

Testimony of Gary Sondermeyer
Vice President of Operations
Bayshore Family of Companies
Representing the Association of New Jersey Recyclers
Senate Energy & Environment Committee
Virtual Hearing on S2515
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Good Morning Chairman Smith and esteemed members of the Senate Energy & Environment Committee, my name is Gary Sondermeyer, Vice President of Operations at the Bayshore Family of Companies. Thank you for the opportunity to offer brief testimony today on behalf of the Association of New Jersey Recyclers (ANJR) as we further our Statewide discussion of recycled content legislation which the Committee began back on June 17, 2020 and continued with the hearing held on September 17.

The mission of ANJR is to support, promote and enhance source reduction, reuse practices, organics management, and recycling activities in the State of New Jersey. ANJR provides educational and training programs, and also advances policies that support sustainable materials management, which in turn benefits the environment, the communities and the economy of New Jersey. We are a not-for-profit, 501(c) (3), nonpartisan network that was incorporated in 1984. ANJR's members consist of individuals and organizations from both the public and private sectors, governmental entities, the recycling industry, and the business community.

We offered brief testimony at both the June 17 and September 17 Committee hearings and once again offer our strongest possible support for S2515 and the majority of the proposed amendments. As we have consistently stated, S2515 represents the most significant legislative blueprint for market development in the history of recycling in New Jersey since our Mandatory Recycling Act passed some 33 years ago. Recycled content legislation is exactly what is needed to address international market disruptions for commodities, primarily brought about by actions taken by China and other Southeast Asian countries. Recycled content legislation also provides what is needed to “close the loop” to make recycling a key element of a sustainable future.

We understand that the esteemed Sponsor met with representatives of the New Jersey Department of Environmental Protection following the September 17 hearing to entertain significant amendments to the bill. This delayed additional hearings since that time. However, we believe this was time well spent. The revised bill is very well crafted, cohesive and substantive. Overall we view the amendments as a significant improvement in the overall approach to recycled content legislation. We respectfully offer the following comments on this significantly modified bill:

- We strongly endorse the modified and somewhat uniform post-consumer content formula for each referenced commodity of establishing a threshold percentage within 2 years of the effective date of the bill, beginning graduated increases within 5 years of enactment, followed by incremental increases over time. We also understand and appreciate that manufacturers have requested more time to achieve increases in post-consumer content. However, we do have concern that too much time has been provided. The graduated increase schedule for rigid plastics extends 17 years to the year 2038 and for plastic beverage containers 23 years to 2044 if we assume bill passage in 2021.

As a compromise, we propose establishing a more action forcing and aspirational schedule to achieve the targeted post-consumer content goals with a total of 12 years where the earlier version of the bill provided 10 years. This would provide additional time as requested by manufacturers and be uniform for both rigid plastic and plastic beverage containers. This would also align the bill closer to Assembly Bill 793 in California passed this September which starts at 15% post-consumer material for plastic beverage containers by 2022, 25% by 2025 and 50% by 2030. Our point here, if manufacturers are under these mandates in the largest State in the country, they can certainly meet more aspirational timeframes in New Jersey than what was proposed in the current amendments. We propose a modified compliance schedule for rigid plastic post-consumer content, as follows, assuming bill passage in 2021:

- ✓ 2021 Bill Passage
- ✓ 2023 25% Post Consumer Content as proposed

- ✓ 2026 35%
- ✓ 2029 45%
- ✓ 2033 50% (Bill caps at 50%)

Similarly, we propose the following compliance schedule for plastic beverage containers:

- ✓ 2021 Bill passage
- ✓ 2023 15% Post Consumer as proposed
- ✓ 2026 25%
- ✓ 2029 35%
- ✓ 2033 40%

While we readily acknowledge that ANJR membership is not made up of manufacturers, we do feel that it is logical to have the compliance schedule for both rigid containers and plastic beverage containers to coincide in terms of meeting final post-consumer content goals.

- In line with the above, we do wish to thank and commend the sponsor for the recognized increase in the goal of getting to 50% post-consumer content for rigid plastic where the earlier goal was 35%. Further, we also strongly endorse the labeling requirements for each referenced commodity to begin within 2 years of bill passage where each container must include the name, city, state, and country where the manufacturer is located. This will allow for tracking compliance with the bill by the NJDEP.
- We recognize and support Section 9 of the bill which allows DEP to adjust any of the post-consumer compliance requirements through rulemaking and, further, that these adjustments can only be for a specific period of time.

We also wish to inform the Sponsor and Committee that recycled content efforts are under serious discussion in our neighboring New England States. A regional approach to recycled content requirements would appear highly advantageous to manufacturers so they are not

ultimately confronted with state-by-state mandates. ANJR is working with the Northeast Recycling Council (NERC) and the Northeast Waste Management Officials Association (NEWMOA) in this regard. Section 9 of the bill, as written, would allow New Jersey to adjust timeframes in line with our neighboring states in New England.

- We don't understand the need for the 5-year exemption from the bill for milk products, medical food, or infant formula as outlined in Section 10 of the bill. We would request some clarification and note that we were unable to find a similar exemption in Assembly Bill 793 passed in September in California.
- Once again, we support Section 11 and the provisions for manufacturers to seek a waiver from the Department and associated need for them to document their reasons from federal, State or third-party experts as provided in Section 11 b. We particularly like Section 11 c. which requires, for transparency, the Department to publish any grant of a waiver on the DEP website. In this regard, we recommend that this same requirement apply to any determinations made by the Department with respect to alternative compliance plans as outlined in Section 12 c.
- One of the most significant sections of the bill is Section 14 which requires submission of an annual certification to the Department to document their compliance with the bill. We like the way this has been amended which is very clear. Manufacturers will now certify "the amount, in pounds, of virgin plastic, glass, or paper and postconsumer recycled material used by the manufacturers for any products subject to the requirements of this act." We do have one recommendation here. Earlier in the bill in Section 11, third party certification is recognized in the context of manufacturer waiver requests. We request that language be added in Section 14 to allow the Department, following rulemaking, to require third party certification of manufacturer compliance claims. This would not be a mandate, but permission language in the event the Department feels that such third party verification is needed.

Also in Section 14 we strongly support 14 c. which requires the Department to audit a random sample of manufacturers to determine

compliance with the bill. We also applaud Section 14. d. where the Department will publish a list of registered manufacturers and their compliance status annually.

- In the earlier versions of S2515 the enforcement section was strong. In the revised Section 16 the enforcement provisions are even stronger and extremely well written. We are in complete support.
- Section 18 of the bill establishes the “Recycling Enhancement Penalty Account” which we support. However, we must once again most respectfully object to Section 18 b. which provides for the Department to work in consultation with the Clean Communities Program to develop and implement a Statewide public information and education program to encourage, support and increase the recycling of the referenced commodities. ANJR has the highest respect for the Clean Communities Program and Clean Communities Council which most certainly has a longstanding legislative mandate to provide public education. However, this mandate pertains to litter abatement and not to recycling. Going back 34 years to the Mandatory Source Separation and Recycling Act, 10% of the State Recycling Fund was dedicated to recycling education which was carried out primarily by county governments in consultation with the Association of New Jersey Recyclers. With no disrespect to our sister association, Section 18 b. needs to be amended and ANJR inserted to work with the Department on Statewide recycling education.
- Finally, we wish to stress the importance of Section 22 b. which authorizes DEP to develop guidance as necessary for the implementation of the act prior to the adoption of rules and regulations pursuant to the Administrative Procedures Act. As a practical matter, rulemaking is a difficult and time-consuming process. We believe that the flexibility to move forward with DEP guidance prior to rulemaking to be critical to program success.

In conclusion, and as noted in our prior testimony, we believe S2515 to be the most significant piece of recycling legislation to stimulate markets for post-consumer material in our State’s history. We are most supportive of the bold steps to stimulate recycling markets through post-consumer content standards

and believe this is essential for the future of recycling. The current version of the bill, as amended, is a significant improvement with the exception of the extended compliance timeframes which, as stated, we believe can be reasonably reduced to provide more time to manufacturers while still being action forcing and appropriately aspirational.

Thank you again for the opportunity to testify today on behalf of ANJR and I would be most happy to answer any questions you may have.