

August 10, 2020

To: National Caucus of Environmental Legislators  
From: U.S. Senator Tom Udall of New Mexico  
U.S. Representative Alan Lowenthal of California  
Re: Legislative Blueprints for Reducing Plastic and Packaging Pollution

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In February 2020, we introduced the ***Break Free From Plastic Pollution Act (BFFPPA)***, the most comprehensive approach to plastic and packaging ever introduced in the U.S. Congress. It is the product of over a year's worth of intensive stakeholder outreach and input, including comment periods with input from over 200 environmental groups, businesses, scientists, and most importantly state and local leaders who are advocating for these policies and implementing them at the state and local level across the United States.

We drew heavily from legislation proposed by strong environmental legislators like yourselves and studied existing state and local laws that are on the books already. We picked from the most successful and effective policies to include in our bill as a reflection of best practices across the United States. Now, put together in one place, we hope that this bill will further inform additional legislators as well as other state and local leaders to pull from it and drive further change.

We want to do all we can to help promote this effort. As such, please find attached materials that we hope will help you and your legislative drafters put together a bill that suits your needs to aggressively reduce plastic pollution and packaging waste. If your state has already introduced legislation aimed at addressing plastic pollution and packaging waste, consider these materials as supplemental. Some of you might still want to consider adding elements discussed in this memo to existing legislation.

At least 10 states have introduced, or are expected to introduce, bills that would implement extended producer responsibility (EPR) systems for all packaging materials. These states may wish to consider introducing some of the complementary legislative elements related to single-use plastics and beverage containers mentioned in this memo. Other jurisdictions might find the model elements in this memo to be best practices to incorporate in a new comprehensive bill that places EPR for all packaging materials at its core. Still others might consider a multi-faceted approach to plastics alone as what you most need as a first step.

Our offices and the coalition of organizations supporting the ***BFFPPA*** stand ready to assist you as you plan for your next legislative sessions. We highly recommend you coordinate with advocacy groups to build out a strong statewide coalition of support in order to ensure that any legislation moving forward does not get watered down. Industry opponents are well funded and will work aggressively to weaken the legislation and then argue no further action is needed.

But there are also those in industry who recognize the problem and want to be a part of the solution. Seek them out and help us build coalitions that will promote lasting change.

The **BFFPPA** goes beyond plastic to tackle all manner of products and packaging that are impacting our environment, straining our budgets, and threatening our health. This memo is broken into components of the **BFFPPA**. We encourage you to use the attached blueprints along with the bill text<sup>1</sup> and our supplemental materials<sup>2</sup> to craft robust legislation for your state. Whatever you decide, we encourage you to build on the great action that has already taken place across the country and to further push for change that will have a lasting impact.

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<sup>1</sup> **Break Free From Plastic Pollution Act**: Senate bill 3263 ([HERE](#)) and House bill 5845 ([HERE](#)) – Identical text.

<sup>2</sup> Background material including a section-by-section description ([HERE](#)) and treatment of covered products ([HERE](#))

## BACKGROUND TO PLASTIC AND PACKAGING WASTE

While our country continues to grapple with the multiple threats of COVID-19, economic uncertainty and racial injustice, we recognize the need to continue with important work that also has profound health, economic and environmental justice implications. As you look forward to your next legislative sessions, we would like for you to consider ways for your state and local governments to reduce the enormous amounts of plastic pollution and packaging waste across the country.

Plastic pollution is no longer viewed as an ocean problem alone. We are seeing plastic and packaging pollution everywhere – our streets, sidewalks, parking lots, rivers, waterways, landscapes and parks. And plastic doesn't go away – it breaks down into small pieces known as microplastics that get into the air we breathe and the food and water we drink. A recent peer-reviewed study published in *Science* found that nearly 1000 tons of plastic dust is blown or rained into our wilderness areas and western national parks each year.<sup>3</sup> The problem extends far beyond plastic as we have seen increases in unmanageable amounts of waste from all manner of disposable materials and packaging.

The rise in single-use products has come with a tremendous environmental cost. An estimated 17.6 billion pounds of plastic enters the marine environment every year – roughly equivalent to dumping a garbage truck full of plastic into the oceans every minute.<sup>4</sup> The crushing environmental impacts of plastic pollution as a significant greenhouse gas polluter and ecosystem disruptor only reinforce the need to move beyond plastic to alternatives, while recognizing that there are costs and benefits to every material type.

State and local governments across the country are in the throes of economic crises, seeing revenue for important services diminish and costs continue to increase. This includes recycling collection with exorbitant costs rising without the commensurate benefits – even before the COVID-19 pandemic. Indeed, as a result of COVID-19, dozens of local programs were put on pause due to staffing shortages and health concerns which, coupled with a drastic decrease in commercial and bottle deposit materials and a sharp increase in residentially generated trash and recycling, has resulted in notable impacts to the recycling supply chain.<sup>5</sup>

We have also watched mass protests and movements across the country calling for sweeping changes on racial justice. We need only look at the disproportionate impacts that plastic production and pollution have on some of our poorest communities to understand how racial and environmental justice are inextricably linked. Plastic production and processing facilities,

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<sup>3</sup> *Science*: [Plastic dust is blowing into U.S. national parks—more than 1000 tons each year](#)

<sup>4</sup> Oceana Fact Sheet ([Here](#))

<sup>5</sup> Product Stewardship Institute: [COVID-19 Impacts U.S. Recycling Programs](#)

much like landfills, oil refineries, and other sources of industrial pollution, are overwhelmingly constructed in low-income communities of color that already bear the brunt of environmental and economic burdens and are further at risk from new and expanded industrial activity.

For many years, industry advocates and producers have shifted the focus exclusively to downstream solutions, like recycling. The result has been more and more products produced without consideration of their environmental impacts and mounting piles of waste left for volunteers and local governments to clean-up at their time and expense. According to a recently released report by the Pew Center, ***Breaking the Plastic Wave***, a strategy focused solely on recycling would still result in 18 million metric tons of plastic flowing into the ocean each year by 2040, 65 per cent above 2016 levels, and would cost governments \$140 billion more than business as usual between 2021 and 2040.<sup>6</sup>

A multi-pronged approach that focuses on limiting all aspects of plastic and packaging pollution and a transition to a truly circular economy is the only solution. It will require reducing unnecessary amounts of plastic and packaging, finding sustainable substitutes, promoting reusable items, improving recycling practices, and expanding waste collection services. End markets for recovered materials will continue to fluctuate, but governments can build resiliency and increase economic stability through comprehensive policies and by holding producers accountable for the management and recycling of their products and packaging.

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<sup>6</sup> Pew Center report: [Breaking the Plastic Wave](#)

**BLUEPRINTS FOR LEGISLATIVE DRAFTING**

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### **Producer Responsibility Policies**

As a state and local leader, you are probably familiar with the rising and staggering costs of recycling services for all packaging and paper products. Many officials from municipalities across the country are facing budget shortfalls and asking themselves how they can afford the millions of dollars it costs to collect, sort, and transport recycled goods when there are few markets or destinations for that recycling and the value for that material is plummeting. Providing for these services is cutting into much-needed funds for other essential services and is estimated to reach \$10 billion in expenses across the country.<sup>7</sup>

Environment 101 tells us that the polluter is responsible for including the cost of cleanup in its business model, but for too long industry has pointed the finger at consumers and litterbugs as “the polluter” and expected local and municipal governments to foot the bill. While consumers and the general public have an obligation to properly dispose of items and littering should be strongly enforced against, this simplistic view of pollution dismisses the role producers have in creating the pollution crisis before us.

By producing overwhelming amounts of material with little to no end-of-life value for recycling and designing products solely for the purpose of marketing and selling those items, producers have failed to make sustainable items that can be easily reused, recycled or efficiently disposed of. Items designed for a one-time use then become the responsibility of taxpayers and local governments to manage.

The ***Break Free From Plastic Pollution Act (BFFPPA)*** shifts the responsibility to producers to finance, collect and manage packaging (plastic, glass, metal) and paper product waste after consumer-use. These policies, often referred to as *Extended Producer Responsibility (EPR)* or product stewardship, have been successfully implemented in the U.S. to manage products such as batteries, paint, mattresses, carpet, thermostats, and pharmaceuticals. Across the U.S. there are 119 EPR laws covering 14 different products in 33 states.<sup>8</sup> EPR is common throughout much of the world, including Canada and Europe, where programs have been in place for decades and many jurisdictions have recycling rates above 70% or even 80%.

There is a range of options for implementing producer responsibility. Some policymakers may wish to continue oversight and day-to-day management of recycling and waste collection, but implement a fee on producers to finance those activities instead of using tax dollars. Other

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<sup>7</sup> The cost estimate is based on a combination of the total volume of plastic produced each year and a peer-reviewed assessment of the average costs of municipal waste and recycling programs. We assume an ideal context of 100% of produced plastic recycled. Data for the total volume of plastic come from EPA (available [here](#)) and estimated costs of municipal waste and recycling programs from Bohm et. al. 2010 (available [here](#)).

<sup>8</sup> Product Stewardship Institute: [U.S. State EPR Laws map](#)

policymakers may wish to require producers to fund the program but also shift recycling management and collection logistics to producers, which is the model that was adopted in the **BFFPPA** and replicated from proposed legislation in Washington State (HB 1204<sup>9</sup> and SB 5397<sup>10</sup>).

We encourage you to use the language in Part I of the **BFFPPA** (sections 12101-12107) in order to craft your own EPR proposal. Tools and models for drafting EPR legislation for packaging are also available from organizations such as the Product Stewardship Institute, which stands in support of the **BFFPPA** and has helped to draft and support EPR for packaging policies in numerous states.<sup>11</sup> We would also encourage you to dialogue and coordinate with neighboring states and regions to implement regional partnerships that would improve efficiency. The broader the coverage for EPR, the more efficient and effective it will become.

Whatever your decision, here are some important considerations to keep in mind:<sup>12</sup>

- **Covered Material/Products:** The **BFFPPA** defines its covered materials and covers food service products; most single-use products; packaging that contain and/or protect goods; service packaging filled at the point of sale; paper sold as a product; and all printed materials (except bound books). This includes all materials such as plastic, paper, glass, and metal.
- **Define who is a producer:** The **BFFPPA** has a definition of a “Responsible Party” that targets the producer as the company who markets the product to consumers (e.g., the brand owner). These entities typically have the most leverage on how their products are marketed and designed to reduce waste. The implementing agency (in our case – the Environmental Protection Agency) has discretion to identify the responsible party according to a hierarchy outlined in the **BFFPPA** in circumstances when multiple candidates may be possible.
- **Allow for Producer Responsibility Organizations (PROs):** The **BFFPPA** allows responsible parties to comply individually or through organizations that represent multiple producers. These entities can be set up by producers to coordinate and operate the new program among similar companies to increase efficiency and reduce the amount of entities a government has to interact with.
- **Funding:** Producer internalized funding in the **BFFPPA** covers all program costs, including collection, transportation, clean-up and disposal/recycling/composting of packaging and paper products. Also included is the cost of U.S. EPA oversight and management, and options for reimbursements to municipalities for collection services

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<sup>9</sup> [HB 1204 - Concerning the responsible management of plastic packaging](#)

<sup>10</sup> [SB 5397 -Concerning the responsible management of plastic packaging](#)

<sup>11</sup> Product Stewardship Institute: [Packaging EPR Toolkit](#)

<sup>12</sup> Product Stewardship Institute: [Elements of Packaging and Paper Products \(PPP\) EPR Legislation](#)

in lieu of producer management of the system. Some systems might include payment for costs associated with litter and compost contamination or include those costs in “eco-modulated fees” that incentivize good design by charging producers more for materials that cost more to manage and have greater impacts on the environment.

- **Incentives for Improved Packaging Design:** The costs of management and cleanup that a responsible party pays into a PRO can be reduced if the producer uses reusable/recyclable materials, a high percentage of recycled content, and innovative product design including non-detachable lids and packaging specifically designed to be reusable or refillable.
- **Ensure administrative costs are covered:** Whether you decide to continue managing recycling/composting/waste collection and charge a fee to producers or plan to turn over control to a PRO, there will be administrative costs that the government will incur, including oversight and enforcement. Ensure that producers are responsible for these costs as well.
- **Performance Standards and Targets:** The **BFFPPA** includes aggressive, but achievable targets for the collection, reuse, recycling, and composting of covered products. Responsible parties must submit plans to oversight entities for approval before they can be implemented.
- **Accountability:** Producers must report their activity and data and be held accountable for implementation. The **BFFPPA** includes a set of fines and penalty fees for non-compliance.
- **Access to Services:** Producers need to ensure that convenient, free and on-going access to collection facilities and services is provided.

### **Beverage Container Deposit and Refund Programs**

Nestled within Part I of the **Break Free From Plastic Pollution Act (BFFPPA)** (section 12104) is an explicit form of producer responsibility for beverage containers – a national beverage container deposit and refund program. This program requires beverage producers to include a deposit amount on their beverage containers that is charged to the consumer at the time of purchase and refunded when it is returned.

Successful examples of container deposit programs exist in the United States and around the world. States with these programs already in place see an increase in the return of beverage containers, and as an added benefit, overall recycling rates for all materials also increase. Evidence shows that bottle deposit programs result in higher returns of materials and less contamination of collected materials: In 2018, Oregon reported 81% of all beverage containers were recycled (87% of metal containers, 75% glass, and 75% plastic).<sup>13</sup> NY’s redemption rate averaged 73% from 1983-2007 (most recently 64%), and of the beverage containers collected,

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<sup>13</sup> [Oregon’s Bottle Bill and Redemption Centers](#)



nearly all are recycled. Government Accountability Office reports from back in 1980 and 1990 found that states with beverage container laws see a reduction *both* in their beverage container litter as well as their overall litter. ME saw 69-77% reduction in beverage container litter, NY 70-80%, OR 83%, VT 76%, MI 80%, IA 77%, with overall total litter reductions around 35% on average for those states.<sup>14,15</sup>

Those states with existing beverage container programs have a lot of considerations to weigh when deciding how to implement extended producer responsibility programs for other forms of packaging. These policies are very complementary and can be found in Canadian and European systems. For those states without a beverage container program, there are many considerations in how to develop a program from scratch and often times there are concerns about how to shift current recycling collection and existing contracts with waste haulers to implement such a program.

### ***Weighing the Costs and Benefits of Container Deposit Programs***

Some municipalities have raised concerns that implementing a container deposit program will result in lost revenue from more valuable recyclable scrap, like aluminum. We want to clear-up misconceptions about how deposit programs work and move toward more long-term goals of supporting recycling into the future beyond annual budget cycles.

Municipal officials might find it useful to use a full-cost accounting approach to understand how deposit programs can save money for municipalities. It is true that aluminum cans and other scrap create some value for collection, but looking only at value collected doesn't reflect the full economic/budgetary situation.

For example, all three beverage container types (plastic, glass & aluminum) have:

- A ***COST*** value for collection and recycling, and
- A ***REVENUE*** number for sale of scrap material.

In order to understand the full cost of recycling these three material types, you need all six numbers.

In addition, all three material types are in the disposal stream as well, which means there are three more cost items. Curbside programs rarely capture more than 50% of these materials, and the rest are disposed of or littered.

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<sup>14</sup> GAO report: [State's Experience With Beverage Container Deposit Laws Shows Positive Benefits](#)

<sup>15</sup> GAO report: [Tradeoffs Involved in Beverage Container Deposit Legislation](#)

The last cost factor is the cost of cleaning up beverage containers that are littered.

Once all costs and revenues are considered, we find that scrap material revenue only covers about one-fourth of the total costs, and the other three-quarters of the costs are paid for by municipalities.

This finding has been verified in more than two dozen studies in various countries around the world, over the past two decades.<sup>16</sup>

### ***Designing a Container Deposit Program***

While there are successful models of container deposit programs across the country with decades of experience like Michigan and elsewhere, the **BFFPPA** modeled its proposal after the successful and popular program in Oregon.<sup>17</sup>

Producers of beverages sold in beverage containers of any material, including plastic, metal and glass, will be required to include a minimum 10 cent refund price on each beverage container.

Retailers will be charged this value as a deposit by the producer and will pass the charge onto consumers. Each time a beverage container is returned, the refund value will be refunded. Any unclaimed or unreturned deposits will be kept by the responsible beverage Producer Responsibility Organization (PRO) to help operate the recycling programs.

The beverage producers, through their PRO (in Oregon, there is a beverage producer cooperative) are responsible for funding take-back depots and the infrastructure to collect and transport the material. These options must be accessible to customers regardless of their location (urban, suburban, rural). As a result, the producers also have direct access to material for reuse and recycling, streamlining the entire process.

### **Simple Plastics Laws Trifecta**

Part II of the **Break Free From Plastic Pollution Act (BFFPPA)** includes and builds on three very simple plastic reduction policies that have been successfully demonstrated across the country: 1) a ban on plastic carry-out bags coupled with a fee on all other carry-out bags; 2) a ban on expanded polystyrene (foam) food and drinkware, and 3) straws available upon request. These items are routinely some of the top items found in beach and highway clean-ups, can do

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<sup>16</sup> ReLoop has catalogued a number of economic analyses in a fact sheet [here](#).

<sup>17</sup> More information about Oregon's Bottle Bill & Redemption Centers found [here](#).

damage to recycling infrastructure if consumers put them in recycling bins, and have readily available alternatives.

These simple plastic laws abound across the United States.<sup>18</sup> There are over 500 local plastic bag ordinances that have been adopted in 28 states and statewide plastic bag laws have been adopted in 8 states: California, Oregon, New York, Vermont, Maine, Connecticut, Delaware, and Washington.

Over 100 cities in California, Florida, Maine, Massachusetts, New Jersey, New York, Oregon, Texas, Washington, and Washington, D.C. have already enacted bans on expanded polystyrene. In addition, about 60 U.S. cities have either banned or shifted straws and other single-use utensils to be available only on request.

### ***Plastic Carry-Out Bags***

Across the country municipal recycling systems face serious economic challenges and residents are being burdened with higher fees. Plastic bags are the top form of contamination in recycling systems and create costly clogs in equipment. Many people mix plastic bags with other recyclables, which can cause serious harm to municipal recycling systems and endanger workers. The City of Phoenix reports<sup>19</sup> that plastic bags cause over a million dollars per year in downtime and equipment damage.

Section 12201 of the **BFFPPA** prohibits covered retail and service establishments from distributing carry-out bags made from film plastic on January 1, 2022. Reusable bags<sup>20</sup> made from plastic fabric may still be sold in stores to consumers if the bags have a thickness of at least 80 grams per square meter. Other exceptions exist for film plastic bags, including bags used inside stores to package bulk items.

Covered retail and service establishments are defined to include stores, grocery stores, restaurants, beverage providers, vendors, hotels, motels and other retail or service establishments.

All other carry-out bags available at check-out, including paper bags and reusable bags given away by the store, incur a 10 cent fee, encouraging consumers to limit the amount of unnecessary carry-out bags they use and to bring their own reusable bags (See Section 4056). A bag fee has been shown to be the most effective way to reduce carryout bag consumption.<sup>21</sup>

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<sup>18</sup> Fact Sheet: [Plastic Bag Laws in the United States](#)

<sup>19</sup> [Phoenix recycling officials: Plastic bags contribute to lost time worth about \\$1 million](#)

<sup>20</sup> Surfrider report: [How Should "Reusable Bag" be Defined?](#)

<sup>21</sup> Surfrider report: [Plastic Bag Law Activist Toolkit](#)

Some states have found that mandating the retail establishment to retain the fee is a best practice that ensures retailers are not burdened by the extra cost of more expensive paper carry-out bags.<sup>22</sup> Other locations have used the funds for dedicated purposes, like river clean-ups and providing resources for low-income constituents to get access to reusable products.

Our legislation included a hybrid of this, allowing retailers to retain a portion of the fee (4 cents) and directing the remaining fee to a fund that would be used for recycling, clean-up, and providing low-income consumers with more access to reusable products. The fee retained by retailers could increase to the entire 10 cents if retailers offer and prominently advertise a rebate program for consumers by offering 5 cents to consumers who bring their own carry-out bags.

Please refer to Sections 6431 and 9512 of the **BFFPPA** for the language on the carryout bag credit program and fund for investments in recycling, clean-up and access to reusable products for low-income consumers.

### ***Expanded Polystyrene (Foam) Food and Drinkware***

Section 12202 of the **BFFPPA** prohibits covered retail and service establishments from selling food and drink in foam food and drinkware starting on January 1, 2022. Despite claims of recyclability, expanded polystyrene requires specialized processes to recycle and cannot be accepted or processed by your typical municipal recycling facilities. According to a study by the New York City Department of Sanitation, foam food and drinkware cannot be recycled in a manner that is economically feasible or environmentally effective.<sup>23</sup>

### ***Straws Available Upon Request***

Section 12202 includes language limiting the distribution of straws to consumers only upon request of the consumer.

It is important to ensure that straws are available for persons with disabilities and other communities that may rely on straws without discrimination. The **BFFPPA** attempts to address this issue by requiring that retail and service establishments provide accessible means of communication across all ordering platforms (such as online, mobile and in-person) for consumers to request a straw. Additionally, retail establishments are required to keep a stock of plastic straws on hand for customers that request them, ensuring their availability for customers who request them. Retail establishments should not discriminate against anyone

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<sup>22</sup> We recommend this approach, but could not take it in the **BFFPPA** because of drafting considerations.

<sup>23</sup> NYC Department of Sanitation Report: [Determination of the Recyclability of Food-Service Foam](#)

requesting a straw. The **BFFPPA** also ensures straws are available for bulk purchase in grocery stores and other locations without request – available to be stocked directly on shelves for customers to pick-up.

### **Reducing Other Disposable Plastic Items and Encouraging Compostable Material**

In addition to bags, foam and straws, the **Break Free From Plastic Pollution Act (BFFPPA)** targets other disposable plastic items for source reduction that you may want to consider. The **BFFPPA** also prohibits:

- Plastic utensils
- Foam coolers (with exceptions for medical uses)
- Foam shipping materials
- Miniature bottles containing shampoo, conditioner and lotion distributed at hotels/motels
- Plastic/non-compostable produce stickers

The **BFFPPA** encourages the development of composting infrastructure and the use and certification of compostable materials that meet specific ASTM International standards. However, compostable materials without proper infrastructure to compost them can create just as much pollution as plastic items. Therefore, compostable alternatives are only permitted in jurisdictions and areas that provide composting collection and treatment.

### ***Cigarette Butt Pollution***

We struggled with including appropriate policies in the **BFFPPA** to deal with the staggering amounts of pollution from discarded cigarette butts. While the bill includes a study and then requires federal agencies to implement policies based on the results of the study, we continue to explore ways to reduce pollution from tobacco filters (and increasingly electronic-cigarette components). We have been reviewing policies and business models in Maine, New York, and at the city-level in places like San Diego that require producers to provide funding and receptacles for proper disposal and collection of cigarette waste. We encourage you to take aggressive action to pursue funding from cigarette producers to provide this kind of infrastructure and access to proper disposal/collection sites.

### **Post-Consumer Recycled Content, Recycling & Composting Labeling**

Part III of the ***Break Free From Plastic Pollution Act (BFFPPA)*** (sections 12301-12305) includes a number of provisions to improve the collection, sortation and recycling/composting of material. Consumer education is an important part of the solution, but only in tandem with meaningful policies to get packaging and plastic products under control – as outlined earlier in this memo. No amount of consumer education will be able to overcome the suffocating amounts of waste that is generated and causing multiple crises.

The ***BFFPPA*** includes a number of measures, such as requiring an increasing amount of recycled content to be included in new products, like plastic beverage containers. Producers will be required to include labels on their products that are easy to read and indicate whether the product is recyclable, not recyclable, compostable, or reusable. Importantly, the ***BFFPPA*** defines what it means to be “recyclable” and does not classify waste-to-energy or other forms of fuel conversion as recycling. Products that are not recyclable shall not include confusing symbols, such as the universal chasing arrow symbol.<sup>24</sup> And compostable products should be immediately identifiable as such to avoid improper disposal.

Just because something may be “technically” recyclable (in a lab or elsewhere), the Federal Trade Commission (FTC) Green Guides note that being labeled recyclable requires a mix of economic viability and public access. These Green Guide rules are up for review in 2021 (and finalized in 2022) and we encourage states and local governments to participate in the comment period process to ensure these standards are not weakened.

Disposable wipes are another product that frequently cause clogs or damage to sewage and waste management systems. The ***BFFPPA*** requires packages have clear labeling on proper disposal of these items. Washington was the first state to pass a law ([HB2565](#)) that requires “Do Not Flush” labels on non-flushable wipes, and the California legislature is considering a similar bill ([AB1672](#)). These are simple solutions to educate the public and to minimize damage caused by wipes.

Additionally, the ***BFFPPA*** sets out to require producers to design their products to minimize the impacts of extraction, manufacture, use and end-of-life management. And to help with proper sortation and disposal, the ***BFFPPA*** requires the EPA to develop guidelines for a national standardized recycling and composting labeling system for Producer Responsibility Organizations to use in public places on recycling and composting receptacles.

Many states are leading on a number of these provisions already and we encourage you to explore the options that work well for your state.

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<sup>24</sup> *Plastic Wars* by PBS provides interesting background on the history of the chasing arrows symbol ([here](#))

### **Preventing Plastic Waste Exports to Developing Countries**

For many years, U.S. recycling has been bundled and packed into empty shipping containers returning to China and Asia for disposal there. Before 2017, the United States was sending 4,000 shipping containers a day full of American waste to China every year. China has changed its import policies severely restricting the amount of contaminated and poorly sorted plastics it would accept. As a result, the U.S. began shipping waste to other parts of Southeast Asia<sup>25</sup> and increasingly to Africa.<sup>26</sup>

Even in the best of times, the recycling markets for mixed plastic waste shipped overseas was nothing more than commingled trash left for impoverished waste-pickers to comb through, seeking out minimal amounts of valuable scrap, with the vast majority left in heaping piles – either to be burned, used for fuel or lost to the environment.

Plastic producers and corporations would like the public to believe that the ocean plastic crisis is the fault of a few countries and rivers, predominantly in Asia, who do not manage their waste effectively. But the truth is that the volumes of waste that are dumped upon these countries is unmanageable. Advocates and reporters have documented the source of waste leaking into the environment in Asia back to the developed countries that exported the waste.<sup>27</sup>

The global community is aggressively tackling this process through the United Nations and the Basel Convention to control the transboundary movements of plastic waste.<sup>28</sup> Unfortunately, the United States is not a party to the convention.

The ***Break Free From Plastic Pollution Act*** prohibits plastic waste, plastic pairings and plastic scrap from being exported to any country not a member of the Organization for Economic Cooperation and Development (OECD). Any plastic waste, plastic pairings and plastic scrap that is exported to an OECD country must have prior informed consent and may not include contamination levels that disrupt the ability to recycle those wastes or hazardous or toxic substances. We would encourage you to explore policy and other options that restrict the export of plastic waste to developing countries. For example, local governments can be encouraged to include “no export of plastic waste” terms in their contracts with waste management companies and material recovery facilities. We must work aggressively to ensure that plastic and other waste is effectively treated here at home and not outsourced to those who cannot manage it.

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<sup>25</sup> [“No Away. Why is the U.S. Still Offshoring Plastic Waste Around the World?”](#) by Jan Dell. *Plastic Pollution Coalition*. April 7, 2020

<sup>26</sup> [“Africa’s Exploding Plastic Nightmare”](#) by Sharon Lerner. *The Intercept*. April 19, 2020

<sup>27</sup> [“Discarded. Communities on the Frontlines of the Global Plastic Crisis.”](#) GAIA. April 2019; [“Where does your plastic go? Global investigation reveals America's dirty secret”](#) published by The Guardian in 2019.

<sup>28</sup> Read more about the Basel Convention updates [HERE](#).

### **Protecting Local Governments**

We have seen the progress of many local governments directly challenged by a robust lobbying effort at the state level to curtail actions to reduce plastic products. These “bans on bans” are industry’s attempts to maintain market-share for their products and strike at the core of local self-government. The ***Break Free From Plastic Pollution Act*** creates standards that all states would have to achieve and protects state and local rights to go above and beyond. This is where the innovation and rapid response happens to tackle plastic pollution and other environmental/health concerns. We encourage you to create standards for your state and to protect local rights to do more as they see fit.

If you are among the states that has implemented restrictions on local governments from taking action, we encourage you to explore options to overturn these restrictions.

### **Development of New Plastic Production Facilities**

While it is unclear what impacts COVID-19 and the economic down-turn will have on the oil and gas industry long-term, we know that their strategy has been to invest in unprecedented plastic expansion. The petrochemical industry announced \$204 billion in investments for 334 new plastic facilities or expansion projects in the United States alone, many relying on state and local tax incentives. In just five years, these investments could increase global plastic production by a third. As a result, this wave of investment would increase pollution risks to frontline communities – communities closest to these facilities and mostly communities of color – throughout the plastics supply chain. They will also undermine efforts by cities, countries, and the global community to combat the growing plastics crisis, and exacerbate the growing climate crisis.

In 2019 alone, the production and incineration of plastic will add more than 850 million metric tons of greenhouse gases to the atmosphere – equal to the pollution from 189 new 500-megawatt coal-fired power plants. If plastic production and use grow as currently planned, by 2030, these emissions could reach 1.34 billion tons per year – equivalent to the emissions released by more than 295 new 500-megawatt coal-fired power plants.<sup>29</sup>

The ***Break Free From Plastic Pollution Act (BFFPPA)*** includes a temporary pause of up to three years on the permitting of new and expanded industrial facilities that create new plastic or convert plastic into chemical feedstocks for new products or fuel while environmental and health studies take place and the EPA updates much needed regulations on emissions and discharges from these facilities. States and local governments may be able to assist in this

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<sup>29</sup> Center for International Environmental Law (2019), [Plastic and Climate: The Hidden Costs of a Plastic Plant.](#)



effort by ensuring that valuable tax credits and resources are directed toward projects that will have better employment longevity with less environmental and health impacts.

Additionally, a glut of natural gas has led to a U.S. production surge in tiny plastic pellets, called nurdles, which are washing up on coasts by the millions.<sup>30</sup> There are a number of emissions and pollution discharges like these that are currently unregulated and are often spilled into waterways, harbors, railways and elsewhere without major consequences. The **BFFPPA** puts limits on these discharges. We would encourage states to follow suit and help regulate these facilities to ensure pollution is dramatically reduced. An example at the state level is underway at the Texas Commission on Environmental Quality where a proposed rulemaking is receiving public input on a prohibition in wastewater permits for facilities that handle plastic resin pellets.<sup>31</sup> We also expect legislation to be introduced in the Texas state legislature on this issue after a plastic producing company settled a \$50 million lawsuit and agreed to “zero discharge” of all plastics in the future<sup>32</sup> – an agreement that has not been kept.

### **Next Steps and Other Considerations**

The **Break Free From Plastic Pollution Act (BFFPPA)** was introduced in February 2020 and referred to committees where it still awaits legislative action. In the meantime, staff for our offices have continued to explore ways in which the bill can be improved, either during the legislative process or in 2021 when the bill is reintroduced in the 117<sup>th</sup> Congress.

Some of the issues we continue to review include action that can be taken on microplastics, discarded cigarette filters and electronic cigarette cartridges, and other issues. We are also actively involved in robust conversations to ensure the definition of “toxic substances” is updated to be appropriately comprehensive and whether items like drink pouches, which are proliferating at a rapid pace, can be appropriately included in the bottle refund program. We worked hard to make the **BFFPPA** a strong and comprehensive bill, but recognize there is always room for improvement and will work with our stakeholders to constantly improve the legislative text. We encourage you to use the **BFFPPA** as a model, but engage with advocates and stakeholders to ensure you are including the most up-to-date information on this rapidly evolving issue.

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<sup>30</sup> **Audubon Society:** [A New Plastic Wave is Coming to Our Shores](#) (Summer 2020)

<sup>31</sup> The TCEQ proposes to place a prohibition in wastewater permits for facilities which handle plastic resin pellets generated at organic chemical manufacturing facilities, or packaged and transported to processors for molding into plastic products. More information [here](#).

<sup>32</sup> **The Texas Tribune:** [Plastic company set to pay \\$50 million settlement in water pollution suit brought on by Texas residents](#), October 15, 2019

## Conclusion

The ***Break Free From Plastic Pollution Act (BFFPPA)*** is a comprehensive tool-kit that tackles packaging waste issues and plastic pollution from extraction to disposal. The current linear model of handling this waste has only been exacerbated over time by increases in population and ever growing consumer appetite. In order to get it under control, we need to return to principles of product stewardship and circularity to ensure that we get a handle on our waste and address the environmental, economic and health impacts that are straining our system.

The ***BFFPPA*** was modeled off of many of the best practices and policies that have been implemented across the United States. We encourage you to continue the momentum by pushing forward at the state and local level, cleaning up our environment and putting pressure on the very industries that need to come to the table and take responsibility for their actions.

## ADDITIONAL RESOURCES

**The Product Stewardship Institute** has many resources available to state and local governments interested in drafting Extended Producer Responsibility (EPR) legislation for packaging or other products. We relied on [PSI's Packaging EPR Toolkit](#) – a one-stop web hub for packaging EPR resources, including:

- [Elements of Packaging and Paper Products \(PPP\) EPR Legislation](#)
- Infographics outlining sample transition flows to EPR
- [National EPR for PPP Briefing Summary](#)
- [EPR for PPP: Policies, Practices & Performance](#) – a full-length report outlining the history and evolution of EPR for packaging and showcasing existing programs in Europe and Canada, including a detailed case study of the full producer responsibility program in British Columbia.
  - *See also:* accompanying [executive summary](#), [fact sheet](#) and [press release](#)

**Plastic Pollution Coalition's Global Legislative Toolkit** has a variety of model bills available to review, including on bags, foodware and microplastics.

**Surfrider Foundation** has compiled a number of resources as a part of their Plastic Pollution Initiative:

- [Comprehensive Foodware Policy Toolkit](#)
- [Plastic Bag Law Activist Toolkit](#)
- [Coastal Blog](#)
- [Rise Above Plastics webpage](#)
- [Beachapedia webpage](#)

**Beyond Plastics** has [sample language](#) for the plastic trifecta on bags, polystyrene and straws.

**The Container Recycling Institute** has a page for each of the existing 10 state programs at <http://www.bottlebill.org/>. On each state's page, there is a profile of the program, as well as a link to the actual law in that state. CRI also recently hosted an event on [Best Practices in Container Deposit Laws](#).

**U.S. PIRG/Environment America** has a helpful [fact sheet](#) on single-use plastic bans.

**Center for International Environmental Law** has reports on [Plastic & Health](#) and [Plastics & Climate](#) to help support efforts to address the impacts of plastic production on our climate and environmental justice issues.

**Ocean Conservancy** released a [Plastics Policy Playbook](#) in October 2019 focusing on reducing unnecessary single-use items, promoting recycled content standards and implementing extended producer responsibility, among other policies.

**Oceana** has compiled a robust set of fact sheets and information about plastic pollution and policies:

[Plastics Overview Fact Sheet](#)

[Inadequate Solutions Fact Sheet](#)

[Top 10 Reasons to Reduce Plastic Production](#)

[Plastics FAQ Fact Sheet](#)

[Plastic Production Fact Sheet](#)

[Plastics and Human Health Fact Sheet](#)

[Corporate Solutions Fact Sheet](#)

[Policy Solutions Fact Sheet](#)

All fact sheets and more information on Oceana's plastic pollution campaign can be found [here](#).

**Safer States** is a diverse network of environmental health coalitions and organizations in states and around the country. We are working with them to ensure the definition of "toxic substances" prohibited in packaging is robust. They have helpful resources on [chemicals in plastic](#) that should be consulted.

**Global Alliance for Incinerator Alternatives (GAIA)** has a new [state legislative alert document](#) and a short [fact sheet](#) on chemical recycling.

[Plasticbaglaws.org](#) maintains updated maps and facts sheets specific to plastic bag laws.

**Greenpeace** issued a [comprehensive survey](#) of plastics recyclability in the United States to determine the legitimacy of recyclability claims and labels on consumer plastic products.

## SAMPLE LEGISLATION

[H.R. 5845](#) and [S. 3263](#) were introduced in the United States House of Representatives and the United States Senate in February 2020. The **Break Free From Plastic Pollution Act** provides the most comprehensive approach to plastic and packaging waste ever introduced in the U.S. Congress. Additional resources, including a section-by-section description of the bill can be found [here](#) and a table describing how different products are treated [here](#).

[S.113](#) was recently passed in Vermont and showcases a comprehensive approach on the “trifecta” of single-use items, showing it is feasible to tackle all three items (plastic carry-out bags, foam food and drinkware, and straws) at once. There are numerous examples of bills from across the country that tackle single-use products individually, but too many to list here.

[HB 824](#) was introduced in Maryland to create a framework for a beverage container refund program. **The Container Recycling Institute** has a page for each of the existing 10 state programs at <http://www.bottlebill.org/>. Lawmakers in at least six other states proposed legislation to add bottle bills in 2019. Bills were proposed in Arkansas ([House Bill 1771](#)), Florida ([Senate Bill 853](#)), Illinois ([House Bill 2651](#)), New Jersey ([Assembly Bill 1710](#)), Tennessee ([House Bill 0814 and Senate Bill 0885](#)) and West Virginia ([House Bill 3120](#)).

[SB 54](#) and [AB 1080](#) in California requires all single-use plastic packaging and products be recyclable or compostable and be reduced or recycled by 75 percent by 2030. Further, would authorize California's Department of Resources Recycling and Recovery (CalRecycle) to adopt regulations establishing a stewardship program, for packaging producers to collectively form a stewardship organization to pay fees associated with this legislation.

[NY S 7718](#): One of two packaging Extended Producer Responsibility (EPR) bills introduced in New York's 2020 legislative session. Developed by the New York Product Stewardship Council using PSI's EPR policy model. Deals explicitly with establishing an EPR program for packaging and paper products, using a hybrid approach between municipal reimbursement and full producer responsibility.

[ME HB 1431](#): A Resolve to Support Municipal Recycling Programs. Maine passed this resolve in 2019, which directed the legislature to introduce an EPR bill for packaging in the 2020 legislative session.

[ME LD 2104](#): An Act to Support and Increase the Recycling of Packaging. This is the EPR bill that was introduced in Maine's 2020 legislative session because of the 2019 Resolve (above). Amendments are expected in the 2021 session.

[\*\*MA HB 745\*\*](#): An Act Reducing Paper and Packaging Waste in the Commonwealth of Massachusetts. Introduced in the 2019 legislative session.

[\*\*MA HB 750\*\*](#) An Act from the Commonwealth of Massachusetts focuses on plastic pollution and promotes circularity by focusing on waste prevention.

[\*\*WA SB 5397\*\*](#) & [\*\*WA HB 1204\*\*](#): Legislation from Washington State that deals specifically with the management of plastic packaging – passed as a study bill in 2019.

[\*\*IN 619\*\*](#) Legislation from Indiana that requires that producers manage or finance the recycling of printed paper and packaging. (from 2019)

[\*\*CT HB 7295\*\*](#) Legislation from Connecticut that requires the establishment of a producer-financed recycling program for packaging and paper in the state and to require certain solid waste reduction goals of municipalities. (from 2019)