May 31, 2024

To: Oregon Department of Environmental Quality (DEQ)

RE: Proposed Program Plan for the Plastic Pollution and Recycling Modernization Act

To whom it may concern:

Thank you for the opportunity to submit comments on behalf of Upstream regarding the draft packaging Extended Producer Responsibility (EPR) program plan submitted by Circular Action Alliance (CAA). Upstream is a US-based non-profit and leading change agency for the reuse movement in the US and Canada. We accelerate the transition from our current throw-away economy to one that is regenerative, circular and equitable by normalizing reuse, growing and supporting the reuse industry, and creating an enabling policy environment for reuse. We were also honored to have been one of the organizations appointed to the second Rulemaking Advisory Committee for the Plastic Pollution and Recycling Modernization Act (RMA), and appreciate this chance to provide further comments on the program.

Packaging EPR programs like Oregon’s represent a vital opportunity to scale reuse systems. While decades of experience across Canada, Europe and elsewhere have demonstrated that EPR improves collection and recycling, its application to waste prevention and reuse is both a new frontier and an absolute necessity. These programs must emphasize source reduction and reuse over recycling if we wish to address the significant carbon footprint of everyday packaged goods - one of the greatest contributors to US greenhouse gas emissions when analyzed through a consumption-based lens.¹

According to DEQ’s own estimates, even flawless recycling implemented nation-wide could only deliver roughly one third of the necessary greenhouse gas emissions reductions we desperately need within the packaging sector to live within our planetary boundaries.² Reduction and reuse are crucial strategies for filling in the gaps.

Oregon’s first program plan is an early milestone that will set the tone for years to come. We appreciate the significant efforts of CAA in compiling this initial plan - the first of its kind in the United States.

However, we feel that this first draft falls short of a robust consideration and incorporation of reuse. We have outlined our comments in detail below.

**Overarching Tone**
It is clear from the very first page of the draft program plan that CAA has not taken a holistic approach to its program planning. The plan is entirely focused on recycling. The four “Goals of the Program” make no mention of upstream waste prevention, source reduction, or reuse:

“1. Reduce the negative environmental, social, and health impacts from the end-of-life management of products and packaging.  
2. Increase the diversion of recyclable materials from disposal.  
3. Improve public participation, understanding and equity in the state’s recycling system.  
4. Create a system that fulfills the needs and regulatory requirements of the PRO, its members, and all other relevant stakeholders.”

A similar focus on recycling is evident throughout descriptions of the key program elements within the Executive Summary, which once again make no mention of waste prevention, packaging redesign, source reduction, or reuse.

In a section of the plan outlining its “Materials Strategy,” CAA includes the following note: “CAA will uphold Oregon’s materials management hierarchy, specifically with regard to the third principle: recycle material that cannot be reused, with preference given to recycling pathways, methods and responsible end markets that result in the greatest reduction of net negative impacts on human well-being and environmental health.” Here CAA is explicitly acknowledging a focus only on the third rung of the materials management hierarchy while entirely ignoring reduction and reuse - two far more beneficial interventions.

Not only are the overall tone and overemphasis on recycling throughout the draft program plan inconsistent with the demands of our global and national climate crisis; they are inconsistent with the goals of the RMA, which states upfront that “It is the State of Oregon’s policy to prioritize practices that prevent and reduce the negative environmental, social, economic and health impacts of production, consumption and end-of-use management of products and packaging across their life cycle, and that it is the obligation of producers to share in the responsibility to reduce those impacts” (ORS 459A.860).

ORS 459A.896(2) states that “A producer responsibility organization shall, to the extent practicable, ensure that covered products collected in this state for the purpose of recovery and described in ORS 459A.869 (7) will be:  
(a) Delivered to responsible end markets;  
(b) Managed according to the hierarchy of materials management options under ORS 459.015 (2); and  
(c) Managed in an environmentally protective way through to final disposition.”

Oregon’s materials management hierarchy clearly and explicitly places waste reduction and reuse above recycling and other downstream interventions, and recovery is broader than recycling alone. A
best-in-class PRO that understands the full scope of the RMA, the severity of our climate crisis, and the significant economic, social, and environmental co-benefits of reuse systems will plan to use a portion of its program funds to build and/or retrofit shared statewide infrastructure that can accommodate an increasing market share of returnable reusable packaging from its member producers. Such a forward-thinking PRO will of course also plan to provide technical assistance and resources to its members as they transition to reusables, helping them take advantage of the new shared system and infrastructure built with their pooled funds. Such a shared system should be complementary to and perhaps even interoperable with Oregon’s existing high-performing deposit-return scheme, existing and expanding recycling collection and sorting systems, and any future uses of the state-managed Waste Prevention and Reuse Fund established under ORS 459A.950 (further mentioned below).

**Eco-Modulated Fees:**
It is a statutory requirement in Oregon that eco-modulated fees are incorporated into the producer fee structure from the start. This has been discussed at length by the second Rulemaking Advisory Committee and was also noted by DEQ in its checklist for the Recycling Council’s review of program fees.³ In its initial draft plan, CAA has instead stated an intention to establish interim base fees and “introduce a graduated fee algorithm to provide producers with practical and measurable criteria upon which to qualify for fee incentives and disincentives in future program plan amendments.”

We understand that eco-modulated fees are a relatively new concept to EPR legislation around the world, but even two or three years of simplistic base fees will have an impact on packaging design. Eco-modulation must be incorporated from the very start, with an understanding that the fee structure will be updated as often as annually and that adjustments will almost certainly be needed as CAA and producers learn from their efforts.

Additionally, while we appreciate that the RMA requires the fee structure to ensure that reusable packaging will only pay once upon exiting the market in Oregon, we note that it is also important to ensure that any fee structure proposed by CAA (or any PRO) incentivizes reusable packaging in practice by counterbalancing any weight-based metrics with discounts for reusables in high-performing systems. Reusables are typically heavier than disposables and therefore - without a proper counterbalance to account for their outsized environmental benefits - may end up being charged more than their disposable counterparts in a weight-dominated system. Even if this charge is only applied once, it must not be set at such a high level as to effectively disincentivize reuse. Please ensure this regrettable potential outcome is avoided at all costs by requiring CAA to include clear discounts for reusables into its eco-modulated fee structure. The one-time fee for any type of reusable packaging must be low enough to incentivize producers to choose reusables over disposables in practice. In other words, it must be abundantly clear to individual producers that they will be rewarded for choosing reuse.

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Building reuse systems:
CAA makes mention of reuse in a short section on page 47 of its proposed plan, as follows: “CAA will explore opportunities for supporting reusable packaging at depot locations and events. As depot locations and events will be staffed there may be opportunities for collection of reusable packaging.

“If member producers express interest in introducing reusable packaging formats, CAA will work [with] those producers and other stakeholders to assess the logistics and operational requirements required to facilitate collection through the PRO depot system. This will likely require additional reverse logistics arrangements specific to refillable packaging. Depending on the status of the material in question, incorporation of reusable packaging into the PRO acceptance collection system may also require material reporting category changes and program plan amendments. CAA will work with producers to assess the full financial and operational implications of managing reusable packaging. Where appropriate trials may be implemented to assess feasibility.”

Simply put, this vision is insufficient for the role that CAA should be playing in supporting its members to transition to reusable packaging. As we noted above, it is more than appropriate for funding from obligated producers under packaging EPR schemes to be used in direct support of reuse systems. If we were truly to align program funding with the materials management hierarchy and the goals of the RMA, the majority of funds would be directed toward source reduction and reuse and the leftovers would go to recycling those packages that couldn’t be source-reduced or reused. In reality, we continue to see the legacy of an overemphasis on recycling manifest in emerging packaging EPR policies in the US.

The best way to spend EPR funds when it comes to reuse is to build a shared reuse infrastructure across the entire state that enables producers to sell their goods in reusable packaging, and to provide technical assistance and active encouragement to producers (if not explicit enforceable targets, which are absent from the RMA) to help them make this necessary transition. Without an efficient, interoperable, shared infrastructure (including collection points, transportation mechanisms, sorting and processing facilities, and cleaning operations), reuse will not scale. Just as we have acknowledged the injustice of placing the burdens of recycling systems on taxpayers through the onset of EPR policies for packaging; so too we must acknowledge that taxpayers should not be responsible for building reuse systems that will ultimately serve producers by accommodating the packaging they put on the market. Producers lack incentives to share infrastructure with their competitors, which is why pooling funds under an EPR scheme is an ideal opportunity to scale and maintain reuse systems.

Similarly, without active encouragement and incentivization by CAA, many producers will be slow to adopt reusables. Additional program funds can and should be used for technical assistance to support producers in transitioning their packaging to reusable formats that take advantage of the new shared infrastructure. Waiting for producers to express an interest in reuse is a lackluster and unambitious approach that will not achieve the goals of the RMA in the timeframe needed to address the climate crisis. Rather, CAA should be providing information on existing and emerging reuse facilities and packaging formats, leading efforts to harmonize and standardize reusable packaging across its member brands within distinct product categories, making connections and “matchmaking” members with reuse service providers, and overall strongly encouraging its members to choose reuse. Organizations like the
Reuse Industry Service Alliance (RISA), which Upstream plans to co-launch with ReLoop in the coming year, will be able to facilitate some of these services for CAA.

Collecting reusables at depots and events will not be sufficiently convenient to allow reusables to operate at scale and reflects a lack of systems-thinking on the part of CAA. **Returnable reusable packaging must be collected everywhere that recyclables are collected if the system is to be convenient and accessible to all.** There are several active pilots in the US and Canada working to demonstrate that commingled curbside collection of reusable packaging is not only logistically but also economically viable. There are also existing reuse service providers, such as EarthWare in Calgary, Alberta, that have begun to leverage existing DRS infrastructure to collect non-beverage reusables. Given Oregon’s famously high-performing DRS, this is a ripe area for CAA to explore. We encourage CAA to look to the existing coordination between Recycle BC and Encorps Pacific as a nearby example of how EPR and DRS programs can collaborate to ensure all materials are collected and delivered to appropriate end markets.

As CAA makes investments into the expansion of recycling services statewide in Oregon, it should be ensuring those investments and any new infrastructure can accommodate an increasing market share of reusable packaging from its members. The vision laid out in CAA’s section titled “Closing Gaps to Meet Convenience Standards,” which includes exploration of on-route/curbside collection services for various covered materials beyond the universal statewide collection list, is a perfect example of the type of creative thinking that could be applied to collection of returnable reusable packaging. A siloed approach to reuse will not result in the high return rates necessary to optimize reuse systems for environmental and economic benefits.

Finally, we note that in its short paragraph on reuse, CAA has interchanged the terms “refillable packaging” and “reusable packaging.” This is not best practice and we strongly encourage both DEQ and CAA to align all mentions of reusable packaging with Upstream’s recommended definitions. Upstream generally defines reusable packaging as follows:

- **Returnable Reusable Packaging:** Packaging designed to be *recirculated* multiple times for the same or similar purpose *in its original format* in a *system* for reuse, that is *owned by producers or a third party* and is *returned* to producers or a third party after each use.
- **Refillable Packaging:** Packaging designed to be *refilled by consumers* multiple times for the same or similar purpose *in its original format*, and that is *sold or provided to consumers once* for the duration of its usable life.

**Regulatory Costs (Appendix E):**

In Appendix E, CAA used the word “potential” when referring to payments into the Waste Prevention and Reuse Fund, as follows: “**Regulatory costs include the Program Plan review fee, annual administrative fees payable to DEQ and potential CAA contributions to the Waste Prevention and Reuse Fund. As per ORS 459A.941, CAA’s initial estimate has assumed annual contributions equivalent to 10% of its annual expenditures based on a rolling three-year average, starting in 2026. These estimates will be revised once RMA rules related to the calculation of these amounts are finalized.**” These payments are a mandatory component of Oregon’s program and CAA should be planning accordingly. We request that DEQ require the word “potential” to be struck from this paragraph, perhaps using “estimated” instead if the intent is to acknowledge that the exact payment amounts are as yet unknown.
We also note that the Waste Prevention and Reuse Fund - an important component of the RMA - is not mentioned anywhere else in CAA’s initial draft program plan. While we understand that these funds will be managed by OR DEQ, it would be prudent for CAA to anticipate potential uses of the Funds in its program plan. As mentioned above, a best-in-class PRO will be planning to invest in reuse systems and technical assistance across the state for its member producers. CAA should prepare to harmonize its own efforts on reuse with future expenditures from the Fund to optimize outcomes for all Oregonians.

**Measures to Protect Ratepayers from Increased Costs:**
Within a section titled “Measures to Protect Ratepayers from Increased Costs,” CAA notes that “New sources of producer funding directed toward recycling system improvements that should provide rate payer protection include … Producer funding for waste prevention and reuse projects designed to lower the environmental impact of covered products.”

We will end our comments by noting that we agree that diverting materials out of the waste and recycling stream through reuse is an opportunity to reduce ratepayer costs for recycling. We would welcome further elaboration on this vision by CAA and we hope to see a future draft of this program plan that demonstrates greater ambition and a comprehensive systems approach to achieve this end.

Thank you again for the opportunity to comment on CAA’s first draft program plan for packaging EPR in Oregon. For any questions, please feel free to contact me at sydney@upstreamsolutions.org. We are more than happy to work directly with any DEQ or CAA staff to support the incorporation of a strong reuse vision into Oregon’s packaging EPR program.

Sincerely,

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Upstream