

Date: Sept. 5, 2023

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item D, Informational item: Recycling Updates 2023 rulemaking Sept. 14-15, 2023, EQC meeting

Why this is important DEQ's Materials Management program will update the commission on implementation of the Plastic Pollution and Recycling Modernization Act including the rulemaking that DEQ intends to request EQC action on in November 2023.

Prior EQC involvement Staff provided an informational item to the EQC in September 2022 on the Recycling Modernization Act and the three-year process to implement 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. It requires producers of packaging and paper products to pay fees into the recycling system to manage the end-of-life costs of their products. The law uses a shared responsibility model to improve the recycling system. It also places new requirements on local governments and recycling processors to help ensure recycling occurs in an environmentally and socially responsible manner, aligning with the [2050 Vision for Materials Management in Oregon](#). The Act became effective in January 2022 and recycling program changes will start in July 2025.

Rulemaking development processes DEQ is in the midst of conducting the first of two anticipated rulemakings related to the Act. For this first rulemaking, DEQ will propose rules related to topics including producer responsibility program plan content; DEQ's administrative fees; the funding and reimbursement of local governments for eligible recycling-related expenses; and the materials suitable for recycling collection in Oregon. DEQ plans to begin the second rulemaking in late 2023.

DEQ consulted with a formal Rulemaking Advisory Committee, the Oregon Recycling System Advisory Council, and a technical workgroup while developing the first set of proposed rules. The Rulemaking Advisory Committee was an 18-member, Director-appointed committee charged with reviewing the technical, fiscal, and equity impacts related to the proposed rules. DEQ convened a committee composed of members who reflect the range of entities directly and indirectly affected by the proposed changes to this rule.

DEQ gathered feedback on rule development through the Rulemaking Advisory Committee, the Oregon Recycling Council and through the formal public comment period in May, June and July 2023.

DEQ intends to bring proposed rules for commission consideration and action at the November 2023 EQC meeting.

Key issues

DEQ developed draft rule concepts and shared them with the advisory committee over the course of six meetings held in 2022 and in spring 2023. Several topics were the subject of significant conversation during the committee process:

1. Producer Responsibility Organization obligations

The Act requires EQC to establish by rule the obligations of Producer Responsibility Organizations. The advisory committee had particularly deep discussions on:

- Definitions and standards clarifying a requirement that 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.
- Clarifying confidentiality and proprietary information.
- A process for calculating market share.
- Coordination among multiple PROs, including an interim period in during which DEQ serves as the coordination body.

2. Local government compensation

DEQ presented rule concepts to the advisory committee that outline the methods and conditions the PROs will follow for providing compensation to local governments or the local government's service provider. Committee members provided thoughtful and constructive input on several topics, including rule concepts related to:

- Transporting covered products from recycling depots and recycling reload facilities to a responsible end market or commingled recycling processing facility 50 miles or greater in distance.
- Expenses related to expansion of recycling collection services.
- The resource to be used to determine annual local government population figures, relative to the funding dedicated for contamination reduction work with the public.
- The structure of invoicing to be provided by local governments and service providers to the PRO.
- Timing associated with subsequent expansion of recycling collection service needs assessments.

3. Materials lists

The EQC will define what constitutes a "recyclable material" after considering criteria such as end markets, economics and environmental impacts. The commission will designate some materials as obligations for local governments to provide recycling services for and others as separate recycling obligations for the PROs to collect via depots or mobile collection events. The advisory committee spent several meetings discussing which materials might appear on certain lists, with particular focus on:

- Paper/metal cans (e.g., canisters for snacks, coffee, nuts, etc.)
- Cartons (e.g., gable-top milk cartons and aseptic packaging)
- Nursery plant packaging (high density polyethylene and polypropylene)
- Steel and aluminum aerosol packaging (e.g., spray paint and spray cooking oil containers)
- Clear plastic cups (polyethylene terephthalate and polypropylene)
- Plastic buckets, pails and storage containers
- Single-use liquid fuel canisters and other pressurized cylinders (e.g., 1lb propane canisters)

4. Equity and fiscal impacts

Oregon Revised Statute 183.335 requires DEQ and other agencies to prepare a statement about the rule's impacts on racial equity. DEQ submitted this equity statement to the advisory committee for review at its sixth meeting, along with a fiscal impact statement. Comments received from the committee during the meeting included:

- The identified fiscal impacts to ratepayers was limited to costs associated with service expansion and did not describe the future costs from ongoing service.
- The potential fiscal impacts or possibility of producer fees being passed on to consumers was not addressed.
- DEQ should consider the equity implications from the definition of “existing depot” which may exclude the informal collection sector from opportunities in the future.

Supporting materials

- A. DEQ’s webpage on the Plastic Pollution and Recycling Modernization Act: www.recyclingact.oregon.gov
- B. [September 2022 EQC Staff Report](#)
- C. [Recycling Acceptance List Fact Sheet](#)
- D. [Plain Language Guide to the Draft Rules](#)

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