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**AMERIPEN**  
**American Institute for Packaging and the Environment**  
**Senate Bill 582-9**  
**Oregon Senate Committee on Energy and Environment**  
**April 8, 2021**

Chairman Beyer and Members of the Senate Committee on Energy and Environment.

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to testify on Senate Bill 582-9 that seeks to establish an extended producer responsibility (EPR) mandate for packaging, printing and writing paper, and food serviceware. While we continue to appreciate the goals of SB 582-9 and the work that has been done to make the bill better, we unfortunately cannot support the bill in its current form. We appreciate all the meetings we have had with the Oregon Department of Environmental Quality (DEQ) to discuss our concerns and our differing policy perspectives on how things should be structured in the bill. There is still the ability to amend the bill in a way that streamlines the processes and governance structure for packaging producer responsibility while simultaneously increasing packaging recycling and recovery in Oregon.

AMERIPEN is a coalition of packaging producers, users and end-of-life materials managers dedicated to improving packaging and the environment. We are the only material neutral packaging association in the United States. Our membership represents the entire packaging supply chain, including materials suppliers, packaging producers, consumer packaged goods companies and end-of-life materials managers. We focus on science and data to define and support our public policy positions and our comments are based on this rigorous research rooted in our commitment to achieve sustainable packaging and efficient recycling policies. We have several members with facilities in Oregon, and many more who import packaging materials and products into the state.

AMERIPEN recognizes the health of a recycling system is critical and there is a responsibility that packaging producers should play in improving that system to support strong environmental outcomes. A coordinated and shared responsibility approach that will ensure that all parties involved in recycling are working collaboratively towards system efficiencies is important. Our organization has had extensive and productive discussions with DEQ over many months about SB 582-1 and some of the language in the current amendments. While we are encouraged by some of the new language in the bill, we would appreciate the opportunity to continue discussions on that.

**Positive Amendments:** We do want to note the following changes that we are pleased to see and thank the committee and DEQ for taking our comments into consideration:

- We appreciate the section on labeling being changed to a task force, as we believe that studying labeling issues is the appropriate way to start a complicated conversation on concerns around the labeling of products.
- We are pleased that landfilling is now explicitly written as something that is not a recoverable cost.
- We do appreciate that a few fee mandates were changed to studies but are still concerned with the overall cost of those studies and checks and balances on the fees that may be created.

- We agree that the Oregon Recycling Advisory Council (RAC) needed representation from the producers and are happy to see the addition of two seats.

**Continuing Concerns:** In light of the positive changes above, the following critical issues remain in need of fundamental amendments in some cases and further refinement in other cases:

- 1. Producer Responsibility Organization Authority:** In nearly every other jurisdiction where packaging producer responsibility has been adopted or considered, the producer responsibility organization (PRO) is given authority to self-govern and use their stewardship plan to propose a structure to accomplish the goals and financing of the enabling law. Senate Bill 582-9, instead, has an intricate process where DEQ and the RAC would make most substantive decisions for the program and set the major substantive financing rates. This governance structure undermines the need primary for a PRO and creates extra costs in the system without clear PRO authority to implement and constrain payments to improve the system. **AMERIPEN strongly recommends a more streamlined structure for implementing the law where the PRO proposes reasonable financing options, rates and goals that would be approved by DEQ and the RAC.**
- 2. Inability of PRO to “Ensure” Outcomes of the Recycling System:** The current draft of the bill indicates in several places that the PRO will “ensure” or “ensure, to the extent practicable” responsible management or certain outcomes of recycling activities, responsible markets for materials, protect the health and safety of workers, etc. However, the PRO is granted **no authority to contract or mandate activities** by other players in the recycling system. Therefore, these mandates are unenforceable and create an arbitrary and capricious standard in the law. **AMERIPEN therefore recommends that either the bill provide specific and direct authority to the PRO to mandate or contract these outcomes of other players in the recycling system or these mandates must be removed from the bill altogether.**
- 3. Packaging Definition** – This definition is critical in determining the base of the packaging producer responsibility program in Oregon. The current definition in the bill covers most packaging for almost all products that are sold into the state, including secondary packaging. We acknowledge and appreciate in the current amendments the **removal** of pallet wrap or similar packaging used to secure a palletized load of covered products. We also understand that because of the way Oregon’s recycling systems are structured, covering only consumer facing packaging would be difficult. However, **AMERIPEN still recommends a narrower definition that covers only consumer facing packaging, from point of sale or when the product is received by the consumer. This will keep the Oregon program aligned with other programs that are being discussed in the United States.**
- 4. Compensation to Local Governments** – We appreciate that compensation for the expansion of on-route collection and recycling depots in areas currently not served will be tied to a new proposed statewide needs assessment to be conducted by DEQ. We also appreciate landfill disposal being explicitly excluded from reimbursements in the amendment. However, **AMERIPEN still believes that the PRO should be able to propose an annual fixed rate for reimbursements (per ton or per capita), in lieu of Commission/DEQ set rates. Furthermore, SB 582 should also be amended to**

**establish a process whereby the PRO may petition DEQ to assist with compensation disputes that may arise with local governments.**

5. **Litter and Marine Debris Cleanup and Prevention Program** – We appreciate that this section has had effective date adjusted to 2028. However, AMERIPEN still asserts that this is not a packaging recycling and recovery issue and therefore should be outside the scope of PRO responsibilities. Producers have no control over the disposition of materials that are not properly placed in recycle or trash bins and therefore should not be required to pay fees to support litter abatement programs and grants. Existing national litter prevention campaigns and programs and strong anti-litter enforcement policies under existing state laws and penalties are needed to curb what is already unlawful behavior in the State of Oregon.
6. **DEQ Administrative Fees** – While AMERIPEN appreciates that DEQ would only invoice the PRO for its activities related to this program, AMERIPEN still strongly asserts that annual administrative costs should be reasonable, capped on an annual basis, and determined in consultation with the PRO. **Similar to annual state budgeting activities, there must be constraints to DEQ administrative costs and oversight of this program’s activities.**

## Conclusion

AMERIPEN recognizes and supports the need to modernize the recycling system in Oregon through shared responsibility and we remain committed to being a partner with you and DEQ to work on a reasonable path forward. Despite recent Senate Bill 582-9 amendments, AMERIPEN asserts that the bill requires significant additional changes to be feasible for producers and allow for more authority for PROs to meet the mandates of this bill and work with the State to modernize the recycling system. We look forward to continuing to work with you and DEQ to improve this bill even further in order to truly improve packaging recovery and recycling and hopefully showcase the State of Oregon as a leader on this in the U.S.