



March 2, 2021

Dear Senators Kaminsky, Hoylman, Krueger, May, and Serrano:

As the leaders of New York City's Solid Waste Advisory Boards (SWABs -- Brooklyn and Manhattan) and Advisory Board Organizing Committees (Bronx and Queens), we are writing today to share our critical appraisal of Bill S1185A, an act to amend the environmental conservation law, in relation to establishing the Extended Producer Responsibility (EPR) Act.

We applaud the bill's overall intention and agree it is in the State's interest for covered material and product producers to undertake responsibility for their products' end-of-life management. For example, in our roles leading New York City's SWABs, we have seen firsthand the way New York City and New York State have struggled to maintain robust recycling systems amid an economic downturn. In New York City, due to COVID-19 budget cuts, residential organics recycling was halted, hazardous material collection operations delayed or suspended, and DSNY faces further reductions in its services in the year ahead. EPR would require businesses to do their part to keep our communities clean, create value from their products at the end of life, and reduce the extent to which this critical work is shaped by municipal budgets, protecting our communities. We have concerns, however, about how the legislation will be enacted and enforced, most notably assigning broad oversight responsibility to a Producer Responsibility Organization (PRO) led by producers themselves.

Rather than rushing to pass this bill into law, we urge the State to:

1. hold additional public hearings and comment periods to engage a more diverse set of stakeholders;
2. critically examine the current bill under the additional lenses of racial, public health, and environmental justice, as well as inclusivity for all stakeholders;
3. consider the upcoming recommendations of the State's Climate Action Council, which is currently considering reforms to waste management in the State, including EPR, and in consultation with the Climate Justice Working Group, with a special focus on how the law can be directed to helping the State achieve its urgent climate goals.

As the bill is currently written, we have objections related not only to the PRO model but also its potential efficacy. In particular, we recommend re-evaluating and/or revising the following:

- A significant amount of financial and regulatory decision-making power is devolved to the PRO. This risks creating an administrative system that serves the interests of producers rather than the public as far as possible. As written, this risks creating a monopoly, reducing transparency, and losing control over the quantities and expenditure of funds generated by the EPR scheme to the PROs without public oversight.
- Language in the EPR bill that shields the PRO from laws regarding antitrust, restraint of trade or commerce, in the course of executing the provisions of the EPR legislation, places the residents of New York State at a distinct disadvantage.
- The PRO is responsible for setting both the minimum post-consumer recycled content rate and minimum recycling rate for each material in the plan. Although this must be approved by New York State's Department of Environmental Conservation (DEC), it is reasonable to assume the PRO will aim for a less ambitious target than if the rates were set by DEC. DEC should set the clear targets PROs need to achieve.
- There is no requirement for the PRO to set targets related to waste reduction or reuse of packaging, beyond vague exhortations; again, it is reasonable to assume this will be resisted except where there is a clear financial benefit. These targets should also be set by DEC.
- The use of weight as the sole metric for waste performance, disregarding other metrics such as volume and carbon footprint, risks encouraging a shift from one single-use material to another in lieu of genuine progress toward sustainable packaging. In particular, it may encourage a shift toward using *more lightweight* plastic, which is difficult to recycle and has well-documented harmful effects on both human and animal health. This should be addressed by a more inclusive set of metrics and clear instructions prohibiting an increase in single-use plastic.

- The definition of “recycling” in the bill excludes landfill and energy recovery by incineration. However, it should also exclude other processes that do not constitute recycling in the true sense such as pyrolysis, waste to fuel, and burning in cement kilns.
- The language related to toxicity in packaging is not strong enough: as it stands, the bill mandates a variable charge based on the presence of hazardous substances that render a product unrecyclable or contaminate the recycling process. However, there is no clear target to reduce the use of toxic substances in packaging. This should be included in the language of the bill.
- There is a lack of clarity around the organizational status of the PRO. The bill text states that the PRO may be “a registered 501(c)(3) charitable organization or 501(c)(4) social welfare organization” which, along with the loose definition of a “a not-for-profit organization” leaves significant room for interpretation. This should be clarified such that the PRO’s organizational structure does not benefit producers unduly.
- The language regarding “preemption” is key and should be retained in future iterations of this legislation. New York City’s existing infrastructure for domestic recycling collections, notwithstanding poor participation rates and the glaring lack of provision for NYCHA premises, is robust and well-established and has the capacity to handle a significant increase in capture rates. This existing infrastructure should be expanded upon rather than reinvented by third parties.
- Given that the ultimate responsibility of enforcing the provisions of this legislation lies with DEC (with specific reference to the supervision of the PRO(s) to ensure compliance and prevent abuses) it is vital that DEC be provided with appropriate funding, tools and staff to adequately execute these responsibilities. There is currently no provision for extra funding or resources in the bill as it stands.

We welcome the opportunity to meet or speak with you about how we can improve this legislation before it is passed to ensure it accomplishes our shared goals to reduce the waste that negatively impacts our State.

Sincerely,

Matthew M. Civello, Chair, Manhattan Solid Waste Advisory Board (Pending)

Wylie Goodman, Chair, Queens Solid Waste Advisory Board Organizing Committee (Pending)

Shari Rueckl, Chair, Brooklyn Solid Waste Advisory Board (Pending)

Dior St. Hillaire, Chair, Bronx Solid Waste Advisory Board Organizing Committee (Pending)