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The Iowa Department of Natural Resources (DNR) received a Petition for a Declaratory Order (Petition) from the Iowa Grocery Industry Association (IGIA) concerning the DNR’s authority to approve or deny “redemption centers.” Cleaner Iowa, Inc. filed a timely motion to intervene.¹

The relevant Iowa Code section requires the DNR to approve redemption centers if the redemption center “will provide a convenient service to consumers[.]” IOWA CODE § 455C.6(3). The legislature did not define the term “convenient service” in the statute. In adopting rules to implement the applicable statute, the Environmental Protection Commission (EPC) adopted virtually identical language. The EPC’s rule states, in part, that a “redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer’s customers.” 567 IOWA ADMINISTRATIVE CODE (IAC) 107.4(1)“c”.²

The DNR has determined that a ten-minute round trip for the consumer is a reasonable benchmark when assessing whether a redemption center will provide a “convenient service to consumers” who will use the redemption center instead of returning bottles or cans to the dealer’s facility. Despite the fact that the legislature did not define the term, the Petitioner argues that DNR’s review process for redemption center applications is unlawful because the DNR has not defined this “convenience standard” by rule.

¹ The IGIA objected to Cleaner Iowa’s standing to intervene. DNR did not rule on the objection.

² If a redemption center has been approved for a dealer, the dealer is no longer required to accept redeemable bottles and cans.

The IGIA requested a meeting with DNR to discuss the Petition. Pursuant to 561 IAC 6.7,³ DNR held a telephonic meeting on September 2, 2020 with the Petitioner and the Intervenor to discuss the Petition. Each party was given 15 minutes to present their respective position, followed by the opportunity for questions from DNR staff. During the IGIA’s presentation it became apparent that, while the Petition raises a question about approval or denial of redemption centers, the primary purpose of the Petition is to require the DNR to initiate rulemaking to define the term “convenient.”⁴

DNR is authorized to issue a declaratory order “declaring the applicability of the statute, rule, or order in question to the specified circumstances,” to decline to issue an order, or to take no action on the Petition. IOWA CODE §§ 17A.9(5) and (8).⁵ In this case, pursuant to section 17A.9 and the applicable rules governing the grounds for refusing to issue a declaratory order located at 561 IAC 6.9, the DNR is declining (refusing) to issue a Declaratory Order for the reasons enumerated below.

1. The DNR is prohibited by statute and rule from issuing a declaratory order if necessary parties have not participated in the proceeding.

The DNR “shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding” (emphasis added). IOWA CODE § 17A.9(1)(b)(2). *See also* 561 IAC 6.9(1)(9).

The “convenience standard” was established by the legislature in the interest of “consumers.” IOWA CODE § 455C.6(3). As such, every consumer in the state of Iowa would be affected by a declaratory order on this question, but no consumers have provided written consent for an order to be issued and no consumers have intervened or filed similar petitions.⁶

It is the DNR’s position that a declaratory order relating to the “convenience standard” cannot be issued because necessary parties have not participated in the proceeding as required by statute.

2. The issue raised in the Petition is within the jurisdiction of the legislature, so DNR rulemaking would be inappropriate.

Pursuant to 561 IAC 6.9(1)(5), the issue raised by IGIA would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter. Given the scope of the impact of a change to the standard—namely, every citizen in the state that seeks to redeem bottles and cans—a legislative determination is appropriate.

³ The DNR, and its associated commissions, have adopted the Uniform Rules on Agency Procedure for declaratory orders, with necessary amendments.

⁴ The purpose of a Petition for Declaratory Order pursuant to IOWA CODE § 17A.9 is not to initiate rulemaking. This appears to the DNR to be the improper use of this mechanism.

⁵ DNR notes for the record that it complied with the 30-day requirement enumerated in Iowa Code section 17A.9(5)(b) by issuing a written notice of informal meeting to both the Petitioner and the Intervenor.

⁶ Remarkably, the IGIA failed to include “consumers” as a category of parties that would be affected by the Petition.

Further, deferring to legislative initiatives when the legislature has already introduced legislative language on the matter at hand is not a novel concept. For example, in May, 2012, then-Governor Branstad issued Executive Order 77 rescinding a rule enacted by the Natural Resource Commission (NRC) because the legislature had just considered legislation on the issue that was the subject of the rulemaking (banning lead shot during the dove hunting season). As stated in the Executive Order, “the determination of whether hunters should be forced to stop using traditional lead shot is the role of the legislature, not an unelected NRC.”

In the last legislative session, at least three bills were introduced that would have established a bright-line standard for when a dealer could refuse to accept cans in reliance on a redemption center in the area. In SSB 1225 and HSB 507, the redemption center would have to be within a ten-mile radius of the dealer. In SSB 3109, the redemption center would have to be within a 15-25-mile radius, expanding over time. These bills make other changes to the underlying Beverage Container Control statute (the “bottle bill”) as well, including adding new defined terms.

Even if deference to the legislature on pending matters was not an expectation, given the fact that the legislature is considering significant alterations to the underlying statute—including changes that would specifically address concerns raised in the Petition—it would seem prudent for the DNR to wait on legislative action before taking any unilateral action on its own. As such, DNR must decline to issue a declaratory order given the legislature’s clear interest in the matter.

For these reasons, the DNR declines to issue a Declaratory Order on matters related to the “convenience standard.”

Sincerely,

A handwritten signature in black ink that reads "Kayla Lyon". The signature is written in a cursive, flowing style.

Kayla Lyon, Director
Iowa Department of Natural Resources