



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Handout 1

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

August 26, 2010

Mr. Mark Kohorst  
NEMA  
1300 North 17<sup>th</sup> Street, Suite 1752  
Rosslyn, VA 22209

RE: Review of *A Program for the Collection and Recycling of Mercury-Containing Lamps Used in Maine Households*

Dear Mr. Kohorst:

Thank you for your June 4, 2010 submittal of *A Program for the Collection and Recycling of Mercury-Containing Lamps Used in Maine Households* on behalf of 23 fluorescent lamp manufacturers. As noted in your cover letter to this submittal, this “Program” is an amended version of the plan submitted by NEMA on December 28, 2009 to meet the requirements of 38 MRSA §1672, Maine’s “Mercury-added lamps” law.

38 MRSA §1672.4.B requires the department to solicit public comment on the manufacturers’ proposed plan prior to approving or denying the Program. The department distributed the proposed Program to interested parties for comment on June 11, 2010, and also posted the proposed Program and solicitation of comments on the department’s web site, with the comment period ending on July 16, 2010. Comments were received from 11 parties, including: the American Coatings Association, the Association of Lighting and Mercury Recyclers, the Connecticut Department of Environmental Protection, ecoMaine, Efficiency Maine, Maine Merchants Association, the Mid-Coast Solid Waste Consortium, Northwest Product Stewardship Council, Town of Biddeford, Town of Dresden, and Dr. Travis Wagner. The department forwarded these comments to you by e-mail on July 23, 2010.

**Discussion**

There are several aspects of the manufacturers proposed Program that need additional detail or modification for the department to find that the Program meets the standards of 38 MRSA §1672.4. These aspects are discussed below. Headers and text within the text boxes are reproduced from NEMA’s June 2010 proposed plan. DEP comments on the selected text and proposed actions immediately follow. Underlined text indicates a deficiency which manufacturers must address in order for the Program to receive final approval.

AUGUSTA  
17 STATE HOUSE STATION  
SKYWAY PARK  
AUGUSTA, MAINE 04333-0017  
04769-2094  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103

PRESQUE ISLE  
1235 CENTRAL DRIVE,  
PRESQUE ISLE, MAINE

(207) 941-4570 FAX: (207) 941-4584 (207) 822-6300 FAX: (207) 822-6303 (207) 764-0477 FAX: (207) 760-3143

### **Product of Manufacturers Not Participating in this Program.**

Manufacturers participating in this Program are not assuming the entire financial burden imposed on manufacturers by the Act unless virtually all of the companies that have historically or currently distribute covered products in the State of Maine participate in this or another program.<sup>2</sup> Participating manufacturers will only assume a proportional burden.

Until this point is reached participating manufacturers offer two reasonable alternatives:

1. The State of Maine or the Efficiency Maine Trust to reimburse the Program for an allocable portion representing the cost to the Program to collect, transport, and recycle product from non-participating manufacturers and the cost of the public awareness program.
2. Require collection locations to share the cost of collecting, transporting, and recycling product from non-participating manufacturers.

Non-compliance of manufacturers is an enforcement issue for DEP. Prior to NEMA's submittal of this revised report, DEP provided NEMA with updated information as to the applicability of 38 MRSA §1672 to the companies listed in Appendix B (footnote "2" refers to Appendix B). DEP has identified only five (5) companies subject to the law which are not included in the Appendix A listing of (tentative) participating manufacturers. These include: Energetic Lighting, Lighting Supplies dba Sunshine Lighting, MaxLite SK America Inc, OttLite Technology, and Verilux. Maine DEP has communicated with each of these companies and each has indicated an interest and willingness to work with NEMA.

NEMA's proposal to require collection locations to pay the cost of recycling product from non-participating manufacturers is counter to the intent of 38 MRSA §1672, and is therefore unacceptable. To consider NEMA's first proposal to have the State of Maine reimburse the program for an allocable portion representing costs to the program from non-participating manufacturers, two actions must occur:

1. NEMA must provide Maine DEP with a proposal for review and approval a methodology and detailed Program budget to determine how costs may be fairly allocated to each non-participating manufacturer, and
2. the State of Maine will have to provide Maine DEP with a revenue source and the authority to pay NEMA for these costs.

The department will continue communications with the non-compliant manufacturers and pursue enforcement actions as needed. It will be extremely helpful if NEMA will keep Maine DEP staff apprised of any changes (additions and deletions) in the listing of manufacturers committed to participating in the NEMA Program pending final approval. If the five manufacturers not currently included in NEMA's Program continue in non-compliance, Maine DEP may seek an amendment to the law to allow us to pay the program costs for non-compliant manufacturers and to collect triple costs from the non-compliant manufacturers through enforcement actions for cost recovery (similar to the authority granted to the DEP in 38 MRSA §1610.7).



## Planned Program Operations

The Program will provide adequate financial support to the Efficiency Maine Trust program for the collection, transportation and recycling of compact fluorescent lamps from participating manufacturers that are collected through the Efficiency Maine Trust program.

The Program will reimburse a qualified Contractor an agreed-upon sum for transporting and recycling covered lamps, based on the proportional burden noted above, from eligible municipal waste collection sites.

38 MRS §1672.4.F provides for the department to determine that the manufacturers' Program meets some of the statutory requirements if, in part, it provides adequate financial support for the referenced Efficiency Maine program. NEMA has not provided sufficient information to demonstrate that it has reached agreement with Efficiency Maine on what constitutes "adequate financial support". This may be done by providing Maine DEP with a copy of any written agreement on program parameters and costs to be paid by the manufacturers. Alternatively, the manufacturers may provide Maine DEP with a detailed budget for the Program. This should include an analysis of the estimated costs of the program (program management, staffing and field support, materials, recycling costs, the estimated number of lamps available for recycling, recycling costs, etc.) and information on Program financing, including financial agreements between NEMA and the manufacturers.

In its July 16, 2010 comments on NEMA's proposed plan, Efficiency Maine noted that it will discontinue its CFL recycling program when CFLs become the industry standard in the not-too-distant future. When Efficiency Maine discontinues this program, the NEMA program will no longer meet the statutory program requirements. The manufacturers' plan must provide a proposal for continuing the retail collection program without Efficiency Maine's involvement or a proposal for an alternative means of providing at least equally convenient collection of CFLs from consumers.

38 MRS §1672.4.F allows the department to determine the manufacturer program is in compliance with some of the statutory requirements "...if the manufacturer provides adequate financial support for the *collection* and recycling of such lamps to municipalities..." (emphasis added). In addition to contracting for transportation and recycling from municipal collection sites, the Program must also provide support for municipal collection site operations. At a minimum this must include providing collection/shipping containers (as proposed later in the plan) and mercury spill kits with clean up instructions as needed. The Program must also include a mechanism by which municipalities can apply for reimbursement of other costs (e.g., staffing, training, storage) that they can document as directly attributable to their mercury lamp collection operations.

It is not acceptable (nor likely possible) for the Program to contract with a qualified Contractor to reimburse the Contractor an agreed-upon sum for transporting and recycling covered lamps, based on the proportional burden of participating manufacturers. The Program will be

responsible for paying its contractor in full for all household lamps picked up, transported and recycled by the contractor. The Program has no legal mechanism to force other manufacturers to pay for a portion of services contracted for by NEMA (the organization implementing the Program on behalf of the manufacturers).

### **Municipal Waste Site Collection Locations**

Each municipal waste collection site location must pre-register with the Program and agree to the Program's terms and conditions before it can obtain collection containers through the Program. Additionally, each location will have to agree to the Contractor's standard terms and conditions. Failure to follow the Program's conditions or the Contractor's terms and conditions will result in the location being terminated from participation in the program.

#### **Convenience and Access**

To qualify, the physical location of a municipal waste collection site must be convenient and accessible for both the household and the Contractor. Participation as a municipal waste collection site is voluntary and will be open to any eligible municipal location that meets the requirements of State law. As note above, the Program will promote participation in the program, in collaboration with Maine DEP.

These two paragraphs are inconsistent. The department agrees that participation as a municipal waste collection site is voluntary, and that the manufacturers' Program be open and eligible to any municipal location that meets the requirements of State law. However, the proposal that the Program will terminate a location's participation for alleged failure to follow the Program's conditions or the Contractor's terms and conditions is not acceptable. If a municipal collection location does not meet its obligations under state law, it is the department's responsibility to pursue enforcement action to ensure any violations are corrected. Such enforcement action may include termination of a location's ability to participate in the program. It is not appropriate for the manufacturers' Program to eliminate a municipal site from participation. The manufacturers may provide the department with information on any perceived non-compliance with applicable laws and regulations. It is then the department's responsibility to resolve any violations through its enforcement processes, which give the alleged violator sufficient opportunity to provide additional information to ensure a fair and appropriate resolution to any identified issues.

The department expects that if a site is convenient and accessible to consumers, it is also convenient and accessible to a contractor, i.e., a contractor cannot unilaterally determine that a municipal site is not accessible for pick-up. NEMA's contract for services to implement its Program must include performance standards, including the requirement that the Contractor must work with municipalities to arrange mutually-convenient pick-up and the timeframe in which pick-up must be scheduled once a municipality notifies the Contractor that it is ready for pick up. To maintain collection operations, larger municipal collection sites normally need pick-up within one week of notifying the lamp recycling Contractor, and smaller municipal collection sites need pick up within 2 weeks.



### Eligible Municipal Waste Collection Site Locations

Site participation criteria will be established to ensure that locations are appropriately equipped and operated to provide the requisite service to residential lamp generators at no cost, and are aware of legal obligations as generators of universal wastes.

Any municipal/county waste collection site for the collection and storage of universal wastes may qualify as a prospective collection/recycling site under the program. A prospective location must certify to the Contractor that it meets the following criteria:

1. Accepts mercury-containing lamps from household residents of Maine and has a system in place that segregates such lamps from those obtained from sources other than households. Costs incurred at the site for accepting, storing, and processing lamps returned by non-residential generators are not eligible for reimbursement under this Program.

2. Utilizes staff trained in the proper handling and storage of universal waste and emergency procedures in the event of a spill for tasks of accepting and processing waste lamps through this program.

3. Complies with all applicable requirements of Maine's universal waste law and regulations, including maintaining documentation of the training in accordance with state and/or federal universal waste rule.

4. Maintains a permanent storage facility for waste that is secure, weather tight and complies with all additional local, state, or federal regulations.

5. Ensures that collection containers are located in an area inaccessible to the general public and ensures that all mercury-containing household waste lamps will be accepted by staff to avoid improper handling and packaging for shipment.

6. Takes reasonable steps to guard against incidental breakage of lamps.

Because some locations operate for a limited number of days and hours, the Program may restrict the number of recycling containers each site can obtain or require that containers be returned for processing within a specified time frame. Locations also will be required to agree to standard terms and conditions provided by the Contractor, and to a provision that will indemnify manufacturers, individually and collectively, against liability in the event of violations of CERCLA, RCRA, or other applicable laws and any regulations or requirements enacted under their authority.

Eligible locations are limited to one municipal waste collection site per municipality.

To ensure convenient collection in all municipalities, the Program must provide municipalities the option to utilize locations other than municipal solid waste collection sites to collect household mercury-added lamps, provided those locations are approved by the department.

In regards to #5 of the listed criteria, it is appropriate to require that the collection sites ensure that all mercury-containing lamps are properly handled and packaged for shipment. The requirement as stated is too restrictive as proper handling can be ensured without restricting all public access to the collection containers and without requiring that every bulb be handled by collection site staff. It is acceptable to require that a municipal collection site have procedures in place to ensure that mercury-added lamps are appropriately handled and packaged for recycling.

The department routinely inspects sites collecting Universal Waste, and checks such procedures to determine if they are adequate to prevent mishandling of lamps.

The department is unable to assess whether the requirement that municipal collection sites agree to a contractor's standard terms and conditions is reasonable or not. NEMA needs to delineate all Program standard terms and conditions (including and "Contractor's standard terms and conditions") for the department to consider approving this provision of the plan.

The requirement that municipalities indemnify manufacturers, individually and collectively, against liability in the event of violations of various laws is overly broad and inappropriate. The liabilities of various parties handling universal wastes such as mercury-added lamps are defined by existing laws, and normally resolved as part of RCRA compliance activities. It is not acceptable for the manufacturers to attempt to shift legal liabilities through in this plan.

The proposed restriction of eligible locations to one municipal waste collection site per municipality is not acceptable. There may be circumstances in which it can be appropriate for there to be more than one collection site per municipality, although the department expects that such circumstances will be limited.

### **Collection Containers**

Upon agreeing to terms and conditions of program participation, eligible collection sites will be able to order collection/transportation containers.

As noted above, because the terms and conditions of program participation are not fully revealed in this plan, the department is unable to determine whether this requirement is appropriate.



## Consumer Awareness

Manufacturers submitting this proposed Program currently promote lamp recycling through a variety of mechanisms, such as labels on lamp packaging, maintaining a website that is promoted on lamp packaging, [www.lamprecycle.org](http://www.lamprecycle.org), and providing retail collateral to retailers. These methods will include:

I. Website – The Program will create a Maine-specific web page on the [www.lamprecycle.org](http://www.lamprecycle.org) website that will feature information on how to identify mercury added lamps and the legal obligation to properly dispose waste lamps in Maine. The site will also enable the consumer to identify no-cost collection sites in Maine participating in the Program, updated regularly. Links to other recycling options will also be included in the web page.

II. Retail collateral -- The Program will develop point-of-sale information that retailers in Maine can obtain at no cost. Posters, brochures and other items crafted for use in other regions will be adapted as necessary for use in Maine.

III. Collaborative efforts – Representatives of the Program will evaluate and consider engaging with existing Maine-based organizations (for-profit, non-profit, or governmental) on collaborative ventures aimed at promoting lamp recycling behavior and increasing collections. The Program maintains discretion on the number and extent of collaborations it will undertake.

### Annual Report

The Program will submit an annual report to the Maine DEP no later than April 1 of the year following the relevant plan year.

38 MRSAS1672.4.A(3) requires that the manufacturer program include “effective education and outreach, including but not limited to, point-of-purchase signs and other materials provided to retail establishments without cost”. The NEMA plan makes no commitment to do any education and outreach, other than repackaging existing web-based material onto a Maine-specific site, beyond that which they are currently doing plus point-of-purchase materials as required at a minimum by Maine’s law. The existing language that it is the consumer’s responsibility to legally dispose of fluorescent lamps is misleading and must be clarified to clearly state that it is illegal to dispose of fluorescent lamps in Maine. In addition, to find a collection center, the referenced website forwards consumers to a different website not within the manufacturers’ control. The plan needs to provide additional information about how the Program will ensure that this web site will be maintained, accurate and current, or provide funding for an alternative website to be developed in consultation with the department.

A study by Dr. Travis Wagner in 2009 (previously provided to NEMA by the department) found that current education and outreach efforts have not been effective. Only 36.8% of the population surveyed in his study was aware that it is illegal to dispose of mercury-added lamps in Maine, and only 35.8 % knew where to recycle mercury-added lamps. More recently, the *Efficiency Maine: 2010 Residential Awareness and Attitudes Survey* (conducted by Digital Research Inc for Efficiency Maine) found that 44% of Maine residents did not know about “a statewide recycling program where you can return used CFL bulbs to any of over 200 retail

stores (such as hardware stores) across the state”. The manufacturer program must include goals and provisions for routinely evaluating the effectiveness of the outreach efforts, and procedures for increasing education and outreach efforts if the goals are not achieved. The department considers a goal of 80% consumer awareness as indicative of effective education and outreach. NEMA should consider contracting with a marketing firm (professional marketing expertise) to assist with a consumer education efforts with targeted messaging and to measure consumer awareness before and after the information campaign. Additionally, materials available to retailers should be made available and provided on request to municipal collection sites at no cost.

Results of the routine evaluation of the effectiveness of outreach efforts must be included in the annual report along with the recycling performance data required by the law.

#### **Other comments for NEMA’s consideration**

NEMA should give serious consideration to several other comments made by interested parties as it revises the plan to create a Program that will achieve the objectives of Maine’s *Mercury-added lamps* law. (The organization which submitted each comment is noted in parentheses.)

#### **Convenience and Access**

“...the plan only allows for municipal waste collection sites and those sites currently provided through the Efficiency Maine program. Many towns do not operate a transfer station and a great many more have no or limited retail locations, thus would be restricted from providing convenient collections sites....the plan should provide further mechanisms for adding additional locations for collecting mercury containing bulbs. This may include expansion of the current Efficiency Maine Program to incorporate Municipal Offices, solid waste transfer stations and sites in addition to, but not limited to, retail locations.” (ecoMaine)

The department does not read the manufacturers’ plan to restrict collection to currently existing sites as purported by ecoMaine, but agrees that when implemented the Program must have mechanisms in place to add additional collection locations. The department expects to maintain a working relationship with NEMA and its contractor to provide any needed state approvals for additional collection sites.

#### **Collection and Disposal of Waste**

This section is named incorrectly. The collection activity is covered in the section above and this section does not cover the act of providing collection. It would be better titled: **Contractor Services Including Transportation and Processing.**

Text should be revised to read “Arrange for pick-up, recycling, treatment and disposal of mercury containing lamps from participating collection sites.... (Northwest Product Stewardship Council)



### **Consumer Awareness**

“...as a central feature of the consumer awareness effort, the 210 retail recycling locations be promoted with the 164 of 280 municipal sites so the recycling effort has a more logical and unified appearance to the public” (Efficiency Maine)

The department notes that such an approach would provide for more cost-effective education and outreach to consumers as compared to an approach that informs consumers separately about the retail and municipal collection sites.

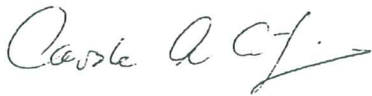
### **Next Steps**

NEMA must submit a revised Program to the department which addresses the deficiencies noted above. This must include a copy of the draft contract for services with a qualified Contractor to implement the manufacturers' Program. The department proposes a target date for submittal of September 30, 2010.

Once NEMA has selected its Contractor to provide pick-up, shipping and recycling of mercury-added lamps, please provide the department with sufficient information on the contract terms so that the department can work with municipalities to ensure any new collection sites proposed by municipalities meet applicable regulations.

Please contact me if you have any questions on the information contained in this letter, and whether September 30, 2010 is an achievable date for submittal of a revised plan. I will be happy to participate in another conference call with you and manufacturers' representatives to discuss ways to address the program deficiencies noted, and an alternative target submittal date (if needed).

Sincerely,



Carole Cifrino, Manager  
Product Management Programs  
Division of Solid Waste Management

cc: Tim Vraebel, Efficiency Maine Trust



# Win a Kayak!

at **ecomaine's** **FREE** Open House

## Saturday, September 25

**8:30-11:30 a.m.** (rain or shine)

64 Blueberry Road, Portland (outer Congress Street)

**One day only!**

**Free** recycling bins!  
(while they last)

**Free** breakfast sandwiches!

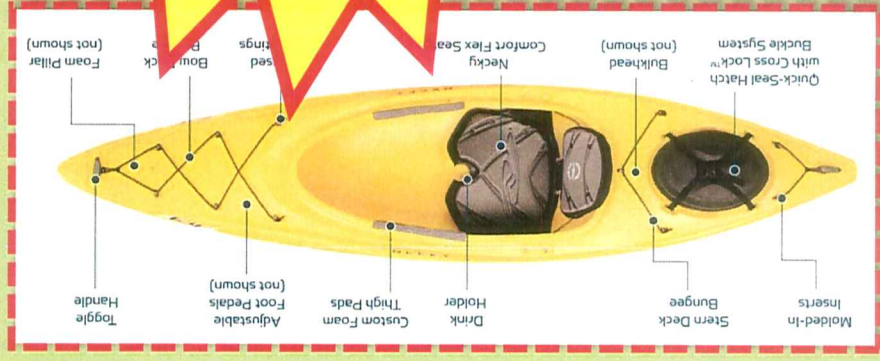
Tour Maine's only  
single-sort recycling  
facility

Student art...made from  
trash!

Activities for kids

Learn how to compost

Walk the river trail



Enter our **FREE** drawing to win a 10' 6" kayak made from 100% recycled material!

PPH

½ page; 11.5 x 10.5"; Color

3 days: Mon, Sept. 20  
Tues, Sept 21  
Sat, Sept 25

\$1,950

Handout #2

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Aug 29	30	31	Sep 1	2	3	4
	6	7	8	9	10	11
	13	14	15	16	17	18
	20	21	22	23	24	25
	PPH	PPH		GO!		PPH

Open House flyer distribution via PWD as of 9/1/10

- Bridgton: 250 flyers
- Cape Elizabeth: 12 poster-size & website link
- Casco: 250 flyers
- Freeport: 200 flyers
- Harrison: 100 flyers
- Limington: 25 flyers & website link
- Portland: 1,000 flyers
- Baldwin/Hiram/Porter: 50 flyers
- Parsonsfield: 50 flyers
- Saco: 200 flyers
- Standish: 200 flyers
- Livermore Falls: 200 flyers
- Monmouth: 250 flyers
- OOB: 50 flyers & website link
- Readfield/Wayne: 200 flyers



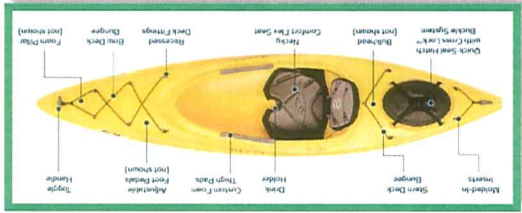
# Win a Kayak!

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Enter our **FREE** drawing to win a 10' 6" kayak made from 100% recycled material!

**One day only!**

**FREE** recycling bins (while they last)

**FREE** breakfast sandwiches

Tour Maine's only single-sort recycling facility

Student art... made from trash!

Activities for kids

How to compost

Walk the river trail

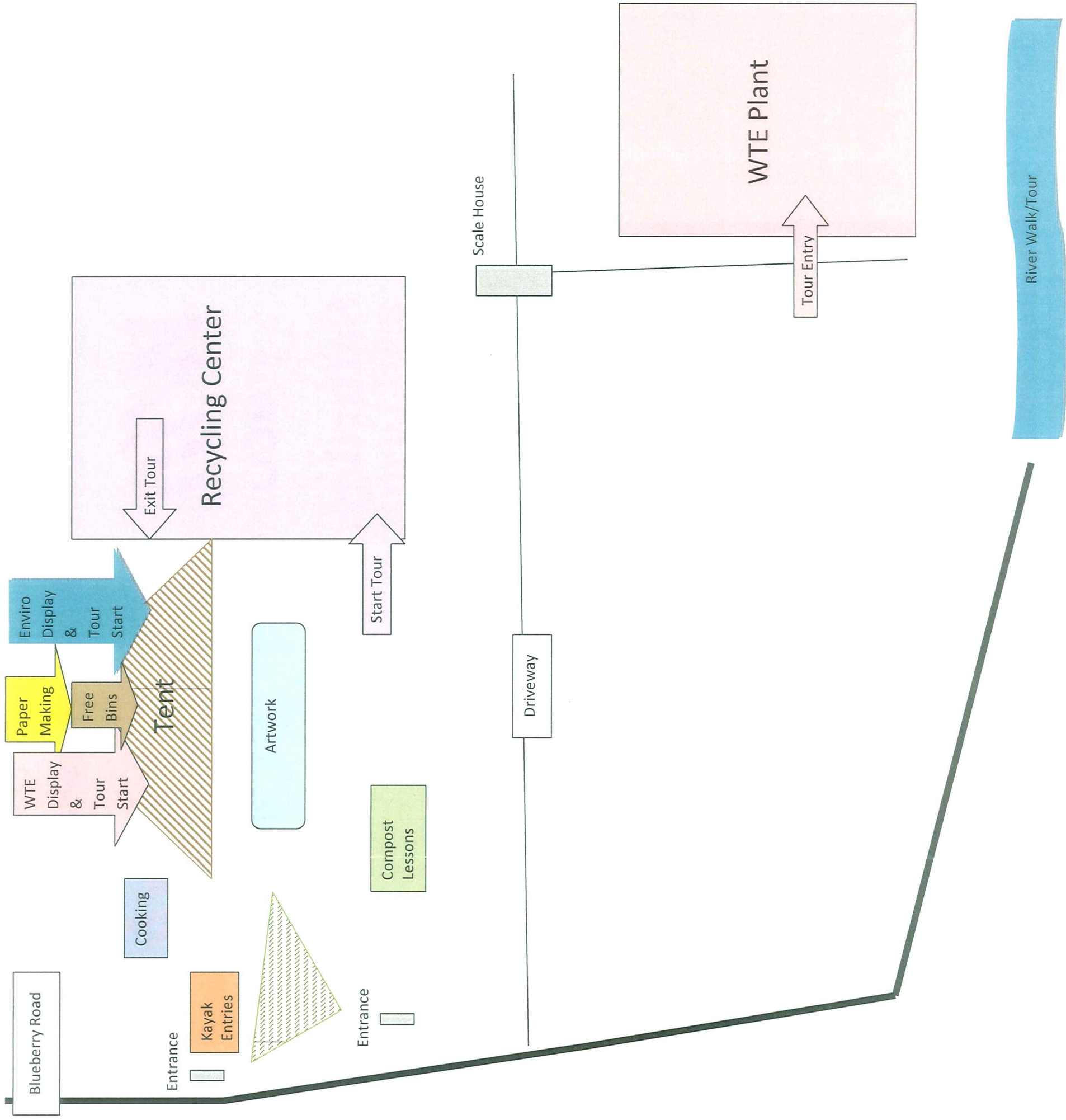
ecomaine is a nonprofit organization  
www.ecomaine.org Please recycle this newspaper

GO!

5 x 5.5", color

3 Days: Thursdays,  
Sept. 9, 16, 23

\$297



**What is it all about:** Competition to create artistically themed silver bullets

**Who:** High School and/or College Students

**How:** Participants would submit their proposed designs. Designs will be submitted in the theme of Reduce, Reuse, Recycling in Maine. All designs will be posted on the ecomaine website where the public will vote on the six best designs.



**What do they get:** The winning team's get to create their design on an ecomaine silver bullet. 6 silver bullets will be sandblasted and primed and transported to the team's location. The team will also receive a \$500 grant for supplies. The silver bullets will then be on display at locations across Southern Maine. Potentially in the winners community!

Winning teams will be featured in individual press releases with their completed design.

**What does ecomaine get:**

- Awareness of recycling,
- Press,
- Targeting that hard to reach group of high school and college age students with the recycling message.
- Drive people to the ecomaine website
- Fun and eye catching recycling containers

**When:** Spring / Fall 2011





ecomaine  
RECYCLING TOTALS

Draft

	1991/02	1992/03	1993/04	1994/05	1995/06	1996/07	1997/08	1998/09	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
July	287.96	323.48	496.67	533.59	593.37	667.46	666.77	732.22	1,085.76	1,174.28	1,439.83	1,392.49	1,670.01	1,536.03	1,801.55	1,963.92	2,212.79	2,776.35	2,743.86	3,211.52
YTD	287.96	323.48	496.67	533.59	593.37	667.46	666.77	732.22	1,085.76	1,174.28	1,439.83	1,392.49	1,670.01	1,536.03	1,801.55	1,963.92	2,212.79	2,776.35	2,743.86	3,211.52
August	283.48	349.92	507.49	632.76	669.37	716.80	631.03	681.37	1,160.65	1,335.45	1,549.36	1,380.26	1,611.16	1,725.95	2,157.27	2,285.15	2,394.69	2,729.66	2,605.20	3,219.21
YTD	571.44	673.40	1,004.16	1,166.35	1,262.74	1,384.26	1,297.80	1,413.59	2,246.41	2,509.73	2,989.19	2,772.75	3,281.17	3,261.98	3,958.82	4,249.07	4,607.48	5,506.01	5,349.06	6,430.73
September	281.94	374.41	546.27	606.30	660.45	682.07	741.43	827.63	1,175.35	1,217.37	1,474.21	1,420.08	1,836.76	1,742.24	2,117.62	2,078.68	2,045.61	2,868.29	2,718.77	0.00
YTD	853.38	1,047.81	1,550.43	1,772.65	1,923.19	2,066.33	2,039.23	2,241.22	3,421.76	3,727.10	4,463.40	4,192.83	5,117.93	5,004.22	6,076.44	6,327.75	6,653.09	8,374.30	8,067.83	6,430.73
October	325.51	339.49	516.48	608.88	677.03	730.60	693.07	772.33	1,013.54	1,290.35	1,998.15	1,667.28	1,800.58	1,593.15	1,993.01	2,294.74	2,357.24	2,783.06	2,796.23	0.00
YTD	1,178.89	1,387.30	2,066.91	2,381.53	2,600.22	2,796.93	2,732.30	3,013.55	4,435.30	5,017.45	6,461.55	5,860.11	6,918.51	6,597.37	8,069.45	8,622.49	9,010.33	11,157.36	10,864.06	6,430.73
November	281.68	337.00	543.15	626.32	688.18	688.07	621.13	824.11	1,146.92	1,316.17	1,750.31	1,596.47	1,483.24	1,744.19	2,198.55	2,277.91	2,256.00	2,333.81	2,662.58	0.00
YTD	1,460.57	1,724.30	2,610.06	3,007.85	3,288.40	3,485.00	3,353.43	3,837.66	5,582.22	6,333.62	8,211.86	7,456.58	8,401.75	8,341.56	10,268.00	10,900.40	11,266.33	13,491.17	13,526.64	6,430.73
December	321.02	388.94	514.09	599.10	683.42	806.53	795.31	834.70	1,178.45	1,341.32	1,764.33	1,841.63	1,919.08	1,936.94	2,256.75	2,166.13	2,362.55	2,937.11	3,158.21	0.00
YTD	1,781.59	2,113.24	3,124.15	3,606.95	3,971.82	4,291.53	4,148.74	4,672.36	6,760.67	7,674.94	9,976.19	9,298.21	10,320.83	10,278.50	12,524.75	13,066.53	13,628.88	16,428.28	16,684.85	6,430.73
January	271.05	359.99	444.28	557.29	608.08	632.55	606.67	673.01	909.51	1,367.61	1,707.27	1,765.43	1,467.16	1,657.08	2,114.52	2,068.29	2,564.76	2,441.23	2,685.89	0.00
YTD	2,052.64	2,473.23	3,568.43	4,164.24	4,579.90	4,924.08	4,755.41	5,345.37	7,670.18	9,042.55	11,683.46	11,063.64	11,787.99	11,935.58	14,639.27	15,134.82	16,193.64	18,869.51	19,370.74	6,430.73
February	244.13	310.62	464.59	451.68	523.30	619.28	605.88	616.02	945.88	1,084.71	1,547.84	1,395.61	1,394.75	1,497.44	1,689.38	1,633.72	2,139.22	2,078.44	2,286.95	0.00
YTD	2,296.77	2,783.85	4,033.02	4,615.92	5,103.20	5,543.36	5,361.29	5,961.39	8,616.06	10,127.26	13,231.30	12,459.25	13,182.74	13,433.02	16,328.65	16,768.54	18,332.86	20,947.95	21,657.69	6,430.73
March	275.97	436.63	512.53	570.16	584.39	616.62	671.88	751.34	1,062.77	1,098.41	1,450.30	1,572.04	1,629.24	1,774.99	2,016.88	1,823.79	2,258.34	2,354.49	2,907.84	0.00
YTD	2,572.74	3,220.48	4,545.55	5,186.08	5,687.59	6,159.98	6,033.17	6,712.73	9,678.83	11,225.67	14,690.60	14,031.29	14,811.98	15,208.01	18,345.53	18,592.33	20,591.20	23,302.44	24,565.53	6,430.73
April	319.29	517.14	549.15	538.63	667.71	676.79	671.45	752.00	1,000.57	1,220.48	1,638.89	1,710.90	1,524.35	1,627.25	1,831.65	1,871.62	2,363.75	2,395.67	2,875.88	0.00
YTD	2,892.03	3,737.62	5,094.70	5,724.71	6,355.30	6,836.77	6,704.62	7,464.73	10,679.40	12,446.15	16,329.49	15,742.19	16,336.33	16,835.26	20,177.18	20,463.95	22,954.95	25,698.11	27,441.41	6,430.73
May	315.59	488.88	547.91	671.66	698.84	639.03	707.09	765.11	1,193.95	1,311.08	1,714.14	1,732.85	1,576.35	1,877.96	2,224.46	2,279.00	2,516.52	2,279.50	2,791.10	0.00
YTD	3,207.62	4,226.50	5,642.61	6,396.37	7,054.14	7,475.80	7,411.71	8,229.84	11,873.35	13,757.23	18,043.63	17,475.04	17,912.68	18,713.22	22,401.64	22,742.95	25,471.47	27,977.61	30,232.51	6,430.73
June	352.14	523.69	583.87	654.97	624.78	660.55	752.80	807.31	1,234.16	1,348.20	1,453.10	1,783.82	1,683.84	2,020.91	2,207.89	2,140.94	2,459.61	2,727.78	3,167.65	0.00
Total	3,559.76	4,750.19	6,226.48	7,051.34	7,678.92	8,136.35	8,164.51	9,037.15	13,107.51	15,105.43	19,496.73	19,258.86	19,596.52	20,734.13	24,609.53	24,883.89	27,931.08	30,705.39	33,400.16	6,430.73

Projection based on



**ecomaine Neighborhood Recycling Monthly Totals For  
August 01, 2010 Through August 31, 2010**

Draft	Pop.	Town	Town	Town	Town	Town	Town % Rec Month
		Tons- MSW Month	Tons-Rec Drop-off - Month	Tons-Rec Curb- month	Tons-Rec Monthly Total	MSW + Rec Monthly Total	
Bridgton	5,120	248.27	72.66		72.66	320.93	22.64%
Cape Elizabeth	9,178	249.25	127.63		127.63	376.88	33.86%
Casco	3,690	84.37	19.59		19.59	103.96	18.84%
Cumberland	7,762	127.52		83.21	83.21	210.73	39.49%
Falmouth	10,950	161.58	76.21	60.84	137.05	298.63	45.89%
Freeport	8,010	161.81	46.45		46.45	208.26	22.30%
Gorham	15,183	185.01	30.23	69.27	99.50	284.51	34.97%
Harrison	2,458	109.29	23.61		23.61	132.90	17.77%
Hollis	4,583	80.75	0.00	24.56	24.56	105.31	23.32%
Limington	3,822	125.76	9.50		9.50	135.26	7.02%
Lyman	4,155	90.75	22.30		22.30	113.05	19.73%
Naples	3,498	102.99	23.95		23.95	126.94	18.87%
No. Yarmouth	3,485	52.26	0.00	40.97	40.97	93.23	43.95%
Ogunquit	1,286	110.80	8.81		8.81	119.61	7.37%
Parsonsfield	1,770	68.00	0.00	6.59	6.59	74.59	8.83%
Portland	64,249	904.72	102.62	324.33	426.95	1331.67	32.06%
Pownal	1,610	13.17	0.00	12.78	12.78	25.95	49.25%
Saco	18,328	496.68	7.00	147.91	154.91	651.59	23.77%
Scarboro	18,604	504.42	70.69	179.20	249.89	754.31	33.13%
S. Portland	23,729	504.11	28.96	174.33	203.29	707.40	28.74%
Standish	9,946	273.70	61.85		61.85	335.55	18.43%
Tri-Town	4,403	153.87	7.19		7.19	161.06	4.46%
Waterboro	7,247	165.27	59.11		59.11	224.38	26.34%
Windham	15,988	202.69	15.34	141.78	157.12	359.81	43.67%
Yarmouth	8,266	204.65	99.04		99.04	303.69	32.61%
		5,381.69	912.74	1,265.77	2,178.51	7,560.20	28.82%

**ecomaine Neighborhood Recycling Year to Date Totals For  
July 1, 2010 Through August 31, 2010**

Town	Town Tons-MSW To Date	Town Tons-Rec Drop off To Date	Town Tons-Rec Curb To Date	Town Tons-Rec Total To Date	Town Total MSW+Rec	Town % Rec To Date
Bridgton	532.69	144.61	0.00	144.61	677.30	21.35%
Cape Elizabeth	487.02	241.89	0.00	241.89	728.91	33.19%
Casco	188.40	43.87	0.00	43.87	232.27	18.89%
Cumberland	248.88	0.00	150.33	150.33	399.21	37.66%
Falmouth	338.26	160.41	120.25	280.66	618.92	45.35%
Freeport	309.57	97.94	0.00	97.94	407.51	24.03%
Gorham	360.84	53.20	146.88	200.08	560.92	35.67%
Harrison	222.75	54.53	0.00	54.53	277.28	19.67%
Hollis	170.18	0.00	54.76	54.76	224.94	24.34%
Limington	270.87	17.52	0.00	17.52	288.39	6.08%
Lyman	200.21	41.99	0.00	41.99	242.20	17.34%
Naples	230.11	53.62	0.00	53.62	283.73	18.90%
No. Yarmouth	97.62	0.00	79.66	79.66	177.28	44.93%
Ogunquit	203.70	20.35	0.00	20.35	224.05	9.08%
Parsonsfield	136.57	0.00	13.51	13.51	150.08	9.00%
Portland	1773.80	215.29	649.87	865.16	2638.96	32.78%
Pownal	29.56	0.00	28.47	28.47	58.03	49.06%
Saco	936.37	27.94	290.94	318.88	1255.25	25.40%
Scarboro	1003.75	135.44	357.39	492.83	1496.58	32.93%
S. Portland	1070.82	53.33	365.83	419.16	1489.98	28.13%
Standish	556.58	116.48	0.00	116.48	673.06	17.31%
Tri-Town	312.96	14.19	0.00	14.19	327.15	4.34%
Waterboro	345.62	107.83	0.00	107.83	453.45	23.78%
Windham	394.07	24.90	276.91	301.81	695.88	43.37%
Yarmouth	418.02	179.65	0.00	179.65	597.67	30.06%
	10,839.22	1,804.98	2,534.80	4,339.78	15,179.00	28.59%



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### Coffee-cup recycling brims with obstacles

Toss out a coffee cup in most parts of the country, and it becomes landfill. Many areas do not recycle. Even when they do, most shun paper coffee cups because of their plastic accompaniments: the lid and the thin lining that protects cups from becoming soaked.

By **Melissa Allison**  
Seattle Times business reporter

Toss out a coffee cup in most parts of the country, and it becomes landfill.

Many areas do not recycle. Even when they do, most shun paper coffee cups because of their plastic accompaniments: the lid and the thin lining that protects cups from becoming soaked.

Seattle is one of a handful of places that recycle coffee cups.

Starbucks wants to expand that by 2015, when its goal is for all the communities where it owns stores to be able to recycle coffee cups.

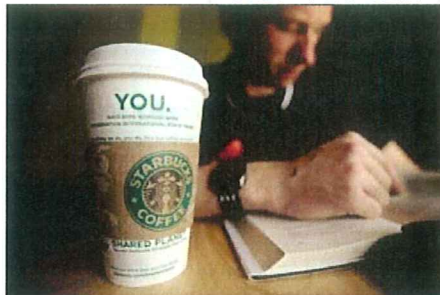
It's a grande order, considering Starbucks' reach and the 3 billion paper cups it goes through each year.

The challenge is to convince mills that coffee cups are decent fodder for boxes and other products they make. So far, mill executives remain skeptical, saying coffee cups take longer, and therefore cost more, to process than do other recycled items like cardboard boxes.

"Any time you're asking an industry to change the way it does things — and they have multimillion-dollar pieces of machinery in their mills — they need it to be proved," said Jim Hanna, Starbucks' director of environmental impact. "Once we prove there's a value to our cups, it will create market pull."

To that end, Starbucks has partnered with two mills in small-scale tests designed to show how easy it is to recycle cups. Early next year, it will send cups used at its Chicago stores to Green Bay, Wis., where a Georgia-Pacific paper mill will turn them into Starbucks napkins.

Last fall, it sent cups from seven stores in



Enlarge ERIKA SCHULTZ / THE SEATTLE TIMES  
From the table: Starbucks offers Seattle customers the option of recycling their paper cups.



Recycling a coffee cup

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#### Mixing in cups

SEATTLE IS ONE OF THE FEW areas that recycles coffee cups. They are put into bales of mixed paper, a grade that goes mostly to China. Here's the breakdown for distribution of mixed paper last year, when 11.8 million tons were produced:

China: 47%

U.S.: 35%

Korea: 5%

India: 3%

Source: Moore & Associates, Atlanta

#### Video



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New York City to a nearby recycling facility to show how easily the cups are sorted by coffee-shop customers.

"Clean" and lidless

The cups came in "clean," with lids removed and coffee poured out, said Myles Cohen, president of Pratt Recycling, which runs the New York mill that did the test.

That does not mean they are the most welcome material.

"Anything that makes it difficult to break down the fibers — including a cardboard box with Scotch tape on it — requires more pulping time, and the longer the time, the less efficient the papermaking process is," Cohen said.

"I'm not saying it totally would not work, but it's less preferable than" a bale of corrugated boxes, Cohen said.

He is helping Starbucks locate mills that make other products and might be more receptive to coffee cups.

Mixed-paper trail

At recycling facilities, coffee cups typically become part of a fiber stream called mixed paper, one of the cheapest types of recycled paper that can include magazines, phone books and small amounts of office paper.

Seattle was one of the first places in the country to collect mixed paper from homes and to try to build a market for it. Now, the U.S. collects nearly 12 million tons of it a year.

Most U.S. mills that accept mixed paper will use no more than 10 percent, added to higher-quality fibers.

China buys the most mixed paper, almost half of what is collected in the U.S., according to Moore & Associates in Atlanta.

But even China's state-of-the-art mills can take only 20 to 40 percent mixed paper, said Peter Wang, chief executive of American Chung Nam (ACN) in Los Angeles, which supplies recycled paper to China.

And Chinese mills do not love coffee cups.

"It's not the best, because poly [coating], no matter how you look at it, has some weight, and you pay for poly at the end of the day. We cannot use that," Wang said.

Chinese customs officials are strict about not allowing materials to enter the country that have been contaminated by food.

Recycled milk and soda-pop bottles are sent to Indonesia and elsewhere to be cleaned before China will accept them, he said.

Used coffee cups have not been a problem, Wang said, probably because they are such a small portion of mixed paper that officials do not notice them.

Even recyclers that accept coffee cups, like Cascade Recycling Center in Woodinville, see few among the 500-plus tons of cans, bottles and papers that arrive each day.

That might be because coffee cups are a small part of what people throw away each day, or because they do not know to recycle them. Seattle did not begin publicizing the fact that coffee cups are recyclable until last year.

More cups also might roll into recycling centers now that the city requires cafes to provide customers with recycle and compost bins. This summer, Starbucks alone put bins into 90 Seattle stores.

One of Cascade's biggest concerns with coffee cups is that they be clean, said Rita Smith, community-education director for Waste Management in the Pacific Northwest, which runs the Cascade Recycling Center.

Where cups are recycled and composted

MOST WASTE SYSTEMS IN NORTH AMERICA send coffee cups to landfills, including many of the 4 billion paper and plastic cups Starbucks goes through each year. Here are a few places that recycle and compost them instead:

Recycle paper cups: Seattle; Toronto; Marin County, Calif.; Boston (commercial only); Los Angeles (commercial only)

Compost paper cups: San Francisco; Bellingham; San Mateo, Calif. (commercial only); Winnipeg, Canada (in-store only)

Recycle plastic cups: Seattle, Denver, Chicago, Atlanta, New York City, Boston, Los Angeles

Source: Starbucks

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"Our position was to accept paper cups [along with milk cartons and other coated papers] and address the residue issue by saying, 'It needs to be clean, no matter what it is,'" Smith said.

People who drink coffee black can shake the cups out; cups with lattes or other milky drinks should be rinsed.

Removing lids is also important. Seattle is one of the few areas where the lids are recycled.

### Composting option

Some cups can be composted, but they're rare.

Technology has improved so that compostable cups no longer melt when filled with hot coffee, but few shops carry them because they cost up to four times more than traditional cups.

Some compost systems, like the one in San Francisco, accept traditional cups.

The plastic linings are thrown away with other bits of plastic and unusable items after composting, said Adam Alberti, a spokesman for Recology, a waste company that owns Jepson Prairie Organics between the Bay Area and Sacramento.

Seattle's Cedar Grove Composting does not accept traditional coffee cups.

"We find them at the end of the process after somebody puts them in the wrong bin," said Susan Thoman, director of sales and marketing.

Even waste-company executives agree that the best solution is using a ceramic cup or travel mug, also known as durables.

"Choosing recyclable over durable takes about 20 times as much energy, with transportation, electricity, everything that goes into recycling an item," said Smith, of Waste Management.

"If you just use your own glass or mug, you're much further ahead than if you're composting or recycling."

Melissa Allison: 206-464-3312 or [mallison@seattletimes.com](mailto:mallison@seattletimes.com)

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**MEMORANDUM**

TO: Kevin Roche  
FROM: Nicholas S. Nadzo  
RE: Electronic Bulletin Board  
DATE: August 27, 2010

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We have prepared the following memo in response to a request for our opinion regarding the legal dangers with establishment of an electronic bulletin board.

**Proposed Bulletin Board**

Our understanding is that **ecomaine**'s Recycling Committee is exploring the possibility of creating, hosting and operating an electronic bulletin board ("eBoard") on the **ecomaine** website for use by its member communities. The underlying purpose of the eBoard would be to provide a forum in which members can share ideas and comments about recycling with each other and with **ecomaine**. Each member municipality would have its own password, which would be shared with recycling committee members and other residents who could post ideas and comments directly on the website. Although host of its site, **ecomaine** would not serve as a "gatekeeper" – that is, **ecomaine** will not be reviewing and approving content before members can post it to the eBoard. In addition to sharing comments on message board "threads," members will be able to upload files, which other members would be permitted to download.

**1. First Amendment Issues**

As a quasi-municipal Maine corporation, **ecomaine** is required to comply with First Amendment restrictions on the regulation of private speech. Therefore, by setting up an eBoard and inviting members of the public to log on and post suggestions and

comments regarding the recycling program, **ecomaine** has arguably created a so-called “limited public forum,” as that term has been defined by courts. In the alternative, if the only users and participants were officials of the member municipalities, any speech would probably be deemed “government speech,” lessening First Amendment issues.

In a limited public forum, restrictions on speech must be reasonable and viewpoint-neutral, such as prohibiting profane or defamatory remarks, or limiting discussion to certain topics, so long as the restrictions are viewpoint-neutral. “Viewpoint-neutral” means that **ecomaine** would not be able to delete comments or posts containing general criticism of **ecomaine** or the individual member governments.

## 2. Right to Know Law Issues

Provisions of Maine’s Freedom of Access Act are applicable to **ecomaine** and thus anything posted on the eBoard would likely be deemed a public record. For example, when someone would post a comment, he or she would, in effect, be sending an electronic message to all other people who have access to the eBoard, including the member users. Just as letters and emails relating to public business which are in the possession of public officials are public records, any posted material would also be deemed a public record, and any member of the public would have the right to inspect and obtain a copy of the material. In addition, all postings would be subject to Maine’s public record retention requirements, and **ecomaine** would likely be required to maintain a copy of all postings for the appropriate time period.

## 3. Maine Tort Claims Act

While unanticipated, it is possible that users of the electronic bulletin board could use the forum as a place to publish material or comments about others that could rise to the level of defamation. Although, as a general rule, governmental entities are immune from liability for most torts under the Maine Tort Claims Act, municipalities have been found liable for torts similar to defamation. For example, in a 1992 case, the Town of Lubec was found liable when the town manager sent a copy of an anonymous letter with defamatory comments to the selectmen, police chief, and town attorney, and posted the letter on the town bulletin board.

Therefore, while not a “gatekeeper” of the eBoard, **ecomaine**, as host of the website, would likely be deemed the publisher and responsible for material posted. To the extent **ecomaine** would have the capability to monitor the comments and remove



defamatory material, it should take reasonable steps to do so in order to avoid potential liability. In addition, measures should be taken to consult with **ecomaine**'s insurance carrier to determine the availability of adequate liability coverage.

#### 4. Terms of Use; Privacy Policy

In order to put users on notice of the terms and conditions of using the eBoard, **ecomaine** would be well-advised to adopt and post a formal privacy policy, with notice of how information on the bulletin board is obtained and circulated. In addition, **ecomaine** could require users to agree to specific terms of use by providing that use of the website constitutes agreement to the stated conditions of use or by providing certain actions be taken prior to use of the website. We can provide sample provisions for a privacy policy and/or terms of use.

#### 3. Virus issues

Finally, less as a legal matter and more as a practical matter, to the extent **ecomaine** will be inviting people to upload any files to the eBoard, it should be wary that there is the possibility that someone will upload a virus which could infect the computers of other users. Such a result would cause inconvenience and potential damages to the users. In addition, in theory, **ecomaine** could be liable for damages relating to such a loss.

### CONCLUSION

Although establishment of an electronic bulletin board would involve a degree of risk to **ecomaine** and its users, the availability of precautionary measures and careful surveillance of postings should limit the likelihood of liability.