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**Testimony of
AMERIPEN – The American Institute for Packaging and the Environment
Presented by Andrew Hackman, Serlin Haley LLP**

**In Support of Legislative Draft 1471
&
In Opposition to Legislative Draft 1541**

Joint Committee on Environment and Natural Resources

May 10, 2021

Thank you, Senator Brenner, Representative Tucker and members of the Joint Committee on Environment and Natural Resources and Agriculture, for the opportunity to comment on LD 1471 and LD 5141, both of which both would establish an Extended Producer Responsibility (EPR) mandate for packaging in Maine to support municipal recycling with the goal of improving recycling in the State.

AMERIPEN **supports LD 1471** and **opposes LD 1541**, as there are important lessons included in LD 1471 that we have learned and hope will be considered by the Committee prior to enactment of any packaging producer responsibility law. Both bills would establish a stewardship program for packaging overseen by the Department of Environmental Protection (DEP) and in coordination with a packaging stewardship organization (PSO), but these bills differ on elements that will actually have a real-world impact on improving recycling in Maine. AMERIPEN's goal in working on the development of LD 1471 is the result of over a year of work with our members that have had experience with packaging producer responsibility around the world and our members and colleagues in the waste management sector. AMERIPEN's goal has been to offer a good-faith and proactive approach that integrates approaches from EPR programs around the world and offers a plan that will incentivize recycling growth and build recycling infrastructure in Maine.

AMERIPEN – the American Institute for Packaging and the Environment – 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 policy association in the United States and 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 today are based on the rigorous research rooted in our commitment to achieve sustainable packaging within a more circular economy. We have several member companies with a physical presence in Maine, and many more who import packaging materials and products into the State.

There are some key differences to note in comparing LD 1471 and LD 1541 and following below is rationale for the AMERIPEN approach on some key issues.

1. **Funding for Disposal/Landfilling**

LD 1541 provides municipalities funding for “disposal” or landfilling of products, while LD 1471 does not. Instead, LD 1471 intentionally saves funds from packaging that is currently not recyclable for infrastructure projects to enable that packaging to be recyclable in the future. This creates an incentive toward recycling and creates a more robust infrastructure budget to improve recycling in Maine.

Landfilling is currently the lowest cost method for dealing with solid waste in Maine. In fact, DEP's recent *Maine Solid Waste Generation And Disposal Capacity Report for Calendar Years 2018 & 2019* notes, “During this reporting period, **the average tipping fee for disposal was lower than that**

for recyclables, resulting in disruptions in Maine’s recycling programs.”¹ LD 1541 would make landfilling less expensive by creating a rate that municipalities would receive for packaging materials that are landfilled. This would unfortunately create a perverse negative environmental incentive for municipalities to landfill packaging materials to achieve the lowest total cost for solid waste while still receiving reimbursements under LD 1541.

No other state in the nation that is considering packaging producer responsibility includes funding for disposal/landfilling costs in their proposed legislation. This issue is probably **the most critical and significant difference that will negatively impact the actual improvement of recycling in Maine** and AMERIPEN urges the Committee to remove this negative incentive from any packaging producer responsibility legislation that advances.

2. Program Administration and Rulemaking

A second area of difference between LD 1541 and LD 1471 is how the producer responsibility program will be administered and the burden placed on DEP. LD 1541 envisions a program where DEP is responsible for 5-separate rulemakings on rates and fees that are paid to and from the PSO. These issues are foundational structures to any packaging producer responsibility program and AMERIPEN is concerned that contentious and frequent rulemakings on these issues would be necessary throughout the life of the program. This would result in non-market based rates being set and fewer incentives for improved recycling infrastructure in Maine.

In contrast, LD 1471 utilizes a structure from existing programs in Canada and integrates stakeholders from the waste sector and beyond, joining the PSO in a binding process that creates collaborative rates and solutions that incorporate real-world data and information. This system is consistent with the principle that packaging producers have the responsibility and ability to help create solutions for recycling. Conversely, LD 1541 divorces producers from key decisions about rates and fees and forces them into becoming “price-takers” for any rate that DEP approves. This creates a truly confrontational system of rulemaking and administrative law and lacks oversight for rate decisions. Additionally, the approach in LD 1541 runs in contrast with the State’s own Framework Product Stewardship Law (38 MRSA, Chapter 16, Section 1176²), that passed in 2009 and was amended in 2019, which states that producers would be “...responsible individually, collectively or through a stewardship organization **for the implementation** and financing of a product stewardship program to manage the product at the end of the product's life...”[Emphasis Added]. LD 1541, does not allow producers or the stewardship organization to be actually responsible for “implementation” of this EPR program. Instead, the DEP implements all major aspects and decisions to implement the program and the stewardship organization is only responsible for financing.

¹ Maine Solid Waste Generation And Disposal Capacity Report for Calendar Years 2018 & 2019, Released January, 2021, Page 7. <https://www.maine.gov/tools/whatsnew/attach.php?id=3898411&an=1>

² <http://www.mainelegislature.org/legis/statutes/38/title38sec1776.html>

AMERIPEN believes that the collaborative and PSO-driven administrative structure, overseen by DEP I LD 1471, is feasible and would create an adaptive and fair approach to making decisions and setting rates for a packaging producer responsibility in Maine. Such an approach is more consistent with other states and jurisdictions around the globe with EPR programs for packaging.

3. Needs Assessment and Data

As admitted by all parties, there is a lack of adequate data on recycling costs and needs in Maine. DEP has estimated that the costs of recycling in Maine is \$15-17-million dollars, but nobody knows for sure what the true cost is or what should be covered via funding. LD 1471 proposes a needs assessment, performed by the PSO, to determine a real-world budget for recycling and improvement in Maine to establish a fair and reasonable budget for what will be covered by the program.

LD 1541 lacks any such mechanism for data development and budgeting. This would impair the ability of the PSO to plan effectively and would result in the majority of recycling funds flowing to existing activities without clear goals or metrics.

AMERIPEN asserts that a needs assessment is critical for any packaging producer responsibility program to be successful and transparent in Maine and strongly encourages this Committee to ensure that is included in any legislation that may advance.

4. Collection Costs

LD 1541 and LD 1471 also differ on the issue of covering collection costs for recycling and solid waste disposal, with LD 1541 mandating the PSO cover this 100%. Collection services are not offered in many communities in Maine, and in many places, recycling collection is truly infeasible given roads and property locations. LD 1541, in the way the producer responsibility program is structured, creates a clear disparity, favoring urban municipalities that already have collection programs.

Additional collection services, frequency of collection and other collection factors have a clear nexus to municipally controlled decisions, constituent service and the ultimate costs of this area of a recycling program. The PSO and producers, under LD 1541, will have no control over those collection factors, yet are responsible for 100% of the costs. Unless the PSO is granted control over these collection factors, they should not be responsible for 100% of the costs.

LD 1471 creates a more reasonable pro-rated formula, based off proposed legislation in Oregon, that accounts for the fact that collection costs are a municipal commitment that is decided at the local level, but provides for reasonable transportation costs reimbursements from producer, to transport recyclable material to processing.

AMERIPEN firmly believes that a reasonable rate for collection and transportation must be established to create a reasonable program and not create further urban and rural gaps in recycling services.

5. “Readily Recyclable” and “Recyclable” Definitions

Another area of difference between LD 1471 and LD 1541, is the “readily recyclable” or “recyclable” definitions. The “readily recyclable” definition for packaging in LD 1541 is both unworkable and unreasonable. It may well be impossible for DEP to determine what types of packaging material are considered “readily recyclable” based upon a “consistent market for purchase” existing for that in “full bales”. Even if DEP can determine that for one year based upon entities processing recyclable material who are willing to purchase full bales of said material, it will be an annual moving target for those materials and very possibly not hold true for the next year. In Maine, recycled material bale markets constantly shift within calendar years and within local markets. Under LD 1541, **nearly all packaging materials will likely be considered not “readily recyclable,” including cardboard, glass, mixed paper, mixed plastics and plastic films.**

Additionally, the exact definition of “readily recyclable” from LD 1541 has been rejected in the State of New York, under Senate Bill 1185, and the approach in LD 1471 has been accepted. LD 1471 creates a collaborative approach within the PSO with producers and recyclers to determine a reasonable set of materials that will be considered “recyclable.” It is this type of definitional approach that will offer uniformity across the state and a more feasible and stable program into the future.

Conclusion

AMERIPEN appreciates the opportunity to comment on LD 1471 and LD 5141 and recycling and recovery policies in Maine. While neither bill is perfect, we have come a long way in working to find credible and constructive solutions that we urge the Committee to consider in its deliberation on these issues.

We acknowledge that there are critical recycling funding and infrastructure issues and challenges that must be addressed in Maine, and LD 1471 represents an honest, good-faith effort to address critical issues that we have been able to explore since the failure of LD 2104 last year.

We therefore respectfully ask the Committee vote **Ought Not to Pass on LD 5141**, as currently drafted and **Ought to Pass on LD 1471 or consider collaborative amendments to bring all parties together on this issue.** We hope that the Committee will work with AMERIPEN and other stakeholders on approaches that will in fact support and increase packaging recycling and recovery in Maine in an equitable and meaningful manner.