

Packaging Extended Producer Responsibility Advisory Board

Wednesday, May 20, 2026

Start 1:00 p.m. - End 4:00 p.m. CT

[MS Teams](#) | Phone conference ID: 414 815 001# | Call in (audio only) +1 651-395-7448

Meeting Location: Lower Level Central, MPCA St Paul Offices, 520 Lafayette Rd N., St. Paul, MN 55155

If attending in person, RSVP to packaging.mPCA@state.mn.us by noon on Friday, May 15.

Agenda

Time	Topic	Speaker	Type	Page
1:00 p.m.	Call to order Meeting logistics Welcome and roll call / attendance Approve agenda Approve April 15 meeting summary	Chair Reinhardt	Action	2
1:10 p.m.	Updates from CAA	CAA	Information	6
1:30 p.m.	Updates from MPCA	MPCA	Information	
1:45 p.m.	Covered materials and criteria for needs assessment	Eunomia	Information	
2:45 p.m.	Break			
3:00 p.m.	Subcommittee report and recommendations discussion: recycling	Jon Steiner		8
	Subcommittee report and recommendations discussion: composting	Shannon Pinc		14
	Subcommittee report and recommendations discussion: reuse	Mac Sellars		15
	Subcommittee report and recommendations discussion: waste reduction	Gabbie Batzko-Conley		18
3:50 p.m.	Public comment			
4:00 p.m.	Adjourn			

Attachment: NWRA MN Comments and Correspondence on the Needs Assessment Survey 4-27-26

Packaging EPR Advisory Board

Material inclusion policy

When an individual or entity would like to have a letter or statement communicated to the full Packaging Extended Producer Responsibility (EPR) Advisory Board, the request shall be submitted to the chair of the board for consideration. The chair will determine if the letter or statement will be included in an upcoming board packet. This determination and the submitted materials must be provided to the agency at least five business days before the meeting to be included, otherwise it will be considered for the next available board packet. Messages from individuals or community members will have personal contact information (i.e., email or home address) obscured for privacy reasons. Contact information for the chair of the Packaging EPR Advisory Board is available at <https://commissionsandappointments.sos.mn.gov/Agency/Details/375>

Packaging EPR Advisory Board

Meeting Summary

Virtual via Microsoft Teams or in-person at the MPCA St. Paul Office | 3 hours

Wednesday, April 15, 2026 | 1:00 p.m. – 4:00 p.m. CT

Recording available at: <https://www.pca.state.mn.us/events-and-meetings/packaging-extended-producer-responsibility-advisory-board-meeting-2026-04-15>

Attendance

Board Member Attendance

Present (<i>9 members required for quorum</i>)			Absent
Gabbie Batzko-Conley	Kirk Koudelka	Maggie Schuppert	Bill Keegan
Sara Bixby	Gregory Melkonian	Mac Sellars	
Megan Daum	Shoshana Micon	Jon Steiner	
Kate Davenport	Shannon Pinc		
Sydney Harris	Victoria Reinhardt (Chair)		
Miriam Holsinger (Vice Chair)	Allie Sauers		

Guest Presenters: Kris Coperine, CAA; Gretchen Salter, Safer States; Megan Byers, Association of Plastic Recyclers

Agency Staff: Mallory Anderson, Molly Flynn, John Gilkeson, Quinn Carr, Annika Bergen, Tina Patton, Mark Snyder, Aubrey Sondrol, Colleen Hetzel

Participants: Alejandro Torres, Amos Briggs, Angiulo Damiani, Anja Aniere, Apurupa Gorthi, Ashley Downes, Becky, Bridget Anderson, Bryce Johnson, Cafferty Alicia (BSH GCM-NA), Cait Harrington-Smith, Carol Patterson, Cathleen Hall, Dan Donkers, DeNeile Cooper, Dylan Reisig, Eleanor Aschoff, Erin McDonald, Erinne Christman, Gabi Romenesko, Garth Hickle, Geralyn Lasher, Hannah Prah, Janell Schroeder, Julie Gilbertson, Julie Ketchum, Justin, Laura S. Hann, Leah Batstone-Cunningham, Lori Olinger, Lucy Mullany, Marissa L Michalkiewicz, Matt Chmielewski, Melissa Finnegan, Michelle Hunt, Mike Robertson, Scott Moening, Neil Marfatia, David Nickelson, Peter Bierbaum, Peter Hargreave, Rebecca Gaertner, Ryan O'Gara, Shayna Petit, Suna Bayrakal, Susan Bush, Tim Wilkin, Will Waggoner, Harrison Nix (Green Group Consulting)

Meeting notes

Call to order

Mallory Anderson conducted a roll call vote.

Present: Batzko-Conley, Bixby, Daum, Davenport, Harris, Holsinger, Melkonian, Micon, Pinc, Reinhardt, Sauers, Schuppert, Sellars, Steiner

Absent: Keegan

Approve agenda

Daum motioned and Pinc seconded. Mallory Anderson conducted a roll call vote.

Yes: Batzko-Conley, Bixby, Daum, Davenport, Harris, Holsinger, Melkonian, Micon, Pinc, Reinhardt, Sauers, Schuppert, Sellars, Steiner

No:

Absent: Keegan

Meeting minutes

Batzco-Conley motioned and Bixby seconded. Mallory Anderson conducted a roll call vote.

Yes: Batzco-Conley, Bixby, Daum, Davenport, Harris, Holsinger, Melkonian, Micon, Pinc, Reinhardt, Sauers, Schuppert, Sellars, Steiner

No:

Absent: Keegan

CAA updates

Provided an overview of how the needs assessment leads into the stewardship plan required to be completed by CAA and submitted to the advisory board for pre-review and ultimately to the MPCA for review and ultimate approval. CAA is undertaking an effort to create a standard for responsible end markets, that draft standard will be available for public comment in May. Conversation around what goes into reimbursement rates and how they'll work – including how CAA may push “efficiency” into the system. Conversation around work CAA may complete after the needs assessment to inform the proposed stewardship plan.

Agency updates

Update on survey process for needs assessment and status of key surveys.

Subcommittee chair updates

A brief comment by each subcommittee chair on the status of their committee and what was discussed at kick-off meetings.

Overview of toxics

An overview of key parts of the Packaging Waste and Cost Reduction Act that require definition or further clarification for the Needs Assessment and therefore input from advisory board were discussed.

Gretchen Selter – Safer States

Provided an overview of the key public health concerns associated with toxics and toxics present in packaging. Provided an overview of laws in MN and around the country and how they address toxics in products.

Megan Byers -- Association of Plastic Recyclers

Provided an overview of the US FDA process for regulating food-grade plastic packaging, highlighting where contaminants are coming from, what recyclers and reclaimers do about it, and steps that can be done to further reduce contaminants.

Toxic Substance and related provisions in MN Packaging Waste & Cost Reduction Act

Overview of how toxics are addressed in the MN Packaging Waste & Cost Reduction Act including key definitions, and required activities by the Commissioner of the MPCA, the producer responsibility organization, and producers.

Public comment

Julie Ketchum, WM - Julie Ketchum, Area Director of Government Affairs for WM Waste Management. I just wanted to comment on the proprietary information discussion that occurred earlier and then just recently on a different matter as far as products that might have proprietary ingredients, chemicals. From our standpoint, WM, I am concerned, and we've expressed through NWRA concerns multiple times to the agency regarding the proprietary nature of the questions that are being asked in the survey but just wanted to raise that. There are a lot of questions, very granular. It's a resource intensive effort for a large company like WM when we have multiple sites that we will have to report for. But yes, again, echoing what was said earlier, our industry really wants to work with the information, with the program, we want to be able to provide that information, but it has to be protected. Designating it as non-public is not really, in our eyes, it's not a legal document, so we were,

we've been asking for a non-disclosure agreement for this purpose. We've also raised issues about the parties that are involved in collecting the data, uploading to a state agency. There's no other state that's doing that. Some of the consultants all do, some of them do municipal contracting as well. So there's that concern. We've raised these issues multiple times to the agency in written documents, so you can try to access those for more information.

Notes compiled by: Mallory Anderson

[Minnesota's Packaging Extended Producer Responsibility Advisory Board](#)

Circular Action Alliance Opens Public Comment Period on Responsible Markets (REM) Standard

[Press Release](#)

May 5

Draft certification standard supports consistent implementation of EPR requirements and increased transparency across recycling markets

May 5, 2026 — Circular Action Alliance (CAA) today announced the opening of a public comment period on a draft Certification Standard for Responsible Markets: For Recycling of Paper, Packaging, and Food Serviceware (REM Standard), a certification standard designed to support verification of REM requirements established under U.S. Extended Producer Responsibility (EPR) laws for paper, packaging and food serviceware.

The REM Standard is intended to provide a consistent framework for verifying how recyclable materials are managed downstream of collection and sorting while maintaining appropriate protections for confidential business information. As EPR laws are adopted across multiple states, the standard is designed to support greater alignment in how statutory requirements are implemented, rather than inconsistent state-by-state approaches.

“States are increasingly relying on responsible end market requirements as part of their EPR laws, and that reality demands credible, consistent tools to verify compliance,” said Shane Buckingham, Chief of Staff, Circular Action Alliance. “The REM Standard is about supporting those statutory requirements with a clear framework that works across jurisdictions while also improving transparency and confidence in recycling outcomes.”

Recycling systems have grown more complex as materials move through global and domestic supply chains, and regulators, producers and other interest holders are often required to make decisions with limited or inconsistent information about downstream market practices. By defining clear expectations and common criteria, the REM Standard is designed to improve visibility into material outcomes and strengthen confidence across the recycling value chain.

The REM Standard is being developed through a structured standards development process in collaboration with SCS Standards and Assurance Systems, an ANSI-accredited standard development organization with a focus on sustainability certification programs. The process includes input from a Standard Development Committee representing regulators, environmental organizations, academic experts and industry organizations, as well as public comment and consideration of pilot audit results.

“Well-designed standards play a critical role in bringing clarity, consistency and transparency to complex systems,” said Victoria Norman, Executive Director, SCS Standards and Assurance Systems. “The REM Standard is being developed to provide a clear and credible framework that supports regulatory requirements while giving interest holders confidence in how recycling outcomes are defined, evaluated and verified.”

The public comment period is open from May 5 through July 7, 2026. Interested parties are encouraged to review the draft REM Standard and submit feedback through the online public comment form. CAA expects to publish a high-level summary of key themes received during the consultation period.

To support participation, CAA will also host a public informational webinar on May 12, 2026, from 1:00–2:00 p.m. ET, introducing the draft standard, outlining key elements and explaining how to participate in the public comment process.

For more information, to access the draft standard or submit comments, visit: <https://circularactionalliance.org/rem-standard-public-comment>.

Media Contact: media@circularaction.org

About Circular Action Alliance [Circular Action Alliance \(CAA\)](#) is a U.S. Producer Responsibility Organization (PRO) dedicated to implementing effective Extended Producer Responsibility (EPR) laws for paper and packaging. As a nonprofit, producer-led organization, CAA is committed to helping producers comply with EPR laws, delivering harmonized best-in-class compliance services and to working with governments, businesses and communities to reduce waste and recycle more. CAA was founded in 2022 and is led by producers representing the food, beverage, consumer goods, foodservice and retail industries.

Recycling Subcommittee

Packaging EPR Advisory Board

Meeting held

First kick-off Wednesday, March 18, 2026 2:45 pm – 4:00 pm

Attendees at meeting: Jon Steiner (chair), Sara Bixby, Kate Davenport, Shoshana Micon, Bill Keegan, Gregory Melconian, Miriam Holsinger, Gabbie Batzko-Conley, Kris Coperine (CAA), Peter Hargreave (CAA), Susan Heffron (MPCA), Mallory Anderson (MPCA), Molly Flynn (MPCA)

Goal: pre-review content to prepare board members for discussion of the draft report, and be prepared to provide feedback on key issues

- Introductions
- Review resources supplied (reading materials) – are these the ones that should be reviewed? Any others? Skip any?
 - File sharing
- Go over “objectives” of the committee and anticipated timeline

Findings

Summary of discussion at the meeting(s). Including resources reviewed and cited in the discussion.

- Discussed RFP process across the state as a way for Eunomia to get access to cost data
 - Encourage Eunomia to go through RFP responses that have been submitted to cities and counties
- Concerns expressed if the surveys are asking the right questions
- NWRA has expressed concern regarding survey data/ and have not received responses
- Concerns expressed that counties and haulers may not be aware or realize the impact EPR may have on their facilities/contracts
 - Some counties have sent out notifications to their haulers to express the importance of getting engaged
- Interest in discussing with the subcommittee the flow of money to MRFs – might help articulate reimbursement
- Questions about how should recyclables be measured in the absence of waste composition data
- Strong interest for Eunomia to attend subcommittee meetings
 - Ask for Eunomia to provide methodology, and specific asks from the subcommittee
 - Subcommittee would like Eunomia to provide something to react to
 - Interest to wait to meet until Eunomia is able to attend
- Discussed options for shared folder to compile data sources/resources

Recommendations

Summary of recommendation for board to discuss and make a motion to approve.

No recommendations determined at 3/18 meeting.

Supporting documents

Supporting documents supplied to this subcommittee were a summary from Eunomia on levers for change an investment, a portion of the Needs Assessment most recently completed for Colorado’s EPR for Packaging program, and an executive summary of the container deposit study completed in Washington state.

Recycling Subcommittee

Packaging EPR Advisory Board

Meeting held

Meeting 1 Wednesday, May 6, 2026 3:00 pm – 4:30 pm

Attendees at meeting: Jon Steiner (chair), Sara Bixby, Shoshana Micon, Bill Keegan, Gregory Melconian, Miriam Holsinger, Stacy Katz (CAA) Peter Hargreave (CAA), Susan Heffron (MPCA), Elizabeth Kuzila (MPCA), Mallory Anderson (MPCA), Molly Flynn (MPCA)

Not Attending: Kate Davenport

Goal: Pre-review Eunomia Proposed 3-Tier Covered Material List for use in the Needs Assessment and provide recommendation on concept to board members for discussion of the draft report, and be prepared to provide feedback on key issues

Agenda

1. Update on Eunomia Contract (MPCA)
2. Eunomia Video: Proposed Covered Material List
 - Structure & Rationale for Proposed Covered Material List
 - Eunomia Covered Material List (Proposed – Not Approved)
 - Input / Recommendation on Eunomia List
3. Review/Compare Eunomia List to Advisory Board Covered Material Subcmte List
 - Compare Lists (Eunomia & Covered Material Sbcmte Lists Provided)
 - Input / Recommendation on Changes to List (Content / Additional Tiers)
4. Advisory Board Recommendation on Eunomia List
 - Recommendation on Tier 1 – 3 Concept & Content
 - Proposed Modifications & Recommendation to Advisory Board
5. Proposed Topic Areas for June 2026 Subcmte Meeting
 - Eunomia Requested Input/Feedback (tentative)
 - Criteria to Classify Covered Materials on List as Commingled or Alternative Collection
 - Considerations for Alternative Collection Programs
 - Other (Suggestions from Subcmte)
6. Adjourn - Next Subcmte Meeting: June 3rd @ 2:30pm

Meeting Notes

Summary of discussion at the meeting(s). Including resources reviewed and cited in the discussion.

MPCA provided update on the status of the Eunomia contract amendment. It has not been signed and therefore Eunomia was unable to attend the meeting. Eunomia recorded a short presentation with PowerPoint slides explaining its proposed Covered Materials List and approach to how it would be used in the Needs Assessment to subcommittee. (MPCA will be reviewing at the same time as the subcommittee).

Eunomia's recorded presentation explained its 3-tier approach to its proposed Covered Material List.

The Advisory Board's 2025 proposed Covered Material List was compared to the proposed Eunomia Covered Material List. What appeared to be errors, omissions and contradictions were provided in another proposed

Covered Material List (under Supporting Documents section). (Additions are underlined and highlighted in **YELLOW** and deleted text is in **RED** colored font and **STRIKETHROUGH**)

Discussed statewide requirements being set at tier 2 and/or if tier 1 or 3 would be more appropriate based on specific covered material.

Eunomia intends to use the proposed Covered Material List to set performance goals, identify need for future investment, criteria for eco-modulated fees, regulations to support EPR laws and goals and educate and shape policy to divert materials from disposal.

Goals would not be set to tier 3 but that could help inform the accepted collection list.

Several subcommittee members expressed interest in further development of tier 3 content, organization and terminology.

Concern around calling out all Small Format as its own category but not identifying Oversized Rigids which cannot be processed with general Rigids of the same material composition.

Would like to see additional discussion on Oversized Rigids, specifically:

- if Oversized Rigids should be a Tier 1, and each grade be its own Tier 2, or
- if Oversized Rigids should be listed in their own grade as its own Tier 3, or
- if Oversized Rigids should be listed as a new Tier 2 under the Tier 1 Other (much like Small Format currently appears in Eunomia's proposed List) and each grade listed as a Tier 3.

Would like to see additional discussion on Small Format, specifically:

- Each grade of Small Format plastic should be represented
- What Tier should Small Format appear on the List (Its own listing on Tier 1 or 2, or under each grade on Tier 2 or 3)
- Decisions on how to manage Small Format materials has considerations that extend beyond only the size of the material
- End markets need to be understood to determine (back into) how each grade should or shouldn't flow through the system.

Other concerns expressed related to Tier 2 and Tier 3:

- Request the development of more 'user-friendly' list in Tier 3 (a lot of specificity for some and overgeneralization of others)
- The Covered Material List could incorporate the grades at MRFs
- Get down to a minimum at the commodity the MRF is making.
- Expressed caution against the specificity for setting targets
- Questioned the benefit separating compostables (plastic vs paper)
- The Covered Material List should match what is going to be collected.
- Performance targets should align with the data to be collected.
- Concerns with tier 3 for paper.
- Concern with EPS packaging – non-food EPS much more recyclable than food EPS's.

Difficulty in determining a Covered Material is considered "Packaging" or "Product". Examples:

- Durable compostable bags purchased to put food scraps in them would be a "Product", but a durable compostable bag purchased to put produce into them would be considered "Packaging".
- Yard bags are made of paper and are a "Product", but a paper bag used to put products into would be "Packaging".
- Cardboard boxes purchased from a moving company would be a "Product", but a cardboard box to ship products in would be considered "Packaging"

Cardboard boxes, or other types of packaging, are Covered Materials regardless of their end of life management (Household Hazardous Waste programs, Construction & Demolition Debris Landfills, Etc.)

General agreement that performance targets and goals could be set at Tier 2, but additional consideration if for some materials Tier 1 or Tier 3 would be more beneficial.

All lined paper is not the same which should be further researched

If a Tier 1 for Reuseable Material is used, then a Tier 1 for Refillable Material should be added.

There was concern over if how Covered Materials are processed and managed aligns with reporting and goal setting mechanisms.

Questions about how to determine at the producer level and recycler end of the system if the Covered Materials originated from covered or non-covered entities (businesses)

Concern if Producer targets should be set base on how the MRF manages the material or if another method is more appropriate.

Considerations for what materials belong in a recycling cart, are widely accepted at MRF's, or require alternative collections programs to be further discussed (possibly another Tier for these types of considerations).

Recommendations

There was general agreement to recommend support for Eunomia's Covered Material List format using a three (3) Tier approach.

There was general agreement that the Tier 2 level was the appropriate for setting goals, however the content of Tier 2 as currently proposed should be revisited.

There was general agreement that the structure of the Tiers, and where certain covered materials appeared in those tiers, should be further reviewed and modified.

Supporting documents

Supporting documents supplied to this subcommittee was a presentation and summary of a preliminary draft covered materials list and a recording of an overview by Eunomia. The subcommittee also consulted the list developed by the board in fall 2025.

Modified proposed Eunomia Covered Material List

The subcommittee believes additional consideration and modification to Tier 3 is warranted. The changes below represent the combination of the 2025 Covered Material subcommittee & Eunomia Proposed Covered Material List and indicated changes based on errors or omissions from the list.

Tier 1	Tier 2	Tier 3	
Paper and Fiber	Non lined packaging and containers	Kraft paper packaging	
		Molded Pulp	
		CCC Cardboard and containerboard	
		Glossy and Other Paper Packaging	
		Paperboard	
	Lined packaging and containers	Paper and fiber food service and beverage ware – lined and coated	
		Aseptic and Gable Top Cartons	
		Polycoated paperboard	
		Waxed CCC Cardboard and containerboard	
	Non packaging and non containers	Coated and Printed Paper	
		Kraft Paper	
		Other Paper and fiber	
		White Paper	
	Plastic	Rigid	Plastic #1 - PET Clear Bottles, Jugs, Jars
			Plastic #1 - PET Pigmented Bottles, Jugs, Jars
Plastic #1 - Other PET Rigid			
Plastic #1 - Clear Thermoform Containers			
Plastic #1 - Pigmented Thermoform Containers			
Plastic #2 – HDPE Natural Bottles, Jugs, Jars			
Plastic #2 – HDPE Pigmented Bottles, Jugs, Jars			
Plastic #2 – Other HDPE Rigid			
Plastic #2 – HDPE Oversized Containers			
Plastic #3 - PVC Rigid			
Plastic #4 - MDPE/LDPE Rigid			
Plastic #5 - Natural/White PP Rigid Items			
Plastic #5 - Pigmented PP Rigid Items			
Plastic #5 – PP Oversized Containers			
Plastic #6 - PS Rigid Items			
Plastic #6 – EPS food-related Rigid Items			
Plastic #6 – EPS non-food related Rigid Items			
Plastic #7 - Other Rigid Plastics			
Multi-Material Laminate - Other Forms			
Flexible		Plastic #1 - PET Flexibles and Films	
		Plastic #2 - HDPE Flexibles and Films	
		Plastic #3 - PVC Flexibles and Films	
		Plastic #4 - MDPE/LDPE Flexibles and Films	
	Plastic #5 - PP Flexibles and Films		
	Plastic #6 - PS Flexibles and Films		
	Plastic - #7 Other Flexible and Films		
Multi-Material Laminate PO Only			

		Multi Material Laminate Non PO
Glass	Glass	Glass Packaging
Metal	Containers - Non Aerosol	Aluminum - <u>UBC</u>
		<u>Other non-ferrous</u>
		Steel
	Containers - Aerosol	Aluminum
		Steel
	Non Containers	Aluminum Foils
Other Aluminum and Non Ferrous		
Other Steel and Non Ferrous		
Compostable Packaging	Compostable Plastics	Paper <u>Rigid Plastic</u> Certified Compostable (certified to ASTM <u>D6400-23</u> D8410-22 or ASTM-D6868-21)
		Flexible Plastic Certified Compostable (certified to ASTM D6400-23)
	Compostable Paper	<u>Non-recyclable, non-certified compostable OCC and paper items</u>
		Rigid Plastic <u>Paper</u> Certified Compostable (certified to <u>D8410-22 or ASTM D6868-21</u> ASTM D6400-23)
Other	Other	Wood – Untreated
		Wood – Treated
		Textile Packaging
		Rubber Packaging
		Ceramic, Porcelain, Pyrex, and Other Glass-Like Material
	Small Format	Plastic
		Glass
		<u>OCC</u>
		Metal
		Paper
Reusable Packaging	Reusable	Reusable
<u>Refillable Packaging</u>	<u>Refillable</u>	<u>Containers and Cylinders</u>

Composting Subcommittee

Packaging EPR Advisory Board

Subcommittees of the Packaging EPR Advisory Board are being coordinated to discuss and provide feedback to the MPCA on key aspects of the Packaging Waste and Cost Reduction Act that must be determined for the completion of the Needs Assessment (due 12/31/2026).

This subcommittee is supported by Mallory Anderson and Nathan Reinbold from MPCA

Board members: Shannon Pinc (chair), Maggie Schuppert, Steve Vrchota, Jon Steiner

Additional invitees: Kris Coperine from CAA, Gwen Jenkins, MPCA

The **composting subcommittee** is requested to:

- Recommended criteria to evaluate covered materials for the commingled compostable materials collection list.
- Paper products identified as not accepted at composting facilities because of the unsafe or unsanitary nature of the paper product.
- Methods to identify and document contamination at a composting facility.
- Criteria to evaluate if a market is “robust” and “viable”.
- Key considerations setting reimbursement rates associated with collection and composting.

Additional items for discussion:

- Do we need resources to supply Eunomia to help develop market development for composters? What does it take to access markets (e.g. getting on MN-DOT’s list).
- How do we want to handle technology like de-packagers, what is our recommendation? Are there other technologies like better screening tools that should be recommended.

Meetings held

Monday, April 6, 2026 -- Start 2 p.m.-End 3 p.m.

Attendees at meeting: Shannon Pinc (chair), Maggie Schuppert, Jon Steiner, Kris Coperine, Gwen Jenkins

Findings

Request to set up next meeting that includes Foth and Eunomia to talk through with them the plan for the Needs Assessment from their role as consultants. At that meeting, run through the response rate from composters to the facility survey, what information is requested in the facility survey, and what information is still needed or helpful that isn’t fully captured or captured at all in the survey.

Recommendations

No recommendations at this time.

Reuse Subcommittee

Packaging EPR Advisory Board

Subcommittees of the Packaging EPR Advisory Board are being coordinated to discuss and provide feedback to the MPCA on key aspects of the Packaging Waste and Cost Reduction Act that must be determined for the completion of the Needs Assessment (due 12/31/2026).

This committee is supported by Annika Bergen and Molly Flynn from MPCA

Board members: Sydney Harris (chair), Mac Sellars, Megan Daum, Allie Sauers

Additional invitees: Kris Coperine from CAA and Kristen Peterson from MPCA

The **reuse subcommittee** is requested to:

- Key considerations to identify and evaluate products and packaging that are best suited to reuse.
- Key considerations to identify and evaluate systems and infrastructure (existing and new) for efficiently launching and expanding reuse in Minnesota.
- Key considerations of criteria included in reimbursement rates associated with collection (Minn. Stat. 115A.1455, Subd 4 (b)(1).
- Recommend criteria to model and apply for reuse rate and return rates.

Meetings held

Kickoff mtg - Wednesday, April 8, 2026 -- Start 12pm central; end 1pm central.

Attendees at meeting: Full subcommittee, consisting of Sydney Harris, Upstream (chair); Kris Coperine, CAA; Peter Hargreave, CAA; Mac Sellars, r.World; Megan Daum, American Beverage; Allie Sauers, RILA; Kristin Peterson, MPCA; Annika Bergen, MPCA; Molly Flynn, MPCA

Findings

- Reviewed overall context & goals for this subcommittee and topics for future calls.
- Aired & acknowledge big-picture worries about how best to implement reuse provisions and committed to staying solutions-focused within our subcommittee work.
- Recapped definitions (e.g., distinctions btw. Reuse & Refill (waste reduction))
 - Identified important questions regarding distinctions between foodware vs food packaging, durable goods/products vs durable packaging (durability not explicitly defined in MN statute), and how these intersect with the scope of the needs assessment and de minimis exemptions
- Outlined many high-level concepts we'd like to see covered in the Needs Assessment - these will be refined as recommendations to Eunomia/MPCA on future calls.
- Planned to bring in external presenters as relevant to the subcommittee to provide valuable info on future calls, e.g. Reusable Packaging Association.

Recommendations

No recommendations yet - plan to firm these up on the next call and into the future.

Supporting documents

Subcommittee members reviewed the following documents prior to our call:

- [Unlocking a reuse revolution: scaling returnable packaging | Ellen MacArthur Foundation](#)
- The Cost and Environmental Benefits of Using Reusable Food Ware in Schools | MPCA - <https://www.pca.state.mn.us/sites/default/files/p-p2s6-16.pdf>
- Upstream Fact Sheet [Reuse+Examples_Final.pdf](#)
- [Upstream presentation to Advisory Board](#)

Reuse Subcommittee

Packaging EPR Advisory Board

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- Key considerations to identify and evaluate systems and infrastructure (existing and new) for efficiently launching and expanding reuse in Minnesota.
- Key considerations of criteria included in reimbursement rates associated with collection (Minn. Stat. 115A.1455, Subd 4 (b)(1).
- Recommend criteria to model and apply for reuse rate and return rates.

Meetings held

Meeting 1 - Thursday, May 7, 2026 -- Start 1:30pm central; end 3:30pm central.

Attendees at meeting: Sydney Harris, Upstream (chair); Mac Sellars, r.World; Megan Daum, American Beverage; Allie Sauers, RILA; Kristin Peterson, MPCA; Annika Bergen, MPCA; Molly Flynn, MPCA; Sylvia Lee, CAA; Jodi Tomschyshyn London, CAA

Findings

As we were unable to have Eunomia join us on this call, we used our time to further refine our ideas for the Needs Assessment - listed below. We confirmed with MPCA staff that we will be able to send these concepts to Eunomia via email once their contract is finalized, which will help save time before they (hopefully) join our next call in June. We intend to talk through these ideas with Eunomia before bringing them to the full Advisory Board for votes as official recommendations, so the sooner we can get them over to Eunomia, the better. We will also ask Eunomia to send us any questions they may have in advance of our June call.

We also discussed recommendations we'd like the Board to make to MPCA in advance of the rulemaking.

Concepts to discuss with Eunomia:

- Stay focused when it comes to foodware.
- Things that likely make sense as in-scope for needs assessment: third-party managed reusable foodware systems like r.World.
- Covered food packaging materials that maybe make less sense (potentially should be out-of-scope): durable foodware items that stay onsite, like a plate or bowl at a restaurant.
- We already know what the general product categories are where reusable packaging is a better fit (beverage, personal care products, transport packaging, etc.). See our [library of helpful studies](#) as reference material. Don't spend your time on this; spend it looking at efficiencies instead and understanding what reuse infrastructure is already in place in the state.
- Make sure you look at how to leverage recycling infrastructure & investments, plus other opportunities for cost savings & efficiency. For example, explore opportunities for co-location of facilities (e.g. a MRF and Wash Hub), shared logistics, combined sortation, etc.
- Without being overly prescriptive, explore container types and categories where it would make sense to use reusables that are not recyclable. For instance, bulk milk/bev dispensers, ceramic foodware for onsite dining, reusable flexibles (like the Algramo pouches in the UK), or small format packaging. Try to identify optimized materials for various reuse applications

- Include info on how transportation works or can work for reusables to avoid breakage, loss, contamination, etc. - and how that might play into geographic distribution decisions (for instance - where should new wash hubs be sited for optimized outcomes?)
- Transport packaging may be a covered material so also cover how this can work - especially: how can reusable transport packaging be used to move other reusables?
- Include both front of house and back of house opportunities - and infrastructure! To the extent that B2B materials are covered, what opportunities exist?
- Look at the potential role/s of municipalities - what makes sense for them to do, and what might be too confusing, e.g. from a data perspective ***we will want to get more feedback from muni reps on the full Board here***
- For example: central reusables dropoff centers, including reusables in organized curbside collection, education, driving demand, making connections, etc.
- While exploring labeling best practices, Identify any examples of mis-labeling of items as reusable when in fact they don't meet the criteria in statute
- When considering potential reuse and return rates to recommend, don't just look into one overarching target, but explore how these might be split up & phased in across different categories, for early progress in some & later progress in others. This could be done by geography, ownership, type of system (closed vs open, etc.), material, format - what makes the most sense for MN?
 - Consider especially that it takes 2-3 years to develop/test new packaging and even longer for ramping up to high return rates, and that allowances and flexibility are sorely needed over time to reach ambitious rates
- Throughout our discussions so far, questions about durability have arisen and it was noted that Minnesota's statute does not include a definition or exemption for durable goods / products. Clarification would be beneficial on where the line is drawn between *packaging* and *products* since reusable packaging is typically more durable than single-use.

Recommendations

No recommendations yet until the subcommittee meets with Eunomia to discuss first.

Waste Reduction Subcommittee

Packaging EPR Advisory Board

Subcommittees of the Packaging EPR Advisory Board are being coordinated to discuss and provide feedback to the MPCA on key aspects of the Packaging Waste and Cost Reduction Act that must be determined for completion of the Needs Assessment (due 12/31/2026).

This committee is supported by Colleen Hetzel and John Gilkeson from MPCA

Board members: Gabbie Batzko-Conley (chair), Gregory Melkonian, Sydney Harris, Megan Daum

Additional invitees: Kris Coperine from CAA and Kristen Peterson and Cristina Villella from MPCA

The **waste reduction subcommittee** is requested to supply key considerations to identify and evaluate products and packaging that are best suited to waste reduction and refill.

Meetings held

Monday, April 6, 2026 – 12:00 p.m.- 1:00 p.m.

Attendees at meeting: Greg Melkonian, Miriam Holsinger, Kris Coperine, Colleen Hetzel, Kristen Peterson, Sydney Harris, Gabby Batzko- Conley, Megan Daum, Cristina Villella, John Gilkeson

Friday, April 24. 1:00 p.m.- 2:30 p.m.

Attendees at meeting: Greg Melkonian, Miriam Holsinger, Kris Coperine, Colleen Hetzel, Kristen Peterson, Sydney Harris, Gabby Batzko- Conley, Megan Daum, Cristina Villella, John Gilkeson

Findings

Meeting #1

Definitions

Discussed definitions and why reduction is somewhat unique in MN compared to other states.

- MN statutory definition does include reuse but for the implementation of this law reuse will have its own targets separate from waste reduction. Waste reduction will include refill.
- Reuse and reduction/refillables are separate in MN because measurement and target setting will be separate. For this reason, there needed to be a distinction between the two definitions.

Ecomodulation

Ecomodulation could influence reduction. It could be an additional carrot for producers to try and reduce the packaging. Ecomodulation doesn't start until the first plan cycle so the initial timeframe of five years will only overlap a little. Ecomodulation should be examined as a national tool and not just a state-to-state tool.

Look at more than re-design, also look at outreach and education.

Options for reduction

Reducing water bottle usage

- Possible measurement could be done through drink refill stations.
- Brings up the question on whether we do a big picture down measurement or bottom up.

Coffee cups

- Are there laws that can be changed to make it easier for people to bring their own coffee cup

Creating options for refillables that work with Health Code regulations

- Are there laws that need to be changed in MN to allow for more refill options or waste reduction. Laws on the restaurant and food association- this tells you what should and shouldn't be allowed. A recommendation could be made that the food code law be reviewed, and changes can be made so refill can happen. Talk with Dept. of Health and make sure food codes are updated, and everyone is updated and knows the new laws.
- For example, the group brought up:
 - All items that are put on a restaurant table must be thrown away even if they aren't used (e.g. napkins, straws).
- Education component for food code is very important. Creating the infrastructure for this is very hard.
- Green to Go packaging and the rules of that, include the structure of how this works and map it back to the group that is leading that charge and how it should be communicated to people.
- Creating a list of acceptable items that all health organizations can agree that they are ok with people bringing into their establishments.

Producer created refillables for cleaning or personal care products

- Having producers create their own refillable products- blueband or dr. bronner's refill (wonderfill makes these machines and the needs assessment should identify which should be used for reuse and which should be refill).
- What about bulk refill containers for janitorial teams in schools.

Bulk milk dispensers in schools.

Reduction for lightweighting, liquid reduction, reducing the number of components in a package.

Right to repair- longevity of products is eligible.

Any products that are ripe for these types of reduction?

Opportunities for more research

- Data collection on what is being done and what might be an easy opportunity or a large amount of material to start to reduce.
- Gaps and opportunities for measuring data.
- Consumer survey to see how often people are using current reduction systems (Is this something that Eunomia would look into?)
- How often do people forgo packaging?
- Promote using refills that are available now.
- Permits and certifications for food code- is there a way to ask for measurement within a permit or certification program?

Meeting #2

The meeting focused on toxicity reduction.

Should a label be added so people using the package as well as those called out in the law for services know what types of chemicals are in the packaging (similar to a prop 65 warning).

Question for Eunomia- How will toxics be discussed in the needs assessment?

As of right now, it seems chemicals fall into two categories- Voluntary or required to meet state law.

- Chemicals that are required to meet minimum thresholds are:
 - PFAS, hexavalent chromium, Bisphenol A, lead, cadmium, and mercury

The needs assessment should have a discussion on additional chemicals to prioritize moving forward.

- The MN Dept. of Health has about 1500 chemicals that can be looked at for prioritization.
[mdhchclist.xlsx](#)

The group felt it was a good idea to look at ways components of packaging overlap so for instance, when are there opportunities to physically reduce components of packaging (a label on a beverage can or bottle) and have it reduce toxicity and possibly contamination from the recycling system.

The group reviewed the U.S Plastic Pact and Safer Chemicals materials.
Determine where reformulations are needed (opportunities or technology advancements).
Can a lit. review of waste reduction/toxicity/packaging be done to find some priority areas to recommend for the needs assessment?
Is there a correlation between the collection list and toxicity/contamination for recycling systems?

Suggestions for best practices moving forward

Use APR design guides and bale specs.

Design guidelines for compostable packaging materials might have guidelines for chemicals that need to be avoided.

- MN already has a requirement in law- what does the ASTM spec require? Make sure that is being followed.

Could create certifications for toxicity and create guidance materials.

Make sure one management method doesn't undermine another management method. Make sure you look at the whole life cycle and not just one component of it.

Add more required sortations in recycling which might have an impact on waste reduction.

Questions/items for Eunomia

Stay focused on more mature systems for paper and packaging for the next 5 years and then look for future possible scenarios.

Can Eunomia give some background on reuse and refillable covered materials that they think will or should be talked about in the needs assessment?

Can Eunomia review the U.S. Plastics Pact report and presentation to look at ways that can drive change using waste reduction but also push the system to more reusable, recyclable, and compostable packaging?
(information from U.S. Plastic Pact in supporting documents section below)

Recommendations

Summary of recommendation for board to discuss and make a motion to approve.

No formal recommendations for the Board but suggestions for Eunomia

Supporting documents

Links to reports:

- Current state report: an evaluation of reuse and refill systems and covered materials that utilize other source reduction activities | CalRecycle
- [SourceReductionReport2026.pdf](#)
- [SourceReductionAppendixAB2026.pdf](#)
- [CurrentSourceReductionAppendixC2026.pdf](#)
- Needed state report: an analysis of actions and investments to achieve source reduction | CalRecycle
- [2026NeededStateSourceReduction.pdf](#)

Problematic and Unnecessary Materials Report (U.S. Plastics Pact)

- [Problematic and Unnecessary Materials Report](#)

Report from Smithers on Packaging Source Reduction (prepared for Ameripen 2025)

- [rnAEYo0L](#)



April 27, 2026

Minnesota Pollution Control Agency
Attn: Mallory Anderson
520 Lafayette Road N
St. Paul, MN 55155-4194

RE: Comments to the Needs Assessment Survey

Dear Ms. Anderson,

The National Waste & Recycling Association Minnesota Chapter (NWRA MN) appreciates your April 14, 2026 response to questions our Association raised in the attached correspondence dated January 20, 2026, our subsequent meeting with the MPCA and Eunomia on February 2, 2026, and in the subsequent attached correspondence on February 16 and 23, 2026. For ease of reference, I attached the prior correspondences.

While we value this continued engagement, we remain deeply concerned about the protection of proprietary and competitively sensitive data. Despite MPCA's assurances regarding compliance with the Minnesota Data Practices Act (Minn. Stat. Ch. 13), the scope and nature of the data currently being requested present an unprecedented level of business risk, including potential exposure and antitrust implications. This concern has increased greatly, driven by the final recycling collections survey. The collections survey requests pricing information at the individual household level, truck maintenance costs per route, locational pricing information for customers and other operational cost and pricing information. This is proprietary information that compromises our businesses.

NWRA MN has consistently raised these issues in prior correspondence. Notably, Minnesota's current approach appears to diverge from other states with extended producer responsibility (EPR) programs. Specifically, **Minnesota is the only state in which a state agency is directly uploading data for the Needs Assessment.** As outlined in our February 23, 2026 letter:

“The EPR enabling statute clearly envisions that service provider data would be provided to a “contractor” conducting the survey – not directly to a state agency. Subd.6(c). Moreover, recognizing the competitively sensitive nature of any information collected, the statute imposes obligations on the “contractor” conducting the survey to “aggregate

and anonymize the not public data or information, . . . and must then include the aggregated anonymized data in the needs assessment.”

Further, we also cited concerns with the antitrust implication of submitting competitive, proprietary pricing information which, in the final collections survey, is clearly putting our members at risk of violating Federal Antitrust laws. As stated in previous correspondence:

“Many of NWRA MN’s concerns with confidentiality and exposure of competitively sensitive data would be greatly ameliorated by adopting these statutory mechanisms. Indeed, these protections based on reliance upon “aggregated and anonymized data” are consistent with well-recognized antitrust guidelines promulgated to protect competition (*See, e.g., U.S. Dept. of Justice & Federal Trade Commission Statements of Antitrust Enforcement in Healthcare* (1996) (recognizing protections for competitor survey data managed by a third-party, using non-current data, and aggregated with data of multiple providers “such that any information disseminated is sufficiently aggregated such that it would not allow recipients to identify the prices charged or compensation paid by any particular provider.”)”

Data protection and antitrust implications are very serious concerns for our industry. As stated in previous requests, we strongly encourage that you share the attached letters with the EPR Advisory Board, since it was clear at the April 15 meeting that Board members were unaware of the efforts our industry has made to request changes to the data collection process. At the April Advisory Board meeting, our industry was advised to reach out to you and have the discussions that NWRA MN initiated in January.

We want to reiterate that we fully support a less detailed, less intrusive, albeit more robust and complete Needs Assessment for our state. It is our belief that changes to the process of submitting data and the extreme level of detail being asked for will compromise this effort.

Sincerely,



Phillip T. Shaffer
Vice President, Chapter Relations
National Waste & Recycling Association
1550 Crystal Drive, Suite 804
Arlington, VA 22202
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pshaffer@wasterecycling.org
wasterecycling.org

Cc: Kirk Koudelka, Assistant Commissioner, Minnesota Pollution Control Agency

Attachments: Prior NWRA MN correspondence (Jan. 20, Feb. 16, and Feb. 23, 2026)



January 20, 2026

Minnesota Pollution Control Agency
Attn: Mallory Anderson
520 Lafayette Road N
St. Paul, MN 55155-4194

RE: NWRA Comments on the Packaging EPR Needs Assessment Draft Survey Questions

Dear Ms. Anderson and Agency Staff,

The National Waste & Recycling Association Minnesota Chapter (NWRA MN) appreciates the opportunity to comment on the draft survey questions for the Needs Assessment Survey issued by the Minnesota Pollution Control Agency (MPCA). NWRA MN fully supports state and local government efforts to reduce waste and maximize the amount of material recycled from the waste stream.

We believe the successful implementation of the Packaging Waste and Cost Reduction Act (Minn. Stat. § 115A.144), through the development of an Extended Producer Responsibility (EPR) program, depends on meaningful and productive collaboration among all stakeholders. Leveraging the expertise of the waste and recycling industry is critical to ensuring the program is practical, effective, and aligned with statutory intent, and NWRA MN's industry experts want to work with the MPCA to further discuss the survey questions and explore approaches that will encourage broad participation from our industry.

We have concerns regarding the scope and volume of questions included in the survey, several of which appear overly intrusive, outside of the statutory charge, and are more aggressive than any other state to date. In addition, we also have concerns related to antitrust considerations and the proprietary nature of detailed operational, maintenance, facility cost, and performance information being requested.

To better align with the statute, questions related to commercial collection should be excluded from the survey, as commercial collection entities are not identified as covered entities under the EPR law. This issue was discussed extensively throughout the 2024 legislative session. During those discussions, we agreed to provide total costs billed to customers, as reflected in Minn. Stat.

§ 115A.1450, subd. 4(9)(ii). As a reminder, those costs are based on a per-household rate, not a per-ton basis, as discussed and agreed upon during the 2024 legislative negotiations.

We believe the Agency and the industry share a common goal of broad participation from recycling collection companies and processing facilities and of collecting accurate, meaningful data to support the EPR program, and believe this goal would be best achieved through a collaborative workshop or a similar forum that allows for broader industry representation and dialogue. Such an approach will increase participation and improve the quality and reliability of the data collected.

To obtain the most useful and representative information, the survey should be limited to questions that clearly align with the statute and focus on data that is necessary for program implementation; otherwise, there is a risk that the survey will be perceived as overreaching, which could create skepticism about its objectives and discourage participation. Many companies that want to be part of Minnesota's EPR program also want to contribute to a robust and representative data set, but only if the survey is appropriately scoped.

Given the time commitment required to respond, the proprietary nature of the information requested, and the concerns outlined above, we are concerned that the current survey approach will not yield sufficient participation to support a successful EPR program launch. There are several hundred collection companies operating in Minnesota, and maximizing participation will only occur if the survey is simplified and limited to non-intrusive questions that are clearly aligned with statutory requirements.

Thank you again for the opportunity to comment and continue to take advantage of our Association's knowledge and expertise in the field to get this done correctly. Please feel free to contact us if you have any questions on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Shaffer', with a long, sweeping horizontal line extending to the right.

Phillip T. Shaffer
Vice President, Chapter Relations
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Cc: Packaging EPR Advisory Board
Kirk Koudelka, MPCA Assistant Commissioner



February 16, 2026

Minnesota Pollution Control Agency
Attn: Mallory Anderson
520 Lafayette Road N
St. Paul, MN 55155-4194

RE: Comments on the Draft Needs Assessment Survey and February 2, 2026 Discussion

Dear Ms. Anderson,

The National Waste & Recycling Association Minnesota Chapter (NWRA MN) appreciates the quick response to our request to meet on the Draft Needs Assessment Survey. We would like to reiterate our primary comments on the document and process for providing information that were discussed in our meeting on February 2 with you, Circular Action Alliance (CAA), Eunomia and Eureka Recycling. We are submitting this letter to clarify our position and to ensure a shared understanding as we work collaboratively toward a successful and durable EPR program for Minnesota.

As outlined in our January 20, 2026 correspondence, NWRA MN cited high-level concerns with the overly intrusive and proprietary nature of the questions, the inability to answer some of the detailed per commodity processing system questions, and the extensive list of questions and time required to respond. We stated that we did not believe the data being requested was necessary to establish an overall cost that would then be used to establish the total amount of funds needed to reimburse our industry.

We strongly believe the Agency will receive more participation from the recycling industry with less intrusive questions and less resource intensive gathering of data by the industry.

During the February 2 meeting, NWRA MN reiterated these concerns and proposed a simple approach for determining overall system costs, specifically, what each company charges all customers for residential curbside collection. NWRA also offered to go beyond the statutory requirement to provide total number of households and to provide some high level regional geographic cost information.

We did not agree to provide costs per city, costs per truck route in a particular city, costs per vehicle per route, performance data, operations and maintenance information and much of the other data being requested in the Draft Needs Assessment Survey.

The desire to determine “what is influencing costs” for contracts and services provided to a particular city is proprietary information and would be in violation of antitrust laws if shared with competitors.

The total charges to our customer, from each company, would already include many of the costs that are being asked for in the Draft Needs Assessment Survey, such as the tipping fees paid at processing facilities, total O&M costs, total fuel costs and others. On February 2 call, the opinion was voiced that the more granular cost information was needed to determine what influences costs provided in contract bids, which could violate antitrust laws.

CAA stated that the detailed business information was needed so that an accurate total reimbursement amount/cost could be determined. Since Minnesota’s EPR law is a partial reimbursement program the law allows service providers to charge in addition to the reimbursement, the accuracy of the reimbursement is not as critical.

Furthermore, due to the granularity of the questions in the Draft Needs Assessment, delving into our individual company business operating costs, the likelihood of getting answers for some of the key information from the statewide hauling and processing industry will be challenging. For this reason, we advocate for the simple approach stated previously, so that service providers are more willing to share the information needed to make this program work.

NWRA MN proposed the industry provide high level “variables”, or categories that would allow for more specific cost estimates; however, we did not agree to provide specific costs for a particular variable, and we would like to work with the MPCA to assist with identifying these cost categories only, not specific cost information.

The submittal of much of the information requested from our individual companies would require assurance that the information is protected by Minn. Stat. Chapter, 13, Minnesota Data Practices Act, and that the information would be determined to be protected prior to its submittal, especially given that Eunomia has subcontracted the anonymization and aggregation with Foth Consulting, a Minnesota based consulting firm that is involved in municipal contracts affecting our industry in Minnesota.

Further, we have requested that the submission of data be sent directly to a third party consultant other than Foth, such as Crowe Consulting, who is also working in other states.

The submission of our individual company data to a state agency is unique to Minnesota. No other state requires that data to inform a Needs Assessment be submitted to a state agency, but rather, data is submitted directly to a third party consultant.

Although the Agency can request data from each company, we believe the data should be sent directly to a third party for aggregation and anonymization, which is consistent with Minn. Stat. 1450 Subd. 6 (c).

We appreciate the responsiveness during the February 2 discussion and look forward to reviewing a revised version of the Needs Assessment Survey, and respectfully requests the opportunity to review and provide feedback on the next draft.

Thank you for your attention to this important matter. We remain committed to working collaboratively with the Agency and stakeholders to establish a practical, legally sound, and effective EPR program for Minnesota.

Please do not hesitate to contact me with any questions or to continue this dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Shaffer', with a long, sweeping horizontal stroke extending to the right.

Phillip T. Shaffer
Vice President, Chapter Relations
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Cc: Kirk Koudelka, MPCA Assistant Commissioner
Victoria Reinhardt, Packaging EPR Advisory Board Chair



February 23, 2026

Minnesota Pollution Control Agency
Attn: Mallory Anderson
520 Lafayette Road N
St. Paul, MN 55155-4194

RE: Additional Comments to the Draft Needs Assessment Survey

Dear Ms. Anderson,

The National Waste & Recycling Association Minnesota Chapter (NWRA MN) and its member companies, appreciate the opportunity for continued dialogue as we continue to work together with the MPCA to develop a successful EPR program for the citizens of Minnesota.

Please recognize that our comments are not intended to delay or thwart the development or implementation of Minnesota's EPR program, but rather to make sure that the program as ultimately rolled-out comports with the governing Minnesota statutory framework and respects the legitimate interests of our members who have invested and competed over the years to develop the Minnesota-based infrastructure and facilities necessary to make the program successful. As outlined below, NWRA MN's concerns relate both to the type, volume and granularity of the competitively sensitive information requested, and the protections accorded any non-public data that survey participants may ultimately choose to submit.

We believe that resolving these issues up-front will ultimately result in greater provider participation in the EPR program without sacrificing MPCA's ability to meet its statutory goals of creating: "an inventory of the current system, including: (i) infrastructure, capacity, performance, funding level, and method and sources of financing for the existing covered services for covered materials operating in the state; (ii) *an estimate of total annual costs of covered services* based on registered service provider costs" Minn. Stat. 115A.1450, Subd 4 (9) (emphasis added).

As set forth in our correspondence of February 16, NWRA MN believes that there are significant elements of the Needs Assessment survey that (i) impose unreasonable burdens on respondents; (ii) seek highly granular cost data that raises risks of competitive harm both to the survey

participants (*i.e.*, harm to competitors) and to Minnesotans that rely on a diverse set of industry participants each pursuing their own competitive interests and strategies (*i.e.*, potential harm to the competitive process); and, equally important, (iii) are not reasonably tailored or calculated to meet the statutory purpose of developing a workable estimate of available and/or needed infrastructure and/or a reliable “estimate of *total annual costs* of covered services” (emphasis added).

By way of notable example, the Hauler Survey (Section 7), questions #19-28 regarding “Costs,” require cost information to be provided in granular fashion, at the municipality and even route level across several metrics, raises all three of these infirmities and should be reassessed. Not surprisingly, that Survey section anticipates the intrusive nature of these particular survey requests. *See* Section 7 (“*NOTE: Due to concerns about confidentiality and supplying proprietary cost and service data, receiving information from haulers has been a challenge in previous studies, including Needs Assessments*”).

In our February 16 letter, we requested that the letter be shared with the Advisory Board in advance of the February 18 meeting so the Board could better understand the industry’s concerns and our alternative proposal. Unfortunately, on February 18, we learned that the MPCA was unwilling to distribute our letter to the Advisory Board.

The reason underlying our request for distribution of the February 16 letter to the Advisory Board was so that the Advisory Board could gain a broader understanding of the industry’s concerns and of our alternative proposal that would alleviate those concerns while still satisfying the underlying objectives of the survey and Needs Assessment.

NWRA MN has tried to explain in our earlier correspondence and at the February 2nd meeting that there are other ways to develop “an estimate of total costs” that do not raise such problems. Most notably, pricing for recycling services in Minnesota takes place in a competitive environment, whether as part of municipal bids or to attract open-market customers. Market participants, many of whom are our members, make long-term investments in equipment and facilities without any guaranteed return, and then price those services in a manner designed to cover their costs and earn a return to compensate for their investments and risks.

It is no exaggeration to state that if market participants were to share with each other this type of granular cost information underlying their competitive bids, they could risk civil liability, if not criminal prosecution, under the antitrust laws.¹

As we have explained, for these reasons, we believe that the MPCA’ can and should use estimates of average statewide service “charges” as the most reliable estimate of total costs. Such information can be provided on statewide basis without the risk of harming competitors or the Minnesota consumers or municipalities that rely on functioning competitive markets.

To be clear, it will ultimately be up to each program participant to make its own determination as

¹ See *Todd v. Exxon Corp.*, 275 F.3d 191 (2d Cir. 2001) (exchange of salary cost information by industry participants raises inference of unlawful conspiracy); see also *S&S Forage & Equip. Co. v. Up North Plastics*, 202 U.S. Dist. LEXIS 5732 (D. Minn. 2002) (finding issue for jury regarding price fixing where defendants agreed to exchange pricing data).

to the information it is willing and able to provide (and, under what set of protections. NWRA MN believes that continued dialogue on the survey's requests for detailed cost information is critical to helping make the Needs Assessment a valuable tool for the MPCA, while protecting its participants and without imperilling the benefits of Minnesota's competitive recycling market.

The NWRA MN remains willing to work with MPCA to refine its alternative proposal to get MPCA the information you need.

In addition to our overarching concerns with the burden and intrusiveness of certain aspects of the Needs Assessment, we also continue to have concerns with the collection of, and protection accorded to non-public data. In your letter of February 20, you reiterate that the survey participants bear the burden to establish their data meets the statutory categories for protection. Before addressing the specific process for seeking protection; however, NWRA MN is concerned that the entire Needs Assessment data gathering is inconsistent with the Minnesota statutory scheme establishing the EPR regime. Minn. Stat. § 115A.144-115A.1463.

First, in contrast to the present Needs Assessment, the EPR enabling statute clearly envisions that service provider data would be provided to a "contractor" conducting the survey – not directly to a state agency. Subd.6(c). Moreover, recognizing the competitively sensitive nature of any information collected, the statute imposes obligations on the "contractor" conducting the survey to "aggregate and anonymize the not public data or information, . . . and must then include the aggregated anonymized data in the needs assessment."

Many of NWRA MN's concerns with confidentiality and exposure of competitively sensitive data would be greatly ameliorated by adopting these statutory mechanisms. Indeed, these protections based on reliance upon "aggregated and anonymized data" are consistent with well-recognized antitrust guidelines promulgated to protect competition (*See, e.g., U.S. Dept. of Justice & Federal Trade Commission Statements of Antitrust Enforcement in Healthcare* (1996) (recognizing protections for competitor survey data managed by a third-party, using non-current data, and aggregated with data of multiple providers "such that any information disseminated is sufficiently aggregated such that it would not allow recipients to identify the prices charged or compensation paid by any particular provider."))

Additionally, the MPCA is utilizing Foth Infrastructure & Environment, LLC ("Foth") to gather information for the Needs Assessment, while Foth is also regularly retained by Minnesota municipalities to advise on negotiating waste and recycling contracts with private haulers (including North St. Paul, Arden Hills, Roseville, and St. Paul). This dual role is problematic because, even if pricing, cost, or operational information is classified as non-public, Foth would nonetheless possess that information and could, consciously or unconsciously, use it to the detriment of haulers and facilities in future municipal negotiations, underscoring the need for appropriate nondisclosure protections.

With respect to the statutory protections accorded non-public data, the survey puts the "cart before the horse." As written, survey respondents would need to submit their highly detailed and competitively sensitive data (e.g., route-based cost data) subject to an after-the-fact determination by the commissioner as to the requested confidentiality designation. While this

method may make sense for certain categories of data and responses, NWRA believes that all responsive material specifically bearing on current charges for services by customer or location, costs of service, or terms of services (*i.e.*, competitively sensitive information),² and the proprietary information requested regarding operations and process flow of processing facilities (*i.e.*, the very definition of trade secret), warrants presumptive protection that can and should be addressed by MPCA in advance of submission.³

Finally, it should be noted in offering these comments, the NWRA MN, through its member organizations and the NWRA national organization, has the advantage of having knowledge of and participation in various other state EPR regimes, including those that have designated CAA as the PRO.

In such states, NWRA's industry members have been able to work with the responsible contractors to reach accommodations to complete surveys sufficient to establish competitive EPR programs.

It is our sincere hope and belief that by open dialogue and collaboration, we can reach a similar result by working cooperatively with the MPCA.

Sincerely,



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Cc: Kirk Koudelka, MPCA Assistant Commissioner
Victoria Reinhardt, Packaging EPR Advisory Board Chair

² Minnesota 115A.1450, Subd. 6 (b) (2) protects against "disclosure of the data or information would tend to adversely affect the competitive position of the service provider or other person, including but not limited to data related to profits, service rates, fees, or business expenses." This provision reads directly on to the data requested in the survey. Detailed information of costs and charges would necessarily adversely impact the competitive position of the survey respondent as actual or potential competitors could use such data to unfairly compete, including with respect to competitive municipal bids.

³ Minnesota's statutory definition of "Trade secret information" clearly covers the category of plant design, equipment layout and process flows: a "method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.