

RE: Chapter 428 Stewardship Program for Packaging, Reposting Draft

Submitted by:

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Mr. Brian Beneski
17 State House Station
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RE: Chapter 428 Stewardship Program for Packaging, Reposting Draft

Dear Mr. Beneski,

PakTech would like to thank Maine DEP for giving us an opportunity to share our thoughts related to the *Chapter 428 Stewardship Program for Packaging, Reposting Draft (Draft Regulations)*. We congratulate DEP for its yeoman work on developing these regulations and the countless hours of stakeholder input and feedback it has solicited that have led to the release of the Draft Regulations. With that in mind, we hope our comments are received in the spirit they were written as we are interested in seeking clarity with some of the sections and helping to improve the final draft.

Founded in 1991, PakTech's facilities are located in Eugene, Oregon and is a manufacturer of HDPE plastic carrier handles that exclusively utilize recycled resin as a feedstock. We use approximately 1.4 million pounds of recycled HDPE resin per month and is part of our commitment to sustainability and ensuring this material remains in the circular economy. Our commitment to sustainability doesn't end with the use of recycled resin as we also use over 170,000 pounds of recycled fiber per month.¹ From purchasing shipping containers and boxes that contain recycled fiber, to using energy efficient and sustainable power sources, to sustainable water use, we are committed to utilizing sustainable business practices throughout the manufacturing process. Our commitment to sustainability and good manufacturing procedures demonstrates our belief a manufacturing facility can provide a quality product while still being environmentally responsible.

DISCUSSION:

1. Section 2 Definitions

We are concerned with the current definition of "Producer" that is contained within the draft.

Specifically, Section V. (3) which states:

"Adds Packaging material to another producer's product for distribution directly to a consumer. This person is only the producer for the packaging material it adds"

¹ Through the use of purchasing shipping containers made with recycled fiber content. As such, we are a significant market for recycled fiber products and are proud to support the recycled fiber industry.

We find this definition somewhat vague and confusing as we are unsure what “adds” means in the context of the definition. As stated earlier, PakTech is a manufacturer of 4-Pack and 6-Pack PCR HDPE carrier handles. PakTech manufactures a component part which is then sold to a Brand Owner who then affixes our handle to their package. We do not physically “add” our handles to any packaging. Therefore, we are wondering if the word “add” in this context means a person who physically affixes the component to the package or merely makes that component part available by selling it to a Brand Owner.

We believe the way component parts are treated in the Draft Regulations will directly impact the status of thousands of manufacturers that provide such items to brand owners and packaging manufacturers. Manufacturers of components are typically engaged in business-to-business transactions and provide those items at the request of the primary packaging manufacturer based on their specifications and criteria.

We believe that once the component part is affixed to the package that component loses its identity as “separate and distinct”. This is due to the function of the component. By itself, the component is not able to perform the function it was designed to do. Typically, component parts are designed to provide some function that aids in the delivery or handling of the package it is affixed to. Accordingly, once affixed, it loses its identity and therefore should be considered to be part of the primary package. Because of this, we believe the Brand Owner, and not the manufacturer of the component should be considered the “Producer”.

Many states, such as California and Oregon have taken a look at this situation and have applied various solutions. For example, California has created the definition “component”:

“Component,” with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function.

A definition like this would readily distinguish our parts from the rest of the package and with a simple amendment to this definition DEP could clearly delineate who is and who is not considered a producer. Accordingly, we suggest DEP consider the following definition:

“Component” with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function. Manufacturers of “component” parts are not considered producers.

By contrast, Oregon, in its second rulemaking draft has looked at this situation and has included the following definition to “Producer”

A person that manufactures a packaged item includes a person that directs the manufacturing of the item, including setting specifications for an item’s packaging. Purchasing or ordering an item for retail sale in the normal course of business is not directing manufacturing.

In this case, Oregon is highlighting the fact that the Brand Owner who is directing the manufacture of the item through specifications should be considered the “producer”.

In either case, both states have acknowledged that manufacturers of component parts should not be considered a “producer”. This clarifies the hierarchy of responsibility and will reduce confusion once the program comes online.

Conclusion

We look forward to working with all stakeholders in this process to develop rules for the RMA that will ensure that the maximum amount of material is recycled and handled responsibly.