

## STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 1185 - L.D. 1649

**An Act To Implement Recommendations of the Department of  
Environmental Protection Regarding the State's Product Stewardship  
Program Framework Laws**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRSA §1771, sub-§6-A** is enacted to read:

**6-A. Proprietary information.** "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

**Sec. 2. 38 MRSA §1772, sub-§5**, as enacted by PL 2013, c. 315, §5, is amended to read:

**5. Legislation to establish product stewardship programs.** Annually, after reviewing the report submitted by the department pursuant to subsection 1, the joint standing committee of the Legislature having jurisdiction over natural resources matters may submit a ~~bill~~ legislation to implement recommendations included in the department's report to establish new product stewardship programs or revise existing product stewardship programs.

**Sec. 3. 38 MRSA §1776, sub-§1, ¶A**, as enacted by PL 2013, c. 315, §7, is amended to read:

A. The program must include a collection system that is convenient and adequate to serve the needs of covered entities in both rural and urban areas. No later than one year following commencement of product collections by the program's collection system, the collection system must include permanent collection locations located within 15 miles of 90% of the residents of the State unless the commissioner determines that the requirements of this paragraph are not practicable due to geographical constraints or that an alternative collection system that does not meet

the requirements of this paragraph will result in equivalent and more efficient collection.

**Sec. 4. 38 MRSA §1776, sub-§1, ¶D** is enacted to read:

D. The program must include at a minimum a half-time employee or contracted agent whose job duties are dedicated to implementing the program in the State unless the commissioner determines that a lesser staffing requirement is adequate to provide the administrative oversight, training and ongoing technical support to collection locations, education and outreach efforts, program performance assessment and reporting necessary for program implementation.

**Sec. 5. 38 MRSA §1776, sub-§4**, as enacted by PL 2013, c. 315, §7, is amended to read:

**4. Costs.** Producers in a product stewardship program shall finance the collection, transportation and reuse, recycling or disposition of the relevant product; effective education and outreach related to the program; program assessment; program reporting; any incentives necessary to achieve program goals; payment of reasonable fees to the department for review of the program plan and any proposed amendments; and payment of annual fees to the department to cover the department's actual costs for the program for annual report review, oversight, administration and enforcement, which may not exceed \$100,000 per year per program and which must be properly documented and provided by the department to the program prior to or at the time that such payment is required.

**Sec. 6. 38 MRSA §1776, sub-§5, ¶¶B, E, H, I, J and K**, as enacted by PL 2013, c. 315, §7, are amended to read:

B. A description of the collection system, including:

- (1) The types of ~~sites~~ locations or other collection services to be used;
- (2) How all products covered under the product stewardship program will be collected in all counties of the State; and
- (3) How the collection system will be convenient and adequate to serve the needs of all entities;

E. ~~If possible, a~~ A description of the ~~method~~ methods to be used to reuse, deconstruct ~~or~~ and recycle the unwanted product to ensure that the product components are transformed or remanufactured to the extent feasible;

H. A description of the education and outreach methods that will be used to recruit, train and monitor collection locations and to encourage participation in the program on an ongoing basis by collection locations and by consumers throughout the State;

I. A description of how education and outreach methods will be evaluated, including, at a minimum, completion of an annual consumer awareness survey to assess consumer knowledge regarding product management options and collection locations. The survey questions and methodology must be approved by the department, and the survey must be administered by a 3rd party;

J. ~~Any~~ A description of how program performance will be assessed, including performance goals established by producers or a stewardship organization to show success of the program; and. When a performance goal is expressed as a recycling rate or a diversion from disposal rate, the plan must include a description of the methodology and the relevant historic sales data used to develop the rate. Sales information submitted to the department pursuant to this paragraph that is identified by the producer or stewardship organization as proprietary information is confidential and must be handled by the department in accordance with subsection 10. The performance goals under this paragraph must include, at a minimum, one of the following goals:

(1) That at least 50% of the residents of the State will be aware of the program by no later than the end of the 3rd year of program implementation and at least 70% of the residents of the State will be aware of the program by no later than the end of the 6th year of program implementation;

(2) That a diversion from disposal rate of at least 50% will be achieved by the program by no later than the end of the 4th year of program implementation; or

(3) An alternative performance goal that does not meet the criteria in subparagraph (1) or (2) as long as sufficient evidence is provided to the department to justify that alternative performance goal;

K. A description of how the program will be financed. If the program is financed by a per unit assessment paid by the ~~producer to a stewardship organization~~ consumer at the point of sale, a plan for an annual 3rd-party audit to ensure revenue from the assessment does not exceed the cost of implementing the product stewardship program must be included; ~~and~~

**Sec. 7. 38 MRSA §1776, sub-§5, ¶L** is enacted to read:

L. An anticipated annual budget for the program that includes identification of specific anticipated administrative, collection, transportation, disposition and communication costs for the program. The anticipated annual budget must be sufficient to fund the program staffing required under subsection 1, paragraph D and the reimbursement by the producer or stewardship organization of the department's actual costs incurred in annual report review and in overseeing, administering and enforcing the program. The anticipated annual budget may not include costs for legal fees or costs related to legislative efforts that have been or will be incurred by the producer or stewardship organization.

**Sec. 8. 38 MRSA §1776, sub-§6**, as enacted by PL 2013, c. 315, §7, is repealed.

**Sec. 9. 38 MRSA §1776, sub-§6-A** is enacted to read:

**6-A. Plan amendments.** In accordance with the provisions of this subsection, a producer or stewardship organization or the department may initiate changes to an approved product stewardship plan.

A. A change to an approved product stewardship plan by a producer or stewardship organization operating the program implemented under the plan must be submitted to

the department for review and approval prior to the implementation of that change, except that if the producer or stewardship organization determines that the change is not substantive, such as the addition of or a change to collection locations, or if an additional producer joins the program, the producer or stewardship organization must inform the department of the change within 14 days of implementing the change but need not receive department approval unless the department determines that the change is substantive. The department shall review and approve plan amendments in accordance with subsection 8.

B. If the department determines that a program has failed to make adequate progress toward achieving the program's performance goals described in the approved product stewardship plan pursuant to subsection 5, paragraph J, the department shall notify the producer or stewardship organization operating the program in writing regarding its determination and may direct the producer or stewardship organization to implement specific changes to the plan within 6 months of the written notification, which may include, but are not limited to, improvements to the convenience of the collection system or to the education and outreach efforts under the program to improve program performance. The department may also recommend in its annual report under section 1772, subsection 1 that the program be amended to require financial incentives or, if appropriate for the product, implementation of a deposit and refund system.

**Sec. 10. 38 MRSA §1776, sub-§§7, 8 and 10**, as enacted by PL 2013, c. 315, §7, are amended to read:

**7. Annual reporting.** By ~~February~~ March 1st of the calendar year after the calendar year in which an approved product stewardship program is implemented, and annually thereafter, the producer or stewardship organization operating the program shall submit to the department a report on the program for the previous calendar year. The report must include, at a minimum:

- A. The amount of product collected ~~per county~~ at each collection location;
- B. A description of the methods used to collect, transport and process the product;
- C. An evaluation of ~~the program performance~~, including, if possible, diversion and recycling rates together with certificates of recycling or similar confirmations and an evaluation of the convenience of the collection system implemented under the program;
- D. A description of the methods used for education and outreach efforts ~~and an evaluation of the convenience of collection~~ and an evaluation of the effectiveness of outreach and education those efforts. ~~Every 2 years, the~~ The report must include the results of an assessment of the methods used for and effectiveness of education and outreach efforts. The assessment must be completed by a 3rd party;
- E. If applicable, the report of the 3rd-party audit conducted to ensure that revenue collected from the assessment does not exceed implementation costs pursuant to subsection 5, paragraph K; ~~and~~

F. Any recommendations for changes to the product stewardship program and to the approved goals for the program to improve convenience of collection, consumer education and program evaluation-; and

G. A financial report on the program, including the total cost of implementing the program as determined by an independent financial audit that includes identification of specific administrative, collection, transportation, disposition and communication costs for the program, and an anticipated budget for the program for the next program year.

**8. Department review and approval.** Within ~~20-business~~ 120 days after receipt of a proposed product stewardship plan, the department shall determine whether the plan complies with ~~subsection 5~~ this section. If the plan is approved, the department shall notify the submitter in writing. If the department rejects the plan, the department shall notify the submitter in writing stating the reason for rejecting the plan. ~~A submitter whose plan is rejected must submit a revised plan to the department within 60 days of receiving a notice of rejection.~~

**10. Proprietary information.** Proprietary information submitted to the department in a product stewardship plan, in an amendment to a product stewardship plan or pursuant to reporting requirements of this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

~~As used in this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.~~