



August 26, 2024

rulecomments.dep@maine.gov

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

Re: Comment on Chapter 428: Stewardship Program for Packaging

Dear Sir or Madam:

On behalf of Casella Waste Systems, Inc., (“Casella”) please accept the following testimony concerning the July 16, 2024 re-posted draft of the Department of Environmental Protection’s (the “Department”) Stewardship Program for Packaging Rule (the “Program Rule”).

We believe that the best way to improve outcomes with respect to an extended producer responsibility program is to ensure that the program is administered in a fair and equitable fashion. The most recent draft of the Program Rule does not do that, but instead, proposes to provide greater funding distribution to communities that incinerate, as oppose to landfill, materials that are not recycled. These program principles will put some communities at a disadvantage, and fails to recognize the reality and prevalence of by-passing of materials for landfill disposal. For these reasons, we offer the following comments for consideration with respect to the Program Rule

Alternative Management (Section 13.D)

For the management of non-readily recyclable packaging, the draft proposes reimbursement rates that vary according to the type of disposal facility a municipality uses for its MSW. Municipalities managing their MSW through an incinerator would be reimbursed at twice the rate of those municipalities who send their MSW to a landfill. Further, municipalities located in geographic proximity to an incinerator who send their MSW to a landfill would receive no reimbursement at all in this part of the program.

We strongly oppose this language on the ground that it obscures the current realities of waste disposal in the State of Maine, results in unfair outcomes for Maine municipalities, reduces market competition, incentivizes CO₂ emissions from the combustion of plastic, adds unnecessary complexity, and distracts from the stated goals of EPR for Packaging.

Unfair Outcomes: The draft implies that a municipality’s MSW consistently goes to one disposal facility throughout the year. However, this is often not the case. For many municipalities, particularly those in northern or rural parts of Maine, waste is commingled at a transfer station and delivered to disposal facilities with available

capacity. Municipalities whose MSW is contracted to an incinerator find that their tonnage is often redirected to a landfill for capacity or shutdown reasons. This happens regularly, is referred to as bypass, and is detailed in the *Maine Materials Management Plan* issued by the Department in January 2024.

The draft contains no mention of bypass, which raises further questions:

- ***Does the state intend for this program to reimburse based on the actual disposal outcome of a municipality's MSW, taking into account bypass from Alternative Management to landfill disposal?***

This would add unnecessary complexity and unfair outcomes for municipalities, as their tonnage is commingled at transfer stations and directed to disposal facilities based on numerous factors beyond their control. Would incinerators track specifically which towns' tons were bypassed? Would those towns receive less reimbursement? Would reimbursement be reduced for all members? Would members be given preferential treatment over non-members? Does any of this advance recycling in Maine?

- ***Does the state intend to disregard actual MSW disposal outcomes, and reimburse only based on a municipality's contracted disposal facility?*** This unfairly penalizes municipalities based on geography. More affluent municipalities in the south would easily access the highest reimbursement rate. Less affluent and more rural towns would be more likely to be reimbursed at the lower rate or not at all. This approach would also restrict market-based competition and could result in unintended outcomes such as increased disposal costs and decreased service quality.

CO₂ emissions: As noted in our March 7th testimony, incineration is a form of disposal, and it should not be given preferential treatment under a product stewardship program. Instead, Maine should apply its waste hierarchy to drive handling of society's solid waste materials to their highest and best use. Waste hierarchies should be used to promote continuous improvement in waste reduction, reuse, and recycling, and should not be co-opted to artificially prop up one form of disposal above another, particularly where incentives to incinerate plastic packaging would run directly counter to climate goals.

To understand how incentivizing incineration of non-recyclable packaging runs counter to Maine's climate goals, it is important to take into account that a substantial percentage of this material will consist of plastics. According to Environmental Protection Agency (EPA) data, incineration of plastics emits on average 1.63 MTCO₂e per ton (EPA WARM v15.1). This is unsurprising given that plastic is essentially a fossil fuel. We estimate that Maine residential waste may contain as much as 64,000 tons per year of plastic packaging that is not currently accepted for curbside recycling. Incineration of this material would generate over 100,000 tons of greenhouse gas emissions, equivalent to the emissions from over 22,000 vehicles. Given Maine's climate goals, and the potential emissions impacts, incineration should in no way be incentivized as a sustainable solution for plastic packaging.

Proposed Revision: The section should be revised such that all participating municipalities are reimbursed at the same rate for management of non-readily recyclable packaging, regardless of the type of disposal they use, or their geographic proximity to one form of disposal or another. That reimbursement could be set at a rate of 50% of the median per ton cost of recycling. This way they receive real cost relief, but still have an incentive to seek recycling solutions for those materials.

Based on our steady participation throughout this rulemaking process, it is our understanding that Maine EPR for Packaging program is intended to provide municipalities with relief from the costs of managing packaging, to increase investment and participation in recycling services, and to give clear financial incentive for producers to

design their packaging to be recycled. The revision we have proposed will ensure that this program remains focused on achieving those outcomes.

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

Sincerely,

Robert J. Cappadona

Bob Cappadona
Vice President

cc: Brian Beneski, Bureau of Remediation and Waste Management
Susanne Miller, Director of the Bureau of Remediation and Waste Management