

Date: Sept. 7, 2022

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Item D: Recycling Updates and 2023 Rulemaking Development (Informational)
Sept. 22-23, 2022, EQC meeting

Why this is important DEQ's Materials Management program will inform the commission about a rulemaking under development to implement the Plastic Pollution and Recycling Modernization Act (2021) as preparation for a request for EQC action in September 2023.

Prior EQC involvement Staff provided updates to the EQC about DEQ's process to engage interested parties during the three-year process to develop the new law.

Background The 2021 Oregon Legislature passed a law that will transform recycling in Oregon – the Plastic Pollution and Recycling Modernization Act ([Senate Bill 582](#)). This law creates an improved system for responsibly managing packaging, printed paper and food serviceware. The new system, one of the first in the country addressing these materials, will build on the parts of Oregon's existing recycling programs that work well, and fill in the gaps where it needs improvement. The Recycling Modernization Act includes elements of a framework called extended producer responsibility, or EPR. It requires producers of packaging and paper products to be accountable for responsible end-of-use management of their products for the first time. As a shared responsibility model, it also places new requirements on local governments and recycling processors to help ensure environmentally and socially beneficial recycling programs.

The new system helps conserve resources, protects the environment and enhances wellbeing for everyone in Oregon, and for people beyond our state's borders who are impacted by the materials we use and recycle here. This is aligned with Oregon's [2050 Vision for Sustainable Materials Management](#).

The Act became effective in January 2022 and recycling program changes will start in July 2025. DEQ will initiate two rulemakings to implement the law,

and the first of these two rulemakings is currently in development and will be proposed for commission consideration in September 2023.

Rulemaking elements

Under the Plastic Pollution and Recycling Modernization Act, producers will finance improvements to Oregon’s recycling system and many parties will perform specific functions to make Oregon's recycling programs convenient, accessible and responsible.

Establishment of Producer Responsibility Organizations

Producers will join and pay a membership fee to a nonprofit Producer Responsibility Organization (PRO) that will fund improvements and ensure that collected recyclables go to responsible end markets. Producers will also be required to meet new recycling goals for plastic packaging and food serviceware. Producer Responsibility Organizations will collect producer membership fees and use them to ensure improved and expanded recycling services. Most collection will continue to be overseen by local governments, but PROs will provide services for certain hard-to-recycle materials. PROs will also fund waste prevention grants, and several studies to assess challenges and recommend improvements to improve multifamily recycling conditions, equity in the recycling system, and litter and marine debris.

Standardization of materials accepted

One, statewide, collection list will allow individuals and businesses to recycle the same items across the state, at home and at work. PRO funding will enable collection of the same items regardless of location or distance from recycling markets.

Expansion of recycling services and education

Recycling services will be expanded under the direction of local governments, with support from the PROs, especially for rural communities and people living in apartments or other multi-tenant environments. The same private collection companies will continue to provide recycling services. Education about how to recycle will continue to be offered by local governments, along with new programs to reduce contamination (trash) in our recyclables. PROs will create accessible educational resources that local governments can use and that meet the needs of diverse communities.

Integration of social equity principles

Processing of recyclables will be done in facilities that meet new performance standards, including for material quality, reporting, and paying living wages to workers. These facilities will be required to obtain a permit from DEQ or meet similar standards to receive material from Oregon communities. Local governments will make sure material collected in their communities goes to approved facilities. End markets that can handle the material appropriately — without creating plastic pollution or other harms — can purchase it after sorting

and recycle it into something new. Producers and processors will be obligated to make sure materials collected in Oregon reach responsible end markets.

Continued regulatory oversight

Oversight and integration will be provided by DEQ, with accountability from all participants. DEQ will plan and implement changes required by the new law, oversee the recycling system and provide enforcement where necessary. A new Governor-appointed advisory council will provide feedback to DEQ and PROs about important elements of the new system. PROs, recycling processors and local governments will track and report more information about where Oregon's recyclables go and ensure that they are managed responsibly and used to make new products.

Currently two advisory groups and a technical workgroup are informing DEQ's rule concept development.

1. The Oregon Recycling System Advisory Council is a Governor-appointed council with 17 voting members and two non-voting members of the Legislature that will make recommendations to both DEQ and Producer Responsibility Organizations on a variety of topics. The Recycling Council will meet at least quarterly in perpetuity and will submit a report to the Legislature every two years.
2. The Rulemaking Advisory Committee (RAC) is a 17-member, DEQ Director-appointed committee charged with reviewing the technical, fiscal, and equity impacts related to the proposed rules. In convening this committee, DEQ appointed members that reflect the range of entities both directly and indirectly affected by the proposed changes to this rule. The advisory committee is scheduled to meet until spring 2023.
3. DEQ convened a technical workgroup to provide and review information that DEQ will evaluate during rule development.

DEQ continues to develop communications and engagement plans to ensure that rural and underrepresented communities are consulted in meaningful ways throughout rulemaking and ongoing implementation of the Act.

Key issues

DEQ is developing draft rule concepts on the following topics and will present them to the Rules Advisory Committee over the course of five scheduled meetings in 2022 and early 2023.

1. PRO obligations

The Act requires EQC to establish by rule the obligations of Producer Responsibility Organizations (PRO). DEQ presented rule concepts to the RAC related to:

- A fixed, one-time fee for reviewing a producer responsibility program plan.
- An annual fee charged to each PRO to pay the costs to the DEQ for administering, implementing and enforcing the Act.
- Methods for calculating market share (which will be used to set thresholds for minimum PRO size, determine the identity of "large producers," and split fees among multiple PROs).
- Standards and requirements for coordination plans and coordination between PROs.
- A process for submittal, review, approval or rejection and revocation of coordination plans.
- A process for DEQ to issue an order requiring a coordination plan.
- Definitions and standards clarifying a requirement that covered products collected for recycling are delivered to "responsible end markets" that benefit the environment and minimize risks to public health and worker health and safety."

2. Local government compensation

DEQ will present rule concepts to the RAC that outline the methods and conditions the PRO will follow for providing compensation to local governments or the local government's service provider, including:

- Transporting covered commingled recyclable materials from recycling depots and recycling reload facilities to the closest responsible end-market or commingled recycling processing facility
- Conducting periodic expansion-of-service needs assessments and expanding recycling services based on the assessment findings
- Documenting expenses for reimbursement requests
- Providing a method for local governments and service providers to return any unused funding to a PRO

3. Materials lists

DEQ will provide recommendations for commission decision to define what constitutes a "recyclable material" after considering criteria such as end markets, economics and environmental impacts. DEQ expects to propose

some materials as "opportunity to recycle" obligations for local governments and others as separate recycling obligations for Producer Responsibility Organizations (PROs) to collect via depots or mobile collection events. For those materials, DEQ will also provide recommendations that identify convenience standards, collection targets, and performance standards that Producer Responsibility Organizations must meet.

DEQ is gathering feedback on rule development through the Rulemaking Advisory Committee, the Recycling Council, and, eventually, through a formal public comment period.

DEQ intends to bring a rule proposal for commission action at the September 2023 EQC meeting.

Supporting materials

- A. DEQ's webpage on the Plastic Pollution and Recycling Modernization Act
<http://www.RecyclingAct.Oregon.gov>

Reported prepared by Roxann Nayar
Land Quality Division, Recycling Program Analyst