Boxed In? Lawsuit Challenges Constitutionality of Oregon's EPR Law

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On July 30, 2025, the National Association of Wholesaler-Distributors (NAW) filed a lawsuit[1] challenging Oregon's Plastic Pollution and Recycling Modernization Act. The Act created Oregon's sweeping extended producer responsibility (EPR) program for packaging, paper products and food service ware.

The Oregon program requires "producers" to contract with a state-selected Producer Responsibility Organization (PRO), then annually file a report and pay dues based on the pounds of packaging the producer sent into the state in the previous year. While the law has a tiered approach to identifying the obligated producer, the brand owner of the product inside the packaging is generally the responsible party. Obligated producers were required to file their initial report by March 31, 2025, and many have already started receiving invoices for the packaging they introduced in the state in 2024.

NAW's challenge to the law argues that the EPR program violates the U.S. Constitution in three ways.

1. **The Dormant Commerce Clause** – NAW argues that the EPR program violates the Dormant Commerce Clause because it unduly burdens interstate commerce in a way that creates inconsistent regulation on activities that are inherently nation-wide issues. NAW adds that the act creates unnecessarily "inconsistent obligations that disrupt uniformity of an inherently national market."
2. **Unconstitutional Conditions** – The EPR program conditions access to the state's markets on a producer's agreement to contract with a single state-selected PRO. NAW argues that this requirement violates producers' constitutional rights of freedom to contract and due process because (1) there is only one PRO, (2) the contract is not negotiable and (3) the PRO agreement requires that the producer agree to resolve conflicts with binding arbitration.
3. **Due Process** – After filing its annual report, a producer must pay annual dues based on the weight of the various types of packaging it sent into the state in the previous calendar year. The PRO calculates a producer's dues using a mathematical formula, which it developed, that accounts for various factors, such as the types of materials and recyclability of those materials. NAW argues that this scheme violates its members' rights to due process because the fees are set without adequate input from producers and without an opportunity to challenge the fee assessments.

Unless the Oregon federal district court stays implementation of the rule, producers must still comply with reporting deadlines and pay recent invoices. If producers fail to comply with the deadlines, they face penalties that could include audit costs and fines of up to $25,000 per day.

Until the suit is resolved, entities that are potentially classified as producers under the program should carefully monitor these developments and take actions to comply with the requirements to

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avoid penalties. Additionally, affected entities should watch for similar challenges in other states with newly implemented EPR programs.

Lawyers in Haynes Boone's Environmental and Food, Beverage and Restaurant practice groups are working to help entities in the distribution chain understand their responsibilities under the various EPR laws across the country. For more information, or assistance on this topic, please contact one of the attorneys listed at the bottom of this webpage or a member of our Environmental or Food, Beverage and Restaurant practice groups.

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[1] Complaint for Declaratory and Injunctive Relief, *National Association of Wholesaler-Distributors v. Oregon Department of Environmental Quality, et al.*, Case No. 3:25-cv-1334 (D. Or. July 30, 2025). https://www.naw.org/wp-content/uploads/2025/07/2025-07-30-NAW-Complaint.pdf.

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