

Memo in OPPOSITION
to
NY A.1749/S.1464
in the
Senate Standing Committee on Environmental Conservation
March 11, 2025

The Flexible Packaging Association (FPA) is submitting this memo **in opposition to NY S.1464**, which directs the Department of Environmental Conservation to establish an Extended Producer Responsibility program in the State of New York.

I. Background on FPA & Flexible Packaging

FPA represents flexible packaging manufacturers and suppliers to the industry in the United States. Flexible packaging represents \$42.9 billion in annual sales; is the second largest, and fastest-growing segment of the packaging industry; and employs approximately 85,000 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 and deeply committed to solving the plastic waste issue and increasing the recycling of all packaging. FPA is deeply troubled by the efforts to

redefine recycling in the state of Maryland, which would stymie the circularity efforts for modern packaging manufacturers that have had to content with our nation's out-of-date recycling system.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoints. But circularity options for flexible packaging are currently limited. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process flexible packaging. 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 primarily through store drop-off programs; however, end markets are scarce. The other half can be used to generate new feedstock, through pyrolysis and gasification.

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; the Consortium for Waste Circularity; and the Flexible Film Recycling Alliance (FFRA). All these programs are seeking to increase the collection and recycling of flexible packaging. Also, increasing the recycled content of new products, including packaging, 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 with this background that FPA provides this testimony to improve the New York extended producer responsibility bill in order to support a well-crafted EPR program. This would provide New York 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. FPA Applauds Technical Fixes to the EPR Bill

In last session's version of S.1464, the definition of "producer" in cases where products were sold or distributed to consumers via remote sale or distribution was unimplementable. Following other

packaging EPR programs throughout the country and internationally, FPA argued that the definition of the producer should be the owner of the item that uses packaging to protect, contain, transport, or serve the item and not the manufacturer (or converter) of the packaging. FPA thanks Assemblymember Glick for her thoughtful change to this definition.

III. Advanced Recycling Should Be Utilized to Accomplish Science-Based Recycling Goals

Common advanced recycling technologies like pyrolysis, gasification, and depolymerization convert used plastics that would be considered waste into high-value materials using methods that are regularly deployed in other industries. Despite being a nascent industry compared to other materials that have had centuries to figure out how to design for a circular economy, our industry has voluntarily invested over \$7 billion, which has led to a massive 21 billion pounds of plastic waste being diverted from landfills across the nation each year. In time, we are confident that engineers and chemists will be able to definitively make the case for a circular plastics economy.

A common myth that our Association constantly must dispel is that advanced recycling is just burning plastic waste through incineration; in reality, this type of recycling relies on cutting-edge technologies that purposefully operate with little to no oxygen (allowing for the recovery of material). Furthermore, advanced recycling produces emissions equal to or lower than similar facilities in other industries with the added benefit of no measurable lead or dioxin emissions. All advanced recycling facilities are subject to the same Clean Air Act standards as mechanical recycling and often outcompete those facilities on environmental indicators. If manufacturers of flexible packaging are expected to meet arbitrary recycling targets of 75% by 2052, innovative recycling methods should be encouraged rather than banned.

The Flexible Packaging Association also requests that advanced recycling be included in the definition of “recycling” and “post-consumer recycled material.” FPA also requests that recycling should be developed following the establishment of an EPR law and with proper study of the recycling system or markets in New York through a statewide needs assessment, potentially using the ongoing study by the Center for Sustainable Materials Management and SUNY College of Environmental Science and Forestry for reliable, expedient goal-setting. Finally, FPA requests that multi-material goals be established based on a needs assessment since the bill does not account for these packaging types.

IV. S.1464's Processes for Determining Toxic Substances Are Inconsistent

In order to prevent a patchwork of state toxics lists that may contradict each other, the FPA recommends adopting the Federal Toxic Substances Control Act Chemical Substances Inventory as a working list of “toxic substances.” In the case where a state desires to add substances with less scientific evidence of toxicity than the TSCA Inventory, FPA recommends a single science-backed process to provide clarity to supply chains and consumers alike. S.1464 establishes a Department of Environmental Conservation standard for adding substances that require some semblance of scientific support and a separate list of substances that the bill's authors desire to see banned. Neither of these processes conforms to the separate, more science-backed process put forward in 2019's S.501B for toxic chemicals in children's products that emphasized working with expert scientists, identifying high-priority chemicals, and making decisions on those chemistries when warranted by the best available risk assessment science on thousands of products. FPA strongly recommends a single science-backed process for determining toxicity for substances that do not have the scientific consensus required for the TSCA inventory.

V. Needs Assessment, Equity, and Education

FPA strongly agrees with S.1464's consideration of how extended producer responsibility could increase equity. As stated above, flexible packaging has led the way in reducing environmental impacts, such as energy and water use, greenhouse gas emissions, and less packaging weight and waste; it is also significant in increasing food access while preventing food loss and waste. Any needs assessment must consider impacts to food access, food waste, and the overall lifecycle of products that any plastic packaging reduction will have. All educational efforts should help consumers make informed decisions on packaging using an unbiased set of metrics and should instruct consumers on the benefits of and how to use innovative packaging technology like modified atmosphere packaging.

VI. Reasonable Costs to Producers

As stated above, FPA and its members support well-crafted EPR that can be used to promote this needed shift in recycling in the United States. While FPA's members are wholly committed to addressing plastic pollution, asking producers to pay for New York's recycling system in full with no maximum payment threshold is unreasonable and threatens the long-term success of the EPR program. It is likely also lead to unintended policy consequences along the waste supply chain.

VII. Conclusion & Next Steps

For these reasons, FPA opposes the current S.1464 but stands ready to support a future version that creates a strong foundation for a meaningful EPR program for packaging, which would 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,

A handwritten signature in black ink that reads "John J. Richard". The signature is written in a cursive, flowing style.

John J. Richard
Director, Government Affairs
Flexible Packaging Association