



December 2, 2024

The Honorable Janet T. Mills
Governor
1 State House Station
Augusta, ME 04333-001

RE: Major Concerns - Packaging Stewardship Program – Reform Needed

Dear Governor Mills,

In July of 2021, the legislature enacted, and you subsequently signed, LD 1541 (PL 2021 Chapter 455) *An Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money*, into law. The purpose of the law is to establish a stewardship program for packaging, with the aim of reducing the volume of packaging and increasing the amount of recycling. While the stated purpose of this law is a positive one that we all support, the implementation of this law is proving to be incredibly challenging and frustrated by significant issues and flaws. Therefore, this letter is asking you to consider requesting a pause to the regulatory process to allow for changes to the rule and potential legislation to make the law more consistent with other states to leverage limited resources toward a more uniform approach.

Since the law's enactment, the Maine Department of Environmental Protection has been working on its implementation; stakeholder meetings were held throughout 2022 and into 2023, and on December 21, 2023, the Department presented the draft rules for implementation to the Board of Environmental Protection, beginning the formal rulemaking process. The rule was posted for public comment in early February, and a public hearing on the rules was held this past March. In May and June, the Department made substantive changes to the public draft. These changes have necessitated reposting the rule for an additional public comment period. **The Maine Board of Environmental Protection is scheduled to review the rules, and potentially adopt them as drafted, at their meeting on Thursday, December 5th.**

As representatives of Maine businesses, manufacturers, retailers, and companies within the packaging supply chain, we have commented on these rules and participated in this nearly 3-year process constructively, offering comment at every opportunity. We appreciate DEP's efforts to try and create a workable program, however, we continue to have serious concerns with the fundamental structure of these rules and especially the most recent redraft of the rules. Therefore, we ask for your engagement to pause the rule-making process and would like an opportunity to discuss with you ways to amend the rules or the law (38 MRSA §2146) to better align with the other states taking action on this issue.

The redrafted proposed rule contains major issues that we believe make the program unworkable and warrant amendments to the law:

1. We are gravely concerned about the **COST, PRODUCER FEES** and **PERFORMANCE GOALS** that will be enshrined in regulatory code now and lock-in a punitive structure on Maine companies and beyond. Nobody, including the Department and the law's supporters, has any idea how much this program will cost, and setting the formula for producer fees that multiply 2x, 3x, 4x and 5x if performance goals are not met, will explode the cost of this program on businesses. Alternatively, every other state, that has passed EPR, has allowed producers to establish fees upon themselves annually, which must meet specific criteria and funding levels to be set out in statute or rule. We believe a similar approach is justified under this law.
2. The definition of **MANAGE** for recycled material has been expanded to include education and litter clean-up costs – this is not supported by the reimbursement language in the law and we believe would not be considered actual management of recyclable materials. Forcing producers to reimburse municipal education and litter costs is not an appropriate mechanism for funding these activities. Instead, similar to other states, the stewardship organization should provide their own uniform statewide direct investments in education and litter reduction/clean-up.
3. **All SERVICE** businesses, in addition to all **COMMERCIAL** and **INDUSTRIAL** locations are now included in the definition of “consumer” – which forces packaging sent to industrial and commercial locations to be paid for (unlike most other states with EPR laws) by producers.
4. An entirely new **RECYCLING ACCESS** goal was added to the draft rules, since the first draft earlier this year. This goal area has not been discussed before, and it requires access to recycling to reach 100% across a State as geographically diverse as Maine. This goal area is not feasible to attain 100% access, and the law lacks the proper tools to require towns to participate in the program.
5. Finally, as we have commented since the beginning of this rulemaking process, the **STRUCTURE** of these regulations is entirely focused toward DEP control of every aspect of the program and the recycling system. All other states that have adopted EPR laws for packaging have not utilized this approach and have relied on packaging companies to propose a funding mechanism and system for funding recycling. **Maine's law is entirely out of step with the 4 other states that have passed EPR laws** and it will cause this program to be incredibly burdensome on companies and municipalities that try to implement its mandates.

It should be noted that despite the sweeping changes these rules propose, and the impact they will have on Maine people, companies, municipalities and entire industries - these rules are routine technical, not major substantive. As of now, the Legislature will have no further review of these rules.

We believe that it has now become necessary to pause the adoption of these regulations and consider a different approach. The goal of this pause and potential reform would be to streamline the process and make it consistent with the 4 other states (Minnesota, Colorado, Oregon and California) that have adopted EPR for packaging. Despite following Maine in passing packaging EPR laws, none of the other states have adopted such a state government-run approach. Instead, Minnesota, Colorado, Oregon and California have all followed international norms for EPR programs and rely on a balanced approach where the state approves a plan from companies to fund and improve recycling. Now is the time for Maine to work to be consistent with this approach and our organizations would welcome a dialogue with you to try to accomplish this goal and would like to meet with you to discuss these issues.

Respectfully submitted,

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