

# MINUTES OF OLCC ADVISORY COMMITTEE MEETING

**OAR 845**

**Division 020**

**Beverage Container/Redemption Center Package**

**Thursday, September 17, 2009 at 9:00 AM in Room 103A,  
Commission Offices, Portland**

Present: Rick Paul (Far West Fibers); Chris Girard (Plaid Pantries/ONSA); John Andersen (OBRC); Alisa Shifflett (OBRC); Brock Howell (Environment Oregon); Shawn Miller (NW Grocers Association); Jerry Powell (Association of Oregon Recyclers); Peter Spendelow (DEQ); Palmer Mason (DEQ); Dan Blue (City of Gresham); Ashley Skaurud (Government Relations Strategies); Glen Martens (Smurfit-Stone); Tom Erwin, Lynne Johnson, Laura Paul, and Jennifer Huntsman (OLCC Staff).

Invited but not Present: Mike McCauley (League of Oregon Cities); Katy Daily (Recycling Advocates); Donna Vandall (OLCC).

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The meeting began at approximately 9:05 a.m. in Room 103A of the OLCC's Milwaukie office. Jennifer Huntsman, OLCC Rules Coordinator, moderated the discussion and opened the meeting with a review of the process, history of how this rulemaking came about and introductions of those in attendance and their interest in this rule. Ms. Huntsman reminded everyone of the purpose of this meeting.

Ms. Huntsman explained that the Legislature has said (through Oregon's Administrative Procedures Act) that it wants agencies to involve interested parties in policy development. Rulemaking is one way agencies develop policies and Advisory Committees are a good way to hear from people or groups likely to have an interest in a particular issue - or who are likely to be impacted by a policy or change an agency is considering. She explained that Advisory Committees are just that: advisory. The purpose of an Advisory Committee is to give everyone a chance to express their thoughts on issues. The Commissioners are not bound by what we discuss or decide in these meetings. They are the policy-makers, and will make the final decision on whether to adopt the proposed amendments. Under Oregon's Public Meeting Law, this meeting is open to the public. We will take and retain minutes of the meeting. The discussion today will be informal; the minutes will reflect the main points that are made. We do not identify who said what, except for Ms. Huntsman. Everyone on the mailing list for this rule will be sent a copy of the minutes; attendees were reminded to record their name and email address on the

sign-in sheet.

This morning we are meeting to discuss the possible amendment and repeal of several rules in Division 20. This proposed rule package would amend OAR 845-020-0020, OAR 845-020-0025, and OAR 845-020-0030 regarding the standards and application for a redemption center. It also proposes to repeal OAR 845-020-0010 and OAR 845-020-0015 regarding outdated container certification.

Ms. Huntsman explained that we would be discussing the rule language proposed to be amended in detail and that this discussion and suggestions will be used in the permanent rulemaking process.

There will be a formal rulemaking hearing on this matter on Tuesday, December 15, 2009 at 10:00 am in Room 103A. Ms. Huntsman advised that she will repeat that information at the end of the meeting, but asked everyone to please note the dates on their agendas for the hearing and public comment period. Staff plans to have this back to the Commissioners for the February 2010 meeting for final action to adopt any amendments to the rules.

Ms. Huntsman asked members to introduce themselves before proceeding to discuss the proposed amendments.

#### OAR 845-020-0010 Certification of Containers / OAR 845-020-0015 Application for Certification of Containers

Several committee members shared that the recycling community is exploring the possibility of reusing glass beer containers in Oregon, since reuse is always a priority over recycling. Initial talks with the industry, such as the craft breweries and OBRC (Oregon Beverage Recycling Cooperative), regarding use and cleaning for reuse of a common bottle have been promising.

Because they are not currently being utilized, the Commission was considering repealing these two container certification rules. However, considering this new information, the committee agreed that we should leave the rules on the books for now. It was acknowledged that the current rules describe the container reuse and certification system from 1971, so if and when this latest reuse program gets off the ground there will be a need to open and amend these rules to match today's environment.

#### OAR 845-020-0020 Redemption Centers / OAR 845-020-0025 Application for Approval of Redemption Center

Ms. Huntsman explained that the initial proposed amendments were meant to take

very general rules that have been on the books for over 30 years and add more specificity for the applicant as to what criteria the Commission will consider when determining if a redemption center will provide a convenient service to consumers. The initial approach was to add at a minimum the criteria categories or factors that would be considered. As a starting place, no specific metrics were included in the criteria rule language. This approach stemmed from the pre-rulemaking advisory committee meetings where a wide variety of specifics were discussed but the only real consensus was around the need to build as much flexibility as possible into the rules to start.

To give the group some background the committee discussion started with DEQ (Department of Environmental Quality) representatives sharing information and maps from other jurisdictions that have redemption centers. The majority of the discussion centered on the California and British Columbia redemption center models as well as the initial proposal for a Gresham redemption site in Oregon.

While it was pointed out that other localities have established acceptable distances between a redemption center and the participating dealers, it was also discussed that there are exemptions made in these systems for factors such as industrial area vs. commercial, the types of highways or roads in the area, and the size of the redemption center.

The majority of committee members felt that while the rules should not be so specific that they thwart the flexibility needed to get our system up and running, they also don't want a free-for-all as there are other models out there that we know we don't want in Oregon. Several members pointed out that there is a very big difference between say the California redemption center system and the Oregon model currently proposed by OBRC; in California, for example, most redemption centers are very small and have very limited hours of operation. They advised that we take into account the totality of our circumstances here in Oregon as we develop our system, as California has.

The committee sees a need for a balance between specificity and flexibility as we move to a new delivery model for container redemption in Oregon. The overall goal is to increase recycling rates and to achieve this we will need an efficient redemption center model, one where the definition of "convenience" is flexible enough to support innovative methods of redemption.

DEQ representatives then shared a concept proposal with the group for discussion. It included a two-tier approach for redemption center approval as well as acknowledgment of the inherent differences between urban and rural areas.

In this concept, Tier One would allow an applicant to propose a center under a basic set of criteria to achieve fast track approval, while Tier Two would allow an applicant to propose a center for approval that does not meet the requirements of Tier One provided that alternate measures enhancing convenience beyond the minimum criteria are implemented. For example Tier One might require all affected dealers to be within one mile of the proposed center where as Tier Two might allow for exempting dealers outside of the one mile range from return-to-retail if other measures such as longer hours of operation or an increase in the number of redeemable containers were implemented.

Some committee members liked the idea of incorporating some specific metrics, but with an exception process. One member mentioned that the concept proposal seems to focus on drive time as the main convenience factor and wondered if there was any information out there on the importance ranking of various convenience factors. While there is no ranking data available, it was acknowledged that the other factors are important as well. The group also discussed the fact that “convenience” is relative to each individual consumer as well; for example, to some having a center near a highway would be convenient, while others wouldn’t find that convenient because they don’t own a car.

Other committee members felt that it would be hard to figure out specific metrics now for such a new system where there isn’t even one redemption center up and running yet. If the Oregon model were to change to be more like those in Canada or California, then we could have a different conversation. They felt that trying to plug specific numbers in right now when there are so many unknowns would not meet the goal of having flexibility. It was proposed that we test our redemption center model first, see where the problems are, and then incorporate specific metrics in our rules.

The committee went on to a discussion of DEQ’s concept of distinguishing between urban and rural areas when approving a proposed redemption center. One member questioned whether the criteria for urban versus rural might be backwards. They believe that for the most part in a rural area there aren’t two mile distances to be had – period, and that in an urban area you have population density for many miles along with the dealers who locate there to serve them. DEQ explained that the idea behind their distinction is to “allow” less redemption centers to be established in rural areas. A member expressed that, unlike British Columbia, we are not in an “allowed” environment here in Oregon and that under our current framework it is the industry, not government, who is responsible for changing the container return model. It was also pointed out that a two mile distance might work in an urban area, but that according to this concept proposal both Bend and Redmond would fall under the definition of urban.

After the discussion of the DEQ concept proposal, the committee members were moving toward agreement that actual data from the Oregon experience would be needed before much specificity could be incorporated into rules. However, a concern was also expressed that we should also have a definite point in time where the existing data is used and evaluated; data collection should not stretch on indefinitely. One member then shared a word of caution that the first redemption center in Oregon would not provide us with data indicative of the entire proposed 90 redemption center system so it will be hard to analyze. There was agreement from other committee members that there would more likely need to be several redemption centers operating, including one in a rural area, in order to get useful data. It was also mentioned that outreach and education will be a critical factor affecting both consumer satisfaction and return volume.

One member suggested a two-step rulemaking process where the redemption center applicant would be required to provide data for use in the second round of rulemaking. When Ms. Huntsman asked about putting the data requirement into the rule language it was brought up that, unlike OBRC, not all applicants would have access to comparative data such as container returns at a center versus what they were at the dealers being served. It was then suggested that the Commission incorporate the data reporting requirement in the order approving a specific redemption center. The committee liked the idea of incorporating this requirement in the order versus a rule, as it would give the flexibility needed for the redemption center system pilot(s).

The committee's discussion then turned to what kinds of data should be reported by redemption centers. Some suggestions from the group were customer counts, average returns per hour, overall redemption data (including the volumes at non-participating small dealers in the area), and average per customer, as well as perhaps the zip code of the consumer so we can determine what percentage of containers are redeemed by the actual consumer of the beverage. Other data ideas included customer feedback from sources such as the Metro Recycling Center hotline, the OLCC hotline, and any relevant hotline the local jurisdiction might have as well. It was also suggested that the Commission convene a more technical task force to work on what specific data to require.

One member then asked if only large dealers will be able to participate in the proposed redemption center system, because he thought at least some smaller dealers would like to join. It was shared that anyone can join under the current applicant's system if they pay a share of the operating cost based on sales volume. Another member shared that most of the small dealers they have spoken with wanted to wait and see what, if any, impact a new redemption center in the area

would have on them. Another member added that currently it is only approximately 300 dealers in Oregon who are redeeming 70% of the containers, with most large dealers experiencing over-redemption.

It was also asked if the OLCC can mandate a dealer's participation in a redemption center. Staff shared that the Commission's stance is (with confirmation from our DOJ counsel) that we do not have the statutory authority to mandate a dealer's participation in a center or its funding.

The discussion then turned to the participating dealer's role in consumer convenience and the importance of dealers providing signage regarding the redemption center. A suggestion was made to incorporate a general requirement regarding education and communication into the rule language. One member then pointed out that we are already asking how consumers will be notified of the redemption center on the application. The advisory committee agreed that we should add the notification language from the application to both OAR 845-020-0020 and OAR 845-020-0025.

**The advisory committee members were able to reach consensus on the following:**

- a) The overall goal of the redemption center system is a high redemption rate and what is convenient for most consumers is not necessarily convenient for all. Given these facts, flexibility is what is needed in the rule language for now.
- b) The current draft rule language will work as it is with no specific metrics included in the current (first round) rulemaking.
- c) The only suggested revision to these two rules is the addition of the consumer notification language discussed above.
- d) A requirement for a redemption center applicant to provide certain operational data at specific points in time should be included in the Commission's order approving a redemption center.
- e) There needs to be a follow-up process for reviewing the data as the redemption center system develops. This data analysis can then be used by the Commission to determine when the second round of rulemaking to add more specificity would take place.
- f) Over time, there was a hope that we could come to an agreement regarding specific metrics of consumer convenience, and that the fast-track approval concept could be revisited in the next round of rulemaking.

## OAR 845-020-0030 Standards of Cleanliness for Redemption Centers

The committee members were appreciative of the proposed addition of the “infestations” language as one spider or fly for example should not be considered a violation.

The committee was in support of the proposed language with the one suggested addition of the word “the” before “law”.

### Fiscal Impact Statement

Ms. Huntsman led the committee through a discussion of the Fiscal Impact Statement and the need to quantify (if possible) fiscal impacts this rulemaking will have in general, as well as any adverse impact on small businesses. During the discussion on the Fiscal Impact Statement, the following points were made:

Because these proposed rule amendments are putting into rule what already exists in the redemption center system set up by statute, there really is no fiscal impact solely from these rule amendments.

That said, the system actually getting up and running for approval of the first redemption centers could mean a slight increase to the applicant in time and resources to apply. It was also questioned if the agency has the staff and resources to handle the application approval process.

The overall redemption center system currently being proposed by the industry would not be a negative impact on dealers, specifically large dealers.

Because the large dealers currently over-redeem, as long as a redemption center redeems the same or more containers than the participating dealers did, there should be no negative impact. However, if the center’s redemption numbers are less, then there could be a negative impact on small dealers in the area, as well as recycling numbers as a whole.

Ms. Huntsman stated that a new draft of the proposed rule amendment will go out with the Advisory Committee minutes within the next few weeks. This will be the version of the proposed rule amendments that folks will be asked to comment on at the hearing and in this next written comment period.

Ms. Huntsman reminded members of the rest of the process: the rulemaking hearing is currently scheduled for Tuesday, December 15, 2009 at 10:00 am in

Room 103A. Written comment would then be received into the rulemaking record until 5:00 pm on Tuesday, December 29, 2009. The tentative plan is to present a report to the Commissioners at their February 2010 meeting for possible final action on this matter.

Ms. Huntsman closed the meeting by thanking members for their attendance and participation. The meeting ended at 11:45 am.