



August 24, 2020

**VIA ELECTRONIC MAIL**

Toxics in Packaging Clearinghouse  
c/o NERC  
139 Main Street, Suite 401  
Brattleboro, VT 05301

**RE: American Forest & Paper Association's Comments on Toxics in Packaging Clearinghouse Proposed Updates to Model Legislation for Toxics in Packaging**

Dear Madam or Sir:

American Forest & Paper Association (AF&PA) appreciates the opportunity to submit the following comments regarding the Toxics in Packaging Clearinghouse (TPCH) draft update to the Toxics in Packaging Model Legislation dated July 9, 2020.<sup>1</sup> In addition to our comments below, AF&PA supports the views outlined in the comments submitted by the American Chemistry Councils' American Alliance for Innovation and the PFAS Regulatory Coalition.<sup>2</sup> The draft updates include the addition of the broad class of perfluoroalkyl and polyfluoroalkyl substances (PFAS) and phthalates as regulated chemicals, as well as new processes for identifying additional chemicals of high concern in packaging. AF&PA and its members have serious concerns with the draft, as it moves very far from the direction paved by TPCH in years past, disregards best available science, and could potentially have major unintended socioeconomic and environmental consequences.

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<sup>1</sup> Letter from Toxics in Packaging Clearinghouse, re: *TPCH Requests Comments on Updates to their Model Legislation for Toxics in Packaging* (<https://toxicsinpackaging.org/wp-content/uploads/2020/07/TPCH-Call-for-Comments-For-Model-Legislation-Update-2020-Revised-7.24.20.pdf>) (July 9, 2020) ("TPCH Draft Legislation").

<sup>2</sup> Letter from the PFAS Regulatory Coalition, re: *Toxics in Packaging Clearinghouse (TPCH) Proposed Updates to Model Legislation* (Aug. 24, 2020).

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative — [Better Practices, Better Planet 2020](#). The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly \$300 billion in products annually and employs approximately 950,000 men and women. The industry meets a payroll of approximately \$55 billion annually and is among the top 10 manufacturing sector employers in 45 states.

AF&PA's sustainability initiative — *Better Practices, Better Planet 2020* — comprises one of the most extensive quantifiable sets of sustainability goals for a U.S. manufacturing industry and is the latest example of our members' proactive commitment to the long-term success of our industry, our communities and our environment. We have long been responsible stewards of our planet's resources. We are proud to report that our members have already achieved the greenhouse gas reduction and workplace safety goals. Our member companies have also collectively made significant progress in each of the following goals: increasing paper recovery for recycling; improving energy efficiency; promoting sustainable forestry practices; and reducing water use.

AF&PA supports actions that provide uniformity in chemical-related legislation, regulation and policy across the country. AF&PA further advocates for legislation and regulations that do not duplicate efforts between jurisdictions, do not regulate PFAS compounds as a class and do not impose requirements that are not technically supported or practically implementable. To those ends, AF&PA respectfully submits these comments on the draft updates to the TPCH model legislation.

**I. Identification and prohibition of packaging chemicals of high concern should be deleted**

Under the current draft, the mechanism for adding chemicals is an unscientific approach that focuses on a system of hazard identification instead of risk and does not provide adequate notice and comment for stakeholders. As the draft now stands, a chemical can be added if it is present on a state list or listed elsewhere for a number of

toxicological or physical-chemical properties and found either in biomonitoring studies or detected in packaging without regard to the risk they may or may not represent. The potential for unintended consequences is very significant, whereby chemicals used in food packaging and authorized by FDA could be banned based solely on presence and perceived hazard. To date, the Toxics in Packaging regulations have been consistent across the 19 states, which had made compliance straightforward for manufacturers. As drafted, section 6 would change that -- likely leading to a patchwork of state regulations that would be inconsistent and constantly changing. Stakeholders need consistent and practical chemicals regulation that is based on the best available science, not simply presence on a list.

## II. PFAS should not be included in the model legislation

PFAS compounds should not be included in TPCCH's model legislation. PFAS compounds in food packaging are already regulated by the Food & Drug Administration (FDA), including through the food contact notification (FCN) process. Subverting federal legislative and regulatory authority to create state bans on otherwise approved uses creates uncertainty and confusion not just for packaging manufacturers but also for consumers.

In addition, the proposal has added all packaging to the draft in addition to FDA-approved food packaging uses. We think this expansion lacks sound scientific reasoning. While migration of PFAS to food is a clear route of exposure for food packaging uses, the route of exposure from other packaging is through the dermal route and results in little to no exposure and should not be included in the draft. Importantly, the Centers for Disease Control Agency for Toxic Substances Disease Registry states:

“[S]tudies have shown that only a small amount of PFAS can get into your body through your skin. Therefore, showering and bathing in water containing PFAS should not increase exposure. Washing dishes in water containing PFAS should not increase exposure.”<sup>3</sup>

Likewise, handling packaging that contains PFAS should not increase exposure.

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<sup>3</sup> U.S. Department of Health & Human Services, Agency for Toxic Substances and Disease Registry (<https://www.atsdr.cdc.gov/pfas/health-effects/exposure.html>) (June 24, 2020).

### **III. Model legislation also should not include “PFAS” as an entire class of compounds**

One of the most concerning aspects of this proposal is that it threatens to upend the benefits provided by quality packaging by banning entire classes of chemistry that contribute to the unique properties of packaging materials that make them so effective. The draft ignores a broad consensus among the scientific community and leading government authoritative bodies: individual compounds within the broad PFAS chemistry class are not the same. To the contrary, they have widely varying properties, uses and environmental and health profiles. In fact, leading authorities such as the EPA, FDA, the Interstate Technology and Regulatory Council, and the Organisation for Economic Co-operation and Development have recognized this to be the case.

Given the wide variations in potential human health, environmental, and other characteristics exhibited by different PFAS chemistries, it is without scientific merit to bundle thousands of PFAS into a single group to assess exposure to and risk from PFAS chemistry or make reasonable inferences about properties such as bioaccumulation and persistence. From a toxicological perspective, regulatory agencies must have sufficient and relevant science to determine health-based values before promulgating specific chemical standards, limits, and related regulations. The most prevalent and available science regarding the incidence and potential health effects of PFAS is based on PFOA and PFOS. There is significant ongoing research on a wide variety of PFAS compounds, and new information is being released on a regular basis. As more is being learned about the multitude of individual chemistries in this class and their variability in toxicity, there must be flexibility to allow the use of chemistries and uses that pose de minimis risk. If TPCH includes any PFAS in its model legislation, the definition in the draft must be amended to specify a risk-based standard for PFAS chemistries.

### **IV. The “no detectable” PFAS language should be removed**

The draft focuses its ban on PFAS that “has been intentionally introduced during manufacturing or distribution in any amount.”<sup>4</sup> The definition of “intentional introduction” in Section 3.g focuses on the deliberate use of a regulated chemical

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<sup>4</sup> TPCH Draft Legislation at Section 4.a., line 116.

where “its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.”<sup>5</sup> It also specifically states that amounts contained in post-consumer recycled materials for feedstock are not considered “intentional introduction.” This definition is helpful and pragmatic and should be retained for any PFAS that may be included in TPCH’s final model legislation.

However, section 4 states: “There shall be no detectable PFAS in any package or packaging component.”<sup>6</sup> That language is at odds with the support for the use of post-consumer content expressed by the model legislation,<sup>7</sup> as well as the provision on “intentional introduction.” PFAS compounds are now ubiquitous in the environment, and very low levels of PFAS could be introduced into manufacturing processes from other sources such as recovered fiber and process intake water.

Laboratory testing using very low limits of detection in the parts per trillion range might result in the discovery of PFAS compounds that were unintentionally introduced and yet pose no risk to consumers. Furthermore, due to advances in analytical chemistry, “no detectable” is a moving target, as test methods for PFAS are largely under development and presently only cover a very small percentage of the broad universe of PFAS. Even if the testing methods were mature, the burden for analysis of approximately 4600 chemicals to prove compliance would be immense for the manufacturers who are required to submit documentation of compliance to customers and agencies upon request. Thus, the “no detectable PFAS” language is counterproductive and should be removed.

## **V. The draft must limit the definition of “phthalates”**

Although the draft includes a de minimis concentration of 100 ppm for phthalates, the limit is a sum total for the entire class of phthalate chemistries. In some cases, prepared lists can have up to 32 regulated ortho-phthalates. However, other lists may have more or less phthalates. Similar to PFAS, a company would be required to provide burdensome testing information for all phthalates to show compliance. Furthermore, unlike heavy metals where a simple low-cost analytical test can show compliance for all

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<sup>5</sup> *Id.* at Section 3.g., lines 50-51.

<sup>6</sup> *Id.* at Section 4.c., lines 131-132.

<sup>7</sup> *Id.* at Section 2.f., line 19 (Stating the intent of the Act is to achieve its results, “without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.”)

substances in the group, phthalates must be analyzed individually, and analytical methods for all phthalates may not be available for all substrates.

In fact, similar to PFAS, leading authorities such as the EPA, FDA, the Interstate Technology and Regulatory Council, and the Organisation for Economic Co-operation and Development have all recognized that individual compounds within the phthalates class are not the same. We request that future drafts of the legislation include a prioritized list for phthalates and only include the most problematic chemistries.

## **VI. Conclusion**

Thank you for your careful consideration of these comments. If you have any questions, please feel free to contact me directly.

Sincerely,

/s/ Stewart E. Holm

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