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## MEMORANDUM-IN-OPPOSITION

**S.4246-B (Harckham)**

**A.5322-B (Glick)**

**AN ACT** to amend the environmental conservation law, in relation to enacting the packaging reduction and recycling infrastructure act

The bill would establish the New York Packaging Reduction and Recycling Infrastructure Act (more widely known as the Extended Producer Responsibility (EPR) Act), which would require companies with net income over \$5 million per annum that sell or distribute certain materials and products, to reduce packaging, improve recycling and recycling infrastructure, financially support municipal recycling and disposal, and ban certain chemistries in packaging including the pigment carbon black.

The **Print & Graphic Communications Association (PGCA)**, the regional trade association representing many of the printers and graphic communications firms in New York, New Jersey, Pennsylvania and Delaware, **STRONGLY OPPOSES S.4246-B / A.5322-B** on behalf of its member companies.

Carbon Black is the primary pigment in black printing ink, for which there is no commercially viable substitute. Additionally, black ink is used in 4 Color Process printing, as one of the four primary colors of pigment in CMYK printing (Cyan (blue), Magenta (red), Yellow and Black) which can reproduce a wide spectrum of colors by utilizing various dot patterns and densities. The amount of printing produced utilizing the CYMK process is vast, as it is the standard color model used in offset and digital printing. No black ink, no more CYMK process printing!

The label and packaging manufacturers located in New York employ more than 8,000 people, working at approximately 260 printing and packaging firms, with a combined annual payroll exceeding \$400 million. The annual value of labels and packaging produced in the State is approximately \$2.8 billion.

As such, banning the use of carbon black in printing inks would have a devastating impact on the label and packaging industry in New York State and would place every one of its 8,000 jobs in jeopardy. Moreover, the jobs in question are highly skilled, well-paying union and non-union manufacturing jobs that carry retirement and health benefits, enabling workers to pay home mortgages, purchase goods and services, and put their children through college, while contributing greatly to the State and local tax base.

Inexplicably, one of the provisions in S.4246-B / A.5322-B lists carbon black as a “toxic substance” that must be excluded from packaging by rulemaking of the Department of Environmental Conservation (DEC) within 2-years of the bill’s enactment into law. No scientific reason therefor is cited in the bill or in the Sponsor’s Introductory Memorandum-in-Support of the bill, except for the cursory phrase “... and reduce toxins in packaging” in the Justification. This is simply unacceptable and should be against public policy.

Moreover, none of the four U.S. States that have passed EPR laws (e.g., California, Colorado, Maine & Oregon) or any of the five Canadian Provinces (e.g., British Columbia, Manitoba, Ontario, Quebec, & Saskatchewan) with EPR laws have banned or restricted the use of carbon black as a pigment.

Perceived toxicity of carbon black – In powdered form, carbon black has raised concerns related to its potential toxicity as an inhalable particulate.

While the International Agency for Research on Cancer (IARC) has classified carbon black as a Group 2B carcinogen that is “possibly carcinogenic to humans,” based upon species-specific, rat lung animal studies, mortality studies of manufacturing workers do not show an association between carbon black exposure and elevated lung cancer rates. Other research and regulatory organizations have opined on carbon black as well: the National Toxicology Program (NTP) has not listed carbon black as a carcinogen, and the American Conference of Governmental Industrial Hygienists (ACGIH) classifies carbon black as A4, “Not Classifiable as a Human Carcinogen.”

Furthermore, carbon black is not present in powdered form when it is incorporated into ink or as a colorant for labels and packaging. This important distinction was recognized by the U.S. Occupational Safety and Health Administration (OSHA), as result of a question posed by the National Association of Printing Ink Manufacturers (NAPIM), with OSHA definitively stating:

*“The Hazard Communication Standard requires that, when mixtures have been tested as a whole, the results of such testing shall be used to determine whether the mixture is hazardous. Furthermore, in the case of printing inks, the carbon black is not present in such a form so as to present an exposure problem for employees.”*

OSHA’s response above shows that carbon black encapsulated in printing inks does not have the same health concerns that carbon black powder may present. Moreover, carbon black is not a chemical respiratory irritant as defined by OSHA and does not produce respiratory or dermal sensitization.

This distinction was also noted in connection with California’s Proposition 65 law, which requires businesses to provide warnings to the public about significant exposures to reproductive toxicants and carcinogens. Proposition 65 is administered by the California Office of Environmental Health Hazard Assessment (OEHHA), which is an independent state agency with several responsibilities, including monitoring the scientific literature, publications of research organizations, governmental entities and academia, and other information sources to maintain and update its list of chemicals known to the State of California to cause cancer or reproductive toxicity. The Proposition 65 “Notice of Listing” addressing carbon black was released on February 21, 2003, and it specifically states:

*“The listing only pertains to airborne, unbound carbon black particles of respirable size” and “Exposure to carbon black does not occur, per se, when bound within a product matrix, such as rubber, ink or paint.”*

Since there have not been any revisions to OEHHA’s position about carbon black, scientific evidence again supports the position that carbon black does not pose a threat to human health and the environment when incorporated into printing inks.

Black plastics interference in the mechanical recycling process – Black plastics have been difficult to detect utilizing the current technology in mechanical optical sorters. Recent technological advances have made it possible to sort black plastics utilizing various processes, including hyper spectral imaging, artificial intelligence, and laser line scanning to identify and separate black plastics. As these technologies come online and facilitate the sorting of black plastics, the contemplated ban of carbon black would remove a valuable component from the recycling waste stream.

Concerns about ink “bleeding” due to exposure to liquids - Printing companies have new formulations and processes to avoid this problem. These include “washable inks,” primers, coatings, and varnishes – all designed to address the ink “bleeding” issue.

Federal environmental designations concerning carbon black:

Carbon black is not a hazardous substance under the federal Clean Water Act;

Carbon black is not a hazardous air pollutant under the federal Clean Air Act;

Carbon black is not a hazardous waste under the federal Resource Conservation and Recovery Act (RCRA);

Carbon black is not a hazardous substance under the federal Comprehensive Environmental Response Act, (CERCLA) (federal Superfund Act);

Carbon black is not an extremely hazardous substance under the federal Superfund Amendments and Reauthorization Act (SARA) and is not subject to SARA toxic chemical release reporting;

Carbon black is on the chemical hazard information profile (CHIP) list under the federal Toxic Substances Control Act, as a chemical in commerce;

Carbon black is not classified as a hazardous material for transportation purposes by the U.S. Department of Transportation (DOT).

In sum, banning carbon black as a toxic substance under S.4246-B / A.5322-B, without any qualifying statements regarding its form, is not appropriate or accurate. Independent federal and state government agencies, utilizing scientific data, have studied the toxicity issue and have concluded that there is no threat to human health or the environment due to the presence of carbon black used to color printing inks. Furthermore, changes in recycling separation technologies and printing formulations are solving the problems associated with black plastics sorting and ink “bleeding.” And since carbon black is not soluble in water, it will not leach or release any constituents to groundwater when properly disposed of in a permitted solid waste management facility.

Since the use of black printing ink containing carbon black is ubiquitous within the packaging and label manufacturing industry, and since there is no commercially viable alternative to carbon black as a pigment in printing inks, banning the use of black or colored inks to either print directly on a package or on a label affixed to a package or container will pose significant, deleterious consequences to New York's printing industry and the thousands of union and non-union jobs it provides to workers. Such a ban would also directly increase costs to New York State consumers and could make certain products unavailable within the State.

On behalf of its member companies and their employees, the **Printing and Graphic Communications Association (PGCA)** is **STRONGLY OPPOSED** to the banning of carbon black in **S.4246-B (Harckham) / A.5322-B (Glick)** as currently written for the reasons cited herein. However, PGCA pledges to work with the Legislature and Executive Branch on amendments for an equitable solution.

Respectfully submitted,

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