



February 14<sup>th</sup>, 2023

Re: Oppose S. 4246 – Packaging Reduction and Recycling Act

Dear Legislator,

We are writing to respectfully oppose NY S. 4246 related to establishing an Extended Producer Responsibility program for packaging that would require producers of packaging materials to be responsible for managing post-consumer packaging waste; establish non-reusable packaging reduction requirements for packaging producers; and ban the use of certain substances and materials from packaging.

S. 4246 is a multipart policy initiative that involves many stakeholders and has broad impacts on many industries as well as residents/consumers in the state. While our organizations recognize improving the recycling system is critical, this legislation has many concerning provisions.

The following undersigned organizations representing over 100,000 jobs in New York oppose the bill for the following reasons:

**This legislation excludes materials that contain “toxic substances” from “Recyclability Criteria”**

The legislation defines "Toxic Substance" as any chemical substance identified by the Department of Environmental Conservation (DEC) or other government entity, research university or other scientific entity deemed authoritative on the basis of credible scientific evidence. The bill also allows DEC to periodically add to the banned substances list.

This language runs counter to the recently finalized chemical regulation legislation signed into law in New York State that focused on children's products. The legislation laid out a framework for working with expert scientists, identifying high priority chemicals, taking action and making decisions on those chemistries when warranted by the best available risk assessment science on thousands of products.

The intent of this legislation is to increase the amount of packaging being recycled, not exclude materials, and reduce recycling. One example of this definition being overly restrictive is that it would limit companies that have existing investments in projects outside of NY that are testing curbside collection of flexible plastic packaging. These companies would like to expand across the US and currently create a material that can be processed using advanced recycling technologies. These materials currently end up at the sorting facility today as contaminants – separating these materials out increases the value of the specific bales, and that sortation alone could be worth the price of installing the equipment -- as long as there are companies willing to accept the material for recycling (wall boards, pyrolysis). This additional sortation would bring greater value in the system and allow more material to be recycled.

**This legislation bans packaging containing numerous chemistries designated as “toxic substances” above practical quantification limits.**

In addition to excluding certain materials from being considered “recyclable,” this proposal expands the list of heavy metals currently banned under the NY Hazardous Packaging Act to include ortho-phthalates, bisphenols, PFAS, benzophenone, flame retardants, perchlorate, formaldehyde, toluene, PVC and polycarbonate. This overly broad prohibition disregards sound science and could potentially have major unintended socioeconomic, environmental, and public health consequences by arbitrarily eliminating packaging best suited for, among other uses, food preservation, medical supply and device protection and hazardous materials containers.

**The legislation specifically precludes Advanced Recycling from the definition of “Post-Consumer Recycled Material (PCR)” and “Recycling”** As written, the bill specifically excludes advanced recycling from the definition of “post-consumer recycled material” (does not include . . . material generated by means of advanced recycling, chemical recycling, gasification, pyrolysis, solvolysis, waste-to-energy, waste-to-fuel or any other chemical or molecular conversation process). It also excludes advanced recycling from the definition of recycling.

In just the past three years, more than \$5 billion in private sector investments including advanced recycling has been announced to help modernize the U.S. recycling infrastructure and expand the types of volumes of plastics that can be reused or incorporated into a circular economy. **Advanced Recycling legislation has passed in 21**

**states including Michigan, New Hampshire, Pennsylvania, and Virginia.**

These new investments have the potential to serve new markets in the coming months and years, and these facilities are expected to recycle up to 9 billion pounds of material per year. The limiting definition in S. 4246 therefore would close a 9 billion pound market to New York communities and material facilities.

Advanced recycling is **NOT** incineration. Advanced recycling converts post-use plastics into their original building blocks, specialty polymers, feedstocks for new plastics, waxes and other valuable products. This process takes place in the absence of oxygen. Incineration is the combustion of unsorted municipal solid waste to turn into electricity. Combustion requires oxygen.

Advanced recycling can contribute significantly to a circular economy wherein plastics are repurposed rather than disposed, which helps keep plastics out of the ocean/environment. Ongoing and emerging advances in mechanical recycling are capturing more types of post-use plastics, while advanced recycling is poised to capture primarily used plastics that are not widely recycled today.

**This legislation includes overly-aggressive and unworkable mandates and timelines.**

This legislation includes mandates for (1) reduction of non-reusable packaging; (2) recycling of non-reusable packaging; and (3) inclusion of post-consumer content. However, there has not been a dialogue with stakeholders, cost analysis or market impact studies to determine the feasibility or practicality of these mandates. We strongly encourage a full evaluation and consideration of these and other factors as part of the discussion around an EPR program.

**For the above reasons, we respectfully request that you OPPOSE S. 4246.**

Sincerely,

American Chemistry Council

ACC Spray Foam Coalition

Alkylphenols & Ethoxylates Research Council

Alliance for Automotive Innovation

American Apparel and Footwear Association (AAFA)

American Coatings Association

American Fuel and Petrochemical Manufacturers (AFPM)

AGC Chemicals Americas

Association of Equipment Manufacturers (AEM)

Association of Home Appliance Manufacturers (AHAM)

Berry Global

The Business Council of New York State

Buffalo Niagara Partnership

Braven Environmental

Carlisle Spray Foam Insulation

Capitol Region Chamber of Commerce  
Consumer Technology Association (CTA)  
Communications Cable and Connectivity Association (CCCA)  
The Chemours Company  
Covestro  
Creative Polymer Solutions  
CropLife  
Dupont  
Fluid Sealing Association (FSA)  
General Coatings Manufacturing Corp  
Gujrat Fluorochemicals (GFL)  
Household and Commercial Products Association (HCPA)  
Huntsman  
Hydraulic Institute  
IDI Distributors  
ITI  
Johns Manville  
Juvenile Products Manufacturers Association (JMPA)  
Milipore Sigma  
Motor & Equipment Manufacturers Association (MEMA)  
Motorcycle Industry Council (MIC)  
National Association of Chemical Distributors (NACD)  
National Council of Textile Organizations (NCTO)  
National Electrical Manufacturers Association (NEMA)  
National Marine Manufacturers Association (NMMA)  
Natural Polymers  
NCFI Polyurethanes  
New York State Chemistry Council  
New York State Economic Development Council  
OPEI  
Plastic Energy

Plastics Industry Association

Pine Chemicals Association

PRINTING United Alliance

Recreational Off-Highway Vehicle Association (ROHVA)

Responsible Industry for a Sound Environment (RISE)

Rhino Linings Protective Coatings

Sealed Air

Solvay

Specialty Vehicle Institute of America (SVIA)

The Toy Association

Upstate United