



**American
Forest & Paper
Association**

Memorandum in Opposition
Part PP – Waste Reduction and Recycling Infrastructure Act
and
Part AAA – Cap and Invest Program
FY 2024 New York State Executive Budget
Transportation, Economic Development and Environmental Conservation
February 14, 2023

The American Forest & Paper Association (AF&PA) appreciates the opportunity to share our perspective on Part PP and part AAA of the Transportation, Economic Development and Environmental Conservation section of the New York State Executive Budget on behalf of our members and their employees who are an integral part of the circular economy.

Introduction to AF&PA

AF&PA serves to advance U.S. paper and wood products manufacturers through fact-based public policy and marketplace advocacy. The forest products industry is circular by nature. AF&PA member companies make essential products from renewable and recycle resources, generate renewable bioenergy and are committed to continuous improvement through the industry's sustainability initiative — [*Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future*](#). The forest products industry accounts for approximately five percent of the total U.S. manufacturing GDP, manufactures about \$350 billion in products annually and employs about 925,000 people. The industry meets a payroll of approximately \$65 billion annually and is among the top 10 manufacturing sector employers in 43 states.

In New York, the industry employs more than 26,000 individuals, with an annual payroll of over \$1.7 billion. The estimated state and local taxes paid by the forest products industry totals \$211 million annually.¹

AF&PA's sustainability initiative — *Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future* — comprises one of the most extensive quantifiable sets of sustainability goals for a U.S. manufacturing industry and is the latest example of our members' proactive commitment to the long-term success of our industry, our communities and our environment. We have long been responsible stewards of our planet's resources. AF&PA members met or surpassed many of the goals outlined in our previous sustainability initiative, *Better Practices, Better Planet 2020*, including a 24.1 percent reduction in GHG emissions; 13.3 percent improvement in purchased energy efficiency; 30 percent reduction in workplace injuries; and 12.2 percentage point increase in wood fiber procurement from certified forestlands.

¹ Data sources: U.S. government, AF&PA, and Fastmarkets RISI. Figures are the most recent available as of December 2022.

Comments on Part PP- Waste Reduction and Recycling Infrastructure Act

AF&PA must respectfully oppose Part PP, which would require producers to create or participate in a product stewardship organization in order to sell or distribute products for use in New York. We urge the legislature to address this complex concept in a stand-alone bill that will allow time and due consideration of this issue which will touch nearly every part of the state economy, rather than in the time-limited state budget process. Additionally, we respectfully ask policymakers to focus on improving recycling for materials with low recovery rates, instead of creating mandates and fees for paper producers that could direct capital away from investing in recycling infrastructure.

The paper industry has a demonstrated, measurable record of success in making paper and paper-based packaging more circular and sustainable through market-based approaches. Extended producer responsibility policies are typically applied as a solution for hazardous, hard-to-handle materials with low recycling rates, such as batteries, paint, mattresses, or electronics. For a highly recycled material like paper, with widely accessible collection programs and robust and resilient end markets, EPR could disrupt efficient and successful paper recycling streams in an attempt to improve the least effective streams.

The Paper Industry Is a Responsible Producer

Paper recycling rates in the U.S. have consistently increased in recent decades, with 68 percent of paper recovered for recycling in 2021.² The paper industry recycles about 50 million tons of recovered paper every year — totaling more than 1 billion tons over the past 20 years. According to the EPA, more paper by weight is recovered for recycling from municipal waste streams than plastic, glass, steel, and aluminum combined.³ The paper industry has planned or announced around \$5 billion in manufacturing infrastructure investments by the end of 2024 to continue the best use of recycled fiber in our products, resulting in an over 8-million-ton increase in available capacity.⁴

This success has been driven by the paper industry's commitment to providing renewable, sustainable, and highly recycled products for consumers. Recycling is integrated into our business to an extent that makes us unique among material manufacturing industries – our members own 114 materials recovery facilities (including one in NY) and 80 percent of paper mills use some amount of recycled fiber. Any EPR system must fully and fairly credit the early, voluntary action our industry has taken to advance the recycling rate of our products, and strictly prohibit the use of fees generated by one material to subsidize development of recycling infrastructure for competing materials with lower recycling rates.

In fact, our industry's recycling rates are so successful that some products are approaching the maximum achievable recycling rate. The three-year average recycling rate for the material that would be most impacted by EPR; old corrugated containers (OCC), is already 90.5 percent.⁵ In

² <https://www.afandpa.org/priorities/recycling>

³ https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf

⁴ The Recycling Partnership; Northeast Recycling Council. Last updated: December 2021

⁵ <https://www.afandpa.org/news/2021/resilient-us-paper-industry-maintains-high-recycling-rate-2020>

addition, 88.9 percent of New Yorkers have access to residential curbside recycling.⁶ The state already has a well-developed and widely accessible paper and paperboard recycling system, thus negating the need for an EPR program. Identifying successful parts of existing programs will allow the state to replicate proven solutions with lowered risk for all stakeholders.

Continuing innovation and meeting customer needs is an important part of the way our members do business. Through research among our members and best practices in the industry, AF&PA developed a tool to help packaging manufacturers, designers and brands create and manufacture packaging that meets their recyclability goals. *The Design Guidance for Recyclability* is intended to serve as a data-driven resource to support ongoing innovation.⁷

Paper Products Do Not Belong with Packaging EPR Concepts

Not only does Part PP create an inappropriate one-size-fits-all solution for packaging types that have vastly different needs and sustainability goals, but it adds paper products to the list of covered materials, which simply does not make sense. The argument that “everyone in the bin needs to pay” is a distraction from whether paper products are contributing to the concerns that are to be addressed by EPR or if it can become more sustainable as a result of EPR being in place- and the answer is no to both.

- Printing paper consumption is naturally declining due to electronic substitution- 64 percent nationally since 2000- and are not contributing to growing volumes in recycling bins associated with other materials.
- Printing papers have already achieved the EPR “design for the environment” goal, as the vast majority of printing papers are 100 percent recyclable and do not contain hard-to-recycle components like other materials that would benefit from major infrastructure improvements.
- Printing paper processing is straightforward and does not require the kind of special equipment needed to sort lightweight, multi-material or complex products. PRO Investments in infrastructure would likely subsidize needs for non-paper materials, not paper.
- This is an aspirational and counter-productive goal for printing papers due to expanding single-stream collection and an increasing proportion of packaging papers in the mix. These trends make increased recycled content unsuitable for making high quality printing paper and diverts otherwise usable fiber away from more efficient uses like packaging products.
- Including printing paper in Part PP would involve the registration, fee collection and enforcement for potentially thousands of printing paper “producers” due to the complex supply chain relationships among manufacturers, brand owners or distributors, and retailers of printed paper products. This raises the question of how high administrative costs of managing such a program with so many producers representing such a small volume of material could be justified.

⁶ <https://www.afandpa.org/priorities/recycling/what-were-doing>

⁷ <https://www.afandpa.org/news/2021/afpa-releases-new-guide-further-advance-paper-recycling-0>

Unintended Consequences of EPR Policies

EPR policies must be carefully designed to avoid creating fees or mandates that could disrupt efficient and successful paper recycling streams or that direct private sector funds away from investment in recycling infrastructure. Part PP requires funding which would be used to pay the costs of municipalities and entities providing solid waste management services. But this is merely a cost-shifting mechanism common in other EPR programs that does not create added value or develop end markets for recyclable materials. The paper industry already contributes to economically sustainable recycling programs by purchasing and utilizing material sourced from residential collection programs in manufacturing new products.

Recycling programs in the U.S. are operated by local governments, which have more freedom to tailor recycling programs to the needs of local communities. The record of highly centralized, command-and-control EPR programs in Canada and Europe offers no real proof of advantages over the market-based approaches and locally-operated programs prevalent in the U.S.

Part PP requires a producer responsibility organization (PRO) to set product performance requirements including a minimum post-consumer recycled content rates which vary drastically between materials (see chart below). At the same time, the recovery and recycling rates are set for all materials to have within five years of the effective date of the law a minimum recovery rate or 35 percent, increasing by 10 every five years until 85 percent; and a minimum recycling rate of 25 percent, increasing by 10 every five years until 75 percent. The state has not done a statewide needs assessment and the basis for all of these numbers are unclear- a gap is acknowledged in the same section of the bill by allowing the numbers to be changed later based on data from the assessment. It should be the role of producers to determine recovery, utilization and recycling goals based on data and product considerations- not a seemingly random decision by outside parties unfamiliar with the impacted industries.

Required Post-Consumer Recycled Content Minimum Percentages

Material	Starting Point:	Increasing to:	Years to Comply:
Glass Packaging	35%	50%	9
Metal Packaging	50%	90%	17
Rigid Plastic Packaging	25%	50%	9
Non-rigid Plastic Packaging	10%	40%	18
Corrugated Cardboard (OCC) Packaging	50%	75%	15
Paper Packaging other than OCC	30%	70%	12
Paper Products (food grade is exempt)	30%	70%	12

Recovered fiber markets are complex, efficient, and dynamic and are not served by regulations or prescriptive approaches to specify the use of recycled fibers or dictate what type of recovered fiber is used in products. The preference for recycled content in packaging could be contrary to sustainability goals. Rather than drive increased paper recycling, fee structures to incentivize recycled content in paper products could: make markets for recovered fiber less efficient; prevent recovered fiber from going to highest value end use; raise the cost of production for new paper

products; and narrow available choices for consumers.⁸ It can also result in unintended consequences such as an increase in transportation costs and emissions due to shipping recovered fiber even while virgin fiber can be sourced more locally.

Recycled paper fiber can be reused 5-7 times to make new products. Virgin pulp supply is needed to sustain and grow the recovered fiber cycle. The paper and wood products industry promotes and uses sustainable forestry best practices because it depends on sustainable forest growth. These best practices include forest certification programs that provide standards, or guidelines and structure, for sustainable forest management and fiber sourcing. In North America there is a mosaic of healthy forests, wherein growing, harvesting, replanting, and regrowing forests occurs as a standard practice. Forest lands in North America have been stable for more than 100 years. Our industry responsibly uses every part of the tree to make essential products for everyday life. Using paper and wood products incentivizes regeneration and replanting trees after harvest and keeping land in forests, decreasing the likelihood of conversion to other uses like parking lots, subdivisions, or pastures.

Current efforts have achieved strong gains in paper recycling and are expected to continue to do so in the future. Putting pressure on producers to arbitrarily change content in certain paper products interrupts the market-based utilization of recovered fiber, prevents recovered fiber from flowing to its highest value end-use, is counterproductive both economically and environmentally, and is inconsistent with the precepts of sustainability.

The bill also requires source reduction of 15 percent within 10 years of the bill's effective date to eliminate or reduce the generation of solid waste with language that clarifies that it should not result in replacing a recyclable or compostable material with a nonrecyclable or non-compostable material. However other parts of the bill explicitly point to making shifts toward reusable packaging which is often, by nature, neither recyclable nor compostable. Similar to the current situation with e-commerce and curbside pickup groceries in New Jersey leading to a glut of reusable bags for customers, a sudden shift to reusable packaging mandated by policy before its end-of-life disposition is worked out could result in that packaging being treated as single-use when it may be ultimately less sustainable from a life-cycle perspective than packaging options available today.

Focus On Solutions for Products with Low Recycling Rates

Paper recycling has enjoyed decades of success because of the industry's investments, consumer education, the wide availability of well-developed recycling programs, and the efforts of millions of Americans who recycle at home, work, and school every day. The paper products industry is proud to be part of the recycling solution by providing renewable, sustainable, and highly recycled products for consumers. We respectfully ask policymakers to focus on improving recycling for materials with low recovery rates that contaminate the recycling stream.

⁸ https://www.afandpa.org/sites/default/files/2022-09/AF%26PA-RecycledContentMandates_8152022_0.pdf

Comments on Part AAA

AF&PA appreciates that energy-intensive and trade-exposed facilities (EITEs) are to be given an allocation of allowances for the covered emissions under the proposed cap and invest program at no cost. Neither the Regional Greenhouse Gas Initiative nor California's cap and trade program require allowances for emissions from eligible biomass combustion, and numerous international and domestic programs recognize the carbon neutrality of biomass. The criteria for structuring the cost of allowances and allocations for EITEs for this will be extremely important for our industry and is not clarified sufficiently in Part AAA, leaving much of the decision-making to the state agencies at a later date.

AF&PA's members are both large consumers of electricity and, in some instances, generators of electricity used, for the most part, for their industrial operations. AF&PA members are also subject to a wide variety of Clean Air Act (CAA) and other federal and state regulatory programs. Those programs consistently impose more and more stringent standards and permitting requirements on our facilities. The investments our members have made to achieve and go beyond compliance with these requirements have totaled billions of dollars and have dramatically reduced emissions of greenhouse gas (GHG) and other pollutants regulated under the CAA.

The U.S. forest products industry is a significant contributor of renewable energy, producing more carbon-beneficial bioenergy than any other industrial sector. On average, about two-thirds of the energy used at AF&PA member mills is generated from carbon-neutral biomass.⁹

Our industry is making large investments in highly efficient biomass energy that meets stringent state-of-the-art environmental standards. Biomass is burned in industrial boilers and black liquor is combusted in recovery furnaces, both of which are operated under very exacting conditions to optimize efficiency and production of energy. Boilers and recovery furnaces are run from highly sophisticated, computerized control rooms that continuously monitor combustion conditions and are subject to stringent air emissions control requirements. The U.S. EPA has confirmed there are no significant risks from recovery furnaces and other major parts of pulp and paper mills on the surrounding areas.¹⁰

The industry also strives to produce and use this energy as efficiently as possible. The industry is a leader in the use of combined heat and power (CHP) technology, which is extremely efficient because it uses the same fuel to produce both thermal energy used in the manufacturing process and electricity, some used on-site and some sold to the grid. In 2020, 99% of electricity produced by the industry was CHP generated.¹¹ The use of CHP provides energy efficiencies in the range of

⁹ 2020 AF&PA Sustainability Goals: Achievements Summary, <https://www.afandpa.org/sites/default/files/2022-02/BPBP2020SustainabilityGoalsAchievementsSummary-2-2-22.pdf>

¹⁰ EPA conclusion of no significant risks for the major parts of pulp and paper mill operations was determined in two phases, first in 2012 and then in 2017, which covered recovery furnaces, as EPA finished its risk and technology review of the 1998 and 2001 Cluster Maximum Achievable Control Technology (MACT) rulemakings.

¹¹ U.S. Energy Information Agency, Form EIA-923 2020 data, <https://www.eia.gov/electricity/data/eia923/> AF&PA Analysis.

50% to 80% at forest products mills, far beyond non-CHP electrical stations such as utilities, which are only about 33% energy efficient.¹²

There is a strong scientific consensus on the enormous greenhouse gas reduction benefits from the bioenergy produced by pulp, paper, and wood products mills:

- Dr. Timothy Searchinger, a scholar who prompted the discussion about the carbon neutrality of biomass, has stated specifically *“black liquor from paper making” is an “advisable” source of bioenergy.*¹³ In addition, in a joint paper with Dr. Searchinger, Dr. Steven Hamburg, the Chief Scientist of the Environmental Defense Fund, and other experts, the co-authors concluded *“biomass should receive credit to the extent its use results . . . from the use of residues or biowastes.”*¹⁴
- An extensive, peer-reviewed study by the National Council for Air and Stream Improvement (NCASI) shows the bioenergy produced from manufacturing residuals and biowastes in the U.S. paper and wood products industry each year avoids the emission of approximately 181 million metric tons of CO₂e.¹⁵ For context, *this greenhouse gas reduction benefit is roughly equivalent to removing about 35 million cars from the road.*
- In 2014, the U.S. EPA conducted an extensive analysis of bioenergy and indicated there are large climate benefits from the bioenergy produced and used by the forest products industry. *Specifically, a detailed analysis of black liquor produced and used by pulp and paper mills showed it is at least carbon neutral and can be even better than carbon neutral. As a result, the analysis assigned black liquor a zero to negative biogenic assessment factor.*¹⁶

Based on the information above and considering the competitive disadvantage that New York industrial facilities would face if they were subject to cost of full-price allocations, the cap and invest program should clearly exempt those facilities from the applicability requirements.

Conclusion

We encourage the Committees to avoid measures that might penalize the forest products industry from continuing to engage in the state economy and we look forward to continuing our work with the State of New York. Please contact Abigail Sztejn, Director, Government Affairs at Abigail_Sztejn@afandpa.org with any questions.

¹² U.S. Environmental Protection Agency, CHP Benefits, www.epa.gov/chp/chp-benefits (“The average efficiency of fossil-fueled power plants in the United States is 33 percent.”)

¹³ Dr. Timothy Searchinger and Ralph Heimlich, Avoiding Bioenergy Competition for Food Crops and Land. World Resources Institute (2015), at 22 and 24 (Table 3) 16 Dr. Timothy Searchinger, Dr. Steven H

¹⁴ Dr. Timothy Searchinger, Dr. Steven Hamburg, et al., Fixing a Critical Climate Accounting Error. Science (Oct. 22, 2009)

¹⁵ Caroline Gaudreault and Reid Miner, Temporal Aspects in Evaluating the Greenhouse Gas Mitigation Benefits of Using Residues from Forest Products Manufacturing Facilities for Energy Production. Journal of Industrial Ecology (Dec. 2015), at 1,004-05; National Council for Air and Stream Improvement, Inc. Greenhouse gas and fossil fuel reduction benefits of using biomass manufacturing residuals for energy production in forest products facilities.

¹⁶ U.S. Environmental Protection Agency, Draft Framework for Assessing Biogenic CO₂ Emissions from Stationary Sources (Nov. 19, 2014), Appendix D, pp. D21-30.