



May 8, 2023

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

RE: Maine EPR for Packaging Stakeholder Meeting – Investments

To whom it may concern:

Thank you for the opportunity to submit comments on behalf of Upstream regarding investments into education and infrastructure 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.**

Generally speaking, it is common practice in existing EPR programs for producer responsibility organizations (PROs – analogous to the Stewardship Organization or SO that will operate under Maine’s law) to submit proposed program budgets annually – including investments into infrastructure, education and all other program expenses – alongside their annual program report. This system enables the oversight agency (in this case ME DEP) to assess the overall direction of the program from a comprehensive bird’s-eye view. Allowances may be made as needed for unforeseen expenditures outside of this annual budget proposal – for example, to address equipment failure at a facility requiring urgent repairs or upgrades. Funding for such

ad-hoc costs should of course be set aside as part of an annual budget planning process, and a responsive approval process for these expenditures may be established. Any unforeseen expenses should be reported in the following annual report and should factor into the proposed budget for the next year. Outside of emergency expenditures, the program budget should fall within a standard annual planning and proposal process.

Section 11 of 38 MRS §2146 states that “the department shall ensure that preference for funding is given to proposals that **support the State's solid waste management hierarchy**” and “**promote a circular economy**” for covered packaging materials. Section 11 also specifies that “*the department shall adopt rules setting forth the criteria for evaluation and approval or denial of investments in education and infrastructure proposed by the stewardship organization.*”

Upstream recommends that in its evaluation criteria for proposed investments, ME DEP 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. Specifically, **we suggest criteria requiring the SO to demonstrate via its annual budget proposal process that proposed investments into reuse infrastructure are no less than 5% of total proposed investments each year.** One example of such an investment could be retrofits to a MRF to enable reusable CPG packaging to be sorted out, sanitized, and returned to producers or distributors for reuse/refill before recirculation into the market. Colocating reuse and recycling infrastructure increases efficiency and reduces costs in addition to benefiting the environment by minimizing transport and optimizing land use (avoiding the construction of multiple facilities). **Similarly, investments into education to ensure consumers are aware of reusable packaging and know how to reuse/refill it should be no less than 5% of total proposed education investments.**

Requirements for investments into reuse infrastructure within EPR systems are becoming the norm. [Austria's Waste Prevention Programme](#) is funded in part by a required 0.5% of packaging EPR fees. In France, [a minimum of 5% of packaging EPR program funds](#) must be dedicated to reuse infrastructure and technical assistance for producers transitioning to reusable packaging. [Oregon's 2021 packaging EPR law](#)

requires up to 10% of program funds to be set aside for waste prevention and reuse. Without a clear framework for transitioning throwaway packaging to reusable formats, Maine's EPR program will fall behind others around the world. Reuse is central to the future of packaging management, and robust infrastructure is needed to ensure this future is efficient and cost-effective, and optimizes benefits for consumers and the environment. Requirements for reuse infrastructure investments, as well as education to ensure the infrastructure is widely used, will also help create consistency for participating producers subject to other EPR programs.

Tracking the impacts of infrastructure and education investments will be crucial to program success. Given a system in which the SO proposes investments for the upcoming year alongside an annual report summarizing the prior year of program activities, it would be most prudent to require the SO to report on the results of all investments within each annual report. In March, Upstream recommended to ME DEP that program targets should include **a 25% reduction in packaging use, with at least 10% met through elimination or reuse within 5 years of implementation, increasing to at least 20% met through elimination or reuse within 10 years.** The SO should propose investments that would enable these targets to be met. **Success should then be measured as progress towards these targets.** As the law also requires incentives for reusable packaging via the eco-modulated fee structure, **successful investments should also enable an increasing share of participating producers to benefit from lower program fees by transitioning to reusable packaging.** This would further align with our suggestion from March that the program specify a certain percentage (20% to start, increasing to 30% by the 10-year deadline) of participating producers who must contribute to the packaging reduction target.

Section 13(A)(8) of 38 MRS §2146 requires that *"the process [for proposing investments] must set forth the manner in which the stewardship organization is required to solicit and incorporate input in the development of proposed investments from producers, recycling establishments and participating municipalities."* Within a reuse context, input from municipalities will be crucial to understand how they intend to – or perhaps already – support or require local-scale reuse, so that reuse infrastructure investments from the program can be coordinated with local efforts to avoid redundancies and optimize results. For

example, a municipality intending to support reusable food service ware for takeaway and home delivery will create a local economy in which reusable goods are continuously circulating, likely requiring centralized washing and redistribution infrastructure and services. Since some of this food service ware is likely to be covered material under the EPR program, and since consumers in this community will of course also be purchasing many other types of goods in packaging covered by Maine's EPR law, the SO might invest directly into a centralized washing facility in this community to ensure it has the capacity to handle reusable packaging from participating producers. This will in turn help producers participating in the SO achieve the overall program targets and statutory goals of reduced packaging material and increased reuse of covered materials.

To simplify the Department's assessment of proposed investments, align the evaluation criteria with the statutory framework as well as the program targets to the maximum extent feasible (i.e., *"an evaluation of how those investments were designed to increase access to recycling in the State and to **encourage the reuse of packaging material**" and "infrastructure designed to **reduce the amount of packaging material used**" and "program goals supporting an **overall reduction by producers in the amount of packaging material used, an increased reuse by producers of packaging material** and an increased amount of post-consumer recycled content in packaging material used by producers; **packaging material litter reduction goals**; recycling access and collection rate goals for municipalities; and overall program and material-specific recycling rate goals"). Investments should be made strategically to ensure that the program achieves its targets.*

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.

Sydney Harris
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