

October 31, 2023

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

via electronic submission

Subject: HCPA Comments on Maine Conceptual Draft Rules for the Stewardship Program for Packaging

The Household & Commercial Products Association (HCPA)¹ appreciates the opportunity to provide input on the implementation of Maine's Stewardship Program for Packaging.² We look forward to continuing to work with the Maine Department of Environmental Protection (DEP) on establishing and implementing rules and regulations to carry out the requirements of the Stewardship Program for Packaging.

Background

HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into Maine or otherwise have a presence in the state and are committed to ensuring that all residents of Maine have access to high-quality products with reduced environmental impacts.

¹ The HCPA is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

² Public Law 2021, Chapter 455.

In addition to representing various categories of household and commercial products (regardless of packaging), HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellent, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle a variety of products packaged in an aerosol form.

HCPA's comments below address both areas of Maine's conceptual draft rules that are generally applicable to household and commercial products and items specific to aerosol products.

Conceptual Draft Rules Part 1

Definitions

HCPA is concerned that the definition of "commodity" is so specific as to risk excluding current or future recycling uses. For example, not all paper is recycled via a pulping operation, glass may be incorporated into items other than those listed, and plastic could be used in processes that do not clearly fit into the specific processes listed or new processes could be developed and scaled as recycling infrastructure is further improved. Materials may also still need to be shredded or cleaned before entering a final process even if the processor considers it to meet industry specifications on receipt. HCPA suggests that DEP remove 1(A)(1-4) and use 1(A) as the definition of commodity: "processed material that meets an industry specification."

Defining Municipal Reimbursement

HCPA is deeply concerned that the conceptual draft rules appear to require producers, through the Stewardship Organization (SO), to reimburse municipalities for the costs of landfilling or otherwise disposing of packaging material. It is HCPA's strong view that producers should be responsible for reimbursement of costs used to recycle or recover packaging material and *not* the costs of disposing of the material. Requiring producers to reimburse for disposal costs as well does not give municipalities a clear incentive to recycle materials instead of landfilling them, as they receive funds either way. Other similar packaging Extended Producer Responsibility (EPR) programs do not require producers to reimburse for disposal costs. Rather, producers are incentivized to produce more circular packaging through eco-modulated fees and/or source reduction requirements and municipalities are incentivized to recycle or recover said packaging through recycling reimbursement. 3(B) lays out provisions for municipalities to receive reimbursement for packaging materials that are not readily recyclable and are managed for disposal. HCPA recommends that DEP remove 3(B) from the conceptual draft rules and limit

reimbursement to the cases described in 3(A), readily recyclable packaging managed for recycling, and 3(C), not readily recyclable packaging managed for recycling.

Determining Municipal Reimbursement

HCPA is concerned by and seeks clarity on the basis and timeline for DEP's proposed consultation requirements. For example, why was 20 selected as the number of complete consultations an SO is required to perform on an annual basis and is this a hard cap or a minimum? How is a "significant change in operations," which would render a consultation no longer complete, defined? Section 4(A)(1)(b) specifies that the SO must conduct a follow-up consultation when a "relevant change" occurs, which is perhaps intended to provide clarity on what is considered a "significant change in operations." But the examples given of what constitutes a relevant change include items that are potentially so minor as to create an endless loop of follow-up consultations. For example, changes to staffing levels or employee duties are described as a relevant change, which would likely render most consultations incomplete on an annual basis. There is currently no cap on the funds that the SO must use for conducting these consultations, making it even more important to set ground rules that limit the number of consultations to those that truly add value. HCPA recommends that DEP provide more specificity on what constitutes a significant or relevant change requiring a follow-up consultation. Additionally, to help ensure appropriate spending of SO funds, HCPA recommends that DEP set a cap on consultations to be performed annually, which could be in terms of number of consultations or percentage of SO funds spent on consultations.

HCPA questions why 4(A)(3)(a)(ii)-(iii) sets requirements based on volume when other requirements throughout the conceptual draft rules are based on weight. HCPA recommends that DEP use weight-based metrics throughout for consistency.

HCPA questions the feasibility of quantifying all types of costs that DEP has listed as reimbursable in 4(B). It is not clear to HCPA that parts of an employee's time, the use of a piece of equipment, or energy costs can be clearly assigned to different packaging streams, or how estimations of equipment use should consider the age of the equipment. HCPA encourages DEP to further explore the extent to which it is feasible to quantify all of the listed endpoints with municipalities, material recovery facilities (MRFs), and recycling processors before formalizing requirements in a rule.

HCPA is concerned by DEP's proposal to include the costs of capital investment in reimbursable equipment costs in 4(B)(2)(c) and structure costs in 4(B)(3). It is not clear to HCPA whether this provision is referring to existing investment costs or new investment costs for equipment and structures. If new, these costs should be captured in investment funds provided by the SO as required elsewhere in the law and the requirement to also cover them here is duplicative. If existing, the SO would have had no opportunity to provide input on past investments taken on by municipalities. This provision appears to be asking producers to pay retroactively for costs incurred and decisions made prior to the law being enacted. HCPA does

not object to reimbursement of ongoing maintenance costs for existing structures, but strongly questions whether retroactive reimbursement of these costs is within the scope of the law and at a minimum believes that additional qualifiers are necessary to limit reimbursement to what is reasonable.

As mentioned above, it is HCPA's strong view that producers should be responsible for reimbursement of costs used to recycle or recover packaging material and *not* the costs of disposing of the material. HCPA is concerned by the provisions in 4(C) that specify procedures for calculating a per ton cost for disposal streams. HCPA strongly believes calculation and reimbursement of per ton costs by producers should be limited to materials that are processed for recycling and recommends that DEP remove references to reimbursement of disposal costs from the conceptual draft rules.

Conceptual Draft Rules Part 2

Scope Definitions

The definition of "consumer"³ in part A is so broad as to appear to include business-to-business and commercial transactions. Combined with the broad definition of "product"⁴ in part E, this could result in numerous raw materials and items used exclusively in industrial and institutional settings to produce new products for later sale getting pulled into the scope of Maine's stewardship program. HCPA does not believe this is consistent with the legislative intent in passing LD 1541, the bill that established Maine's stewardship program for packaging. Packaging for products used exclusively in industrial and institutional settings often have established take-back, reclamation, or recycling systems in place and do not typically end up in curbside recycling and disposal systems. HCPA recommends that DEP revise the definition of "consumer" and/or the definition of "product" to clarify that only products which are intended to be used by entities for personal, family, or household purposes are within the scope of the law.

HCPA appreciates DEP's efforts to, in the definition of "producer"⁵ in part D, clarify who is responsible for packaging in ecommerce transactions where the retailer or distributor may add

³ "Consumer" means an entity that uses a product, including an entity that uses a product to create a new product.

⁴ "Product" means an economic good, or the delivery of an economic good, that is marketed or sold. Product includes material that is sold in bulk for containing, protecting, delivering, or presenting items at a later time, but does not include packaging material bought at the point of sale for use containing, protecting, delivering, or presenting other purchases.

⁵ "Producer" means a person that:

- (1) Has legal ownership of the brand of a product sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material; or
- (2) Is the sole entity that imports into the State for sale, offer for sale or distribution for sale in or into the State a product contained, protected, delivered, presented or distributed in or using packaging material is branded by a person that meets the requirements of subsection (1) and has no physical presence in the United States.

additional packaging unbeknownst to the original producer of the product. We believe that the definition of producer would benefit from additional clarifying language to address when a franchisor is considered the producer and when the brand owner is considered the producer. The current definition appears to allow for double-counting, or situations where both the brand owner and a franchisor could be considered the producer for the same product. HCPA respectfully requests that DEP clarify the circumstances under which a brand owner vs. a franchise owner would be considered the producer.

Readily Recyclable

Definitions.

HCPA believes the use of the term “remanufacturing facility”⁶ and corresponding definition in 1(C) will lead to stakeholder confusion as currently written. The definition refers to processing a commodity, which, going back to the definition of “commodity” in part 1 of the conceptual draft rules, appears to indicate that DEP is referring to pulping operations, smelters, and so forth. These types of facilities, however, are rarely the actual facilities responsible for the final processing of a commodity prior to its use in a new product following DEP’s definition of “product” in part 2 of the conceptual draft rules. For example, a smelter may make rolls of steel, but a packaging manufacturer would then make that steel into a new product such as an aerosol can. Some paper mills may make pulp, which would then go to another mill to make paper, which would then go to a converter as the final step before becoming a new product. HCPA believes that DEP’s intent is to refer to end markets, rather than remanufacturing facilities per say, and recommends that DEP replace “remanufacturing facility” with “end market” for clarity.

Process for annual review of the packaging material types list and readily recyclable list.

HCPA supports DEP’s intent in 3(E) to, when adjusting the packaging material types list, keep in mind the challenges associated with discontinuing the collection of a packaging material type and the efficiencies and efficacies afforded by aligning producer reporting across jurisdictions. HCPA encourages DEP to consider aligning other elements of the packaging material types list across jurisdictions as well, such as which materials are collected for recycling by other jurisdictions. All stakeholders could benefit

(3) Adds packaging material to another producer’s product for distribution directly to a consumer.

Producer includes a low-volume producer and a franchisor of a franchise located in the State but does not include the franchisee operating that franchise. Producer does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).

⁶ “Remanufacturing facility” means the facility responsible for the final processing of a commodity prior to its use in a new product.

from a more consistent approach to packaging stewardship regionally or across multiple states.

HCPA appreciates DEP's inclusion of a pathway for materials to transition from being considered not readily recyclable to readily recyclable and vice versa, but questions the length and fee structure associated with the transitional period described in 3(G). It is not clear to HCPA what value is added by requiring producers to pay a fee other than the actual per ton cost of managing the packaging material type for the three calendar years after a material is transitioned from one list to the other, as described in 3(G)(1)(a) and 3(G)(2)(a). HCPA encourages DEP to focus producer payment requirements on the actual per ton cost of managing a packaging material type, assuming such information is available, rather than assigning a separate cost.

Further, HCPA is concerned about the long delay in including a packaging material type as readily recyclable in municipal reimbursement and participation requirements, as described in 3(G)(1)(b). Waiting for three years after the packaging material type's status has changed from not readily recyclable to readily recyclable to require municipalities to collect the material and provide them reimbursement for recycling it will disincentivize recycling of that packaging material type. Such a delay may even cause the packaging material type to shift back to being not readily recyclable during the three-year period if consumers don't have access to recycle it and municipalities elect not to recycle it if not required to. Packaging material types that make the opposite transition, from readily recyclable to not readily recyclable, are not subject to a similar delay. Rather, municipal reimbursement and participation requirements in this case reflect the packaging material type's new status in the calendar year that the change occurs. While a grace period for both types of transitions may be appropriate in order to allow municipalities and producers to adjust to the change, allocating three years for one change and not the other does not make sense. HCPA recommends that DEP follow the same timeline approach for materials that transition from not readily recyclable to readily recyclable as those which make the opposite transition.

Program Goals

HCPA is concerned that the reduction goal set in 5(A) would unintentionally limit new sales of products into the state as the population grows and penalize companies for market growth unless it is normalized against sales volume. Additionally, historical reductions should be taken into account so as to not penalize companies that have already taken significant steps to optimize their packaging. For example, California requires its Producer Responsibility Organization (PRO) to give producers credit for source reduction achieved from the 2013 calendar year to the 2022 calendar year.⁷ HCPA also notes that,

⁷ California PRC § 42057(f)

given that states such as California also have source reduction requirements, aligning the source reduction baseline across jurisdictions would allow for greater efficiencies and efficacies. We recommend that DEP normalize the reduction goal by the number of packaging units shipped; add a mechanism to allow producers to receive credits for historical reductions; and align the baseline for reductions with the baseline in California's EPR program so that producers are working against one baseline for reductions nationally.

HCPA notes that although there are repeated references to reuse and refill throughout the conceptual draft rule, including a program goal as described in 5(B), there is no definition given for "reuse," only one for "refill." We presume this is because the underlying statute references a definition of reuse that refers back to Maine Revised Statutes Title 38 §1771(8), which in turn defines reuse as follows: "Reuse" means a change in ownership of a product or component in a product for use in the same manner and purpose for which it was originally produced." HCPA is concerned that this definition does not allow for the refilling of packages by the original consumer in their home or outside of their home. We recommend that DEP revise the "reuse" goal to clearly account for refill, as defined in 1(B) of the "Readily Recyclable" section of part 2 of the conceptual draft rules, along with reuse.

HCPA is concerned that the language in 5(C) regarding postconsumer recycled (PCR) material does not consider packaging material that is restricted from using PCR material due to federal law. For example, certain packaging materials used for the shipment of hazardous materials are prohibited from being manufactured with PCR material by federal material packaging standards found within 49 CFR § 178, such as plastic aerosols as laid out in 49 CFR § 178.33(b). HCPA recommends that DEP clearly confirm that packaging material which cannot use PCR material due to federal restrictions is out of scope of these requirements and not included in the total weight of packaging material used to calculate the percentage that is PCR material.

HCPA is concerned that the penalties in 5(D) related to meeting readily recyclable goals may not incentivize producers and municipalities to move towards a circular economy. It appears that if goals for using readily recyclable materials are not met, producers must pay four, five, or six times the cost of managing the most expensive readily recyclable material for each ton of packaging material that is not readily recyclable that they produce. HCPA notes that producers, who typically plan packaging years in advance, will face significant logistical challenges in planning ahead for readily recyclable goals given Maine DEP's intent to annually update the readily recyclable list. Additionally, it is unclear to HCPA what the basis of the penalty costs is. Given that the cost is a flat fee, HCPA is concerned that municipalities may be incentivized to shift materials from the readily recyclable to the not readily recyclable list in order to receive more funds from producers. HCPA recommends that DEP adjust the penalty costs to be based on any additional cost associated with managing not readily recyclable material,

investment in appropriate infrastructure and education activities to encourage increased recycling, or similar activities.

HCPA questions why the litter reduction goals in 5(E) are expressed as percentage measured in units rather than as percentage of total weight. It is likely that litter will degrade or break apart while in the environment prior to collection and assessment by the SO or contractor, making it difficult to sort litter into discrete units. Further, all other goals in section 5 are described as percentage of total weight, making the litter goal as written inconsistent with other sections. HCPA recommends that DEP base the litter goals on the percent of litter that is packaging by total weight.

HCPA notes that while DEP has included recycling access and collection rate goals for municipalities in 5(F) and (G), there is no penalty if the collection rate goals are not met by participating municipalities. HCPA is concerned that this may decrease the incentive for participating municipalities to provide access to recycling for all readily recyclable packaging material types. Recycling access and collection is the first step in the process of recycling any packaging material; if it is not able to be completed, efforts to improve infrastructure, processing, end markets, and so forth become irrelevant. HCPA requests that DEP clarify how the Department will address participating municipalities which underperform on collection.

HCPA is concerned that the base material-specific recycling and overall recycling rate goals described in 5(H) and (I) will be impossible to meet when DEP multiplies the amount of material sent for recycling by recycling yield. Any recycling process generally results in some level of yield loss. For example, typical yields of 65-76% (24-35% loss) have been cited for polyethylene terephthalate (PET) reclaimers,⁸ 89% for steel⁹ and aluminum¹⁰ cans (11% loss), and 60-95% (5-40% loss) for paper¹¹ depending on the type of recycled paper and how often it has been recycled previously. Meeting the requirements that DEP sets forth would require collecting more than 100% of packaging material types given yield loss. HCPA recommends that DEP remove the reference to multiplying by recycling yield in 5(H) and (I), which would result in impossible targets. HCPA additionally encourages DEP to engage with MRFs, recycling processors, and material experts to better understand the meaning of recycling yield and explore alternate language to ensure material sent for recycling reaches a responsible end market.

⁸ <https://resource-recycling.com/plastics/2020/05/19/slipping-through-the-cracks/>

⁹ <https://www.steel.org/wp-content/uploads/2021/08/AISI-and-SMA-Steel-Container-Recycling-Rates-Report-Final-07-27-2021.pdf>

¹⁰ <https://link.springer.com/article/10.1007/s11837-013-0615-2>

¹¹ https://www.energy.gov/sites/prod/files/2013/11/f4/pulppaper_profile.pdf

Producer Reporting and Payments

Defining packaging material.

HCPA has some concerns about DEP's proposed criteria for defining readily recyclable laid out in 2(C). First, regarding marketability in 2(C)(1)(a-b): As discussed above, HCPA believes the use of the term "remanufacturing facility"¹² and corresponding definition in 1(C) in the "Readily Recyclable" section of part 2 of the conceptual draft rules will lead to stakeholder confusion as currently written. HCPA believes that DEP intends to refer to end markets in 2(C)(1)(a-b), but the remanufacturing facility definition appears to point to processors earlier in the recycling supply chain. There is also a lack of clarity on the geography where the proposed required three operational remanufacturing facilities must be located (must they be in Maine? In the U.S.? Anywhere in the world?) and who has the responsibility to identify whether three facilities exist with the capacities as described for each packaging material type annually. HCPA recommends that DEP remove the numerical requirement for three operational remanufacturing facilities given the numerous points of confusion and explore alternate language to support packaging material types reaching a responsible end market.

Additionally, HPCA questions DEP's statement in 2(C)(1)(c) regarding recycling processes that do/do not safeguard the environment and human health, in particular DEP's statement that recycling process which "are known to result in the release of material into the environment are examples of processes that do not safeguard the environment and human health." Recycling facilities must meet rigorous environmental permitting requirements but are still likely to release some level of material into the environment via wastewater, air emissions, and so forth. Environmental permitting systems are in place to ensure that these releases do not pose a risk to the environment and human health. It is unclear to HCPA how DEP intends to apply 2(C)(1)(c) in practice, but if taken literally, this could exclude nearly all recycling facilities. HCPA suggests that DEP remove the reference to "known to result in the release of material into the environment" and replace this with a statement that recycling facilities must meet applicable permitting requirements.

HCPA is concerned that by placing a numerical requirement for throughput in 2(C)(2)(a), DEP is unintentionally excluding many materials that are readily recycled today from continuing to be recycled in Maine. There are several packaging material types that are commonly recycled but will likely be present at less than 1% by total weight. For example, a 2020 material recovery facility (MRF) assessment for King County, Washington, found that HDPE natural, HDPE colored, mixed metals, and tin were all present in inbound material at 1%. Aluminum cans and PET were present at 2%

¹² "Remanufacturing facility" means the facility responsible for the final processing of a commodity prior to its use in a new product.

and 3%, respectively.¹³ While the composition of Maine’s waste streams will likely differ to some degree, the King County data suggests that if DEP breaks down throughput by “packaging material type,” many items will fail to meet the 1% threshold. HCPA does not believe the wording in 2(C)(2)(b) is sufficient to account for these situations. Given the definition of “commodity” in part 1 of the conceptual draft rules, it is unclear that a mixed plastic bale would count as a commodity since it would require further processing. Additionally, the word “already” seems to exclude all future bales of materials or changes to industry specifications. Further, the limitation that the inclusion of an additional packaging material type must not be considered contamination or lower the value of the bale creates additional constraints that would keep materials from being recycled. For example, aluminum pet food cans are fully recyclable, but would likely not meet the 1% threshold, could be considered contamination in an aluminum used beverage can (UBC) bale, and could lower the value of the bale, and thus would not be considered readily recyclable under DEP’s proposed criteria. HCPA recommends that DEP remove the throughput requirement in 2(C)(2).

Producer reporting.

HCPA respectfully requests that DEP clarify the meaning of the term “program year” in 4(B) – does this refer to calendar year or another time frame?

HCPA strongly recommends that DEP simplify reporting obligations to focus on allowing for calculation of fees against statutory obligations rather than introducing additional complexity not required by statute that may result in inaccuracies or inconsistencies in producer data. Specifically, HCPA recommends that DEP:

- 1) Remove the reference to brick code in 4(B)(2); not all companies use brick codes and it is not required to be included in reporting by the statute.
- 2) Structure reporting by stock-keeping unit (SKU) and then by packaging components rather than separability for recycling. The way recycling facilities separate and manage packaging may change over time and producers will not have clear visibility into these changes.
- 3) Structure reporting for multi-material components by individual material type, not heaviest material type. There are many factors that affect how packages are managed in the system and their cost besides their weight.
- 4) Remove the requirement for producers to report on whether they can certify the absence of toxics. The lists of toxic chemicals as defined in the underlying statute are broad and not applicable to all packaging types, making it nearly impossible for any producer to appropriately certify using all of those lists as a basis.

¹³ https://kingcounty.gov/~media/depts/dnrp/solid-waste/about/documents/MRF_assessment-2020.ashx?la=en

HCPA questions the penalties to producers for using estimates in 4(D)(1)(d) and seeks clarification on DEP's intent. If DEP's proposed penalty for estimating weight from units in 4(D)(1)(d) is applied, it appears that producers who are unable to obtain sufficient information on the weight of their packaging material would have little incentive to meet the positive criteria DEP has identified for eco-modulated fees. While producers will generally be able to determine their packaging weight, there may be specific circumstances, particularly given the complexity of today's supply chains and distribution channels, where they are unable to do so. HCPA suggests that DEP set strict limitations on when producers are able to estimate weight from units rather than penalizing producers in a way that disincentivizes them from making more circular packaging choices.

HCPA additionally seeks clarification on DEP's intent in (4)(D)(2) regarding estimations of the number of units produced for each producer distribution network that may sell, offer for sale, or distribute for sale into Maine. Many companies sell products through various distributors and sales channels. Companies generally do not have reliable, specific sales data for these distributors that can be readily aggregated or visibility into which products are eventually sold to an end consumer in which state. We encourage DEP to take this complexity into account and respectfully request that DEP confirm that reporting based on a population-based percentage of national shipment data will not be subject to malus fees under the eco-modulated fees concept or other penalties. States such as Washington in similar policy contexts permit the use of averaging data flowing from national sales data.

HCPA also questions the purpose of DEP requiring producers to report the distributor, distribution network, and number of total units distributed in (4)(D)(2)(c). If producers are estimating units based on national shipment data normalized to Maine's population, the requested specific information on distribution networks is not relevant. Information on distributors and sales channels is extremely sensitive and generally considered by companies to be confidential business information. It is not clear to HCPA that DEP has a plan to use this information for decisions relevant to the stewardship program for packaging or a system in place to adequately protect this information if reported. HCPA recommends that DEP remove the reporting provision referencing distributors in 4(D)(2)(c).

Producer fees.

HCPA is concerned by the timeframe for producer fee payments in section 5. It is not clear to HCPA how far prior to July 1 the SO is obligated to invoice producers and it seems possible that the SO may invoice producers shortly before July 1 of the program year (relatedly, as stated above, HCPA seeks clarity on what timeframe "program year" refers to). Charging a late fee of 10 percent starting one day after invoices are due with no requirement to have invoices sent to producers a certain amount of time in advance is

unnecessarily punitive. This timeframe does not account for producers needing time to review and confirm the invoices they receive and process invoices through internal company systems. HCPA recommends that DEP allow the SO to determine the late fee timing and amount as the SO will be in charge of invoicing rather than prescribing this in regulations.

As discussed above under “Program Goals,” HCPA is concerned that the penalties for packaging material types that are not readily recyclable, in particular the higher penalties if goals for readily recyclable materials are not met, are not structured in a way that would incentivize producers and municipalities to move towards a circular economy. HCPA recommends that DEP adjust the penalty costs to be based on any additional cost associated with managing not readily recyclable material, investment in appropriate infrastructure and education activities to encourage increased recycling, or similar activities.

It is not clear to HCPA why producers must pay an additional fee for specific components that do not meet PCR content goals, as specified in 5(A)(3)(a), when the base material PCR content goal is met. Different packaging material components may have different abilities to incorporate PCR content. HCPA recommends that DEP remove the penalty fee provision in 5(A)(3)(a), which appears to be penalizing companies for not meeting the PCR content goal for each component although the goal itself is structured by base material.

As discussed above under “Producer Reporting,” HCPA is concerned that the lists of toxic chemicals included in the conceptual draft rules and underlying statute are broad and not applicable to all packaging types, making it nearly impossible for any producer to appropriately certify using all of these lists as a basis. HCPA recommends that DEP remove the penalty fee provision in 5(A)(3)(d) related to certifying intentional addition of toxics.

Additionally, as discussed above under “Program Goals,” HCPA is concerned that DEP’s use of recycling yield will result in impossible targets. There are a variety of reasons why packaging material sent to a recycler may not be recycled, including simple loss of what is truly recyclable material due to an inefficient recycling process. Producers do not have control over or visibility into the processes and systems used at MRFs and recycling processors, and material yield loss cannot necessarily be easily categorized into different packaging material types. HCPA recommends that DEP remove the penalty fee provision for recycling yield in 5(A)(3)(e) and encourages DEP to engage with MRFs, recycling processors, and material experts to better understand the meaning of recycling yield and explore ways to meaningfully incentivize full recycling of material.

Packaging stewardship fund cap.

HCPA questions the requirement in 6(B) for the SO to create and fill an additional full-time position in the case of excessive funds, and to maintain this position even if contents of the fund change such that it no longer has excessive funds. Adding an additional position in the case of excess funds is not a statutory requirement of the stewardship program. Once created, the position will remain regardless of whether there continues to be a need for the role or enough funds to support the position. HCPA recommends that DEP leave the staffing of the SO to the discretion of the organization selected as the SO and eliminate this section.

Transparency and benchmarking for producers.

HCPA questions the utility of the SO producing a report on price per unit for packaging material and components associated with products of a given size and brick code as described in 7(C). Since goals and metrics throughout the conceptual draft rules are based on weight by packaging material type, it is not clear to HCPA how information on product price per unit and unit size would be used. Additionally, as mentioned above under “Producer Reporting,” not all companies use brick codes and brick codes are not required to be included in reporting by the underlying statute, so it is not clear to HCPA why DEP is specifying a breakdown by brick code in this section. HCPA recommends that DEP remove section 7(C).

Conceptual Draft Rules Part 3

HCPA respectfully requests that DEP confirm that major investment needs will be identified prior to DEP developing and maintaining a savings plan to fund them. Additionally, HCPA is unclear on the interplay between the proposed timing of DEP approval of an investment proposal – within 90 days of receipt, according to section 7 – and the process for the SO and stakeholders to evaluate and comment on an investment proposal – annually, according to section 5. It appears to HCPA that DEP’s intent is to have the SO and stakeholders evaluate proposals received during the prior calendar year during the first half of the current calendar year, send proposals on to DEP by the second Monday in July, and have DEP make a decision within 90 days following the second Monday in July. We respectfully request that DEP confirm the intended timing.

Conclusion

HCPA thanks DEP for the opportunity to provide input on DEP's conceptual draft rules for the implementation of Maine's Stewardship Program for Packaging and appreciates the care that DEP is taking and intends to take to solicit stakeholder input on developing future rules and regulations. HCPA looks forward to continuing to engage with DEP in a good-faith process to support successful implementation of Maine's Stewardship Program for Packaging. We invite any questions about this submission and look forward to DEP's response.

Sincerely,

A handwritten signature in black ink, appearing to read "Molly R. Blessing". The signature is written in a cursive, flowing style.

Molly R. Blessing
Director, Sustainability