

13:1E-99.11

LEGISLATIVE HISTORY CHECKLIST  
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(Toxic Packaging Reduction Act)

NJSA: 13:1E-99.11

LAWS OF: 1991 CHAPTER: 520

BILL NO: S2261

SPONSOR(S): Contillo and others

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COMMITTEE: ASSEMBLY: \_\_\_\_\_  
SENATE: Land Use Management

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SENATE: November 19, 1991

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

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FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Model act--attached

KBG:pp

[THIRD REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 2261**

**STATE OF NEW JERSEY**

ADOPTED SEPTEMBER 24, 1990

Sponsored by Senators CONTILLO, McNAMARA,  
ORECHIO and BUBBA

1 AN ACT concerning the reduction in the use of certain toxic  
2 substances in packaging, and supplementing P.L.1970, c.39  
3 (C.13:1E-1 et seq.).  
4

5 BE IT ENACTED *by the Senate and General Assembly of the*  
6 *State of New Jersey:*

7 1. This act shall be known and may be cited as the "Toxic  
8 Packaging Reduction Act."

9 2. The Legislature finds that discarded packaging constitutes  
10 the largest single category of solid waste within New Jersey's  
11 waste stream and is, therefore, a necessary focus of any effort to  
12 reduce the flow of solid waste to costly disposal facilities; that  
13 the presence of heavy metals in packaging is a matter of great  
14 concern in light of their likely presence in emissions or ash when  
15 packaging is incinerated at a resource recovery facility, or in  
16 leachate when packaging is landfilled; that lead, mercury,  
17 cadmium and hexavalent chromium, on the basis of available  
18 scientific and medical evidence, are of particular concern; that it  
19 is desirable as a first step in reducing the toxicity of packaging  
20 waste to eliminate the addition of these heavy metals to  
21 packaging; and that because New Jersey is faced with a very  
22 restricted range of disposal alternatives, the reduction at the  
23 source of toxic packaging materials can make a significant  
24 contribution to the reduction of the State's overall solid waste  
25 stream.

26 The Legislature further finds and declares that a statewide  
27 solid waste reduction strategy must begin with fundamental  
28 changes in manufacturing practices and packaging processes; and  
29 that the most effective and appropriate method to promote  
30 reduction is to prohibit the distribution or sale of toxic packaging  
31 in this State.

32 The Legislature therefore determines that it is in the public  
33 interest to achieve this reduction in toxicity without impeding or  
34 discouraging the expanded use of post-consumer waste materials  
35 in the production of packaging and its components.

36 3. As used in this act:

37 "Commissioner" means the Commissioner of Environmental  
38 Protection <sup>3</sup>and Energy<sup>3</sup>;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AWM committee amendments adopted January 8, 1991.

<sup>2</sup> Assembly floor amendments adopted July 15, 1991.

<sup>3</sup> Assembly floor amendments adopted December 2, 1991.

1 "Department" means the Department of Environmental  
2 Protection <sup>3</sup>and Energy<sup>3</sup>;

3 "Distributor" means any person who distributes packaged  
4 products intended for retail sale in packages or packaging  
5 components;

6 "Package" means a container specifically manufactured for the  
7 purposes of marketing, protecting or handling a product and shall  
8 include a unit package, an intermediate package and a shipping  
9 container as defined by the American Society for Testing and  
10 Materials in ASTM D996; "package" shall also mean and include  
11 such unsealed receptacles as carrying cases, crates, cups, pails,  
12 rigid foil and other trays, wrappers and wrapping films, bags and  
13 tubs;

14 "Package manufacturer" means any person who manufactures  
15 packages or packaging components;

16 "Packaging component" means any individual assembled part of  
17 a package including, but not limited to, any interior or exterior  
18 blocking, bracing, cushioning, weatherproofing, exterior  
19 strapping, coating, closure, ink, label, dye, pigment, adhesive,  
20 stabilizer or any other additive;<sup>1</sup>except that a "coating" shall not  
21 include a thin tin layer applied to base steel or sheet steel during  
22 manufacturing <sup>2</sup>of the steel or package<sup>2</sup>; <sup>1</sup>

23 "Product manufacturer" means any person who purchases  
24 packages or packaging components from a package manufacturer  
25 for the purposes of marketing, protecting or handling the  
26 contents of the package or packaging component, including a  
27 product intended for retail sale;

28 "Retailer" means any person who engages in the sale within the  
29 State of packaged products intended for retail sale in packages or  
30 packaging components to a consumer at retail for off-premises  
31 use or consumption.

32 4. a. On or after <sup>3</sup>[July 1, 1992] January 1, 1993<sup>3</sup>, no person  
33 shall sell, offer for sale, or offer for promotional purposes in this  
34 State any package or packaging component which includes, in the  
35 package itself or in any packaging component, inks, dyes,  
36 pigments, adhesives, stabilizers or any other additives containing  
37 any lead, cadmium, mercury or hexavalent chromium which has  
38 been intentionally introduced as a chemical element during  
39 manufacturing or distribution as opposed to the incidental  
40 presence of any of these elements.

41 b. On or after <sup>3</sup>[July 1, 1992] January 1, 1993<sup>3</sup>, no person shall  
42 sell, offer for sale, or offer for promotional purposes in this State  
43 any product contained in a package which includes, in the  
44 package itself or in any packaging component, inks, dyes,  
45 pigments, adhesives, stabilizers or any other additives containing  
46 any lead, cadmium, mercury or hexavalent chromium which has  
47 been intentionally introduced as a chemical element during  
48 manufacturing or distribution as opposed to the incidental  
49 presence of any of these elements.

1 c. The sum of the concentration levels of lead, cadmium,  
2 mercury or hexavalent chromium present in any package or  
3 packaging component, which shall constitute an incidental  
4 presence, shall not exceed the following levels:

5 (1) Not more than 600 parts per million by weight (0.06%)  
6 after <sup>3</sup>[July 1, 1992] January 1, 1993<sup>3</sup>;

7 (2) Not more than 250 parts per million by weight (0.025%)  
8 after <sup>3</sup>[July 1, 1993] January 1, 1994<sup>3</sup>;

9 (3) Not more than 100 parts per million by weight (0.01%)  
10 after <sup>3</sup>[July 1, 1994] January 1, 1995<sup>3</sup>.

11 5. a. Any package manufacturer, product manufacturer or  
12 distributor may, in accordance with rules or regulations adopted  
13 by the department pursuant to the "Administrative Procedure  
14 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), claim an exemption  
15 from the provisions of section 4 of this act for any package or  
16 packaging component meeting any of the following criteria:

17 (1) Those packages or packaging components labeled with a  
18 code indicating a date of manufacture prior to <sup>3</sup>[July 1, 1992]  
19 January 1, 1993<sup>3</sup>; <sup>2</sup>except that the labeling requirement may be  
20 waived by the department in those instances where it is not  
21 feasible or practical to label individual packages or packaging  
22 components provided that suitable alternative evidence of date of  
23 manufacture is furnished to the department;<sup>2</sup>

24 (2) Those packages or packaging components used to contain  
25 alcoholic beverages, including liquor, wine, vermouth and  
26 sparkling wine, bottled prior to <sup>3</sup>[July 1, 1992] January 1, 1993<sup>3</sup>;

27 (3) Those packages or packaging components which are glass  
28 containers with ceramic labeling used to contain pharmaceutical  
29 preparations; except that the exemption provided in this  
30 paragraph shall expire on <sup>3</sup>[July 1, 1994] January 1, 1995<sup>3</sup>;

31 (4) Those packages or packaging components which are glass  
32 containers with ceramic labeling used to contain cosmetics;  
33 except that the exemption provided in this paragraph shall expire  
34 on <sup>3</sup>[July 1, 1994] January 1, 1995<sup>3</sup>;

35 (5) Those packages or packaging components to which lead,  
36 cadmium, mercury or hexavalent chromium have been added in  
37 the manufacturing, forming, printing or distribution process in  
38 order to comply with health or safety requirements of federal law;

39 (6) Those packages or packaging components to which lead,  
40 cadmium, mercury or hexavalent chromium have been added in  
41 the manufacturing, forming, printing or distribution process and  
42 for the use of which there is no feasible or practical alternative  
43 or substitute; except that the exemption provided in this  
44 paragraph shall expire on <sup>3</sup>[July 1, 1994] January 1, 1995<sup>3</sup>;

45 (7) Those packages or packaging components that would not  
46 exceed the maximum contaminant levels set forth in subsection  
47 c. of section 4 of this act but for the addition of post-consumer  
48 waste materials; except that the exemption provided in this  
49 paragraph shall expire on <sup>3</sup>[July 1, 1996] January 1, 1997<sup>3</sup>;

1 (8) Those packages or packaging components composed of  
2 metal and commonly referred to as "tin cans" that are used to  
3 contain food or food products intended for human consumption  
4 and that may exceed the maximum contaminant levels set forth  
5 in subsection c. of section 4 of this act due to the incidental  
6 presence of lead as a naturally occurring chemical element in the  
7 metal that is unrelated to the manufacturing process<sup>2</sup>; or

8 (9) Those packages or packaging components composed of  
9 metal and commonly referred to as "tin cans" that are used to  
10 contain paint, chemicals or other nonfood products<sup>1</sup>, to which  
11 lead has been added in the manufacturing process for the  
12 purposes of forming, soldering or sealing the can<sup>1 2</sup>, to which  
13 lead has been added in the manufacturing process for the  
14 purposes of forming, soldering or sealing the can, or that may  
15 exceed the maximum contaminant levels set forth in subsection  
16 c. of section 4 of this act due to the incidental presence of lead  
17 as a naturally occurring chemical element in the metal that is  
18 unrelated to the manufacturing process<sup>2</sup>.

19 The exemption provided in paragraph (6) may be renewed by  
20 the department for periods not to exceed two years, except that  
21 any renewal granted by the department for the exemption  
22 provided in paragraph (6) shall be based on evidence furnished to  
23 the department that there is no feasible or practical alternative  
24 or substitute for the specified package or packaging component.

25 The exemptions provided in paragraphs (8) and (9) shall expire  
26 on <sup>3</sup>[July 1, 1996] January 1, 1997<sup>3</sup>, except that any <sup>2</sup>[package or  
27 packaging component eligible for the]<sup>2</sup> exemption provided in  
28 paragraphs (8) or (9) may be <sup>2</sup>[sold] renewed by the department<sup>2</sup>  
29 after this date <sup>2</sup>[provided that the package or packaging  
30 component is labeled with a code indicating a date of  
31 manufacture prior to July 1, 1996] for periods not to exceed two  
32 years. Any renewal granted by the department for the exemption  
33 provided in paragraphs (8) or (9) shall be based on evidence  
34 furnished to the department that there is no feasible method to  
35 reduce the concentration levels of lead for the specified package  
36 or packaging component<sup>2</sup>.

37 For the purposes of this subsection, a use for which there is "no  
38 feasible or practical alternative or substitute" means one in  
39 which the use of lead, cadmium, mercury or hexavalent chromium  
40 is essential to the protection, safe handling, or function of the  
41 contents of the package.

42 b. Any package manufacturer, product manufacturer or  
43 distributor claiming an exemption pursuant to subsection a. of  
44 this section shall maintain on file a written declaration of  
45 exemption for each specified package or packaging component  
46 for which an exemption is claimed. Copies of each declaration of  
47 exemption shall be furnished to the department upon its request  
48 and to members of the public in accordance with the provisions of  
49 section 14 of this act.

1        <sup>2</sup>c. Any product contained in a package or packaging  
2 component for which an exemption is claimed may be sold by a  
3 retailer provided that the declaration of exemption claimed is  
4 valid and in accordance with the criteria provided in subsection a.  
5 of this section, as may be verified by the department pursuant to  
6 section 9 of this act.<sup>2</sup>

7        6. a. Any person claiming an exemption pursuant to subsection  
8 a. of section 5 of this act shall maintain on file, and shall  
9 transmit, in writing, to the department upon its request, the  
10 following information:

11        (1) A statement setting forth the specific basis upon which the  
12 exemption is claimed;

13        (2) The full name, business address, telephone number and  
14 signature of the person claiming the exemption; and

15        (3) The full name, business address and telephone number of  
16 the authorized local representative of the person claiming the  
17 exemption.

18        b. The information required pursuant to this section shall be  
19 furnished to the department for each specified package or  
20 packaging component requested by the department.

21        7. a. The department may, in accordance with a fee schedule  
22 adopted as a rule or regulation pursuant to the provisions of the  
23 "Administrative Procedure Act," establish and charge fees for  
24 any of the services to be performed or rendered in connection  
25 with this act, and for the costs of compliance monitoring and  
26 administration.

27        b. The fee schedule shall reasonably reflect the duration or  
28 complexity of the specific service performed or rendered,  
29 information reviewed, or inspection, sampling or testing  
30 conducted.

31        8. No later than <sup>3</sup>[July 1, 1992] January 1, 1993<sup>3</sup>, a written  
32 certification of compliance stating that a package or packaging  
33 component is in compliance with the requirements of this act  
34 shall be furnished by the package manufacturer to the product  
35 manufacturer or distributor of the product packaged in that  
36 specified package or packaging component, which certification  
37 shall be signed by an authorized representative of the package  
38 manufacturer.

39        a. The product manufacturer or distributor shall retain the  
40 certification of compliance for as long as the package or  
41 packaging component is in use. A copy of the certification of  
42 compliance shall be kept on file by the package manufacturer.  
43 Copies of each certification of compliance shall be furnished to  
44 the department upon its request and to members of the public in  
45 accordance with the provisions of section 14 of this act.

46        b. In the event that the package manufacturer reformulates or  
47 creates a new package or packaging component, a new or  
48 amended certification of compliance shall be furnished by the  
49 package manufacturer to the product manufacturer or distributor

1 for the reformulated or new package or packaging component.

2 c. The provisions of this section shall not apply to any package  
3 or packaging component for which a declaration of exemption is  
4 kept on file pursuant to subsection b. of section 5 of this act.

5 9. a. The department shall have the right to enter the  
6 premises of a package manufacturer, product manufacturer,  
7 distributor or retailer at which packages or packaging  
8 components are manufactured or stored, or at which products  
9 packaged in packages or packaging components are sold or  
10 offered for sale or for promotional purposes, in order to  
11 determine compliance with the provisions of this act, or any rule  
12 or regulation adopted pursuant thereto. The department may, at  
13 any time during normal business hours and upon presentation of  
14 appropriate credentials, conduct inspections, including the taking  
15 of samples of products packaged in a package or packaging  
16 component, for the purpose of testing the package or packaging  
17 component. The department may be required to purchase any  
18 product packaged in a package or packaging component for which  
19 a sample is sought at a retail establishment, if requested to do so  
20 by the retailer.

21 b. The department may request, by certified mail, that any  
22 package manufacturer, product manufacturer or distributor  
23 transmit to the department a written certification that a  
24 specified package or packaging component is in compliance with  
25 the provisions of this act. The package manufacturer, product  
26 manufacturer or distributor, as the case may be, shall submit  
27 copies of each declaration of exemption and certification of  
28 compliance to the department within 45 days of receipt of the  
29 request. Upon receipt by the department of the information  
30 requested from the package manufacturer, product manufacturer  
31 or distributor, the department shall review this information and  
32 shall verify that all certifications of compliance are complete  
33 and that all declarations of exemption claimed are valid and in  
34 accordance with the criteria provided in section 5 of this act.

35 10. a. Whenever the commissioner finds that a package or  
36 packaging component fails to comply with the provisions of this  
37 act, or any rule or regulation adopted pursuant thereto, the  
38 commissioner may issue an order requiring the distributor or  
39 retailer, as the department deems appropriate, to remove or  
40 arrange for the removal of the entire allotment of the product  
41 packaged in the noncomplying package or packaging component  
42 from the premises, and directing that the distributor or retailer  
43 return the entire allotment of the product packaged in the  
44 noncomplying package or packaging component to the product  
45 manufacturer for credit or reimbursement.

46 b. Whenever the commissioner finds that a package  
47 manufacturer, product manufacturer or distributor has failed to  
48 respond to a request for certification made by the department  
49 pursuant to subsection b. of section 9 of this act, the

1 commissioner may issue an order requiring the package  
2 manufacturer or product manufacturer, as the department deems  
3 appropriate, to submit a specified package or packaging  
4 component to laboratory analysis, conducted at the ordered  
5 person's expense by a laboratory certified by the department in  
6 accordance with rules or regulations adopted pursuant to the  
7 "Administrative Procedure Act," in order to certify that the  
8 package or packaging component is in compliance with the  
9 provisions of this act.

10 c. Whenever the commissioner finds that a package or  
11 packaging component fails to comply with the provisions of this  
12 act, or any rule or regulation adopted pursuant thereto, all  
13 samples taken from the same allotment of the noncomplying  
14 package or packaging component for the purpose of testing shall  
15 constitute a single violation.

16 11. a. Whenever the commissioner finds that a person has  
17 violated any provision of this act, or any rule or regulation  
18 adopted pursuant thereto, the commissioner may:

19 (1) issue an order requiring the person found to be in violation  
20 to comply in accordance with subsection b. of this section;

21 (2) bring a civil action in accordance with subsection c. of this  
22 section;

23 (3) levy a civil administrative penalty in accordance with  
24 subsection d. of this section;

25 (4) bring an action for a civil penalty in accordance with  
26 subsection e. of this section; or

27 (5) petition the Attorney General to bring a criminal action in  
28 accordance with subsection g. of this section.

29 Pursuit of any of the remedies specified under this section shall  
30 not preclude the seeking of any other remedy specified.

31 b. Whenever the commissioner finds that a person has violated  
32 this act, or any rule or regulation adopted pursuant thereto, the  
33 commissioner may issue an order specifying the provision or  
34 provisions of this act, or the rule or regulation adopted pursuant  
35 thereto, of which the person is in violation, citing the action that  
36 constituted the violation, ordering abatement of the violation,  
37 and giving notice to the person of the person's right to a hearing  
38 on the matters contained in the order. The ordered person shall  
39 have calendar 20 days from receipt of the order within which to  
40 deliver to the commissioner a written request for a hearing.  
41 After the hearing and upon finding that a violation has occurred,  
42 the commissioner may issue a final order. If no hearing is  
43 requested, the order shall become final after the expiration of  
44 the 20-day period. A request for hearing shall not automatically  
45 stay the effect of the order.

46 c. The commissioner may institute an action or proceeding in  
47 the Superior Court for injunctive and other relief to enforce the  
48 provisions of this act and to prohibit and prevent a violation of  
49 this act, or of any rule or regulation adopted pursuant thereto,

1 and the court may proceed in the action in a summary manner. In  
2 any such proceeding the court may grant temporary or  
3 interlocutory relief.

4 Such relief may include, singly or in combination:

5 (1) a temporary or permanent injunction;

6 (2) assessment of the violator for the reasonable costs of any  
7 inspection, including the costs of any sampling or testing of  
8 packages or packaging components that led to the establishment  
9 of the violation, and for the reasonable costs of preparing and  
10 litigating the case under this subsection.

11 d. (1) The commissioner may assess a civil administrative  
12 penalty of not more than \$7,500.00 for a first offense, not more  
13 than \$10,000.00 for a second offense and not more than  
14 \$25,000.00 for a third and every subsequent offense. Each day  
15 that a violation continues shall constitute an additional, separate,  
16 and distinct offense.

17 No assessment may be levied pursuant to this section until  
18 after the violator has been notified by certified mail or personal  
19 service. The notice shall include a reference to the section of the  
20 statute, rule, regulation, or order violated, a concise statement  
21 of the facts alleged to constitute a violation, a statement of the  
22 amount of the civil administrative penalties to be imposed, and a  
23 statement of the person's right to a hearing. The ordered person  
24 shall have 20 calendar days from receipt of the notice within  
25 which to deliver to the commissioner a written request for a  
26 hearing.

27 After the hearing and upon finding that a violation has  
28 occurred, the commissioner may issue a final order after  
29 assessing the amount of the fine specified in the notice. If no  
30 hearing is requested, the notice shall become a final order after  
31 the expiration of the 20-day period. Payment of the assessment is  
32 due when a final order is issued or the notice becomes a final  
33 order. The authority to levy a civil administrative penalty is in  
34 addition to all other enforcement provisions in this act, and the  
35 payment of any assessment shall not be deemed to affect the  
36 availability of any other enforcement provisions in connection  
37 with the violation for which the assessment is levied. The  
38 department may compromise any civil administrative penalty  
39 assessed under this section in an amount the department  
40 determines appropriate.

41 (2) The commissioner may not assess a civil administrative  
42 penalty for a first offense for any violation of the provisions of  
43 this act, or of any rule or regulation adopted pursuant thereto,  
44 except in those instances where an ordered person violates an  
45 administrative order issued pursuant to subsection b. of section  
46 10 of this act.

47 e. (1) A person who violates this act, or any rule or regulation  
48 adopted pursuant thereto, shall be liable for a penalty of not  
49 more than \$7,500.00 per day, to be collected in a civil action

1 commenced by the commissioner.

2 (2) The commissioner may not bring an action for a civil  
3 penalty for a first offense for any violation of the provisions of  
4 this act, or of any rule or regulation adopted pursuant thereto,  
5 except in those instances where an ordered person violates an  
6 administrative order issued pursuant to subsection b. of section  
7 10 of this act.

8 A person who violates an administrative order issued pursuant  
9 to subsection b. of this section, or a court order issued pursuant  
10 to subsection c. of this section, or who fails to pay an  
11 administrative assessment in full pursuant to subsection d. of this  
12 section is subject upon order of a court to a civil penalty not to  
13 exceed \$50,000.00 per day of each violation.

14 Any penalty imposed pursuant to this subsection may be  
15 collected, with costs, in a summary proceeding pursuant to "the  
16 penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior  
17 Court and the municipal court shall have jurisdiction to enforce  
18 the provisions of "the penalty enforcement law" in connection  
19 with this act.

20 f. Assessments and penalties under this section shall be paid to  
21 the department and deposited into the "Toxic Packaging  
22 Reduction Fund" established pursuant to section 12 of this act.

23 g. Any person who purposely or knowingly:

24 (1) sells, offers for sale, or offers for promotional purposes any  
25 package or packaging component in violation of subsection a. of  
26 section 4 of this act, or of any rule or regulation adopted  
27 pursuant thereto;

28 (2) sells, offers for sale, or offers for promotional purposes any  
29 product in violation of subsection b. of section 4 of this act, or of  
30 any rule or regulation adopted pursuant thereto; or

31 (3) sells, offers for sale, or offers for promotional purposes any  
32 package or packaging component that exceeds the maximum  
33 contaminant levels set forth in subsection c. of section 4 of this  
34 act; shall, upon conviction, be guilty of a crime of the third  
35 degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall  
36 be subject to a fine of not less than \$7,500.00 for a first offense,  
37 not more than \$10,000.00 for a second offense and not more than  
38 \$25,000.00 for a third and every subsequent offense. Each day  
39 during which the violation continues constitutes an additional,  
40 separate and distinct offense.

41 h. The provisions of N.J.S.2C:1-6 to the contrary  
42 notwithstanding, a prosecution for a violation of the provisions of  
43 subsection g. of this section shall be commenced within five years  
44 of the date of discovery of the violation.

45 i. No retailer shall be deemed to have violated the provisions  
46 of section 4 of this act, if the commissioner finds that the  
47 retailer can demonstrate that, in the purchase of a specified  
48 package or packaging component, the retailer relied in good faith  
49 on the written assurance of the product manufacturer or

1 distributor that the package or packaging component complied  
2 with the provisions of this act. The written assurance shall state  
3 that a specified package or packaging component is in compliance  
4 with the provisions of this act, and shall be signed by an  
5 authorized representative of the package manufacturer or  
6 distributor. If an exemption is claimed for the package or  
7 packaging component pursuant to subsection b. of section 5 of  
8 this act, the written assurance shall state the specific basis upon  
9 which the exemption is claimed.

10 12. There is created in the Department of Environmental  
11 Protection <sup>3</sup>and Energy<sup>3</sup> a special nonlapsing fund to be known as  
12 the "Toxic Packaging Reduction Fund." The fund shall be  
13 administered by the department and shall be the depository for  
14 all fees collected pursuant to section 7 of this act, and all  
15 assessments and penalties received pursuant to section 11 of this  
16 act, and any interest earned thereon. Unless otherwise  
17 specifically provided by law, monies in the fund shall be utilized  
18 exclusively by the department to administer and enforce the  
19 provisions of this act, or any rule or regulation adopted pursuant  
20 thereto.

21 13. The department, in consultation with the Source Reduction  
22 Council of the Coalition of Northeastern Governors (CONEG),  
23 shall review the effectiveness of this act no later than 42 months  
24 after its effective date and shall provide to the Governor and the  
25 Legislature a written report based upon that review.

26 a. The report shall include:

27 (1) a recommendation whether to continue the exemptions  
28 provided in paragraphs (7), (8) and (9) of subsection a. of section 5  
29 of this act; and

30 (2) a description of the nature of the substitute elements used  
31 in lieu of lead, cadmium, mercury or hexavalent chromium during  
32 the manufacturing or distribution of a package or packaging  
33 component.

34 b. The report may contain recommendations to include  
35 additional toxic substances contained in packages or packaging  
36 components on the list set forth in section 4 of this act in order  
37 to further reduce the toxicity of packaging waste.

38 Any recommendation to include an additional toxic substance  
39 on the list set forth in section 4 of this act shall include:

40 (1) a determination as to whether the continued use of the  
41 proposed substance presents or will present an unreasonable risk  
42 to health or the environment, which determination shall utilize a  
43 nationally recognized risk assessment protocol taking into  
44 account the magnitude and severity of the environmental harm  
45 against the benefits of the substance to product manufacturers  
46 and the general public;

47 (2) a determination as to the availability of a substitute  
48 element to be used in lieu of the proposed substance; and

49 (3) a description of other adverse effects which the addition of

1 the proposed substance to the list set forth in section 4 of this  
2 act may have on product manufacturers or the general public.

3 14. A member of the public may request a package  
4 manufacturer, product manufacturer or distributor for a copy of  
5 the declaration of exemption or certification of compliance for  
6 any specified package or packaging component. The request shall  
7 be made in writing with a copy thereof provided to the  
8 department. The package manufacturer, product manufacturer or  
9 distributor shall respond, in writing, within 60 days of receipt of  
10 the request and shall provide a copy of this response to the  
11 department.

12 15. The department shall adopt, pursuant to the provisions of  
13 the "Administrative Procedure Act," any rules or regulations  
14 necessary to implement the provisions of this act.

15 16. This act shall take effect immediately.

16  
17

18 WASTE MANAGEMENT

19  
20

The "Toxic Packaging Reduction Act."

SENATE, No. 2261

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1990

By Senators CONTILLO, BENNETT, STOCKMAN,  
RAND and AMBROSIO

1 AN ACT concerning the reduction of solid waste at the source,  
2 and supplementing P.L.1987, c.102 (C.13:1E-99.11 et seq.).

3

4 BE IT ENACTED *by the Senate and General Assembly of the*  
5 *State of New Jersey:*

6 1. This act shall be known and may be cited as the "Toxic  
7 Packaging Reduction Act."

8 2. The Legislature finds that discarded packaging constitutes  
9 the largest single category of solid waste within New Jersey's  
10 waste stream and is, therefore, a necessary focus of any effort to  
11 reduce the flow of solid waste to costly disposal facilities; that  
12 the presence of heavy metals in packaging is a matter of great  
13 concern in light of their likely presence in emissions or ash when  
14 packaging is incinerated at a resource recovery facility, or in  
15 leachate when packaging is landfilled; that lead, mercury,  
16 cadmium and hexavalent chromium, on the basis of available  
17 scientific and medical evidence, are of particular concern; that it  
18 is desirable as a first step in reducing the toxicity of packaging  
19 waste to eliminate the addition of these heavy metals to  
20 packaging; and because New Jersey is faced with a very  
21 restricted range of disposal alternatives, the reduction at the  
22 source of toxic packaging materials can make a significant  
23 contribution to the reduction of the State's overall solid waste  
24 stream.

25 The Legislature further finds and declares that a statewide  
26 solid waste reduction strategy must begin with fundamental  
27 changes in manufacturing practices and packaging processes; and  
28 that the most effective and appropriate method to promote  
29 reduction is to prohibit the distribution or sale of toxic packaging  
30 in this State.

31 The Legislature therefore determines that it is in the public  
32 interest to achieve this reduction in toxicity without impeding or  
33 discouraging the expanded use of post-consumer waste materials  
34 in the production of packaging and its components.

35 3. As used in this act:

36 "Commissioner" means the Commissioner of Environmental  
37 Protection;

38 "Department" means the Department of Environmental  
39 Protection;

40 "Distributor" means any person, firm or corporation who takes  
41 title to goods purchased for resale;

1 "Manufacturer" means any person, firm or corporation who  
2 manufacturers packages or packaging components;

3 "Package" means a container providing a means of marketing,  
4 protecting or handling a product and shall include a unit package,  
5 an intermediate package and a shipping container as defined in  
6 ASTM D996; "package" shall also mean and include such unsealed  
7 receptacles as carrying cases, crates, cups, pails, rigid foil and  
8 other trays, wrappers and wrapping films, bags and tubs;

9 "Packaging component" means any individual assembled part of  
10 a package including, but not limited to, any interior or exterior  
11 blocking, bracing, cushioning, weatherproofing, exterior  
12 strapping, coatings, closures, inks and labels;

13 "Purchaser" means any person, firm or corporation who  
14 purchases packages or packaging components from a  
15 manufacturer or distributor for the purposes of marketing,  
16 protecting or handling the contents of the package or packaging  
17 component, including a product intended for retail sale.

18 4. a. On or after July 1, 1992, no person shall sell, or offer for  
19 sale, and no manufacturer or distributor shall offer for  
20 promotional purposes in this State any package or packaging  
21 component which includes, in the package itself or in any  
22 packaging component, inks, dyes, pigments, adhesives, stabilizers  
23 or any other additives, any lead, cadmium, mercury or hexavalent  
24 chromium which has been intentionally introduced as an element  
25 during manufacturing or distribution as opposed to the incidental  
26 presence of any of these elements.

27 b. On or after July 1, 1992, no person shall sell, or offer for  
28 sale, and no manufacturer or distributor shall offer for  
29 promotional purposes in this State any product in a package which  
30 includes, in the package itself or in any packaging component,  
31 inks, dyes, pigments, adhesives, stabilizers or any other additives,  
32 any lead, cadmium, mercury or hexavalent chromium which has  
33 been intentionally introduced as an element during manufacturing  
34 or distribution as opposed to the incidental presence of any of  
35 these elements.

36 c. The sum of the concentration of lead, cadmium, mercury or  
37 hexavalent chromium present in any package or packaging  
38 component shall not exceed the following levels:

39 (1) Not more than 600 parts per million by weight (0.06%)  
40 after July 1, 1992;

41 (2) Not more than 250 parts per million by weight (0.025%)  
42 after July 1, 1993;

43 (3) Not more than 100 parts per million by weight (0.01%)  
44 after July 1, 1994.

45 5. a. The commissioner may, in accordance with rules or  
46 regulations adopted pursuant to the provisions of the  
47 "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1  
48 et seq.), exempt from the provisions of this act any package or

1 packaging component otherwise subject to the provisions of this  
2 act meeting any of the following criteria:

3 (1) Those packages or packaging components labeled with a  
4 code indicating date of manufacture that were manufactured  
5 prior to the effective date of this act;

6 (2) Those packages or packaging components to which lead,  
7 cadmium, mercury or hexavalent chromium have been added in  
8 the manufacturing, forming, printing or distribution process in  
9 order to comply with health or safety requirements of federal law;

10 (3) Those packages or packaging components to which lead,  
11 cadmium, mercury or hexavalent chromium have been added in  
12 the manufacturing, forming, printing or distribution process and  
13 the use for which there is no feasible or practical alternative or  
14 substitute; or

15 (4) Those packages or packaging components that would not  
16 exceed the maximum contaminant levels set forth in subsection  
17 c. of section 4 of this act but for the addition of post-consumer  
18 waste materials; except that the exemption provided in this  
19 paragraph shall expire on July 1, 1996.

20 For the purposes of this subsection, a use for which there is "no  
21 feasible or practical alternative or substitute" means one in  
22 which the use of lead, cadmium, mercury or hexavalent chromium  
23 is essential to the protection, safe handling, or function of the  
24 contents of the package.

25 b. A manufacturer may petition the department for an  
26 exemption for a specified package or packaging component based  
27 upon the criteria provided in subsection a. of this section. The  
28 commissioner is authorized to grant, deny or conditionally grant  
29 the exemption. Any exemption granted by the commissioner shall  
30 not exceed two years in duration, and may be renewed for an  
31 additional two years if warranted by the circumstances.

32 6. No later than July 1, 1992, a Certificate of Compliance  
33 stating that a package or packaging component is in compliance  
34 with the requirements of the "Toxic Packaging Reduction Act,"  
35 P.L. , c. (C. ) (now before the Legislature as this bill) shall  
36 be furnished by its manufacturer or distributor to the purchaser  
37 thereof, which certificate shall be signed by an authorized  
38 representative of the manufacturer or distributor.

39 a. In the event that an exemption is claimed pursuant to  
40 section 5 of this act, the certificate shall state the specific basis  
41 upon which the exemption is claimed. The purchaser shall retain  
42 the certificate for as long as the package or packaging  
43 component is in use. A copy of the certificate shall be kept on  
44 file by the manufacturer or distributor of the package or  
45 packaging component. Copies of each certificate shall be  
46 furnished to the department upon its request and to members of  
47 the public in accordance with the provisions of section 9 of this  
48 act.

1       b. In the event that the manufacturer or distributor of the  
2 package or packaging component reformulates or creates a new  
3 package or packaging component, a new or amended certificate  
4 shall be furnished by the manufacturer or distributor to the  
5 purchaser for the reformulated or new package or packaging  
6 component.

7       7. a. Any person who violates the provisions of sections 4, 5 or  
8 6 of P.L. , c. (C. ) (now before the Legislature as this bill)  
9 is guilty of a crime of the third degree.

10       b. The provisions of N.J.S.2C:43-3 to the contrary  
11 notwithstanding, any person convicted of a violation of the  
12 provisions of sections 4, 5 or 6 of P.L. , c. (C. ) (now  
13 before the Legislature as this bill) is subject to a fine of not less  
14 than \$7,500.00 for a first offense, not more than \$10,000.00 for a  
15 second offense and not more than \$25,000.00 for a third and  
16 every subsequent offense. Each day during which the violation  
17 continues constitutes an additional, separate and distinct offense.

18       8. The department, in consultation with the Source Reduction  
19 Council of the Coalition of Northeastern Governors (CONEG),  
20 shall review the effectiveness of this act no later than 42 months  
21 after its effective date and shall provide to the Governor and the  
22 Legislature a written report based upon that review.

23       a. The report shall include:

24       (1) a recommendation whether to continue the exemption  
25 provided in paragraph (4) of subsection a. of section 5 of this act;  
26 and

27       (2) a description of the nature of the substitute elements used  
28 in lieu of lead, cadmium, mercury or hexavalent chromium during  
29 the manufacturing or distribution of a package or packaging  
30 component.

31       b. The report may contain recommendations to include  
32 additional toxic substances contained in packages or packaging  
33 components to the list set forth in section 4 of this act in order  
34 to further reduce the toxicity of packaging waste.

35       9. A member of the public may request a manufacturer or  
36 distributor for a copy of the certificate of compliance for any  
37 specified package or packaging component. The request shall be  
38 made in writing with a copy thereof provided to the department.  
39 The manufacturer or distributor shall respond, in writing, within  
40 60 days of receipt of the request.

41       10. The department shall adopt, within three months of the  
42 effective date of this act and pursuant to the provisions of the  
43 "Administrative Procedure Act," rules or regulations designed to  
44 implement the purposes and provisions of this act.

45       11. This act shall take effect immediately.

## STATEMENT

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3 This bill would require manufacturers and distributors of  
4 packaging or packaging materials to reduce the amounts of toxic  
5 substances added to packaging or packaging materials used or  
6 sold within this State.

7 Specifically, the bill provides that after July 1, 1992, no person  
8 shall sell and no manufacturer or distributor shall offer for  
9 promotional purposes in this State any packaging or packaging  
10 materials, or any product in a package which includes, in the  
11 package itself or in any packaging component, any lead,  
12 cadmium, mercury or hexavalent chromium.

13 The bill also provides that the sum of the concentration of  
14 lead, cadmium, mercury or hexavalent chromium present in any  
15 packaging or packaging materials must not exceed the following  
16 levels: (1) not more than 600 parts per million by weight (0.06%)  
17 after July 1, 1992; (2) not more than 250 parts per million by  
18 weight (0.025%) after July 1, 1993; and (3) not more than 100  
19 parts per million by weight (0.01%) after July 1, 1994.

20 The Commissioner of the Department of Environmental  
21 Protection may exempt from the provisions of this bill any  
22 packaging or packaging materials meeting any of the following  
23 criteria: (1) those packages or packaging components labeled with  
24 a code indicating date of manufacture that were manufactured  
25 prior to the effective date of this bill; (2) those packages or  
26 packaging components to which lead, cadmium, mercury or  
27 hexavalent chromium have been added in the manufacturing,  
28 forming, printing or distribution process in order to comply with  
29 health or safety requirements of federal law; (3) those packages  
30 or packaging components to which lead, cadmium, mercury or  
31 hexavalent chromium have been added in the manufacturing,  
32 forming, printing or distribution process and the use for which  
33 there is no feasible or practical alternative or substitute, i.e. the  
34 use of lead, cadmium, mercury or hexavalent chromium is  
35 essential to the protection, safe handling, or function of the  
36 contents of the package; or (4) those packages or packaging  
37 components that would not exceed the maximum contaminant  
38 levels set forth in the bill except for the addition of  
39 post-consumer waste materials; this exemption would expire on  
40 July 1, 1996.

41 A manufacturer may petition the department for an exemption  
42 for a specified package or packaging component based upon these  
43 criteria. The commissioner is authorized to grant, deny or  
44 conditionally grant the exemption. Any exemption granted by the  
45 commissioner must not exceed two years in duration, and may be  
46 renewed for an additional two years if warranted by the  
47 circumstances.

48 No later than July 1, 1992, every manufacturer or distributor

1 of packaging or packaging materials must furnish each purchaser  
2 of these items with a Certificate of Compliance stating that the  
3 package or packaging component is in compliance with the  
4 requirements of the bill. A "purchaser" refers to any person, firm  
5 or corporation who purchases packaging or packaging materials  
6 from a manufacturer or distributor for the purposes of marketing,  
7 protecting or handling the contents of the package, including any  
8 product intended for retail sale.

9 If an exemption is claimed for a particular package or  
10 packaging component, the certificate of compliance must state  
11 the specific basis upon which the exemption is claimed. The  
12 purchaser must retain the certificate for as long as the package  
13 or packaging component is in use. A copy of the certificate of  
14 compliance must be kept on file by the manufacturer or  
15 distributor, and copies of each certificate must be furnished to  
16 DEP upon its request and to members of the public, upon written  
17 request, within 60 days. If the manufacturer or distributor  
18 reformulates or creates a new package or packaging component,  
19 a new or amended certificate of compliance must be furnished to  
20 the purchaser for the reformulated or new package or packaging  
21 component.

22 The bill provides that any person who violates the contaminant  
23 level, exemption or certificate of compliance provisions of the  
24 bill would be guilty of a crime of the third degree. Any person  
25 convicted of a violation of these provisions would be subject to a  
26 fine of not less than \$7,500.00 for a first offense, not more than  
27 \$10,000.00 for a second offense and not more than \$25,000.00 for  
28 a third and every subsequent offense. Each day during which the  
29 violation continues constitutes an additional, separate and  
30 distinct offense.

31 The DEP, in consultation with the Source Reduction Council of  
32 the Coalition of Northeastern Governors (CONEG), must review  
33 the effectiveness of this bill no later than 42 months after its  
34 effective date and must provide to the Governor and the  
35 Legislature a written report based upon that review.

36 The report must include: (1) a recommendation whether to  
37 continue the exemption concerning those packages or packaging  
38 components that would not exceed the maximum contaminant  
39 levels set forth in the bill except for the addition of  
40 post-consumer waste materials; and (2) a description of the  
41 nature of the substitute elements used in lieu of lead, cadmium,  
42 mercury or hexavalent chromium during the manufacturing or  
43 distribution of a package or packaging component. The report  
44 may contain recommendations to include additional toxic  
45 substances contained in packages or packaging components to the  
46 list set forth in the bill in order to further reduce the toxicity of  
47 packaging waste.

48 This bill is based on model legislation developed by the Source

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1 Reduction Council of CONEG, an organization of representatives  
2 from nine northeastern states, including New Jersey, industry and  
3 environmental organizations concerned with the source reduction  
4 of packaging waste.

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#### WASTE MANAGEMENT

8

9 The "Toxic Packaging Reduction Act."

SENATE LAND USE MANAGEMENT  
AND REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2261

STATE OF NEW JERSEY

DATED: SEPTEMBER 24, 1990

The Senate Land Use Management and Regional Affairs Committee favorably reports a Senate Committee Substitute for Senate Bill No. 2261.

The SCS for Senate Bill No. 2261 requires manufacturers of packaging or packaging materials to reduce the amounts of toxic substances added to packages or packaging components used to market products sold within this State.

The SCS defines a "package" as a container specifically manufactured for the purposes of marketing, protecting or handling a product. The definition also includes such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.

In this regard, the Committee finds that there is some confusion regarding those containers which are "packages," and certain products which may be (incorrectly) considered packages. Accordingly, it is the understanding of the Committee that a "package" is the single-use disposable or recyclable container specifically provided by the product manufacturer to transport, safeguard or hold his product, i.e. the contents of the package. Thus, items that may include cups, trays or tubs which are intended for extended use by the purchaser, such as ceramic tableware, crystal glasses and so forth, are products and, as such, are not subject to the provisions of this bill. By contrast, the label, box, wrapper and cushioning material used to market and protect such items constitute the package and packaging components covered under the bill.

Section 4 provides that after July 1, 1992, no person shall sell, offer for sale, or offer for promotional purposes in New Jersey any packaging or packaging component, or any product in a package which includes, in the package itself or in any packaging component, any lead, cadmium, mercury or hexavalent chromium. In addition, the sum of the concentration of lead, cadmium, mercury or hexavalent chromium present in any packaging or packaging component cannot exceed the following levels:

(1) Not more than 600 parts per million by weight (0.06%) after July 1, 1992;

(2) Not more than 250 parts per million by weight (0.025%) after July 1, 1993; and

(3) Not more than 100 parts per million by weight (0.01%) after July 1, 1994.

The SCS provides a self-exemption procedure for package manufacturers, product manufacturers and distributors. Section 5 authorizes any package manufacturer, product manufacturer or distributor to claim an exemption from the provisions of section 4 of the bill for any package or packaging component meeting any of the following criteria:

(1) Those packages or packaging components labeled with a code indicating a date of manufacture prior to July 1, 1992;

(2) Those packages or packaging components used to contain alcoholic beverages, including liquor, wine, vermouth and sparkling wine, bottled prior to July 1, 1992;

(3) Those packages or packaging components which are glass containers with ceramic labeling used to contain pharmaceutical preparations; this exemption would expire on July 1, 1994;

(4) Those packages or packaging components which are glass containers with ceramic labeling used to contain cosmetics; this exemption would expire on July 1, 1994;

(5) Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law;

(6) Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process and the use for which there is no feasible or practical alternative or substitute; this exemption would expire on July 1, 1994;

(7) Those packages or packaging components that would not exceed the maximum contaminant levels set forth in section 4 of the bill but for the addition of post-consumer waste materials; this exemption would expire on July 1, 1996;

(8) Those packages or packaging components composed of metal and commonly referred to as "tin cans" that are used to contain food or food products intended for human consumption; or

(9) Those packages or packaging components composed of metal and commonly referred to as "tin cans" that are used to contain paint, chemicals or other nonfood products, to which lead has been added in the manufacturing process for the purposes of forming, soldering or sealing the can.

Any exemption claimed under paragraph (6) may be renewed by the Department of Environmental Protection every two years, provided that the person seeking the renewal furnishes the department with evidence that there is no feasible or practical alternative or substitute for the specified package or packaging component.

Any exemption claimed under paragraphs (8) or (9) would expire on July 1, 1996, except that any package or packaging component meeting the criteria under paragraphs (8) or (9) may be sold after this date provided that the package or packaging component is labeled with a code indicating a date of manufacture prior to July 1, 1996.

Any package manufacturer, product manufacturer or distributor claiming an exemption must maintain on file a written declaration of exemption for each specified package or packaging component for which an exemption is claimed. Copies of each declaration of exemption must be furnished to the DEP upon its request and to members of the public upon written request.

Any person claiming an exemption must also maintain on file, and transmit to the department, in writing, upon its request: (1) a statement setting forth the specific basis upon which the exemption is claimed; (2) the full name, business address, telephone number and signature of the person claiming the exemption; and (3) the full name, business address and telephone number of the authorized local representative of the person claiming the exemption. This information must be furnished to the DEP for each specified package or packaging component requested by the department.

The SCS authorizes DEP to establish and charge fees for any of the services to be performed or rendered under this bill. The fee schedule must reasonably reflect the duration or complexity of the specific service performed or rendered by the department, including reviewing information, conducting inspections and sampling or testing packages or packaging components.

The SCS provides a self-certification procedure for package manufacturers. By July 1, 1992, a written certification of compliance certifying that a package or packaging component is in compliance with the requirements of section 4 of the bill must be furnished by the package manufacturer to the product manufacturer or distributor of the product packaged in that specified package or packaging component. The certification must be signed by an authorized representative of the package manufacturer.

The product manufacturer or distributor would retain the certification of compliance for as long as the package or packaging component is in use. A copy of the certification of compliance must be kept on file by the package manufacturer. Copies of each certification of compliance must be furnished to the department upon its request and to members of the public upon written request.

Whenever the package manufacturer reformulates or creates a new package or packaging component, a new or amended certification of compliance must be furnished by the package manufacturer to the product manufacturer or distributor.

Subsection a. of section 9 of the bill authorizes the DEP to enter any premises at which packages or packaging components are manufactured or stored, or at which products packaged in packages or packaging components are sold or offered for sale or for promotional purposes, in order to determine compliance with the provisions of this bill. The department may, at any time during normal business hours and upon presentation of appropriate credentials, conduct inspections, including the taking of samples

of products packaged in a package or packaging component, for the purpose of testing the package or packaging component. The DEP may be required to purchase any product packaged in a package or packaging component for which a sample is sought at a retail establishment, if requested to do so by the retailer.

Under subsection b. of section 9 of the bill, the DEP may request, by certified mail, that any package manufacturer, product manufacturer or distributor submit written certification that a specified package or packaging component is in compliance with the provisions of the bill. The requested party must submit copies of each declaration of exemption and certification of compliance to the department within 45 days of receipt of the request. Upon receipt of the certification, the department would review this information in order to verify that all certifications of compliance are complete and that all declarations of exemption claimed are valid and in accordance with the criteria provided in section 5 of the bill.

Under subsection a. of section 10 of the bill, if the Commissioner of the Department of Environmental Protection finds that a package or packaging component fails to comply with the provisions of the bill the commissioner may issue an order requiring the distributor or retailer to remove or arrange for the removal of the entire allotment of the product packaged in the noncomplying package or packaging component from the premises, and directing that the entire allotment of the noncomplying package or packaging component be returned to the product manufacturer for credit or reimbursement.

Under subsection b. of section 10 of the bill, if the commissioner finds that a package manufacturer, product manufacturer or distributor has failed to respond to a request for certification made by the department under subsection b. of section 9 of the bill, the commissioner may issue an order requiring the package manufacturer or product manufacturer, as the department deems appropriate, to submit a specified package or packaging component to laboratory analysis, conducted at the ordered person's expense by a laboratory certified by the DEP in order to certify that the package or packaging component is in compliance with the provisions of the bill.

Under section 11 of the bill, whenever the commissioner finds that a person has violated any provision of this bill, or any rule or regulation adopted pursuant thereto, the commissioner may: (1) issue an order requiring the person found to be in violation to comply with the provisions of the bill; (2) bring a civil action against the violator; (3) levy a civil administrative penalty against the violator; (4) bring an action for a civil penalty against the violator; or (5) petition the Attorney General to bring a criminal action against the violator.

No retailer would be deemed to have violated the provisions of section 4 of the bill, if the commissioner finds that the retailer can demonstrate that, in purchasing a specified package or

packaging component, the retailer relied in good faith on the written assurance of the product manufacturer or distributor that the package or packaging component complied with the provisions of the bill.

The written assurance must state that a specified package or packaging component is in compliance with the provisions of this act, and must be signed by an authorized representative of the package manufacturer or distributor. If an exemption is claimed for the package or packaging component pursuant to subsection b. of section 5 of the bill, the written assurance must state the specific basis upon which the exemption is claimed.

The commissioner may bring a civil action in the Superior Court for injunctive and other relief to enforce the provisions of the bill, including: (1) a temporary or permanent injunction; and (2) assessment of the violator for the reasonable costs of any inspection, including the costs of any sampling or testing of packages or packaging components that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case.

The commissioner may assess a civil administrative penalty of not more than \$7,500.00 for a first offense, not more than \$10,000.00 for a second offense and not more than \$25,000.00 for a third and every subsequent offense. Each day that a violation continues shall constitute an additional, separate, and distinct offense. However, the commissioner may not assess a civil administrative penalty for a first offense for any violation of the provisions of the bill, except in those instances where an ordered person violates an administrative order issued by the DEP under subsection b. of section 10 of the bill.

A person who violates the provisions of the bill shall be liable for a penalty of not more than \$7,500.00 per day, to be collected in a civil action commenced by the commissioner. However, the commissioner may not bring an action for a civil penalty for a first offense for any violation of the provisions of this bill, except for a violation of an administrative order issued pursuant to subsection b. of section 10 of the bill.

Violations of section 4 of the bill may also be the subject of criminal actions. Specifically, any person who purposely or knowingly sells, offers for sale, or offers for promotional purposes (1) any noncomplying package or packaging component; (2) any product contained in a noncomplying package or packaging component; or (3) any package or packaging component that exceeds the maximum contaminant levels for lead, cadmium, mercury or hexavalent chromium set forth in the bill, upon conviction, is guilty of a crime of the third degree and would be subject to a fine for each day during which a violation continues of not less than \$7,500.00 for a first offense, not more than \$10,000.00 for a second offense and not more than \$25,000.00 for a third and every subsequent offense.

Section 12 of the bill establishes a "Toxic Packaging Reduction

Fund" in the DEP as a special nonlapsing fund. The fund would be administered by the department and would be the depository for all fees collected pursuant to section 7 of the bill, and all assessments and penalties received by the DEP under section 11 of the bill, and any interest earned thereon. Monies in the fund would be utilized exclusively by the department to administer and enforce the provisions of this bill.

The DEP, in consultation with the Source Reduction Council of the Coalition of Northeastern Governors (CONEG), must review the effectiveness of this bill no later than 42 months after its effective date and must provide to the Governor and the Legislature a written report based upon that review.

The report must include: (1) a recommendation whether to continue the exemptions scheduled to expire on July 1, 1996 under the criteria listed in section 5 of the bill; and (2) a description of the nature of the substitute elements used in lieu of lead, cadmium, mercury or hexavalent chromium during the manufacturing or distribution of a package or packaging component.

The report may contain recommendations to include additional toxic substances contained in packages or packaging components to the list set forth in the bill in order to further reduce the toxicity of packaging waste. However, any recommendation to include an additional toxic substance on the list set forth in the bill must include: (1) a determination as to whether the continued use of that substance presents or will present an unreasonable risk to health or the environment, which determination must utilize a nationally recognized risk assessment protocol taking into account the magnitude and severity of the environmental harm against the benefits of the substance to purchasers and the general public; (2) a determination as to the availability of a substitute element to be used in lieu of that substance; and (3) a description of other adverse effects which the addition of the proposed substance to the list may have on purchasers or the general public.

The SCS is conceptually based on model legislation developed by the Source Reduction Council of CONEG, an organization of representatives from nine northeastern states, including New Jersey, industry and environmental organizations concerned with the source reduction of toxic packaging material.

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# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

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Release:

Jan. 20, 1991

## GOVERNOR SIGNS THREE MEASURES TO PRESERVE OPEN SPACE & STOP POLLUTION BEFORE IT STARTS

Governor Jim Florio today signed three key environmental laws, including two measures designed to prevent pollutants from entering the waste stream and one law aimed at preserving thousands of acres of open space from development.

"There is no greater responsibility for any generation than the preservation and protection of our water, land, and air for our children and our grandchildren," Gov. Florio said. "That responsibility means we must work to preserve vital open spaces and parks, and we must be vigilant in eliminating toxins at the source -- before they ever enter our waste stream."

One bill signed by the Governor requires the reduction of toxic substances used in packaging or packaging materials, to reduce the amount of lead, cadmium, mercury and chromium permitted to enter the waste stream. The law requires manufacturers and distributors of packaging materials to eliminate, by the end of the year, any additives containing lead, cadmium, mercury or chromium from the manufacturing process. The bill was sponsored by Sen. Paul Contillo and Assemblyman Henry McEnroe.

The second measure signed by the Governor imposes the toughest standards in the nation on the manufacture and disposal of dry cell batteries. The law requires manufacturers to virtually eliminate mercury from dry cell batteries by the end of 1995. It also requires the redesign of rechargeable consumer products by July, 1993 to allow for battery removal.

In addition, the law allows for the eventual ban on the disposal of dry cell batteries that contain mercury, lead or cadmium electrodes, and requires battery manufacturers to establish collection programs for used batteries. It was sponsored by Sen. Contillo and Assemblyman McEnroe.

"Real protection means stopping problems before they start," Gov. Florio said. "We want to preserve our state by preventing the mistakes of tomorrow, and not just cleaning up the mistakes of yesterday."

The Green Acres bill appropriates \$114.9 million for the

preservation and protection of open space throughout New Jersey for recreation and conservation purposes. The money is coming from the Open Space Preservation Bond Act of 1989 and other Green Acres bond acts. It will pay for the preservation of more than 18,000 acres of open space in the state, in addition to the 300,000 acres that have been preserved during the past 30 years.

The bill was sponsored by Sen. Daniel Dalton and Assemblymen Byron Baer, Peter Cantu, Ray Batten, George Spadaro, Joe Charles, John Villapiano, Thomas Duch and D. Bennett Mazur.

"The people in New Jersey want to keep the Garden in the Garden State," Gov. Florio said of the Green Acres measure. "We want to leave our children the best of both worlds -- balanced development and lots of green and open spaces."

"This money is one of the best ways we can invest in the future, and it's a promise to our children that the New Jersey we give them will be a New Jersey's that's green, and a state that's committed to preserving the best of what it has," Gov. Florio said.

The bill provides the following:

- \$29.5 million for state acquisition of open spaces
- \$5 million for state parks and recreation projects
- \$10 million in matching grants for nonprofit organizations to undertake 28 different open space acquisition projects.
- \$40 million in grants and low interest loans to help local governments in the acquisition of 25 different properties for recreation and conservation purposes.
- \$13.5 million in low interest loans to help local governments in the acquisition of 15 different properties for recreation and conservation purposes.
- \$6 million in low interest loans to help local governments undertake 30 different park and recreation projects
- \$11 million in low interest loans and grants to other local governments to help in the acquisition open spaces or development of parks in 19 different projects.

Embargoed  
until  
January 3, 1990

**Model Toxics Legislation**  
as developed by the  
Source Reduction Council of CONEG  
December 14, 1989

Section 1. (Title)

Section 2. The legislature finds and declares that:

- a. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;
- b. Packaging comprises a significant percentage of the overall solid waste stream;
- c. The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled;
- d. Lead, mercury, cadmium and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern;
- e. It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of these heavy metals to packaging; and
- f. The intent of this act is to achieve this reduction in toxicity without impeding or discouraging the expanded use of post-consumer materials in the production of packaging and its components.

Section 3. Definitions

"Package": means a container providing a means of marketing, protecting or handling a product and shall include a unit package, an intermediate package and a shipping container as defined in ASTM D996. "Package" shall also mean and include such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.

"Distributor": means any person, firm or corporation who takes title to goods purchased for resale.

"Packaging Component": means any individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks and labels.

Section 4. Prohibition/Schedule for Removal of Incidental Amounts

a. As soon as feasible but not later than two years after the adoption of this act, no package or packaging component shall be offered for sale or for promotional purposes by its manufacturer or distributor in the state of \_\_\_\_\_, which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers or any other additives any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced as a element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

b. As soon as feasible but not later than two years after the adoption of this act, no product shall be offered for sale or for promotional purposes by its manufacturer or distributor in the state of \_\_\_\_\_ in a package which includes, in the package itself or in any of its packaging components inks, dyes, pigments, adhesives, stabilizers or any other additives any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

c. The sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium present in any package or packaging component shall not exceed the following:

600 parts per million by weight (0.06%) effective two (2) years after adoption of this statute;

250 parts per million by weight (0.025%) effective three (3) years after adoption of this statute; and

100 parts per million by weight (0.01%) effective four (4) years after adoption of this statute.

Section 5. Exemptions

All packages and packaging components shall be subject to this act except the following:

a. those packages or package components with a code indicating date of manufacture that were manufactured prior to the effective date of this statute;

b. those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative, provided that the manufacturer of a package or packaging component must petition the [state administrative agency] for any exemption from the provisions of this subsection for a particular package or packaging component based upon either criterion; and provided further that the [state administrative agency] may grant a two year exemption if warranted by the circumstances; and provided further that such an exemption may, upon meeting either criterion of this subsection, be renewed for two years; For purposes of this subsection, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents; or

c. packages and packaging components that would not exceed the maximum contaminant levels set forth in subsection c of section 4 of this act but for the addition

of post-consumer materials; and provided that the exemption for this subparagraph shall expire six (6) years after the adoption of this act.

**Section 6. Certificate of Compliance**

As soon as feasible but not later than two years after the adoption of this act, a Certificate of Compliance stating that a package or packaging component is in compliance with the requirements of this act shall be furnished by its manufacturer or supplier to its purchaser provided, however, where compliance is achieved under the exemption(s) provided in subsection 5 b or c, the Certificate shall state the specific basis upon which the exemption is claimed. The Certificate of Compliance shall be signed by an authorized official of the manufacturing or supplying company. The purchaser shall retain the Certificate of Compliance for as long as the package or packaging component is in use. A copy of the Certificate of Compliance shall be kept on file by the manufacturer or supplier of the package or packaging component. Certificates of Compliance, or copies thereof, shall be furnished to the [state administrative agency] upon its request and to members of the public in accordance with section 9.

If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide an amended or new Certificate of Compliance for the reformulated or new package or packaging component.

**Section 7. Enforcement**

[Each state to add its own enforcement provisions]

**Section 8. State Review**

[The state administrative agency] shall, in consultation with the Source Reduction Council of CONEG, review the effectiveness of this act no later than forty-two (42) months after its adoption and shall provide a report based upon that review to the Governor and legislature. The report may contain recommendations to add other toxic substances contained in packaging to the list set forth in this act in order to further

reduce the toxicity of packaging waste, and shall contain a recommendation whether to continue the recycling exemption as it is provided for in subsection c of section 5 of this act, and a description of the nature of the substitutes used in lieu of lead, mercury, cadmium, and hexavalent chromium. [Add power to gather this information under section 7]

**Section 9. Public Access**

Any request from a member of the public for any Certificate of Compliance from the manufacturer or supplier of a package or packaging component shall be:

- a. Made in writing with a copy provided to the [state administrative agency];
- b. Made specific as to package or packaging component information requested; and
- c. Responded to by the manufacturer or supplier within 60 days.

**Section 10. Effective Date**

This act shall become effective immediately upon adoption.

## SOURCE REDUCTION COUNCIL OF CONEG

### Model Toxics Reduction Legislation

#### Summary

The purpose of the model legislation is to reduce heavy metals in emissions or ash when packaging is incinerated or in leachate when packaging is landfilled.

The model legislation calls for the reduction of lead, mercury, cadmium and hexavalent chromium in packaging or packaging materials used or sold within the state.

Manufacturers and distributors of packaging would have two years to clear their inventory and make necessary adjustments to their operations in order to comply with the law.

Manufacturers and distributors of packaging or packaging materials would be required to cease the addition of lead, cadmium, mercury and hexavalent chromium to packaging and packaging components within two years. Incidental amounts of the heavy metals must be reduced to a total of 600 parts per million two years after the legislation is signed into law; 250 parts per million three years after it is signed into law; and 100 parts per million four years after it is signed into law.

The legislation provides an exemption process for packaging made from recycled materials and for packaging that is essential to the protection, safe handling or function of the package's contents - for example, medical products related to radiation therapy, x-rays, etc.

Manufacturers and suppliers of packaging and packaging components are required to furnish a certificate of compliance to the purchasers of packaging (the purchaser is the company which actually puts its product in the package rather than the retailer or the individual consumer). The public and the state will have access to these certificates.

The model legislation also provides for a review process by the state to determine the effectiveness of the act. More specifically, that review will address the need to continue the recycling exemption and will determine if other toxic substances contained in packaging should be subject to reduction.

The model legislation was developed by the Source Reduction Council of CONEG, an organization of representatives from nine Northeastern States, industry and environmental organizations concerned with the source reduction of packaging waste.