

Meeting Summary

Truth In Labeling Task Force

Meeting Summary: Meeting #6

5/4/2022

Zoom



State of Oregon
Department of
Environmental
Quality

Truth In Labeling
700 NE Multnomah St.,
Suite 600
Portland, OR 97232
Phone: 503-869-2884
Contact: Alex Bertolucci

www.oregon.gov/DEQ

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List of Task Force Members in attendance

- Athena Petty
- Commissioner Steve Kramer
- Dave Larmouth
- Dylan de Thomas (Chair)
- Jenny Slepian
- Kristan Mitchell
- Nicole Janssen
- Maya Buelow
- Rep. Evans
- Sen. Beyer

- Shawn Miller
- Thomas Egleston
- William Posegate

Attended part of the meeting

- Dr. Anja Brandon (Vice-chair)
- Dan Felton

DEQ Staff

- Alex Bertolucci
- David Allaway

| Time | Topic |
|-----------|---|
| 2 p.m. | Welcome. The Chair welcomed attendees and thanked members for their work between meetings. The Chair also expressed optimism that the path would be clear by the end of the meeting. The Chair made a call for public comment. |
| 2:05 p.m. | Overview of statewide recycling lists David Allaway of Oregon DEQ presented the different lists of materials for recycling that will be created under the Recycling Modernization Act. The first list is for materials local governments must collect for recycling. The uniform statewide collection list indicates items that can be collected in commingled recycling. The USCL is a subset of the local government list. Lastly is the producer responsibility organization drop-off/depot collection list. |
| 2:10 p.m. | Review straw poll results The Chair thanked all members for participating in the straw poll. ORRA members received an additional thanks for their work on an additional proposal. Both proposals are included at the end of this document. Straw poll results showed that the revised Chair/Vice-chair proposal had support from eight members, five members supported changes, and no members opposed it. The ORRA proposal received six votes in support, two votes to support with changes and five votes opposed. Members who supported a proposal with changes provided what changes they would like to see. These responses are below: Chair/Vice-Chair proposal |

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- **Jenny Slepian** – “The local government list recommendation adds too much complexity for producers. Producers are unlikely to make local jurisdiction specific labels. The labelling needs to be statewide. It is either labelled for recyclable, or not recyclable, but it is unlikely that producers will create labels that specify “Oregon drop off” or “Recyclable in some Oregon jurisdictions “etc. We need to keep in mind that this is just one of several EPR bills in the country that will require labelling changes, and while it is reasonable to expect state level labelling, local level labelling would be prohibitive on many levels. I would ask that we strike this section on local government rules.”
- **Shawn Miller** – ““standards for language” must be flexible enough to encompass all federal and state requirements - How2Recycle logos/instructions should be considered an acceptable standard. Not clear what good vs poor would be, given the standards must be complied with - is simply being easily visible at point of purchase considered “good”? or is going beyond use of the text/symbol “recyclable” to also include instructions considered good?”
- **Dave Larmouth, Will Posegate and Kristan Mitchell** - “1. Please explain what is meant by “recyclability claims (text and/or symbol)” as used throughout the proposal a. Does that include the RIC code surrounded by the chasing arrows? 2. How would glass fit into this revised program? No glass in commingled collection, some in bottle bill, other is collected on the side curbside, and some at depot.
3. Under #4 of the proposal, how does the use of the circle/line around a recycling symbol to indicate not recyclable solve the 36 other states problem?
4. Instead of “allowing” embedded smart labeling, it should remain “mandated” a. Add an Oregon-specific pilot project (Digimark, etc) to test function and provide data and feedback on effect on contamination
5. Move #6 up – providing time for producers to complete changes should be required, not under “Other recommendations.” For example, mandating the smart labeling will require time, as will making changes to molds/other labeling devices.
6. Move #9 up to #8, to read “...labeling requirements, subject to Oregon Legislature’s oversight.” Delete #9, since it is now a part of #8.
7. #10, Support labeling improvements at the federal level that align with Oregon’s goals for Truth in Labeling.
8. No “Recommendations to PROs” – all should be recommendations to the Legislature, as that is the direction to this Task Force.
As for #1 and #2 under the Recommendations to PROs header in this proposal, ORRA’s position is that they are both under the scope of other entities noted in the RMA (rulemaking advisory committees, ORSAC, Local Governments, working with PROs, etc.). However, if that is noted, and they are moved to the Other Recommendations heading, ORRA will support.”

ORRA Proposal

- **Thomas Egleston** – “Remove requirement for #2 (make it allow) and remove requirement for #4 because it conflicts with California’s legislation, requiring recycling labeling is also challenging for products that dont have much labeling/packageg?”

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| | <ul style="list-style-type: none"> • Maya Buelow – “Bullet #3, change “mandate” to read “incentivize.” Bullet #4, change “Require” to “Incentivize.”” |
| 2:30 p.m. | <p>Discussion and editing of the joint proposal The Chair walked Task Force members through the edited Chair/Vice Chair proposal, now called the joint proposal, after integrating comments and feedback from members. The entire joint proposal is included at the end of this document.</p> <p>Discussion points included:</p> <ul style="list-style-type: none"> • Time allowed for producers to add smart labels to their packaging. The proposal suggested ten years. Task Force members suggested a five-year timeframe. • Definition of “standards for language,” “depot,” “good” and “poor” labeling practice, and “recyclability claim.” Ensure the “recycling claim” definition includes a recycling identification code inside the chasing arrows. • If a slash across the RIC would be allowed in the 36 states that require the RIC. • If the proposal creates conflict with California’s SB 343. • Will a strikethrough of the RIC cover the number? <p>Action by the Task Force</p> <ul style="list-style-type: none"> • Vote - Change the timeframe for mandating a QR code from ten years to five years? 11 voting members voted yes; two members were absent. • Vote – Share the proposal with the public and ask for input? 11 voting members voted yes; two members were absent. |
| 3:30 p.m. | <p>Liability Recommendation Task Force member Shawn Miller shared about the draft language he and Task Force member Kristan Mitchell put together on legal considerations involving labeling. The proposed language is below.</p> <p>Liability for package recycling labeling requirements should follow the producer that is responsible or has accepted responsibility for joining the Producer Responsibility Organization (PRO) set forth in Senate Bill 582 (2021 legislative session). On page 5-6 of the enrolled version of SB 582, Section 3 determines the producer of covered products. Furthermore, on Page 6, Section 4 (3) and (4) allows a producer to contractually or otherwise designate another producer responsible for that covered product as long as they have registered with the producer responsibility organization responsible for that covered product. Section 4 (3) and (4) is broad language to allow retailers to contract with a manufacturer to be the responsible producer for private label (brand) products just like in House Bill 2344 (2021 legislative session)—the wiper “do not flush” bill. House Bill 2344 defined the “covered entity” as a manufacturer of a covered product and a wholesaler, supplier, or retailer that has contractually undertaken responsibility to the manufacturer for the “do not flush” labeling of a covered product.</p> <p>In conclusion, liability for package recycling labeling requirements should track with both Section 3 and Section 4 (3) and (4) of Senate Bill 582 to be consistent with existing policy.</p> |

Meeting Summary

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|-----------|---|
| | <p>Civil Penalty Enforcement Add new provision under ORS 459.995 (1) (h) for civil penalty authority specific to new labeling requirements ...</p> <p>Any producer (as defined in ORS XXX.XXX) who violates this Act or any rule adopted under this Act incurs a civil penalty up to \$X per day for each day of the violation.</p> |
| 3:45 p.m. | <p>Public input Kim Holmes with 4R Sustainability</p> |
| 3:55 p.m. | <p>Next steps. Written public input will be accepted from 5/6 to 5/11. Input will be shared with Task Force members. Verbal public input will be taken by DEQ staff on 5/16 between 1 p.m. and 2 p.m. before Meeting #7, at which point staff will brief Task Force members on what was heard. The public input meeting is optional for members.</p> |
| 4 p.m. | <p>Adjourn.</p> |



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List of attendees

| | |
|--|---|
| Andrea Fogue-Oregon Refuse and Recycling Association | Kristin Leichner-Pride Disposal & Recycling Company |
| Callyn Gonzalez | Laura Leebrick-Rogue Waste, Inc. |
| Celine Swenson Harris | Laurie Hansen-Strategic Partners Group |
| Cheryl Grabham-DEQ | Michael Van Dyke |
| Colette Bazirgan | Morgaine Riggins-Tri-County Hazardous Waste & Recycling Program |
| Dean Kampfer-WM | Morgan Beltz-Oregon Business & Industry |
| Greg Ryan-Pioneer Recycling | Nicole Mann |
| Heather Trim-Zero Waste Washington | Nicole Portley-Department of Environment Quality |
| Jared Rothstein-Consumer Brands Association | Rachel Harding |
| Jazmin Rocha | Rocky Dallum-Tonkon Torp |
| Jeanette Hanna | Rui Fernandes-roundbanQ Inc. |
| jeff Murray-EFI Recycling | Scott Klag-Metro |
| Jeff Newgard-Peak Policy, LLC | Shannon Crawford-WM |
| Jennifer Olson | Timothy Brownell-Deschutes County |
| Julie Jackson | Vinod Singh |
| Katy McDowell | Yanira Gonzalez |
| Kelsey Wilson | |
| Kim Holmes-4R Sustainability | |

ORRA TIL Proposal - revised for May 4, 2022, Meeting Discussion (red indicates changes from 4/20 document)

- All Elements in this document are from the TIL Proposal Ranking Survey completed before the April 4 Task Force meeting, and are listed in this document by their number in the Survey

- If an Element is listed, it received a majority vote of “support” (unless otherwise noted), with the number of support votes listed. For example, [Element 2, 7 votes]
 - No Elements that were opposed are included
 - All recommendations are for the June 1 Report to the Legislature
1. Packaging not on Oregon’s Uniform Statewide Collection List (USCL) for commingled collection cannot have the chasing arrows anywhere on it or make any other claims about the packaging being recyclable. [Element 2, 7 votes]
 - a. Allow recyclability labeling on covered packaging if it uses chasing arrows symbol in combination with a clearly visible line placed at 45-degree angle over chasing arrows symbol to convey that item is not recyclable. Example shown. [Element 9, 7 votes]
 - b. Allow glass to be labeled with chasing arrows, but must include language to “recycle separately” as unlike other states, Oregon does not collect glass in commingled
 2. Require clear, standardized recycling labels (chasing arrows, instruction for separating products as needed) for items that are on Oregon’s USCL. [Element 11, 10 votes].
 - a. Limit this requirement to commingled materials on USCL - see #1 and #1(b) above
 - b. Items for Depot or Event Collection (whether using existing infrastructure or Producer-provided), label with “check locally”
 3. Mandate embedded recyclability labeling via QR code or other smart labeling technology [Element 13, 10 votes]
 - a. This is not in lieu of labeling required in #2 above
Consider pilot program, such as testing smart labeling options with letter coding, for example: C – commingled, D – depot, S – separate collection, G - garbage
 4. Require the Resin ID Code (RIC) without any other triangle or chasing arrows shape [Element 4, 9 votes]
 5. Use the PROs as a tool for removing a non-compliant product from sale in Oregon. [Element 17, 8 votes]
 6. Require DEQ to review state criteria against enforceable federal statutory or regulatory recyclability labeling within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements. [Element 10, 8 votes]
 - a. Subject to Oregon Legislature’s oversight
 7. Provide time for packaging producers to prepare for any changes adopted. [Element 14, 13 votes]
 - a. To clarify, this element applies to all changes recommended in this report. In particular, this includes #3 above, mandating labeling improvements via technology such as QR codes.
 8. Support labeling improvements at the federal level [Element 21, 13 votes]

Deleted from April 20 Proposal/Reason:

Incentivize removal of RIC with chasing arrows via ecomodulation fees [Element 18 – this was a tie, vote 5 to 5, 3 neutral].

Reason: this is a part of the RMA, how ecomodulation will be implemented is outside of the purview of this group

Provide on-ramp for new materials or materials that have developing markets

- Via SB 582/RMA USCL process
- Also include off-ramp for materials that fail the USCL process

Reason: this is a part of the USCL process, outside of the purview of this group

PROs run statewide ad campaigns to teach Oregonians about label changes [Element 16, 9 votes]

- Via SB 582/RMA process

Reason: this is a part of the RMA, local governments will work with PROs, with oversight from ORSAC, to determine campaign content

Create Oregon's USCL after dialogue with California [Element 12, 7 votes]

- a. Delete "after dialogue with California" and insert ", informing and discussing with California and Washington partners during the process to consider areas of alignment on the West Coast."

Reason: this is a part of the USCL process, outside of the purview of this group

Ecomodulation fees

b. Use to provide incentives for good labeling practice (lower fee)

c. Use to provide disincentives for poor labeling practices (higher fee)

d. Aligning with the implementation timelines in SB 582/RMA, for every year that "chasing arrows laws" are statutory requirements in the remaining 36 states, increase the ecomodulation fee paid by plastic packaging PRO members. Use the extra fees for additional contamination reduction and labeling education for Oregon consumers.

12.c. is a revision to Element 15, which received 5 votes support, 4 neutral, 4 opposed, and stated: "Require the packaging industry, through PROs, to propose and advocate for federal legislation to remove chasing arrows laws in all 36 remaining states."

Reason: this is a part of the RMA, how ecomodulation will be implemented is outside of the purview of this group

Chair/Vice-Chair Proposal

Truth In Labeling Task Force Chair de Thomas/Co-Chair Brandon Updated & Combined Proposal

Includes adjusted elements from all supported components/legos from all proposals, including ORRA's master proposal.

If a recyclability claim is made on a package (text and/or symbol):

1. **For items on the Oregon local government collection list** (USCL is a subset of this list) – allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
2. **For items covered by the Bottle bill**– allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
3. **For items exclusively on the Oregon depot list** - allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
 - a. Instructions must say "drop-off recycling only" or similar.

4. **For all other items** - prohibit claims of recyclability; exemption allows the use of recycling symbol ONLY if surrounded by a circle with a 45-degree slash (universal “do not”) {solves the 36 other states problem}
5. **Allow** embedded consumer-facing recyclability labeling via commonly-used smart-labeling technology, if adhering to all of the above language.

Other recommendations

6. Provide time for packaging producers to prepare for any changes to be adopted
7. DEQ coordination with other west coast states on the development of lists
8. Require DEQ to review state criteria against enforceable federal statutory or regulatory recyclability labeling within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements.
 - a. Subject to Oregon Legislature’s oversight
9. Support labeling improvements at the federal level

Recommendations for PROs

1. PROs run statewide ad campaigns to teach Oregonians about label changes (which does not preclude RMA money for local government education)
2. Use eco modulation to support recycling labeling best practices
 - a. good labeling practice = lower fee. Poor labeling practices = higher fee
 - b. Incentivize via eco modulation embedded consumer-facing recyclability labeling via commonly-used smart-labeling technology.

Alternative formats

DEQ can provide documents in an alternate format or a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.