

August 26, 2024

Maine Department of the Environment
17 State House Station
32 Blossom Lane
Augusta, Maine 04333-0017

RE: Comments on Chapter 428 Draft Proposed Rule Redraft

Thank you for the opportunity to provide input on the Proposed Rule Draft of the implementation process for the State Stewardship for Packaging program. PRINTING United Alliance (Alliance) hopes that the comments contained herein will prove useful and stand ready to continue to work with the Department of Environmental Protection (DEP) in the further development of the requirements.

As background, the Alliance represents the interests of facilities engaged in producing a wide variety of products through various print processes including screen printing, digital imaging, flexography, and lithography. There are 126 facilities involved in printing and packaging in the state of Maine that employ almost 3,500 people. The value of goods shipped ranges from \$1.2 billion to \$1.4 billion per year. The printing and packaging industry is comprised primarily of small businesses, with approximately 95 percent classified as a small business according to the Small Business Administration standards.

Many of the Alliance's members in Maine are engaged in the production of packaging. In addition, the Alliance also has members that produce packaging for customers that ship products into Maine. These customers would be classified as producers under the proposed regulations. As such there is a requirement for producers to indicate if they have a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify the absence of intentionally added toxics.

Producer Certification of No Intentionally Toxics in Packaging

Producers will be required to provide this information when they register with the Packaging Stewardship Organization (SO) and provide detailed information about the packaging they are using to distribute their products. As part of the registration process, they need to indicate which package can be certified to show that no "toxics" have been intentionally added to the package. For all products that cannot be certified, the producer will be charged a higher fee under the program.

Here are some of the key provisions to the proposed regulation:

B. Annual Reporting for Producers Other Than Low-Volume Producers.

(7) Whether the producer can provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify the absence of intentionally added toxics;

10. Producer Fees. A producer must pay fees based on the packaging material it produces each year. The SO must invoice producers by July 1st of each calendar year, and a producer must pay fees owed in accordance with this Section by September 1st of each calendar year. The SO's contract with the Department must define, or provide a mechanism for defining, late fees.

(3) Incentive fees. Beginning the third calendar year in which producers report under this Chapter, a producers must pay the following incentive fees, as applicable. These fees are relative and additional to packaging material type fees.

(b) Toxicity fee. For a packaging material type for which a producer is unable to provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify no intentional addition of toxics, it must pay a per ton fee equal to 10% of the packaging material type fee.

Here is the definition of a "Toxic Chemical":

2. Definitions. The following terms, as used in this Chapter, have the following meaning unless the context indicates otherwise:

DD. Toxics. "Toxics" means chemicals of concern, chemicals of high concern, or priority chemicals priority chemicals listed by the Department in accordance with *Toxic chemicals in children's products*, 38 M.R.S. § 1694; PFAS and phthalates as defined in under *Reduction of toxics in packaging*, 32 M.R.S. § 1732; and food contact chemicals of high concern or priority food contact chemicals priority chemicals listed by the Department in accordance with *Toxic chemicals in food packaging*, 32 M.R.S. § 1743.

Problems With Producer Toxic Chemical Certification Requirements

This requirement poses significant challenges for producers and their suppliers. The first is the ability to obtain a certificate in a timely manner. Supply chains for packaging can be very complex with many different components required to assemble a single package. Requesting a certificate from a supplier that is a single source provider is challenging, but when multiple components are involved, the process becomes a time consuming and complex administrative burden for both producers and their suppliers. In addition, some producers may be manufacturing their own packaging which includes printing information on it required for distribution.

The certification requirement introduces additional, unnecessary costs to the producer and their packaging suppliers. The daunting list of nearly 2,000 chemicals that must be evaluated exacerbates the complexity of the certification requirement. Verifying that a package is free from these substances may require expensive testing of each lot produced, which is highly impractical. This is because the primary tool for assessing chemical composition is the Safety Data Sheet (SDS) required by OSHA. The information available on SDS's is often insufficient for this purpose, making compliance with certification nearly impossible.

Under the Hazard Communication Program, manufacturers and importers must provide a Safety Data Sheet for products containing hazardous constituents, except for articles, which are exempt. OSHA

requires that these constituents, most of which are chemicals, to be identified if they are present in a concentration of 1% and 0.1% for carcinogens.

If the constituent is not a human health hazard, then it does not have to be identified on the Safety Data Sheet. Likewise, if a material is considered an article, then a Safety Data Sheet is not required to be produced or provided to an end user. In many instances, the base substrate for packaging such as paper, paperboard, corrugated, rigid plastics, plastic films, etc. are articles and Safety Data Sheets are not available for them. Manufacturers and importers can also withhold the name of ingredient, if it is considered a trade secret, when they follow OSHA's guidance.

The inclusion of the chemicals of concern and chemicals of high concern under the Children's Products and Toxics in Packaging regulations is inappropriate, because these lists were originally intended as a candidate list for potential regulation under the program. These lists of chemicals were analyzed by a process created by the DOE that ultimately determined which chemicals would be regulated under each program.

There is a process by which the candidate chemicals are evaluated and just because a chemical appears on a candidate list does not automatically mean it is toxic and a threat to human health or the environment. There are many factors that need to be considered before a chemical is identified as one that requires some form of regulation. The chemicals on the candidate lists must be carefully vetted before they are regulated. Presence alone does not imply exposure. Exposure must be assessed using factors such as concentration, duration, and pathway.

Revisions To Certification Requirement

The certification requirement for producers needs to be eliminated from the proposed regulations. There are two main reasons: first, the logistical challenge of obtaining such certification is nearly impossible; second, the requirement is not mandated by the enabling legislation, Stewardship Program for Packaging (38 M.R.S. § 2146). The certification requirement is a burdensome administrative requirement that will only increase the cost and complexity of compliance.

As an alternative to the certification requirement, the regulation could require a producer to provide an assurance that they are working with their supply chain to reduce or eliminate the presence of the identified chemicals. Producers that do not provide an assurance could be identified in the annual report required by the SO as an incentive.

The number of toxic chemicals that need to be investigated by the producer needs to be reduced to only the chemicals that are being regulated under the identified statutes. They are as follows:

- Title 32, Chapter 26-A: REDUCTION OF TOXICS IN PACKAGING: [Toxics Use Reduction Program \(TUR\), Maine DEP](#)
- Title 32, Chapter 26-B: TOXIC CHEMICALS IN FOOD PACKAGING: [Toxics in Food Packaging Program, Maine DEP](#)
- Title 38, Chapter 16-D: TOXIC CHEMICALS IN CHILDREN'S PRODUCTS: [Safer Chemicals in Children's Products, Maine DEP](#)

Reducing the number of chemicals that need to be investigated has two key benefits. First, it aligns this program with existing requirements, preventing an increase in the compliance burden for producers and

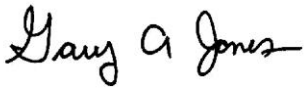
their suppliers. Second, it streamlines compliance, ultimately benefiting consumers. Producers cannot absorb all the costs of compliance and fees associated with this program. Some or all the costs of compliance and fees will be passed on to the consumer in the form of higher prices for products sold in covered packaging.

Conclusion

The producer certification process for toxic chemicals needs to be scaled back from what is contained in the proposed regulations. It is a requirement that will impose significant compliance costs and complexities that may not be able to be met.

We look forward to working with the State of Maine as the Department continues its deliberations and information gathering during the implementation process. If we can be of any further assistance, please contact me at gjones@printing.org.

Sincerely,

A handwritten signature in black ink that reads "Gary A. Jones". The signature is written in a cursive, flowing style.

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