



June 5, 2023

Re: Oppose S. 4246-A/ A. 5322-A – Packaging Reduction and Recycling Act

Dear New York State Legislator,

We are writing to strongly oppose the newly amended bill, **NY S. 4246-A/A. 5322-A**, related to establishing an Extender 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.

In addition to the substantive concerns outlined below, we have concerns about the approach to advancing this legislation. With just a few days left in the legislative session, these amendments were put forth without meaningful stakeholder input or robust detailed discussion of the complex provisions. There is limited opportunity for stakeholders to provide public comments and for legislators to consider comments and evaluate the bill on its merits.

S. 4246-A/ A. 5322-A 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. This bill offers a framework for a comprehensive EPR program with far-reaching impacts. It therefore warrants full and fair consideration and adequate debate.

The following 77 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 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” and creates a Task Force to recommend additional substances to ban.

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.

This bill also creates a Toxic Packaging Task Force that would recommend additional toxic substances to be banned, potentially targeting hundreds of substances without sound- scientific basis and creating uncertainty for businesses in commerce.

The legislation specifically precludes Advanced Recycling from the definitions of “Recycling” and “Post-Consumer Recycled Material (PCR)” As written, the bill excludes advanced recycling from the definition of “recycling” (does not include: (A) energy recovery or energy generation by any means, including but not limited to . . . pyrolysis, gasification, solvolysis, waste-to-fuel; (b) any chemical conversion process). It also therefore excludes advanced recycling outputs from the definition of “post- consumer recycled material.”

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 24 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-A/A.5322-A 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 completed 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-A/ A. 5322-A.

Sincerely,

American Chemistry Council
ACC Spray Foam Coalition
AmSty
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)
Association of the Nonwoven Fabrics Industry(INDA)
Berry Global
The Business Council of New York State
Buffalo Niagara Partnership
Braskem
Braven Environmental
Carlisle Spray Foam Insulation
Capital Region Chamber of Commerce
Consumer Technology Association (CTA)
Communications Cable and Connectivity Association (CCCA)
The Chemours Company
Covestro
Creative Polymer Solutions
CropLife
Daikin America, Inc
Dupont
EPS Industry Alliance
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
Performance Fluoropolymer Partnership (PFP)
Plastic Energy
Plastics Industry Association
Pine Chemicals Association
Polyisocyanurate Insulation Manufacturers Association (PIMA)
PRINTING United Alliance
Recreational Off-Highway Vehicle Association (ROHVA)
Responsible Industry for a Sound Environment (RISE)
Rhino Linings Protective Coatings
Sabic
Sealed Air
Solvay
Specialty Vehicle Institute of America (SVIA)
Trinseo
The Toy Association
Upstate United