

**STATEMENT OF
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ON LD 2104**

**BEFORE THE MAINE JOINT STANDING COMMITTEE ON
ENVIRONMENT & NATURAL RESOURCES
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AUGUSTA, MAINE**

Members of the Committee, I respectfully submit this statement on behalf of the Institute of Scrap Recycling Industries (ISRI) and its member companies. ISRI is the trade association that represents approximately 1,300 companies that process, broker, and industrially consume recyclable commodities including metals, paper, plastics, glass, textiles, rubber, and electronics. ISRI's mission is to promote safe, economically sustainable, and environmentally responsible recycling through networking, advocacy, and education.

From its headquarters in Washington, D.C. and through its 20 regional chapters including the New England Chapter representing the state of Maine, ISRI raises public awareness of the vital role recycling plays in the economy, U.S. and global trade, the environment and sustainable development. In the state of Maine, the recycling industry has a positive economic impact of nearly \$327 million and directly supports more than 1,900 jobs. Thank you for the opportunity to submit testimony on LD 2104, an act to support and increase the recycling of packaging.

Statement Summary

- I. Successful recycling in the United States depends upon a market-based system where there is minimal contamination in the stream of recyclables and involves far more than what is placed in the curbside recycling stream.
 - The recycling industry consists of a series of actions that transform unprocessed, mixed materials into uniform single stream commodities used as raw materials in manufacturing.
 - LD 2104 contains notable fallacies in many of the core components of the legislation reflecting an apparent absence of recycling industry expertise.

- II. While ISRI applauds the sponsors of LD 2104 for their goal to support and increase residential recycling, ISRI is opposed to this legislation in current form but is eager to work with this distinguished body to achieve its goals.
 - There needs to be consistent and commonly accepted definitions within LD 2104, and a revised method for determining "readily recyclable" following consultation with the recycling industry.
 - Producer responsibility in appropriate form may be suitable in limited circumstances, but the policies in LD 2104 disrupt the current recycling infrastructure by targeting, including and disrupting the recycling of materials or products that are being successfully recycled.

- Incentives for producers to implement alternative collection mechanisms may help improve quality in the recycling stream, a goal that ISRI aggressively supports.
- ISRI is concerned the mandated fees on producers may discourage public-private partnerships and investment for increased recycling education.

- III. Challenges in the residential recycling stream are multifaceted and include various pressure points that call for consideration of other solutions outside of producer responsibility including:
- Encouraging recycling activities through policies that support increased recovery and recycling such as education, financial and technical assistance for recycling operations.
 - Tax incentives for increased recycling investment and technological innovation.
 - Advancing and strengthening domestic residential recycling and end markets through initiatives such as affirmative government procurement policies for recycled content and commitments to use recyclable materials in state/local transportation and infrastructure.

I. Understanding what Makes for Successful Recycling

Recycling within the United States is a \$110 billion industry directly employing more than 164,000 Americans in jobs averaging \$73,000 in wages and benefits annually, while generating and \$13 billion in federal, state and local tax revenue. These numbers tell the story of a strong U.S. recycling industry, but not one without challenges in key segments of the industry. Most notably, significant challenges have arisen over the last several years within the residential sector of recycling.

To understand these challenges, it is important to understand what makes for successful recycling –

1. Successful recycling requires market demand. If there is no end market to utilize the recyclable materials that are collected, they will not move regardless of the volume of material collected. Collection without consumption is not recycling.
2. Successful recycling requires minimal contamination in the stream of recyclables that flow into the system. Contamination can make the recyclables non-recyclable – either because they are often very difficult with existing equipment and can be products sold by grade, with their corresponding value and marketability directly related to their quality.
3. Recycling in the U.S. involves far more than what is placed in the curbside blue bin, or cart, at the end of the driveway. While residential collection programs may be the most visible part of America’s recycling infrastructure, it represents less than 30% of the volume of material recycled in our country. The other 70% comes from the recycling of commercial and industrial materials that can be processed to higher grades with greater marketability.

Recyclable material collected through curbside programs contain a highly diverse and heterogeneous mix of materials. These materials flow through the residential recycling stream and are generally not linked to current market conditions. Instead, the material flows into an infrastructure for which success is dependent upon end market demand and the supply of material flows into the stream whether there is a market for it or not. This sets the residential recycling infrastructure apart from commercial and industrial recycling in the United States and that is why it demands a unique approach.

Recycling Expertise is Noticeably Absent

ISRI applauds the stated goal of LD 2104 to support and increase recycling of packaging but suggests that a crucial element for successful recycling is missing. Increasing recycling requires collaboration with multiple stakeholders on the various pressure-points within the recycling stream, not the least of which are those operating recycling processing facilities. ISRI is disappointed with what seems to be a lack of consultation thus far with those recycling enterprises which actually transform unprocessed, mixed materials into specification-grade commodities used as raw materials in manufacturing.

LD 2104 contains a number of flaws and notable fallacies in many of the core components of the legislation reflecting a lack of understanding of recycling markets and the current recycling infrastructure. The vast majority of the recyclable material that flows through today's recycling infrastructure does so without any problems, and is transformed by recyclers into clean, high quality, commodity grade product. This is especially true for commercial and industrial grade material. However, ISRI acknowledges that this is not always true for residentially-sourced material, and recently formed a distinct Materials Recovery Facility (MRF) committee comprised of ISRI member companies operating private sector MRFs in order to identify and address the challenges of today facing municipal recycling.

While the language in LD 2104 acknowledges recycling operations should be consulted, this language as currently written does not reflect that expertise and experience and therefore contains elements that are unworkable and we believe ineffective at achieving the goals set aside by the legislature. The industry's expertise needs to be a primary source for ensuring producers understand what packaging materials are actually recyclable, how to process these materials, and what sustainable end markets exist for packaging materials, how to process these materials.

ISRI Recyclability Protocol

Should this distinguished body of legislators decide to implement recyclability standards or programs, ISRI believes the department should be required verify the materials' recyclability from those recycling operations that handle and process packaging materials. To this extent, ISRI is working in collaboration with its MRF committee member companies on evaluating a certification program to ensure that packaging materials can be collected, sorted, and processed properly. Such certification could be used by brands, packaging designers or packaging manufacturers as a "stamp of approval" to indicate the material is ready for recycling.

In addition, ISRI's specifications should be utilized to determine recyclability. These specifications are derived from many sectors of the industry including materials recovery facilities, metals, paper stock, plastics, glass, and electronics industries and are constructed to represent the quality or composition of the materials bought and sold in the industry. The specifications are internationally accepted and are used throughout the world to trade the various commodities.

II. Specific Comments on LD 2104

It is critical that all stakeholders work together to develop a common understanding of the weaknesses affecting the residential recycling stream. While ISRI applauds the sponsors for incorporating some provisions addressing education and recycled content, LD 2104 appears to be primarily focused on creating a funding source for DEP and municipalities. A more in-depth analysis and series stakeholder's discussions are needed to help prioritize which goals drive underlying policy and are best suited for the State's recycling system and most effective at reaching the goals of this legislature.

Definition Flaws in LD 2104

All stakeholders must have a common understanding as to the recyclability of materials and the recycling process in order to effectively support and increase recycling. Some of the definitions in LD 2104 are misguided at best. Further adding to confusion is the fact that LD 2104 incorporates definitions from other chapters within Title 38, some of which actually have differing definitions depending upon the chapter in which the term appears in Title 38. ISRI respectfully suggests this must be rectified with a single set of definitions that are consistent throughout Title 38 of the Maine Revised Statutes Annotated.

ISRI urges this body to include the following suggested definitions that are commonly accepted within the recycling industry, appear in state statutes and local ordinances across the nation, and have been incorporated into federal legislation currently pending in Congress. Furthermore, ISRI strongly suggests this body repeal all conflicting definitions within Title 38 in order to eliminate confusion. The definitions in Chapter 13: Waste Management are particularly troubling as they count recyclables and scrap materials as subsets of solid waste, despite the solid waste definition recognizing that these materials "have value or other use or may be sold or exchanged." ISRI would welcome the opportunity to work with this body to revise those problematic definitions in future legislation.

- **Recycling** is the series of activities during which obsolete, previously used, off-specification, surplus, or incidentally produced materials are processed into specification-grade commodities, and consumed as raw-material feedstock, in lieu of virgin materials, in the manufacture of new products. The series of activities that make up recycling may include collection, processing, and/or brokering, and shall result in subsequent consumption by a materials manufacturer.
- A **Recyclable** material is an obsolete, previously used, off-specification, surplus, or incidentally produced material for processing into a specification-grade commodity for which a market exists.
- **Recycled Material** is material that was initially obsolete, previously used, off-specification, surplus, or incidentally produced and that has been processed into a specification-grade commodity for use in materials manufacturing.
- **Processing** is any mechanical, manual, or other method that transforms a recyclable material into a specification-grade commodity. Processing is often multi-step, with different steps at different locations.
- **Materials Recovery Facility (MRF)** is a recycling facility where primarily residential recyclables, diverted from disposal by the generator and which are collected separately from municipal solid waste are mechanically and/or manually sorted into commodities for further processing into specification-grade commodities and/or sale to end users. A solid waste management facility which may process municipal solid waste to remove recyclable materials is not a Materials Recovery Facility.

Understanding what is Readily Recyclable

The term “readily recyclable,” as defined in the bill, is does not reflect the reality of recycling markets and could prove counterproductive to the goals of LD 2104. Defining a consistent market for purchase based on the prior two years in which entities are willing to purchase full bales of that fully sorted material will lump nearly all materials as not recyclable. It creates a moving target that has no meaning to those that process recyclable materials.

With respect to what constitutes “readily recyclable” material, it is important to note that markets for recyclables are continually adjusting to fluctuating supply and demand conditions and, by extension, commodity pricing, which in turn impacts the incentives to recycle. Given those market dynamics, whether demand for a recycled commodity is “...equal to or in excess of the supply” is not the appropriate yardstick by which to measure whether a material is “readily recyclable.”

In addition, “sorted” does not mean recycled. Sorting is only one step in the recycling process. Every recycling operation involves the separation of material by material type, almost always resulting in small quantities of particular commodities being sorted out from other recyclable commodities. However, as specified in the definitions put forth by ISRI above, a material cannot be deemed recyclable until it is processed – which likely involves multiple steps beyond sorting – into a specification grade commodity. ISRI’s Specifications (<https://www.isri.org/recycling-commodities/scrap-specifications-circular>) are the globally recognized standard within the recycling industry used for more than 80 years for determining whether a material truly is of the form ready to be consumed by an industrial consumer (steel mill, plastic formulator, paper mill, etc.) for manufacture into a new product.

Producer Responsibility

ISRI acknowledges that there are an increasing number of certain materials and consumer products entering the residential recycling stream for which commodity markets do not currently exist, or the markets may be regional in nature and not be economically viable at the point of collection. There are also some packaging materials for which no technological process has been developed to handle. Furthermore, there are a number of recycling programs driven by government mandates or sustainability goals that are not supported solely by market values, and certain materials that were previously economical to recycle may no longer have viable end markets due to major changes in global commodity markets. These conditions create items that are difficult to recycle.

ISRI does not support product stewardship policies that disrupt the current recycling infrastructure, such as extended producer responsibility programs that either target, include, or disrupt the recycling of materials or products that are being successfully recycled and consumed in existing markets. To address facilitation of the proper recycling of difficult to recycle items, as a last resort, ISRI supports consideration of policies that are **temporary in nature** to support markets for recycling of those items until the markets mature, and that require consumers and manufacturers to:

- Provide a collection mechanism for difficult to recycle items which could be accomplished through manufacturer facilitated collection systems developed in cooperation with retailers or other entities, and/or;

- Compensate municipalities / recyclers for costs associated with separate collection, transportation, and processing systems for difficult to recycle items.

However, while ISRI agrees EPR may be appropriate on a temporary basis to help municipalities with the costs of handling these materials until end markets develop, LD 2104 does not include the clarity necessary for an effective producer responsibility program. As it currently stands, the legislation could very well collapse under the weight of this uncertainty.

Alternative Collection Programs that Preserve Integrity of the System

ISRI strongly supports retail takeback programs for materials that may be recyclable but must be collected separately for safety, environmental or operational reasons. As such, ISRI is pleased to see that LD 2104 allows producers the option of developing alternative collection programs. There are numerous packaging materials that are readily recyclable but face challenges in the collection stage of the recycling process. Plastics shopping bags are the perfect example of a packaging product that is economical, useful, and recyclable, but if placed in curbside collection will lead to maintenance issues, damage to equipment and contamination of the stream.

Allowing for alternative collection programs will provide producers with incentives to collaborate with retailers on convenient options for consumers to bring back packaging materials made of valuable recyclable commodities. Care should be taken in these takeback programs to ensure the materials collected are of the same nature and commodity stream. Existing voluntary takeback programs have proven that the recycling industry is often fully capable of economically processing many of these quality recyclable materials when presented free of contaminants.

Education Funding for Recycling

Consumer packaging is becoming increasingly complex as brand owners are under pressure to develop innovative designs that fulfill their sustainability goals. As these new packaging designs are released to the public, there is a need to ensure the materials can be collected, sorted and recycled properly. Though, the degree of education required is far beyond that which can be funded by the producer fees allocated in the legislation. In fact, producers are in as much need of education as the consuming public.

ISRI supports addressing the education vacuum as a multi-prong and multi-stakeholder responsibility. There are numerous public-private partnerships that have successfully raised the bar for consumer awareness and these should be encouraged and expanded by exploring new and effective means for connecting to consumers who are the primary source of the residential recycling stream. ISRI is concerned that the mandated fees in LD 2104 could discourage producers from investing in new and innovative educational campaigns utilizing their vast communications expertise.

III. Multifaceted Residential Recycling Challenges Require Looking Beyond EPR

Challenges in the residential recycling stream are multifaceted and include various pressure points that require consideration of multiple solutions that fall outside of producer responsibility. Unfortunately, ISRI cannot support LD 2104 because it appears only to create a funding source for DEP and municipalities and fails to address critical factors for improving recycling.

Encouraging Recycling Activities

ISRI supports policy that will encourage the collection, processing and end market development for recyclable materials. So long as there is parity for public and private recyclers, ISRI supports increased recovery and recycling through policies such as:

- Business financial assistance programs
- Recycling-specific technical and financial assistance
- Grants, loans, and tax incentives for new innovation

Strengthening Domestic Recycling and Markets

ISRI fully supports initiatives and incentives designed to strengthen domestic residential recycling and markets utilizing policies such as:

- Affirmative Government Procurement policies demanding increased recycled content
- Commitments to use recycled materials in state/local transportation and infrastructure projects
- Tax credits, tax exemptions, loans, grants, and bonds for investment in recycling facilities
- Dedicated recycling business development assistance
- Minimum recycled content mandates tied to increased public education, collection & supply
- Encouraging policies that incentivizes manufacturers to design their products for recycling, to use greater amounts of recycled content in manufacturing, and to use recyclable content in packaging, provided there are no negative implications to the product's recyclability

Conclusion

ISRI commends the sponsors of LD 2104 for seeking answers to help improve residential recycling but regrettably is unable to support this legislation in its current form. The producer responsibility plan in LD 2104 essentially amounts only to a tax on consumer goods companies, manufacturers, distributors and retailers in order to fund municipalities for waste disposal and recycling, and it fails to address critical pressure points in the recycling infrastructure. The legislation contains systematic flaws in its definitions, market fallacies, and unrealistic assumptions to determine whether packaging is readily recyclable.

ISRI would be pleased to work with the sponsors and this distinguished body to identify solutions for addressing current challenges with recycling. It would be my privilege to serve as a conduit for this body to access the vast wealth of recycling expertise within the ISRI community which is uniquely situated to provide insight on possible methods to support and increase recycling. I can be reached directly at DWaterfield@ISRI.org or (202) 662-8516. We look forward to working with you.

Thank you.