

February 23, 2023

*via* electronic transmission

Judith Andrejko, Esq.  
Regulatory Officer  
Assistant Commissioner's Office, Contaminated Site Remediation & Redevelopment Program  
New Jersey Department of Environmental Protection  
401 East State St  
Trenton, NJ 08625

Subject: HCPA Comments on P.L. 2021, c. 391 – Recycled Content Calculations and Compliance Certifications

Dear Ms. Andrejko,

The Household & Commercial Products Association (HCPA)<sup>1</sup> appreciates the opportunity to provide comments to the New Jersey Department of Environmental Protection (NJDEP) Rulemaking Team for P.L. 2021, c. 391, also known as New Jersey's Recycled Content Law, on the rulemaking process for this law. HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA and its members are committed to advancing a circular economy. Many of our member companies have ambitious goals related to use of recycled content in their products that are equivalent to or go beyond the targets in New Jersey's Recycled Content Law. We support policies and regulation based on sound science that increase the recovery of material from waste articles and the use of that recycled material in new products.

Our comments below focus on postconsumer recycled (PCR) content calculations and compliance certifications to respond to the questions raised by NJDEP in the Department's most recent stakeholder meeting and to highlight ways NJDEP can increase efficiency and consistency and lower costs to stakeholders and NJDEP. HCPA encourages NJDEP to allow for utilization of the mass balance method and material from advanced recycling when calculating PCR content and supports NJDEP's allowance of use of national portfolio data to determine compliance. Additionally, HCPA recommends that NJDEP give manufacturers, as defined in New Jersey's Recycled Content Law, the option to self-certify compliance and/or submit an independent third-

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<sup>1</sup> The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

party certification. Finally, HCPA recommends that NJDEP coordinate closely with Washington's Department of Ecology, which is currently working through its own rulemaking process for Washington's recycled content law, and align provisions to the extent possible.

### **Calculation Methodology for Postconsumer Recycled Content in Covered Products**

HCPA recommends that NJDEP allow for a mass balance chain-of-custody method for measurement and reporting of recycled content, as well as suggests that NJDEP require utilization of a third-party certification system for PCR content reported through this methodology. While physical traceability of recycled material in the supply chain is important to ensure that targets are being met, requirements for traceability should not be so restrictive as to significantly limit the validated methods that recycling companies can use to build up the supply of recycled material. Once recycled feedstock enters world-scale systems, it can be difficult and impractical to physically segregate and track the source of the materials, potentially requiring duplicative infrastructure to do so. The mass balance method is widely used today and can be utilized to allocate recycled content to products that use material recovered through mechanical recycling methods as well as products made using chemical compounds recovered through advanced recycling methods (see next paragraph for further discussion of advanced recycling). There are nationally and internationally recognized third-party certification bodies that can track and attribute recycled feedstocks using the mass balance approach to support companies in making credible claims.<sup>2</sup> Requiring use of an established certification system to report PCR content through mass balance attribution would build confidence and trust in the reported performance while allowing companies the flexibility to adopt different technologies to achieve New Jersey's goals of increased recycled content in the supply chain and used in products.

HCPA notes for the Department's consideration that advanced recycling technologies that produce high-purity chemicals from what would otherwise be waste plastic are critically important to meeting the PCR content requirements in the NJ law and are a necessary part of the transition to a more circular economy. Advanced recycling is material-to-material recycling, *not* incineration and *not* waste-to-energy. Advanced recycling takes place in the absence of oxygen, meaning it does not involve combustion and cannot be considered incineration (which is the reaction between a fuel and oxygen). Turning waste into fuel is not considered recycling and HCPA believes such technologies should not be included in a definition of advanced recycling. A wide variety of stakeholders recognize the value of material-to-material advanced recycling. The state of Washington has included advanced recycling in the definition of PCR content in its draft rule for PCR content in plastic containers developed to implement Washington's recycled content law<sup>3</sup>; the German coalition government has expressed support for broad recognition of advanced recycling as a key tool for significantly increasing recycling<sup>4</sup>; the National Institute of Standards and Technology (NIST) has recommended that processes and frameworks should

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<sup>2</sup> For example, ISCC PLUS, Intertek, UL, SCS Global, and the Recycled Material Standard developed by nonprofit GreenBlue.

<sup>3</sup> Final draft version shared with stakeholders on October 10, 2022.

<sup>4</sup> <https://www.c-eco.com/news/new-coalition-agreement-for-more-ce/>

promote the successful expansion of collection, capacity, and markets for both mechanically and chemically recycled polymers<sup>5</sup>; and the EPA has included advanced recycling in the scope of the agency's National Recycling Strategy<sup>6</sup>. For the household and commercial products industry, along with other industries, to be in compliance with NJ and other state PCR content requirements, material-to-material advanced recycling technologies must be recognized as complementary to mechanical recycling technologies.

HCPA recommends that NJDEP include language that specifically allows for both advanced recycling and mechanical recycling to be sources of PCR content. As long as a technology leads to the production of good quality recycled resin that can be used effectively and efficiently in place of virgin resin, HCPA does not believe it should be completely excluded. HCPA is supportive of including language to limit the circumstances under which advanced recycling may be considered a source of PCR content to ensure only advanced recycling processes that meaningfully contribute to the desired circular outcome are recognized – for example, a third-party certification requirement. There are established third-party certifications for attributing recycled content from advanced recycling technologies following a mass balance approach, as mentioned above.

Lastly, in line with the requirements of New Jersey's Recycled Content Law, HCPA supports NJDEP allowing for manufacturers to use national portfolio data to calculate the average amount of recycled content contained in their products. Companies will likely not have visibility or oversight into all locations where their products are sold, particularly when selling through distributors and/or retailers whose needs may cross state lines.

### **Postconsumer Recycled Content Compliance Certification Report Requirements**

HCPA notes for the Department's consideration that third-party certification of PCR content is standard practice for material recyclers and processors of recycled material, but not typically done at the end product/brand level. Certification at the brand level would be duplicative of work done by material suppliers and packaging manufacturers earlier in the supply chain. HCPA recommends that NJDEP allow for manufacturers as defined in New Jersey's Recycled Content Law (which includes brand owners) to certify compliance by submitting one or both of an independent third-party certification and self-certification. Manufacturers would be relying on the third-party certification of their suppliers to develop the self-certification, so allowing for self-certification would not mean lessening the role of third-party evaluation in the recycled content supply chain, but rather avoiding duplicative payment of third parties and additional burdensome reporting requirements.

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<sup>5</sup> <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1500-206.pdf>

<sup>6</sup> <https://www.epa.gov/system/files/documents/2021-11/final-national-recycling-strategy.pdf>

## Conclusion

HCPA appreciates the opportunity to comment on the rulemaking process for New Jersey's Recycled Content Law and participate in related stakeholder meeting. As discussed above, HCPA encourages NJDEP to allow for mass balance attribution, consideration of material from advanced recycling, and the option to self-certify compliance and/or submit an independent third-party certification. HCPA also supports NJDEP's allowance of the use of national portfolio data to determine compliance. Finally, HCPA encourages NJDEP to continue to engage in stakeholder outreach, including to other states with PCR content requirements, and harmonize provisions where it makes sense to support efficient achievement of New Jersey's recycled content goals. HCPA looks forward to continuing to work collaboratively with NJDEP during the rulemaking process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Molly R. Blessing'.

Molly R. Blessing  
Director, Sustainability