

## Environmental Law &amp; Litigation

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**NJ Department of Environmental Protection Ramps Up Enforcement Activity Under the Toxic Packaging Reduction Act Ahead of Proposed Ban on PFAS in Consumer Packaging**By [Mark S. Heinzelmann](#) and [Brian S. Winfield](#)

Recent anecdotal evidence suggests that the New Jersey Department of Environmental Protection (NJDEP) is restarting enforcement activities under a seldom-used consumer packaging law originally adopted in 1990: the Toxic Packaging Reduction Act (TPRA), N.J.S.A. 13:1E-99.44 to -99.58. This three-decade-old statute prohibits the sale of packages or packaging components that include one of four toxic heavy metals: lead, cadmium, mercury, and hexavalent chromium. Interestingly, the TPRA's reemergence syncs with [Senate Bill 3135](#) (SB 3135), introduced on April 15, which seeks to expand the TPRA to prohibit a slew of additional hazardous substances in packaging, including per- and polyfluoroalkyl substances (PFAS). SB 3135 was closely followed by the NJDEP's May 13 [TPRA Enforcement Advisory](#), which reminds affected businesses of the TPRA's existence and warns of forthcoming enforcement activity. The NJDEP's actions point to a renewed regulatory focus on toxic substances (particularly PFAS) in consumer packaging.

If passed, SB 3135 would, two years after its effective date, amend the TPRA to ban the inclusion of PFAS and 13 other hazardous substances<sup>1</sup> in packaging, packaging components, or any product contained in a package that is sold or offered for sale in New Jersey.<sup>2</sup> The TPRA defines "packaging components" to include inks, dyes, pigments, adhesives, stabilizers, or any additives.<sup>3</sup> SB 3135 would also establish the Toxic Packaging Task Force and grant the NJDEP authority, upon recommendation of the Task Force, to "designate additional substances to be prohibited from being included in packaging and packaging components by adopting rules and regulations" under the Administrative Procedure Act.<sup>4</sup> In other words, following the passage of SB 3135, the TPRA would no longer be focused on heavy metals solely; its scope and any related regulatory obligations would be dramatically expanded.

One month after SB 3135 was introduced, the NJDEP issued the TPRA Enforcement Advisory, asserting that the TPRA's requirements impact all parties in the chain of packaging production and use, including (1) retailers selling packaged products; (2) distributors distributing or selling packaged products; and (3) manufacturers and suppliers of packaging and packaging components that are sold, offered for sale, or offered for promotional purposes in New Jersey.<sup>5</sup> The NJDEP reminds regulated entities of their obligations under the TPRA and warns that NJDEP representatives can visit affected businesses to assess compliance. We are aware of at least one instance in which an agency official conducted a random TPRA inspection at a retail store. During that inspection, the official asked store management to produce written certifications of compliance with the TPRA, which in the advisory the NJDEP asserts must "be retained [by product manufacturers or distributors] for so long as the package or packaging component is in use."<sup>6</sup> Product manufacturers and distributors can typically obtain certifications from the manufacturers of the packaging in use. If the certifications cannot be produced, regulated entities are subject to penalties and other enforcement actions.

Taken together, SB 3135, the TPRA Enforcement Advisory, and increased agency enforcement activity signal that the NJDEP and the New Jersey Legislature have heightened their focus on packaging and packaged products, with a particular emphasis on PFAS. Whether through this TPRA amendment or some other mechanism, the NJDEP likely

will continue its efforts to ban the use of PFAS (and other hazardous substances) in consumer products and packaging. Businesses should consider assessing and taking an inventory of the compounds in their products and packaging to determine whether they may be affected by the NJDEP's new packaging initiatives or any prospective PFAS bans. At a minimum, to protect against any enforcement action under the current iteration of the TPRA, regulated entities should ensure that they have written certifications of compliance on file affirming that their packages and packaging components comply with the TPRA.

For additional questions on PFAS, the TPRA, the TPRA Enforcement Advisory, or SB 3135, please contact the authors of this article.

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<sup>1</sup> The 13 other substances are: (1) ortho-phthalates; (2) bisphenols; (3) halogenated and organophosphorus flame retardants; (4) non-detectable pigments including carbon black; (5) oxo-degradable additives including oxo-biodegradable additives; (6) UV-328, 2-(2h-benzotriazol-2-yl)-4, 6-tert-pentylphenol, or any other ultraviolet light absorbers including benzophenone and its derivatives; (7) short-, medium-, and long-chained chlorinated paraffins; (8) toxic metals other than lead, cadmium, mercury, and hexavalent chromium [which are already banned]; (9) antimony trioxide; (10) formaldehyde; (11) perchlorate; (12) toluene; and (13) vinyl chloride, including polyvinylidene chloride. See S.B. 3135, 221st Leg., Reg. Sess. (N.J. 2024).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> See N.J. Dept. of Env'tl Prot., Compliance Advisory #2024-08: Reducing Heavy Metal Toxic Materials in Packaging (May 13, 2024).

<sup>6</sup> *Ibid.*

## Contacts

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