

Meeting Summary

Recycling Modernization Act Rulemaking



Rule advisory committee meeting #3 Nov. 1, 2023

On Nov. 1, 2023, DEQ convened the third 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:

- Present rule concepts for the Commingled Recycling Processing Facility Permitting and Responsible End Market Obligations rule concepts.
- Present an update made to the 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. Rick Dukes, Neil Menezes and Claire Dorfman were not able to attend and Rob Jones attended as Chris Drier's alternate.

- **Rule Concept: [Commingled Recycling Processing Facility Permitting](#)**

Justin Gast presented the rule concept titled "Commingled Recycling Processing Facility Permitting", which describes the new permit program DEQ is establishing for CRPFs. The rule concept describes proposed requirements including:

- A two-phased approach for the performance standards related to capture rates;
- Permit conditions requiring compliance with environmental and human health standards;
- Reporting on outbound contamination; and
- The proposed start date of regulations.

Discussion and questions from the RAC: Members of the RAC discussed this proposal and asked questions and provided comments related to capture rates and the rule concept including:

- Will materials currently on the USCL remain on, or be removed from, the list if processors cannot meet the capture rate standards?
- Regarding how bagged materials are addressed:
 - How will the process for measuring contamination in bales work and how does it fit with the capture rate measurement? How will residuals fit into this process?

DEQ response: Outbound contamination rates will be measured by regular assessments. There will be a combination of manual sorting and potentially in the future, using artificial intelligent technology. It is

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being used more in the industry, and appendix 2 within the CRPF permit program rule concept details what criteria need to be met if AI does get used.

- Metro supports the progressive approach for the capture rates and discretion for opening bags.
 - Multiple RAC members expressed support for not applying the capture rate requirements to bagged materials, or penalizing facilities for not sorting bagged materials. Current practices in many facilities prioritize safety, and staff are instructed not to open on the sort lines; bagged materials are considered trash/residue.
- Will there be financial incentives for materials to be sent loose (not baled) to reload facilities?

DEQ response: If there are to be financial incentives for loose over baled material, that would be determined via the conversations the PRO(s) will have with local governments, service providers and CRPFs as it considers methods for calculating costs associated with the transportation costs reimbursement.

- What is the 75 percent threshold based on?

DEQ response: The same resources used to create the proposed capture rates were also used to help determine the 75-percent minimum capture rate for all material added to the USCL via a PRO onramping effort (per ORS 459A.914(4)(b)), with rates for specific materials being updated in a future rulemaking.

- Will the RAC be able to revisit the proposed capture rates once current research is complete?

DEQ response: DEQ will not bring the proposed capture rates back to the RAC, unless it's been determined that it is necessary to do so.

- How will DEQ ensure contamination rate reporting will be consistent across facilities?

DEQ response: Reporting from CRPFs must meet the requirements established in statute or rule, though it should be noted, how facilities propose to report on outbound contamination could differ from facility to facility. Reporting associated with the eventual outbound contamination rate will either be determined via the assessments to be overseen by DEQ (see Appendix 2 of the CRPF permit program rule concept for more information).

- Should facilities be encouraging customers to clean their containers?

DEQ response: Currently, education and outreach is a local government and service provider responsibility, not the CRPF's. In the future system, the PRO(s) will develop educational resources and promotional campaigns relevant to the system (e.g., how to properly prepare materials for recycling), providing those resources to local governments and service providers for distribution. See ORS 459A.893 for more information on educational resources and promotional campaigns.

- When will outbound contamination reporting come into effect?

DEQ response: All requirements associated with the CRPF permit program will take effect beginning July 1, 2025.

- How does DEQ plan to verify reporting is accurate?

DEQ response: Compliance and enforcement is detailed in Appendix 2 of the rule concept, DEQ will be using the data collected from the assessments to verify the accuracy of the reporting.

- **Rule Concept: Recycling End Market Obligations**

Nicole Portley presented the Recycling End Markets Obligation rule concept. The presentation began with a background of the responsible end market requirements from the first rulemaking. The Recycling End Market Obligation rule concept adds to the CRPF permitting requirements and Nicole provided an overview of what this concept and any proposed rules seeks to address. The rule concept introduces several concepts for the RAC to consider.

Discussion and questions about the background information:

- What informed the 60 percent yield target? Is it to allow aseptic cartons on the list?

DEQ response: To clarify the 60 percent yield target is different from the capture rate because it applies downstream of the CRPF.

- Multiple RAC members supported incorporating a process that allows for yield targets to be increased in the future.

DEQ response: The yield target is set in rule, if it were to be adjusted, it would need to occur in a subsequent rulemaking. There is a possibility that yield targets could be increased via the PRO plan.

- Will the CRPF need to report where the plastic flake used for food and beverage and children's toy products goes?

DEQ response: The rule specifies that the end market has been defined as the producer of the next product, so yes, disposition reporting would need to identify the producer using the material.

- Is the PRO responsible for source segregated material?
- Recommendation and support for DEQ to provide a mechanism or pathway for the communities located near an end market to file a complaint or documentation about issues with end market compliance with the responsible end market standard. This aligns with the RMA's emphasis on equity.

Nicole's presentation continued by introducing the proposed concepts that describe the division of responsibility between the CRPFs and PROs proposed for rule, including:

- End market definition
- "Responsible" standard
- Self-attestation and related deadlines requirements
- Reporting for certification and self-attestation and verification

Discussion and questions from the RAC:

- Would responsible end market certification be done by an individual or, multiple, PROs if there are multiple operating in the system?
- What happens if a CRPF accepts a self-attestation from an end market only to find out later that it was untrue?
- What frequency does the self-attestation, verification and audit need to occur?
- Does DEQ have the capacity to review the annual audits?
- Does DEQ have a mechanism or process for compiling compliance across the different media the agency regulates (air and water)?
- Multiple RAC members expressed concern that the public does not readily understand why materials are sent to a landfill or why materials that are on the USCL could still be disposed at a landfill and be on the USCL.
- What if there is a limited number or only a single end market for a material, would that impact a facility achieving the 60 percent yield threshold?

- Will the responsible end market obligations apply to markets located overseas?
- DEQ should be mindful of the difference between the mills who want aseptic cartons as opposed to the ones who will accept them.
- Is DEQ willing to accept different methodologies when measuring yield?
- Other than Norpac in Longview, WA, are there are other domestic markets that would accept #52 bales?

DEQ response: DEQ provided information on all current end markets for grade 52 bales, both domestic and abroad.

- Consider whether the de minimis threshold of 1 percent may cause reputational damage or negatively impact credibility with the public.
- Does the threshold apply to residuals?

- **Rule Concept: Living Wage and Supportive Benefits (update)**

Stephanie Caldera provided an update on the Living Wage and Supportive Benefits Rule Concept, noting developments that have been made since the committee heard about the concept at July's meeting. These changes include:

- The definition of worker to focus on the tasks and types of work performed,
- Changes to the household composition element, to inform how the MIT living wage calculator is applied. DEQ is now proposing to use a calculated weighted average based on Oregon's census for working households, and
- Changes to the list of supportive benefits, which is now proposed to include: health insurance coverages, life insurance coverages, short- and long-term disability insurance coverages, paid time off (in the form of sick leave, vacation leave and holiday pay) and paid training and career development opportunities.

Discussion and questions from the RAC: The Committee discussed the updates to the rule concept and shared comments and asked questions about the proposal.

- Can DEQ explain how local governments and haulers will know if a facility will be meeting these requirements?
- Multiple RAC members wanted to ensure that this proposal aligns with the Oregon's Bureau of Labor and Industries definitions and commented that rules involving labor law is outside of the Committee's and DEQ's expertise.
- Multiple RAC members asked how the proposal aligns with pay equity requirements, whether it would create pay compression, and asked for clarification about who pays for the differences created by potential inflation of wages.
- Can a recycling company operate in Oregon if they do not provide a living wage and supportive benefits?

DEQ Response: Local governments are responsible for ensuring the facilities they are sending the materials are in compliance.

- RAC members expressed support for living wages and benefits, and pointed out that this policy is written in statute, requiring the producers/PROs pay for these expenses.
- Commodity prices do not pay for a lot of the expenses.
- RAC members expressed support for the revised proposal for hourly living wage calculations.

Public Input Period

The public input period was opened at 12:00 p.m. The following people registered to speak and provided input:

1. Dale Feik, Washington County Citizen Action Network
Provided a letter to the Environmental Quality Commission and would like to share a concern that the recycling industry is falsely promoting chemical recycling as a step towards progressive. Chemical recycling has serious implications that are not being addressed and they should be considered in this rulemaking.
2. Gina Miller, Umatilla County
How are local governments going to pay for increased staff needs to meet the requirements of the RMA?

- **Living Wage and Supportive Benefits Discussion Continued**

Because there was time remaining to the meeting, the RAC resumed discussion about the Living Wage and Supportive Benefits rule concept. Questions and comments included:

- When will the insurance and benefit apply for new employees?
- It should be noted that this industry is considered an essential service, so most often holiday leave is paid out and not given as time off.
- Does Oregon law provide a standard minimum number of holidays and sick leave for all workers?
- Multiple Committee members agreed that not having a waiting period before benefits are active is unrealistic and there should be considered more closely.
- Has DEQ considered employee contributions for the benefits?

DEQ Response: Employee contributions will be consistent with the federal American Affordable Care Act.

- **Meeting adjournment and next steps**

DEQ adjourned the meeting at 12:30 p.m. The next RAC meeting will be held via Zoom on Jan. 31, 2024.