



# 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

### S 1185-A

Honorable Todd Kaminsky  
Senator  
307 LOB  
Albany, NY 12247

February 1, 2021

Dear Senator Kaminsky:

The Empire State Forest Products Association has concerns with **S. 1185-A** enacting the Extended Producers Responsibility Act. This legislation would require our paper and paper packaging producers to develop and implement strategies to promote recycling, reuse and recovery or participate in “producer responsibility organizations”.

The Empire State Forest Products Association (ESFPA) represents over 300 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 and paper packaging 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 the responsibility does not address the underlying problems.

This legislation is broad and deep regarding to 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 and paper packaging sectors towards mutually beneficial goals to ourselves and to society as a whole. According to the U.S. EPA, in 2018 paper & paper-based packaging had a far higher recycling rate from municipal solid waste streams than other major recyclable commodities: Paper (68.2%); Steel (33.1%); Glass (25.0%); Aluminum (17.2%); and Plastics (8.5%).<sup>1</sup> Put another way, more paper by weight is recovered for recycling from municipal solid waste streams than plastic, glass, steel and aluminum combined.<sup>2</sup>

The voluntary efforts of the manufacturers of paper and paper packaging 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.

While this legislation looks to have producers take on the responsibility and costs of recovery, reuse and recycling we do not see how this will be possible, particularly in our sectors. Take for example a manufacturer of paper for a magazine. The manufacturer produces a large unit of paper for a printing shop. The manufacturer has no knowledge or control over how much of the circulation/sale of that magazine is distributed or sold within New York. Ultimately the magazine publisher and their mail house and distribution center to retail outlets has the knowledge and responsibility. Are they the one responsible for the costs as opposed to the paper producer?

The challenges today for paper and packaging recycling markets stems largely from the National Sword policy of China. In December 2017 China banned (effective January 1, 2018) the importation of certain types of solid waste, including paper and paper packaging. That, in turn, created oversupply in the paper and packaging markets at U.S. based recycled pulp mills. In a bit of irony, Hong Kong based Nine Dragons beginning in October of 2018 announced over \$300 million investment into recycled content pulp lines in Wisconsin and Maine. This, in addition to other recycled content plant expansion and capacity investments across the country, is leading the way for expanded paper and packaging markets that will address much of New York's problem. That is how private investment and manufacturing can address recovery, recycling, and reuse, not through government mandated cost shifts and programmatic burdens that we do not have experience nor capacity to undertake.

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<sup>1</sup> <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data>

<sup>2</sup> [Advancing Sustainable Materials Management: 2018 Fact Sheet. EPA. November 2020.](#)

The burden and shift of cost associated to this legislation could not come at a worst time while manufacturers and producers as well as their supply and distribution chains are facing the COVID-19 Pandemic. Just as we start to see light at the end of the tunnel and are struggling to recover from government mandated shut-downs, market declines, challenges in workforce, and skepticism in investment. This legislation would shift a burden and cost at the worst possible time.

Lastly, regarding our overall comments, we are already engaged in standing up the 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 and packaging 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.

Turning now to some technical provisions in the bill.

**27-3303 1 and 5** allows producers to participate individually or jointly with other producers or through a “producer responsibility organization”. As noted above most paper and packaging producers do not have the expertise or capacity to implement this individually and collaborating among our peers and competitors is not likely going to be viable so we would be looking at the producer responsibility organization option. We have any number of questions and concerns about how these organizations would be based. If they mirror the current county-based systems, our producers could be faced with participating in and financially supporting over 50 such entities across New York where our end products are distributed or sold. This would be a tremendous demand on our staff as well as on finances. While we could be “discharging our responsibilities” we certainly will not be discharging our burden or costs.

**§27-3303 2** would require paper and packaging producers to meet minimum post-consumer content for their products. This is government inserting itself into the marketplace and not maximizing the benefit of product lines that are necessary to meet product demands. There is an increasing demand from consumer choice for post-consumer recycled content and the market is the best pathway to expanding that demand. The above mentioned Nine Dragons investment is just one current example. Hopefully, New York can foster investor interest in recycled-paper content manufacturing investment here at home in New York where we generate a tremendous amount of waste-paper flow.

**27-3305 2 a** “convenient as the previous refuse collection schema”, 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. We already know that with paper and packaging single source collection is the largest contributor to contamination. Any long-term solution to resource recycling, reuse and recovery will 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.

**§27-3305 3** proposes that “charges shall be adjusted based upon the percentage of post-consumer material content”. This is an unnecessary government intervention in creating incentives for producers to increase recycled content in products to buoy up the recovery markets. The recycled content

markets are doing fine on their own in meeting consumer as well as performance demands. This requirement forces the use of recovered fiber in one product or another into what may or may not be the most efficient or most valuable end products. This also ignores the fact there needs to be a “virgin” pulp supply in order to sustain or grow recovered fiber.

We would also point out that International 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 1,000 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.

**§27-3305 4** This section should apply to any producer responsibility organization, if they are established, and not provide any preference to a municipality or a private service. Once again, the market should drive decisions and not the legislation. This efficient use of existing infrastructure, as well as the partnerships created with municipal or private sub-contractors should be allowed to create the most efficient systems. That is not to say that municipal services will not have potential roles, but the choice should remain in the hands of the producers or producer responsibility organization.

**§27-3305 5** “No producer may charge a point-of-sale or other fee to consumers to recoup the costs of meeting obligations under this title.” Just how then are producers going to pay for their costs associated to this legislation? The idea of a free market is to generate revenues through the allocation of price. Every product must be priced to cover its production or wholesale cost, freight charges, a proportionate share of overhead (fixed and variable operating expenses), and a reasonable profit. While the costs of this recycling, reuse and recovery may be internalized, it inevitably will be included in the price per unit of the covered products. Municipalities have the power to tax to cover their costs, the private sector only has price (a fee) mechanisms.

**27-3307 1 n** “description of the end-of- life management”. With respect to paper and packaging, cellulosic fibers can only be re-pulped so many times and for a limited range of product grades and materials. Eventually, at end-of-life the recycling potential ends and disposal occurs. The regulation and handling of the “waste disposal” are not driven by the producer or the producer responsibility organization. The disposal of solid waste is a related but separate set of laws, policies and regulations that should not be an additional burden of these organizations.

**23-3307 1 o** “description of how the producer responsibility organization will work with producers to reduce packaging through product design and program innovation”. Product design and innovation is a proprietary and protected right of producers and manufacturers and legislating in a role for producer responsibility organizations is an infringement on those rights. What product, market manufacturing expertise would these bring to a producer or manufacturer. While a producer or manufacturer may consult with whomever they want we should not be mandating this relationship nor bringing it into public arena.

For the above reasons, the Empire State Forest Products Association cannot support this legislation. We would, however, be happy to work with you in developing policy and, if necessary, legislation regarding recycling, reuse and recovery of paper and paper packaging. Also establishing a policy that recognizes the market value that our paper and paper packaging products, particularly those manufactured in New York, brings to employees, consumers and to our forests as a natural solution to climate change.

cc: Senate Environmental Conservation Committee Members  
Assembly Environmental Conservation Committee Members

**For More Information Contact:**

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