



August 31, 2026

Federal Court Upholds Oregon EPR Law

On August 27, a federal district court in Oregon upheld the state's Plastic Pollution and Recycling Modernization Act against constitutional challenges brought by the National Association of Wholesaler-Distributors (NAW).

We wanted to make sure our members are aware of the decision because it is the first federal court decision to address the constitutionality of a state extended producer responsibility (EPR) law for packaging. It will not control challenges to EPR laws in other states, but it is likely to be cited by states defending similar programs.

Oregon's law requires covered producers to participate in a producer responsibility organization (PRO), report the amount and composition of covered materials distributed in Oregon, and pay fees intended to reflect their share of the state's recycling system costs. The law covers packaging as well as certain paper products and food service ware. Oregon's Department of Environmental Quality (DEQ) retains regulatory and enforcement authority, while Circular Action Alliance (CAA) currently serves as the state's approved PRO.

NAW challenged the law principally under the dormant Commerce Clause and the Due Process Clause of the U.S. Constitution. Its arguments included that Oregon's law unfairly burdened interstate businesses, that various exemptions favored in-state interests, that the fees imposed through CAA were constitutionally problematic, and that Oregon had delegated too much authority to a private organization whose members may compete with regulated companies.

The court rejected those claims after a five-day trial.

Commerce Clause

On the Commerce Clause issues, the court found no evidence that Oregon adopted the law for a protectionist purpose or that its exemptions actually discriminated against

interstate commerce. It also rejected the argument that CAA's assessments amounted to an unconstitutional user fee.

Perhaps more significantly for future challenges, the court held that evidence of substantial compliance costs for individual companies was not enough to establish the type of burden on interstate commerce as a whole necessary to trigger meaningful review under the Pike balancing test. The court emphasized that the dormant Commerce Clause protects the interstate market, not individual companies from costly regulation, and that increased producer or consumer costs alone do not establish a substantial burden on interstate commerce.

This is a significant distinction. NAW presented evidence that compliance could be very burdensome in practice. Among other things, witnesses testified about difficulty determining responsibility for thousands of products, significant data and material-composition requirements, and potentially very large assessments relative to a distributor's margins. The court did not necessarily dispute that those burdens exist. Instead, it concluded that NAW had not sufficiently demonstrated a constitutionally significant burden on the interstate market.

The court also gave considerable weight to Oregon's stated environmental and waste-management interests. Even assuming NAW had crossed the threshold for Pike balancing, the court concluded that the burdens were not clearly excessive compared with Oregon's interests in waste management, pollution reduction, and public health.

Due Process and the Role of the PRO

NAW's Due Process arguments focused in substantial part on the role of CAA. Because CAA is a private organization controlled in part by producers, NAW argued that Oregon had impermissibly allowed private, potentially self-interested companies to regulate other companies and determine the fees they must pay.

The court acknowledged the concern but concluded that Oregon retained enough governmental control. In its view, a private organization may play a significant role in administering a regulatory program so long as the government retains ultimate decision-making authority and meaningful oversight. The court found that DEQ reviewed and approved CAA's program and fee methodology, required changes during that process, and remained the ultimate regulatory authority. On that record, the court characterized CAA as acting in a subordinate or advisory capacity rather than exercising independent governmental power.

The court reached that conclusion even though DEQ had not reviewed the proprietary formula and underlying data used by CAA to generate all of its material-specific cost values. The court found it constitutionally sufficient that DEQ reviewed the methodology and values, engaged with CAA during development of the program, and ultimately had to approve the program before it became effective.

Finally, the court rejected NAW's argument that producers lack an adequate mechanism to challenge fees. The court relied heavily on the procedures available before DEQ may impose civil penalties, including notice and an opportunity to cure, an administrative hearing, agency review, and judicial appeal. No civil penalty is payable until those appeals are exhausted. The court described those protections as more than adequate under the Fourteenth Amendment.

What This Means for Members

The decision does not resolve whether every state EPR program will survive constitutional review, and the result turned in several places on the particular structure of Oregon's statute and on the evidentiary record developed at trial. It also does not mean that concerns about cost, complexity, transparency, fee methodology, or the role of producer responsibility organizations are misplaced. In fact, the court's opinion documents many of those concerns in considerable detail.

What the decision does show is that at least for this court, those concerns may be difficult to convert into a successful federal constitutional challenge. A company-specific showing of high costs or difficult compliance was not enough in this case. Stronger evidence demonstrating discrimination or a substantial effect on interstate commerce generally may be required by other courts. Likewise, a private-delegation challenge may be difficult where the state agency formally retains approval and enforcement authority.

There are pending challenges involving EPR programs in other states, including Colorado and California. The Oregon decision is not binding in those cases, but states will almost certainly rely on it, particularly its treatment of *Pike*, private delegation, and agency oversight.

We will continue to follow the pending cases and state implementation developments. Please do not hesitate to contact me with thoughts or questions.