

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF KANSAS**

FORD COUNTY, KANSAS, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

EXXON MOBIL CORPORATION, CHEVRON
USA INC., CHEVRON PHILLIPS CHEMICAL
CORPORATION, DUPONT de NEMOURS INC.,
CELANESE CORPORATION, DOW INC.,
DOW CHEMICAL COMPANY, DUPONT
CORPORATION, EASTMAN CHEMICAL
COMPANY, LYONDELLBASELL INDUSTRIES,
and AMERICAN CHEMISTRY COUNCIL

Defendants.

Case No. _____

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Ford County, Kansas files this Class Action Complaint, individually and on behalf of all others similarly situated, against the named Defendants, seeking relief to remedy the harms caused by Defendants' negligent and/or intentional representations regarding the recyclability of plastics, which led to the production and purchase of more plastics than otherwise would have occurred. These representations have led to higher plastic prices than otherwise would have occurred in a competitive market and massive sanitation problems for county and city governments and their landfills. Plaintiffs' allegations are based on personal knowledge as to Plaintiffs' own conduct and investigation of counsel based on publicly available information as to all other allegations.

I. INTRODUCTION

1. This case is about Defendants' profit-driven decision to promote the idea to the American consumer that plastics were recyclable and better for the environment, when in reality they had information that only a tiny fraction of plastics are ever recycled.

2. Defendants' false representations regarding the recyclability of plastics led to increased production of plastic products, increased demand for plastics products, increased prices for plastic products and corresponding issues with the remediation of plastic waste, all of which have harmed the citizens of Kansas.

3. Through this Class Action Complaint, Plaintiff, individually and on behalf of the Class (defined below), seeks abatement to remove and properly dispose of Defendants' plastic products, and an injunction to enforce that Defendants will no longer advertise their plastic products as recyclable.

4. Plastic pollution is one of the most serious environmental crises facing the world today. Between 1950 and 2015, over 90% of plastics were landfilled, incinerated, or leaked into the environment.¹ Plastic waste is ubiquitous—from our rivers, lakes, and oceans to roadways and coastlines. It is in “the air we breathe, the food we eat, and the water we drink.”² One study estimates that humans ingest up to five grams or the equivalent of one credit card worth of plastic per week.³ Some of the largest oil and gas companies are among the 20 petrochemical companies

¹ Roland Guyer, et al., *Production, Use, and Fate of All Plastics Ever Made*, 3 SCIENCE ADVANCES 2-3 (2017), <https://www.science.org/doi/10.1126/sciadv.1700782>.

² WWF, *NO PLASTIC IN NATURE: ASSESSING PLASTIC INGESTION FROM NATURE TO PEOPLE* 6-7 (2019), https://wwfeu.awsassets.panda.org/downloads/plastic_ingestion_web_spreads.pdf

³ Kala Senathirajah, et al., *Estimation of the Mass Microplastics Ingested – A Pivotal First Step Towards Human Health Risk Assessment*, 404 JOURNAL OF HAZARDOUS MATERIALS 11 (2021), <https://www.sciencedirect.com/science/article/abs/pii/S0304389420319944>.

responsible for more than half of all single-use plastics generated globally.⁴ ExxonMobil, for example, is the world's top producer of single-use plastic polymers.⁵

5. Underpinning this plastic waste crisis is a decades-long campaign of fraud and deception about the recyclability of plastics.

6. Despite their long-standing knowledge that recycling plastic is neither technically nor economically viable, petrochemical companies—independently and through their industry trade associations and front groups—have engaged in fraudulent marketing and public education campaigns designed to mislead the public about the viability of plastic recycling as a solution to plastic waste. These efforts have effectively protected and expanded plastic markets, while stalling legislative or regulatory action that would meaningfully address plastic waste and pollution. Fossil fuel and other petrochemical companies have used the false promise of plastic recycling to exponentially increase virgin plastic production over the last six decades, creating and perpetuating the global plastic waste crisis and imposing significant costs on communities that are left to pay for the consequences.

7. The plastics industry—which includes petrochemical companies, their trade associations, and the front groups that represent their interests—should be held accountable for their campaign of deception much like the producers of tobacco, opioids, and toxic chemicals that engaged in similar schemes.

II. JURISDICTION AND VENUE

8. This Court has proper jurisdiction over this matter in that Defendants have

⁴ See Minderoo Foundation, THE PLASTIC WASTE MAKERS INDEX: REVEALING THE SOURCE OF THE SINGLE-USE PLASTICS CRISIS 12, 14 (2021), <https://cdn.minderoo.org/content/uploads/2021/05/27094234/20211105-Plastic-Waste-Makers-Index.pdf>; Minderoo Foundation, THE PLASTIC WASTE MAKERS INDEX 2023 18, 57 (2023), <https://cdn.minderoo.org/content/uploads/2023/02/04205527/Plastic-Waste-Makers-Index-2023.pdf>.

⁵ Minderoo Foundation, THE PLASTIC WASTE MAKERS INDEX 2023, *supra* note 4, at 57.

transacted and conducted business within the State of Kansas and in this judicial district.

9. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because this is a class action where the amount in controversy exceeds the sum or value of \$5 million, exclusive of interest and costs, there are more than 100 members in the proposed class, and Plaintiff, is an entity located in a state different from Defendants.

10. This Court also has personal jurisdiction over all Defendants, and Venue in this District is proper, under the combination of 28 U.S.C. § 1391(b), (c), and (d).

11. Venue is proper in this Court, because a substantial part of the events or omissions giving rise to the claims at issue occurred in this district, Plaintiff resides in this district and Defendants' property at issue (plastics) are located in this district.

III. PARTIES

12. Plaintiff County of Ford, Kansas ("Plaintiff") is a duly organized county located in Kansas, which purchased plastic products in the State of Kansas, and operated a landfill in the State of Kansas. County attorneys in Kansas have standing to sue to abate public nuisances on behalf of their respective counties pursuant to Kan. Stat. Ann. § 60-908.

13. Defendant Exxon Mobil Corporation is the world's largest plastic producing company in revenue and market capitalization. It is headquartered in Spring, Texas. Exxon Mobil is the successor company to John D. Rockefeller's Standard Oil Company and was created by merging two oil giants (Exxon and Mobil). It dominates the American oil and gas industry and is the world's largest producer of polyolefins, additives, raw materials, compounds and other related polymers and resins. Exxon Mobil Corporation can be served at 22777 Springwoods Village Parkway, Spring, TX 77389-1425.

14. Defendant Chevron USA, Inc. is another oil and gas company created by the breakup of Standard Oil Company. It is headquartered in San Ramon, California and is the largest

polyethylene manufacturer in North America. It can be served at 6001 Bollinger Canyon Road, San Ramos, CA 94583.

15. Defendant Eastman Chemical Company is a global specialty chemicals company that produces a wide range of fibers, chemicals and advanced materials. It is a significant supplier of coatings, adhesives, specialty plastic products and a major supplier of cellulose acetate fibers and copolyesters. It is headquartered in Kingsport, Tennessee. It may be served at 200 S. Wilcox Dr., Kingsport, TN 37660.

16. Defendant Celanese Corporation focuses mainly on specialty chemicals and is a leading producer of acetic acid. It is also the world's largest vinyl acetate monomer (VAM) producer. It is headquartered in Irving, Texas. It can be served at 222 W. Los Colinas Blvd., Suite 900N, Irving, TX 75039.

17. Defendant Chevron Phillips Chemical Corporation is a joint venture between Chevron USA Inc. and Phillips 66 Company. It is headquartered in The Woodlands, Texas and is one of the top suppliers of polyethylene in the world today. It can be served at 10001 Six Pines Dr., The Woodlands, TX 77380.

18. Defendant Dow Chemical Company is headquartered at 2211 H. H. Dow Way Midland, Michigan. As of 2021, Dow Chemical was among the three largest chemical producers in the world. Dow Chemical produces commodity chemicals like polyethylene. Basic plastics make up 26% of Dow Chemical sales. It is an operating subsidiary of Dow Inc. It can be served at 2211 H.H. Dow Way Midland, MI 48674.

19. Defendant Dow Inc. is one of the world's leading material science companies. The company has six worldwide business units. It was incorporated in Delaware in 2018 to serve as a

holding company for the Dow Chemical Company. It is headquartered in Midland Michigan and can be served at 2211 H.H. Dow Way, Midland, MI 48674.

20. Defendant Dupont de Nemours Inc. is an American multinational company headquartered in Wilmington, Delaware. It is a leading plastics manufacturer with revenue of over \$12 billion dollars in 2023. It can be served at 974 Centre Rd. Bldg. 730, Wilmington, DE 19805.

21. Defendant LyondellBasell Industries is a multinational company. It is the largest licensor of polyethylene and polypropylene in the world. Its worldwide headquarters is located in Houston, Texas. It can be served at 1221 McKinney St., 300, Houston, TX 77010.

22. Defendant The American Chemistry Council, known as the Manufacturing Chemists' Association at its founding in 1872, then as the Chemical Manufacturers Association from 1978 to 2000, is an industry trade association for American chemical companies. It is based in Washington D.C. The mission of the American Chemistry Council is to promote the interests of the chemical industry. The trade group represents U.S. chemical companies as well as the plastics and chlorine industries, formerly known as the American Plastics Council. It can be served at 700 Second St. NE Washington D.C. 20002. Throughout its operations the Council has included the following Defendant members: Exxon Mobil, Chevron Phillips, Dow, Dupont, Eastman Chemical Company, Celanese Corporation and LyondellBasell.

IV. FACTUAL ALLEGATIONS

A. Background of the Plastic Product Industry

23. The plastic products at issue in this case can be separated into certain categories based upon their chemical composition and end use.

24. Polyethylene Terephthalate (PET) is used most commonly in water and soft drink bottles, fruit juice containers, domes or covers for prepared meals, cookie/biscuit trays, condiment bottles, cream/nut butter containers and cooking oil bottles.

25. Polyethylene (PE) is used in milk and water jugs.
26. Polypropylene (PP) is used in hard containers such as pill bottles as well as microwave dishes, yogurt and ice cream containers and chip bags.
27. Polystyrene (PS) is used for water station cups and plastic cutlery.
28. Polycarbonate (PC) is used in longer lasting reusable containers including refillable water bottles, nursing bottles or lab bottles.
29. High Density Polyethylene (HDPE) is used in milk bottles, freezer bags, ice cream containers, pouches and sachets.
30. Low Density Polyethylene (LDPE) is used in squeeze bottles, cling wrap, shrink wrap pouches and sachets.
31. Plastics are part of a sector known as “petrochemicals,” or products made from fossil fuels such as oil and gas. More than 99% of plastics are produced from fossil fuels.⁶

B. Most plastics cannot be recycled, causing the plastic waste and pollution crisis.

32. There are “thousands of different types of plastic, each with its own chemical composition and characteristics.”⁷ The vast majority of these plastics cannot be “recycled”—meaning they cannot be collected, processed, and remanufactured into new products.⁸















⁶ Center for International Environmental Law (CIEL), FUELING PLASTICS: FOSSILS, PLASTICS, AND PETROCHEMICAL, FEEDSTOCKS 1 (2017), <https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf>.

⁷ Professor Plastics, *Types of Plastic: How Many Kinds of Plastics are There?*, Plastics Make it Possible (Jan. 18, 2012), available at <https://web.archive.org/web/20220611222514/https://www.plasticmakeitpossible.com/about-plastics/types-of-plastics/professor-plastics-how-many-types-of-plastics-are-there/> (archived June 11, 2022).

⁸ U.S. EPA, The U.S. Recycling System, <https://www.epa.gov/circulareconomy/us-recycling-system> (“In the United States, recycling is the process of collecting and processing materials (that would otherwise be thrown away as trash) and remanufacturing them into new products.”).

33. As of 2021, the U.S. recycling rate for plastic is estimated to be only 5-6%.⁹ Despite decades of industry promises, plastic recycling has failed to become a reality due to long-known technical and economic limitations.¹⁰

34. Certain types of plastics have no end markets (i.e., businesses that buy and use recyclable materials to make new products), and therefore are *impossible* to recycle. To date, viable markets only exist for polyethylene terephthalate (PET) and high-density polyethylene (HDPE) plastic bottles and jugs.¹¹ These are known as plastics #1 and #2, respectively, under the industry's Resin Identification Codes (RICs).¹²

Resin Identification Number	Resin	Resin Identification Code - Option A	Resin Identification Code - Option B
1	Poly(ethylene terephthalate)	 PETE	 PET
2	High density polyethylene	 HDPE	 PE-HD
3	Poly(vinyl chloride)	 V	 PVC
4	Low density polyethylene	 LDPE	 PE-LD
5	Polypropylene	 PP	 PP
6	Polystyrene	 PS	 PS
7	Other resins	 OTHER	 O

<https://web.archive.org/web/20160126213345/http://www.plasticsindustry.org/AboutPlastics/content.cfm?ItemNumber=823&navItemNumber=1125>

⁹ Beyond Plastics & The Last Beach Cleanup, The Real Truth About the U.S. Plastics Recycling Rate 3 (2022), <https://static1.squarespace.com/static/5eda91260bbb7e7a4bf528d8/t/62b2238152acae761414d698/1655841666913/The-Real-Truth-about-the-USPlastic-Recycling-Rate-2021-Facts-and-Figures-5-4-22.pdf>.

¹⁰ The plastic recycling rate in the U.S. has never exceeded the 2014 peak of 9.5%, and even that figure includes a significant amount of exported plastic waste that was dumped or burned rather than recycled. *Id.*; John Hocevar, Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability 7 (2020), <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf>.

¹¹ John Hocevar, *supra* note 10, at 7.

¹² Brad Kelechava, Resin Identification Codes (RICs), as Specified by ASTM D7611, American National Standards Institute (Feb. 21, 2019), <https://blog.ansi.org/2019/02/resin-identification-codes-rics-astm-d7611/>.

35. After conducting a 10-year review on plastic recycling, in 1991, the U.S. Environmental Protection Agency (EPA) concluded that “it appears that at the present only two types could be considered for making into high quality objects, PET and HDPE,” specifically those sourced from bottles.¹³

36. This remains true more than 30 years later.¹⁴ While a minority of municipal recycling programs across the country may collect plastics with RICs #3-7, they do not actually recycle them.¹⁵ Instead, such plastics are incinerated or sent to landfills.

37. The thousands of different plastics and the variation among them further limit recyclability. When recycling plastic waste, a facility must sort and separate thousands of pieces of plastic by type to maintain a high degree of purity in the recycled material.¹⁶

38. For this reason, some types of plastic may be technically recyclable but are not recycled in practice. For example, many single-use plastics are made of different types of plastic polymers as well as other materials, such as paper, metals, or adhesives.¹⁷ It is impractical—if not impossible—to separate these different components for recycling.¹⁸

¹³ U.S. EPA, Ten Year Review of Plastics Recycling 22 (1991), <https://semspub.epa.gov/work/03/17184.pdf>.

¹⁴ John Hocevar, *supra* note 10, at 4 (“Only some PET #1 and HDPE #2 plastic bottles and jugs can be legitimately labeled as recyclable in the U.S. today”); *see also* Greenpeace, Circular Claims Fall Flat Again: 2022 Update 27-29 (2022), https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf (estimating that the existing domestic capacity for recycling/reprocessing PET waste is 20.9% and HDPE is 10.3%, while the capacity to recycle other plastics ranges from “negligible” to less than 5%).

¹⁵ John Hocevar, *supra* note 10 at 4, 7-9; Greenpeace, *supra* note 14, at 3-4. For example, the City of Knoxville, Tennessee, states on its website that its recycling facility will collect plastics #3-7, but it does not recycle them because “there is no ‘end-market’ buyer.” City of Knoxville, Recycling, <https://www.knoxvilten.gov/cms/One.aspx?portalId=109562&pageId=200229>.

¹⁶ Judith Enck & Jan Dell, Plastic Recycling Doesn’t Work and Will Never Work, *The Atlantic* (May 30, 2022), <https://www.theatlantic.com/ideas/archive/2022/05/single-use-plastic-chemical-recycling-disposal/661141/>.

¹⁷ *See* Jefferson Hopewell et al., Plastics Recycling: Challenges and Opportunities, 364 *Philos Trans. R. Soc. Lond. B Biol. Sci.* 2115, 2118 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873020/>.

¹⁸ *Id.*

39. Even products made of a single type of plastic often cannot be recycled together, because they include different chemical additives or colorants.¹⁹ For example, PET is widely accepted by municipal recycling programs, yet PET bottles cannot be recycled with PET clamshells and other thermoforms, which are made from a PET material with different chemical properties.²⁰ Similarly, green PET bottles cannot be recycled with clear PET bottles.²¹

40. The quality of plastic degrades as it is recycled, limiting both the use of recycled plastic and its continued recyclability. The fossil fuel-derived chemicals that form the basis of plastic are vulnerable to heat and other processes used in recycling.²² As the chemicals degrade, they lose their quality and integrity, making recycled resins unsuitable for many manufacturers.²³

41. The reality is that plastics can only be recycled – or more accurately “downcycled” – once, rarely twice.²⁴

42. Recycling most plastics was technologically infeasible, as the plastics industry knew, and subsequent scientific research would confirm. “When recycled, some of the plastic can be remade into similar products; however, most is typically downcycled into a product of lower quality and is unable to displace products made from virgin plastics [citation omitted].”²⁵ Even PET, the most easily-recycled type of plastic, quickly degrades through the recycling process.

¹⁹ Judith Enck & Jan Dell, *supra* note 16.

²⁰ *Id.*

²¹ *Id.*; see also Becky Sullivan, *Sprite Ditches its Iconic green bottle—but Environmentalists Say it’s Not Enough*, NPR (July 28, 2022), <https://www.npr.org/2022/07/28/1114242535/sprite-green-bottles-recycle>.

²² See Huiying Jin et al., *The effect of extensive mechanical recycling on the properties of low density polyethylene*, 97 POLYMER DEGRADATION AND STABILITY 2263 (2012), <https://www.sciencedirect.com/science/article/abs/pii/S0141391012003114> (“[P]roperties of mechanically recycled polymers do not remain the same because of degradation from heat, mechanical stress, oxidation and ultraviolet radiation during reprocessing and lifetime”).

²³ See Sarah DeWeerd, *Why It’s So Hard to Recycle Plastic*, SCIENTIFIC AMERICAN (Dec. 13, 2022), <https://www.scientificamerican.com/article/why-its-so-hard-to-recycle-plastic/>.

²⁴ See Roland Geyer et al., *supra* note 1, at 2-3.

²⁵ Moran et al., San Francisco Estuary Institute, *A Synthesis of Microplastic Sources and Pathways to Urban Runoff* (Oct. 2021) page 76.

43. The *toxicity* of plastic and its chemical additives limits the recyclability of plastic. Many plastics commonly contain toxic additives such as stabilizers, plasticizers, coatings, catalysts, and flame retardants.²⁶

44. Managed plastic waste contributes to plastic pollution of the environment. As plastic waste degrades in landfills, microplastics are released into the surrounding environment, including contamination of soil, groundwater, and surface water by air and by leachate.²⁷

45. Plastic waste may be further contaminated through curbside collection of containers for pesticides, cleaning solvents, and other household items.²⁸

46. As plastics degrade through use and the recycling process, they begin to leach these toxic substances.²⁹ For this reason, a vast majority of plastic products cannot be recycled into food-grade packaging, food-contact surfaces, or other high-contact products.³⁰

C. Defendants knew that their promotion and production of plastic products for a throw-away lifestyle created a solid-waste crisis without a solution.

i. 1950s: The plastics industry touted plastics' supposedly disposability.

47. Beginning in the 1950s, the petrochemical companies that produced plastic resins identified a way to ensure a steady, growing demand for plastic: disposability. If plastic products were used only once, then they would need to be purchased—and thus produced—again and again.

48. At the Society of the Plastics Industry's (SPI) 1956 national conference, participants were told that “developments should be aimed at low cost, big volume, practicability,

²⁶ See John N. Hahladakis et al., *An overview of chemical additives present in plastics: Migration, release, fate and environmental impact during their use, disposal and recycling*, 344 J. of Hazardous Materials 179, 184-168 (Feb. 15, 2018), <https://www.sciencedirect.com/science/article/pii/S030438941730763X>.

²⁷ Leachate is a solution or product obtained by leaching, especially from landfills or other sources.

²⁸ Greenpeace, *Forever Toxic: The Science on Health Threats from Plastic Recycling 4* (2023), https://www.greenpeace.org/usa/wp-content/uploads/2023/05/GreenpeaceUSA_ForeverToxic_ENG.pdf.

²⁹ *Id.*

³⁰ See Environment & Climate Change Canada, *ASSESSING THE STATE OF FOOD GRADE RECYCLED RESIN IN CANADA AND THE UNITED STATES*, 4, 34 (2021), https://www.plasticsmarkets.org/jsfcontent/ECCC_Food_Grade_Report_Oct_2021_jsf_1.pdf.

and *expendability*.”³¹ In short, the producers’ aim should be for their products to end up “in the garbage wagon.”³²

49. The shift to disposables began almost immediately—even for products that had previously been sold to customers on the basis that they could be repurposed.³³ Plastic dry cleaning bags were advertised as durable and reusable throughout the 1950s,³⁴ but the industry quickly changed tack in 1959 after around 80 children suffocated on plastic dry cleaner bags, leading to immense public backlash against the industry and some of the earliest calls for plastic bans.³⁵

50. SPI launched a nationwide public relations campaign, claiming that the bags were meant to be disposable, essentially shifting the blame to the children’s parents—and it worked.³⁶

51. This campaign served as a mechanism to insulate the industry from public and regulatory backlash while simultaneously introducing consumers to the idea of disposable plastics. An SPI pamphlet from 1959 (**Figure 1**) explained that customers should “never keep a plastic bag after it has served its intended usefulness. Destroy it: Tear it up ... or tie it in a knot ... and throw it away.”³⁷ To do otherwise “is the worst mistake a mother could make.”³⁸

³¹ *Plastics in Disposables and Expendables*, 34 MODERN PLASTICS 93 (Apr. 1957) (emphasis in original).

³² *Id.*

³³ Jeffrey L. Meikle, AMERICAN PLASTIC: A CULTURAL HISTORY 266-67 (Rutgers University Press 1995), https://www.google.com/books/edition/American_Plastic/u_1ePU4GEGAC?hl=en&gbpv=0 (chronicling the shift to disposables). The industry’s earlier campaigns promoting plastic as durable have also been chronicled. *See id.* at 186-88; Susan Freinkel, Plastic: A TOXIC LOVE STORY 145 (2011).

³⁴ *See This Bag Spells Business*, 50 DUPONT MAGAZINE 24, 25 (Feb/Mar. 1956), https://digital.hagley.org/1956_50_01 (quoting the general manager of a Providence, Rhode Island dry cleaning company who explained that the film bags combined “maximum transparency as well as the necessary durability.” That durability, the article went on to say, allowed consumers to find additional uses for the bags even after they had received their laundered clothes, stating, “Bags of ‘Alathon’ are reusable, too, as housewives have discovered”).

³⁵ Susan Freinkel, *supra* note 38, at 142-43.

³⁶ Jeffrey L. Meikle, *supra* note 38, at 249-58; *see also* Hiram McCann, *Hazards in Film Misuse Must Be Taught Parents*, 36 MODERN PLASTICS 262 (June 1959) (explaining that the bags were “made and costed to be disposable” and lamenting that items ranging from cars to cleaning fluids “kill children every day,” but in those cases “[a]dults are blamed—mainly parents. And rightly so”).

³⁷ Society of the Plastics Industry (SPI), PLASTIC FILM: CORRECT USE AND MIS-USE 2 (1959).

³⁸ *Id.* at 3.



Figure 1

The Society of the Plastics Industry encouraged consumers to dispose of plastic dry-cleaning bags. SPI, 1959.

52. The plastics industry’s successful navigation of this crisis—and the corresponding threat of plastic bans—provided a model for the future, both in the way the industry would respond to backlash and the way it would insist on disposability by offering customers no alternative.³⁹ Yet even as consumers resisted the shift to single-use plastics, which they found jarring after being told since the 1930s that plastics were too valuable to be thrown away, the plastics industry expanded into new markets—including single-use packaging—at an unprecedented pace.

53. In 1960, packaging represented just 10% of total plastic production but amounted to 25% by the end of the decade.⁴⁰ By that point, disposable plastics had become the norm for everything from detergent bottles to plastic milk jugs, and plastic rings for canned beverage six-packs.⁴¹

54. In 1963, Lloyd Stouffer, editor of the trade journal *Modern Plastics*, congratulated the industry on “filling the trash cans, the rubbish dumps and the incinerators” with single-use

³⁹ Jeffrey L. Meikle, *supra* note 38, at 249-58.

⁴⁰ *Id.* at 266.

⁴¹ *Id.* at 265-66.

plastics.⁴² “The happy day has arrived,” Stouffer opined, “when nobody any longer considers the plastics package too good to throw away.”⁴³

ii. Late 1960s into 1970s: Landfills and burning were the plastic industry’s “solution” to the growing pollution problem.

55. The industry’s success in “selling” disposability and introducing single-use plastics had predictable consequences. By the end of the decade and into the early 1970s, plastics were identified as a key part of the developing solid waste crisis.

56. Modern Plastics warned companies that the industry needed to figure out a solution to the pushback they were experiencing before “well-meaning but misinformed authorities step in with homemade remedies and regulations.”⁴⁴

57. Again, facing immense public backlash and a genuine threat of regulation,⁴⁵ the plastics industry responded with two “solutions.” The first, in response to concerns about litter, was landfilling.

58. Throughout the 1970s, SPI officials argued that plastics were an ideal material for landfilling since “they don’t biodegrade,” they “just sit there.”⁴⁶ But the industry favored waste-

⁴² See Rebecca Altman, *American Beauties: How Plastic Bags Came to Rule Our Lives, And Why We Can’t Quit them*, Topic (2018), available at <https://web.archive.org/web/20191113102708/https://www.topic.com/american-beauties> (archived Nov. 13, 2019) (quoting Lloyd Stouffer, *Plastics Packaging: Today and Tomorrow*, SPI Annual Plastics Conference (Nov. 19-21, 1963)).

⁴³ *Id.*

⁴⁴ Jeffrey L. Meikle, *supra* note 38, at 265 (quoting Joel Frados, *There’s Something in the Air*, 4 MODERN PLASTICS 89 (Oct. 1966)).

⁴⁵ See Jerome Heckman, General Counsel, SPI, Presentation at the Meeting of the SPI Plastics Waste Management Committee: Solid Waste and Litter: Legislative Status and Outlook—1972 (Mar. 1, 1972), available at <https://cdn.toxicdocs.org/8R/8Rq8Namx13mzoge1jEG7N0pzm/8Rq8Namx13mzoge1jEG7N0pzm.pdf> (claiming that, at the time of the presentation in 1972, there were over “a thousand regulatory proposals . . . at various governmental levels which could adversely affect the interests of the plastics industry”); Lester E. Blaschke, *Analysis of the Resource Recovery Act of 1970 and Its Effect on Implementation of Solid Waste Management Programs*, 34 J. ENVTL. HEALTH 89, 89 (1971), <https://www.jstor.org/stable/44545882> (describing the passage of the Resource Recovery Act in 1970, as an EPA official, represented “a significant shift in emphasis from ‘disposal’ to ‘recycling and recovery of materials and energy’”).

⁴⁶ Radio Interview with Ralph Harding, President of the Society of the Plastics Industry, in Atlanta, Georgia (n.d.).

to-energy (WtE) incineration. Support for WtE was reinforced by individual companies and trade associations representing the industry throughout the decade.⁴⁷

iii. 1980s: After receiving backlash from the earlier “solutions,” the plastics industry encouraged recycling of plastics.

59. These so-called solutions provided little reprieve for the plastics industry. Neither landfilling nor incineration sufficiently assuaged public concerns or regulatory pressure, and the industry again found itself facing proposed bans on single-use plastics in the mid-1980s. This time, it adopted a solution that it knew was popular among consumers and policymakers alike: recycling.

60. SPI established the Plastics Recycling Foundation (PRF), bringing together petrochemical companies and bottlers (**Figure 2**), and PRF immediately began a campaign to demonstrate the industry’s supposed commitment to mechanical recycling.⁴⁸

⁴⁷ Jeffrey L. Meikle, *supra* note 38, at 272; *see also, e.g.*, Internal Memorandum from Avron B. Magram, Hatco Chemical Division, W.R. Grace Company on PVC/Ecology (May 11, 1971), available at <https://cdn.toxicdocs.org/pe/peX25LzXyN4nbMM8dO6D1Za66/peX25LzXyN4nbMM8dO6D1Za66.pdf> (discussing relevant research and updates regarding PVC incineration from January 1970 to May 1971).

⁴⁸ *See* Leo H. Carney, *The Environment*, N.Y. TIMES (Sept. 15, 1985) <https://www.nytimes.com/1985/09/15/nyregion/the-environment.html>; *see also* Judie Neilson, Oregon Dep’t of Fish & Wildlife *The Oregon Experience*, in NOAA, PROCEEDINGS OF THE WORKSHOP ON THE FATE AND IMPACT OF MARINE DEBRIS 154, 158 (Richard S. Shomura & Howard O. Yoshida eds., 1985), <https://repository.library.noaa.gov/view/noaa/5680> (noting that “the Society for the Plastics Industry has allocated \$5 million to establish a Plastic Recycling Foundation and Institute to aggressively pursue methods to make it economically feasible to recycle plastic in large quantities”).

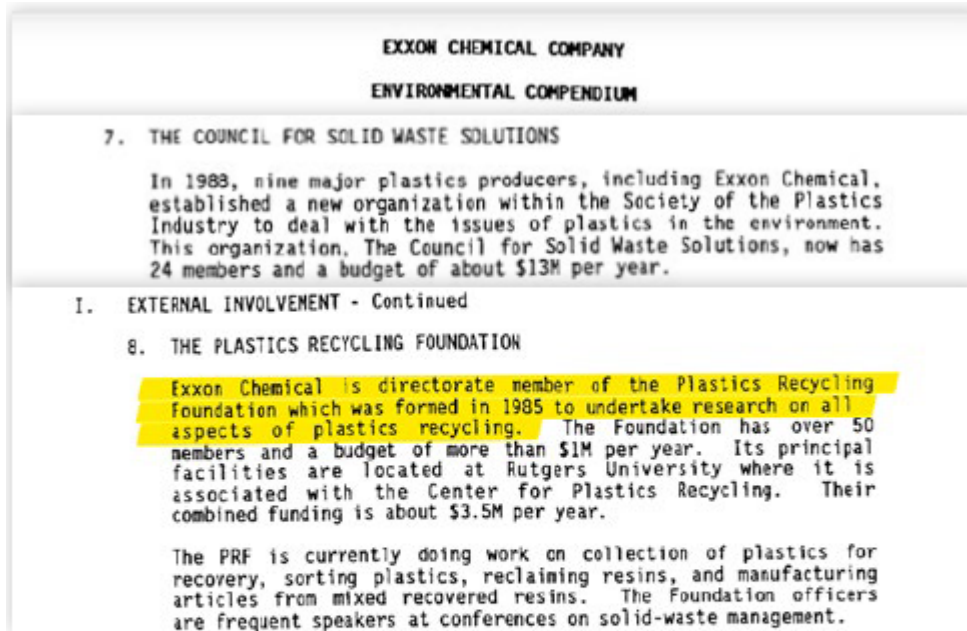


Figure 2

Exxon Chemical, a member of the Society of the Plastics Industry, acknowledged its support for organizations like the Plastics Recycling Foundation and the Council for Solid Waste Solutions in its Environmental Compendium. *Exxon, 1990 (emphasis added).*

61. But industry support did little to change the basic problem: plastics were notoriously difficult to recycle, as the industry had known for years. Doubts about the viability of municipal solid waste recycling in general went back decades.

62. As the American Chemical Society explained in 1969, “it is always possible that scientists and engineers will learn to recycle or dispose of wastes at a profit, but that does not seem likely to happen soon on a broad basis.”⁴⁹

⁴⁹ ACS Committee on Chemistry & Public Affairs, *Cleaning Our Environment—The Chemical Basis for Action*, in C&E NEWS, at 58, 60 (Sept. 8, 1969), available at <https://cdn.toxicdocs.org/6b/6bLOmw81KLQJwzb0RQ9mEadx6/6bLOmw81KLQJwzb0RQ9mEadx6.pdf>.

63. Plastics presented the greatest challenge of any material in the municipal waste stream. Crucially, the term “plastics” refers to a set of related synthetic polymers, not a single material.

64. Different types of plastic cannot be recycled together, even when separating out those that cannot be recycled at all (including thermoset polymers like polyurethanes and vulcanized rubber). For example, a PET bottle cannot be recycled with an HDPE bottle, however similar they appear. Further complicating matters, many plastic products are made by incorporating various additives, as well as mixing different polymers to take advantage of their distinct qualities.

65. As explained by researchers in 1969, “[t]he very success of package makers in marrying dissimilar materials has made packaging materials virtually unrecoverable after use.”⁵⁰ As a result, the economics of plastic recycling were—and still are— “virtually hopeless,” as one industry insider put it in 1969.⁵¹

66. Still, the greatest obstacle to plastic recycling was that no market existed for the final product. Recycled plastic was more expensive and of lower quality than virgin resins. This was, in part, intrinsic to the material. Even under ideal conditions, plastics experienced “a degradation of resin properties and performance . . . during the initial fabrication, through aging, and in any reclamation process,” as explained in a 1973 report commissioned by SPI.⁵²

⁵⁰ Arsen J. Darnay & William E. Franklin, *The Changing Dimensions of Packaging Wastes*, FIRST NATIONAL CONFERENCE ON PACKAGING WASTES at 11, 16, <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000Q54D.TXT>; see also Thomas B. Becnel, *supra* note 54, at 85 (stating that “it is ironic that the very molecular structure that has made [plastic] so popular creates certain disposal problems”).

⁵¹ Eric B. Outwater, Packaging – U.S.A., in Proceedings: First National Conference on Packaging Wastes 1, 7 (1971).

⁵² R.L. Glauz, et al., THE PLASTICS INDUSTRY IN THE YEAR 2000 41 (1973), Box 12, Jack Milgrom Papers, Special Collections Research Center, Syracuse University Libraries.

67. SPI, at its annual meeting, reported that it deployed a female employee to women's groups in the Midwest to explain the benefits of plastics. The plastics industry's efforts were specifically directed to making plastics more appealing, encouraging a "throw away" culture, and focusing on anti-litter laws to shift the plastic waste and pollution crisis to consumers.

68. As a direct result of these limitations, few manufacturers had any interest in purchasing recycled resins.⁵³

69. According to the SPI report, "[r]ecycling of plastics from [municipal sources of plastic waste] poses the greatest challenge," because "there are no effective marketing mechanisms for trade in contaminated, mixed plastics."⁵⁴ The report was definitive: "When plastics leave fabrication points, they are almost never recovered. There is no recovery from obsolete products."⁵⁵

iv. Mid-1980 to 1990s: The plastics industry came under further scrutiny to either "recycle or be banned."

70. Prior to 1980, the plastics industry consistently reached the same conclusion when it explored the possibility of recycling plastic from the municipal waste stream: mechanical recycling was technically and economically infeasible.

71. Defendants have known about the limitations of plastics recycling for decades. In 1986, an industry trade association acknowledged that the situation was virtually the same as it had been decades prior.

72. The Vinyl Institute (VI), a spin-off organization of SPI, explained in a report that "purity and quality demands set for many applications preclude the use of recycled material."⁵⁶ As

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Vinyl Institute, SOLID WASTE FACT SHEET—DRAFT 5 (July 18, 1986), available at https://climateintegrity.org/uploads/deception/1989_Vinyl_Institute_-_Fact_Sheet.pdf.

the organization's founding director, Roy Gottesman, explained to attendees of an industry conference in 1989 (**Figure 3**), "Recycling cannot go on indefinitely, and does not solve the solid waste problem."⁵⁷

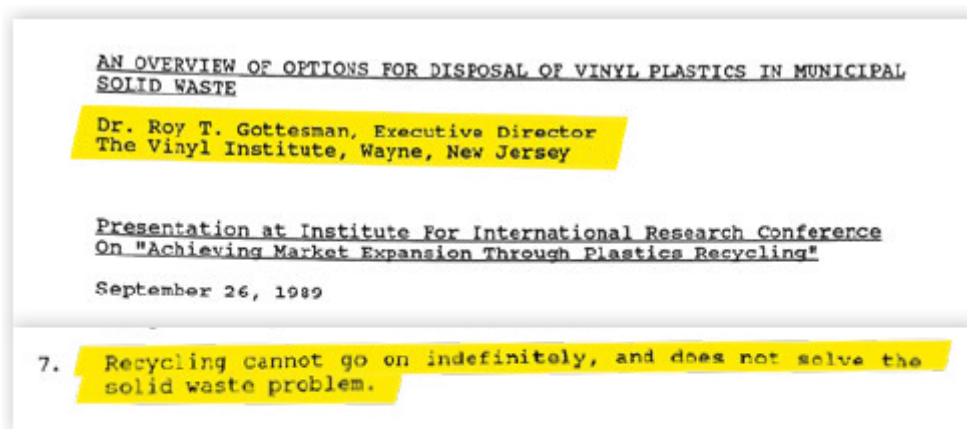


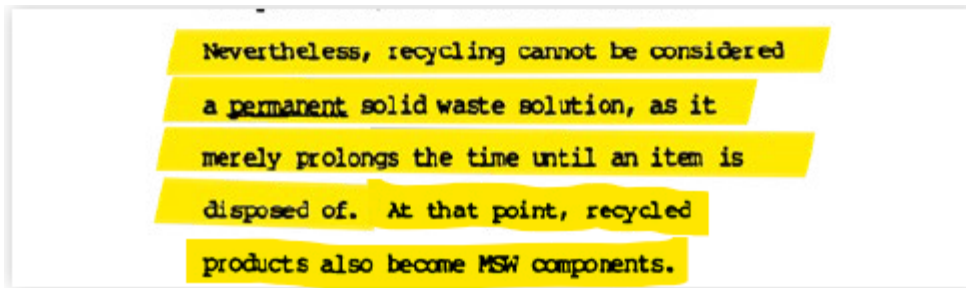
Figure 3

The executive director of the Vinyl Institute shared "key considerations to be made when considering recycling" with other members of the plastics industry. *Gottesman, 1989 (emphasis added)*.

73. Ultimately, the VI report (**Figure 4**) concluded, "recycling cannot be considered a permanent solid waste solution, as it merely prolongs the time until an item is disposed of. At that point, recycled products also become MSW [municipal solid waste] components."⁵⁸

⁵⁷ Dr. Roy T. Gottesman, Executive Director, Vinyl Institute, Presentation at the Institute for International Research Conference on Achieving Market Expansion Through Plastics Recycling, *An Overview of Options for Disposal of Vinyl Plastics in Municipal Solid Waste* 1 (Sept. 26, 1989), Box No. 5, Jack Milgrom Papers, Special Collections Research Center, Syracuse University Libraries.

⁵⁸ *Id.* at 2 (emphasis in original).



Nevertheless, recycling cannot be considered a permanent solid waste solution, as it merely prolongs the time until an item is disposed of. At that point, recycled products also become MSW components.

Figure 4

A draft “Solid Waste Fact Sheet,” created by the Vinyl Institute, was stark in its assessment of the viability of recycling to address plastic waste issues. *VI. 1986 (emphasis added).*

74. At the Vinyl Institute meeting that same year, members discussed a recent study on the economics of recycling. “This study indicates that based on our economic system, on the cost of fuel and transportation, on the economic benefit of downstream markets, on the low cost of plastic feedstocks, and the even lower cost of off grade-off spec plastic feedstocks, recycling is not and will never be commercially viable unless it is significantly subsidized by a government entity.”

75. What led the industry to change its position in the 1980s was not a massive technological breakthrough or an answer to the economic roadblocks to plastic recycling. Rather, the plastics industry began to lie about the viability of recycling as a direct result of the backlash they faced from the public.

76. As SPI officials discussed in a 1984 memo on the threat of a recycling bill (**Figure 5**), although they were able to shape the bill “to reflect the . . . commitment of our industry to move forward” on recycling, “there is no question that the State of New Jersey must see substantial short-term progress in the recycling of plastic containers or else punitive legislation . . . will attack the problem head-on.”⁵⁹

⁵⁹ Letter from Roger Bernstein, Society of the Plastics Industry, to the New Jersey Task Force State Government Affairs Committee, New Jersey’s Mandatory Recycling Bill 2 (Dec. 20, 1984), available at <https://www.toxicdocs.org/d/rpQVOR8obVNLbN5R69K0EJ5pJ?lightbox=1>. As an SPI employee put it in a

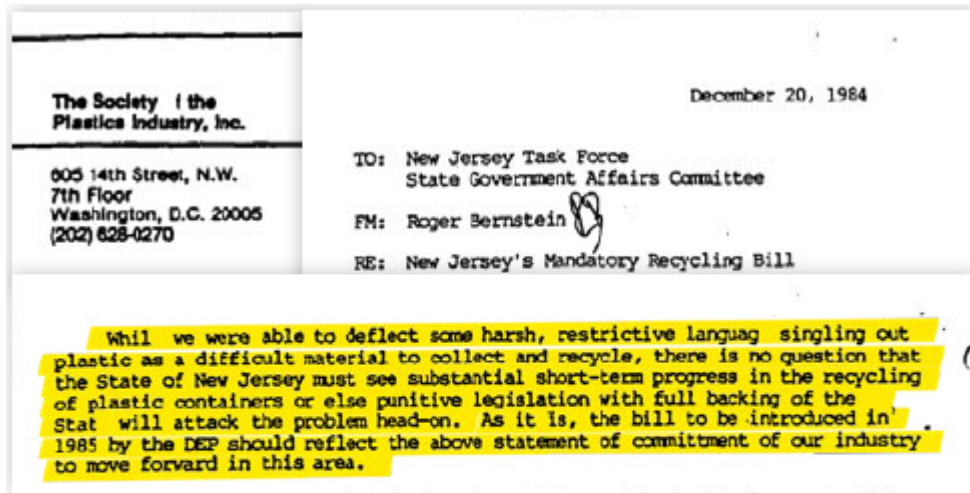


Figure 5

The Society of the Plastics Industry articulating the industry's support for recycling in the face of potential "punitive legislation" that would attack the plastic waste problem "head-on." *Bernstein, 1991 (emphasis added).*

77. The industry felt the threat of legislative action acutely throughout the 1980s and 1990s.
78. Looking back at the early days of this regulatory uptick, a representative from Occidental Chemical testified to Congress in 1992 that there was a "rush to demonstrate environmental purity. . . . The call was to recycle or be banned."⁶⁰
79. Consumer demands that plastics be recycled or banned, presented the plastics industry with a serious problem. The industry knew that mechanical recycling was not a viable solution—yet renewed concerns about plastic waste and its impact on the environment meant they

different memo, "the NJ Recycling office regards plastics as a problem not shared by competitive materials." Memorandum from John C. Malloy, Director of Packaging Services, SPI, to Plastic Bottle Institute (Oct. 12, 1984).

⁶⁰ Plastics Recycling: Problems and Possibilities: Hearing Before the Subcomm. on Env't & Emp. of the H. Comm. on Small Bus., 102nd Cong. 121 (1992) (testimony of William F. Carroll, Jr., Ph.D., Director of Commercial Development, Occidental Chemical Corp.). The Occidental representative went on to explain the challenge of the situation given the poor state of plastic recycling infrastructure and development: "The plastics industry was made to feel the pressure acutely. Programs for each plastic, and in many cases each grade of plastic, had to be devised and technically proven. Bottles had to be sorted, cleaned, purified and made into pellets for processors." *Id.*

needed the public to *believe* recycling could address their concerns, and the industry was invested in its success.

80. The industry took a familiar approach, leaning on its trade associations just as it had in the face of previous crises.⁶¹ SPI's Public Affairs Council (PAC), originally created after SPI successfully defeated a recycling bill in New York City in 1971,⁶² served as a model in particular. Initially established as the Plastics Waste Management Fund, PAC brought together 12 petrochemical companies "to fight off restrictive legislation everywhere," in the words of SPI President Ralph Harding, Jr.⁶³

81. Similar trade associations and front groups proliferated during the 1980s and early 1990s. In addition to the Plastics Recycling Foundation and Vinyl Institute, the petrochemical companies, with support from SPI, created a variety of organizations in this brief span,⁶⁴ including: the Plastic Bottle Institute (PBI) in the early 1980s; the Center for Plastics Recycling Research (CPRR) at Rutgers University in 1985; the Council on Packaging in the Environment (COPE) in 1986; and the Council for Solid Waste Solutions (CSWS) in 1988 (**Figure 6**), which became known as the Partnership for Plastics Progress (P3) in 1992 before quickly being reorganized as the American Plastics Council (APC).⁶⁵

⁶¹ See, e.g., Jerome Heckman, *supra* note 50 (addressing the plastics industry as SPI's general counsel amid fighting proposed taxes on plastic containers and other regulation on plastics in 1972).

⁶² *Id.*

⁶³ Jeffrey L. Meikle, *supra* note 38, at 272-73 (quoting a talk given by Ralph Harding, Jr. entitled "Challenges Facing the Plastics Industry" on December 8, 1971).

⁶⁴ These organizations were not necessarily contained within a single umbrella organization. For example, SPI and the Chemical Manufacturers Association both had official roles in the Partnership for Plastics Progress. The board of directors, "made up of the highest level of industry executives," and "function[ed] as a business council under the auspices of the" CMA, while SPI was responsible for "staffing and implementing Partnership programs." Partnership for Plastics Progress, *Introducing the Partnership for Plastics Progress* (Jan. 1992).

⁶⁵ Internal notes at APC indicate that the name was changed after it was poorly received by consumers: "The connect betw[ee]n P3 & SPI was clutter—no good[.] Consumers don't like." Bailey Condrey, APC, *Staff Mtg 8/24/92*, in STAFF MEETINGS 53 (1992). These issues had been anticipated a year prior, when internal discussions about organization names concluded: "P3 great internally, but bad externally," and the group would "[n]eed consumer-friendly name." Bailey Condrey, APC, *Outreach TF 8/23/91*, in NOTES 6 (1991). The Task Force praised another unused acronym because it was "[m]ore publically [sic] focused" and "[n]o conspiracy implied." *Id.* at 7.

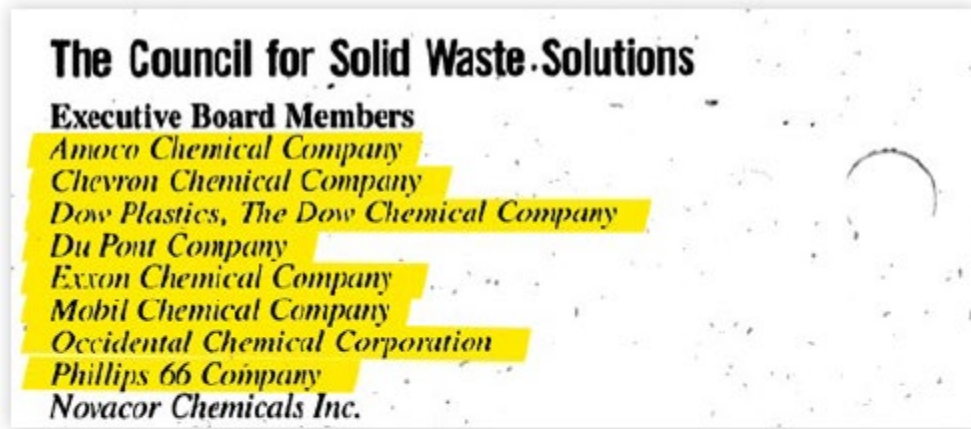


Figure 6

The executive board members of the Council for Solid Waste Solutions, including many of the world's largest fossil fuel and petrochemical companies, were listed on the cover of the organization's industry newsletter, *Handlers News*. CSWS, 1991 (*emphasis added*).

82. The Council for Solid Waste Solutions (the Council) formed in 1988 was in furtherance of their campaign to convince the public that recycling was the answer to the plastics waste and pollution crisis.⁶⁶

83. After Exxon, Mobil, and others in the industry formed the Council, they pushed the plastics recycling message with increased coordination and seriousness. In 1989, Mobil misleadingly promised the public that it was “venturing into recycling mainly out of a sense of environmental concern. ‘We are responsible for that segment of the waste stream, so we’re going to see that it’s disposed of consistent with’ the federal [EPA’s] recommendations.”

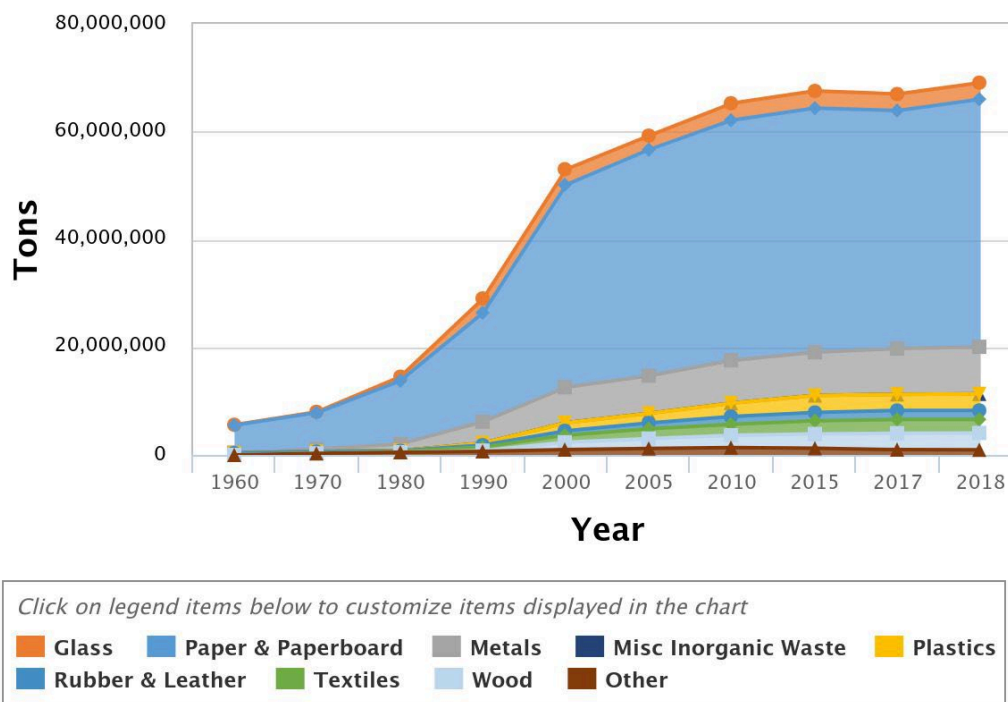
84. At the time that Mobil made these statements, the national plastics recycling rate was between just one and two percent. *See Figure 7: National Recycling and Composting Rates from 1960 to 2018.*⁶⁷

⁶⁶ Council for Solid Waste Solutions, *The Urgent Need to Recycle* (July 17, 1989) *Time*.

⁶⁷ U.S. Environmental Protection Agency, *National Overview: Facts and Figures on Materials, Wastes, and Recycling* <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/national-overview-facts-and-figures-materials#Trends1960-Today>.

Figure 7

Recycling Tonnages, 1960–2018



Recycling and composting as a percentage of generation

	1960	1970	1980	1990	2000	2005	2010	2015	2017	2018
Paper and Paperboard	17%	15%	21%	28%	43%	50%	63%	67%	66%	68%
Glass	2%	1%	5%	20%	23%	21%	27%	28%	25%	25%
Plastics	Neg.	Neg.	<1%	2%	6%	6%	8%	9%	9%	9%
Yard Trimmings	Neg.	Neg.	Neg.	12%	52%	62%	58%	61%	69%	63%
Lead-acid Batteries	Neg.	76%	70%	97%	93%	96%	99%	99%	99%	99%

"Neg." means less than 5,000 tons or 0.05 percent.

85. Other trade associations, such as the National Association for PET Container Resources (NAPCOR) and the Flexible Packaging Association (FPA), were established or took on new importance over the same time period.

86. All these groups had the same directive: defend the plastics industry from restrictive legislation by selling recycling as a viable solution to plastic waste. **(Figure 8).**

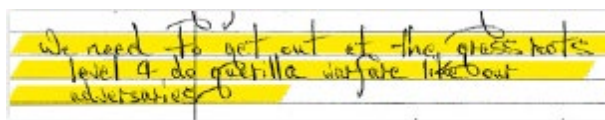


Figure 8

Meeting notes from January 2, 1994 indicate that the American Plastics Council intended to take an aggressive approach in responding to public outcry about plastic waste. Condrey, 1994 (emphasis added).

87. The largest resin producers, including Exxon, Mobil, DuPont, and Dow, invested tens of millions of dollars into various aspects of plastic recycling, including public relations efforts to shape consumer perception of recycling.⁶⁸

88. One of the first and most important steps in this campaign to make consumers believe in plastic recycling was the implementation of a labeling system known as Resin Identification Codes, or RICs. First introduced in 1988 by SPI, in an attempt to stave off regulation, the “Voluntary Plastic Container Coding System,” as it was originally known, grouped plastics by resin type and labeled them with a number surrounded by a triangle of “chasing arrows,” the widely recognized symbol for recycling.⁶⁹ The “chasing arrows” symbol, a logo showing three arrows each folded in the middle and arranged in a triangle was invented in 1970 by a student who won a contest held by a box manufacturer to promote recycling of paper.⁷⁰

89. SPI modified and adopted the chasing arrow symbol for plastic containers, including a number in the middle of the three arrows ranging from 1 to 7, that would correspond to the type of resin the item was made from.

⁶⁸ Susan Freinkel, *supra* note 39, at 162-63.

⁶⁹ *Id.* at 177-78.

⁷⁰ Che, *His Recycling Symbol Is Everywhere. The E.P.A. Says It Shouldn't Be.*, N.Y. Times (Aug. 3, 2023) <https://www.nytimes.com/2023/08/07/climate/chasing-arrows-recycling-symbol-epa.html>.

90. The chasing arrows symbol is now strongly associated with recycling, and consumers usually assume that the symbol identifies items that can be recycled.⁷¹ Even though, it is universally understood as the recycling symbol, the symbol is unnecessary and misleading.

91. Indeed, in practice, the symbol led consumers to believe that all labeled plastic items were recyclable. In truth, however, the plastic resin identification codes confused consumers, who believed that any item containing the chasing arrows symbol was recyclable. When in fact, most plastic resins were not able to be recycled because there were no recycling facilities that were capable of recycling most resin numbers. Two surveys in different states showed that between 53 and 74 percent of consumers believed the presence of the symbol on a product meant it could be recycled where they live.

92. The recyclers themselves were clear that they did not need, and in some cases actively opposed, SPI's RIC system. **(Figure 9).**

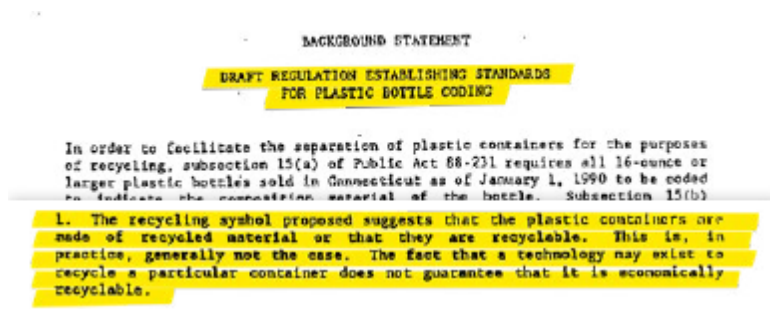


Figure 9

The Connecticut Department of Environmental Conservation discouraged the state government from adopting Society of the Plastics Industry's resin identification code system because it was unnecessary and likely to confuse consumers. DEC, 1990 (emphasis added).

93. Despite these concerns, the plastics industry continued to push for the adoption of the codes, with other trade associations like APC joining SPI in the fight to codify the system

⁷¹ *Id.*

through state legislation with a clear purpose: “to prevent bans.”⁷² The industry encouraged the adoption of the codes not in spite of the confusion the RIC system would cause, but because of it. As APC officials noted in a 1992 meeting, the chasing arrows were a “consumer tested mark” and “most identified.”⁷³ The RIC system conveyed that plastics are recyclable and, by the mid-1990s, 39 states had adopted legislation requiring the symbols.⁷⁴

94. Industry trade associations also sought to influence consumer views on plastic recycling through other means. The industry heavily publicized repeated “commitments” to recycling, only to quietly ignore them when they were not achieved.⁷⁵

95. The plastics industry set these goals knowing they were unlikely to meet them, according to a representative of DuPont. “It is no secret that the quantitative goals industry originally set for itself for economically recycling plastic containers extracted from municipal waste streams were extremely ambitious,” James Lohr told attendees at a 1992 recycling conference.⁷⁶

96. Unfortunately for the industry, Lohr explained, “[t]he goals have proven to be an even greater ‘stretch’ than originally anticipated.”⁷⁷

97. APC internally acknowledged that their publicized goal to recycle 25% of post-consumer plastic bottles and containers by 1995 would be difficult to reach years before.

⁷² Bailey Condrey, *Staff Mtg 8/24/92*, in STAFF MEETINGS, *supra* note 70, at 54.

⁷³ Bailey Condrey, *Monday Mar 23 Staff Mtg.*, in STAFF MEETINGS, *supra* note 70, at 11.

⁷⁴ See Richard Lindsay Stover, et al., Ecology Center, Report of the Berkeley Plastics Task Force 9 (Apr. 8, 1996), <https://ecologycenter.org/plastics/ptf/>; Steve Toloken, *FTC Cracks Down on Resin Code Placement*, PLASTICS NEWS (May 4, 1998), <https://www.plasticsnews.com/article/19980504/NEWS/305049986/ftc-cracks-down-on-resin-code-placement>.

⁷⁵ See, e.g., Tom Ford & Roger King, *APC Retreats from Goal To Recycle 25%*, PLASTICS NEWS (Mar. 25, 1996), <https://www.plasticsnews.com/article/19960325/NEWS/303259995/apc-retreats-from-goal-to-recycle-25> (SPI and the Council for Solid Waste Solutions announced in 1991 a goal to recycled 25% of post-consumer bottles and containers by 1995, but abandoned the goal in 1995).

⁷⁶ James E. Lohr, *supra* note 77, at 4.

⁷⁷ *Id.*

98. In 1992, staffers at APC noted that “[a]dvocacy doomed to failure unless signif[icant] resources allocated to recy[cling],”⁷⁸ and acknowledged that the goal “will be difficult to reach” since the “value of the product is lower than cost to prod[uce].”⁷⁹

99. By January 1994, APC staff again acknowledged that they were unlikely to meet the goal and began discussing how they hoped the failure would be viewed.⁸⁰ Still, they were careful to avoid emphasizing this in public. An Exxon employee warned APC staff (**Figure 10**) that they did not “want paper floating around saying we won’t meet goal” since the issue was “HIGHLY SENSITIVE POLITICALLY.”⁸¹

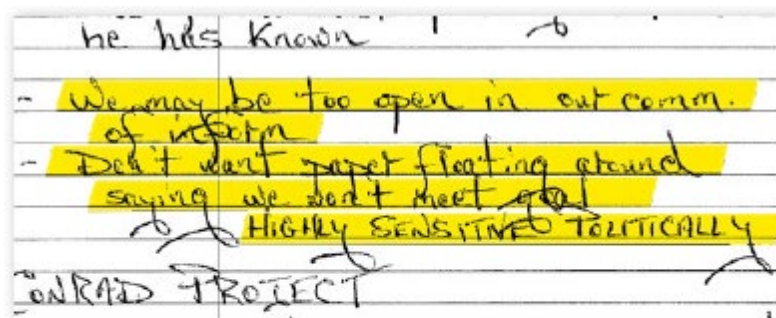


Figure 10

Irwin Levowitz of Exxon Chemical discouraged American Plastics Council staffers from being “too open” in their communications about the trade organization’s recycling goal in a January 1994 meeting. *Condrey, 1994 (emphasis added).*

100. In light of these failures, the industry developed new ways of measuring and presenting recycling rates.

101. Internal APC meeting notes from May 1995, for example, indicate that the organization was “moving from reporting plas[tic] pkg #s [sic] to bottles only,”⁸² making it appear

⁷⁸ Bailey Condrey, *Staff Mtg 4/13/92*, in STAFF MEETINGS, *supra* note 70, at 13.

⁷⁹ Bailey Condrey, *Staff Mtg 8/24/92*, in STAFF MEETINGS, *supra* note 70, at 53.

⁸⁰ Bailey Condrey, *ART Meeting – Houston 1/26/94*, in NOTES, at 24 (1994).

⁸¹ *Id.* at 25 (emphasis in original).

⁸² Bailey Condrey, *Staff Mtg 5/8/95*, in STAFF & COMMUNICATIONS MTGS. 111 (1994-1996).

that rates had increased more than they actually had. This “roll out of new recy[cling] rates” was appealing because it “helps us justify the new methodology.”⁸³

102. Industry advertisements, whether sponsored by individual petrochemical companies or front groups, normalized the idea that plastics could be recycled among consumers and policymakers. But most advertisements simply repeated the same lies about the viability of plastic recycling. According to a NAPCOR ad placed in *Ladies' Home Journal* in 1991 (**Figure 11**), “a bottle can come back as a bottle, over and over again.”⁸⁴



Figure 11

In 1991, The National Association for Plastic Container Recovery ran a seemingly innocuous advertisement in *Ladies' Home Journal*, deceptively telling readers that “PET plastic can now be recycled repeatedly.” NAPCOR, 1991.

⁸³ Bailey Condrey, *May 5, 1995 Red Mtg., Tech Review Prog., in STAFF & COMMUNICATIONS MTGS., supra* note 70, at 107. An alternative system of measurement and a new phrase, “Recovered for Recycling,” had been developed by NAPCOR in partnership with the accounting firm Ernst & Young. *See generally* R.W. Beck, 1995 NATIONAL POST-CONSUMER PLASTICS RECYCLING RATE STUDY (Sept. 1996), Box No. 12, Jack Milgrom Papers, Special Collections Research Center, Syracuse University Libraries.

⁸⁴ National Association for Plastic Container Recovery, *A Bottle That Can Come Back for New Year's Eve is a Cause for Thanksgiving*, LADIES HOME JOURNAL 92 (Dec. 1991).

103. CSWS advertised its materials demonstrating how people could set up plastic recycling programs in their communities and left little room for doubt: “The proven systems are in place. The talk is over. Plastics recycling is here.”⁸⁵ And COPE (then known as the Council on Plastic and Packaging in the Environment) told *Chicago Tribune* readers that they should “Recycle Plastic to Save Landfill Space” to celebrate Earth Day in 1992.⁸⁶

104. Perhaps most egregiously, plastics industry trade associations representing the petrochemical companies developed “sponsored educational materials” for use in schools.⁸⁷

105. For example, a 1994 educational guide distributed by the California Department of Conservation Division of Recycling promoted materials created by trade associations and petrochemical companies, including free curriculum materials on plastic recycling from Dow,⁸⁸ an APC guide to setting up a school recycling program,⁸⁹ and a Foodservice Packaging Institute (FPI) video entitled “Foodservice Disposables: Should I Feel Guilty?” discussing “the growing controversy over reusable versus disposables.”⁹⁰ APC produced another video, “Working Together for a Healthier Planet,” that featured a narrator making blatantly false statements, including the claim that “most plastics can be melted and reused over and over again.”⁹¹

⁸⁵ Council for Solid Waste Solutions, *Plastics Recycling Has Taken Off*, STATE LEGISLATURES 35 (Apr. 1991); see also Council for Solid Waste Solutions, *Innovations in Recycling: Plastics Industry Offers Step by Step Recycling Program Set Up*, STATE LEGISLATURES a2, special insert at 13 (June 1991).

⁸⁶ Council for Solid Waste Solutions & National Association for Plastic Container Recovery, *Together, We're Working to Improve Products for Our Environment*, CHICAGO TRIBUNE Z21 (Apr. 5, 1992).

⁸⁷ *Molding Young Minds: Firms Spend Big to Get Views into Public Schools*, PLASTICS NEWS (Oct. 30, 1995), <https://www.plasticsnews.com/article/19951030/NEWS/310309999/molding-young-minds-firms-spend-big-to-get-views-into-public-schools>.

⁸⁸ Cal. Dep't of Conservation, Div. of Recycling, EDUCATION & RECYCLING: EDUCATOR'S WASTE MANAGEMENT RESOURCE & ACTIVITY GUIDE 194 124, 127 (1994).

⁸⁹ *Id.* at 131; see also National Energy Information Center (NEIC), ENERGY EDUCATION RESOURCES 8 (Mar. 1997) (describing another APC education campaign as “a unique hands-on kit, designed to help middle level science classes explore the world of plastics”).

⁹⁰ Cal. Dep't of Conservation, *supra* note 93, at 133; *IAMFES Audio Visual Library*, DAIRY, FOOD, & ENVIRONMENTAL SANITATION 195 (Mar. 1993) (describing the educational material as a video that “examines such issues as litter, solid waste, recycling, composting and protection of the earth's ozone layer” and “makes for an excellent discussion opener on . . . the environmental trade-offs (convenience, sanitation and family health) that source reduction necessarily entails”).

⁹¹ *Working Together for a Healthier Planet*, at 8:31 (American Plastics Council 1992).

106. When public backlash prompted threats of legislative and regulatory action, the plastics industry recognized that the appearance of action was its best defense. The industry announced direct investments in recycling initiatives, taking the form of research efforts, pilot programs, and company-owned recycling facilities.

107. Whatever form they took, they shared a common purpose: to prevent bans on single-use plastics. Although heavily publicized in their initial phases, investments in these projects rarely lasted. The projects were either never built, or the facilities were shut down quietly when the threat of regulation passed.

108. Short-term industry investment could not overcome the economic obstacles to plastic recycling. “The basic issue is economics,” the director of environmental solutions at B.F. Goodrich explained to an industry panel in 1992. “[F]or commodity plastics, including PVC, the costs of recycling or recovery either overlap or are greater than the selling price for these materials. This is the essence of the problem and the basic reason why recycling is not growing at faster rates.”⁹²

109. Ideally, a representative of Eastman Chemical told attendees of an industry conference in 1994, consumers could put their plastic containers into recycling bins and “be assured that they would be separated into pure streams and would all be sold for viable reuse applications.”⁹³ But “[w]hile someday this may be a reality,” he explained, “it is more likely that we will wake up and realize that we are not going to recycle our way out of the solid waste issue.”⁹⁴

⁹² F.E. Krause, Director Environmental Solutions, Geon Vinyl Division, BF Goodrich Co., Presentation to The Vinyl Industry Tripartite Meeting, *PVC Recycling—An Overview* 1 (Sept. 3-4, 1992), available at <https://www.toxicdocs.org/d/91wxG1YnjQ8KjOnZ3jE9wLxg7?lightbox=1>.

⁹³ Noel Malone, Manager Plastics Solid Waste Management, Eastman Chemical Company, Presentation at Bev-Pak America’s ’94 Program, *Automated Sortation of Plastic Containers* 1-2 (1994), Box No. 5, Jack Milgrom Papers, Special Collections Research Center, Syracuse University Libraries.

⁹⁴ *Id.* At 2.

110. The petrochemical companies continued to be primarily invested in expanding production, and that meant more virgin resins. Between 1990 and 1996, for every pound of plastic packaging that was recycled, an average of four pounds of virgin plastic was produced.

111. As another employee at Occidental, James R. Clark, explained at a 1992 conference, “the economics of virgin production”—meaning the widespread availability of cheap, virgin resins—“have put downward pressure on recycled resin value in the marketplace.”⁹⁵ He told attendees that while “[v]irgin resin meets” the criteria of converters—including characteristics like consistent color, low contamination, and processability—“current recycled materials fail in many of these categories.”⁹⁶

112. In 1995, even as APC officials continued their campaign to convince the public that recycling was viable, staffer Bailey Condrey noted internally (**Figure 12**) that “virgin supplies will go up sharply in near future [and] kick the shit out of PCR (Post-Consumer Recycled material) prices.”⁹⁷

1996 Strategy
Expand solid waste laws
Virgin supplies will go up sharply in near future & kick the shit out of PCR prices

Figure 12

Notes from a November 1995 American Plastics Council staff meeting reveal clear knowledge that recycled plastic was not economically competitive with virgin material. Condrey, 1994-1996 (emphasis added).

⁹⁵ James R. Clark, Product Manager Recycling, Occidental Chemical Company, Presenting at ETEX '92: Turn Waste into Profits, *Plastics Recycling Strategy 1* (Apr. 6-7, 1992), Box No. OS2, Jack Milgrom Papers, Special Collections Research Center, Syracuse University Libraries.

⁹⁶ *Id.* at 3.

⁹⁷ Bailey Condrey, *Staff Mtg 11/6/95*, in STAFF & COMMUNICATIONS MTGS. 111, 182 (1994-1996).

113. “Recycling is not always the best option as it does not always effect [sic] greatest environmental gain,” explained the European Vinyls Corporation in 1993. “In many instances where mechanical recycling is possible, the energy and other resources consumed outweigh the environmental gain.”⁹⁸ (Figure 13).

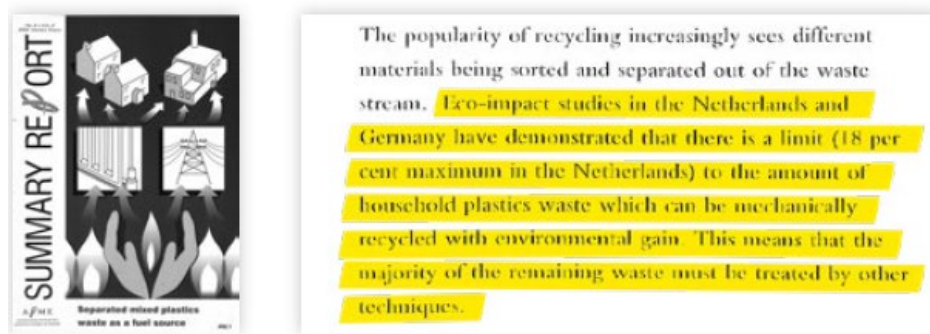


Figure 13

A report from the Association of Plastics Manufacturers in Europe acknowledged that recycling could not adequately address plastic waste. APME, 1996 (*emphasis added*).

114. The plastics industry’s failure to overcome the technical and economic obstacles to mechanical recycling may have suggested the need for additional research and investment, either a doubling-down on the mission of the “strike force” or exploration of additional options in the fight against plastic waste. But, in reality, the opposite happened.

115. The Center for Plastics Recycling Research shuttered its doors in 1996, as did several of the plastic recycling facilities owned by various petrochemical corporations, including Union Carbide.⁹⁹

⁹⁸ Rolf Buhl, European Vinyls Corp., UPDATE OF THE PVC RELATED ENVIRONMENTAL DEVELOPMENTS IN EUROPE AS PER JANUARY 1993 25 (Jan. 25, 1993), available at <https://www.toxicdocs.org/d/O19KKZqrv3EGM5451dXYGmbr1?lightbox=1>.

⁹⁹ See Dianne Dumanoski, *Key Events of 1996*, PLASTICS NEWS (Apr 26, 2004), <https://www.plasticsnews.com/article/20040423/NEWS/304239998/key-events-of-1996>.

116. NPRC fell well short of its 25% recycling commitment – it recycled under 2% as of 1995,¹⁰⁰ and was sold in 1999.¹⁰¹

117. Recycling-oriented industry front groups also shifted to the background or, in the case of groups like COPE, ceased operations.¹⁰²

118. All of these changes reflected a broader shift away from the highly visible campaign for recycling that defined the period between 1985 and 1995.

v. Mid-1990s to 2010s: The plastics industry successfully curbed pressure to create more recyclable plastics, yet recycling continued to prove to be an ineffective method to combat plastic pollution and waste.

119. Recycling research and advocacy were no longer the priorities they once had been because, as far as the industry was concerned, the real problem had been addressed. The public had been successfully convinced that plastics could be recycled, and the actual viability of recycling mattered far less to the industry than perception.

120. By the mid-1990s, public outrage on plastic waste had begun to subside, and plastics fervor waned in state legislatures and city councils across the country.¹⁰³

121. With that decline in public pressure came a sense of security that the industry had not felt for some time. APC President Red Cavaney explained that “in the early 1990s the public

¹⁰⁰ Clare Goldsberry, *supra* note 133.

¹⁰¹ Steve Toloken, *Thermoformer Elm Packaging Buys NPRC*, PLASTICS NEWS (July 5, 1999), <https://www.plasticsnews.com/article/19990705/NEWS/307059998/thermoformer-elm-packaging-buys-nprc>.

¹⁰² See *Recycling Structure is Worth Salvaging*, PLASTICS NEWS, (Dec. 9, 1996), <https://www.plasticsnews.com/article/19961209/NEWS/312099976/recycling-structure-is-worth-salvaging>. Further confirmation to industry insiders of the declining importance of recycling came in 1996 when Tom Rattray, the recycling expert who explained that petrochemical companies viewed recycling as competition, retired from his position as Procter & Gamble’s associate director for environmental quality. The company decided not to fill his position. *Requiem for a Heavyweight*, PLASTICS NEWS (Sept. 16, 1996).

¹⁰³ See Roger King, *Big Reforms Not Likely by State Legislatures*, PLASTICS NEWS (Jan. 16, 1995). Internal documents indicate that by this time, industry fears of increased regulation and recycling mandates had largely shifted abroad. In a December 1995 meeting, APC staffers discussed the “European vs. American model” of packaging regulation, noting “more [and] more countries moving toward mandated recycling goals.” Bailey Condrey, *Staff Mtg. 12/4/95*, in STAFF & COMMUNICATIONS MTGS., *supra* note 108, at 194.

focus was very much on targets, and they seemed the most easily explained way of showing that something was being done.”¹⁰⁴

122. But while an APC spokesperson assured the public that the organization remained “very much committed to increased recycling,” the situation was different in 1996 than it had been when they set recycled content goals that had not been reached.¹⁰⁵ “The idea of rates, dates, mandates . . . numerical goals, is all very artificial.”¹⁰⁶ The plastics industry had “progressed beyond” these sorts of “targets,” Cavaney explained.¹⁰⁷

123. This shift reflected the fact that the implementation of a sustainable plastic recycling infrastructure had never been as important to the industry as relieving public and regulatory pressure.

124. As Exxon Chemical Vice President Irwin Levowitz succinctly explained in a January 1994 meeting with APC staff (**Figure 14**), “We are committed to the activities, but not committed to the results.”¹⁰⁸

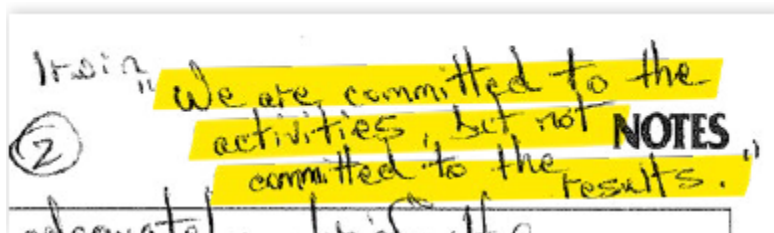


Figure 14

Notes from an American Plastics Council meeting in January 1994 quoted Irwin Levowitz of Exxon Chemical. Condrey, 1994 (*emphasis added*).

¹⁰⁴ Tom Ford & Roger King, *supra* note 99.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Bailey Condrey, *Gov/Tech Mtg 1/21/94*, in *NOTES*, *supra* note 86, at 7-8.

125. In essence, the plastics industry had won, and they knew it. As a *Plastics News* columnist told readers in March 1995, “[t]he plastics recycling war is over. We should declare victory and put the money into cancer research... [T]he level of plastics recycling is about 22 percent and won’t increase greatly for each new dollar spent.”¹⁰⁹

126. The results of the plastic recycling research and development sprint had been limited, but the public relations campaign accompanying it had been remarkably effective.

127. Working in concert, petrochemical companies and their trade associations had convinced consumers that recycling presented a viable solution to the plastic waste crisis, and that was enough.

128. Polling conducted for APC in 1997 showed that, while respondents who worked in the waste management field were rapidly losing confidence in recycling and shifting their priorities toward source reduction,¹¹⁰ “recycling continues to be seen as the best use of a community’s time and money for resource management by the media, government, and customers.”¹¹¹

129. Members of the media in particular had embraced the industry’s narrative on recycling, with a majority favoring plastic recycling over alternatives like reuse or source reduction.¹¹² Media respondents were also more likely to believe that plastic recycling was economically self-sufficient compared to other groups.¹¹³

¹⁰⁹ Roger King, *Don’t Throw More Money at Recycling*, PLASTICS NEWS (Mar. 13, 1995), <https://www.plasticsnews.com/article/19950313/OPINION02/303139979/don-t-throw-more-money-at-recycling>.

¹¹⁰ See Cambridge Reports, Research Int’l, RESOURCE MANAGEMENT OPTIONS, PLASTICS, AND THE PLASTICS INDUSTRY: VIEWS OF APC’S TARGET AUDIENCES I (May 1997).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 2.

vi. Plastics production & waste increases.

130. In 2000, the plastics recycling rate sat at only six percent and only increased three percentage points, to nine percent, by 2018.¹¹⁴ According to plastic waste export data, the ostensible increase to nine percent was largely due to millions of pounds of plastic waste being exported each year to China and developing countries, supposedly for recycling but often for incineration or landfilling.¹¹⁵ Today, the plastic waste exports have declined and the U.S. plastics recycling rate to a dismal five percent.¹¹⁶

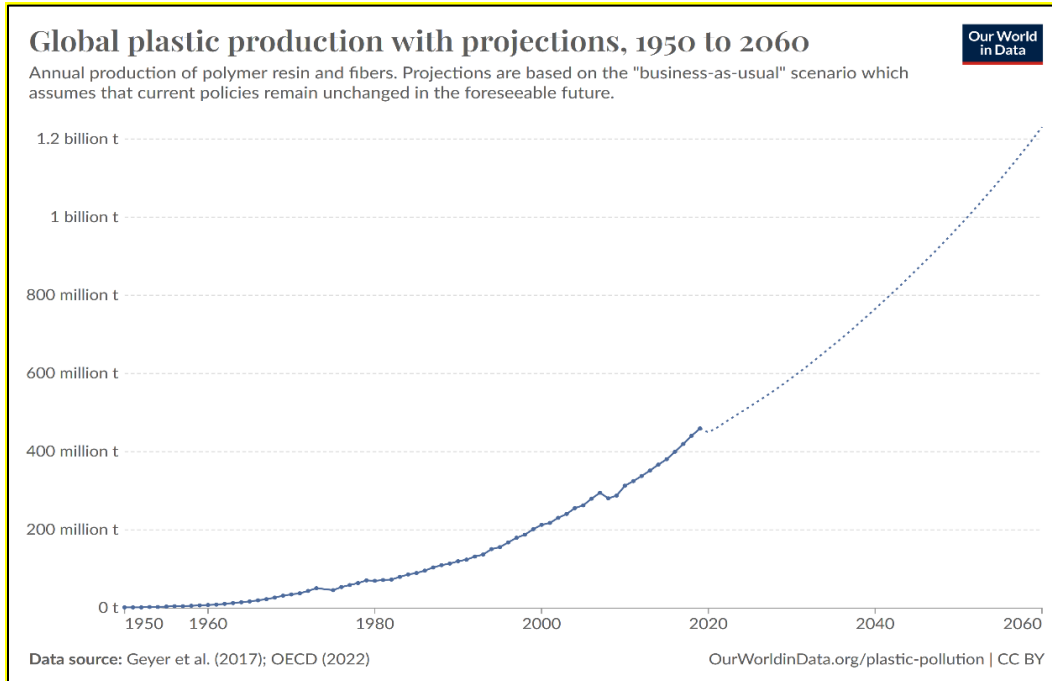
131. The steep increase in plastic production over the past 60 years, as depicted in **Figure 15**, created a dramatic increase in plastic waste: in the United States, plastic increased as a percent of municipal solid waste (by mass) from 0.4 percent in 1960 to 12.2 percent in 2018.¹¹⁷ An estimated 44 million tons of plastic waste were generated in the United States in 2019.

¹¹⁴ U.S. Environmental Protection Agency, *National Overview: Facts & Figures on Materials, Wastes, and Recycling*, *supra*.

¹¹⁵ Beyond Plastics and the Last Beach Cleanup, The Real Truth about the U.S. Plastics Recycling Rate, *supra* note 9, at page 2.

¹¹⁶ Nat. Renewable Energy Laboratory, *NREL Calculates Lost Value of Landfilled Plastic in the U.S.* (April 28, 2022) <https://www.nrel.gov/news/press/2022/nrel-calculates-lost-value-of-landfilled-plastic-in-us.html>; *see also* Beyond Plastics and the Last Beach Cleanup, *supra* note 9.

¹¹⁷ Com. on the U.S. Contributions to Global Ocean Plastic Waste, Nat. Academy Sciences, Engineering, and Medicine, *Reckoning with the U.S. Role in Global Ocean Plastic Waste* (2022) page 3. (Additionally, the generation of municipal solid waste in the United States has increased significantly over the past 60 years).

Figure 15 Plastics Production Chart and Prediction to 2060¹¹⁸

132. The excessive amount of plastic waste and pollution is one of the most serious environmental crises confronting Kansas and the planet today. According to the U.S. Environmental Protection Agency's (EPA) latest estimates, approximately 23 percent of global plastic waste was improperly disposed of, burned (creating harmful and toxic emissions), or leaked into the environment in 2019.

133. Widespread production and promotion of single-use plastic has led to persistent plastic leakage into the environment¹¹⁹ Around the world each year, an estimated 11 million tons of plastic waste become aquatic pollution and 18 million tons of plastic waste pollute land.

¹¹⁸ *Global Plastic Production and Projections, 1950 to 2060*, Our World in Data
<https://ourworldindata.org/grapher/global-plastic-production-projections>.

¹¹⁹ Organization for Economic Cooperation and Development (OECD), *Plastic Pollution is Growing Relentlessly as Waste Management and Recycling Fall Short*, Says OECD (Feb. 22, 2022)
<https://www.oecd.org/en/about/news/press-releases/2022/02/plastic-pollution-is-growing-relentlessly-as-waste-management-and-recycling-fall-short.html>.

Together, that is the equivalent of four garbage trucks of plastic waste polluted in the water or land every minute.¹²⁰

134. Single-use plastics – plastic packaging, bags, straws, and disposable plasticware and utensils – represent the largest plastics application, and account for one-third of all plastics consumed globally.¹²¹ Single-use plastics comprise most of the plastic waste that escapes and/or is discharged into the environment.¹²²

135. Once plastic waste enters the environment as pollution, it is long-lived, cumulative, friable, and mobile, and can have substantial negative impacts on a wide range of freshwater, marine, and terrestrial species. Removing plastics from the environment becomes difficult and costly as plastics fragment into smaller and smaller pieces.

136. Defendants produce the primary chemicals and polymers used to produce plastic and styrofoam products such as bottles, cups, plastics, utensils, take-out containers, and packaging designed for single-use that are sold throughout United States and Defendants consider the production of these polymers as the “core” of their chemicals and products portfolio and see 80 percent of its growth potential as “dependent on single-use plastics applications”.

137. Over the years, ExxonMobil and Defendants expanded their U.S. plastic production to 7.7 million tons per year in 2023. Plastic waste has also grown, for instance, from 8.9 percent of all managed trash in California in 1999 to almost 14 percent of all managed trash in California in 2021. Even when millions of tons of waste plastic were still being exported to China each year, plastics recycling never managed to reach 10%. Despite the stark failure of plastics recycling, the

¹²⁰ Lau et al., *Evaluating Scenarios Toward Zero Plastic Pollution* (2020) 269 Science 1455.

¹²¹ Minderoo 2023, *supra* note 4, page 17.

¹²² *Id.*

plastics, packaging, and products industries have waged a decades-long misinformation campaign to perpetuate the myth that plastic is recyclable.¹²³

138. “Plastic waste is not just an environmental issue. It’s a waste management issue. It’s also a land use issue because landfills are closing in many areas,” Anelia Milbrandt, a senior research analyst at NREL said. “What do we do with all that waste?”¹²⁴

139. Tellingly, all polled groups—consumers, media members, government officials, and even waste management industry representatives—believed that plastic could be economically recycled at a much higher rate than it could be.¹²⁵

V. TOLLING OF THE STATUTE OF LIMITATIONS

A. Discovery – Rule Tolling

140. Within the period of any applicable statute of limitations, Plaintiffs could not have discovered through the exercise of reasonable diligence that Plastics are for the most part not recyclable.

141. Plaintiffs did not discover, and did not know of facts that would have caused a reasonable person to suspect that Plastics were not for the most part recyclable.

142. For these reasons, even if a statute of limitations did apply, the claims of Plaintiffs did not begin to run and have been tolled.

B. Fraudulent – Concealment Tolling

143. All applicable statutes of limitations have also been tolled by Defendants fraudulent concealment throughout the period relevant to this action that Plastics were not for the most part recyclable.

¹²³ Beyond Plastics, The Real Truth about the U.S. Plastics Recycling Rate, *supra* note 9, at page 2. *See also* PBS Frontline, “Plastic Wars,” March 31, 2020 <https://www.pbs.org/wgbh/frontline/documentary/plastic-wars/>

¹²⁴ Nat. Renewable Energy Laboratory, *NREL Calculates Lost Value of Landfilled Plastic in the U.S.* (April 28, 2022), <https://www.nrel.gov/news/press/2022/nrel-calculates-lost-value-of-landfilled-plastic-in-us.html>.

¹²⁵ *See id.*

144. Instead of disclosing to consumers the fact that only 15% of all plastics can be recycled and less than 10% is recycled, Defendants continued to manufacture, market, distribute, and sell Plastics as recyclable and a better alternative to aluminum and glass.

VI. CLASS ACTION ALLEGATIONS

145. Plaintiffs repeat and re-allege each and every allegation set forth above.

146. Pursuant to Federal Rule 23(b)(3) and (2), Plaintiffs bring this suit on their own behalf and on behalf of a proposed national class of all other similarly situated persons (“Class Members” of the “Class”) consisting of:

All counties located within the State of Kansas which have incurred and will continue to incur sanitation costs for plastic waste clean-up and disposal from **January 1, 1989** until Defendants’ conduct ceases or until class notice is given, whichever occurs first (the “Class”).

Excluded from the Class are:

- a. The Defendants and their officers, directors, management, employees, subsidiaries or affiliates;
- b. The judges in this case and any members of their immediate families;

147. Upon information and belief, the Class consists of over 100 counties throughout Kansas. Accordingly, it would be impracticable to join all Class Members before the Court.

148. Under Rule 23(b)(3), there are numerous and substantial questions of law or fact common to all of the members of the Class and which predominate over any individual issues.

Included within the common question of law or fact are:

- a. Whether Defendants’ deceptive advertising regarding the recyclable nature of plastics, has substantially affected interstate and intrastate commerce;
- b. Whether Defendants’ deceptive advertising regarding the recyclability of plastics has increased the cost of waste disposal;
- c. Whether Defendants negligently misrepresented its product or pricing;

- d. Whether the Defendants' conduct was an unreasonable interference with the Kansas counties health and welfare; and
- e. The quantum of overcharges paid by the Class in the aggregate.

149. The claims of the Plaintiffs are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiffs and Defendants' conduct affecting Class Members, and Plaintiffs have no interests adverse to the interests other Class Members.

150. Plaintiffs will fairly and adequately protect the interests of Class Members and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

151. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The liability claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoy their ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendants has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the

Court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

152. Because Plaintiffs seek relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

153. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

VII. CLAIMS FOR RELIEF

COUNT I PUBLIC NUISANCE

154. Plaintiffs repeat and re-allege each and every allegation set forth above.

155. Defendants created, exacerbated, and maintained a public nuisance by increasing plastic waste which proximately caused injury to Plaintiffs.

156. A public nuisance is an unreasonable interference with a right common to the general public. Defendants conduct has created, contributed to, and maintained an ongoing, significant, unlawful, and unreasonable interference with rights common to the general public, including the public health, welfare, safety, peace, comfort, and convenience of Plaintiffs' communities. *See* Restatement (Second) of Torts § 821B.

157. Defendants have created, contributed to, and maintained a public nuisance by

deceptively advertising and marketing that plastics were recyclable when in reality less than 10% of Plastics are recycled. This deceptive advertising caused various agencies not to ban Plastics, artificially increased the demand for Plastics and increased the amount of Plastics waste that counties across Kansas have had to dispose of. This conduct has unreasonably interfered with the public health, welfare, and safety in Plaintiffs' communities. Plaintiffs have a common right to be free from such conduct and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property.

158. The interference is unreasonable because Defendants nuisance-creating conduct:

- a. Involves a significant interference with the public health, the public safety, the public peace, the public comfort, and/or the public convenience;
- b. Was and is proscribed by state laws and regulations at all relevant times; and/or
- c. Is of a continuing nature and, as Defendants know, has had and continues to have a significant effect upon rights common to the general public, including the public health, the public safety, the public peace, the public comfort, and/or the public convenience.

159. The significant interference with rights common to the general public is described in detail throughout this Complaint.

160. Defendants are liable for creating, contributing to, and maintaining the public nuisance because their intentional, knowing, reckless, and unreasonable and/or unlawful conduct was a substantial factor in producing the public nuisance and harm to Plaintiffs.

161. Defendants had control over its conduct in Plaintiffs' communities and that conduct has had an adverse effect on rights common to the general public. Defendants have controlled the dissemination of information regarding the recyclability of Plastics to consumers for years.

162. It was reasonably foreseeable that Defendant's actions and omissions would result in the public nuisance and harm to Plaintiffs described herein.

163. The externalized risks associated with Defendants nuisance-creating conduct as described herein greatly exceed the internalized benefits.

164. The nuisance created by Defendants conduct is abatable.

165. As a direct and proximate result of Defendants' tortious conduct and the public nuisance created by Defendant, Plaintiffs have been damaged.

DEMAND FOR JURY TRIAL

Plaintiffs respectfully demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request the following relief:

- a. Determine that this action may be maintained as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3); direct that reasonable notice of this action, as provided by Fed. R. Civ. P. 23(c)(2) be given to the Class; and declare that Plaintiffs are the representatives of the Class;
- b. Require Defendants to pay for sending notice to the certified class of all consumers, as required by relevant states' law;
- c. Appoint Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
- d. Issue an injunction to enjoin Defendants from engaging in the deceptive, unfair, unconscionable, and unlawful business practices alleged in this Class Action Complaint;
- e. Find that Defendants have caused a public nuisance by their conduct which has injured the Plaintiffs;
- f. Provide abatement/clean up of this public nuisance at the court's direction;
- g. Award compensatory damages to Plaintiffs and the proposed Class in an amount to be established at trial;
- h. Award treble damages as permitted by law;
- i. Award pre- and post-judgment interest;
- j. Award punitive damages based on Defendants' reprehensible and deliberate conduct;
- k. Award reasonable attorneys' fees and costs; and,

1. For all such other and further relief as may be just and proper.

Dated: November 27, 2024.

Respectfully submitted,

/s/ Rex A. Sharp

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