



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

Background information for stakeholder meetings on education and investment

The Department will hold stakeholder meetings on topic of *education and investment* on May 9th and May 23rd, from 1:00 pm to 5:00 pm EST. As a reminder, Meeting 1 provides stakeholders an opportunity to share prepared comments, and Meeting 2 allows for discussion of those comments. Stakeholder meetings will be held in room 101 of the Deering Building at 90 Blossom Lane in Augusta and will also be available virtually. To RSVP for a stakeholder meeting or access comments submitted to date, visit [Maine’s EPR Program for Packaging website](#).

Section 13(A)(8) of 38 MRS §2146 *Stewardship program for packaging* requires rulemaking define the following, and it is the central topic for the May meetings—

A process by which the stewardship organization will develop and submit for department review and a process by which the department shall review and approve or deny a proposed investment in education and infrastructure pursuant to [subsection 11](#). The process must set forth the manner in which the stewardship organization is required to solicit and incorporate input in the development of proposed investments from producers, recycling establishments and participating municipalities.

Below we have included relevant excerpts from statute, contextual information, and questions for consideration. All excerpts are from 38 MRS §2146 unless otherwise noted.

I. Process for development and submittal of investment proposals by the stewardship organization (S.O.) for Department review

The S.O. will make investments in education and infrastructure. Section 11 puts forth the following regarding these investments—

In accordance with the provisions of this subsection and the rules adopted by the department, the stewardship organization shall make investments in education and infrastructure that support the recycling of packaging material in the State.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

May 2023

Before investments in infrastructure and education are made, the S.O. will develop and submit an investment proposal to the Department for review. Section 11(A) puts forth the following regarding these investment proposals—

The stewardship organization shall submit any proposed investment in education or infrastructure to the department for approval prior to making any expenditure for such investment. The proposal must incorporate any input received by the stewardship organization regarding the proposed investment from producers, recycling establishments and participating municipalities.

The process by which input is solicited and incorporated into investment proposals will need to be explained in rule. Section 13(A)(8) puts forth the following regarding the process—

The process must set forth the manner in which the stewardship organization is required to solicit and incorporate input in the development of proposed investments from producers, recycling establishments and participating municipalities.

Questions:

- Should the process for soliciting and collecting input be the same for all entities? If not, how should the S.O. solicit and collect input from producers? From recycling establishments? From participating municipalities?
- Should soliciting and collecting input be ongoing, or should there be a designated time frame for entities to submit input?
- Should soliciting and collecting input be streamlined with other data collection processes managed by the S.O.? For instance, the annual producer reporting, consultations, or the annual meeting for determining what packaging material is readily recyclable?
- Should input be required to be in writing from the entities who submit it? If so, should collected input be made publicly available? For instance, on the S.O.'s publicly accessible website?
- Other than incorporated input, what should be included in an investment proposal developed by the S.O.? For instance, should references to written input submitted by producers, recycling establishments, and participating municipalities be included?
- Should the process for incorporating input into investment proposals received from producers, recycling establishments, and participating municipalities be prioritized? If so, in what order?
- Should the process for incorporating input into an investment proposal developed by the S.O. be contingent on any criteria? If so, what should criteria include? Should it align with the evaluation criteria used by the Department during review of investment proposals?

May 2023

- If submitted input is not incorporated into an investment proposal, should the process include substantiating such a decision? If so, how might the S.O. substantiate not incorporating submitted input into an investment proposal?
- Are there any other provisions rule should include regarding soliciting, collecting, and incorporating input into investment proposals developed by the S.O.?

II. Process for Department review of investment proposals from the S.O.

The S.O. will submit investment proposals it develops to the Department for review. Section 11 (B) puts forth the following regarding the Department's review of investment proposals submitted by the S.O.—

The department shall adopt rules setting forth the criteria for evaluation and approval or denial of investments in education and infrastructure proposed by the stewardship organization. The department shall approve or deny a proposed investment within 90 days of receipt of the proposal from the stewardship organization.

The process by which the Department reviews investment proposals submitted by the S.O. will need to be explained in rule. Section 11(C) puts forth the following regarding this process—

The department shall ensure that preference for funding is given to proposals that support the State's solid waste management hierarchy under [section 2101](#), promote a circular economy for packaging material types for which producers were required to make payments under [subsection 6](#), increase the recyclability of packaging material that is not readily recyclable, increase access to recycling infrastructure in the State, improve consumer education in the State regarding recycling and recyclability and equitably support recycling and education efforts in participating municipalities, particularly in those participating municipalities that have received minimal or no prior funding pursuant to this paragraph.

Questions:

- Should there be a minimum number of investment proposals the S.O. submits to the Department for review annually? Should there be a maximum number? Or, should the number of submitted investment proposals be contingent on the funds available for investment expenditures?
- When should an investment proposal be submitted to the Department for review? If multiple investment proposals are submitted for Department review annually, how much time should be given between submissions to the Department?

May 2023

- Should the schedule for submitting investment proposals be streamlined with any other occurrences or deadlines? For instance, should submission of an investment proposal accompany the submission of the S.O.'s annual report?
- What best practices should the Department's review of investment proposals include? For instance, should results be demonstrated after approval of an investment proposal? If so, how should this be done, and by who? Should denial of an investment proposal be substantiated with reasoning? If so, what reasons might an investment proposal be denied?
- Other than the preferences referenced in statute, are there other criteria that should be considered when evaluating investment proposals for approval or denial? Should preferences be prioritized? If so, in what order?

III. Assessing program performance to inform future investments

An evaluation of investments the S.O. has made to date will be included in the annual report it submits to the Department. At a minimum, the following information will be included in an annual report, and it will be made publicly accessible on a website—

A description of education and infrastructure investments made by the stewardship organization in prior calendar years and an evaluation of how those investments were designed to increase access to recycling in the State and to encourage the reuse of packaging material; [5(G)]

and,

Any proposals for changes to the packaging stewardship program or investments in education and infrastructure designed to reduce the amount of packaging material used, increase access to recycling, increase the recycling of or recyclability of packaging material, reduce program costs or otherwise increase program efficiency, which may include an analysis of best practices for municipal recycling programs; [5(K)]

Assessment of the program's performance will be used to inform future decision-making. Section 13(A)(5) puts forth the following requirements for assessing the program's performance—

Requirements for the assessment of program performance, including the setting of program goals used to inform the producer payment schedule determined pursuant to subparagraph (1) and the investments in infrastructure and education made pursuant to [subsection 11](#), which 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.

Questions:

- Should the evaluation of investments in the annual report be used to inform the process by which the Department reviews investment proposals? If so, to what extent? For instance, to the extent which program goals are being met? Or, to the extent which review evaluation criteria are being met?
- Should proposed changes in the annual report be used to inform the process by which the Department reviews investment proposals? If so, to what extent? For instance, to the extent which program goals are being met? Or, to the extent which review evaluation criteria are being met?