

October 30, 2023

Maine Department of Environmental Protection  
90 Blossom Lane  
Augusta, ME 04330

**RE: Maine EPR for Packaging Draft Rules**

Dear Commissioner Loyzim:

Thank you for the opportunity to submit comments regarding the newly released draft regulations for Maine's packaging EPR law. The following comments are submitted on behalf of Reuse Portland - a volunteer coalition of business, municipal, environmental and sustainability leaders in Portland and South Portland who are actively working to catalyze and launch reuse systems in our cities. **We believe Maine's packaging EPR law represents a crucial opportunity to accelerate packaging reduction and reuse throughout the state, and we greatly appreciate the Department's incorporation of reuse and refill throughout the program.** Please find our comments below separated by section to align with the structure of the draft rules.

Municipal Reimbursements:

Municipalities wishing to manage packaging materials through reduction and reuse - the most desirable outcomes on the waste hierarchy - should be eligible for reimbursement of associated costs from the Stewardship Organization (SO).

Such a reimbursement can simply follow the structure proposed for reimbursements associated with recycled materials (*"A participating municipality must be reimbursed for the cost of managing packaging material that is reused or recycled and for the cost of managing packaging material that is not readily recyclable."*). Under such a paradigm, we would recommend that municipalities be eligible for reimbursement on a per-unit basis, rather than a per-ton basis (*"For packaging material types that are reusable, a participating municipality shall be reimbursed for each unit managed for reuse at the median per unit cost realized by similar municipalities during the previous calendar year."*). This will keep costs lower for the SO as reusables tend to be heavier than disposables (including recyclables).

Municipalities in Maine are increasingly interested in reuse and refill. The Cities of Portland and South Portland have a joint commitment to supporting reuse in their [Climate Action Plan](#) and are actively engaged in Reuse Portland to help make this

vision a reality. But the startup and ongoing implementation costs of a reuse system are significant. While it is expected that [brands who offer reusables will see a major return on their investment in just a few years](#), the same is not necessarily true for a municipality. If reuse services are provided as a public utility, akin to recycling and disposal services, they will remain a cost to taxpayers unless reimbursed by the SO. Just as Maine municipalities will soon be eligible for reimbursement of their recycling costs, they should be eligible for reimbursement of costs associated with providing reuse services as well.

Given the potential investments into reuse infrastructure through this program, it logically follows that any municipalities who choose to take advantage of this infrastructure should be reimbursed for their ongoing operating costs. Requiring the SO to reimburse municipalities for their costs to reuse materials will not only provide the maximum possible incentive for municipalities to manage materials in accordance with the waste hierarchy; it will also ultimately support the SO and its member producers in achieving the statutory goals and reducing the long-term costs of the EPR program by reducing waste.

#### Definitions:

**We appreciate that the draft rules differentiate between *reuse* and *refill*.** These are distinct economic models and defining them as such adds clarity to the program. However, we suggest amending the proposed definition of refill as follows:

***Refill.*** “Refill” means an operation by which **a person** fills **their** own container.

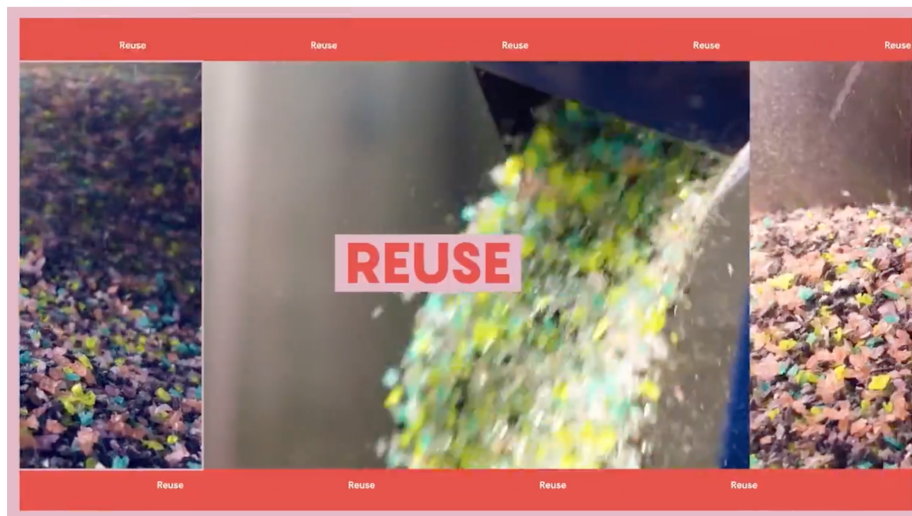
The proposed rules do not define “end-user” (the term currently proposed in the refill definition). Refill is an operation in which consumers (the people who are typically end-users of products and packaging) repeatedly fill their own containers. However, given that the proposed definition of “consumer” includes “*an entity that uses a product to create a new product,*” we suggest using plain language for refill to eliminate any potential loopholes that could arise from using the term “consumer” in this case.

**There is also a need to update the current statutory definition of reuse.** We strongly suggest an update to the definition of reuse from Title 38 Chapter 18 §1771, as well as a distinct definition of reusable packaging for the purposes of this legislation as follows:

***Reuse.*** “Reuse” means **the repeated use** of a product, **packaging type** or component in a product **or packaging** for the same manner and purpose for which **and in the same format in which** it was originally produced.

***Reusable packaging.*** “Reusable packaging” is packaging that is designed and marketed to be reused several times for the same purpose and without a change in format after initial use, and whose actual return and reuse is made possible by adequate logistics and infrastructure as part of a reuse system operated by or on behalf of producers.

These provisions are critically important to the effective implementation of the packaging EPR program. Codifying that reusable packaging does not undergo processing to change its format may seem common sense, but in fact is needed to avoid serious loopholes. There are some companies already making deceptive marketing claims that equate recycling with reuse - for example this recycled iPhone case, which purports to be “reusing” materials when in fact they are, at best, being recycled:



Source: CASETiFY [“Re/CASETiFY” program](#)

#### Packaging Material Types:

It is not clear from the draft rules whether the Department intends to include “reusable” as a packaging material type. We suggest including this designation to further clarify which types of packaging qualify as reusable and to ensure adequate data collection and reporting on this distinct category of packaging.

#### Program Targets:

**We strongly support the packaging reduction and reuse targets** proposed in the draft rules, and thank the Department for including these ambitious yet achievable goals. We also strongly support the provisions to direct investments into reuse and refill projects should reduction and reuse targets not be met. However, as currently proposed, these triggers may not result in meaningful investments unless program

targets are missed for three or more years. We suggest adjusting the proposed language in both sections as follows to strengthen these provisions:

*“If a goal is missed, beginning the following calendar year, and continuing every year in which the goal remains unmet, the Department will dedicate a percentage of investments to projects supporting reuse and refill. The percentage of the investment must be at least equal to the difference between the percent reuse [or reduction] goal and the realized percent reuse [or reduction] **during the year in which the goal was not met.**”*

We also suggest including a mechanism within the rules to allow the Department to adjust reduction and reuse targets (either up or down) over time and as more information becomes available, such as after the publication of the statewide needs assessment or the implementation of similar programs in other jurisdictions, should the Department see fit.

On the reduction targets, we further suggest requiring a reduction in the number of packaging units produced per year *in addition* to a reduction by weight. This would sign with what California adopted in its [packaging EPR program](#) (see 42057(a)(1)), which requires a 25% reduction by weight as well as a 25% reduction by packaging component for single-use plastic packaging. This structure better reflects the realities of switching to reusable and refillable packaging, allows a more comprehensive analysis of the waste reduction impacts of the program, and avoids potential unintended consequences from a purely weight-based metric, which may disincentivize highly reusable yet heavy packaging formats, such as glass.

We appreciate that the Department has set program goals collectively across producers via the SO. This is consistent with the best-performing packaging EPR programs around the world and allows for flexibility between various producers participating in the program. However, **we suggest specifying a certain percentage of participating producers who must contribute to the packaging reduction and reuse targets, and increasing this percentage over time.** This will ensure there is some equitable distribution of the burden of achieving the targets across participating producers, as well as a diversity of branded products available for consumers to purchase in reusable and refillable packaging. This is important to ensure a competitive market and protect consumer choice. Specifically, we suggest requiring that 20% of obligated producers are contributing to the overall reuse targets by selling a portion of their products in reusable packaging after 10 years of the program operating, and increasing this threshold by 10% every 10 years thereafter (e.g. 30% of producers contributing to the reduction and

reuse targets after 20 years of the program operating; 40% after 30 years, and so on), until a rate of 50% is reached.

Such a structure follows the same logic as the proposed targets for the percentage of participating municipalities (*“The percent of cities, towns, townships, villages, and plantations participating in the program should be no less than 30 percent of all cities, towns, townships, villages, and plantations from 2030 to 2034, no less than 60 percent of all cities, towns, townships, villages, and plantations from 2035 to 2039, and no less than 90 percent of all cities, towns, townships, villages, and plantations from 2040, onward”*). Both are aimed at ensuring greater participation in the program while allowing transition time for increased engagement. This requirement should not apply to low-volume producers.

#### Producer Fees:

We generally support the proposed structure for eco-modulated fees (i.e., “incentive fees”) in the draft rules, which emphasizes malus fees to disincentivize undesirable packaging types. We know from existing EPR programs around the world that malus fees are more effective at influencing producer behavior than bonuses/discounts.

However, **we strongly recommend including an incentive (likely in the form of discounted program fees) for high-performing reusable packaging that achieves a 90% or higher return rate to encourage producers to implement effective reuse programs.** In order for reusable packaging to achieve its environmental goals, return rates must typically be greater than 90%, so incentivizing effective reuse systems with the highest possible rates of return is *key*.<sup>1,2</sup>

We do recognize that the proposed rules allow for Alternative Collection Programs for reuse, which would exempt packaging in such programs from the incentive fee structure. However, unless the Department intends to require *all* reusable packaging systems run by producers to apply for Alternative Collection Program status, it will still be beneficial to establish incentive fees under the primary program for reusable packaging to encourage producers to choose these more sustainable materials when selecting their packaging, and help ensure high rates of reuse.

#### Reporting and Transparency:

**We strongly support the proposed requirements for producers to annually report to the SO** whether packaging components are collected for reuse in the State or elsewhere, and whether each producer operates reuse systems for products sold in

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<sup>1</sup> Global Plastics Policy Centre (2023). [Making reuse a reality: A systems approach to tackling single use plastic pollution](#). Revolution Plastics, University of Portsmouth, UK.

<sup>2</sup> M. Newman (2021). [“Return Rates Rule: Why Brands Aren’t Asking the Right Questions About Reusables.”](#) Reusable Packaging News.

covered packaging material in the State or elsewhere. We appreciate the flexibility afforded to low-volume producers in reporting requirements while still requiring information about their reuse or refill systems.

We further appreciate the proposed requirements that the SO annually produce a document listing the percent of each brand's packaging material that is reusable (among other factors), and a summary document on progress toward reuse and refill with information on brands for which reuse and refill options are available in the State and elsewhere. **Please ensure that these documents are made publicly available** (after any necessary data aggregation to protect proprietary information).

We do suggest, given our prior recommendation to incorporate incentives for high-performing reusable packaging into the producer fee structure, **requiring producers to report to the SO the average return rates for any reusable packaging they put onto the market.** This will enable the SO to calculate any applicable discounts or otherwise ensure their fees have been adjusted accordingly. It will also help to provide more data to the Department and the public on the effectiveness of reuse and refill programs in the state.

#### Investments

**The rules should outline clear priority for direct investments into infrastructure to enable packaging reuse and refill systems that are convenient, affordable, and accessible to all residents of the state.** This is required by statute and should be spelled out very clearly in the proposal criteria. It is currently not clear from the proposed rules that reduction and reuse are higher priorities than recycling and other forms of waste management. Rather than specify that "*the primary objective of an investment must be to improve the management of packaging material,*" we suggest a clear reinforcement of the requirements in statute to "*ensure that preference for funding is given to proposals that support the State's solid waste management hierarchy under section 2101 [and] promote a circular economy for packaging material types...*". **The purpose of investments into infrastructure and education within a packaging EPR program is to facilitate the achievement of program targets.**

**We also strongly recommend simplifying the proposed process for investment proposals.** As currently drafted, the rules spell out a process by which the SO would solicit proposals from interested parties throughout the state, and would then review and evaluate them before passing them on to the Department, who will make the final determination on where to invest. Municipal and producer reporting entities are eligible to participate in an optional ranking process for all proposals, but there is not an opportunity for other stakeholders to provide input. This is problematic from the perspective of a volunteer coalition such as Reuse Portland, which would be interested

in submitting a proposal for investment into reuse infrastructure and systems for Portland and South Portland, but would thereafter not be able to provide any input or have a voice in the ranking process. We are concerned that, in the event there are insufficient funds to address all proposals, the momentum of the status quo (namely: an emphasis on recycling) may bias reporting entities in their rankings against selecting a project for reuse despite the clear benefits of reuse over recycling and its overall priority in the waste hierarchy. **A more straightforward process would be to simply have interested parties submit investment proposals and then have the SO and the DEP discuss them and select projects based on the clear criteria outlined in statute (and clarified in the rules per our suggestions above). Otherwise, we request that the Department allow all interested parties who submit proposals to participate in the ranking system.**

Additionally, we appreciate the allowance for a 501(c)(3) to be designated as the owner of new reuse infrastructure. However, most reuse warewashing services are operated as small businesses. We therefore suggest further allowing small businesses - consistent with the cutoff defined in statute of \$5 million annual gross revenue - to be designated as owners of reuse infrastructure under the proposed rules. This would prevent large corporations from receiving these funds while allowing more flexibility for the emerging reuse sector.

We suggest removing the proposed provision that *“Proposals that improve the management of material other than packaging material must be supported with a commensurate source of outside funding.”* From a reuse perspective, this will be problematic to implement as it adds barriers (in the form of seeking matching funds) to the development of shared reuse infrastructure that can enable reuse systems to operate at scale. Such shared infrastructure will necessarily accommodate materials beyond the scope of the EPR program, but must be eligible for uncomplicated funding if we are serious about transitioning to a circular economy in Maine.

Lastly, the proposed provision that *“for every \$2000 of investment, expressed in January 2021 dollars and adjusted according to the U.S. Bureau of Labor Statistics’ Consumer Price Index, there will be at least 1 ton of material recycled”* appears to be directed at ensuring that funds are spent effectively. We appreciate the Department’s interest in ensuring that every dollar spent in this program produces results, but we recommend expanding this provision to include reuse. Whatever calculations were done to arrive at 1 ton of material recycled per \$2,000 invested should be applied to reuse investments as well. It is likely that the outcome will be lower, e.g. ½ ton of materials reused per \$2k spent, simply by virtue of the fact that reusables reduce the overall

amount of materials circulating in the system and have outsized social and environmental benefits compared to recycling.

### Needs Assessment

**We appreciate that the rules require the needs assessment to provide a summary of ways recycling infrastructure is used to manage reusable packaging material in other jurisdictions.** This is an innovative approach to reuse systems design that is increasingly gaining traction at the municipal level across the US.

However, municipal recycling systems are not the *only* way to manage reusable packaging. **We recommend expanding this language to include a general study of any current reuse infrastructure in the state and, most importantly, to identify opportunities to invest in reuse infrastructure** throughout the state, including but not limited to retrofitting/adapting municipal recycling systems. Every packaging EPR law that has passed to date in the US requires a similar study of reuse infrastructure in its needs assessment, including the two laws passed this year in MD and IL that are purely needs assessments.

For example, [Maryland's SB 222](#) - a needs assessment bill signed into law earlier this year - includes "an evaluation of the current infrastructure and capacity related to, need for, and associated costs of ... reuse infrastructure." Similar language appears in [IL SB1555](#) - another needs assessment bill signed into law earlier this year: "The Agency shall issue a competitive solicitation in accordance with the Illinois Procurement Code to select a qualified consultant to conduct a statewide needs assessment to assess recycling, composting, and reuse conditions in the State for packaging and paper products, including identifying current conditions and an evaluation of the capacity, costs, gaps, and needs..." In Colorado, the needs assessment "must identify... the availability and scope of any reuse or refill systems in the state affecting the use of covered materials" (per [CO HB 22-1355](#)).

**Reusable and refillable packaging is the future of consumption in Maine, across the country, and around the world.** We applaud the Department for incorporating reuse and refill into our state's packaging EPR program, and we strongly encourage strengthening the proposed provisions to ensure this program results in the creation of robust reuse and refill systems that support Maine's local economies. **Reuse will mean an overall reduction in waste and improved environmental outcomes across the state.** We thank you for your dedication to this effort and look forward to working with you to address any questions.

Sincerely,





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