

SB 222 EPR Advisory Council Meeting
Thursday, February 6, 2025, 9:30am-11:30am E.T.
Meeting Location: Online via Google Video

Introduction

Bradley Baker: [Introduction to the agenda].

- I. Roll Call
- II. Opening Remarks
- III. EPR Framework Discussion
- IV. Open to public comment

Note that for all votes taken, the total number of voting members present was 17. Therefore, motions were accepted with a majority vote, out of 17 votes.

I. Roll Call

Attendees

Member Names	Affiliation	<i>Present</i>
Lee Zimmerman	Frederick County on behalf of MACo	Y
John Neyman	Republic Services	Y
Frankie Sherman	Charles County	Y
Chris Pilzer	WM	Y
Eileen Kao	Montgomery County	Y
Angie Webb	Maryland Environmental Service	Y
Vinnie Bevivino	Bioenergy Devco	Y
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	--
William Singleton	Mars Inc.	Y
Abigail Sztein	America Forest and Paper Association	Y
Delphine Dahan Koehler Michael Hamm (substitute)	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
Scott Goldman	MDE	
Dave Mrgich	MDE	Y
Sara Weitzel	MDE	Y
Shannon McDonald	MDE	Y
Jeremy Baker	MDE	

II. Opening Remarks

Roll call was taken via chat and the 12 council member quorum was reached. Angie Webb and Michael Okoroafor provided an introduction to the meeting and the document that was shared.

II. EPR Framework Discussion

Recommendation 5 – Scope of Packaging Material

Clarification requested included:

1. Removing “tertiary” packaging from the scope of materials defined in law. A previous meeting discussed defining tertiary packaging rather than removing it.
2. Changing “take out and home delivery food service packaging” to “food service ware”, to align with other state definitions
3. A discussion around whether the definition of packaging covers materials supplied to both residential and industrial, commercial and institutional (ICI) non-residential entities?
 - Bradley Baker brought up the Future State Workshop (previous meeting) and inclusion of commercial collection in the model
4. Clarifying if packaging materials includes reuse or refillable packaging.

Recommendation 5 was opened for discussion

- Peter Hargreave clarified that CAA’s comment (3) was asking if the definition of packaging covers just residential or also ICI material. Bradley Baker noted that modelling operation considerations included increasing collection at commercial entities.
- Scott DeFife discussed:
 - There can be tertiary packaging at residential, but a lot of tertiary packaging is not residential. Things that never hit the residential/public waste stream are often excluded (e.g. cardboard boxes behind retail establishments and glass from wine tasting room bottles)
 - Closely considering medical exemptions for things that touch the FDA but are not over the counter prescriptions (e.g. fluoride mouthwash, things with minor amounts of medicinal uses)
- Bradley Baker clarified that the definitions of packaging material written under Recommendation 5 are already in law.
- William Singleton discussed tertiary going to consumers that buy from warehouse club vs. what ends up behind the store. Peter Hargreave added e-commerce as another example of tertiary packaging going to consumers.
- Chaz Miller requested definitions for food service ware and tertiary packaging, as well as citations where specific laws are referenced.
- It was clarified that tertiary packaging was included in the enrolled version of SB0222.
- Peter Hargreave discussed ICI packaging material, specifying that the material generated is different for each sector in terms of material amount, material type, material size, and the producers supplying the packaging material. Peter Hargreave also discussed differences in collection and processing systems.
- Abigail Sztein discussed concerns from the paper industry perspective, including:

- Increased structure, bureaucracy and cost burden on paper packaging that never enters the municipal system
- An unclear definition of tertiary packaging (e.g. ties around logs on their way to a sawmill or wood pallets) that could lead to producers of certain paper products paying a fee for something they won't benefit from
- A lot of tertiary is tied to contracts and is handled well directly by industries
- Scott DeFife agreed that a definition is needed. Scott DeFife also discussed covering commercial/industrial consumers-facing products rather than industrial material, scrap metal, ties around logs destined for sawmills, etc.
- Ellen Valentino stated that any profit entities adding cost to county recycling systems should be included to avoid free-riders.
- Chaz Miller also discussed whether tertiary packaging (specifically shipping containers and wooden pallets) is touched by taxpayers outside of smaller business establishments, medical, etc. Chaz Miller reiterated need for a definition of tertiary packaging.
- Eileen Kao stated that there are some jurisdictions that have mandates for recycling of materials which are sometimes the same materials found in both residential and business streams. Eileen Kao discussed that while there are some materials that are not found in residential homes, in some jurisdictions the commercial sector contributes around half or more of the waste. They agreed that more specific definitions are needed.
- Martha Ainsworth discussed reduction goals as well as recycling goals and potential missed opportunities that could arise from excluding material. Chaz Miller asked if the needs assessment may be able to provide insight into the amount of tertiary packaging. Martha Ainsworth noted that the needs assessment only focuses on recycling, not reducing.
- Peter Hargreave discussed balancing added complexity with benefit, and specifically mentioned OCC and material flows that already flow naturally and may not benefit from reporting. Peter Hargreave also suggested writing into the recommendation that this needs to be considered.
- Abigail Sztein mentioned that in CA there is a threshold rate that determines how tertiary is included in the system.

Abigail Sztein moved to vote on removing "tertiary packaging". No second was made.

Peter Hargreave moved to define tertiary packaging and Scott DeFife seconded the motion.

- *In support: 16*
- *Opposed: No vote taken due to a clear majority in support*
- *Abstained: No vote taken due to a clear majority in support*

Recommendation 6

The definition of a producer was defined in SB0222, 9-2501.F.

Suggested recommendations included:

1. Use MN's definition for producer rather than the definition already in law.
2. Take out some of the language around paper products.

Recommendation 6 was opened for discussion.

- Peter Hargreave discussed issues with MD's definition of a producer, including:

- conflicting language/tiers (e.g. “brand or manufacturer” doesn’t account for a situation in which there are both)
- a situation in which a licensee brings a product into the state and the brand is not involved in distribution
- the current definition will create difficulties with implementation and enforcement
- Ellen Valentino expressed support for Peter’s comments.
- Michael Okoroafor discussed using language from the MN law that has already been done well.
- Scott DeFife stated that the MN definition of producer is thorough.
- Abigail Sztein discussed that paper products are not included in MD’s law (SB0222) and should remain left out if MN language is used.
- Chaz Miller discussed learning from the (limited) experiences of other states.
- Peter Hargreave noted about the MN definition of producer:
 - Is the PRO responsible for the cost of material’s supplied into the marketplace for exempted producers or exempted materials?
 - There may be a need for different hierarchies for service packaging and food service ware.
 - In the hierarchy, an area that may be of concern: Is it better to capture the US importer or the distributor into the state.
- Ellen Valentino discussed keeping MN language as intact as possible, including paper, and considering the impact of materials on the recycling system. Those who are part of the recycling system need to pay into the system.
- Scott DeFife discussed printed paper, and whether or not it’s included in the bin, as a key focus as an indicator of what is included in the system.
- Abigail Sztein stated no support for the addition of a product to the list of materials outside of legislation, and suggested looking more closely at the MN producer language to make sure language is appropriate.
- Eileen Kao discussed that other paper products (magazines, catalogues, etc.) are worth looking into, and other paper products are important for the group to consider. Eileen Kao also discussed lack of certainty around the market value of paper.
- Peter Hargreave clarified their stance.

Peter Hargreave moved to vote on recommending that the legislator consider MN’s definition (or aspects of MN’s definition) of a producer, and Frankie Sherman seconded the motion.

- *In support: 13*
- *Opposed: 1*
- *Abstained: 3*

Recommendation 7

Changes requested included:

- Update the recommendation to read: “Data collection and reporting could take into account...[identifying] any data gaps **needed to initial development of a program plan.**”
- Update the recommendation to read: “Data collection and reporting could take into account...how much materials are being supplied into the **State.**”
- Update the recommendation to read: “Data collection and reporting could take into account...**financial and performance related audit and verification.**”

Recommendation 7 was opened for discussion.

- Peter Hargreave discussed concern about the needs assessment being paid for by producers and run by the state when the information is intended to help the PRO improve the system. Therefore, the PRO's ability to ensure the needs assessment covers the key information needed is important. Bradley Baker provided context stating that CAA did the needs assessment in CO, while in MD the State is responsible.
- Martha Ainsworth discussed program targets and required monitoring of the measurements from recommendation 9 (quantity of packaging sold in the state, PCR, recycling rate, etc.), and suggested merging the two together.
- Ellen Valentino agreed that the PRO should develop the needs assessment, perhaps in consultation with MDE.
- Eileen Kao suggested including a time frame for the financial and performance-related audit and verification. Peter Hargreave suggested that could be addressed in the program plan (which is reviewed by the advisory council and approved by MDE). Eileen Kao proposed making a recommendation on timing for audit and verification.
- Scott DeFife discussed deficiency in the CO law regarding the needs assessment, and stated that the State should be able to inform the scope of what is studied and the public should see the results of the needs assessment.
- Michael Okoroafor suggested changing the language to "in consultation".
- Peter Hargreave noted challenges with timeline in CO. Scott DeFife discussed the importance of allowing time between the needs assessment and the PRO plan to have it fully vetted. Peter Hargreave discussed that financial and performance audit and verification timeline and questions that may arise that haven't been considered yet.
- Chaz Miller discussed role of the needs assessment in the advisory council's recommendations. Bradley Baker discussed the timeline for the delivery of the needs assessment and mentioned that in CO, after the needs assessment was developed, another round of surveys went out to gather more information and stakeholders met every other week. Bradley's team has reviewed the needs assessment and expects comments back from leadership on Friday. Those comments will then need to be incorporated by the contractors. The vast majority of comments have been provided for technical memos – this timeline is specific to the main report body.
- Eileen Kao suggested recommending that the financial audit and verification will be performed on a set periodic basis, as determined as the Advisory Council continues their work.
- Bradley Baker added to the recommendation language:
 - o "Data collection and reporting **would be defined in consultation with MDE and the Advisory council.** Identify any data gaps needed to initial development of a program plan."
 - o "Data collection and reporting could take into account...financial and performance related audit and verification. **These would be set on a periodic basis and as determined by the Council.**"

Peter Hargreave moved to vote for moving forward with Recommendation 7 as currently written (with edits), and Ellen Valentino seconded the motion.

- o *In support: 16*
- o *Opposed: 0*

- *Abstained: 1*
- Martha Ainsworth noted that program targets and required monitoring of the measurements from recommendation 9 were not discussed.

Recommendation 8

Recommendation 8 Part 1: The producer fee structure

Changes requested included:

1. Deleting “The EPR program’s producer fee structure could be: ~~Proportional on sales in the state and updated annually. Approved by MDE.~~”
 - Peter Hargreave discussed including this in the plan rather than locking it into the legislation to allow for changes to methodology for setting producer fees.
 - It was noted that although “Approved by MDE” was deleted, it was previously discussed that MDE would approve the plan therefore, this fee structure would be approved by MDE.
2. Including the following in the list of ways producers could lower their fees: recyclability, molecular recycling as it’s not going to fuel or energy production, a look back for steps taken over the past 10 years.
 - Michael Okoroafor discussed evolving and improving technology and innovation and advocated for staying open to future technological evolution in order to maximize benefit.
 - Bradley Baker clarified that if it’s going to energy and fuel production, it is not counted as recycling under MD law, however the law allows for material that becomes new polymers.
 - Scott DeFife stated that they are not opposed to other future modalities of recycling being covered after being thoroughly vetted by MDE. However, Scott DeFife expressed concern about providing molecular recycling an automatic pass until it undergoes further scrutiny. Additionally, Scott DeFife discussed the length of time for a look back and look backs for source reduction. Scott DeFife also noted that in discussions about multiple PROs, off-ramping, IPPs, etc alongside molecular recycling, this one area of recycling could take significant time and resources for the PRO. Additionally, Scott DeFife advocated against distributing fees by weight as glass and paper weigh more and will pay for activities unrelated to paper and glass.
 - Chaz Miller discussed using “chemical” recycling vs “molecular” recycling (which is specific to PET in the example company discussed). Chaz Miller also discussed chemical recycling, specifically mentioning that technologies are resin-specific with few operating close to a commercial scale. They made a motion to strike the section about molecular/chemical recycling, and made a note about whether it reduces waste. Michael Okoroafor elaborated on how the technology reduces waste (using polystyrene as an example) and confirmed that chemical and molecular recycling can be used interchangeably in the suggested language. Chaz Miller expressed concern about whether the technology works, and specifically whether it works to scale.

- Abigail Sztejn discussed leaving room for innovation and mitigating controversy by adjusting the language from explicitly including chemical/molecular recycling to “such as...”.
- Eileen Kao stated that all other bullet points are about innovation/new technology. Therefore, including molecular recycling may be too specific and unnecessary, as it is not possible to capture a complete list and technology is constantly changing.
- Peter Hargreave discussed how implementation of ten year look backs would work and potential issues with enforcement and administrative complexity. Peter Hargreave also mentioned that typically costs depend on the technologies being used and questioned how recycling innovations would be applied into the cost and how the PRO implements innovation, creativity, and improvement. The PRO will assess the cost of the system and materials added into the system. Lastly, Peter Hargreave discussed whether reuse and refill are included in the system (paying reduced fees).
- Angie Webb discussed allowing for chemical/molecular recycling in situations where all other waste diversion/recycling methods can’t be used. Michael Okoroafor discussed capturing this idea through “innovation” language.
- Martha Ainsworth noted that criteria for recyclability is not present, and proposed removing chemical/molecular recycling language and defining recyclability (which is present in CA’s law and listed in the definition section of the document). Discussing the process/type of recycling isn’t appropriate for setting producer fees.
- Scott DeFife expressed support for Peter Hargreave’s concerns about going back 10 years into data. Scott DeFife also discussed whether the program is focused on what happens to the material after it is delivered to end markets.
- Scott DeFife, Chaz Miller, and Michael Okoroafor agreed to move ahead with deleting “chemical/molecular recycling” from the suggested language and adding “innovation” in order to move forward with a vote.
- Peter Hargreave advocated for removing the language around a ten year look back.

The edits made via the advisory council’s discussion were:

- 1. The EPR program’s producer fee structure could be:**
 - a. Proportional on sales in the state and updated annually. Approved by MDE*
- 2. Producers can pay lower fees by reducing the packaging and types of packaging they are putting in the market**
 - a. Post recycled content*
 - b. Reuse*
 - c. Reduced tonnage*
 - d. Compostability*
 - e. Recyclability*
 - f. Leave room for innovation, creativity, and improvements.*
 - g. ~~Molecular recycling could be included in reduction efforts as long as it’s NOT going to fuel or energy production~~*
 - h. ~~Could include a look back for steps taken over the past 10 years~~*

A motion was made to move forward the language as written with edits from the section of Recommendation 8 that discussed the producer fee structure, and the motion was seconded.

- In support: 14
- Opposed: 1
- Abstained: 2

Recommendation 8 Part 2: What the producer fee could pay for

No changes were suggested for this section prior to the meeting.

- Eileen Kao suggested explicitly including local government in the list of reimbursed entities and Bradley Baker noted that this could also include private entities such as private haulers.
- Peter Hargreave:
 - Questioned what “reuse costs” was referring to
 - Questioned what is meant by education costs including expenses associated with communicating to producers is referring to (noting that typically the PRO is the only entity that communicates with producers)
 - Expressed a preference for a PRO-led needs assessment rather than reimbursement of MDE by the PRO
- Bradley Baker discussed the previously discussed need for education of all involved parties (including consumers as well as those involved in collection, sorting, and processing) from the operational considerations/future state meeting with Eunomia. In previous versions of the legislation, the cost of the needs assessment was paid for by the producers.
- Eileen Kao discussed jurisdictions with robust outreach and education efforts and their efforts to include every player (not just generators).
- Peter Hargreave stated no issue with the PRO paying for education. However, they stated concern about what is included in reuse costs, specifically about providing reimbursements for situations such as the following:
 - Collection and processing (and refill process) of jugs provided by an office water jug provider
 - Propane cylinders
 - Oxygen cylinders
- Scott DeFife discussed fees and reimbursements tied to the amount of local control included in the program in other states, including limits; if the local government wants more than what’s on the standard state plan, that is the county’s responsibility rather than the producers’. Scott DeFife also discussed boundaries around the definition of refill/reuse.
- Chaz Miller commented that the goal of the PRO is to pay as little as possible to keep member costs down. Michael Okoroafor stated support for Chaz Miller’s comment, and specifically talked about inclusion of consumer education as a producer goal. Chaz Miller discussed collection practices in MD and the opportunity for different forms of education based on decisions made by different local governments.
- John Neyman discussed including the private sector as a reimbursable entity.
- Peter Hargreave:
 - Discussed including non-profits in the list of reimbursable entities
 - Recommended removing “and reuse costs”

- Recommended removing “producers” from “Education costs could include expenses associated with communicating to ~~producers~~, consumers, haulers, processors...”
- Recommended removing “MDE” from “Reimbursing ~~MDE~~ for the costs of the current and future needs assessments”
- Eileen Kao recommended including reuse cost – a scenario in which refillable containers become more relevant was highlighted.
- Peter Hargreave discussed issues with reuse and the scope it opens.
- Scott DeFife discussed off-ramping in the context of reuse.
- Frankie Sherman noted that the word “cost” should not be deleted from the recommendation.

A motion was made to move forward the producer fee structure section of Recommendation 4 as written and Scott DeFife seconded the motion.

- In support: 9
- Opposed: 2
- Abstained: 6

Recommendation 9

Changes requested included:

1. Program targets/**measurements** to measure success could include:
 - a. The quantity of packaging sold in the state, by material type, recyclability, composability
 - b. The quantity of packaging waste in the state, by material type
 - c. Post-consumer recycled content of packaging, by material type
 - d. The recycling rate for packaging sold in the state, by material type
 - e. The percentage of packaging sold in the state that is reusable, by material type
 - f. **Effectiveness of infrastructure could be measured in material yield, contamination, rates, etc.**

Recommendation 9 was opened for discussion.

- Peter Hargreave discussed whether material type is necessary to include (1.e.) and the impact of additional requirements on administrative burden. Administrative burden for highly functional systems was specifically brought up.
- Martha Ainsworth highlighted the origins of the bill in reducing plastic packaging, in the context of 1.a and 1.b. Peter Hargreave discussed difficulty with reuse data collection. “By material” adds more requirements on those entities. Martha Ainsworth advocated for measuring reuse data, and asked what the additional burden would be to identifying the specific material.
- Martha Ainsworth also noted that there were recommendations made that were not included on the current list, as well as definitions that still need to be discussed. Martha Ainsworth requested that the discussion and voting continue February 13th.
- Chaz Miller asked about how (1.f.) contamination rates and material yield would be measured. Bradley Baker stated that contamination rates could be measured in relationship with education. Chaz Miller expressed concern that the relationship between

contamination and education is theoretical and does not capture all causes of contamination. Scott DeFife discussed other sources of contamination beyond just what is put into the system, the impacts to commodity value, and contamination as a key indicator of the improvement of the system. Chris Pilzer stated that improved contamination rates are the result of both updated equipment and what is put into bins by consumers. Scott DeFife noted that not every MRF is the same and there can be a high level of variance across sources.

- Eileen Kao stated:
 - o That the 1.a. and 1.b. were good measurements, and that information and data would show waste reduction over time support for reporting by material type
 - o Support for reporting by material type, as it additionally provides information about progress and which materials need to be focused on moving forward.
- Peter Hargreave stated that there was no issue with keeping “by material” in, noting that there was an exemption for propane and part of the concern may have been with administrative burden.

It was determined that the group no longer had a quorum. Concern was raised about taking an email vote without opportunity for discussion. No vote was taken, and it was decided that the next meeting on 2/13 would include discussion of recommendations 9 and 10.

V. Open to Public Comment

No comments.

Concluding Remarks

The meeting was adjourned at 11:38.