



TO: The Honorable Liz Krueger, Chair
Members, Senate Standing Committee on Finance

FROM: American Coatings Association

DATE: May 20, 2025

RE: Senate Bill 1464 – An Act to Amend the Environmental Conservation Law, in Relation to Enacting the Packaging Reduction and Recycling Infrastructure Act

The American Coatings Association (ACA)¹ submits the following comments to the Senate Standing Committee on Finance regarding Senate Bill 1464, An Act to Amend the Environmental Conservation Law, in Relation to Enacting the Packaging Reduction and Recycling Infrastructure Act (S1464). ACA represents approximately 96% of the paint and coatings products manufactured in the United States (U.S.), including architectural, industrial, and specialty coatings.

The \$659 million paint and coatings industry in New York manufactures a wide variety of coatings products for consumers, businesses, and manufacturing establishments alike. With the exception of powder coatings, most paint and coatings products are in liquid form and utilize containers in a range of sizes. The sizes range from small containers of less than a liter or pint to large containers that hold several hundred gallons. These containers are typically either metal, plastic, or a hybrid of metal and plastic.

With the increasing number of packaging extended producer responsibility (EPR) laws across the country, ACA members will be required to evaluate the packaging being used for paint and coatings products to ensure compliance with these laws. Consequently, ACA has a significant interest in assisting our industry in compliance with any legal requirements.

ACA is concerned that the differing requirements from state to state will result in confusion for manufacturers as well as New York residents. Significant differences from state to state in regulatory programs are problematic and burdensome for the paint and coatings industry since manufacturers with a nationwide customer base will find developing any compliance plan(s) to be extremely challenging. The coatings industry routinely conducts interstate transactions where their products are shipped across state lines, thereby requiring companies to comply with various applicable federal and state laws.

ACA provides the following recommendations to S1464 to provide clarification and consistency with other existing packaging EPR laws in the U.S.

- 1. Amend the definition of ‘packaging material’ to clarify that packaging for products subject to a postconsumer paint program under N.Y. ENV’T CONSERV. LAW § 27-20 are not included as packaging material under S1464.**

Currently, S1464’s definition of the term ‘packaging material’ contains an exemption for “[a]rchitectural paint containers collected and managed pursuant to title twenty of [Article 27].” While ACA appreciates that this language recognizes that leftover paint and paint containers should be managed by an approved paint stewardship program, we are concerned that this language could be misconstrued to exempt only a portion of the containers sold. In New York’s PaintCare program,

¹ ACA is a voluntary, nonprofit 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.

leftover paint in their original containers is collected and managed responsibly. ACA and PaintCare's goal is to divert leftover paint from landfills and recycle as much as possible. Our goal with respect to paint containers is the same – to divert from landfills and recycle as much as possible. This is true for all the states with PaintCare programs.

PaintCare's program anticipates managing the end-of-life of these containers and consequently, the PaintCare assessment is designed to cover this cost. If these products are not clearly excluded from the definition of 'packaging material' in S1464, it will result in there being additional fees (fees in addition to the PaintCare assessment) imposed on these products. Thus, in order to avoid confusion, promote efficiency, and prevent double coverage of these containers by two different EPR systems and the imposition of an additional fee, ACA urges inclusion of the following language in S1464: "packaging for products subject to title twenty of this article."

2. Amend the citation for materials sold and/or supplied in connection with dangerous goods to refer to 49 C.F.R. § 178.

Currently, the definition for the term 'packaging material' in S1464 provides an exemption for "[p]lastic packaging containers used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under 40 C.F.R. 178" (emphasis added). ACA believes that this citation is an inadvertent error.² ACA appreciates recognition of the complexity of managing packaging designed for dangerous goods, and recommends that the citation be corrected to reference 49 C.F.R section 178.

3. Promote ease of compliance by industry by amending the definition of 'packaging material' to include additional exemptions commonly found in other states' packaging EPR laws.

Within other states' packaging EPR laws, there exists several other exemptions to the term 'packaging material.' These exemptions include but are not limited to the following:

- a) Packaging materials that are used for the long-term storage (e.g., 5+ years) and/or protection of a durable product;
- b) Packaging materials that are exclusive to the manufacturing or industrial process;
- c) Packaging materials that are used solely for business-to-business operations;
- d) Packaging materials that are sold and/or supplied in connection with products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) under 7 U.S.C. section 136 et. seq.;
- e) Packaging materials that are sold and/or supplied in connection with products that meet certain poison prevention requirements;
- f) Packaging materials that are sold and/or supplied in connection with hazardous or dangerous goods regulated by 49 C.F.R. section 178;
- g) Packaging materials that are sold and/or supplied in connection with hazardous or flammable goods regulated by 29 C.F.R. section 1910 (Occupational Safety and Health Standards (OSHA));
- h) Packaging materials that are sold and/or supplied in connection with products regulated by the Federal Food, Drug, and Cosmetic Act (FDCA) under 21 U.S.C. section 301 et. seq.;
- i) Packaging materials that are used to contain, among others, drugs that are used for animal medicines;
- j) Packaging materials that are used to contain infant formula, medical food, and/or necessary fortified oral nutritional supplements;
- k) Refillable containers of liquefied petroleum gas; and
- l) Other packaging materials identified by the relevant authority.

The paint and coatings industry operates from coast to coast in all directions. Harmonization of the requirements of the states' packaging EPR laws would greatly aid our member companies in developing compliance schemes. Currently, out of the foregoing exemptions, S1464 only provides for packaging materials that are (1) sold and/or supplied in connection with products regulated by the FDCA, FIFRA, and OSHA; (2) used to contain, among others, drugs that are used for animal medicines; and (3) used to contain infant formula and/or medical food. Consequently, ACA urges consideration and incorporation of the above-mentioned exemptions in order to provide some harmonization with packaging EPR laws

² The following states have enacted a packaging EPR law: (1) California, (2) Colorado, (3) Maine, (4) Maryland, (5) Minnesota, (6) Oregon, and (7) Washington. Within these states' laws, it is common for the term 'packaging material' to include an exemption for materials that are sold and/or supplied in connection with hazardous or dangerous goods regulated by 49 C.F.R. section 178. *See* CAL. PUB. RES. CODE § 42041(e)(2)(C).

adopted in other states.

4. Amend S1464's prohibition on certain toxic substances and materials so that the proposed chemical bans are limited to specific chemistries associated with contamination and/or health effects when used in packaging.

ACA is concerned that the proposed chemical bans in section 27-3425 of S1464 are overly broad. The bill unnecessarily bans chemicals that are critical to effective packaging, including those that are not associated with contamination and/or health effects when used in packaging (e.g., per- and polyfluoroalkyl substances (PFAS), formaldehyde, etc.).

PFAS, as a general category, includes non-toxic and non-bioaccumulative fluorinated chemistries. Broadly prohibiting PFAS in section 27-3425 of S1464 detracts from the identification of fluorinated chemicals that *are* associated with contamination and/or health effects when used in packaging while banning useful chemistries. If New York is referring to PFAS as substances with one or more fluorinated carbon atoms, such a definition is not aligned with the U.S. Environmental Protection Agency's definition of PFAS or the definition in some states.

Fluoropolymers are one example of a type of fluorinated chemistry that should be excluded from S1464's broad prohibition of PFAS. Fluoropolymers are considered to be "polymers of low concern," as they are chemically stable, non-toxic, non-bioavailable, non-water soluble, and non-mobile.³ Ultimately, due to the diversity of PFAS chemicals with varying hazardous characteristics, ACA recommends that New York restrict any product lifecycle requirements to discrete lists of specific PFAS chemicals that are associated with contamination and/or health effects when used in packaging.

S1464's ban on formaldehyde is also unnecessarily broad. Formaldehyde is commonly found in trace amounts in packaging materials as well as in protective coatings applied to packaging materials. These trace amounts are not associated with contamination and/or health effects. Moreover, identifying trace amounts of chemicals can also be problematic, as methods of detection will vary based on the relevant chemical and product.

Conclusion

Overall, ACA appreciates the opportunity to provide comments to the Senate Standing Committee on Finance on S1464, and we look forward to working cooperatively on this matter.

Respectfully submitted,



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³ Additional resources from the U.S. Department of Energy, the Washington Department of Ecology, and the Canadian Department of Environment and Health explain these conclusions. *See generally* Stephanie Jacobs & David S. Kosson, *Assessment of Fluoropolymer Production and Use with Analysis of Alternative Replacement Materials*, U.S. DEP'T OF ENERGY OFF. OF SCI. AND TECH. INFO. (Jan 1, 2024), <https://www.osti.gov/servlets/purl/2370520>; Wash. State Dep't of Ecology, *Per- and Polyfluoroalkyl Substances Chemical Action Plan*, WASH. STATE DEP'T OF ECOLOGY 97, <https://apps.ecology.wa.gov/publications/documents/2104048.pdf> (last revised Sept. 2022); *Canada gazette, Part I, Volume 158, Number 28: GOVERNMENT NOTICES*, GOV'T OF CANADA (July 13, 2024), <https://www.gazette.gc.ca/rp-pr/p1/2024/2024-07-13/html/notice-avis-eng.html#ne3>.