

Impacted Stakeholders Concerns
New York State Executive Budget
Waste Reduction and Recycling Infrastructure Act
Article VII Proposal, S.4008/A.3008, Part PP
February 14, 2023

The undersigned organizations appreciate the opportunity to provide comment on Article VII proposal, S.4008/A.3008, Part PP, which seeks to establish a waste reduction and extended producer responsibility (EPR) mandate for packaging and printed material. While many of our organizations support a properly structured EPR mechanism to aid the recycling system, we have concerns with Article VII proposal, S.4008/A.3008, Part PP and believe the language must be significantly amended to provide a more practical program to improve the recycling system in New York.

Our organizations recognize supporting and improving the recycling system is critical and there is a reasonable role that producers can play in improving the recycling system. However, the infeasibility of the recycling and source reduction goals and the cost and scope of this program will damage industries in New York and impact the price of consumer goods. In order to ensure that an EPR program in New York is feasible and fair, the following issues must be addressed and amended in this proposal:

Critical Problems & Solutions

- 1. Unrealistic Goals** - The statutory recycled post-consumer recycled content goals, recycling rate goals and source reduction rate goals in Section 27-3407 of this proposal are not based on any data or proper study of the recycling system or markets in New York. Our organizations believe an analysis of real-world markets and the current recycling system is critical before such high and escalating performance goals are put into law. In fact, as currently drafted the combination of statutory goals in this proposal represents the most aggressive sets of goals anywhere in the world. ***We recommend that a proper needs assessment be performed under this law prior to setting mandatory performance goals in statute.***
- 2. Producer Fees and Registration** – The separate and individual producer registration and fee requirement in Section 27-3403(3) is duplicative, unnecessary and a monumental bureaucratic and potential financial burden on companies and the Department of Environmental Conservation. This step is unnecessary and not required in any other EPR program in the U.S. or elsewhere. ***We recommend that Producer Responsibility Organizations (PROs) be charged with collecting any initial registration information or fees from producers and if necessary, remit those fees to the Department – unless a producer chooses to comply individually.***
- 3. Funding Mechanism & Convenience Standards** – The funding mechanism in S.4008/A.3008, Part PP must be reasonable and constructed in a way that shares costs between producers and municipalities for fair allocations of services and costs for which a particular party has influence over. S.4008/A.3008, Part PP establishes a funding mechanism that would provide for full cost reimbursement from producers to municipalities for collection, recovery, recycling and processing of packaging materials and prescribe those at the current rates of convenience. Improving the recycling system is a shared responsibility and funds should primarily support infrastructure development and should only be used to return a material to a positive market value – not cover the entire recycling system as it exists today, including all collection costs. ***PROs or producers must be given flexibility to use the needs assessment to determine reasonable best practices and convenience standards for particular geographic regions and determine reasonable costs. PROs or producers should not be locked into funding only the current system of convenience.***
- 4. Use of Funds** – Section 27-3409(3)(f)(iv) creates an unconstitutional restriction on the use of any funds collected by a PRO organization “pursuant to this title” from being used for certain purposes; such as, lobbying, litigation

or penalties. All funds collected by a PRO might be collected pursuant to this title, and therefore could be construed to create an unconstitutional restriction on speech and a right to defense under the law. ***This section must be amended to allow the PRO to fund these activities, not by diverting funds from recycling programs, but such funds might still be collected under this title.***

Conclusion

This coalition of impacted stakeholders recognize the need to improve the recycling system in New York and beyond and we remain committed to being a partner to find the right paths forward. We urge the Senate and the Assembly to consider these critical issues and amend S.4008/A.3008, Part PP in a way that makes it feasible for consumer goods producers and leads to improved recycling systems in New York. We believe that improving the recycling system is a shared responsibility. Therefore, we hope that our comments are helpful in creating a pathway to developing a truly workable program for EPR in New York.

Respectfully Submitted, on Behalf of the Following Organizations:

- 3M
- Air-Conditioning, Heating, and Refrigeration Institute
- American Cleaning Institute
- American Forest & Paper Association
- AMERIPEN - American Institute for Packaging and the Environment
- American Apparel & Footwear Association
- Association of Home Appliance Manufacturers
- Associated Builders & Contractors – Empire State Chapter
- The Business Council of New York State
- Buffalo Niagara Partnership
- Binghamton Chamber of Commerce
- Can Manufacturers Institute
- Consumer Technology Association
- Consumer Brands Association
- Council for Responsible Nutrition
- DISCUS - Distilled Spirits Council of the United States
- Empire State Forest Products Association
- Flexible Packaging Association
- Food Industry Alliance of New York State
- Foodservice Packaging Institute
- Household & Commercial Products Association
- New York Alliance of Fine Wine
- New York Cider Association
- New York Farm Bureau
- New York State Distillers Guild
- New York State Brewers Association
- New York Wine Policy Institute
- North Country Chamber of Commerce
- Owens-Illinois Inc.
- Pactiv Evergreen Inc.
- Personal Care Products Council
- Plastics Industry Association
- PRINTING United Alliance
- Retail Council of New York State
- Responsible Industry for Sound Environment
- Rochester Chamber of Commerce
- The Toy Association
- Upstate United
- Water Quality Association
- Western Plastics Association
- Wine Institute







American
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