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Hazardous Materials
& Waste Management Division

Department of Public Health & Environment

October 3, 2025

Brian Wild

Chief Government Affairs Officer

National Association of Wholesaler-Distributors

Sent via email to: bwild@naw.org, with a copy to Karen Harned, kharned@naw.org.

Re: Response to the National Association of Wholesaler-Distributors' Letter: Request for Delay of Effective Date for Registration Under the Producer Responsibility Program For Statewide Recycling

Mr. Wild,

Thank you for your July 23, 2025 letter regarding the National Association of Wholesaler-Distributors' ("NAW's") concerns about Colorado's Producer Responsibility for Statewide Recycling Program ("Program"). In its letter, NAW:

1. requested a one year delay of the July 31, 2025 producer reporting deadline,
2. asked how producers will avoid duplicating efforts for the same covered materials and how to revise their registration if so,
3. asked who is the obligated producer of a product using packaging materials manufactured by one company but distributed under the brand of another company where the destination of the end product is unclear,
4. asked about the required methodology for assessing the weight of covered materials for reporting purposes and how that methodology addresses mixed materials, and
5. argued that the Program's producer dues setting process, calculations, and total dues amounts lacked clarity and asked whether dues are retroactive.

The Hazardous Materials and Waste Management Division (the "Division") of the Colorado Department of Public Health and Environment (the "Department") has reviewed NAW's July 23, 2025 letter and provides the following in response. The Division retains the right to provide additional clarification and change its position in the future should new information arise.



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Background on the Act, its Implementing Regulations, the Program Plan, and the Public Input Process

The Division provides the following background on the Program to give context to its response.

The Colorado Legislature passed the Producer Responsibility Program for Statewide Recycling Act (“Act”), codified at §§ 25-17-701 to 716, C.R.S., in May 2022. The Governor signed the Act into law in June 2022.

The legislative declaration section of the Act describes eight goals for the Program, including first and foremost, “[e]stablish[ing] a centralized system for managing recycling in the state that is funded through annual producer responsibility dues paid by the producers of covered materials.” § 25-17-702(1)(g), C.R.S. The legislative declaration also sets out a key structural component of the Program: an independent nonprofit organization, or producer responsibility organization (“PRO”), managed the Program in consultation with an advisory board of recycling experts and with oversight by the Division and the Department. The Department appointed the 13 members of the Advisory Board in December 2022 and designated Circular Action Alliance (“CAA”) as the PRO for Colorado in May 2023.

The Act sets out specific dates for Program implementation. For example, it provides that “[e]ffective **July 1, 2025**, a producer shall not sell or distribute any products that use covered materials in the state unless the producer **is participating** in the program.” § 25-17-708(1), C.R.S. (emphases added). “Covered materials” include packaging materials and paper products. § 25-17-703(13)(a), C.R.S. The Act also defines who qualifies as a “producer” of covered materials and in what order the producer would be obligated. § 25-17-703(30)(a), C.R.S. As of August 2025, over three thousand producer accounts have registered with CAA for the Colorado program.

The Act grants the Solid and Hazardous Waste Commission (“Commission”) with rulemaking authority for the Program. In June 2024, after five stakeholder meetings and a rulemaking hearing, the Commission adopted regulations for the Program at 6 Colorado Code of Regulations (“CCR”) 1007-2, Part 1, Part B, Section 18 (the “Regulations”). Among other things, the Regulations clarify the Act’s producer order of obligation at Section 18.2.2. The



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Regulations also clarify what it means for a producer to participate in the Program by setting a registration deadline for producers of October 1, 2024. Section 18.2.4(A).

In addition to the July 1, 2025 producer participation deadline, the Act requires producers to pay dues to the PRO by January 2026. § 25-17-709(1), C.R.S. The Act sets out how the PRO must calculate producer dues and requires the PRO to describe this process in the program plan (the implementation plan for the Program). Specifically, producer dues “must vary by the type of covered material, whether or not the material is readily recyclable, and be based on the net recycling services costs for each covered material in the state.” § 25-17-705(4)(i)(II), C.R.S. The PRO must also include “a proposed budget and a description of the process used to determine producer responsibility dues” in the program plan. § 25-17-705(4)(m), C.R.S. Additionally, the PRO must update producer dues annually and solicit and incorporate feedback from producers when revising dues. § 25-17-705(4)(i)(III)(C), C.R.S.

The PRO’s draft program plan must address the above requirements for producer dues as well as 25 other requirements and is subject to extensive review by the Advisory Board, the public, the Division, and the Department. Further, the Department must ultimately approve or reject the plan. CAA submitted its draft program plan to the Advisory Board in February 2025. The Advisory Board then reviewed the plan in a series of public meetings and requested CAA make amendments to the plan at the end of April 2025. CAA submitted an amended draft plan in June 2025. The Advisory Board reviewed the amended plan in another series of meetings and eventually recommended approval of the draft plan in August 2025. In total, the Advisory Board reviewed and discussed the plan and amended plan in no less than fourteen public meetings. The draft plan was then up for public comment between August 14 and September 14. The Division is now in the process of reviewing public comment, considering whether to request changes to the plan, and deciding whether to recommend approval or rejection of the plan to the Department. Thus, CAA’s program plan is not yet final.

Responses to NAW’s concerns

I. One year delay to the July 31, 2025 reporting timeline

In its letter, NAW first requests a one year delay of the July 31, 2025 producer reporting deadline. However, as explained below, the Division cannot grant an extension of the July 31, 2025 reporting timeline while still meeting the January 2026 statutory dues payment deadline. Producer dues are necessary for the PRO to cover statewide recycling services costs



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as required under the Act, and the PRO must implement the program within 6 months of approval by the Department. Additionally, the Division believes that public outreach efforts on this deadline have been extensive and thorough, negating the need for an extension.

The Division acknowledges that the Legislature chose to set an aggressive timeline for implementation of the Program, but this aggressive timeline does not mean that public input has not occurred. To date, the Advisory Board has held 67 public meetings to discuss implementation of the Program. The Division has also engaged in 11 stakeholder meetings during four rulemakings and two public comment periods on draft producer plans.

As noted above, the Act requires producers to stop selling or distributing products using covered materials in the state unless they are participating in the Program by July 1, 2025. § 25-17-708(1), C.R.S. Through the Regulations, the Division and Commission have clarified that participation means that producers must register by October 1, 2024. The Division has also set a covered materials producer reporting deadline of July 31, 2025. And, the Act requires producers to pay dues by no later than January 2026. § 25-17-709(1), C.R.S.

The July 31, 2025 reporting deadline is necessary to meet the January 2026 dues payment deadline. CAA cannot calculate final producer dues without knowing the tonnage of covered materials in each category and thus each registered producer's share. The Department does not have the authority to extend the January 2026 dues payment deadline because the deadline is in statute. *Colorado Div. of Emp. & Training, Dep't of Lab. & Emp. v. Indus. Comm'n of State of Colo.*, 665 P.2d 631, 633 (Colo. App. 1983). The executive branch cannot unilaterally ignore legislatively-set deadlines, and by extending the reporting deadline, the Division would then need to extend the dues payment deadline.

Further, the public process for developing the program plan including the deadline for producer reporting, has been extensive, thorough, and transparent. As described in Section V below and in Table 11 of the June draft plan proposal, CAA began outreach to the public and producers about the reporting date in 2024.¹ CAA's February 2025 draft program plan included the July 31, 2025 reporting date in Table 32. Additionally, CAA's June 2025 amended plan proposal has maintained this date. CAA also has guidance available to support producers on

¹ Available at <https://cdphe.colorado.gov/hm/epr-program> under the "Notice to stakeholders: Amended plan proposal under review" section and then "Circular Action Alliance - Amended Program Plan."



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reporting requirements, covered materials, reporting categories and other information for producers towards implementing this new program. The producer reporting guidance document is available after a producer registers with CAA.² CAA also has a branch for producer services dedicated to providing technical assistance for producers that have questions on the new reporting process, covered materials, and any other questions on producer requirements with this program. Thus, producers have had ample notice to prepare for reporting and reach out to Division and CAA with questions.

II. Avoiding duplicate efforts

NAW next raises concerns regarding how a producer can revise their “submission” when the producer believes it may overlap with other producers. NAW does not specify if its use of the term “submission” is about producer registration or records reporting. Either way, there are a number of publicly available mechanisms to address this issue.

First, as stated before, Section 18.2.2 of the Regulations sets out a clarified producer order of obligation for brand owners, brand/trademark licensees, importers, and manufacturers of packaging materials. The Division has also provided guidance on producer determinations through a flowchart.³ Producers can use both of these resources to identify the first obligated producer. Additionally, CAA has published a list of registered producers.⁴ Producers should review this to determine whether producers with potential overlap have already registered. Second, producers can reach out to CAA directly to clarify their obligations and to update their obligations if they believe they have changed as indicated on CAA’s website.⁵ All of these mechanisms are publicly available and have been for some time.

² CAA, Producer Reporting, <https://circularactionalliance.org/producer-reporting> (last visited Sept. 9, 2025).

³ The Department, Producer Responsibility Program: Resources, <https://cdphe.colorado.gov/hm/epr-program> (last visited Sept. 9, 2025).

⁴ CAA, Producer Registration: Producer Registration Lists, <https://circularactionalliance.org/registration> (last visited Sept. 9, 2025)

⁵ CAA, Producer Registration: Producer Registration FAQ, <https://circularactionalliance.org/registration> (last visited Sept. 9, 2025).

III. Obligated producer clarification

NAW next describes a scenario where a product using covered materials is manufactured by one company but distributed under the brand of another company but neither company knows whether the product will be sold or distributed into Colorado.

As explained above, Section 18.2.2 of the Regulations sets out a clarified producer order of obligation for brand owners and manufacturers that address this question. Under this, the brand owner would be the first obligated producer. Brand owners that distribute products using covered materials can use the contracting process to address any missing information regarding the end destination of the product and the practical considerations raised by NAW. Both the Division and CAA are available as resources to further discuss this question.

IV. Required methodology for calculating the weight of covered materials and addressing mixed materials

NAW also requests clarification on producer reporting, including how to calculate the weight of covered materials and how to address mixed materials.

Producers must report the total weight of covered materials that producers use for products that are sold or distributed in Colorado. Once producers register with CAA, CAA provides a [Preparing to Report Your Supply Data](#) guidance document. In Section 4, CAA describes how to calculate packaging weights using two accepted methodologies: 1. the Specific Material Reporting Method, or 2. the Average Bill of Material Method.

In section 4.4.3, CAA also explains the Component Threshold Rule and the difference between separable components or non-separable components. For the example NAW utilizes in their question, e.g., a cardboard box filled with twenty plastic sleeves of plastic cups, the producer should follow guidance under separable components, which is that the components can be removed from the main packaging by the end user. All the separate components should be reported in the appropriate material category that best fits their material type and form. By following the guidance, and conducting a thorough review to ensure accuracy and completeness, producers will ensure that they will be charged accurate dues on their products.



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V. Clarity regarding producer “fees” methodology, amounts, retroactivity

Last, NAW claims that “neither the law nor its contemplated implementation provides any clarity regarding how fees⁶ are established and the amounts to be charged.” The Division does not agree with this statement. The Act sets out how the PRO must calculate producer dues and requires the PRO to describe this process in the program plan. And, CAA has complied with these requirements to date. Further, the Advisory Board and the Division/Department have had extensive discussions and oversight over the process to set dues, and the Department retains the final approval authority to approve producer dues through the Department’s authority to approve the program plan.

The Act sets out four specific requirements for producer dues. The Act provides that producer dues “must vary by the type of covered material, whether or not the material is readily recyclable, and be based on the net recycling services costs for each covered material in the state.” § 25-17-705(4)(i)(II), C.R.S. The PRO must also include “a proposed budget and a description of the process used to determine producer responsibility dues” in the program plan. § 25-17-705(4)(m), C.R.S. Additionally, the PRO must update dues annually and solicit and incorporate feedback from producers when revising dues. § 25-17-705(4)(i)(III)(C), C.R.S. And, the PRO must provide an annual audit of producer dues, § 25-17-708(5), and include this audit in the annual report provided to the Advisory Board and approved by the Department.

CAA has been consulting with the Advisory Board in open public meetings regarding producer dues calculations since at least June 2024.⁷ For example, at the June 13, 2024 Advisory Board meeting, CAA described its dues setting principles and methodology. CAA then walked through its high level equation and example calculations for various material categories. The Advisory Board then discussed these concepts at length. The Advisory Board revisited producer dues at its August 29, 2024 technical work session meeting, and CAA presented the producer dues equation for discussion and described how it would plug in producer data based on future reporting requirements.⁸ The Advisory Board then asked a number of questions. The Advisory

⁶ The Act uses the terms “dues” instead of “fees.” § 25-17-703(31), C.R.S.

⁷ See, e.g., Past EPR board and technical work session meeting materials, June 13, 2024 Meeting Recording at 2:03:40, <https://cdphe.colorado.gov/hm/past-epr-meeting-materials> (last visited Sept. 9, 2025).

⁸ See, e.g., Past EPR board and technical work session meeting materials, August 29, 2024 Meeting Recording at 2:19:00, <https://cdphe.colorado.gov/hm/past-epr-meeting-materials> (last visited Sept. 9, 2025).



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Board also discussed producer dues at its October 21, 2024 technical work group meeting and February 12, 2025 meeting.

Additionally, both CAA's February 2025 draft program plan and CAA's June 2025 amended draft program plan include a description of the steps to calculate producer dues and the anticipated range of dues for each covered material. For example, the June plan states: "CAA uses a six-step process to set dues. In step 1, CAA determines total system costs based on its compliance obligations. In step 2, we determine the cost to manage each material category using a state-specific Activity-Based Costing (ABC) model. . . ."⁹ Page 190, Table 34 of the June plan includes a producer dues table with a range of cents per pound per material category. This table includes a range because the total cents per pound depends on the actual tonnage of covered materials coming into Colorado. CAA received the total tonnage when producers reported in July. CAA is currently using these numbers to calculate actual dues and will release a table with a set cents per pound for each material category in October,¹⁰ before the Department approves the program plan and well before the January 2026 deadline for producers to pay the dues.

CAA also plans to release its draft eco-modulation adjustments in October.¹¹ These adjustments can either increase or reduce a producer's base dues. Producers will be able to calculate or closely estimate their dues using the cost for each material category table and the eco-modulation adjustments. CAA then plans to issue final invoices to individual producers in January 2026.

Finally, if a producer has registered and reported with CAA during the timelines described above and accurately reported their dues, a producer is not required to pay back dues. However, if a producer has not registered and reported and does so after the above deadlines, or has over or underreported, then it may have to pay back dues and interest to be fair to those producers who have complied with the deadlines.¹²

⁹ CAA Draft Colorado Program Plan 176-77 (June 2025), <https://cdphe.colorado.gov/hm/epr-program> (last visited Sept. 16, 2025).

¹⁰ *Id.* at 184.

¹¹ *Id.* at 198.

¹² CAA [Payment Policy](#) (June 2025).



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All of these timelines and processes are included in the draft program plan, which is currently under review. The Division may request changes, and the Department will make the final decision of whether to approve or reject the plan. Thus, the Department has not yet approved the proposed dues and retains oversight over the PRO's proposed plan through this decision-making process. Additionally, the Division believes there has been ample opportunity to understand the dues calculation process and provide input.

Conclusion

Thank you again for your July 23, 2025 Letter. Please feel free to reach out to me if you would like to discuss the Division's responses or have any additional questions.

Sincerely,

David Snapp

Program Manager

Solid Waste and Materials Management Program

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