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**AMERIPEN  
American Institute for Packaging and the Environment  
Testimony on**

**Packaging Reduction & Extended Producer Responsibility**

**Senate Environmental Conservation Committee  
Assembly Environment Conservation Committee**

**October 24, 2023**

Chairman Harckham, Chairwoman Glick and Members of the Senate and Assembly Environmental Conservation Committees.

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to submit testimony on packaging reduction and efforts to establish an Extended Producer Responsibility (EPR) program for packaging in the State of New York. AMERIPEN supports EPR when it is structured in a balanced and equitable way and we would welcome the opportunity to continue discussions with the Committees and stakeholders to find a feasible and workable EPR approach for the State.

AMERIPEN is a coalition of stakeholders dedicated to improving packaging and the environment. We are the only material inclusive 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 effective and efficient recycling policies. The packaging industry in New York supports 58,621 jobs and accounts for more than \$20 billion in total economic output.

Packaging plays a vital role in New York, ensuring the quality of consumer goods as they are manufactured, shipped, stored and consumed, protecting the health and safety of Illinoisians, who consume, use and handle those products. Packaging has value and none of it belongs in landfills, roadsides or waterways. We need to recover it to be recycled and reused, and no one knows better how to do that than the AMERIPEN members who design, supply, produce, distribute, collect and process it. They are driving innovation, designing for better environmental performance to boost recycling and evolve the recycling infrastructure.

AMERIPEN supports policy solutions, including packaging producer responsibility, that:

- **Improve the Recycling System:** Are designed to actually achieve the recycling and recovery results needed to create a more circular packaging economy.
- **Effective and Efficient:** Focus on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values and streamline administrative costs.
- **Equitable and Fair:** Focus on all material types and are funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

AMERIPEN has been concerned that current packaging EPR legislation in New York (S.4246A & A.5322A) would not meet these principles and we are hopeful that a new draft can emerge for further consideration. Following below are critical issues we believe must be addressed for a successful EPR program to be established in the State.

### Critical Issues and Considerations

1. **Realistic Goals** – Setting statutorily mandated recycling, recycled content, source reduction or other goals is an extremely challenging exercise, especially without any reliable data to support what these goals might be in the State. Instead, AMERIPEN asserts that goals should be developed following establishment of a EPR law and with proper study of the recycling system or markets in

New York through a statewide needs assessment such as is being conducted right now by the Center for Sustainable Materials Management and SUNY College of Environmental Science and Forestry. Setting an extremely aggressive set of rates and packaging reduction mandates might look like progress, but without a true vision of what that future might look like either dooms the law to fail or will result in companies going out of business in the State. AMERIPEN believes an analysis of real-world markets and the current recycling system is critical before any specific performance goals are put into law. ***We recommend that a proper needs assessment and rates study be performed and published prior to setting mandatory performance goals within a packaging EPR program.***

2. **Packaging Reduction** – AMERIPEN understands and supports the Committee and the Chairs’ desire to reduce packaging and packaging waste. However, setting unachievable packaging or source reduction goals in statute will either wholesale result in banning products under the law or cause the law to fail under the inability to meet such mandates. Packaging reduction is happening in the marketplace and has been occurring for some time, as it is an area that reduces costs to producers. AMERIPEN very recently examined the past three years of ESG reporting by our membership to see what they reported on source reduction. We identified that the average annual reduction in packaging materials across a global portfolio is typically 1-2 percent.<sup>1</sup> This may not sound like much, but it can add up to millions of pounds each year. One major CPG notes that between 2005-2014, they removed 150 million pounds, or an average just below 19 million pounds per year, from their global packaging chain. Our members all stress these reductions are the result of steady changes over different products across multiple years and with multiple stakeholders and steps involved. These types of changes take time to ensure progress is steady. However, codifying source reduction goals in statute, without considering producers’ historical source reduction efforts and without a clear vision for how companies and their retail partners could achieve them, will cause traditional business models to cease to exist. ***Therefore, AMERIPEN asserts that for any mandated source reduction goals, credit for historical efforts must be provided for and goals must be based on the needs assessment and developed in conjunction with producers, retailers and stakeholders.***
  
3. **Funding Mechanism** – The funding mechanism in a successful EPR program must be reasonable and constructed in a way that shares costs between producers and municipalities for fair and reasonable allocations of services and costs. AMERIPEN opposes funding mechanisms that would provide for 100% cost reimbursement from producers to municipalities or private entities for collection, recovery, recycling and processing of packaging materials – especially without providing for incentives or best practices for improving recycling. Improving the recycling system is a shared responsibility and funds should primarily support infrastructure development and reimbursements should only be used to return a material to a neutral market value – not cover the entire recycling system as it exists today. ***For a successful EPR program, producer responsibility organizations (PROs) or producers must be given flexibility to use the needs assessment to determine***

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<sup>1</sup> AMERIPEN assessment based on member conversations. Also referenced in Berry Global Annual ESG Reports for 2022 and 2021 based upon their own tracking.

***reasonable best practices and convenience standards for particular geographic regions and then determine reasonable costs. PROs or producers should not be locked into funding only the current recycling system.***

4. **Enforcement and Office of Inspector General** – EPR systems must be efficient and effective, without undue administrative structures and unfair enforcement practices. Concepts such as creating an Office of Inspector General duplicates the existing authority that would be vested in the Department of Environmental Conservation (DEC) and in some cases the State’s Attorney General. Creating wholly punitive enforcement departments that duplicate existing enforcement mechanisms serves no useful purpose and subtracts from funding that could be used to actually improve recycling in New York. ***AMERIPEN recommends that enforcement remain vested in the Department of Environmental Conservation, and where necessary the Attorney General’s Office.***
5. **Chemicals in Packaging** – Imposing wide bans on the mere presence of chemicals in packaging, without clear environmental or public health justification, is not a means to creating an effective and efficient packaging EPR program. Additionally, banning any presence of certain chemicals in packaging, without providing for any de minimis levels to account for substances that were not intentionally added, undermines the potential use of recycled content in products and makes an EPR program impractical. Interjecting this issue into EPR legislation is not germane to recycling systems and their improvement. ***Chemicals in packaging can and should be addressed outside of packaging producer responsibility laws and under other existing statutory and regulatory frameworks in New York, including the State’s ongoing participation in the Toxics in Packaging Clearinghouse.***
6. **Feasible and Consistent Approach** – Four states – Maine, Oregon, Colorado and California – are working to implement packaging EPR laws enacted in 2021-2022. While these programs are not the same, there are lessons to be learned as they are being implemented. These states are in the following stages of implementation and offer the following points of reference for consideration as a program is crafted for New York:
  - **Maine** – this law relies heavily on the Maine Department of Environmental Protection (DEP), similar to approaches under consideration in New York, to make most administrative decisions via rulemaking and the stewardship organization (SO) will be a contractor to the DEP and primarily serve as a funding conduit from producers to municipal governments. This structure has resulted in Maine having the longest timeline to implement their EPR program (DEP estimates 2027 for funding to flow to municipalities) despite being the first state in the nation to pass a packaging EPR law.
  - **Oregon** – this law has had more success under a shared-producer responsibility structure, where producers are estimated to fund approximately 30% of the cost of the recycling system and its expansion. Oregon’s approach, similar to some proposals in New York, creates statewide recycling acceptance lists and has clear delineation on how producers

will help create expansion of the recycling system. Oregon's rules are expected to be adopted fully in 2024 and the program will be operational in 2025.

- **Colorado** – this law will establish a 100% producer funded and producer operated program and also in one respect are further along than the other three state here in that the state has already selected the PRO. Their program plan will be in place in March of 2024 and will go into full effect starting later in 2025.
- **California** – this law has statutory aggressive source reduction and recycling goals, making it the most expansive packaging EPR law in the country. Similar to Maine, funding is not likely to start in California until well into 2027.

These lessons suggest that greater involvement of producers in a shared producer responsibility system would result in a more efficient and more quickly funded program to begin improving recycling in New York sooner.

## Conclusion

AMERIPEN recognizes the need to improve the recycling system in New and we remain committed to being a partner to find the right path forward. We urge the Committees to consider the critical considerations above and would welcome the opportunity to work with stakeholders to create a feasible structure for a EPR program that will improve recycling systems in New York.

We believe that improving the recycling system is a shared responsibility. Therefore, we hope that our comments are helpful in creating a pathway to developing a truly workable program for EPR in New York. Please feel free to contact Dan Felton, Executive Director of AMERIPEN at [danf@ameripen.org](mailto:danf@ameripen.org), or Andy Hackman at [ahackman@serlinhaley.com](mailto:ahackman@serlinhaley.com) for any questions or for stakeholder discussions on this important issue. Thank you for your consideration of our comments.