



# Empire State Forest Products Association

*The people behind New York's healthy forests and quality wood products*

*www.esfpa.org*

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## **Memorandum of Opposition**

### **A 5322/S 4246**

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Honorable Deborah Glick  
Assembly Member  
621 LOB  
Albany, NY 12248

Honorable Peter Harckham  
Senator  
315 LOB  
Albany, NY 12247

March 10, 2023

Dear Assembly Member Glick and Senator Harckham:

The Empire State Forest Products Association has concerns with **A. 5322/S. 4246** enacting the Packaging Reduction and Recycling Infrastructure Act (otherwise known as extended producers responsibility - EPR). This legislation would require our paper producers to develop and implement strategies to promote recycling, reuse and recovery or participate in “packaging reduction and recycling organizations” (PRROs).

The Empire State Forest Products Association (ESFPA) represents over 350 member businesses, industries and landowners engaged in forest resource production and stewardship of New York’s 19 million acres of forest. In total, \$22.9 billion dollars in annual industry production and nearly 100,000 jobs are attributable to operations of various industries within the forest related sectors. Our comments on this legislation are in the context of the production of paper as other covered materials and products have different production, distribution, and supply chains that we are not familiar with.

We will first cover some overall comments on the legislation and then present some technical comments on the bill itself.

This legislation proposes a fundamental shift of responsibility for the development and implementation of strategies to promote recycling, reuse and recovery of covered materials and products. It does so by merely shifting the responsibility and costs from municipalities to private sector producers with no improvements or solutions to the problems with recycling markets and programs which have struggled for decades. Merely shifting responsibility does not address the underlying problems.

This legislation is broad and deep regarding the covered materials and producers who will be impacted and was developed devoid of engagement of the very producers and manufacturers within and outside of New York who will be most impacted by this bill.

We have been left in a reactive mode and within time frames that are not conducive to constructive exchange of ideas, concerns and costs associated to the intended outcomes. We do not deny the challenges as well as opportunities to improve the recovery, recycling, and reuse of materials that we produce. We, in fact, take great pride in the accomplishments we have made in the paper sector towards mutually beneficial goals to ourselves and to society as a whole.

The voluntary efforts of the manufacturers of paper have grown to be extremely successful in very high rates of recovery and recycling of our products. We do so within a highly integrated yet independent network of producers, product refiners and product distributors which have no direct control of the multiple parties involved. This legislation would combine us into a network of diverse product producers (from glass to metal to paper to plastic) which do not have integration, varying recovery and recycling rates, and complex markets and unintegrated networks of distribution and sales. Paper and paper packaging producers could be pooled into the expense and problems of products that have poor markets and costly solutions which are completely out of our control and put our globally competitive cost margins at further risk.

This legislation does not take into consideration the unique characteristics of paper fibers in the recycling process. Every time paper is recycled it loses 14% of the fiber in the pulping process. This results in smaller fibers of lower quality and integrity and is used for lesser quality paper products. Fiber can only be repulped 5-7 times. So, there is a continuous need to integrate young new fiber into the process. Fiber that comes directly from the forest.

We would also point out that Sylvamo Paper, Ticonderoga Essex County and Finch Paper, Glens Falls Warren County specialize in “virgin” paper manufacturing for globally recognized high quality paper. These two mills produce the quality paper necessary for certain products and the Legislature is proposing to impede their product in the marketplace. Further, between these two mills there are over 1,000 high paying manufacturing and engineering jobs and the wood demand they generate drives another 2,500 plus jobs in logging, trucking and contractual services in the northern Capital District and eastern Adirondacks. There are also thousands of landowners who have a market for their harvested wood which helps our forests remain as forests and be our largest landscape-scale natural solution to climate change. Government meddling in the marketplace is risky to retention and investment in New York and could lead to fewer markets for forest landowners.

Lastly, regarding our overall comments, we are already engaged in implementing the recently adopted Climate Scoping Plan as from the 2019 Climate Leadership and Community Protection Act (CLCPA) which will be requiring massive shifts in investments and capital projects that threaten our global position in a competitive markets place. Paper manufacturing is an energy intensive and trade exposed industry that will be heavily impacted by the CLCPA and may in fact lead to leakage of manufacturing and jobs from New York. Adding yet another government mandate on manufacturing at this time will only further fuel the investment skepticism in New York. We need this manufacturing in New York, and we urge you to work with us, not against in addressing these energy and environmental issues.

Now turning to some technical aspects of the legislation:

**There is a strong market for recovered paper unlike the other materials covered in this legislation.**

- Including paper in an EPR program places a renewable, sustainable, recyclable, biodegradable, natural product in a system with materials that in most cases do not share these characteristics.
- Inclusion of “paper of any description” products does not recognize the unique characteristics of paper. Exemptions for newspapers and magazines included in the bill are an arbitrary exclusion. Paper should be treated equally.

- The bill language does not adequately provide credit for the environmental success of paper products. In 2021 68% of all paper was recovered nationally and in New York 98% of all residential customers have curbside access to recycling.
- Between 2019 and 2023, U.S. packaging and pulp producers committed to investing more than \$4.1 billion in new manufacturing capacity specifically designed to use over 7 million additional tons of recovered paper per year. However, any EPR fees paid by producers would reduce the capital available to support further investment in manufacturing capacity using recovered fiber.

**The applicability of many provisions is unclear, and it is uncertain how the provisions of the program would be implemented in practice.**

- Prior to the passage of legislation creating EPR for paper there should be a comprehensive needs-based assessment of the existing systems in New York. Without a baseline establishing pre-existing collection methods, identifying current processing infrastructure, waste management practices, and costs, it is not clear how the impacts of the program will be calculated nor how priorities and opportunities will be identified in an equitable way. Further, identifying successful parts of existing programs will allow the state to recreate proven solutions with lowered risk for all parties.
- Covered products and materials are often sold/distributed in a regional or global market where producers may not know to what extent a covered product is ultimately sold or distributed in NY. The legislation should be clear to ensure producers, brand owners and distributors are not double counted in assessing fees.
- Printing/writing papers come from thousands of “brands” across the globe. How will the proposed “packaging reduction and recycling organization” (PRRO) register, assign fees, and ensure compliance for such a diverse set of products? The administrative costs would be extraordinarily high.
- Nothing in the legislation requires funds paid by material type to be devoted to that material type and the issues necessary to improve that material recovery, recycling, and reuse. How will the PRO ensure that highly successful recycled products are not subsidizing hard to recycle products?

**The legislation sets in place an unbridled assessment of costs to be covered (collection, processing and overhead) with minimal checks on costs.**

- The current language potentially requires the costs of refuse collection to be covered as well as recycled collection.
- There is value in sharing some of the responsibility of costs with New York residents. This legislation leaves end users with no responsibility or costs associated with recovery and compliance. Improved recycling programs and public education supported by the PRRO will have little impact if residents are not motivated to comply with the systems. The legislation permits DEC to establish additional requirements at their discretion, which could expand costs significantly.

**The treatment of “toxic substance” is excessively broad and adds unnecessary and overcomplicated requirements to an EPR system that is meant to improve and fund recycling.**

- The legislation imposes a ban on the presence of fifteen specific chemicals in packaging, and allows for additional chemicals to be banned in future years, without clear environmental or public health justification, and without providing for any de minimis levels to account for substances that were not intentionally added to packaging products.

**Language requiring collection programs as “convenience” combined with the degree of public engagement envisioned in this act may inhibit necessary changes in the behavior and practices of individuals and businesses contributing to the waste stream.**

- Assessment of the convenience of an existing or previous collection schema is not accommodated in the bill, suggesting that the basis for convenience could be based on arbitrary anecdotal information rather than data. Another reason is a needs-based assessment should be conducted first.

- Mandated “convenience” and no impact on residential systems could create support for maintaining inefficient and expensive systems rather than wholesale improvements.
- Single-stream collection is the largest contributor to contamination in the recycling stream but is often adopted as more convenient to residents and a cost-cutting measure for municipalities. Any long-term solution to resource recycling, reuse and recovery must also necessitate changes in consumer behavior and practices that may not always be more “convenient”.
- Changing end user behavior should be the targeted mandate for any recycling legislation and not forcing producers to compensate for poor practices of those end users.

**Mandated “recovery and recycling rates”, “post-consumer content” amounts and “packaging source reduction rates” are problematic and potentially counterproductive in the paper and paper packaging sector.**

- The recycling rate for paper and paper-based packaging has met or exceeded 63% since 2009; more than glass, aluminum, steel and plastic combined. 68% in 2021.
- Rather than drive increased recovery of paper, recycled content minimums could: make markets for recovered fiber less efficient; prevent recovered fiber from going to highest value end use; raise the cost of production for new paper products; and narrow available choices for consumers.
- Mandating “post-consumer content” in paper and paper-based packaging does not recognize the unique characteristics of paper coming from a sustainably managed renewable natural resource.
- This also ignores the fact that there needs to be a “virgin” pulp supply to sustain or grow recovered fiber.
- It imposes unreasonable mandatory reductions in total packaging used by each individual producer of packaging of 50 percent by weight, applied equally to all categories of materials, without regard for already-achieved source reduction measures, and with no accommodation for shifting market share or consumer demands. Packaging source reduction standards could hamper market growth on products in high demand. The reduction standards do not take into consideration the historic reductions of paper and put paper in a position where further reductions are not possible.
- Imposes a mandate on product producers that within two years they assure “a consistent regional market” for all post-consumer paper product materials collected, a compliance mandate that is beyond the capabilities of individual companies to achieve.

**Municipal services and systems have an open ended opt in/out reference even if such systems and services are not efficient or dealing with problems that inhibit recovery and recycling.**

- PROs could be forced into using municipal services and systems that are not cost effective or efficient and are not under the direct control of the PRO to make changes.
- The preemption provision in this legislation effectively undermines the PRRO and producers from implementing uniform and efficient systems.
- If individual local laws that exist remain in place or future laws could still be adopted, we will end up with a hodge-podge patchwork of recycling requirements and systems which could be unmanageable.

**Time frames are conflicting and out of sink with what can practically be accomplished.**

- Sets up an unworkable timeframe for business compliance, with producer responsibility plans required to be submitted to the state on the same timeframe for the state to adopt implementation regulations, and with other provisions of the bill allowing the state to expand its list of recyclable materials with no adequate time for businesses to remain in compliance with expanded obligations.

**Enforcement mechanisms and restrictions are burdensome, unnecessary, or potentially violate constitutional rights.**

- It would impose significant civil penalties for any violation of this complex new law, including violations based on factors beyond their control (such as the impact of economic conditions on markets) without providing any opportunity for producers to address and correct violations;
- It would establish a new, unnecessary “office of recycling inspector general” that would duplicate oversight and enforcement authority of the DEC and the office of attorney general, and whose costs would be borne by packaging and paper producers;
- It contains an unconstitutional prohibition against a PRRO making political expenditures.

For the aforementioned reasons ESFPA cannot support this legislation. We have and will continue to engage on the number of EPR related legislative proposals so that some degree of consensus on a workable program can be pursued.

Should you have any questions or need additional information, please do not hesitate to contact us.

### **For Further Information Contact:**

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