

## TPCH Model Legislation Update Comments

6/8/2020

The New York State Department of Environmental Conservation (Department) strongly supports the concept of banning the addition of harmful substances in packaging at its source, thereby curbing the necessity for residue remediation from waste packaging in the environment post-use. The addition of packaging and packaging component restrictions for Phthalates and Perfluoroalkyl substances (PFAS), as well as a process for the identification and addition of future substances of concern to model legislation, are beneficial next steps forward towards expanded toxics reduction.

The Department supports the draft TPCH Model Legislation, and once finalized, anticipates requesting the adoption of its changes to New York's Hazardous Packaging Law (ECL Article 37, Title II). That being said, the following modifications to the draft are recommended:

1. Remove "in any amount greater than an incidental presence," from Sections 4(b) and 4(c), as the language is subjective and problematic. How much is an incidental presence? A blanket prohibition is more appropriate since the addition during manufacture is being discussed. While in PFAS, for example, there could be naturally occurring fluorine compounds present -- these are not intentionally added. The Department believes the supply chain should have full control over what is intentionally added to packaging during its manufacture.

Regarding the model's proposed PFAS prohibition, the basis of this language appears to be the Biodegradable Products Institute's (BPI) certification for biodegradable products used in composting. BPI does not use PFAS, but uses "fluorinated chemicals," as testing for total fluorine is straight forward. PFAS includes thousands of chemicals, including ones without a readily available test method. BPI relies primarily on the prohibition on the addition during manufacture and requires safety data sheets, etc. to support a request from a manufacturer. As a backup they can test the materials or require testing. The difficulty with the testing is the presence of the naturally occurring fluorine material that may be there, but when that is the case, the manufacturer should be able to provide that justification.

While the Department feels the 100 ppm exceedance limit for an incidental presence is high (when states are looking at levels at part per billion or trillion level in soil, compost, etc.), we do find value in setting a threshold to limit the amount present from unintentional sources (i.e., naturally or present through recycling feedstock) that is consistent with industry groups and certification bodies.

2. Modify Section 5(b) to include exemptions for phthalates and PFAS. Many companies have turned to PFAS other than PFOA and PFOS, and while we want them to stop using all PFAS, the Department is concerned there might not be a practicable alternative at this time. The existence of the ability to apply for an exemption does not guarantee approval.