



Talking Trash at the FTC: Recyclable Claims and the Green Guides

May 23, 2023

Jim Kohm:

Okay. Good morning, everyone. My name's Jim Kohm. I'm the associate director of the Enforcement Division. For today's purposes, that's important because we're the division that's responsible for the Green Guides. Welcome, everyone, to our Talking Trash roundtable. Before I begin, I have to, as a good lawyer, disclaim everything I'm about to say, so the views that are expressed today by me or other folks at the FTC are only their own and not those of the commission as a whole or any particular commissioner. Having said that, because I'm a lawyer, I think what I have to say is extremely important, and so I'll take a little bit of your time this morning to tell you what I think that today we're going to bring together a range of experts to talk about recycling claims. Today's panelists will address the current state of recycling practices and advertising claims, consumer understanding of those claims and the need for updates or changes to the recyclable portion of the Green Guides. As a refresher, among other things, the guides currently provide that marketers should not make unqualified recyclable claims unless recycling facilities are available to a substantial majority of the people to whom you're making the claims, and that we have defined that as 60% and we're very interested among other things and whether that is an accurate consumer perception or that should change. There is also guidance about resident identification codes. I'm old enough, they used to be called RICs and they're now called-

Julia Ensor:

[inaudible].

Jim Kohm:

Oh, they used to be spy codes, that's right. The little chasing arrows, and there's considerable confusion among those and the Möbius loop arrows. And how to handle products that are partially recyclable or are maybe recyclable in content, but not because of their shape or that they have food waste on them or other reasons, this is as you know an important part of our information gathering for the Green Guides. And this is not just a proforma exercise. We are open to being influenced. This is not like maybe many of the other government functions you may have attended. We want to be influenced, so let me tell you how to influence us, and that starts with the framework that we have for the Green Guides.

Let's start with what the Green Guides are not. The Green Guides aren't environmental policy. So you may have really good ideas about how to further environmental policy. We have neither the mandate

nor the power to do that. What we are about is making sure that claims are not deceptive, and we'll talk about that in a second. If you have environmental policy considerations, those are best addressed to the much larger building down the street at the EPA or to the even larger building up on the hill on the other side of the FTC.

What we're interested in, the Green Guides are the FTC's interpretation of section 5. Section 5 forbids deceptive advertising. So what are deceptive claims? Well, deceptive claims look not to a definition of that claim, but to how reasonable consumers interpret the claim, and that can change over time. And that's one of the reasons that we renew this regulatory review every 10 years, is to make sure that current practices but more importantly, current claims aren't being perceived in a way that's deceptive. So if talking about current practices is important, telling us how consumers interpret claims is extremely important. If you have evidence of how consumers interpret your claim, and the gold standard in that area is survey evidence. We'd love, if you don't have survey evidence, if you'd go out and get it. There's a lot of information online at the FTC on how to conduct a really good survey. You can look at the surveys that we've conducted in the past, but that is the most influential piece of evidence we can have. We also want to hear from everybody. We realize that the panel slots are limited. We tried to get an array of people who would represent the kind of panoply of views out there, but of course they don't represent every single view. If you hear things that you have different views on or important pieces of information, you have until June 13th right now to comment on those. We take those comments every bit as seriously as anything that's said on this stage, so please take good notes and comment if you agree, if you disagree, if you have additional information. Those are extremely important parts of this process. You can find instructions on our website if you're not sure. It's pretty easy on how to submit comments.

Okay, a few words for our panelists and then I have some extremely important information at the end. For the panelists, please lean into the microphones. Our microphones aren't great and so we want to make sure that... These are our government microphones, and we want to make sure that not only do we all hear you, but the transcript is clean afterwards. Our moderators will be asking questions and follow-up questions, and the follow-up questions are extremely important, but if you want to speak, are we having people turn their cards?

Hampton Newsome:

Yeah.

Jim Kohm:

Okay, turn your card the other way, just like Julia's doing now. But we're going to try to make sure we get everybody's opinion. Please, everybody, watch your time. I'm going to do the same now. We're going to respect your time. We started on time, we're going to finish on time, and so try to make your comments as succinct as possible, because we want all the information. Please, if you haven't done so already, silence your phones. Anybody who hasn't done that, go ahead and do it now. If you leave the building, which you're more than welcome to do of course, and for lunch, you have to come back through full security, so just leave enough time to get back through all the security you went through to get in this morning.

Please wear your name tags at all times in the building. Our security folks are particular about that and they'll know that you belong. In case of an emergency, follow the instructions provided on the PA system and they'll tell us whether we have to leave the room, whether we have to leave the building, where to go. They're actually quite good at that. If we evacuate, the building alarm will sound and then we'll all leave in an orderly manner. We've had drills. This actually works pretty well. If you notice any

suspicious activity in the building, please tell one of the security guards, both at the FTC entrance and the entrances to the building.

The event may be photographed or recorded, so it's okay if you want to record it. We are recording this and there will be a public transcript of what happens here. Here is the most important part of my comments, and according to my staff, my highest use, the bathrooms are right outside. To the left is the men's room, to the far left is the lady's room, so everybody can know where to go. The cafeteria is open. It's open for lunch, and they have coffee, I think, until 11. However, and they're extremely strict about this, other than water, there is no food and drink in the auditorium. The guards will be strict about that. Okay, I hope we're going to have an extremely productive day. Thank you all so much for coming out. And with that, I'll turn it over to Julia.

Hampton Newsome:

All right, I'm not Julia, I'm Hampton. I'm not Julia, I'm Hampton, but I'm going to lead this panel. And I guess we're already ahead of schedule, which is a good thing. But I'm Hampton Newsome, and I'm an attorney at the FTC here. In this first session, we're going to talk about the current state of things with recycling practices, advertising/labeling, and then we will talk a little bit about where panelists think things are going, and then we hope to have a little time at the end for any comments from the audience. So after this session, we're going to do a session on consumer perception, and then in the last session we're going to drill down specifically into issues about the Green Guides and potential changes that people think might be needed. Before we dive in, I'd like the panelists just to give their name, their affiliation, just a quick intro. Let's start with you, Kate.

Kate Bailey:

It's really a chance to test the microphone, isn't it? Good morning. My name is Kate Bailey. I am the chief policy officer with the Association of Plastic Recyclers. We are the only trade association focused exclusively on plastics recycling and represent the entirety of the supply chain from design to collection, sorting and reprocessing back into new materials. It's an honor to be here this morning.

Kayla Smith:

Good morning. I'm Kayla Smith. I'm an assistant attorney general with the state of Connecticut, so I understand the government microphone problem. I'm also very thrilled to be here. Thank you.

Adam Riddell:

Good morning. I'm Adam Riddell. I'm the manager of the Office of Environmental Management with Arlington County. We oversee all of the county's trash recycling, organics, household hazardous materials, e-waste. Basically everything that needs to go somewhere, we oversee it. It's a pleasure to be here. Thanks.

Anne Germain:

Good morning. Anne Germain, with the National Waste & Recycling Association. We are the trade association representing the private sector, waste and recycling industry.

Eric Unis:

Good morning. I am Eric Unis, senior attorney at BBB National Programs, National Advertising Division. Thank you for having me. We are a form for advertising self-regulation and hear claims across different industries in different kinds of claims, including environmental benefit claims.

Hampton Newsome:

Great, thank you. Julia, do you want to introduce yourself?

Julia Ensor:

Hi. Julia Ensor, also an attorney in the Division of Enforcement at Bureau of Consumer Protection. I also wanted to mention, although Hampton said there will be time for comments at the end of this session, we will remain here until everybody who wants to talk has a chance to talk. So if you don't get your opportunity in the first session, there will be one in the second session, one in the third session, and anybody that wants an opportunity to ask a question or say something will be given that opportunity.

Hampton Newsome:

Okay, great. Let's start this discussion with kind of big picture in a nutshell. What are the pressing issues and problems as you see it currently with recycling? Anne, I'll kick it to you, but then the others can weigh in. Just in a short fashion, what are the problems that you see out there, Anne?

Anne Germain:

Sure. When I say I represent the private sector, waste and recycling industry, I want to qualify that by saying what we talk about with recycling, we're talking about generally what we manage and touch on a daily basis, so residential, commercial and office buildings, retail, things like that, things that you're used to experiencing. From recycling, some of the most pressing issues that we've had is there's a lot of volatility with the end markets, so prices are starting to go up a little bit, but we had very low prices for quite a while. The supply chain issues that a lot of people heard about during the pandemic certainly were actually a boon for recycling, so our prices went up significantly, and that was something that we got to enjoy for quite some time. And then as the supply chain issues have kind of been ironing themselves out and fixing themselves, we have seen a lot of our commodity prices drop again.

One of the things that our members see as a real need is to create the circularity. You need to have some pull through the system, so there should be additional demand created. A lot of recycling is mandated, so we think use of the recycled materials might be needed as well. Another really pressing issue is with respect to contamination, there's a lot of what we call wish-cycling that is done where people really want to recycle something without necessarily understanding whether it can be recycled in programs. They go ahead and put it in the bin, and that leads to a lot of contamination. It was as high as 25%. My members say it's come down a little bit, but it's still above the 20% for most of my members. I do have one member that says theirs is down to about 12 or 13%. That being said, we do think labeling has a significant impact on some of that contamination and perception. There are a couple of surveys that have been done that have indicated that labeling is the way that most people get their information on what can be recycled, so rather than reaching out to their municipalities which is a little bit more challenging, they tend to look at the label. And if they see anything that appears to be a recycling symbol, then they'll think that this can go in and they'll throw it in the recycling bin.

Hampton Newsome:

Great. Anthony, welcome aboard. And your timing's impeccable because the next question is for you, so you'll have an opportunity to introduce yourself. We are talking about the big picture in terms of what problems are out there with recycling, so I'll kick it over to you.

Anthony Tusino:

Sure, thank you so much. And thank you, Anne, for stalling for time. I really appreciate it. Security, they warn you, but you never really allot the amount of time. Thank you so much to the FTC for convening this important conference this morning. My name is Anthony Tusino. I am senior program officer for plastic policy advocacy at World Wildlife Fund. At World Wildlife Fund, we really believe in a future where people and nature thrive. As part of that, it's important to address plastic pollution, and we can't address plastic pollution without also addressing how confusing our recycling system is. Consumers are overwhelmingly frustrated and overwhelmed by the amount of stuff they have in their homes. And I picked up on the last part of your comments, I think it's absolutely true that recycling claims can be confusing because there's so many different types of plastic and so many different materials and different formats that consumers bring into their home.

When we create a bottle or create a clamshell, we don't always know where it's going. And it matters whether you live in Massachusetts or Washington, D.C., or Montana or California, how you process those materials and where you put them. Sometimes we put them in a blue bin at the end of our curb. Sometimes we don't have access to these services. Sometimes we need to bring them back to our stores. So it's important that we consider that the consumers are our first line in creating a responsible materials management system. They need to be empowered to make decisions, to use their materials responsibly, and then also once they're finished using them, know how to recycle or reuse them to the fullest extent. Every two years, WWF undertakes ambitious public opinion polling to understand how consumers are thinking and feeling about the materials they used.

We started in 2020, we redid it in 2022, and even in just that short timeframe, in two years, especially going through a pandemic, we saw a dramatic increase in the amount of Americans who want to address this problem. It's very rare that in public opinion polling, you get 86% of the public to agree on anything, but 86% of the public does agree that the US recycling system needs improvement. So at World Wildlife Fund, we really take that to mean that it's an important issue, it's a pressing issue, it's a bipartisan issue, and consumers really need to be empowered to make the right choices and have the right information to be a productive player in the system.

Hampton Newsome:

Great, thanks. In a few minutes, we will drill down into specifics of what's happening with collection and facilities, but other big picture thoughts, Kate?

Kate Bailey:

Thank you, Anthony, and Anne did a great job of summarizing things. I want to just make a comment, big picture. Recycling is working. Recycling is working every single day across this country, and the way it works is there are 9,000 community programs which are collecting a specific set of materials. Those materials are then sorted by material recovery facilities or other similar locations into specific commodity types, and then sold on a market to be used by mills, reclaimers and others, to be made into a specific product. That is really important because recycling is about manufacturing. It's not just about keeping things out of the landfill, it's about making a specific product. The reason recycling is important is because it supports the supply chain, it becomes part of our circular economy. And so we're here

Kate Bailey:

... here today because there are a lot of challenges with the system, and there's a gap between where recycling is and where we want it to be. And the FTC plays a role in addressing that gap. But I first want to just establish, it is working. The system works every day, as Anne mentioned. We saw particularly during the pandemic, recycling was declared essential because manufacturers needed that paper. They needed that glass. They needed that plastic to be made back into new products here in the US. So, what we do know is there is a gap and we need to take steps to improve that. And that starts first with designing products that are made to be recycled in the systems we have.

Second, with getting consumers to put those materials in the correct place. And then third, building out a robust recycling infrastructure to process and sort and put those materials back into re-manufacturing.

And the FTC really plays a strong role in helping us make sure products are accurately labeled, and in really helping restore the consumer confidence that when they put the things that are asked for in the bin, they are effectively recycled. And look forward to more discussion on that today.

Hampton Newsome:

All right, thanks. Adam.

Adam Riddell:

Yeah, just one big picture thing, as we discuss this, and Anthony touched on in his remarks. Recycling, we're talking about it and we're talking about national policy and guidance. It's actually very parochial. And that's what I think a lot of the confusion, one of the big challenges is when we talk about, well, what should we do nationally?

Well, from a locality standpoint, we kind of play this role a lot of times of directing traffic. We don't control what goes into the marketplace, what those materials are.

And then we are sort of takers on the back end too with what the private sector, who in this region we rely on a lot. But in California and other places, they're much more public MRFs. And so then it's almost policy decisions.

But what we're always combating is people say, "Well, is this recyclable? I heard, I read this article in the New York Times." Well, they were talking to a MRF in Iowa. And I have people coming to me going, "Well, I know you're just lying to me. And that's not..." And I'm like, "Well, no, in our system it is. I don't know what they're doing in Iowa. That's their thing."

And it comes down to the contracts you have with the MRF, what the MRF's willing to do, what they can do.

And so again, that's just something to keep in mind is, that it's very hard to come up with a national. We are certainly here to try. But it is so localized in many respects that it does become hard to talk about as just one conversation.

Hampton Newsome:

Great. All right, anyone else on the large picture? Okay.

Let's get into some of the details about what's happening on the ground. And this will, I'll throw it out first to Adam, Kate, and Anne. And this is specifics about current recycling practices.

So a bunch of questions here. So what materials are generally widely recycled by municipal programs today? And are there any materials that are routinely accepted by all consumer recycling programs? Curbside and collection drop off programs?

And also importantly, what materials are commonly collected by recycling programs but are not actually getting recycled these days? And I know that's a big issue.

And then lastly, how is this information obtained by people? So Adam, if you could just start off, since you're running one of these programs, and if you could go through the nuts and bolts and what's happening?

Adam Riddell:

Yeah. So again, as a locality, we sit at, we're kind of directing traffic. And the way the United States Waste and Recycling System is, and I think hopefully starting to change. But we've really sort of, manufacturers make stuff and then they're not responsible. It sort of falls to localities and states to figure out how do we do this? And we work with the private sector. And again, there's some public MRFs.

But we've seen a couple of changes I think that are happening. Is one, and this has probably been the biggest change, we've seen the economics of a lot of Materials Recovery Facilities. And again, just for people who, we throw around the jargon MRF. A Materials Recovery Facility is where the recyclables go and they sort the single stream recyclables into the various commodities, and then market them and move them out to the end users.

But one of the big changes is, in the private sector at least they have gone from a business model where it used to be much more, they had some more skin in the game on the backend for commodities. They've now wanted to get all their money up front.

So we just finished renegotiating a contract with our MRF, and we saw our prices double. And that's because they're giving us more of the backend. We get about 90% of the commodity revenues. But they want all their money up front. "Just pay us our processing costs, what we expect to be our profit, and you can have whatever comes off the back end."

That's a big change because you see your prices go up and then people go, "Well, should I recycle?" You start to get into budgetary issues with your county board or city government. Because it does start to, they go, "Wow, look at this jump. Should we be recycling all these materials?"

So then, again, this is where you get into things where people may think something is not recyclable, but someone may have made a decision, "Well, if we don't include that in our stream, we can get better prices. They'll give us, they really don't want this. They can technically handle it, but they don't want it."

And so we've seen that change, which has driven some decisions. It's where, and again, I think this is sort of misinformation, but people hear, all these localities, they're not doing curbside recycling, they're not. And people are like, "Oh, well it must be because it's not working." And that's not really the case. A lot of times it's, they've seen these huge cost jumps. And especially for small and rural communities, they can't handle that budgetary jump. And so those economics have changed.

Turning to the materials and what's commonly accepted, I think pretty much everywhere, aluminum cans, paper and cardboard, those three are the really big ones. Kind of a cut to the chase, plastics is where we get 98% of the confusion. I rarely, the only question you occasionally get about cardboard is, "Do I need to take the tape off?" No, you don't.

But plastics, everyone, again, because they get their information from national media, they get some of it from us, they get it from where they lived before, and they get it from advertisers. And then they come and go, "Well, this is what I heard and why was it accepted here? And now that I moved to Arlington, it's not." Or, "It's accepted in Arlington, but not in Alexandria. Why not? "

So again, it's really the plastics where we're seeing most of the confusion. But I'd say the good news is, and I agree, I think if people use the system correctly, plastic, it works, right? It's a good system. One of the big challenges we have is people not using it correctly.

And that's because, again, we're sitting in this sort of area where we have a lot of different voices telling people a lot of different things. And sadly, one of the effects is just by having so many people lose faith in the whole thing. And it suddenly becomes, "Oh, well if you're saying this and they're saying that and the manufacturer's saying this, you guys must be making this up."

Anyway, yeah, again, I think the system works when people use it correctly. But yeah, it's getting them to do that, and sort of adjusting to all these different factors.

Hampton Newsome:

Okay, great. Thanks. And Anne, I was hoping you could get into kind of specifics. So if I'm a consumer and I have something that I'm trying to figure out what to do with, what materials are, types of material shapes, materials, that are there that I can with confidence just put into any collection program in the country? Is there kind of a list of that?

Anne Germain:

So the general guidelines that we use, cans are recyclable. So whether it's steel or aluminum, in general, those are recyclable.

In general, bottles are recyclable. So, and bottles and jars and. Then fiber. So basically paper. Whether it's junk mail, whether it's your magazines, whether it's newspapers, whether it's cardboard boxes or cereal boxes, all that kind of stuff. So we call all the paper, cardboard, all that, we just call that fiber. So think fiber, cans, bottles, jars, are the ones that are almost universally recyclable.

Hampton Newsome:

So when you say recyclable, does that mean-

Anne Germain:

In your bin.

Hampton Newsome:

... these are routinely collected by, say, the municipality or whatever?

Anne Germain:

Yeah.

Hampton Newsome:

Are these things accepted by the MRFs?

Anne Germain:

In general, they're accepted by the MRFs, and in general they're collected by the municipalities. So that's a general rule of thumb. As Adam says, there's always little nuances.

But if we got contamination from the nuances from that, we can generally live with that. Barring something like aerosol cans, which we don't want. But other cans, like in general, when you think about cans, food and beverage cans, we can take pretty much all of that.

So there's always little nuances. But if that was the extent of our contamination, we would be thrilled.

Our major contaminants are three things that I would point to. One are what we call film plastics, plastic bags, anything that you can, any plastic that's really something you can wrinkle up. The film plastics tend to wrap around our machinery, and multiple times a day, the entire plant has to be shut down to cut, and they go on the machine with machetes and they cut down those plastic bags to get them off. So that's a huge problem.

Lithium batteries, while less common, is a significant issue for our MRFs. I have one member that said the first, he's been in an operation about 10 years. The first four years he didn't have a single fire. The next four years, he had one to two fires a month. In the last couple of years, he's been having about five fires a month. We expect that to only go up.

And a lot of the reason is because lithium batteries, rather than having a recycling label, they often have a trashcan with a slash through it, indicating to people, "You shouldn't put this in your garbage." And so people, what are they supposed to take away from that?

Sometimes it's accompanied by a recycling symbol, indicating that to the consumer, "You should recycle this." And so most people equate recycling with their curbside bin. And that's why we think we have had such an increase.

There's no additional information saying, "Well, not in your curbside bin. You should recycle it, but not there. You should take it back to the store." And then it requires a whole lot of increased effort by the consumers.

And this has led to huge numbers of fires across our system. We have, somebody recorded about 400 fires in the country, but that was fires where the fire department's called and they're bigger fires. Some of our facilities might be having 400 fires a year. So it's a huge problem for us. So those would be the largest contaminants.

Hampton Newsome:

So in terms of plastic, so just back to the consumer making decision. So if they're looking at the numbers on it, are there certain numbers, and it's kind of a conventional shape, not a tube or something like that, that they can be confident that this is going to be collected by as part of the program?

Anne Germain:

So in general, one, twos and fives are ones that are pretty widely recyclable. So your plastic bottle here, this'll be a two. Your milk jugs, your laundry detergent bottles, all those are ones.

And then we have a lot of fives, polypropylene, that have entered the market. So in general, one, twos and fives are widely recyclable, in the shape formats that we discussed.

If it gets to another shape, like there's a toothpaste that has switched to a two. Or actually, I'm sorry, switched to an HDPE. That toothpaste tube, while the plastic might be recyclable because of the shape, it's not going to make it through our systems. It will be looked at as contaminant and it'll be removed by the workers on the, because they don't have a lot of time, they're pulling out contaminants and there's a conveyor belt going by super fast. So there's no opportunity until all toothpaste tubes go to that format, that will be regarded as contamination.

Hampton Newsome:

Okay. And one last thing, and we'll get to Kate. So these configurations are shapes, tubes, are they widely understood across the country to be-

Anne Germain:

Not recyclable.

Hampton Newsome:

... problematic?

Anne Germain:

Yes.

Hampton Newsome:

Or is it kind of a facility by facility?

Anne Germain:

I don't know of a facility that accepts tubes.

Hampton Newsome:

Okay. And so are there any materials that are kind of borderline? Like some will be okay with it?

Anne Germain:

So the borderline shapes that are less widely accepted but are accepted in a lot of places, would be something that Kate had mentioned, which are some of the other rigid plastics, like clamshells, things like that. So a lot of places do accept those, but they're not universal.

Hampton Newsome:

Great. Thanks so much. All right, Kate?

Kate Bailey:

Thank you. Anne did a great job of highlighting, it's really rigid plastic packaging that gets collected in the recycling system. We tend to think about four shapes, bottles, tubs, jugs and jars. So the water and soda bottles, your milk jugs, your peanut butter jars, your yogurt tubs.

It's easier to educate the consumer about bottle, tub, jug, jar, because then they're not going to argue with you. Is it a chair or a jar? Like, it's one or the other.

And those do pretty much break down into the three major resin types. PET, number one. Number two, HDPE. And number five, polypropylene. Those three are 80% of the rigid packaging on the market. So they really are the majority of the rigid packaging that consumers receive.

And those three materials meet the FTC guidelines around what is acceptable and widely recycled. And so this is really a key role for the FTC to enforce, that those materials are being recycled, and uphold those claims. A couple of things about them being recycled. They're being largely recycled domestically. There was at one point where about a third of plastics and a third of paper were being shipped overseas, much of that to China. That has radically changed in plastics recycling in recent years.

Last year, less than 8% of plastics were exported. The China National Sword policy was an important market shift within the US. And we reinvested in domestic manufacturing. And those materials are recycled in the US and in North America.

And that's important because there is record demand. Companies have made commitments, and there's also policy to increase the use of recycled PET. So in the water bottles, for example, we need to collect three times more PET to meet those goals in the coming years.

So there is record demand coming to make plastics, to really strengthen that. And to the point about how materials are accepted, how facilities choose. A really important thing that guides our industry are the bale specifications.

So as a recycler, I am buying a specific commodity. And that bale specification is outlining what is accepted in that commodity. Recyclers may choose to accept a variety of materials and then sort out to make a specific bale, but it's very much governed by what is in the bale specification itself. So that's a way that our industry regulates itself.

Hampton Newsome:

Okay, thanks. Anthony.

Anthony Tusino:

Yeah. Just quickly, I want to touch on this from a bit of a consumer angle. The consumer will look at a package for maybe a few seconds before they decide what they're going to do with it. I know we're going to touch on what that looks like, what advertising claims should look like. But it's important to keep in mind that, as we think about where the process leads these materials, it starts with the consumer looking at a package for a couple of seconds.

Maybe they can find the resin identification code. Maybe they can't. Maybe they know it's a tub or a tube, and what to do with it. But oftentimes it comes to these split second decisions where you stand over your kitchen trash bin, I don't know, my recycling's in the back, my trash is in the front. And then I say, "Okay, what do I do?"

And it's those couple of seconds that really change the fate of this material. So we really need to empower our consumers to know what to do with it. And that starts with how we design these products. Whether we use a recyclable bottle or not, or what format we choose. Whether we include contaminants or additives or colors or labels.

But it really comes down to those couple of seconds, where we determine the fate of what this water bottle will be. And that leads to things, like Kate saying, later down the stream, is the bale actually the grade that we need or is it not?

Hampton Newsome:

Okay. Kate?

Kate Bailey:

One more quick comment. I forgot to answer the second part of the question, what doesn't get recycled?

Things we don't ask for do not get recycled. We talked about wish-cycling. It's a huge thing. If we didn't ask for it, it doesn't get recycled. The other important thing to know about what does not get recycled is

all of those things that are not collected. And so I think when we talk about frustrations with recycling and anything about the story of recycling, we also have to look at the story of packaging.

And what is going on with packaging in our lives right now, we have a profusion of plastic packaging, profusion of plastics. We've all heard the stat, only 9% of plastics were ever recycled. That doesn't mean 9% of what went in your bin, that meant 9% of what was produced. So I think it's important to discern what is the frustration people have about what to do with plastics, which is different than what is happening with their confusion around the recycling bin.

Hampton Newsome:

Well, just to follow up on that, so are there materials that are collected, listed, and Adam, you can jump in on this too. That are part of the recycling program, they're collected, they're baled up. You talked about how there's increasing demand, but are there still materials that are collected and not recycled at this time? Landfilled or done something else with? And either one of you.

Adam Riddell:

Yeah, I'll say, and this is where it gets into contracts and a little bit confusing. So in Arlington, we are still collecting ones through sevens. And we've talked about ones, twos and fives. And so when I got to the MRF [inaudible] center stuff, I asked them like, "What are you doing with these? Because we're not aware of markets for three, fours, six or sevens." And what they told us, they said, "Look, 98 plus percent of what comes in here is a one, two or five." They said three, fours, six and sevens make up a very small part of it. They said, "We can move what's called a mixed bale," which is one through seven. And I said, "Well, what's happening to it?" They go, "We don't know of end markets for three, fours, six and sevens either." But we think they're breaking the bale. So someone buys it, literally breaks it open, then they sort it, take the one, twos and fives, but they got a lower price for this thing that they know will be about 2% or less of stuff they don't want. Then they said, "Probably goes to a landfill."

So what do we do that with as a locality? We're saying, "Look, they're telling us we can take this stuff and we can put it in a mixed bale and sell it. But we're not aware of three, four, six and sevens." And what do you do? So we've decided to keep it largely because we want to make the system as simple as we can.

And to Anthony's point, people make these split second decisions. And some of those numbers, it's just hard to see. So we're kind of like, "Okay, we'll put it in because we are being told, yeah, they can bale it up." But I think probably they're not, the threes, four, six and sevens are not actually getting recycled. We have no evidence. But we've told people.

Now, some people get mad about that and they're like, "Well, you shouldn't tell people." Again, the flip side is we're trying to make the system as easy for people as possible. And until they tell us, to your point Kate, that we don't want it, if they're saying, "No, we can take it," we kind of follow what they tell us, go ahead and put in.

Hampton Newsome:

So your observation is that the plastics that are widely collected, as Anne pointed out, the one, twos and fives, your observation is those are actually getting recycled?

Adam Riddell:

Yeah. And again, I asked them, who are you shipping it to? And so they could give me... And we were with one of the biggest waste processors in the country, Waste Management is who has our MRF

contract. They have a lot of outlets. And so again, they could tell me, well, we're sending this... It is all staying domestic. As Kate said, it's all mills on the plastic side throughout the southeast. So we know where those are going.

But yeah, the threes, four, six and sevens are like, "Yep, we're still shipping mixed bales." But they're not aware of any end markets. And I think, if they're not aware, there probably aren't any for those.

Hampton Newsome:

And just a quick question about your experience in Arlington. So I know Arlington stopped recycling glass.

Adam Riddell:

We didn't stop.

Hampton Newsome:

Or stopped... Well, okay, you can explain that. But the general question is, how often do you find that you are changing that list that you're providing to residents about what goes in the bin and what doesn't?

Adam Riddell:

So we'll start with the glass thing because I do want people, "Well, why don't we recycle glass?" Well, we do recycle glass. But what was going on with glass is, glass, when you put it in a single stream system, so it's mixed with all the other materials, the paper, everything. It's serviced by the same vehicle that picks up your trash with a compactor. Well, glass breaks and you get all these little shards, which are, one, really hard to filter out of that stream. And two, they stick to stuff.

So what they were using it for, and most MRFs I think are, I'm sure there's, Anne probably could point to a couple that maybe are successfully recovering it. But all the ones that we're aware of in the region that we talked to, they said, "Well, it's going as daily cover for landfills."

So it's reused, because you could use gravel or something else heavy, but it's the stuff basically you put down to make sure for a landfill, wind doesn't blow all that stuff out and it doesn't get into streams and into the environment. And that's what it was being used for.

If you source separate it, glass actually has pretty robust markets, if you have a really clean stream, so it's just the glass. And so we actually make a profit on the glass. And we sell it to a facility in Pennsylvania that will take that stream.

So we are recycling it, but we do need it to be source separated. And so that's what we've asked people to do.

The second thing on how often we update the list. The market of recyclable materials evolves. And also, again, MRFs are constantly adding new capabilities.

So occasionally we will get things that we say, "Okay, here's a new product that we've been told, Hey, they've got a new optical sorter, they can get these." And so a good example of that was fives, have been sort of more recently, and I think some of it's around COVID, when everyone did takeout, but we've seen a lot more acceptance of, "Oh, well we can get your fives out and so we want those."

Whereas in the past it was more hand-picking, they'd get some, but that's gotten a lot better. So we're much more comfortable taking those materials in our system.

Occasionally, materials will get deleted or move somewhere else. Again, glass is the prime example of the last big change we had.

But generally, again, the plastic bottle hasn't changed all that much. There's been some changes in more standard composition, just using one resin of plastic. But again, for 20, 30 years, whatever, it's pretty much been that. Same with aluminum cans for even longer. Paper's paper. So in large part it's a pretty stable list.

Hampton Newsome:

Great. Thanks. Anthony?

Anthony Tusino:

Yes, quickly. I just want to touch on, we know that three, four, six and seven isn't recyclable. So whose responsibility is it to remove it from our recycling streams? We at WWF very much believe that it's the producer's responsibility to remove these formats.

If we know that consumers don't know what to do with them, if we know that municipalities can't reprocess them, if we know that it decreases the value of the bale, okay, where in the value chain do we remove these problematic and unnecessary materials?

And that absolutely starts with the producers of our packaging. They produce things that they know can't or won't be recycled, so they should move toward recyclable or reusable formats.

It's not the burden of the consumer or the municipality or the hauler or the reprocessor, because they don't have control over those decisions. So it's absolutely the producer's responsibility.

Hampton Newsome:

Okay, great. Last word to Anne on this topic.

Anne Germain:

Yeah. I just wanted to expand on what Adam was saying about the end markets for glass. So glass, besides getting broken in the trucks, they also mix colors.

So the most robust markets are for what we call flint, which is the clear glass. And then amber, which is brown. And then green has the lowest value.

And so, besides getting smaller and contaminated, it also mixes color. So usually if you're near an end market that can separate the glass and then make it into new glass, your proximity to those end markets is really helpful, because glass is also extremely heavy.

So transportation costs become a large factor. So I do have some MRFs that are positioned in locations that are very close to a secondary MRF, that will take the glass and separate it into the three colors. And then be able to take the flint and make it into new glass, or the amber to make it into new glass. And then the green will usually end up being utilized for some third purpose. It's usually not made into new glass because it's usually not American.

Hampton Newsome:

Great, thank you. Well, this, really helpful, a lot of useful information for us. We appreciate it.

But now let's get the lawyers involved. So Kayla and Eric, couple of questions I'd like you all to talk about. We're going to be getting into consumer perception in the next panel, but generally speaking, what are consumers generally faced with when they're considering recycling information in today's

market? As far as you guys can see. What do NAD and the state AGs see out there in terms of claims that are made to consumers?

What impacts do the RIC codes have? Jim mentioned that at the beginning. And what generally are the most common problems with the recycling claims that you see out there? What harms do they cause? And just generally, what's at stake here for consumers in the environment?

And Kayla, why don't we start with you.

Kayla:

Sure. I guess you have to get the lawyers involved now. But just before I jump in, I wanted to say, one, I'm really heartened by the 86% statute that you cited, Anthony, that there is this really intention in consumers to address and deal with the recycling system. I think that that's, again, very, very heartening.

And as I've just been listening to these subject matter experts, one of the things that's running in the back of my head is how as I, small position that I am as an AAG, how can regulators and state enforcement be helpful in the situation in the industry, in environmental groups? What are the concrete things that we could do to assist?

I know for example, and you were talking about the lithium battery fires. In Connecticut, we have a pretty robust EPR program for lithium batteries. That's not necessarily universal across the country. But I'm just really interested in hearing these perspectives and wondering how we can be helpful.

And I think, right now, one of the things that Connecticut is focusing on is really trying as best we can to address the consumer confusion that we all know exists. That we all know is somewhat deliberate in the packaging that the producers are creating and are selling to consumers.

We have very robust UDAP statutes, the Connecticut Unfair Trade Practices Act. And we actually have filed suit against Reynolds for the manufacturer of their hefty recycling bags. And it's a plastic bag, but it's advertised as a recycling bag. It's advertised as a bag that you put your recycling in, put it in your big blue bin, it gets picked up and sent to your MRF. And we have alleged, it's very confusing to consumers, that it's a plastic bag.

And again, as Anne was mentioning, when plastic fill and plastic bags go to MRFs, they get into the machines, there's an issue for men, money and material, it's unsafe to cut them out.

So right now our role is, with this lawsuit and then kind of considering others, is how we can best address this glut of information that consumers are faced with, in terms of the split second that they have to look at their product.

But then also just the lack of actual concrete, real direction from the producers. We think that's a huge problem. We think that our role as a regulator is to help address that end, while of course supporting our citizens and our consumers with as much information as we can, to give them clear direction.

Julia Ensor:

Kayla, you said in your remarks just now, something about deliberate deception on the part of the marketers. Is there a particular express or implied claim or category of claims that you're seeing, that you're referring to?

Kayla:

Just greenwashing generally. We certainly know that consumers, many consumers, Connecticut's a progressive state, it's a blue state, consumers are environmentally conscious. Most consumers. Again,

86% of consumers don't want to pollute. They want to be helping the environment and helping the world.

And it's frustrating, because it is not easy for them to know what is recyclable, what isn't, how best to utilize their product, and how best to recycle it and to deal with it.

So really just seeing how much we can drill down on greenwashing claims, is something that our state's focusing on.

Julia Ensor:

And just to drill down on that, one follow-up question. So is this deception that you're seeing, is it more in the form of imagery? Is it in words on the packaging? What are you seeing?

Kayla:

All of the above. All of the above. And it's, pictograms that are trying to make it simple for consumers, are actually confusing. Again, there's both a glut of information and a lack of really clear direction. And that's frustrating

Kayla:

... For us to see. And we've done our best to see if we can address it.

Hampton Newsome:

Okay, thanks. Eric.

Eric Unis:

Yeah, so I mentioned earlier that we are in advertising self-regulation. So I think I want to note that upfront because that's the circumstances that we are seeing these claims in and what does that mean when we examine a recyclable claim? It means that we've had a competitor challenge advertising a claim that a product is recyclable or NAD in its monitoring function has initiated its own challenge. So I think that shows some of the impact these claims have in the marketplace. We too, note that one of the general issues is confusion and I think that goes across the board and something we try to alleviate in this space, not just in recyclability but across the board in environmental claims, is making sure consumers have the right information. And as far as the claims we've seen in our form having to do with recyclability, I think it would be fair to say that some of them are very much what the guides currently contemplate.

And through the examples we've had the classic unqualified recyclable claim, the please recycle claim and we've applied the standards set forth in the guides. Going a little bit further, some observations of what we've seen in recyclable claims. They're often paired with broader environmental benefit claims, like an overall message about sustainability. Taking it a step further, and I know that might be another panel, but creating a message about sustainability through the recyclability qualities, we also see competitive claims about our product is more easily recyclable than another product where that product is impossible to recycle. We also have encountered the issue of special instructions required that place an additional burden on consumers to recycle the product where it may not be apparent that the consumer has to take a special step to return it to the manufacturer to get the benefit of the recyclability.

Hampton Newsome:

Kaelah.

Kayla:

And just to jump back off of that and then to answer one of your questions, I think it may be answered one and a half of them, but RIC codes are particularly problematic in that I'm not going to have the number correct, but it's something like a 40 plus states have baked into their legislation information about RIC codes or resin codes or chasing arrow symbols or a triangular symbol. And it can be very challenging then for individual states to actually address greenwashing problems because they have the language baked into their statute and again, that can just only increase the consumer confusion because the consumer sees the recycling symbol or they feel the little chasing arrow symbol and they say, "Oh, this must be recyclable." Even if it perhaps isn't because of the market or just because it's actually a three year a four. But that's something of a difficult problem to address since it's legislative. So it can be a little frustrating.

Hampton Newsome:

Do you or does anyone else on the panel have an idea of where things are with those state laws? Are they getting changed? Are some changing, some not?

Kayla:

I can only speak for Connecticut. Connecticut's actually is not a particularly egregious example of it. There's really no significant problem. I know that other sister states actually, I think Massachusetts for example, has very specific requirements about what the resin code has to be or what the RIC code has to be, that can make some things challenging for them, but I can only speak to Connecticut.

Hampton Newsome:

All right Kate.

Kate Bailey:

So from a recycler point of view, the resin ID code was never meant for consumer education. It was meant to help recyclers understand, what is this type of plastic? Plastic was relatively new on the market. There were many different types. We were much more specific about the types of materials we were able to accept. So the current FTC guidance is for the inconspicuous use of the resin ID code. And we have recyclers who still rely on the resin ID code. We have a lot of optical sorting. If something is not sorting, it keeps kicking out of the system, recycler will flip it over, "Oh, it's a seven. I'm trying to sort for two. Okay. Why is this product a seven?" So it is still used today by recyclers as a technical tool. Ideally, we don't want consumers flipping over the bottle and looking in the light as we all have done.

We want a label that's very clear on the label itself. So in many ways we don't need either the label or the RIC code. We need something that's very clear to consumers right on the package because that is where they are going to look and that's where we are starting to see a lot of momentum around a national labeling system that could potentially address the fact that 36 states have the resin ID codes. It could put something right there on the label. It could include what's recyclable, instructions, as well as what's not recyclable, because the burden should not just be on companies that do make something recyclable. It should also be on companies that do not make something recyclable to help keep those materials out of the stream.

Julia Ensor:

What's the role of qualified claims as you see it?

Anne Germain:

I'm sorry, I was going to-

Hampton Newsome:

Go ahead Anne and you can answer that and if you have another comment.

Anne Germain:

Well, I was going to address the resin identification code. So for those of you, the resin identification code is when you see the number in the chasing arrows, the chasing arrows is considered the universal recycling symbol. Everybody knows it's the recycling symbol. When it's used on cans. When it's used on fiber, people know, "Okay, this box is recyclable or this can is recyclable." But when it's used on plastic, it's no longer a recycling symbol. It's now a resin identification code. And is that part of the reason why it's confusing? I would suggest yes. In fact, they changed the resin identification code a few years to reduce that confusion.

They changed it from chasing arrows to a solid triangle, but that was a voluntary change and some of the manufacturers elected not to make the change so the confusion continues. Currently FTC says if it's in an inconspicuous place, then maybe it could remain, but we find that people are searching their containers for any sign that something can be recycled and they will turn and find those inconspicuous chasing arrows and if they find them, they will put them in their recycling bins. And so we suggest that if they put a resin identification code in an inconspicuous place, that they should also put a, this is not recyclable next to that so that it's very clear for the consumer.

Hampton Newsome:

Thanks. Anthony.

Anthony Tusino:

Yeah, just quickly to touch on that, we're quickly moving beyond recyclable claims as well. We see more claims of plastic neutral or marine degradable or biodegradable, and those only confuse consumers even more. I'm not a material science expert, but if you'd like to hear from our material science experts or WWF comments, go into the science behind what is biodegradable, what is compostable, how can it be an effective part of our waste management system in a way that doesn't confuse consumers? So we also have the recyclability claims. We have to evaluate them and how consumers evaluate them. But also we need to think and remember, this goes beyond recycling, especially as consumers learn more about compostability, biodegradability, marine degradability, especially plastic neutral. Those at first glance to consumers can seem like positive environmental outcomes on their packaging, but they're not always positive environmental outcomes.

Hampton Newsome:

Just to follow up what Julia asked about qualified claims, claims where there's extra information to try to steer the consumer to the right decision. And I guess I would be interested if anyone has any thoughts about whether current qualifications that you see on packaging is helpful, confusing, deceptive to consumers. Anne.

Anne Germain:

So we would like qualified claims to be nationalized, universal. So once people get more used to qualified claims, then they'll be able to know them at a glance. So one of the things we've gotten a lot of is used diapers. I know it seems impossible. How could anyone think that was recyclable? And we couldn't figure it out either. And then we saw that the box has the recycling symbol very clearly on it. We understand that new parents tend to be sleepy and when they see a recycling symbol, perhaps they become hopeful that their material is going to be recycled. Not sure. So qualified claims that show that, oh, the box is recyclable, the contents are not. This is recyclable return to store, this is recyclable in some other manner. This is check locally. We are in favor of those as long as it's a universal symbol that is used consistently across the country. The inconsistent use when you're exposed to a new symbol that's when people aren't used to it and they won't understand it. But if it becomes widely utilized, we think it could be effective.

Hampton Newsome:

Thanks. Eric.

Eric Unis:

I was just going to quickly add, yes, that's similar to what we've seen that sometimes that issue comes up, what portion of the product or the packaging is recyclable? So that issue does come up and causes confusion.

Hampton Newsome:

Kate.

Kate Bailey:

I want to speak to the role of qualified claims in that we talk a lot about the curbside recycling system. Everyone wants things to be simple. Everything can just go in the curbside recycling system. That's just not going to be the case. MRFs are only set up to handle so many commodities to sort things out. And as plastics recyclers, we need more supply. We need to be making more plastics that are designed and collected to be recycled, to be made back into new products. So we can use less virgin fossil fuels, which is what consumers want, and use more recycled post-consumer plastic to make products. In getting more supply we are going to have to think outside the curbside recycling system. So it's not just is it curbside recyclable or is it not? Recycling does exist in that uncomfortable gray area where we have store drop-off programs, we have mail back programs, we have a variety of collection mechanisms.

There's not just packaging there's, how can I take my electronics back to be recycled? Things like that. So there is some of that nuance. That nuance is hard to communicate to recyclers, but we need that, we are going to continue to exist in that space where some materials are just not as widely collected because they don't fit into the curbside bin. We also need to establish that for a long time, packaging was designed over here and recycling was designed over here and we existed in silos. And there's a lot of fantastic work going on right now through legislation and through stakeholder groups to align packaging design with the recycling system and create a north star. Where are we all going together so that companies are designing products to be recyclable and they're investing in the recovery system to make them recyclable.

That is a pathway and part of the role of qualified claims is how do I make a product more widely recyclable? So this is not just a static, are you widely recyclable right now? How do I have a pathway, a roadmap to get there? That's not an eternal purgatory. You don't just get to exist somewhere on there.

You have to show measurable progress. But where we are today with recycling rates being lower than we need to, we need to acknowledge that we need that pathway for materials to become more widely recyclable. And that is a key role of the qualified claim.

Hampton Newsome:

Thanks. Kaelah.

Kayla:

I hope it's all right if I'm going to ask a question when I make this comment, but I take your point, Kate, certainly that your industry group, they want more supply. They want more supply. I understand that, but is there a thought that we should be looking to the post-consumer content that is sitting in rivers and landfills and oceans and that's where the supply should come from versus the just newly made plastic? I mean, I know that's really difficult to address that and to deal with that, to flake that down, but I'm interested in the idea that we should be making more plastic is what I take from your comment. But if that's incorrect then okay.

Kate Bailey:

Thank you for asking. We do not need to make more plastic to recycle more plastic. We have plenty of plastic out there today to be recycled. We know seven out of 10 water bottles, for example, are thrown away or littered in the country. We have a long way to go in just making that very recyclable product more readily recycled or more put in the bin by consumers. And that's where the FTC comes in by helping shore up that that is a very recyclable product. And to your point of where do we go look for it. It's in the consumer household. We know 40 million Americans do not have access to recycling. So it doesn't matter what the label says, if you don't have a curbside bin, you are not going to participate in the program.

So a huge thing that we need to do moving forward is get people bins. Connecticut's a great example. You have a deposit program, you have bins. Much of the country does not. We also know the recycling partnership has done some great data. Consumers are only recycling about 60% of what is actually recyclable. So there's still a lot of things that you consume at home. You have a recycling system and you are still not putting it in the bin. And that is a role of labeling and marketing can really help us get that extra participation from those consumers that do have access.

Hampton Newsome:

Okay, A few minutes we'll be talking about the future, but one more question about all of this. And Adam, I'll kick it to you first since you also have a comment. So we've been talking about this decision making the consumer is going through. Do you have any impression on what's the basis for that? Is it the label? Is it their general understanding? Is it the list that Arlington County provides them? Is it a combination of those? And I'm curious if anyone else has any thoughts about that. And also related to that, the advertising claims we're talking about. Does anyone have any thoughts on the nexus between that and the general problems we were talking about at the beginning with recycling? Adam.

Adam Riddell:

So quickly, I just had a quick comment on the qualified claims. I'm less in favor of them because I see it as a get out of jail free card. It tends to be recycling's really prominent and then it'll be like, check with your local and you've just given someone a research project. Well, most people aren't going to do that. So you've now expanded a lot of products that have recycling claims very prominently. And yeah, there's

fine print that says, well, maybe not in your single stream, but people just hear single stream. And so again, if you said no qualified claims, you got to be recyclable, we're going to limit this to just curbside single stream materials. I think that would help. On your question about where people are gaining their information. It's a mix of all different things. As I said, I think in earlier comments, people get ideas from the media.

I think the study where they said only 9% of plastics get recycled. And Kate I think did a good job pointing out the problems is you have an overly large denominator that included everything for medical sharps, which obviously we don't want to recycle and latex gloves combined with the things that we do want to recycle, so people get it from there. People will look at our list and again, it's like if the exact thing, we can say bottles, jugs one day and they'll get something and they'll be like, "Well it didn't say this." And I'm like, "Well, I know we didn't name that product." But they'll get confused. They'll say, "Well, if it's not on there, I assumed it wasn't."

And then they get it from the products themselves. And one of the big ones that we've seen is more of a challenge is with the e-commerce boom, the plastic envelopes that come just say, recycle me or recyclable. Well, those are films, they are recyclable, but if you take them and treat them like a plastic bag, people just see, "Oh, it goes in my..." And the number of those envelopes we see in our herbicide bin. And then have to tell people, "No, no, it is, but you have to take them and drop them off." They're getting their information from the package itself and that's what they're taking. So again, it's a lot of different sources of information, which is also what makes this challenging is that I'm not sure there's one tweak because people hear are conflicting things.

Julia Ensor:

So just a quick follow up question on that. To the extent that you're seeing store drop off materials in curbside, in your observation, and you may not have had a chance to analyze this, but in your observation, are those materials that are indicated on the package that they're for drop off only or are they materials that just say recyclable without the direction to drop off or both?

Adam Riddell:

I think both because again, I think people read over the fine print or they rely on what they heard or what they did in the last place they live. Obviously Washington has a somewhat transient population, people learn the rules of the last place they live and assume they apply here. Again, to reiterate something I said earlier, recycling's very parochial and it's really... So again, they just have this, "Oh no, this goes in and I know I don't need to read any further or research or figure out what our LinkedIn's doing." And so they're just on autopilot. So yeah, I think, yeah, it's both.

Hampton Newsome:

Okay. Quick comment from Anne.

Anne Germain:

Yeah, so I would agree to some extent what Adam said. A lot of people do rely on what they already know and that is helpful for some of the things that are traditionally recyclable and have never changed. So aluminum can and newspapers, cardboard, those have some of the highest recycling rates for any commodities out there. Even though PET bottles are about as recyclable as aluminum cans, they don't have nearly the recycling rate that aluminum cans have simply because people have a lot better understanding of aluminum cans. That being said, we do understand from a couple of the surveys that have been done more recently by the Recycling Partnership, but a few years ago by the Carton Council

that consumers do look to the packaging to get their recycling information. And the Carton Council found even further that that's where the consumers looked first for recycling information, the majority of consumers. And they also found that if they don't find the recycling symbol on packaging, they will assume that it is not recyclable. So both for recycling and for not.

Hampton Newsome:

Great. Thanks. Okay, so let's finish up this discussion with a little bit of a talk about the future. What are the emerging issues? Where are things going? What's coming that will significantly shape practices and results in the future? And the comments that we've seen so far that there is a lot of talk of emerging technologies, particularly what they call advanced or chemical recycling. So in addition to the advertising all lumped together, where are things headed? So Kate, why don't you want to start first on that?

Kate Bailey:

There has never been more momentum to improve recycling and particularly plastics recycling than we are seeing right now. So I'll give several examples of this. I've worked in recycling for almost 20 years. We saw more policy last year at the federal level, more single bills than I have seen in 20 years combined. We are seeing more attention at the local, the state, the federal, the global level. So next week in Paris, the UN is going to be convening the second round of talks to negotiate a global plastics pollution treaty to reduce plastic waste. So this has risen all the way to the highest level of a global problem and part of that solution to reduce plastic waste is increasing the circularity of plastics. So that gets down to design, that gets down to collection programs, labeling, all of these conversations are happening right now.

So I really cannot underscore how dynamic this space is right now in terms of policy at every single level. And not just policy, also investment. We are seeing massive investment from the EPA and the infrastructure grants and the education grants. EPA was really pivotal in the early nineties with helping to jumpstart community recycling programs. So it's great to see that federal funding coming back in. There is a strong supply of private capital investment also circling around recycling and for plastics recyclers, their number one question is where are you getting the supply? Can you guarantee that you're going to get enough materials? Because our companies today have the capacity to recycle 50% more bottles right now, we could raise the PET recycling rate from 28 to 42% right now if we could just get more consumers to put their bottles in the bin.

We have that existing. Our plants are not running at a hundred percent capacity. So we have policy changes coming, we have infrastructure changes coming, we have new technologies, we have advanced sorting technologies at the recycling center. If you have not been to a MRF, please come, they are fascinating. I think all of us would agree, to see the robots, to see the automated sorting, to see the infrared detection on the different types of plastics. So recycling is changing some of the new technologies that are coming. Chemical recycling in particular, we are not able to recycle all of the plastics today in a mechanical recycling system, especially not back into food grade quality. And we spent a lot of time today talking about packaging, but 55% of plastics are in non packaging uses.

So we're looking at opportunities of how do we recycle these chairs, the carpet, the clothing, the electronics back into new plastics that we can put back into new materials as we build that circular economy. So you're really seeing a nexus of policy, infrastructure, investment, new technologies. And then the last I'll leave is stakeholder engagement. I mentioned earlier that packaging was designed over here and recyclers responded over here. We are working together through things like the US Plastics Pact. We are talking as a supply chain in really the first time we ever have collectively. So it's not the end

all be all, we need a lot more other things, but just to underscore how dynamic of a space this is right now.

Hampton Newsome:

Okay, thanks. Anyone else on the future? Adam, you got there first.

Adam Riddell:

Quick on the draw. Yeah, I think one thing that's coming that would be a sea change and it's dovetails with Kate's point on what have always existed is disparate worlds together is EPR extended producer responsibility, which is really legislative efforts to make the manufacturers from the start to think about this design and how they're going to handle it on the backend by either having them required to support some sort of take back system or sometimes it's just straight up giving money to pay for MRFs and sorting materials. But all of these initiatives, it's a way to say, okay, when they're just allowed to not think about at design stage because it's someone else's problem once they sell their product, that's dissipating. I think that's going to have a big change in the future as more and more states adopt this and you see, yeah, again, these worlds come together, just figure out, okay, when we design this, how do we make sure that we're using materials and designing something shape otherwise that is recoverable by what's out there or adapt what's out there to recover this.

Hampton Newsome:

Okay, Anthony.

Anthony Tusino:

Sure. I'll start by saying I'm really encouraged by the momentum. I started with my 86% statistic. I'll end with it to, this is a pressing issue. The global treaty on plastic pollution is coming together at an accelerated pace. I don't think a global treaty has ever been written in two years, but we're going to do it, we're going to get it done. But I'll close on three considerations I think we need to have in mind as we move forward. That's health, the environmental and community health of our planets, our local communities. We need to keep that at the forefront of our considerations as we develop new technologies and build infrastructure. It's important that we're creating positive environmental outcomes.

It's important that we're increasing access and that means increasing collection, increasing the processing capacities of our MRFs and building up that capacity, as Kate said, to get our materials back. And then finally touching on what Adam left on is the reduction in responsibility, we need to reduce the amount of problematic and unnecessary materials that contaminate our systems and clog our waterways and end up in our environments. And we also need to ensure that we're tying the responsibility for production to its end of life outcomes. That's recycling, that's land filling, make sure that we're really creating the right feedback loops. So we're doing more with less.

Hampton Newsome:

Okay, Anne, and also I just wanted to throw up a more specific question. Kate mentioned chemical recycling. Are we seeing claims based on chemical recycling out there? Is that something that's here now or is it something that's down the road somewhere?

Anne Germain:

So I'm going to say chemical recycling is not yet here. I think there's one or two facilities in the country that are doing some things, but for the most part, if you live in this area, there's no chemical recycling happening for you.

Hampton Newsome:

Anne, could you just briefly describe what that is?

Anne Germain:

Sure. So chemical recycling is a process that what they try and do is take the plastics that are polymers and they're supposed to break the plastics down to monomers. So once they're brought down to the very simple hydrocarbons, then they can theoretically be brought back up and rebuilt into any new plastic format. Some of these facilities can utilize them to make new fuels or new products and because they have the ability to do anything and fuel is one potential outcome, most people would feel, I don't have any survey data on this, but I think most people would feel that that was a bait and switch. That fuel is essentially ultimately going to get burned. And so because of that it would end up in the environment and contributing to climate change. And so if it were to actually get made into new products like Kate suggested, I think people would be receptive to that.

So I think from our perspective, we just want to make sure that any advanced recycling or chemical recycling ends up being not deceptive to the public because we already have to struggle with some of the things Adam said where people feel that their recycling isn't being made into new products or they don't believe that recycling is really happening. And we want to be as transparent as possible to make sure that what gets recycled into new products, people understand is getting recycled into a new product. And if instead it gets taken through your recycling bin and made into a fuel source, then that would be something we would expect people would want to know. So that would be the only caveat we would have. But regardless of that, it's something that I would say is still in the infancy, it's not here yet.

Julia Ensor:

So quick follow up question on that is, and this is just for our learning, when we talk about chemical recycling, is it only plastics or plastics the only material that we're talking about, A and B, are there specific numbers of plastic specific RICs we're talking about?

Anne Germain:

So this is why people are talking about chemical recycling is because it can take a much wider range of materials. So this is where a one through seven would go. Since mechanical recycling is so structured to be able to handle the one, twos and fives already, the chemical recycling would probably be for some of the other numbers, be able to take a lot of those. That being said, anytime you talk to somebody that's looking to establish a new facility, they'll at first say, "We can take anything." It's like, "Okay, so if I send you pure

Anne Germain:

... PVC, you're going to be fine. Well, not really, so then they'll usually have some specs. There'll usually be something that they can't take too much of something, but they're a lot more flexible in their feed stock than a mechanical recycler.

Julia Ensor:

Adam, in your facility, are you putting together any bales that are being sold for chemical recycling, to your knowledge?

Adam Riddell:

No, I think Anne's right. I'm not aware of any. Everything's going to sort of your traditional mills. There's been talk about building a pyrolysis, which is a type of chemical recycling for fuel, like Anne was saying, in Virginia. But it's been rumored, and as far as I know never got off the ground.

Hampton Newsome:

Okay. Anyone else on the future or anything else?

Okay, great. Well, we have a few minutes, so if anyone from the audience wants to make a comment, you can come up to the microphone. I ask that if you do make a comment, you try to keep it brief so we can stay on schedule, but we've got a little time.

What's that? Yeah, I don't know. Michelle, can you check it?

Jessica Roth:

It sounds like it's on. Can you hear me? Hi, my name is Jessica Roth. She/her pronouns. I work with GAIA, the Global Alliance for Incinerator Alternatives. I just wanted to touch on the chemical recycling issue because it goes way beyond the fact that there's potential for a bait and switch for creating fuel. Not only are they not creating the plastics they say that they're going to create, but they're claiming this broad scope of feedstock, but that's also not accurate.

I just came back from an industry conference a month and a half ago and they talk all the time about how we have a feedstock problem in those doors. They don't talk about it out here in front of other people, but there's a constant conversation about how exactly what you all have been talking about, that the film bogs down the material, bogs down the machines. There's all kinds of issues with things that are multiple layers that are compressed together. They can't separate those out. They're saying that it's the answer to everything. In fact, even if they're going to be using some amount of recycled material in it, it still needs mass quantities of virgin material to make it work at any of the levels that they're talking about, either for safety or for quality or anything else.

First issue is we have to get all the toxics out of the process that we're creating. I mean, the first thing is we got to stop making plastic. We got to stop pulling out fossil fuels. The talk about needing to make this transition to recycle, everyone is still dodging the question that Kayla asked about: What's already out there that's not in our homes? That's not the issue. The issue is what's in our rivers, what's in our lives everywhere outside of our houses. Industry is saying they're going to solve this problem by taking this mix of stuff that we don't know what to do with, and they're going to magically create without emissions and without toxins. It's not accurate. They're not even sharing their information.

I was trying to go on the tour that they were offering at the Exxon facility, one of the alleged facilities where they're actually creating product. First of all, they blocked me because of my job, but second of all, even the friendlies in the industry were put on a bus and not allowed off the bus. They never got into the facility. They never saw what was happening. It's all happening behind closed doors. There's no transparency.

Chemical recycling is not viable, and it's not recycling. It's burning, it's pyrolysis. Pyro is literally in the name. It's incineration, but we're going to pretend that it's an answer because of the fact that we don't have the answers. But there isn't going to be a quick tech fix, right? The answer is changing the systems. The answer is stopping using the plastic, as everyone is talking about. We do what we're used to.

We have to go back to what we were used to that actually worked correctly, where we brought things in and out of our homes and then we sent them back to where they came from, and then we brought them back in again because we can't handle the garbage. It's not just a question of fuel, it's the plastic to plastic that's also not being marketed accurately. It is fully intentional bait and switches.

They talked the entire time about being careful about messaging because of what you're going to be liable about and that consumers believe what you tell them. Shocking that they would think the system is going to do something. We spent millions and millions of dollars telling them it was going to do, and it's not.

Julia Ensor:

Thank you very much. Any response from the panelists?

Anthony Tusino:

I'll just add quickly. WWF has established chemical recycling principles, which is not an endorsement of chemical recycling, but essentially to say as we develop these technologies, we need to ensure that environmental and community health is at top priority, that we're not creating recycled plastic, but also creating major emissions. That's not at all a sustainable alternative. But also to prioritize the solutions that we already know that work: Recycling, reuse and reduction.

Hampton Newsome:

Okay. Next.

Pui:

Hi, my name is Pui. I'm from Malaysia. We still have a lot of Mr. Rogers DVDs from the United States sitting in an illegal dump site back where I'm from.

Bloomberg recently released a report about how Amazon packages are sent to Muzaffarnagar in India with many plastic bits inside the bill.

In paper mills in Indonesia and Malaysia, we're finding a lot of plastics that are, I don't know, intentionally or unintentionally slotted into the bills. There's a village in Indonesia where people have been living next to plastics from paper recycling facilities. They import the paper bills and they dump the residue of plastics on open land. It has created this mountain and these people have been living next to the mountain for 20 years. They burn the plastics as fuel. Sometimes they burn it just to reduce the mountain, and they have been living with this smoke for 20 years, them and their children and their children's children.

I really wonder if recycling of, sorry, I'm talking about plastic specifically, if recycling really works, it would've worked a long time ago and we wouldn't be in this position. Is recycling really a solution or is it just a smoke screen for us to continue producing more and more and continue living this convenience lifestyle?

I'm not sure whether this is the proper forum, but we really need to go towards reducing the use of plastics, especially unnecessary plastics. We need to go towards zero-waste systems. We also need to talk about how toxics in, toxics out.

IPEN and international organization have studied the pallets, recycled pallets, and they found that these recycled pallets contained the same chemicals that were found in virgin plastic, in items made from virgin plastic. If we recycle those chemicals, it's just going to be recycled in the system. Yeah, if we keep

exporting plastic waste, it may just be 8% to the United States. It's thousands of tons to our communities and it only goes to specific communities. These communities will continually get loaded. Chemical recycling, Unilever famously announced a chemical recycling plan in Indonesia to deal with flexible packaging, they famously withdrew their plan last year as well. Yeah.

Hampton Newsome:

Okay. Thank you.

Julia Ensor:

Yeah, thanks.

Pui:

We really need to talk more about zero waste. Yeah.

Hampton Newsome:

We have about four minutes. I'd like to get these people in, so you keep it...

Kate Bailey:

I just want to respond very briefly to your comments and your concerns. First, the issue about the paper bales being exported about one-third of paper is still being exported no longer to China, but to countries like Malaysia. That is a quality issue. We need to get those paper bales to a higher quality. Those are things we need to address from bale specifications. That is not about plastic exporting, that is about paper exporting and some of the issues there.

In terms of the role of recycling, we want to recycle that the plastics we do need and that we do use. There is a role for eliminating and there there's a need for plastic in much of our lives. This is recognized at every level. We talked briefly about the Global UN Treaty. Recycling is written into that, in part of those negotiations, as it has a role. That is not to say it is the only solution. It is not the only solution. It is a comprehensive suite of tools, but it is recognized at every level that recycling does play a role for the plastics that we do need.

Hampton Newsome:

Okay. Next, and we should have a little time later, but, so let's try to keep it brief so we can get our break in. Next. Thanks.

Andrew Sussman:

Hello, Andrew Sussman, Institute for Advertising Ethics.

In the beginning of the speech, you had mentioned that surveys were the gold standard for detecting consumer perception. But surveys have been largely abandoned by the advertising industry and replaced with more contemporary mechanisms such as eye tracking and micro-expressions. I wonder if you are considering how you measure perceptions of deception and considering things in addition to surveys that the ad industry itself is using? Thank you.

Julia Ensor:

We welcome all comments and evidence that anybody would like to submit in conjunction with the review. As was mentioned at the beginning of the session, there is a current public comment period that's open and associated with this workshop, so anything that anyone thinks would be helpful in conjunction with the review is very welcome.

Hampton Newsome:

Thanks. Next.

Speaker 1:

Okay.

Speaker 2:

I think she was in line [inaudible].

Speaker 1:

Oh, were you? Oh, go ahead. Thank you, Sarah.

Sharon Silverman:

Sorry.

Speaker 1:

Yeah, of course.

Sharon Silverman:

I'll be quick. I'll make some comments about everything you guys all said. I am Sharon Silverman. I am the Textile Waste Committee Chair for the Manhattan Solid Waste Advisory Board. I also have my own textile waste recovery resale and legal advisory.

One of the things for the Federal Trade Commission, it is a Federal Trade Commission, and I really sort of don't understand how you can help the recycling claims and marketing effectiveness if we don't have a set of federal policies. It really needs to be a non-siloed thing where we're all functioning under the same level playing field. I know that's not what you do. You don't make policy. But I think the FTC needs to work with the branches of government that do to to make sure that we have a system of policies and regulations that everyone needs to conform to, that the MERFs and PERFs, hopefully PERFs, which are physical, taking things that get dumped on the side and can be up-cycled and repaired. Making sure all of those systems are across the United States.

I'm very glad you talked about the role of EPR to finance. I think EPR should finance MERFs and PERFs because the industry that is making all the product is putting it on the market. While consumers need to participate in that system, I'm not drinking your bottles of water. My tax dollars shouldn't pay for recycling those bottles. Like so many other consumer products, if I didn't pay for it, why am I paying my tax money to recycle it? It's the industry that created it. Add it to the price of your bottles, add it to the price of whatever it is that you're making.

Of course, I represent textiles in fashion. Then I want to sort of come to plastics, and I know it's controversial. I think chemical recycling in the textile industry is a good thing because we have so much excess. I will offer that all of you are dressed today. Your clothes are the closest thing to you in the

room, in your lives most hours of most days. I wish there was someone on the panel from fashion, and I already expressed that. But so much of plastic gets recycled, down-cycled, into clothing. 60 to 70% of your wardrobes are plastic. They're polyester, they're nylon, they're acrylic. We've come to rely on them. The leggings you wear, the bike shorts you wear to exercise, and every time you do that, every time you sweat in them, the volatile chemicals that are in them are carcinogens and hormone disruptors.

Plastic recycling, while I think it has a lot of potential, I just don't think it's good for us. I think eventually we need to replace all of the plastic in our lives. Yes, there are medical and other industries that rely on plastic and its health benefits, but I think we really need to consider what the technology going forward is that is going to replace what the fossil fuel industry has gladly done and keeps financially benefiting from and keeps saying it's the consumers that need to participate in the recycling.

Hampton Newsome:

Okay. Thank you. There'll be an opportunity if you want to provide more comments at the next session. If you can want to wait till the next session or just do 30 seconds, your choice.

Rayna:

Okay. Yeah, yeah.

Hampton Newsome:

I want everybody to get a break.

Rayna:

I know, everybody's like, "Please, let's get out of here."

Okay, so I'm Rayna. I have a company, RCD Packaging Innovation. I do sustainable packaging things.

I think something that's most important, just to resonate with this woman here, is that we have a situation where we all use the same materials all across our country. It's practically all the same stuff. We should have a standard system across the country in terms of collection and sorting as well as some transparency in the system, because we have too much black box activity when it comes to recyclability and specifically recyclability of plastics. There's some problems with track and trace issues.

For example, I've seen a lot of situations where chemical recyclers are taking in basically never used before low-density polyethylene, putting it through their little systems, selling that liquid as if it was recycled. There's no way for us, even people, that are buyers within the CPG industry to determine if it was truly a recycled material that comes in. That does also happen with PCR content as well. We are lacking that level of traceability.

I'm also seeing a lot of packaging PCR materials coming on the market that I know doesn't match the availability of food-grade safe. I'm a little concerned there. Again, zero accountability, zero systems for us as buyers and manufacturers to substantiate the claims. That's a big concern of mine. The last thing I'll say is this, is that we have a situation as well where we have plastic companies that are benefiting from labeling their material as recyclable, yet if they flood the market with virgin recyclable material, it makes it economically infeasible for recycling systems to work. That means for in order for recycling systems to work, it's an economic system that has to work as well. You can't have virgin material competing with recyclable material of the same grade in order for recycling to work.

We do need to take a look at that. That's why I would recommend doing a mass balance type of metric to substantiate the claim of recyclable, so you have to prove that there's real end markets at a high

percentage of the materials flowing into the system that are being bought and put into new products in order for something to be recyclable. You can't just base it on collection and access to collection.

Hampton Newsome:

Okay.

Rayna:

Thank you.

Hampton Newsome:

Thank you so much. Thank you, panel. Really appreciate it. Let's do a 10-minute break.

Julia Ensor:

All right, everyone, if we could welcome the second panel to the stage, please. We will get started momentarily. Thanks. All right. Hi, everyone. Welcome back. Before we begin, this second session is going to be on consumer perception of recyclable claims. I'd like to just go around the table. Briefly, if you could just state your name and your affiliation. Sarah, we'll start with you.

Sarah Dearman:

Great. Hi, everyone. I'm Sarah Dearman. I'm the Chief Innovation Officer for the Recycling Partnership. We are a mission-driven non-profit organization focused on improving recycling. We conduct a lot of surveys, focus groups, and other elements of research. We've talked to nearly 30,000 people just over the last few years so that we can find ways to improve recycling.

Bonnie Patton:

Hi, my name is Bonnie Patton and I'm the Executive Director of Truth In Advertising or tina.org for short. We're a non-profit, nonpartisan consumer advocacy organization that works to out, stop, and prevent deceptive advertising.

Karen Hagerman:

Hi, everyone. I'm Karen Hagerman. I am director of the How To Recycle program at Green Blue. Green Blue is a nonprofit focused on sustainable materials. The How To Recycle program specifically is focused on consumer-facing labeling to communicate recyclability of products. Behind every How To Recycle label is a custom recyclability assessment that's specific to that package. We build our definition of recyclability off of compliance with the Green Guides.

Very happy and excited to be here.

Brian Hawkinson:

Good morning. I'm Brian Hawkinson. I'm the Executive Director of Recovered Fiber with the American Forest and Paper Association. AFMPA is the national trade association that represents US manufacturers of pulp, paper, paperboard, and wood products.

Kim Holmes:

Hi, everyone. I'm Kim Holmes, owner and principal consultant of For Our Sustainability. I also serve in the capacity of a research consultant for the recycled material standard, which is also a project of Green Blue. It's a chain of custody, third-party certification for claims of recycled content and investments in recycling.

Julia Ensor:

Thank you. As you all know, as Jim mentioned when he opened the session today, the FTC's authority is based on deception. Step one in figuring out whether a claim deceives consumers is figuring out what the claim actually means to consumers. Currently, among other things, the guides provide that consumers understand recyclable claims to mean a product can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for use in manufacturing or assembling another item. If the claim is not qualified to indicate limited availability, consumers expect they have access to these programs in their communities.

I want to start out by asking the group, based on the research that you've done, is the focus on access to recycling correct and is 60% the right threshold for unqualified recyclable claims?

Sarah, let's start with you.

Sarah Dearman:

Great. When people see the recycling symbol or a message on a package that says it's recyclable, then they expect that it is going to be able to be made into something new. That's what our research shows over and over. When they see something that says it's recyclable or has chasing arrows and it's not recyclable, then they do feel deceived. Our research shows that 82% of people feel that it's dishonest when a package or a claim says that something is recyclable, but it can't actually be made into something new.

I keep using the word actually, and I've heard it mentioned numerous times today. What does it mean for something to actually be recyclable? That means that it has to be able to be sorted, it has to be collected, it has to have end markets, so that it can actually go into something new.

I think that the language that is in the Green Guides has a lot of those elements. One of the things that we think would be really helpful to make sure that claims are accurate is that there is accessible guidance for each of those elements of recycling. We need accessible guidance for design, sortation and end markets in addition to access so that we can have packaging and other items have the highest likelihood to be recycled.

Julia Ensor:

When you talk about something being recycled into something else, does it matter whether it's recycled into the same type of product?

Sarah Dearman:

Through our surveys and focus groups, and even in-home research, people really, when they recycle something,

Sarah Dearman:

It's a leap of faith. They trust that it is going to be recycled. And so I think that's really on our system to make sure, it's on the producers to make sure that it's designed to be recycled, and then our system to

make sure that it can be recycled. We do not see evidence typically that people expect it to go back into the same thing. They expect it to be reused into something.

Julia Ensor:

So I neglected to mention at the beginning of the session, like the last session, if anybody on the panel wants to jump in, of course turn your table tent and feel free. But when we talk about tracking whether something is recycled into something else, how would a marketer keep track of that? Open to the group.

Kim Holmes:

Well, I would say that that's where chain of custody certification can become really valuable. For example, the recycled material standard, we aren't necessarily tracking and tracing from the point at which the consumer puts it into the system, but at the point that it becomes transformed within the system. So for example, once a bottle becomes shredded, that flake becomes very hard to identify whether it came from a post-consumer source or a post-industrial source. And then that's where the traceability begins to come through all the way to the point of labeling on a product, if you have a full certified supply chain to convey that label.

And actually one of the things that we found, the research that we did for the recycled material standard didn't focus on recyclability, but it focused on these claims of recycled content and people's ability to understand those claims. We found there's a lot of association that consumers make in their mind with different environmental attributes and also some suggestions around what motivates people, motivates behavior in that from these claims. And one of the things that we found, one of the most compelling elements of our label was the fact that it contained the word standard and it was certified. And that's what gave people the most confidence and assurance actually.

Julia Ensor:

Thank you, Kim. And following up, well, Brian onto you.

Brian Hawkinson:

Sure. Thanks. [inaudible].

Julia Ensor:

Please turn on your mic.

Brian Hawkinson:

Sorry. Okay. I promise that'll be the last time I did that. The good news is the paper recycling works, and consumers have confidence that it works. The industry is able to substantiate recyclability claims from the bin to the new product. And it starts with research that we did last year. AFMPA published the 2021 AFMPA access to recycling study, documents consumers access to a number of paper and paper based packaging products to existing community recycling programs. What we found was 10 of the 12 categories of paper and paper-based packaging products had at least 60% access to recycling programs consumers did. Overall, 94% of Americans have access to an existing recycling program, whether it's residential, curbside or drop off. So we know that community recycling programs for paper and paper based packaging are well-developed, widely accessible, and consumers have confidence that they can participate in that.

So we know they've got access. The second part is making sure the packaging is recyclable. Year before last, we completed a project with other stakeholders in the industry called the AFMPA design guidance for paper-based packaging. And what we looked at was, we know the paper-based packaging is inherently recyclable, but what happens if there are non fiber elements attached to it, whether it's a coating, some sort of decorative attachment, a handle something? And the research that we did indicates that every type of paper-based packaging with some kind of non-fiber element attached to it is recyclable in some mills. The question is how widespread, how many mills we're able to do that? And the report provides that guidance. The benefit is that folks who are engaged in the value chain for designing and making paper-based packaging, now have guidance that helps them understand what happens if you put a moisture barrier on paperboard packaging, how does that affect recyclability.

And they can start to make those trade-offs in terms of design so that the design works, manufacturing works, and they're able to deliver packaging into the marketplace that better meets consumers needs in terms of recyclability. And then finally, in terms of being recycled, the paper industry is enjoyed consistent high success in recycling the industry's products. In 2021, the recycling rate for total paper and paper board was 68.1%, and that recycling rate has been at or above 63% since 2009. And the recycling rate for cardboard corrugated boxes, OCC that we refer to it in the industry, was 91.4%. And it's been, I think, 83% or higher since 2009. So consumers have confidence that paper-based packaging is recyclable. More and more it is being designed to better meet consumer's needs in terms of recyclability. And the recycling rate shows that the collection systems are well-developed and widely accessible, and consumers have confidence in our recycling at a high rate.

Julia Ensor:

One quick follow up question before I go to Sarah. So Brian, when you're measuring access to recycling, who are you surveying? Are you surveying MRFs? Are you surveying municipalities? How is that done?

Brian Hawkinson:

Right. It was done looking at municipalities. We worked with a consulting company that did individual searches of the consumer facing educational material that goes out from community recycling programs to the people that they serve. So Adam with Arlington, right? They would've looked at the Arlington County website to identify what are the materials that they accept in their recycling program. And they built that database aggregating that information.

Julia Ensor:

How do you handle situations like what Adam was talking about, where they collect certain numbers of plastics because people are telling the municipalities that they can accept mixed bales or whatever, but they know they're not going to be recycled? Is there a tracing that happens after surveying the MRFs or surveying the municipalities, or is the main reliance for this data on just municipality collection practices?

Brian Hawkinson:

Yeah. So this particular research was focused on the municipal collection of paper-based products only. However, if you think about it, another point that Adam made that I thought was great is that communities tailor the collection, the mix of products that they collect, based on what they can process and place into the marketplace. It's a business. And they're not going to collect products that they have to throw away. They don't want to incur the cost of that. So community recycling programs by and large

collect the things that can be processed, that can be billed, that can be put into the marketplace and use to make new products.

Julia Ensor:

Thank you. Sarah?

Sarah Dearman:

I want to build on some of what Brian said and really make sure we're answering your question, Julia, on how does a marketer know if something is likely to be recycled? You highlighted the industry design guides. Most material industry have design guides that are available in every company who's producing packaging and products, and are making recyclable claims, need to make sure that they're aligning with those industry design guides. There's also guidance available for doing test for sortation, to make sure that the size and shape can flow through the system. And there's also information available on if there are sufficient end markets, and if it can go into bales. So this information is available and accessible to everyone. We worked with the industry to put it all into one place through an initiative called the Pathway to Circularity Recyclability Framework, so that it's available for everyone and anyone to use for free.

In addition to that, you asked about access. And one of the things we are really excited that we've been working on is we now have a national recycling database that uses AI to check in to all of those communities, and to get that information real time so that we know which communities accept which materials. Today that is based on the information that the communities are providing, and we're in the process of launching a community facing tool now where those communities that we work with, which are thousands of communities across the US, will also be able to come on and confirm what information they say on their website is accurate. So I think that there's a lot of opportunity for people to make sure that what they're producing has the highest likelihood of being recyclable and that should be the expectation to make claims.

Julia Ensor:

Thank you. Karen, I want to turn to you on how to recycle's findings on consumer perception of recyclable, which sound similar to some of the themes that Sarah was describing.

Karen Hagerman:

Yeah, absolutely. And I could build off several of the things that were already said. But as I mentioned before, how to recycle label was developed to enable companies to communicate the recyclability of their package to consumers. And to do that in a way that's standardized, that involves a full recyclability assessment that looks at several components and makes sure what's put in the package is in compliance with the green guides. So we look at really five components. Applicable law, which in the US is really compliance with the Green Guides and the FTCs guidance. Collection, which is that access piece. And I would like to mention that access, while it is the number that's identified in the Green Guides, it's just a starting point. If we have above 60% access, but no end markets or no technical reprocess ability that exists, then our definition would render that in a lower recyclability category.

So it's compliance with applicable law, collection, sortability, technical reprocessability, and the strength or existence of end markets. That definition was built off of the FTC and that's how we operate and how we determine recyclability for the packages that we assess. However, we wanted to make sure that that was in alignment with what consumers perceived to be the definition of recycling. So we did a consumer research study in 2021 and 2022 to look at the way that consumers understand recyclable or

recyclability as a definition, and then also to understand a little bit more about how they are able to interpret and perceive the different labeling categories that we use. But what we looked at when it came to the definition was a spectrum. We showed everything from the broadest, which is theoretical recyclability, that in theory this thing can be recycled, all the way to very narrow in scope, which is thing is 100% recycled all of the time.

And what we found was that the most agreeing, the category where consumers agreed with the most, the strongest, was the category that is recycled most of the time, but not always. The second most agreeable thing was can theoretically be recycled, even if it's not commonly recycled. And then the third most was collected curbside or recycling drop-off centers. And so that is 67% of consumers that align their definition of recyclability with basically the ability to be recycled, but not the promise that 100% of the time it will be recycled. So we found this to be encouraging as it is in alignment with the definition of the... That's set forth in the Green Guides. It's also in alignment with how we assess a package and how we determine recyclability.

Julia Ensor:

So following up on that, when we talk about whether something is theoretically recyclable, what does that mean? Isn't everything theoretically recyclable?

Karen Hagerman:

Absolutely. I think that's a great point. And that's why that definition would be on the end of the spectrum that's much more liberal than the FTCs definition than our definition. Because as you mentioned, theoretically anything can for the most part be recycled into something new with the right technology. However, that's why our process and why what we've talked about before with the end markets and having traceability, why that's so important, because even if things can be theoretically recycled, we need to also understand that they are being recycled at scale, that there's an end market that exists for them. And that communities will actually collect it and sort it for recycling.

Julia Ensor:

Sarah?

Sarah Dearman:

We do have some evidence that the supports, I think, the question that you're asking right there. In some of our focus groups, when we asked people what types of things are recyclable, and we gave them specific examples, when we gave them things that were technically recyclable and said they were technically recyclable, 91% of the time they thought that that could go into their bin at home. So there is some confusion there. And the same when it had chasing arrows saying that something had PCR or a post-consumer recycled content in it, but the item itself, in this case it was a marker, was not actually recyclable, 81% of the time they thought that it was recyclable and that it could go into their home bin. So I do think that it's really important that we continue to build on the definition of making sure that it can be sorted and that it has end markets, not just that it's technically recyclable.

Julia Ensor:

And so I'm going to turn to Bonnie in a minute. But before, I just want to clarify, Sarah. So what I hear you saying, and correct me if I'm misunderstanding, is that when we're talking about technically recyclable and we're testing that claim, in your view, consumers are baking in an implied claim that means technically recyclable by putting in your blue bin. Is that...

Sarah Dearman:

Yes.

Julia Ensor:

Okay.

Sarah Dearman:

In our experience through these many, many surveys, when someone sees that something is recyclable or when they see chasing arrows, it means that it is recyclable in their home bin. One of my favorite quotes was someone talked about, of course, learning about chasing arrows in recycling in elementary school, and that there's some symbols in life that we know. That a red light means stop, and a recycling symbol means go, that it can go into their recycling bin.

Julia Ensor:

Thank you. Bonnie?

Bonnie Patton:

I just want to say we are chuckling at theoretical recycling claims, but at tina.org, we track class action lawsuits in which consumers sue brands and companies for greenwashing claims. And one of the favorite defenses of companies is it's not deceptive because it's theoretically recyclable. And Wyoming might chuckle about that, courts have actually agreed with that concept that if your dictionary concept of recyclable is there, then companies are permitted to make this marketing claim, even though consumers perceive it very differently than what the brands are theoretically marketing to us about.

Julia Ensor:

And Bonnie, has Tina done thinking or studies of what consumers do think when they see a recyclable claim or how consumers do perceive these?

Bonnie Patton:

Tina hasn't, but we're aware of surveys that make very clear that when consumers see a chasing arrow logo, 81% believe it's definitely recyclable. And 16% say it's probably recyclable. Which means that approximately 97 to 98% of consumers in the United States think that chasing arrows logo means that it's definitely or probably recyclable. And consumers also believe that if they put it in the bin, that it's somewhat to very surely going to be recycled. And that's about 85% of US consumers.

Julia Ensor:

Thank you. Brian?

Brian Hawkinson:

Thanks, Julia. Wanted to share some consumer research that AFMPA performed this year, looking specifically at this question, what do consumers think the term recyclable means? So this data comes from research we conducted in April of this year. And from the research, we know the consumer perception of what is recyclable mirrors the reality of the paper industry. When asked what it means, over 52% of respondents associated that the term means being able to be reused to make another product. The specific question that was posed is what does recyclable mean to you when you see it on

paper products or packaging? And overall, 78.4% of consumers understanding of the term recyclable is either consistent or partially consistent with this definition, the product can be recovered by local recycling programs and used to make other products. So within that over 78.4%, 18.3% used both elements can be recovered, can be used to make something else.

And again, this is open-ended. No prompts. Just tell us what you think it means. Another 34% cited the second piece of the definition, can be used to make another product. And 25.8% cited the first piece, that it can be recovered by local recycling programs. And then some consumer's responses were not consistent with the definition that I used earlier. There were 9.9% that defined recyclable as environmentally friendly. They're right, that's not wrong, but it's not enough. 6.1% defined it as made from recycled materials. So we see that there's a little bit of confluence of those two or maybe conflation of those two. And then 12.2 defined it as something else. The final 1.4 were honest enough to say they didn't know. So broadly, consumers get what recyclable means.

Julia Ensor:

So Kim, I'll turn to you in a second. But first, Brian, just a quick follow up question. So in your testing, this specific thing that you looked at was whether it can be used to make another product. That sounds to me like, is it capable of being recycled? That sounds more like, the theoretical possibility of recycling versus is it actually turned into something else?

Brian Hawkinson:

I think the difference here is between recyclable and getting recycled. So in a lot of this comes down to the consumer. Think about a paperboard cereal box. Their standing, they've finished the box, they can either put in the recycling bin or they can put it in the trash. If they put in the recycling bin, congrats, they made the right decision. That'll go to a MRF, into a bale, to a mill and be made into something else. If they put it in the trash can, then it goes to the landfill. The box is still recyclable. That box didn't get recycled. So I don't think it's as much a question of technical recyclability as what the final destination of that product was.

Julia Ensor:

Thank you. Kim?

Kim Holmes:

Yeah. So I just want to touch on one of the data points that Brian raised, which is the association that consumers have with recycled content and recyclability. And this was probably the strongest association that we found in our research in testing seven claims around recycled materials, for each of the different labels we tested, between 38 and 41% of the consumers also thought that implied it's recyclability. And so I think what that tells us is we maybe need to think about how claims can or cannot be made in isolation. We need to maybe understand what that implied association is between those different environmental attributes. So because we saw that there was that strong correlation, what we wrote into the standard was to say that if you're using a recycled content claim and your product is not recyclable, that you have to specifically qualify that to prevent consumer confusion. So it's going above and beyond what might currently be required, but I think that's one of the things that we need to think about.

Julia Ensor:

Thank you. Brian, I'll turn to you in a second. But as part of whatever you were wanting to present on and just larger question to the group, I want to know whether anybody has done any thinking on where

in the disposal process consumers think recycling has occurred. So have you looked at, does a consumer just put something in their blue bin and say, okay, recycled, done? We were talking about theoretical recycling that would be the capable of being recycled. Does it need to go to a MRF? Does it need to be sorted? Does it need to be sold? Does it actually have to go into something else? And does that ultimate product, and we talked about this briefly before, have to be the same product that it started out as? Can it be a lesser product? Can it be down cycled? Any of these questions, Brian?

Brian Hawkinson:

Sure. Well, we can start out with the second one, and that's the question about what does the material have to be made into. I think what's important is that all the recyclable material that can be used, should be used to make something new. And there are a lot of examples. Corrugator boxes can be used to make new corrugator boxes. They also go into paper board. Some of it goes into tissue. The important point is that we keep materials in use. And if you think about the definition of circular that came out in the Save Our Seas 2.0 act, where you talk about the three components of being circular. One is designing out waste and pollution throughout the process. Second one is keeping materials in use as long as possible. And the third one is regenerating natural systems. So as long as in our industry paper-based products continue to be used to be made into new paper-based products, wherever it is the best and highest use, that's where it should go.

And the beauty of the market-based system that we have in place now is because of economics and the environmental concerns that paper-based packaging goes to its highest and best use in making new products. And then just real quickly on, when do consumers think recycling happens? We didn't ask that specifically in the research, but from some of the verbatims what does recycled mean, they know that there's a process. They know that there are multiple steps. They know that there is a first part. They know that when they put the recyclable product in the blue bin, that's the beginning, that it goes somewhere to be processed. And after that, it goes to a mill to be made into something else.

Julia Ensor:

Thank you. Bonnie?

Bonnie Patton:

Yes. So there was a 2019 national poll that said that most consumers believe that plastic is endlessly recyclable, which is a mistake in belief. And there was also a 2019 survey that said 85% of US consumers are somewhat to very confident that what they throw in the recycling bin will actually be recycled. And that's very different again than what we're hearing from brands who are defending themselves in court by saying, no reasonable consumer would ever believe that a 100% recyclable on packaging actually means 100% recyclable. And that was actually in a case where the court agreed with the brand.

Julia Ensor:

Sarah?

Sarah Dearman:

I would emphasize that this is the really important role that the Green Guides play. Because it's not always going to be possible to know a 100% of the time what happens after someone puts something into their recycling cart. They trust that it is going to happen. And what we can do as industry, and as producers what they can do, is make sure that they've done everything possible from, again, design, sortation, end markets, and investing in infrastructure, so that it has the highest likelihood of being

recyclable. And by providing those accessible standards, so that companies can test their packaging and make sure that they are making it as likely as possible that it will be made into something new, then they can make claims. And we would love to see every package have clear, accurate recycling information on it, even if that says that it's not recyclable. That's what it's going to take so that we can reduce confusion and really improve trust throughout the system.

Julia Ensor:

Thank you. So I'd like to pose a hypothetical to the group based on something that came up in the last session. So in the last session, we talked a little bit about glass and how some municipalities are collecting glass. They're telling consumers that they can put glass in their blue bins, and then they're grinding up that glass and using it as landfill cover. Is that recycling?

Bonnie Patton:

I can speak as a consumer of one, that I would never have thought in a million years that recycling glass meant grinding it into little pebbles and using it as weights.

Julia Ensor:

But it's disappearing from your house. You can put it in your blue bin. Someone's picking it up.

Bonnie Patton:

Right. But let's remember that consumers really are trying to do their part in helping our environment, and they want to buy Earth friendly, sustainable products. And they're willing to pay more for it. That's how much they feel compassionate about this issue. When you think in those terms, recycling means that we're going to reuse it, not that we're going to use it like rocks, in my opinion.

Julia Ensor:

Kim?

Kim Holmes:

Yeah. So this is unrelated to any of the research that we did on this, but I live in Oregon and Oregon is one of the first states to adopt an extended producer responsibility program. And I would say that that's the very type of issue that is being taken up. In the rule making process as people are designing their systems, is to really consider what is truly recycling, how do consumers perceive that, and really what responsible end markets are for that. So that just to say there's a new policy layer that's going to be coming into that discussion and decision making.

Julia Ensor:

Sarah?

Sarah Dearman:

I think just the one piece that I would add to that is glass is highly recyclable, and in many places is actually recycled. And this is an opportunity where companies should be looking at what's actually happening to the material and investing in the infrastructure where it doesn't exist. In many places, it is sorted and made into new products. And in the communities where that's not possible, that's where we need to be making investments so that it is actually made into something new.

Julia Ensor:

Thank you. And so just to make sure that I'm understanding, so what I'm hearing is based on the research that you all have done, there is a distinction between reuse and recycling, and that distinction has to do with processing. Is that a fair summary?

Karen Hagerman:

I would say there there's absolutely a distinction and our organization has done a lot of work to look at reusable packaging in the definition of reuse and how that differs from recyclability. I think there are a lot of components that need to go into reuse that's not just this jar that had mayonnaise in it. It can now be reused as a paperclip holder. Per the definition that we developed, that would not mean it because that's not the same use. Although that is repurposing it. It's a difference between reusing it for the actual intended use of the packaging with the intended product to be refilled in it, but that we see as very distinct from recyclability.

Julia Ensor:

Thank you. So we want to leave additional time for questions from the audience. But before I turn back to the audience, I want to pose a question to this group. So as many of you know, in conjunction with this review, we've received a lot of comments. And some of those comments contain some consumer perception testing on chemical and advanced recycling. And we're still looking through the comments we've received, looking at the data that's been received. Does anyone on the panel have any thoughts on that topic? Brian.

Brian Hawkinson:

Yes. Thank you. Chemical recycling is a complex topic, and it's easily misunderstood. And oversimplifying it, can potentially mislead consumers. And this misunderstanding is based on what's made through the thermochemical conversion processes, whether it's a new plastic product or fuel. I know Anne talked about that in the earlier panel. AFMPA believes that the thermochemical conversion of post use materials into fuels is energy recovery, not recycling. That's supported by the EPA waste management hierarchy that puts recycling in a separate higher category in end of life disposition preference than energy recovery. And also in the ISO definition of recycling, that specifically excludes energy recovery from recycling. So we think that FTC should care about how chemical recycling is defined, described, or presented because of the potential for misleading consumers, either through a lack of clarity or just through simple oversimplification.

Julia Ensor:

Thank you. Karen?

Karen Hagerman:

Yeah, I agree it's a massively complex topic. And I think when we discuss chemical or advanced recycling, we talk about it as a monolith when it's actually a diversity of technologies. And a lot of the data that exists on it does focus on the conversion technologies, which are pyrolysis and gasification, which were traditionally used for fuel and still are to a large extent. But there are technologies that do focus more on product into material that can then be used back into product. But I think as it relates to recyclability, what's interesting about it is that if a community is selling, for example, a polypropylene bale to a purification technology that's local in their area. That type of information isn't really known to a consumer. It has to do with the markets and how the MRFs or the further sortation facilities, how they

have their business set up to send that material to one of those facilities. So I think when it comes to access for recycling and labeling, that is something that's almost on the

Karen Hagerman:

... The backside and not as present in the way we currently look at access to recycling and the definition of recyclability.

Julia Ensor:

Thank you. Kim?

Kim Holmes:

Yeah, and I would just say, yes, I echo what you say. This is not a monolith. All of these technologies have different outputs. Even pyrolysis, when you're getting pyrolytic oil, a fraction of that can get re-cracked, turned into naphtha. You can get chemical building blocks, but what it comes down to is how we calculate, track, and trace all of those materials. And that's going to come down to mass balance, and mass balance allocation is something that's newly being applied to plastics, recyclability calculations, recycled content calculations, but it's an allocation and tracking method that's been used for many industries, including palm oil and others.

So I would strongly encourage, I think that's going to be an issue that the FTC probably needs to take on in the Green Guides, an area that hasn't been addressed yet, and not just for the sake of recyclability and recycled content claims, but for claims made for other industries as well.

Julia Ensor:

Thank you. Bonnie?

Bonnie Patton:

With recyclability, I think this is an area where there's incredible informational asymmetry, and consumers are forced to believe the marketing that they read because they can't figure it out. When you get into areas, chemical recycling, consumers are already confused. They don't understand what the numbers mean, but they believe if it's got a number, it's recyclable. So to the extent that brands or companies are trying to market using these new terminologies and new techniques, I think the burden needs to be on those companies to make sure that consumer perception is clear about what can and cannot be recycled.

Julia Ensor:

Thank you very much. Any closing thoughts from the panel before we move to audience? Brian?

Brian Hawkinson:

Yep. Thanks, Julia. One of the topics that came up in a couple of the conversations was recycled content and what do consumers think that means? That was one of the topics that we did research on.

And what we learned is that first of all, it is an artificial construct and it's not a meaningful distinction for consumers. So think about them. When bales were covered with paper, they'd go to a paper mill, they get repulped and recycled into a new product in exactly the same way, irrespective of where they were sourced. And think about it from an individual perspective. Think about standing in the checkout aisle of grocery store and the magazine rack is right there. You're waiting in line, you pick one up, you leaf

through it, maybe you see an article that you think is interesting, so you bring it home, you read it. When you're done, put it in recycling bin and it goes to the MRF to get processed and onto the mill.

That magazine is post-consumer content. If you put the magazine back on the rack and it doesn't get sold, it goes back to the distributor who aggregates all the unsold product, sends it to a processor, and that goes to a paper mill that gets repulped and recycled in the same way. But that's pre-consumer content. So, it's an artificial construct and it is not a meaningful distinction for consumers.

In the research that we conducted, when we asked the question about what consumers think recycled content means, 63.4% of the responses were either consistent or partially consistent with the definition, "The product contains materials that were recovered or diverted from the waste stream and were used to manufacture this product that has the recycled content in it." So within that 63.4%, 13.9% cited both of the elements: contains materials that were diverted or collected, and were made to use this product. The bigger portion, 49.5%, defined the product as being made with used materials.

The most important finding in that, and again, these are all open-ended questions, no prompts, only one respondent out of the 217 people who answered that question mentioned post-consumer, just one. So it's not a meaningful distinction for consumers.

Julia Ensor:

Thank you. Karen?

Karen Hagerman:

Yeah, absolutely. I would like to mention or to emphasize the role of data in standardization in recyclability, and I think Sarah mentioned several initiatives that her organization is working on to ascertain better data. But when it comes down to what we do, we're really looking at the package that a brand or a company is producing, and assessing the different components of it via all that criteria to make sure it is recyclable. However, what we need to do to successfully do that is to base that on data.

And Brian mentioned his organization commissioned to study to figure out access. My nonprofit as well commissioned to study to understand access to have that data to be able to make those assessments of whether it's above 60% or not. But without that data, it's really difficult to do that. And the same goes for any other category, but I would emphasize that it is important. The only number that is in the Green Guides currently is that 60%. In our assessment, we actually established a lower-end threshold, a 20% access to be able to even be eligible for qualified claims. Below 20%, we labeled those as not yet recyclable because we understand that the vast majority of the US does not have access to those.

So I think it's important to look at different thresholds that we can include and then also when it comes to the other components of recyclability, to have certain thresholds or levels to be able to base that on. And the same thing goes for end markets. We developed a rule for end markets for how we determine whether there's strength. The Recycling Partnership also did a scorecard about end markets, but there's not necessarily a single number to define whether an end market exists and how strong it is. It's a very complex area, but I think more guidance in those areas would absolutely be helpful, as would some other areas that we've had to develop to go above and beyond what's in the Green Guides to include things like material health or safer chemical use in packaging, as well as consumer preparation and how much effort do consumers have to put into.

So there are, I think, a lot of ways that we can really increase the type of guidance we have and then ensure that the packaging that we're showing consumers that we're telling them is recyclable, that there are standardization and thresholds behind that so that consumers can have credibility and believe that what they're recycling is, ideally, getting recycled.

Julia Ensor:

Thank you. Sarah?

Sarah Dearman:

I do just want to emphasize a couple of points. Even what you just said there, Karen, is that we know our research shows that what people trust and how they trust the interpretation of claims directly impacts whether or not they choose to recycle. So we do need to make sure that everything that we are doing increases the likelihood that packages and other items will be recycled.

I do want to make sure that I'm clear though that, as we've talked about, these stricter guidelines and really rigorous assessment that needs to be provided so that companies can ensure that their package has the highest likelihood to be recycled, that to me is for unqualified claims. So, any type of recycling symbol or messaging without qualifications. Our system is evolving rapidly. We need as much material as possible to, of course, be eliminated; and then reused; and then what's left, recycled. And that's changing really quickly.

So, I do think that there is an important role for smart qualified claims to continue to be used. And when I say smart, I think about using some of the data that we're talking about where rather than making blanket claims, now packages that are not yet able to be recycled everywhere or are not yet able to meet the rigorous criteria, can use technology to communicate if that's recyclable where they live, so via QR code or a link or something else. We now have the data that we can answer the question. We have free chatbots available where someone can see, is this specific package available where I'm at?

So I think that these rigorous guidelines are really important and that we need to continue to advance them over time for those unqualified claims while also continuing to have a pathway for those packages that are making steady progress toward improvements.

Julia Ensor:

Thank you very much. We want to give a short period of time for any questions from the audience, and again, we will stay after the third session as long as we need to make sure that everybody can ask questions and be heard, but if anybody has any questions for the current panel?

Kayla:

Hi, I am Jenny Romer with United States Environmental Protection Agency, Deputy Assistant Administrator for Pollution Prevention at our Office of Chemical Safety and Pollution Prevention.

EPA submitted a comment, one of your many thousands of comments that you'll be reviewing, and I just wanted to point out a couple of things that had come up on this panel. You specifically asked about the 60% threshold for collection, and our comment really focuses on creating a higher bar for recyclable claims. And so really seeing a higher threshold there, in addition to we've heard a lot about strong end markets, so having an explicit reference rather than just implicit as it currently is within the Green Guides, to the need for the requirement for a strong end market and really defining that and taking a hard look at qualified claims, including Check Locally and Store Drop-Off to really raise a higher bar there as well.

And then I also just wanted to say that EPA is also going through a process. We have a draft, we have a draft plastic strategy that we put out right around Earth Day. That's out for public comment right now.

And in that draft strategy, we have a statement that EPA does not consider plastics-to-fuel to be considered recycling, rather than the recyclable as you're looking at. And we have that, we have questions out for public comment about what, other than mechanical recycling, should qualify as

recycling. So as we receive those comments, we're happy to try to share that with you through public channels or through the official channels. So thank you very much.

Julia Ensor:

Thank you. So we have time for one more question after this session, and then as I said before, after the third session, we'll stay as long as we need to make sure that everybody can be heard. So rest assured there will be a time for everybody to make your comment. Please go ahead.

Ted Waugh:

Good morning. Thank you for the opportunity. I'm glad I got in line just at the right time. Ted Waugh with the American Chemistry Council. We represent plastic manufacturers as well as a number of advanced recyclers in the industry. I wanted to comment on two issues.

The first is in terms of advanced recycling. We share the view of many who've already talked today that products sold as fuel resulting from advanced recycling should not be considered recycled material. However, we also would strongly recommend use of mass balance and third-party certifications to help provide the consumer confidence and transparency that's needed in this area.

The second item that I wanted to talk about is the 60% recycling threshold. We've heard from a couple parties that were interested in increasing that threshold. We feel that there would actually increase confusion and isn't justified by the consumer data, certainly the data that we provided that was conducted by Hearts and Minds. Instead, several federal courts in multiple states have held that the definition of recyclable simply means that it possesses the intrinsic capacity to be recycled. It doesn't mean whether it actually will be recycled if you put it in the bin.

Furthermore, we think that increasing the availability of the use of recycled claims based on increased facilities around the nation, there are a lot of implementation challenges with that. First, there are changing market dynamics. This is an area that there's a lot of growth. Second, we heard earlier this morning that there are a lot of variabilities in the jurisdictions and how they handle it. So, we just think increasing the recycling threshold beyond 60% is going to be counterproductive. Thank you.

Julia Ensor:

Thank you very much. We'll now go to a 10-minute break. Thank you so much to the panelists. Hi, everyone. Welcome back. We'll go ahead and get started. Before we begin, let's go around the table and state names and affiliations. Peter B, let's start with you.

Peter Blair:

Hi everyone. So happy to be here. My name is Peter Blair. I'm an environmental attorney and the Policy Director for Just Zero. We're a new national environmental nonprofit focused on implementing just and equitable zero-waste solutions.

Jeffrey Greenbaum:

I'm Jeff Greenbaum. I'm the Managing Partner of the law firm Frankfurt Kurnit Klein & Selz. We're in New York and LA and I'm an advertising lawyer.

Patrick Krieger:

Good morning, everyone. Patrick Krieger, the Vice President of Sustainability for the Plastics Industry Association, so we are the trade association that represents the full plastic supply chain. That includes

equipment, mold makers, material suppliers, processors, converters, and recyclers. The plastics industry is the sixth-largest manufacturing industry in the United States. It employs over a million people.

Raissa Lerner:

Good morning, I'm Raissa Lerner from the California Attorney General's Office in Oakland.

Pete DePasquale:

Hey, good morning. My name is Pete DePasquale. I'm the Vice President of Government Affairs for Keurig Dr pepper. Keurig Dr Pepper is one of the nation's leading non-alcoholic beverages companies with over 125 licensed owned distributed brands.

Dr. Quinta Warren:

Hello, everyone. My name is Dr. Quinta Warren. I am the Associate Director of Sustainability Policy at Consumer Reports, and we are a member organization, nonpartisan and with about 6 million members across the country. We conduct surveys, testing of products and services, all of that to create a fair and just marketplace for consumers. Thanks.

Julia Ensor:

Thank you. I'm going to ask for the slides to be advanced so that we can put the Substantive Guidance up on the screen. Thank you.

So we've talked a little bit about the current state of recycling. We've talked about consumer perception. So now's the time to put it all together and talk about how and whether the FTC can help with some of the problems that we have talked about today within our current authority. Again, just to emphasize, our role here is to prevent consumer deception. We're the truth-in-advertising people. So any potential revisions or updates to the Green Guides will be made to prevent consumer deception consistent with that authority.

So let's talk a little bit, first of all, about the building blocks of the guidance. So we're talking about access to recycling and unqualified claims where 60% of consumers or communities have access to appropriate facilities.

Raissa, I want to start with you as an on-the-ground enforcer. Is access to recycling the right test and how do we measure access?

Raissa Lerner:

That is the main question, and thank you for starting with that. First of all, we're very happy to be here and we strongly support retention of the Green Guides, and specifically, the recycling provisions of the Green Guides, and we appreciate the FTC's current understanding of recycling as access to actual and existing infrastructure that will sort and process items into new items. That's an important consumer understanding that I think we've heard in the past couple of panels, that there's a real-world meaning to recyclable.

From an enforcement perspective though, I think we've seen that that has been subject to a wide variation of interpretation. Some of the cases were alluded to in earlier panels. First, I think the guides have played an important role. They are incorporated into or referenced into many, many state laws in a variety of ways, and in California, that is the case also.

They've played a strong role in important cases, like even with Keurig, I think we'll talk about. That was an important settlement. In current cases that are currently being litigated, courts do understand that

recyclable needs to mean something in the real world to consumers, but we've also seen courts interpret the guides to mean essentially no more than technically recyclable in the Curtis v. 7-Eleven case in Illinois, and also Swartz v. Coca-Cola. These are outcomes where it seems like those courts have lost sight of the Green Guides's focus on consumer expectations. And so I think revision of the Guides needs to really focus on that leakage there and how that term can be tightened in a way that really serves the consumer purpose.

I think the EPA commenter on the last panel emphasized that there should be a very high bar and there is a very high bar, but it should be explicitly made so for recyclable marketing claims that require strong end markets. That's a key piece that maybe could be made more explicit, that we are talking about the end use, not just putting it in the bin and access to that, but all the way through because that's the consumer expectation, that they're the beginning of that process. And that even where historic deception exists, like we were talking about the Chasing Arrows, et cetera, perhaps marketers should be required to put in a disclaimer when we're talking about those kinds of Chasing Arrows around the number plastics that are not widely recyclable to counter consumer understanding created over decades, perhaps, that that does mean recyclable. What can the FTC do to guide consumers into a greater, more specific and clear understanding?

Julia Ensor:

Thank you. And I should have said at the beginning of the panel, of course, this is a discussion, so to the extent any of the other panelists want to weigh in, just turn your table card and I'd be happy to calling you.

But Raissa, just following up on your statement just now, so when you're evaluating substantiation for a recyclable claim, how do you figure out whether that 60% access threshold is substantiated? Is there a database? What type of substantiation are you seeing?

Raissa Lerner:

For cases? Yeah, for cases. Well, in California we have our own information through our agencies, and we can also conduct our own surveys throughout California. And as someone mentioned, I think on the first panel, it's very parochial and it's very parochial even within California, and the MRFs or the collection facilities, the municipal or regional or countywide collection facilities will make their own policies, like what they want to take. And a lot of times they do say... Well, some of them are single stream, first of all, so then they just take everything and sort it, and they take care of the consumer there. Others will say, "Just give us this, this, but not that." Almost everybody in California, almost all of them, say, "Please don't give us number four plastic film" because of the problems that creates for operation of the facilities. That's very common, but some still do take that.

So you kind of have to look very specifically at the material that we're trying to enforce regarding, for example, plastic bags or some other type of material. We would need to look very specifically at how that's dealt with in the state and whether there are, not just collection, but infrastructure to then process are there any end markets? That's very important. That is part of access because access means access to sorting facilities that will then get it to an end market. Access doesn't just mean a bin to put it into or a store that will collect it. What happens after? That is all part of access. It's access to getting the item from the consumer all the way into another item. That's what access means.

Julia Ensor:

Thank you. Peter?

Peter Blair:

Yeah, I couldn't agree more, but I do want to push back on this idea that it's parochial, that recycling is really dependent on where you live. We've been working on recycling

Peter Blair:

... Recycling for 30, 40 years and we have pretty good data about where things stand. You've heard a lot of it today. The paper and cardboard... The recycling rates were pretty strong, they're only getting stronger. What we're really talking about the problem being is plastic, and we know that there is a very low recycling rate for plastic and when I talk about recycling rate, it's not that access to collection, it's what is actually making it to the end markets that is going to be repurposed into something new. So, we have a five to six overall recycling rate in this country, which is absolutely abysmal.

So, it's much lower than the 60% access to collection standpoint, but we also have data about this reprocessing. What is actually being collected? What consistently has an end market? PET reprocessing rate, this is data from the EPA 2018, we're only at 17.2%. HDPE reprocessing rate, what's actually being collected, manufactured into a new product, 8.9%. So, we know where the existing end markets are, so we really need to stop talking about access to collection and focus on access to collection systems that will get you to those end markets.

Hampton Newsome:

Just a quick question, those percentages, is that the percentage of material produced or is it the percentage of material collected?

Peter Blair:

My understanding of the EPA's reprocessing rate is that's what's actually collected and put back into the economic mainstream, what's being used to manufacture new consumer products.

Julia Ensor:

Patrick.

Patrick Krieger:

Thank you, so again, I think it's really important to focus on the specific claim that we're talking about, which is recyclable, not ultimately recycled, not those sorts of things. All of those are very important things. We want to see more plastics be recycled, but the term recyclable and especially when we use it in an unqualified way, is that you have the ability to, not is actually, and again, I also want to point out to the fact that that is consistent with industry definitions like from ISO and others, so that's really important to point out.

And again, also, when judges find that words mean what their definitions are, that's important to consider when we set policy around guidance documents, which are supposed to say, how do we interpret whether or not something is true or not? So, that's really important, again, focusing on their access is important from that because there is the test that you need to be actually able to collect it, recover it, and turn it into finished products. You have to demonstrate those, but none of the data that we've heard here today says that it needs to be over 60% or even higher or ultimately recycled. Again, those are different claims for recyclability to be true.

Julia Ensor:

So, I want to push back a little bit again on a topic we talked about on the previous panel, which is, "What does capable of being recycled mean and how is that workable as guidance?" You heard in the first panel some of the commenters were talking about certain plastics that are routinely collected, even though municipalities know there's no end market, how does that play in here?

Patrick Krieger:

So, I think that it's important to recognize capable versus technically recyclable. We're not talking about technically recyclable. Yes, as we acknowledge all materials are technically recyclable, capable of being recycled means that you have to have a demonstrated ability to collect it. The examples currently exist in the Green Guides-

Julia Ensor:

Does the market play into that or is it just collection or is it markets?

Patrick Krieger:

Well, market is because you do have to be able to make it into a finished product, but again, have to make it into a finished product versus must is different because of many different economic considerations that are outside of control of the producers themselves. Now, I think that, again, we would like to see more recycled content and more things be recycled, but that's different than the claim. That's an environmental policy issue.

Julia Ensor:

Do you have any consumer perception testing that would support this approach?

Patrick Krieger:

We do, so what we would say is that we have asked people what the definition of recycling means, both as mechanical and in molecular advanced recycling, and they acknowledge that what we say is recycling. We have also then further asked them when do they recognize when recycling... Whether or not it needs to be everywhere, a majority, et cetera, and we have data and we've shared that with the FTC. In addition, other associations and coalitions have provided data that show that people know that there is a difference between recyclable and actually recycled.

Julia Ensor:

Jeff?

Jeffrey A. Greenbaum:

So, I think that it's important to, as we talk about this, to talk about the role that the Green Guides are playing in the extraordinarily important and influential role that they're playing, and they've been around for decades, companies follow them, companies make plans based on product development, based on knowing what that they can do. And I think that one of the things that we've seen with the Recyclable Standard is how widely it has been adopted. I think we talked about the fact that many states have adopted either the Green Guides wholesale or the specific Recyclable Standard and are applying the Recyclable Standard in the way that the FTC has been applying it for a very, very long period of time, and I think we've also seen the NAD follow the FTC's guidance in this area and we've seen several federal court cases as well that have also followed essentially the standard.

Now, I think you can look at it as an outlier problem, the theoretical recyclability issue or the technical recyclability issue, but I actually think there's a fair amount of consensus in the way that have sort of followed the way the FTC has defined recyclable claims, so that I think that it has a fairly well established meaning, two companies in the marketplace. So, I think that it raises big questions I think to start to ask, should we as another matter say that recyclable means something else, where it seems to have been fairly widely adopted to mean something pretty specific, which is being able to enter into the recycling system, which I do think is a very different question than the sort of technical or theoretical recyclability issue.

Julia Ensor:

So Peter, I'll turn to you in a second, but first though, I do think there's a distinction between something being generally accepted by the marketplace versus consumer understanding. And so what I want to drill down into is, I hear what you're saying about this being generally accepted in the marketplace by marketers, but is that continuing to track consumer understanding of the claim?

Jeffrey A. Greenbaum:

I think it's a good question. Though, I guess one of the things that I think is an interesting thing to think about is as we think about this issue is we do know that if someone gets a single use plastic bottle like this, we actually want them to put it in the recycling bin. We know we want them to do that. I think that there's universal agreement that if you're going to use one of these things, we want you to put it in the recycling bin. I think it's a strange question to be asking that we may not want people to tell people that they should put it in the recycling bin. I think that there's a theoretical, do consumers fully understand what does it mean to be recyclable, meaning capable of being recycled, meaning it's going to be in a community recycling system and we get that, but do they understand what percentage is actually going to happen?

I think it's an interesting question, but there's a question of would we be creating more confusion by actually not telling people that it's recyclable because we're actually telling them they've got a sign on the refrigerator that says, put this in your recycling bin, but we're actually going to say to people, don't put it on the packaging when one of the things we have heard today is that one of the most important things is clear messaging on the packaging about what we want consumers to do with the packaging itself.

Julia Ensor:

Thank you. Pete.

Pete DePasquale:

One of the things that I agree with that was said on panel one by Kate and Adam is that this idea that there's never been more momentum around the topic of achieving circularity than there is now, and I think one of the comments that Sarah made during the second panel and I think is being a bit overlooked is that when we think about design for recyclability and that momentum and this moment of time we're in right now where brands are talking to supply chain up and down as they're designing for products, is this adherence to the commodity design guides. I think that is such a critical part of designing for recyclability that most of the brands are really now incorporating. So when we're thinking and talking about design for recyclability of our new products, whether it's innovation or renovation of brands, it's not theoretical recyclability, it's not technical recyclability.

It's actually do these products adhere with the design guides of the association of plastic recyclers and in those design guides are embedded principles of this is what we need for there to be an end market. So, while I understand the conversation of actually recycled, is it not, I think we might be losing sight of this idea of we have MRFs and recyclers who say they want products and packages in a certain way to be able to market them, and I think that should be the part of that analysis is saying, "Is that designed for recyclability, taking into account and adhering to well-recognized design guides of the various commodity groups?"

Julia Ensor:

Thank you. Quinta, I'm interested in your perspective on how we can protect consumers here. We've heard a little bit about recyclable claims for products that are capable of being recycled, but maybe are not routinely recycled. We've heard a little bit about the access and availability thresholds. What are your thoughts?

Dr. Quinta Warren:

I think it's been said, and I'm going to echo this, the onus of sorting through green claims should not fall on consumers. Corporations have a big responsibility here to be clear and non-deceptive and of course we need government, so we need the FTC to set clear guidelines that corporations have to follow but also that consumers can use. So Consumer Reports does a lot of surveys, so I want to share a couple surveys that we did in the recent past. The good news is that consumers care about sustainability. In my view, we're already starting in a good place because we don't have to convince consumers to recycle. Our surveys show that they want to. So we conducted a survey in May of 2021, nationally representative, we surveyed 2,000-plus US adults and about half of them, whenever they have the opportunity to recycle, will always recycle, but this is talking about cans, bottles of paper, and things like that.

Now, 70% recycle at least often. So, you have 70% of consumers who will recycle very often and that's fantastic. I will also say that consumers want guidance in understanding what products are most sustainable and they pay attention to labels. In another nationally representative survey that we did in January this year, about 70% said that when they have the opportunity to do so, they buy a product because the label or advertising said it was environmentally safe. That's why deception in advertising, deception in labeling is important because we don't want consumers to be buying a product thinking that it's recyclable when it actually isn't. So, I'll say again that labels matter and that's why the FTC Green Guides are so important in helping to keep corporations honest, but also in helping consumers to do the right thing that they already want to do.

Julia Ensor:

Thank you, so just to throw a question back out to the group, is the 60%... Assuming access to recycling is the right standard or the right proxy for consumer understanding for recyclable claims, is 60% the right threshold to prevent deception?

Hampton Newsome:

And I'd just like to add to that, aside from the issues what we're talking about, well, what is recyclable? Is it technically recycled, is it collected? Is it collected and actually recycled? The 60% kind of reflects this notion that something's widely recyclable, so you can use an unqualified claim. Is it a difficult test for marketers and others to apply to get the information? Is there another way to express the same thing, like say instead of basing it on population of the people that have access, maybe on looking at the

collection facilities or programs that are actually bringing it in? Then, I just want to open it up to that too.

Raissa Lerner:

I'll speak for us in California. I think we want to see that 60% access means, like I said before, all the way through. So, an element of that would be how much is making it all the way through, not just how many people or what percentage of people have access to collection or curbside. I think curbside was mentioned as the most important because it's the easiest for consumers to participate in, but once in the bin, then the follow through all the way to the extent that items are collected and sorted out and not recycled or only let's say recycled into a new item at a rate of 20%, then it's not meeting the 60% of all the way through, and I think that's where the guides could be more specific and clear and put the onus, take it off of the consumer. It has to be on the marketer, the manufacturer making the claim.

If you're making the claim that it's recyclable, then make sure that it is all the way through. That means that it can be. If the consumer puts it in the bin, it has a route, it's like being dropped in the little river and it's going to get there, it's going to flow along, not that it's going to be sorted out and just it's going to be one more stop on the way to the landfill. That's the problem that we're seeing and particularly we can talk about plastic bottles, but I think that's kind of a has-been, plastic bottles have been recyclable for a very long time. I think where the rubber hits the road is plastic packaging of all kinds now, bags of every kind, film, number four that is not a one, two, or a five, that's where people are deeply confused and where marketing labels are taking advantage of that confusion to hit people's feel-good button and basically continue to directly or indirectly promote wish-cycling and promoting wish-cycling takes consumer's focus off of the need to actually reduce plastic production if we're ever going to get a handle on the plastic pollution problem.

And that's where I think the EPA's draft strategy is coming in, and I appreciate the connection that EPA tried to make with FTC because it would be great if these agencies weren't operating as silos, but are connected because the consumer claims are connected to environmental impact ultimately. You can't really disconnect that.

Julia Ensor:

Thank you. Peter.

Pete DePasquale:

I agree with those last statements \$100. I think the importance of the agency to coordinate, as we think about a whole of government approach to this space is critically important, making sure that what we do here in this room, with these guides is consistent with national recycling strategy, the national strategy to reduce plastic waste and is not a headwind to the work that we're doing there. I think that's critically important. To the question about the substantial majority test, I think stepping back and saying from a marketer's perspective, it's regardless of whether it's 60% or 70%, clear guidance around substantiation, regardless of whether it's 60% or 70%, that's really what's needed. The questions that I would be asking about saying, should we move it from 60% to 70%, would all be data driven. And again, and I agree with Raissa, what she just said, it's hard to separate what we're doing in this room from environmental policy because the question that I would have is that, if we move from 60% to 70%, from an environmental impact standpoint, what are we getting from reduced contamination?

What are we picking up in a cleaner stream? But recognizing also that if we increase to 70%, we're pushing more products to qualified claims. And as Anthony said, kind of giving that illustration of him standing saying... That unqualified claim is the straightforward, most simplest claim there is for the

consumer. So we really need to balance, I think, those two factors. One, are we cleaning up the stream going from 60% to 70%? If so, how much? And what could potentially be the negative impact by pushing more products to qualified claims, which I know we're going to talk about?

Julia Ensor:

Thank you. Peter B.

Peter Blair:

Thank you. I think, Raissa, you hit on this where you're talking about a pathway towards recyclability when we're talking about collection, but really that is the bare minimum. We shouldn't be talking about due to a substantial amount of Americans have access to collection because that's just the first point. It's not whether we're raising that to 60, it's really, how can you substantiate that more likely than not, if you put this unqualified claim, this product in your recycling bin, is it going to be used to manufacture a new product? Because that's what consumers think it is. At the end of the day, they don't think it's theoretical. They don't think that this could be capable of being reprocessed into something new. When they see an unqualified claim, they believe from the marketer's perspective, you are telling me that more often than not, this has an end market. You want to purchase this to manufacture something new, and that's what really the guides need to focus on and it can be pretty straightforward. California has a wonderful new law that they're in the process of rolling out. It's a simple four-part test. You have to earn the ability to make that unqualified claim based on data. You have to substantiate it.

Julia Ensor:

Thank you. Jeff.

Jeffrey A. Greenbaum:

So just I guess three things. I haven't heard evidence today, though maybe there is evidence in the loss of the comments, but is there evidence to support that that number should be changed and whether consumers actually understand it to be something different? I just haven't seen that, but maybe it's out there, but I think that obviously that's an important question. I think another really interesting question to know the answer to, which I don't know the answer to is consumers who live in places that do not have curbside recycling programs who get a plastic bottle that says recyclable on it, are they confused by that or do they understand?

No, my community doesn't have recycling. I think that would be interesting information to know too in terms of the ways in which consumers who could in theory be harmed by them and whether in fact they're being deceived. I think the third thing is just to emphasize Peter to the left's point, I think that having the specific number was a tremendous improvement in the guides in the last go round, and I think that the more specific the guides are on these types of issues, the more helpful they are to marketers and in terms of preventing consumer deception.

Julia Ensor:

Thank you. Raissa?

Raissa Lerner:

Hi, I was just going to follow up on the qualified claims and also specificity. I think that, well, first of all, the FTC probably should recognize that an all the chasing arrows at this point are unqualified claims.

They're just out there as unqualified claims as far as the consumer understands them. Just sitting with my sister this morning, she was like, "Let me see if this is recyclable," and the first thing she did was turn it over and like, "Oh yeah, there it is, the chasing arrow," but it was a chasing arrow around a number four, but she doesn't perceive that detail. So, that's just the way it is, and I think we've heard a lot about that in the first two panels. So, I think the FTC needs to recognize that is an unqualified claim and what to do about that if it doesn't actually meet the standards that you're going to hopefully specify and make more explicit.

Do those types of claims need a disclaimer that they are not recyclable to community to the consumer? So, that wouldn't be for the plastic bottle because that's a one or a two, but for all the other stuff out there, most of other stuff out there of packaging, and then to resist maybe more qualified claims, I think... Who is it on the panel that was saying you have about 30 seconds or less when you're looking at something, does it go in my recycling or does it go in my landfill? Consumers just aren't going to do a research project as it was mentioned. You just can't put the research project onto them at all. I think the disclaimer needs to be clear. It can't be check locally or go try to figure out which store to go back to with this item and that item and this other item.

Consumers at a very early point in that phase are just going to give up or the likelihood will be. So, looking very closely at pretty much reducing the number of recyclable claims out there, I think would end up being what the outcome of clarifying or revising the guides would be is so that recyclable is not such a ubiquitous claim, but it actually becomes a claim that really means something and really has a positive environmental outcome in the end of the day. Zooming back to the point of making an environmental marketing claim is there needs to be an environmental benefit for making it.

Julia Ensor:

Thank you. Patrick.

Patrick Krieger:

I know that we're going to talk about the brick later, so I'll reserve those comments to there. I just want to make the comment about qualified claims and whether they're appropriate and limiting the number, et cetera, things like that. Qualified claims are really important because what they do is they help us tell true things, and so what we want to do as marketers of truth is to tell consumers things that are true and there's a real balance that needs to be considered on a restriction on commercial free speech, on the ability to tell true things to consumers. So, it's just something that I don't think we necessarily have the time today to get into, but really thinking about that and especially around the idea of qualified claims, that's really important.

Julia Ensor:

Thank you, and I'll ask a follow up question to you, Patrick, and then also I'm interested in Peter B's thoughts on this as well. So in the first panel, there was some discussion about products that were marketed as recyclable for store drop-off and there was some discussion about consumers just completely ignoring that qualifier. So, is there guidance that the FTC can give to help marketers make qualified claims that consumers can understand, that consumers will notice and follow?

Patrick Krieger:

What I would say there is that it is a really important role of education about what store drop-off means. I think that if the FTC wants to play a role in that, I think we would welcome that about helping to educate consumers about what store drop-off means. I think that it is the role for industry as well, and

we work with many of our partners and our members to help people understand what store drop-off means, how they can access that, including using new technology that may not have existed in 2012, to be able to find local places, to be able to recycle those items.

Peter Blair:

To the extent that the FTC wants to get involved in store drop-offs, I think the focus really needs to be on the data. Are these programs more than just collection hoax? And I promise that I did not time this, but there's an ABC investigation that is going to go out tonight that looked at store drop-off programs, figuring out, these exist, are they one, confusing consumers that they're putting this in their blue bins? And then two, if you actually do the right thing and understand that this means you have to take it to its dedicated program, what's happening? They put 48 trackers on bundles of plastic bags that have this store takeback, which is probably the most notorious of the takeback programs because they're pushing back against single use plastic bag bans. Only three made it to processing and markets that theoretically could manufacture something new with that.

23 of them pinged at landfills and incinerators, seven pinged at transfer stations, but went no further, six pinged at stores and didn't go any further, three were shipped to Southeast Asia. So, I think the FTC has to play a role here because there's a lot of confusion, and again, it goes back to we need to move away from the idea of collection being the gold standard and focus on what is actually happening, and there are caveats within the recycling market. Things fluctuate, I think the EPA's comments were great on this, but we have the data that shows we generally know what material is readily recyclable and what is not.

Julia Ensor:

Quinta.

Dr. Quinta Warren:

I don't have answers, but I have questions. Store drop-offs are not convenient and I really think that recycling needs to be as convenient for the consumer as possible. Some of the things consumers think, "I can't recycle plastics, I have to wash things off." So in their minds, they have to live with their trash, build up enough, then take it and drop it off somewhere. Most people are not going to do that, no matter how much they want to "do the right thing". So I'm thinking about myself and I live in the city, I don't have a car, so if I need to move something heavy that has maybe some kind of battery that needs to go to a facility, it takes a lot more effort than just putting it in the bin, and I also do want to see that store offs are not... We don't look at a product and it says store drop-off. It says, "Don't put in the bin," which isn't quite the same thing or at least not the same understanding from the consumer perspective. So, we do need labeling that's as clear in its messaging as possible.

Julia Ensor:

So just to summarize and make sure that I'm understanding, in your view in this particular instance, it would be more helpful to consumers to say, "Do not put in your blue bin," so have that negative instruction on what not to do in conjunction with the direction? Is that...

Dr. Quinta Warren:

I do think that would be helpful. I agree with points that were said earlier talking about education campaigns. So if I'm buying, I don't know, a portable charger, should I be told at the point of purchase whether I'm buying it on Amazon or in a store, should there be a notice that says, when you're done

with this product, don't put it in the bin? I think we sort of need all of that, but right now a lot is left up to interpretation. If you know what the labels mean, it's very clear to you. Chasing arrows does not mean recyclability, but if you don't know, then it's just sort of, well, that's a symbol of recyclability and you just go with it.

Julia Ensor:

Thank you. Jeff.

Jeffrey A. Greenbaum:

Just two points, one is I think that the examples that the FTC has included in the guides are helpful and will continue to be helpful, and more examples on alternative types of recycling programs will be helpful to marketers, particularly because there are plenty of products out there that are theoretically recyclable, but require different types of recycling programs. And I think that marketers are absolutely asking difficult questions about what types of qualified claims or what types of instructions would be acceptable to the FTC. What would they consider to be acceptable? I mean the check locally an example, which works for maybe a particular type of product, probably my guess is FTC wouldn't be crazy about that on a shirt or something like that says check locally because where are you going to check for that? But I think that specific guidance to marketers about the ways in which marketers can give consumers instructions about how to find out where something is recyclable or how to bring it to your store, I think there's a potential there for some really useful guidance.

Julia Ensor:

Thank you.

Peter Blair:

Just to kind of finalize the point, I think to the extent your original question was, is this confusing consumers? Are they putting this in the blue bin because of these store drop-off programs? We heard this morning from the Association of Plastic Recyclers that the number one contaminant that they're dealing with at MRFs is film plastic, it is plastic bags, which is the most ubiquitous store takeback program. So, I think that says a lot about the confusion that these types of labels have made.

Julia Ensor:

Thank you. So this is just for our information and understanding, and I think this question is probably primarily for Patrick and Peter D., although anyone else is free to weigh in. When you're evaluating access to recycling, where do you look for that information?

Patrick Krieger:

So a variety of places, one thing to point out is when we talk about access to recycling, that is a very broad term. When we even talk about consumer recycling, not all consumers are disposing at their residences. So when we talk about blue bin, that's residential recycling, that is a form of recycling. Store drop-off is a different kind, takeback programs as found in I believe example eight, all of these are appropriate examples for recycling. That's the process, right? Meaning the definition. So when we look at measuring access, we look at all of those, and we determine that... We have sponsored studies in the past

Patrick Krieger:

...asked around access, where we have done polls, we've worked with partners in the industry, the recycling partnership and other allied trade associations to identify residential access as a data point, but it's not the only data point.

Julia Ensor:

In terms of tracking access, and I think your comments raise the point that it can be very difficult for a marketer to track what happens to a package ultimately, so there's a pragmatic concern in terms of figuring out, is this actually being recycled? Are you getting your data from collection programs? Are you looking to MRFs? Where exactly is the point that you're looking?

Patrick Krieger:

Yeah, so what I would say is that that can be very difficult. I think the EPA acknowledges that in their comments when they talk about the difficulty in compostable products, determining whether they could meet the 60% access threshold. When we look at it, we look across a wide variety, but it is at the MRF level and then also at PRFs, plastic recycling facilities.

Julia Ensor:

Thank you. Peter D, any thoughts?

Pete DePasquale:

Yeah, I agree with Patrick. I mean, we heard today how fragmented, decentralized the US recycling system is, right? And so as marketers trying to substantiate and qualify what appropriate recycling facilities are and the access, I mean that's a challenge, right? So one of the takeaways that I hope you know in Hampton are left with is the importance in the guides of identifying how to substantiate those terms and what sources of information are appropriate or inappropriate. I mean, we aggregate a lot of different data points, I think many of which Patrick you reference, right? But it is this aggregation of a lot of sources of data. Sarah, when she was up here talked about the recycling partnerships work they're doing to try to create a national recycling database. I think those projects are incredibly helpful and absolutely important. We would, in order to rely, depend upon those types of databases though we would need to see some sort of guidance within the guides saying that those types of databases are in fact appropriate sources.

Patrick Krieger:

Just one thing to add to that, I apologize. I think that I think that guidance is actually incredibly helpful for us when we do these studies. One of them that was done not by us, but another association actually when looking at store drop-off, looked at a wide variety of parameters for how you can judge whether or not the access to store drop-off is reasonable. And it included various things like is it within a 20 minute walking distance or is it within a certain mile radius or a driving radius or just as the crow flies? I think helping to identify these methodologies by which we can confidently use and measure access would be pretty useful.

Pete DePasquale:

Yeah, I mean we refer to that, I mean as a convenience standard, and I think it's going to be important to really understand what is that convenience standard that we should be using as we assess whether appropriate recycling facilities exist or not.

Julia Ensor:

Raisa.

Raisa Lerner:

I'll just mention again, I think that's all very important and whether it's convenient and to assessing store or dropoff, similar to curbside, who has it, who has access to it. There are all those parameters for figuring that out. But another really important parameter is whether or not the store is then sending it out for recycling. Where is that stream flowing again, it's just like, or is it being blocked or is it sometimes those store drop-off bins look like trash bins and sometimes you look in there and you see a lot of trash in there that's contaminated that whole load then. And then does it even make it to the back of the store? And then what happens to the back of the store? Is it actually being collected? Who's paying for that? Who's coming? How are those contracts working? Do those contracts exist and is it going out the back end? And then when it goes out the back end, is it actually making it somewhere where this plastic film can be reliably turned into something? And if that percentage drops down to single digits or insignificant or much less than 60%, then you've kind of lost the point of the 60% upfront. So to have them 60%, whether it's 60, 70, whatever it is to mean something, you've got to flow it all the way through.

Julia Ensor:

Thank you. Well, we're starting to run low on time. We still have a lot to cover. So I want to turn now to RICs. We've heard a lot of discussion today about consumers looking at Ricks and interpreting those as recyclable claims. So as you know, the guidance now is that if the RIC is in an inconspicuous location on the panel, it will not be considered a recyclable claim for purposes of our analysis. Is that guidance right? Is there additional guidance that we can give to prevent deception? Patrick?

Patrick Krieger:

Yeah, as the Association of Plastics Recyclers said earlier, the RIC is a necessary and useful tool for them to identify and differentiate during the recycling process. I kind of cringed in that conversation in panel one when we talked about what types of plastics should we tell consumers to recycle ones or twos. That's not appropriate. The problem when we talk about why a consumer picks up and looks at a resin ID code, it's because we don't have great consumer markings on that, or we haven't historically. And so absent the right tool an imperfect tool was used, and so many, many people referenced the RIC and said recycle ones and twos and threes or fives, et cetera, as opposed to saying this item is recyclable. So the resin ID code is very important for what it's used for and if we stop teaching people to look for it and to reach for it and to turn things up upside down and look in an inconspicuous area, then the better we will be in prominently providing clear direction on how to recycle.

Julia Ensor:

So Peter B, I'll turn to you in a second, but before we get there, let's assume the ship is sailed on that. That consumers are primed to look at RICs. Is there additional qualification that needs to be made during the RIC or some other tool that should be near the RIC or some other tool that we need to employ here to prevent deception?

Patrick Krieger:

I think that the RIC standard currently is a solid triangle. If we would like to update the RIC to that, I would love to see that. Unfortunately, I don't necessarily think that the FTC Green Guides are going to

be able to change that in the 29 states where the use of the chasing arrows is actually required. So I would say let's not make a complicated problem worse. We as an industry, I think that working on a national standard, working in other policy arenas, are where we're going to solve those issues.

Julia Ensor:

So I think it was raised earlier. We've talked a little bit about the question of negative qualifications. So for certain plastics that we know there's no market for that can't be recycled, should the guidance say something like, we understand you need to include a, the state laws require it, but you need to also have a qualification that says not recyclable in close proximity to the RIC or some other notation to consumers that this is not a recycling symbol.

Raissa Lerner:

Yeah, I can answer it. Well, in California that is going to be the law like event. Eventually when it kicks in under SB 343, to the extent that a chasing arrow is mandated in any form, it's going to require a clear disclaimer if it doesn't meet the terms for recyclable in the state, which is I know California has defined in SB 343 as well.

Julia Ensor:

Peter B.

Peter Blair:

Yeah, I think we need to be honest about the intention behind that RIC. And I understand that ASTM never intended for it to be a recycling qualifier. But there was a reason they chose the chasing arrows. If it's just a technical tool, it could have been designed in a different way. And that ship has in many ways sailed. The Consumer Brands Association did a survey in 2019, 92% of Americans do not understand what the RIC is for. 68% assume that if it has a RIC, it is automatically recyclable. 24% don't know what it means, in general.

And only 8% understood that the RIC does not guarantee recyclability. So I think the guides have been getting closer with the conspicuous and the approach, but we really need to understand that we have 30 to 40 years of institutionalized knowledge where people look, that is the first thing they look at when they think of recyclability with plastics. And changing it from chasing arrows to a triangle is not enough to get rid of that. We need to earn the ability to say that your product's recyclable, earn the ability to use the chasing arrows, like California's doing. And I think ultimately to deal with the kind of problem of state laws, the FTC has the ability to promulgate regulations and that's conflict preemption. It would invalidate those state laws, set a national standard.

Julia Ensor:

Patrick?

Patrick Krieger:

Yeah, I think I'm confused because is the chasing arrows recyclable or is the solid triangle? The standard, and I will go back and I will look at that survey to see whether or not they use the RIC with the chasing arrows or the current standard as written, which is a solid triangle. I think that it is an identity thing and the more consistent that we talk about it as an identity tool that is being used by plastics recyclers to properly sort and again, place in an inconspicuous area. But I think that we should also recognize that if

it's used inappropriately, that the FTC should be writing warning letters and encouraging and telling people to not use it this way. If it's an inappropriate use, if it is implying that something is recyclable when it's not prominently displayed or it's connected or associated with a recycling claim that's inaccurate it's false and misleading and should be enforced as such.

Julia Ensor:

So I think we all agree that to the extent someone is making completely false claim and relying on the rick to make a recyclable claim that that's highly problematic. But in just your standard use case for the Rick, assuming that the FTC is not able to change ASTM standards. We are not able to, the states say what they say and that the guides at this point are just guidance. Is there additional guidance we can give on the use of risks that would prevent consumer deception?

Pete DePasquale:

I mean, think we've been working on it for 10 years trying to transition these states to decouple the RIC from a recyclable claim. And it's taken a while. I think think that there is a role that the FTC could play mean as we think about wanting the Green Guides to really be the north star in this space. As many stakeholders in this room continue to work with those 20 plus states to try to update their laws that require chasing arrows, I think having a strong statement in the guides around solid, solid triangle is a start.

It's a start for us to begin increasing the work in those states, change law, get enforcement forbearance. Because as a marketer you're caught in this strange dichotomy of saying, hey, but I'm mandated in this state to have a resin identification code with the chasing arrows. So I do think that there's so falling short of preemption all that. I think that having a clear statement can be useful for the advocates in the room as they're engaging with states. And I think also the FTC Office of Policy Planning could get more engaged in helping that process as well.

Julia Ensor:

Thank you. Any final thoughts on RICs? Okay. So are there new types of claims that the Green Guides need to address to avoid deception? If so, they, how should they be addressed? And I think we've already touched in the other sessions upon the one that seems to be at the forefront of many's minds, which would be a chemical and advanced recycling. Any thoughts, Patrick?

Patrick Krieger:

I would just like to say that I would like to see, and I in our association would like to see the FTC clearly acknowledge that advanced molecular, chemical, however you would like to say it, is a recognized form of recycling. That is what we have found in our consumer data where we polled them. We asked consumers in March of this year, we described to them the definition of mechanical recycling without telling them what mechanical recycling was. And 93% of Americans said, yeah, that process is recycling. We then asked them about advanced recycling and the definition of advanced recycling and again, did not use the term and they said, yeah, that is recycling 91% of the time, so 93 versus 91. And also I will point out that in 50% of the cases we led with mechanical in 50% of the cases we led with molecular advanced. So we think that consumers care about recycling and less about the specific technologies and I think that it would be very helpful for us as an industry to make sure that it's very clear within the guides that this is an appropriate use of technology.

Julia Ensor:

Thank you. So Peter B I want to hear your response to the question as part of this. I'm also interested in thinking or information about overall environmental impact of chemical and advanced recycling to the extent that a recycling claim conveys an underlying general environmental benefit claim or else, can you tell us a little bit about environmental impact?

Peter Blair:

Yeah, I think that's important. When we talk about advanced chemical, whatever you're going to call it, we need to ground it and we're talking about environmental marketing claims and consumers see that as a promise that this is an environmentally beneficial process. 80% of consumers, this is a 2020 study from the Sheldon Group, found that recycling is the bare minimum that they want to do for the environment. So I appreciate that you guys had the language from your survey in there, but I take issue with it because it did not focus on the fact that this is a polluting technology. When consumers think about recycling, they think about environmental benefits, they think about greenhouse gas reductions, they think about minimizing extraction, keeping things in circularity. Very little of this technology, and it's mostly been pyrolysis and gasification, are actually recycling any materials. We all have agreed, it sounds like we've talked about this throughout the day. Plastic to fuel is not recycling. A Department of Energy study looked at all the different ways you can manage plastic. This came out earlier this year, one to 14% of the plastic processed at an advanced recycling facility is actually converted into something that could be used to manufacture new plastics. So that's a very little amount of material that's actually being put back into circulation and that's just the first part. That's the pyrolysis oil that is magically going to be used to manufacture new plastics.

Then they looked at the economic and environmental impact of using this process and they found that the pyrolysis and gasification, the leading advanced technologies, advanced recycling technologies we're 10 to a hundred times greater than the impacts of just manufacturing new plastics. So it completely gets rid of the environmental benefits. So ultimately the report said this is not circular, this is not an environmental benefit, and I think we need to contextualize when we talk about recycling, that consumers see it as an environmental benefit and if it's going to increase pollution. Most of these facilities, I think 78% are in environmental justice communities. So we really need to understand that consumers, when they think of recycling, they think of benefits.

Julia Ensor:

Patrick, did you want to respond to that before I turn to Quinta or Raisa?

Patrick Krieger:

I will let them and then I can respond.

Julia Ensor:

Okay, Quinta.

Dr. Quinta Warren:

Thank you. I actually agree a lot with what Peter just said. Advanced recycling is in its early stages and I appreciate the benefits that it offers. We can go from one to seven and recycle all plastics. That sounds fantastic. But I do think that we need to strike a balance between the benefits that it offers and then the cost to the environment and maybe the FTC can consider things like lifecycle assessment that will help compare new types of recycling with existing types of recycling so we can see if we're actually helping the environment when we're doing these things. Again, recognizing that advanced recycling is in its early

stages and could potentially get better and better as things start to scale up. So I think those were my major points. Thanks.

Raissa Lerner:

Yeah, I would agree with what Peter said and specifically the need to zoom out, obviously, on the whole point of the Green Guides is to endorse environmental marketing claims that actually have an environmental benefit. So whether that's lifecycle assessment or whatever that incurs, and when we're dealing with mechanical recycling, we're looking at how much goes out, how much goes in, and whether that's 60%, if that's the number of what is collected of what is available to people collection wise actually results in turning products in turning waste plastic into new products. The point of which is to reduce the amount of plastic that's actually produced, otherwise what's the point to reuse plastic so we don't keep producing more and more so that we don't have to landfill or incinerate what we've already produced or at least can reduce the amount of necessary to do that.

So I think ultimately with anything new like chemical recycling or pyrolysis and gasification, all again, the industry would have to substantiate whether that is even recycling at a rate of return of one to 14%, which is what the Department of Energy found. I think that doesn't sound like it's anywhere close to serving the 60% access point. If 60% people have access to putting their threes, fours, sixes and sevens in there, then we'd want to know that in order for those to continue to have viable recycling claims that don't need to be disclaimed or labeled, not recyclable, then those would have to move through the stream, get processed by chemical or advanced recycling at a much higher rate of return, like 60 or above. And the industries know we're close to that. And then looking at the environmental impacts and the environmental justice issues, where are these plants located where they are putting out into the air and the water, perhaps a greater pollution load than virgin plastic itself, production of virgin plastic.

Then again, it's like what's the point if we're trying to get away from or reduce the impact of producing more virgin plastic, then how is that serving that? And lastly, if the only way to use the pyrolysis oil that we're getting out of it, even at only one to 14% is to mix it with or to require a large amount of virgin plastic. Then again, it's like it's just facilitating the virgin plastic production cycle that we're on that pretty much every commentator and academic has agreed that we've got to start reducing that in order to deal with the plastic pollution problem facing the planet.

Julia Ensor:

So what I'm hearing here again is something is a stress on the 60% access threshold. Because the issue that you specifically identified is if we have an instance where more than 60% of particular plastics are picked up, but you end up only being able to use or distill down to a reusable resin 1% or something like that, then that is the operable number. It doesn't matter, in your view, that the 60% is picked up, is going through this process, if the end result is a small proportion of the materials. Is that accurate?

Raissa Lerner:

Yes. I think that, not that it doesn't matter, but it's not all that matters. You have to follow it all the way through. Otherwise, again, it's just another stop on the way to landfill or incineration.

Julia Ensor:

Patrick.

Patrick Krieger:

Yeah, thank you. So advanced recycling, molecular, chemical, multiple names for the same thing though. I like to say that that advanced recycling, there is advanced mechanical recycling that does exist. So advanced chemical and molecular recycling, they offer a lot of potential promise for our industry, the ability to recycle plastics that are currently difficult to recycle. So we recognize that these are in an incredibly important part of our industry and to be able to make and reuse more plastic in a circular fashion. I will also probably challenge the idea that the purpose of the environmental guidelines is to produce less plastic. I do stress here at this point, plastics from a lifecycle analysis have lower environmental footprints in many of the applications that they are used compared to alternative materials. That's really important to think about. And so this isn't about using producing less plastics, it's taking the plastics that we are producing and using them more in a circular way, in a more sustainable way.

Now the report from the Department of Energy did list a certain number of technologies. Again, we've also recognized that not all of these technologies are up to commercial scale or even a available yet. We're talking about the development of a green guide that will be used in the future and then for 10 years. So we want to make sure that we're thinking about that as it is. We would encourage it that as it's being designed and so we know that these things are in its current infancy for its use and it will get better over time. So that's what we really want to point the idea of that it has to be over 60% now I feel like that's an arbitrary number that's just been thrown out. Again, there's no data about consumers understanding of what recyclability means and whether or not that means that that makes sense. So I think that that molecular recycling is something that is useful and is something that we need in the future.

Julia Ensor:

Thank you. So I want to make sure that we take a few minutes to talk about potential rule making. Before we get to that, are there any other new claims that we need to be thinking about in this round of review of the guides? Okay, great. So one of the questions that we asked in conjunction with the call for comments was whether we need a rule when it comes to recycling, should any portion of the recycling guide be picked up and should we undertake rulemaking and what would the rules say? So of course the first question, if the FTC is going to do a rulemaking in this area, is there a prevalence of deceptive recycling claims on the market and what is the evidence of that? Peter B, I think you might have something to say about that.

Peter Blair:

Yeah, so Just Zero strongly thinks that the FTC should promulgate rules. It will standardize things. It will set a clear standard in the way that California has for what you need to do to be able to market your product as recyclable. And while the FTC hasn't taken a lot of enforcement actions over the last couple years regarding qualified, unqualified claims about recyclability, states have really stepped in. We heard from the Attorney General of Connecticut, California is, I believe, suing over the recyclability of plastic bags. So there's widespread consumer confusion about what is recyclable. We are a bunch of experts in this room and even we're not agreeing. So I think that it would go a long way to have a clear standard federal regulations that companies have to achieve that you have to meet to earn the ability to claim your product is recyclable.

Julia Ensor:

Thank you. Does anybody else want to speak on the prevalence of deceptive claims in the market? Of course, this is a necessary step toward undertaking rule making as we have to first show a prevalence of

deceptive claims. If we move forward, if we were to move forward with the rule, assuming that there is that prevalence of deceptive claims a rule could provide, would provide the violators are potentially subject to civil penalties for a first offense. Is this a good idea? Are there downsides? Go ahead.

Jeffrey A. Greenbaum:

Well, I guess I would maybe just take a step back for a second and say that if you look at the history of just FTC or even state attorney general enforcement of environmental claims over the last decade, there hasn't been a ton. And I think that there is a reason for that, which is I think that the Green Guides themselves are very well-written and thoughtful and are something that have really guided marketers in terms of not only product development, but in terms of the kinds of claims that they're making. So I think that they've been extraordinarily effective, as is.

The second thing is I think that one of the really interesting things about today was the number of questions that we have, the number of big questions we have about the way things work, the speed at which technology is changing, the questions about different types of recycling technologies. And it does make me nervous to have a rule that we're stuck with that is more difficult to change, that doesn't allow for just what we know is going to be this rapid advance of technology. So I guess I would both in recognition of how successful the Green Guides are and the concern about the evolution in technology and the pace, the rapid pace of change, I would at least raise the question of whether this is the right time for rulemaking, certainly absent sort of the kind of evidence you would expect to see in terms of deception in the marketplace.

Julia Ensor:

Quinta.

Dr. Quinta Warren:

I think naturally I disagree. It does feel like we're sort of in the wild west. I mean, producers, manufacturers are making claims. Sure, they're guided by the Green Guides, but there are no rules. There are no, at least first time penalties. And then so consumers are stuck paying the price for that. We can talk specifically about recycling plastics where consumers are using a guide that symbols that weren't designed for them. I do think we need rules. I'm firmly in support of rulemaking.

Julia Ensor:

Thank you. Peter B.

Peter Blair:

Yeah, I think to answer your first question, we're kind of in a catch 22, right? It's what is the evidence that there's deceptive marketing claims and where's the enforcement? But there hasn't been, so is there a problem? And the real reality is the guides have a lot of ambiguities in that. There are examples that do not cover the array of claims and qualifiers that you can make in our comments, we did list a series of what we feel are deceptive claims that would violate the Green Guides. I think there's this argument whenever we talk about regulation that it's going to spur innovation or it's going to limit the ability for companies to change this rapidly expanding marketplace, and I just don't think that's true. I think if you set a clear standard, the companies will be empowered to meet it. If we were going to see this innovation, we've been talking about plastics recycling for 40 years. We have not seen this innovation, so something clearly needs to change.

Julia Ensor:

Patrick.

Patrick Krieger:

Yeah, I would say that we've not seen enforcement again on the current guides in the way that we would expect before. We think that a rule is necessary. We think that a reasonable first step is to enforce maybe new examples would be better to help clarify. Again, a lot has happened since the last V version was published, but I think that there are current examples. The Rick is a really great example of opportunities where mourn letters and other methods of enforcement before you rise to the level of a rule is put in place. I think that furthermore, I don't think that setting a rule in this will solve many of the overarching issues that exist with recycling and recycling claims with the disconnect between the various states. So I'm also just concerned that it would make a complex issue worse.

Julia Ensor:

Peter D.

Pete DePasquale:

I share Jeff's concern about a long rule making that results in a static regulation that can't be responsive to all the changes in the marketplace, innovations, et cetera. I think kind of building on what Peter said is, for us, clarity is paramount and clear guidance, significant explanatory text, more frequent updates, engagement with other states and predictable enforcement. I think those are the things that we're looking for as we are trying to communicate clearly to consumers, the recyclability of our products and packaging as we're working to make investments in the recycling infrastructure and to try to get these packages and products actually collected recycled in those markets so we can put it back through and satisfy our post-consumer recycled content commitments that we've made publicly.

Julia Ensor:

Thank you. Now, I know that we have numerous questions from the audience. And as I said before, we will stay here and listen to any statements or questions from the audience to the extent that they exist. Before I turn over to those, any other thoughts from the panelists? Well, thank you all for your time today. This has been really interesting and helpful discussion. I'm going to ask anyone with questions or statements from the audience to please line up at the microphones. I think we may have one or two panelists that need to catch flights. You are welcome to go to the extent that other panelists are able to stay and respond to questions or comments, that's great as well. Thank you.

Rayna:

Yeah. Okay. Hi, Reyna Bryan here from RCD Packaging. I think widespread deception is something that many consumers are feeling as that recycling hasn't worked for many decades and we're seeing such low recyclability rates of plastic. And so I think there is a cause for the FTC to move into more of adding

Rayna:

Adding real policy and law to actually back up the work that they're trying to do to make sure we're protecting consumers from misleading claims. So I do think that's important. I also think that we've really touched on the fact that reasonable consumers expect that when something's put into the bin or labeled as recyclable, that it is going to make it all the way to an end market, right? Flowing all the way

through. So we cannot just have a metric of substantiation based on collection. That does not go far enough. That's the way it's been so far. It's not working. We're still not getting the recycling rates that we're looking for as consumers to feel good about and not feel misled about something being labeled as recyclable. So I would really encourage that we have a metric that has to do with somehow qualifying and quantifying the size of end markets for each type of material that's flowing through the recycling system.

So if something's going to be deemed as recyclable, you have to prove the vast majority of that material flowing through is a substantial majority, is actually being put in creating a new product. If we do not have ways to substantiate that claim, then we're going to deal with this black box nonsense. And I don't feel like we should continue to allow certain industry partners to create the guides and set their own rules around this.

This hasn't worked for the last decade or last two decades, so additional guides and APR and so on, that's not going to be enough. We need to make sure we're getting visibility and traceability, accountability, and this whole notion that we should allow continued siloed management across this country is absolutely insane. Like we are a modern country. These materials are being used across every single state. We need consistent systems that everybody's using so that we can all have the same expectations of where these materials are going. So somehow finding ways to combine efforts of the EPA with the efforts of the FTC and other policy makers is absolutely critical. And so yeah, that's all I'm going to say there. But yeah, no more just depending on guides put forth by the American Chemistry Council and the APR would be very helpful.

Julia Ensor:

Thank you. And of course, to the extent there's any comment or question from the audience that a panelist would like to respond to, just turn your table 10 on the side and I'd be happy to call on you. Go ahead.

Jeffrey A. Greenbaum:

Awesome. Michael Savior from UL Solutions. There was a recent study released few weeks ago that estimated that the mechanical recycling of plastics in the United States is producing up to 400,000 tons of microplastics each year. So if we have that issue on mechanical recycling and with advanced recycling or chemical recycling, there are other issues that we've discussed today, what are we supposed to do with these materials? Do we just outright ban plastics and recycling in that general or how are we approaching this? Because if it's ultimately to increase the environmental benefit of what we're doing, but we're producing microplastics or emissions the other ways, what should we do and how should we approach that?

Julia Ensor:

Thank you.

Jordan Wallman:

Hi, Jordan Wallman reporter with Politico. I just had a question about what are the sort of pros and cons to a rule here? Because I know the FTC can take enforcement action under the green guides through section five. So what are the legal or technical or tangible differences here that a rule would present?

Julia Ensor:

Panelists, any thoughts?

Peter Blair:

Yeah, that's a great question. I think first and foremost, it would create a level playing field that says what the terms are outright for everyone to understand in simple ways. We have California's law to look as a model. And I think in the absence of that, it was mentioned this morning that we're seeing more and more state legislation, state policy trying to address this. That's great. I'm working on a lot of that. A lot of it is very exciting. That will create a patchwork network where marketers are going to have to figure out what do I do in California? What do I do in Oregon? It will set a clear federal floor that states could then go above, but it will at least set a standard across the US and I think that's the biggest pro that we could get for rulemaking.

Julia Ensor:

Any other thoughts, panelists? Okay, thank you.

Jessica Roth:

Unsurprisingly, I have a lot of thoughts. I'd like to say just start with that I and Gaia, we definitely support a rulemaking. Clearly guidance is not enough. If industry is asking for just guidance, then we need more than that. We are not in a situation now where we're in the right place for dealing with recyclability and recycle content. And so that definitely needs to take place. The argument that there haven't been a lot of claims I think is not helpful. I understand that's what the guidelines require, but nobody knows about these guidelines. I didn't know about them before I started this job and I've been doing climate work for a decade. I've never heard of them before. How do I file a claim? What do I do? How do I talk about it? Administrative law is intentionally opaque for the participants. I was an administrative lawyer in my past life. I know.

It is really difficult to figure all of that out. And so if there hasn't been a situation where people are complaining, it's because they don't know that they have a route to do that. And we need to, in addition to everything else, make much more public information about this to the general public. I did an informal survey of a bunch of small business owners that I know. None of them have ever heard of these guides, and I live in a neighborhood that is a pretty engaged, interested in sustainability and environmentalism and all of this. Nobody had ever heard of them before. Change isn't happening fast enough to Peter B's point before, and we need to accelerate that. We don't have time anymore. We can't be screwing around. Sorry. And chemical recycling, as I mentioned, does not offer the benefits that they're claiming. The fact that these surveys keep getting cited, let's all be real also. Surveys can get you the results you want depending on how you ask your question. We all know that fact, right? The ACC speaker spoke and Patrick spoke about these questions about people supporting advanced recycling. I would love to know the actual language and all of the questions that are asked that way. And instead, I think the important question is why don't you ask the general public how would you describe chemical recycling, and then ask if they support it. Because I guarantee you nobody knows what it is. Again, had never heard of chemical recycling in my past life. I've been fighting fossil fuel for 15 years. Nobody knew about it until the big push came out for it. And then it was all with green washing and all costs lots of money in order to bring everybody on board with it because there's no accessibility.

It's completely opaque. There's no information. The certification is by a third party that is the international sustainability and carbon certification. Guess who makes out the ISCC, y'all? 232 corporations of whom almost every one of the largest polluters and plastic producers in the world is on it. So that is not a third party certification. That is the box gardening the hen house if I ever heard it. So I

think and addition to that, one of the things that they're certifying on is around mass balance. There was a little bit of mention of it. I thought there would be more of it. Mass balance is an enormous problem if it's being done at a free allocation level, at a company-wide level, at an interstate level, at a multiple facility level. These are all the things industry is pushing for. The only way mass balance can be used, and it's still not a great option, but the least terrible option is to do it at the batch level where there is an actual accounting for the amount of recycled material going into a product and what's coming out.

The others is basically it's like La Croix, the joke about it sits next to a fruit and so it smells like it and tastes like it. If it's adjacent to recyclable recycled material, then they're saying that it is including it. And if you look at the ACC, at the ISCC's slides from this ACC conference that I came from, in fact, they talk about very carefully how things have to be labeled as not adjacent to, it's associated with or something. It's definitely not saying that that content is in there, but as we have heard time and time and time again, the consumer is going to believe what it says on the package. If it says recycled or recycleable anywhere on there, that's that five seconds people are giving to it. They're not reading the full explanation. Also, they're not going to go to QR codes, they're not going to go to websites.

It's also an accessibility issue. Everyone doesn't have a smartphone. Everyone doesn't have access to internet. Everyone is not under 90. There are people in this world who will not find that information. And if we're talking about how we're educating the people, we have to do it in a way that actually educates all of the people. I mean, to the point about the issue of it's all just about making sure people understand, I mean no offense, but Patrick and Peter couldn't keep track about the triangle and the chasing arrows and the numbers. How are we supposed to, and industry, you said you've been working on it for 10 years .and we're just going to go out and change all of America's understanding of how this works tomorrow? With what money, with what people, with what process, with what connectivity to anything? Like it's completely unreasonable to think that that's going to be what's happening.

And to the point of the people that are out there, these processes are all located in communities that are already overburdened by dealing with all of the other literal crap that we are creating and dealing with across this country. They're almost always, as Peter alluded to earlier, they're almost always in BIPOC communities. They're almost always in low wealth communities. The entire process of making and dealing with plastic from extraction, from fracking through the end process, is all in communities that can't afford any more problems. They have all been affected deeply by really dangerous processes for decades now, and it's time to not use that as a solution. It's creating more sacrifice zones, and we can't be doing that.

And finally, I'll just say that the point about this being future looking and the fact that this is an infant process of chemical recycling. I mean the infant is already killing things. It's already destroying things. We can't invest more money in it. And the point that this is going to be future looking guidance means this is the time to stop it in right now in its tracks. We can't be using chemical " recycling" as an answer for either recycled content or recycleability because it's neither of them.

It's a misnomer. It's a bait and switch. Industry is rubber stamping it by themselves and they're closing all ranks around it so that we can't see what's happening. So it's really, really important that we get into some mandatory actual accountability, like not warning letters. What is a warning letter going to do y'all? The planet is in crisis. People are in crisis and we all know it and nobody's changing what they're doing. So I don't know what anyone thinks a warning letter is going to do about it. We need actual laws promulgated that have actual penalties that are actually going to hurt the bottom line of the people and corporations that are causing the problems because little slaps on the wrist isn't making any change.

Speaker 3:

Thank you. Anyone else?

Sharon Silverman:

I agree with so many of the things people have just said here. Madison Avenue made Americans the ideal consumer. They produce convenient, cheap, and disposable products and we got to stop doing that. We got to stop having Amazon packages show up that are this big and have something the size of my fist inside wrapped in bubble wrap inside of them. And you all have experienced it, I'm sure. So what we're doing doesn't make sense. Someone talked on the last panel about pre-consumer and post-consumer. Well, pre-consumer excess is called overproduction. It's inventory we never needed and it just has extracted materials from the earth that never need to have been extracted and used energy and water to do it.

Post-consumer waste is over consumption. And if it gets thrown away that quickly, we probably didn't need it to begin with. We need to slow down our growth. And I think you all know that. The ability to recycle things on a national level is paramount where no one has to ask consumers to understand the numbers on the bottom of a bottle or a tub. If you guys were a corporation, someone would tell you to rebrand. You've been working on it for decades. Rebrand the system. Don't use the chasing arrows anymore. Make it something new.

Peter, you talked about a study where plastic bags had something attached to them. In fashion, we call that digital product passports. And if you could attach it to things that you wanted to know what the end route from the beginning when it was first created until it got to a recycling center or didn't, you would know that. And that would be a useful study to do across all kinds of product categories. The glass rocks that you had mentioned that sit on top of compost piles, that's part of the education comment. That's a linear system. It didn't go in a circle. That was just an extended linear supply chain of a take make waste system. There's so much new vocabulary that we need to learn that's associated with a circular economy in our attempts at zero waste. The verbiage goes on and on and we've talked for at least an hour and a half of this about what the definitions of things are.

That's because people my age older than me don't aren't familiar with it. We are those consumers that were taught by Madison Avenue and all the advertisers to buy something, use it for a little while and throw it away. And the confusion at the symbols, again, rebrand it with education. But education should be paid by the producers because they're the ones economically benefiting from making the products. So they should be economically required to fit their product into a circular system and educate consumers, educate legislators, educate scientists or have the scientists contribute to the education really, and educate the producers. Because it's all different levels of education and it all needs to be structured differently. Because some people need the real scientific background and data. And consumers need to have a simple system that understands what is everyone so scared about legislation? We have so much legislation in this country that control so many harmful side effects or not prevents them.

Why are we concerned about some education that's going to level a playing field like I tell the fashion industry all the time, and make us all better producers and consumers? And hopefully start to repair some of the damage we've done to marginalize communities all across the world and to the environment and to our economy.

There is huge financial opportunity in the circular economy, but we need to talk about what's really harmful and what's not, because there's no financial evaluation for the cancer you get or when your daughter comes and says she can't conceive a child because her hormones have been affected. So I think there's a lot more than the surface here. And I think we need to unsilo, like so many people have talked about, talking just about green guidance for marketing. It needs to be everyone sitting in on the conversation talking about the environmental, the social, the legislative, the opportunities that are involved. Getting public-private partnerships that really have at their heart making a difference quickly

and not being afraid. If we go in one direction and we find it's not quite working, to make an adjustment so that it's better. But not sitting around endlessly having conversations about trying to guard your position. It doesn't work. It hasn't worked. Thank you.

Julia Ensor:

Thank you. Anyone else? Thank you. And I'll turn it over to Jim.

Jim Kohm:

So for those of you who are... Usually, I'm loud enough on my own. For those of you who want to get to lunch, I feel your pain. So this'll be extremely short. I just wanted to acknowledge Mary Engel and earlier Laura Kim were here. They're no longer with the FTC, but had huge impacts on the guides over the years. And I want to thank all the people in the audience and all of our panelists. Thank you very much. This has been really interesting. And please comment before the 13th. We'd love to see your comments. Thank you very much.