



June 5th 2024,

Re: Oppose NY S 4246D/NY A 5322D - Packaging Reduction and Recycling Act

Dear New York State Legislator,

We are writing to strongly oppose the newly amended Extended Producer Responsibility bill, S 4246D/A 5322D. These amendments won't result in a thoughtfully crafted EPR bill. **The bill will *still* result in problematic consequences for consumers like everyday concerns about increased grocery prices and being able to get in-demand products that are no longer available on store shelves. The mandates will *still* result in manufacturers being forced to find materials that comply with requirements and will eliminate products where certain packaging is not available. As a result, consumers will face higher costs and will have limited choices as manufacturers discontinue products.**

Siena polling consistently shows that New York voters want lawmakers to address the cost of living more than any other issue. For this reason and others, we strongly urge you to **OPPOSE** legislation that would establish an Extended Producer Responsibility (EPR) program for packaging. This program could cost your constituents and consumers across the state **\$5.8 billion in new costs over the next five years** according to a study by York University in Toronto. Further, the bill would have a significant impact on New York's lower income households **with an additional cost of \$720 per household over the next five years.**

In addition to the substantive concerns outlined below, we have concerns about the approach to advancing this legislation. These amendments do not make any meaningful changes to broad business and consumer concerns with the bill including recycling targets, increased costs to consumers, risk of food and products off the shelves, disallowing Advanced Recycling, and excessive package reduction to name a few.

With only a few session days left, 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. S 4246D/A 5322D 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, however, this legislation has many concerning provisions. The 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 68 undersigned organizations representing over 100,000 jobs in New York continue to oppose the bill and amendments 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 the recently enacted chemical regulation law in New York that focuses on children's products. The law lays 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 New York 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 – if there are companies willing to accept the material for recycling (wall boards, pyrolysis). This additional sortation would bring greater value to 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.

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 25 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 4246D/A 5322D therefore would close this 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.

Other progressive states including Minnesota, Maine, Oregon and California have passed legislation to establish EPR programs for packaging. No other state, however, has included such aggressive mandates and unworkable timelines as this proposal.

The amendments continue to include 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 S4246D/A5322D.

Sincerely,

American Chemistry Council

American Cleaning Institute

American Petroleum Institute – Northeast

AmSty

Alkylphenols & Ethoxylates Research Council

Alliance for Automotive Innovation

Alliance for Chemical Distribution (ACD)

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

Bio-Process Systems Alliance

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

Flexible Packaging Association

Greater Binghamton Chamber of Commerce

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 Association of Printing Ink Manufacturers

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

Outdoor Power Equipment Institute

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

Retail Council of New York State

Recreational Off-Highway Vehicle Association (ROHVA)

Responsible Industry for a Sound Environment (RISE)

Sabir

Sealed Air

Syensqo

Specialty Vehicle Institute of America (SVIA)

Styrene Information and Research Center

Trinseo

The Toy Association

Upstate United

Vinyl Institute

3M