

May 9, 2024

To: NJ Senate Environmental Committee
From: PRINTING United Alliance
Re: Oppose S-3135 Toxic Packaging Reduction Act

Dear Member of the NJ Senate Environmental Committee

PRINTING United Alliance is writing to express our strong opposition to S-3135 Toxic Packaging Reduction Act, which requires producers to reduce the amount of plastic packaging and single-use plastic items sold or distributed in New Jersey. It also restricts additional substances such as carbon black and other chemicals and excludes advanced recycling technologies from the definition of recycling. The source reduction mandates, and various restrictions and limitations, are not feasible to implement.

As background, PRINTING United Alliance represents the interests of facilities engaged in producing a wide variety of products through screen printing, digital imaging, flexographic, and lithographic print processes. The print industry is comprised primarily of small businesses, with approximately 95 percent of the printing industry falling under the definition of a small business as described by the Small Business Administration.

In the state of New Jersey, the economic impact of manufacturing or packaging and labeling converting is significant. There are 224 firms located in the state that are involved in packaging or label converting. These companies employ more than 9,400 people with a payroll exceeding \$498 Million. The annual value of packaging produced in the state is nearly \$3.4 billion and a blanket ban on carbon black puts all these jobs and economic activity in jeopardy.

New Chemical/Substance Bans

This legislation prohibits the sale of any product, package, or packaging component which includes inks, dyes, pigments, adhesives, stabilizers, or any other additives containing various substances which are enumerated in the bill. The bill seeks to ban many substances, chemicals, and additives in the absence of clear health or environmental evidence to necessitate such a ban.

One of the chemicals captured in this ban, carbon black, is a prime example of a chemical that should not be included as a "toxic" chemical because it has been determined that when incorporated into an ink, is not toxic. OSHA and California's Office of Environmental Health Hazard Assessment, the agency responsible for implementing Proposition 65, have documented the lack of toxicity when carbon black is incorporated into matrices such as ink. FDA also allows the use of carbon black-based pigments in certain food-contact applications and medical devices.

One significant unintended consequence posed by a ban on carbon black would be the disruption of using recycled substrates for packaging. This is in direct conflict with the objectives of the legislation, especially the mandate for the post-consumer fiber content for corrugated packaging.

There are at least three substrates made from recycled materials that would be banned due to the presence of carbon black and some of the other chemicals identified in the legislation because they could be found in inks in a trace concentration. Those substrates are recycled paperboard such as those used in food and other packaging, recycled corrugated aka cardboard, and recycled black plastic.

When recycled paperboard and corrugated are manufactured, they are made primarily from recovered paper, paperboard, and corrugated, respectively. The recovered paper is not deinked prior to repulping. Once the paper is repulped, it is processed with screening and introduced into the board or corrugated machine. Because the paper is not deinked, there will be carbon black and other chemicals on the banned list, which about half of them could be present as a trace contaminant in the recycled paperboard and corrugated. Therefore, they will also be banned and will prohibit the ability of producers to meet the recycled content mandates in the legislation.

Likewise, some black plastic is produced from recovered feedstock of various colors. The difficulty in separating the colored plastics means these materials get blended together to make black plastic. Carbon black is usually added to enrich the color. Banning carbon black will also prevent the use of this recycled material.

Imposing wide bans on the mere presence of chemicals in packaging, without clear environmental or public health justification disregards sound science and is not a means to creating a safe, effective, and efficient packaging program. Additionally, banning any presence of certain chemicals in packaging that have been deemed to be nontoxic or without providing for any de minimis levels to account for substances that were not intentionally added, undermines the potential use of recycled content in products and makes this legislation impractical.

Banning specific chemicals could have other unanticipated consequences as manufacturers may be unable to find appropriate alternative substances that work as effectively. Specific chemicals may have unique properties that make them stable or extend the shelf life of products. This is especially important in food and beverage packaging. For example, there is no substitute for carbon black. Carbon black can be made from several different feedstocks and even those made from bio-based sources such as algae, are still carbon black and thus would be banned under the bill. The attached position statement from the National Association of Printing Ink Manufacturer provides more details as to why there is no substitute for carbon black.

Additionally, this bill establishes a Toxic Packaging Task Force within NJDEP to review the toxicity of packaging in the State, and to recommend the designation of additional toxic substances to be subject to the same prohibitions as the substances included in the bill. Upon recommendation of the task force, NJDEP can designate additional substances to be prohibited from being included in packaging and packaging components. It is concerning that a small number of taskforce members would have the authority with no technical or economic limitations to make decisions that would impact and disrupt national and global commerce.

Advanced Recycling

This legislation excludes advanced recycling technologies from the definition of recycling. Advanced recycling, also called chemical recycling, is a process that allows waste plastic to be broken down to its molecular building blocks and then reused. 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 allows for the recycling of plastics that are currently ending up in landfills, waterways, and incinerators, since there is currently no marketplace for these hard to recycle plastics. Advanced recycling technologies can expand the scope of materials that can be recycled thus contributing significantly to a circular economy. It helps preserve the value of resources in our economy and bridge the gap between the supply and demand for high-quality recycled plastics. 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 is particularly important to those companies that need to meet the recycled content demands as identified in the legislation.

Another benefit that advanced recycling provides is that its end product is a feedstock that will replace the byproducts of natural gas, which industry is currently using to make virgin plastic - thus reducing industry's reliance on fossil fuels. Currently twenty-five states have passed legislation which enables them to attract the development of advanced recycling facilities in their states. These laws have been passed with bi-partisan support and signed by governors of both political parties.

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.

Setting statutorily mandated recycling, recycled content, source reduction or other goals is an extremely challenging exercise, especially without any reliable data to support what these goals might be in the State. Goals should be developed following proper study of the recycling system through a statewide needs assessment and determination that the infrastructure exists that can produce the packaging materials with the specifications for recycled content that is identified in the legislation.

Setting an extremely aggressive set of rates and packaging reduction mandates, like S-3135 does might look like progress, but without a true vision of what that future might look like either dooms the law to fail or will result in companies going out of business in the State. We strongly encourage a full evaluation and consideration of these and other factors as part of the discussion around how to address packaging waste.

Some of these substances are currently under review or regulation by the FDA, EPA, or other federal agencies, which continuously review substances used in consumer products. Federal agencies are the appropriate regulatory authorities to make determinations about safety in products produced for national and global markets. A patchwork of state-level laws reduces consistency, disrupts interstate commerce, and ultimately increases the costs of products. One of the chemicals captured in this legislation, PFAS, is also being actively addressed in New Jersey as the Senate is advancing legislation to regulate PFAS in various areas, including water, packaging, household products, and fire-fighting foam. Chemicals in packaging should not be addressed through general packaging legislation, but through the existing regulatory and statutory framework.

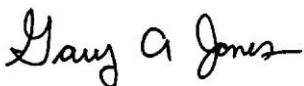
Summary and Conclusion

In addition to the substantive concerns about the ban on carbon black and other chemicals, ban on advanced recycling, and unrealistic packaging requirements, we have additional concerns about the approach taken to advancing this legislation. This legislation was 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.

S-3135 is a multipart policy initiative that involves many stakeholders and has broad impacts on many industries as well as residents/consumers in the state. While the Alliance recognizes improving the recycling system is critical, this legislation has many concerning provisions. This bill has far-reaching impacts. It therefore warrants full and fair consideration and adequate debate.

For the above reasons, we respectfully request that you OPPOSE S-3135.

Sincerely,

A handwritten signature in black ink that reads "Gary A. Jones". The signature is written in a cursive, flowing style.

Gary A. Jones
Vice President EHS Affairs
gjones@printing.org
703-359-1363