

# Meeting Summary

## Truth In Labeling Task Force

### Meeting Summary: Meeting #3

3/17/2022

Zoom

#### List of Task Force Members in attendance

- Dr. Anja Brandon (Vice-chair)
- Athena Petty
- Dan Felton
- Dave Larmouth
- Dylan de Thomas (Chair)
- Jenny Slepian
- Kristan Mitchell
- Nicole Janssen
- Sen. Lee Beyer (non-voting)
- Maya Buelow
- Rep. Paul Evans (non-voting)
- Shawn Miller
- Commissioner Steve Kramer
- Thomas Egleston
- William Posegate

#### DEQ Staff

- Abby Boudouris
- Alex Bertolucci
- David Allaway



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

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Time	Topic
1 p.m.	<p><b>Welcome.</b> The Chair started the meeting by introducing the newest members, Maya Buelow and Rep. Paul Evans. The Chair shared a view of the Task Force roadmap to get the report completed on time and how many meetings it will take. The Task Force then reviewed their charge.</p> <p><b>The Chair asked if there was any opposition to DEQ drafting the report. No member registered opposition.</b></p> <p>The Task Force discussed how best to receive public input on Task Force proposals. Ideas included designating more time for comments at meetings or holding a special session. <b>The Chair and Vice Chair will bring a recommendation to the Task Force on public input.</b></p> <p>A member brought up the idea of posting an attendee list. DEQ commented that this is not standard practice within the Agency. A discussion took place with some members agreeing with the concept and others asking if there would be unintended consequences. <b>The Chair and Vice Chair will meet with DEQ and let the group know the outcome at the next meeting.</b> A vote will take place if needed.</p>
1:20 p.m.	<p><b>Review of materials from meeting 2 with a California SB 343/Recycling Modernization Act lens.</b> The Task Force reviewed several examples of misleading or confusing claims at the last meeting. DEQ staff reviewed how these items could possibly be affected by SB 343 and the Recycling Modernization Act. Three questions were looked at for each item:</p> <ol style="list-style-type: none"><li>1. Could the item possibly be included on Oregon's statewide recycling lists?</li><li>2. Could the item possibly use the chasing arrows symbol or make a recyclability claim under SB 343?</li></ol>

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	<p>3. Would the current label possibly be allowed, in its current form, under SB 343?</p> <p>The Chair then reviewed a Venn diagram showing the potential overlap and differences of possible SB 343 and Oregon's RMA lists. A discussion occurred around how the Task Force wants to align or not with SB 343. Members noted items sold into California are the same products sold into Oregon and discussed how this would or would not be an issue.</p>
1:50 p.m.	<p><b>Straw Person Proposals.</b> Task Force members submitted five straw person proposals. Including:</p> <ul style="list-style-type: none"> <li>• Kristan Mitchell, Dave Larmouth and William Posegate (ORRA Proposal)</li> <li>• Thomas Egleston</li> <li>• Dan Felton (AMERIPEN Proposal)</li> <li>• Dr. Anja Brandon</li> <li>• Dylan de Thomas</li> </ul> <p>Time was provided to members to present their proposal with Task Force discussion following. The full proposals are provided at the end of this document.</p>
2:50 p.m.	<p><b>Public Input.</b> Two people spoke.</p> <ul style="list-style-type: none"> <li>• Laura Leebrick, Rogue Disposal</li> <li>• Heather Trim, Zero Waste Washington.</li> </ul> <p><b>Outcomes and Task Force member requests.</b> A Task Force member requested more information from the FTC regarding its Green Guide update process and from Steve Alexander of the Association of Plastic Recyclers regarding APR's design for recyclability standards.</p>
2:55 p.m.	<p><b>Next steps.</b> Task Force members were reminded to fill out the Doodle poll for future meetings. The Chair proposed that one or two future meetings run three hours in length, extending one additional hour beyond (later) than what the Doodle poll showed. Based on feedback from Task Force members, the Chair decided to keep the 4/4/2022 meeting to two hours – but might extend the 5th and/or 6th meeting. Task Force members may receive homework and additional information via email. Task Force members were asked to review straw person proposals for the next meeting.</p>
3 p.m.	<p><b>Adjourn.</b></p>

## List of Task Force Members straw person proposals (listed in the order they were received)

### Kristan Mitchell, Dave Larmouth and William Posegate's Proposal (ORRA Proposal)

1. Prioritize labeling efforts. Time is short, a report is due June 1, so focus labeling efforts first on plastic packaging. Other packaging can be considered later, but plastic is the key concern for consumers, the major source of confusion that leads to contamination, and the environmental issue of our time. Other packaging that is of concern, such as freezer boxes and cartons, could be considered and possibly included later, similar to how the bottle bill first began in 1971 and has been amended over time.

2. In order for plastic packaging to label with "chasing arrows," the package must be included in the Oregon Uniform Statewide Collection List (USCL) for commingled collection - only

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packaging that is collected in the commingled stream may use chasing arrows. We could go beyond this and also require that non-commingled stream packages have a "don't recycle" label for further clarity. a. Meets all three ORRA goals.

b. Aligns with three of UN/CI/One Planet report's insights and recommendations.

c. Label could look like:

3. If a plastic packaging is not on the Oregon USCL for commingled collection, it cannot have the chasing arrows on it in any location, nor make any other claims about the packaging being recyclable.

4. Plastic packaging requires a resin ID code, so make it just that – a resin ID code. It could look like this, with RC standing for Resin Code: a. RC1, RC2, RC3...

b. Does not need a triangle or any other symbol, and it only needs to be recognized by the industry that uses it for recycling.

c. English is the international business language and that is the audience of the resin ID code.

5. Provide time for packaging producers to prepare for these changes (for example, matching up timeline to Oregon USCL commingled collection designations, with 18 months thereafter to change labels). For any item that comes on or off the USCL commingled list, give 18 months to add or remove the chasing arrows (confirm this aligns with CA SB 343, modify timelines as appropriate). Another option is to align with Oregon's Bottle Bill timeline for adding wine cans via 2022's SB 1520, which is three years (July 2025).

6. Enforcement – use the PRO as a tool for removing a non-compliant product from sale in Oregon. Enforcement should not be on the grocers, but at the source of the packaging labeling. Inventory issues should be considered (maybe longer compliance timeline than 18 months for non-perishables, for example). Consider and modify enforcement elements from other laws, such as Oregon's Bottle Bill program, or the flushable wipes law (2021's HB 2344), which, as an example, includes the following elements (as noted in DEQ's recent follow up email, Information Requests from Meetings 1 and 2): i. A city, county or special district that provides wastewater service has exclusive and concurrent authority to enforce compliance with the requirements.

ii. Before bringing an action to recover a civil penalty, a written notice of violation shall be sent to the alleged violator. If the covered entity continues to sell or display for sale the packaging, then enforcement may occur.

iii. A civil penalty of not more than \$2,000 may be issued for a first violation that occurs between 90 days and 120 days after the date of the notice;

iv. An additional civil penalty of not more than \$5,000 for a second violation or for a first violation that continues for more than 120 days after the date of the notice; and

v. An additional civil penalty of not more than \$10,000 for a third and any subsequent violation or for a first violation that continues during any part of each 30-day period that follows the period described in (iv) above.



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vi. Cumulative penalties for the same violation (from multiple cities, counties or special districts) may not exceed the limits described above.

vii. Local governments may separately recover reasonable enforcement costs and attorney fees.

7. Require plastics industry, through PROs, to propose and advocate for federal legislation to remove "chasing arrows" laws in all 36 remaining states, or to do the same state-by-state, for repeal at each of the 36 state legislatures. Set specific dates by which to complete law changes. Require plastic packaging PRO members to pay increased, escalating ecomodulation fees, TBD, if deadlines are not met. Use any additional fees generated for more contamination reduction efforts and consumer education. Consider other options for ecomodulation fees to be used as incentives or disincentives.

8. PROs run statewide ad campaigns to teach Oregonians about label changes (as part of SB 582).

## **Thomas Egleston's Proposal**

Option 1 and 2 combined from the Menu of Options.

Based on the presentation from the gentleman from California and the review of how California's new labeling standards in SB 343 are expected to align with Oregon's acceptable materials list (for the most part as displayed by the attached Venn Diagram), it seems logical that Oregon leverage the market forces of California, a much larger market share state, for labeling standards. California's list of materials will also be developed based on what materials are in fact getting recycled across the state – if there are markets for materials and sorting capabilities, we should encourage Oregon PROs and recyclers to rise up to meet those standards.

If overtime we find that Oregon's acceptable materials list deviates more than marginally from what is accepted to be recycled in California, new legislation could be proposed at that time. I fear a "Unique to Oregon" approach to labeling standards is not practically or politically feasible for the global marketplace within which we operate.

I would also suggest Oregon advocates for and supports improvements at the federal level and through updates to the FTC Green Guides. Enforceable national standards around misleading labels would also help limit misinformation through labeling to include recyclability claims and beyond.

## **Dan Felton's Proposal (AMERIPEN Proposal)**

### **AMERIPEN Preferred Federal Approach**

- Federal law/regulation does not mandate recyclability labeling for covered packaging.
- If producer chooses to use make recyclability claims on labeling for covered packaging, federal law/regulation requires producer to follow related criteria established by EPA and enforced by FTC.
- Criteria should acknowledge approved third-party programs for standardized recyclability labeling.
- Criteria and requirements should acknowledge packaging elements that require consumer action to achieve recyclability for covered packaging.



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- For non-recyclable packaging, federal law/regulation prohibits use of resin identification code (RIC) within chasing arrows symbol on labeling.
- For non-recyclable packaging, federal law/regulation prohibits other labeling intending to lead consumer to believe packaging should be sorted for recycling.
- For covered package with multiple components or material types, under federal law/regulation recyclability statement or symbol may be displayed on external packaging pursuant to criteria established by EPA, with indication of packaging elements that are not recyclable.



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## **AMERIPEN Proposed Oregon-Specific Approach\***

- Prohibit labeling on covered packaging that makes a deceptive or misleading recyclability claim.
- Prohibit use of chasing arrows symbol, chasing arrows symbol surrounding resin identification code (RIC), or any other symbol or statement indicating that it is recyclable unless it is designated for collection under PRO plan approved by DEQ.
- Allow recyclability labeling on covered packaging if it:
  - Is required by another state law or Agency or by federal law or Agency at time claim is made;
  - Is part of widely adopted and standardized third-party labeling system; or
  - 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.
- Require DEQ to review state criteria against enforceable federal statutory or regulatory recyclability labeling for covered packaging standards within 180 days after such is implemented at federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements.

\* Based on last version of compromise language for Washington State 2022 Senate Bill 5297 (Das).

## **Dr. Anja Brandon's Proposal**

Oregon-specific labeling requirement that is largely aligned with CA – Do Not Recycle Approach

- Require clear, standardized recycling labels (chasing arrows, instructions for separating products as needed) for items that are on Oregon's statewide recycling collection list
- Require clear, standardized "Do Not Recycle" labels (chasing arrows with strike-through and the words "DO NOT") on products that are not on Oregon's statewide recycling collection list AND are not accepted in California.
  - Option – add a threshold for the "DO NOT" recycle label, e.g., items that are recyclable in less than X% of areas in Oregon but above Y%.
    - For items that are close to the threshold and accepted in CA, do not add an on-product label either way.
  - Other Option – "OR Do NOT Recycle" Allow/add "OR" to demonstrate it's Oregon specific
- Prohibit the sale of any product that makes on-product recyclability claims that are NOT on Oregon's statewide collection list as they would be misleading and deceptive.

## **Dylan de Thomas' Proposal**

Additional considerations to Status Quo w/ some CA Alignment

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- Prohibit use of chasing arrows symbol, chasing arrows symbol surrounding resin identification code (RIC), or any other symbol or statement indicating that it is recyclable unless it is designated for collection under PRO plan approved by DEQ.
- Following CA SB 343 compliance assessment, offer on-ramp for materials non-OR-but-CA-accepted materials and amendment of RMA PRO program plan implementation to address infrastructure/education needs.
- Consider mandating RIC w/o triangle, only number
- Consider adjusting timeline of statewide list finalization in Oregon to allow for more dialogue with CA
- Allow/mandate embedded recyclability labeling via QR code or other "smart" labeling technology.

## List of attendees

Ame LeCocq  
Andrea Fogue  
Brennan Georgianni  
Celine Swenson Harris  
Christa McDermott  
Colette Bazirgan  
Denise Barnes  
Elena Bertocci  
Eliza Murphy  
Garth Hickle  
Heather Trim  
Hugh Ady  
Janine Bogar  
Jazmin Rocha

Jeff Murray  
Jeff Newgard  
Jennifer Dresler  
Jerry Powell  
Joan Popowics  
John Bush  
Jonathan Levy  
Justin Gast  
Katy McDowell  
Kim Holmes  
KJ Lewis  
Laura Leebrick  
Leah Navarro  
Mary Vihstadt

Matt Markee  
Maureen McGee  
Merdiye Iren  
Meredith Shield  
Paloma Sparks  
Sabrina Correll  
Sam Schlaich  
Samantha Siegner  
Shari Jackson  
Steve Siegel  
Tara Brock  
Vinod Singh

## **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](mailto:deqinfo@deq.state.or.us).



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