

September 15, 2023

Melanie Loyzim, Commissioner  
Maine Department of Environmental Protection  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333-0017

**Re: Comments on Section 13(A)(1) of 38 MRS §2146 Stewardship Program for Packaging  
Topic of producer payments and reporting**

The Maine Grocers & Food Producers Association and the Retail Association of Maine are providing joint comments for the EPR Program for Packaging - Producer Payments and Reporting stakeholder discussions. Our business trade associations represent Main Street businesses including independently owned and operated grocery stores and supermarkets, general merchandise retailers, and convenience stores, distributors and supporting partners — together representing more than 450 members statewide.

Thank you for the opportunity to provide comments. Clarity on ‘producer payments and reporting’ is of the utmost concern to the participating producers. Producers will have to determine how to absorb or pass along the costs of this program and understanding the figures is critical to their budgets. In addition, the details will provide clarity on how to best move forward with their packaging strategy. Clearly set payments and incentive fees will also be important for businesses who are currently exempt so they will be able to determine costs as they approach surpassing the set ceilings (whether that be the sales exemption threshold or low volume threshold). With the recent inflation, brands are keenly aware of the end-consumer price and are concerned with how much more consumers can bear. Private-label and more price sensitive brands as well as specialty, higher priced brands are all anxiously awaiting the details of the program and payment structure to know the financial impact on their businesses.

**I. Flat fee option**

Overall, the EPR program should ensure equity amongst the producers. This may create additional administration on behalf of the Stewardship Organization (SO) but it’s important that the producer fees and structure equally reflect the waste and attributed fees. Without knowing the market in 2026 and all the necessary program details, it’s likely that the SO will be best suited to determine thresholds/tiers for appropriate levels. We encourage the DEP to include as much detail as possible in the RFP to set clear expectations of the SO and the launch of this significant program.

**II. Base payment**

Our understanding of the EPR model policy is that the base-payments/fees will cover ‘the cost of managing’ the material with additional financial need to support the administration/operating costs of the SO, DEP fees, and the additional goals of the program including investments in education and infrastructure. Since not 100% of the municipalities will participate at the start of the program, the producer payments that are *not* used to reimburse the municipalities for managing the materials will aid in the other associated costs. We do not support municipalities generating additional revenue from payments if they achieve further efficiencies (such as if the payments exceed the costs to manage the materials).

Therefore, any additional income should be utilized to enhance Mainer's knowledge of and access to recycling, not allocated to the municipality's bottom line.

We agree with the comments by NRCM in which producer payments would be for those materials (weight/volume) managed within the municipal systems (payments would not be expected for materials that are managed by the producers in alternative programs).

### **III. Incentives**

The term incentive is somewhat contradictory and we agree with the department's explanation that, "all incentives be structured as penalties." There will not be a scenario where a producer while they are offering a less-toxic, more reusable, or clearly recyclable labeled item will pay less into the system than the cost to recycle the material plus, at minimum, a cost to sustain the SO. The incentives instead will be a 'lesser of a penalty', an additional cost/payment on top of the base-payment. It appears to be designed as though it's a fee structure of the penalties on top of the base per ton material management fee.

We agree with the comments shared during the stakeholder meeting on July 11<sup>th</sup>, that material that generates income for the municipalities should be included in the equation for reducing that producer's materials fee. If the material is generating revenue for the municipality (therefore, not a total cost to manage) this should be reflected in the fee calculation. The municipality in return should only be reimbursed for the true cost to the municipality of the material management.

Prioritizing recyclability may be challenging for set industries and there should be a clear strategy for the use of incentives to move the market.

If/when the program is going to consider changing producer payments and incentive fees there must be an adequate amount of time to communicate the change. Producers must have time to determine adequate availability for materials and how other sourced materials compare relative to costs and performance.

We, too, support fee reductions/bonuses/incentives for those producers who proactively seek to improve their packaging to meet the additional goals of being less-toxic, reusable, and prominent labels promoting recycling. We also support efforts to phase-in details of the program as participation and necessary components evolve; a balance between clearly stated feasible requirements and on-going program development.

There needs to be an appropriate balance between the incentives/penalties that inspire and evolve packaging material (to become less-toxic, reusable, and labels promoting recycling) paired with market data that evaluates alternative options as to not over-penalize when modern alternatives do not exist in the market. We agree with the comments by NRCM acknowledging this challenge. There may be times when it is appropriate for the manufacturers/producers to advise the necessity of particular packaging choices or for the SO to provide criteria/guidance for producers to aid in their decision making. We agree with the comments shared on the 11<sup>th</sup> that the incentives/penalties may be best approached as a second phase to the program, focusing on recycling and reuse as the highest priority.

### **IV. Reporting for low-volume producers**

Low volume producers are likely smaller-scale businesses. It's likely that they do not have the additional administrative staff to accurately determine some of the necessary details or access data easily. It may be beneficial to have the SO determine and suggest methodology for reporting tonnage for consistency.

## **V. Reporting for producers other than low-volume producers**

Again, it may be helpful for the SO to determine the methods and advise via posted materials available to the producer community. Potentially, the SO and DEP determine thresholds and indicate metrics which determine additional verification. Clear program expectations, compliance standards, and expected data points across municipalities and producers will assist in consistency.

We continue to reiterate the complexities of the supply chain and the challenges that brand-owners and producers will face being able to accurately determine the amount of product and therefore packaging sold into the Maine market. There needs to be flexibility within the rulemaking to allow for estimates, and without the strict necessity for *all* details.

## **VI. Estimates in reporting**

Similar comments to above, the complexities of the distribution chain will provide challenges in accuracy. Food (along with other products) does not simply leave the manufacturer and arrive directly at the retailer within Maine. Manufacturers, Brand-Owners, Producers may alternatively sell their items in large volumes, to specialty distributors, redistributors, or to warehouses. Product can make its way to a third-party online retailer without the manufacturer knowing so. These distributors/sellers along the path to the end-consumer can vary significantly and have other partners unknown to the producers along the way. There must be allowance for some variation in reporting, without penalty, to allow for some unknowns. We also express hesitation that producers can rely on their retail partners for sales data.

There will be some administrative work to determine the components of the packaging and the varying materials within the packaging as a whole. The more complex the packaging, the more work to calculate the varying components. Producers will need to determine (if they do not know already) the individual weight of the packaging material components to estimate its weight without product included. We continue to express that participation in the program will require additional administrative work and is an additional expense for the producers to evaluate and advise accurate reports.

## **UPCs (Universal Product Codes)**

We appreciate the discussion on July 11<sup>th</sup> specific to UPCs and agree with the challenges associated with the tracking/reporting of UPCs. As suggested, utilizing prefixes or identifiers that help convey product and material details without the complexities of the ever-evolving product details specific to the UPC is a welcomed proposal.

## **VII. Timing**

As noted during the stakeholder discussion, the program will likely need to operate on forwarding estimates based on historical data and then adjusted based year-end actuals.

## **Program's Start-Up Operating Costs:**

Comments during the stakeholder discussion suggested an initial 'registration fee' or 'licensing' structure to fund the start-up costs of the SO. We could anticipate that the SO within the RFP would accurately describe the projected costs of launching the program and administratively maintaining it. If overestimates are made, and initial payments are made by producers to launch the program, credit should be adequately applied to future payments or a form of reimbursement within a reasonable time. The SO should not be allowed to sit on a substantial amount of funding as it could be working capital for producers (whether the initial start-up collection costs or on-going overall payment collection revenue).

It is unclear whether or not producers' determined payment amounts will be set within the first 180 days. The SO's ability to accurately determine the producer payments will be critical and it will need to be communicated clearly, at the earliest

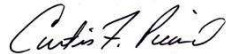
convenience, for businesses to be able to prepare for their anticipated payments. The SO will likely need to set criteria to determine the scale/tier/level of responsibility, as equitable as possible, for participating producers.

We, too, continue to support efforts that are regional or national for consistency, ease in participation, and evolution of the packaging market.

Thank you for the continued opportunity to share feedback. We look forward to bringing forward additional comments as the stakeholder process continues.



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