



July 11, 2023

Maine Department of Environmental Protection
Deering Building Room 101
90 Blossom Lane
Augusta, ME 04330

RE: Maine EPR for Packaging Stakeholder Meeting – Producer Payments

To whom it may concern:

Thank you for the opportunity to submit comments on behalf of Upstream regarding producer payments and eco-modulated fees (financial incentives) under Maine’s packaging EPR law. Upstream is a non-profit organization that sparks innovative solutions to plastic pollution by helping people, businesses and communities shift from single-use to reuse. We seek to live in a world where people and the planet are treated as “indisposable” and communities thrive without all the waste. **We believe Maine’s packaging EPR law represents an unprecedented opportunity to accelerate packaging reduction and reuse throughout the state.**

Upstream supports ME DEP’s emphasis on malus fees rather than bonuses to ensure the program retains the necessary funds to cover all administrative and operational costs. We have also found that an over-emphasis on bonuses and an under-emphasis on malus fees does not yield the desired results in terms of influencing packaging design. For instance, in France, [malus fees account for just 5%](#) of the total value of eco-modulated fees, and they are disproportionately applied to paper packaging (roughly 93% of malus fees are applied to paper).

France’s eco-modulation structure also [provides a cautionary tale](#) when it comes to

the overall weight of eco-modulation factors versus base fees. As of 2022 in France, eco-modulation contributions from producers totaled less than €60 million – less than 10% of the total fees collected (over €900 million). In order to truly influence producers' packaging choices, eco-modulation incentives must play a significant role in the overall fee structure. This under-use of eco-modulation as an overall fee factor in France has failed to push producers to choose more sustainable packaging, which is why France's packaging EPR scheme was [recently amended](#) to incorporate explicit reuse requirements. **It is imperative to heavily weight eco-modulated fees – especially malus fees – against the base fees for the program to ensure that program targets are met without needing to amend the statute in future years.**

Subsection 13(A)(1)(c) of Maine's packaging EPR statute requires the producer payment schedule to incentivize increased reuse of packaging materials, among several other outcomes. We firmly believe that **increased reuse should be prioritized above other outcomes**, because [reuse offers the greatest environmental benefit](#) across the full lifecycle of a given product or packaging format. **We especially do not support incentives for compostable or degradable packaging**, as these types of packaging typically have a [greater environmental footprint](#) than even their non-recyclable alternatives.

Producers should be incentivized through the program fees to offer their products in reusable packaging as part of an organized system that achieves high return rates – as close to 100% as possible. Return rates are critical for determining the overall environmental benefit (via the number of reuse cycles) of a reuse program. For producers other than low-volume producers, it will be important to require reporting on average return rates for any reusable packaging to achieve and track this outcome.

Incentivizing durability and optimized reuse rates for reusable packaging is in line with the intent of Maine's packaging EPR legislation, which states that producer fees must be set on a *net-material* basis. This implies that if a given producer supplies, say, 1,000 tons of reusable packaging onto the market in a given year, but collects 950 tons back through an established reuse system (a 95% return rate), they should only pay fees on the 50 tons of non-recovered reusable packaging for that program

year. This is fair, given that non-recovered reusable packaging will represent a cost to taxpayers and municipalities when it is inevitably managed in the local waste stream. It is also a strong incentive for producers to use long-lasting reusable packaging in an efficient system that achieves maximum reuse cycles - as they will only have to pay fees on packaging that evades this system.

This approach to incentivizing reusable packaging aligns with [Oregon's packaging EPR program](#), in which producers will pay fees on reusable packaging only if and when such packaging is "ultimately discarded" in the State. In other words, packaging that is recovered for reuse will not be subject to fees. This approach will help to ensure consistency between jurisdictions across the U.S. with packaging EPR programs in place.

DEP has also asked whether low-volume producers should have an incentive to indicate whether packaging material is readily recyclable or otherwise provide information on packaging material characteristics. We suggest an incentive for low-volume producers to report on any **reusable** or readily recyclable packaging through a lower flat fee (a tiered system). It would be left to each low-volume producer's discretion to report any environmentally preferable packaging to receive the incentive (a lower flat fee), and they would not be required to do so should they prefer to simply pay at a higher tier without the extra reporting.

Thank you again for the opportunity to comment on Maine's new packaging EPR program. For any questions, please contact me at sydney@upstreamolutions.org.

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