Oregon Plastic Pollution and Recycling Modernization Act: National Association of Wholesaler-Distributors Files Judicial Challenge

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The National Association of Wholesaler-Distributors ("NAWD") filed a Complaint for Declaratory and Injunctive Relief ("Complaint") on July 30th in the United States District Court for the District of Oregon against the Oregon Department of Environmental Quality and Oregon Environmental Commission (collectively, "Oregon") challenging the Oregon Plastic Pollution and Recycling Modernization Act ("Act"). See Case No. 3:25-cv-01334-SB.

The Act is an example of extended producer responsibility" ("EPR") legislation that places some responsibility for management of the end-of-life of products to the producer of those products.

The Act requires companies that make packaging, paper products, and food serviceware to fund recycling programs and facilitate the recycling of their materials.

The Act was enacted in 2021 as Senate Bill 582. A key portion of the Act requires participation from producers and became effective July 1st. It requires producers of product packaging, food serviceware, paper products, and certain other items to join a producer responsibility organization ("PRO").

The Act allows more than one PRO to administer the program. However, the state agency to date has solely selected the Circular Action Alliance ("CAA") to administer the program. NAWD notes that this PRO is then:

…granted wide authority to set "eco-modulated" fees associated with a vast range of materials sold or distributed into the state—including newspapers, glass jars, aluminum foil and containers, packing paper and cardboard, nearly three dozen different categories of plastic products, and wood and other organic materials.

NAWD's Complaint further states that a producer includes a manufacturer that sells packaged products in Oregon; or a wholesaler or distributor who brings any such product into the state. They are required to:

- Register with the PRO.
- Enter into a non-negotiable contract with that PRO.
- Provide the PRO data about the materials and volumes used in its operations, which the PRO uses to assess fees.

NAWD describes itself as representing the $8.2 trillion wholesale-distribution industry and includes stakeholders across every distribution sector.

NAWD's Complaint argues that the two Oregon agencies that oversee the Act's implementation and enforcement do so only tangentially. The trade association further argues that the:

…vast majority of program administration is delegated to the PRO, which has been granted wide discretion to apply a confidential methodology for setting fees, to establish other criteria and incentives for certain producers, and to penalize producers of certain materials.

The Complaint alleges that the Oregon Act is unconstitutional because it violates:

- Nondelegation Doctrine.
- Federal Dormant Commerce Clause.
- Federal Unconstitutional Conditions Doctrine.
- Federal and State Due Process.

NAWD requests that the Court declare the Act and any regulations promulgated thereunder as void and enjoin Oregon from implementing and enforcing the requirements, along with other relief.

A copy of the Complaint can be downloaded here.