

Letter of Support for Outline of Legislation to Tackle the Plastic Waste Pollution Crisis

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Dear Senator Udall and Representative Lowenthal,

We write today as a diverse group of environmental and environmental justice organizations to express our shared support for your approach to tackle the plastic waste pollution crisis. We commend you for your bold vision to tackle this crisis through comprehensive legislation, and we have prepared general comments to expand on your vision with insight from our collective experience working on each of the categories addressed in your outline. As a group, we firmly believe that source reduction and reuse should be prioritized in this legislation over recycling efforts. We also oppose the use of incineration, gasification, pyrolysis, waste-to-energy and chemical recycling facilities for solid waste, including plastics.

Obligations for Producers

Extended Producer Responsibility (EPR) is a policy approach that requires manufacturers to fund, design and operate a system for safely managing product waste at end-of-life (EOL). When manufacturers (aka “producers”) are responsible for the costs previously externalized onto the environment and taxpayers, they rethink design and marketing decisions that add to those EOL costs. EPR laws for packaging started in Europe in the late 1980s and there are now over 350 EPR programs for products in the world from Chile to Israel, California to South Korea. In the U.S., EPR policies have been adopted in at least 33 states and Washington, D.C. and each of these laws relates to a particular product, including potentially hazardous materials (batteries, paint, mercury switches, agricultural pesticide containers, unwanted medicines and used medical sharps, computers and electronic equipment, and solar panels), as well as products that are especially difficult or impossible to recycle, or to properly dispose of (mattresses, carpet).

EPR laws adopted in the U.S. thus far have not reached past the individual items mentioned above, but laws relating to EPR for packaging were passed this year in Maine and Washington State, and bills were also introduced in Massachusetts, Indiana, Connecticut, and California. Under [Washington’s comprehensive bill](#) proposed last session, but ultimately watered down to a study bill, a producer of plastic packaging would have been prohibited from selling or distributing plastic packaging for use in the state unless they participated in a plastic packaging stewardship plan approved by the state agency. We applaud your ambition to expand EPR laws in the U.S. to include the costs of waste management for food containers, packets and wrappers, drink containers, cups and lids, tobacco products, wet wipes, balloons, and lightweight plastic bags, which is an

approach similar to the recent [European Union Plastics Strategy](#). We ask that you also consider comprehensive EPR for all packaging similar to the bill proposed in Washington State.

A proper structure for implementation of EPR programs is also important, because there is a risk that the industry's goals for maximizing profits will trump environmental values. For example, in California a carpet EPR law established an industry-controlled, non-profit stewardship organization to oversee the program, but without adequate performance goals, oversight mechanisms, transparency, accountability and backstops, which resulted in less productive outcomes. Successful EPR programs also have a mechanism for meaningful input from NGOs and other potentially affected stakeholders, such as waste haulers and retailers, and we urge you to include this in your proposal.

We also recommend that EPR bills be structured to incentivize product redesigns with source reduction as the highest priority, as well as favoring refill and reuse options over recycling. Measuring effectiveness based on weight reduction alone, for example, can encourage the use of lightweight, single-use plastics with low recycling potential. California's state agency, [CalRecycle](#), oversees the largest number of EPR programs in the U.S. and has developed an [EPR Legislative Checklist](#) describing the components of an EPR law that are necessary for successful implementation.

Nationwide Container Deposit Requirements

The benefit of deposit laws is clear in container deposit states; in these 10 states and Guam, the percentage of containers diverted from the landfill is much higher than states without a program. In addition, the quality of recycled materials is much better compared to curbside recycling; thus, manufacturers using recycled content prefer materials from these states. Container deposits range from [5 cents to 15 cents](#) and one of the best examples of a container deposit law is in Oregon, where the deposit is 10 cents and the [capture rate is 81 percent](#). In 1971, litter control was a primary reason for initiating Oregon's bill and since then the percentage of beverage containers among roadside litter has dropped from [40 percent to 6 percent](#) of the materials picked up.

We caution that while a national container deposit law would be a momentous step towards increased capture of recyclable containers, reduction and reuse should still be the ultimate goal and the main focus should be on refillable containers. One of the best examples of a refillable beverage container program is in Germany where plastic beverage bottles have a deposit and are collected and cleaned, then refilled 20-25 times before being recycled. Oregon also started a [BottleDrop Refillables](#) program this year, where a subset of glass bottles returned are washed and refilled. The California State University system is also currently implementing a program that will eliminate the purchase and supply of all single-use plastic water bottles on campuses by 2023 through development and promotion of refill stations. We suggest that similar refillable systems be piloted in other U.S. states using grant funds available through the Federal Fund established under this legislation.

Carryout Bag Fee

Single-use carryout bag laws have been adopted in seven states and at least 471 local jurisdictions in the U.S. The most effective carryout bag laws include a [pass-through fee component](#), meaning either a fee on all carryout bags or a ban on thin plastic film bags and a minimum fee on all other carryout bags. Even a small carryout bag fee dramatically changes consumer behavior and decreases overall carryout bag consumption, as shown by [effectiveness data](#) from the U.S. and around the globe. On the other hand, plastic bag bans with no

fee component often lead customers to switch to whichever carryout bag is available for free, without changing their behavior and therefore also without achieving the desired reduction outcomes.

California's statewide plastic bag law, [SB 270](#), was implemented in 2016. The law bans thin plastic carryout bags and mandates a minimum 10-cent fee on all remaining carryout bags at all retailers that sell food. CalRecycle, the agency tasked with managing and enforcing California's laws related to waste management, recently [released a report](#) highlighting the results of a survey of thousands of stores and grocers. The study found that in the six months after the bag ban went into effect that in 86 percent of transactions, customers brought their own bag and didn't purchase a paper or reusable bag. As a result, there was an 85 percent reduction in the number of thin plastic bags and a 61 percent reduction in the number of paper bags provided to customers. We recommend a law similar to the California statewide law, but all retailers and restaurants should be covered and we suggest a higher fee for all available carryout bags to further incentivize the consumer behavior shift and help businesses recuperate their costs while monitoring the effectiveness of the law and offsetting costs associated with education for its effective implementation.

Plastic ban of certain products

We applaud your strategy of focusing on some of the [most commonly collected items](#) from beach clean-ups, which has remained a fairly static list for years. Banning certain plastic products has been pursued at the local level in the U.S. for over a decade. We also concur with your approach of addressing many of these items in one bill, an approach similar to the European Union's groundbreaking 2019 Directive, which bans certain plastic products commonly found littered on beaches in Europe. Many of these items are also particularly problematic to recycle and/or cannot be captured in curbside recycling programs, including lightweight plastic carryout bags, foam foodware, straws, and plastic utensils.

Styrofoam

Styrofoam™ is a registered trademark of Dow Chemical Company used for "extruded polystyrene" (XPS) foam building materials, and represents a brand name sometimes [mistakenly associated](#) with generic "expanded polystyrene" (EPS) foam foodware (cups, plates, trays, etc.). While expanded polystyrene is technically recyclable, in practice, expanded polystyrene foodware is rarely recycled and instead is sent to landfills, as a result of very low residual economic value to recyclers and food residue contamination of expanded polystyrene foodware recycling feed stock. Expanded polystyrene products are composed of about 95% air and are easily blown out of containers even when disposed of properly, and notoriously break into tiny pieces that negatively impacts water quality and harms marine wildlife that often mistake pieces of polystyrene for food.

We ask that you consider comprehensive legislation that addresses both the use and sale of all polystyrene foodware products (including expanded polystyrene and rigid polystyrene) that may threaten public health with chemicals and additives that can leach from foodware into the food and beverages they contain, for example as adopted in [Manhattan Beach, California](#), and as adopted in various forms in at least 191 communities and two states in the U.S. We also recommend a more comprehensive scope of legislation that regulates expanded polystyrene products such as packing materials, coolers and ice chests, pool or beach toys, and dock floats, mooring buoys, or anchor or navigation markers, not fully encapsulated in a more durable material, as adopted in [San Francisco, California](#) and other communities. We also recommend that foodware bills address toxics, namely per- and poly-fluoroalkyl substances (PFAS), in alternative foodware products. San Francisco's bill includes a good example of this provision.

Labelling Requirements

We agree that it is important to have clear and standardized labelling laws regarding how waste should be disposed of, as well as the presence of plastic in products. However, we ask that federal labeling requirements not preempt stricter labeling requirements by states. For example, the Federal Trade Commission's (FTC) [Green Guides](#) provide marketing guidelines regarding recyclability and compostability claims, but California statewide law codifies those guidelines and provides for stricter and more detailed requirements as well as allowing for "[greenwashing](#)" lawsuits against companies that make false and misleading labeling claims.

Awareness-raising measures

As with any systems change, there must be a focus on education and outreach for these new policies and why they are critical for saving our ocean and conserving natural resources. These efforts must not only take place throughout the policy development and implementation phases, but also into the future, so as to ensure stability of new markets and sustained culture change. We ask that the legislators consider offering grant funding for environmental and community groups that do public outreach and education about reduction and reuse of plastics and packaging.

Increase Recyclability of Plastic Products and Improve Recycling Capacity

Recycling is not the answer to the plastic pollution crisis. A heavy focus of this legislation and of future market change MUST be on reduction and reuse of plastic products and packaging, in that order. For the plastic that remains, there should be strict requirements regarding recyclability to ensure that products can be recycled. We recommend exploring a structure similar to California's proposed [Circular Economy and Plastic Pollution Reduction Act](#), which requires covered entities to source reduce to the maximum extent feasible and requires all priority single-use plastic products in the California market be recyclable by a date certain according to strict regulations promulgated by the agency.

Current plastics recycling rates are abysmally low at [9 percent](#), and falling, in part because there is little demand for recycled plastics when virgin resins are abundant and inexpensive. Mandatory post-consumer recycled content requirements are one way to increase demand and ensure that recycled plastics have a value and are more likely to be processed domestically. Some packaging EPR bills include a mandate that plastics have a certain minimum percentage of post-consumer recycled content. The California statewide bag law requires that thicker film plastic bags have a minimum of 20% (soon to be 40%) post-consumer content, which incentivizes a market for post-consumer film. A federal law requiring post-consumer content for plastic film, as well as certain other rigid plastic containers, would improve the domestic market for many of the plastics that are currently being shipped abroad, incinerated, or sent to landfills.

False recycling options

The FTC's Green Guides state items "should not be marked recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item." The proportion of plastic items that meet all of these requirements that are currently accepted in many curbside programs is low.

One growing category of plastic items that we believe should be addressed specifically is plastic shipping packaging. With the marked increase in small packages of goods ordered online and shipped directly to customers' homes, plastic delivery envelopes are an emerging trend. These envelopes are made from plastic

and are not recyclable through curbside programs, but are often labeled as recyclable and placed in curbside recycling bins. We recommend that your bill require that all mail order goods be shipped in packaging that is recyclable curbside according to FTC guidelines. More importantly, we recommend that particular delivery services be required to offer reusable deliverable container options under certain circumstances and that further reusable container delivery options be incentivized.

Federal Fund

We suggest that an additional category of potential grants from the Federal Fund be made available for projects focusing on source reduction and reuse. These two areas present a substantial opportunity to reduce the amount of plastic products produced and are often overshadowed by recycling initiatives. Increased opportunity for grant funding would make existing programs more widely available and propel innovation. Examples of projects include refillable beverage container deposit systems, reusable foodware programs, reusable packaging programs, and community reuse businesses.

Protect Local Governments Ability to Tackle Plastic Pollution More Aggressively

Statewide laws aimed at preemption of local plastic pollution policies have been adopted [in 13 states](#). Preemption is a tactic that has increasingly been used to thwart grassroots activism and local progress. Plastics industry groups have found that rather than fighting each local grassroots attempt to control plastic pollution at the city and county level, it's much more efficient to go to the state legislature and adopt a ban on all laws regarding "auxiliary containers" (bags, foodware, etc.). The American Legislative Exchange Council has taken up the issue and developed model legislation that unfortunately has been adopted in several states.

We greatly appreciate your creative concept for addressing preemption through the method of withholding funds from the Federal Fund created under this legislation for states that prohibit local governments from implementing more aggressive measures to reduce plastic products. We recommend making this mechanism retroactive to states who have already adopted preemption legislation.

Curbing Pollution from Plastic Production in the U.S.

In order to more meaningfully curb plastic pollution and more closely correlate the issue with the environmental justice movement, we believe the bill, or a related bill, should also address air and water pollution from plastic production. To that end, we propose provisions that address the proliferation of new plastics manufacturing plants in the U.S. and pollution from existing facilities. Plastic refining is among the most greenhouse gas-intensive industries in the manufacturing sector—and the fastest growing. The petrochemical industry plans to increase plastics production by an estimated [35 percent](#) in the U.S. by 2026, with more than 300 new and expanded plastic and petrochemical projects announced since 2010. Using fracked natural gas, these facilities produce the essential building blocks for plastic, nearly half of which is used for single-use packaging. The U.S. Environmental Protection Agency (EPA) Clean Water Act standards that apply to the planned buildout of plastic manufacturing plants are largely unchanged from their original adoption in the 1970s and 1980s. Similarly, many applicable Clean Air Act standards have not been updated since the 1990s.

Suggestions to address this issue include: 1) a temporary moratorium on certain new federal permits for plastic manufacturing facilities, 2) a prohibition on the discharge of plastic from such facilities, and 3) direction that the EPA incorporate these stringent prohibitions and permitting requirements in their regulations.

A three-year moratorium on new federal permits for natural gas liquid (NGL) crackers and plastic polymer facilities would allow a holding pattern for the essential time needed for the federal government to consider the cumulative impacts of proposed new and expanded facilities on air, water, solid waste, hazardous waste, environmental justice, and climate. Prohibiting the discharge of plastic pellets and other plastic materials in stormwater and wastewater would directly address pollution from plastic manufacturing, a problem highlighted recently by a court opinion that found [Formosa Plastics](#) liable for routinely polluting Texas waterways with billions of plastic pellets. Finally, directing the EPA to update its Clean Air Act emissions standards and Clean Water Act Effluent Limitations Guidelines and Standards for existing and new facilities would ensure that NGL crackers and plastics facilities are equipped with the most stringent control technology available. Recently, hundreds of public interest organizations joined a [legal petition](#) to the EPA calling for such updates to the Clean Water Act. We believe that these three suggestions would go far to curb plastic pollution from production in the U.S.

Lastly, we would like to offer our support as this outline takes legislative shape in the fall, and look forward to remaining engaged on this issue.

Sincerely,

7th Generation Advisors
Algalita Marine Research & Education
AmPark Eco-Group Core
Association of NJ Environmental Commissions
Beyond Plastics
Big Reuse
Blue Sphere Foundation
Cafeteria Culture
California Product Stewardship Council
Center for Biological Diversity
Citizens Campaign for the Environment
Citizens for Responsible Use of Plastics
Clean Air Council
Clean Water Action
Container Recycling Institute
Edinburg Bag Ban Campaign
End of Waste Foundation
Environment America
Environmental Coalition of the Pelhams (EcoPel)
Global Alliance for Incinerator Alternatives
Greenpeace USA
GROUP W BENCH LITTER PATROL
Inland Ocean Coalition
Lonely Whale
National Stewardship Action Council
New Jersey Environmental Lobby
New York Lawyers for the Public Interest

NJ Audubon
No Waste Louisiana
NYC Friends of Clearwater
Oceana
Plastic Free Delaware
Plastic Pollution Coalition
Plastic Pollution Coalition
Public Citizen's Texas office
Rockaway Waterfront Alliance / Rockaway Initiative for Sustainability & Equity
San Antonio Bay Estuarine Waterkeeper
Scientist Action and Advocacy Network
SeaLegacy
Sixth Street Community Center
Strawless Oregon
Surfrider Foundation
Sustainable Saratoga
Texas Campaign for the Environment
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education (COARE)
The Last Plastic Straw
Trash Free Maryland
Turtle Island Restoration Network
U.S. PIRG
United for Action
UPSTREAM
West 80s Neighborhood Association
Zero Waste First State
Zero Waste Washington