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Report on Product Packaging Must Meet Recycling Standards or Receive Hardship Waiver (State Ballot Measure 6)

City Club of Portland (Portland, Or.)

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Report on

**PRODUCT PACKAGING MUST MEET RECYCLING
STANDARDS OR RECEIVE HARDSHIP WAIVER
(State Ballot Measure 6)**

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The City Club membership will vote on this report on October 26, 1990. Until the membership vote, the City Club does not have an official position on this report. The outcome of the membership vote will be reported in the City Club Bulletin (Vol. 71, No. 24) dated November 9, 1990.

Report on
**PRODUCT PACKAGING MUST MEET RECYCLING
STANDARDS OR RECEIVE HARDSHIP WAIVER**
(Ballot Measure 6)

To the Board of Governors,
City Club of Portland:

I. Introduction

Ballot Measure 6, an initiative petition placed on the ballot by the Oregon State Public Interest Research Group (OSPIRG), would require that packaging sold in Oregon meet recycling standards by 1993. The measure as it will appear on the ballot is as follows:

Question: By 1993, shall packaging used in Oregon meet certain recycling goals, unless a hardship waiver is obtained?

Explanation: Law would govern packaging of products sold retail or wholesale in state. By 1993 such packaging must be: reusable five times for like uses, made of 50% recycled materials, recycled at 15% rate or made of material recycled at 15% rate. Rates for last two goals rise in steps to 60% by 2002. Allows hardship waivers. Retailers must post data on their packaging standards. Creates civil fines. State, citizens may enforce law. Forms advisory panel. Local governments may use stricter standards.

II. Background

Oregon and the rest of the country have become increasingly aware of two critical environmental problems in recent years: the increasing difficulty and cost of disposing of solid waste, and the increasing demand for, and use of, natural resources. Each year, the average U.S. household discards 1,800 plastic items, 13,000 paper items, 500 aluminum cans, and 500 glass bottles. (Kovacs, p. 539)

Packaging is the largest component of the waste stream - about 30% by weight and 50% by volume of total solid waste. According to a report prepared for the Environmental Protection Agency (EPA), packaging in the United States is 55% paper, 22% glass, 11% plastics, and 8% metals. As consumers, we have come to rely on increasingly sophisticated, multilayered packages. The soft-sided juice containers with separate wrapping for a straw that are so popular with children and their parents are an example. One expert projects that packaging waste will increase at almost double the rate of population growth for the rest of this century. Any effort to deal with our environmental problems must address the packaging waste issue.

With the passage of the Bottle Bill in 1971, followed by the passage of the Opportunity to Recycle Act in 1983, Oregon established itself as a leader in efforts to increase recycling. The Bottle Bill addressed only a narrow product category, while the Opportunity to Recycle Act focused on source separation of recyclable materials and the infrastructure necessary to encourage recycling.

Since 1983, few changes have been made in Oregon's recycling laws. Several proposals were considered by the 1989 Oregon Legislature. A bill to address recycling of plastics failed to pass the Senate, while a second bill to improve curbside recycling programs languished in the Ways and Means Committee upon adjournment. The third bill which failed would have added wine cooler containers to the Bottle Bill.

Following the adjournment of the legislature, OSPIRG began work on the proposal that was to become Ballot Measure 6, the Oregon Recycling Act. In the fall of 1989, OSPIRG and industry representatives, at first Associated Oregon Industries and later a broader group, tried to reach consensus on a recycling proposal. Negotiations took place both before and after the filing of this ballot measure.

Industry representatives advanced a counter-proposal that would have expanded current recycling laws to include all recyclable plastics, established recycling goals, included a funding mechanism, and created a task force to address problem packaging categories. The major thrust of their proposal was increasing consumer recycling efforts. The parties were unsuccessful in reaching a compromise, and OSPIRG continued efforts to place the measure on the November 1990 ballot.

III. Summary of the Proposed Oregon Recycling Act

A. Definitions

The proposed Oregon Recycling Act (ORA) would limit the use of non-recyclable materials in packaging of products sold in Oregon. Specifically, after December 31, 1992, all "packagers" would be required to use "environmentally sound packaging."

The ORA defines "packagers" as persons, including businesses, who put the product in the package, if the packaging is done in Oregon. For products packaged outside Oregon, the first person in Oregon to receive possession would be a packager for purposes of the ORA.

"Environmentally sound packaging" can be achieved in any of four ways: 1) packaging used five times for the same purpose; 2) packaging composed of recycled material, at least 50% by weight; 3) packaging recycled statewide through an effective recycling program (such as plastic milk jugs); and 4) packaging composed of an "effectively" recycled material (e.g., containers made from most types of glass, metal, and paper). The Act defines a material as being effectively recycled if the state certifies that it is being recycled at a rate of 15% statewide by 1993, 30% by 1996, 45% by 1999, and 60% by 2002.

B. Enforcement

Under this proposed measure, the Department of Environmental Quality (DEQ) would conduct and publish an annual survey to determine actual recycling rates. The measure requires the Environmental Quality Commission to adopt administrative rules necessary to carry out the ORA and requires the DEQ to form an advisory committee to assist in establishing rules. The proposed measure also allows DEQ to inspect packaging to determine environmental soundness, issue compliance orders, and assess civil penalties. Any Oregon resident may bring a lawsuit against any packager for violation of the ORA. Notice must first be given to the state, and a lawsuit cannot be brought if the state has already undertaken an action to require compliance.

C. Exclusions and Exemptions

The ORA would not apply to packaging required by federal law, packaging for medications prescribed by physicians, packaging necessary to provide tamper-resistant seals for public health purposes, or packaging for products for export from Oregon if the packaging is not separated from the product before export.

The DEQ could grant a one year (renewable) exemption if a packager could prove that meeting the ORA requirements would impose an undue hardship on the general public. Increased cost is not a basis for undue hardship. An exemption could be granted for one of the following reasons:

1. there is no environmentally sound packaging available for the product;
2. the packaging is necessary to meet health and safety requirements, and no environmentally sound packaging meets those requirements;
3. the packaging provides net environmental benefits that are demonstrably superior to alternatives;
4. the packaging is an innovative approach to meeting the requirements of ORA and is likely to meet the requirements within one year; or
5. the packaging is necessary to satisfy another compelling public interest, and no environmentally sound alternative is available.

IV. Arguments Advanced in Favor of the Measure

Proponents of Measure 6 made the following arguments in favor of the measure:

1. The ORA would reduce solid waste significantly because packaging accounts for much of the total waste currently deposited in landfills.
2. The current recycling system provides for collection and source separation of materials, with no provisions for re-use of the recycled materials. The public has shown support for recycling through consumer collection, but packagers have not, as demonstrated by the high use of virgin and/or non-recyclable materials. By requiring producers to use recycled materials, the ORA would force packagers to accept some responsibility for re-using materials consumers collect for recycling, and would increase demand for recycled materials.
3. The government subsidizes the use of virgin materials by selling timber from public lands at less than market value, by selling low-cost power to aluminum producers, and by providing similar financial incentives to the petrochemical industry, thus sparing packaging producers from the full financial impact of relying on virgin and/or non-recyclable materials.
4. Due to industry opposition, the Oregon Legislature has been unable to pass effective recycling legislation. A citizen initiative is the only viable route for establishing the necessary industry accountability for recycling.
5. Research has shown that laws which are the most successful at forcing environmental innovation are those that set stringent standards, give industry flexibility in meeting those standards, and focus on innovative industries. The ORA meets those guidelines.
6. The ORA would conserve natural resources by requiring the use of more recycled materials instead of virgin materials.

7. The ORA would provide incentives to eliminate extravagant packaging and move toward simple, single-material packaging. Consumer costs would be reduced as we get rid of excessive and expensive packaging and eliminate unnecessary disposal costs.
8. The ORA would once again put Oregon in the vanguard of environmental legislation.

V. Arguments in Opposition to the Measure

Opponents of Measure 6 made the following arguments against the measure:

1. The measure lacks any funding mechanism for administration.
2. The Act's potential for reducing solid waste is limited to, at most, 8% of total waste generation. Banning tree leaves from landfills would achieve a similar reduction.
3. In some cases, the Act could increase waste generation. If a component of a package is not recyclable, the packager could add layers of a material that is recyclable, making a smaller percentage of the total non-recyclable to satisfy the ORA.
4. Some products could become unavailable in Oregon if their packaging is unable to meet the standards. For example, access to certain medical supplies could be limited.
5. If the ORA is passed, the results will be increased packaging and enforcement costs for producers, packagers, shippers, retailers, and eventually consumers.
6. Added bureaucracy will be necessary to enforce and administer the Act.
7. The measure lacks any means for educating wholesalers, retailers, and consumers. In order for recycling to become a way of life, people must be educated.
8. The measure is too broad. We could achieve better results by addressing specific types of problem packaging.
9. The measure is vague and ambiguous regarding DEQ's ability to define, administer, and enforce the provisions regarding public health issues and regarding the compliance with federal laws and regulations.
10. The exemption process will be costly and cumbersome. Exemptions must be renewed annually; the process and costs will continue for years.

VI. Discussion

In preparing this report, statistics proved unreliable. In many cases, neither proponents nor opponents provided data, but instead relied on blanket policy statements that were not supported with figures. When figures were provided, the two sides frequently discussed different aspects of the problem so that your Committee was unable to reasonably compare data. For this reason, your Committee has not included as many statistics as we might otherwise have done.

A. Proposals for Incorporating Packaging Producers in the Recycling Effort

Current Oregon recycling policy focuses on consumers through curb-side recycling. Laws require local garbage haulers to collect recycled materials. Although packaging is a large component of solid waste, packaging producers are a missing part of the recycling effort.

Producers are important to an effective recycling program for two reasons. First, packaging producers are the major buyers of recycled materials. Without buyers for recycled materials, the materials will not be collected, or if collected, will end up in landfills. For example, according to material reviewed by your Committee, the price paid this year for green glass has fallen from \$40/ton to \$10/ton, plastic from \$0.14/lb. to \$0.06/lb. and newsprint from \$100/ton two years ago to \$11/ton today. The price has gone down because there is insufficient market demand for recycled materials. Second, packaging producers create materials for recycling when they select packaging materials. Producers must use recyclable materials to allow recycling to occur. In sum, producers create both a supply of and demand for recycled materials.

Your Committee reviewed several alternative proposals to include packaging producers in the recycling effort.

The packaging industry's proposal, while not without merit, did not attack the problem directly. It was essentially a proposal to create a committee to study the problem and set goals. Although calling for "fair" funding, the proposal lacked a mechanism to actually collect the funds. Your Committee found this proposal to be deficient in that it contained few specific plans.

After considering industry's proposal, OSPIRG proposed a two year experimental period during which the industry proposal would be implemented. If waste diversion goals were not met after two years, packaging limitations would become effective. Your Committee found it troubling that the packaging industry rejected OSPIRG's counter-proposal. Your Committee found this reaction demonstrated an unwillingness, particularly on behalf of the plastics industry, to voluntarily accept responsibility for its position in the recycling equation.

Your Committee also considered a proposal by DEQ in the form of draft legislation. It primarily addresses education, a valid component missing from the ORA, and expands recycling efforts. Your Committee believes the DEQ proposal would be complementary to the ORA, but it is less comprehensive and uncertain of being passed by the legislature.

B. Waste Reduction

The consequences of solid waste disposal include contamination of ground and surface water, uncontrolled gas migration, excessive waste of material and energy resources, and depletion of existing landfill capacity in the United States. (Kovacs, p. 539)

Oregon landfills about 75% of all garbage. Proponents and opponents disagree on how much this measure will reduce solid waste. Opponents contend that 33% by weight of the total waste stream is packaging. Proponents point out that the ORA applies to all paper, glass, plastic, and metal (not just packaging) which comprise 65% of the waste stream.

Despite these disagreements, proponents and opponents agree that waste will be reduced. Your Committee believes the measure would reduce a significant portion of the waste being dumped into landfills. Not only will the packaging components of the waste stream be reduced, but the measure will affect other recyclable materials as well.

C. Resource Preservation

Raw materials and energy are two of the main focal points of the recycling issue. Many of the raw materials used in manufacturing are non-renewable resources, subject to exhaustion. Recycling conserves them. Energy costs of using virgin raw materials exceed those of using recycled raw materials. For example, using recycled aluminum to make new cans saves 95% of the energy needed to produce them from virgin bauxite. It takes 50% less energy to make a steel or glass product from recycled materials than from virgin materials. Many Pacific Rim countries use our waste paper to make new paper products in a process that uses only 40% of the energy required to manufacture paper from virgin pulp. (Kovacs, pps. 543-544)

Both proponents and opponents admit it is impossible to estimate reliably how many natural resources the measure may preserve. Opponents state additional energy and resources will go into the mechanics of recycling to collect, haul, and process materials, reducing overall preservation.

Proponents state savings will occur. According to material reviewed by your Committee, if about 17 trees are required to produce one ton of paper, the reduction in newsprint recycling over the past two years from 66,000 tons to 57,000 tons represents the harvest of an additional 150,000 trees.

While no firm data could be obtained to indicate exactly how much resource preservation would occur, information reviewed by your Committee indicated that some resource preservation would occur.

D. Implementation

The success of the ORA, if the ballot measure passes, will hinge on DEQ's implementation. Opponents stated that many of the crucial terms in the ORA are undefined, and suggested the overall vagueness will leave DEQ with little guidance.

Your Committee found that the flexibility and broad rulemaking authority delegated to the DEQ are strengths of the Act. A DEQ representative told your Committee that DEQ often uses a consensus approach to regulating by incorporating all interested parties in its processes. Using this approach, the DEQ has successfully developed rules for implementing the Waste Tire Bill, the Toxic Use Reduction Bill, and the Siting of Hazardous Waste Facilities Law. The DEQ representative stated this Act would present no insurmountable obstacles to implementation. The representative further pointed to the broad rulemaking authority as a tool to ensure the Act would be workable and realize its objectives.

Opponents challenge another aspect of implementation — funding for DEQ personnel and materials. DEQ's ORA Fiscal Impact Statement estimates total expenditure for the 1991-93 biennium will be \$1,152,000 which includes funding of six positions. DEQ made several significant assumptions, including development of a simplified mass exemption process if needed, random inspections in the Portland area only, maximum of 20 inspections per year, and minimal enforcement and complaint responses. The Statement goes on to say the "fiscal impact could be much greater if there are large numbers of requests for exemptions, complaints, or enforcement actions."

Your Committee is cognizant of the Act's lack of an adequate funding mechanism, and is disappointed by the ballot measure supporters' decision not to provide for this crucial component of good legislation. Nevertheless, your Committee does not find this omission to be a reason to reject the measure given the nature of the solid waste problem. Ultimately, a funding mechanism must be found, perhaps through an increase in landfill use fees.

E. Economic Concerns

Opponents stated that, if adopted, Ballot Measure 6 will have two undesirable economic effects: products will disappear from stores, and Oregon consumers will incur higher product costs.

1. Products

The Portland metropolitan area alone is one of the top 100 retail markets in the United States. Proponents argue that producers will opt to retain this market and comply with the Act. They point to the Bottle Bill as an example of producer compliance. Proponents further argue that if some producers decide not to retain this market, competing producers will move to fill the niche.

Proponents and opponents agree that most paper, glass, steel, aluminum cans, and plastic soft drink bottles are already able to meet the standards proposed in the ORA. Most plastics and some treated paper would probably not be able to meet the standards without new technologies. No specific figures were received on the cost for industry to retool.

Industry has already begun to respond to consumer demand. A recent article in *USA Today* cites many new recyclable or biodegradable packages, including an edible meat tray made of 90% starch. Celestial Seasonings is converting to recycled paperboard for its boxes. Proctor & Gamble is selling a fabric softener packed in paperboard and is offering plastic containers made of at least 25% recycled plastics. In Oregon both Safeway and Fred Meyer supermarkets have started programs that prominently identify environmentally friendly packages.

Given the innovative approaches industry has devised to create modern packaging, your Committee believes the scenario described by the proponents is more likely.

2. Increasing Costs for Consumers

Opponents say the Act will affect 23,000 businesses and 320,000 jobs. The measure will directly raise costs for some products and force expensive major operational changes in delivery for other products. All of these costs will be passed on to Oregon consumers.

Proponents argue that any increase in costs will be minimal as producers innovate and discover the least costly ways to comply. Further, even if there is a short-term increase in product costs, overall the consumers' cost will decrease. In addition to paying for product packaging, consumers must pay for landfills for the packaging.

Over the long term, your Committee believes packaging, health, and environmental costs would be less from adopting this measure than they otherwise would be. One major local retailer, Fred Meyer, has indicated it is unsure that costs will increase and has adopted a "wait and see"

attitude. Your Committee believes that while increased costs may indeed result from adopting this measure, the increases are likely to be small and short-term. Ballot Measure 6 would phase in standards, starting in 1993 and culminating in 2002. Both proponents and opponents agree that most packaging materials other than plastics already meet the 1993 recycling rates. During the intervening years, industry and entrepreneurs will have ample time and incentives to discover the least expensive ways to comply.

F. Enforcement

Opponents argue that enforcement will be burdensome and "Draconian" to producers and sellers, as well as requiring a sizable bureaucracy funded by taxpayers. They state this sort of governmental regulation is unwarranted. They also argue the measure may even increase solid waste if packagers increase layering.

Proponents agree that enforcement without industry cooperation will be extremely difficult. They believe industry will voluntarily cooperate in implementation after it has been adopted. Proponents note that while industry aggressively opposed the bottle bill, they ultimately cooperated in implementing it.

Your Committee believes that enforcing this Act will require the active, good faith cooperation of the packaging industry to avoid high costs of monitoring and enforcement by the DEQ. Your Committee also believes that if the measure is adopted, industry will follow its own best interests and cooperate in implementation. Not only is industry interested in financial survival, but it is interested in responding to consumer issues.

G. Risk in Adopting Unprecedented Legislation

Opponents assert Oregon is taking an unnecessary risk by being the first state to adopt legislation of this type. They encourage Oregon to wait until another state has experimented with regulation of packaging rather than risk our economy.

Proponents counter that Oregon has traditionally been in the vanguard of environmental legislation. The state earned its reputation as a recycling leader by being the first state to adopt a bottle bill. Recently, however, Oregon has fallen behind in recycling leadership.

Your Committee believes that Oregonians take great pride in their standing as environmental leaders, and could reclaim their role by having the courage to be the first state to adopt a packaging recycling bill.

H. Other Considerations

Your Committee believes that other issues should be addressed by the legislature and DEQ in order to achieve an effective program:

1. The program should be tied to a funding plan, such as an increase in disposal fees at landfills, to cover administrative costs.
2. An educational effort should be targeted at industry and consumers.
3. DEQ should exercise broad rule-making powers, consistent with the intent of the Act, and should not be forced into a narrow interpretation of the language of the Act.

VII. Conclusions

A decision on Ballot Measure 6 is fundamentally a policy decision. Your Committee based its judgment on qualitative aspects of the issue rather than on questionable quantitative information.

Your Committee concluded that Ballot Measure 6 will be effective at reducing solid waste and conserving natural resources. Existing recycling legislation focuses on consumers but ignores producers. The measure addresses the need to establish markets for recyclable materials collected by consumers. It also provides DEQ with sufficient flexibility and authority for implementation, and DEQ has demonstrated the ability to implement complex legislation in the past.

Your Committee concludes that industry will innovate to meet consumer demand, as it has in the past. Many packaging materials already meet the 1993 standards. Although there may be a short-term increase in costs, the long-term costs of both packaging and landfills are likely to decrease.

VIII. Recommendation

Your Committee recommends a "YES" vote on Measure 6 in the November 6, 1990 general election.

Respectfully submitted,

Maribeth Bushey
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Linda J. Crum
Becky A. Denham
Stephen C. Goodrich
Peggy A. Naumann
Ann D. Thompson, Chair

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Appendix A

WITNESSES

Joel Ario, Executive Director, OSPIRG

Paul Cosgrove, Attorney, Lindsay Hart Neil & Weigler, and legal counsel to Oregon Committee for Recycling

Robert L. Denko, Hazardous and Solid Waste Analyst, Department of Environmental Quality

Kathy Dimond, Information Officer, Department of Economic Development

Lynda Gardner, Attorney, Lindsay Hart Neil & Weigler, and legal counsel to Oregon Committee for Recycling

Phil Keisling, State Representative

William Kovacs, attorney, Dunn, Carney, Allen, Higgins & Tongue

Bob Martin, Solid Waste Director, METRO

Pat McCormick, Pihas Schmidt Westerdahl, representing Oregon Committee for Recycling, (coalition of business groups opposed to measure)

Jerry Powell, Editor, RESOURCE/RECYCLING Magazine

Blanche Schroeder, Government Relations Director, Portland Chamber of Commerce

Dick Springer, State Senator

James Whitty, Director, Oregon Retail Council

Appendix B

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