

# Meeting Summary

## Recycling Modernization Act Rulemaking



### Rule advisory committee meeting #2 Sept. 19, 2023

On Sept. 19, 2023, DEQ convened the second meeting of the Plastic Pollution and Recycling Modernization Act (RMA) Rulemaking Advisory Committee (RAC), for the second of two rulemakings. The meeting was held via Zoom, and people could connect by computer or telephone.

The purpose of the meeting was to:

- Provide follow-up information from the previous meeting, including about elements of DEQ's rulemaking process and the Living Wage and Supportive Benefits rule concept.
- Present rule concepts for the Material Impact Reduction and Reuse Oregon program and defining "responsive to diverse conditions" for Contamination Reduction Programming
- Introduce general information about the recycling processing industry in Oregon.

### 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**

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

- **Rulemaking timeline**

Roxann Nayar provided an update regarding the Recycling 2024 rulemaking timeline: DEQ is adding a seventh meeting to the schedule, in February 2024. DEQ still anticipates the overall timeline will remain the same, with the public comment period opening at the end of May 2024, the public hearings will be in June 2024, and the draft rules presented to the Environmental Quality Commission for decision in November 2024. Nayar outlined which proposed rule topic will be brought to the committee at which RAC meeting.

- **Follow-up: Process and logistics**

Roxann Nayar provided an update about DEQ's rulemaking process in response to input and questions received during the first RAC meeting held in July:

- Presentation slides will be posted as soon as possible after each meeting, if not before.
- Only written comments from RAC members will be published to the rulemaking website. Input received from the public are welcome and will be considered by staff; however, that will not be published, since it's not formal public comment under DEQ's rulemaking process.
- DEQ updated the charter to include the names of the committee members' alternates.

### Translations or other formats

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- DEQ changed the meeting format from Zoom webinar to Zoom meeting, which allows all attendees to see the full list of participants and makes other small adjustments to the meeting experience.
- There is no deadline to providing input following a RAC meeting. All input from the RAC and public should be emailed to [recycling.2024@deq.oregon.gov](mailto:recycling.2024@deq.oregon.gov).
- **Follow-up: Living Wage and Supportive Benefits Rule Concept**  
Stephanie Caldera provided a brief update on the Living Wage and Supportive Benefits Rule Concept, noting developments that have been made since the committee first heard about the concept at July's meeting. A fully updated rule concept will be provided ahead and then presented at the third RAC meeting in November. The RAC will hear more about:
  - The results from a third-party wage study being conducted by Crowe LLP. This study is an assessment gauging what may change when the proposed rules go into effect Jan. 1, 2027.
  - DEQ research and work with other state agencies to ensure that any proposed definitions for rule related to insurance provisions and other benefits align with state policies and the DEQ Materials Management 2050 Vision.
  - DEQ is considering a revision to the rule concept where '1 worker/0 dependents' could be the basis for assessing living wage.

### Discussion:

Committee members asked clarifying questions and provided comments related to:

- The change to 1 worker/0 dependents. Some expressed disappointment that DEQ is considering this change; given the emphasis of the Act on equity, larger families should be the standard.
- When the committee would be able to review the results from the wage study conducted by Crowe Study
- **Rule concept: [Material Impact Reduction and Reuse Oregon](#)**  
Blaine Mershon presented the rule concept titled, "Material Impact Reduction and Reuse Oregon", or MIRROR. DEQ is required by the Act to establish this program, which reduces environmental impacts of covered products through means other than waste recovery.

PROs will pay a new waste prevention and reuse fee to DEQ, which will fund the MIRROR program and support activities related to impact reduction. The fee will be used to reduce impacts through waste prevention and reuse, and other activities that reduce environmental impacts that occur across the life cycle of covered products. For example, the production of primary material, such as paperboard or resin pellets, is a significant contributor to environmental impacts. Projects that could address these impacts include energy and water efficiency investments, and changes to industrial processes or supply chains.

The design and implementation of the MIRROR program will align with the [2050 Vision for Materials Management](#).

Statute specifies the criteria DEQ must consider for issuing grants or loans to projects: environmental impact reductions in implementation, environmental benefits, human health benefits, social and economic benefits, cost-effectiveness, and needs of economically distressed or underserved communities.

DEQ suggests two rule concepts for the RAC to consider, the proposed fee and proposed eligible expenses that can be funded under this program.

DEQ proposes an annual fee equal to the lesser of \$11.5 million or 10 percent of the average of any PRO's annual expenditures for the prior three calendar years, excluding payments of this fee, and as

described in the PROs' annual reports. If multiple PROs are approved to operate in the state, the fee will be divided between them in proportion to their modified market share. DEQ will annually invoice a PRO on or before September 1.

DEQ presents the following eligible expenses and activities that can be funded under this program including:

- DEQ's costs and anticipated costs in administrating waste prevention, reuse, and other efforts funded under this program; and
- Eligible expenses approved by DEQ to support funding for MIRROR programs such as:
  - Staffing,
  - Capital investments including equipment, buildings, and land (to include remodeling existing infrastructure, construction of new infrastructure or procuring existing infrastructure to support activities related to environmental impact reduction),
  - Reusable items that allow for a reduction in the environmental impacts of covered products,
  - Repair and lifespan extension of covered products,
  - Research, evaluation, surveys, and assessment,
  - Pollution control technology that exceeds regulatory requirements,
  - Feasibility assessments and pilot projects,
  - Technical assistance,
  - Education, outreach, training, and skills development, and
  - Community engagement.

DEQ will also look at whether the funds are being used to reduce impacts of covered products sold into Oregon, even if some of the emissions and resulting impacts occur outside of Oregon. DEQ will evaluate whether a project primarily reduces impacts inside Oregon as part of DEQ's evaluation.

DEQ paused the presentation to ask the RAC if they had any clarifying questions.

**Clarifying questions:**

- How did DEQ reach the \$11.5 million amount?  
*Response:* DEQ researched potential needs and projects, conducted interviews, identified the range of cost categories to inform the amount.
- Can DEQ clarify how the 10 percent is being calculated, is it the costs of any individual PRO or of all the PROs?  
*Response:* The phrasing is taken from statute, but DEQ will look at clarifying this in rule.

The second proposed concept presented eligible items for funding including:

- DEQ's costs and anticipated costs in administrating waste prevention, reuse, and other efforts funded under this program; and
- Eligible expenses approved by DEQ to support funding for MIRROR programs such as:
  - Staffing,
  - Capital investments including equipment, buildings, and land (to include remodeling existing infrastructure, construction of new infrastructure or procuring existing infrastructure to support activities related to environmental impact reduction),
  - Reusable items that allow for a reduction in the environmental impacts of covered products,
  - Repair and lifespan extension of covered products,
  - Research, evaluation, surveys, and assessment,
  - Pollution control technology that exceeds regulatory requirements,
  - Feasibility assessments and pilot projects,

- Technical assistance,
- Education, outreach, training, and skills development, and
- Community engagement.

### **Discussion questions:**

The committee was asked to consider and discuss the following questions:

1. What kinds of projects could you envision being funded?
2. Is there anything on, or excluded from, the list of eligible items for support by the Fee that would prevent that project from being funded?
3. What types of projects would remote, small, and rural communities be interested in? What are the barriers for them in developing a project and accessing these funds?
4. Do you have any other feedback that could improve these rule concepts?
5. Is there anything that we should consider when drafting rule language or items that could be clarified?

Comments and questions from the RAC included:

- The most impactful use of this funding could be to support the creation of shared reuse infrastructure across the state, for both obligated and non-obligated producers. This could include collection points (e.g. a place to return reusable materials, wash hubs) transportation for moving reusable to/from wash hubs to consumers, etc. Investing in shared reuse infrastructure is an investment in public interests and provides a unique opportunity to scale reuse in Oregon.
- Will funding be used with time-limitations or will projects be funded in the long-term?
- Has DEQ considered incorporating pricing-support mechanism to support reusables in a project proposal?
- Is there a mechanism to add eligible programs that may have been omitted from the current list?
- If land is purchased for a project and then the project no longer meets the intent of the funding, what happens to the land/that purchase?
- To provide flexibility for eligible projects can the application ask why the applicant thinks the project meets the intent of the funding?
- On-going operational costs are not included and may need to be considered.
- Rural needs include support for consulting services, transportation, new machinery, new attitude about how to collect materials, new sites for collection, assistance with capital improvements, staffing, hauling.
- There are challenges in the communities where there are seasonal influxes of visitors that temporarily increase the population, but there are limited year-round residents and staffing capacity to create and maintain infrastructure or new programming that will last. Additionally, in communities where there are significant numbers of residents of lower socio-economic status, engagement can be challenging when people are struggling to meet their basic needs.
- There is a need to help smaller local governments with technical or consulting services, to help fill gaps expertise and capacity to plan and implement new projects.
- Using this funding to support shared infrastructure provides an alternative to conventional grants programs which can be burdensome and inaccessible for smaller groups and communities. This would remove burdens associated with the application and reporting process. Supporting shared infrastructure addresses a significant barrier to creating new programs.
- Consider providing an 'off-the-shelf' program rural communities could use as a template.
- Consider providing technical assistance with the application process. Many rural communities are dealing with very basic issues, these types of efforts cannot be prioritized when there are more pressing needs.
- Multiple members concurred that DEQ should consider removing the \$11.5 million funding cap.
- Is it possible for leftover funding to be rolled over to the following year? There may be benefit to allowing money to accumulate to fund larger projects.
- Collaborative approaches will make it easier for rural communities to partner.

- Consider compiling a list of consulting firms for rural communities could contact for assistance.
  - It is important to take a holistic approach to considering the full impacts of a project, for example, changing packaging or to reuse, and looking at the impacts to all the entities in the supply chain.
- **Rule concept: [Contamination Reduction Programming and Defining Responsive to Diverse Populations](#)**

Arianne Sperry presented the rule concept titled Contamination Reduction Programming and Defining “Responsive to Diverse Populations”.

Oregon Revised Statute 459A.929 funds local government customer-facing contamination reduction programming. The Act supports local government efforts to educate Oregon residents and businesses on how to properly prepare materials for recycling by providing up to \$3 per capita annually. The PROs will be responsible for paying for this as the funding is available.

DEQ’s role in supporting this work is by establishing a list of approved contamination reduction program elements, that incorporate the following criteria:

1. Customer-facing materials and methods that are responsive to the needs of diverse populations;
2. Standards for providing feedback to generators that contribute to contamination that is responsive to the needs of diverse populations; and
3. Standards for service or financial consequences to generators that are significant and repeated sources of contamination and that continue to contaminate separated recyclables after being subject to customer-facing materials and targeted feedback. Consequences must be responsive to the conditions of diverse populations.

DEQ is proposing a rule concept to clarify the phrase “responsive to the needs of diverse populations” and define “significant and repeated sources of contamination”.

Statute uses the terms “generator” and “customer.” The generator is the person who places materials into the recycling container. This rule concept uses the term “customer” to refer to the entity that maintains a relationship with the service provider and sets up and pays for collection service. The customer can be the generator but can also be a property manager, homeowner association, business, etc. For simplicity, this rule concept will refer to “tenants” if the people who recycle are different than the actual customer.

DEQ proposes to define contamination reduction programming that is “responsive to the needs of diverse populations” as programming and products for which:

1. Information is accessible to all people that recycle, regardless of background, ability, preferred language, access to technology, or where they live or work. This includes:
  - Information is translated or made available in common languages. Even better, if the information is trans-created in partnership with community members that speak the language. In addition, local governments and service providers aim to provide assistance in the customer’s preferred language.
  - Written materials and websites follow best practices for accessible design.
  - Approach and delivery are tailored to the intended audience.
  - Imagery includes products and people that represent a variety of cultures and Oregon’s diverse communities.
2. Information is easy to understand.
  - Messaging is clear and simple and uses common words.

- Written material uses headings, bullets, short sentences, and images and design elements to improve readability.
3. Assistance is provided in multiple ways. Recipients can learn more and ask questions via phone, email, online, or in person.

**Discussion question:** Will this definition result in materials, methods, and standards for feedback that are clear, accessible, inclusive, and understood by Oregon’s diverse communities?

Committee members provided feedback on the presentation and discussion question.

- Can best practices or guidance be established to ensure consistency and assistance those who do not have as much experience with providing these resources (e.g. plain language guidance, specificity about what we mean about best practices, like images vs. text)?
- Templates would be really helpful.
- Access to translated materials in a variety of languages.
- Has DEQ identified how many diverse communities are in Oregon?
- Do the materials need to be translated into all the languages spoken in the state?
- One member clarified the difference and origin of the term “Hispanic” which comes from the U.S. government census, but that the people who fall under this category can speak hundreds of different languages that are not Spanish.

### **Defining “Significant and Repeated Contamination”**

The third type of program element the statute requires is standards for service or financial consequences to generators that are significant and repeated sources of contamination and that continue to contaminate separated recyclables after being subject to customer-facing materials and targeted feedback. Consequences must be responsive to the conditions of diverse populations.

DEQ is proposing to define significant and repeated contamination in the following way:

The threshold for **significant** recycling contamination is documentation that at least 25 percent by volume or weight of materials set out for recycling collection are items not on the Uniform Statewide Collection List.

The threshold for **repeated** recycling contamination is documented instances of significant recycling contamination that occurs at least three times within three consecutive months.

### **Discussion questions:**

1. Is the threshold for repeated recycling contamination fair for both customers and service providers?
2. What challenges will local governments or their designated service providers face in measuring and documenting “significant” recycling contamination?

The committee responded to these questions with the following question and comments:

- Multiple committee members thought the 25 percent threshold is too high. Suggestions included: reduce the proposed threshold to 15 percent or lower (10 percent), have a graduated reduction in the threshold over time.
- Multiple members agreed that there should be earlier consequences applied when hazardous material contamination is found.
- When thinking about fairness, the consequences should be clarified and considered more closely. For example, what happens when someone exceeds the threshold?
- Another way to consider fairness, is fairness being applied to the local governments who need to take action, or, to the customers?
- Consider how these rates relate to outbound contamination at the recycling processing facility and the contamination levels they need to meet.
- Will this apply to depots or to communities with populations under 4,000?

- There should be consequences for the owners of multi-tenant buildings.

### **Public input period**

The public input period started at 11:25 a.m. and closed at 11:35 a.m. Four members 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.

#### 1. Yang Li

Commenting from the perspective of a packaging professional and as a consumer. Reuse packaging normally requires sturdier material that typically has higher environmental impact and carbon footprint compared to single-use packaging. Will there be any information that tells consumers the anticipated lifespan of that reusable item so they can compare to a single-use item? Consumers should have more information to inform their decision to purchase reusable or single-use packaging.

#### 2. Gina Miller, Umatilla County

Representing local government and franchised haulers. The biggest obstacle about the third discussion question from the MIRROR rule concept, regarding barriers in rural communities, is distance. Distance between customers, travel on the route, to markets, etc. and related costs, are a burden on rural markets. Keep in mind that distance and associated costs are barriers to rural markets.

#### 3. Alaina Labak, Waste Free Advocates

Commented on “consequences for contamination” in addition or in lieu of a financial consequence, proposes a mandatory education component when there are multiple offenses. For example: defensive driving education is required when drivers have had multiple violations.

Related to grants and loans rules, clarify what funds would be available for school districts.

#### 4. Christa McDermott, Portland State University

Representing their own views, appreciates that DEQ has incorporated opportunities for public input in this process. They believe the most efficient way to reduce contamination is by investing in system improvements, and not by relying on the individual or individual consumer education. This may include standardized color-coding, clear labeling, convenience physical access, symbols on packaging to align with where items should be disposed.

Related to the proposed \$11.5 million for reuse projects, should be the minimum not the cap. Reuse infrastructure will need continued investments and not just for start-up costs.

- **Continuation of rule concept: Defining Responsiveness to Diverse Populations for Contamination Reduction Programming**

### **Discussion:**

The committee continued its discussion regarding the rule concept presented by Arianne Sperry.

- Committee members reiterated that the proposed 25 percent threshold is too high.
- Suggested that a threshold of 10 percent should be the maximum.
- DEQ should consider that for some communities for different reasons, contamination reduction is not a priority but the large players could do more to help the smaller ones.

Arianne went on to introduce the proposed the standards that would need to be met prior to enforcing the consequences. Before the threshold of “significant and repeated contamination” has been reached:

1. Contamination should be identified using a method that is applied consistently and equitably across the entire customer base.
2. For all instances of significant contamination, targeted feedback should be provided to the customer and tenants.

And then after the threshold for significant and repeated contamination has been reached:

3. The customer should be notified and provided opportunities to remedy after the threshold for significant and repeated source of contamination is reached. Notification includes documentation of the contamination, available remedy options, potential consequences if a remedy option is not pursued, and timeline for responding.
4. Assistance that is responsive to the needs of diverse populations should be provided to confirm customer understanding and identify barriers to compliance. Customer communications and agreed-upon actions should be documented.
5. And then consequences may be applied in the following circumstances: If opportunities to remedy are refused OR a response is not received within 21 calendar days to at least two contact attempts.

DEQ proposed the following consequences:

1. Consequences should be set to reflect the goal of maintaining the value of the collected recyclables. Consequences should not be punitive: Service consequences should affect only recycling collection; financial consequences should relate to the increased costs associated with managing contaminated recycling, providing technical assistance, conducting additional outreach, or other steps needed to improve the quality of the recycling.
2. The opportunity to recycle should be maintained. Consequences should be temporary and include a clear path for removal. And also, to maintain the opportunity to recycle, service consequences should not be applied to multi-tenant customers. And at single-family rentals, tenants should be notified prior to implementing service consequences.

#### **Discussion questions:**

1. Will these standards help to ensure customers understand why consequences may be applied and provide them with opportunity to make changes?
2. Does this approach meet the needs of commercial and residential multi-tenant properties?
3. What type of standards are needed for depot collection?

#### **Clarifying questions and discussion:**

- Please clarify when the 21 days will start (e.g. will it start after the third violation).
- It will probably cost more, in time and money, to provide education in multi-family buildings, for both the owner and the tenants.
- When considering the consequences, the 21 calendar days is a long time if hazardous waste is the contamination. If DEQ is considering having categories or thresholds that vary based on the types of contamination (e.g. hazardous waste), consider using timeframes that correspond with the urgency of correcting the behavior as well.
- Depots need to be staffed to reduce or prevent contamination.
- Service providers do not have a direct relationship with renters to be able to send notifications directly. They typically communicate with the property owner or property manager.

- **Overview of recycling processing in Oregon**

Justin Gast presented an overview of how recycling processing in Oregon works ahead of the commingled recycling and processing facility permitting and certification rule concepts he will be presenting at the November 1 RAC meeting. In preparation prior to this meeting, DEQ sent a link to this [video](#) to RAC members.

There are currently 10 commingled recycling processing facilities operating in Oregon, with most of those facilities located a relatively short distance from I-5 in the Portland, Salem and Eugene metro areas. There are also two out-of-state facilities currently handling Oregon-generated commingled materials, one in Clark County, Washington and one in Humboldt County, California. DEQ's proposed rules for facility permitting will apply to the processing facilities located in Oregon, and the related certification requirements will apply to the facilities outside the state.



The material accepted by Oregon's processors will come from several different methods of collection, such as on-route collection, from distant depots or reload facilities or directly from businesses generating large loads. Some facilities also have an on-site drop-off depot for public use, where material collected is processed at the facility.

Under the current recycling system structure, processing facilities are not required to have a specific recycling permit from DEQ, though most in the state do hold a DEQ-issued Solid Waste Disposal Site Permit. Facilities within the Metro region must hold a solid waste facility license issued by Metro.

The RMA requires that a person may not establish or operate a CRPF in Oregon unless the person obtains a disposal site permit issued by DEQ. Local governments, a local government service provider or a CRPF may not deliver to a processing facility commingled Uniform Statewide Collection List material unless the facility holds a permit, is certified or the facility can prove it meets the requirements of the permit or certification program without actually holding a certification.

In the current system, service providers have the option to deliver material to the processor of their choice, as there are no physical contracts in place between service providers and processors. Generally, service providers will deliver on-route collected material to processing facilities nearest to the route or to the facility that will charge them the least to tip. Before National Sword, it also used to depend on which processing facility actually paid the most per-ton to tip material.

The level of technology used varies between facilities, and the technology used at each CRPF will determine what material that facility can properly process. A processor who cannot handle the full stream of materials being tipped at their facility has the option of handling what it can properly process, in almost all cases, fiber, then selling the rest of the material to a post-secondary processor. DEQ expects this practice to continue in the future system.

Currently, in most cases, processors will market material for domestic end markets directly to them. However, for materials going to an overseas end-market, the processor may sell directly to that end-market, or they may sell the material to a broker. If they sell to a broker, they will no longer know where the material goes. The broker will sell to an importer or end-market. With the changes coming with the implementation of the RMA, supply chain transparency will be improved through the responsible end market rules and disposition reporting requirements.

- **Meeting adjournment and next steps**

DEQ adjourned the meeting at 12:07 p.m. The next RAC meeting will be held via Zoom on Nov. 1, 2023.

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