

From Washington

Administration Agenda Update

The Trump Administration continues to be stuck in first gear as we pass the 100-day mark into this presidency. While the President has signed several executive orders and a continuing resolution to keep the federal government operating, important legislation such as comprehensive tax reform has been delayed as serious opposition to some of the reforms has materialized. Also, the President has had to take his attention off domestic policy to address foreign policy. And, to further delay implementation of policies, very few under- and deputy secretaries have been nominated or appointed. Without these political personnel in place, the administration is literally stuck in park. However, a very few important things are getting done.

Healthcare

Candidate Trump (and many down-ticket Republicans) ran on a promise to repeal Obamacare (ACA). Earlier this month, after two huge battles predominantly among House Republicans, the lower chamber was able to pass its version of repealing and replacing the ACA (with one vote to spare). The measure now goes to the Senate where it likely will face significant resistance from Senators, especially those Senators who are up for re-election in 2018. The Senate has formed a committee to draft its version of a new healthcare bill. Senator Susan Collins (R-ME), on a recent Sunday morning talk show, said the Senate will not take up the House version of a healthcare bill but rather “will start from scratch.” The Senate does not seem to be in a rush to pass a bill. It first will try to draft a bill to take into consideration the needs of various Senators. That will take some time. The bill will then go to the Senate floor where there is likely to be extensive debate, occurring, perhaps, over a month or more (while the Senate simultaneously conducts other essential business. Assuming the Senate can pass its version of the bill, the House and Senate will have to meet to reconcile the differences between the two bills in a Conference Committee. There is no telling how much time a Conference Committee will take. Then, both bodies will have to vote on the results of the Conference Committee’s work. That opens the question as to whether or not the various Republican factions in the House will agree with the Conference Committee results to pass the bill. While the White House and the House of Representatives would like to see a healthcare bill passed by the Congress and signed by President Trump in short order, the reality is obviously otherwise. It is also important to note that healthcare is an integral part of the overall tax reform package and is cited as a way to jump start the economy. Republicans expect to use the savings from healthcare reform to pay for some of the individual tax rate reductions. If an Obamacare replacement fails, pressure on options for tax reform increases exponentially.

Tax Reform

While the August deadline for legislation has slipped, discussions are advancing to reduce corporate and individual tax rates. However, those discussions are being complicated by the necessary trade-offs for budget purposes. One such trade-off is the “Border-Adjusted Tax” (BAT) that would impose a tax or tariff on goods that come into the United States. The BAT is intended to protect domestic production and American jobs. The \$1 trillion that the BAT would collect is intended to provide the funds to offset

tax reform and pay for immigration controls such as the “Wall.” Without a BAT or another source of funding, comprehensive tax reform faces a huge budget obstacle. However, many manufacturers have long relied on imports of parts to produce products. In fact, in many automobiles, some parts cross the U.S. border six to eight times before being installed into a new car. Those parts would be subject to the BAT at each entry, driving costs up. The BAT would also be imposed on other goods and products which is the reason a coalition has been formed by retailers who import their products for sale in the U.S. Another major issue related to tax reform is healthcare reform – will a Replacement of Obamacare be enacted? Will a newly enacted healthcare bill be written to realize substantial budget savings to allow room for meaningful tax reform? These questions cannot be answered now. Depending on when they can be answered will inform us of tax reform likelihood and what it will look like. There is great concern now that one or both tax reform and healthcare legislative efforts may slip into 2018 – an election year. If they do slip to 2018, the difficulty of enacting either or both pieces of legislation gets more complicated. Politicians do not like to take tough votes too close to an election. So, ISRI’s Government Relations Team has this recommendation for ISRI members, “Buckle up your seat belts. This can be a very bumpy ride.”

Regulatory Reform

The Trump Administration has also initiated a full regulatory freeze over all federal agencies and has asked each agency to solicit comments regarding regulations that are overbearing, burdensome, or useful. The most notable of these exercises is at the Environmental Protection Agency (EPA). The administration has focused on EPA with proposed budget reductions of more than 30 percent and announced its intention to cease all regulatory actions regarding the Obama Administration’s clean power initiatives. EPA will also be looking for opportunities to address long standing regulatory burdens on industry as well as curtail enforcement of certain laws. Congress has recently signaled that it may not be as interested in gutting to the Environmental Protection Agency to same extent as the Administration. Appropriations hearings on EPA’s FY2018 budget will likely occur over the summer. Expectations are that the FY18 EPA budget deliberations will be difficult if not loud.

Transportation

Along with the regulatory freeze are the petitions to improve rail traffic. The petition to revoke the exemptions for scrap steel is caught up in this process. However, the Congress has approved the necessary funds to expand the Surface Transportation Board (STB) to fill additional Board seats and to provide funds for the Office of Public Assistance, among others. This is an important development since any Board action requires a quorum (which it currently does not have) as well as a majority to advance these and new actions. As the STB gains these Board members (after presidential nomination and Senate confirmation), it is anticipated they will move with deliberate speed to complete these regulatory actions. However, the Trump Administration has relied on advice from those in the rail industry - possibly placing these pre-existing regulatory reforms in jeopardy.

The Trump Administration is trying to fulfill many of its promises to reform government even as it lacks most of the necessary personnel to accomplish this goal. After the first 100 days in office, the administration is slowly beginning to learn that it is necessary to have its people in place throughout all the agencies to accomplish its goals. Stay tuned as we watch whether this process improves over the next 100 days.

Trade - Make Your Voice Heard

Since early in his administration, President Trump has signed a number of executive orders to study various rules and regulations that impact the functioning of the U.S. economy. As is generally acknowledged, Candidate Trump's campaign was filled with suggestions regarding creating jobs and economic opportunity, including by making it easier for businesses to operate, such as renegotiating trade agreements, emphasizing domestic sourcing and protecting vulnerable industries. Although these orders have not, as yet, changed anything, they serve as an avenue for the President to fulfill his campaign promises, which is to better understand what holds back more robust economic growth so as to fix problems appropriately. This process also offers the opportunity for voices to be heard – a foundation of our democracy.

Currently ongoing are studies about regulatory barriers to business expansion, trade deficits and so-called "Buy American, Hire American" policies. In addition, within the last few weeks, the President has directed the Secretaries of Commerce and Defense to study the national security implications of steel and aluminum imports. Soon, we expect a process to begin reviewing the future of the North American Free Trade Agreement (NAFTA). These are all areas that could impact business continuity for recyclers, and ***we encourage you to stand up for your interests***, such as a phone call or letter to your Member of Congress or a formal submission to the Administration as part of these reviews.

ISRI will be submitting comments to the steel and aluminum studies, and we are anticipating getting involved on NAFTA. ***Our position is directed by our members, so we are eager to hear from you. If the Administration were to put in place import and/or export restrictions on primary steel and aluminum, how would this impact you and your company?*** And while we are waiting until there is more clarity on the direction of a NAFTA renegotiation, we know that a wholesale renegotiation of the agreement also may not be an ideal arrangement for recycling supply chains.

Therefore, ***do not just make your voice heard with lawmakers – keep ISRI staff informed, especially when any of the possible outcomes of these reviews could negatively impact your operations.*** Help shape our advocacy on these critical trade issues. An email or call can be directed to Senior Director for Government Relations & International Affairs [Adina Renee Adler](#).

The EPA Show

In the previous issue of SPAN, we informed you that we could not definitely tell you what to expect from the U.S. Environmental Protection Agency (EPA) under the new Trump Administration. If you are reading this (again) to learn what the U.S. Environmental Protection Agency will do and when, you will probably be disappointed (again). This is not terribly unusual when a new Administration takes office in Washington. However, a few things seem a little clearer since you last read these pages.



There has been slightly more information coming out of the EPA. With *Federal Register* notices as the metric once again, the EPA has issued about five notices per day on average, but with a standard deviation of six notices. This means that on a random day, the *Federal Register* is as likely to have no

EPA notices as 11 or more EPA notices (mostly related to state issues). However, some of the notices have been quite substantial, including delay of certain regulations issued in the final month of the Obama Administration, reconsideration of the 2022-2025 Corporate Average Fuel Economy (CAFE) standards for cars and light trucks, review of the Clean Power Plan as well as similar standards for new power plants, and regulatory reform.

Concerning regulatory reform, the most relevant of the above to the recycling industry, EPA's Office of Policy released April 13 a *Federal Register* notice seeking comment on existing federal environmental regulations "that could be repealed, replaced, or modified to make them less burdensome." EPA gave the regulated community about 30 days to identify existing federal environmental regulations that "are outdated, unnecessary, or ineffective" or "impose costs that exceed benefits." This comment opportunity carried out President Trump's Executive Order 13777 on *Enforcing the Regulatory Reform Agenda*. While the Trump Administration seems poised to rollback a large number of environmental regulations, it cannot be done with a stroke of the pen. The regulations covering the process of making (or unmaking) regulations still apply, which is why EPA had to issue the *Federal Register* notice.

Carrying out such a regulatory rollback requires a great deal of staff time in reviewing comments, developing a rationale for repeal, replacement, or modification of regulations, and working through the required regulatory processes (e.g., public notice and comment) to effect such regulatory changes. Legal challenges along the way would (or will) only add to the staff and budgetary burden.

In addition to this high-priority work, there are the mandatory regulatory efforts such as the changes to the Toxic Substances Control Act (TSCA) as required by the Lautenberg Chemical Safety for the 21st Century Act (LCSA). Despite what appears to be a lot of work in the short-term, the EPA may be heading into a perfect staffing and budget storm that could derail all of these. Congressional decisions about EPA's FY 18 budget will be debated over the next number of months. Its staffing levels will likely be decided through that process. We cannot, at this point, predict the outcome of those deliberations or its impact on the President's regulatory reform agenda.

On the staffing side, Administrator Pruitt has begun to appoint staff that do not need Senate confirmation, but the numbers are still small. These filled positions include Associate Administrator for Public Affairs, Associate Administrator and Deputy Associate Administrators for the Office of Congressional & Intergovernmental Relations, and perhaps most substantively to date, Associate Administrator for the Office of Policy and Principal Deputy Assistant Administrator for Office of Chemical Safety and Pollution Prevention (OCSPP). Each of these appointments seems to meet the immediate needs of the EPA. Of particular note, as Associate Administrator for the Office of Policy, Samantha Dravis signed the *Federal Register* notice on regulatory reform and will lead these EPA's efforts. As Principal Deputy Assistant Administrator for OCSPP, Nancy Beck—recently with the American Chemistry Council and previously with the Office of Management and Budget in the George W. Bush Administration—will lead the efforts to carry out the mandatory TSCA regulatory activities under the LCSA.

At the same time, it is still true that the top political EPA positions (other than Administrator) that need Senate confirmation are largely unfilled. These positions have substantial regulatory responsibilities

under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and TSCA, among others. Such top-level EPA vacancies mean that holdover EPA staff are likely to be the ones leading the review of comments on regulatory reform (more than 45,000 as of May 7) and the efforts of (likely) undoing or scaling back the regulations that they helped to justify and write in the first place. This can be expected to make for slow work.

These holdover leaders also have fewer staff under them to do the work. A significant number of senior lawyers and younger staff left EPA early in the Trump Administration. The Administration has also been encouraging early retirements and carrying out personnel buyouts in addition to instituting a hiring freeze. This has shrunk and will continue to shrink the ranks of EPA employees. As it is, EPA is a relatively “old” agency with an estimated 38 percent of EPA staff between 50 and 59 years old and 17 percent older than 60 years (probably before the recent retirements and buyouts). It seems inevitable that EPA staff will become less experienced on average and as well as fewer in number. This may take a toll on regulatory reform and mandatory TSCA activities, at minimum.

On the budgetary side, the Trump Administration previously signaled its intent to drastically scale back the EPA by way of its outline for EPA’s Proposed Fiscal Year (FY) 2018 Budget (starting October 1, 2017). Preliminary information suggested a 25-percent cut relative to the FY 2017 Budget, including a 20-percent workforce reduction, a 30-percent cut to state programs, consolidation of EPA’s 10 regional offices down to eight, and more than 20 programs eliminated. A more-recent EPA memo indicated a Proposed FY 2018 Budget seeking a 31-percent cut with a 22-percent staffing reduction. The Proposed FY 2018 Budget reflects EPA’s intended focus *“on [its] core legal requirements, federal-only and national efforts, providing support to states in implementing environmental laws, and easing regulatory burden. In line with this approach, many voluntary programs are eliminated. Locally-focused geographic efforts also are eliminated, including the geographic programs and Alaska Native Villages and Mexico Border activities. Non-core international efforts are reduced as well.”* Among the more than 50 programs to be eliminated are Waste Minimization & Recycling, Pollution Prevention, Environmental Education, Integrated Environmental Strategies, Regional Science & Technology, Lead Risk Reduction Program, and Trade & Governance. Many of these programs are helpful to industry, but viewed as non-core.

However, the elimination of geographic programs and the fact that not all staff cuts will occur in Washington, DC may upset some in Congress whose districts or states will suffer as a result. This is important because Congress ultimately approves the Federal Budget (including EPA’s), so what the Trump Administration proposes as the FY 2018 Budget may not resemble at all the finally approved FY 2018 Budget. This budgetary tension between the Executive and Legislative branches of government (the checks and balances) recently played out in the FY 2017 spending negotiations needed to keep the Federal government open through September 30, 2017. Despite the Administration’s attempt to seek “transitional” FY 2017 spending cuts of about \$250 million (3 percent), the final spending bill for FY 2017 included only an \$81 million cut (1 percent) in EPA spending. Both sides of the aisle claimed some degree of victory in the FY 2017 spending agreement (for vastly different reasons). President Trump signed the spending bill Friday, May 5 with little fanfare.

As before, the dynamics of an underpopulated EPA administration in the near term, expected resistance from holdover EPA staff, looming budget, staff and program cuts next year, and potential resistance from Congress because of these cuts, as well as industry's interest in retaining many endangered EPA's programs, make prediction of what the EPA will do and when extremely difficult. At the moment, regulatory reform is in the spotlight, but collecting comments is the easy part. The hard part is to act on the comments, and ISRI will be watching carefully.

Amid all of this uncertainty and lack of information, one thing is certain. What happens at the EPA will not be boring. Come back to SPAN to stay on top of these matters.

Superfund Liability is a Major Migraine that is Not Going Away

With all the noise coming from Washington about new Trump policies cutting the EPA and other agencies, some might jump to a conclusion that the risk of liability for hazardous spill clean-up is gone or greatly reduced. Do not be fooled into thinking you are free and clear - or even at a reduced risk. You would be wrong. In fact, Superfund liability remains a headache for the recycling industry that simply will not go away.

First and foremost, the U.S. EPA is not going away. More pertinent and immediate is the fact that government – both federal and state – will always need money to clean-up hazardous messes and that money must come from somewhere. Where? Well, it could very likely be from YOU whether or not you are responsible for the mess.

We are talking BILLIONS of dollars extracted from private businesses just like YOURS.

The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et seq. (1980)) -- otherwise known as CERCLA or Superfund – creates an essentially privately-funded Federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. The Superfund law is a strict-liability statute, with joint-and-several and retroactive liability. In practice, this means that any and all parties who ever have handled waste materials now in a hazardous-waste site are potentially responsible for part or all of the cleanup cost.

Through CERCLA, EPA was given power to seek out "potentially responsible parties" (PRPs) for any release and assure their cooperation in cleanup efforts. U.S. EPA is authorized to implement the Act in all 50 states and U.S. territories. Superfund site identification, monitoring, and response activities in states are coordinated through the state environmental protection or waste management agencies. The intent of the Superfund law is for responsible parties to pay 100 percent of the cleanup costs, including the Environmental Protection Agency's (or other agency's) investigation and oversight expenses, for sites that are deemed hazardous.

Recyclers Beware!

While CERCLA was never intended to subject Superfund liability on those processing and handling traditional recyclables, a series of U.S. court rulings interpreting the sale of recyclables as "arranging for disposal" put a bullseye target on the recycling industry. Citing the Superfund law's remedial purpose,

federal courts had interpreted broadly the law's provisions, which impose liability on those who "arrange for treatment or disposal" of hazardous substances. Many of these courts had ruled that arranging for recycling constitutes an "arrangement for disposal." These rulings had a significant negative impact on the recycling industry and placed recyclers at a competitive disadvantage to entities dealing in virgin materials.

Worse than the Tax Collector

Under CERCLA, all U.S. EPA has to do is assert that your company could have been responsible for part of the mess and – at the very least – you'll have one serious headache with which to deal. At worst case, you could face a crushing blow that might wipe out your business. Think that's all? You'd be wrong again. Under its "polluter pays" principle and the law's "cradle-to-grave" liability, U.S. EPA is authorized to – and has attempted in the past – to go after an individual's personal estate even after the responsible party had long retired and left the business.

Despite all the rhetoric lately of reduced regulatory oversight, in fact, there is no slow-down in enforcement and collection of funds for "Superfund" cleanups. All one needs to do is look at the latest numbers. In fiscal year (FY) 2016, U.S. EPA pursued 11 enforcement agreements (settlements, consent decrees, and court orders) at a total of nine (9) Superfund sites across the nation for the cleanup of contaminated "sediments" at an estimated cost of more than \$314 million. Another large settlement order in New Jersey involved contaminated groundwater and soil was valued at nearly \$194 million, and there were others such as the \$40 million settlement in Polk County, Tennessee, and a \$27 million court order for clean-up in Washington State.

In total last year, the U.S. EPA cleanup enforcement program secured more than \$1.1 billion in monies that will be used to clean up Superfund sites, replenish the Superfund Trust Fund, and reimburse the Agency for its past cleanup costs and administrative costs in managing the Superfund program. PRP's were required to reimburse more than \$55.3 million in clean-up costs from past site clean-ups, and required to commit more than \$1 billion in new site clean-up work. These civil cases and consent decrees can all be viewed in detail on the U.S. EPA's [website](#).

Not Responsible for the Mess? – Who Cares? Pay UP!

In fiscal year (FY) 2016, U.S. EPA issued thousands and thousands of "potentially responsible party" letters to business owners indicating they owed money for clean-up costs in various communities and environmental justice areas – whether or not the business really had anything to do with the mess in the first place. Furthermore, states have enacted their own similar laws that enable state agencies to collect funds for clean-up of sites that the federal government passes over. So, even if you slide by overlooked by the federal government, the states have another shot at you and they are increasingly taking it.

One can get a severe headache just thinking about it.

According to the [U.S. EPA](#), for every one dollar spent on Superfund civil enforcement activity, approximately eight dollars in private party cleanup commitments and cost recovery is obtained for cleaning up contaminated sites across the country.

Relief for Recyclers

ISRI advocates that recycling is the opposite of disposal. Since recycling is not disposal, Superfund does not and should not apply. The “magic words” in Superfund that invoke liability say if you ‘arrange for disposal’ of something, you’re liable for its cleanup. As such, it should not apply to people that do not dispose but recycle this material. As such, ISRI embarked on what many dubbed impossible – get Congress to amend CERCLA, which would be only the third time in more than 20 years it had done so.

Following nearly a decade of aggressive no-surrender lobbying tactics on Capitol Hill, ISRI cheered as President Clinton signed into law the Superfund Recycling Equity Act on November 29, 1999. The new law provides a Superfund liability exemption for companies that process scrap paper, metal, glass, textiles, batteries, plastics and other materials. Under the Superfund Recycling Equity Act (SREA), someone who arranges for the recycling of recyclable material is not liable for cleanup costs as an “arranger” or “transporter” at a site where both the recyclable material and hazardous wastes are present. In short, arranging for recycling no longer amounts to arranging for disposal.

At last adhering to the recycling industry’s mantra that “scrap is not waste,” Congress enacted relief that is specific to and just for recyclers. ISRI successfully engineered the exemption for its members through a mix of skill, energy and pure drive from the desperation of the matter. As a veteran U.S. Senate Environmental Public Works Committee staffer, industry lobbyist and current ISRI Vice President of Government Relations Mark Reiter recalls, “it was heart-wrenching listening to ISRI members tell story after story of how Superfund was crushing their businesses. Furthermore, just the threat of being named as a PRP was a headache that no recycler should have had to bare because they simply are not responsible and should never had been considered as such under CERCLA.”

The Protective Shield ISRI Members Need

The SREA law relieves scrap recyclers of Superfund liability, both retroactively and prospectively under specific circumstances. It is not a “get out of jail free” card or an insurance policy, but it is darn close if – and only if – recyclers meet what are some very basic requirements of the law. While there are some exclusions to the recycling exemption, if a recycler can demonstrate it meets the outlined requirements of the SREA law, the recycling is not only exempt from Superfund liability, but is eligible for reimbursement of attorneys’ and expert witness fees incurred in defending against a lawsuit.



The basics are easy. First off, it only covers material that meets a specification grade, is traded in commerce and is used to make something new that was never in the chain, or was diverted from the waste stream and put into the recycling process. Second, the material must be shipped for recycling purposes. Third, recyclers must take some reasonable steps to ensure those they ship to are in compliance with applicable law and they must be in compliance with the law themselves. If a recycler either contaminated his own site or sent hazardous materials to another site that became contaminated, he would still be liable.

The most confusing – and yet to be officially defined by the courts or U.S. EPA – is the “reasonable” steps a recycler must take to ensure compliance of the consuming facility to which it ships recyclable

material. For shipments and transactions occurring after March 2000 (90 days following enactment of the law), the recyclers must take “reasonable care” to determine the facility is in compliance with substantive provisions of federal, state, and local environmental law.

Having a protective shield is only good if one can afford to have the shield. ISRI recognizes that the process of gathering compliance information from federal, state AND local governments is a herculean task and can be very expensive. As such, as an exclusive ISRI membership benefit, ISRI offers the SREA Reasonable Care Compliance Program to assist members get the protection they need. In short, the program digs through and collects compliance data on behalf of ISRI members requesting compliance information to meet the law’s requirements. All information on the program can be found at ISRI.org/SREA.

A Cure for the Headache

The Superfund Recycling Equity Act corrects the unintended consequences of Superfund and provides relief that recyclers desperately needed. It is really that simple. It restores recycling as a rewarded rather than punished activity and eliminates the headache of being associated as a potentially responsible party for the costs of hazardous spill clean-ups. But, recyclers need to request the cure in order to benefit from its relief. The ISRI SREA Reasonable Care Compliance Program makes this simple.

The SREA law makes it clear that recycling is not disposal or treatment within the reach of U.S. EPA Superfund authority – a pretty potent aspirin for the really bad headache that EPA had become on this issue.

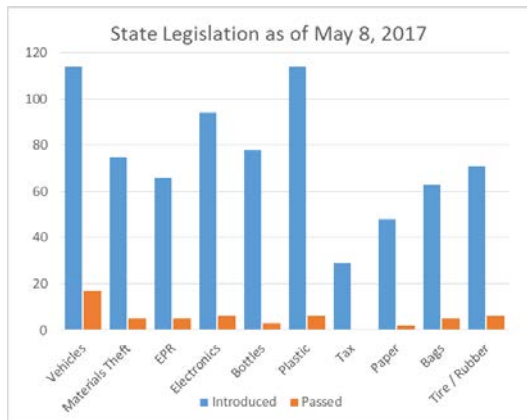
For more information about the ISRI SREA Compliance Program, contact ISRI General Counsel [Thomas Casey](#) or [Shelley Backstrom](#).

ⁱ See, e.g., *Catellus Development Corp. v. United States*, 34 F.3d 748 (9th Cir. 1994); *State of California v. Summer del Caribe Inc.*, 821 F.Supp. 574 (N.D. Cal. 1993).

State News

State Legislatures Update

As spring moves towards summer most state legislatures are rushing to finish business before their scheduled adjournment dates. By the end of May only 18 states will still be left in their regular sessions. However, this doesn't mean the bills considered this year are dead; most states will automatically carry legislation over to 2018 as well as any special sessions called between now and then.



You can keep up with which bills are on track to pass this session (or may come back for the next) with [ISRI's State Legislative Tracking System](#); contact [Danielle Waterfield](#) or [Justin Short](#) if you have any questions about the bills or the system. ISRI has also added issue specific bill snapshots on the [State Policy Resources](#) page along with updates to the metals theft summaries and other resources.

Issue: Metals Theft

Revisions to ISRI's Position on Recyclable Materials Theft were passed during the Spring Board Meeting in New Orleans. The revised position tightens and refocuses the document to urge recyclers to comply with state and local law and work in cooperation with their communities and law enforcement to inform them about the scrap recycling industry and fight the theft of recyclable materials through methods such as [ScrapTheftAlert.com](#). This and other positions and policies updated during the Board Meeting are available on [ISRI's White Papers, Reports, and Analysis](#) page.

In the states, **Maryland** added "cell tower batteries" to their list of Used Articles; **Oklahoma** tweaked the information required for purchases of vehicles by Scrap Metal Dealers; **Kentucky** changed the registration agency to the Department of Professional Licensing, and **Arizona** clarified that the auxiliary container laws passed last year do not prevent local business licensing of Scrap Metal Dealers. Several more far-reaching amendments such as **Kansas** HB 2153, delaying the reporting and database requirements until 2019, are pending passage as of the time of writing; if any are passed, they will be added to the [State Metals Theft Law Database](#) and the state summaries available on the Resources page.

Issue: Paper and Plastic Bag Ban Pushback

Following the approval of **California's** bag ban by referendum and the continued push for such bans at the local level, states are beginning to split dramatically in their handling of these bans and fees. While **Maine** LD 57, currently awaiting action by the governor, encourages local governments to pass their own requirements (in contrast to the original text which would have banned plastic bags), bills passed in **Iowa**, **Kentucky**, and **New York** this session and currently being considered in **Minnesota** and other states instead prohibit local bans on bags and other containers. This debate between bans and fees vs auxiliary container protections is unlikely to be settled this session, but to date California's statewide ban remains unique.

States are also working to distinguish "biodegradable" bags due to the problems they can cause when incorrectly added to the recycling stream. **Maryland** just passed HB 1349, requiring ASTM standards be met for biodegradable plastics and that such products be labeled.

Issue: Electronics

Illinois continues pushing to allow landfilling of CRT glass while also banning accreditation organizations such as [SERI](#) from penalizing companies that do so with Illinois HB 772 / SB 774 as well as several attendant House and Senate resolutions. While the Illinois legislature is set to adjourn at the end of May, as of May 8, the House bill had already passed into the Senate and both versions are up for consideration by the Environment and Conservation Committee, while HR 161, HR 108, SR 128, and SR 170 are targeted at urging SERI and e-Stewards to allow storage cells and landfill aggregate as "beneficial use". Even beyond the issue of placing CRT glass "in storage cells for future retrieval", these bills represent a direct assault on the ability of accreditation organizations to operate independently and determine standards. Also in Illinois, HB 3881 would require recyclers and refurbishers to submit quarterly reports including total weights of computers, monitors, televisions, and other items covered under the law; the manufacturers to which the items were attributed to in order to attain the manufacturers' annual recycling goals; and, a list of end markets to which the processed materials were sent, among other information. Other bills would allow municipalities and retailers to charge fees for collection. **Arizona, Mississippi, New Hampshire** and **Massachusetts** also introduced legislation to create new extended producer responsibility (EPR) programs.

Issue: Recycled Rubber/Artificial Turf

Despite the ongoing federal, state, and international studies that thus far indicate no significant risk to athletes who play on synthetic turf surfaces, state and local legislators continue to react to assertions in the media that playing on synthetic turf fields with recycled rubber infill is connected to long-term health risks. As of May 8, there were:

- 13 bills in 8 states directly targeting crumb rubber and synthetic turf;
- 5 in **Maryland** that authorize debt to install synthetic turf fields,
- 3 EPR bills in **Connecticut**, 1 in **Vermont**, and 2 in **Massachusetts** that could impact how tires can be recycled and crumb rubber utilized; and
- 1 resolution in **New Mexico** that would study the recycling and reuse of tires.

Illinois passed Senate Resolution 118, urging the state to create a "watchlist" of fields and playgrounds containing crumb rubber and publish it on the Illinois EPA website until federal testing concludes that crumb rubber "is definitively safe for use as infill" and urging such fields and playgrounds to provide notice to parents of the federal study and the "possible chemical exposure to their children"; however, resolutions do not carry statutory weight. **Minnesota** legislators slipped a 3-year moratorium on the construction of artificial turf fields into an omnibus health & human services bill just before it passed the Senate, but it was later stripped out. The bill currently awaits concurrence between the House and Senate versions. **Maryland** HB 1353 threatened a different approach, exposing state and local government to unlimited tort liability in claims involving artificial turf, but following [testimony](#) by Tire Division Chair Mark Rannie the House Judiciary Committee ruled against passage.

Issue: State SREA Equivalents

While all 50 states have enacted laws similar to the federal Superfund law, only seven have adopted state laws similar to the [Superfund Recycling Equity Act](#) (SREA). While the courts in various states have suggested that a party that sells a valuable "product" should not be subject to environmental cleanup cost liability, in states without a SREA equivalent it is possible that scrap processors and recyclers could potentially be subject to liability. To this end, efforts in the Southeast and Gulf Coast chapters have led to the recent adoption of state SREA equivalents in **Florida** and **Tennessee**, the passage of **South Carolina** SB 181 just this month, and additional bills approaching passage in **North Carolina** and **Texas**. For more information on SREA, please contact [Shelley Backstrom](#).

Get To Know Your Government Relations Team



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ISRI Employee since 2014; Liaison to Law Enforcement Advisory Council; (LEAC). Prior: 28 year veteran of U.S. Secret Service Agent; Pennsylvania State Trooper Pennsylvania State Police.



Justin Short, Legislative Analyst

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ISRI Employee since 2012. Prior: State Government Relations Coordinator of the Equipment Leasing and Finance Association.



David Waggoner, PhD, Chief Scientist, Director of Environmental Management

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ISRI Employee since 2005; Liaison to Shredders Committee. Prior: 25 years' experience in environmental engineering, science, and regulation. He holds a BS and a PhD in chemical engineering from the University of California, Berkeley, and the Massachusetts Institute of Technology, respectively.



Danielle Waterfield, Senior Director of Government Relations & Assistant General Counsel

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ISRI Employee since 2007; Liaison to State Subcommittee and Materials Theft Task Force. Prior: More than 20 years of legislative and legal experience. Danielle was a member of the U.S. Senate floor staff. She was a legislative/legal assistant for an international law firm and worked in the private sector on legislative and legal issues. Former Chief Operating Officer (COO) for the Automotive Recyclers Association.

International News

ISRI President Visits Chinese Embassy in Washington

Because China is a very important export market for the products of American recyclers, ISRI President Robin Wiener, visited the Embassy of the Peoples Republic of China where she met with its Minister-Counselor of Economic Affairs and its First Secretary (who previously served at China's AQSIQ, the Chinese agency responsible for both registration/certification of companies exporting material into China and the quality of scrap materials entering China.) President Wiener was accompanied to the meeting by Bernie Lee, ISRI's Research Analyst/Commodities.

Wiener said that the meeting was productive and that the Minister-Counselor and First Secretary were enthusiastic about the recycling industry and the need for cooperation to assist and promote the industry. A number of issues were discussed including National Sword; China Certification and Inspection North America (CCINA); the harmonization of ISRI Specs with those of the China Ministry of Environmental Protection (MEP) regulations; adoption of U.S. Best Practices; and a discussion of the amount of scrap business between the American scrap recycling industry and China.

National Sword

Since China's establishment of its National Sword program, ISRI members have been confused as to its purpose and why it was established. Wiener believes that many of the problems or confusion surrounding National Sword may derive from the difference between the words "scrap" and "waste" in Chinese. The discussion led to Wiener explaining ISRI's experience with EPA with regard to the two words (also known to ISRI members as, "Scrap Is Not Waste.") The Chinese Embassy officials said they would raise the matter to their government to try to clarify the issue.

CCINA

In August 2016, China announced that CCINA will no longer be the sole company doing pre-shipment inspections for recyclable materials. During this discussion, the First Secretary said China will announce additional options for pre-shipment services around the end of 2017. ***The First Secretary requested that ISRI provide the names of companies that it believes ought to be included in the upcoming announcement. ISRI members who wish to make recommendations should send them to Adina Renee Adler at aadler@isri.org.*** The matter of double inspections was also raised and it was suggested that it be raised to AQSIQ officials during Wiener visit to Beijing in late May.

Harmonizing ISRI Specs and MEP Regulations

Because of inconsistencies between ISRI specs, which are used globally, MEP regulations complications sometimes arise. The Minister-Counselor and the First Secretary said they will try to identify the appropriate contact within China's MEP with who to discuss this and other issues in Beijing in late May.

Adopting U.S. Best Practices

The Chinese officials were interested learning more from ISRI about the U.S. Scrap Recycling Industry. They inquired about regulations, radiation controls, etc. Wiener offered to provide them with a tour of some scrap facilities later this year.