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AMERIPEN
American Institute for Packaging and the Environment
Senate Bill 582
Oregon Senate Committee on Energy and Environment
February 23, 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 that seeks to establish an extended producer responsibility (EPR) mandate for packaging, printing and writing paper, and food serveware. While we appreciate the goals of SB 582, we cannot support it in its current form. But we would like to continue to work with you and the Oregon Department of Environmental Quality (DEQ) to amend the bill in a way that makes all stakeholder goals more feasible 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 this and much of the language within SB 582, but not its entirety and we have not yet had a chance to review the most recent amendments with DEQ. While we are encouraged by some of the new language in the bill, we would appreciate the opportunity to continue discussions on some of the language.

- 1. Packaging Definition** – This definition is critical in determining the base of the packaging producer responsibility program in Oregon. The current definition in the bill appears to cover all packaging for almost all products that are sold into the state, including tertiary and secondary packaging that may be used in business-to-business transaction and is not consumer facing. **AMERIPEN recommends a narrower definition that covers only consumer facing packaging, from point of sale or when the product is received by the consumer.**
- 2. Food Serveware Definition** – This definition has been unnecessarily expanded from earlier language, adding clamshells or similar containers that by industry standards are already considered packaging and therefore already captured in the packaging definition. **AMERIPEN recommends this**

definition be returned to its original and more narrow form that does not include “takeout” containers.

- 3. Producer Definition and Determination** – The definition and determination of producer as specified in Section 3 of the bill is overly prescriptive, with different determinations depending on remote sales, brick and mortar sales, or food serviceware sales. **AMERIPEN recommends a more streamlined definition under a hierarchy approach that also aligns with packaging producer responsibility discussions taking place in other states:**

a) the person or company who uses the covered material or product under such person's own name or brand and who sells or offers for sale the product that uses covered material or product in the state; or

(b) the person or company who imports the product that uses covered material as the owner or licensee of a trademark or brand under which the product is sold or distributed in the state; or

(c) the person or company that offers for sale, sells, or distributes the product that uses covered material in the state.

The responsibility of a person higher in the hierarchy would relieve the responsibility of a person lower in the hierarchy.

- 4. Producer Responsibility Organization Fees** – Sections 24-26 of the amended version of SB 582 propose three new contamination, processor commodity and compost facility fees to be imposed upon PROs with rates still to be determined by independent studies through DEQ. The issues that these fees are attempting to address are outside the primary scope of the PRO and imposition of them will severely limit the ability and flexibility of the PRO to implement their primary program budgets and plans. These issues and any related fees should be studied and potentially implemented in separate legislation and **AMERIPEN therefore recommends the language for these new fees be struck entirely from SB 582.**
- 5. Compensation to Local Governments** – We appreciate that compensation for the expansion of on-route collection and recycling depots in areas currently not served with such will be tied to a new proposed statewide needs assessment to be conducted by DEQ. We also appreciate that the PRO can determine how the amounts will be reimbursed to the local governments and the flexibility given to the PRO to choose if the payments should be based on zones and solid waste management best practices. However, **AMERIPEN recommends there be an annual fixed rate for reimbursements (per ton or per capita) and landfill disposal costs of covered product materials should expressly not be included in the annual fixed rate. 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.**
- 6. Product Labeling Requirements** – The labeling provisions in the current version of SB 582 are extremely problematic for AMERIPEN members that follow the ASTM Resin Identification Code (RIC) standard and voluntarily use the nationally standardized How2Recycle labels with the chasing

arrows symbol on their products. AMERIPEN generally does not support state-by-state labeling requirements. As drafted, SB 582 would prohibit commonly used labels from identifying a package or product as recyclable under ASTM standards (Section D7611-13) that are currently required by Oregon and many other states, unless that package or product includes the Oregon specific labeling requirement or the producer using the label can show that the packaging is actually being recycled in a “majority” of recycling collection services in Oregon. The goal of How2Recycle labels is to reduce consumer confusion with a clear and consistent recycling message and corresponding informational website. They also provide companies with a way to ensure compliance with the Federal Trade Commission (FTC) “Green Guides” while using nationwide recyclability data. It will be very difficult, if not impossible, for members to comply with the labeling standards in the bill and make their products available in Oregon. **AMERIPEN encourages DEQ to engage in further discussions with packaging brand owners and manufacturers on this issue to determine what, if any, labeling language and requirements might be workable within the confines of SB 582.**

7. **Litter and Marine Debris Cleanup and Prevention Program** – 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.
8. **DEQ Administrative Fees** – Annual administrative costs should be reasonable, capped on an annual basis, and determined in consultation with the PRO.

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. SB 582 needs to be more feasible for producers and allow for more flexibility for PROs to meet their goals and those of the state to modernize its recycling system. We look forward to a continued this important dialogue with you and DEQ on this topic.