

Testimony in OPPOSITION
to
S. 3398
in the
New Jersey Senate Environment and Energy Committee

June 20, 2024

Dear Chair Smith, Vice-Chair Greenstein, and Members of the Environment and Energy Committee,

The Flexible Packaging Association (FPA) is **opposed to the current NJ S 3398**, which would establish an Extended Producer Responsibility (EPR) program in the State of New Jersey but stands ready to strongly support an amended version.

I. Background on FPA & Flexible Packaging

I am John Richard, Director of Government Relations at FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents \$45.1 billion in annual sales; is the second largest and fastest-growing segment of the packaging industry; and employs approximately 83,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day—including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice, as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, like diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-out food containers and e-commerce delivery, which became increasingly important during the pandemic, are also heavily supported by the flexible packaging industry.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. Unfortunately, we do not believe S. 3398 as written will provide New Jerseyans with a durable, effective EPR program.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from a water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint, but circularity options are limited. There is no single solution that can be applied to all communities for the best way to collect, sort, and process flexible packaging waste. Viability is influenced by existing equipment and infrastructure; material collection methods and rates; volume and mix; and demand for the recovered material. Single-material flexible packaging, which is approximately half of the flexible packaging waste generated, can be

mechanically recycled through store drop-off programs, however, end markets are scarce. The other half can be used to generate new feedstock, whether through pyrolysis, gasification, or fuel blending.

Developing end-of-life solutions for flexible packaging is a work in progress, and FPA is partnering with manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership (TRP); the Materials Recovery for the Future (MRFF) project; the Hefty® ReNew® Program; and the Consortium for Waste Circularity. All of these programs seek to increase the collection and recycling of flexible packaging. Increasing the recycled content of new products will not only create markets for the products but will also serve as a policy driver for the creation of a new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

It is FPA's position that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials and promotion and support of market development for recycled products is an important lever to build that infrastructure. FPA also supports well-crafted EPR that can be used to promote this needed shift in recycling in the U.S. In fact, FPA worked with the Product Stewardship Institute (PSI) and jointly drafted a set of principles to guide EPR for flexible packaging (<https://www.flexpack.org/end-of-packaging-life>). The dialogue looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity.

It is with this background that FPA provides this testimony to improve the New Jersey extended producer responsibility bill in order to support a well-crafted EPR program. This would provide New Jersey with the necessary elements to improve collection and infrastructure investment and development of advanced recycling systems, allowing for the collection and recycling of a broader array of today's packaging materials—including flexible packaging—and quality sorting and markets for currently difficult-to-recycle materials.

II. Statewide Goals Must Flow from Needs Assessment & Material-Neutral Metrics

The authors of S. 3398 have critically added a needs assessment to inform the program implementation of New Jersey's EPR program, which will make strides towards a truly circular economy. Unfortunately, S. 3398 subsequently commits to achieving a staggering and arbitrary source reduction goal source reduction goal of 25%. FPA and its members request the bill be amended to allow the needs assessment to inform and determine any feasible overall statewide goals in order to ensure all materials reach their proper end markets. Furthermore, source reduction by packaging type can confound the bill's objectives for refillable and reusable packaging programs, which rely on flexibles with less plastic than the containers they are designed to refill.

In addition to allowing the needs assessment to drive data-based policy decisions, it is vitally important to have an unbiased set of metrics to inform packaging choices. S. 3398 directs producers to achieve source reduction requirements by eliminating plastic components, which may lead to unintended consequences for the items being packaged.

III. Alternante Collection Infrastructure

Modern flexible films often present contamination problems for our nation's often antiquated recycling system to process and are, therefore, primarily recycled at store drop-off locations around New Jersey. Recent voluntary partnerships between end-market users, brands, retailers, and manufacturers will illustrate the path forward for our critical packaging and provide solid examples for the eventual

producer responsibility organization (PRO) to replicate.¹ FPA and its members request that the statewide needs assessment be required to include expanding access to store drop-off programs instead of the optional language that is currently used. FPA also requests that store drop-off locations be included as an element of any studies conducted on access to recycling to ensure equitable access to recycling infrastructure.

III. Necessary Exemptions for Critical Goods

While FPA supports extended producer responsibility to drive circularity and improve environmental outcomes, several critical products must be exempted from EPR programs. The FPA's Sterilization Packaging Manufacturers' Council (SPMC) develops rigorous medical device packaging specifications that adhere to ASTM International standards to ensure the integrity of flexible barrier materials. FPA is pleased to see medical devices be included as an exemption. This exemption should also apply to animal biologics and medical food for many of the same reasons. FPA and its members also urge consideration of exemptions for other critical goods like infant formula and packaging regulated by the Federal Insecticide, Fungicide, and Rodenticide Act. Authors can look to Minnesota's recently passed EPR law for a fleshed-out list of packaging types that may make sense to exempt.

IV. Reasonable Costs to Producers

As stated above, FPA and its members support well-crafted EPR that can be used to promote this needed shift towards circularity in recycling in the U.S. While FPA's members are wholly committed to addressing plastic pollution, asking producers to pay for New Jersey's landfilling system in full with no maximum payment threshold threatens the long-term success of the EPR program. This policy will divert critical funds from infrastructure investment to, paradoxically, increase the amount of landfill waste. FPA does not believe that is the intent of the authors and requests that that portion of the bill be stricken.

VII. Conclusion & Next Steps

For these reasons, FPA opposes the current S. 3398 but stands ready to support a future version that creates a strong foundation for a meaningful EPR program for packaging. FPA and its members wish to note that the authors of this bill have made strides in the right direction this session, from antitrust protections for the PRO, to the producer definition, to establishing a needs assessment to inform policy decisions. We look forward to working with you to provide the necessary investment in new infrastructure and markets for all packaging, including flexible packaging. In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at (443) 534-3771 or jrichard@flexpack.org.

Respectfully,



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¹ Wakefern Food Corp. "New Recycling Kiosk at ShopRite Lets Customers Recycle Flexible-Film Plastic Packaging for Pet Food, Snacks, Garden Products and More." Wakefern press release, June 6, 2024.