

**Testimony of Matt Prindiville, Natural Resources Council of Maine  
On Draft Proposed Chapter 880 and 881 rules to implement  
Maine’s Safer Chemicals Law**

Before the Board of Environmental Protection

December 17, 2009

Chair Lessard, members of the Board. My name is Matt Prindiville and I am the Toxics and Clean Production Project Director for the Natural Resources Council of Maine, an organization founded by Maine people fifty years ago, and currently supported by more than 12,000 citizens. NRCM backs both proposed rules, and we appreciate the opportunity to speak before you today. My testimony will focus primarily on the fee rules, specifically the reporting fee, since others here today will be speaking on other parts of these proposed rules.

According to the statute that directed this rulemaking: “The department may assess a fee payable by the manufacturer or distributor upon submission of the notification to cover the department's reasonable costs in managing the information collected.” **The goal of this language is to ensure that DEP’s costs for soliciting, collecting and managing information and data pursuant to the law are sufficiently covered by the users of the priority chemicals, not the public.**

In practice, when a priority chemical is named by the Department, then this fee would apply to help cover the Department’s staff time and resources spent to inform covered manufacturers of their responsibilities under the law, collect the information required by the law, and manage the information in a way that is consistent with the statute’s fundamental purpose: “...to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible.”

**The practice of manufacturers sharing the costs to prevent environmental harm - associated with the manufacturing and use of their product - is consistent with other Maine laws.** This approach, known as Extended Producer Responsibility (EPR), is the cornerstone of many of Maine’s landmark initiatives to reduce our exposure to hazardous substances. Our producer-funded electronic waste, mercury thermostat, and auto-switch collection and recycling laws are all examples. Maine’s e-waste recycling law assigns an annual registration fee on all covered electronics manufacturers, which, from what we understand, covers all DEP staff time and resources devoted to managing the information collected from covered manufacturers and ensuring the law’s effectiveness.<sup>1</sup> Our lead poisoning prevention law assesses an annual fee on paint manufacturers for all program costs and administrative costs associated for DEP and CDC to run our state’s lead poisoning prevention program.<sup>2</sup>

**The statute clearly provides DEP with the authority, applied at the Commissioner’s discretion – to assess a “reasonable” fee to be divided equitably among covered manufacturers for DEP’s administrative costs. The key question, then, is whether these rules meet the standard of setting a “reasonable” fee.**

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<sup>1</sup> MRS Title 38 §1610 - ELECTRONIC WASTE – language attached to testimony

<sup>2</sup> MRS Title 22 §1322-F - LEAD POISONING PREVENTION FEE - language attached to testimony

Webster's Dictionary defines reasonable as "a) being in accordance with reason, b) not extreme or excessive, c) moderate or fair..." Let's compare that with what the rule says. The fee is to cover the administrative costs incurred by the Department to collect and manage the information, which is reasonable and consistent with the statute. The rule sets the total amount of the fees to cover the costs. The costs are those incurred by the Department to collect the information, evaluate the information for completeness, and to evaluate the information for sufficiency, because if it's incomplete or unreliable information, then the manufacturers have not satisfied their obligations under the law. That all seems reasonable according to Webster's.

DEP proposes taking the total fees for those tasks - which will vary from chemical to chemical, and thus cannot be specified in rule - and dividing them equally among the entities that submitted the information. Divided equally - that means if your competitor refuses to pay, then you don't have to pay their share. That seems reasonable.

Setting a cap would be unreasonable. Let's say a cap was set at \$500. For some chemicals, that might be too high. For others, it might be too low. The allocated costs would depend on the priority chemical selected and the extent to which that chemical is used in covered consumer products. **Setting a cap would be arbitrary and inconsistent with the "on the ground" reality of evaluating hazardous chemicals to phase them out of consumer products.**

**You are likely to hear today from manufacturers who are concerned about paying any fee, but you probably won't hear about all the ways they can avoid paying the fees.** If the information is already in the public domain, then DEP doesn't need to gather that information from Manufacturers and thus, won't request a fee. If the use is minor in volume, then there's no fee. If a manufacturer is interested in avoiding fee payments, then they can do so by substituting alternatives for any priority chemical in their products. That's completely within their control, and was part of the legislative intent behind this bill.

**Also, the rules provide a substantive appeals process, which rests final authority for determining the reasonableness of the fee with the Board.** Thus, if there is an issue, you will be the final authority in determining whether the fee adequately covers DEP's administrative costs at a reasonable level for the covered manufacturers.

The last point I would like to make is that **it's important that these rules move forward on an expeditious timeline.** The law was passed nearly two years ago, and it emerged from a two-year Governor's Task Force process before that, so we're nearly 4 years into policy making on this issue here in Maine. DEP is required to designate the first slate of priority chemicals in 2010. DEP needs clarity about the fee allocation process so that it can move forward with its first determination of priority chemicals. The fee rules require legislative approval, and the Legislature will only be in session until late March or early April. Thus, we request that you promptly review these rules so that they may be forwarded to the Legislature.

Again, thank you for your consideration of these comments. I would be happy to answer any questions you may have.

## **Appendix A: Electronic Waste Recycling Program Fee**

### **MRS Title 38 §1610 - ELECTRONIC WASTE**

**6-A. Manufacturer registration.** By July 1st annually, a manufacturer that offers or has offered a

computer monitor, television, desktop printer or video game console for sale in this State shall submit a registration to the department and pay to the department an annual registration fee of \$3,000. The annual registration must include:

- A. The name, contact and billing information of the manufacturer;
- B. The manufacturer's brand name or names and the type of televisions, video game consoles, computer monitors and desktop printers on which each brand is used, including:
  - (1) All brands sold in the State in the past; and
  - (2) All brands currently being sold in the State;
- C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;
- D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products;
- E. The method or methods of sale used in the State;
- F. Annual sales data on the number and type of computer monitors, televisions, desktop printers and video game consoles sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B; and
- G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10.

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351.

7. **Enforcement; cost recovery.** The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5, paragraph D, subparagraph (1), including, for a computer monitor manufacturer and a desktop printer manufacturer, its pro rata share of costs attributable to orphan waste, the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

The Attorney General is authorized to commence a civil action against any manufacturer to recover the costs described in this subsection, which are in addition to any fines and penalties established

pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine Solid Waste Management Fund established in section 2201.

## **Appendix B. Lead Poisoning Prevention Fee**

### **MRS Title 22 §1322-F - LEAD POISONING PREVENTION FEE**

**1. Fee imposed.** Beginning July 1, 2006, a fee is imposed on manufacturers or wholesalers of paint sold in the State to support the Lead Poisoning Prevention Fund under section 1322-E. The fee must be imposed at the manufacturer or wholesaler level, in the amount of 25¢ per gallon of paint estimated to have been sold in the State during the prior year, as determined by rule adopted by the department.

[ 2005, c. 403, §1 (NEW) . ]

**2. Rules.** By July 1, 2006, the department shall adopt rules to implement this section, including rules to determine which manufacturers or wholesalers of paint sold in the State are responsible for the fees imposed under subsection 1 and rules establishing the estimated number of gallons of paint sold in the State in the prior year for each manufacturer and rules determining the manner of payment. The rules must provide for waivers of payment for manufacturers and wholesalers of paint that is sold in low quantities in the State. The costs for development of these rules and for administration of the Lead Poisoning Prevention Fund must be reimbursed from the fees collected. The rules must specify that the first payment of fees is due by April 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 403, §1 (NEW) . ]

**3. Enforcement.** The Attorney General shall enforce payment of fees under this section through an action in Superior Court in Kennebec County and may collect costs and attorney's fees.

[ 2005, c. 403, §1 (NEW) . ]

**4. Contingent repeal.** This section is repealed when the Commissioner of Health and Human Services certifies that a period of 24 months has elapsed since the Department of Health and Human Services identified a child with an elevated blood lead level through screening by health care providers under section 1317-C. The Commissioner of Health and Human Services shall provide notice to the Secretary of the Senate, the Clerk of the House of Representatives and the Office of the Revisor of Statutes when this condition has been met. For purposes of this subsection, "elevated blood lead level" means a confirmed level of blood lead of 10 micrograms per deciliter or a level of blood lead defined by the federal Department of Health and Human Services, Centers for Disease Control and Prevention, whichever is lower.