

Meeting Summary

Recycling Modernization Act Rulemaking



Rule advisory committee meeting #1 July 13, 2023, Zoom Webinar

On July 13, 2023, DEQ convened the first meeting of the Plastic Pollution and Recycling Modernization Act (RMA) Rulemaking Advisory Committee (RAC), the second of two rulemakings via Zoom Webinar. The purpose of the meeting was to:

- Introduce the purpose and intent of the rulemaking process and RAC involvement.
- Provide an overview of the Act
- Present rule concepts previews for the Material Impact Reduction and Reuse Oregon program, Commingled Recycling Processing Facility (CRPF) Permit and Certification Programs; Contamination Management Fee and Processor Commodity Risk Fee, and Life Cycle Impact and Evaluation.
- Present the CRPF Living Wage and Supportive Benefits rule concept.

Meeting Summary

- **Welcome, Meeting Overview**

DEQ welcome the meeting attendees and provided an overview of the agenda and what is planned for the day.

- **Introductions**

Ariane Sperry welcomed and introduced DEQ staff and the rulemaking advisory committee members. Members were asked to state their names and introduce themselves.

- **Role of the Rulemaking Advisory Committee**

Roxann Nayar provided an overview of the rulemaking advisory committee's role and purpose.

The Committee is serving in an advisory role and does not have decision-making authority. While the RAC cannot approve or deny a rule concept, DEQ needs their expertise, perspectives and ideas to help inform DEQ's thinking as the draft rule language is developed. Questions, conversations, recommendations to literature and data are all welcome over the course of this rulemaking.

- **Rulemaking Timeline**

Roxann Nayar provided an overview of the anticipated timeline for this rulemaking.

DEQ anticipates that there will be at least six RAC meetings between July 2023 and April 2024. After the RAC meeting are complete, DEQ will compile a rulemaking packet, which includes the rulemaking

Translations or other formats

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notice, draft rules, fiscal impact and racial equity impact statements. The notice will be published and put out on public notice in the spring. Once the packet is published, the public comment period will open, likely in mid-to-late May, and the public hearing(s) will likely be in mid-June. The RAC was advised that this timeline may shift, but that DEQ will provide updates about any changes as the year progresses.

- **Rulemaking Orientation**

Roxann Nayar reviewed the RAC Charter, which is posted on the Rulemaking 2024 webpage.

The charter describes the roles and responsibilities of the RAC and DEQ. The charter describes expectations, including that the RAC can expect:

- DEQ will be convening the RAC meetings, which will always be open to the public,
- Meeting materials will be posted at least two weeks prior to the RAC meeting,
- A copy of the presentation and a meeting summary will be posted following the meeting.

Meeting attendees from the public and the RAC were encouraged to sign-up for the GovDelivery notices to receive updates about when meeting information and when materials are posted online. The link to sign-up for GovDelivery is on the [Recycling 2024](#) webpage.

The rule development was described next. Roxann clarified that this is an administrative rulemaking, meaning the proposed rules are clarifying or further defining what is already in statute, allowing DEQ to implement and enforce the requirements. DEQ will be presenting rule concepts to the RAC during each meeting. It was explained that the rule concepts describe DEQ's general thinking behind future rule language. The general thinking is informed by extensive research; however, the concept is far from finalized and DEQ is looking to the RAC for more information and their perspectives to help refine DEQ's thinking before the draft rule language is drafted.

- **Questions**

There was a pause for questions related to the timeline, rulemaking process and charter.

DEQ was asked by a committee member whether there be a deadline for the committee members to provide comments after the meetings, and how will the comments be shared?

Will DEQ add the names of the alternates in the committee charter?

DEQ responded: There will be no input period or deadlines, input is welcome throughout the next 10 months. All input received from RAC members will be compiled and posted to the rulemaking webpage periodically. Per DEQ's and the evolutionary nature of the rulemaking process, input received from the public is not included with the RAC's input.

DEQ will consider including the alternates' names in the committee charter.

- **History of the Plastic Pollution and Recycling Modernization Act**

Roxann Nayar provided background history about the RMA, and how the law addresses many challenges in Oregon's recycling system.

The RMA's Extended Producer Responsibility approach requires that producers begin paying into the recycling system to contribute to the costs of managing the end-of life of their products. The RMA is unique in that it uses a shared responsibility approach, where all participants in the system will have responsibilities, keeping existing infrastructure in place rather than placing full end-of life management on the producers.

The two rulemakings are establishing the foundational elements required for DEQ to implement the new law. These elements include establishing:

- a uniform statewide collection list
- a commodity risk fee
- requirements and standards for responsible end markets
- permitting for recycling processing facilities
- living wage, health, safety and wellness benefits for processing facility workers
- dedicated funding for reuse and waste reduction solutions
- producer disclosure of life cycle impacts of their products
- statewide plastic recycling goals

- **Key Roles in the RMA**

Roxann Nayar described the main participants in the RMA's shared responsibility system:

- **Producers:** of materials deemed to be "covered products," including packaging, printing and writing paper, and food serviceware, will be required to join a Producer Responsibility Organization and pay fees based on the quantity of material they are selling in Oregon.
- **Producer Responsibility Organizations:** will form to administer and implement most elements of the RMA. The PROs will recruit producers, develop a fee schedule, and assess the producers fees. The PROs will collect the fees and distribute the funds to support and expand recycling services in a variety of ways across the state.
- **Local governments and their service providers:** will be updating their recycling services to meet the new standards as outlined in the Act.
- **Recycling processors:** will be required to meet new performance standards, including ensuring that they are sending recyclable materials to responsible end markets, among others.
- **DEQ** will oversee implementation and enforce the requirements of the Act.
- **Recycling Council** will advise DEQ and the PROs.

- **Questions**

DEQ paused for questions and comments. DEQ was asked to include service providers in "Key Roles".

- **Rule Topic Previews**

Ariane Sperry described the anticipated schedule for when the rule topics for this rulemaking will be presented to the RAC and then invited DEQ staff to introduce some of the topics they are working on this year.

Material Impact Reduction and Reuse Program

Blaine Mershon introduced the Material Impact Reduction and Reuse Program (MIRROR) rule concept.

The RMA requires DEQ to establish a program to reduce the environmental impacts of covered products through activities other than recycling or waste recovery, such as through waste prevention and reuse. The PRO(s) will use a portion of the fees collected to make specific and targeted investments, including to a new "waste prevention and reuse fee." DEQ will use this fee to establish a program, the "Material Impact Reduction and Reuse Program" or "MIRROR" to fund activities that reduce environmental impacts of covered products through waste prevention and reuse, and in other areas that occur during other phases of the products' life cycle, including throughout the supply chain, production, transportation, use and disposal.

Processor Permit and Certification Programs

Justin Gast introduced the Processor Permit and Certification Programs rule concept.

Commingled recycling processing facilities will be subject to a new permitting program which incorporates the new provisions of the RMA (e.g. funding mechanisms, performance standards, responsible end markets requirements). To account for the facilities that are located out-of-state, DEQ is also required to establish a third-party certification program to ensure they are also meeting the Act's requirements. Under the new permitting program, the facilities will be required to:

- sort all materials collected from the public so that materials do not become contaminants in other waste streams.
- manage contaminants to avoid impacts on other waste streams or facilities.
- report on the quality of materials coming into facilities.
- report to DEQ on the disposition of materials processed, with disposition only happening at responsible end markets.

Fees

Justin Gast then presented an overview of the commingled recycling processing facility fees that will be proposed later this year. The CPRF fee and the Processor Commodity Risk Fee.

- **Contamination Management Fee:** A per-ton fee to be paid by PRO(s) to processors to compensate the facilities for the costs of removing and disposing covered products that are contaminants. Essentially, any covered product not proposed for inclusion on the Uniform Statewide Collection List that is tipped at a processing facility would be seen as a contaminant.
- **Processor Commodity Risk Fee:** is to be paid by the PRO(s) to processors to ensure that producers share in the costs of fully processing commingled recyclables that are covered products and to allow local governments to reduce the financial impacts on ratepayers.

Life Cycle Evaluation

Nicole Portley introduced the life cycle evaluation project.

Life Cycle Evaluation fulfills the Act's overarching goals of reducing the life cycle impacts of covered products. The second rulemaking will be addressing impacts in the production phase of a product, or upstream in its life cycle. Disclosing life cycle impacts is one component of this work as it has been found that companies required to disclose life cycle impacts are more likely to take action to reduce impacts.

Every two years, the 25 largest producers of covered products in Oregon will be required to follow specific standards when disclosing the impacts of at least one percent of the products they have sold in-state. These evaluations must be provided to DEQ and posted on the relevant PRO(s) website.

The disclosure requirements are tied to "eco-modulation," a mechanism in the Act referred to as "fee graduation." This mechanism adjusts producer fees to incentivize environmentally beneficial changes and disincentivize environmentally harmful behavior.

The future rule concept will propose rules that clarify the product category rules which will create a standard for comparing and assessing the environmental impacts of different types of products that perform similar functions.

To help inform this topic, DEQ is seeking feedback on its approach through two Requests for Information; the first is currently open and the second will open later this fall.

Covered Product Exemptions

Next, Nicole Portley introduced the covered product exemptions topic.

Statute includes a list of products exemptions in the definition of "covered product," and producers will not be required to report data or pay fees to the PRO for them. Statute includes a placeholder for additional exemptions to be added in rule, which must be developed in conjunction with the Recycling Council. DEQ held an exemption request period, which was open in May-June 2023, to help inform

understanding about the rationale and potential impacts of the proposed exemptions. This concept will be presented to the RAC in 2024.

Roxann Nayar presented an overview of the fiscal impact and racial equity impact statements which DEQ is required to draft as part of the rulemaking. The RAC will be given an opportunity to review and comment on DEQ's analysis prior to the opening on of the formal public comment period.

- **Questions**

DEQ paused for questions. No questions were asked.

- **Rule Concept Presentation and Discussion: Living Wage and Supportive Benefits**

Stephanie Caldera presented the first rule concept of the rulemaking, for living wage and supportive benefits. Stephanie first clarified that this is a very early proposal and that DEQ will complete more research in the coming months. The rule concept will be brought back to the RAC during the November meeting with a more detailed proposal.

The rule concept proposes to define specific reference from statute include, "workers at the facility," "living wage," and "supportive benefits." DEQ is proposing to utilize the Massachusetts Institute of Technology(MIT) Living Wage Calculator as the primary data source for national wage data. Benefits of using MIT's model include that its intent aligns with DEQ's for the purposes of the act, it is free to use, and it is updated annually, reducing DEQ's administrative burden. DEQ proposes modifying one term utilized by the calculator by using "dependents" rather than "children" to reflect that workers' care responsibilities can extend beyond children.

DEQ provided three discussion questions on the slide for the RAC to consider and opened up the meeting for discussion and questions.

1. What additional data sources might DEQ consider, as backup support if the MIT Living Wage Calculator is no longer available, for the hour wage figure calculations?
2. Do the proposed location and household composition parameters seem to meet the legislative and statutory intent for this draft rule concept?
3. What other data or information would help inform the EQC's decision related to the supportive benefits portion of the draft rule concept? Who else should we talk with?

- **RAC Discussion:**

Arianne Sperry facilitated the discussion. The RAC discussed and asked many questions about this early proposal, including:

- Questions and comments about the use and application of the term "worker" within different contexts, including for clarification about when and where this definition of "worker" would be applied to specific employees in these facilities.
- Clarifying questions about the reasoning and purpose for using MIT's calculator as opposed to other options.
- Suggestions that further research into the implications, potential duplication, and potential for overlaps with other state and federal definitions of these terms be considered.

- **Public Input Period**

The public input period started at 11:37 a.m. and closed at 11:44 a.m. One member of the public shared input, which is summarized below. DEQ reopened the public input period at noon and no other members of the public signed up to provide input.

One person registered to provide public input:

1. Peter Bierbaum, One World Resource

When DEQ is developing the fiscal impact statement, DEQ should consider the economic impacts of producers of covered products who do not join a PRO, and other scenarios involving system free riders.

- **Meeting adjournment and next steps**

DEQ adjourned the meeting at 12:15 p.m. The next RAC meeting will be held on September 19, 2023.