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February 1, 2022
NY State Budget Forum

Re: Governor's FY23 Executive Budget, Title 33, Extended Producer Responsibility Act

Honorable Senators and Members of the Assembly:

Thank you for the opportunity to submit testimony today. My name is Thomas Outerbridge and I am President of Sims Municipal Recycling (SMR). SMR is in the business of receiving, processing, and marketing post-consumer recyclables collected by municipalities, including the City of New York. In this capacity, we are exposed to local government budgets, fluctuating commodity prices, and the good, the bad and ugly of what materials end up in the residential waste stream. The recycling industry is resilient and accustomed to challenges, but there is a need and opportunity to engage product manufacturers who play a critical role in determining the type and quantity of material local governments (and recyclers) must eventually manage.

I have testified on many occasions in support of Extended Producer Responsibility for packaging materials (EPR). Last year a great deal of effort went into drafting, refining and advancing EPR legislation in the NYS Senate (Senate Bill S1185C). This year, I am very excited that EPR is included in Governor Hochul's Executive Budget.

Many parties will submit comments on the Governor's proposal, because EPR will realign responsibilities for many materials produced, consumed and discarded in New York. I believe there are important concerns being raised, and I venture to group them as follows:

- Producer concerns that they will have to pay undefined amounts into a system over which they have no control. Most EPR laws have found a balance between an "open checkbook" and no responsibility or obligation. There is no shortage of examples to choose from. There will be some producers that oppose the imposition of any financial responsibility, not surprisingly. But most producers already sell products in other jurisdictions with EPR laws, where they have established a level of producer participation in the system that is commensurate with their responsibilities. The task in the first place is not to achieve universal support since that is not likely to happen. However, what is readily achievable is to identify and incorporate language to ensure a reasonable fee structure, providing a level of participation and predictability for producers, who must manage their business and plan for the future.
- Organizations and individuals concerned with the opposite scenario, that producers will have too much control over the system, and there will not be sufficient accountability and transparency to ensure the law is having the intended effect of reducing the waste stream, increasing recyclability and recycling rates, and creating more robust local programs. EPR programs have addressed this concern in many ways. The Governor's proposal and S1185C both detail specific oversight roles for an advisory board and the NYS DEC, as well as processes for reviewing and approving plans and other reports. Other jurisdictions have taken other approaches. If the Governor's proposal requires adjustments in this regard, that should not be an insurmountable task.
- Concern by local producers and businesses, ranging from NYS wine makers, to paper mills, to supermarkets who package products under their own label, that EPR will increase their costs, and those costs will have to be passed on to consumers. A study performed for the Oregon

DEQ prior to passage of their EPR law found no correlation between product prices in jurisdictions with vs. without EPR laws. The costs for recycling programs are typically measure in \$/ton. As a result, it is not surprising the EPR fee on any one package is infinitesimal, and is dwarfed by other cost variables such as labor, energy, raw materials, and transportation.

- Questions and concerns about local law preemption and Activity Based Costing provisions. I do not pretend expertise in this area, but these are important issues to be addressed with representatives of local jurisdictions.
- Recyclers and collection companies wondering if the old model of working with municipal customers and the commodity markets will still be viable. In some cases, these are business built over generations of hard work so the concern is understandable. As a member of the NY Product Stewardship Council, we have worked for years to ensure that NYS EPR follows a “reimbursement” model, and I am pleased to see the Governor’s proposal does. This means the municipalities, counties and solid waste authorities that provide recycling services to their residents, can contract for services with private haulers and recyclers as they do today.

I have no doubt that your work in the coming weeks will result in improvements to the Governor’s proposal, and an EPR law and program that are suited to New York. As you move forward in your deliberations, I ask that you keep in mind two points.

First, in the current environment, without EPR, producers of packaging materials have no inherent financial incentive to choose environmentally preferable packaging. Many companies have made significant steps and commitments to use recycled feedstock, design for recycling and reduce packaging, but there is no direct financial connection to the environmental or economic cost of managing that material at end of life. NYS Municipalities, Counties and Solid Waste Authorities bear that cost. The public sector and recycling businesses absorb all the risk of commodity markets and must manage whatever products and materials producers sell into the marketplace.

Second, while the Governor’s proposal should be refined and improved, it will inevitably require adjustment in future. The landscape in which EPR operates changes in basic and profound ways – consumer and producer behavior, technology, markets, and the material stream. In the last decades, existing EPR systems across Europe and Canada have adjusted for e-commerce, the growth of flexible packaging (“pouches”), advances in automated sorting systems, and global shifts in markets (notably China exiting the market for recycled commodities). EPR will be a living program that needs to anticipate adjustments, include assessment and review, and be modified appropriately as conditions change.

Maine and Oregon passed packaging EPR last year. This year it is proposed in Washington, Colorado, Connecticut and elsewhere. But many are still looking are looking to see what New York will do. I fully appreciate the effort required. The details do matter. But this has been years in the making, decades if you go beyond the US. As a recycler, I ask you to not kick this can down the road. I ask that you find a balance on key issues, and pass legislation to start a process whereby producers have a direct stake in the impact of their packaging after it has served its purpose to the original consumer.

As always, I appreciate your attention to recycling. It is incredibly important to those of us who work on it, and it is an environmental activity that virtually all New Yorkers have access to and that most participate in daily.

Thank you.