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DEPARTMENT OF ENVIRONMENTAL PROTECTION



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**TESTIMONY OF**  
**BRIAN BENESKI, SUPERVISOR, RECYCLING PROGRAMS**  
**DIVISION OF MATERIALS MANAGEMENT**  
**BUREAU OF REMEDIATION AND WASTE MANAGEMENT**  
**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING NEITHER FOR NOR AGAINST L.D. 2036**  
**AN ACT TO CLARIFY THE APPROVAL PROCESS FOR AND THE**  
**OPERATION OF THE COMMINGLING PROGRAM FOR THE**  
**MANAGEMENT OF BEVERAGE CONTAINERS**

**SPONSORED BY REP. CAMPBELL**

**BEFORE THE JOINT STANDING COMMITTEE**  
**ON**  
**ENVIRONMENT AND NATURAL RESOURCES**

**DATE OF HEARING:**

**FEBRUARY 4, 2027**

Senator Tepler, Representative Doudera, and members of the Committee, my name is Brian Beneski and I am the Supervisor of Recycling Programs within the Division of Materials Management in the Bureau of Remediation and Waste Management at the Department of Environmental Protection ("Department"), speaking neither for nor against L.D. 2036.

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L.D. 2036 proposes two changes to the Beverage Container Redemption Program. It would allow the Commingling Cooperative to delay the commingling of beverage containers by material type, size and deposit value, rather than by commingling group and material type, size, and deposit value, until such time that initiators of deposit ("IODs") have provided auditable beverage container sales data to the Cooperative. Additionally, it removes the Department's processing and approval of the Cooperative's operations plan from the Department's requirements outlined in Department Rule, Chapter 2: *Processing of Applications and other Administrative Matters*. The Department is neither for nor against these changes, however the Department would like to point out several items for the committee to consider.

As written, L.D. 2036 will require a full transition from sorting by brand to material type (full comingling) by October 1, 2026 *only* if 90% of IODs submit auditable sales data by June 30, 2026. Requiring auditable sales data prior to full comingling will likely delay implementation of this program for an uncertain amount of time, as it is unknown how many IODs collect what would be considered auditable sales data. Unless there is a specific definition and an incentive or a target date requiring IODs to start collecting this data, it is possible that this requirement may never be achieved. Since there is no definition of "auditable beverage container sales data," or any indication as to who is responsible for this definition, this goal is open to interpretation and will lead to uncertainty within the regulated community. Finally, it should also be noted that the share of beverages on the beverage market belonging to individual IODs varies considerably; a few IODs contribute a large percentage to the market, whereas a large number of smaller IODs each contribute only a small percentage of containers. Therefore, the number of IODs reporting auditable sales data is not reflective of the extent to which beverages sold are being accounted for within the beverage container redemption system.

If this bill moves forward, the Department recommends the following:

- Providing language to incentivize or require a target date upon which individual IODs must begin to collect and report "auditable" sales data.
- Providing language to clarify that full comingling must occur within a given timeframe once the 90% reporting goal has been reached.
- Providing a definition of auditable beverage container sales data.

Maine's Beverage Container law at 38 M.R.S. 3107 (3-B)(C)(1) establishes procedures for the Department's review of the Commingling Cooperative's operations plan, including steps for final approval of the plan if the Department requires the Cooperative to make revisions to the plan. This paragraph authorizes the Department to approve a revised plan "*subject to the implementation of specific changes required by the department.*" In other words, if the Department determines that the plan does not meet the requirements of the statute, the Department may impose specific changes in the Cooperative's plan and then issue a final approval.

L.D. 2036 specifies that approval of the plan submitted by the Cooperative would not be considered to be a "license or permit decision or other final action of the Department" in accordance with provisions outlined in Department's Chapter 2<sup>1</sup>. It is important to consider that Chapter 2 was developed to ensure that there is a specific, defined process for the Department to review applications and issue Department decisions in order to provide consistency. By following these rules, the Department provides clarity to the regulated community as well as transparency. As part of this process, Chapter 2 also provides a pathway for any applicant that wishes to appeal a final agency action. If the approval of the plan is no longer subject to the rules regarding the processing of applications, the Commingling Cooperative would no longer have a venue to challenge the Department's decision on the Cooperative's operations plan. It is unclear why

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<sup>1</sup> It is unclear if this would also exclude the Department's approval from the definition of "final agency action" in the Maine Administrative Procedures Act at 5 M.R.S. §8002 (4).

L.D. 2036: An Act to Clarify the Approval Process for and the Operation of the Commingling Program for the Management of Beverage Containers

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entities that will be required to follow the Department-approved operations plan would want to eliminate their ability to appeal changes in the plan that may be imposed by the Department.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions from the Committee, both now and at the work session.