

Zero Waste Warren County
A Project of Clean Air Action Network of Glens Falls
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I first became involved in this field in 1988 as a graduate student, when I led a successful three-month campaign to get Cornell University to institutionalize recycling, rather than leaving it to a checkerboard of haphazard arrangements. A local town supervisor recently referred to me as the most knowledgeable person about solid waste of anyone he knows. In 2019, I founded the Clean Air Action Network of Glens Falls and two and a half years ago we launched Zero Waste Warren County, which I coordinate.

I oppose Governor Hochul's Extended Producer Responsibility for packaging bill. It would establish a poorly designed program that would not bring about the outcomes it promises. The number one flaw of this bill is that it relies on industry to regulate itself, and we all know how well self-regulation works. I will address this issue after I discuss some other problems with the bill before us today.

Scientists, journalists and environmental activists have done an amazing job of illuminating the issues of micro-plastics and other types of pollution and health hazards from plastic from production to disposal. They have built a great deal of public awareness about these problems. We have learned that the problems of plastic are far worse than unsightly litter. The explosion of new plastics production infrastructure is driven by the fracking boom and increased extraction of fossil fuels and we are beginning to recognize the contribution of plastics to climate change. As a result, pressure is building on corporations and public officials to take action about this plastic nightmare.

I strongly agree that we must reduce the wanton proliferation of plastic, starting with single use plastics in packaging and food service. **However, in the ensuing panic to act quickly, if we do not proceed with care, we risk being saddled**

with a disastrous program that would only prolong the production, use and disposal of single-use plastic packaging and all its associated problems.

This EPR program outlined in Hochul's bill threatens to undermine NYS's recycling programs and Bottle Bill, increase costs to consumers without any associated benefits, and create a new monster in the form of a powerful entity called a Producer Responsibility Organization or PRO. This new PRO nonprofit would be made up of corporations and endowed by the state with the right to regulate itself and its corporate producer members. If you hold dear democratic decision making, opportunities for public input, transparency, and the rule of law, forget about it if this bill is passed.

If we are truly looking for a solution to the growing problem of wasteful packaging, as New Yorkers, we need to call on our state to build on its recent successes. In 2021 the state implemented its ban on single-use grocery bags. This year another state ban went into effect -- on expanded polystyrene for food containers in retail and food service, and in packing peanuts.

The state did not ask supermarket chains to band together in a PRO and figure out how to manage their plastic grocery bags over the next few years. It did not ask restaurants to form a Producer Responsibility Organization to come up with a plan for expanded polystyrene take-out containers. Legislators sponsored bills to ban these materials, citizens and corporations weighed in and these bills were passed, signed into law, and subsequently implemented.

If we want to eliminate single-use packaging, especially packaging made of plastic, we should build on this proven model.

Bans are not the only model that has been demonstrated to be effective. State bottle bills have been very effective in increasing recycling, and decreasing litter. Moreover, they create a supply of uncontaminated recyclable materials. In single stream recycling programs, glass is commonly too contaminated to meet the stringent standards of glass furnaces (instead it is often repurposed as daily landfill cover), but the Bottle Bill provides a clean supply of glass for recycling.

It is high time for NY's Bottle Bill to be updated, by increasing the nickel deposit to a dime and expanding the lists of covered beverages. However, Hochul's EPR bill threatens the future of the Bottle Bill. By including beverage containers that are not covered by the current Bottle Bill, this EPR bill would prevent the state from adding these containers to the Bottle Bill in the future. Yet the Bottle Bill is a

sure thing, proven to work, while corporate controlled EPR, as Hochul's bill would establish, is a demonstrated failure, as I will show you.

Hochul's bill also directs the PROs to analyze whether all beverage containers should be covered by EPR, thus superseding the Bottle Bill. This would mean the elimination of the Bottle Bill without public input or legislative action.

Let's consider bans on all plastic resins that are not readily and widely recycled through existing curbside programs. In single stream recycling, all plastic containers may be collected, though only #1, #2, and sometimes #5 have any chance of being recycled. Only plastics made of resins that are actually getting recycled should be considered recyclable. Other plastic containers should be banned within several years.

Last year the state of California enacted a law that prohibits the use of the chasing arrows recycling sign on materials that are not actually being recycled.

Let's establish a minimum recycled content standard and mandate a process for verifying the recycled content. This is a not pie-in-the-sky idea any more. It is happening in other jurisdictions. For instance, the government of Canada has set a goal of at least 50 percent recycled content in plastic products by 2030.

The packaging industry has been very innovative, but unfortunately many of its innovations have made recycling more difficult, rather than increased recyclability. Composite materials are hard to recycle or even impossible to recycle, and therefore should be phased out.

The bill also failed to phase out or ban the use of hazardous chemical additives in or on packaging, despite the fact that such chemicals complicate recycling (in addition to posing health risks to the people consuming the foods and beverages or using personal care products in such packaging). They can contaminate recycled materials with unwanted chemicals, certainly not a desired outcome. The state should make it a priority to ban or phase out hazardous chemicals in packaging.

We often focus on the problem of harmful plastic additives or coatings in food containers, but they are used without any transparency in other applications as well. A year ago, the US EPA confirmed that PFAS chemicals intentional used in pesticide containers and subsequently contaminating the pesticide products. This contamination was first discovered in 2020 in a mosquito insecticide that is widely used in government mosquito abatement programs.

The Problem of the Producer Responsibility Organization

The state has the power to assess fees and taxes and regulate the activities of people and businesses. The State of New York should never turn this power over to unelected entities composed of corporations. Sadly, that is exactly what this EPR bill would do.

Let me explain how the Producer Responsibility Organization would work.

Each PRO would develop a plan for managing packaging waste from its member corporations. Each PRO would also assess fees on their corporate members. Each PRO would get to determine how much its fees would be. The fees are supposed to incentivize better packaging, while covering the PRO's administrative costs and the costs of implementing its plan, and also being used to reimburse municipalities and MRFs for the costs of recycling and to fund recycling infrastructure. Apparently, it's up to each PRO to decide which recycling programs to reimburse and which infrastructure it would help fund. This broad discretion is well beyond the legitimate role of a private entity, even if it's supposed to be acting on behalf of the state.

The only oversight on these PROs would come from overworked DEC employees and an unpaid, business-heavy advisory board whose members would be appointed by the En Con commissioner. Also the convoluted structure of this EPR program would make it difficult to hold either the PROs or the producer members accountable for their actions and their failures to act.

I am in good company in questioning EPR that includes PROs. The National Recycling Coalition, the national Sierra Club and the Global Alliance for Incineration Alternatives all oppose any Extended Producer Responsibility legislation that includes Producer Responsibility Organizations.

Let's take a step back and examine the logic of the Producer Responsibility Organization.

I ask you to do a simple thought experiment. Imagine that the PRO approach used in this EPR bill had been used as the means to end child labor in the early 20th century. Under this approach, the legislature would have passed a law that directed businesses that used child labor to form a nonprofit. Let's call this nonprofit an Employer Responsibility Organization. This ERO would have assessed fees from

all the companies that used child labor, and it would have been charged with creating and implementing a plan to phase out child labor – or to somehow make child labor less objectionable. The ERO would also be charged with educating children, families, and the general public about child labor, just as in Hochul’s bill each PRO is charged with educating the public about how to manage packaging. The ERO’s educational materials might have called out poor families for sending their children to work in factories and sweatshops, just as PROs under the EPR bill might blame “lazy” consumers for not recycling packaging.

EROs would probably have come up with all kinds of ways to make child labor seem more benign, like printing propaganda about how children learn important skills and the meaning of responsibility by working. Maybe EROs would have convinced some of their member companies to include a few hours a week of basic schooling for some of their underage workers to counter the argument that child labor prevents a segment of the population from learning to read. I also imagine that history books would have judged this approach to ending child labor as a severe mistake that prolonged the scourge of child labor, rather than an effective strategy for ending it.

Has EPR been successful elsewhere?

When analyzing proposed legislation, it’s imperative that lawmakers exercise due diligence. Do similar laws or programs exist elsewhere? What is their track record? Did they achieve their objectives? Were there any unanticipated or unintended consequences that we should be aware of?

EPR for packaging of the sort proposed in the Hochul bill is new in the U.S. but in Canada, British Columbia and Ontario have long established EPR for packaging programs. As in the Hochul bill, both provinces rely on Producer Responsibility Organizations

EPR is promoted as having two objectives: increasing recycling and leading corporations to redesign their products to reduce environmental impacts. In British Columbia and Ontario, neither objective has been met, and the trends have not been promising. In neither province did the EPR program make any significant investments made in recycling infrastructure. Nor did EPR lead to the development of new or expanded recycling markets for problematic packaging materials. In Ontario, the cost of curbside recycling tripled even though recycling rates increased by less than 5 percent. Further under EPR, the incineration of plastics been routine in both provinces.

In both provinces, researchers have been stymied by the lack of transparency of the Producer Responsibility Organizations. PROs add a layer of bureaucracy and PROs would be exempt from New York's open meeting and freedom of information laws.

Other problems with the bill

If the objective is to reduce the proliferation of unrecyclable and unrecycled packaging, it's imperative to include strong numerical goals in any EPR legislation. However, the Hochul bill does not establish any standards or goals at all for reducing, recycling or the reuse of packaging, such as by requiring refillables. The bill does not require corporations to transition to packaging that is recyclable in existing recycling programs around the state. It does not set a minimum recycled content for any materials used in packaging, even though such laws have been an effective driver in creating markets for recycled materials. In short, it does not take any of the types of straight-forward regulatory action that are available to the state to end the use of objectionable materials or ensure that they are recycled or otherwise managed sustainably.

Rather, Hochul's EPR bill leaves goal setting to an industry-dominated advisory board and allows each PRO to create its own plan for moving forward. The DEC is charged with approving these plans. But will the DEC have the capacity to carefully review them and also determine if they are adequately implemented?

Currently, every solid waste planning unit in the state, which in upstate New York are usually counties, is required to submit a solid waste management plan to DEC every ten years. These plans are reviewed by a DEC employee and usually approved, sometimes after the county is asked to address deficiencies. However, there are no repercussions to counties that fail to adequately implement their solid waste plans. Also in past years, the DEC gave some planning units a pass because it was inadequately staffed to review their plans.

Other comments on the EPR bill and some preferred alternatives

I am very skeptical about the feasibility of doing a statewide needs assessment, as required under this bill. The state has not done a good job of collecting data from municipal or private recycling programs and Material Recycling Facilities. From what I have seen, huge data gaps would prevent the timely completion of such a needs assessment.

For instance, Warren County has only begun in this calendar year collecting data on the quantities and disposition of municipal solid waste and recyclables collected by private haulers in the county. Without such data, calculating an accurate recycling rate would be impossible. Shockingly, I have confirmed that DEC is unable to provide a list of recycling end-markets, such as paper mills and plastics factories that process recycled materials.

The state legislature should support such an assessment, but the first steps must be identifying the many information gaps, followed by corrective action to mandate the reporting and collection of the required information.

The state of New York should take a variety of other actions to support and improve recycling and waste reduction:

- 1) The state should expand and update the Bottle Bill and also include refillable requirements with numerical goals and timelines.
- 2) The state should do (or commission) a comparative study of the economics and actual rates of materials recycled in dual stream vs. single stream recycling. Dual stream recycling has much lower levels of contamination; its sorting costs are significantly lower; and the market acceptance and value of less contaminated recyclables are greater. We could boost the percentage of materials that are actually reprocessed into like commodities by returning to dual stream recycling.
- 3) The state should require transparency in recycling so that recycling programs can be evaluated in terms of the percentage of materials that get successfully reprocessed into like commodities, rather than the rate of curbside collection.
- 4) The state should establish mandatory minimum diversion goals (recycling, composting, and reuse) to be met by all solid waste planning units, starting at 50 percent within 5 years and provide technical, financial, and organizational assistance so that planning units can succeed. Once this initial goal is set, ramp up the goal to 75 percent.
- 5) The state should publicize effective models for all aspects of waste reduction, recycling, composting, and reuse, from collection to sorting and processing to marketing. Provide road maps for all aspects of solid waste management besides disposal so local planning units and interested residents can understand their choices and find out how different approaches work.

6) The state should adopt a strategy to phase out single use disposables by substituting reusable tableware in food service, whether in restaurants and other food establishments; hospitals, nursing facilities, and other institutions; Meals on Wheels; and cafeterias and dining halls in schools, higher education, daycare and summer camps.

7) The state is the entity that should levy fees and taxes on corporations that use single-use unrecyclable or hard-to-recycle packaging. Companies that refill their containers will be exempt from these fees. These fees should be commensurate with the toxicity and weight of the packaging. All fees collected should be deposited in a dedicated fund to be used to fund municipal infrastructure to facilitate waste diversion and reduction.

8) The state should also establish a schedule for banning or phasing out objectionable packaging. Corporate EPR is not needed.

In conclusion, the state must not devolve its responsibilities to a private entity to do its job. The governor's EPR bill is anti-democratic and contrary to the principles of our nation. And experience in Canadian provinces shows that it will not work. We can and must do better with our policy decisions.

(I have appended excerpts from a trade association's statement of opposition to Extended Producer Responsibility based on its poor performance in British Columbia and Ontario and its endorsement of a direct tax on plastic packaging put forth in a 2022 California ballot initiative.)

The Association of Home Appliance Manufacturers prefers direct tax on plastic to help solve plastics dilemma, rather than EPR.

In a Dec 2021 press release, this trade association stated:

“The rationale behind these extended producer responsibility (EPR) policies is that those who produce, distribute or sell products, rather than governments or consumers, should pay for the recovery and recycling of any packaging waste that comes from products. In those terms, it sounds simple. **But as with many policy issues, the reality of EPR is far more complex, and the results, after more than a decade in action, have not lived up to the policy’s promise.**”

In rejecting EPR, the Association of Home Appliance Manufacturers noted that EPR hasn’t achieved its objectives in British Columbia or Ontario. “The available metrics from these programs show that they routinely miss their recovery targets while still increasing costs for producers. For example, Stewardship Ontario, in its 2020 report, showed that recovered metric tons of packaging waste declined each year from 2015 to 2019, from 854,537 in 2015 to 729,906 in 2019. The recovery rate during that time fell from 64% to 60.2%. During the same period, Stewardship Ontario increased by 17% the fees it charges producers.”

“In addition, British Columbia, Ontario and other provinces with EPR programs have not been able to maintain or develop a market for plastic recycling. A 2019 report, “The Economic Study of the Canadian Plastic Industry, Markets and Waste,” provided a review of the “entire plastics value chain in Canada, from raw material production and products manufacturing to use and end-of-life.” The study found that 87% of plastics, with an estimated value of 7.8 million Canadian dollars, are discarded. According to the report, “the Canadian plastics economy is designed to be linear and to throw away plastic,” and out of the 3.27 million metric tons of plastics that were discarded, 9% was recycled.

Proponents of EPR claim it shifts the cost burden to industry. But it actually just raises costs for producers and consumers and has not resulted in progress on the recycling front.”

The Association of Home Appliance Manufacturers proposes a “simpler path to reducing plastic waste.” This trade association supports the **California Plastic Waste Reductions Regulations Initiative**, which will go before voters on the November 2022 California ballot, which has a far simpler approach than EPR and the Producer Responsibility Organizations needed to oversee local recycling. **“It would require producers to pay a penny-per-piece fee on single-use plastic packaging, as well as implement a number of measures to ensure that all single-use plastic packaging is reusable, refillable or compostable by 2030.”**