

March 25, 2021

Senator Todd Kaminsky, Chair
NYS Senate Committee on Environmental Conservation
Legislative Office Building
Albany, New York 12248

cc: Assemblymember Steve Englebright, Chair, Assembly Environmental Conservation Committee

Re: Amendments Needed to Senate Bill 1185-B, an Act to Amend the NY Environmental Conservation Law in Relation to Establishing the Extended Producer Responsibility Act

Dear Senator Kaminsky:

Thank you for your commitment to making packaging companies take financial responsibility for the packaging waste they put on the market. We have reviewed Senate Bill 1185-B and thank you for some of the important improvements that have been made. However, we recommend that several areas of this bill are changed to ensure that the Act effectively reduces waste and meets its intent of holding producers responsible.

Strengthen Oversight Authority and Create Essential Checks and Balances

Packaging companies have created a serious environmental problem with the large amount of waste they produce. This bill, as currently drafted, gives those very same packaging companies enormous responsibility to solve the problem, with very little oversight, by putting them in charge of the new non-profit Producer Responsibility Organizations. These companies have a track record indicating they are, and will continue to be, motivated by one thing: paying the least amount of money and not necessarily reducing waste. While that is understandable from the companies' perspective, this reality needs to be recognized in the law by providing the NYS Department of Environmental Conservation considerably more authority to take over the program and charge companies for the cost of the program if they do not achieve the goals of the program within a certain timeframe. To that end, the goals of the program must be enumerated clearly in this legislation, such as minimum recycled content standards and specific waste reduction goals. As currently written, there would be few checks and balances over the way the Producer Responsibility Organization(s) operate, and the new advisory committee does not have the resources or the authority to intervene in order to correct problems with implementation of the producer responsibility plan.

Add Critical Safeguards To Prevent Implementation Abuses

An improvement in this version of the bill prohibits the Producer Responsibility Organization(s) from spending money on lobbying, but the bill should also specifically prohibit the body from spending money on suing the state or local governments.

The bill continues to include liability exemptions for antitrust violations, restraint of trade and unfair trade practices. This provision should be removed from the bill.

Provide Funding To Ensure Sufficient Oversight

This is a sweeping new program that should be carefully overseen by the Department of Environmental Conservation (DEC), an agency that is already starved for resources. According to a recent report from State Comptroller DiNapoli, despite DEC's growing responsibilities, DEC's staffing levels have been flat for a decade and funding for basic operations has dropped by 10%. This bill must include sufficient new funding for the DEC to oversee the operation of the program.

Establish Binding Reuse Targets for Specific Industry Sectors

Improving and encouraging more recycling is only one small piece of the formula needed to effectively reduce waste. In order to resolve the global solid waste and plastic pollution crisis, the market must transition to reusable products. Creating binding reuse targets for specific industries would help create the conditions and investment needed for larger-scale reuse technology and infrastructure. For example, the European Union has proposed individual companies achieve a reusable packaging rate of 25% within 5 years and 50% within 10 years of adoption. The following industries should be included in these targets: 1. Food service: take out, delivery of prepared meals, meal kits; 2. Consumer packaged food and beverage products; 3. Consumer packaged Cleaning Products; 4. Consumer packaged Personal Care products. 5. Transportation/shipping packaging, both for wholesale and retail goods.

Include Commercial Waste

As currently written, this bill only covers residential waste, not commercial waste. In many communities, commercial waste accounts for as much as half of the total waste stream. If the immediate inclusion of commercial waste presents unique issues to deal with, at a minimum, the bill should phase in commercial waste after a year. Plastic is plastic and cardboard is cardboard, regardless of whether it comes out of a household or a business.

Establish Minimum Material-Specific Recycled Content Standards

One of the most important things that is missing from the current draft is the establishment of minimum recycled content standards for packaging. The amended bill leaves these decisions to be made by the packaging industry but this policy decision should be made by the Legislature, not by the very companies that are currently not using enough recycled content material and consistently failing to meet their own recycled content goals. Legislation in California and New Jersey includes material-specific recycled content requirements and New York's legislation should do the same.

Reject False Solutions

The amended bill prohibits some incineration technologies but not all. The legislation should be expanded to exclude gasification, pyrolysis, plasma arc technologies, waste to fuels, and burning in cement plants and steel plants. The bill should also prohibit the "recycling" of plastics for road construction. These technologies may be attractive to businesses on paper, but in reality they generate air pollution, emit significant amounts of greenhouse gases, and create toxic ash which

requires the building of new toxic ash dumps. Incorporating plastics into roads should be prohibited, as it increases the microplastic pollution of our air and water. The bill should also clearly prohibit chemical recycling rather than leaving that determination to the Department of Environmental Conservation. These technologies are all false solutions that ultimately undercut recycling and waste reduction measures and fuel our climate crisis.

Funding for Recycling

We share your commitment to finding new funding for municipal recycling programs. However, the statutory goal of any EPR program should be to drive waste reduction. We need a comprehensive law that will incentivize companies to reduce packaging or make it reusable or refillable. Providing funding for recycling is not the paramount goal of EPR. While local recycling programs do need funds, these new funds would not become available for at least four years. We support including additional funding in this year's budget to support local recycling programs. For the immediate future, this funding is a separate issue from EPR.

We greatly appreciate the effort put into this bill. We believe that with the above recommended changes, this legislation will be effective in dramatically reducing pollution and set the standard for our nation as we move to enact extended producer responsibility.

Thank you for your consideration of these comments.

Sincerely,

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