

Plastic Pollution and Recycling Modernization Act Rulemaking #1

Oregon Environmental Quality Commission Meeting

Nov. 16, 2023

About Materials Management

The 2050 Vision describes how people in Oregon:



Produce and use materials



Conserve resources



Protect the environment



Live well

Materials Management in Oregon

2050 Vision and Framework for Action

Adopted by the
Environmental Quality Commission
December 6, 2012

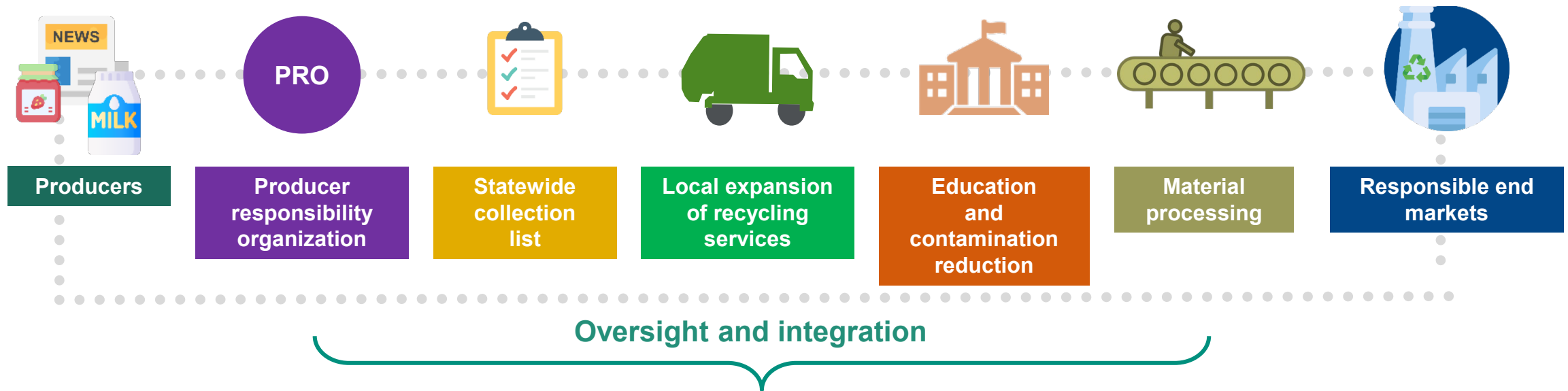


State of Oregon
Department of
Environmental
Quality

Oregon's Plastic Pollution & Recycling Modernization Act



Overview of the Recycling Modernization Act



Rulemaking Advisory Committee

Name	Affiliation	Representing
Trevor Beltz	Tillamook County Creamery Association	Producers
Udara (Abeysekera) Bickett	The Environmental Center	Community-Based Organizations
Tim Brownell	Deschutes County	Local Governments
Scott Bruun	Oregon Business & Industry	Producers
Scott Cassell	Product Stewardship Institute	Public Interest – Product Stewardship
Rosalynn Greene	Metro	Local Governments
Lauren Janes	Consumer Brands Association	Producers
Allen Langdon	Circular Materials	Prospective Producer Responsibility Organizations
Michael (Mike) McHenry	Pendleton Sanitary Service, Inc	Solid Waste Service Providers

Rulemaking Advisory Committee Continued

Name	Affiliation	Representing
Kristan Mitchell	Oregon Refuse and Recycling Association	Solid Waste Service Providers
Jeff Murray	EFI Recycling, Inc.	Commingled Recycling Facilities
Deveron Musgrave	City of Eugene	Local Governments
Jerry Powell	Community member	Residents
Mallorie Roberts	Association of Oregon Counties	Local Governments
John Salvador	Georgia-Pacific Professional	Producers
Craig Smith	Food Northwest	Producers
Taylor Cass Talbott	Trash for Peace	Community-Based Organizations
Nicole Willett	Resource Recovery Alliance	Prospective Producer Responsibility Organizations

Public Comment Period

Formal public comment period

- Opened May 25, 2023
- Closed July 28, 2023

Virtual public hearings

- June 27, 2023 first hearing
- June 29, 2023 second hearing



Proposed Rules: Chapter 340 Division 90



Revisions to 17 existing rules and 22 new rules:

- Revisions to existing rules (conforming amendments)
 - New rules relating to recycling acceptance lists
 - New rules relating to PRO obligations



Opportunity To Recycle and the RMA

Opportunity To Recycle

Portland Metro area, cities with populations of 4,000+ and unincorporated areas within the urban growth boundaries of those cities.

On-route collection of recyclables from garbage service customers.

Supplemental services, such as enhanced promotion or yard debris collection.

Sites that accept garbage from the public such as landfills or transfer stations.

Provide a depot solid waste disposal site or more convenient location where the public can deliver recyclables.

Opportunity To Recycle and the RMA

Before RMA

Limited incentive to provide expanded recycling opportunities.

Each local government selects its own list of materials for recycling.

Definition of recyclable materials based on economic factors.

Depots at permitted solid waste sites collect recyclable materials.



After RMA

New incentives to provide additional recycling opportunities.

New Uniform Statewide Collection List creates an Oregon-wide baseline for what is recyclable on-route.

Commission designates which materials are recyclable.

- Depots at permitted solid waste sites collect materials on Local Government Recycling Acceptance List.
- PRO-supported depots collect materials on PRO Recycling Acceptance List.

Today's Proposed Rules



Conforming updates to existing rules.



Recycling acceptance lists.



Convenience standards, performance standards and collection targets for certain recyclables.



Requirements on PROs, including fees to DEQ, responsible end markets, coordination in the event of multiple PROs, and more.



Standards for compensating local governments for transportation, contamination reduction, and new or expanded collection services.

Revisions to Existing Rules

340-090-0010 to -0430

Changes to 17 existing rules, including:

- **0010 Definitions**

- Change the definition of recyclable material to align with statute and include any material designated by the Commission.

- **0030, General Requirements**

- New statutory requirements on local governments, including the requirement to collect materials on the new Local Government Recycling Acceptance List.

- **0041, Eliminated**

- Replaced with a new requirement that local governments provide feedback on sources of contamination.

- **0070, Eliminated**

- Under the new Act, all cities with populations over 4,000 will provide for collection all materials on the uniform statewide list.

Purpose, Applicability, Definitions and Effective Date

340-090-0600 to -0620

- **0600 – Purpose and applicability**
 - States the purpose and applicability of the new rules are to implement the Plastic Pollution and Recycling Modernization Act.
- **0610 - Definitions**
 - Defines terms used in the new rules.
- **0620 - Timelines**
 - Effective dates of the new rules.



Uniform Statewide Collection List

340-090-0630

- Uniform Statewide Collection List is first established in rule.
- PROs can propose to onramp additional materials in the future.
 - Subject to DEQ approval of the PRO's Program Plan.



Recycling Lists—Statutory Considerations

ORS 459A.914

The stability, maturity, accessibility and viability of responsible end markets

Environmental health and safety considerations

The anticipated yield loss for the material during the recycling process

The material's compatibility with existing recycling infrastructure

The amount of the material available

The practicalities of sorting and storing the material

Contamination

The ability for waste generators to easily identify and properly prepare the material

Economic factors

Environmental factors from a life cycle perspective

The policy expressed in ORS 459.015(2)(a)-(c)

Recycling Acceptance Lists

340-090-0630

- **0630 - Recycling Acceptance Lists**
 - Establishes the first recycling acceptance lists.
 - Uniform Statewide Collection List (USCL) for commingled materials
 - Local Government Recycling Acceptance List (depots): USCL + motor oil and large scrap metal
 - PRO Recycling Acceptance List
 - Glass packaging
 - Provides an extension to the effective date for local governments if certain extenuating circumstances occur.
 - Requires a PRO, when proposing additions to the USCL, to address all evaluation criteria required in statute.



Convenience Standards

340-090-0640

- **0640 - defines convenience standards for PROs**
 - What constitutes an existing depot, and what it means to be “possible” to contract.
 - Defines the minimum number of collection points for each material on the PRO Recycling Acceptance List.
 - Sets population-based thresholds and accessibility standards for collection points.
 - Creates standards for operating hours, notification of changes, continuity of service, and more.



Existing multi-material depots



Return-to-retail



Single-material drop-box



New multi-material depot

Performance Standards and Collection Targets

340-090-0650 and -0660

- **0650 - performance standards**
 - General standards for collection point operations, including being free to the public, adequately promoted, accessible and responsible.
 - Additional standards for expanded polystyrene, aerosol cans and pressurized cylinders.
- **0660 - collection targets**
 - How collection targets are set and calculated.



Responsible End Markets

340-090-0670

- **0670 - responsible end market standards**
 - Requirement for PROs to ensure materials flow to responsible end markets, where practicable.
 - Defines end markets for different materials.
 - Standards for responsible end markets: compliant, transparent, environmentally sound, and achieving adequate yield.
 - Tracking and verification of responsible end markets. Including audits and tracking by PROs and DEQ.
 - Examples of “practicable” actions PROs may take to ensure materials flow to responsible end markets.

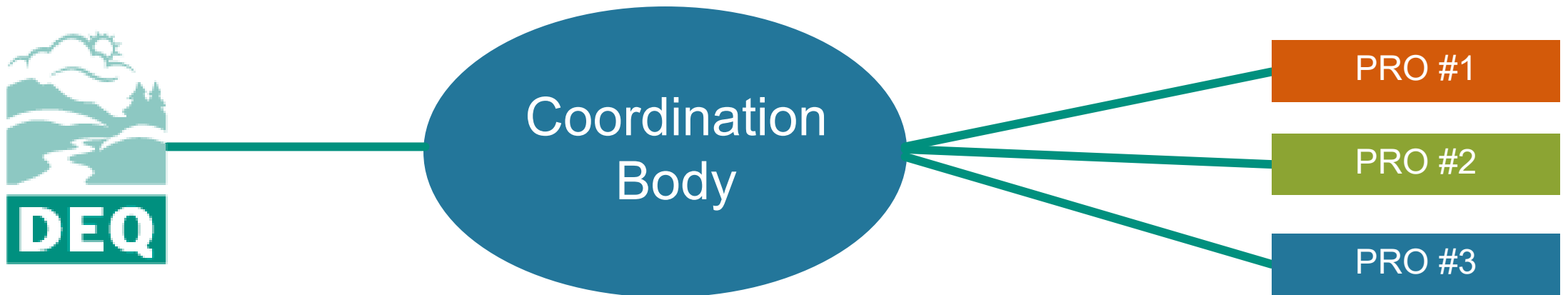


PRO Coordination

340-090-0680

- **0680 - PRO Coordination**

- Set out a process for PROs to develop a coordination plan to provide for more efficient delivery of services if multiple PROs exist.
- Interim Coordination period for PROs.
- Allows for new PROs to enter the system.



PRO Fees

340-090-0690

- **0690 - PRO fees**
 - Establishes two fees which PROs will pay to DEQ to reimburse for administrative costs related to the Act.
 1. \$150,000 program plan review fee paid for each PRO plan submission.
 2. Annual administration fee of \$4 million for first 4 years, \$3 million each year after (shared across all PROs).
 - DEQ may reduce annual fee if funds are not needed.



Market Share and Modified Market Share

340-090-0700

- **0700 - Market Share and Modified Market Share**
 - Defines how producer “market share” and “modified market share” will be calculated.
 - Proposes to use modified market share to allocate financial obligations between multiple PROs.



Proprietary Information

340-090-0710

- **0710 - Proprietary Information**
 - Defines the term “proprietary information.”
 - Creates a process by which parties can specify information as proprietary.
 - Allows DEQ to share proprietary information with the PRO if necessary for the implementation or enforcement of the Act.



Additional PRO Rules

340-090-0720 to -0760

- **0720 to 0760 - other topics related to PROs**
 - Defines program calendar.
 - Outlines methods for removing a PRO with less than 10% market share.
 - Details related to reporting progress toward the statewide plastic recycling goal.
 - Defines when changes to a PRO's membership fee schedule trigger a required program plan amendment and when they do not.



Transportation Reimbursement

340-090-0770 and -0780

- **0770 and 0780 - Transportation Reimbursement**
 - Establishes reimbursement from PROs to local governments and their service providers for transporting materials more than 50 miles to the nearest commingled processing facility or responsible end market.
 - Addresses possible contingencies involving transportation routes and methods.
 - Defines allowable costs.
 - Require periodic assessment.
 - Requires PROs to provide methods for calculating transportation costs in the program plans submitted to DEQ.



Expansion of Service and Needs Assessment

340-090-0790 and -0800

- **0790 - Expansion of Service**
 - Requires PROs to describe in their program plan how they will compensate local governments, including a schedule.
 - Sets priorities for which communities receive compensation earlier than others.
- **0800 - Expansion of Service Funding and Needs Assessment**
 - Clarifies what types of expenses are eligible for compensation.
 - Requires DEQ to conduct local government needs assessments on an ongoing basis.
 - Creates standards for the return of unused funds, reporting, and coordination between local governments and their service providers.



Local Government Invoicing and Compensation

340-090-0810

- **0810 - Local Government Invoicing and Compensation**
 - Provides additional standards for all invoicing by, and compensation to, local governments.
 - Specifies the source of population data to be used, where applicable.



Fiscal Impacts of Rules



Convenience and Performance Standards (PRO Recycling Acceptance List)

- Compliance costs (to PROs) in the range of \$24 to \$35 million annually.



Responsible end market standard for PROs

- Verification of end markets and potential corrective actions.
- Costs TBD because of the unprecedented nature of the rule.



General Public

- Voluntary costs related to personal vehicle use to deliver materials to collection points.
- Offset by reduced impacts from pollution and potentially reduced garbage costs.



Individual businesses

- Mostly reimbursable costs to waste collection and processing facilities.
- PRO membership fees for producers.
- Costs to producers will become known once implementation begins.

Racial Equity Impacts

Positive impacts include

- **Social and environmental benefits** for Oregon and the world by sending materials only to **responsible end markets**.
- **Improved recycling opportunities** for currently underserved communities.
- **Consistent statewide** recycling collection list and **expanded recycling opportunities** for all Oregon counties.

Public Comments Received

270 comments from 47 commenters

Topics Frequently Mentioned



General support



Requests to prioritize equity and diversity



Requests that exceeded Commissions authority



Recycling acceptance lists



Responsible end markets

Public Comments: Rule Topics



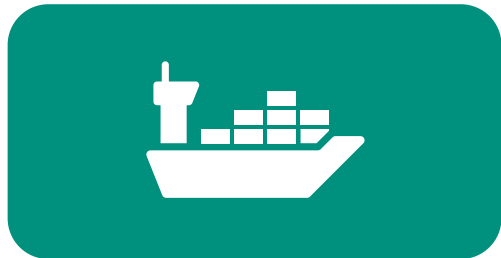
Existing Rules



Recycling
acceptance lists



Convenience,
performance
standards and
collection targets



Responsible end
markets



Other PRO rules



Local government
compensation

Response to Comments: Existing Rules



Highlights of comments that resulted in change

- Improve clarity.
- Allow “expanded depots” to qualify for *Opportunity to Recycle* compliance even if they don’t accept large scrap metal, so long as another collection option in the community exists.

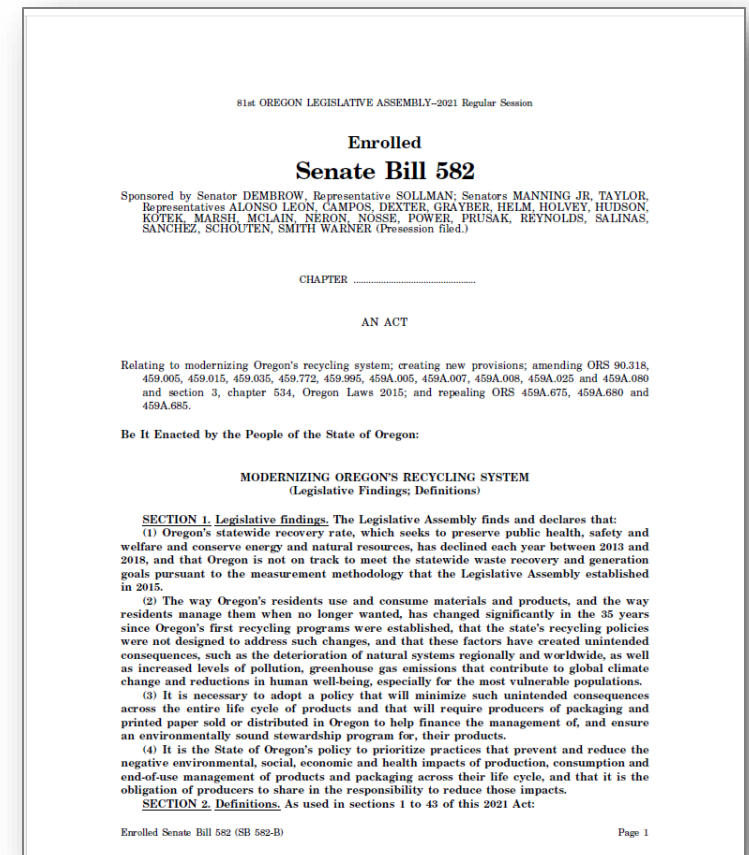


Response to Comments: Existing Rules



Highlights of comments that did not result in change

- Exceed the EQC's statutory authority.
- Based on incorrect reading of statute.
- Clarifying changes that are inconsistent with precedent/style.
- Clarifying questions answered in the response document.



Response to Comments: Recycling Lists

Highlights of comments that resulted in change

- Changed the size limit for plastic bottles and tubs to better align with national standards.
- Several changes prioritize reusable propane cylinders over recycling single-use cylinders.
- Clarified several definitions.
- Established a process to request the addition of materials to acceptance lists.
- Removed two materials from USCL:
 - Paper cans with steel ends
 - single use plastic and paper cups



Response to Comments: Recycling Lists

Highlights of comments that did not result in change

- Request to remove materials from USCL:
 - Polycoated cartons
 - Nursery packaging
 - Small scrap metal
- Request for more materials to be added to USCL.
- Allowing *Opportunity To Recycle* depots at disposal sites to reject appliances that contain refrigerants.



Response to Comments: PRO Collections

Highlights of comments that resulted in change

- Several changes that provide for greater flexibility for PROs.
- Provide better service in high-population unincorporated areas.
- Allow PROs to terminate contracts with existing depots that fail to meet performance standards.
- Modified collection targets and added criteria for evaluating proposed collection targets.



Response to Comments: PRO Collections

Examples of comments that did not result in change

- Requests requiring the Commission to exercise authority not granted to it by statute.
- Changes to the price premium existing depots can charge a PRO.
- Requirements for DEQ to conduct additional studies.
- Further increases to convenience standards.
- Relaxed standards for management of pressurized cylinders and aerosol cans.



Response to Comments: Responsible End Markets

Examples of comments that resulted in change

- Modified rules to confirm responsible end markets apply to all disposition pathways including:
 - chemical recycling.
 - incineration facilities.
- Technical adjustments to definitions and methods.
- Provided for variances in exceptional cases.
- Extended the time PROs have to verify responsible end markets.



Response to Comments: Responsible End Markets

Highlights of comments that did not result in change

- Truncate the definition of end markets.
- Allow “responsible end market” standards to be met using industry averages (vs. individual facilities).
- Require facility consent prior to random bale tracking.
- Limit the types of remedial actions a PRO might take in response to markets not meeting the responsible standard.



Response to Comments: Other PRO Obligations



Examples of comments that resulted in change

- Clarified costs of interim coordination will be divided among PROs in proportion to modified market share.
- Sharpened criteria for assigning interim coordination tasks.
- Clarified when DEQ would suspend, amend or revoke a coordination plan.
- Clarified when a plan amendment is required.
- Clarified market share.
- Expanded protections for proprietary data.
- Clarify the process for terminating a PRO with less than 10% market share.
- Clarify reporting requirements related to the plastic recycling goal.



Response to Comments: Other PRO Obligations



Examples of comments of comments that did not result in change

- Reduce the annual administrative fee.
- Suggestions related to PRO coordination that were either unnecessary or which might significantly delay implementation.
- Suggestions outside DEQ's statutory authority.
- Suggestions outside of the scope of the rulemaking.



Response to Comments: Local Government Compensation



Examples of comments that resulted in change

- Clarified several rules to reduce confusion.
- Allowing local governments or service providers and a PRO to agree to transfer transportation responsibilities to the PRO as an alternative to the PRO providing reimbursement.
- Clarifies when a PRO must amend its program plan relating to funding for local government service expansion.



Response to Comments: Local Government Compensation

Examples of comments that did not result in change

- Eliminate land acquisition as an eligible expense for service expansion.
 - Rather, added leasing of land as an eligible expense.



Recommendation



DEQ recommends the Environmental Quality Commission adopt the proposed rules and rule amendments in Attachment 2 as part of Chapter 340 of the Oregon Administrative Rules.

Thank you!

Join me, Binny, to learn
more about the RMA at
RecyclingAct.Oregon.gov

