August 24, 2020

Melissa Nadeau
Program Manager
Toxics In Packaging Clearinghouse
139 Main Street, Suite 401
Brattleboro, VT 05301

Dear Ms. Nadeau,

Thank you for your diligent work to update the Toxics in Packaging model legislation. The undersigned groups work on issues related to food safety, plastics reduction, and toxic chemical reduction in order to protect the health of humans and wildlife. We strongly support the work the Clearinghouse is doing to ensure that packaging has the smallest chemical footprint possible and poses the least potential for harm. It is critical that laws at the state and federal level continue to take a pollution prevention approach by prohibiting intentional use of toxic chemicals and that they place the primary burden of compliance on manufacturers and their suppliers.

This endeavor couldn't be more important. Packaging accounts for nearly 30% of all waste in the United States. The chemicals found in packaging may pose harm at numerous stages in the packaging life cycle. At the manufacturing stage, workers may be exposed to harmful chemicals, which then may also be discharged to air or water. During use, harmful chemicals may leach out, exposing the consumer to harmful contaminants due to migration from the packaging into a product. Once discarded, toxics in packaging can render materials difficult and costly to recycle and can contribute to environmental degradation as chemicals leach into soil and groundwater, or become air pollution as packaging is sometimes incinerated.

It is clear that your team has been thoughtful and acknowledges the importance of regulating chemicals as a class. We wholeheartedly agree with adding PFAS and phthalates to the TIP model legislation. States, cities and the federal government are already regulating these chemicals and both manufacturers and retailers are moving away from them. More state-based and local policies will only encourage more movement away from these harmful chemicals.

We also recommend adding other prohibited substances to this list. If the goal is to ensure safe packaging, it is critical to prevent all harmful chemicals from being included in packaging. We recommend that the model legislation be amended to include other chemicals of concern in packaging. Specifically:

1. **Bisphenols** - The class of bisphenol compounds as defined by California Department of Toxic Substances and included in the state's Safer Consumer Products Program Candidate Chemicals List should be added to the list of prohibited substances. These chemicals have been linked to endocrine disruption as well as developmental and reproductive toxicity. Bisphenol A (BPA) is already banned by the FDA for use in baby

and children's cups and for coating of infant formula packaging. In addition several states have banned the use of BPA in reusable food and beverage containers. Albertsons, Safeway, Kroger, Publix, Wegmans and Whole Foods have adopted policies to reduce the use of BPA in their private-label canned food. Unfortunately, other bisphenol compounds BPS and BPF have become common replacements to BPA in packaging, but recent studies demonstrate similar health concerns to BPA. Additionally, Washington state passed a policy in 2019 authorizing the state to regulate the entire class of bisphenols. Due to the prevalence of replacing one bisphenol compound with another and to avoid regrettable substitutes, we recommend that the entire class be included in the ban.

2. **Organohalogen Flame Retardants** - While not intentionally added in foodservice products, flame retardants, particularly brominated flame retardants, end up in plastic foodware as a result of the recycling of electronic housings and other products. Organohalogen Flame Retardants are no longer used in furniture due to their health and environmental impacts but are still used in electronics and other uses. The Consumer Product Safety Commission (CPSC) is currently pursuing regulatory action to ban organohalogen flame retardants in toys, furniture, mattresses and plastic casings of electronics. Adding a provision banning the inclusion of Organohalogen Flame Retardants would help stop the practice of recycling hazardous materials into packaging.

3. **Perchlorate**- Perchlorate is a component of rocket fuel and is now used as an anti-static agent for dry goods, including food packaging. Perchlorate disrupts the thyroid gland's normal function and reduces production of the thyroid hormone needed for healthy fetal and child brain development. Unfortunately, food contamination due to perchlorate is widespread; especially problematic is the increase of perchlorate levels in infant dry cereal. There are safer alternatives to this use of perchlorate. Carbon, for example, can be used to reduce static in dry-food packaging. Flushing packaging with carbon dioxide or nitrogen also removes static charge, thereby eliminating the need for chemical antistatic agents.

4. **Styrene** - Styrene has been identified by the World Health Organization and the Environmental Protection Agency as a probable carcinogen. Styrene is primarily used to produce plastics, particularly polystyrene products including expanded polystyrene cups, bowls and plates. Styrene can leach from these polystyrene containers into food and beverages, especially when the contents are hot. Because it is not readily biodegradable and disperses easily, expanded polystyrene has become a major contributor to plastic debris in the ocean where animals often mistake it for food. Expanded polystyrene products have been banned in Maine, Vermont, Maryland and more than 100 localities nationwide.

Adding these chemicals to the list of prohibited substances in packaging will not only ensure safer packaging for consumers, but also will limit environmental degradation while spurring innovation.

Additional criteria

In addition to naming chemicals, we strongly support the provisions that allow state authorities to add individual chemicals and classes of chemicals to the list of prohibited substances based on scientific evidence. This criteria-based approach encourages states to consider emerging contaminants and address them before they become a widespread problem. The criteria listed in the model are comprehensive. In addition, we recommend including immunotoxicity in the list of health endpoints. This is particularly relevant as we deal with a global pandemic. Scientists are sounding the alarm on chemicals that can impact the immune system which is particularly concerning as our nation tries to manage the Covid-19 crisis.

Thank you for considering our comments and your ongoing commitment to public health.

Sincerely,

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