

S.4246 (Harckham)/A.5322 (Glick)

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BILL S.4246 (Harckham)/A.5322 (Glick)
SUBJECT "Packaging Reduction and Recycling Infrastructure Act"
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OPPOSE

Many businesses and business organizations are supporting efforts to improve recycling and waste reduction efforts in New York and other states. However, a key objective of these efforts is to ensure that new mandates and/or restrictions are effective, workable, and affordable, and to avoid unnecessary increased costs or limitations on consumers.

Upon detailed review, we find that this proposed legislation includes a number of unworkable mandates, contradictory provisions, unnecessary or unjustified restrictions, and missing components – all of which would result in an inefficient,

unworkable program that would be difficult and costly for businesses to comply with, and would result in an unwarranted impact on New York consumers.

We have shared our comments and critiques of this legislation with both sponsors, and we are willing to work with them, the Executive, and other legislators to adopt workable, effective provisions to ensure the diversion of post-consumer from disposal into reuse.

However, we strongly oppose the adoption of S.4246/A.5322 as proposed.

Examples of our concerns include:

- The bill proposes unworkable compliance and implementation timelines. For example, a “packaging reduction and recycling organization, “PRRO,” must submit its plan within 18 months of the effective date of this law, but also gives the DEC eighteen months to issue compliance regulations that may not be adopted prior to that compliance date, and the required needs assessment will not be complete until 6 months prior to the PRRO’s plan submission dates. Moreover, material producers must be included in an approved plan within two years of the bill’s effective date, but the advisory committee may not be named until one year after the effective date, the PRRO is obligated to provide the advisory committee with “a reasonable period of time” to review and comment on the plan before the PRRO submits it to the DEC, and the advisory committee is required to forward plans it reviews to the DEC “within ninety days” of its receipt, while the DEC has up to 60 days after receiving the advisory committee’s recommendations to approve or deny approval of a plan. As a result, the PRRO will have little, if any, time to respond to new data on waste management systems or specific state compliance requirements. Under the best of circumstances, the PRRO will have just 6 months after the completion of a needs assessment to develop its plan and may have to do so prior to the availability of compliance regulations. And, once a PRRO submits its draft plan, the review times for the state advisory committee and DEC can consume five of the remaining six months before the implementation deadline. If any plan changes are required, there will be virtually no time for the PRRO and producers to respond and achieve timely compliance.
- The bill imposes an impossible obligation regarding markets for recovered material. Specifically, the bill requires that, within two years of the date the law becomes effective, all covered materials used by a producer of packaging or

printed paper must have “a consistent regional market for purchase, by end users in the production of new products.” This mandate for regional markets takes effect on the same timetable that a PRRO plans are required to be implemented, so it would require the expansion of recycling infrastructure be achieved even before a PRRO is obligated to take any action under this act, other than register with the state. As a result, this could result in an effective ban on the use of covered materials for which no “consistent regional market” exists, or at least significant civil penalties for non-compliance. Moreover, it is unclear what “regional” means regarding markets for recovered materials or what, if any, geographic restriction would apply to this mandate.

- Within two years after DEC promulgates regulations, the bill would ban the sale of any packaging materials containing any level of twelve listed categories of chemicals, making no allowance for trace amounts, let alone levels below any reasonable action level. Among other things, this would mandate the testing of all

categories of packaging products to demonstrate the lack of trace amounts of listed chemicals. The bill goes on to direct the DEC to ban an additional ten chemicals every three years, by regulation, a mandate that is inherently arbitrary, and could result in the purposeless ban of materials not typically used in packaging or that pose a significant hazard.

- The bill imposes company-specific material use reduction mandates. Within twelve years of when a producer first registers with a PRRO, it has to reduce the amount of packaging it sells in New York State by 50 percent by weight, regardless of increased demand for the products it sells to New York consumers or shifting market shares. It also specifically – and arbitrarily -- prohibits source reduction to be achieved through the use of lighter weight plastic materials, regardless of its ability to be reused or recycled.

Among other concerns, the bill is unclear as to the scope of the program, allows municipalities to opt in and out of participation with no criteria or timetable to allow for a PRRO to make necessary adjustments, bans the use of technology that can produce usable feedstock for reuse, and has other structural and policy shortcomings.

As a final point, it should be recognized that New York has long had a statutory framework for post-consumer material management, but major components of that framework have gone unstaffed and unfunded, resulting in poor outcomes that are

now resulting in calls for an entirely new approach to addressing the recovery and reuse of post-consumer materials. As example, New York is the only state with a state-wide mandate for recycled material collection. To help support the recovery and reuse of secondary materials, the DEC is required to assist in the development of local waste reduction, source separation and recycling programs, to assist department of economic development in conducting secondary materials market development programs. Further, ESDC is directed by statute to collect and share information on existing manufacturers within the state that utilize secondary materials in their manufacturing process, and incentives for existing businesses to expand their utilization of secondary materials and their adoption of waste prevention technologies and practices. ESDC is also required to identify special needs and problems facing the secondary materials processing industry and implementation of waste prevention within New York State; evaluate, develop, and facilitate the establishment of markets necessary for the implementation of solid waste management programs.

We are committed to helping develop legislation that builds on existing state statutes and programs to improve the recovery, management, and reuse of post-consumer materials. In doing so, we are able to point to good and bad ideas adopted and implemented in jurisdictions inside and outside of the United States to inform this process. But, it is essential that any new legislation allow for meaningful involvement by the regulated community in designing and implementing new programs, and to assure that new mandates result in cost-effective and workable regulatory programs.

For these reasons, we oppose the adoption of S.4246/A.5322

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