



**SUSTAINABILITY
OFFICE**

SUSAN G. PARMELEE

October 31, 2023

Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

SUBJECT: Maine EPR for Packaging Draft Rules

Dear Commissioner Loyzim:

Thank you for the opportunity to submit comments on the draft rules for Maine's Extended Producer Responsibility for Packaging law. The City of South Portland respectfully submits the following comments:

Definitions

We recommend adding waste incineration to the definition of "Disposal."

Based on the written definition of "Packaging Material Type" it is not clear whether reusable packaging will be considered a packaging material type. We suggest including this designation to clarify which types of packaging qualify as reusable and to ensure adequate data collection and reporting on this category of packaging.

We recommend adding a definition for "reusable packaging" in order to avoid potential loopholes that would allow packaging producers to claim that packaging is being reused, when it is actually being processed and recycled. For example, a plastic water bottle that is recycled and used to make another plastic water bottle is not the same as a reusable water bottle. South Portland supports the definition suggested by Reuse Portland: **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.*

Program Goals

We appreciate the ambitious yet attainable goals that the Department has included in the draft rules. We strongly agree with requiring packaging materials to be readily recyclable and encouraging producers to use postconsumer recycled material. We were encouraged to see a litter reduction goal included in the draft and believe it is a relevant and worthwhile addition to the program goals. We do have a few additional suggestions for the Program Goals section.

Both the reduction and reuse goals are based on decreasing the weight of packaging material that is being produced. We acknowledge that tonnage is the typical measurement of waste and that municipalities are charged per ton for trash disposal and recycling; however, measuring reduction by weight alone may encourage more lightweight plastic and discourage the use of more durable/heavier materials that are better suited for reuse/refill. Setting goals to reduce the quantity of packaging units produced per year would encourage producers to make packaging more reusable and create reuse systems that are accessible to consumers. This is more consistent with the ultimate goal of reducing the amount of packaging material managed by municipalities.

To meet the municipal participation goals included in the draft rules, it is necessary that eligibility and reporting requirements are clear and concise. No municipality should be excluded because participation is too burdensome for staff to undertake.

Investments

The investment criteria states, "The primary objective of an investment must be to improve the management of packaging material." This objective seems to encourage recyclability, but does not clearly encourage a reduction in overall packaging. M.R.S. Ch. 38 § 2146 *Stewardship for Packaging* states, "The Department shall 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..." To be consistent with the language in statute, the primary objective should be to prioritize investments that manage waste higher on the solid waste management hierarchy.

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 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.

The draft states that investment proposals for infrastructure must demonstrate that for every \$2,000 of investment there will be at least one ton of material recycled. It is clear how this incentivizes effective recycling, but it does not clearly incentivize waste reduction. As previously stated, investment should prioritize projects that manage packaging higher on the waste hierarchy. To clearly incentivize waste reduction and reuse, this section could include an alternative requirement for the quantity of material reduced per dollar spent.

Compostable Packaging

The draft rules do not include language about compostable packaging and it is unclear whether compostable packaging would be encouraged or considered recyclable. If language around compostable packaging is added to the rules, the City of South Portland recommends labeling compostable plastic as non-recyclable material, thereby disincentivizing this type of packaging. Compostable plastic can only be processed at industrial composting facilities and many of these facilities are starting to turn it away. Compostable plastics are commonly confused with regular plastic and become contamination in the recycling stream, ultimately ending up in the landfill or waste incinerator.

I want to thank the Department for providing an opportunity to participate in the rulemaking process through the numerous stakeholder meetings and written comments. It is clear that the Department considered input from stakeholders and put together a thorough and thoughtful draft of the Stewardship Program for Packaging rules.

Best regards,



Susan Parmelee (She/Her)
Sustainability Program Manager
City of South Portland