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BEFORE THE NEW YORK STATE ASSEMBLY WAYS AND MEANS COMMITTEE AND SENATE FINANCE COMMITTEE

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The production, use and disposal of plastic is one of the greatest environmental and health threats of our time. In this year’s state budget, lawmakers have an opportunity to take bold action to help solve this problem. Plastic pollutes our air, water, soil, and bodies, threatens fish and wildlife and ecosystems, increases illness, widens inequality, and hastens the climate crisis. A report issued by the National Academies of Sciences, Engineering, and Medicine on December 1, 2021, concluded that “Without modifications to current practices in the United States and worldwide, plastics will continue to accumulate in the environment, particularly the ocean, with adverse consequences for ecosystems and society.” This is a clarion call for legislative action.

Beyond Plastics calls on the Legislature and the Governor to take action in this year’s budget on the following three policies:

1. Modernize New York’s Bottle Bill;
2. Create a new category in the proposed Environmental Bod Act to fund waste reduction, refill, and reuse systems.; and
3. Adopt an effective and strong Extended Producer Responsibility program for packaging and some paper.

WHY STATE ACTION IS NEEDED

The United States is the largest producer of plastic waste in the world. In 2016 alone, it generated 42 million metric tons of plastic, exceeding all of the European Union member states combined. Because it is not biodegradable, all the plastic ever manufactured is still present on earth. Much sits in landfills or is littered through the ecosystem. Perhaps the only thing more shocking than these figures is how recent the plastics problem is. Half of all plastics ever made were manufactured in the past 16 years, generally to meet consumer demand created by the plastics industry itself, such as the use of plastic shopping bags and take-out “clamshells.” Forty percent of virgin plastic is used for single-use packaging, much of which is utilized for moments before it is discarded. The impact of this is sobering.

- **Plastic production is a major driver of the climate crisis.** Plastics release climate warming emissions at every stage of their lifecycle, hastening climate change. Here in the U.S., the plastic industry’s greenhouse gas emissions are poised to surpass those of the coal industry

by 2030. If plastic were a country, it would be the world's fifth largest greenhouse gas producer. We cannot solve our climate crisis without also solving our plastic pollution crisis.

- **Plastic pollution is an environmental justice issue.** The burden of plastic is disproportionately borne by low-income communities and communities of color. According to Beyond Plastics landmark report “The New Coal: Plastics and Climate Change” published in October 2021, ninety per cent of the U.S. plastic industry’s climate change pollution occurs in just 18 communities where residents earn 28% less than the average U.S. household and are 67% more likely to be people of color. In addition to greenhouse gasses, these facilities also emit massive amounts of particulates and other toxic chemicals into the air, threatening residents’ health. Landfills and incinerators are also overwhelmingly located in low-income communities and communities of color where residents are sickened by air and water pollution.
- **Plastics are a threat to aquatic ecosystems.** They damage rivers, lakes, beaches, and bays by impeding the flow of water and confusing wildlife, which often mistake them for food. Fish, plankton, whales, and seabirds are all known to ingest plastic, which either kills them or works its way along the food chain. Even the open ocean is awash with plastics, which mostly sink to the floor of the ocean and become irretrievable. It is estimated that 8- 16 million metric tons of plastic enter the ocean each year, a quantity expected to triple by 2040. By 2050, there will likely be more plastic in the ocean than fish, by weight. Images of this destruction - plastic in the ocean, beached whales, injured sea turtles, starved sea birds - appear in the news and on social media, leaving many people feeling hopeless.
- **Instead of biodegrading, plastic breaks into smaller and smaller pieces.** They eventually become fragments so tiny that they pervade every aspect of our world: water, soil, food, and the air we breathe. These pieces, called microplastics, contain the toxic chemicals used to manufacture plastics, and they easily absorb more as they move through the environment. These chemicals are known carcinogens and endocrine disruptors, whose presence in the human body is alarming to scientists. Recent findings that microplastics can cross into the human placenta have raised even greater concerns. Microplastics also pose a threat to agriculture, as they disrupt soil health. A report from the United Nations released on December 7, 2021, found that plastic has become pervasive in agricultural soils, which contain larger quantities of microplastics than oceans. Images taken through a microscope have revealed fragments of microplastic inside the vasculature of plants, a phenomenon associated with stunting and reduction of crop yields.
- **We cannot recycle our way out of this problem.** For the past 30 years, the plastics industry has promoted recycling as a solution to the plastics problem, yet less than 9% of all plastic is actually recycled. This is not an accident. From its inception, plastic recycling was inefficient and poorly conceived. Corporations funded and promoted it because it gave consumers a sense of security about their purchases; plastic packaging, they argued, was harmless as long as users placed their bottles in the blue bin. Ecologists and others refer to such assertions as “false solutions.” Nearly all of the alternatives suggested by the plastics and petrochemical industry fall into this category. Incineration, burning waste at cement kilns (a.k.a. “waste-to-fuel” and “waste-to-energy”), pyrolysis, gasification, “advanced recycling” and “chemical recycling are all fraught processes that are inferior and too energy-intensive to be

scaled into general use. Their main role is to distract attention from the extent of the crisis, generate goodwill toward weak voluntary programs, and block efforts to promote regulatory action.

- **The overproduction of plastics is driven by manufacturers, not market demand.** As the economy moves away from reliance on fossil fuels for electricity generation and transportation, the fossil fuel industry is losing a significant portion of its market. The investment in new plastic production facilities is a hedge against this loss. Petrochemical manufacturers are producing and marketing single use plastics at an accelerated pace to make up for declines in fuel revenues. Plastics are “Plan B” for their future earnings. But there isn’t a “Plan B” for the rest of us.

RECOMMENDED POLICIES TO INCLUDE IN THE BUDGET

Bottle Bill

Beyond Plastics recommends modernizing the NY Bottle Bill. 2022 is the 40th anniversary of New York’s highly effective container deposit law, also known as the Bottle Bill. Signed into law by Governor Carey and sponsored by Assemblymember G. Oliver Koppell and Senator James Lack, the Bottle Bill is one of the most successful environmental laws in state history and a stellar example of Extended Producer Responsibility. It is long past time to require deposits on non-carbonated beverages such as iced teas, wine, liquor and those pesky little single-serve “nip” bottles which litter our neighborhoods, parks, and beaches. The deposit should be raised to a dime and a percentage of products should be sold in refillable and reusable containers. Some amount of the unclaimed deposits should be used to build refill and reuse infrastructure.

Funding for Waste Reduction and Reuse

Beyond Plastics recommends creating a new category in the proposed Environmental Bond Act to fund waste reduction, refill, and reuse systems. The state’s solid waste hierarchy puts waste reduction at the top but it never gets top billing when it comes to funding or policy. The best way to save taxpayer dollars on waste disposal is to enact policies that make less waste. Examples of building that infrastructure include: fund schools to install dishwashing equipment in school cafeterias so students and teachers can stop eating food on single-use disposable plates and utensils. Do the same at public colleges and universities. Second, this budget should provide funding to the 59 local offices of the Aging that support the vitally important Meals on Wheels programs so that food can be served on reusable, durable dishware and not single use plastics. Millions of meals are delivered to senior citizens and homebound New Yorkers every day, all on single-use disposable packaging, including a tremendous amount of single-use plastics. This work is done by 1,200 community based organizations and includes feeding sites at 800 senior centers. For home delivery, there is a built-in return system: when new meals are delivered to homes, the reusable packaging can be returned. It then needs to be washed by dishwashing equipment, which is very limited or non-existent in the commercial kitchens. State funding for dishwashing equipment could launch this sensible program. Third, put a deposit on wine bottles so those bottles are returned to retail stores, but simultaneously fund commercial bottle washing operations in the Finger Lakes and Long Island so that wineries can shift to refillable wine bottles, saving them money by not having to purchase new glass bottles. There are numerous other opportunities for reuse and refill by business entrepreneurs and small businesses all over the state, but they need state funding.

Extended Producer Responsibility

A strong and transparent Producer Responsibility Law is needed to solve the growing problem of packaging waste. Adopting a weak or ineffectual law will be a giant setback. A well-designed EPR program must REQUIRE packaging to be either reduced, reused, or refilled over a ten year period. The rest of the packaging should be made from recycled material or be easily recycled or compostable. A number of toxic chemicals, not just PFAS and phthalates, must be prohibited from packaging to ensure that toxins are not recycled into new products. New funding should flow to local governments for waste reduction (the least expensive way to deal with waste is by reducing it) and recycling programs. Just as we have fuel efficiency standards for cars, we need environmental standards for packaging. Equally important, we cannot have Producer Responsibility Organizations that are controlled by the producers of packaging— the sector that created the problem in the first place. Putting them in charge of solving this gargantuan problem, with oversight from a business dominated Advisory Committee and an understaffed state agency will not work. It is a recipe for failure and delay.

We appreciate the time that lawmakers and Governor Hochul have put into drafting bills. Beyond Plastics has carefully reviewed the Governor’s budget bill and has identified significant problems, as outlined in this testimony. We cannot support the budget bill as drafted and urge lawmakers and the Governor’s office to review a model bill which we have drafted with other environmental organizations. A Summary of that bill is attached, along with a handy chart which compares the Governor’s budget bill with this model Extended Producer Responsibility bill. The full bill draft is also available upon request.

Beyond Plastics appreciates the hard work being done by Senator Kaminsky, Assemblymember Englebright and now Governor Hochul on EPR. The details really matter. Below are our comments on Governor Hochul’s proposed budget bill and recommendations for changes.

1. Producer Responsibility Organization System Design + Accountability

Creates an unworkable system of self-regulation, with minimal regulatory oversight that will take years to ramp up and will not be effective —wasting precious time.

There are a number of significant problems with how the Governor’s budget bill structures the Producer Responsibility Organizations, as it relates to the flow of funding, cooperation to complete projects, overall improvement of recycling, enforceability, and program oversight.

The budget bill states that the funding created by the PRO through the producer fees is to be used for the PRO to cover the cost of their plans and reimbursing municipalities, Material Recovery Facilities (MRFs) and other entities involved in the recycling supply chain for managing the packaging and paper waste created by the Producers. It is unclear, however, in the proposed budget bill what each municipality will receive, how that will be calculated, and how that will be included in the PRO plans. Furthermore, key to fixing our broken recycling system is cooperation among the various recycling stakeholders to complete big projects. These projects should be identified in the Needs Assessment, but there is no mechanism in

the proposed legislation to require the PROs to work together to complete these larger infrastructure projects that are necessary to fixing recycling.

The proposed legislation risks making recycling more confusing and less accessible for New York State residents. The budget bill allows for the possibility of producers to sponsor their own mailback programs, drop-off sites, and drop-off events. Accessibility requirements for drop-off sites are 15 miles—which in New York City and other areas, renders them inaccessible, especially for New Yorkers who do not have cars.

There is no limit on the number of PROs that can be formed in the state and producers can choose to implement their own take-back programs without belonging to a PRO. With an estimated 2,000+ producers this will likely become an unworkable, unmanageable, and unenforceable program. Each PRO or producer must create their own plan in consultation with the business-dominated DEC Advisory Committee and each plan must address its own members' waste collection needs. This is too large a responsibility to assign an Advisory Committee made up of volunteers, too many potential points of enforcement, too much subjectivity, and too much self-regulation by the industry that created this waste crisis. It is very likely that the budget bill, if adopted, would set up a program where the PROs will be managed and controlled by packaging and paper companies with minimal regulatory oversight. This is a recipe for failure. Companies will be driven to spend the least amount of money possible and it will take years to recognize that this construct does not work – wasting valuable time. We would not expect the fossil fuel industry to solve the climate crisis. It is not realistic to think that the packaging industry will solve the problem of packaging, particularly the growing use of single-use plastic packaging. They have not in the past and the budget bill puts them in the driver's seat to solve the problem in the future.

2. Advisory Committee

The composition and role of the Advisory Committee is inappropriate and will not provide the intended oversight.

There are significant problems with both the makeup and the role of the Advisory Committee. It is too business-heavy and we know from past experience that the members representing environmental and consumer interests will likely be able to dedicate a small sliver of their time to the work, whereas the industry representatives will have much more resources to spare, further aggravating the imbalance.

All members appointed by the DEC commissioner, the very powerful unelected and unaccountable advisory board would consist of 3 municipal representatives, 3 recycling industry representatives, 2 packaging manufacturers, 1 retail trade association, 1 consumer advocates, 1 environmental justice representative, 1 environmental representative. Plus, 3 packaging industry representatives as non-voting members. We see numerous opportunities for conflicts of interest and the need for many of these business representatives to recuse themselves from deliberations.

The Advisory Committee would have an unprecedented amount of influence over the program and there are many duties that we see as problematic. Chief among them is recommending

rates for recycling and post-consumer content in consultation with the regulated industry. This would become an example of industry self-regulation and we can think of no successful environmental program that allows the industry to set their own standards and self-regulate. The Advisory Committee, as envisioned, would be a policy-making body that would not be subject to many of the safeguards that the Public Officers Law and lobbying rules use to protect governance from corruption. Many of the business representatives would need to recuse themselves from decision making if it affects the financial status of their business.

3. Packaging Reductions

The Governor's budget bill has no packaging reduction requirements.

Packaging reduction is somewhat acknowledged, but mostly voluntary, meaning that it would result in little to no reductions in packaging waste. It is critically important that any EPR program in New York have the real effect of reducing packaging waste, particularly plastics. In order to see real reductions in packaging, through either elimination or reuse and refill systems, it is critical to set requirements in the legislation, not make them voluntary. In addition, any incentives for reusables must be directed to reuse and refill systems, not just the packaging. Reusable packaging that is not contained within a reuse and refill system will likely result in single-use packaging that is more durable and resource intensive. This would not be a net environmental benefit.

With 8-16 million metric tons of plastic waste washing into the ocean each year, we are turning our oceans into landfills. This problem starts on land and must be dealt with at the source. The United States is the largest generator of plastic waste in the world and therefore, we have an obligation to reduce the amount of plastic waste that we generate. New York is one of the largest states in the Nation and has an opportunity to lead by example.

Plastics recycling has been an abysmal failure, with the national recycling rate hovering around 8.5%. While recycling is important and works very well for many materials, we cannot recycle our way out of our plastic pollution problem.

Recycling and waste disposal is expensive. One way to make the entire system more affordable is to eliminate unnecessary packaging. This will save taxpayers money and will decrease the amount the covered producers need to pay into the system.

Packaging reduction requirements should push the industry to address the growing waste problem. While it may take some time for the Needs Assessment to be completed, for covered producers to set up their PROs and submit their plans, and for the DEC to develop the regulations, reduction requirements can begin within the first year and ramp up over time. This also helps to make enforcement more straightforward.

4. Packaging Design Standards

There are no packaging design requirements in the Governor's budget bill.

The legislation includes a process whereby a new Advisory Committee will develop recommended rates for recycling and post-consumer content, that the DEC can then put into regulation. The PROs are then directed to recommend changes to these rates in their annual report. This is the equivalent of asking the fossil fuel industry to recommend their rates of Greenhouse Gas emissions each year. What incentive do covered producers and PROs have to work together to fix recycling feedstock supply issues and design for recyclability if they can simply report that it was impossible to meet the targets without consequence? This approach runs the risk of fostering a race to the bottom for recycling and post-consumer content rates.

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 lower greenhouse gas emissions, especially from plastics which are set to surpass the emissions from coal-fired power plants within the decade. In order to grow our circular economy, reduce demand for natural resources, and reduce greenhouse gas emissions, it is critical to set requirements for recycling rates and post-consumer recycled content for packaging in the legislation.

5. Toxics

The bill needs to be stronger on eliminating the most toxic substances from packaging.

Elimination of Toxics from packaging should be contained within the same legislation and should include known toxic chemicals and chemical classes found in packaging, as well as known toxic packaging materials. Packaging that contains toxic substances poses a threat to the health of people and the environment during production, use, reuse, recycling, and disposal. These toxic substances can leach out of packaging during use; expose workers producing or handling the packaging; be down-cycled into new products; and contaminate waterways and communities along the packaging lifecycle. In order to achieve a truly circular economy, packaging must be made from the safest materials, free of the most harmful toxic substances.

An effective EPR legislation should ban the sale or distribution of any packaging or reusables containing the following chemicals or chemical classes:

- Ortho-phthalates
- Bisphenols
- Per and polyfluoroalkyl substances (PFAS)
- Lead and lead compounds
- Cadmium
- Mercury
- Hexavalent chromium and compounds
- Perchlorate
- Benzophenone and its derivatives
- Formaldehyde
- Halogenated flame retardants
- Toluene

Some materials that are made from toxic building blocks and/or have very high lifecycle impacts on frontline communities and the environment and should not be used for packaging or reusables. Therefore, the legislation should also ban the sale and distribution of packaging or reusables made from the following materials:

- Polyvinyl chloride
- Polystyrene (note: NY law only bans some expanded polystyrene)
- Polycarbonate

It is important that the legislation contains language that directs DEC to review and update the list of chemicals or classes of chemicals in packaging every three years. It should also allow the public the ability to petition the DEC for the inclusion of new chemicals or classes of chemicals to the list of prohibited substances.

6. Definition of Recycling

The definition of “recycling” leaves room for waste-to-fuel or waste-to-energy schemes to be considered recycling.

Given that EPR is creating a system to fund better recycling that is paid for by the producers, it is absolutely critical that the funding go to real recycling projects that create more post-consumer materials to be used as inputs for future packaging manufacturing. The budget bill would allow producers to divert packaging waste to these types of projects, as long as another material is also created as part of the process, and call it recycling. This is a serious problem.

Most importantly, this is an environmental justice issue. These types of facilities are disproportionately sited in communities of color and low-income communities. These communities already face multiple environmental burdens. It is critically important that we do not create a system that is either purposely or unintentionally causing a proliferation of waste-to-fuel facilities and the latest “chemical recycling” false solution.

7. Relationship to the Bottle Bill

Could lead to the eventual dismantling of New York’s Bottle Bill and prevent expansion.

Deposit return systems or "bottle bills" are proven to be the most effective way to recover and recycle beverage containers. It's one of the oldest examples of EPR in New York State. After 40 years of success, the NY bottle bill should be expanded to all non-carbonated, wine and liquor bottles and those small liquor bottles littering our communities referred to as nips. Beverage container deposits should be raised to a dime. There should also be a requirement that a percentage of beverage containers be sold in refillable containers; and beverage containers should have ambitious recycled content requirements. Finally, some unclaimed deposits should be used to build infrastructure for refillable and reusable systems. Governor Hochul's EPR proposal in the executive budget threatens New York's highly effective Bottle Bill and could prevent future expansion to additional beverage containers. Two specific sections are very worrisome:

Section 2 (o), Page 192 lines 1-3 directs the producers/Producer Responsibility Organizations in their annual report to include "an evaluation of the feasibility and recommendation for adding beverages in beverage containers as defined in title ten of this article to the covered packaging and paper products definition of this title." By directing producers to analyze each year whether containers covered under the Bottle Bill should instead be covered under EPR, the bill puts producers in control of deciding how their packaging should be managed and gives them a path to re-litigate what we already know: Bottle Bills are the most effective way to manage beverage containers.

In Section 27-3301, 5(a)(i) and 5(c)(iv), the definition of "packaging and paper products" on page 167 lines 16-23, and 168 lines 14-15 is designed to include beverage containers not currently covered under the Bottle Bill into the EPR system. Including in the EPR bill beverage containers that are not already covered under the bottle bill will likely close the door on future bottle bill expansion to these containers. It will also likely lead to confusion for New York State residents.

For all of these reasons, Beyond Plastics cannot support the Governor's proposed budget bill and urge the Legislature to take a close look at the model bill that has been developed by Beyond Plastics and other organizations, which we believe is a more effective approach to solve our packaging problems, particularly for plastic packaging.