

December 13, 2021

Honorable Mona Das
230 John A. Cherberg Building
PO Box 40447
Olympia, WA 98504
[Submitted Electronically]

RE: Proposed RENEW Act

Dear Senator Das:

Thank you for the opportunity to communicate with your office on your pending legislation related to Extended Producer Responsibility (EPR).

The Household & Commercial Products Association (HCPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally including in the State of Washington. Products HCPA represents include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for home, lawn and garden, and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

As an industry, we have made serious efforts and commitments to reduce plastics and materials in our environment and contribute to the movement on a policy level. For example, HCPA is a member of the Recycling Leadership Council (RLC), where we joined other consumer facing industry partners and NGOs in a call for action to address plastics in our landfills and the environment. The RLC is striving for circular supply chains that cycle materials through the economy and recently released a Blueprint for America's Recycling System. Many companies are leading the way on waste reduction and responding to consumers' desire for environmentally friendly products. Other manufacturers – joined, together with organizations like the Alliance to End Plastic Waste, have made real investments in reducing plastics in our landfills. These goals and accomplishments are not easy, however, we share your commitment to a cleaner environment.

HCPA shares many of the broader concerns expressed by industry partners thus far-related to reasonable rates and dates for recycling, the definition of packaging, a longer on-ramp for implementation, fee cost containments, appropriate environmental goals, and antitrust liability protection. An EPR program must embrace shared responsibility across the packaging value chain to reach a circular system. The program should identify responsible stakeholders -- including state and local governments, waste and recycling communities, and producers -- coupled with accountability and goals to achieve system improvements.

Unique Challenges for Federally Regulated Products

EPR programs like the RENEW Act bring unique challenges to HCPA represented products. In particular, an EPR program must consider its impact on federally regulated products. As underscored by the intent language under Section 1 of the RENEW Act: "...extended producer responsibility programs are implemented by and for producers of plastic packaging and other material types so that the **design** and management of their packaging is accomplished in a manner that ensures minimal environmental impact, involves producers from **design concept** to end-of-life management, and **incentivizes innovation** and research to minimize environmental impacts." *[emphasis added]* However, product packaging, material makeup, and supply chains are incredibly complex, and crafting regulations without consideration for how they impact the health and safety of consumers will lead to serious negative consequences.

HCPA represented products have complex chemistries and some of the product design, recyclability or recycled content rates are a function of federal regulations or technological feasibility in order to safely deliver the product to consumers, as well as store for long periods of time. Without acknowledging these unique challenges, EPR programs are not going to be set up for success and may unfairly make producers liable for standards that cannot be met. Products that fall into this category include those registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), aerosol products, child resistant packaging, or products that could become unsafe or unsanitary to recycle by virtue of their anticipated use. All of these products have the common thread of ensuring consumer and environmental safety through proper packaging, and we believe this should be appropriately balanced with reasonable environmental goals.

More latitude should be given to these products within the context of EPR. Legislatures have long recognized these challenges, and consistency across regions and states is also important for efficiency and economies of scale. For example, leading proposals in California,¹ New York,² and New Jersey³ include specific safety and public health considerations for products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). **HCPA urges you to include similar language in the RENEW Act.** Enclosed are proposed amendments modeled on New Jersey's legislation.

¹ CA Senate Bill 54 (Allen)

² NY Senate Bill 1185--C (Kaminsky)

³ NJ Senate Bill 2515 (Smith)

Timing for Household Cleaning Products and Cost of EPR

Many of the HCPA represented products are just now beginning to understand the details of the recently enacted legislation (SB 5022) that requires aggressive postconsumer recycled content (PCR) rates in Washington. It is still unclear what fees and compliance under that program will look like, but fees will be levied early next year. A new EPR program will add an additional fee and set of regulations on these products. Consider a common product like a household disinfectant which has played a critical role in the state's COVID-19 response. This past year, the state significantly raised fees on the registration of these products through the Washington State Department of Agriculture; producers will now pay significant PCR fees; and under this EPR bill an additional layer of fees would be added. At the same time, as we continue to navigate a pandemic and global supply chain logjams, consumers are facing some of the worst inflationary pressure since 1990.

Timeline is too Fast and Not in Proper Sequence

SB 5022 (2021 plastics law) currently requires producers to make payments to the department before the rulemaking process establishes the actual scope of impacted products, and before it is possible to establish an equitable fee. In addition to early implementation before rulemaking takes place, the RENEW Act would establish the same dilemma in the law by requiring payment before a plan is in place to determine equitable shares of the cost. HCPA recommends amendments to the RENEW Act that allow sufficient time (6-12 months) after registration to determine products sold into the state that meet the law's definitions. Many companies will need to build reports and some may have to manually determine the data. After this process there should be additional time to determine fees for the management and creation of the program. Finally, producers should have at least 6 months to pay once they are provided the fee information.

Given the short session in 2022, as well as these growing cost pressures, we urge you to ensure there is a substantial public review and input process for this EPR bill, similar to the robust SB 5022 advisory group currently addressing PCR rates in various product types. Like you, we want to ensure an EPR program is workable and successful.

Once again, thank you for the opportunity to express our concerns in writing. We are committed to working with you to find solutions to Washington's recycling challenges and moving closer to a circular economy. I welcome the opportunity to discuss these in person and appreciate your ongoing dialogue through the stakeholder process.

Sincerely,



Christopher Finarelli
Director, State Government Relations & Public Policy - Western Region