AMERICAN BEVERAGE
DRIVING SOLUTIONS TOGETHER

MEMO

TO: New York Senate and Assembly Environmental Conservation Committees

FROM: American Beverage Association and its New York Bottlers

DATE: October 24, 2023

SUBJECT: Packaging Reduction and EPR

The beverage industry has a long history of packaging innovation and reduction, breaking new ground on light-weighting of packaging, elimination of waste in our production and distribution systems, and innovative product delivery systems eliminating packaging altogether, such as in-home mixes. We also realize that reduction has its limits if we are to maintain the safety and integrity of products we all count on and to serve the needs of consumers; we are therefore equally focused on deploying packaging that is recyclable and has a high value in the recycling stream. And our industry has invested significantly in the collection and recovery of packaging to promote greater circularity for decades – much of that voluntarily without legislative or regulatory mandate. It is in that context that we present the views of the beverage industry on policy that might be employed to promote packaging reduction.

Our members produce and distribute a wide array of refreshment beverages through a network of local bottlers who live and work in New York. Our industry provides jobs to 15,000 New Yorkers; these jobs are some of the best paid, highest benefit jobs available in communities to employees with and without college degrees, and many of them are union jobs. We are proud of our employees and how they and the companies they work for are involved in and give back to our communities.

For reference packaging represents 28 percent of municipal solid waste (MSW) in the US, plastic packaging is 5 percent, and PET plastic refreshment beverage containers are 0.9 percent.[1] Packaging reduction has the potential to reduce waste and resource use, but given these figures, those benefits have limits. Reduction cannot be the sole strategy of policy so we must pay equal attention to the type of material used (recyclable, compostable, or reusable) and to the recovery systems in place. In short, reduction by itself is not a path to sustainable materials management, which must be our over-reaching goal.

Industry Commitments and Action

The beverage industry is committed to reducing plastic waste in the environment. Our ongoing efforts to reduce package use, lightweight or eliminate packaging, and make packaging more recyclable have eliminated the use of millions of tons of virgin resin and we continue to make and track progress in this area.

These efforts are linked to our Every Bottle Back program which includes:

[1] https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/advancing-sustainable-materials-management Tables 10 and 23 plus ABA generation data.

- Working with World Wildlife Fund to measure and track progress toward reducing our plastic footprint.
- Partnering with The Recycling Partnership and Closed Loop Partners to invest $100 million to modernize and improve community recycling in communities where we can have the greatest impact.
- Increasing awareness about the value of our 100% recyclable plastic bottles.
- Introducing a new voluntary on-pack message to promote the recyclability of our plastic bottles and caps.

As noted, these are voluntary efforts, meant to reduce the impact of our industry's use of plastics, but also intended to leverage other resources to these ends. The recycling grants, for example, have leveraged significant funding from other sources leading to investments significantly greater than just the funds we have pledged.

Policy

With the launch of our Every Bottle Back campaign in late 2019, the beverage industry recognized that not enough of our bottles and cans were being collected and recycled and that more profound public policy changes were necessary to achieve our goals and to raise the performance of all recycling in the country. We recognize our responsibility as producers and brand owners to lead on this issue. As a result, drawing on our industry's global experience with EPR systems, we developed principles and parameters for EPR programs, understanding that EPR has the potential to efficiently increase recovery of packaging but only if the program's design and operation are consistent with best practices. We have appended those best practices to this document.

Not only do these programs relieve taxpayers of the obligations for funding these programs, but they put in place the incentives and structures to enhance performance of systems that have long underperformed, leading to poor quality and inadequate quantities of recycled inputs for new products.

EPR also has the potential to incentivize source reduction through producer fees that internalize the externalities associated with putting products and packaging on the market. Simply put, producers pay more the more they sell. Using fee structures and eco-modulation, producers have a direct incentive to use less material, use more recyclable material, use more recycled material, and avoid package and product designs and components that hinder recycling.

It is important, however, that EPR maintains its primary focus of improving and funding our systems of collection, processing, and recovery of materials. EPR cannot simply be a vehicle for packaging taxes and bans. We need revitalized, efficient recovery systems and EPR has proven the most effective policy to deliver that.

Because of the importance of implementing well designed EPR, our industry has actively engaged in developing, debating, and implementing EPR laws in the US. In New York, we collaborated closely with Senator Kaminsky and his staff in developing the first EPR bill for packaging filed in New York S.1185C. We whole-heartedly endorsed this legislation, which closely mirrored the principles for well-designed EPR systems. Subsequently, we have engaged with other EPR bill sponsors, providing detailed comments and suggestions on additional proposals. We offered qualified support of Senator Harckham's initial introduction of S.4246 at the beginning of this session, but oppose the significantly altered A version of the bill as disruptive to the state's economy and a radical departure from best practices.

Outside New York, we have been actively engaged in discussions with stakeholders in several states including California, Connecticut, Maine, Massachusetts, Maryland, Minnesota, and Washington; we also played a lead role in the development and passage of the EPR law in Colorado, which we hold up as a model of best practices in the US.

Conclusion

"Reduce" occupies the primary position in the waste management hierarchy, but policy must go beyond reduction to provide practical solutions to our materials management challenges. Undue reliance on reduction can have significant equity impacts on consumers, may lead to substitute materials or systems with greater impacts on the environment and on consumers than the original product or package, and leaves unaddressed the challenges faced by local governments in funding and operating high-performing collection and recovery programs.

We prioritize EPR as a policy approach because it provides much needed coordination, technical expertise, reliable funding, and accountability into our recovery systems. Through fee structures it can also drive changes in material selection and package and product design.

We remain committed to engaging in discussions over the shape and direction of EPR legislation in New York and will continue to offer our expertise to lead to a well-designed program that unlocks the full potential of this important policy shift in the US.

We appreciate the opportunity to present our perspective on these programs.

Addendum: ABA Principles for EPR

Based on our global learnings and experience with multi-material EPR systems, we understand that we therefore have a unique responsibility to lead on this issue. To expand on our past advocacy efforts, we have developed the following global principles and parameters for EPR programs. EPR has the potential to efficiently increase recovery of packaging but only under certain conditions articulated below. The overarching goals for these principles are:

- Generate strong environmental outcomes in an efficient and accountable manner
- Provide convenient service to consumers
- Create a financially sustainable model
- Offer producers access to recovered material for closed loop recycling

Key Principles

- **Clear scope of products affected and programs funded**

    - Products include all types of consumer goods packaging and printed paper with products labeled to indicate recyclability to consumers. The list of materials that can be recycled is consistent across the jurisdiction.

    - The program funds 100 percent of the net cost (net of scrap value) for residential recycling of packaging and printed paper including both single- and multi-family dwellings and including education and outreach programs. Excludes costs for industrial, commercial, and institutional waste management and for disposal of residential material.

    - Initial goal of 50 to 60 percent recovery for packaging and paper, increasing to 60 to 80 percent over time, depending on local factors

- **Centralized program management**

    - A single, non-profit Producer Responsibility Organization (PRO) manages the funding system for the entire jurisdiction, with professional staff answerable to a producer-led board of directors.

    - The PRO develops and implements a plan to achieve the program goals, developed in consultation with other stakeholders and usually mapped out over five to seven years. After plan approval, the PRO sets fees for producers following the cost principles below, implements needed recycling system changes, establishes funding and reimbursement arrangements with recyclers, evaluates and reports on performance, and markets recycled materials. Obligated producers have right of first refusal to their share of recovered material at market terms.

    - The PRO does not typically operate recovery vehicles and facilities, but contracts for those services either directly or through reimbursement of private sector or municipal costs to provide the services.

- **Transparent cost principles**

    - The PRO sets producer fees by material type (*e.g.,* PET, aluminum, corrugated cardboard) based on the cost to recycle the material minus its value in the scrap market. Because costs and commodity values change over time, fees are reset typically once per year.

- Producers pay fees based on these net costs with fees assessed based on the weight of various materials sold, with a *de minimis* threshold set to relieve the smallest producers of obligation. Producers typically update sales annually and the data is treated confidentially.

- The PRO may modify fees based on environmental factors. Fee reductions might be considered for products that are the most recyclable, contain recycled content, or have a low carbon footprint. Surcharges (disruptor fees) may apply to difficult to recycle materials with the highest fees charged to materials that cannot be recycled.

- The overhead costs of running the PRO and the government's cost of rulemaking, oversight, and enforcement are also embedded in the producer fees.

- **Defined role for government**

    - Enabling legislation sets the scope of the program and its goals to assure a level playing field among producers of consumer goods packaging and printed paper. The legislation also specifies the role for government and how those activities are funded.

    - The designated government agency evaluates and approves the PRO's plan for achieving program goals, monitors program progress, and provides enforcement.

    - Government agency costs for rulemaking, plan approval, oversight, and enforcement activities are reimbursed by the PRO, with those costs embedded in the producer fees. No additional government funds are drawn from the producer organization, other than reimbursements to local and regional governments for recycling services as noted above.

All of these principles reflect experience in other developed economies around the world, but any program needs to be customized to the local and regional conditions including the existing infrastructure, demographics, available markets, and key stakeholders.