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March 18, 2024

Maine Board of Environmental Protection
c/o Brian Beneski, Department of Environmental Protection
17 State House Station, Augusta, ME 04333
Via email: rulecomments.dep@maine.gov; brian.beneski@maine.gov

RE: Comments on Chapter 428: Stewardship Program for Packaging

The Retail Association of Maine and the Maine Grocers & Food Producers Association are jointly submitting comments regarding the proposed routine technical rules for the Stewardship Program for Packaging. These comments are in addition to the oral testimony provided by Curtis Picard of the Retail Association of Maine at the public hearing on March 7, 2024.

Our business trade associations represent Main Street businesses including independently owned and operated grocery stores and supermarkets, general merchandise, specialty retailers, and convenience stores, distributors and supporting partners — together representing more than 500 members statewide. Maine's retail sector employs more than 85,000 Mainers.

Our associations have been active participants in the implementation of this law. We've participated in both formal and informal stakeholder meetings and additional conversations with Maine DEP staff on the law and these proposed rules. At the public hearing, Mr. Duchesne made the analogy that the legislature gave the Maine DEP Lincoln Logs, and are asking them to build the Eiffel Tower. We think that is an apt analogy, and we have a deep appreciation for the hard work the Maine DEP staff have put in to try to build the Eiffel Tower. Part of our role as business trade associations is to translate confusing and complex regulations and rules into an understandable format for our members to understand. We regularly do that for programs like Maine's Paid Family Leave law, workers' compensation, or tax policy. However, we are nearly three years past when this law was enacted, and it remains incredibly complex, hard to understand, and difficult to explain to our members. It's not often we see 62 pages of proposed routine technical rules. The sheer volume demonstrates the complex intricacies of making Maine's EPR law feasible.

One of the primary questions we are asked regularly by our business members is how much is this program going to cost, and how much are they going to have to pay? We've asked that question repeatedly, but we have yet to receive an answer. Advocates of the law frequently cited \$18-\$20 million annually, and it did not seem credible at the time nor does it seem realistic three-years later. That would mean that the per capita cost of recycling in Maine is only \$15 per person per year. We want to stress the importance of understanding the costs so businesses can adequately financially prepare. Our industries have significant concerns for the lack of available cost projections. This program is slated to begin the collection of funds in 2026, and businesses are planning their 2026 budgets *now*. Determining even a ballpark estimate for this program continues to be more imperative with each passing day.

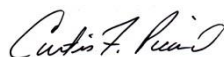
In most cases, we understand who is considered a producer, and the responsible entity to pay into the system. However, we remain confused about business-to-business packaging, and whether that packaging will classify certain entities as producers. Curtis Picard gave an example during his oral testimony for a case of canned tomato sauce and two varying paths to the end-customers. One example is tomato sauce tin cans that are shipped in a cardboard box from the manufacturer (brand owner/producer), to a distributor, then to a grocery store. The grocery store unpacks the case, loads the cans on the store shelf for sale to the end consumer. The grocery store recycles the cardboard through their existing industrial, contracted recycling channel. The sauce tin cans get sold to a consumer, and recycled. Under this scenario, the sauce producer would have to pay into the system for the tin cans, but not the cardboard box manufacturer because it wasn't used by an individual, end-consumer.

However, if a case of tomato sauce was delivered to a local pizza restaurant, and the sauce was used to make pizzas, the restaurant would be the end-consumer. We are seeking clarity as to whether or not both the box and cans as B2B packaging would be considered material in the EPR program. Part of this confusion appears to stem from smaller business entities using municipal facilities. Some businesses arrange for their own waste and recycling, and some use municipal operations. We believe the intent of the law was to only include packaging that goes to end-consumers as individual consumers, and not to include business-to-business packaging, and ask for the rules to specify so.

We would like to offer some specific comments for your consideration:

- **Exemptions:** We appreciate the Department's inclusion of a method for exemption from the incentive fee for federally regulated products, but there should be consideration for other products where there are no readily recyclable alternatives. For example, ice cream containers are pretty universal throughout that category with plastic lined cardboard. There currently is no other alternative to that packaging, and we think the rules should include a similar exemption mechanism for packaging materials like that.
- **Producer Reporting:** While the brick code may be helpful for the Department to manage a like group of products, we remain concerned that it will be incredibly difficult, if not impossible, for the Department or SO to maintain a comprehensive list of compliant and non-compliant products. This will leave retailers frequently unsure if their product line is compliant.
- **Responsibility:** Alongside reporting, we do not see the specified clarity necessary to determine the responsible entity for payment when it is unclear who the producer/owner of the packaging material is, both at a retail level and specific to packaging with multiple material types.
- **Packaging Material Types List:** Conceptually, it should be easier for a non-readily material to be added to the readily list as market changes occur. Conversely, there should be some time period to allow for manufacturing changes if a material changes from readily to non-readily. In addition, the fees should be timely in responsiveness to market and material changes.
- **Program Goals:** The program goals seem overly ambitious, if not impossible, to meet due to the complexity and penalties attached to many of the goals. We question the data-driven rationale behind the specified % goals and affiliated years. We urge the DEP and the SO to revisit how to best determine achievable goals.
- **Certifying the Absence of Toxics:** As we have seen with PFAS reporting, the ability for producers to certify that packaging materials are free of toxics is likely to be challenging especially for low-volume producers. Which toxins are to be certified as absent? This is comprehensive of hundreds of thousands of products.
- **Packaging Stewardship Fund Cap:** Proposes that the fund will have excessive funds when it reaches five times the annual expenditures. We can think of no other state program that would maintain excess funds that much. Maine's unemployment insurance program, for example, would never maintain a fund balance five times the annual expenditures.

Thank you for the consideration of our comments. We look forward to remaining engaged partners as the process continues. It is imperative that this is done well for implementation clarity and overall program success.



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