

January 23, 2023

Melanie Loyzim
Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

RE: Comments on Municipal Reimbursements – Stewardship Program for Packaging

Dear Commissioner Loyzim,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to submit commentary to the Department of Environmental Protection (“DEP”) on the rulemaking topic of municipal reimbursements relative to regulations in paragraph 13(A)(4) of the Packaging Stewardship Law (38 M.R.S. § 2146(13)(A)(4)).

AMERIPEN is a coalition of stakeholders 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 effective and efficient recycling policies. We have several member companies with a presence in Maine, and many more who import packaging materials and products into the state. The packaging industry supports more than 7,100 jobs and accounts for more than \$2.1 billion in total economic output in Maine.

As raised during the January 10th stakeholder’s discussion, AMERIPEN has the following concerns, regarding elements raised in the background document and assertions made by other stakeholders during the session:

Costs for Covered Packaging Only – AMERIPEN recognizes the importance and value of appropriate municipal reimbursements and determining different reimbursement and incentive methods to achieve the overall goal of material movement up the solid waste management hierarchy. AMERIPEN firmly believes that municipalities should be reimbursed costs incurred for *covered/eligible* packaging material only – not *all recyclable* materials collected. 38 M.R.S. § 2146(10) stipulates that municipal reimbursable costs for *covered/eligible* packaging materials may include those costs related to the collection, transportation, and/or processing of such *covered/eligible* packaging materials.

Disposal Costs Excluded from the Law – While municipal reimbursable costs for *covered/eligible packaging material* are not necessarily limited to those costs mentioned above, *disposal costs of packaging material not readily recyclable should not be considered a reimbursable cost* and AMERIPEN

asserts that this runs counter to the law and legislative intent. There is clear legislative intent with the H-714 amendment of L.D. 1541, offered by Representative Tucker, replacing the word “disposal” with “other management” and specifically *removing* language that would have required reimbursement to participating municipalities for costs incurred in the disposal of packaging material not readily recyclable.

AMERIPEN believes reimbursing the disposal of materials could also potentially lead to an increase of municipal program participation, yet result in activities that only simply collect the minimal recyclable materials and then seek as much reimbursement as possible for the disposal of significant volumes of packaging materials, in order to receive funds under the program. AMERIPEN asserts that providing disposal costs for packaging materials undermines the overall goal of moving materials up the solid waste management hierarchy.

Hidden Infrastructure Costs in Municipal Reimbursement Rates – AMERIPEN further believes “infrastructure” – elements of infrastructure, loan payments, or equipment costs – *should not be considered a municipal reimbursable cost*, as suggested in the background documents and should not be included in the calculation of the Municipal Reimbursement Rate covered under 38 M.R.S. § 2146(10). Under the law, funding for infrastructure, loans, and/or equipment are covered under a *separate* section of the Packaging Stewardship Law, specifically 38 M.R.S. § 2146(11), Investments in Education and Infrastructure. Within that *separate* section, the stewardship organization is provided a prior approval process with the DEP to qualify for funds from an established packaging stewardship fund for infrastructure, loans, and equipment related costs. Since covered under separate section of the law, they should not be considered a municipal reimbursable cost, nor included within the calculation of the Municipal Reimbursement Rate.

Revenue from Recycled Materials must be Considered – AMERIPEN asserts that the Municipal Reimbursement Rate must consider any revenue received from recyclable materials sold on the open materials market and discount the rate for the average revenue a municipality may receive on a per ton basis. If revenue is ignored, municipalities will not be accountable for their operations and reimbursements would exceed the operating budget of municipal recycling programs. Providing funding for materials that consistently have a positive market value and provide net revenue to a municipality subtracts from the ability of the stewardship organization to invest in infrastructure and supporting additional materials to become readily recyclable under the law.

Default Recycled Rates and Data – Finally, AMERIPEN has questions and concern in DEP relying solely on default per ton material recycling rates for municipal recycled volumes, where the amount of material in marketed commodities recycled cannot be determined. We have questions about how rates would be established and what data would be utilized? Additionally, there is concern with established “default rates” obscuring challenges and progress with particular recycled packaging materials – rather than actually providing the data that can be used to improve recycling.

Accurate reporting will provide *beneficial* data that ultimately assists in identifying any potential changes or improvements needed to municipal recycling programs. Municipal cost data is also a main element of producer payments and is important for incentivizing packaging decisions that reduce municipal costs. Therefore, it is imperative for AMERIPEN, prior to the end of the rulemaking process and before rules are finalized, that details are made available regarding what information the DEP will require from municipalities in order to qualify for reimbursements. AMERIPEN believes effective policy is based on good data. Therefore, in the best interest of everyone, this information is needed for discussion prior to implementation to fully understand how a Municipal Reimbursement Rate will function.

AMERIPEN urges all interested parties to continue an open dialogue and focus on the balance between the myriad of needs for packaging, recycling, and sound solutions to grow a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, which in the end, ultimately assists in the success of this program. AMERIPEN continues to focus on strategies that develop and/or strengthen policies to progress the “reduce, re-use, recycle” strategies while at the same time enhance the value of packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain. We remain committed to supporting progressive, proactive, and evidence-based strategies for sustainable packaging recovery and recycling programs.

As always, AMERIPEN thanks the DEP for this opportunity to provide comments on this important matter under the Stewardship Packaging Law and appreciates its staff’s time and assistance during this rulemaking process. Please feel free to contact me or Andy Hackman, with Serlin Haley, LLP (ahackman@serlinhaley.com) with any questions on AMERIPEN’s comments.

Sincerely,



Dan Felton
Executive Director