

March 18, 2024

Maine Department of Environmental Protection
17 State House Station, Augusta, ME 04333

To Mr. Brian Beneski

The Biodegradable Products Institute (BPI) is North America's leading certifier of compostable materials, products, and packaging, with over 500 member companies worldwide. As a science-driven organization, BPI supports a shift to the circular economy by promoting the production, use, and appropriate end of lives for materials and products that are designed to fully biodegrade in specific biologically active environments. Our certification program has verified thousands of items using ASTM standards as a baseline, plus additional requirements on PFAS, labeling, and eligibility criteria, all to help to keep organic waste out of landfills.

We appreciate Maine as the first state in the country to pass a law to create a statewide EPR program of its kind, and we support the general goals to reducing landfill waste, pollution, supporting the necessary infrastructure to ensure that covered products are either recyclable, reusable, or compostable. We are however, concerned that these regulations fail to recognize vital differences between recyclable and compostable products and the systems they inhabit. Recycling has enjoyed decades of additional support and education compared to compost, yet compostability is a necessary compliance mechanism for many products that are designed to be single-use and food associated (PLU stickers, food scrap collection bags, coffee and tea products, food-contact film, food ware, condiment packets). The benefits of compostable products also extend beyond their own material, as they are designed to divert food and other organic waste from the landfill to reduce emissions and help create a valuable soil amendment. We offer the following suggestions to ensure overall programmatic success:

2(H) Definitions

We recommend the following change to the definition of compostable packaging material to align with other states and widely accepted industry standards:

“Compostable Packaging Material” means packaging material that is designed for direct contact with food or organic waste, and has been certified by an independent third party to

meet ASTM standard specification D6400, D6868, or D8410 and is capable of undergoing composting

Being “capable of undergoing composting” is by itself vague and requires verification to prohibit the many products that make false, misleading, or unsubstantiated claims. That’s why states across the country have adopted ASTM-based requirements, including with third-party certifiers to provide verification and ensuring additional criteria are met (food & organic waste association, testing for toxicity, clear labeling etc.) The current definition would leave Maine unaligned with the much of the country.

To account for packaging designed to handle yard waste, for example, we recommend expanding the definition to beyond just food.

3(A)(8) Postconsumer recycled material

Compostable products, as they are designed to disintegrate and biodegrade in compost and provide a unique benefit in diverting food scraps and organic waste, are widely exempted from PCR requirements. The Department should clearly exempt them from this requirement and any related fees described in 10(A)(3) to avoid unintended consequences.

3(C) Needs Assessment

The draft states, “If requested by the Department, an assessment comparable to that described...for additional packaging materials that are not readily recyclable.” Given the goals of the program to improve recycling, reuse, and composting, the Department should request an assessment for compostable packaging materials as well, to better understand the funding, equipment, and educational needs of compost facilities capable of processing compostable packaging.

4(C)(3) Primary Management Pathway

Why won’t the Department designate materials as compostable packaging as ‘readily recyclable,’ or ‘readily compostable’? Many certified products may already meet the criterion of being accepted and processed by (many more than) two facilities in North America and 100% ratio by weight targeted for composting. Throughput is not applicable to compostable products as they are not sorted post-disposal. Need ‘operational facilities’ as described in (1)(a)(ii) be located in Maine? If not, compostable products may meet the criteria as well.

10(A)(3) Incentive fees

(b) Toxics – how is certification and toxicity defined? BPI certified compostable products, for example, were the first in North America to adhere to a scheme now adopted by many states to prohibit the use of perfluorinated chemicals (manufacturer signature, ingredient list, total organic fluorine test). BPI also tests for ecotoxicity to ensure non-toxic plant uptake. Does BPI's scheme comply? Without clarity, compliance is impossible.

(d) Labeling – the requirements in this section conflict with existing laws across other states and apply an inappropriate set of criteria based on the realities of recycling, not composting. As indicated earlier, a product may be labeled compostable across many parts of the country if it has been third-party certified to meet ASTM standards. Unlike recyclable products, a certified compostable product can disintegrate and biodegrade equally in any well-managed facility, regardless of location or market dynamics, which is why they have been defined and labeled **based on their tested performance** and not other thresholds.

Studies indicate that the BPI certification logo is the labeling element most positively identified by consumers with a compostable product, along with the word 'compostable.' Requiring their removal in specific, changing geographies would not only be unrealistic for manufacturers, but it would also cause further consumer confusion and betray the realities of compostable products' tested and proven capabilities and their acceptance in cities and municipalities across the country.

We recognize the point that many consumers (currently) may not have access to a local composting program, which is why our members support well-conceived EPR as a mechanism to fund the necessary infrastructure for all counties. To provide clarity and align with FTC guidelines, BPI-certified products often display a disclaimer indicating the potential lack of availability. For the reasons spelled out, we recommend the following:

For packaging material to be labeled compostable, it must meet definition 2(h) and, where possible, indicate that a packaging collection program may not be available; a material management pathway is available if there are alternative collection programs managing the the packaging material in every county.

Please reach out to us with any questions or concerns,

Sincerely

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