



***Via Electronic Mail***

August 26, 2024

Ms. Kerri Malinowski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

**Re: PLASTICS Comments on the Definition of “Toxics” in Maine’s Stewardship Program for Packaging Statute Implementing Rule**

Dear Ms. Malinowski:

On behalf of the Plastics Industry Association (“PLASTICS”),<sup>1</sup> we are writing to submit comments on the draft update to the Chapter 428 draft rule implementing Maine’s Stewardship for Packaging statute.<sup>2</sup> On February 5, 2024, Maine’s Department of Environmental Protection (DEP or Department) proposed an updated definition of “toxics” in the Stewardship for Packaging statute to include chemicals listed in the Toxic Chemicals in Children’s Products,<sup>3</sup> Reduction of Toxics in Packaging,<sup>4</sup> and the priority chemicals listed by the Department in the Toxic Chemicals in Food Packaging.<sup>5</sup> We are concerned by the breadth of this expansion in the definition, and anticipate that the proposed definition will significantly increase the burden on industry stakeholders as well as DEP itself. Such a substantial change could lead to the removal of many packaging materials from the market. In addition, the Department may face a considerable administrative burden in determining whether thousands of listed compounds may be contained in packaging materials for hundreds of thousands of food products. PLASTICS’ members fully support effective, science-based policies that protect public health and the environment, and we believe that such efforts can be successfully advanced in ways that do not inhibit the use of safe packaging and allow for innovations that benefit consumers.

We appreciate the opportunity to comment on Maine’s Stewardship for Packaging rule. Our members have extensive knowledge about food packaging substances and assessments of

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<sup>1</sup> PLASTICS was founded in 1937, as the Society for the Plastics Industry (SPI) and is the trade association that represents one of the largest manufacturing industries in the United States. PLASTICS’ members represent the entire plastics industry supply chain, including processors, machinery and equipment manufacturers, and raw material suppliers.

<sup>2</sup> See 38 MRS § 2146; *see also* Maine Department of Environmental Protection, “Chapter 428 Proposed Rule Draft” Feb. 5, 2024, <https://www.maine.gov/dep/bep/2024/03-07-24/Chapter%20428%20Proposed%20Rule%20Draft.pdf>.

<sup>3</sup> See 38 M.R.S. § 1694.

<sup>4</sup> See 32 M.R.S. § 1732.

<sup>5</sup> See 32 M.R.S. § 1743.



their safety, and we believe that our organization can provide unique insight into the proposed update to the rule. However, the proposed rule should not encompass an overly broad range of chemicals to be effective, particularly listings that may not have direct relevance to food-contact applications. A targeted definition of “toxics” would foster a high level of compliance without being unduly burdensome on industry or create adverse impacts on the consumers it aims to protect. For these reasons, we respectfully request that DEP carefully consider our comments below.

**I. The proposed definition of “toxics” is overly broad as it lacks sufficient scientific evidence to justify the inclusion of the named substances and therefore creates unnecessary regulatory burdens.**

**A. A broader definition of “toxics” could lead to unintended consequences.**

The expanded definition of “toxics” in the proposed rule is concerning due to its reliance on separate listings for chemicals that may lack sufficient scientific evidence to justify their classification as “toxics” at the concentrations found in packaging. This overbroad definition could include substances that present little or no risk to human health or the environment. Although the state’s policy rationale aligns with the goal of protecting public health and the environment, a more targeted approach is essential to avoid market disruptions to both the packaging and food supply chains. We urge DEP to take a risk-based approach, which encompasses both hazard *and* exposure. By focusing on chemicals with demonstrated *risks* rather than mere hazards – a distinction that is often unappreciated by those lacking in scientific expertise – regulators can prioritize their efforts and resources to address substances that may pose a safety concern.

A risk-based approach is essential for determining which chemicals should be considered “toxics” under Maine’s Stewardship Program for Packaging. While certain chemicals may pose a hazard, the actual risk to human health or the environment depends on a number of factors (e.g., exposure levels, routes of exposure, and the inherent toxicity of the substance). In the plastic packaging industry, many chemicals that have identified hazards are used at exceedingly low levels and are entirely safe under such circumstances, as they result in minimal or negligible risk at typical exposure levels. A focus on chemicals that pose a significant *risk*, rather than the proposed definition of “toxics,” would have more robust scientific support and better ensure that these regulatory efforts are targeted and effective.

**B. The impact of the proposed “toxics” definition on the packaging industry.**

The expanded definition of “toxics” in the proposed Stewardship Program for Packaging presents a significant challenge for businesses in the packaging industry. The increased scope of regulated substances will necessitate additional testing, documentation, and compliance efforts leading to increased costs and operational burdens. Moreover, the expanded definition will likely diverge from existing federal and international standards, thereby creating complexities in



global supply chains. Businesses will face challenges in sourcing materials that comply with Maine's stringent requirements while maintaining competitiveness in the global marketplace.

The potential for regulatory burden is also a major concern. A broader definition of "toxics" could lead to an unnecessarily complex compliance effort, overwhelming businesses with requirements that would cause problems in the supply chain. A more targeted, risk-based approach, focusing on chemicals with demonstrated hazards and significant exposure risks, would be a more effective and efficient means of protecting public health and the environment. A similar approach was adopted during the implementation of Maine's Toxics in Packaging law.<sup>6</sup> Although the initial proposal sought to ban the use of intentionally added PFAS in *all* food packaging, the final regulation adopted an approach that targeted priority applications. By focusing the proposed prohibition to food packaging primarily composed of paper, paperboard, and plant-based materials, Maine's DEP properly balanced public health protections and practical considerations for the industry to take corrective measures. We see value in taking a similar approach to Maine's draft update to the Chapter 428 draft rule implementing Maine's Stewardship for Packaging statute.

Accordingly, we urge DEP to reconsider the expanded definition of "toxics" and adopt a more focused approach. We believe that such an approach would achieve the intended policy implications. The Department can better accomplish its goal of identifying chemicals of concern through a targeted approach that ensures citizens still have access to safe and suitable packaging.

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We appreciate this opportunity to comment on this proposed rule and wish to continue to work with Maine's Department of Environmental Protection to ensure that food packaging is safe for all populations. If you have any questions or concerns regarding this letter, or if we can provide additional information regarding any of our comments provided above, please do not hesitate to contact us.

Cordially yours,

A handwritten signature in black ink that reads "Stacy Tatman". The signature is fluid and cursive, with the first and last names clearly legible.

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<sup>6</sup> See 32 M.R.S § 1732.