

Portland Press Herald

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June 18, 2013

Maine leaders try and fail to dilute recycling's success

'Product stewardship' regulations – even those with industry and bipartisan support – meet staunch resistance from, among others, a commissioner with former ties to corporate interests.

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Third of three parts

AUGUSTA – Almost everyone seemed to like last month's paint recycling bill.

The paint industry wrote it. Recycling experts endorsed it. Environmentalists said it would help keep poisons out of Maine's land and water. Towns and cities said it would save them money, effort and worry. It had strong Democratic support and a Republican sponsor.

But one powerful party strenuously opposed the bill: the LePage administration.

The Maine Department of Environmental Protection, headed by former chemical industry lobbyist Patricia Aho, testified against the bill, saying it would create "an entirely new regulatory program" that would increase consumer costs without "guaranteeing" that all paint would be recycled and undermine public support for an existing lead abatement program.

Despite the DEP's objections, legislators on the Environment and Natural Resources Committee recommended Republican Sen. Thomas Saviello's paint recycling bill be adopted. It is expected to go to a floor vote this week.



The LOBBYIST in the henhouse

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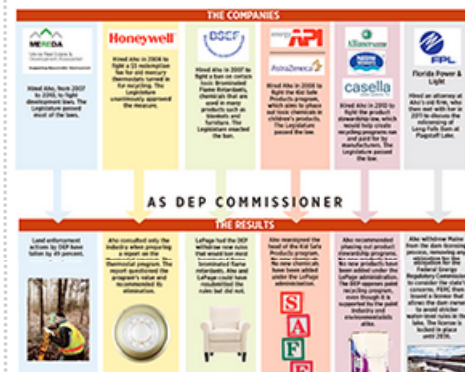
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To those expecting a pro-business administration to support an industry-drafted, Republican-sponsored bill, the DEP's stance came as a surprise, but to those familiar with Aho's past lobbying activities -- and those of Gov. Paul LePage's regulatory reform adviser, Preti Flaherty lobbyist Ann Robinson -- it came as no shock at all.

The paint recycling bill -- L.D. 1308 -- belongs to a category of laws now in disfavor at the DEP: those that require manufacturers of certain products to take them back for recycling at the end of their lives under what is called "product stewardship."

Under Commissioner Aho, the DEP has tried to roll back these programs and prevent new ones from being created. Before joining the department, Aho lobbied against these laws on behalf of clients in the automotive, bottled-water and waste disposal industries.

A seven-month investigation by the Portland Press Herald and Maine Sunday Telegram revealed how the DEP has moved against programs and laws opposed by Commissioner Aho's former lobbying clients. In the case of product stewardship programs, this effort has been largely unsuccessful to date.

The corporate fear: Seeing Maine's success spread

Product stewardship is an innovative approach to recycling that shifts the cost of disposing of certain hazardous consumer products from taxpayers (through municipal waste programs) to the consumers who use them (through a recycling fee imposed on manufacturers). The manufacturer of, say, a television or mercury thermostat is responsible for the collection, reuse or recycling of those products, creating an incentive to design and build them in such a way that they can be processed easily and reused at the end of their life span.

Laws already on the books in Maine -- but targeted for elimination when LePage took office -- include the first-in-the-nation product stewardship framework law (which sets out uniform procedures for future programs) and five other laws covering electronic waste, mercury thermostats, cellular telephones, compact fluorescent light bulbs and mercury-bearing automotive switches.

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HERE'S WHAT WE FOUND

A Portland Press Herald/Maine Sunday Telegram investigation has found Patricia Aho, a former industrial and corporate lobbyist who became commissioner of the state's Department of Environmental Protection in 2011, has scuttled programs and fought against laws that were opposed by many of her former clients in the chemical, drug, oil, and real estate development industries. Under Aho, the DEP has:

- **Frozen the Kid Safe Products Act** -- a 2008 law to protect fetuses, babies and children from potentially damaging chemicals -- by blocking efforts to bring more chemicals under the law's jurisdiction, chemicals produced by Aho's former lobbying clients.
- **Reduced enforcement actions** by 49 percent against large developers and landowners. Aho had unsuccessfully fought to weaken many of the laws at issue as the longtime lobbyist of the Maine Real Estate and Development Association.
- **Fought to roll back recycling programs** that are strongly opposed by former clients of Aho and a still-active lobbyist, Ann Robinson, the governor's regulatory reform adviser.
- **Oversaw a purge of information** from the DEP's website and a clampdown on its personnel, restricting their ability to communicate relevant information to lawmakers, the public, policy staff and one another.

THE SERIES DAY TO DAY

SUNDAY: For two years, public servant Patricia Aho has overseen Maine's environmental protection. But whom does she really serve? Our seven-month investigation points to her former corporate clients.

MONDAY: Led by a former chemical industry lobbyist, the Maine DEP has stalled efforts to regulate substances that are potentially harmful to children and to the development of unborn fetuses.

TUESDAY: So-called "product stewardship" regulations -- even recycling efforts with industry and bipartisan

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Thirty-two states have at least one such law, but only Vermont and California cover as many product categories as Maine or more.

support – find staunch resistance at the Maine DEP, where a former corporate lobbyist has taken the helm.

Maine's programs are considered among the most successful in the country, and they have sharply reduced the amount of mercury, heavy metals and other extremely toxic substances that escape into Maine's environment. But they are unpopular with many manufacturers, who worry that the programs might serve as models for more populous states.

"When we passed some of these laws, they were the first in the nation, and that's why the national industry associations were coming out in protest," said Melissa Walsh Innes, who sponsored several of the laws while serving as a Democratic legislator and is now deputy director of Recycling Reinvented, which promotes product stewardship policies. "They saw it had legs and was working and feared the 'slippery slope' of it spreading to other states."

"We had opposition here, too, when we first started it years ago," said Mark Parent, a Baptist pastor who was the Conservative Party's environment minister in Nova Scotia when that province started mandating the recycling of paint and electronic waste.

"But when people started to see that it created new industries and created jobs and gave us the self-pride of being a clean province," Parent said, "that went away."

The environmental community regards Maine's product stewardship programs as a smashing success. The Natural Resources Council of Maine estimates the 4-year-old e-waste program has recycled 40 million pounds of electronic gear -- including 4 million pounds of lead -- and saved municipal taxpayers more than \$11 million.

In April, four national groups identified Maine's mercury thermostat program as the most successful in the country, in large part because it includes a \$5 incentive for people to recycle their old thermostats. The joint report by the National Resources Defense Council, the Clean Water Fund, the Product Stewardship Institute and the Mercury Policy Center found that in 2011, Mainers returned more thermostats per capita than people in any other state save Vermont, which modeled its program after Maine's.

"Together, these two programs are consistently the national leaders," the report said.

The memo: From corporate request to administration policy

But Maine's product stewardship programs have always faced headwinds.

During the Baldacci administration, affected industries hired lobbyists from two of the state's biggest law firms -- Preti Flaherty and Pierce Atwood -- to fight the laws. Lobbying disclosures show that when Aho worked at Pierce Atwood, she fought the framework law and the current mercury thermostat recycling law as a lobbyist for Casella Waste Systems, the Alliance of Automobile Manufacturers, the Maine Pulp and Paper Association, Nestlé Waters North America, Verso Paper and thermostat manufacturer Honeywell.

LePage's regulatory reform adviser, Ann Robinson of Preti Flaherty, also lobbied against the framework law for the Maine Automobile Dealers Association.

Some of these clients saw in LePage's election an opportunity to weaken or repeal the laws. Honeywell and two other thermostat manufacturers sent a letter to the governor-elect in the care of Pierce Atwood managing partner Gloria Pinza, who served on his transition team. The manufacturers sent the letter a few days before LePage's inauguration through their shared association, the Arlington, Va.-based Thermostat Recycling Corp.

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In the letter, the companies wrote LePage that they were "respectfully requesting your help" to improve "the effectiveness" of Maine's mercury thermostat take-back program "and in creating a more cooperative and productive working relationship" between DEP and themselves.

The memo made its way to Robinson -- herself still a registered lobbyist for the automobile dealers -- who was compiling LePage's regulatory reform agenda. In the agenda -- compiled in a color-coded binder acquired through a public records request -- Robinson included recommendations to take action against product stewardship laws that "ensures that manufacturers do not have to pay to recycle their consumer products" -- language that was included in the controversial list of regulatory reform proposals LePage submitted to the new Legislature in January 2011.

The framework law -- which created a procedure under which the DEP could identify and put forward worrisome chemicals for possible regulation -- was slated to be repealed altogether.

"I know they are a business-friendly administration, but it was very bizarre to see a contract lobbyist essentially writing policy for the administration and targeting product stewardship," said Matt Prindiville, the Rockland-based associate director of the Product Policy Institute, a policy and advocacy organization that seeks to reduce the environmental effects of consumer products.

Neither Robinson nor Pierce Atwood's Pinza responded to interview requests.

LePage's spokesman, Peter Steele, did not respond to written questions asking about Robinson's advisory role and why the governor wished to eliminate product stewardship programs.

Stopping product stewardship was one of Robinson's priorities. When former Republican Sen. Tom Sawyer applied to be LePage's DEP commissioner, he said he was interviewed for the job by Robinson and two other gubernatorial advisers. Sawyer, the self-described "father" of Maine's first-in-the-nation electronic waste recycling law, said Robinson questioned him on his support for product stewardship.

"It was not lost on me that Ann and I were antagonists in 2002" -- when the e-waste law was debated -- "but such is life," Sawyer said. "I was later told I was tainted as being too 'green,' too pro-environment to be DEP commissioner."

Robinson and LePage's effort to repeal product stewardship programs was stymied by the Republican-controlled 125th Legislature, which actually moved to strengthen, not eliminate, the e-waste program. But having failed at the State House, the mercury thermostat manufacturers opened a new front within the DEP itself.

The failed strategy: No arguing against success

The thermostat program's proponents note that Maine's program is among the most successful in the country in terms of the number of thermostats recovered per capita, a rate nearly twice that of the next competitor, Minnesota, and more than seven times that of Connecticut.

They ascribe this to a \$5 redemption fee, or "bounty," paid to people who turn in a thermostat, a feature most state programs do not have. "It has exponentially increased the quantity of thermostats that we have received back," Innes said. "The bounty has worked."

The industry's primary goal was to repeal the bounty, and Aho tried hard to make that happen.

While she and the thermostat companies have not succeeded, it was not for lack of trying. Their efforts -- well-documented in correspondence obtained by the Natural Resources

Council of Maine, or NRCM -- offer a window into the ways in which they have operated behind the scenes.

The thermostat manufacturers' attorney, Thomas Doyle, of Pierce Atwood, and industry representatives met with Aho and other DEP officials at least a dozen times during 2011, while the department was preparing its annual report and recommendations regarding the state's product stewardship programs, records show. The DEP did not seek input from any other stakeholders, including environmental groups and town and city governments.

"I just don't think it was part of the requirement or anything," said Ron Dyer, who was in charge of the DEP's Remediation and Waste Management Bureau at the time, and to whom Aho referred questions on the matter. He also said there were only "like one or two meetings" with industry representatives, although the department calendars, e-mails and visitor logs indicate otherwise.

"It seems their point of view was to try to get rid of these programs, so I suppose it's not surprising that they didn't reach out to environmental and municipal organizations that support and believe in these recycling programs," said Pete Didisheim, of the NRCM.

The records also show that Aho tried to have the official responsible for the program, Carol Cifrino, reassigned. The NRCM also obtained a transcript of a voice mail message two industry officials had left for Cifrino the day after LePage's election in which -- thinking they'd hung up -- they joked about getting her fired. Ultimately, Cifrino kept her position.

Internal emails acquired through public records requests show Cifrino and other technical staff members were upset that they were not consulted during the creation of the DEP's annual product stewardship report, which was overseen by an inexperienced staffer with little or no prior knowledge of the programs.

The resulting report -- released in December 2011 -- was pilloried by doctors, municipalities and environmentalists as technically flawed and one-sided. The report made no attempt to describe the program's benefits, misassigned and inflated costs, and recommended the programs be considered for termination.

While the Thermostat Recycling Corp., the American Chemistry Council and other interested industries sent letters praising the report, critics said it was an embarrassment.

Stung, the DEP has since retreated on the issue. Its December 2012 report on the program admitted "there has been some success with the program's current products and product categories" and recognized they were achieving a range of unexpected benefits, including "job creation, business innovation ... and lowering costs to local governments."

It proposed a number of improvements to the framework law but did not recommend any new products for inclusion under its umbrella.

"The report was well-written this year, and the rhetoric has leveled off," Innes said.

Still, the department's opposition to the industry-sponsored paint bill suggests the administration still takes a dim view of this type of recycling, even when the manufacturers are for it. If it passes, supporters will be waiting to see whether LePage feels strongly enough to exercise a veto.