



ESTABLISHED 1975

October 31, 2023

Department of Environmental Protection
State of Maine
17 State House Station
Augusta, Maine 04333-0017

Re: Rulemaking Topics – Stewardship Program for Packaging Law
Conceptual Draft Rules

Dear Sir or Madam:

Please accept the following comments concerning the Department of Environmental Protection's (Department) conceptual draft rules for the Stewardship Program for Packaging Law, 38 M.R.S. § 2146.

For decades, Casella has invested in the Northeast's recycling infrastructure, providing single stream collection, processing, and sorting systems, which serve thousands of municipalities and businesses and recover hundreds of thousands of tons per year of recyclable materials. We believe that the best way to improve recycling outcomes in Maine is through continued investments building off existing infrastructure, greater public outreach and education, and the strengthening of markets for recycled commodities.

Regarding the conceptual draft rules provided by the Department in recent weeks, we offer the following comments for consideration:

Reporting requirements and confidentiality

Clarify definitions and roles: In the municipal reimbursement section, the Department should clarify its definitions and provide examples to avoid any doubt around the categories. Specifically, the language should clearly indicate the category under which single stream recycling would fall, by listing it as an example in the relevant definition. Similarly, any referenced roles should be clearly defined. We understand the Department may remove references to "reporting entities," but other roles such as contractor, affiliated contractors, and any new introduced terms, should be clearly defined in the Definitions section. As a company that provides curbside collection pursuant to agreements with municipalities, operates transfer stations on behalf of municipalities, and operates a recycling operation, it is important for entities like Casella to understand what definition they fall under based on the activity being performed.

Minimize reporting requirements: Municipalities and reporting entities should only be required to provide data that is necessary to the reimbursement of their costs for managing packaging. Simplifying reporting requirements will serve the program's goal to maximize participation while also minimizing administrative costs and should be a top priority.

Refine follow-up consultation requirements: The Department has proposed a list of “relevant changes” that would trigger a “follow-up consultation” by, and/or notification to, the Stewardship Organization. To that list we would add “change of contractor”. In addition, we would recommend allowing for a materiality threshold, e.g., notification would be required only in the event that one of these changes resulted in a +/-15% change to program costs, and in such case, a follow up consultation would not be required.

Leverage non-proprietary data: The Department should strive to meet program needs with non-proprietary data wherever possible, and in particular, pricing data that is readily available and changing on a monthly basis. Non-proprietary data would include material audit data and data already listed on municipal bills, such as tons managed, total transportation costs, per ton transportation cost, total processing cost, and per ton processing cost. Commodity index data can also be accessed publicly via these industry standard references:

- <https://www.fastmarkets.com/methodology/forest-products>
- <https://www.recyclingmarkets.net/>

Confidentiality for Recyclers’ proprietary data: The legislation (§2146.3.A.(6)) requires prospective Stewardship Organizations to provide a certification that the bidder will not share, except with the department, proprietary information provided by a producer. We request that language be added to the Rules to require Stewardship Organizations to provide the same certification for proprietary information provided by Recyclers.

While the legislation does provide language for proprietary data to be kept confidential, we strongly believe that the program should first simply limit its data collection, wherever possible, to those elements that are necessary for advancing the goals of EPR.

Readily Recyclable definition and process

Marketability definition: In the Marketability definition we suggest reducing the required number of outlets to two established facilities. Three or more is certainly preferable but two may be sufficient in some cases.

Throughput definition: Under Throughput we are concerned that the 1% threshold could be too high (i.e. for items such as aluminum), and may preclude low weight but high value materials from meeting the Readily Recyclable definition. A lower threshold should be used or this concept should be addressed in another manner.

Add public comment period for changes to readily recyclable list: The timeline for the department to review and finalize revisions to the readily recyclable list seems unnecessarily rushed. We propose leaving more time for Department review and integrating a 30-day comment period on any proposed changes to the list.

Infrastructure investments

Reduce restrictions on infrastructure investments: The current version of the Rule significantly limits the types of entities who can apply for infrastructure investments. This may prevent the program’s funds from

being invested in the projects that would most efficiently and effectively improve the state's recycling infrastructure. We request that new project infrastructure investments be broadened to include private enterprise, with a belief that it will encourage the health and growth of recycling in the State.

Glass recycling

The current definition of Disposal could potentially deter the beneficial use of construction materials containing recycled content – such as recycled glass – in landfill construction work. The rule's Commodity definition recognizes construction materials as a recycling end use for MRF glass. This is presumably because the use of recycled glass in these materials reduces demand for virgin natural resources such as sand, gravel, and aggregate. This same environmental benefit is achieved when these materials are used for construction purposes within the permitted area of a landfill. We would therefore assert that glass, when used as a construction material, whether in a landfill or elsewhere, should be recognized as being recycled, not disposed of.

The Department should add the following to the definition of Disposal:

- E. Disposal.** "Disposal" means the final disposition of material in a manner that does not constitute recycling. Disposal includes any placement of material in the permitted area of a landfill, **except when such material is a specified component of a construction material.**

Impacts for subscription residents

Not all Mainers receive their trash and recycling service as part of a municipal contract. These residents sign up for these services with private companies on a subscription basis. This can be most common in rural areas that may lack the coordination and resources available in more urban and affluent areas. We encourage the Department to explore ways to make sure these residents would be eligible to benefit from the EPR program, and would welcome the opportunity to discuss this point in greater detail with the Department.

Thank you for the opportunity to provide comment. Please reach out if we can provide you with additional information, or if you have any questions.

Sincerely,



Bob Cappadona
Vice President