



August 29, 2023

Commissioner Loyzim,

The Natural Resources Council of Maine (NRCM) is committed to ensuring the success of Maine's Extended Producer Responsibility (EPR) for Packaging program established in [MRS Title 38 §2146](#). Thank you for the opportunity to comment on *Producer Fees* and *Alternative Collection Programs* for Maine's new EPR for Packaging law. The shift from an inequitable, inefficient taxpayer-funded system to a fairer and more systematic producer-funded approach is the backbone of this law. NRCM remains committed to working with the Department and stakeholders to ensure the success of this transformative program.

We believe that the Stewardship Organization (SO) should assess producer fees on a *net-material* basis, meaning producers only have an obligation to pay fees on the total weight and volume of material that is managed through Maine's municipal program. For instance, if a beverage producer sells 10,000 four-packs in Maine, that are held together by a Pak-tec, but they run a program where consumers may return Pak-tecs that results in 7,500 collected (whether their own or another producer's) and thereby kept from the municipal waste or recycling program, then that producer only pays fees on the 2,500 that they put out into the Maine market and didn't collect back and can be presumed to be managed by the municipal programs in Maine.

Another example would be the sale of products in reusable packaging. Producers should only have to pay fees on reusable packaging if the packaging is managed and paid for by Maine's municipal systems. For example, if an obliged restaurant uses reusable take-out containers and they collect back half of them to be reused that year, they only pay half of the total fees to the SO for the weight and volume of that material type or types. In the instance where a municipality is managing the take-back and reuse of the packaging, the municipality should be reimbursed for the cost of doing so by the SO.

We understand that *alternative collection programs* are designed to take the burden of waste management off the municipalities and allow for the producers to manage their materials separately—not through payment to the SO. One example could be glass packaging. This is an ideal material category for an alternative collection program since its removal from the municipal system will save money and increase the quality of all recycled commodities. Glass packaging producers could report their sales and collection figures, and audits will help verify by showing what glass packaging is still being collected by the municipalities, and then the producers of glass should only have to pay fees to the SO on the glass that is managed through the municipal system.

For materials left for Maine's municipalities to manage, the basic fees should *begin* with the actual costs needed to meet the overall anticipated budget. Fees should generally be assessed on the costs to collect, process, and manage that material type by weight and volume, and

incorporate any funds needed to administer the program and fulfill the overall responsibilities of the stewardship organization. Materials fee categories should be as granular as possible if the materials incur different costs because of their attributes and can be measured and verified.

Then, producer fees should be adjusted, or eco-modulated in a way that works to disincentivize the most problematic, costly materials and their attributes. Generally, the costs of each material should be higher the higher health and environmental costs are of that material type. We believe it's appropriate to use the fees generated from the most problematic materials (i.e., non-recyclable plastics) to essentially "subsidize" the management of the least problematic packaging (i.e., reusable packaging) through the establishment of eco-modulated fees.

The fees for the most problematic packaging choices should be heavily weighted against the base fees. The Department could initially select an arbitrary multiplication factor, like 5 or 10 times more and assess whether or not it made a difference in a producer's choice of packaging over time, then adjust accordingly.

But, a potential non-arbitrary way to determine how much to weight the eco-modulated malus fees for certain packaging types could be to estimate how much it would cost producers to switch to a reusable or more sustainable packaging option and make sure that the fee is higher than that. Such an exercise may also reveal that it's more cost-effective for a producer to use reusable or more recyclable packaging regardless of the fees, which would be of added benefit.

These are our 10 overall recommendations regarding eco-modulation:

1. All eco-modulation should be done in a way that does not threaten the ability of the SO to collect enough funds to ensure the success of the program; a system of financial penalties, or malus payments, should be primarily used, and *if* any fee reductions or "bonuses" should be used, they should subsequently be adjusted such that the total bonuses do not exceed the total malus adjustments to avoid starving the program of needed funds.
2. We encourage the Department to work with other states to create consistency for producers and so that the incentives used to encourage producers to swap problematic packaging for more sustainable alternatives are more or less uniform in the United States, and therefore have the most potential to be effective at changing packaging design.
3. Any criteria used for eco-modulation should be measurable and verifiable, as well as able to be assessed as to the effectiveness of the fees on deterring the use of less desirable packaging materials.
4. An adjustment for volume should be made such that lightweight but bulky materials that take up just as much room on a truck or in a landfill pay their fair share of landfill space and trucking.
5. NRCM endorses the [U.S. Plastic Pact's Problematic and Unnecessary Materials List](#) as a starting point for assessing higher fees for their use.<sup>1</sup> In addition to providing financial

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<sup>1</sup> These include: Cutlery, Intentionally added<sup>1</sup> Per- and Polyfluoroalkyl Substances (PFAS), Non-Detectable Pigments such as Carbon Black, Opaque or Pigmented PET – Polyethylene Terephthalate bottles (any color other than transparent blue or

incentive to discontinue the use of these problematic and unnecessary materials, we will gain insight into the quantity and source of these materials and be able to compare their presence in Maine year to year.

6. That said, it may be prudent to take an incremental approach to eco-modulation to focus first on increasing reuse and readily recyclable packaging and disincentivizing the most problematic material types—particularly plastics that are not on the readily recyclable list. This could reduce complexity and gauge the effectiveness of the fees before the criteria are expanded upon and scaled up over time.
7. It is important to note that some types of packaging may not have viable substitutes or are required to be a certain way by State or Federal law, so adding additional malus fees to packaging for these products may not be fair nor effective. While we do not support exempting packaging completely from fee payments, we do support exempting certain packaging malus payments, or fee payments above what they would use in absence of a law or requirement if they are able to provide the verifiable information needed to make that determination.
8. NRCM does not support the incentives for the use of compostable packaging, particularly because our municipal systems do not currently manage that material at scale and it may likely have a higher environmental footprint than its reusable or recyclable counterparts—rather, we believe Maine’s system should prioritize elimination of packaging, with a focus on reuse.
9. While recyclability should impact the fee, and producers of readily recyclable materials should pay fewer fees, NRCM does not believe that recycling rate should be used to determine fees because the producer is responsible for designing the packaging and not for the recycling or collection of that packaging in Maine’s system.
10. While we mostly support the use of malus fees, or penalty payments for unsustainable packaging choices, we think that some criteria may be beneficial to have for bonuses, or reduced fees. If a producer takes the time to calculate and verify that they have used post-consumer recycled content, accurate consumer labeling, and successful efforts to educate consumers to reduce waste and litter and increase recycling on their own, then those would be ideal categories for fee reductions.

Aside from material-specific fees, we acknowledge that the producers will have to share in administrative costs for the program. Ideally, these costs would be fully baked into the fee schedule so they are most fairly charged according to how much material is sold into Maine to be managed by Maine’s municipalities. However, at first it may be prudent to collect payment from producers to begin the program with administrative costs tiered to reflect the producer’s

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green), Oxo-Degradable Additives, including oxo-biodegradable additives PETG – Polyethylene Terephthalate Glycol in rigid packaging, Problematic Label Constructions – This includes adhesives, inks, materials (e.g., PETG, PVC, PLA, paper). Avoid formats/materials/features that render a package detrimental or non-recyclable per the [APR Design® Guide](#). Labels should meet APR Preferred Guidance for coverage and compatibility and be tested in any areas where this is unclear, PS – Polystyrene, including EPS (Expanded Polystyrene), PVC – Polyvinyl Chloride, including PVDC (Polyvinylidene Chloride), Stirrers, Straws

contribution of material to Maine's municipal programs. The largest companies that make the most waste should pay more than the smaller companies that make comparatively less.

On Alternative Collection Programs, we don't believe that the goal should be to move these materials into the municipal system. Rather, the separate collection bins for approved programs should allow for producers to take their own initiative to manage their materials that are not being collected by municipalities currently. However, there may be instances where it makes sense to move more materials into the municipal system to streamline the recycling process for consumers or to encourage multiple alternative collection programs to work together to collect materials. Too many individual recycling programs could be confusing for the general public.

Thank you so much for your time and consideration of these comments. We look forward to reading the Department's draft rules and ensuring that a strong set of EPR for Packaging rules is approved by the Board of Environmental Protection in 2024.