



To: Chris Nelson, Connecticut Department of Energy and Environmental Protection
From: Sandra Grance, American Beverage Association
Date: 8/27/2021
Re: Bottle Bill Modernization

Dear Mr. Nelson:

I am submitting written comments in response to your July 16, 2021 notice regarding Public Act 21-58. These comments reflect the views of the American Beverage Association and our Connecticut bottler members. As you know, our industry proposed significant, innovative reforms to the bottle bill this session, consistent with recommendations from DEEP and the Connecticut Coalition for Sustainable Materials Management and designed to provide a sustainable solution to the debate over the direction of the program.

We have responded to all of DEEP's issues in the letter below. We also have included a summary of our key points as follows:

- The beverage industry is committing time, resources, and expertise to designing a collection system that is convenient and easy for consumers to use, is efficient, and achieves high collection/reuse rates. We conveyed this message in our June 11 letter to Governor Lamont.
- The Stewardship Organization (SO) implementing this system should be made up of obligated beverage distributors (*i.e.*, deposit initiators) and should have the flexibility to design the right collection system within the legislative framework. The development of this SO is already underway.
- Creating a sustainable and efficient collection program is critical; the SO has a strong interest in leveraging existing redemption centers and supporting new ones that serve the program's objectives. Duplicate centers serving the same areas or located in border areas are counter to the goals of the program. We believe that siting new redemption centers should be paused or minimized until the SO is operating and that DEEP should consult with the SO in the interim over grants and approvals for new redemption centers.
- Given the need to consult with stakeholders, develop data and analysis, and design a plan prior to July 1, 2022, it is imperative that we move to establish the Stewardship Organization (SO) as quickly as possible. We propose an October 31, 2021 deadline for applications. We are concerned that the increased handling fee and expansion will compound the problems of the already poorly-functioning system, thus compounding consumer dissatisfaction with the system, inefficiency, and cross-border fraud. That outcome leaves the SO with significant challenges to improve the system. Moving quickly to establish the SO and begin the consultation and planning process is key to bringing accountability and effectiveness to the program.

Topic 1

We agree with most of the proposed objectives and would propose the addition of two others:

- **Ensure that the system operates efficiently and is financially sustainable**

This is especially important to balance the objectives of convenient access and promoting economic development. As has played out over the decades in many US redemption systems, lack of coordination and planning can lead to inefficiencies and excessive costs. Scale economies are critical with redemption and establishing too many locations, especially in conflict with each other, will lead to an inefficient program, higher costs, and greater incentive for fraud with redemption centers fighting over the same containers. Rapid and uncontrolled growth of new redemption centers could also jeopardize the viability of those centers already in place, which we want to support and build on in developing a program plan for the system. Later in our comments we have addressed specific concerns along these lines related to grants to redemption centers.

- **Establish transparent and robust metrics to track the performance, satisfaction, and cost of the system**

The only measure of the system's performance today is unaudited data collected from unclaimed deposit reports. There is no validation of sales or redemption information, reverse vending machine data are not validated, consumer engagement can only be measured by their participation (or lack thereof) in the system, and system costs are only partially understood. These gaps emphasize the need for accountable management of the system sooner rather than later.

With regard to ensuring convenient access, rather than "through strategies and approaches that reflect the specific needs and circumstances of individual communities," we would suggest convenient access be defined as "meeting consistent standards and service levels across the state to ensure residents are served adequately in all areas." A system customized to each community's needs is a subjective goal; striving for service levels consistent across the state is a measurable standard; we also address this in more detail below.

Topic 2

The criteria specified in statute are adequate for the formation of the organization, though a *de minimis* representation of commitments from members might be appropriate (e.g., a 35% share of deposits initiated in the state) to ensure that proposals are submitted from a *bona fide* organization. We also believe strongly that the intent of the legislation is and should be that a single SO manage the deposit system.¹

¹ While the fate of the wine and spirits initiative remains unclear, it may be possible that a separate organization formed to manage those containers might eventually be integrated with the SO.

Topic 3

The principles for a well-managed SO could include:

- **Producer (i.e., deposit initiator) governance of the SO** is critical to align financial responsibility with accountability for system performance
- **Industry managed stewardship** - not only do producers share in the cost; they also actively work to improve systems and increase effectiveness
- **Effective and efficient program delivery**, which benefits all stakeholders
- **Equitable cost sharing** – no cross-subsidization and a level playing field for all
- **All funds remain in the program** to support its operation and oversight. (PA 21-58 conflicts with this because a significant share of unclaimed deposits is diverted to the state, so this is a subject for future legislative recommendations.)
- **Organizational transparency** – the SO must consult with stakeholders and will publish its financial statements and performance metrics annually

Topic 4

We support a deadline for applications to form the final, approved Stewardship Organization, along with a timeline for DEEP review and decisions so that ample time remains after acceptance for the SO to undertake the necessary data collection, consultation, and analysis to prepare a plan on or before July 1, 2022. **We would suggest a deadline of October 29, 2021 for applications, responses from DEEP four weeks later, and final approval required by December 31, 2021.**

Topic 5

Some requirements in 9(c) are confusing or poorly worded:

(1) the rate target should have a target date, proposed by the SO, but the SO must have adequate time to meet those rates, especially given the dramatic changes that will occur to the redemption system *before* the SO has an opportunity to assume management of the system. Consistently high rates such as those seen in Canada and in Oregon are the result of mature, industry-led systems that are very different from what exists in Connecticut.

(4) ensuring that materials are returned to their highest and best use may require taking material out of state for processing to achieve scale economies, utilize newer technology, *etc.* This and other aspects of regional-scale solutions should be incorporated into plan development and evaluation, rather than state-centric thinking.

(6) “disclosing” rates is not in the control of a newly formed entity that is not yet managing the system. The SO can project rates and performance, using state-generated estimates to start, but until it is managing the system and data, the SO cannot be responsible for the accuracy of or “disclose” the data.

(7) “how the plan will yield costs” is a confusing phrase. Costs incurred by DEEP in reviewing the plan and overseeing the work of the SO should be tracked by the agency and reimbursed from the unclaimed deposits retained by the State of Connecticut. The operation of the deposit system necessarily imposes costs on a wide range of participants, but those costs will be the responsibility of the SO. Presumably the requirement is to report on the cost of the system once the SO is in the position to have access to that information.

(8) revenues claimed by the state will be governed by the percentages set in statute and projected return rates in the plan. Again, these are not up to the SO to set, but rather can only be projected given the anticipated return rates and the percentage allocation to distributors established in the law.

Topic 6

Performance criteria are already included among the evaluation criteria in the law and we have proposed some additional criteria below. In general, these should include recovery rates, consumer satisfaction, financial sustainability, public communications, end markets utilized, and responsible governance of the system.

Consideration of penalties is not appropriate, aside from clearly specified infractions such as governance not adhering to regulations or administrative failings. (Penalties for individual producers not in compliance with the law are separate and should be enforced.) Penalties linked to system performance should not be considered until well after a transition period given that the SO would be assuming control of a system not of its own creation. No one knows what that system will look like or how it will be performing by the time the SO has an opportunity to begin managing it to achieve objectives.

Further, as long as significant revenue is being drawn off from the system to fund other state activities, the SO is already paying a significant penalty by having to make up for that lost revenue through additional fees.

Topic 7

The stewardship plan should include other provisions. The list of plan elements included in our proposed legislative language were:

- (1) Contact information for the SO
- (2) A list of registered deposit initiators and the brands they represent
- (3) A process for collaboration with the department to identify brands, distributors, or manufacturers who are not fulfilling their obligations as deposit initiators and subsequent enforcement by the department
- (4) A proposed network of redemption sites to achieve consumer satisfaction and performance goals utilizing:
 - A. Standalone redemption centers to accommodate high-volume redemptions located in accessible, high-traffic areas
 - B. Drop-and-go redemption sites at dealer or other locations
 - C. Dealer sites
- (5) A plan to respond to the needs of environmental justice communities in establishing and operating the redemption network including locations, operating hours, and redemption options

- (6) Financial terms for participating dealers, operators of redemption centers, and other redemption sites
- (7) Conditions and criteria for dealers to be participating dealers, thereby being exempt from or have reduced responsibility for accepting empty beverage as established in Section 4. These conditions should include financial participation by the dealer in establishing redemption centers or other redemption options.
- (8) Description of a public education and outreach program to promote redemption of empty beverage containers including publicity for the program and accessible information on the locations and hours of redemption sites
- (9) Description of a system to collect redeemed beverage containers from all redemption sites in a timely manner and process them for sale to end markets
- (10) A plan for processing and selling redeemed material consistent with principles of a circular economy and environmental justice. This shall include a description of the means by which deposit initiators have the right of first refusal to purchase their share of redeemed material.
- (11) A plan for mitigating fraud in the system including, but not limited to, reducing the incidence of selling beverage containers in Connecticut without initiating deposits and redemption of out of state, ineligible, or already redeemed containers
- (12) A plan for minimizing the non-marketable or non-recyclable fraction of empty beverage containers including incentives for brands and manufacturers to improve recyclability and package design and how the SO's collection and processing system will contribute to this goal
- (13) Planned market development activities for glass container material
- (14) A plan for regularly assessing whether the SO should recommend to the department an increase in the refund value in order to achieve redemption targets. This should consider refund values in neighboring states, equity issues across consumers, impacts on border businesses, and progress toward the target
- (15) A plan effective date on which the SO assumes control of the existing beverage container refund system outlined in CGS 22a-243-246 inclusive.

Topic 8

Stakeholder engagement during plan development is critical to the implementation of a successful program and we view that as a responsibility of the SO. All SO applicants should propose a detailed consultation plan for all stakeholders, collectively and individually. This should be a public process and include opportunities for engaging in writing and via open houses/seminars/webinars, with qualified staff on hand to answer questions.

The SO may request DEEP's assistance in developing an engagement plan and convening stakeholders, to help ensure that the SO has the opportunity to be comprehensive and transparent in the process in order to win plan approval.

Topic 9

This is one of the areas of greatest concern that we identified in our letter to Governor Lamont. We, too, recognize the need to extend and improve redemption in under-served and environmental justice communities. We are concerned, however, that the surge in the number of redemption centers resulting from the increased handling fee will lead to poor siting of those facilities, duplicating existing sites and promoting cross-border redemption (especially in light of the upcoming expansion and 10¢ deposit). We have witnessed dramatic growth in the number

of redemption centers in other states that significantly increased handling fees, and this has increased opportunities for fraudulent redemption. In fact, some states imposed moratoria on new redemption center locations for some period after the increase.

The value of a centrally managed system is its ability to assess the need for redemption centers against standards for access and to site the size and type of facility that best meets the needs of that area; opportunistic redemption center operators often do not have those goals in mind. We are therefore strongly focused on criterion (d) and would ask that DEEP consult with the SO (or with producer stakeholders prior to the approval of the SO) to attempt to minimize conflicts and inefficiency through inappropriate investments. Stakeholders eager to access the new funding will not be accountable for how well the centers perform, so their voice needs to be tempered with a more strategic view.

We have encouraged the Governor and the Legislature, to institute review and criteria for the approval of new redemption centers. Whether considering grant recipients under the budget section or new applicants this fall, criteria must focus on access and equitable access across the state. The criteria should be consumer focused and not about funding/supporting specific redemption centers. Putting more RVMs into stores will not achieve the desired goals; more innovative approaches are needed and that is exactly what the SO will be establishing.

We recommend that approvals and grant awards are coordinated with the SO to ensure the most effective and efficient use of the monies to enhance the system. Even more effective would be to have the SO administer the grants so that new investments are consistent with the longer-term reforms brought about by the SO.

Topics 10-12

No additional comments.

We appreciate the opportunity to provide written comments. We look forward to collaborating with DEEP through the process of forming and implementing a beverage container stewardship organization for Connecticut and are eager to continue the work we have already begun.