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Position Paper on the Waste Advisory Panel Recommendations to the Climate Action Council

Environmental Advocates NY

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About Environmental Advocates
Environmental Advocates NY fights for policies that will restore and protect New York's environment, support healthy, vibrant communities, and secure benefits and outcomes for all within and beyond the state through education, partnerships and advocacy.

Executive Summary

New York has committed to being a leader in the fight against climate change. The Climate Leadership and Community Protection Act (CLCPA), passed in June of 2019, places aggressive limits on greenhouse gas (GHG) emissions and sets the state on the path to a more just and resilient future. The details of how we reach the mandates of the CLCPA will be shaped by the Climate Action Council (CAC), the 22-member appointed body charged with drafting a scoping plan for the law by the end of 2021. The CAC is advised by working groups and advisory panels with expertise in the fields and sectors relevant to New York's climate impact, from climate justice to power generation. This paper concerns the recommendations to the CAC made by the advisory panel on waste.

This position paper outlines substantive changes to the Waste Advisory Panel's recommendations to the CAC and reflects the perspective of Environmental Advocates NY (EANY), a 50+-year-old New York State based environmental policy nonprofit and government watchdog, whose staff had a meaningful role in developing and advocating for New York's climate law (the CLCPA).

While many of the Waste Advisory Panel's recommendations are in line with EANY's policy priorities, there are four high level suggestions that could improve the equity and efficacy of the recommendations. The paper argues that the final scoping plan's waste strategies must further emphasize: Producing less waste (reducing consumption), prioritizing disposal diversion and resource recovery, reducing waste related pollution in disadvantaged communities, and avoiding "false solutions" like waste-to-energy or the combustion of waste.

Introduction

New York has promised to be a leader in the fight against climate change. The Climate Leadership and Community Protection Act (CLCPA), passed in June of 2019, places aggressive limits on greenhouse gas (GHG) emissions from New York and sets the state on the path to a more just and resilient future. The details of how we get there will be shaped by the Climate Action Council, the 22-member appointed body charged with drafting a scoping plan for the law by the end of this year. The Climate Action Council is advised by working groups and advisory panels with expertise in the fields and sectors relevant to New York's climate impact, from climate justice to power generation. This paper concerns the recommendations to the Climate Action Council made by the advisory panel on waste.

Waste sector emissions are especially pressing because they consist primarily of methane, a GHG that warms the atmosphere at more than 80 times the rate of carbon dioxide in the near term. The most recent report from the Intergovernmental Panel on Climate Change (IPCC) highlights the need to act immediately to curb the

rapid impact of methane on global temperatures.[1] The urgency of addressing methane emissions is also built into the CLCPA, which places an extra emphasis on methane by specifying that GHG emissions must be calculated using a 20-year global warming potential (GWP) instead of the more common 100-year GWP. When the 1990 baseline is updated to account for a 20-year GWP, the waste sector's share of economy-wide emissions more than doubles, from less than 6% to 13%.[2]

In May 2021, Environmental Advocates NY gathered 18 waste sector experts and practitioners for a roundtable to discuss solutions and practices that could reduce waste creation, incentivize sustainable waste management, reduce waste and pollution in disadvantaged communities, and create well-paying green jobs in the waste sector – all of which would dramatically reduce GHG and co-pollutant emissions in New York. This paper reflects many of the concerns and priorities of our roundtable participants.

Environmental Advocates NY supports the majority of the Waste Advisory Panel's recommendations. We especially appreciate the recommendation to enact broad Extended Producer Responsibility (EPR) policies that require producers to cover the cost of recycling their products and the recommendation to reduce fugitive emissions through regulatory and monitoring programs. At the same time, we believe that the recommendations can be strengthened by maintaining a rigorous focus on the entire lifecycle of waste, starting with source reduction, and by prioritizing disadvantaged communities in waste and pollution reduction as well as job creation.

Reduce consumption and waste

The GHG emissions limits set by the CLCPA do not leave room for modest ambitions. The law demands a 40% reduction in emissions by 2030 and an 85% reduction by 2050, to be shared across all sectors of the economy. To attain these reductions, we need robust solutions directed at every stage of the lifecycle of waste: the production of food, goods, and materials; the reuse and recycling of recoverable resources; the disposal of trash and organic materials; the transport and processing of waste; and the management of landfills. The most efficient solutions, however, are those that intervene at the earliest stages of the process: the best way to reduce waste emissions is to produce less waste, which is directly tied to our consumption behaviors. While it is important to develop solutions at every stage of the lifecycle, the scoping plan should prioritize upstream interventions that tackle consumption and minimize the production of waste in the first place.

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[1] "Global Assessment: Urgent steps must be taken to reduce methane emissions this decade," UN Environment Programme, May 6, 2021. https://www.unep.org/news-and-stories/press-release/global-assessment-urgent-steps-must-be-taken-reduce-methane

[2] NY State Dept. of Environmental Conservation, Revised Regulatory Impact Statement, 6 NYCRR Part 496, 12. https://www.dec.ny.gov/docs/administration_pdf/revisedris496.pdf

The Waste Advisory Panel proposes a variety of measures to reduce waste at its source. Digitally enhanced demand planning for grocery stores and restaurants is an excellent tool for reducing food waste; so is standardizing "best by" labels on food items. Preventing food from becoming waste is one of the most important things that New York can do to draw down methane emissions. Packaging is another critical waste problem, brought home to many Americans during the COVID-19 pandemic as they witnessed a surge in plastic take-out containers and packaging from online retail.[3] The Waste Advisory Panel recommendations should take a stronger stance on packaging across the board. The scoping plan should not only evaluate the possibility of a universal restaurant reusables model for takeout and delivery containers; it should direct legislation to require it. The panel's recommendation to evaluate requiring reusable shipping materials from online retailers should be a mandate, not a call to evaluate.

Addressing the ultimate source of waste, however, requires looking beyond consumption and packaging to production itself. The Waste Advisory Panel recommendations do not include a proposal made by the Climate Justice Subgroup to tax and regulate consistent overproduction of frequently discarded consumer goods and materials. This proposal would subject producers across all sectors of the economy to comprehensive, measurable, and equitable regulation and inspection, and exact penalties on overproduction that could be used to fund further waste-reduction projects. Designing and implementing such a policy would be controversial and complex, but the proposal deserves consideration from the Climate Action Council. Every step we take to reduce waste at its source will give end-of-the-pipe solutions a better chance of success.

Although not technically waste-sector emissions, we also urge the Climate Action Council to consider proposals to mitigate emissions associated with the distribution of food. Distribution is a GHG-intensive component of our food system that is closely tied to waste since inefficient distribution can lead to spoiled food being sent to landfills. Optimizing food transport, a measure proposed by the Climate Justice Subgroup, was not ultimately incorporated into the Waste Advisory Panel recommendations. This measure has the potential to reduce GHG emissions from both transport and food waste by increasing route efficiency, reducing handling and touchpoints, electrifying transport vehicles, and utilizing reusable crates and palettes for food instead of disposable containers in transit.
New policies are needed to achieve the degree of waste sector emissions reductions required by the CLCPA, but the path forward must also include a re

[3] Emma Newburger and Amelia Lucas, "Plastic waste surges as coronavirus prompts restaurants to use more disposable packaging," CNBC, June 28, 2020. https://www.cnbc.com/2020/06/28/coronavirus-plastic-waste-surges-as-restaurants-use-more-disposable-packaging.html

examination of policies that are already on the books. The drive to reduce waste in New York is not new, and there is much to be gained by implementing, evaluating, and improving existing policies, starting with those that address waste produced by the government itself. The Green NY program, which provides sustainability guidelines and purchasing specifications for state agencies, could be updated with user-friendly guides and factsheets that make it easier to identify items available from preferred sources, Minority and Women-Owned Business Enterprises (MWBEs), and others that meet Green NY specifications. New York can make it easier to purchase low- or zero-waste products by flagging items that meet Green NY specifications on state contracts and adding a filter to the OGS e-Marketplace. The State Surplus Property Program could also be updated to better support waste reduction goals by allowing for the donation of furniture and other lower-value products after the Office of General Services (OGS) surplus process has been completed. Currently, these donations are prohibited.

Prioritize disposal diversion and resource recovery

After source reduction, composting and recycling are the most effective methods of reducing waste sector GHG emissions. The scoping plan must prioritize policies that make it easier for communities to compost and recycle, and less convenient and acceptable to send waste to landfills and incinerators. That means not only mandating or incentivizing beneficial practices and penalizing detrimental ones, but also putting structures in place that enable communities – especially disadvantaged communities – to meet those mandates, earn those incentives, and avoid those penalties. The lack of transparency in the recycling process has been confusing and misleading for consumers. Based on a study by the Global Alliance for Incinerator Alternatives (GAIA), in examining the recycling streams of five U.S. cities, 64.3% of all plastic in the waste stream were not recyclable through municipal recycling or state redemption programs. In order for recycling systems to be improved, producers should be prevented from using non-recyclable or difficult- to-recycle plastics.[4]

The Waste Advisory Panel recommendation to co-locate food donation centers, compost sites, recycling facilities, and repair cafes is one example of the kind of structure communities will need. Micro-hauling with bicycles and electric cargo vehicles could be an essential element of the hub and spoke model that many operators are already using and experimenting with. Micro-hauling also pairs excellently with micro-processing – another burgeoning decentralized waste infrastructure management strategy.

The Waste Advisory Panel recommendations include a pay-as-you-throw fee program for all waste landfilled or combusted in New York or sent out of state. Pay-as-you-throw programs have been shown to reduce the total amount of waste sent

[4] Denise Patel, "A Tale of Five Cities: Plastic Barriers to Plastic Waste," The Global Alliance for Incinerator Alternatives (2021): 3-5. DOI: www.doi.org/10.46556/HEOY6222c

to landfills and incinerators and to increase recycling and yard waste diversion.[5] In order to maximize their success, pay-as-you-throw fees must be implemented in concert with robust recycling and composting programs that give people good alternatives to throwing things in the trash. They must also be designed to include equity considerations so that they do not place a disproportionate burden on disadvantaged households or drive illegal dumping in low-income communities.

The Advisory Panel also proposes to phase in required organics source separation, leading to an eventual ban on the combustion and landfilling of food scraps, food processing wastes, and other high-strength and organic wastes. This is an essential step that we fully support. Here too, the State must partner this mandate with programs that ensure universal organic waste collection from residences and commercial establishments. A good place to begin is with existing innovative models that prioritize reducing waste and pollution from waste in disadvantaged communities. New York City Housing Authority (NYCHA) has a program to enhance composting and food waste collection for public housing residents that could be replicated across the state. We appreciate the Waste Advisory Panel's recommendation to "expand successful models for organics collection programs inclusive of multi-family buildings and public housing."

We also support recommendations that facilitate composting for municipalities and small commercial composters. We echo the Climate Justice Subgroup's call to remove existing barriers that prohibit composting on parklands. In addition, DEC regulations around composting must be amended to enable small composting businesses to scale up in capacity and land use by reducing restrictions on siting while maintaining high environmental and public health operation standards, and by streamlining registration and certification processes.

The programs that are necessary to make composting and recycling easier for New Yorkers will require major investments of public funds. Improving recycling infrastructure, in particular, is an urgent and cost-heavy undertaking. Taxpayers cannot continue footing the bill; it is time for those responsible for creating the waste crisis to take responsibility for improving the system at large. That is why we applaud the Waste Advisory Panel's recommendations to enact broad Extended Producer Responsibility (EPR) or Product Stewardship legislation that would require companies to cover the cost of recycling their products. That said, it is important to consider that EPR programs do not always inherently reduce waste, and therefore New York's EPR policies should include within them detailed waste reduction measures. EPR policies should include stringent standards that direct funds toward waste reduction efforts and ensure that industry and corporations are not given the opportunity to heavily influence decision-making processes on the final policies.

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[5] Lisa A. Skumatz, "Pay as you throw in the US: Implementation, impacts, and experience," *Waste Management* 28, No. 12 (2008): 2782. https://doi.org/10.1016/j.wasman.2008.03.033

EPR policies must be judiciously structured to ensure that they drive beneficial innovations in materials and packaging and incentivize repair, reuse, and recovery of materials. And care must be taken to ensure that assigning companies responsibility for recycling their products does not interfere with another vital Waste Advisory Panel recommendation, to provide support for local reuse centers, materials exchanges, sharing hubs, and innovative waste-reducing businesses. To fix our broken recycling system, it will be necessary to foster participation on both the corporate and the community level.

While diverting waste from landfills and incinerators is a critical upstream solution to waste emissions, we caution Climate Action Council members not to over-emphasize diversion metrics in their decision-making. The diversion metric – the rate of recycling and composting relative to the rate of waste sent to landfills – is a statistic commonly used to track and evaluate waste-reduction programs, but it does a poor job of reflecting waste reduction and is easily skewed. For example, the most recent Green NY program progress report claims that State agencies achieved a 90% diversion rate in the 2019-20 fiscal year. However, the report also states that 80% of the material the State discarded that year was heavy debris from construction and demolition projects, much of which was recycled. When construction and demolition materials are removed from the totals, the State's diversion rate is closer to 50%. And while the diversion metric jumped by 24% from the previous year, making it appear as though the State had made progress, that statistic hides the fact that the total volume of waste increased dramatically over the same period.[6] To avoid the distortions that the diversion metric can encourage, the Climate Action Council should focus instead on trends in the weight and volume of material being sent to landfills and incinerators over time.

New York State must accurately measure and understand its waste in order to map out the solutions, verbalize the narratives, and visualize a path forward. We recommend that the CAC use both a consumption-based emissions inventory and conventional emissions inventory approach when developing the overall Scoping Plan recommendations on waste. This approach is becoming a standard in municipalities and states on the West Coast because it more accurately reflects resource-based emissions and can be a powerful mechanism enabling more robust waste, a circular economy policy and programming interventions.[7] This shift would help codify policies aimed at source reduction rather than simply diversion from landfill.

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[6] NY State Office of General Services, "Greening New York State: Ninth Progress Report on State Green Procurement and Agency Sustainability, Fiscal Year 2019-2020," 12.

[7] Berkeley CoolClimate, "Consumption-Based Greenhouse Gas Inventories," Accessed October 7, 2021. https://coolclimate.berkeley.edu/inventory

Reduce waste-related pollution in disadvantaged communities
The CLCPA charges the Climate Action Council with maximizing reductions of GHG emissions and co-pollutants in disadvantaged communities. The Council must understand that this provision of the law amounts to a mandate to phase out incineration of municipal solid waste.

Nearly 80% of U.S. incinerators are in environmental justice communities.[8] As of 2014, the Wheelabrator Hudson Falls incinerator in Washington County, NY was the highest per ton emitter of lead in the country.[9] Long Island's Babylon Resource Recovery Facility was both the highest per ton and the highest total emitter of mercury, releasing 320 pounds into the atmosphere in a single year.[10] Both incinerators are located in environmental justice communities.

The Climate Justice Subgroup of the Waste Advisory Panel strongly recommends decommissioning all New York State incinerators and ending contracts with out-of-state incinerators by 2030 – without allowing any subsidies, new incinerator permits, or incineration by other names. They stress that during the phase-down of incinerators, New York must require the best available continuous monitoring and control technologies for all pollutants at existing incinerators, fully enforce all environmental laws and permit conditions applicable to incinerators and ensure ash testing and enforcement of hazardous ash citing laws. The State should also require waste facilities to enclose and capture odors during this process, enforcing statutes designed to protect neighboring communities and enacting further protection where necessary.

These recommendations of the Climate Justice Subgroup were omitted from the Waste Advisory Panel's recommendations to the Climate Action Council, but the Council has an obligation to hear them. New York's waste problem is also a pollution problem that sickens low-income and BIPOC communities. Our reliance on siting disposal and burning, in environmental justice communities in the US, and in developing countries, is something that all relevant New York State policies and regulatory frameworks should strive to address. Continuing to burn New York's garbage is an act of environmental racism that violates one of the most important mandates of the CLCPA.

Caution regarding waste-to-energy
There is also a second provision of the CLCPA that impinges on incineration. Most incinerators produce electricity as a byproduct of waste disposal and generate

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[8] Ana Isabel Baptista and Adrienne Perovich, "U.S. Municipal Solid Waste Incinerators: An Industry in Decline," Tishman Environment and Design Center at The New School, 15. https://static1.squarespace.com/static/5d14dab43967cc000179f3d2/t/5d5c4bea0d59ad00012d220e/1566329840732/CR_GaiaReportFinal_05.21.pdf
[9] Baptista and Perovich, 40.
[10] Baptista and Perovich, 73.

income by selling that electricity to the grid. This business model will inevitably come into conflict with the CLCPA's provision that by 2040, the statewide electrical demand system will be zero emissions. The combustion of waste emits carbon dioxide and other co-pollutants; therefore, it cannot contribute to statewide electricity production after 2040.

There may be a promising future for waste-to-energy projects in other forms – for example, projects that generate thermal energy or use non-combustion fuel cell technology. But with all waste-to-energy proposals, the Climate Action Council must take caution to ensure that the climate benefits are real, and the climate and public-health risks are accounted for. The devil is in the details. At their best, waste-to-energy projects reduce the volume of waste, harness the value of unwanted byproducts that would otherwise be lost to the atmosphere as potent GHG emissions, and offset a small amount of the demand for energy derived from fossil fuels. At their worst, they produce more climate-warming emissions than offset and exacerbate the burden of air pollution on disadvantaged communities.

These risks are even more reason to focus on upstream solutions to managing waste. New York must address the problem at its source by investing in waste reduction, disposal diversion, and resource recovery. We have an opportunity to foster a resource-conserving circular economy, to develop a living-wage, green-collar labor force in economically depressed communities, and to mitigate decades of harm caused by waste-related pollution. Only if we seize these opportunities will we live up to the promise of the CLCPA.