



Oregon Department of Environmental Quality

Rule Concept: Commingled Recycling Processing Facility Fees Processor Commodity Risk Fee

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information and draft rule concepts associated with the Processor Commodity Risk Fee (ORS 459A.923), one of two funding mechanisms meant solely for commingled recycling processing facilities.

Under ORS 459A.923(2), the Environmental Quality Commission shall by rule adopt and periodically revise a processor commodity risk fee to be paid by producer responsibility organizations to commingled recycling processing facilities. The fee will ensure that producers share in the costs of fully processing commingled recyclables and to allow local governments to reduce the financial impacts on ratepayers.

The processor commodity risk fee shall be based on the eligible processing costs of facilities less the average commodity value of recyclable materials processed by facilities. The eligible processing cost is to be established in rule as a fixed value, or schedule of values. The average commodity value is to be established in rule as a formula or algorithm that allows for monthly adjustments based on changes in commodity prices.

Rule concepts for discussion at Jan. 31, 2024 RAC meeting

Four rule concepts related to the Processor Commodity Risk Fee follow:

- I. [Statewide, per-ton average eligible processing cost](#)
- II. [Average Commodity Value](#)
- III. [Invoicing](#)
- IV. [Appropriate fee charging](#)

I. Statewide, per-ton average eligible processing cost

Background

Per ORS 459A.923:

(2) The Environmental Quality Commission shall by rule adopt and periodically revise a processor commodity risk fee to be paid by producer responsibility organizations to commingled recycling processing facilities 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. The processor commodity risk fee shall be based on the eligible

Translation or other formats

[Español](#) | [한국어](#) | [繁體中文](#) | [Русский](#) | [Tiếng Việt](#) | [العربية](#)
800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

processing costs of facilities less the average commodity value of recyclable materials processed by facilities.

(3)...the Department of Environmental Quality shall contract with an independent organization to conduct the study under this subsection. The study must:

- (a) Estimate the average eligible processing cost at commingled recycling facilities that process commingled recycling generated in Oregon; and*
- (b) Report the costs on the basis of tons of commingled recycling received and materials shipped to end markets.*

To satisfy the requirement of ORS 459A.923(3), DEQ contracted with Crowe LLP. Crowe's analysis is nearing completion; the draft final report, which informs this and several other rule concepts, can be viewed on the [Commingled Recycling Processing Facilities project webpage](#).

Rule concept for discussion

Based on the most recent draft of the Processor Commodity Risk Fee and Contamination Management Fee study conducted by Crowe LLP, the statewide, per-ton average eligible processing cost at commingled recycling processing facilities that process commingled recycling generated in Oregon is currently recommended to be:

- \$201 per ton for the 2025 and 2026 program years (July 1, 2025 – Dec. 31, 2026);
- \$287 per ton for the 2027 program year (Jan. 1, 2027 – Dec. 31, 2027); and
- \$246 per ton for the 2028 program year (Jan. 1, 2028 – Dec. 31, 2028) and all years thereafter (until updated by rule).

These values may change as Crowe's report undergoes final review in the coming weeks. Processing cost values may change further between today and rule adoption in response to PRO program plans, for example, if DEQ accepts program plans from prospective PRO(s) that propose to incorporate additional materials into the Uniform Statewide Collection List (per ORS 459A.914(4)), or provide advance funding to processing facilities (in response to specifically identified material designations; see ORS 459A.917 and ORS 459A.875(2)(g)(C)).

The statewide, per-ton average eligible processing cost figure excludes adjustments for Average Commodity Value (see next rule concept) but does include Crowe LLP's estimate of anticipated program costs. DEQ proposes to include this value in rule, to be used with the invoicing approach detailed in rule concept III.

- The value for the per-ton eligible processing cost can only be adjusted following a new study to re-assess the cost to commingled recycling processing facilities of fully processing commingled recyclables, and then updating the fee value through rulemaking.
- For the purposes of payment of the Processor Commodity Risk Fee, the statewide, per-ton average eligible processing cost less the Average Commodity Value of materials processed will be multiplied against the total first tons in of eligible material coming into a commingled recycling processing facility that meets the requirements under ORS 459A.905(2)(a)(A) or (B). Invoicing of the per-ton Processor Commodity Risk Fee is detailed in section III of this rule concept.

II. Average Commodity Value

Background

Statute establishes that the Processor Commodity Risk Fee consist of two elements: a fixed element that is intended to cover the full costs of processing commingled recyclables, and a variable element that represents the value (net of transportation) of outbound materials. This variable element, called Average Commodity Value, changes, thus causing the Processor Commodity Risk Fee to change with it. Specifically, Average Commodity Value is subtracted from the fixed element (processing costs). So as commodity values rise, offsetting more processing costs with commodity revenue, the full Processor Commodity Risk Fee (paid by PRO(s) to the processing facilities) falls. Conversely, when commodity values fall, and provide less commodity compensation to the processing facilities, the Processor Commodity Risk Fee increases to pay the difference.

The policy objective of this approach is to allow commingled processing facilities to maintain relatively stable tipping fees for inbound materials, and to transfer the volatility of commodity prices to the PRO(s) and away from the processing facilities and their customers.

Per ORS 459A.923(2)(h), rules shall:

(h) Establish methods to determine and periodically update, but no more frequently than once per month, the average commodity value per ton of commingled materials collected from single-family residences in Oregon and from all other sources in Oregon. The methods developed under this paragraph must include:

- (A) The average composition of materials by percentage in each mix, multiplied by published market values;*
- (B) The sources of the published market values used; and*
- (C) Any adjustments to published market values for each commodity to reflect conditions in Oregon.*

Rule concept for discussion

The following is the approach DEQ will undertake to determine the Average Commodity Value, a figure DEQ will update monthly. The method described below is highly detailed because Oregon law does not allow agencies to exercise administrative discretion in the interpretation or administration of fees. The administrative rules that establish the Processor Commodity Risk Fee will need to establish clear and unambiguous standards and protocols for calculating and updating the Average Commodity Value.

Average Commodity Value will be calculated by DEQ monthly and will be the sum of weighting factors multiplied by market prices for each of nine material categories. The weighting factors will be defined in rule (and subject to future updates by rule) and the market prices will be drawn from published indices.

The proposed weighting factors, based on the Crowe LLP study, are as follows:

- Cardboard – 49.1%
- Other Paper Fiber – 32.4%
- Polyethylene Terephthalate (PET) – 1.0%
- High-Density Polyethylene (HDPE), Natural – 0.7%
- High-Density Polyethylene, Color – 1.0%
- Mixed Plastic – 0.6%

- Tin/Steel Cans – 1.4%
- Aluminum – 0.8%
- Other Materials (including contamination) – 12.9%

For purposes of calculating Average Commodity Value, the market price for other materials will be established as \$0/ton. Most of these materials are contamination and should be disposed of; the cost of disposal is compensated separately by the Contamination Management Fee (ORS 459A.920).

- To meet the requirements of ORS 459A.923(2)(h)(B), DEQ proposes that scrap pricing data specific to Region 4 – Pacific Northwest (ID, OR, WA and British Columbia) be pulled from the following published scrap pricing indices, to be used toward determining the Average Commodity Value:
 - RecyclingMarkets.net, Secondary Materials Pricing (SMP)
 - Waste Paper Composite Index (part of Secondary Commodity Composite Index)
- The following commodity pricing categories are to be used with the proposed scrap pricing indices to determine the published source market price for each given commodity:
 - Cardboard – Blended average between RecyclingMarkets.net of 50% OCC PS11 and 50% Waste Paper Composite Index - baled OCC
 - Other Paper Fiber – Weighted average of 78% mixed paper price (RecyclingMarkets.net, PS54 and Waste Paper Composite Index, mixed baled waste paper) + 22% Sorted Residential Papers (RecyclingMarkets.net, PS56)
 - Polyethylene Terephthalate (PET) – RecyclingMarkets.net, PET baled, picked up.
 - High-Density Polyethylene (HDPE), Natural – RecyclingMarkets.net, HDPE natural baled, picked up.
 - High-Density Polyethylene, Color – RecyclingMarkets.net, HDPE color baled, picked up.
 - Mixed Plastic – RecyclingMarkets.net, #3-#7 baled, picked up.
 - Tin/Steel Cans – RecyclingMarkets.net, steel cans, sorted, baled, picked up.
 - Aluminum – RecyclingMarkets.net, aluminum cans, sorted, baled, picked up.
- As noted, data drawn from RecyclingMarkets.net and the Waste Paper Composite Index will draw from Region 4, where prices are reported on a regional basis. Where prices are reported only on a national basis, national pricing data will be used.
- If one or both of the scrap pricing indices becomes unavailable, DEQ will calculate the percent change in a replacement index between the current month and the last month that the original source was available; DEQ will then apply that percent change to the last month that the original source data was available.
- DEQ will utilize the following secondary sources as replacement indices if needed:
 - For OCC and Other Paper Fiber, utilize the FRED Producer Price Index by Commodity: Pulp, Paper, and Allied Products: Recyclable Paper to determine the percent change by month;
 - For PET, utilize PlasticsNews.com North America recycled plastic resin price for clear post-consumer flake to determine the percent change by month;
 - For HDPE natural, utilize PlasticsNews.com North America recycled plastic resin price for natural, post-consumer flake to determine the percent change by month;

- For HDPE color, utilize PlasticsNews.com North America recycled plastic resin price for mixed colors post-consumer flake to determine the percent change by month; and
- For aluminum, utilize ScrapIndex.org baled UBC monthly price to determine the percent change by month.
- Should any of these alternative sources become unavailable, adjust the market price for the commodity by the percent change in Consumer Price Index for all Urban Consumers (CPI-U) as published by the US Bureau of Labor Statistics for the most recently published month.
- For the purposes of calculating a monthly average published source market price for any given commodity, DEQ will determine monthly average published source market prices as follows:
 - For commodity values sourced from the Waste Paper Composite Index, utilize the published commodity value for the month.
 - For commodity values sourced from Recyclingmarkets.net, determine the average commodity value by identifying the Regional Average prices for each day that data is published (note, published days vary by commodity and over time) for the last day of the prior month and through the month in question to identify the daily commodity values. Once the daily values are identified, calculate the average commodity value for the month.
- Once the weighted average market price for each commodity has been determined, each price is to be added together to determine a total weighted average market price.
- DEQ will then use the following equation to determine the Average Commodity Value for a given month:

$$\text{Average Commodity Value} = (\text{Weighted average market price} \times \text{Oregon-specific average commodity value differential of 5.39\% (or 0.0539)}) + \text{Weighted average market price}$$

This Oregon-specific average commodity value differential, which is the adjustment added to the Average Commodity Value based on the average difference (calculated by Crowe LLP) between published source market prices and the average prices actually paid for commingled recyclable material processed by Oregon CRPFs, will also be updated with each subsequent study.

- After the Average Commodity Value figure for a specific month is established, DEQ will provide CRPFs the Average Commodity Value figure for the month being invoiced for within the first week of the subsequent month, and then post that figure to a designated DEQ web page.

Discussion prompts

- Are there any questions regarding how DEQ will determine the monthly Average Commodity Value?

III. Invoicing

Per ORS 459A.923(2)(a):

(a) Provide that payment of the fee may not be required more frequently than once per month and must be paid within 45 days of a request for payment;

Per ORS 459A.923(2)(b):

(b) Provide that the fee may not be based on commingled recycling originating outside of Oregon.

Per ORS 459A.923(2)(f):

(f) Ensure that materials handled by more than one commingled recycling processing facility are not double counted for purposes of calculating the fee.

Rule concepts for discussion

Commingled recycling processing facilities must meet the requirements under ORS 459A.905(2)(a) to be eligible to invoice for and receive funding from the Processor Commodity Risk Fee.

- A commingled recycling processing facility shall not invoice a producer responsibility organization for any tons processed in each month until that month has concluded. If for any reason a processing facility chooses to hold onto an invoice, with the purpose of submitting multiple invoices at a later date:
 - A facility shall not combine eligible tons from different months into one invoice. Tons are month, year specific and shall be invoiced as such.
 - A facility shall not hold onto invoices for the purpose of holding out for a higher Average Commodity Value and submitting multiple months' worth of tons in relation to that higher figure. If a facility is choosing to hold onto invoices for multiple months, when submitting invoices, the processing facility will be required to submit separate invoices for the eligible tons processed for each given month using the Average Commodity Value established by DEQ for each of those months.
- CRPFs shall not invoice for any tons of commingled recycling handled which originated outside the State of Oregon.
- CRPFs shall not invoice for any tons of non-commingled recycling handled, or any tons of commingled recycling which were previously handled by a different CRPF.
- CRPFs shall not invoice for Processor Commodity Risk Fee funding any tons of material that are invoiced for the purpose of receiving Contamination Management Fee funding.
- For the purposes of payment of the Processor Commodity Risk Fee, the statewide, per-ton average eligible processing cost less the Average Commodity Value of recyclable materials processed will be multiplied against the total first tons in of eligible material for a given month coming into a commingled recycling processing facility that meets the requirements under ORS 459A.905(2)(a)(A) or (B).
- For any eligible tons of commingled Uniform Statewide Material List material moved from the initial commingled recycling processing facility to a secondary processor, the

two processing facilities will work together to negotiate a price and come to a mutual agreement on the price paid.

- The invoicing approach associated with the Processor Commodity Risk Fee will look as follows:

**TOTAL TONS RECEIVED BY [CRPF NAME HERE] FOR [MONTH AND YEAR]:
[figure] tons**

- A. Eligible tons of commingled USCL material received from local government recycling collection programs: **[figure] tons**

TOTAL [MONTH AND YEAR] INVOICABLE TONS: [figure] tons

**TOTAL TONS INELIGIBLE FOR PROCESSOR COMMODITY RISK FEE FUNDING
FOR [MONTH AND YEAR]: [figure] tons**

Tons that are ineligible for Processor Commodity Risk Fee funding are:

- B. Tons of out-of-state-originated material processed: **[figure] tons**
- C. Tons of in-state but non-RMA-program material processed: **[figure] tons**
- D. Tons of in-state but additional non-commingled recyclable material processed: **[figure] tons**
- E. Tons of commingled USCL material acquired from other CRPFs: **[figure] tons**
- F. Tons of material invoiced for the purpose of receiving Contamination Management Fee funding: **[figure] tons**

**(Statewide, per-ton average eligible processing cost – Average Commodity Value)
X [figure] invoiceable tons for [month and year] = \$ to be paid**

Discussion prompts:

- Are there any questions regarding the invoicing approach to be used with the PCRPF?

IV. Appropriate fee charging

Per ORS 459A.923(2)(c):

(c) Establish a review process to ensure that the fee is appropriately charged.

Rule concept for discussion

- To meet the requirement of (2)(c), commingled recycling processing facilities will provide DEQ monthly transactional data associated with each inbound load of commingled recyclables received by the processing facility.
- DEQ, the PRO, or a combination of both, will conduct on-site and off-site assessments of facility-specific data, to ensure the processing facility is not invoicing for ineligible tons.
- A commingled recycling processing facility cannot purposefully invoice a PRO for ineligible tons. In the event that a commingled recycling processing facility was found to

have unintentionally invoiced a PRO for ineligible tons, the processing facility shall promptly compensate the PRO for all inappropriately charged tons.

Discussion prompt:

- Should DEQ require that other information be provided on a monthly basis?

Appendix 1 – Definitions

ORS 459A.863(3) defines ‘Commingled recycling processing facility’ as follows:

(3)(a) *“Commingled recycling processing facility” means a facility that:*

- (A) *Receives source separated commingled recyclable materials that are collected commingled from a collection program providing the opportunity to recycle; and*
- (B) *Separates the recyclable materials described in subparagraph (A) of this paragraph into marketable commodities or streams of materials that are intended for use or further processing by others.*

(b) *“Commingled recycling processing facility” does not include:*

- (A) *Scrap metal recycling facilities.*
- (B) *Scrap automotive or appliance recycling facilities;*
- (C) *Full-service redemption centers or dealer redemption centers, as those terms are defined in ORS 459A.700, and recycling facilities owned and operated by a distributor cooperative established under ORS 459A.718;*
- (D) *Recycling facilities handling covered electronic devices, as defined in ORS 459A.305;*
- (E) *Recycling processing facilities that process only noncommingled, source separated recyclable material from commercial entities;*
- (F) *Recycling processing facilities that recover commingled recyclable material primarily from the construction and demolition debris waste stream;*
 - (G) *Recycling depots;*
 - (H) *Recycling reload facilities; or*
- (I) *Limited sort facilities, as defined by rule by the Environmental Quality Commission.*

In addition, ORS 459A.923(1) provides definitions for the following terms:

(1)(a) *“Anticipated program cost” means all additional costs related to any new requirements of ORS 459A.860 to 459A.975 that are anticipated prior to the next review of the processor commodity risk fee under subsection (6) of this section.*

(b) *“Average commodity value” means the average revenue paid by brokers or end markets, after processing by a commingled recycling processing facility, for a composite ton of commingled material collected for recycling in Oregon.*

(c)(A) *“Eligible processing cost” means all costs associated with owning and operating a commingled recycling processing facility as determined by the study conducted under subsection (3) of this section, including but not limited to sorting, handling, storing, disposal, marketing and shipping, administration, rent, fees, depreciation, fixed costs, profit, the target price paid for commingled recycling collected from Oregon as described in subsection (2)(d) of this section and anticipated program costs.*

(B) "Eligible processing cost" does not include revenue from the sale of recyclables and any costs that are reimbursed by producer responsibility organizations or other parties, including the contamination management fee established under ORS 459A.920.

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).