August 24, 2020

Melissa Nadeau, Program Manager
Toxics in Packaging Clearinghouse
c/o Northeast Recycling Council, Inc.
139 Main St., Ste. 401
Brattleboro, VT 05301

Submitted via e-mail: info@toxicsinpackaging.org

RE: Model Toxics in Packaging Legislation

Dear Mrs. Nadeau:

The American Coatings Association ("ACA")[1] appreciates the opportunity to submit these comments on the proposed *Model Toxics in Packaging Legislation*. The association's membership represents 90% of the paint and coatings industry. Our membership includes companies that manufacture coatings, inks and other chemical additives used in the manufacture of food and other product packaging. As such, our members could be affected by the model legislation.

ACA appreciates your willingness to consider perspectives of stakeholders during this process. ACA and its members understand the importance of minimizing and eliminating the environmental effects of products and packaging. To achieve this goal, ACA and its members regularly evaluate chemical safety and reformulate products as necessary.

ACA encourages legislators to develop effective legislation based on accurate evaluations of risk posed by products and chemicals. Because of this focus on risk evaluation and exposure analysis, ACA believes that the scope of the model legislation is too broad as it would ban chemicals without evaluation of risk. Please consider the following information about PFAS as used in packaging.

[1] ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA's membership represents over 90 percent of the total domestic production of paints and coatings in the country.

I. About per- and polyfluoroalkyl substances (PFAS)

PFAS are a diverse universe of chemistries with a wide range of critical uses. For instance, fluorotelomers (one type of PFAS) are used in food packaging applications, but are also currently being used in medical garments, hospital gowns, drapes and divider curtains to create a barrier that provides life-saving protection against infections and transmission of diseases like COVID-19 in hospitals.

The Environmental Protection Agency (EPA) distinguishes "long-chain" from "short-chain" PFAS chemicals. The toxicity of "long-chain" varieties have been well documented. Consequently, industry has largely phased out uses of "long-chain" PFAS. EPA continues to evaluate many "short-chain" and some "long-chain" PFAS substances on a case-by-case basis, as toxicity can vary greatly by PFAS compound and use.

To further these evaluations, EPA recently initiated a data collection requirement of 177 types of PFAS chemicals through its Toxic Release Inventory (TRI) program. In the TRI, EPA provides a discreet list of PFAS chemicals where toxicity could be concerning. In contrast, the model legislation does not recognize how toxicity varies by type of PFAS as it regulates PFAS as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom." According to the European Chemicals Agency (ECHA), such a broad definition of PFAS encompasses about 4,700 chemicals.

II. With respect to product packaging generally, the model legislation is overly-broad

The model legislation raises several issues without providing a clear, viable pathway to compliance. As further described below, issues include traceability of such a broad group of chemicals, lack of detection limits, vague criteria for substitution and inequitable allowances for exemptions.

a) Downstream formulators cannot identify a broadly defined class of chemicals in raw materials

ACA is concerned that manufacturers of formulated products, such as coatings and inks, will not be able to trace PFAS chemicals in additives from upstream suppliers to comply with a prohibition on use or sale, as implemented in Section 4(c) of the model legislation. The model legislation would implement a prohibition of sale or distribution of any packaging or packaging component (including coatings and inks) with PFAS "intentionally introduced during manufacture or distribution in any amount."

Formulators of coatings and inks may use additives that give products a certain desired property or performance characteristic. Often trace amounts of a chemical in an additive may have a functional purpose, but the supplier will not disclose presence in amounts below 0.01%. In effect, even

chemicals in trace amounts would be considered "intentionally introduced" under the model legislation if they are "detectable." The problem is compounded by the broad, vaguely defined universe of PFAS chemicals, embodying about 4,700 chemicals. Formulators simply would not be able to test for or track this universe of chemicals in trace amounts across several additives, when not disclosed by a supplier.

b) Prohibition of any detectable amount results varying degrees of compliance

ACA is also concerned that the prohibition against any "detectable PFAS in any package or packaging component," in Section 4(c), will lead to varying degrees of compliance. Because of variability in detection methods and margins of error, detection limits will vary, depending on sampling amounts and testing methods. As analytical methods improve, levels so low as to be irrelevant are often detected. A hazard-based threshold, akin to the 100-ppm limit for the sum of metals, provides some clarity. Such a limit, however, may be extremely difficult to apply due to the vast number of individual chemicals within the PFAS category.

c) Substitution provision may encourage regrettable substitution with chemicals of unknown hazards

The model legislation further provides a vague substitution provision in Section 4(d), allowing for possibly regrettable substitution of materials with unknown hazards. The section prohibits substitutes with a, "hazard as great or greater than the hazard created by the chemical regulated" in the model legislation. Instead, ACA suggests establishing a minimum hazard data set while requiring a risk evaluation addressing risk of the substitute chemical as used in packaging. TPCH should also take note that many PFAS chemicals will meet the current Section 4(d) standard for substitute chemicals and could be used as substitutes, absent the prohibition in Section 4(c).

d) Exemptions for metals but not PFAS are not justified

ACA further notes that the model legislation allows exemptions for necessary use and lack of substitutes for identified metals in packaging, but not for PFAS. Manufacturers can petition for an exemption to use metals with known, observed adverse effects. Several PFAS within the universe of 4,700 PFAS chemicals have no observed adverse effects in the general population. As such, should TPCH proceed with the model legislation, an exemption mechanism for PFAS chemicals is appropriate.

III. With respect to food packaging specifically, the bill is overly broad

ACA requests that TPCH consider the following related to PFAS in food packaging:

- The universe of PFAS chemistry includes a broad range of products with differing characteristics, structures and intended uses. Importantly, only a small subset of PFAS is authorized for use in food packaging.
- PFAS are used in certain paper and paperboard packaging to protect the packaging integrity and prevent oil and grease from leaking through the packaging material onto clothing, furniture or car interiors. However, the bill as written may negatively impact a much broader range of packaging types and users.
- While concerns have been raised regarding environmental contamination issues related to certain PFAS, these PFAS chemicals are not currently authorized for use in food packaging.
- The type of PFAS used in paper-based food packaging (short-chain fluorotelomers) are polymers that are not bioavailable, although their hazards are characterized by their potential breakdown product, perfluorohexanoic acid (PFHxA). PFHxA is well studied with a robust body of data demonstrating it does not present a significant risk to human health or the environment. PFHxA is not carcinogenic, mutagenic, or genotoxic, and not an endocrine disruptor. PFHxA is also not a reproductive or developmental toxicant.
- Further, detections of PFHxA in the environment and humans are extremely low. Some environmental and biomonitoring programs stopped testing for PFHxA because it was not being detected. This includes the Centers for Disease Control's nationwide biomonitoring program – National Health and Nutrition Examination Survey (NHANES).

IV. Conclusion

TPCH's model law proposes a broad prohibition of about 4,700 chemicals, including some with no record of adverse environmental or public health effects, with no clear method of compliance for downstream product formulators. Even the most diligent companies with sophisticated compliance infrastructures will have difficulty identifying and/or detecting PFAS in formulated products. Consequently, ACA recommends that TPCH table these proposed changes and defer to EPA and FDA's renewed efforts to evaluate PFAS chemicals under the *Toxic Substances Control Act*, *the Safe Drinking Water Act*, the *Food, Drug and Cosmetic Act* and other federal regulatory programs.

If TPCH intends to proceed with finalizing a model law restricting PFAS, ACA respectfully recommends the following:

- TPCH clearly identify only those PFAS chemicals with known, adverse and clearly documented effects used in packaging, as being within the scope of the model law.
- Restrictions apply to listed PFAS in amounts above 0.01%, while clearly identifying a test method.

- TPCH establish exemptions for necessary use or for when viable substitutes are not available.
- TPCH amend the criteria for substitutes in Section 4(d) to establish a minimum hazard data set while requiring a risk evaluation addressing risk of the substitute chemical as used in packaging.

Please feel free to contact us to discuss further any issues identified herein or if ACA can assist TPCH in any manner during this process.

Respectfully submitted,

Riaz Zaman, Esq.
Counsel, Government Affairs
American Coatings Association
901 New York Ave., Ste. 300 W
Washington, D.C. 20001
rzaman@paint.org
202-719-3715

Dr. Scott Braithwaite
Director of Product Stewardship, Science and Technology
American Coatings Association
901 New York Ave., Ste. 300 W
Washington, D.C. 20001
sbraithwaite@paint.org
202-805-4907