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Testimony  
In Opposition To  
House Bill 741 and Senate Bill 346  
“An Act To Create A Framework To Re-allocate Responsibility For Discarded  
Products”  
And  
House Bill 729, “An Act Establishing the Commission on Extended Producer  
Responsibility”

Before The  
Massachusetts Joint Committee on Environment, Natural Resources & Agriculture  
Room B-1  
State House Office Building  
March 26, 2013

The American Cleaning Institute (ACI), ACI is the trade association representing the \$30 billion U.S. cleaning products market. Our members include the formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers. ACI and its members are dedicated to improving health and the quality of life through sustainable cleaning products and practices. ACI’s mission is to support the sustainability of the cleaning products industry through research, education, outreach and science-based advocacy. Since 1926, ACI has promoted health through personal hygiene and effective cleaning. More information about ACI can be found at [www.cleaninginstitute.org](http://www.cleaninginstitute.org).

ACI appreciates the opportunity to appear today to testify on the legislation. We believe that a cost effective system of shared responsibility for end-of-life product/package management currently exists which includes all factors in the commercial chain including producers, consumers and government. This system has evolved, and continues to evolve, with shared costs and responsibilities between the parties. Among other factors, it efficiently accommodates variations in population density, transportation costs and local resources.

**“Framework” Approach is Perilous**

ACI must respectfully oppose H. 729, H. 741 and S. 346. All three embody the so-called framework approach whereby Commissions and Committees – not a legislative body – determine a list of products that require its producer to be responsible for the end-of-life disposition.

In H. 741 and S. 346, the Commonwealth of Massachusetts' Department of Environmental Protection (DEP) would establish an eleven (11) member advisory committee that would provide technical information and advice regarding the specific products that would be required to have a product stewardship program before they are sold in the Commonwealth. The advisory committee would create the rules and examine products prior to their being offered for sale in Massachusetts.

ACI would respectfully suggest that ceding this responsibility to an advisory committee or a product stewardship organization is inappropriate since the economic and social impacts flowing from the designation of a product can be significantly different on a product by product basis.

With respect to packaging, for example, there are social impacts relating to employment and quality of employment as well as market impacts on the cost of recycled material. These are complex issues and deserve the kind of attention best assured by a fulsome legislative process where all interests can make their case in an unprejudiced atmosphere. This is significantly different than making a case before a pre-empowered agency or committee, no matter how open and transparent a process is undertaken.

### **Recycling Costs Must Be Minimized – Not Increased**

The cleaning products industry is a major consumer of recycled resins for its packaging. The more costly the system for retrieving, processing and recycling recycled resins, the higher the costs of that product to those, like the cleaning products industry, that use it. Imposing a new system for collecting used plastic containers that increases handling costs simply would not benefit recycled resin markets. The less expensive the recycled resins the more attractive they are to use.

### **All Costs Are Borne By Consumer**

As costs rise for producers, they will rise for consumers who, in the end, will see the price of their cleaning products increase. Whether costs are internalized in the local tax bill or in product cost, the consumer always pays in the end. The requirement that there be “no fees” under the producer sponsored program is curious to say the least. The program will cost “X” and the manager of the program will raise the funds to cover those costs.

Minimally, there should be an analysis to whether or not any alternatives would approach the cost effectiveness of the current system or accommodate local differences as effectively.

### **Cost Reductions Not Viable**

H. 741 and S. 346 would require reports, approvals and stakeholder processes that will impose significant administrative costs beyond the actual functioning of the system and authorize the Commonwealth to charge administrative fees on top of the other costs imposed for overseeing the programs. Consequently, any assertions by the proponents that such systems would decrease producer or consumer costs, as has been argued in other venues, simply defy reason.

## **Net Job Creation Is Questionable**

Similarly, the potential of these programs to create jobs must be scrutinized as well. The real question is the effect on net job count and the nature of the jobs created versus those lost. For example, packaging is already hinted at by the legislation for consideration. We assume that solid waste collection and removal in Massachusetts is conducted by public sector employees or contractors. We further assume that in Massachusetts, these are breadwinner, often union jobs that come with healthcare and pension benefits.

If the responsibility for managing the packaging component is shifted to producers who are required to create entirely new and potentially redundant systems, some number of these well compensated public or contract employees will become superfluous. Municipalities will save costs because they will cut their workforce.

## **Anti-Competitive/ Trade Secret Consequences**

The Department would be required to rely on producers for key advice on product-specific rules, technical information and advice regarding the identification, evaluation and recommendation of products. Such an arrangement poses significant anti-trust and anti-competitive issues. In the first instance, no innovative company would reveal the nature of its products to competitors. In the second, it would put competitors in the position of rejecting one another's products, a violation of the core anti-trust protections. The consequence of this is that competing product formulators would have to establish costly company specific stewardship programs, the most costly option imaginable.

A product's packaging is just as much of a trade secret as the product itself. Companies invest to improve current products as well as new products. Consumer choices are sometimes driven more by how a cleaning product is packaged than the efficacy of the product. That information is the essence of the marketplace. Forcing a producer to provide this information in order to join a product stewardship program is untenable.

## **Innovation**

The product stewardship programs created by these bills will impede the introduction of innovative products to the Commonwealth. New products and packaging would be subject to an approval process to be accepted into a program. This process has no statutory time limit and would, consequently, result in costly delays to the introduction of new products. Even existing products, whose packaging has changed, would be delayed going to market while they are scrutinized. Are regional distributors and wholesalers supposed to absorb the extra expense of carrying two sets of products, one for the Commonwealth and another for the rest of the country?

The perverse consequence of the proposed system is to deny the citizens of the Commonwealth ready access to new innovative products.

## **Conclusion**

For over 20 years, cleaning product manufacturers have pursued a continuing path of sustainability in the packaging of a product development efforts. Manufacturers have developed increasingly concentrated products which have allowed for packaging reductions, i.e., more wash

loads for the same volume of product. This has resulted in less packaging being used per unit with resulting transportation efficiencies on a per unit basis that have reduced related transport emissions and improved per unit carbon footprint.

In addition, cleaning product manufacturers have maintained their commitment to incorporating recycled content. The cleaning products industry is a major purchaser of post consumer recycled resins, thereby supporting that market.

The cleaning products industry has demonstrated its commitment to manufacturing sustainability while maintaining its social commitment to providing consumers of all economic levels with cost efficient cleaning products leading to improved hygiene. Any program that adds unnecessary costs must be scrutinized from that perspective as well.

Thank you for your attention and consideration of these comments. We urge the Committee to judge ACI's critique of H. 729, H. 741 and S. 346 against this decades long commitment to sustainability. For future reference, my contact information is (202) 662-2514 (direct dial) or via electronic mail at [jcassady@cleaninginstitute.org](mailto:jcassady@cleaninginstitute.org).