

August 18, 2024

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

Mr. Brian Beneski

The Biodegradable Products Institute (BPI) is North America's leading certifier of compostable materials, products, and packaging, with over 500 member companies worldwide. As a science-driven organization, BPI supports a shift to the circular economy by promoting the production, use, and appropriate end of lives for materials and products that are designed to fully biodegrade in specific biologically active environments. Our certification program has verified thousands of items using ASTM standards as a baseline, plus additional requirements on PFAS, labeling, and eligibility criteria, all to help to keep organic waste out of landfills.

Re: Definitions

We thank you for updating the definition of "compostable packaging material" to include third-party certification to appropriate ASTM standards. In addition to providing clarity, it aligns with other statewide programs, creating uniformity for producers and consumers.

Re: Defining Packaging Material

We remain supportive of the goal for packaging and products to be compostable (and readily recyclable and reusable). The department's choice to amend language such that it "*may* further designate a packaging material type as...compostable" would seem to potentially delay determination and therefore allow for EPR reimbursement mechanisms to support compost (and reuse) infrastructure, creating (potentially) an 'on-ramp' for compostable (and reusable) products. However, we need clarification from the department regarding how this language change might practically affect determination, funding, and enforcement.

We also question whether identifying the 'base material' makes sense for products that aren't designed to be recyclable (i.e. compostable and reusable products). While recyclability may be largely determined by base material, the process for determining compostability is material agnostic. Certified compostable products can be made from any number of materials and combinations of materials, yet they must all adhere to the same ASTM standard specifications described above. Please clarify the purpose of determining 'base material' for products not designed to be recyclable.

Re: Postconsumer recycled material

As mentioned in our previous comments, compostable products are designed to disintegrate and biodegrade in compost and provide a unique benefit in diverting food scraps and organic waste. As such, they are widely exempted from PCR requirements throughout the country. The Department should clearly exempt them from this requirement and any related fees described in 10(A)(3) to avoid unintended consequences.

Needs Assessment

The draft states, “If requested by the Department, an assessment comparable to that described...for additional packaging materials that are not readily recyclable.” Given the goals of the program to improve recycling, reuse, and composting, the Department should request an assessment for compostable packaging materials as well, to better understand the funding, equipment, and educational needs of compost facilities capable of processing compostable packaging.

Incentive fees

The department states that a producer must pay a per ton fee equal to 20% if a product is “labeled in a way that suggests it is compostable” where a material management pathway is unavailable. However, as mentioned in our previous comments, BPI-certified products already display a disclaimer noting that commercial compost “facilities may not exist in [the] area” per FTC guidelines. Having acknowledged on-product that an appropriate management pathway might be unavailable, we believe such products should be exempt from the additional fee. The department’s language also does not address home compostable products for which an appropriate management pathway is available in nearly every backyard. Would home compostable products (that are still certified to be commercially compostable according to the definition provided above) be exempt from this penalty fee?

Our last comments also addressed toxicity and the extent to which the BPI certification process already tests for toxicity. While we appreciate the additional language specifying ‘chemicals of high concern’ or ‘food priority chemicals,’ the new fee/requirements to “provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to the absence of intentionally added toxics” is unclear. What constitutes a legitimate entity and how are such entities confirmed? How many chemicals must be included to avoid a fee, or will the fees differ based on results?

Collection

To ensure all packaging is recyclable, reusable, or compostable by 2050., BPI recommends the addition of “composting” within the collection goal “recycling.” While

food scraps and other organic wastes can contaminate products, rendering them non-recyclable, they enhance the utility of compostable products

Cost & Reimbursement

We appreciate the department providing more details on cost studies and how participating municipalities might be reimbursed. Because compostable packaging materials are disposed of along with other organic waste and cannot be sorted post-disposal like recyclables, how will the tonnage be estimated? Will it be based on products sold in areas where compost infrastructure is available, for example? Clarity on how cost studies might be conducted and how samples might be taken would be appreciated.

Please reach out to us with any questions or concerns,

Sincerely

Alexander Truelove

alexander@bpiworld.org