



Adapted statement from NY SWAB

Statement on New York State's Extended Producer Responsibility provision proposed in Title 33 of the New York State Executive Budget

Title 33 is in need of further and immediate legislative remediation through amendment.

Extended Producer Responsibility (EPR) legislation, if enacted in New York State, will have profound and enduring impacts on the environment, consumer prices, waste collection, and sorting and processing of recyclables and reusables in New York State.

New York has both a depth of managerial expertise and a robust infrastructure for the collection and processing of recyclable materials developed over 30 years. New York's recycling infrastructure is not "broken." An increasingly significant portion of packaging and paper products has become broken, and is no longer aligned with reuse and recycling infrastructure and the goals of recycling.

A bad Extended Producer Responsibility program could exacerbate this misalignment, while a good Extended Producer Responsibility program could correct it.

A poorly designed Extended Producer Responsibility program would allow producers to continue choosing to make packaging designs that are difficult or impossible to effectively reuse or recycle and cause more environmental harm .

A good Extended Producer Responsibility program would realign recyclables with New York's recycling infrastructure and, as a result, reduce or eliminate toxics in packaging and paper, significantly reduce overall waste volumes incinerated and landfilled, and reduce plastics in our urban environment. Positive effects of a good EPR bill will help protect the health of the people, fairly reimburse municipal and private participants in the EPR plan, and reduce the harmful effects of packaging and paper waste on overburdened communities.

In order for Clean Air Action Network and our vast, diverse, and engaged constituencies to feel confident about this EPR legislation, the areas we have identified for legislative amendments on their behalf must be addressed before passage.

- 1. Preemption Language:** The preemptive language in Title 33 § 27-3315 is too broad, making the continued existence of NYC programs such as the successful electronics EPR program vulnerable. Preferable is the preemption language in Senate Bill S1185-C § 27-3323, which narrows the exclusive responsibility of the state to determining costs and funding mechanisms, and allows localities to determine details of their recycling system.
- 2. Municipal and Private Reimbursement:** The reimbursement mechanism of activity-based cost as described in § 27-3307 (f) will consist of “cost of consumer recycling collection, on-site processing cost for each readily-recyclable material, processing cost of non-readily recyclable material types, transportation cost of recycling for each material type, disposal costs for any residual or non-recyclable material, and any other cost factors as determined by the advisory committee or department” this will likely be difficult, if not impossible, to calculate with reliable accuracy and will introduce substantial administrative costs. These costs will be borne not by the producers but by the municipal and private entities seeking reimbursement. This mechanism should be simplified or replaced with a reimbursement mechanism that reduces such costs as in Senate Bill S1185-C § 27-3323.
- 3. Performance Standards for Packaging:** Design Standards for performance should be developed in the form of targets that include dates for achieving desired outcomes in terms of reducing packaging waste. Title 33 § 25-9 (a) should include timetables for target achievement that are sensitive to producers’ need to gradually learn the means for achieving stronger outcomes. For example, non-recyclable or non-reusable packaging could be reduced by 10 percent two years into the program, and by an additional 10 percent every two years thereafter. Failure to achieve reduction targets should result in fines and reusable packaging should be rewarded according to targets set.
- 4. Reducing Toxic Chemicals in Packaging and Recycling:** Title 33 does not cover toxic chemicals in packaging. Experts have listed ten substances that should not be used in packaging or reusable products above the practical quantification limit: (1) Ortho-phthalates; (2) Bisphenols; (3) Per- and polyfluoroalkyl substances (PFAS); (4) Lead and lead compounds; (5) Hexavalent chromium and compounds; (6) Cadmium and cadmium

compounds; (7) Mercury and mercury compounds; (8) Benzophenone and its derivatives; (9) Halogenated flame retardants; and (10) Formaldehyde. Language prohibiting these substances from packaging should be added to Title 33.

5. **Thermal Recycling:** Title 33 § 5 12 – in its definition of recycling – allows for the possibility of “thermal treatment processes that produce substantial production of a marketable non-fuel product or secondary raw material.” This language should be removed from Title 33. These technologies: chemical recycling (often called “advanced recycling”) and thermal recycling must be proven to be safe, effective and economically and environmentally feasible at scale before inclusion in this legislation, and should be separated from the bill for legislative consideration after thorough review.
6. **Bottle Law:** The New York State Bottle Deposit Law provides both employment and income for thousands of New York City residents as well as achieving a high recycling rate. Title 33 § 27 calls for “an evaluation of the feasibility and recommendation for adding beverages in beverage containers as defined in title ten of this article to be covered in the packaging and paper products definition of this title.” Deposit systems like that of New York State’s Bottle Law have proven to be substantially more effective than that of curbside recycling; specifically, a 71 percent recycling rate was found for beverage containers covered in the New York State Bottle Law compared to 20 percent for curbside recycling with containers not in the Bottle Law (New York State Association of Counties Bottle Bill White Paper, June 2016). The language in Title 33 § 27 to evaluate the addition of beverage containers to the EPR program should be removed from Title 33 §. 27-3307 e. v (o).
7. **The Responsibilities of Producers:** Producers should make changes to their product design to reduce packaging consumption and waste to adhere to the requirements of recycling systems, so as not to have mixed components in their packaging. Clearly, producers should pay fees based on the amount, by weight, and type of packaging material that is sold or distributed for sale in or into the State – and eventually unrecyclable packaging should be banned. Title 33 (12.9) defines Producer Responsibility Organizations (PROs) as not-for-profit organizations “designated by a group of producers to act as an agent on behalf of each participating producer to develop and implement a producer responsibility program.” Instead of this extensive oversight afforded to PROs, we believe the primary role of a PRO should be the collection and distribution of fees only. All associated guidelines should be set by the department.

8. **The Role of Government (Department of Environmental Conservation) versus**

Producers: As defined in Title 33 § 27-3307, the Producer responsibility program plan will create structural asymmetries that place municipal and private recycling experts in New York at a disadvantage in relation to producers. This section should be remediated to provide enhanced department control. The department as defined under Title 33 § 3305 should create mandates for packaging design that reduce packaging consumption, non-recyclable packaging, toxic pollution, and demands on natural resources. A public hearing should then be held jointly by the Advisory Committee and the department to obtain comments from a variety of stakeholders on the proposed guidelines. Following adoption of the guidelines agreed upon after the public hearing, the department should monitor producers' performance in implementing the program according to the guidelines as adopted. Non-compliance with the guidelines should result in fines if the department finds non-compliance. Sufficient resources as part of the funding from the Extended Producer Responsibility plan must be allocated to the department to effectively monitor and regulate producers' activities. These changes will help prevent Producer Responsibility Organization(s) from developing an undue oversight over its own operations and targets. This undue oversight could impinge upon any future progress made toward Zero Waste by 2030, progress already achieved to date as well as any innovation and progress towards those goals in New York.

We prefer that the Legislature pass no Extended Responsibility Producer bill, rather than an inadequate or ineffective EPR bill.

Any Extended Responsibility Producer Legislation enacted in New York State should at minimum not reverse the progress made in New York regarding recycling over the past 30 years, nor should it impinge upon any future progress likely to be made on our goal of Zero Waste by 2030.

We look forward to working with the Legislature to develop appropriate legislation to move away from harmful and polluting packaging and better support public infrastructure and programs for recycling, composting, and reuse in New York State.