

Meeting Summary

Recycling Modernization Act Rulemaking



Advisory Committee Meeting 4 Jan. 31, 2024

On Jan. 31, 2024, DEQ convened the fourth meeting of the Plastic Pollution and Recycling Modernization Act Rulemaking Advisory Committee, for the second of two rulemakings. The meeting was held via Zoom, and attendees had the option of connecting by computer or telephone.

The purpose of the meeting was to:

- Present rule concepts for:
 - Contamination Management Fee
 - Processor Commodity Risk Fee
 - Clarifications to and Exemptions from 'Covered Product'
 - Defining Associated Producers and Designating Large and Small Producers

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. Jeff Murray attended as Greg Ryan's alternate, Chris Drier and Catherine McCausland were not able to attend.
- **Rulemaking 1 Update**
Cheryl Grabham provided an update about the outcome from the first RMA rulemaking and provided an overview of the entire process as a preview for the RAC involved with this current rulemaking. As a recap, the Environmental Quality Commission adopted the proposed rules from rulemaking conducted in 2023 during their November meeting.
- **[Funding for Recycling Processors under the RMA](#)**
Cheryl introduced the graphic DEQ made to help explain the funding mechanisms for commingled recycling processing facilities. This graphic is available as a fact sheet on the [Recycling 2024 webpage](#).
- **Rule Concept: [Contamination Management Fee](#)**
Justin Gast presented the rule concept titled "Contamination Management Fee", which describes the new fee DEQ is proposing to establish in rule. The rule concept asks the RAC to consider:

Translations or other formats

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- Compensation rates for the costs of removing and disposing of covered products that are contaminants;
- Invoicing criteria;
- Clarifying reporting requirements for reporting ineligible material clarifying the corresponding fee amount to ensure the facility is not invoicing for ineligible materials
- Details regarding the fee amounts that will be established in the coming program years
- Criteria for frequency and method (formulas) CRPFs will use to invoice to receive funding from the CMF

Discussion and questions from the RAC:

Members from the committee asked for clarification about the definitions of ineligible or eligible materials:

- Clarify the definition of eligible materials or provide examples of what eligible materials would be?
 - DEQ response: Any covered product that is not included for collection on the USCL or is a material that is so improperly cleaned that it needs to be disposed of.
- Is there a threshold or definition for “improperly prepared”?
 - DEQ response: Currently, no.
- Under “D”, of ineligible materials, can the intent of ‘co-located’ be explained?
 - DEQ Response: This proposed condition is based on a facility in Lane County and how it was proposed to operate, this was included in the event there are two operations separated by a wall, but who are sharing a tipping floor.

(In response): DEQ should reconsider the phrasing because regardless if the sites are co-located or are under the same roof, these materials should not be commingled.

- Is there any justification for the 30% increase with the CMF fee between 2025-26 and 2027 program years?
 - DEQ response: The cost increase is related to the implementation of the new the living wage and supportive benefits requirements. Handling, removing and disposing the material are eligible activities for the CMF.
- These amounts proposed for the CMF include an assessment of the processing costs and an estimate of the anticipated costs the facilities will need to incur to meet the new RMA standards. The amounts include estimates for future costs.
- There were discussion and questions related to the proposed invoicing approach from the RAC:
 - The higher CMF could create an incentive to send more materials to the landfill. DEQ should consider a more balanced approach that does not have unintended negative incentives.
 - Would not want the rules to place a burden on the CRPFs who may have the capacity to separate the materials but that require them to bale (managed) separately to be eligible for funding.
 - DEQ Response: This was addressed during a Technical Workgroup Meeting. It was recognized that it would be difficult to meet the minimum tons. The Technical Workgroup recommended separation for accuracy in tons reported. DEQ is open to other approaches.
 - The intent of requiring separately baling was to assure the PRO(s) that the materials were being handled properly. It is included with the CMF to compensate for the tipping fee that would normally be paid, and to incentivize pulling those materials out.
 - Support for tracking the materials separately by documenting where the materials go and provide transparency
 - Caution about difficulty with effecting monitoring if materials are transported to facilities that are further away or out-of-state
- How often will the 43.7% get updated?
 - DEQ response: Statute requires a waste composition study be conducted every five years, but not every study will include inbound and outbound studies. There will be a composition study conducted nearly every subsequent study.

- Producers and PROs will be invested in improving yields at the CRPFs, and will want assurance that the percentages (decrease) are reflective of these investments.

- **Rule Concept: Processor Commodity Risk Fee**

Justin Gast presented the Processor Commodity Risk Fee rule concept. This fee will be established by the Environmental Quality Commission by to ensure that the expenses associated with processing commingled recyclables to be paid by PRO(s) to CRPF(s) to ensure that processing costs are shared by producers. The PCRFB will be based on eligible costs from processing facilities minus the average commodity value of the recyclable material processed by the facilities. Using the research conducted by Crowe LLP, DEQ proposes:

- To establish the eligible processing cost in rule as a fixed value, or a schedule of value
- To establish the average commodity value in rule as a formula that allows for monthly adjustments based on changes in commodity prices,
- To establish an invoice process

Discussion and questions from the RAC:

- Is glass eligible for the contamination management fee?
 - DEQ Response: Glass is eligible because it is on the uniform statewide collection list.
- Multiple members asked for clarification about the calculation of the material categories, including whether the proposal would result in counting certain materials, like glass twice, and for specific examples about which activities are eligible for the fee (e.g. labor used to sort)?
- Will facilities receive compensation from tipping fees for covered material and facilities will not receive compensation for non-covered material?
 - DEQ Response: The study that informed these fees looked at the costs associated with handling the non-covered products were incorporated into the PCRFB.
- The cost of labor for sorting and disposal of non-covered product contaminants is included in the PCRFB.
 - DEQ Response: Correct.
- If a processor receives a small amount of broken glass and they send it to the landfill, how would this be calculated?
 - DEQ response: If a facility chooses to add the glass to the residual stream the costs would be paid by the CMF. If a facility chose to sort and market the glass, they can.
- Is the market value formula fixed for the term of the CMF? If the value of the commodity changes over time, the prices will be adjusted after the next study.
- What frequency will the percentage breakdown of the materials be updated?
 - DEQ: the figures will be updated during each subsequent study
- Can shipments be held to get a better price?
- There should be flexibility to incorporate other data

- **Rule Concept: Clarifications and Exemptions from Covered Products**

Nicole Portley presented the rule concept titled, "Clarifications and Exemptions from Covered Products". Topics proposed for rule include:

- Clarifying that storage items, service packaging and consumer wraps are packaging
- Differentiating packaging and food serviceware
- Additional specific product exemptions in rule
- Clarifying existing statutory exemptions in ORS 459A.869(13)

Discussion and questions from the RAC:

- What is the rationale for including garbage bags because the majority will not reach the recycling stream?
 - DEQ response: To clarify, garbage bags meet the definition of packaging and storage items, but note, covered products are not necessarily recyclable.
- Is there a definition for who is a producer of packaging-like products?

- DEQ response: This definition will be introduced as a rule concept for these three subcategories at the RAC meeting in March.
- To clarify, the distributors of containers sold as empty food serviceware are considered the producer but if the food serviceware is sold with food/product inside and/or those sold at physical retail, the three-tiered hierarchy would apply (brand managers, manufacturers of the food inside).
- Support was expressed for the proposed approach
- Multiple members wanted more information about medical device exemption and asked for examples of types of packaging specifically used for (e.g.) durable equipment. Overall there was not support expressed for any medical device exemptions.
- One person noted that this request to exempt medical packaging has been raised in other states' EPR programs. Exempting medical packaging would make it a free rider, and the amount of packaging is significant. Exemptions more generally undermine the goals of EPR.
- Multiple members commented on the durability of the proposed storage materials, and commented that the lifespan of products like storage totes vary widely, depending on usage and exposure to extreme temperatures and that they would likely not meet the five-year threshold. There was general sentiment that these products should not be exempted.
- Multiple members did say that if they had to choose an option, they would choose option three, however that would be if there were additional tracking requirements to provide transparency and accountability. However more generally, they do not support any exemptions.
- Concern was expressed for option three because these products do appear in CRPFs and pose challenges during sorting.
- One member pointed out that there is an existing exemption for producers who can demonstrate that they are recovering their materials. DEQ was asked to clarify whether hospitals would be eligible for this exemption, which includes a responsible end market requirement.
 - DEQ response: This exemption does require that the materials be tracked through to the of life to be eligible for this exemption (459A.869(13)). To qualify for this exemption, it still only applies to the proportion of materials which reach a responsible end market. Comparatively what is being proposed in this rule concept would be broadly applied to the supply sold to those hospitals and are known to have recycling programs for those materials.
- Is the ornament box exemption necessary?
 - DEQ Response: One producer requested this specific exemption. DEQ does not have any information about what proportion of the public keep their ornament boxes for long term storage.
- One member commented on the proposed exemption for agricultural chemical containers. In this comment they stated that exemptions have consequences and would not support exempting these materials. However if this exemption is approved, it was strongly recommended that an audit process be developed and that DEQ is not entirely relying on self-reported return rates.

Public Input Period

The public input period was opened at 11:30 a.m. and the following people provided input:

- 1) Christopher Finarelli, Household and Commercial Products Association
 In response to RAC member's comment about agricultural chemical container exemptions. These materials are regulated under federal laws, which provide packaging and labeling oversight. These containers are subject to federal disposal laws under the federal Resource Conservation and Recovery Act, disallowing certain products from being introduced into the recycling stream. The manufacturers depend on customers to read the packaging labels carefully and to follow complicated, product-specific instructions to increase recycling rates before disposing them into the recycling stream.

California and Colorado have excluded these from their EPR programs. Standardization is important for consumers, and Oregon's current proposed would create confusion in the west. HCPA requests exemption of all federally regulated pesticide product containers, instead of by container type.

- 2) Katie Murray, Oregonians for Food and Shelter

OFS provided the exemption request for the agricultural pesticide container. OFS is a non-profit trade association. They requested the broad exemption for pesticides, fertilizers and products used on farms and nurseries, to align with an existing statutory exemption for products. 90 percent of the overall market for these products are used by agriculture and this request would align Oregon with other states' requirements. Exempting these products is protective of workers at depots and recovery facilities. Most of these products end up in responsible end markets. The Recycling Council also supported this exemption, and OFS wants to reiterate support for the broad exemption for commercial and household products rather than differentiating between the two. The products used at the individual consumer level may represent one percent of the market share and differentiating between the different categories may not have a large impact.

3) Darbi Gottlieb, AdvaMed

They submitted the exemption request for medical devices. The current exemption excludes a range of medical devices. These products are regulated by Federal Drug Administration to ensure the products are safe and effective for patients, and often producers do not have much control over the design requirements. Changing medical device packaging requires meeting criteria and require receiving regulatory approval. Medical device packaging is not designed for aesthetics, it is designed for safety and performance. Medical device packaging is designed to ensure products can be shipped safely and can be sterilized upon arrival.

Photos and information about the packaging have been shared with DEQ staff and why it is protective of the equipment. The alternatives proposed by staff, including option 3, are overly complex and would be very difficult or impossible to implement. It would require companies to differentiate between each individual product and within the healthcare settings they are being sold into. Meanwhile, regarding option 2, they have seen defining devices by device classification work well in other EPR programs, including in California. This options fits with the original legislative intent for capturing larger devices, while still excluding small products like cotton balls and band-aids.

4) Mark Hudson, Agricultural Container Recycling Council

The ACRC appreciates the opportunity to provide comments and echoes the comments made by Christopher Finarelli and Katie Murray for what they think is the simplest and most effective solution. They recommend rephrasing the current proposed language by eliminating the proposed categories, and by simplifying the language to state, "exempt pesticide packaging products as defined under statute and fertilizers and agricultural amendments as defined in statute intended for commercial use". However if the RAC considers the proposal as written, they propose to exempt products made by the ACRC members. To provide more context, he would like to describe who the ACRC and its members include.

The ACRC is a 501(3)(6) non-profit organization that was founded by 11 manufacturers of the products it promotes and funds the recycling of agricultural chemical containers for. These include containers up to 55 gallons from professional agricultural use, animal health, crop protection, nutrient and biological products. It funds research for determining acceptable end uses of the plastics used to hold these products. ARCR was instrumental in developing the health and safety standards for handling and disposing of these containers. Today they have 36 regular members and 18 affiliate members, funded entirely by member dues. The ACRC recently provided DEQ with data demonstrating that they are capturing 80 percent of containers of its members in Oregon. A one-page summary of the facts shared in the comments are available on the ACRC website (agrecycling.org) under "Resources- Links and State Resources". Information about approved end uses for this plastic is also available on their website under "Recycling- What Happens to the Plastic".

Discussion and questions from the RAC continued:

Following the public input period, DEQ resumed the discussion regarding the previous rule concept.

- One RAC member commented in response to the public input provided by the ACRC, is that the U.S. is the largest user of plastic in agriculture in the world, and “people of color” are the ones who are disproportionately exposed to the products being used. The containers that are not recycled are likely being incinerated. There should be more documentation proving what is happening to these plastic containers and the communities that are being exposed to their disposal.
 - There were multiple RAC members who reiterated not supporting exemptions.
 - These exemptions continue to put pressure on the consumers to dispose of packaging properly when it should be the responsibility of industry to create packaging that easy to consumers to properly dispose of, particularly from an equity and justice standpoint.
 - It was noted again that exemptions lead to consequences, exemptions seen in other states were used because those states could not come up with another solutions, and Oregon should not follow suit.
 - EPR does not work with a lot of exemptions and will destroy the bill.
 - Preventing future exemptions should be a priority of the RAC.
 - Federal regulation should not inform whether there are exemptions under this law.
 - One member noted that comments provided during the input period raised highlighting the complexities with the issues surrounding exemptions and that there should be more time spent discussing them before considering a broad exemption. There should also be more time spent investigating self-reported claims before DEQ makes a decision.
 - One member reiterated that an exemption designation means that those products will not have to pay fees into the system but providing an exemption will not drive changes in packaging design. Just because there are federal regulations dictating design elements, does not mean the product packaging is not creating waste. If anything, this would lend support for not meeting ecomodulation requirements given the design constraints. The RMA is not requiring packaging design changes, it is requiring that producers need to pay into the system.
 - To qualify for an exemption from an EPR program there needs to be strong oversight and independent proof that they are achieving equal or better results than they would have if they had participated in the EPR program
 - Exempting cylinders are a distraction for the PRO, they are used for a long time and they generally get recycled because they have value as scrap metal.
 - Does the rule language specify the whether the cylinders must be made from metal or could they be made from plastic?
 - o DEQ Response: DEQ is not aware of any cylinders being made from plastic but staff can look into it and consider specifying the materials type in rule.
 - There was support from committee members for exempting the metal, refillable cylinders.
 - One member asked if the refillable cylinders discussed in the proposal are the same as those explode at MRFs? Another responded that more generally the MRFs receive the smaller cylinders, used for barbecuing they see at the processing facilities, not the larger ones.
 - One member asked that DEQ bring back the proposal for ORS 459A.869(13) because the last-minute changes were hard to follow. DEQ was asked to return with the topic during a future meeting for further consideration.
 - Will a franchised hauler be excluded if they are also collecting these materials from a retailer?
 - To confirm, any PRO material (PRO materials acceptance list) would not be eligible for this exemption.
 - o DEQ Response: Correct
 - This exemption requires more consideration, in practice it will be difficult to implement.
- **Rule Concept:** [Associated Producers and Designations of Small and Large Producers](#)

Nicole Portley presented the Associated Producers and Designations of Small and Large Producers rule concept. The rule concept proposes threshold criteria for defining associated, small and large producers. The proposed language is adapted from definitions use by the Internal Revenue Service. The language includes describing interrelationships between companies.

There was no time for RAC discussion on this topic before adjourning the meeting on time.

- **Meeting adjournment and next steps**

DEQ adjourned the meeting at 12:15 p.m. The next RAC meeting will be held via Zoom on Feb. 14, 2024.