



Oregon Department of Environmental Quality

Rule Concept: Commingled Recycling Processing Facility Certification Program

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 7, Rulemaking 2

March 26, 2024

Background and Statutory Context

This memo provides background information and draft rule concepts associated with the Commingled Recycling Processing Facility certification program. This certification program applies to out-of-state commingled recycling processing facilities handling Oregon-generated commingled recyclable material collected from the Uniform Statewide Collection List and collected pursuant to a collection program providing the opportunity to recycle.

Permitting and Certification

Under ORS 459A.905(2):

- (2) A local government, the local government's service provider or a commingled recycling reload facility may not deliver to a commingled recycling processing facility commingled recyclables that were collected pursuant to the uniform statewide collection list established under ORS 459A.914 unless:*
- (a) At the time the local government, the local government's service provider or the commingled recycling reload facility delivered or contracted to deliver or transport materials to the commingled recycling facility:*
- (A) The commingled recycling facility held a valid permit issued under ORS 459A.955; or*
- (B) For a commingled recycling facility located outside of this state:*
- (i) The facility held a valid certificate issued under ORS 459A.956; or*
- (ii) The facility certified that it otherwise met the requirements of ORS 459A.955 or 459A.956, even though the facility did not hold a permit or certificate.*

Under ORS 459A.956:

- (1) The Department of Environmental Quality shall establish a program or approve a program established by a third party to certify commingled recycling processing facilities located outside of Oregon. The department may issue certificates under the program or develop a list of approved contractors to issue certificates.*
- (2) A commingled recycling processing facility certified under this section must satisfy the requirements of ORS 459A.955(2)*

Performance standards

Per ORS 459A.955(2):

- (2) A disposal site permit issued to a commingled recycling processing facility must require the facility to:*
- (a) Sort all materials collected from the public so that materials do not become contaminants in other waste streams;*
- (b) Market materials to responsible end markets or to another commingled recycling processing facility, provided that the permittee complies with the requirements for a commingled recycling reload facility under ORS 459A.905;*
- (c) Manage contaminants to avoid impacts on other waste streams or facilities;*

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- (d) Refrain from creating a public nuisance or health hazard, consistent with rules adopted under this section;*
- (e) Limit air or water pollution or other adverse impacts on public health or the environment, consistent with rules adopted under this section;*
- (f) Evaluate and report on inbound material quality and contamination, in accordance with forms and procedures established by the department in ORS 459A.959;*
- (g) Accurately report outbound contamination levels; and*
- (h) For all materials held by the processor:*
 - (A)(i) Accurately report the final end market of the materials; or*
 - (ii) Obtain a certification that the responsible end markets for the materials meet standards for environmental and social sustainability established by a program approved by the commission under subsection (3) of this section.*

Rule concepts for discussion at April 3, 2024 RAC meeting

DEQ proposes three rule concepts related to the CRPF certification program:

- I. Threshold
- II. Application and assessment of performance standards
- III. Reporting

I. CRPF certification program – Threshold

DEQ proposes that certification requirements begin once an out-of-state commingled recycling processing facility accepts at least 2,500 tons of eligible material in a calendar year.

This applies to local governments, local government service providers and commingled recycling reload facilities that send commingled recyclables collected pursuant to the uniform statewide collection list to an out-of-state commingled recycling processing facility. The requirement under ORS 459A.905(2)(B) that such a facility be certified or otherwise certify that it meets the requirements of ORS 459A.955 does not apply to any given facility in any calendar year until it has accepted at least 2,500 annual tons of Oregon-originated commingled recyclable material.

II. CRPF certification program – Application and assessment of performance standards

Application of performance standards

DEQ proposes that certification (including self-certification) for out-of-state commingled recycling processing facilities applies only to the requirements of ORS 459A.955(2)(a) – (c), (f), (g) and (h)(A).

Requirements related to public nuisance and air or water pollution under ORS 459A.955(2)(d) and (e) will be addressed by local and/or state ordinances or laws within the state where the processing facility is located.

Assessment of performance standards

DEQ proposes that obligated out-of-state commingled recycling processing facilities will undergo assessments for performance standards related to responsible end markets and contamination as described in ORS 459A.955(2)(a) and (c).

DEQ proposes that the amount of material assessed at a facility be based on the percentage of inbound commingled recyclable material processed that originated in Oregon compared against the total tonnage of commingled recyclable material processed by the facility over the last year.

For example, if 30% of all the commingled recyclable material the processing facility handles annually is Oregon-generated, then 30% of the facility's material (loose or baled) must be assessed against the performance standards established for capture rates and outbound contamination.

Similarly, responsible end market disposition and reporting requirements (955(2)(b) and (h)) would apply to 30% of outbound materials.

This standard applies to each commodity marketed by the facility, so it would apply to 30% of outbound corrugated volume, 30% of outbound HDPE volume, etc. It is the CRPF's prerogative to identify which outbound streams are subject to assessment; the CRPF is not held to meeting performance standards for all outbound materials.

DEQ proposes that performance standard (f), which requires evaluation and reporting on inbound material quality and contamination, would apply to 100% of all inbound materials originating from Oregon. All other standards apply in proportion to Oregon's contribution of inbound commingled materials.

DEQ proposes to require that assessments of compliance with capture rates and outbound contamination performance standards be conducted as follows:

- A facility contracts with a DEQ-approved third-party certifier to conduct periodic assessments per the approach established by DEQ. A facility may request to use an alternative method to assess compliance with the established performance standards, subject to review and approval by DEQ.
- A facility must undergo at least one unannounced conventional evaluation method assessment within the first 2.5-year program plan period. That assessment must sample material from each of the established capture rate-related commodities categories.
- For each subsequent five-year program plan period, each facility would undergo at least two unannounced assessments, though data taken from a DEQ-approved alternative evaluation method assessment could be used to substitute for one of the conventional evaluation method assessments.

At any point, a facility may request to DEQ that data be provided via an alternative evaluation method. Any alternative evaluation method would need to produce similar or better quality data than the conventional evaluation method, and its use would be subject to DEQ approval. A facility would be responsible to pay for and conduct such a comparison study.

- A facility using an alternative evaluation method to provide performance standards-related data would provide all relevant data to a third-party certifier. The certifier will provide the data to DEQ on a schedule to be determined by DEQ.
- Any facility using an alternative evaluation method assessment for data-generation purposes (e.g., use of artificial intelligence technology) would still need to undergo at least one unannounced conventional evaluation method assessment within each five-year program plan period, for comparative data purposes.

Material samples to be assessed will be pulled from the material stream as it enters the facility's baler(s), or by sorting finished bales. The facility must make material available for on-site or off-site assessment.

- The percentage of material available to be sorted will be based on the percentage of the facility's total annual tonnage handled that originates from Oregon. The out-of-state commingled recycling processing facility will be responsible for selecting the percentage of bales to be sorted by the third-party certifier, or a contractor to the third-party certifier.
- A third-party certifier or a contractor to a third-party certifier may utilize one or multiple material samplings to evaluate compliance with performance standards and to determine a CRPF's average capture rate across all commodities and the average outbound contamination rate.
- If multiple site visits are necessary to assess compliance with the capture rate and outbound contamination rate-based performance standards, DEQ will work with the third-party certifier to determine the need and schedule for any follow-up sampling assessments.
- All initial unannounced conventional evaluation method assessments conducted by a third-party certifier, or contractor to a third-party certifier, will be paid for by DEQ. Out-of-state processing facilities would be required to cover costs associated with any follow-up assessments, in accordance with protocols approved by DEQ. All follow-up assessments will be subject to observation by a third-party certifier.

III. CRPF certification program – Reporting

DEQ proposes that a service provider or a commingled recycling reload facility that transports materials collected to provide the opportunity to recycle to a commingled recycling processing facility located outside Oregon must obtain material disposition information from that facility for the materials originating in Oregon. Service providers and commingled recycling reload facilities would be required to report disposition information to DEQ on a quarterly basis.

Non-discrimination statement

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