**Stakeholders Concerns**
**New York State Executive Budget – Article VII**
**Extended Producer Responsibility Act – Title 33**
**February 1, 2022**

The undersigned organizations appreciate the opportunity to provide comment on TITLE 33, which seeks to establish an 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 TITLE 33 in its current form and believe the language must be 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 shared responsibility that producers can play in improving the recycling system. However, the cost and scope of this program will likely be significant to producers and impact the price of consumer goods. In order to ensure that an EPR program in New York is reasonable, we would like to highlight the following core issues and potential solutions.

**Critical Problems & Solutions**

1. **Problematic Definition of "Readily Recyclable" –** This definition is a critical standard for the implementation of a successful packaging producer responsibility program. ***These factors, for what is considered "readily recyclable" <u>should not</u> be specified in statute, but instead determined through the needs assessment and in collaboration with the producer responsibility organization and stakeholders in the solid waste system. <u>This approach is more akin to the language for this issue in S.1185C.</u>***

2. **Problematic Definition of "Producer" –** Clearly articulating who is the responsible "producer" under this proposal it critical to ensuring that the law can be implementable and enforceable. In all EPR programs around the world, the brand owner is considered the "producer" and this proposal must reflect that reality to be enforceable. ***<u>The definition of producer in S.1185C is appropriate and reflects work that was done last year to address this issue.</u>***

3. **Overly Expansive Role of the Advisory Council –** TITLE 33 creates a new and expansive role for the Advisory Council in establishing major decisions for the EPR program. In many areas this vests too much authority for developing the following factors:
   - Annual minimum recovery rates
   - Recycling rates
   - Post -consumer recycled content rates

   ***These rates are factors that producers will be responsible for and they therefore should propose them to the Advisory Council and the Department, per S.1185C.***

4. **Recycling Rates Should Not be Set in Code –** In nearly every other EPR program in the world, the recycling rates are not set in statutory code. TITLE 33 proposes to have the rates created by the Advisory Council, per above, codified in regulatory code by the Department. Recycling rates are dynamic and fluctuate. ***Therefore, these rates should be proposed in the producer responsibility plan, per S.1185C, and approved by the Department and adjusted as need to reflect real-world changes in the marketplace.***

5. **Funding Mechanism Structure –** The funding mechanism in TITLE 33 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. TITLE 33 establishes a funding mechanism that would provide for full cost reimbursement from producers to municipalities for collection, recovery, recycling and processing of packaging materials. 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.***

**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 further amend TITLE 33 in a way that makes it more feasible and leads to improved

recycling systems in New York. We believe that improving the recycling system is, and always will be, a shared responsibility. Therefore, we hope that our comments are helpful in creating a pathway to developing a truly workable program under this legislation.

Respectfully Submitted, on Behalf of the Following Organizations:

- Air-Conditioning, Heating, and Refrigeration Institute
- American Chemistry Council
- American Cleaning Institute
- American Forest & Paper Association
- AMERIPEN - American Institute for Packaging and the Environment
- 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 Farm Bureau
- New York State Chemistry Council
- New York State Chapter – National Waste and Recycling Association
- New York State Distillers Guild
- North Country Chamber of Commerce
- Owens-Illinois Inc.
- Pactiv Evergreen Inc.
- Personal Care Products Council
- Plastics Industry Association
- Retail Council of New York State
- Rochester Chamber of Commerce
- The Toy Association
- Upstate United
- Water Quality Association
- Western Plastics Association
- Wine Institute