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

Dear Commissioner Loyzim,

Promulgating the rules for Maine's new extended producer responsibility (EPR) program is a major step, and we applaud the DEP team for providing the reposting to allow additional time for comments. Statute 2146 has very clear goals that collectively aim to advance the circularity of packaging. Our team is offering comments on the regulation relating to the use of certification systems to verify the post-consumer recycled content in packaging as outlined in Goal #9. Third-party certification is a valuable tool that can support the rules in multiple methods; however, certification standards are not all created equally, and by ensuring the correct systems are adopted in regulation, the better that the PCR goals can be delivered for Statute 2146.

Section 9.B.(6). mentions weight of post-consumer recycled content requiring verification by third-party audit. We hope to provide insight and clarity on guidelines that should be further defined about the standards and processes for achieving third party certification, as improper guidance will create confusion and consumer doubt around the credibility of PCR claims.

About GreenBlue and the Recycled Material Standard

The <u>Recycled Material Standard (RMS)</u> is a project of <u>GreenBlue</u>, an environmental nonprofit dedicated to the sustainable use of materials in society. The standard establishes requirements necessary to assure the accuracy and transparency of claims with the support of a robust third-party certification system. The RMS serves as a voluntary, market-based tool to address the challenges that brands, their suppliers, and the recycling industry face in trying to incorporate higher amounts of recycled content into packaging or finished products. Independent Third-Party Verification for Postconsumer Recycled Content As the regulations are currently written, DEP could allow any third-party audit, certification, or group to provide attestation of post-consumer recycled content use in covered products. It would be prudent to require third-party certification standards to be utilized in the process and require auditing by ISO 17065 compliant certification bodies. At just a very high level, standards are developed to create consistency in measuring performance. Certification bodies are then accredited to audit against those standards. This creates consistency in the auditing process from certification body to certification body. The draft regulations do not propose any guidance on the criteria for third party audits or requirements for the organizations providing certification decisions.

This approach may prove to be more challenging for the Stewardship Organization (SO) to manage, as inconsistency of methods and levels of traceability will allow companies to obtain low-quality audits confirming only part of the supply chain. If consumers have uncertainty as to whether products are attributed the recycled content they're claiming, the credibility of the whole program is brought into question. Additionally, the SO will have to manage incoming reports from many different groups with no alignment of auditing criteria or quality of assessment. Requiring certification standards and having specific standards approved for use by DEP or the SO would simplify management of information and credibility of reporting.

Resin-level certification vs. Chain of Custody Certification

There are currently two strategies in the marketplace for the certification of recycled materials. The first is simply an audit of the recycler to verify the resin manufactured at the beginning of the supply chain is, indeed, sourced from post-consumer and/or post-industrial sources. No further auditing occurs with these certifications, and companies communicate with a simple passing of letters. This leaves many opportunities for material to be switched, mixed in different percentages than claimed originally, or sent to an incorrect customer.

The second certification method is a chain-of-custody certification system. Chain of custody ensures the claim of recycled materials offered by the recycler is appropriately conveyed through the manufacturing supply chain. Each organization taking ownership of the recycled material must be audited, with shipping documentation of every material transfer between organizations required to contain specific declarations to identify recycled content. This provides a means of certainty that final products containing material with specified claims can be traced back to the original source.

The risk of not specifying the use of chain of custody means that the claim of recycled content offered by the recycler could get miscommunicated in the compounding, converting, filling, and labeling phases of manufacturing. Chain of custody certification has been widely embraced in the paper industry (being the core of FSC and SFI certification standards) and should be similarly embraced in plastics manufacturing. Chain of custody certification for custody certification means that brand claims can be authenticated through every step of the

supply chain, which could be two or three steps removed from the recycled material supplier.

GreenBlue recommends DEP adopt a requirement for chain of custody certification where third-party validation is referenced and for any other reporting of post-consumer content

The rulemaking text specifically mentions reporting must be specific to the producer's packaging material. This would be containers for products sold to consumers, not the resin produced by a recycler. The only method to provide assurance of the claim at the end of the manufacturing process by producers is chain of custody certification.

GreenBlue also recommends that DEP require chain of custody standards that have been developed through a voluntary consensus standard process, as defined by the Federal Trade Commission (FTC) Green Guides. Voluntary Consensus Standards are developed with transparent governance, stakeholder feedback, and public comment. We also recommend DEP reference standards that meet the US Plastics Pact PCR Certification Principles, requiring chain of custody and ISO 22095-compliant accounting methods.

We are including an educational document outlining benefits of proper certification definition in rulemaking and additional was certification can support regulatory reporting.

Responsible End Market Certification

Requirements outlined in the rules mirror those in other EPR states, which are implementing a certification process for reclaimers called *Responsible End Markets (REM)*. For REM, MRF's and reclaimers must receive audits confirming facilities meet criteria of legal compliance, transparent disposition reporting, environmental soundness, and yield. Requirements in Chapter 428 such as determining weight and volume of material types, calculating tons of material recycled, defining the point at which recycling occurs, and confirming no intentional addition of toxic chemicals would be items verified in the REM auditing process.

As these components have not been audited together before, RMS has created a REM certification standard and procedure that should be recommended for SO implementation. It will provide a standard methodology to confirm when materials are in fact processed as recycling, that each municipality can account for proper amounts of packaging collected and effectively managed, identify contamination volumes, and check for addition of intentionally added toxics in the recycling process. Standardizing certification of criteria for municipalities and reclaimers will also reduce effort required by the SO, as third-party standards can manage the process, and efforts from other states will not be duplicated. Combined with chain of custody certification, it is possible to verify the transformation of material all the way into new packaging. The RMS team is hopeful to discuss this new program and help the DEP streamline the audits and reporting for critical program criteria.

Certification Standards Supporting Alternative Compliance

During enforcement of Statute 2146, there are many opportunities for third party recycled certification to provide the DEP alternative compliance methods that support producer adoption of post-consumer recycled material and scaling availability of PCR for use in packaging. Mass balance certification and Book and Claim certificates offer action-based solutions when direct compliance may not be possible.

Section 10.A.3.(a). outlines the incentive fees for producers not meeting minimum PCR goals. Where the 10% per ton fee is applied, other options may be available to cover the balance of PCR content not contained in packaging. DEP should seek to allow mass balance PCR claims to be applied to packaging. Mass balance is a chain of custody method defined in ISO 22095 for accounting specific material characteristics through a supply chain. It applies a longer time window for accounting PCR input into an organization and allocation of claims to outgoing rather than following the specific physical blend contained in the material. When supported by third party certification, mass balance is a widely recognized method for providing claims in end products – sustainable forestry, fair trade, and sustainable palm oil certifications employ the method regularly.

DEP could allow mass balance claims (properly outlined in certification standard guidelines) across all PCR reporting or for instances when minimums cannot be met through direct material incorporation (also known as Controlled Blending), such as lack of availability of food-safe PCR for food and beverage packaging. The US Plastics Pact certification principles outline reputable methods for utilizing mass balance, including using Proportional Allocation and requiring any material converted to fuel to be treated as a loss.

Additionally, when producers can't meet PCR goals, solutions may be provided as replacement or in conjunction with per ton fees. Certain certification standards like the RMS enable the creation, transfer, and retirement of tradable commodities called Book and Claim certificates. This ISO 22095 accounting method is the same system upon which Renewable Energy Credits (RECs) are founded. Instead of Megawatt-Hours of electricity, tons of recycled material processing are verified in an audit and allowed for trading to third parties. RMS employs a certificate called Attributes of Recycled Content (ARCs). ARCs provide quantified validation of taking accountability for additional recycled processing in new investments beyond the status quo. Should producers not meet their PCR goals, DEP could recommend producers procure and retire ARC certificates for matching resins in their packaging.

This way, instead of simply paying fines, companies can directly support investments in capacity expansion by recyclers and scale the system to provide more PCR for their uses in the future. Similarly to how energy utilities must maintain minimum renewable portfolios through REC procurement, producers could be asked to maintain PCR portfolios when they are unable to add enough directly into their own packaging. Book and claim applications

could be applied to Litter Audit responsibilities in 10.A.3.(c). or in support of exemption requests from PCR fees in section 21.

Mass balance accounting and book and claim guidelines are explained in our minimum PCR rulemaking education guide.

<u>Conclusion</u>

GreenBlue appreciates the opportunity to weigh in on the draft rules as part of the Statute 2146 rulemaking process. We are happy to be a resource to DEP as it moves through this process and look forward to future input opportunities as it relates to certification standards to enable the circular economy.

Sincerely,

Ross Bergman Director, Recycled Material Standard GreenBlue