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May 20, 2024

Maine Department of Environmental Protection
MainePackagingEPR@maine.gov

SUBJECT: Packaging Material Exemption Request for Packaging Stewardship Program

To Whom It May Concern:

The Ag Container Recycling Council (ACRC) appreciates the opportunity Maine Department of Environmental Protection (ME DEP) has provided to submit exemption requests to the Maine Packaging Stewardship Program relevant to Section 13(D) of 38 M.R.S. § 2146. The ME DEP can reach the ACRC for further follow-up as follows:

ACRC Contact Information:

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Who is the ACRC?

The Ag Container Recycling Council (ACRC) is a 501(c)(6) nonprofit association that promotes and funds programs in the United States for the collection and recycling of plastic containers (up to and including 55 gallon) from agricultural pesticide, animal health, specialty pest control, micronutrient, biologicals, fertilizer and adjuvant products. It also funds research for determining acceptable end uses for the plastic collected in the program. ACRC was founded in February 1992 by 11 manufacturers, formulators or packagers of such products. The ACRC was an instrumental resource in the development of the ANSI/ASABE S596 Standard, a standard specifying how to handle, clean and recycle pesticide containers. Today, the ACRC has 36 Regular Members and 18 Affiliate Member companies. Manufacturers, formulators or packagers of agricultural pesticide, animal health, specialty pest control, micronutrient, biologicals, fertilizer and adjuvant products can be Regular Members. Any manufacturer of HDPE plastic containers or container components used by the companies that qualify for Regular Membership may be an Affiliate Member. ACRC is funded entirely by member dues. Since 1992, ACRC has collected and ACRC contractors have recycled, over 240,000,000 pounds of HDPE containers. ACRC began collecting in Maine in 1993, the first year of nationwide collection by the program. Since that time, ACRC has collected approximately 720,000 pounds of ag chemical containers in Maine, which translates to approximately 900,000 empty rinsed containers.

ACRC Packaging Material Exemption Request for Packaging Stewardship Program:

Maine DEP Criteria for exemption:

1. **Significantly diminished ability to increase recyclability.** The Department will not exempt packaging material where there are opportunities to increase recyclability through design changes. For the purposes of 38 M.R.S. § 2146, *recycling* means—

the transforming or remanufacturing of an unwanted product or the unwanted product's components and by-products into usable or marketable materials. "Recycling" does not include landfill disposal, incineration or energy recovery or energy generation by means of combusting unwanted products, components and by-products with or without other waste. (38 M.R.S. § 1771 (7))

The Department will not consider the potential for infrastructural and technological advances to increase the recyclability of packaging material as a means by which a producer can increase the recyclability of its packaging material.

2. **Significantly diminished ability to reduce volume.** The Department will not exempt packaging material where design changes can increase the ratio of product sold to packaging material produced. This includes transitions to reusable and refillable packaging material unless there are federal laws and regulations that would prohibit these distribution methods.

An exemption request must answer the following questions, in the following order:

1. Which federal laws or regulations preclude or significantly diminish a producer's ability to increase the recyclability or reduce the volume of packaging material? Please provide specific citations and language.
 - 1) Packaging products used to contain any substance regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136 et seq. (FIFRA)
 - 2) FIFRA registered pesticide products sold in nonrefillable containers are subject to all the nonrefillable packaging requirements ([40 CFR 165.25, regulations-glance-table-3.pdf](#) (epa.gov))
 - 3) Packaging products used to contain any substance regulated by EPA 40 CFR 156.146; 165.25; 2006 Container and Containment Rule.
 - a) EPA 2006 Standards for Pesticide Containers and Containment; Final Rule, provides very prescriptive language around rinsing prior to recycling. (<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-156/subpart-H/section-156.146>)
 - b) This reduces a producer's ability to increase recyclability because it is dependent on end user education and compliance with this federal standard. ACRC has been operating for 32 years to promote this standard and still regularly encounters containers that cannot be recycled because they do not meet the standard.
 - c) <https://www.federalregister.gov/documents/2006/08/16/06-6856/pesticide-management-and-disposal-standards-for-pesticide-containers-and-containment>
 - 4) Packaging products used to contain any agricultural or veterinary products regulated under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.

- 5) Animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and others covered by the United States Department of Agriculture under the Virus-Serum-Toxin Act, 21 U.S.C. Sections 151-159 et seq.
 - 6) Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials and is: (a) prohibited from being manufactured with used material by federal packaging material specifications set forth in 49 C.F.R. s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R. s.178.609, or (c) is subject to the recommendations of the United Nations on the transport of dangerous goods
 - 7) Packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration Hazard Communications Standard (29 C.F.R. 1910.1200).
 - 8) Products that are required under 40 C.F.R. 156.140, or other federal regulation pertaining to toxic or hazardous materials, to state on the label or container that the packaging should not be recycled or should be disposed of in a manner other than recycling; or identified by rule as product that is required by law to state on the label or container that the packaging should not be recycled or should be disposed of in a manner other than recycling.
 - 9) Packaging products used to contain any substance regulated by FIFRA that is required to be Child Resistant Packaging (40 CFR 157.20; <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-157>). Packaging is to be designed and tested to be meet certain standards (see 157.32).
 - 10) Packaging material used to contain a product that is required under state law to be sold in packaging material that meets the standards set forth in the "Poison Prevention Packaging Act of 1970", 15 U.S.C. SEC. 1471 ET SEQ., as amended.
2. If content or construction standards are not directly specified in the citations referenced in response to Question 1, please explain how the cited federal laws or regulations indirectly specify content or construction standards.
- 1) Many of these products are heavily governed by federal and global regulations for performance-based packaging standards, which limit the ability to reduce packaging volume while still meeting performance standards. These include:
 - a) 49 CFR 178.504 – 178.523, 178.704 – 178.710, 178.915 – 178 – 940.
 - b) UN 6.1.4.1 – 6.1.4.20, 6.5.5.1 – 6.5.5.6, 6.6.4.2 – 6.6.4.5
 - c) IMDG 6.1.4.1 – 6.1.4.20, 6.5.5.1 – 6.5.5.6, 6.6.4.2 – 6.6.4.5
 - d) ICAO 6.3.1.1 – 3.1.18
 - e) IATA 6.1.1 – 6.2.18, 6.8.1.3, 6, 3.2 – 3.6
 - 2) Registered EPA pesticide products not designated as hazardous materials by DOT, but that carry a Toxicity Category I or II designation, or a Restricted Use designation are required through 40 CFR 165.23 to be placed in at least UN Packaging Group III containers.
 - 3) Registered EPA pesticide products designated with a Toxicity Category of III or IV are required through 40 CFR 165.23 to be placed in packaging compliant with 49 CFR 173.24.
 - 4) 49 CFR 178.509 (b)(1) specifically prohibits using recycled plastic to manufacture drums and jerricans unless special approval is obtained from DOT.
3. To which product or group of products do the federal laws or regulations referenced in response to Question 1 and any circumstances specified in response to Question 2 apply?

- Packaging products used to contain any substance regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136 et seq. (FIFRA)
 - See question 1, items # 2, 3.a-c, 6-10. Also question 2, items # 1 – 4.
 - Packaging products used to contain any agricultural or veterinary products regulated under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.
 - Animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and others covered by the United States Department of Agriculture under the Virus-Serum-Toxin Act, 21 U.S.C. Sections 151-159 et seq.
 - Nitrogenous, phosphatic, or other fertilizer materials and mixing ingredients made elsewhere into fertilizers.
 - See question 1, items # 6, 7, 10.
4. Do the federal laws or regulations referenced in response to Question 1 and any circumstances specified in response to Question 2 apply to some or all packaging material associated with the product or group of products identified in response to Question 3? If some, identify the packaging material that is affected.
- Pesticide products designated as hazardous materials by DOT must meet the requirements of 49 CFR 178.500 and 178.600 non-bulk performance-oriented packaging standards that are based on UN recommendations.
 - 49 CFR 178.509 (b)(1) specifically prohibits using recycled plastic to manufacture drums and jerricans unless special approval is obtained from DOT.
 - Registered EPA pesticide products not designated as hazardous materials by DOT, but that carry a Toxicity Category I or II designation, or a Restricted Use designation are required through 40 CFR 165.23 to be placed in at least UN Packaging Group III containers.
 - Registered EPA pesticide products designated with a Toxicity Category of III or IV are required through 40 CFR 165.23 to be placed in packaging compliant with 49 CFR 173.24.
5. Who should the Department contact with questions regarding this exemption request?

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6. Further comments:

- The input provided above speaks to the scope of products collected by the ACRC program which includes pesticides, animal health, specialty pest control, micronutrient, biologicals, fertilizer, and/or adjuvant product containers. As indicated by the regulations cited above, these products should be recycled in a responsible manner as conducted by the ACRC program. Strict adherence to the regulations governing rinsing requirements impact the recyclability of this packaging. Likewise, the packaging for these products fall under a

variety of federal and international regulations which greatly limit the ability to be volume reduced while still meeting performance and safety standards.

- For these reasons, we request the Department exclude by rule, these products and their packaging from the packaging material definition.

Sincerely,

J. Mark Hudson

J. Mark Hudson
Executive Director