OREGON REFUSE & RECYCLING ASSOCIATION

March 3, 2021

To: Chair Lee Beyer and Vice Chair Lynn Findley
Senate Committee on Energy and Environment

Re: Senate Bill 581 and -1 amendment to Senate Bill 582

Chair Beyer, Vice-Chair Findley, and members of the committee, thank you for the opportunity to testify last week on SB 581 and the -1 amendment to SB 582. I am the Executive Director of the Oregon Refuse and Recycling Association (ORRA), and I also served on the Recycling Steering Committee that is the basis for both SB 581 and SB 582. Members serving on the RSC represented the entire supply chain of Oregon's recycling collection and processing programs, as well as representatives from the Association of Oregon Recyclers, a NW paper mill, a Portland-area plastics processor, and The Recycling Partnership, a national voluntary producer responsibility association. The RSC formed originally to respond to the worldwide recycling market crisis and evolved into broader discussions about modernizing Oregon's recycling program.

ORRA worked with Sen. Dembrow to introduce SB 581, and ORRA supports the bill. ORRA has not taken a position yet on SB 582, although we've been diligent in our review of the -1 amendment.

Founded in 1965 to advance the efficiencies of collecting and processing recyclables and solid waste, ORRA is the statewide trade association representing 200 solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate material recovery facilities and many of Oregon's municipal solid waste transfer stations, landfills, and compost facilities. ORRA works in partnership with, and under the regulation of cities and counties across the state to provide garbage and recycling services in communities across Oregon.

On Tuesday, February 23, during the informational hearing on Truth in Labeling, I spoke to SB 581 and ORRA's support. I do want to respond to a few points that came up after I spoke, in particular as they relate to the Department of Environmental Quality (DEQ) comparison of SB 581 to the truth in labeling language in the -1 amendment to SB 582.

1. SB 581 originated from the Recycling Steering Committee (RSC) consensus concept. ORRA's intent was to align with the concept. The -1 language described by DEQ differs from that consensus.
2. DEQ focused on two reasons for the changes it made to the RSC consensus language on Truth in Labeling:
   one, the impracticality for an Oregon-only label and;
   two, potential Commerce Clause objections.

First to practicality – Truth in Labeling solutions are only impractical if the plastics industry is unwilling to correct misleading labeling. The plastics industry is innovative, they could help us

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fix it instead of telling us it is too hard and Oregon is too small. Would an Oregon-only sticker work? Something else? The plastics industry should use its deep research and development and financial resources to find a solution, instead of continuing to assert that the burden of dealing with misleading labeling should be borne by Oregonians. It is particularly frustrating to listen to testimony from the Plastics Industry Association(PIA) - that 38 states require the resin identification codes inside of the chasing arrows – when PIA (previously known as SPI) is the reason behind those 38 states adopting the symbol. PIA (then SPI) lobbied for it; PIA should be leading the effort to correct misleading labeling now.

It also should be noted that the -1 includes Truth in Composting labeling prohibitions – products sold in Oregon cannot be labeled as compostable unless they can actually be composted in Oregon. That is an Oregon-only restriction as well. And of course, there is the most iconic example that started in 1971 as an Oregon-only label - the Bottle bill - which was likely met with the same arguments. ORRA does not agree that "impracticality" is a justification for letting the industry off the hook for misleading Oregonians.

There are other differences between SB 581 and the -1 amendment to SB 582. For example, terms such as, "offer to sell," a different implementation schedules, and the private right of action. ORRA is open to changes to SB 581. We did not offer an "ORRA" Truth in Labeling bill; we worked within the RSC process on the concept. The language on Truth in Labeling in SB 581 originated from that consensus.

SB 581 is intended to right a wrong that happened 30 years ago when Oregon passed a law requiring that all plastic containers sold into Oregon include specific labelling. The intentions of Oregonians were good – the label was described as a way to identify plastic resins, which is important for determining recyclability. However, beyond the numbers and letters needed to identify the resin, the law as passed also requires the resin identifiers to be enclosed within the triangular "chasing arrows" symbol that is commonly recognized as a symbol of recyclability. As we know now from the PBS investigative reporting program, Frontline, requiring the "chasing arrows" on packaging was an intentional lobbying effort on the part of the national plastics industry, with the goal of leading consumers to believe that plastic products were recyclable, whether true or not. 38 states – including Oregon, in 1991 – passed this labeling requirement into law.

SB 581 deletes the statute that requires plastic packaging to include this labeling for products sold into Oregon. It goes on to require that if a product is sold into Oregon labeled with the chasing arrows symbol, it must be accurate – truthful. ORRA worked with Senator Dembrow to ensure there would be a standalone bill on truth in labeling to have an optional pathway to get started on modernizing the system. ORRA was a partner at the table for over two and half years on the broader concept, but sometimes political realities, combined with COVID, wildfires, economic issues and now the ice storm, intervene.

The crash of the recycling markets in 2018, largely due to China refusing to take contaminated materials, was the reason the RSC was convened, and what drives the need to update and improve our recycling system in Oregon. Customer confusion caused by misleading labeling leads to contamination resulting in increased costs and adversely affects processing, with the ultimate loss of access to responsible end markets. Current labeling

laws ensure that consumers, including our customers, are confused about what is recyclable. In fact, a study commissioned by Metro and completed by DHM Research in 2018 showed that 26-46% of people responded that they put non-recyclable plastic containers in the recycling bin because "the packaging says recyclable." Customers believe what they see and read on the label. That confusion is the starting point for contaminating recycling collection.

To address the current contamination crisis, we've got to stop confusing customers with misleading labels. Oregonians want to do the right thing and take care of our environment. We are not happy when we learn that things we thought could be recycled are not. We believe what we read on the package label. Customers want to believe plastics are recyclable, and the label supports their belief. While education is key, if the labeling is contradicting what we're telling our customers, it's not effective. Customers want to recycle everything, so if they have to decide between listening to us, or reading the label on their package, they will follow their confirmation bias and believe the label because it makes them feel better to put it in the recycling. We can't educate enough to get over the labeling issue.

Truth in Labeling is the first step to restoring trust in our recycling system by correcting the intentionally mislead consumer beliefs about the recyclability of packaging. Either as standalone legislation, or as part of a broader extended producer responsibility model in Oregon, strong Truth in Labeling laws are the foundation for addressing customer confusion and reducing contamination.

Neither our customers, nor our city and county-authorized recycling collection programs, control the manufacturing choices of the plastics industry, nor do they control the markets for the plastics collected. Truth in Labeling is a place we can start to make meaningful progress to stop confusing consumers, clean up our recycling stream, and get materials to responsible end markets.

Finally, California is currently considering the most stringent Truth in Labeling standard in the country, via Senate Bill 343, which includes criminal penalties for misuse of the chasing arrows recycling symbol. This conversation is happening in other places, and this is our chance to get it right for Oregon. We want more discussion about Oregon enforcement options – for example, many retailers in the supply chain do not make product design choices, so how can enforcement target those in the plastics industry that did cause, and continue to use, the recycling symbol to mislead customers? This should be everyone's goal.

The second issue noted was potential Commerce Clause objections. Legislative Counsel drafted SB 581 to survive Commerce Clause objections. Of course, that does not mean that those opposed would not sue, but it also does not mean they would prevail, and it shouldn't be the reason not to proceed. The ultimate fix would be for the plastics industry to seek Congressional action to correct misleading labeling nationally. We offer our support for that approach as well, but we shouldn't wait for that effort.

Turning to the -1 of SB 582, we're reviewing it with the following in mind:

The RSC spent over 2 ½ years working through how to modernize our recycling system. Those discussions were broad and complex with many important policy considerations- no state in

the country has implemented a comprehensive Extended Producer Responsibility (EPR) model such as what is offered in the -1, so getting it right for Oregon was our common goal.

Unlike some of the testimony you heard on February 23, the RSC very intentionally took a deep dive into the full spectrum of EPR models. We did that with an eye toward legislative discussions such as these because we expected legislators might ask these questions, and we wanted to be able to answer them. The RSC considered, debated, and ultimately rejected the full EPR models that exist elsewhere as not being the right fit for Oregonians. The RSC agreed producers should be a part of the system, and that the right model for Oregon is one of shared responsibility. This means all participants in the recycling system have roles and responsibilities.

Different from "full EPR" systems, in the shared responsibility model, the RSC tried to identify areas where it is practical and appropriate for Producers to provide financial support – namely around contamination, and leveling the cost of delivering recyclables to market from distant and rural areas. DEQ has stated that there is research that finds that EPR programs in other places have not led to increased consumer prices, however, there is also research that does not come to the same conclusion, and that was discussed during the RSC process. One reference for that is the July 22, 2020, RSC meeting, presentation of Dr. Calvin Lakhan, York University, "who pays the bill," beginning at slide 17:
https://www.oregon.gov/deq/recycling/Documents/RSCCalLakhanPresQA.pdf.

At the February 23 hearing, DEQ answered that we don't know how the producers will choose to pass along these costs – and if they do choose to spread costs over the narrower consumer base in Oregon, we want to make sure that those price impacts are fair and reasonable when they translate to household budgets. ORRA raised this issue numerous times during the RSC process, and we raise it again as an area that deserves further discussion.

The shared responsibility model also means that Oregon's cities and counties maintain their authority over recycling programs to meet the needs in their communities. ORRA members partner with and are regulated by cities and counties across the state. In fact, most Oregon collection services are franchised or regulated by cities and counties. When the DEQ hosted listening sessions last fall to talk about the RSC concept, we heard loud and clear that cities and counties want to limit administrative burdens to accessing available funds. They want a streamlined process and very importantly, they want certainty of funding. They need to have flexibility to manage and control the costs for their ratepayers, and ORRA is supportive of that as well. We know that one size does not fit all.

The consensus recommendation reached by the RSC in September of 2020 was high level based on intent. We all knew the real work would be translating that intent into legislative language and we've been working to do that since last November when we first saw legislative language. There is a lot of good work in this 93 page amendment, but there is more to do to confirm that it includes all of the elements for a successful EPR model in Oregon—like addressing contamination with strong Truth in Labeling, maintaining the shared responsibility model, understanding cost impacts on consumers, and ensuring this bill does not have any negative unintentional impacts on underlying solid waste management statutes, such as the Opportunity to Recycle Act.

The details matter, and we're getting closer. I believe the way to move forward is for this committee to convene a table where the conversation can continue about what an EPR model, including strong Truth in Labeling provisions, should look like for Oregon. Key stakeholders such as producers, brands, and manufacturers need to be participants in building a working EPR program, as they would have a new and considerable financial role in the recycling system.

Thank you again - ORRA and its members greatly appreciated the opportunity to provide testimony. We look forward to continuing to work this session on an EPR solution that serves all Oregonians.

Sincerely,

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