



To: Maine Legislature Committee on Environment & Natural Resources
From: Alex Walsh, Associate VP, Northeast Dairy Foods Association, Inc.
Date: May 7, 2021
Re: LD 1541

Northeast Dairy Foods Association, Inc. along with Northeast Dairy Suppliers Association, Inc., which represents dairy processors, manufacturers, distributors and suppliers in New York, New Jersey and all of the New England States, including Maine, as a united manufacturing and food processing industry, respectfully submit the following testimony regarding LD 1541, An Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money.

First and foremost, the dairy industry is and has been pro-sustainability for many years, and have proven their commitment when it comes to recycling. Dairy food processors and manufacturers, as well as companies that manufacture items such as milk cartons and yogurt containers, have been a leader on this effort to not only provide foods that are healthy and nutritious, but also take proactive environmental approach when it comes to their operations. Members of Northeast Dairy Foods Association and Northeast Dairy Suppliers Association are working more efficiently, developing new technologies, reviewing sourcing options, reducing energy consumption, conserving water, and recycling or repurposing production waste in a variety of ways. One example of an industry trend that has been happening is largescale packaging companies are moving more and more away from petroleum-based plastics and into plant-based resins and other materials such as paperboard, and containers with resin-based closures only. The industry has made significant strides in ensuring the recyclability of dairy products, such as the use of widely recyclable high density polyethylene (HDPE) for milk cartons and plastic jugs.

A concern Northeast Dairy Foods Association and Northeast Dairy Suppliers Association have is the fact that our members, including those in Maine, provide milk, cheese, yogurt, ice cream and other dairy products beyond their state's borders into neighboring states into the region and throughout the United States. By enacting this legislation, it would become complicated and cumbersome to members to comply with other current state and federal regulations including guidelines set by the Food and Drug Administration's Food Contact Surface Notification (FCN) process. Through the FCN process, FDA considers each proposed use of recycled plastic on a case-by-case basis and issues advice to packaging fabricators on whether the recycling process is expected to produce plastic suitable for specific food-contact applications. FDA has prepared language intended to assist manufacturers of food packaging in evaluating processes for recycling plastic into food packaging. For most foods, excluding Grade "A" milk products, the FCN review process is voluntary, allowing food companies to utilize recycled plastic without undergoing FDA review so long as the companies and packaging comply with FDA's requirements.

Under the Pasteurized Milk Ordinance (PMO), manufacturers of Grade “A” milk and milk products or packaging suppliers for such products are required to obtain acceptance by FDA before recycled packaging can be used for a particular Grade “A” milk or milk product. This is unique to dairy food manufacturers, as no other industry faces the same type of regulatory requirement.

Beyond Maine, other states are also considering varied recycled content mandates. With this, municipalities and states have widely varying degrees of recycling infrastructure and capacity, which limits the extent to which resin and packaging companies can access reliable and consistent supplies of recycled material. This lack of infrastructure has put the United States at a competitive disadvantage on using recycled material. Dairy companies who make Grade “A” and non-Grade “A” milk and milk products and other food manufacturers, are faced with these same hurdles in trying to lead on recycling while abiding by mandates that are not supported by state or municipal infrastructure. While recycling capabilities are moving forward and packaging manufacturers are expanding the availability of recyclable resins and post-consumer content, our members report that the supply is limited and more costly.

A concern that members of Northeast Dairy Foods Association and Northeast Dairy Suppliers Association have regarding this bill is the immediate increase in cost this will have on products. As the State of Maine and the rest of the country continues to navigate through the Coronavirus pandemic, now is not the time to increase cost on businesses or consumers, especially when it comes to food items that our neighbors rely on every single day. Many dairy processors and manufacturers contract with container producers and suppliers that are outside of Maine or outside of the United States, and this requirement would increase their costs in order to be compliant under this proposal. The increase of costs will place the dairy industry at a disadvantage and make processors and manufacturers less competitive in the market place as costs that will ultimately be passed on to the consumer. LD 1541 also leaves the calculation of payments by producers and municipalities entirely to the Department of Environmental Protection rulemaking. This gives impacted entities virtually no idea how this bill could impact their production budgets upon enactment. Payments would be required based on tons of packaging used, and companies currently may not have this data, which would need significant time and resources in order to develop. There is also potential confusion over who the responsible party might be as it is not clearly defined in the bill.

Another financial burden this will have on dairy processors, manufacturers and suppliers is the fundamental shift of responsibility for the development and implementation of strategies to promote recycling, reuse and recovery of materials and products by shifting the responsibility and costs from municipalities to private sector producers with no improvements or solutions to the problems with recycling markets and programs which have had obstacles for decades. Northeast Dairy Foods Association and Northeast Dairy Suppliers Association have serious and significant concerns of the feasibility of this requirement. This also does not solve the underlying problems of Maine’s recycling infrastructure and it will not improve or be rectified by shifting the responsibility, as this will increase the cost of recycling, and at the same time does not provide any incentive for municipalities to actually promote or increase recycling activities. The bill does not create any goals to specifically improve the recycling system. There needs to be a clear needs

assessment conducted to establish the infrastructure funding budget, Extended Producer Recycling program and recycling system as a whole. Furthermore, the technology and manufacturers' capabilities are lacking, and supply is limited as it is, making implementation and compliance that more difficult.

Northeast Dairy Foods Association and Northeast Dairy Suppliers Association and our members are willing to listen, engage and work with the legislature on this issue and determine realistic and feasible solutions, however, do not support LD 1541 as it is currently proposed. If Northeast Dairy Foods Association and Northeast Dairy Suppliers Association can be of any assistance or you would like to further discuss this legislation, please feel free to contact our office. Thank you in advance for your consideration to this request.

Sincerely,

Alex Walsh

Alex Walsh

Associate Vice President of Regulatory Affairs