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**MEMORANDUM**

**TO:** Senator Virginia Lyons, Chair  
Senate Committee on Natural Resources and Energy

Representative Tony Klien, Chair  
House Committee on Natural Resources and Energy

**FROM:** Justin G. Johnson, Commissioner

**DATE:** January 13, 2010

**SUBJECT:** Legislative Report – Agency of Natural Resources Report on the Beverage Container Redemption Program

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We are pleased to provide the attached report on the Beverage Container Redemption Program's pilot project for co-mingling of empty beverage containers. This report was prepared by the Solid Waste Program and submitted to the General Assembly in accordance with Act 123.

Please contact Matt Chapman at (802) 241-3467 or [matt.chapman@state.vt.us](mailto:matt.chapman@state.vt.us) if you have questions.

**Attachment**

cc: Mr. David Gibson, Secretary of the Senate  
Mr. Donald Milne, Clerk of the House

# **Report on the Beverage Container Redemption Program**

**January 2010**

**Submitted to the Vermont General Assembly**

**According to Act 123**

Prepared by the

Vermont Agency of Natural Resources  
Department of Environmental Conservation  
103 South Main Street  
Waterbury, Vermont 05671-0404

## **Description and Purpose**

In accordance with Act No. 123 of the 2009 Legislative Session, the Secretary of the Agency of Natural Resources (ANR) was required on or before January 15, 2010, to make a report to the Committees on Natural Resources and Energy with regard to:

- The implementation of the co-mingling program established by this act;
- The implementation of the auditing program established by this act; and
- The results of a redemption center survey regarding whether the co-mingling program has achieved cost efficiencies.

## **Co-Mingling Program**

The two-year co-mingling pilot project has been up and running since July 2008. ANR adopted a procedure for the approval of beverage container co-mingling agreements. The procedure outlines the minimum requirements for an approved co-mingling agreement. ANR received and approved one co-mingling agreement that covers containers for most beer, Pepsi products, Coke products (in southern Vermont), and a few other carbonated beverages. Distributors pay a 3 ½ cents per container handling fee for brands covered under this agreement. Distributors of brands not covered under this agreement must pay a 4 cents per container handling fee. **The procedure is attached.**

## **Auditing Program**

An auditing procedure was adopted by ANR and must be followed by each distributor or their representative to deter the co-mingling of containers that do not have the Vermont refund message embossed on the top or included in the label of the product distributed in Vermont for sale. The actions outlined in the procedure start with a warning to the redemption center and/or retailer, to non-payment of the deposit and handling fee, to a fine for continuing offenses. **The procedure is attached.**

## **Survey**

The results of the survey to redemption centers indicated that there is an overall positive response for the current co-mingling system that is in place. **The results of that survey are attached.** The ANR supports the continuation of the co-mingling system due to the majority of the redemption centers who are currently co-mingling indicated that there is a moderate to significant cost savings involved with regards to the cost of sorting and labor.

## **Beverage Registration**

As required, the ANR has prepared and provided a registration form for manufacturers and distributors use to inform the ANR when a new product will be available for distribution and sale in Vermont, the name of the beverage and the size of the containers

it will be sold in, and whether or not the beverage is part of a co-mingling agreement and who will be picking up the empties from Vermont retailers and redemption centers. This information is available from the ANR upon request.

### **General**

A subgroup comprised of redemption centers, distributors and/or their representatives, and a member of the Vermont Grocers' Association continues to set its own priorities and initiate meetings as needed. Past meetings have included discussions surrounding third-party pick-up problems and inefficiencies that have since been resolved (i.e., frequency of pick-up to large volume redemption centers). The ANR called a meeting of the subgroup after receiving and compiling the results of the co-mingling survey. Discussion surrounding what constitutes a certified redemption center also occurred at this meeting. This subgroup will continue to meet to discuss and resolve issues as they arise and the ANR will attend as needed and upon request.

### **Next Steps**

The ANR is currently in the process of revising the Environmental Protection Regulations, Chapter 10, Deposit for Beverage Containers. The pilot co-mingling authorization in statute expires July 1, 2010. The rule revisions will allow the continuation of the co-mingling of containers and include requirements from the Auditing Procedure. The ANR anticipates adoption of these rules on or about July 1, 2010.

VERMONT AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
WASTE MANAGEMENT DIVISION

PROCEDURE FOR THE APPROVAL OF A BEVERAGE CONTAINER COMMINGLING AGREEMENT

§ 1. Authority.

This procedure is adopted pursuant to the authority under 10 V.S.A. Chapter 53 and Sec. 5 of No. 123 of the Acts and Resolves of the 2007 Session (Adj. Sess.).

§ 2. Purpose and Applicability.

- (a) It is the purpose of this procedure to establish minimum criteria for any group of beverage brands who wish to commingle containers qualify for a handling fee of \$0.035 pursuant to 10 V.S.A. § 1522(b).
- (b) For purposes of this procedure and determination of the handling fee pursuant to 10 V.S.A. § 1522(b), liquor bottles redeemed by the department of liquor control are deemed to be commingled and have a handling fee of \$0.035 per container.

§ 3. Definitions.

As used in this procedure, the following terms shall have the meaning given to them in 10 V.S.A. § 1521, or as follows:

“Commingling” means the sorting of beverage containers at a redeemer by material type rather than by beverage brand in accordance with the requirements of an approved commingling agreement.

“Commingling agreement” means a group of manufacturers or distributors who have entered an agreement that meets the minimum criteria under § 4 of this procedure.

§ 4. Minimum Criteria.

Any commingling agreement shall contain, at a minimum, the following criteria:

- (1) The agreement shall include the pick up of commingled beverage containers from at least:
  - (A) 30 percent of the beverage containers redeemed in the state of Vermont; or

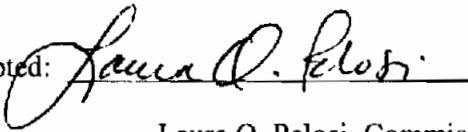
- (B)(i) commingled containers shall be collected from all redeemers regardless of the number of containers collected per year; and
  - (ii) In 2008, 3 manufacturers of beverages sold in the State; In 2009, 6 manufacturers of beverages sold in the State.
- (2) The agreement shall require pick up of comingled containers from all certified redemption centers with a redemption volume greater than 250,000 containers per year. The agreement may specify other redeemers who are eligible to participate in the agreement, except for those commingling agreements established under section 4(1)(B) which shall collect commingled containers from all redeemers.
- (3) The agreement shall clearly define criteria for beverage brands to enter into an approved commingling agreement and there shall not be unreasonable barriers put into place on any beverage brand entering the commingling agreement.
- (4) The agreement shall clearly define criteria for a beverage brand to exit a commingling agreement and there shall not be unreasonable barriers placed on a beverage brand to exit a commingling agreement.
- (5) The agreement shall specify that the manufacturers or distributors participating in the agreement will provide gaylords and shells, upon request of the redeemer, for use in redemption and shall credit for 50 percent of the costs of bags used for redemption.
- (6) The agreement shall specify that the manufacturer, distributor, or any third party pick-up agent acting on their behalf, pick up beverage containers at a frequency of not less than once per week or as otherwise agreed upon by the redeemer and manufacturer, distributor, or pick-up agent.
- (7) The agreement shall specify a method for determining the number of containers redeemed. This method shall be one of the following:
  - (A) The number of containers redeemed shall be based upon a count of 10 percent of the containers presented for redemption by the redeemer;
  - (B) The number of containers the redeemer certifies as being presented for redemption; or
  - (C) Another method approved by the Secretary as a part of the commingling agreement.

- (8) The agreement, or a cover letter to the agreement, shall identify a name, address, and telephone number for a point of contact for questions on this agreement and to respond to complaints that the terms of the agreement are not being conformed to.

§ 5. Notice of noncompliance.

If the agency believes that the manufacturer or distributors who are parties to an approved commingling agreement are not in conformance with the minimum criteria contained in § 4 of this procedure, the secretary shall notify the agreement point of contact of the alleged non-compliance. The manufacturers or distributors shall have 30 days to correct the noncompliance or provide information demonstrating that the allegation of noncompliance was in error. Continued noncompliance shall be grounds to remove the approval of a commingling agreement.

Date: July 1, 2008

Adopted: 

Laura Q. Pelosi, Commissioner  
Department of Environmental  
Conservation

VERMONT AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
WASTE MANAGEMENT DIVISION

PROCEDURE FOR THE AUDITING OF FOREIGN CONTAINERS AT REDEMPTION CENTERS

§ 1. Authority.

This procedure is adopted pursuant to the authority under 10 V.S.A. Chapter 53 and Sec. 5 of No. 123 of the Acts and Resolves of the 2007 Session (Adj. Sess.).

§ 2. Purpose and Applicability.

It is the purpose of this procedure to establish criteria for the proper auditing for foreign containers at redemption centers within the state and to establish appropriate penalties.

§ 3. Definitions.

As used in this procedure, the following terms shall have the meaning given to them in 10 V.S.A. § 1521, or as follows:

“Foreign container” means a container which is not labeled in accordance with the requirements of 10 V.S.A. § 1524.

“Auditor” means a person authorized by a manufacturer or distributor to inspect containers holding beverage containers, including gaylords, shells, boxes, bags, or the contents of a reverse vending machine, and presented for redemption to determine whether and how many foreign containers are within the bags.

“Redemption center” means a redemption center, as defined in 10 V.S.A. § 1521(7), a retailer seeking to redeem a beverage container, and a reverse vending machine

§ 4. Audit

- (a) Audits shall only be conducted on containers presented by the redemption center as ready for redemption.
- (b) A request by an auditor to conduct an audit on premises shall not be unreasonably refused. If the on premises audit is unreasonably refused, the audit may be done off premises.
- (c) Audits shall be conducted on at least 1000 containers at a redemption center.



§ 5. Violation and Penalties

- (a) It shall be a violation of this policy to have more than two percent foreign containers within the bags audited.
- (b) A manufacturer or distributor, or their representative, may withhold the deposit and handling fee on any foreign container discovered during an audit. In addition to this penalty, the following may be assessed against a redemption center:
  - (1) On the first offense, a warning to the redemption center which includes a statement of their obligations under state law and a warning of the potential future penalties that may be assessed against them for foreign containers.
  - (2) On the second offense, a penalty based upon the percentage of foreign containers found in the bags audited applied to all other bags to be picked up by the manufacturer or distributor, or their representative at that pick up. For example, if 2000 containers were audited and four percent of those cans were foreign containers (40 containers) and the redemption center wished to redeem a total of 8000 containers at that pick up the penalty would be assessed on 160 containers.
  - (3) On the third offense, a penalty based upon the percentage of foreign containers found in the bags audited applied to all other bags to be picked up by the manufacturer or distributor, or their representative for the next 30 days.
  - (4) On the fourth offense, and each offense thereafter, a penalty based upon the percentage of foreign containers found in the bags audited applied to all other bags to be picked up by the manufacturer or distributor, or their representative, for the next 60 days.
- (c) Violations of the foreign container provisions of this procedure may be used to consider the cumulative penalties for a period of one year from the date that written notice was sent to the redemption center under § 6.

§ 6. Written notice

An auditor shall provide notice in writing to a redemption center of a violation of this foreign container procedure. This notice shall be sent certified mail. This notice shall contain, at a minimum, the date of the audit, the person present representing the auditor, the person present representing the redemption center, the number of foreign containers found in the course of the audit, the penalty to be assessed under § 5(b) of this procedure, and the following statement:

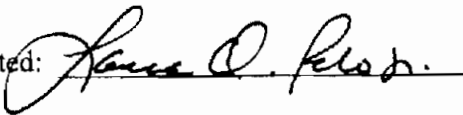
"You have 30 days from your receipt of this notice to grieve the violation of the foreign container policy to the state of Vermont. Any grievance shall provide the copy of the written notice and briefly describe the basis for the grievance. The grievance shall be sent to the auditor who provided the written notice and the following address:

Department of Environmental Conservation  
Waste Management Division  
103 S. Main Street, West Office Building  
Waterbury, Vermont 05671-0404

§ 7. Grievances

- (a) Grievances under this procedure shall be informal proceedings and shall not be considered formal evidentiary hearings.
- (b) It shall be the burden of the auditor to clearly demonstrate that there was a violation of the foreign container policy.
- (c) Decisions of the secretary shall be in writing and provided to both parties.

Date: July 1, 2008

Adopted: 

Laura Q. Pelosi, Commissioner  
Department of Environmental  
Conservation

# **SURVEY RESULTS**

## **RE: CO-MINGLING**

1. What type of business do you run?

**Retailer - 0**

**Retail & Redemption - 19**

**Redemption Only - 6**

2. What county are you in? **Addison – 1; Bennington – 1; Caledonia – 2; Chittenden – 3; Essex – 1; Franklin – 3; Grand Isle – 1; Lamoille – 1; Orleans – 2; Rutland – 3; Washington – 3; Windsor - 4**

3. Do you sell liquor? **Yes - 5 No - 20**

4. Has the co-mingling system reduced the space needed at your location to manage containers? **Yes - 18 No - 7**

5. Has the co-mingling system reduced the costs of sorts at your facility?

**Significant cost savings - 4**

**Moderate cost savings - 11**

**Low cost savings - 7**

**No savings - 3**

6. Has the co-mingling system saved labor costs for you?

**Significant cost savings - 6**

**Moderate cost savings - 5**

**Low cost savings - 9**

**No savings - 4**

**Skipped Question – 1**

7. In the past six months, is the frequency of pick up adequate?

**All of the time - 7**

**Most of the time - 14**

**Some of the time - 3**

**Never - 1**

8. Have you been audited under the co-mingling system? **Yes - 13 No – 9**

If yes, was the process: **Very Fair - 5; Fair – 5; Unfair – 1; Very Unfair - 2**

**Skipped Question – 3**

9. In the last six months, have you been getting correct counts?

**All of the time - 5**

**Most of the time - 16**

**Some of the time - 2**

**Never - 2**

10. In the last six months, have you been receiving enough gaylords, shells, and bags?

**All of the time - 8**

**Most of the time - 14**

**Some of the time - 2**

**Never - 1**

11. Overall, do you like the co-mingling system?

**Strongly like - 21**

**Moderately like - 3**

**Take it or leave it - 0**

**Do not like - 1**

12. If you could change something about the co-mingling system, what would it be?

- **I would require all beverages be co-mingled, and I would add more products to the deposit law.**
- **Better audit system.**
- **Day of the pick ups – Monday or Tuesday and Thursday or Friday. Presently Wednesday and Friday, which does not help after big weekends and bottle drives to have to trip over everything for two more days.**
- **Would like to see Coke Burlington get involved in the process. Better communication with Tomra, very poor at returning phone calls about problems, takes many calls before we get results. Better gaylords, they are most in bad shape.**
- **Seems fine as it is.**
- **Co-mingle Sams, Price Chopper, Alde-Sweet Valley.**
- **Co-mingle more brands; ie., Wal-Mart, Price Chopper, etc.**
- **We wish that every brand could be co-mingled!**
- **Get rid of Tomra.**
- **Include Coca Cola. Include warehouse brands. Include water and juice in returnables.**
- **Gaylords are a sanitary mess; they should be washed off.**
- **Small size gaylords.**
- **The audit system!**
- **All items co-mingled! Everything!**

- **Fill line on gaylords are not correct: settlement, bowing of sides, and breakage occur on a regular basis. We have performed several counts and find the line should be 8-10 inches below present line. If filled to line, you lose 9 cases +/- per Gaylord (we adjust now).**
- **Obviously, participation in comingling by beverage brands not presently doing so would be a small step. However, the loss of a half cent per container handling fee means we wouldn't want that change to happen. The redemption centers are now receiving at least 30% LESS handling fee (due to inflation alone) than when redemption in Vermont started in 1973; or, when we had the last substantial increase in 1988. The effort to do the redemption process remains essentially the same. The ANR has chosen for the past 21 years not to support Vermont redemption centers or the redemption process. Many bills to upgrade redemption have died over the years with much of the credit due to distributors and their lobbyists' influence over the ANR and the VT legislature. Are you folks aware that the states of New York and Connecticut have passed a deposit on bottle water bill?**

13. Do you have comments you would like to share?

- **I would be interested to know if redemption centers would be interested in expansion of deposit on all look-a-like products and water bottles.**
- **They (Tomra?) need to get more gaylords.**
- **We were supposed to get together regularly (every four months or so) to review its implementation quirks and scheduling issues. Also containers (gaylords) are a problem at the most inopportune times. They (Tomra?) have improved their pick-up staff which has helped with consistency in the invoicing and counts. Overall we are certainly making good progress.**
- **Great program.**
- **Yes, would like to be a liquor store also. Open 7 days a week. We would be a good outlet.**
- **Would hope that more companies would co-mingle.**
- **I think all containers should be allowed to be returned even though there is no deposit on the bottle or can. Example – wine bottles, juice bottles, plastic water bottles.**
- **I think they should check counters once in a while. Some of my counts are off and I know they are right. Overall they are not bad but should be checked.**
- **We think that the co-mingling system was a change for the better.**
- **Not really.**

- Tomra needs to be more consistent with pickups.
- I think wine bottles should be included as a deposit item; also water bottles.
- Tomra is very hard to deal with. They never pick up on a timely basis, Their drivers are crooks. The counts are never right. We have no leverage w them because they sell us nothing.
- Tomra needs to be more consistent with their schedule and need to clean gaylords.
- When the truck picking me up fills up before getting to me (I am the last pick up), the next day I should be the first pickup.
- I like the system a lot. I don't care for the audit system in place. Thanks.
- Redemption is now cost effective! We are being paid enough. I believe water bottles should be added!
- Given that Tomra has wrapped up pickup, cutting out the small business (Nexcycle, etc.), pickup and payment should be mandatory on a regular and timely basis. Case-in-point: Tomra comes for pickup but can only take half of what you have already paid out for. The payee only gets back a portion of the payout. When \$1000's are involved, this can damage a small business. Co-mingling on par works but there are bugs that should be worked out. Tomra should have been more prepared before they bite off more than they can chew.
- Comingling was not much of a change for the redemption centers. The greater change was for the distributors needing to cooperate to disclose their sales volumes in order to split up the redemption fee costs. There's no rocket science involved and the entire process is repetitious and labor intensive. A two or three-month period to assess the merits of comingling would have sufficed. Most probably the distributors and their lobbyists coaxed the ANR to extend the assessment period to two years. That action assured there would be no chance the redemption centers might get a handling fee raise during that time. You people need to stop soaking up what the distributors/lobbyists are saying, pay us what you used to based on inflation; and add water bottles, etc., to redemption. This is what a majority of Vermonters support.