



February 27th 2024

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

Dear Member of the NYS Senate Environmental Conservation Committee,

We are writing to strongly oppose the newly amended bill, NY S 4246-B/A5322B, related to establishing an Extended Producer Responsibility program that would require producers of packaging to be responsible for managing post-consumer packaging waste; establish non-reusable packaging reduction requirements for packaging producers; and ban the use certain substances and material from packaging.

In addition to the substantive concerns outlined below, we have concerns about the approach to advancing this legislation. 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.

The undersigned support a well-designed Extended Producer Responsibility program in New York and while S.4246-B/ A 5322-B is a multi-policy initiative that involves many stakeholders and has broad impacts on many industries as well as residents/consumers in the state and 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 57 undersigned organizations representing over 100,000 jobs in New York oppose the bill for the following reasons:

Excludes Packaging with a Broad Set of Chemistries from being “Recyclable”

This legislation arbitrarily excludes packaging with potentially thousands of chemicals at any amount from being considered recyclable. The designation of substances to be excluded will affect a significant amount of current packaging within two years of the bill’s effective date. As such, many packaging products will end up at the sorting facility as contaminants and will be landfilled.

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 based on credible scientific evidence. This bill allows DEC to periodically add to the banned substances list.

This language runs counter to recently finalized chemical regulation legislation signed into New York State focused on children’s products. The legislation laid out a framework for working with expert scientists, identifying high priority chemicals, taking action and managing decisions on those chemistries when warranted by the best available 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 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 materials”.

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-B/A5322-B 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 you OPPOSE S. 4246-B/A5322-B

Sincerely,

American Chemistry Council

AmSty

Alkylphenols & Ethoxylates Research Council

Alliance for Automotive Innovation

American Apparel and Footwear Association (AAFA)

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)

BASF

Berry Global

The Business Council of New York State

Buffalo Niagara Partnership

Braskem

Braven Environmental

Capital Region Chamber of Commerce

Color Pigments Manufacturers Association

Consumer Technology Association (CTA)

Communications Cable and Connectivity Association (CCCA)

The Chemours Company

Covestro

CropLife

Dupont

EPS Industry Alliance

Gujrat Fluorochemicals (GFL)

Household and Commercial Products Association (HCPA)

Hydraulic Institute

IDI Distributors

ITI

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 Federation of Independent Business- NY (NFIB-NY)

National Marine Manufacturers Association (NMMA)

New York State Chemistry Council(NYSCC)

New York State Economic Development Council

OPEI

Performance Fluoropolymer Partnership (PFP)

Personal Care Products Council (PCPC) 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)

Sabir

Sealed Air

Syensqo

Specialty Vehicle Institute of America (SVIA)

Trinseo

The Toy Association

Upstate United

Vinyl Institute