



April 24, 2023

Commissioner Loyzim,

The Natural Resources Council of Maine (NRCM) is committed to ensuring the success of Maine's Extended Producer Responsibility (EPR) for Packaging program established in [MRS Title 38 §2146](#). Thank you for the opportunity to participate in this third of five Department rulemaking topic areas regarding program goals, recyclability of packaging, and auditing procedures and uses.

Program Goals

We believe that setting of program goals is perhaps the most important aspect of this entire stakeholder dialogue. In fact, we think there would have been great value in making program goals be the first meeting topic back in December for that reason. The discussion would have helped to ground us all in the purpose of moving to an EPR system. Most of the basic goals are generally agreed upon—landfill diversion, more recycling, less wasteful packaging in general—but how to achieve those goals is where it gets controversial. However, once goals are laid out, then people can make cases for or against certain programmatic elements and targets based on whether the suggestion aligns with the goals of the program.

The statute lists certain goals that must be included in rulemaking, which are generally quantifiable in nature, but it does not limit those goals.¹ We've given the program goals a lot of thought and have organized our suggestions into *goals*, *elements*, and *targets*. The goals are public facing, and over-arching. Under each goal, there are more specific "elements" that pertain to implementing the given goal. "Targets" are quantifiable and serve the purpose of measuring progress toward the primary goals underlying the Statute. Broadly, here are what we believe are the four primary goals of Maine's EPR for Packaging program, which pertain to certain programmatic elements and quantifiable targets.

Goal 1: Shift costs from taxpayers and towns to producers: Save taxpayers money and reduce the financial burden on local cities and towns by creating a more sustainable funding source to support the diversion of recycling of packaging materials.

Elements:

- Full producer-funded reimbursement of municipal costs related to packaging waste management, including in public spaces and schools.

¹ Section 13(A)(5) of the legislation states that program goals "must include, but are not limited to, program goals supporting an overall reduction by producers in the amount of packaging material used, an increased reuse by producers of packaging material and an increased amount of post-consumer recycled content in packaging material used by producers; packaging material litter reduction goals; recycling access and collection rate goals for municipalities; and overall program and material-specific recycling rate goals."

- Producer-funded management of litter, including education that results in reduction of litter.
- Encouragement of municipal participation through support of the stewardship organization.

Goal 2: Safeguard the environment and enable environmental action. Encourage big corporations, brands, and packaging manufacturers to reduce plastic pollution and design less-wasteful packaging that can be more easily recycled or reused. Make it simpler for Maine people and businesses to reduce, reuse, and recycle packaging materials.

Elements:

- Waste reduction targets
- Reuse/refill targets
- Overall and material-specific collection and recycling rate targets
- Ensure producer funding facilitates broad public education and outreach to support participation in recycling and reuse programs.
- Use of eco-modulation to reinforce and enhance these targets.
- Accurate and easy to read recycling and disposal instructions on packaging.

Goal 3: Fund infrastructure enhancement. Invest targeted funding to expand reuse and recycling programs in cities and towns equitably throughout Maine, not just the population centers and cities.

Elements:

- Ensure producer funding is focused to meet identified needs to expand reuse and recycling opportunities. Stewardship Organization (SO) is to conduct a statewide needs assessment per Section 3(A)(7).
- Intentional coordination among municipalities to encourage regionalization and sharing of resources to divert more materials from the landfill and to achieve economies of scale for recycling among smaller communities.

Goal 4: Gather and leverage data. Expand availability and quality of data and use the information to continually improve the effectiveness and enforcement of recycling and reuse in Maine.

Elements:

- Incorporate robust reporting from all the producers in the supply chain, municipal collection, and fate of the packaging material, whether it be reuse, recycling, litter, disposal in a landfill, or incinerator.
- Technical support from the stewardship organization to the municipalities to create simple, accurate, and efficient reporting by municipalities.
- Expand required reporting over time as appropriate and as increasing data becomes available through ongoing program implementation.
- Reports from the stewardship organization to the Department, and from the Department to the Legislature should suggest any changes to the program or related policies that

could enhance the effectiveness of the EPR for Packaging program as more data becomes available.

When it comes to setting quantifiable targets, we feel in general that they should be achievable based on existing data or sound justifiable reasoning, and reflective of goals established in other jurisdictions. They could also be set with caveats, and some targets may need to be phased in over time. We also need better baseline data. We believe that it’s important to also identify clearly who the responsible party is for reaching each measurable target: the producers, the municipalities, or the overall program in general. Table 1, below, shows the relationships between various performance targets and the four overall goals described above, as well as who is accountable for achieving each target.

Table 1: The interconnected nature of the primary goals of Maine’s EPR for Packaging program and the performance targets that will help achieve those goals.

		Overall Goals for Maine’s Extended Producer Responsibility for Packaging Program			
		Shift costs from taxpayers and towns to producers	Safeguard the environment and enable action	Fund infrastructure enhancement	Gather and leverage data
Targets that are the Producers’ Responsibility	Source reduction	X	X		
	Readily recyclable packaging	X	X	X	X
	Recycled content		X	X	X
	Better public understanding of what to recycle and how	X	X		
	Phase-out of targeted hazardous chemicals/toxins		X		X
Targets that are the Municipalities’ Responsibility	Expand access to recycling	X		X	X
	Better public understanding of what to recycle and how	X	X		
Overall Program Targets to Measure Success	Reduce per-capita disposal	X	X		X
	More reusable and/or refillable packaging		X		
	Increase collection rates		X		X
	Increase recycling rates		X		X

Here is further exploration of considerations to be made in determining performance targets, and we note that any performance targets identified by the Department should also be given a financial incentive through eco-modulated fees:

Recycled content: It is important to provide demand for materials collected through municipal recycling programs; recycling only works if there is a market for the materials.

- Recycled content targets can apply to any material and could be producer specific, with special consideration for packaging that has food contact.
- Reporting could be in annual, third party-verified reports from producers on total virgin vs. total recycled material used in specific applications.
- Barriers include supply of recycled materials (both quality and quantity), and limitations on food grade applications.

Source Reduction: This refers to reducing the total amount of disposable material produced, and incentives to do this will be inherent in the payment of fees because those who create less waste pay less; but there are important things to consider when setting any source-reduction targets:

- Incentives to reduce the most problematic types of packaging, acknowledging that other types of packaging may increase as a swap.
- Provisions to guard against an incentive to move to non-recyclable packaging that may weigh less.
- Reusable boxes and shipping containers should be acknowledged as source reduction.
- Reduced packaging should not compromise the protective function of the packaging, so it doesn't lead to more broken or wasted products.
- We believe that consistency with other jurisdictions is important and suggest that the Department consider reinforcing the source reduction targets established in California.
 - 25% reduction in plastic packaging measured by overall weight and number of individual packaging units—with at least 10% met through elimination and reuse. But, in Maine this should apply to all packaging, and not just plastic, so we aren't just swapping out one disposable package for another.

Reuse/Refill: One of the keys ways to reduce disposal packaging at the source is to adopt more reuse and refill, which makes it a means to achieve a source-reduction target.

- The producer should be accountable for achieving the targets set and be responsible for educating and incentivizing their customers to use it.
- Targets could be created for food service and food packaging, personal care and cleaning products, as well as pallets, crates, and other secondary and tertiary packaging.
- Data needed for tracking could be units sold and number of refills with help from the use of technology.
- Success will require new distribution and collection infrastructure, and consumer awareness. Most other jurisdictions have established goals for reuse and refill of beverage containers. Maine has the opportunity to do that within our bottle bill program, and parallel efforts could be done with packaging potentially using the same infrastructure.

Recycling Rates: Many other EPR for Packaging programs specify recycling rate targets. In Maine, we should differentiate what is collected for recycling “collection rate” from what actually ends up going to a recycler “recycling rate,” each expressed as a percent of the sold into the state.

- Targets should be set overall and be material specific. NRCM believes we need to specify baseline data and then have incremental percentage increase targets over time.
- At the very least, Maine should aim to achieve the 50% recycling goal established in 1989, which has never been met.

Recycling Access: Municipalities should provide universal access to recycling such that it’s just as easy to recycle as it is to throw something away.

- Access should include single-family homes, multi-family homes, public areas, and schools.
- The SO should provide assistance and funding to towns who need help expanding access.
- The readily recyclable list can be used to determine a minimum requirement for recycling, but towns should still be reimbursed for recycling packaging that is not on that list.
- Municipalities and subscription service providers should report the number of households served and note the collection type.

Litter reduction: A portion of packaging in Maine is littered and that comes with a cost to the municipality and the environment. It’s a cost of management of a packaging material, which is covered by the law. The SO should assist municipalities in litter reduction and clean-up efforts.

- The litter goal should be zero and could be measured using clean up data and surveys funded by the SO.
- Using the evaluation of clean-up audits could help determine which types of packaging are most often found as litter, and the targets and incentives could be specific to that packaging or material type.

Toxicity: Reducing the toxicity in the manufacture, use, and disposal of packaging materials should be a priority. NRCM is concerned about the upstream and downstream effects of the packaging materials we use in the state that harm people around the world in the form of air and water pollution from industrial processes. Incentives are helpful, but perhaps more effective would be to have a ban on certain chemical additives or processes. We urge the Department to think beyond the toxic qualities of the package itself and consider the full life-cycle impacts of different material types.

Determining Recyclability

We firmly believe that the criteria for what it means to be readily recyclable should be set in rule so that materials cannot be added or taken off the list in a haphazard manner. At a minimum, anything on the readily recyclable list each year should have an end market. The end market for the materials must be as an input into a new product or package as a priority, and secondarily diverted from a landfill or incinerator for some other purpose, and under no circumstances be sold to a market for fuel or energy—that is not recycling but rather destruction of resources. It’s

not crucial that the material go through a materials recovery facility MRF, as it may not be appropriate for certain packaging types, like glass or small but recyclable items.

Conversely, the Department should consider also generating criteria for what qualities render a material not readily recyclable so that it's clear to producers of packaging where they could make improvements. The [US Plastics Pact](#) provides a detailed list of problematic or unnecessary plastics that we believe provides an excellent basis for that list, or for what types of plastics are to be discouraged through the producer fee-setting process.

The Department should identify the parameters of what it means to be readily recyclable, and what renders it not readily recyclable, in rule. Then the Department could put the initial list of readily recyclable material together for the first year of the program as part of the contractual arrangement with the SO. This would give both producers and towns enough lead time to prepare for the implementation and make any necessary adjustments to their programs or packaging. We support a grace period for municipalities to still participate as they work to get all the materials on the readily recyclable list accepted in their communities.

Any changes to that list should be done methodically, with an approval process. This could be via recommendation by the SO in the annual report from the SO to the Department, which comes built in with a public comments process. The DEP could then approve or deny any changes to the list. The SO should be required to consult with the packaging industry, recycling trade organizations, and other states with EPR for Packaging programs and provide data-backed rationale for requesting changes to the list. The SO should have the ability to charge the packaging producer or manufacturer for the work required to make this determination so that the cost is equitable.

There should be a clear on-ramp to add materials to the readily recyclable list, one of those being through alternative collection programs. This way, a packaging type could be collected even though it may have a weaker market, but not receive the benefits of being on the official "readily recyclable list" until it meets the criteria laid out in the rules.

We do not support the idea of creating a new voting process by an annual meeting to add or remove items from this list, as that lends itself to potential problems and threatens the integrity of the readily recyclable list. Instead, we believe the Department should have final authority to determine whether the material is readily recyclable, or to incorporate it into some kind of existing public process.

Audits

The statute requires substantial auditing of recyclables, waste, and litter, which will provide invaluable data that allows us to understand where the most opportunity for improvement is. As the Department sets the rules for these audits, it should seek to provide the greatest possible transparency into the recycling system to ensure that Mainers understand how materials are flowing. Composition studies that identify the mix of recyclables in community programs and MRFs that will be critical to determining the proportion of program costs that can be attributed to packaging materials.

Audits should also be used to ground-truth figures reported by the producers. This will be a good way to identify any exempted materials, free-riders, or underreporting into the system. Which means that in addition to sorting by packaging material and format, some information on brands should be collected. And in addition to the requirements listed in the statute regarding audits, we believe that sample sizes should be large enough and samples need to be representative over time and different geographies, as well as reflect any changes due to holidays or seasonal variation.

We do not support the idea of penalizing municipalities for the rate of contamination found in bales at MRFs through the EPR for Packaging program. The municipalities should be incentivized directly through the relationship with their MRF, and we believe it's fair that any penalties imposed by the MRF to the municipalities for contamination *not* be a reimbursable expense.

Thank you for your time and consideration of our comments, and we look forward to working with everyone to develop the most successful and impactful EPR for Packaging program that we can.