



**American
Forest & Paper
Association**



Maine Forest Products Council

October 31, 2023

Maine Department of the Environment
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Submitted digitally via MainePackagingEPR@maine.gov

RE: Comments on Maine EPR Conceptual Draft

The American Forest & Paper Association (AF&PA) and the Maine Forest Products Council (MFPC) appreciate the opportunity to weigh in on some of the considerations connected to the implementation process for the State Extended Producer Responsibility for Packaging program. The paper industry has a demonstrated, measurable record of success in making paper and paper-based packaging more circular and sustainable through market-based approaches. We have appreciated the opportunity to engage in the stakeholder meetings and the ongoing dialogue with staff and the Commissioner on the impact of the program on an historic Maine industry.

Background on AF&PA and MFPC

The American Forest & Paper Association (AF&PA) serves to advance U.S. paper and wood products manufacturers through fact-based public policy and marketplace advocacy. The forest products industry is circular by nature. AF&PA member companies make essential products from renewable and recycle resources, generate renewable bioenergy and are committed to continuous improvement through the industry's sustainability initiative — [*Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future*](#). The forest products industry accounts for approximately 5% of the total U.S. manufacturing GDP, manufactures about \$350 billion in products annually and employs about 925,000 people. The industry meets a payroll of about \$65 billion annually and is among the top 10 manufacturing sector employers in 43 states.

In Maine, the forest products industry operates 35 manufacturing facilities and employs more than 13,000 individuals with an annual payroll of over \$845 million and produces over \$4 billion in products each year. The estimated state and local taxes paid by the Maine forest products industry totals \$91 million annually.

AF&PA's sustainability initiative — *Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future* — comprises one of the most extensive quantifiable sets of sustainability goals for a U.S. manufacturing industry and is the latest example of our members' proactive commitment to the long-term success of our industry, our communities

and our environment. We have long been responsible stewards of our planet's resources. AF&PA members met or surpassed many of the goals outlined in our previous sustainability initiative, *Better Practices, Better Planet 2020*, including a 24.1 percent reduction in GHG emissions; 13.3 percent improvement in purchased energy efficiency; 30 percent reduction in workplace injuries; and 12.2 percentage point increase in wood fiber procurement from certified forestlands.

The Maine Forest Products Council represents Maine's forest industry. Maine's forest products provide over 30,500 direct and indirect jobs in the forest management and wood manufacturing business, covering 8 million acres of forest land. Our members cut across the whole spectrum of forest-related jobs from landowners, loggers, truckers, tree farmers and foresters to paper mills and lumber processors.

AF&PA and MFPC support data-driven policy solutions, including packaging producer/stewardship responsibility, that are:

- **Data & Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and data-driven solutions that improve consumer education, increase recycling access, and limit administrative costs.
- **Equitable and Fair:** Focused on preventing cross-material subsidization, while acknowledging the investments and voluntary improvements historically taken by each material type to achieve their material-specific recycling rates.

Paper-Based Packaging Recycling Works

Paper recycling rates in the U.S. have consistently increased in recent decades, with 68 percent of paper recovered for recycling in 2022.¹ The paper industry recycles about 50 million tons of recovered paper every year — totaling more than 1 billion tons over the past 20 years. According to the U.S. EPA, more paper by weight is recovered for recycling from municipal waste streams than plastic, glass, steel, and aluminum combined.²

In fact, our industry's recycling rates are so successful that some products are approaching the practical maximum achievable recycling rate possible. The recycling rate for containerboard (corrugated cardboard) in 2022, for example, was 93.6 percent. The three-year average recycling rate for old corrugated containers (OCC), is already 91.3 percent.³

This success has been driven by the paper industry's commitment to providing renewable, sustainable, and highly recycled products for consumers. Recycling is integrated into our business to an extent that makes us unique among material manufacturing industries — our members own and operate 114 materials recovery facilities and 80 percent of U.S. paper mills use some amount of recycled fiber. Any EPR system must fully and fairly credit the early, voluntary action our industry has taken to advance the recycling rate of our products,

¹ <https://www.afandpa.org/news/2021/resilient-us-paper-industry-maintains-high-recycling-rate-2020>

² https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf

³ <https://www.afandpa.org/news/2021/resilient-us-paper-industry-maintains-high-recycling-rate-2020>

and strictly prohibit use of fees generated by one material to subsidize development of recycling infrastructure for competing materials.

The paper industry has planned or announced around \$5.1 billion in manufacturing infrastructure investments between 2019 and the end of 2026 to continue the best use of recycled fiber in our products, resulting in an over 8-million-ton increase in available manufacturing capacity.⁴

Continuing innovation and meeting customer needs is an important part of the way our members do business. Through research among our members and best practices in the industry, AF&PA developed a tool to help packaging manufacturers, designers and brands create and manufacture packaging that better meets their recyclability goals. *The Design Guidance for Recyclability* is intended to serve as a data-driven resource to support ongoing innovation.⁵

[Comments on Conceptual Draft Part 1: Municipal Reimbursements](#)

1. **Definitions.** A “commodity” is defined as a “...processed material that meets an industry specification,...” The definition of “paper” as a “commodity” says it “...does not require further processing before entering a pulping operation;” In neither case is “processed” defined. What does “processed” and “processing” mean? Further, the definition of paper, “for paper, does not require further processing before entering a pulping operation” is insufficient to give clarity on the wide range of materials that could be included. While paper-based packaging is a broad category, it can be quickly shrunk to much smaller categories to capture unique processing needs and material attributes. Paper is different when it comes out of different collection streams and ways that it can sorted could be associated with layered and multi-material creates complexity that over-broad language exacerbates.
2. **Accepted Materials and Commodities.** In Part 1, references to materials processed in commodity streams are called “Accepted materials” such as on pages 8, 15, 18, and 19, while in Part 2 the (presumably) same materials are referred to as “packaging material types list and readily recyclable list.” The inconsistency in terminology is already causing confusion with several stakeholders as to whether this is an important distinction and what the difference might be. Clarification or modification to make the language consistent across sections would be appreciated.
3. **Cost containment.** It is incumbent on any state-established program to be responsible in assuring that EPR programs are both effective in progressing towards their stated recycling goals and assessing on-going impacts to Mainers as consumers and Maine industry as a vital component of the state’s economy. One of the goals of the EPR for Packaging program in Maine is to both decrease the cost burden but also help municipal waste management systems to improve, and

⁴ The Recycling Partnership; Northeast Recycling Council. Last updated: December 2021

⁵ <https://www.afandpa.org/news/2021/afpa-releases-new-guide-further-advance-paper-recycling-0>

improvement of those systems should potentially result in decreases in cost. For example, in addition to the audit programs for MRFs, there should be audits of the municipalities that are using them, as a mechanism to support improvements rather than reinvesting in inadequate or failing programs.

This can further serve to prevent problems such as producer fees that equalize landfilling with recycling for municipalities receiving the funding either way, inadvertently undercutting efforts to decrease the volume of materials that are landfilled. Landfilling is already the lowest cost option for solid waste in Maine and further decreasing the price of disposal would hinder improvements to recycling.

During the initial stages of rulemaking to implement their EPR program, Oregon's Department of Environmental Quality has estimated the annual administration fee for EPR alone will be a minimum of \$3,000,000. Given these potentially significant impacts, we recommend including a requirement for a periodic assessment of the impacts of the program, at least every 5 years. Metrics should be established that can help recycling systems benchmark their costs and performance quality to demonstrate improvements to overall recycling systems. This will allow regulators, legislators, stakeholders, and the citizens of Maine to fully understand if and how the recycling system is improving, what areas of revision may be necessary to improve program performance, and what unintended changes may have occurred to the consumer or economic landscape as a result of the program.

These metrics could include factors such as:

- An evaluation of contamination prevention efforts by a municipality receiving funding with a baseline assessment of contamination and systems in place to ameliorate the problem, followed by recurring review of contamination levels and any changes to those systems to improve or downgrade the resources.
- A review of a municipality's access to recycling and thoroughness of system options. Continuously funding or even increasing funding for a system that continues in provably insufficient processes such as single-stream collection, for example, should be noted and reflected in PRO resources.

Lack of improvement on factors where municipal funding is targeted could result in changing programs, curtailing funding, or other changes to reflect potentially wasteful or incompatible systems.

[Comments on Conceptual Draft Part 2: Exemptions, Definitions, Readily Recyclable and Producer Fees](#)

Readily Recyclable

Certain elements of part 1 and 2 of the conceptual draft are tightly bound together. Per the statute, municipalities will receive reimbursement payments for the median per-ton cost of managing packaging material that is readily recyclable and reimbursement payments for the median per-ton cost of managing packaging material that is not readily recyclable. The

result of this is that the definition of key terms such as “readily recyclable” are paramount to the rest of the discussion.

The review process for packaging material and readily recyclable lists should be as transparent as possible. While having general guidelines on requiring changes be communicated to reporting entities is included in (page 4 item F), there should be further details related to how much advance notice is required before the Department meeting to discuss changes to maximize engagement.

The transitional period for a material type becoming reclassified as readily recyclable or no longer recyclable being three full years before processes and fees are changed is too long and is not compatible with the dynamic nature of recycling markets. Payments reflecting the cost of the most costly to manage readily recyclable type could create harm in the form of pushing the newly readily recyclable type back out of qualification at a key point in a materials environmental evolution.

“For 3 calendar years following that in which the change occurs, a producer’s payment must reflect the per ton cost of managing the readily recyclable packaging material type with the highest management cost. Beginning the fourth calendar year following that in which the change occurs, a producer’s payment must reflect actual per ton cost of managing the packaging material type.”

In Oregon, the implementation process for their EPR program is also underway, and a key component of the state discussions is connected to establishing a list of recyclable materials and giving each a rating based on how recyclable they are. There is perhaps a similar opportunity for Maine to do this process, but it also amplifies the importance of conducting the state or regional needs assessment to understand systems that are already successful and those that present opportunities for improvement. Much of that data already exists in Oregon but does not in Maine. A copy of the Oregon materials list and AF&PA’s comments on recommended changes to the July 2023 proposal are included as Attachment 1 and 2 to these comments as a reference.

Packaging material types are to be placed on the readily recyclable list based on marketability and throughput. Each of these criteria raise concerns for AF&PA and MFPC based on how they are laid out beginning on page 10.

For Marketability, requiring three operational remanufacturing facilities that recycle a type in as a factor is based on unclear information. There is no limit in the language on where these remanufacturing facilities need to be and “three” seemed to be perhaps facetiously suggested during a stakeholder session rather than based in data. Raising a number of questions including:

Why three? If there are two facilities with more than enough capacity for new material, must that be insufficient? Should factors such as distance and practicality come into play? Could any of these facilities be out of the country or on the other side of the country?

Restrictions on operational recycling facilities such as Section C.c. on page 10 need to be specific and clear. Paper mills take in water for manufacturing processes and, after processing and filtering it, return that water to the environment. Even though that process is approved by federal and state water standards, “**or** that are known to result in the release of material into the environment” is broad enough to potentially include paper mill effluent as unacceptable. This section is also not clear on geographic scope. Maine has banned land application of biosolids, but this practice is not banned in neighboring jurisdictions- would this legal practice also move a nearby recycling facility out of scope?

The language for Throughput on page 10 sets the percentage of the weight at one percent, but the threshold percentage is irrelevant to the issue of separate sortation. What matters is whether there is a separate grade for the material and rather than creating a new system, Maine should look to ISRI which has grades that describe what gets sorted separately. The percent of total packaging used in the state does not matter if the market buys the separately sorted material grade.

Program Goals

While the Stewardship Program for Packaging calls for program goals to be set to inform the producer payment schedule, there is nothing that states that the program goals should be applied to each material type the same way. It should be clear that not all the different program goals are equally appropriate to each type and that decision should be a reflection of information gathered through the needs assessment and in consultation with producer and industry experts of the material types. Some of the reasons why the application of these goals can be unique between materials are explored below.

Additionally, the program goals beginning on page 6 are not based in statute and should be centered on the findings of the needs assessment yet to be done. AF&PA and MFPC support a robust state or regional needs assessment. It would be inappropriate and wasteful to set any program goals to change the existing systems before the assessment is complete.

- A. Reduction: As mentioned above, our industry’s recycling rates are so successful that some products are approaching the practical maximum achievable recycling rate possible. Setting reduction goals based on the first producer reporting regardless of other statistics immediately ignores the achievements of paper and other industries that have productively pursued sustainable manufacturing practices for decades.

Efforts to encourage investment in sustainable products stand to be undermined by blanket requirements to decrease the weight of material categories, which ignore the primary purpose of packaging – to protect its contents from damage or spoilage. For example, at some point, lightweighting (designing packaging to be lighter) crosses a line into increasing waste as a result of insufficient protection of the contained item. Furthermore, the weight of a packaging type is not a reflection of any attribute other than weight- it does not make it smaller by volume, more efficiently produced, more renewable, recyclable or anything else. Other attributes in the program goals make

'reduction' duplicative. An unpopular or otherwise unsustainable product should not be rewarded for simply being used less.

Reduction has the potential to be so punitive as to undermine the rest of the program. The language requires that for every year a reduction goal is missed, a percentage has to be dedicated to investments in reuse and refill projects, but investments and improvements take time to show a return, and this would not allow for that time to pass.

A mechanism should be added to allow producers to receive credit for any historical reductions and that the baseline be aligned with that of other programs such as CA SB 54 so that in those instances that reductions are needed, they are working with the same national baseline. Similarly, any reduction goal needs to be normalized by the number of packaging units shipped,

- B. Reuse: Any emphasis on reusable packaging needs to have guardrails on it. Even reusable packaging has an eventual end-of-life and unlike cardboard and other types of paper-based packaging, it is neither recyclable nor compostable. Like the current situation with e-commerce and curbside pickup groceries in New Jersey⁶, too much access to reusable packaging could result in that packaging becoming ubiquitous and treated as if it is single-use when it may be ultimately less sustainable from a landfilling standpoint than single-use products available today.

The rule does not actually define reuse, only refill, but both are referenced throughout the language in ways that are not necessarily interchangeable. Existing Maine law includes a definition of reuse that refers back to another product stewardship statute that defines reuse as follows: "Reuse" means a change in ownership of a product or component in a product for use in the same manner and purpose for which it was originally produced. We recommend this concept be revisited to ensure that the refilling of packages by the original consumer in their home or outside the home can be incorporated into this goal.

- C. Postconsumer recycled (PCR) material: PCR goals can be problematic for the forest products industry. There needs to be clear justification for the numbers and consideration of individual products and the voluntary action already underway to recycle them. Recovered fiber markets are complex, efficient, and dynamic and are not served by regulations or prescriptive approaches to specify the use of recycled fibers or dictate what type of recovered fiber is used in products.

Moreover, the preference for PCR in packaging could be contrary to sustainability goals. Rather than drive increased paper recycling, recycled content minimums in paper products could: make markets for recovered fiber less efficient; prevent recovered fiber from going to highest value end use; raise the cost of production for new paper products; and narrow available choices for consumers.⁷ An issue can

⁶ <https://www.cbsnews.com/newyork/news/new-jersey-plastic-bag-ban-too-many-reusable-bags/>

⁷ https://www.afandpa.org/sites/default/files/2022-09/AF%26PA-RecycledContentMandates_8152022_0.pdf

arise when a recycled content minimum requires inefficient economic and environmental uses of recovered fiber and, in some cases, may restrict the availability of certain products altogether. For example, mandating recycled content in copy paper when it would be more efficient to be used in tissue or packaging papers instead of printing papers. Rather than decreasing virgin fiber use or increasing the use of recovered fiber, virgin fiber would be used as a substitute in products that currently use recovered fiber.

Current efforts have achieved strong gains in paper recycling and are expected to continue to do so in the future. Putting pressure on producers to arbitrarily change content in certain paper products interrupts the market-based utilization of recovered fiber, prevents recovered fiber from flowing to its highest value end-use, is counterproductive both economically and environmentally, and is inconsistent with the precepts of sustainability.

Fiber is selected for use in products based on a number of factors, including cost, availability, performance and customer specification. The specific performance and aesthetic needs for different products can limit how PCR fiber can be used. Imposing a mandate to use PCR also creates a path for government-based preference for one part of the market (recovered fiber) over another (virgin) in a state with family-wage jobs supported by both.

There is also a serious risk of the paper industry paying multiple times for the same recovered fiber- first through required fees for an EPR program, then again when producers purchase recovered fiber to make new products. To counter this problem, EPR fees should credit the market value of the material that is put into the stream of commerce- often referred to as net-cost.

- D. Readily Recyclable: According to the statute, "readily recyclable" means, with respect to a type of packaging material, that the type of packaging material meets the criteria and standards for recyclability as determined by the department by rule pursuant to [subsection 13, paragraph A](#), subparagraph (2). That section says:
- A process for determining on an annual basis those types of packaging material that are readily recyclable, which must involve consultation with the stewardship organization and recycling establishments and must include a transitional period between the time that a type of packaging material is determined to be readily recyclable or to not be readily recyclable and the time that such determinations will be effective for the purposes of calculating producer payments and municipal reimbursements in accordance with this section.*

The decision process should include more of the stakeholders. If the statute states that "sorted paper is considered recycled if it does not require further processing before entering a pulping operation," then the pulping operation should be part of the determination of whether something is recyclable, not just the entity that would collect the materials in order to sell them to the pulping mill.

Furthermore, AF&PA's work on the *Design Guidance for Recyclability* makes our members uniquely qualified to be part of this process because they have worked for years with packaging designers and consumer brands to maximize recyclability in addition to better understanding how non-fiber elements, such as coatings and additives, impact the recyclability of paper-based packaging.

- E. Litter: The percentage of litter that is packaging material is the sum of several factors, rather than solely attributable to the producer. Litter is specifically cited later in the draft as an eco-modulation factor to be levied against a producer. However, litter is exacerbated by lack of consumer education and by lack of proper recycling and disposal access. Waste bins in public spaces that do not have lids to guard against wind and animals, event spaces with insufficient receptacles, and lack of consumer knowledge for how to recycle or properly dispose of an item are all factors that can increase litter.

This is an opportunity to include consumers and municipalities in a visible and shareable goal of reducing litter in Maine's communities and environment, rather than as a goal solely in the hands of producers.

- F. Collection and Base material-specific recycling: Since 1994, AF&PA has periodically conducted national surveys to measure the extent and growth of access to community paper and paperboard recycling. Our 2021 study found that the vast majority of Americans, 94 percent, have access to community paper and paperboard recycling programs. The [2021 AF&PA Access to Recycling Study](#) also found more Americans, 79 percent, now have access to residential-curb-side programs making it easier to recycle paper at home – an increase of more than 14 million people since the 2014 study.

Recycling access can sometimes be tied up with an interest in convenience for constituents, which can have a harmful overall impact in effective recycling practices. Mandated convenience can continue support for inefficient and expensive systems rather than actual improvements. Because the state has repeatedly supported single-stream recycling policies, the contamination of collected materials is a continuing barrier to the circular economy.

Single-stream collection is the largest contributor to contamination in the recycling stream but was widely adopted in Maine as more convenient to residents and a cost-cutting measure for municipalities.⁸ Any long-term solution to resource recycling, reuse and recovery must also necessitate changes in consumer behavior and practices that may not always be more "convenient."

EPR programs should be limited to residential collection, focusing on increasing rates and quality of collection from consumers either through curbside or depot

⁸ <https://ctmirror.org/2020/02/17/is-connecticuts-outdated-recycling-system-in-line-for-an-overhaul/>

collection. The paper industry has a well-established system for the collection of materials when they are collected from industrial, commercial, or institutional (ICI) sources. Products collected directly from ICI sources are A. generally segregated from other forms of waste through the entirety of their collection, substantially reducing their exposure to contamination; B. are not recovered through municipal recycling systems therefore adding no burden to local counties and cities; and C. are directly collected because they have robust and well-established end markets. The established system of ICI product collection works and typically achieves recovery rates significantly higher than other forms of recycling. Therefore, we respectfully request that the scope of any proposed EPR system is limited to concerns and needs within residential collection only.

By not explicitly excluding ICI, there are important factors that will need to be clarified on an individual basis.

- a. For example, a multiunit case that is delivered to a big box store will arrive at the store, be used at the store, and be recycled by a service paid for by the store to take to a materials recycling facility for processing. It would be unlikely to be contaminated or lost in the process to landfilling, so any fee for that packaging would have nothing to do with the packaging's life cycle.
- b. Similarly, it is unclear if wooden pallets for shipping, or strapping material for transporting logs on trucks would be included in the referenced "for the protection of the product during transport."

California's Plastic Pollution Prevention and Packaging Producer Responsibility Act also allows for ICI collected material to qualify as a 'non-covered material' by meeting the below criteria:

42041 (e)(2)(H): ..."covered material" does not include any of the following:...

(i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

(I) The covered material is not collected through a residential recycling collection service.

(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.

(III) The covered material is recycled at a responsible end market.

(IV) The material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter."

G. Overall Recycling Rate: The level to which a material is actually recycled – or its utilization rate – is a focus of our industry and centered around multiple disparate

elements. The paper and wood products industry has an inherently circular supply chain from the replanting of trees that supply fiber and enhance the environment to recycling paper and packaging that is turned into new products.

One of our 2030 goals is to [Advance a Circular Value Chain Through the Production of Renewable and Recyclable Products](#), which will help strengthen the role our industry plays in the circular economy. AF&PA members seek to meet evolving customer and consumer needs while improving the sustainability of the industry's products through:

- Innovating manufacturing processes, products and packaging
- Increasing the utilization of recycled fiber and wood residuals in manufacturing across the industry to 50%
- Increasing the percentage of our products that are recyclable or compostable
- Collaborating with stakeholders and educating them on the contribution/value of renewable materials

As with the other factors, setting rates that will be tied to fees when there are nuances far beyond the control of producers raise concerns that need to be considered in the needs assessment before requirements should be set.

In both base material-specific recycling and the overall recycling rate there is a reference to recycling yield being a factor of determining the amount of material recycled. However, using recycling yield as a multiplier makes meeting these standards *practically impossible*. For paper and other packaging materials yield can never be 100 percent because there is a certain amount that is lost in the manufacturing process even in a theoretical situation where all recyclable material is captured.

Program Goals: Producer Off-ramp

Maine should consider as part of the Program Goals the example set by California. California passed Senate Bill 54 which includes an example of an offramp or benchmark for materials that are already effectively recycled under a program before EPR begins. Instead of levying ever-increasing fees on products not reaching certain numbers each decade, Maine could similarly *encourage* producers to improve their recovery rate which may ultimately be more effective.

We propose that Maine follow the California model wherein any producer that achieves a 60 percent or better recovery rate consistently and maintains 65 percent after the program is in place is still responsible for managing the product and keeping that rate without burdening the systems, but they do not need to pay into a stewardship organization which is focused on increasing recovery rates and improving recycling infrastructure and education. If a product is demonstrating a 60 percent or higher recovery rate, there is little benefit to participating in a stewardship organization.

Additional Comments:

1. Representative audits (Page 5, Section 4) are required to conduct one litter audit per year, anywhere in the state based on municipal feedback but only one audit per decade to determine the relative weight and volume of packaging material in the waste stream. This seems to place a disparately sized weight on litter in a tiny portion of the state over the samples of three randomly selected municipalities for presence of packaging material in the waste stream. Considering the litter number is a factor in one specific goal while the packaging presence is an overlay to the entire program, it would seem to be counter to the level of value to the program.
2. Definitions of certain key terms need more clarity (Page 1).
 - a. The producer definition was updated to include the person that adds packaging material to another producer's product for distribution directly to a consumer. With this definition, would an entity such as a school or a sports stadium putting their product into a clamshell, or a retailer into a carryout bag, be considered a producer?
 - b. Consumer is defined as "the entity that uses a product, including an entity that uses a product to create a new product." How does this fit within a concept entirely focused on packaging without resulting in double or triple-counting? In an example of a box of cereal, by the definition of Producer, the brand owner would be the cereal brand but most cereal brands purchase their boxes from a container plant, which might purchase the paperboard from a paper mill, which may purchase the fiber from a recycling facility or sawmill, which gets that fiber from a MRF in bales of paper or a forester from a logging truck. If they are furthermore packaged for shipping and delivery of the additional elements at each stage, how many times is a fee to be levied and would all of it go back to the cereal brand to pay?
3. Base Material: Setting the material type based on whether a material accounts for at least 60 percent of the weight to make it the majority type contradicts certain realities about packaging material recycling. There are multiple instances where the most valuable part of a collected material and the heaviest are not the same, and the language could inappropriately bundle materials in a way that would intentionally lower the value of a bale in pursuit of following policy.
4. Product Exemption: Paper bags have a fee at the point of sale and have a minimum recycled content rate despite being widely recycled and 100 percent recyclable. Adding an EPR fee for kraft paper bag producers on top of this is unreasonable and they should be exempt.
5. Toxicity: As we have stated throughout the process, AF&PA and MFPC believe that requirements related to the toxicity of products is addressed in separate statute and should not be included in already complex and burdensome legislation. Requiring the stewardship organization to also be responsible for making determinations on chemical considerations is inappropriate. Chemical knowledge is not included as a factor in their competitive bidding, has no overlap with other knowledge required to execute the legislation, and interferes with the stakeholder engagement underway

between producers and policymakers on chemical regulations in the state.

6. Uniform labeling standards are essential to the free flow of interstate and international commerce. Most companies do not distribute products and the associated packaging solely to Maine. It will be very difficult, if not impossible, for manufacturers to comply with the labeling standards as currently drafted given the language would create conflicting labeling requirements across state jurisdictions. This would require creating a new regulatory framework that is partially duplicative of the Federal Trade Commission's Green Guides and a cumbersome new bureaucracy for the agency to update every two years based on current "readily recyclable status" for certain products to develop and maintain a list of "approved" list of recyclables.

Comments on Conceptual Draft Part 3: Investments

The factors included in the needs assessment are insufficient to capture the full picture. Statewide and product performance goals should be technologically feasible and economically practical. There needs to be clear justification for the numbers and consideration of individual products, while recognizing voluntary actions already underway.

Determining reduction rates is nearly impossible without a comprehensive state or regional needs assessment being conducted first, and the practicality of tracking how much certain materials (such as party supplies, newspapers, bags, and boxes) are reused seems unlikely as well. AF&PA tracks our national recycling rate but breaking it down to a state level is very difficult when materials are exported to other states or countries. Waste and recycling management is complex. Waste disposal and recycling collection differs by:

- Geographic region: an urban area might have access to curbside recycling, trash and organics while rural does not.
- Waste management companies: the companies who haul away your trash and recyclables.
- Materials processing facilities: the place where your recycling gets sorted.
- Housing type, etc.

EPR Policies Introduce Uncertainty in Fee Structure and Disrupt Flow of Material

The paper industry already contributes to economically sustainable recycling programs by purchasing and utilizing material sourced from residential collection programs in manufacturing new products. New fees or mandates established by the stewardship organization have the potential to disrupt efficient and successful paper recycling streams and that direct private sector funds away from investment in recycling infrastructure. Caution should be taken against a cost-shifting mechanism that does not create added value or develop end markets for recyclable materials.

Recycling programs in the U.S. are operated by local governments, which have more freedom to tailor recycling programs to the needs of local communities. The record of highly centralized, command-and-control EPR programs in Canada and Europe offers no real proof of advantages over the market-based approaches and locally operated programs

prevalent in the U.S. In fact, a 2021 research paper performed by York University in Ontario concluded there is no evidence to indicate that the steward-operated EPR program in Canada will result in cost containment or increased recycling performance.⁹

Conclusion

We look forward to working with the State of Maine as the Department continues its deliberations and information gathering during the implementation process. If we can be of any further assistance, please contact Abigail Sztein, Senior Director of Government Affairs, at Abigail_Sztein@afandpa.org, Brian Hawkinson, Executive Director of Recovered Fiber at Brian_Hawkinson@afandpa.org, or Krysta West, Deputy Director at kwest@maineforest.org.

Attachments:

1. Oregon RMC List
2. AF&PA Comments on OR List

⁹ Review of Recycle BC Program Performance, Dr. Calvin Lakhan, York University