

SB 222 EPR Advisory Council Meeting
 Thursday, November 14, 2024, 9:00am-11:00am E.T.
 Meeting Location: Online via Google Video

Introduction

Bradley Baker: [Introduction to the agenda].

- I. Roll Call
- II. Panel with the first 5 states implementing packaging EPR in the US
- III. Needs Assessment Update
- IV. Recommendations to Legislature Policy Discussion (including what is legislatively possible in 2025 and 2026)
- V. Open to public comment

I. Roll Call

Attendees

Member Names	Affiliation	<i>Present</i>
Lee Zimmerman	Frederick County on behalf of MACo	Y
John Neyman	Republic Services	
Frankie Sherman	Charles County	Y
Chris Pilzer	WM	Y
Eileen Kao	Montgomery County	Y
Angie Webb	Maryland Environmental Service	Y
Vinnie Bevivino	Bioenergy Devco	
Michael Okoroafor	McCormick	Y
Ellen Valentino	MD-DE-DC Beverage Association	Y
Mario Minor	Market Fresh Gourmet	
Scott DeFife	Glass Packaging Institute	Y

Vacant	Ameripen	--
Abigail Sztejn	America Forest and Paper Association	Y
Delphine Dahan Kocher	Constellium	Y
Peter Hargreave	Circular Action Alliance	Y
Chaz Miller	Maryland Recycling Network	Y
Kelly Doordan	Trash Free Maryland	Y
Martha Ainsworth	Sierra Club	Y
Crystal Faison	Shepherd Design and Construction	
Miguel Lambert	Repurpose Aggregates	
Gurcharan Singh	WAH Global	
Bradley Baker	MDE	Y
Dave Mrgich	MDE	Y
Sara Weitzel	MDE	Y
Shannon McDonald	MDE	Y
Tim Kerr	MDE	

II. States Panel

Each panelist introduced themselves. Panelists included Jessica Nadeau with Maine DEP (ME), Darla Arians with CDPHE (CO), Timothy Burroughs with the California SB 54 Advisory Board (CA), Arianne Sperry with Oregon DEQ (OR), and Annika Bergen and John Gilkeson with MPCA (MN). Bradley Baker led a Q&A session with panelists.

Question 1: Would you highlight some key components in your state's EPR program's design that were included to ensure the success of packaging EPR in your state?

CO: Darla Arians discussed the traditional industry-led, industry-funded design of Colorado's EPR program as the most important key component to ensuring its success. CO's statute prescribed requirements but didn't focus on how to achieve those requirements. They discussed the importance of making sure the EPR program works for both the industry, service providers, and local governments and the importance of input from an advisory board composed of representatives from those groups. Enforcement, authority and oversight from the state

(including penalties for non-compliance) was another component identified. Ensuring equitable access to free recycling for everyone in the state (including the convenience standard).

Darla Arians responded to several questions from Bradley Baker, clarifying that:

- CO's program goals are established in legislation. Specific targets are proposed by the PRO, presented to the advisory board who makes recommendations to be approved by the State.
- The time frames to achieve goals are 5 year targets, with the first target set for 2030.

OR: Arianne Sperry explains contrasting elements between OR and CO's programs, including that OR's law takes a shared responsibility approach rather than full EPR. It maintains parts of the system that were already working and focuses on funding and fixing the parts of the system that needed additional investment, and it includes new roles and mandates for local governments and MRFs. Arianne Sperry responded to questions from Bradley Baker, clarifying that:

- Shared responsibility is between a number of entities taking on new obligations under the law.

ME: Jessica Nadeau described decentralization of decision making in ME's program from a PRO to all interested parties/persons. The goals of this approach are ensuring incentives for improved packaging material from producers, efficient/effective management of packaging material by municipalities, and transparent waste management data. Arianne Sperry responded to questions from Bradley Baker, clarifying that:

- ME has a Stewardship Organization (an administrative body) and does not have a PRO.

CA: Timothy Burroughs introduced CA bill SB 54. Specific targets are set in statute for reducing the volume of plastic packaging entering the state, achieving recyclability, and achieving recycling rates. The PRO must develop a plan describing how targets will be achieved based on the results of the needs assessment. Timothy Burroughs highlighted key components of the program, including that SB 54 builds on the foundation of the existing waste management system, the importance of the source reduction target, and a separate \$5 billion mitigation fund specifically designed to clean up existing plastic pollution in the state.

MN: John Gilkeson stated goals for waste reduction, reuse, refill, recycling, and organics composting. They highlighted exemptions and the importance of giving them proper consideration, consideration of how the old system will transition into the new system (PRO reimbursement of service providers), toxicity reduction and elimination, and consistency with other states' laws. Annika Bergen commented on providing an on-ramp/targets for better establishment of waste reduction, reuse and refill infrastructure.

[QUESTIONS]

In response to questions from the chat, Jessica Nadeau spoke about the stewardship organization's identity as an entity that is contracted with the Department. Timothy Burroughs clarified that producers of covered materials under the law are responsible for paying fees into the program based on the volume and complexity of the material sold/distributed into the market.

OR: Arianne Sperry highlighted other key components of Oregon's program including emphasis on responsible end-markets, product life-cycle impact evaluation and disclosure, equity standards

and periodic evaluation, and waste prevention and reuse program seed funding from the PRO. Bradley Baker commented on the importance of responsible end markets.

[QUESTIONS CONTINUED]

Scott DeFife asked about OR's starting recycling rates/performance before the RMA and clarifies that only the top 20 producers need to do Life Cycle Analyses (LCAs). Arianne Sperry confirmed that only top producers need to do LCAs however there are incentives for other producers to conduct them as well and that Oregon's recycling rates are on the higher end with metropolitan areas likely having higher rates than other regions. Bradley Baker stated that MD's MRA rate (sometimes described as the MSW recycling rate) is around 38-39% as of the last report.

Chaz Miller called attention to similarly high subscription contracts for waste and recycling services in CO and MD, and asked about CO's strategy for implementation of changes to how fees are paid on subscription routes. Darla Arians stated that CAA has proposed entering into agreements with the service providers based on net cost to provide services. Chaz Miller followed up, asking about how that would be managed when haulers are collecting both recycling and waste. Peter Hargreave (CAA) discussed reimbursement of service providers for recycling collection based on zone pricing and the responsibility of service providers to remove recycling from their invoices to customers.

Bradley Baker asked about enforcement in different states, and each representative discussed their state's approach to enforcement. Chris Pilzer asked about issues with collecting penalties, and Arianne Sperry clarified that the program hasn't started yet but likely the PRO will be the first point of contact with producers. John Gilkeson advised maintaining agency involvement during language negotiation to ensure enforcement language builds on existing enforcement authorities.

Bradley Baker requested clarification about Chaz Miller's reference to individual subscription services in MD, and Chaz Miller responded, highlighting combined contract (waste and recycling) subscription services in rural areas of MD and Montgomery County. Peter Hargreave restated that CAA is planning to directly compensate service providers based on a zone rate to mitigate disruption and acknowledged the added complication. Chaz Miller asked if the fee will cover service providers' current costs or zone average costs and raised concern that some service providers will lose money. Peter Hargreave established two methodologies under consideration: a zone price and working with companies directly based on their ledger of costs. Jessica Nadeau added that the reimbursement model in ME only reimburses municipal costs, not service providers and suggested that this may alleviate some complications. Chaz Miller commented that 80% of MD's population lives in unincorporated communities that aren't required to follow the County's solid waste plan.

Question 2: What advice would you give other states, based on your experience with the implementation process so far?

CO: Darla Arians advised other states to have a role in the needs assessment, conduct a full assessment of the impacts of proposed exemptions (considering the impacts of free riders),

require reporting on materials regardless of exempt status, and harmonize with other states who have passed packaging EPR specifically on key definitions, covered materials reporting categories, eco-modulation, and responsible end-markets. Bradley Baker underscored that lack of harmonization increases the complexity to comply and stated MDE's awareness of the issue.

CA: Timothy Burroughs uplifted Darla Arians' advice and additionally advised not taking for granted the role of the advisory council in democratizing the implementation process for the state law and providing opportunity for multidisciplinary engagement, considering sequencing so that the needs assessment can inform the PRO plan, and clarifying early on which costs will be covered by the producers (direct vs indirect) as well as the flow of costs in the system and how the costs paid by producers protect the rate payers.

MN: Annika Bergen echoed CO and CA's advice and additionally advised other states to do a robust stakeholder process to build support and consensus, stand firm on important policy positions and consider the role of the law in getting the impetus for new data collection, and consider the balance between using statute vs. the rulemaking process vs. the plan (ensure a strong structure in statute but not leaving everything just to the plan). John Gilkeson also mentioned putting together resources to answer questions and echoed Timothy Burrough's advice to ensure there is enough lead time to put the pieces together accounting for delays.

ME: Jessica Nadeau acknowledged ME's shared experiences mentioned by other states and additionally shared important steps taken in ME, including establishing definitions in statute, transparent proposed program rules with data provided. They also discussed harmonizing incentives and measurements across jurisdictions to improve the recyclability of packaging material. Exemption decisions will follow a review of federally regulated product packaging material published by the State. The needs assessment will provide the landscape of the recycling system, but is not used to define exact investments (the rule will determine the criteria and processes for investments).

OR: Arianne Sperry acknowledged previous state representatives' comments and added that OR began by convening a recycling steering committee that developed the framework for the legislative concept and eventually the law over 2-3 years during which they built coalitions and understood the different dynamics of the existing system. They also highlighted the benefit of having sufficient staffing, stated that conducting a needs assessment requires a lot of time and outreach and more time is helpful to get a good set of data, and advocated for either starting with a single PRO and allowing for the opportunity to add more later or building in a lot of time for coordination to reduce difficulty at the start of implementation. They also advocated for a phasing plan and considering how new recycling education materials fits in with the broader educational work already being done (and, more generally, how recycling fits into a broader waste management system).

MN: John Gilkeson stated that negotiating the language and process of the alternative collection list (of materials collected through alternate methods) was challenging and emphasized the importance of ensuring that convenient access is provided throughout the state, not just to metropolitan areas. Arianne Sperry asked if different parts of the state will be receiving funding to transport materials across the state. John Gilkeson communicated that that will be covered in the plan.

Bradley Baker thanked the panelists and transitioned to the next agenda item.

III. Needs Assessment Update

Bradley Baker gave an update on the Statewide Recycling Needs Assessment. At the last meeting, HDR provided a preliminary look at survey and interview results as well as an update on the Waste Characterization Study. Many of those activities are starting to finalize. The waste sort will be informed by both data from the 9 sites currently participating as well as data from around 10 additional waste characterization studies from counties. Some interviews are still being scheduled with a goal set for getting those done this week or early next week. Future schedule items included:

- Dec 5th will be an advisory council meeting during which the policy discussion will be continued.
- Dec 17th (noted that this is on a Tuesday) will be a scenario workshop with HDR and Eunomia based on a baseline assessment of material flows, current system costs, etc. The purpose of the discussion will be to discuss the future state from a modelling perspective.
- Aiming to deliver the needs assessment by the start of the legislation session or sometime in mid-to-late January (which is consistent with the gantt chart provided in Eric Weiss's presentation in the last meeting). Bradley Baker identified the difference between the ideal of waiting for the needs assessment to discuss policy vs. the reality is that those activities need to occur more concurrently, and they introduced a discussion about what is legislatively achievable in the 2025 legislative session.

IV. Recommendations to Legislature – EPR Policy Discussion

Angie Webb stated the perspective that the data from the needs assessment is needed to make the right recommendations for legislation and discuss what is achievable. They identified that reimbursement of MDE for the needs assessment is a recommendation that can be made by the council. Michael Okoroafor concurred. Bradley Baker identified reimbursement to MDE by producers as a concept that was outlined in the original SB222 language and other states programs. Currently, that mechanism doesn't exist legislatively.

What is legislatively doable, and recommendations were discussed by the Advisory Council. Topics of discussion included the roles of the PRO vs. the Advisory Council vs. the State in setting goals, reimbursing MDE for the needs assessment, and the timeline for legislative rollout. Peter Hargreave requested clarification about the logistics of the PRO providing compensation for the needs assessment, given that the producers haven't been defined yet and additionally requested information to support CAA's budgeting. Concerns about the timeline for passing legislation were discussed. Bradley Baker opened conversation about moving legislative efforts to 2026, and Scott Goldman (Chief of Staff at MDE) requested support from the Council in making the recommendation to take more time to develop the EPR legislation. Scott Goldman also suggested that there is an opportunity for this council's final report to have substantive information and recommendations. Participants in the discussion expressed support for reimbursing MDE for the needs assessment. However, there was disagreement about the timeline for legislative rollout, including whether the needs assessment was necessary to inform a legislative framework that would move forward in the 2025 legislative session, or whether it would be better to push legislative efforts to 2026.

V. Open to Public Comment

[None]

Concluding Remarks

Bradley Baker expressed gratitude for those who joined, summarized where progress is currently and what will be happening at the next meeting. They stated that the EPR legislation approach can be phased, and that this is common in other states, and closed the meeting.

The meeting was adjourned at 11:00