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October 31, 2023

Via electronic submission: MainePackagingEPR@maine.gov

Maine Department of Environmental Protection
Attn: Extended Producer Responsibility Program for Packaging
17 State House Station
Augusta, Maine 04333-0017

To Whom it May Concern,

Thank you for the opportunity to submit the attached comments as requested through Maine DEP's rulemaking process.

The Recycling Partnership is a national nonprofit with a mission to advance the circular economy by building a better recycling system. Please don't hesitate to contact us if you have any questions about the information we've provided.

Sincerely,

Trina Matta
Director of Policy Implementation
The Recycling Partnership

Introduction

The Recycling Partnership respectfully submits the following input to the State of Maine’s proposed rules. The process of drafting rules is a complex one, but we believe that in the case of EPR for Packaging, the combination of regulation and rules should, as straightforwardly as possible, orient towards driving system improvement to ensure more material is diverted from disposal and into recycling systems throughout the state. There is the opportunity for regulation to do more than just shift costs on material management. It can also drive behavior change, increase system investment, and encourage implementation of best practices.

We believe Maine DEP should consider the following overall system goals:

- Increase collection rates: Offer multiple options for most residents, a combination of curbside collection and convenient drop-off locations. For rural residents, support accessible drop-off or collection locations. For multifamily residents, ensure as robust on-property collection options as possible.
- Increase participation: Make it as easy to recycle as it is to throw away materials throughout Maine. Drivers of this change can be investment in consumer education and increasing equity and access to recycling systems. Investments to drive consistently high consumer use of collection services is a critical feature of an improved system.
- Decrease contamination: Through investment in education and outreach programs and recycling infrastructure.
- Expand Critical Processing and Other Infrastructure: Address infrastructure needs and design the system in a way that allows for continuous improvement.

The Recycling Partnership continually works to establish best practices in each of these categories.

We are available and eager to work with DEP staff to provide examples of best practices and enactment and discuss these points and other ways EPR implementation can improve recycling system performance in Maine.

The Recycling Partnership also urges Maine DEP to consider that several processes defined in the rulemaking are very complex and may benefit from simpler approaches. One example is the lengthy consultation process relating to municipal reimbursements.

Below are more detailed comments and feedback on each of the three published documents.

Municipal Reimbursement

1. Definitions

1.O. Similar Municipalities

The grouping of municipalities is done solely by geography and population. We would recommend that this definition also considers program type, e.g., curbside, drop-off, type of curbside system. The exclusion of this consideration may discourage the provision of better or more convenient service, e.g., the expansion of curbside services to certain areas of the state.

2. Requirements for participating municipalities

2.b. The rationale for the obligation to collect things that have been on the readily recyclable list for at least three consecutive years is unclear and does not address what happens at the commencement of the program.

4. Determining municipal reimbursement

4.A.1. Consultations

This process seems unduly complicated. A periodic cost study may be sufficient and would significantly reduce complexity.

Exemptions, Definitions, Readily Recyclable and Producer Fees

Scope Definitions

A. Consumer

This definition is confusing. We encourage using the definition of consumer stated in Colorado's HB 22-1355: "Consumer means any person who purchases or receives covered material in the state and is located at a covered entity". In addition to providing clarity, this would be a step toward harmonization with other state EPR laws.

E. Product

This definition includes material sold for use in containing, protecting, delivering, or presenting items at a later time, but does not include packaging material bought at the point of sale for use in containing, protecting, delivering, or presenting other purchases. As these materials are often not distinguishable at the point of collection, it may be worth considering inclusion now.

Readily Recyclable

5. Program Goals

General Comments

If goals are set during rulemaking, these should be based on the best available data and focus on ensuring the SO is driving towards continuous improvement in the management of packaging in the state. However, where current baseline data is limited, some goals may be better set after the needs assessment, which could be facilitated by an approval process stated in the RFP.

The Recycling Partnership supports the inclusion of goals on reduction and reuse.

5.D. Readily Recyclable

This could and arguably should be achieved within a much tighter timeframe. Twenty-five years is a very long lead time, and we would argue longer than is necessary to achieve readily recyclable status.

5.F. Participation

We believe there is capacity to raise the participation percentage at a quicker rate. Thirty percent of cities, towns, villages, and other local governments participating in 10 years is a low bar for an EPR model. Having a lower threshold could send signals to local governments that participation is not vital to the success of the program.

We recommend raising the percentage threshold at a quicker rate. With funding provided by the SO, it is possible to accelerate the timeline for participation. DEP could consider a target such as achieving 100% participation by 2035, and then working backwards from that objective to set step-wise goals.

I. Overall Recycling Rate

A 40% recycling rate for a duration of over 10 years is not ambitious enough for an EPR program. The jump to 80% is then dramatic. We would urge Maine DEP to consider a more gradual increase in targets and a continuous improvement review process.

Producer Reporting and Payments

2. Defining Packaging Material

C. Readily Recyclable

2.C.2. Throughput: This could be very limiting for the potential expansion of infrastructure in the state with the goal of overall system improvement. Has DEQ considered the use of secondary

sortation for small volume materials, or is the assumption that there will be no additional sorting capacity beyond the two existing MRFs in the state?

2.C.3. **Recycling Yield:** DEP should clarify whether this clause references bale yield or recycling processing yield.

Specific to recycling processing yield, there are some materials which have new or innovative recycling processes that may not yet meet the 60% recycling processing yield threshold. DEP may want to consider a lower threshold to allow for innovation in recycling where there are no markets that can meet the 60% recycling processing yield.

In addition, DEP may want to refer to Oregon DEQ's rules regarding recycling yield, and consider attempting to harmonize language among the two states. This is especially helpful for end markets, as in some cases recyclables cross state lines to be processed.

5. Producer Fees

A. Fees for Producers Other than Low-Volume Producers

5.A.3. Incentive Fees

In addition to the outlined malus fees, we recommend including fee penalties for design choices that negatively impact the recycling system, such as the use of PVC or oxo-degradable plastics. Further, package elements that violate design for recyclability standards, such as the use of dark color plastics, high percentages of additives in certain resins, the addition of non-ferrous closures to glass containers etc. should be disincentivized through malus fees.

However, we recommend that DEP encourage the use of bonuses in line with international best practices to incentivize desired behaviors e.g., conformance with industry standards for recyclability and the use of PCR. The incentive fees structure i.e., suggested eco-modulation approach, seems to rely solely on malus fees. We recommend allowing scope for review and alteration of bonus/malus structures in line with what is leading to real change in line with program goals.

7. Transparency and Benchmarking for Producers

7.C. How will the information on price per unit be used? It would be helpful to see a broader explanation as to the purpose of this information.

Investments

General Comments

Definitions: Several terms used in the proposed rules are not well defined and could create confusion:

- “Entities” eligible to submit investment proposals: what are examples of inclusions or exclusions, or how is entity defined?
- “Infrastructure”: what is in and out of scope here?

Budgeting:

The savings plan for system investments should be more closely aligned with the findings of the needs assessment. Setting an annual budget in advance of this process is challenging. We recommend that first, the needs should be defined, and then the SO should set fees at a level that covers the needs, including system improvements, which may vary from one year to the next.

Evaluation:

Current infrastructure investment evaluation revolves around the financial viability of the investment. However, more nuanced, non-financial criteria may be necessary depending on the nature of the “infrastructure”.

For example, investments to expand equity and access to recycling systems should have separate evaluation criteria. Again, with a vision toward system improvement, all aspects of that improvement should be explored and should ideally inform the considerations around infrastructure (not just financial viability).

Conclusion

We appreciate all the hard work of the DEP to develop these proposed rules on a tight timeframe. We want to reiterate our offer to engage with you and share our resources on research, best practices, and implementation efforts to build out a robust and harmonized Maine EPR system. Additionally, we encourage Maine to look to other EPR states in an effort to foster harmonization amongst EPR systems within the U.S. We strongly believe in the ability for well-designed and thoughtful EPR programs to significantly, and continually, improve recycling systems, infrastructure, equity and accessibility.