

**Testimony to the Minnesota Senate
Environment, Climate, and Legacy Committee
SF 3561 - Packaging Waste and Cost Reduction Act**

April 10, 2024

Dear Chair Hawj and Environment, Climate and Legacy Committee Members:

We appreciate that the Minnesota Senate and House of Representatives are considering ways to reduce plastic pollution caused by excessive and toxic plastic packaging. The introduction of SF 3561/HF 3577, the Packaging Waste and Cost Reduction Act, was a promising step towards addressing these issues. We are concerned, however, that certain provisions of this proposal, particularly recent amendments made in the Senate version, may actually increase our reliance on single use plastic packaging and will not bring about the changes to packaging that are needed in order to protect public health and the environment. While our organizations support many of the features of this bill, we are unable to support it overall because of the following critical issues:

1. **The definition of “recycling” may not prevent chemical recycling from being used to meet recycling targets. {Sec 2 Subdivision 26}**

Chemical recycling is an industry marketing term for a set of polluting technologies that mostly turn plastic waste into fuels. It is a dangerous deception by the petrochemical industry that seeks to distract from the need to reduce plastic production.

Beyond Plastics and the International Pollutants Elimination Network published a report on October 31, 2023 documenting the dangers of chemical recycling, how a buildout threatens environmental justice communities, and how the failures of this industry will continue to prevent it from living up to the big promises made by the petrochemical industry. For more information and to view the report, please visit BeyondPlastics.org/publications/chemical-recycling.

The bill relies on the definition of “recycling” that is currently in Minnesota regulation.

Subd. 25b.**Recycling.** "Recycling" means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

This definition is problematic because it is unclear whether “in a manner that precludes further use” means that turning plastic waste into fuel would be a permissible recycling outcome. Even if the Minnesota Pollution Control Agency does not consider waste-to-fuel recycling, companies will argue that chemical recycling can be used to turn plastic waste into feedstocks for new plastic.

However, there are no plastic-to-plastic chemical recycling facilities currently operating in the entire United States; all currently operating facilities are making a mix of products that include gasses, oils, waxes, and toxic ash. Some small portion of the oil they produce may become feedstock for new plastic, but only in small proportions to the virgin fossil feedstocks that need to be added to the process. In other words, any plastic waste that is processed at a chemical recycling facility is, at least in part, becoming fuel and chemical recycling of plastics will never lead to full circularity of plastics because of the amount of virgin feedstock that must be added to the oils created from chemical recycling. The only way to guarantee that plastic is being recycled into plastic is to ensure only mechanical recycling methods are used.

While we understand the desire to maintain one definition of recycling across all of the laws in the state, we believe that this definition is particularly problematic in the context of establishing a new extended producer responsibility program for packaging, since the final stages of recycling will, for the most part, happen outside of Minnesota and tighter controls in the legislation are warranted. If your bill becomes law, the mandatory recycling rates contained in the bill (which our organizations support) will need to be met by producers of packaging materials. The recycling standards established in your bill can easily be gamed by chemical recycling companies that may claim to guarantee that waste from Minnesota has not gone on to become fuel.

If companies have the option of utilizing chemical recycling, they will likely choose that option over redesigning their packaging when faced with how to manage hard-to-recycle materials. That would be a big loss for Minnesota's residents and will also lead to harm in communities where chemical recycling facilities exist, and where toxic ash is disposed of. For these reasons we request that you amend the language in your bill to ensure that the door is closed to chemical recycling. For example (new language in caps and underlined) :

Subd. 26. **Recycling.** "Recycling" has the meaning given in section 115A.03 except that FOR THE PURPOSES OF THIS ACT recycling does not include reuse or composting, as defined in this act NOR DOES IT INCLUDE (A) ENERGY RECOVERY, ENERGY GENERATION, OR FUEL PRODUCTION BY ANY MEANS, INCLUDING BUT NOT LIMITED TO, COMBUSTION, INCINERATION, PYROLYSIS, GASIFICATION, SOLVOLYSIS, OR WASTE-TO-FUEL; (B) ANY CHEMICAL CONVERSION PROCESS; OR (C) LANDFILL DISPOSAL.

- 2. Allowing for materials to be sold into the state if they are covered by an "alternative collection system" will allow for materials that are not actually recyclable to remain in circulation. {Sec. 9 [115A.1448] PRODUCER RESPONSIBILITIES, Subd. 1 (3)}**

One of the chief goals of the bill is to ensure that all packaging materials sold or distributed into the state are truly recyclable or compostable. This will make recycling

easier for people and increase the chances that materials will actually get recycled. The bill sets up a process for the Minnesota Pollution Control Agency to decide what materials qualify for the “recyclables and compostables list”. Any material that does not meet the criteria for this list should not be allowed to be sold or distributed into the state, even if there is an alternative collection system. Alternative collection systems often do not lead to true recycling. Recent exposés have uncovered how these systems often lead to materials sitting idle in warehouses, being illegally dumped, or being disposed of in incinerators or landfills.^{1 2} By allowing materials to be sold into the state if an alternative collection system exists, companies will be able to keep materials on the market that are not actually recyclable.

3. **A recent amendment to the senate version would allow for producer fees to cover costs for covered material not on the “Recyclable and Compostable” list that are “otherwise diverted from disposal”. This is problematic because it could be read as covering the cost of using it for fuel or energy.**

Turning waste into fuel or using it for energy should not be a cost that can be recovered through producer fees. Doing so runs antithetical to the intent of the legislation, which is to reduce packaging and manage what we do use in a more sustainable way. Turning plastic waste into fuel is problematic for a number of reasons: (a) it does not displace virgin plastic production and keeps us addicted to single-use plastic production from fossil fuels; (b) it does nothing to reduce pollution from plastic production, which continues to poison communities where plastic manufacturing exists; (c) it is an energy intensive and polluting process that creates hazardous waste, air emissions, including greenhouse gas emissions; and (d) fuels derived from plastics are dangerous because plastic contains many hazardous additives or polymers, recently estimated at more than 3,200 hazardous chemicals (UNEP 2023) that end up in the final product.

Minnesota must pass a law that requires producers to design packaging for recyclability, take responsibility for educating the public about how to properly recycle their products, and invest in the logistics and infrastructure to create robust recycling systems. Allowing producer fees to cover the cost of non-recyclable material to be burned for energy or turned into fuel amounts to a subsidy for incinerators and waste-to-fuel facilities, and should be removed from the bill.

4. **A recent amendment to the senate version removes the binding reduction, reuse, and recycling rates and dates. This is problematic because robust rates and dates are what drive system performance and will create a program that helps Minnesota meet its goals.**

¹ “A Plastic Bag’s 2,000 Mile Journey Shows the Messy Truth About Recycling”, by Kit Chellel and Wojciech Moskwa, Bloomberg News, March 29, 2022

² “We Put Dozens of Trackers in Plastic Bags for Recycling. Many Were Trashed” by Matt Gutman, Evan Simon, Cho Park, Tonya Simpson, Jared Kofsky, Jon Schlosberg, Tommy Brooksbank, Seiji Yamashita, and Soo Rin Kim. ABC News, May 23, 2023

Evidence from similar programs around the world shows that specific rates and dates in the enabling legislation are necessary to drive system performance. Without them, companies will not reduce and redesign packaging in ways that make a measurable dent in reducing plastic pollution. The targets in the original legislation were reasonable and gave companies enough time to make the changes necessary to comply. Removing them will result in a program that will not make the progress that we need to meet the challenges of plastic pollution. We urge you to put these targets back in the bill and do not allow them to be lowered.

5. **A recent amendment to the senate version gives producers until 2040 to make packaging changes based on broad “market or technical issues”, which is a loophole that will prevent progress on our plastic packaging and waste crisis for another 16 years.**

This new amendment allows the producer responsibility organization to petition the commissioner for a two-year extension on the requirements of paragraph (c) if market or technical issues prevent a covered material from being considered recyclable, reusable, or compostable as included in the lists established under section 115A.1453. This extension may be renewed in annual increments until January 1, 2040, if market or technical issues persist."

Given the severity of our waste plastic pollution crisis, we cannot wait 16 years for companies to make progress on reducing and redesigning their packaging. The original timeframes in the bill were more than sufficient. To put this timeframe into a larger context: Amazon managed to completely revolutionize national and global delivery logistics in about a decade, proving that it **is** feasible for packaging producers to effect shipping and delivery changes with broad environmental and public health implications within the bill's original timeframes.

6. **A recent amendment to the senate version has removed commercial waste, which is problematic because commercial waste makes up such a large proportion of the municipal solid waste stream.**

Commercial waste makes up somewhere between 38 and 59 percent of the municipal solid waste stream and should also be managed through a producer responsibility system. Commercial waste will be processed through the same recycling systems that need investment, therefore the producers of packaging waste in the commercial sector should pay into the PRO to support those recycling systems.

Until changes are made to the legislation that address these critical concerns, we are unable to support this proposal. It will not be a net benefit to Minnesota to set up a new system of extended producer responsibility for packaging and paper unless these major flaws with the legislation are fixed. If you have any questions, please contact one of our organizations.

Sincerely,

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