



**Comments in Support of Proposed Rules for the Stewardship Program for Packaging
(Chapter 428)
To the Board of Environmental Protection
by Vanessa Berry, Sustainable Maine Program Manager
August 22, 2024**

The Natural Resources Council of Maine (NRCM) appreciates the opportunity to provide additional feedback on the proposed rules for Chapter 428, the Stewardship Program for Packaging, established in MRS Title 38 §2146.

NRCM advances practical policies and programs that help Maine communities make recycling more effective and reduce the amount of waste sent to landfills and incinerators. We strongly support Extended Producer Responsibility (EPR) for Packaging because it is a proven solution for increasing recycling rates and saving taxpayers money by holding producers accountable for the wasteful packaging they create.

The process of creating the rules for this program has been exhaustive, with the Department providing multiple opportunities for interested parties and the public to provide input and build consensus. **We look forward to seeing this program move into the implementation phase, which will provide municipalities with critically important financial support.**

The rules drafted by the Department are strong and effective. Not only do they provide a foundation for the program's success, but they will also set a good example for other states considering EPR for Packaging. Of course, we can anticipate that these rules – like many such rules – will likely be amended over time as we incorporate lessons learned to optimize the program's performance.

For these comments, we propose one minor amendment to the draft rules, which we believe is necessary to ensure equitable reimbursements and adequate incentives for municipal participation. **With that amendment, we urge the Board to approve the rules and direct the Department to proceed with implementation of the program.** Attached, for reference, you can find a copy of our previous detailed comments on the Department's initial draft rules.

Reimbursement for Packaging Should be Equitable.

In Section 13(D) of the proposed changes to the rules, municipalities throughout the state would be entitled to different rates of reimbursement for the management of non-readily recyclable packaging and would only be eligible for these funds under certain conditions. We agree with concerns expressed by some members of the Board at your June 20 meeting that this proposed approach would create an unfair advantage to those communities with existing access to incineration facilities and would penalize rural areas of the state where disposal options are far more limited.



Specifically, NRCM is concerned that municipalities will only be eligible for reimbursement of landfilling non-readily recyclable packaging if a landfill is closer in proximity than an incineration facility, and these communities would also receive a lower rate of reimbursement than those with access to incineration. This provision within the rules does not account for capacity at incineration facilities or potential acquisitions of processing facilities that may occur, which can force municipalities reluctantly into waste processing agreements that do not align with Maine's Solid Waste Management Hierarchy.

We recognize the Department's intent of the current proposal to utilize reimbursements in a way that incentivizes improved management of waste in accordance with the waste hierarchy, but we do not believe that the proposed language will have the intended impact for municipalities. To the contrary, it likely would create unintended consequences that would further delay or even completely discourage some communities from participating in the Product Stewardship for Packaging Program, especially in rural areas that desperately need financial support to manage their packaging materials more sustainably.

Given these concerns, we request that the draft rules be amended so that all municipalities would be eligible for a two-thirds reimbursement for the management of non-readily recyclable materials, regardless of disposal method or distance from disposal facilities.

We understand that some producers and interest groups might not support reimbursing municipalities for packaging that is disposed of in landfills. However, we feel strongly that producers, who have decision-making authority over the packaging they design and distribute in Maine, should be encouraged to focus on reducing non-readily recyclable packaging and designing more circular alternatives to support municipal diversion. Doing so would help increase participation and reduce environmental impacts for the packaging that they have produced.

With this suggested amendment to the drafted rule language, NRCM wholeheartedly supports the proposal for Maine's Stewardship Program for Packaging. We appreciate the thoughtfulness of the Board's deliberations of these rules, and look forward to partnering with communities, sustainable materials management entities, and businesses during the program's implementation to ensure its success. Thank you for your consideration of our comments.



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(Chapter 428)**

To the Board of Environmental Protection

by Vanessa Berry, Sustainable Maine Program Manager

March 7, 2024

The Natural Resources Council of Maine (NRCM) appreciates the opportunity to comment on the proposed rules for Chapter 428, the Stewardship Program for Packaging, established in MRS Title 38 §2146.

In 2021, the 130th Maine Legislature passed LD 1541: An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money, a first-in-the-nation policy to ensure that manufacturers of packaging waste are required to help finance end-of-life costs for managing packaging waste that they have helped produce. Presently, these costs are covered by Maine communities and taxpayers—not the producers. This is an Extended Producer Responsibility (EPR) law that extends responsibility to producers beyond the point of simply providing consumers with an expanding volume of packaging materials.

EPR for packaging laws exist around the world and are helping those nations save money for taxpayers and achieve levels of recycling far beyond what has been achieved in the United States. Many countries with EPR for Packaging laws are achieving recovery rates above 60%.¹

For decades, Maine taxpayers and municipalities have been responsible for finding solutions to packaging they have little or no control over. Even though packaging simply serves as a temporary vessel in which we receive our everyday items, according to the Maine DEP, about 30-40% of the materials managed by municipalities are packaging waste. Maine taxpayers pay *at least* \$16 million each year to manage packaging material through recycling or disposal.² In our current system, there is little incentive for large producers to create less waste or make their packaging easier to manage because they share no responsibility in taking care of it.

With limited options on the market for these materials, and rising costs for managing recycling programs, many Maine communities have been forced to suspend or cut back their recycling programs, sending these materials to landfills instead. With landfills throughout the state nearing capacity, this temporary cost-saving solution is creating another expensive problem for Maine people – expanding existing landfills. However, this waste crisis was created by producers, not by Maine people.

¹ Source: [Resource Recycling Systems Impact of EPR for PPP on Recycling Rates 2020](#)

² Source: [Maine Department of Environmental Protection's 2019 Annual Product Stewardship Report](#)



The Legislature enacted LD 1541 to address these problems, and the rules before you now will implement that law. The result will be a new system of producer responsibility for packaging that will benefit Maine taxpayers and municipalities, increasing Maine's rate of recycling, reducing pressure on landfills, and creating incentives to producers to reduce packaging waste and make their packaging more recyclable.

Extended Producer Responsibility for Packaging is Necessary to Meet Maine's Recycling Goals

Extended-Producer Responsibility for packaging is designed to support municipalities in their efforts to manage the excessive barrage of single-use packaging by shifting the financial costs of managing these programs back onto the producers who make and distribute the packaging materials in the first place. With support from the Department and a third-party Stewardship Organization (SO), Maine communities who choose to participate will report the costs they incur while collecting, sorting, transporting, and processing eligible packaging materials to receive a reimbursement for those costs. The producers who make this packaging will share the responsibility of managing the waste they create, with strong financial incentives to make less packaging and make their packaging easier for Mainers to recycle. These programs create a system for managing packaging that is more efficient, more sustainable, and more equitable for Maine people and towns.

More Efficient - EPR programs incentivize producers to achieve waste reduction, reuse, and recycling of packaging materials through fees that are modified based on materials design (e.g., eco-modulated fees). Municipalities, reimbursed based on the median costs for similar communities, are encouraged to manage materials efficiently to maximize those funds across their solid waste budgets.

More Sustainable - By reimbursing participating municipalities for their recycling efforts, EPR makes Maine's community recycling programs more resilient by stabilizing costs for managing packaging materials. This financial incentive allows towns to recycle when costs would otherwise be a barrier and provides opportunities for long-term investments in recycling infrastructure.

More Equitable - With support from a third-party Stewardship Organization, Maine's EPR program will identify areas where recycling access is more limited and explore solutions to make recycling more widely available to all Maine communities.

EPR programs create accountability for the producers who create this packaging waste and require them to own part of the responsibility for these materials throughout their full lifespan. Producers have the choice to pay the true cost of their existing packaging, create alternative recycling pathways for their packaging, or make changes to the way they package and sell their products to reduce the negative impacts of the packaging.



Some large producers may voice opposition to these rules, request exemptions from the rules, and provide excuses to avoid the increased accountability, yet many of those same companies adhere to programs just like this in other nations, and Maine lawmakers have clearly established in passing LD 1541 that a similar approach is needed here. Maine municipalities should no longer be responsible for footing the bill for wasteful packaging created by producers. In this context, we support the Department of Environmental Protection's decision not to provide exemptions to certain categories of producers.

While Maine was the first state in the country to pass this legislation, many other countries have decades of experience operating a similar framework for packaging materials and can serve as role models for successful implementation of these programs. For example, there are five provinces in Canada that have existing stewardship programs for packaging materials. As part of an expert technical briefing to the Environment and Natural Resources (ENR) Committee on January 22nd, 2020, Resa Dimino, Senior Consultant at Resource Recycling Solutions, presented data showing that:

- Residential recycling rates in Canadian provinces immediately increased by an average of 8% following adoption of EPR for Packaging laws;
- Average recycling rates in these provinces after 2-4 years increased by 17%; and
- Average recycling rates after 8-10 years increased by 29%, with overall recycling rates exceeding 60% in some provinces.

Maine has been working toward a goal of recycling more than 50% of municipal waste for more than thirty years³, but has yet to achieve this goal. Our current municipal recycling rate is 34%. With proven examples from others around the world, EPR for packaging will put Maine on the right path toward better recovery of existing materials and allow us to be less dependent on our finite natural resources now and in the future.

EPR Programs Provide Much-Needed Financial Support for Participating Municipalities

Maine's EPR for Packaging law contains reasonable, yet ambitious goals to reach full participation from Maine communities throughout the state and provides additional avenues for investments that will make recycling more accessible and affordable for everyone. We know that some municipalities are already well-positioned to begin fully participating in this program and currently operate highly effective recycling programs, but not everyone will start from the same place. These rules allow the Stewardship Organization to provide a thorough assessment of Maine's recycling landscape and identify areas where communities could use more support to get their programs operating efficiently and effectively.

³ Source: [Maine State Legislature Statutory History Title 38, Section 2132, 1989](#)



Once implemented, this law will provide major benefits for all Maine communities, regardless of their level of participation in the EPR for Packaging program. The DEP's proposed rules create strong financial incentives for producers to alter their packaging to reduce the use of unnecessary materials, make packaging from materials with lower toxicity, make packaging that is more easily reused and recycled, and provide more accurate labeling to avoid consumer confusion about the recyclability of materials. Even communities who need more time to successfully implement a full recycling program in their town will experience improvements in the design and collection of packaging materials.

Maine Communities and Maine People Support EPR for Packaging

This law was passed with bipartisan support and was supported by dozens of communities around the state and thousands of Maine people. Twenty-three Maine municipalities, representing more than 280,000 Maine residents, adopted municipal resolutions urging Maine to adopt an EPR for Packaging law⁴, and about 2,500 Mainers signed a petition in 2021 urging lawmakers to enact an EPR for Packaging law.⁵

These communities supported EPR for packaging because it will provide critical financial support for recycling in Maine, relieve taxpayer costs for recycling programs, help boost recycling rates, and shift responsibilities for end-of-life management of packaging waste to the producers that are generating these materials that are filling up Maine's landfills.

Maine Has Over Forty Years of Experience with EPR Programs

In addition to this program for product packaging, Maine currently manages product stewardship programs for beverage containers, rechargeable batteries, mercury auto-switches, electronics, mercury thermostats, cell phones, mercury lamps, unused paint, and unused pharmaceuticals. Many of these programs have been in place for decades and have resulted in high rates of recycling and reduced landfilling of problematic materials, including mercury-containing products.

For example, in 2022, Maine's product stewardship program for beverage containers resulted in an overall recycling rate of 78 percent.⁶ This model for management of material provides more comprehensive collection and recycling compared to Maine's overall municipal solid waste (MSW) recycling rate of 33.8 percent, and a statewide recycling rate of 24.46 percent for MSW, construction debris, and organic waste combined.⁷ With examples of success in management of

⁴ Source: [NRCM Municipal Resolutions for EPR](#)

⁵ Source: [NRCM EPR Petition Signatures and Comments](#)

⁶ Source: [Maine Department of Environmental Protection's 2024 Annual Product Stewardship Report](#)

⁷ Source: [Maine Materials Management Plan: 2024 State Waste Management and Recycling Plan Update and 2022 Waste Generation and Disposal Capacity Report](#)



packaging abroad, coupled with examples of Maine's own success with product stewardship programs for other types of packaging, we know that this program will result in better materials management for Maine people, communities, and our environment.

Overall, NRCM Supports the Rules Proposed by the Department of Environmental Protection

The management of packaging in Maine is a complex topic that requires a systemic approach to address the many unique ways that Maine communities collect, sort, process, ship, and dispose of these materials. Supporting the intent from the 130th Maine legislature, the DEP completed a comprehensive evaluation of this landscape and gave all stakeholders, from producers and material processors to municipalities and local governments, ample opportunity to provide comments and input. The rules extensively cover all avenues for municipal and producer management of packaging and provide a pathway for producers to reduce their overall fees through changes to the design and material makeup of packaging that support Maine's existing diversion and solid waste management goals.

Many states are looking at Maine as we finalize rules for this program. While NRCM is overall very supportive of the proposed rules and appreciates DEP's commitment of time and effort to incorporate feedback from stakeholders, we do have several recommendations that we would like the Board to consider.

Reimbursements for Disposal Costs - While NRCM supports the inclusion of disposal costs for non-readily recyclable packaging within the municipal reimbursement structure, the current rule language proposed only allows for reimbursement of per-ton costs for those municipalities that utilize "alternative management" to dispose of packaging in incineration facilities. We believe this creates an unfair financial incentive for those select communities with access to waste-to-energy incinerators, and specifically provides less financial support for management of packaging in rural and northern areas of our state. We would strongly encourage the rules to be amended so that the costs of management for all methods of disposal be reflected in the reimbursement framework or eliminate disposal reimbursements and instead refocus on the incentives for recovery of these materials and allocate those producer fees for the development of recycling and reuse infrastructure.

Third-Party Accountability - We recommend the rules be amended to include language to require third-party verification or specific certification requirements for use of post-consumer recycled content and lack of toxins within product packaging.

Improved Auditing Metrics for Municipalities and Producers - The need for improved collection of waste management data is imperative for establishing a baseline and measuring the success of the EPR for packaging program. Within the draft rules, the Department states that the Stewardship Organization will conduct disposal audits of the municipal waste stream every ten years, with three randomly selected municipalities, but we strongly recommend that



the rules be amended to require these audits to be either scaled in size to accurately reflect the municipalities participating in the program, or increase the frequency of these audits to create a more representative sample of the municipal waste stream.

Additionally, under this law, producers have a number of reporting requirements to provide information regarding units of packaging produced, material types, absence of intentionally-added toxics, their use of recycled content, their labeling, and other important details related to their packaging. To ensure consistent and effective data collection from producers, we recommend that the Department require the Stewardship Organization to have a third-party conduct producer auditing and require that at least two producer groups are subject to auditing annually. This is consistent with other product stewardship programs in Maine. We also suggest that the Department establish a mechanism for the reporting of any instances of underreporting from producers so that the Department can take steps to enforce compliance.

NRCM appreciates your thoughtful reflection of these rules and looks forward to the successful implementation of Maine's EPR for Packaging law, which will provide Maine communities with the support they need to maintain and strengthen their recycling programs. Thank you for your consideration of our comments on these proposed rules.