



**Testimony of Judith Enck, President, Beyond Plastics
Joint – Public Hearing on the Climate Action Council Final Scoping Plan
January 19, 2023
Albany, New York**

Thank you for the opportunity to offer testimony today on this critical topic. My name is Judith Enck, and I am the founder and president of Beyond Plastics, a project at Bennington College in Vermont with a mission to end plastic pollution everywhere. I am on the faculty at Bennington, and I served as Regional Administrator for Region 2 at the U.S. Environmental Protection Agency, appointed by President Barack Obama.

Solid waste issues are climate change and environmental justice issues. The scoping plan recognizes that the production, distribution, and disposal of materials that become waste generates greenhouse gas emissions and toxic pollution, disproportionately impacting low-income communities and Black, Brown, and Indigenous people. To put a finer point on this, the rise of plastic waste and plastic packaging, in particular, has led to immense challenges for fenceline communities where these plastics are either produced, landfilled, or incinerated, and has frustrated waste reduction efforts.

Plastic is the new coal. The hard-won reductions in greenhouse gas emissions from shuttering U.S. coal plants are being quickly canceled out by a new universe of climate-warming emissions from plastics. By 2030, emissions from plastics could exceed emissions from coal-fired power plants in the U.S., according to Beyond Plastics' 2021 report on plastics and climate change¹. Plastic production facilities are almost always located in communities of color. In the United States, 90% of pollution from plastic production is emitted into just 18 communities; these communities are two-thirds more likely to be communities of color.

¹ <https://www.beyondplastics.org/plastics-and-climate>

The Major Sources of GHG Emissions from Plastics in the U.S.²

Source	Annual GHG Emissions 2020	Projected Emissions by 2025
Fracking for ethane feedstock to produce polyethylene	36 million tons CO2e	42 million tons CO2e
Transporting + Processing Fracked Gases	4 million tons CO2e	8 million tons CO2e
Ethane Gas Crackers	70 million tons CO2e	112 million tons CO2e
Other Plastics Feedstock Manufacturing	28 million tons CO2e	38 million tons CO2e
Polymer and Additive Production	14 million tons CO2e	16 million tons CO2e
Exports and Imports	51 million tons CO2e	57 million tons CO2e
Off-Gassing Foamed Plastic Insulation	27 million tons CO2e	
“Chemical Recycling”		18 million tons CO2e
Municipal Waste Incineration	15 million tons CO2e	17 million tons CO2e
Totals	245 million tons CO2e	308 million tons CO2e

The Climate Law Scoping Plan directs the New York State legislature to do many things to address the waste sector’s contributions to climate change and environmental injustice. The plan calls on the legislature to pass an Extended Producer Responsibility (EPR) bill for packaging and other materials in 2023 as the main legislative route for reducing waste and greenhouse gas emissions from materials and improving recycling. EPR can be a powerful tool for mitigating pollution from materials production, use, and disposal. **However, New York must not take for granted that Extended Producer Responsibility will decrease the use of virgin materials and greenhouse gas emissions simply by making producers financially responsible for the end-of-life impacts of their products and packaging.**

The unintended consequences of ineffective EPR bills can be prevented with strong directives, which are clearly laid out in the scoping plan and now must be incorporated into law. Perhaps most significantly, the plan calls for a complete phaseout of single-use packaging. This is *very important*. The scoping plan also calls for toxics reduction in materials and products, investments in reuse and refill systems, and major improvements to recycling and composting infrastructure, with disposal being the absolute last resort.

²https://static1.squarespace.com/static/5eda91260bbb7e7a4bf528d8/t/616ef29221985319611a64e0/1634661022294/REPORT_The_New-Coal_Plastics_and_Climate-Change_10-21-2021.pdf

This is not a situation of “perfection being the enemy of the good” as New York has not done nearly enough to reduce plastics, and in particular, plastic packaging. New York must get the details right. The four existing EPR laws in other states (Maine, Oregon, Colorado, and California) have significant shortcomings. New York will not achieve its goals with conventional EPR policies, which leave waste reduction, toxics, and packaging design up to a Producer Responsibility Organization that is controlled by the consumer brands responsible for packaging pollution. You would not put ExxonMobil or Shell in charge of the state Regional Greenhouse Gas program, and we cannot put the packaging polluters in charge of the EPR programs. The legislature must use its authority to ensure that these essential waste reduction directives in the scoping plan are also key components of any EPR law it passes.

Beyond Plastics, along with our partner organization Just- Zero, have designed a model [Packaging Reduction and Recycling Act](#) which the state can use in 2023 to reduce packaging waste, eliminate toxic chemicals, and reduce plastic pollution. The bill would reduce unnecessary and excessive packaging by 50% over the first ten years of the program, ensure minimum recycling rates of 70% over twelve years, and make packaging safer by banning the use of certain known toxic chemicals and materials, all while creating an EPR system that provides fiscal relief to municipalities by holding companies financially responsible for managing their product packaging after it has been discarded. Funds generated by the program would be invested in reuse, refill, and recycling systems. For more information, I direct you to the [bill summary](#) and [model bill language](#). A very strong bill along these lines has been introduced by Senator Rachel May (SB1064), and is worthy of your support.

For any packaging reduction law to be effective it must include the following key provisions:

1. **Establish environmental standards for packaging.** Similar to fuel efficiency standards for cars and appliances, we need environmental standards for packaging: 50% reduction in packaging over ten years - achieved either through elimination or by switching to reuse/refill systems- and the rest must achieve a 70% recycling rate. Waste reduction comes before recycling in every waste hierarchy and will only be achieved if it is required. Plastics recycling is a failure, and we cannot rely on recycling to solve our plastics problem.
2. **Reduce toxics in packaging.** Packaging that contains toxic chemicals is harmful to human health and the environment and can make it unsafe to use recycled materials in future products. Known toxic chemicals and substances, such as PFAS, formaldehyde, mercury, and lead should be removed from packaging.
3. **No False Recycling.** Whether it’s called “chemical recycling” or “advanced recycling”, the technologies all emit hazardous waste, are mostly waste-to-fuel, and are often placed in low-income communities and communities of color. The last thing we need is to create more fossil fuels or to waste taxpayer dollars and valuable time on false solutions. These technologies should not be considered recycling- the definitions in any policy must make that clear.

4. **Provide financial relief to taxpayers and consumers.** Packaging companies should pay fees that are used to: reimburse municipalities and consumers for the cost of recycling packaging material, provide new funding for projects that reduce packaging waste and improve recycling, and fund state agencies for managing the program and enforcing the law. Companies should pay no fees for packaging used in reuse + refill systems.
5. **Include both residential and commercial waste.** Commercial waste makes up 40-60% of the waste stream; an EPR policy must apply to packaging waste generated in all sectors.
6. **Don't put the packaging industry in charge.** We would not expect the tobacco industry to implement effective anti-smoking efforts - do not allow consumer brands to self-regulate through Producer Responsibility Organizations (PROs). There needs to be binding performance targets set in statute, and strong accountability and oversight by state agencies, including the ability to completely disband poor-performing PROs.
7. **Ensure strong oversight and accountability.** A law is only as strong as its enforcement. Create a new Office of Inspector General specifically to enforce the program and make sure state agencies receive the funding necessary to implement and enforce the law.
8. **Avoid glaring loopholes.** Make sure the bill language does not allow packaging producers to wiggle out of compliance. For instance, Section 42060(3)(A) of the California EPR law exempts "single-use material that presents unique challenges in complying." This provision alone could make the California EPR law ineffective.
9. **Seek transparency and inclusion in the process.** Do not negotiate this complex and important policy behind closed doors. Hold public hearings and roundtables, invite citizens into the process, and hear all sides and then decide what is best for the people and the environment.

On packaging reduction, toxics reduction, and the contribution of packaging to greenhouse gas emissions, I am in agreement with the Climate Action Council. But I strongly oppose the section of this scoping plan that allows for the continued use of incineration for waste management. Incineration is an antiquated approach that further increases greenhouse gas emissions and causes harm to the residents of the communities they are sited in, which are overwhelmingly environmental justice communities. Carbon dioxide emissions³ and toxic pollution⁴ from incinerators are worse than those from coal fired power plants and they also generate massive amounts of toxic ash which must be landfilled. Take a guess at where those toxic ash dumps are located. If you guessed environmental justice communities, you are correct.

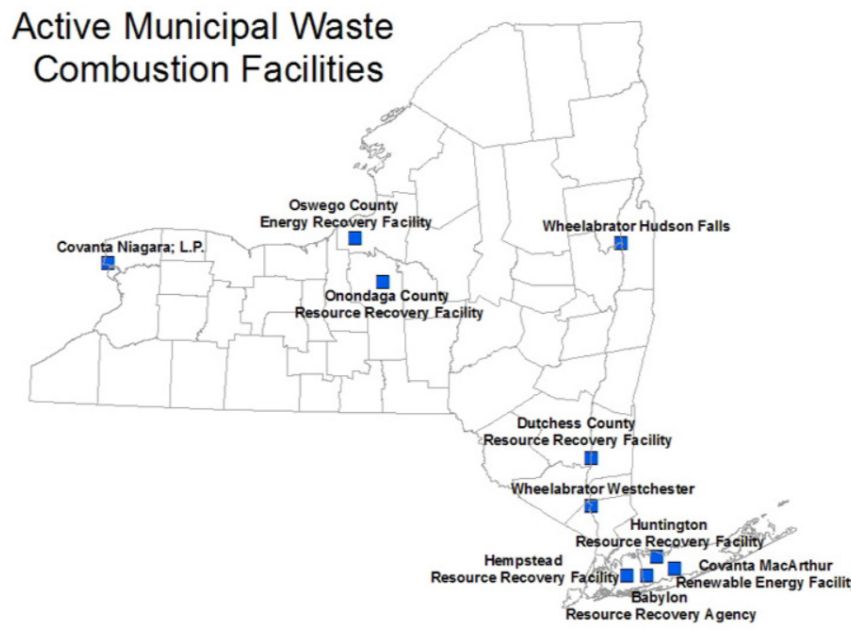
Any supposed benefit of "energy recovery" from burning waste is canceled out because incinerators demand large amounts of waste as feedstock. It is very difficult to reduce waste if municipalities are undermined by contractual obligations to incinerators that could result in penalties for not meeting quotas. New York State is home to ten waste incinerators, tied with Florida for the U.S. state with the highest number of these polluting facilities. This is a national

³ U.S. EPA, <http://www.epa.gov/cleanenergy/energy-and-you/affect/air-emissions.html>

⁴ <http://www.energyjustice.net/incineration/worsethancoal#ny>

embarrassment and causes harm in communities where these incinerators are located, and the communities where the massive amount of incinerator ash is sent.

Active Municipal Waste Combustion Facilities in NY.⁵



With the implementation of strong reduction, reuse, refill, and recycling requirements for materials, along with the increased diversion of organic matter to composting facilities, incinerators have no place in New York's future. The legislature must prioritize closing these ten incinerators to fulfill its environmental justice and climate change safety obligations to New Yorkers. They are old, they are polluting, they pose health risks, and they should be shut down.

Further, the legislature should pass a bill prohibiting chemical recycling in New York, which is false recycling. A new law is needed to prevent the next generation of trash burning and false recycling: so-called "Chemical Recycling," or "Advanced Recycling." Chemical and advanced recycling technologies mostly turn waste into fuel to be burned, producing substantial amounts of hazardous waste in the process. These facilities are almost always placed in low-income communities and communities of color. **The technologies as a whole are ineffective at managing plastic waste and building more of these facilities involves substantial public risks.**

These risks are not limited to greenhouse gas emissions or to local health impacts due to air pollution. From an infrastructural and budgeting perspective, **it is risky to direct scarce public resources into ineffective technologies that will inevitably reduce the amount of funding available for proven, safe methods of waste reduction**, such as building out a reuse and refill infrastructure. We should be spending public dollars on solutions that will reduce plastic waste at the source, not use multimillion dollar industrial facilities to transform one form of waste

⁵ <https://www.dec.ny.gov/chemical/67804.html>

into other forms of waste in a Cat-in-the-Hat-like fashion.⁶ These technologies should not be considered recycling—state law must make that clear. Our model bill, [The Packaging Reduction and Recycling Act](#) explicitly states that *false recycling is not a solution*.

The chemical industry has convinced 21 states to promote polluting and expensive false recycling technologies including pyrolysis, gasification, solvolysis, and gasification. Last session, Senator John Mannion and Assemblymember Alicia Hyndman introduced “Advanced Recycling” bills (SB7891/AB9495) as supported by the plastics/chemical industry. These bills would promote false recycling by exempting these polluting facilities from New York's solid waste and recycling laws. They would also open the door to taxpayer subsidies for these technologies that do not effectively recycle materials. We hope Assemblymember Hyndman and Senator Mannion will not re-introduce them this session and call on the NYS Legislature to adopt a new law prohibiting these facilities in our state.

The past eight years have been the warmest on record. The climate crisis is here, and it is most directly hurting low-income people. I saw this first hand working on the aftermath of Hurricane Sandy and Hurricane Maria in the Caribbean. I applaud Senator Kruger and her colleagues for convening this hearing and urge you to take bold action before it is too late. The [Packaging Reduction and Recycling Act](#) was drafted by national experts in waste management, recycling, conservation law, and enforcement, and it either meets the directives in the climate law scoping plan for packaging materials. I look forward to collaborating with you to pass this bill this year. Thank you.

⁶ “The Cat in The Hat.” [Seuss](#), Dr. (Theodor Geisel), 1957.