

July 1, 2022

To the New York State Climate Action Council:

Care of: New York State Energy Research Development Authority
17 Columbia Circle
Albany, New York 12203-6399

The undersigned organizations submit the following comments on the draft scoping plan for the New York State Climate Leadership and Community Protection Act.

Introduction

Solid waste issues are climate change issues, and waste issues are environmental justice issues. The production, distribution, and disposal of materials that become waste generate greenhouse gas emissions and toxic pollution, most of which is emitted in low-income communities and communities of color. The rise of plastic waste and plastic packaging, in particular, has led to immense challenges for fence line communities where these plastics are either produced or landfilled or incinerated, and has frustrated recycling efforts.

According to Beyond Plastics' October 2021 report *The New Coal: Plastics and Climate Change*¹, the greenhouse gas emissions from the production, usage, and disposal of plastics will exceed greenhouse gas emissions from coal-fired power plants in the United States by 2030.

Made from a combination of chemicals and fossil fuels, plastic produces greenhouse gas emissions at every stage of its life cycle. In fact, if plastic were a country, it would be the world's fifth largest greenhouse gas emitter, surpassing all but China, the U.S., India, and Russia. Yet, unlike the plastic trash choking our waterways and littering our communities, the plastic industry's devastating impact on our climate is taking place under the radar, with little public scrutiny and even less government accountability.

Plastic is the new coal. The hard-won reductions in greenhouse gas emissions from shuttering U.S. coal plants are being quickly canceled out by a new universe of climate-warming emissions from plastics. Plastic production facilities are almost always located in communities of color. In the United States, 90% of pollution from plastic production is emitted into just 18 communities; these communities are two-thirds more likely to be communities of color.

In the National Academy of Sciences' 2022 report, *Reckoning with the U.S Role in Global Ocean Plastic Waste*², the first recommendation to address ocean plastic pollution is to reduce the production of plastics. The NYS Climate Leadership and Community Protection Act scoping

¹ <https://www.beyondplastics.org/plastics-and-climate>

² <http://www.nap.edu/26132>

plan must clearly address plastics as a climate and environmental justice issue, from extraction of fossil fuels to disposal, and prioritize policies that ultimately reduce plastic production. As written, the draft plan calls for waste reduction, reuse, and recycling. However, if we are to address the threat of plastics, meet our climate goals, and ensure a livable planet for generations to come, the plan must call for the end of waste-to-energy and waste-to-fuel facilities, prohibit “chemical recycling” and “advanced recycling,” and prioritize eliminating single-use plastics through strong Extended Producer Responsibility laws and an expanded container deposit (a.k.a. Bottle Bill) law.

The Role of Plastics in Climate Change

The draft scoping plan points to products and product packaging as the main source of municipal waste, the “production, distribution, and disposition of which generate emissions” (page 235). This is an accurate statement, but more detail is needed to understand these emissions, particularly from plastics, and the necessary remedies to address them.

A pie chart on page 234 breaks down New York’s municipal solid waste by material, relying on the 2010 Beyond Waste plan from the NYS Department of Environmental Conservation (DEC), showing that plastic waste makes up 13% of solid waste. It is not clear if this chart is describing MSW by weight or volume - an important distinction as plastics are very lightweight and therefore have a much larger volume per unit of weight than other materials. Further, plastic packaging has proliferated since 2010; according to National Geographic, more than half of all plastic produced since 1950 (nearly 10 billion tons) was produced in just the last fifteen years³ and **nearly half of all new plastic is intended for single-use packaging**. Given this information, we can assume the 2010 data is no longer accurate and that plastics make up a larger percentage of waste today. The DEC’s data is too outdated to be accurate. NYSERDA should not rely on 12-year-old data when making important decisions.

The issue of single-use plastic packaging warrants more detailed attention in this section. While all new materials contribute greenhouse gas emissions, new plastic production for single products and packaging is expanding at a dizzying scale. With little to no regulatory change, plastic threatens our collective chances at staying below 1.5 degrees of warming.

The Major Sources of GHG Emissions from Plastics in the U.S.⁴

Source	Annual GHG Emissions 2020	Projected Emissions by 2025
Fracking for ethane feedstock to produce polyethylene	36 million tons CO2e	42 million tons CO2e
Transporting + Processing	4 million tons CO2e	8 million tons CO2e

³ <https://www.nationalgeographic.com/environment/article/plastic-pollution>

⁴ https://static1.squarespace.com/static/5eda91260bbb7e7a4bf528d8/t/616ef29221985319611a64e0/1634661022294/REPORT_The_New-Coal_Plastics_and_Climate-Change_10-21-2021.pdf

Fracked Gases		
Ethane Gas Crackers	70 million tons CO2e	112 million tons CO2e
Other Plastics Feedstock Manufacturing	28 million tons CO2e	38 million tons CO2e
Polymer and Additive Production	14 million tons CO2e	16 million tons CO2e
Exports and Imports	51 million tons CO2e	57 million tons CO2e
Off-Gassing Foamed Plastic Insulation	27 million tons CO2e	
“Chemical Recycling”		18 million tons CO2e
Municipal Waste Incineration	15 million tons CO2e	17 million tons CO2e
Totals	245 million tons CO2e	308 million tons CO2e

Plastic litter in the environment also releases GHG emissions as it breaks down into microplastics, and plastic pollution in oceans interferes with oceans’ ability to act as a carbon sink. The scoping plan needs to delineate the climate change emissions and environmental justice impacts from plastics and plastic waste.

Waste-to-Energy and Waste-to-Fuel: A Climate and Environmental Justice Threat

New York State has acknowledged its waste problem for decades, and its failure to act on reduction and reuse priorities has resulted in unhealthy waste disposal projects. New York is tied with Florida for the highest number of garbage incinerators in the country. A growing number of cement kilns have lobbied to allow waste burning as a “replacement” for coal or other fossil fuels in cement production. The practice of burning waste “to recover energy” or as a fuel harms communities and speeds climate change; the scoping plan must explicitly call for the closure of existing incinerators in New York State and prohibit waste burning as a fuel for industry, including cement kilns and aggregate plants.

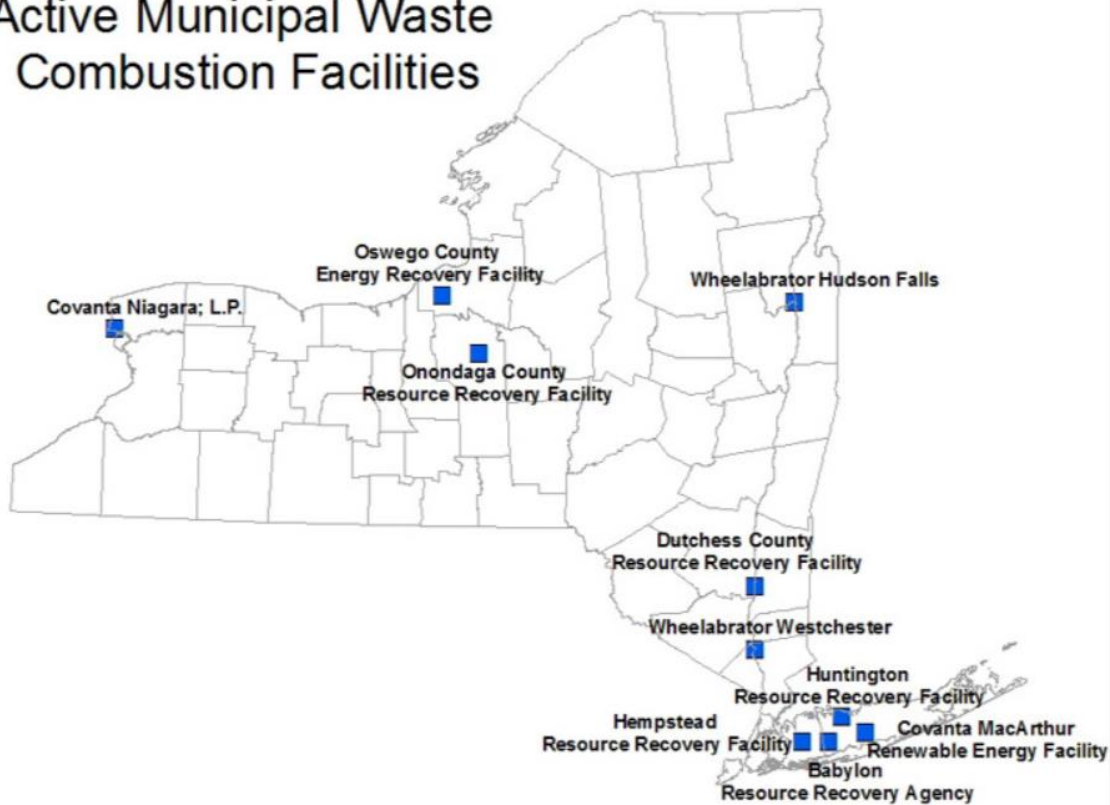
A pillar of the state’s climate law is Community Protection. Burning waste releases 14 times as much mercury as coal-fired power plants. Mercury is a potent neurotoxin that can negatively affect children’s’ development and ability to learn. There is no safe level of exposure to mercury, yet this is just one of the unhealthy emissions from burning waste. Plastics, in particular, have thousands of chemicals added to them in the production process, which are ultimately transferred to air, water, and soil when they are burned. These chemicals can also be transformed into even more toxic substances: burning plastics with paper generates dioxin, the same toxin in agent orange. Dioxin does not readily degrade in the environment and remains

toxic for a long period of time; exposure to dioxin shortens life expectancy and can cause adverse effects in future generations.

Communities near incinerators are also exposed to ultra-fine particles, which can penetrate deep into the lungs, enter the bloodstream, and travel throughout the body, causing systemic damage to tissues and cells. According to the World Health Organization, air pollution can affect almost every organ in the body, contributing to stroke, ischemic heart disease, chronic obstructive pulmonary disease, lung cancer, and pneumonia⁵. Particulate matter from outdoor air pollution is a Group I carcinogen designated by the International Agency for Research on Cancer⁶. In the United States in 2016, air pollution contributed to at least 77,500 premature deaths⁷. These fence line communities are almost always communities of color and low income communities⁸.

Active Municipal Waste Combustion Facilities in NY.⁹

Active Municipal Waste Combustion Facilities



Page 235 of the draft scoping plan mentions landfills as the “most obvious and well-documented contribution to GHG emissions from the management of wastes,” and barely mentions

⁵ <https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts>

⁶ https://www.iarc.who.int/wp-content/uploads/2018/07/pr221_E.pdf

⁷ <https://www.who.int/data/gho/data/indicators/indicator-details/GHO/ambient-air-pollution-attributable-deaths>

⁸ <http://www.energyjustice.net/incineration/ej>

⁹ <https://www.dec.ny.gov/chemical/67804.html>

combustion as a source of emissions. It should be noted in this section that the DEC does not capture carbon emission data from incinerators. For example, there is community concern about the as yet undocumented GHG emissions from the Norlite hazardous waste incinerator in Cohoes, NY. The DEC should require continuous emissions monitoring from Norlite and all facilities in the state which burn waste.

Despite a lack of DEC data, it is known that waste-to-energy incinerators generate more carbon dioxide per unit of energy than coal-fired power plants¹⁰. Annually, waste incineration in the U.S. emits approximately 15 million tons of CO₂e¹, with a large portion of this coming from New York State's ten incinerators. Burning waste has never been an environmentally sound practice; it merely transforms waste into air pollution without eliminating the need for landfills because of the massive amount of toxic ash that is generated by the burning. This toxic ash perpetuates environmental injustice as it requires its own special landfill. Much of the toxic ash from New York's incinerators is sent to construction and debris landfills or to the two ash monofills on Long Island. The transportation of this ash also produces greenhouse gas emissions.

Although newer incinerators utilize more effective air pollution control devices than older ones, these technologies merely capture some of the pollutants rather than eliminating them. According to the Global Alliance for Incinerator Alternatives, for every three pounds of waste burned, a pound of concentrated toxic ash is produced that must be landfilled, generating further risks to health and environment. Because incinerator ash is so toxic, it poses an immense risk to groundwater, the only source of drinking water on Long Island and rural communities throughout the state.

Waste-to-energy companies may advertise their advanced pollution control devices. While there have been advancements in technology, upset conditions - such as those that occur during incinerator startup or shutdown, when the composition of waste feedstock changes sharply, malfunctioning equipment, operator error, poor management of the incineration process, or inadequate maintenance¹¹ - can result in toxic emissions that are not reflected in annual emission averages or captured in data without continuous emissions monitoring. Even the most technologically advanced incinerators release large quantities of pollutants into the air, water, and soil. This harm to the environment which we all depend on for air, water, and food creates significant economic consequences. A 2011 study published in the *American Economic Review* found that waste incineration creates more negative economic impacts from air pollution compared to economic value than any other industry¹².

Waste burning, whether in incinerators or cement kilns, undermines recycling efforts because incinerators and cement kilns compete with recyclers for feedstock. Subsidizing waste burning through taxpayer funds creates an incentive for municipalities to burn materials that may have been recovered, due to the high cost of constructing and operating incinerators. This creates a

¹⁰ U.S. EPA, <http://www.epa.gov/cleanenergy/energy-and-you/affect/air-emissions.html>

¹¹ <https://nap.nationalacademies.org/catalog/5803/waste-incineration-and-public-health>

¹² Muller, Nicholas Z., Robert Mendelsohn, and William Nordhaus. 2011. "Environmental Accounting for Pollution in the United States Economy." *American Economic Review*, 101(5): 1649-75.

compounded effect on the climate as it perpetuates the production, distribution, and disposal of virgin materials.

To address the issue of waste-to-energy and waste-to-fuel as a climate and environmental justice issue, this scoping plan should:

- Consider “energy recovery” (waste burning) to be an unacceptable mitigation strategy within the solid waste hierarchy and excluded from any definition of “renewable energy.”
- Consider “energy recovery” and “waste-to-fuel” (waste burning) as ineligible for beneficial use of materials.
- Call for the elimination of public subsidies for waste incineration. The money saved from these subsidies can instead fund reduction, reuse, and refill programs that ultimately reduce waste.
- Explicitly call for the closure of all waste-to-energy incinerators (“waste combustion facilities”) in New York State by 2025.
- Prohibit the burning of waste as fuel in cement kilns, aggregate plants, and other energy-intensive industries.

“Chemical” and “Advanced Recycling”: Plastic Burning in Semantic Disguise

As written, the scoping plan prioritizes improvements to recycling after waste reduction and reuse. It is essential to make the distinction within the scoping plan between mechanical recycling and so-called “chemical” and/or “advanced” recycling.

In the United States, the plastics recycling rate hovers below 6%¹³. A May 2022 report by Beyond Plastics and The Last Beach CleanUp estimated the U.S. plastics recycling rate for 2021 at 5-6%, and the U.S. Department of Energy also released statistics for plastics recycling in the U.S. at 5% for 2019 in April 2022¹⁴. In response to the clear failure of plastics recycling, the plastics industry is marketing what it calls “advanced recycling” or “chemical recycling” as a “circular” solution for plastic waste in an effort to undermine single-use plastic reduction policies. These techniques include pyrolysis, gasification, methanolysis, and solvolysis; all turn plastics into fossil fuels to be burned, rather than back into new plastic products. The end result of “chemical” or “advanced” recycling is burning plastic.

“Advanced recycling” facilities rely on high inputs of energy to turn waste back into hydrocarbon feedstocks such as naphtha, a flammable, hydrocarbon liquid. The most common process is pyrolysis in which a high-heat furnace melts solid plastic into liquid feedstocks. The presence of contaminants, difficulties with sorting, and other factors make the process very challenging – and the energy input required to carry out the procedure is very large. Like conventional waste burning, the plastic waste made into fuel is not a renewable energy source as it perpetuates the demand for extraction of fossil fuels to continue producing disposable plastic products.

¹³ <https://www.beyondplastics.org/press-releases/the-real-truth-about-plastics-recycling>

¹⁴ <https://www.globenewswire.com/news-release/2022/04/28/2431659/0/en/NREL-Calculates-Lost-Value-of-Landfilled-Plastic-in-U-S.html>

The plastics and packaging industry’s euphemistic term “chemical recycling” is a misnomer. To the extent that pyrolysis and gasification produce anything other than pollution, the end “product” is simply wastes that have no productive quality or usage, such as effluent and tars, that can be burned as low-grade fuels when combined with actual fuels. In the specific cases where plastic is produced - which, as the Global Alliance for Incinerator Alternatives (GAIA) has documented, has never been achieved at commercial scale¹⁵ - the product almost invariably will need to be blended with other materials, and further refined, which again, is largely unaccounted for in industry claims of “circularity.” This whole process is much more inefficient than the most straightforward and effective solution to plastic waste, which is simply to produce less plastic.

For fence line communities, pollution from gasification and pyrolysis facilities is just as bad, if not worse, than toxic pollution from conventional incinerators¹⁶. Expansion of so-called “chemical” and “advanced recycling” has the potential to emit 18 million tons of greenhouse gasses per year by the year 2025, equivalent to the GHG emissions from nine coal-fired power plants¹⁷.

To prevent the greenwashing of recycling and to address plastic waste as a climate and environmental justice issue, the scoping plan must:

- Consider “chemical” and “advanced” recycling facilities as incinerators in the same category as waste-to-energy and waste-to-fuel schemes.
- Explicitly prohibit “chemical” and “advanced” recycling from the definition of recycling, renewable energy, or as a sustainable solution for plastic waste.
- Require state agencies to ban the construction of “chemical” and “advanced” recycling facilities in NYS.

Further resources on “chemical” recycling:

- Global Alliance for Incinerator Alternatives: [Chemical Recycling: Distraction, Not Solution](#)
- Natural Resources Defense Council’s issue brief: [Recycling Lies: “Chemical Recycling” of Plastic Is Just Greenwashing Incineration](#)

Extended Producer Responsibility (EPR) is the urgently needed legislative route for reducing waste at the source and encouraging a truly circular economy.

New York Assembly bill A10185¹⁸, introduced by Assembly Environmental Conservation Committee Chair Steven Englebright is the most effective EPR bill introduced in the country and will reduce greenhouse gasses more than any other EPR proposal in New York. It should be

¹⁵ <https://www.no-burn.org/wp-content/uploads/2021/11/revised-CR-1-pger.pdf>

¹⁶ Rollinson & Oladejo, Chemical Recycling: Status, Sustainability, and Environmental Impacts (2020), at 21; See Bell & Takada, Plastic Waste Management Hazards, Waste-to-Energy, Chemical Recycling, and Plastic Fuels (2021) (“IPEN Report”) at, 6, 22-29, 52-54.

¹⁷ https://static1.squarespace.com/static/5eda91260bbb7e7a4bf528d8/t/616ef29221985319611a64e0/1634661022294/REPORT_The_New-Coal_Plastics_and_Climate-Change_10-21-2021.pdf

¹⁸ <https://www.nysenate.gov/legislation/bills/2021/A10185>

endorsed by the Climate Council, embraced by the Hochul Administration, and adopted by the NYS Legislature as quickly as possible.

The scoping plan mentions Extended Producer Responsibility (EPR) as the legislative route for reducing waste and improving recycling. The 2010 DEC *Beyond Waste* Plan also called for EPR. The scoping plan must provide more detailed information on how EPR can reduce waste, with special consideration given to plastic waste. For example, page 242 calls for enacting a fee per ton on waste, with the fees being used to support reduction, reuse, and recycling. While these fees should certainly be used to support reduction, reuse, and recycling, plastic is much lighter than other materials, and an inadvertent consequence of enacting a fee-per-ton waste policy may be for producers to simply switch their other heavier materials to plastics, which would be disastrous for our climate. This unintended consequence can be prevented with stronger directives.

According to *National Geographic*, nearly half of all virgin plastic produced today is intended for a single use¹⁹, which has become the largest source of plastic waste and pollution in the environment. The draft scoping plan calls for the reduction and elimination of single-use packaging (page 242) but the plan must go further and provide clear directives for how that goal will be achieved through Extended Producer Responsibility without creating unintended incentives for companies to actually increase their use of plastic packaging to avoid paying fees based on weight.

Providing Financial Relief for Municipalities and Modernizing Recycling

From rural upstate communities to New York City, local recycling programs need more resources and local governments need to establish comprehensive waste reduction, refill, and reuse programs.

To ensure the expansion and improvement of New York State's recycling programs, the scoping plan must endorse Extended Producer Responsibility with the following key provisions:

- Ensure that every resident in the state will have access to recycling that is as convenient as their existing waste collection services, whether they live in an urban or rural community or a single family or multi-unit dwelling.
- Allow producers to establish or contract for new programs where municipalities do not currently, or decide not to, provide recycling services. This is critical to ensuring convenient, consistent, statewide recycling services.
- Establish consistency among programs in New York, so that all materials that can be sorted and sold to market are collected and processed for recycling. This will facilitate consumer education and reduce confusion.
- Require producer responsibility organizations to coordinate their plans to ensure that consistent, convenient recycling programs are available statewide.
- Limit the preemption of local laws.

¹⁹ <https://www.nationalgeographic.com/environment/article/plastic-pollution>

- Clearly define the rights and responsibilities of municipalities to continue providing services independent of the Producer Responsibility Organization and receive reimbursement, discontinue the right to provide service, or opt out of the program and continue to operate as they see fit.

Waste and Plastic Reduction Requirements

The fact that consumer brand-owners are disconnected from the end-of-life management of their product packaging is a significant factor in our increasing waste management, plastic pollution, and climate change crises. These companies have no requirements or incentives to reduce packaging waste, create reusable products, make packaging easier to recycle, or boost market demand by using more recycled content. New York State's waste management strategy has lost sight of the waste hierarchy which starts with waste prevention, followed by waste reduction, then reuse, and finally, recycling, with landfilling and incineration as the highly undesirable last resorts that should be avoided at all costs.

The draft scoping plan acknowledges packaging reduction as a goal but the questions of how much and when this will be achieved through Extended Producer Responsibility (EPR) cannot be arbitrary or poorly defined. If we hope to keep global warming within the 1.5-degree Celsius increase scientists have specified as critical to ensuring the continuation of life as we know it, **setting specific waste reduction targets is just as necessary as setting GHG emissions reduction targets.** Without specific reduction goals in EPR, packaging waste will continue to grow, as has happened in European countries with EPR laws. Therefore, it is important to set packaging reduction goals in the scoping plan.

To that end, we recommend the following waste and plastic reduction requirements:

- A waste reduction requirement of 50% over a ten-year period is commensurate with the problem we're facing. Packaging companies can achieve these reductions by switching to reuse and refill systems and/or by eliminating packaging components entirely. These specific rates and dates *must* be included in the EPR law, not set later.
- Creating significant incentives for the adoption of reuse and refill systems, not just for recycling programs.

Minimum Recycling, and Post-Consumer Content Standards

Strong recycled content standards help drive up the value of recycled materials and recycling rates, which, in turn, helps lower demand for virgin feedstocks. This reduces the need to extract natural resources and will significantly decrease greenhouse gas emissions, especially from plastics, which are set to surpass the emissions from coal-fired power plants within the decade. In order to create viable reuse and refill systems, reduce demand for natural resources, and reduce greenhouse gas emissions, it is critical for the scoping plan to require that EPR set requirements for recycling rates and post-consumer recycled content for packaging in the legislation.

To that end, we recommend that the scoping plan call for the following standards in EPR legislation:

- After packaging is reduced by 50% over ten years, 90% of the remaining packaging must be made from post-consumer recycled materials, materials that are truly recyclable (such as paper, cardboard, and aluminum), or fully compostable materials. These clear minimum rates for post-consumer recycled content and recycling are commensurate with the problem. These rates and dates must be included in the law, not set later.
- Eco-modulated fees which provide financial incentives to reward brand owners who design their products to go above and beyond the minimum requirements for recyclability and post-consumer recycled content.

Definition of “Producer”

Although manufacturers produce the packaging materials, it is consumer brands who make the decisions about which materials to package their consumer products in and who distribute these packaged products in the market. Therefore, EPR for packaging systems around the world typically obligate brand owners as producers. Obligating consumer brands simplifies compliance, enforcement, data tracking, and accountability within the EPR system because consumer brands closely track where and how many of their packaged goods are sold. Furthermore, packaging manufacturers have less incentive to reduce packaging materials, and cannot make decisions to move consumer goods into reusable/refillable containers or to eliminate packaging altogether.

Definition of Recycling

Since a primary goal of any EPR system is to support and strengthen existing recycling operations across the state, it is essential that the scoping plan set forth an unambiguous definition of the term “recycling.” The term “recycling” must not include technologies that produce fuel or fuel products or any type of plastic burning, no matter what misleading term is used to describe the technology.

The definition of recycling must:

- Prevent incineration, gasification, or pyrolysis, which are often put forward under the umbrella of chemical or advanced recycling, to be considered recycling.
- Explicitly prohibit thermal treatment of waste or waste-to-fuel products in all scenarios.
- Exclude plastic waste that is exported to other countries.

To that end, the definition of recycling in the Englebright EPR legislation (Assembly Bill A10185) should be used.

Accountability

Three key components of any effective EPR program are accountability, government oversight, and protection against industry capture. Checks and balances are important to ensure the producers are preparing and executing responsibility plans that are in compliance with the legislation and that the NYS Department of Environmental

Conservation (DEC) has the financial support required to fully oversee the implementation of the EPR program as specified in the legislation.

Increased Accountability and Transparency

An effective EPR program like the one proposed by Assemblymember Englebright will create multiple responsibilities for producers, government agencies and others to be implemented over long periods of time. The legislation is not self-enforcing, and the promised benefits of the EPR approach will not be achieved without timely and effective enforcement. In order to enhance producer accountability and transparency, we support creating an Extended Producer Responsibility Inspector General, funded by the packaging companies and tasked with ensuring compliance and implementation of the EPR law and rules. A similar structure was created as part of the 1997 Upstate-Downstate Watershed Agreement, with a Watershed Inspector General position created to ensure that the multiple duties and responsibilities of that program were effectively implemented. Other New York State programs for which an Inspector General office was created include Welfare, Workmen's Compensation Fraud and the Metropolitan Transportation Authority. We recommend that the scoping plan call for an added mechanism to ensure implementation and enforcement of the statutory and regulatory scheme.

Elimination of Toxics in Packaging

The presence of harmful chemicals in a material makes it inappropriate to be returned to the supply stream. Often, materials circulated through general recycling are turned into objects with uses that were never considered by the original producer. For example, electronic waste is often the only source of recycled black plastic that may be turned into black plastic single-use cutlery and food containers. Unfortunately, electronic waste tends to be contaminated with many toxic chemicals and heavy metals (lead, mercury, cadmium and more) which then end up in our recycled food ware and cutlery, posing a risk to public health. Only manufacturers have the power to change this.

As reused and recycled materials are used more and more in packaging, their chemical composition must face even greater scrutiny. We must mandate the removal of toxins from products and packaging. Reducing toxicity in materials is inseparable from the increased reuse and recycling that would occur under an EPR law. It has been far too many years since New York State established its first set of toxic chemicals in packaging. Over the intervening decades, scientific evidence has revealed many more concerns about chemicals used in packaging²⁰, including the "forever chemical" PFAS^{21,22}, phthalates²³, and toluene²⁴, which is often used in inks.

²⁰<https://supplychain.edf.org/resources/key-chemicals-of-concern-in-food-packaging-and-food-handling-equipment/>

²¹<https://www.consumerreports.org/pfas-food-packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/>

²² <https://toxicfreefuture.org/research/take-out-toxics-pfas-chemicals-in-food-packaging/>

²³ <https://www.sciencedirect.com/science/article/pii/S0269749121016031>

²⁴ <https://www.epa.gov/sites/default/files/2016-09/documents/toluene.pdf>

The scoping plan should call for the elimination of toxic chemicals used in product and packaging.

All the key elements of an effective Extended Producer Responsibility program described above, are included in the legislation introduced by Assemblymember Steven Englebright, Chair of the Assembly Environmental Conservation Committee. Assembly Bill A10185, introduced on May 5, 2022, is the strongest EPR bill introduced in the nation and deserves widespread support.

The Bottle Deposit Law, Better Known as the Bottle Bill

New York’s Bottle Deposit Law, adopted by the State Legislature in 1982, is the State’s first EPR-based statute and has been highly successful. The Bottle Deposit Law is an important complement to any EPR program for packaging. It is particularly important that any EPR for packaging law passed in New York will neither undercut nor threaten the existing bottle law nor its expansion or modernization.

By expanding the Bottle Deposit Law, New York can lead the way on reducing waste, litter, and greenhouse gas emissions. Over its 40-year history, the Bottle Bill has proven to be effective in reducing litter and increasing recycling rates. In 2020, New York’s redemption rate was at 64%. The Bottle Bill reduces roadside container litter by 70%, and in 2020, 5.5 billion containers were recycled in the state. Expanding the Bottle Deposit Law in parallel with EPR legislation will further enhance these successes and strongly support municipalities. The data supports that the best functioning EPR programs operate with an expanded container deposit system. It is critically important that moving forward with an EPR for packaging does not leave the Bottle Bill expansion behind.

Energy savings from recycling common container materials²⁵

Recycled Material	Energy Savings
Aluminum	95%
Plastics	70%
Glass	40%

Specifically, we urge that nothing in state policy should preclude or inhibit the expansion of the Bottle Deposit Law to cover a wider range of beverage containers in a deposit program. In particular, we strongly recommend that New York’s Bottle Deposit Law be amended in parallel with EPR legislation to include non-carbonated soft drinks, non-carbonated fruit or vegetable juices containing less than one hundred percent fruit or vegetable juice, coffee and tea beverages, carbonated fruit beverages, and wine, liquor, distilled spirit coolers, and cider and wine products as defined in section three of the alcoholic beverage control law.

Container deposits should be increased to 10-cents from 5-cents; programs with a 10-cent deposit, such as Michigan and Oregon’s deposit laws, see a redemption rate of more than 90%.

²⁵ <https://nems.nih.gov/environmental-programs/pages/benefits-of-recycling.aspx>

Increasing the deposit would also support thousands of low-income people who collect bottles and cans in our communities. These fellow New Yorkers generate income and perform a critical environmental service by collecting and redeeming deposit containers that would otherwise have gone into trash or single-stream recycling, which has a much lower recycling rate.

These key policies outlined above are all included in Assembly Bill A10184, introduced on May 5, 2022, by Assemblymember Steven Englebright and in the State Senate by Senator Rachel May, Senate Sill S9164. When adopted, this policy will drive down greenhouse gas emissions.

There are many things that the DEC can do to improve the implementation of the NYS Bottle Bill and therefore reduce greenhouse gas emissions. Many stores in New York City make it difficult to return deposit containers. The DEC should perform spot checks to ensure that stores are accepting empty containers. There needs to be a serious enforcement effort in New York City, in particular. Forty years after adoption of the Bottle Bill, the DEC still has not prioritized enforcement of the law nor addressed the difficulty of enforcement in New York City.

Similar problems exist with the plastic bag ban in New York City. Volunteers with Beyond Plastics have identified more than 100 stores in New York City that are still handing out plastic bags, in violation of the state's ban on single-use plastic bags, The Bag Waste Reduction Law²⁶. All the violators have been reported to the DEC, yet the stores continue to hand out plastic bags. This needs to change in order to reduce the climate change impacts of the widespread use of single-use plastic bags.

Additional Initiatives to Support the Solid Waste Hierarchy: Reduce, Reuse, Recycle

Grants

Page 238 of the scoping plan mentions the Municipal Waste Reduction and Recycling Program, which allocates funds for municipal recycling. Funds and grant opportunities should be expanded to support the first tiers of the solid waste hierarchy: reduce and reuse.

Green Products

Page 239 includes a section which mentions the GreenNY initiative and state procurement services. We recommend state procurement services be required to not purchase any single-use disposables and to provide reuse and refill at state facilities. Single-use plastic sales should also be banned in state parks and all state facilities.

NYS Bag Waste Reduction Law

Attempts have been made by industries to weaken New York's Bag Waste Reduction Law. The scoping plan should explicitly include that no exceptions be made to the plastic bag law in the future. The plastic bag ban should be expanded to include restaurants and other businesses. It

²⁶ <https://www.dec.ny.gov/chemical/50034.html>

should also be expanded to ban plastic produce bags in supermarkets. Reusable and single-use paper bags are suitable alternatives.

Outreach and Education

Page 239 mentions DEC educational programs to inform the public on recycling, as well as funding to State colleges to research recycling “composition” and “public attitudes” on recycling. DEC should be directed to expand its education programs to better reflect the solid waste hierarchy and include reduction and reuse in these efforts. Recycling is not enough. With a plastics recycling rate that has never even achieved 10%, we cannot recycle our way out of the plastic pollution crisis. Reducing the manufacturing, usage and disposal of plastics should be prioritized in this Scoping document.

Outreach to Small Businesses

Large companies such as Amazon and McDonald’s know how to reduce the use of plastics or can afford to pay an expert to develop a plan for them. They are not doing it because plastics are cheap and there is no requirement that they do so. That is why we need a strong Extended Producer Responsibility law adopted in New York. However, small businesses may need technical assistance. New York should look at the success of its neighbors in Massachusetts which established a Toxics Use Reduction Institute to assist businesses in reducing their generation of hazardous waste. We need a similar institution here in New York.

Sincerely,

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