



memo

TO: EPR Coalition Members

FROM: Ken Pokalsky

SUBJECT: S.1464-A/A.1749-A

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The [A print of the "Packaging Reduction and Recycling Infrastructure Act," \(PRRIA\)](#) contains numerous amendments.

However, while it includes several positive changes, the amended bill still fails to address our most significant concerns, and would create an expensive, unworkable EPR program that would be inconsistent with EPR laws adopted by other states. We should remain strongly opposed.

Summary of Changes - Key amendments (most of which we discussed during our April 14 coalition call) include:

- Pushes back most implementation timetables and deadlines by a year or more but generally does not change the specific targets.
- Limits post-consumer recycled material to "new material produced using material resulting from North American recycling." The bill drops the PCRMR requirement for glass packaging but still allows DEC to impose content requirements on additional categories of packaging.
- Exempts non-plastic primary packaging from source reduction mandates.
- Exempts "all" packaging related to bottle bill containers.
- Provides that by 2032 all packaging sold in NYS must be sortable by material processors and have "responsible end markets" (replaces language requiring "consistent regional markets.")
- Eliminates toxics advisory committee and its process to recommend additional chemical bans, eliminates an expansive definition of "toxics," and eliminates four chemicals/chemical classes from the list of banned materials but maintains its ban on the remaining ten listed chemicals.
- Makes explicit the act's applicability to "commercial" packaging (undefined) and for its source reduction mandates to "tertiary" packaging (defined as packaging intended to protect products during transport), expanding applicability to business-to-business packaging.
- Eliminates the "Office of Inspector General," leaving enforcement to the DEC and Attorney General.
- Adds multiple provisions requiring the PRO to finance disposal costs.
- Adds provisions allowing the PRO plan to establish performance standards for reimbursements to service providers.
- Waivers based on inconsistency with federal law are extended to five years, with modified criteria, but otherwise the waiver provisions are not changed and remain limited.

Note, the A print retains the original bill's restriction on the consideration of advanced recycling processes from calculations of recycled materials. Further, the A-print fails to add any substantive provisions related to composting.

Impact on Priority Issues - The following provides a more detailed discussion of priority issues we presented to the legislative sponsors in January, and whether/how they are impacted in the bill's A print.

In summary, the A print makes marginal changes to two of our priority issues and makes no material change to the other three, while adding or expanding several mandates.

As such, the amended bill falls well short of what we would consider a workable, affordable, and achievable EPR program. While the amendments adopt some language from EPR laws adopted in other states, stark differences remain between the proposed PRRIA and other states' EPR programs.

Therefore, the amended bill poses the same significant concerns that we and others have raised about impacts on consumer prices and consumer choices, as well as the direct impact on the businesses that produce and use packaging.

- Restrictions on Materials – PRRIA contained three provisions restricting the use of materials:

* It required that by two years after adoption of regulations, all packaging material used by producers must have “a consistent regional market for purchase” for remanufacturing – which meant, to us, that materials without consistent markets could not be sold in New York after that date. **This provision is amended in the A print language.** The compliance date is moved to January 1, 2032, and all materials must have “responsible end markets” (still implying a ban on materials for which such markets are not available.) While these amendments add up to four years to the compliance date in PRRIA, they leave New York's compliance period significantly more compressed than in California or Minnesota.

* PRRIA imposed restrictions on five categories of materials under its “recyclability” criteria. **In these amendments, the compliance date is changed to January 1, 2032,** but the list of prohibited substances remains the same. This remains a significant concern, as no other state's EPR or chemicals-in-packaging law imposes restrictions on these materials.

* PRRIA prohibited the use of fourteen specific substances or classes of substances under its “toxic substances provisions.” **These amendments remove the four substances from the ban list** – halogenated flame retardants, perchlorate, UV 328 and polycarbonate -- and removes TMBPF from the ban on bisphenols. However, the practical significance of these deletions is unclear, as these materials may have limited use in packaging (e.g., flame retardants.) The prohibition deadline is extended by one year, to four years after the promulgation of regulations. The bill would retain its two-step prohibition, first on intentionally added material, then a prohibition based on “lowest level feasibly achieved” as determined by DEC. (We note that a similar “lowest level” provision was removed in chapter amendments adopted as Chapter 31, laws of 2026, regarding the restriction of chemicals in menstrual products). These chemical bans remain a significant concern to business as they are not support by specific concerns in all packaging and would preclude the use of widely used categories of packaging, with resultant impacts on consumer price and choice.

The amendments delete provisions for a new “toxics packaging task force,” whose recommendations would have been binding on the DEC. They also delete an expansive definition of “toxic substance” that would have captured most substances regulated under the ECL.

- Source reduction – We remain opposed to the adoption of unproven rates and dates in statute. **The amendments do not change** the PRRIA's source reduction “rates and dates,” which our members consider unworkable. **The amendments do change** the applicability of its source reduction mandates, to exempt any non-plastic primary packaging from source reduction requirements. This has been described as an “incentive” to substitute non-plastics for plastic primary packaging, a substitution that is very likely to result in an increase in the volume and/or weight of packaging use.

The amendments would also apply source reduction mandates to all “secondary and tertiary” packaging. While secondary packaging was already captured in PRRIA language, we see this language as an expansion of PRRIA to tertiary packaging used in business-to-business shipping.

- Waivers – We have previously illustrated the limit scope of PRRIA’s waiver provisions. **These amendments modify the federal law-based waivers** for recycling rate and source reduction requirements to extend waivers to five years, and they add factors that can be considered in determining inconsistency with federal law. They also add a similar waiver provision to the bill’s material reuse requirements. **However, the bill’s waiver provisions remain very limited**, with no waiver provision based on technical or economic practicality. Interestingly, these amendments add a broad waiver for municipalities and service providers that are unable – for apparently any reason -- to collect listed recyclables at an “optimal level of service and convenience.”

As a final point, it is unclear what obligations apply at the end of a waiver. For instance, would producers restart at the point of the “rates and dates” provisions that applied when the waiver was granted, or be subject to the increased obligations that would be in place as of the date of the waiver’s expiration?

- PRO Designation - Six of the seven states (Maine as the exception) allow producers to designate the producer responsibility organization (with some level of agency oversight or approval). **Under these amendments, the DEC has sole authority to select the PRO** from among any not-for-profit seeking to serve as the initial PRRO. This is unacceptable, and we question the effectiveness of a PRO that is not supported by regulated producers.

- Technology Neutral – This is the top issue for many of our member companies. Under these amendments, **the PRRIA would continue to preclude “any chemical conversion process”** for its definition of “recycling” or “recycled,” the only state packaging EPR law to do so. This is a backdoor prohibition of materials – flexible plastics in particular – that are not currently recyclable “mechanically” at scale, as this recovered material would not count toward the bill’s recycling rate and recycled content standards. While the economic viability and environmental safety of chemical recycling is an important policy discussion that should be focused on “fact-based” determinations, it is a discussion that should be held separately from EPR and not be based on preconceived prohibitions. All recycling technologies should be recognized under this program if they are economically viable and meet the state’s stringent permitting requirements.

Additional Issues

- “Domestic” recycled content – **The amendments would define “post-consumer recycled material” (PCRM) as that produced by “North American” recycling.** The bill’s explicit PCRM requirements are limited to paper carryout bags and plastic trash bags (the **amendments drop PRRIA’s mandate for glass containers**), but the bill still allows DEC to apply PCRM mandates to other categories of packaging, which would also be subject to this North America only source restriction.

This is a wholly unworkable restriction, as businesses purchase materials, including recycled materials, from world-wide markets. For the wide variety of products produced outside of New York, this mandate would be impractical if not impossible to meet. This restriction would be unique to New York, as no other EPR state has such a restriction.

There are additional concerns with this new domestic only PCRM requirement:

- * The bill would also mandate compliance with any new recycled content mandate set by DEC by January 1, 2032, as well, regardless of how close to that date those mandates are set.
- * The availability of “post-consumer recycled content” material (with the domestic source-only restriction) is a consideration in the DEC’s setting its list of recyclable materials. It is unclear how that criteria will be applicable to the assessment of recycling market capacity.
- * The proposed amendment’s criteria for setting of “eco-modulated fees,” which are based in part on recycled content, would also be restricted to the consideration of domestic-only recycling.

In contrast, the amendments regarding “responsible end markets” and “recycling rates” do not contain a North America-only material restriction.

- Recycling mandate – **These amendments bifurcate reuse and recycling rate provisions. While the compliance dates are pushed back by several years, the mandated rates do not change.** In one provision that could provide compliance flexibility, the amendments make the recycling rates achievable at the organization, rather than individual producer level – the only organization-level compliance provision in PRRIA. On the other hand, these amendments extend specific reuse/refill requirements to plastic packaging, whereas PRRIA set a single target percentage for plastics that encompasses reuse and recycling.

- Disposal – We **continue to have concerns with the imposition of disposal fees on producers** via the PRO – something that is not required in other states’ EPR statutes. While in one provision regarding PRO funding mechanisms, producer fees are only required to cover the disposal of residual contamination from the recycling processes, other provisions of the amended bill impose a broader disposal financing requirement. These include:

* In proposed amended language, the A print would require producers to cover the costs of “handling, disposal and transportation of non-recyclable materials” collect as part of the collection process for material recycling. This would include the cost of disposal of materials not intended to be included in the recycling stream.

* The PRO must fund all activities, including disposal, in municipalities that elect not to provide service. It could be read as – ironically, considering other provisions of the PRRIA – to requiring funding chemical processes that are included in the bill’s definition of “disposal.” This also underlines the disconnect between how the law mandates that fees to be developed and what program activities those fees are required to fund.

We note further that, under these and other provisions of the amended PRRIA, the responsibility for the cost of managing exempt material remains unclear.

- Commercial material – The PRRIA was ambiguous as to the treatment of “business-to-business” materials. In comparison, the Minnesota EPR bill’s definition of “covered entity” is limited to residences, schools, nonprofits with annual revenue of less than \$35 million and government entities, and which also exempts material used in transportation of products to non-consumers, used in business-to-business transactions, not sold to covered entities, or sold or distributed out of state. **The A print covers these types of commercial-only material uses under the PRRIA program, given the new definition of “packaging” to include “commercial” packaging.** Commercially generated packaging waste and business-to-business packaging should be exempted.

- Producer v. municipal cost sharing – While these amendments adopt selected language from Minnesota and California EPR statutes, **they do not reflect the producer/municipality cost sharing** that was in the most recently adopted EPR statutes in Minnesota, Washington, and Maryland.

- Bottle bill packaging – These proposed amendments provide that all packaging related to containers subject to the state’s bottle bill are exempt from the PRRIA. As “secondary and tertiary” packaging used in this context are not subject to any Title 10 requirements, their management remains unclear under this amendment – as is the case for other exempted materials. These costs should not be imposed on the PRO and its producer members.

- Recycling Inspector General – These amendments correctly **delete provisions for an “independent” office of recycling inspector general** – a proposal that seemed wholly redundant and unnecessary, with unclear accountability.

- “Environmentally protective” markets – In adopting a new definition of “responsible end markets,” **these amendments borrow open-ended language from the Minnesota statute requiring that such markets “protect the environment and minimize risks to public health and worker health and safety.”** As these amendments also require that such markets comply with all applicable federal, state, and local laws regarding

environmental, health, safety, and financial responsibility; possess all required permits and licenses; and manage waste according to all applicable state laws, the meaning of and need for this additional open-ended language is unclear – as it was in the Minnesota statute.

- Performance standards for municipalities and service providers – Reflecting provisions in other recent state statutes, **these proposed amendments adopt language allowing the draft PRO plan to include performance standards for, and impose basic administrative requirements on, “service providers.”** While not explicit, municipalities seem included in the proposed definition of “service provider” if they provide covered services. But in some instances, the amendments refer to both municipalities and service providers in the same provision, while others apply only to service providers, which is confusing. The language further provides that a municipality “may be” a service provider if it contracts for or otherwise arranges for provision of covered services but provides no criteria as to how such determination would be made.

As always, we welcome the opportunity to discuss these comments and concerns with Coalition members.

Thank you.