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Legal Review of the 30 Year Old Basel Convention

It is well-established in the United States that recycling is a series of steps to transform one product at the end of its original life into something new and useful. Any American who throws even one aluminum can or daily newspaper into a separate bin with the intent to segregate from household trash considers him/herself a recycler, and the process begins. Materials can go through one or two stages or they can go through eight or nine to make a new product. All told, that is the recycling industry.

But if a proposal by the European Union is accepted by the 187 parties of the *Basel Convention on the Transboundary Movement of Hazardous Materials and Their Disposal*, ISRI will have to change its name to the Institute of Scrap *Treatment* Industries.

The Basel Convention Conference of Parties agreed in 2017 to create a working group that would study the feasibility of revising Annex IV (list of disposal and recycling operations), Annex IX (list of products not under the scope of the Basel Convention) as well as the annexes that define hazardous for purposes of specifying the scope of products required to follow the Basel Convention's "prior informed consent" procedures for trade. ISRI participates in the working group as an observer.

Specifically, the European Union is proposing to add a new category of operations:

"mechanical treatment (e.g., dismantling, sorting, crushing, compacting, pelletizing, shredding, conditioning, repackaging, separating, blending, mixing) prior to submission to any of the operations in section B" [recycling operations]

The intent of this clause is to redefine the operations listed as "treatment" of materials *before* they are recycled. In other words, the European Union is saying that only a steel mill is a recycler of ferrous scrap. Although the proposal is for a change to the Convention, national

legislation in many countries incorporate Basel Convention definitions for waste, scrap, recycling, and disposal.

The United States is not a party to the Basel Convention, which impairs our ability to advocate against this proposal, although several large country governments may be sympathetic. On the flip side, the United States is not a party, which means there is no likelihood that U.S. regulations would change. But any recycler that does business outside of the United States could find itself regulated the same as trash companies.

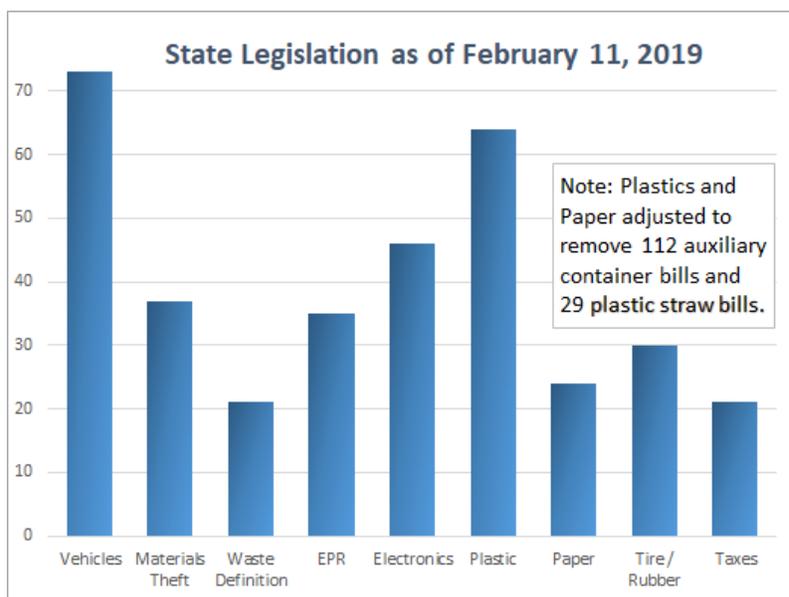
There are dozens of proposals being reviewed as part of the feasibility study, and it is quickly becoming clear that renegotiating any part of the 30 year old agreement – even just the annexes – will be a large and time-consuming process. Nevertheless, ISRI is working closely with the Bureau of International Recycling (BIR) to fight against this proposal and to fight for the identity of our centuries-old industry. We welcome members to help us in this endeavor, particularly those with business partners and interests around the world that could be an advocate with governments. Although the European Union is pressing this issue, we wonder if they truly speak for 28 or if there are any European governments that would worry about their ability to achieve ambitious recycling targets, meet their UN Sustainability Goals or, simply, to improve their environment and their economy through recycling.

Please contact [Adina Renee Adler](#) (202) 309-8514 with questions or to support our advocacy efforts.

State Legislative Roundup

Two months into the New Year and every state but Florida, Alabama, and Louisiana is in session, with policymakers racing against committee and chamber deadlines that have already passed in some states. By the end of February, Virginia and Wyoming will have already adjourned, with legislators in five more states following close behind in March.

Bills and regulations targeting metals theft, packaging, product



stewardship, and other commodities and issues can directly change how your business operates. You can keep track of these and other state legislation and regulations targeting the industry on [ISRI's State Resources and Tracking Pages](#).

Materials Theft

While ISRI is already tracking 41 materials theft bills for 2019, the majority follow recent trends towards comparatively small tweaks to existing law instead of the massive rewrites of past years. A few examples include:

- South Dakota HB 1082, currently in the Senate, would require payments for nonferrous metal property that exceed \$100 be made by check or electronic funds transfer, and require a photocopy of the seller's ID for the transaction record;
- Indiana SB 471, amending the penalties for the theft of valuable metal to include increased penalties for critical infrastructure facilities;
- Bills in Arizona and Florida changing the thresholds for different theft penalties related to metals;
- Maryland HB 442, allowing scrap metal processors to request a list of all junk dealers and scrap processors submitting the required transaction reports; and
- Massachusetts HD 3229 bucks this trend by creating a new chapter for secondary metal dealing, including registration, recordkeeping, inspection, hold by request, and penalties for violations.

Synthetic Turf

New York and Connecticut rang in the New Year by returning to proposals to ban the installation of synthetic turf and other crumb rubber ground covers. The following bills have been introduced:

- New York SB 1109 would require a six month moratorium while the state conducts an environmental and public health study;
- Connecticut HB 7003 would ban new contracts for crumb rubber ground covers until the U.S. EPA completes a federal study; and
- Connecticut HB 5249 would simply ban future state or municipal contracts for the purchase, use, or installation of artificial turf.

And in a new wrinkle, Maryland HB 1142 would require that synthetic turf and turf infill (any turf infill, not just crumb rubber) be disposed of in a controlled hazardous substance facility or at a closed loop recycling facility, bans incineration, and states that turf and infill may only be reused if processed at a closed loop facility and used for new turf and infill. It would also require tracking manifests from the manufacturer through to disposal or reuse that would be published on the Maryland Department of Environment webpage.

In contrast, Indiana SB 615, aimed at combatting lead poisoning of children, lists artificial turf as an acceptable method of control for covering lead contaminated soil, and other states continue to introduce appropriations for rubberized track and artificial turf athletic fields for school districts.

For reference, [ISRI supports](#) the ongoing EPA and other scientific studies regarding recycled rubber.

Plastics, Paper, Packaging, and Producer Responsibility

Driven by news reports about ocean plastics and Americans using 500 million straws a day - a questionable statistic with its own story - ISRI has seen a surge in legislation targeting "auxiliary containers" (112 bills targeting plastic and paper bags and other "single use" items) or just seeking to ban plastic straws (29 bills and counting).

Most of these auxiliary container bills are unlikely to pass, with most states instead opting to prevent local governments from passing their own restrictions. But all this attention has led to a resurgence in extended producer responsibility (EPR) legislation targeting packaging.

2019 has already seen bills targeting packaging in Indiana, Massachusetts, Washington State, New York, and Vermont, along with broader bills like New York's AB 1642 that would require manufacturers of all "consumer goods" purchased or leased for household use to provide and pay for collection of these items. Whether these bills will receive traction remains to be seen.

[ISRI's Position on Producer Responsibility](#) opposes government fees and mandates on paper, packaging, and other products that are being manufactured into commodity grade materials and sold into viable, commercial markets, as these can restrict or interfere with the free flow of recyclables by giving producers control over the recycling market.

For certain products such as [electronics](#), ISRI recognizes that such programs can stimulate recycling, but ISRI supports ending producer responsibility and government imposed fees as soon as practicable.

Recyclables vs. Waste

China's import restrictions and uncertain commodity markets don't just hurt recyclers; local governments with contracts for curbside collection and recycling are also feeling the pinch. However, how states choose to confront this issue varies widely:

- Texas HB 286/SB 649 would promote the use of recyclable materials as feedstock for manufacturing; the Gulf Coast Chapter is seeking an amendment to clarify that for-profit private recycling companies are not subject to any reporting requirements intended to target municipal facilities;

- Maine LD 401 is a concept draft that declares the intent to discourage landfilling of recyclable materials and ensure materials used as daily cover at a landfill are not counted towards the State's recycling goals;
- Florida SB 816 would prohibit local governments from requiring the collection or transport of contaminated recyclable materials by residential recycling collectors, and require that "contaminated recyclable material" be defined in every contract between a local government and a collector or MRF; and
- Washington HB 1795/SB 5854 would restrict what is considered recyclable material for curbside collection and allow transporters to apply for waivers to dispose of materials.

ISRI members need to be involved with their policymakers on the federal, state, and local levels to ensure the industry can continue to operate without excessive statutory and regulatory burdens.

If you'd like to find out what changes could impact your company, visit [ISRI's State Policy](#) page or contact [Danielle Waterfield](#) (202) 662-856 if you have any questions about the system or legislation impacting your state. ISRI has also added live legislative and regulatory reports to the [State Resources and Tracking](#) pages to make keeping up-to-date in your state easier, and will be adding more resources in the coming year.

Congress Gets Down to Work

Following the longest government shutdown in history, Congress has finished with its committee assignments and is staffing up for the next two years. As the Democrats take control of the House of Representatives and the Republicans maintain control of the U.S. Senate, some of the top issues for this Congress will of course be funding the government for the next fiscal year, developing a large scale infrastructure spending package, health care fixes, trade agreements, possible immigration reform, and Congressional oversight.

The time is short before the Presidential election will be in full swing.

With this as a background, let's look at a couple of those top line legislative issues:

Infrastructure

Infrastructure is the one single issue that both parties and both branches of government want to achieve before they go off to campaign. President Trump earlier proposed upwards of \$1 trillion for a comprehensive infrastructure package that would include funding for roads and bridges, ports and waterways, airports, network utility improvements, and workforce development. The scrap recycling industry stands to benefit from this infrastructure package by advancing increasing recycled content wherever possible, promoting the wider application of

rubber in asphalt and exploring new uses for plastics in infrastructure. Additionally, workforce development and training would help the industry recruit more workers in the scrapyards as well as truck drivers and other technical fields. Finally, with this spending package, improvements to all modes of transportation could be possible which would result in more confidence and lower prices for efficient and reliable transportation of scrap materials.

Trade

The USMCA trade agreement between the United States, Canada and Mexico will take center stage in both Houses of Congress due to the tax revenue aspects in the revised agreement. However, this agreement will face resistance in the House of Representatives as the Democrats want to include additional environmental and labor side agreements added to the text. The Administration has submitted the text to Congress and it is unlikely the Administration will make any major modifications that would require it to go back to both Canada and Mexico. Republicans have their own concerns. The chances for ratification of the USMCA in this Congress is not assured.

Immigration

Immigration and workforce development are inextricably linked. This is proving to be a larger hurdle than anticipated for the Administration and the Congress to find mutual agreement. This is especially so with border security being the Administration's top priority. However, business and labor are both clamoring for additional training programs to prepare new workers for 21st century jobs that require significant technical training. Most ISRI members have remarked at the difficulty of hiring enough workers with sufficient technical training in all areas from welding and torching to heavy equipment operators. Every industry is reporting shortages with the low unemployment figures especially in the trucking transportation area. ISRI is partnering with the National Association of Manufacturers and the American Trucking Association to advocate for more worker training in these vital areas.

As we enter the 2020 Presidential Election with several U.S. Senators already announcing their intentions to run for president, the 116th Congress will have a very limited window of opportunity to achieve results. Legislative proposals such as infrastructure spending will require significant time and willingness to get a package across the finish line before the election season gets into full gear and little if anything further will pass. At ISRI, we will be working hard to get these and other priorities accomplished before the time runs out in 2020.

ISRI Members Testify on Recycled Rubber in Connecticut

A hearing on CT HB 7003 was held on February 7, 2019 in the Connecticut House of Representatives Committee on Children. Through ISRI's state legislative program, ISRI worked with members and other stakeholders to provide testimony against the bill. ISRI Scrap Tire

Processors Chapter President Art Dodge eCore testified against the bill and ISRI member Liberty Tire Recycling submitted testimony. Members and allied stakeholders all testified that there is no scientific study that conclusively finds crumb rubber is a risk to human health. In addition to member companies testifying against the bill, testimony from the Connecticut Association of Boards of Education (CABE) came out against the bill. CABE testified that due to the heavy use school playgrounds receive, crumb rubber is an option many school districts turn to and removing the option of using crumb rubber would negatively impact their decision making and budgetary processes. Additionally, other associations such as the Connecticut Recreation & Parks Association provided testimony that stated “CRPA commends the Committee for their efforts to ensure the safety of Connecticut’s children but cannot support legislation that is not in line with science, education, and research and that would limit our ability to provide accessible playgrounds.” The testimony from members and non-members alike provided many powerful arguments for the Committee to hold the bill.

ISRI Passes Official Transportation Policy

On January 1, several more railroads established precision rail scheduling to make their operations more efficient. These changes however, have resulted in higher costs and less reliability for shippers. One such aspect of this new policy is significant demerge charges for rail cars after only 24 hours. This new scheduling policy is being adopted by the railroads as a way to increase the speed of their trains by charging its customers for any delays. These charges are being challenged by many industries as unfair and unworkable especially as the railroad’s service is inconsistent and unreliable. Moreover, with the shortage of trucks and truck drivers compounded by the reduced and restricted driving times, the railroads are exploiting this transportation situation as a means to impose these additional charges on their customers.

In response, ISRI has passed a comprehensive [transportation policy](#) to address all modes of transportation in the United States from trains, trucks, barges, and ships. ISRI has also formed a transportation committee and a rail string committee to address these new rail scheduling and demerge policies. This committee will also help ISRI advance the rail shipping policies and ISRI’s petition with the Surface Transportation Board to revoke the rail regulatory exemption for iron and steel scrap shipments. For more information about these committees or to get involved in the rail transportation issue, please contact [Billy Johnson](#) at (202) 662-8548.

Police Chiefs’ Organization Backs Recyclers on Materials Theft

In the fall of 2018, the International Association of Chiefs of Police (IACP) passed and adopted a resolution entitled *Reducing Metal Theft*. The resolution highlights the positive relationship

between the recycling industry and law enforcement, as well as ISRI's ScrapTheftAlert.com system.

ISRI maintains a very important and close working relationship with the IACP, which includes a seat on the IACP's Crime Prevention Committee. This resolution was made possible by this relationship.

The following is a statement from the President of the IACP, Chief Paul M. Cell:

"Metals theft is a very serious crime that often goes beyond just property damage. We have witnessed a precipitous increase in the number of metal thefts and in the enormity of the theft of metals. To effectively fight metals theft, cooperation and communication is needed among all stakeholders in the community. Where we have seen the most success is where recyclers and law enforcement work together. That is why the IACP adopted the Reducing Metal Theft resolution in 2018 to bring awareness to the issue, promote partnership between recyclers and law enforcement, and to encourage police to use the web-based scrap metal theft alert system by the Institute of Scrap Recycling Industries, Inc. (ISRI) and others other web-based sites that are globally available to alert recyclers of stolen scrap metals."

The IACP has more than 30,000 members worldwide and this resolution is available to each and every one of them. As ISRI continues outreach efforts with law enforcement, it is important for members to continue liaison on the local level and promote the ideals as set forth in the resolution. Should your local law enforcement not be aware of the resolution, let them know.

The full resolution can be found at [IACP Reducing Metal Theft Resolution](#).
