



January 23, 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 second of five Department rulemaking topic areas regarding *municipal reimbursements*. To achieve a successful EPR program, we believe that it is important to encourage the most participation from, and support for, our municipalities as much as possible. Our comments focus on the why, what, how, and when aspects of the reimbursement payments.

**Why municipal reimbursements?** Maine's municipalities have historically had to pay for all the packaging waste that enters their communities, which the Department estimated costs them 16-17.5 million taxpayer dollars per year as of the 2019 Product Stewardship report. They manage and pay for all of this, even though they have no control over the amount or type of materials that they have deal with:

- If the packaging they receive happens to be recyclable that year, they can opt to set up a recycling program and then educate their residents on how to participate and pay for all of it; and if it's not designed for recycling then must pay high fees to dispose of it in a landfill or incinerator.
- Municipalities also have no control of the use of recycled content in packaging, which supports strong recycling markets and help make the economics of recycling work in their favor. Nor do they control how a package is labeled with recycling or disposal instructions that could significantly reduce confusion and help with consumer education.
- Our towns also pay for the costs of problematic packaging materials that contaminate our waste streams, degrade the quality of our recycled commodities, jam equipment, or are prone to being windswept and becoming litter in our environment.

We have a growing, changing waste stream made largely of disposable packaging materials that are not only straining municipal budgets but are putting significant stress on our environment and threatening the sustainability of our planet. This is a textbook example of a special type of market failure, called a negative externality. Where some people—the producers of all this packaging waste—are benefitting from pushing the costs of waste management onto other people who do not benefit from packaging waste—Maine's property taxpayers and our future generations. It's no wonder why we have a waste problem under this municipally funded approach.

EPR brings about the fundamental paradigm shift we need to make our waste management efforts fairer, more effective, and more sustainable, which is largely due to shifting the costs to the responsible parties—which are the producers of all the packaging materials. This shift to

*cost-internalization* is a policy tool that is used to correct negative externalities—or what we like to call “polluter pays.” We’ve seen this approach used all over the world to cost-effectively reduce waste and significantly increase recycling, and we’re very proud of Maine for leading the way here in the United States.

**What costs should be reimbursed?** The statute very clearly states that determination of which costs associated with the management of packaging will be eligible for reimbursement will be done through Department rulemaking. NRCM believes that to be the most effective, Maine’s municipalities should be reimbursed for **all** costs related to management of the covered packaging materials, which includes costs associated with collection, sorting, and processing of recycling, disposal, or litter costs, as well as education and outreach expenses. And it should be for all costs associated with packaging in homes, schools, and public areas as well as any costs incurred to participate in the EPR for Packaging program—basically anywhere that the taxpayer is ultimately footing the bill or investing in strategies that reduce packaging waste. We encourage the Department to be thorough and specific in how we outline and determine all of packaging related costs to our communities so that there is no question as to what is and is not a reimbursable expense and how reimbursement is calculated.

The statute also requires that the reimbursement payments to municipalities encourage them to manage the materials in a way that supports our waste management hierarchy, much in the same way that the producer fees are “eco-modulated” to encourage them to reduce waste, and design more reusable, recyclable packaging. Our ideas for how we can encourage municipalities to work to move more materials up the hierarchy include:

- Bonus payments to municipalities that have successful policies in place such as pay-as-you-throw or policies that support reusable packaging for local restaurants, businesses, and schools.
- Bonus payments to municipalities that sell recycled commodities to recyclers that use responsible and/or local end-markets, and reduce transportation of these materials and associated emissions.
- Reimbursing expenses that are associated with packaging reuse efforts including public drop-off kiosks for reusables, and other infrastructure regarding reuse including staffing.
- When it comes to disposal, we encourage the Department to treat waste-to-energy and landfilling to be the same undesirable outcome and keep the focus on the higher rungs of the hierarchy—which are waste reduction, reuse, and recycling.

**Who should be reimbursed for the costs of managing packaging waste?** This program is voluntary, but to be successful we need as many towns as possible to participate. Because of that we’d like the Stewardship Organization (SO) to take a no-municipality-left-behind approach, and we encourage existing municipal groups to rally their members.

- To do this, we think the SO should be required to hire additional staffers for the first few years of the program to assist municipalities in getting recycling programs started or expanded to include all readily recyclable commodities so that they qualify for reimbursement; and also so they can give direct assistance to municipalities to fill out

their reports that enable them to be reimbursed to the maximum extent possible. The SO should be given enforceable goals to reach regarding outreach and municipal recruitment.

- We also hope existing municipal groups that already work together on waste such as our councils of governments, ecomaine, municipal review committee, and others will help ensure that all their member communities are aware of this new program and ready to participate when the law goes into effect; and they should consider playing a role in representing the group as a whole when it comes to reimbursement.

**How should reimbursement payments be made?** To simplify the reimbursement process, the regulation should establish a formula for municipal reimbursement that models the key cost factors supported by studies and audits to determine the cost associated with managing packaging waste in our communities. This approach would be less burdensome to municipalities than a system that requires each of them to provide detailed accounting, reporting, and reimbursement of actual costs.

Further, we believe that initial regulations should focus on the first few years of the program, and then refine the formula over time once baseline information has been established. The model formula should consider the following cost factors:

- Type of program (curbside vs. drop off, single stream vs. dual or multi stream, public area/away from home)
- If curbside, population density (as it affects collection costs)
- Distance to materials recovery facility (MRF) and/or end market
- Recycling processing costs
- Tons recycled and tons wasted/disposed
- Number of households
- Education (\$/household)<sup>1</sup>

Model formulas are provided below as a place to begin. **Appendix A** provides information on reimbursement procedures in select Canadian EPR for Packaging and printed paper programs. Calculating reimbursement rates will require the Department to gather data to fill in each of the variables identified below. The Department could gather such data through a data call to all relevant stakeholders, through a cost analysis, or through a modeling exercise. Another approach is for the Department to propose costs and allow stakeholders to submit detailed documentation of alternative costs for consideration if the stakeholder feels the Department-generated model cost is inaccurate.

### **1. Cost of Recycling = Collection Costs + Processing Costs + Transportation Costs**

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<sup>1</sup> There needs to be a clear definition of what education is to be done by municipalities and what is to be done directly by the stewardship organization. For instance, it is possible the stewardship organization designs and prints materials that the municipalities then distribute.

- **Collection Cost** = X\$/Household (HH) where X is calculated based on population density/route density
    - In communities that have only drop off recycling, collection cost = drop off center operating cost pro-rated for proportion of material (by weight, volume, disruptor status, etc.) managed that is covered packaging.
  - **Processing Cost** = X\$/ton where X represents the processing cost, net of revenue, paid by the municipality or ratepayer to the material recovery facility (MRF) operator
  - **Transportation Cost** = X\$/mile\* for miles traveled where X represents the cost per vehicle miles traveled to get recyclables from the collection route or transfer station to the MRF/processor
    - It is important to account for changing fuel prices in the per mile cost. Transportation costs could be assessed every year or quarter and could rely on stakeholder engagement with transportation companies and other providers to ensure coverage of costs.
    - Recycling service providers may be interested in passing on the responsibility of transportation onto the stewardship organization.
2. **Cost of Disposal = Collection Costs + Disposal Costs + Transportation Costs**
- **Collection Cost** = X\$ / HH where X is calculated based on population density/route density
    - Communities that have only transfer station disposal, collection cost = transfer station operating cost pro-rated for proportion of material (by weight, volume, disruptor status, etc.) handled that is packaging
  - **Disposal Cost** = X\$/ton where X represents the disposal tip fee paid by the municipality or ratepayer to the disposal facility.
  - **Transportation cost** = X\$/mile \* miles traveled where X represents the cost per vehicle miles traveled to get waste from the collection route or transfer station to the disposal site.
3. Education & Outreach (including anti-contamination and anti-litter programming) = \$10/household<sup>2</sup>
- In the Oregon discussions around rulemaking for the Recycling Modernization Act, the Rulemaking Advisory Committee has been discussing using a \$3/person education and outreach cost figure.
  - We acknowledge that this specific topic will be covered in future stakeholder conversations.
4. Administrative costs = X\$/household where X is variable based on the type of program and the complexity of management/administration (e.g., number of contracts required, extent of municipal engagement in program management)

Municipalities should report the following data in a standard digital form created by the Stewardship Organization with guidelines set by the Department stakeholder process. The

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<sup>2</sup> As defined as a best practice by The Recycling Partnership.

process will be smoother the earlier the Department determines the data it requires for calculating municipal compensation, and the earlier municipalities are made aware of the information they will need to track. Municipalities should seek to provide the greatest level of detail on program costs possible, but at a minimum provide the contractual costs and scope of services for key service providers:

- Number of households serviced
- Tons disposed and tons recycled
- Collection service provider and costs
- Annual operations and maintenance costs on municipally-owned facilities
- Transportation service provider and costs
- Recycling service provider and costs
- Distance to market
- Number of public area/away from home collection containers

### **Grouping Municipalities and Using Average Cost Parameters**

- There needs to be a process for determining on an annual basis which municipalities are similar to each other and can be grouped. The initial groupings could be based on already accessible data (e.g., population density), and subsequent years could utilize data collected from the first few years of the EPR program administration.
- Municipalities can be grouped into typologies based on similar characteristics around their recycling and waste systems. Formulas based on average cost parameters will avoid the need for municipalities to track highly specific information. The method used by Quebec might be particularly useful for Maine, since it takes into account both the size of a municipality and the distance from an urban center. Given that Maine has a high number of rural communities, particular attention will need to be given to how reimbursement differs due to degree of urbanization. (Between three and five typologies is ideal to allow sufficient differentiation while still gaining efficiency and simplicity.)

**When should reimbursement payments be made?** As soon as possible. We defer to our municipal representatives on the frequency and time of year that reporting could be done most easily. And we continue to urge the Department to amend the [schedule for implementation of this program](#) to remove reference to major substantive rulemaking for exemptions. We do not support any exemptions by major substantive rule, but, if that happens then the issuance of the RFP for the Stewardship Organization can happen concurrently with any major substantive rulemaking activity. Doing so could get payments to our municipalities at least a year sooner than is currently projected.

Thank you for the opportunity to provide comments on this important aspect of Maine's EPR for Packaging program. We look forward to providing comments to the Department on the remaining three topic areas.

--Sarah Nichols, Sustainable Maine Director

## Appendix A: Other Programs Utilizing Municipal Reimbursement Systems

A comparison of the methods used for municipal reimbursement in Manitoba and Quebec provinces, which have EPR for Packaging programs.

<b>Comparison of Municipal Reimbursement Programs in Canadian Provinces</b>		
	<b>Manitoba</b>	<b>Québec</b>
<b>How costs are submitted</b>	Munis register and apply with a form <sup>3</sup> that requires information about the recycling program, materials collected	Munis need to report cost, tonnage, population
<b>Frequency of payments</b>	Annually	Annually for the real reported net costs of previous year
<b>Who do municipalities submit costs to?</b>	Munis report their costs to Multi-Material Stewardship Manitoba (MMSM), the primary stewardship organization	Munis report their costs to Recyc-Québec (semi-public authority that sits between the government and the PRO).
<b>Who determines what is reasonable?</b>	MMSM	Recyc- Québec performs the validation of the costs. R-Q has a high level of administrative responsibility.
<b>Criteria of “reasonable” municipal costs</b>	Funding from MMSM is a set compensation rate designed to reflect 80% of total program cost. Communities are grouped by population and must submit regular reports/claims for reimbursement. The costs of operating the program are collected annually through the Cost Monitoring Survey. MMSM calculates the median net cost per group and funds up to 80% based on the net median cost three year rolling average. Costs above the established payment level (\$/tonne) are the responsibility of the municipality. A municipal program must meet certain requirements, including types of material collected, in order to be	In the regulation, munis are grouped into six categories depending on size and distance from an urban center, and there is a reasonable reimbursement range. Each municipality is compared to others based on the Performance and Efficacy (PE) factor, which is a ratio between recovery per capita and cost per ton. The PE factor prevents reimbursement of very high municipal costs. There is also a minimum compensation amount or floor, to ensure rural communities receive 70% of their costs after the adjustment with the PE factor. <sup>4</sup> Recyc-Québec provides the <a href="#">Charter of Recyclable Materials</a> , which is a harmonized list of acceptable materials that can be adopted by municipalities (although it is not mandatory).

<sup>3</sup> [https://stewardshipmanitoba.org/wp-content/uploads/2021/04/MMSM-Registration-Guide-Forms-2021\\_FINAL2.pdf](https://stewardshipmanitoba.org/wp-content/uploads/2021/04/MMSM-Registration-Guide-Forms-2021_FINAL2.pdf)

<sup>4</sup> More details on the Method of Calculation, Division, payment and Distribution of Compensation can be found here in “Division IV” Section 8 <https://www.legisquebec.gouv.qc.ca/fr/document/rc/q-2,%20r.%2010?langCont=en>

	<p>eligible for financing. Municipalities are required to consult with MMSM prior to any changes in recycling programs to demonstrate that the changes improve efficiency and effectiveness while controlling costs. MMSM bases its funding rates on the outcomes of annual cost monitoring studies.</p>	
<p><b>How is funding dispersed? Flow of payments</b></p>	<p>MMSM's Municipal Services Program pays municipalities</p>	<p>Recyc-Québec performs the validation of the costs and informs EEQ, the PRO. EEQ then remits, in trust, the annual amount of compensation owed to the municipalities. Recyc-Québec distributes money to the municipalities for the net cost of recycling services.<sup>5</sup></p>

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<sup>5</sup> EEQ Fee Structure and Terms. <https://www.eeq.ca/en/for-companies/fee-structure/understanding-the-schedule-of-contributions/>

