

IOWA DEPARTMENT OF NATURAL RESOURCES

<p>Petition by the Iowa Grocery Industry Association for a Declaratory Order on Iowa Code § 455C.6 and Iowa Administrative Code § 567-107.4</p>	<p>PETITION FOR DECLARATORY ORDER</p>
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The Iowa Grocery Industry Association (hereinafter “IGIA”) petitions for a Declaratory Order pursuant to Iowa Administrative Code § 567-5.1 and Iowa Code § 17A.9 due to disparity in administration and enforcement of the Beverage Containers Control law. Specifically, this Petition requests explanation, clarification, and action on access for dealers to approved redemption centers under Iowa Code § 455C.6 and Iowa Administrative Code § 567-107.4.

RELEVANT FACTS

Iowa’s Beverage Containers Control law at Iowa Code Chapter 455C, commonly referred to as the “Iowa Bottle Bill,” requires consumers to provide an upfront five-cent deposit with each redeemable container with the legal requirement for that deposit to be returned to the consumer when the container is redeemed by a dealer or redemption center. The law allows dealers to decline to redeem containers at their businesses when there is an approved redemption center that “will provide a convenient service to consumers.”¹ The purpose of redemption centers is to “facilitate the return of empty beverage containers *and to serve dealers of beverages.*”²

¹ IOWA CODE § 455C.6; IOWA ADMIN. CODE r. 567-107.4(1)(c). On July 23, 2020, the IGIA submitted a Petition for Declaratory Order requesting the Department to define the “convenient service” standard found in the statute and regulation.

² IOWA CODE § 455.6(1) (emphasis added).

Iowa Code § 455C.6 vests the approval of such redemption centers in the Department and sets forth the application procedure and requirements for approved redemption centers. The law provides that an application for approval of a redemption center shall list “the names and addresses of the dealers to be served.” Iowa Code § 455C.6(2). The purpose of this requirement is to ensure that the redemption center is furthering the statute’s intent in creating approved redemption centers – “*to serve dealers of beverages.*”

The Department has added the requirement that redemption centers must submit “written consent of those dealers to be served by the redemption center.” Iowa Admin. Code § 567-107.4(1)(b)(4). The rules do not provide a procedure for dealers to request to be approved as dealers for approved redemption centers. Thereby, if a redemption center can conveniently serve a dealer’s customers, but the redemption center chooses to not include that dealer in its application, that dealer has no means of being served or assisted by that redemption center. Redemption centers are using the current administration of these rules and procedures to their advantage by requiring certain dealers to pay substantial monthly payments to the redemption center in exchange for the redemption center including the dealer in its order. Simply put, certain dealers are being held hostage by redemption centers under the Department’s administration of the rules and are being forced to pay substantial fees to those redemption centers in exchange for receiving the benefits of the law established by the legislature. The manner in which the law and rules are being applied does not further the statute’s goal in establishing redemption centers “*to serve dealers of beverages.*”

As an example, Redemption Center, Inc. is an approved redemption center for certain dealers in Dubuque, Iowa. Redemption Center, Inc. has refused to request an update to their order to include a Fareway store in Dubuque as an approved dealer, despite a request from the

store. Redemption Center, Inc. requires that the Fareway store pay \$1,250.00 per month to the redemption center for the redemption center to apply to the Department to include the Fareway store as an approved dealer. The Dubuque Fareway store is within the same distance as the other dealers that have been approved by the Department for the redemption center and should be considered a convenient location to store's consumers. Permitting redemption centers to force dealers to make substantial payments in order to be served by the redemption center defeats the purpose and intent of redemption centers in Iowa Code chapter 455C.6.

IGIA petitions the Department for:

- a declaratory order addressing this particular circumstance;³
- requests that the Department permit dealers to apply as exempt dealers for approved redemption center without seeking and obtaining consent from the redemption center;
- that the Department fairly and equitably approve all dealers that are within a convenient distance from the redemption center to serve the purpose and intent of the statute; and
- that the Department establish rules barring redemption centers from demanding fees in exchange for serving dealers.

Dealers should not be forced to pay hostage fees to exercise their rights under the law.

³ The IGIA seeks a declaratory ruling on the specific question of dealers' access to redemption centers, not just the example provided. *See City of Des Moines v. Public Employment Relations Bd.*, 275 N.W.2d 753 (Iowa 1979) (finding declaratory rulings can apply to purely hypothetical sets of facts and do not need to present live, present controversies).

APPLICABLE LAW

1. Iowa Code chapter 455C implements Iowa's Beverage Containers Control law, which requires dealers to charge a five-cent deposit to a consumer who purchases certain beverages and then mandates that a dealer accept all empty beverage containers of the type that was sold to consumers.
2. Iowa Code § 455C.6(1) creates approved redemption centers to assist dealers in the return of empty containers, enabling dealers to decline the return of containers to their stores pursuant to Iowa Code § 455C.4. The authority to approve redemption centers is vested with the Department.
3. In order for the Department to issue an order for an approved redemption center, the Department must determine if "the redemption center will provide a convenient service to consumers." Iowa Code § 455C.6. The statute does not define "convenient service to consumers" and the Department has never formally adopted a rule to regulate this standard.
4. Pursuant to Iowa Code chapter 17A⁴ and Section 455C.9, the Environmental Protection Commission (hereinafter "Commission") and the Department are required to adopt rules for administration of the Beverage Containers Control law at Iowa Administrative Code chapter 567-107.
5. Iowa Code § 455C.6(2) sets the requirements for an application to the Department for an approved redemption center. Section 455C.6 requires an applicant for an approved redemption center to state the "names and addresses of the dealers to be served by the redemption center."

⁴ Iowa Code § 17A.3(1)(c), (d) ("[E]ach agency shall . . . adopt rules, in addition to those otherwise required by this chapter, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers . . . [and] [m]ake available for public inspection all rules.").

6. Iowa Administrative Code § 567-107.4(1) expands upon those requirements outlined in Iowa Code § 455C.6(2), requiring a redemption center seeking approval from the Department to provide the “[n]ames and addresses of the dealer to be served by the redemption center *and the written consent of those dealers to be served by the redemption center.*”

7. The rules currently do not provide for a procedure for a dealer to petition to be approved as a dealer for an approved redemption center, leaving many dealers unable to be served by redemption centers that are created and authorized by law “to serve dealers.”

QUESTIONS TO BE ANSWERED

1. Can dealers apply for and be approved as a dealer for an approved redemption center that is within a distance convenient to consumers without application or written consent from the redemption center?

2. Is a redemption center permitted to demand fees from a dealer in order to include that dealer in an application with the Department?

3. Is an approved redemption center that is serving certain dealers within a distance convenient to consumers legally permitted to refuse to accept redeemable containers from certain dealers who are also within a convenient distance?

DESIRED ANSWERS AND REASONS FOR SUPPORT

The Department should permit dealers to apply for approval to be serviced by an approved redemption center without mandating consent from the redemption center. The Department should approve all dealers as exempt dealers for approved redemption centers that are within a distance that is a convenient service to consumers without requiring consent from the redemption center. The Department should bar redemption centers from charging fees to include a dealer as an approved dealer for a redemption center.

REASONS FOR DECLARATORY ORDER AND INTEREST IN OUTCOME

After over four decades of administration of chapter 455C by the Department, the rights of IGIA members have been increasingly disregarded. The legislature enacted chapter 455C with broad guidelines and directed the Department to enact and administer rules to carry out the purpose and intent of the statute. The administration of the bottle bill has subjected a subset of dealers to an increasingly larger share of the burden. Approved redemption centers are in the business of recycling containers and should be available to any dealer within a distance convenient to consumers – including IGIA members. IGIA brought this Petition on behalf of its members seeking a declaratory order to ensure the system is administered in a fair and equitable manner.

STATEMENT ON OTHER PROCEEDINGS

The IGIA is not a party to any other proceeding involving the question at issue and does not have knowledge of these questions being decided by the Department or any governmental entity.

DESCRIPTION OF ANY CLASS OF AFFECTED PERSONS

- All Approved Redemption Centers according to Iowa Code § 455C.6.
- All Dealers according to Iowa Code § 455C.1(5).

PETITIONERS' ARGUMENTS IN FAVOR OF THE ACTIONS URGED IN THIS PETITION

Redemption centers that are approved by the Department under Iowa Code § 455C.6 are in the business of redeeming beverage containers. The statutory structure outlines the application for an approved redemption center and guidelines for compliance. If a redemption center is approved for one dealer, then other dealers should be able to access that redemption center if they are within a distance that is similarly convenient to consumers.

As expressly stated in Iowa Code § 455C.6(1), redemption centers are not only created to facilitate the return of empty containers, but also to “serve dealers.” Dealers who do not have access to redemption centers that are convenient to the customer carry a significant burden as compared to the similarly situated dealers who are approved for the redemption center.

Approving some dealers, but not all dealers, who are located within a convenient distance from the redemption centers applies Iowa Code chapter 455C in an unfair and inequitable manner.

Approved redemption centers should be accessible to all dealers within a convenient distance from the redemption center whether or not written consent is obtained from the redemption center. Dealers should have an ability to apply to the Department to become a dealer for an approved redemption center.

Under current administration of the rules, redemption centers can force certain dealers to pay excessive and unreasonable fees in order to be included as an approved dealer for that redemption center. Without the ability for dealers to seek approval from the Department themselves, dealers are left with no choice but to either pay excessive hostage fees to redemption centers, carry the burden of facilitating the redemption of cans and bottles inside their facilities, or be subjected to potential criminal violations for non-compliance with the statute. This process bars certain dealers from exercising their rights under the law.

MEETING WITH DNR AND PETITIONER REPRESENTATIVE

Petitioners hereby request a joint meeting between the Director of DNR, her legal staff, and IGIA to discuss the agency’s response to this petition provided for by Iowa Administrative Code rule 11-8.7(17A). Please address all correspondence regarding this petition to counsel for IGIA at the address below.

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