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GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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COMMISSIONER

Background Information for Municipality Reimbursement

The Department will hold stakeholder meetings on the topic of municipal reimbursements on January 10th and January 24th, from 1:00 pm to 5:00 pm EST. As a reminder, Meeting 1 provides an opportunity for stakeholders to share prepared comments, and Meeting 2 will allow for discussion of those comments. Comments will be posted on the Department’s website and made available prior to the second meeting. Meetings will be held in room 101 of the Deering Building at 90 Blossom Lane in Augusta and are also available virtually. Please use [Maine’s EPR Program for Packaging website](#) to RSVP for a meeting.

Section 13(A)(4) of 38 MRS §2146 *Stewardship program for packaging* requires that rulemaking define the following, and it is the central task for the January meetings.

A process for determining municipal reimbursements, including a description of the information required from participating municipalities under subsection 9, a method for calculating the reimbursements required under subsection 10 and the timing for participating municipality reporting and payments to participating municipalities. The method for calculating reimbursements must include the median per-ton cost of managing packaging material that is readily recyclable and the median per-ton cost of managing packaging material that is not readily recyclable. The method for calculating reimbursements must involve consultation with participating municipalities and be designed to incentivize municipal waste management activities that represent higher priorities on the solid waste management hierarchy. [13(A)(4)]

Below we have included relevant excerpts from statute, contextual information, and questions for consideration. All excerpts are from 38 MRS §2146 unless otherwise noted. Words and phrases in bold font are statutory terms and their definitions can be found at the end of this document.

Who can receive reimbursement?

Participating municipalities can receive reimbursement. A **Municipality** is defined as—

a city, town, county, township, village or plantation; a refuse disposal district under chapter 17; or a regional association [1(H)]

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To qualify as a **participating municipality**, a municipality must—

- A. *Provide for the collection and recycling of packaging material that is generated in the municipality and is **readily recyclable**; and*
- B. *Annually report to the stewardship organization, on a form provided and approved by the department, all information necessary for the stewardship organization to determine the municipality's incurred costs associated with its collection, processing, transportation and recycling or other management of recyclable material and of municipal solid waste. [9]*

The process for determining readily recyclable will be discussed during meetings held in March of 2023. Meetings held in May of 2023 will cover education and investment funding, which may provide a mechanism to help municipalities that would like to participate but do not meet the first criterion.

What municipal costs will be reimbursed?

Municipalities will receive—

...reimbursement payments for the median per-ton cost of managing packaging material that is readily recyclable and reimbursement payments for the median per-ton cost of managing packaging material that is not readily recyclable. For the purposes of this subsection, the cost to a municipality of managing packaging material may include, but is not limited to, the costs associated with the collection, transportation and processing of packaging material, whether readily recyclable or not readily recyclable. [10]

Reimbursable costs “...include costs associated with the management of packaging material collected in public spaces and schools”. [10(A)(1)] And, the method for calculating reimbursement must “...be designed to incentivize municipal waste management activities that represent higher priorities on the solid waste management hierarchy” [13(A)(4)], pictured at the right.

Some packaging material will be determined to be readily recyclable; the rest will not be readily recyclable. There may be cases where municipalities are able to recycle packaging that is not readily recyclable, and there will be cases where municipalities do not recycle packaging that is not readily recyclable. The statute



uses the word “managed” to refer to how packaging is handled by a municipality—it does not reference potential management outcomes. The statute does require municipal reimbursements to incentivize movement of material up the hierarchy, so reimbursement payments must consider management outcome.

Questions: How can reimbursements incentivize movement of material up the waste hierarchy while acknowledging the fact that some packaging is not readily recyclable? How should municipalities get reimbursed for packaging not readily recyclable and is disposed? Should reimbursements reflect differing costs for different disposal outcomes, and if so, how? Should reimbursements reflect differing costs for different recycling outcomes, and if so, how?

How will the amount of material recycled by a municipality be determined?

The stewardship organization (SO) will determine—

*The total tons of each packaging material type recycled by all municipalities at each **recycling establishment** and the percentage of those total tons attributable to each participating municipality. [10(B)]*

It will use the following to determine the amounts of material recycled for the purpose of reimbursements:

- *Information provided to the department by recycling establishments pursuant to section 2145 ... including the tons of recyclable material received by each recycling establishment from each municipality and the tons of processed recyclable material sold by each recycling establishment;*
- *Information provided to the department by recycling establishments not located in the State or by participating municipalities and made available by the department to the stewardship organization regarding the tons of recyclable material brokered by those municipalities to those recycling establishments and processed and sold by those recycling establishments;*
- *Information obtained by the stewardship organization through the audits of facilities that process recyclable material generated in the State... and*
- *Any other information specified by the Department by rule. [10(A)]*

1. Splitting Material Among Municipalities

The material sold by recycling establishments will be split among municipalities according to the percentage of the establishment’s total material received from each

municipality. In some cases, material from multiple municipalities is collected and the amount of material coming from each municipality cannot be determined. The statute provides the following guidance for allocating material in these cases.

- *In the case of 2 or more municipalities that jointly send recyclable material to a recycling establishment, the stewardship organization shall assume that an equal amount of the jointly sent material is attributable to each resident of each municipality unless those municipalities by agreement identify an unequal per capita division of that jointly sent material for the purposes of this subsection.* [10(B)]

Or,

- *Two or more municipalities, municipally owned solid waste processing facilities or quasi-municipal entities that manage waste materials on behalf of a municipality may elect to jointly report to the stewardship organization as required by paragraph B and to jointly receive reimbursement payments pursuant to subsection 10 from the stewardship organization.* [9]

Questions: Are there any instances of municipal cooperation not addressed by the language above?

2. Audits

Audits of material in a bale or other commodity sold by a recycling establishment that identify the material included in that commodity can be used to determine—

- the relative amount of each packaging material type present in commodities sold by recycling establishments and/or municipalities,
- the presence of any exempted or non-packaging material within commodities, and
- the percentage of contamination in commodities.

The relative amount of packaging material types present in commodities is relevant because different processing facilities manage different mixtures of materials; materials managed together by some processing facilities may have different median costs. For example, recycling establishments in the state market HDPE natural, HDPE colored, and HDPE mixed; HDPE natural (milk jugs) and HDPE colored (many detergent bottles) will have different costs associated with managing them; where HDPE mixed is marketed, proper reimbursement based on the median cost per-ton of managing a material type will require an understanding of the amount of natural and colored HDPE in a mixed bale.

Audits of mixed, unprocessed material sent by a municipality to a **solid waste processing facility** can be used to determine how much contamination enters single stream solid waste processing facilities from various municipalities.

The logistics and details of audits will be discussed during the meetings held in March.

3. Recycling Standards

Section 13(A)(5) puts forth the following standards to be used to measure material-specific recycling rate goals—

(a) Sorted glass is considered recycled if it does not require further processing before entering a glass furnace or before use in the production of filtration media, abrasive materials, glass fiber insulation or construction materials;

(b) Sorted metal is considered recycled if it does not require further processing before entering a smelter or furnace;

(c) Sorted paper is considered recycled if it does not require further processing before entering a pulping operation; and

(d) Plastic separated by polymer is considered recycled if it does not require further processing before entering a pelletization, extrusion or molding operation or, in the case of plastic flakes, does not require further processing before use in a final product;

Reported commodity sales do not reflect the fact that commodities sold by recycling establishments may not be completely **recycled**. In addition to some small amount of remaining contamination, commodities can contain usable materials that are removed by the buyer and disposed. For example, a mixed plastics bale might go to an entity that picks out materials with particular resin codes and disposes of the rest.

Questions: How can the amount of material in marketed commodities ultimately recycled be determined? Can default rates be used in cases where this information cannot be obtained? If so, how should default rates be determined?

How will municipal costs be determined?

To figure municipal costs, the SO will use—

Information provided by participating municipalities ... regarding the costs incurred by those municipalities in managing packaging material that is readily recyclable and packaging material that is not readily recyclable... and any other information specified by the department in rule. [10(A)]

The Department is conducting an extensive outreach effort with municipalities and solid waste processing facilities in the state to understand costs and how they might be accurately and straightforwardly reported. If you would like to discuss your municipality's operations with DEP staff as part of our outreach effort, please email MainePackagingEPR@maine.gov.

Questions:

- When reporting municipal costs for recycling, what are examples of costs that might be overlooked or neglected when allocating costs among activities involved in collection and recycling of different materials in different streams?
- What are relationships between municipalities and haulers like? What information can a hauler provide a municipality that would be needed for determining municipal costs?
- Might there be an instance when a municipality is making loan payments on equipment or storage at a facility? How might this be included when calculating costs?
- At what time of year would submitting another annual report, possibly requiring data from 3rd parties such as haulers and brokers, be practicable?
- When figuring overhead costs, how can they be split among material streams to best represent the true cost of that material stream?
- Is baled recycling sent on mixed truck loads? In such cases, when is the truck load limited by weight? When is it limited by volume?
- To what extent are time studies needed/appropriate to better allocate labor, energy, or equipment costs among the material streams processed at a facility?
- In instances where materials are transferred between municipalities, how are the costs being calculated and/or shared?

The Department has considered the ease and accuracy tradeoff when it comes to reporting, as reporting is required for municipal participation in the program. While reporting requirements should not be a barrier to participation, accurate reporting will provide useful data that will help identify potential improvements to recycling programs. Municipal cost data is also the basis of producer payments and is therefore important for incentivizing packaging decisions that reduce municipal cost.

Assistance to municipalities with reporting requirements can improve accuracy in reporting. A prospective SO's proposal in response to the department's request for proposals must include the following—

The mechanism or process, to be developed with input from municipalities, by which a participating municipality may request and receive assistance from the stewardship organization in the reporting of required information and regarding methods by which a municipality's recycling program may be modified so as to increase access to and participation in the program; [3(A)(1)(b)]

Questions: How could the SO best assist municipalities? How could municipalities share feedback or request changes regarding SO assistance? What reporting systems can the SO develop that would ease reporting requirements for municipalities?

How will medians be used to determine reimbursements?

After the per-ton cost per material type is calculated for each participating municipality, the SO will calculate the median cost. Municipalities will be reimbursed at median per-ton cost. It should be noted that the SO will calculate the producers' fees from these costs; producer fees are the topic of the meetings held in July of 2023.

The statute provides a structure for grouping municipalities with similar characteristics to ensure reimbursement equity. **Similar municipalities** is defined as—

2 or more municipalities that, as determined by the department by rule pursuant to subsection 13, paragraph A, subparagraph (3), have similar population sizes and similar geographic locations and share other department-specified criteria

Question: What characteristics might be considered when defining groups of municipalities as similar for the purpose of ensuring reimbursement equity?

That statute requires that rulemaking include—

A process for determining on an annual basis which municipalities are similar municipalities, which must involve consultation with participating municipalities; [13(A)(3)]

Question: When should this process occur? How can participating municipalities be consulted regarding the determination?

When will reimbursements be available?

Once the Department establishes a contract with an SO, producers will pay into the packaging stewardship fund within 180 days. Initial municipal reimbursements will be distributed soon thereafter. The Department anticipates the first reimbursement payments to municipalities in 2027 for expenses incurred during 2026.

Outstanding Questions: Are there any issues relating to municipal reimbursements that require clarification and have not already been addressed?

Important statutory terms:

“Participating municipality” means a municipality that has complied with the requirements of subsection 9 and is eligible for reimbursement of certain costs in accordance with subsection 10.

“Readily recyclable” means, with respect to a type of packaging material, that the type of packaging material meets the criteria and standards for recyclability as determined by the department by rule pursuant to subsection 13, paragraph A, subparagraph (2).

“Recycle” means the transforming or remanufacturing of an unwanted product or the unwanted product's components and by-products into usable or marketable materials. ‘Recycling’ does not include landfill disposal, incineration or energy recovery or energy generation by means of combusting unwanted products, components and by-products with or without other waste. 38 MRS §2146 references this recycling definition in 38 MRS §1771

“Recycling establishment” means an establishment engaged in the marketing, brokering or purchasing of reportable recyclable materials generated in the State. "Recycling establishment" does not include an establishment that directs all reportable recyclable materials it markets, brokers or purchases to brokers and purchasers that are located in the State. 38 MRS §2101-A

“Solid waste processing facility” means a land area, structure, equipment, machine, device, system or combination thereof, other than an incineration facility, that is operated to reduce the volume or change the chemical or physical characteristics of solid waste. “Solid waste processing facility” includes but is not limited to a facility that employs shredding, baling, mechanical and magnetic separation or composting or other stabilization technique to reduce or otherwise change the nature of solid waste. 38 MRS 1303-C