

Meeting Summary

Recycling Modernization Act Rulemaking



Advisory Committee Meeting 6 March 14, 2024

On March 14, 2024, DEQ convened the sixth 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 people could connect by computer or telephone.

The purpose of the meeting was to:

- Provide updates about earlier rule concepts previously presented to the committee
- Continue introducing the remaining life cycle assessment rule concepts from meeting 5
- Introduce the proposed outbound contamination rates rule concept
- Introduce the rule concept for limited sort facilities, commingled materials, and reload facilities
- Introduce the rule concept for local government compensation for evaluation of contamination
- Introduce the rule concept for clarifications to producer definitions

Meeting Summary

- **Welcome, meeting overview**

DEQ welcomed the meeting attendees and provided an overview of the agenda and what was planned for the day.

- **Introductions**

Cheryl Grabham welcomed and introduced DEQ staff and the rulemaking advisory committee members. Members were asked to state their names and introduce themselves. Alternates in attendance were Rob Jones for Chris Drier and Jeff Murray for Greg Ryan.

- **Rule Concept Updates**

Nicole Portley began by providing updates about rule concepts that were presented during previous RAC meetings for the related topics: responsible end market obligations, exemptions for private recycling services, covered product exemptions and life cycle assessments. DEQ also received a letter from Senator Dembrow, chief sponsor of the RMA. This letter is included as Attachment 1 to this meeting summary.

RAC members previously provided feedback that exemptions should be as narrow as possible. Incorporating this perspective, DEQ reviewed the requested exemptions for medical exemptions and agricultural containers. DEQ considered the different categories for medical devices and how they are packaged. DEQ also reviewed how federal standards regulate packaging. Using these considerations, DEQ is now proposing to exempt Class III medical devices, and possibly a defined subset of Class II devices.

DEQ also received feedback on providing an exemption to agricultural chemical packaging, which included requiring additional auditing and verification that the ACRC is adequately handling and disposing of these containers. DEQ is proposing to limit the exemption to products that are only sold

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commercially not to individual consumers. DEQ is developing draft rule language that specifies standards the ACRC will need to meet.

DEQ is proposing that producers can claim an exemption for materials collected through services not provided under the Opportunity to Recycle requirements, if they meet three criteria:

- The collection service is not provided through Opportunity to Recycle
- No separation or processing occurs at a commingled recycling processing facility, this includes the removal of contamination
- The materials must be sent to a verified responsible end market

Originally, gift wrap was included on the Uniform Statewide Collection List, with the assumption that the producers would be paying into the system. Producers of gift wrap used for presentation have requested that gift wrap be exempted from being considered “packaging”, because it is not being used per the definition for “protection and containment of a product” and DEQ requested feedback on this proposal from the RAC.

Discussion and questions from the RAC:

- DEQ was asked what information - or if a lifecycle assessment - was used to inform the 50% yield rate exception for cartons proposal. Can this information be shared with the RAC?
 - o DEQ response: This analysis was conducted with the Recycling Steering Committee. This information can be found on slides 94-133 of the Aug. 23, 2022 [Technical Workgroup on Materials List](#) presentation.
- There was some general support for the updated medical exemption proposal because it consists of a small portion of the market.
- Multiple members provided comments related to DEQ’s oversight of the ACRC, including that the agency should audit and ensure that the same reporting and oversight are applied to ACRC.
- The discussion about the exemption proposal for gift wrap included the following comments:
 - o Gift wrap is considered contamination at Garten’s facilities.
 - o Gift wrap and plastic film should not have been included on the USCL.
 - o There are too many types of gift wrap for the public to expect the public to be able to sort it properly.
 - o Despite the distinction that gift wrap may be used for presentation, it does not warrant excluding it from the ‘packaging’ definition because its composition is similar enough.
 - o Multiple members agreed that the inherent difficulty the public will have with understanding the distinction would likely lead to gift wrap entering the system anyway and result in these producers to be free riders in the system.

Multiple members asked DEQ clarification about the implications for this proposal on the USCL and payment of producer fees.

DEQ response: This proposal would have a similar effect as an exemption because the producers would not be paying fees to the PRO. Gift wrap could be kept on the USCL, since the USCL is not limited to materials that are subject to the law and producer fees. But DEQ is considering clarifying whether gift wrap should be considered packaging because of the contamination implications.

- o This topic is relevant for the emphasis the Act has on outreach and education.

- **Rule Concept: [Life Cycle Evaluation of Covered Products](#)**

Peter Canepa provided updates about some of the life cycle evaluation concepts introduced at the last RAC meeting, and continued introducing the remaining proposed concepts (8-10) from the Life Cycle Evaluation of Covered Products rule concept that was first presented during the Feb. 14, 2024 meeting.

Based on RAC feedback, DEQ updated the proposal for:

- Ecomodulation (rule concept II): Two alternative options are proposed, to adjust the weighting factors for calculating the impacts of plastics beyond the known physical impacts to incorporate the potential other concerns associated with plastics, that are not as well studied.
- Calculating health and social impacts (rule concept III): DEQ proposes to incorporate existing requirements from existing, related reporting initiatives that require producer disclosures, and require that they report incidents of non-compliance for human health and safety as it relates to their products.
- Impact assessments for toxicity (rule concept IV): The original proposal required large producers include the flow of toxics from their products and report them to DEQ. But these were not required to be included in the overall scoring for the impact reduction bonus because the data is uncertain.
- Reusable products: A RAC member suggested that the definition of a reusable product should distinguish between consumer-owned refillable container and a reusable packaging that is owned, washed and distributed by the manufacturer. DEQ updated the proposed definition so that it better reflects the intent of incentivizing reuse systems.

Peter introduced the remaining concepts linked above, starting on page 11 of the rule concept document. The remaining concepts address sensitivity analysis, recycling allocation procedures and biogenic carbon accounting.

Discussion and questions from the RAC:

- The new definition for reusable products does not quite reflect the ownership of the product once it has been sold to the consumer.
- Multiple members said that DEQ should reconsider the use of the term 'durable' or 'durability'. Some recommendations included either defining durability or replacing it with 'environmental breaking point' and placing responsibility on the producer to prove the performance of the products.
- Support was received for including the sensitivity analysis.
- Multiple members expressed concern about chemical recycling, gasification or burning of materials, and do not think they should be considered. Any type of waste burning technology would place the environmental burdens disproportionately on communities who are already overburdened and disproportionately impacted by pollution.

- **Rule Concept: [PRO Annual Reporting](#)**

Nicole Portley introduced the PRO Annual Reporting rule concept. Originally this rule concept was intended to be presented during the fourth RAC meeting on Jan. 31, 2024 but it had to be rescheduled to this meeting. DEQ is proposing changes to the original rule concept since RLG withdrew its intent to operate in Oregon as a PRO. With only one PRO potentially operating in the Oregon is DEQ amending the reporting deadline.

There were no discussion or questions from the RAC.

- **Rule Concept: [Outbound Contamination Rates](#)**

Justin Gast presented the outbound contamination rates rule concept. In this rule concept, DEQ is proposing that processed Uniform Statewide Collection List-related materials destined for a responsible end market must not contain more than 5% contamination. The 5% rate will be determined based on

the average of material assessed, whether it is loose or baled. Meanwhile, if a CRPF sends a bale of mixed plastics to a limited-sort facility, the CRPF must obtain data confirming the materials were sent to a responsible end market.

Discussion and questions from the RAC:

- How was 5% selected as the threshold?
- Will there be different rates for different materials?
- This requirement should be phased in over time because of the parallel changes that are happening as the new system is implemented.

• **Rule Concept: Limited Sort Facilities, Commingled Materials and Reload Facilities**

Justin Gast presented the rule concepts related to limited-sort facilities, commingled materials and reload facilities. DEQ is proposing definitions for the terms ‘commingled materials’ and ‘limited sort facilities’ in rule.

Discussion and questions from the RAC:

- Jeff Murray from EFI highlighted a recommendation for a simpler definition in a letter sent to DEQ, where commingled recycling means materials on the USCL that are collected commingled in a program provided in Opportunity to Recycle and is processed by a permitted CRPF. He believes a variation of this language appears in the Act.
- Several comments were made about the proposed range of cardboard allowed to be removed in the rule concept, including: 50% is too high, it will change the material composition and quality, and the impacts it will have on the facilities who made equipment investments to remove a substantial proportion of incoming cardboard.
- DEQ should treat similar facilities in the same way and use this lens when considering the 50% proposal.
- Consider the implications for out-of-state facilities.
- Consider how ratepayers will be affected by this proposal.
- This proposal is trying to lump two very different processes and facilities under the same definition.
- This definition is not inclusive for facilities that receive material directly from the public.
- It is unclear how these new rules will change activities that are already occurring.
- Processors stated they have noticed increases in the amount of cardboard gleaned in recent years. DEQ is seeking data to quantify these observations.
- Multiple committee members commented that facilities who are allowed to remove cardboard, or process a very small percentage of the inbound commingled stream, should not be allowed to become a CRPF and be eligible for Contamination Management Fee and Processor Commodity Risk Fee funding. .

Public Input Period

The public input period was opened at 11:45 a.m. and the following people provided input:

- 1) Scott Jenkins, EFI Recycling
EFI Recycling has made costly upgrades to their facilities in anticipation of meeting RMA requirements. They disagree with the current proposal to allow limited-sort facilities to remove materials during initial sorting, it is their understanding that they were only supposed to be providing secondary sorting. This proposed rule concept jeopardizes their business and will have impacts on other businesses in Oregon. EFI has already provided this feedback to DEQ, at RAC meetings, and during meetings with the Department of Justice, they do not feel that their comments about this proposed rule language are being heard.
- 2) Dan Cary, Food Northwest
His comments are related to the upcoming topic of producer definitions. The clarifying documents DEQ has provided has been helpful. The proposed rule concepts will drive

change in the contracts between the manufacturing sector, producers and private label producers. DEQ is encouraged to continue engagement.

3) Darbi Gottlieb, Advamed

Thanked DEQ for meeting with their organization for continuing to discuss their concerns and interests since the last RAC meeting. They would like to share the information they have provided to DEQ staff about the medical device packaging. All medical device packaging must meet federal packaging design standards, including compatibility with sterilization processes, the ability to withstand specific temperatures, damage from shipping and storage, and labeling standards. It can take between seven and ten years to change packaging design.

4) Mark Hudson, Agricultural Container Recycling Council

The ACRC appreciates the opportunity to provide comments to the RAC. The ACRC provides and promotes programs that collect and recycle plastic agricultural chemical product containers with volumes up to 55 gallons that include pesticides, fertilizers, chemical pest control, etc. and determines acceptable end uses of plastics recycled through this program. ACRC would like to comment the proposed exemption for ag container packaging. Item #4 provides a volume caveat, with a volume greater than five gallons. ACRC understands that the proposed volume threshold is intended to exclude packaging that may reach the individual consumer but it would also exclude approximately 70-80 percent of the products that are also sold commercially, including the majority of the packaging collected through the ACRC program. ACRC has proposed the following language to DEQ staff as an alternative, to remove the volume caveat and state, "rigid HDPE packaging of pesticides, chemicals and agricultural amendments produced by members of the ACRC and eligible for collection by the ACRC program". ACRC invites the RAC to review the [ACRC Agricultural Chemical Contain Recycling \(Oregon\) fact sheet](#) written to address this issue.

5) Jason Hudson, Waste Connections

He was involved in the original development of the RMA law, and wants to reiterate that there should be recognition for the companies that make investments in their facilities in anticipation of the new requirements. Waste Connections has large gleaning operations, which were operating prior to Waste Connections' acquisition of the original companies. They participated in the Crowe study, and these existing gleaning activities were accounted for during the initial calculations. They support DEQ's definition for limited-sort facility and think that the industry should let economics play out between the MRFs and the prices of the materials.

The public input period was closed at noon. Justin Gast resumed the presentation of the Limited Sort Facility, Commingled Materials and Reload Facility rule concept.

Discussion and questions from the RAC:

- How will the proposal reconcile the changes in material composition, which the fees are based on?
 - o DEQ response: DEQ is required to conduct a composition study at least every five years.
- Constant studies may not reflect the changes in the market and create a burden, and not address the issues surrounding the involvement with limited sort facilities. This may create a situation where materials are being handled twice.
- The current proposal will change the composition dramatically.
- There has been a lot of comments about the intent of the Act, including that the new system will have new requirements to ensure living wages, worker standards, meet new permit requirements, etc., but this proposal to allow limited-sort facilities to operate and remove up to 50% of material, would allow 50% of this material to be handled by workers who are not benefitting from these new standards.

- Was the inclusion of the limited-sort facilities in the Crowe Study predicated on the assumption that they would become a permitted CRPF under the new system?
 - o DEQ response: yes.

- **Rule Concept: Clarifications to Producer Definitions**

DEQ reorganized the meeting agenda to ensure that this rule concept was presented to the RAC today. Nicole Portley presented DEQ's proposed clarification to producer definitions. The rule concept clarifies definitions of producers of retail products, who owns an item when it is sold under a manufacturer's own brand, or in packaging without a brand, or in the instances of contract manufacturing.

Discussion and questions from the RAC:

- Clarification was requested about the phrasing where the proposal says the manufacturer directs packaging, when in most cases for private labels, they would direct the manufacturing of the product, not the packaging.
 - o DEQ response: that may have been a typo.
- There was discussion about how the use of the term "most control" is subjective, who is the owner of a private label, and who would be the obligated producer.

- **Meeting adjournment and next steps**

DEQ adjourned the meeting at 12:30 p.m. The next RAC meeting will be held on Zoom on April 3, 2024.

Attachment 1: Letter from Senator Michael E. Dembrow, Senate District 23



Senator Michael E. Dembrow
Senate District 23

Dear Abby and Logan:

I know that there have been disagreements around some of the intentions behind SB 582 as the rule-making has proceeded. Now that the session is over, I wanted to take a few moments to put my thoughts into words regarding the intent behind SB 582, as I understood and expressed it at the time it was being designed and passed, as the bill's lead Chief Sponsor.

If anyone has any questions about the fundamental intent behind the bill, they actually need look no further than its opening, where we laid out the purposes of the bill in a series of four findings. They will find there that the focus is on the need to improve our recycling systems and the responsibility of producers to help pay for those needed improvements. The remainder of the bill delineates how Oregon's system of extended producer responsibility will work.

A secondary focus of the program, as in every good EPR system, is the notion of "eco-modulation," where the producer's financial responsibility is connected to the recyclability of its products, thereby creating incentives to find and use alternative packaging that is more reusable and recyclable. It's an important goal, and I've seen it used to good effect firsthand in EU countries. Unfortunately, I've heard some people misusing this concept and arguing that if a substitute product cannot be found, the producer no longer has a responsibility to financially support the system. Nothing could be further from our intent. The notion of shared responsibility persists, even when—for now at least—alternatives may not be available.

As the Recycling Modernization Act was being designed, the notion of fairness was very much on our minds. The producers of covered products need to begin supporting the work of the PRO(s) as soon as the PRO(s) begin their work. Otherwise, they are in

effect “free riders,” shifting the responsibility for supporting the system to others. That’s not fair. Ideally, the coverage “net” will be cast as widely as possible in order to make the system more fair for everyone in all industries. If exemptions need to be made, they need to be made for good reasons.

In finalizing the bill in 2021, we recognized that a certain amount of fine-tuning would need to be left up to rule-making, including with respect to the identification of exempt products. The rule-making process allows for both deeper analysis and flexibility going forward. But the conclusions and decisions made as part of that process still need to be based on the principles laid out in the bill.

As you know, following the passage of SB 582, I subsequently was recruited to serve as a legislative member of the National Conference of State Legislatures’ Public-Private Partnership on Recycling, a taskforce charged with creating models for EPR legislation. My experience as part of that group—which brought together legislators (half Democrat, half Republican) and industry representatives—confirmed my belief that the SB 582 program was intelligently and appropriately designed. Industry representatives described it as such, and also praised the participatory nature of both the design phase and the rulemaking.

I’d appreciate it if you would share these comments with RAC members, and please let them know how much we value their hard work.

Sincerely,



Michael E. Dembrow
Senator, Oregon Senate District 23