



State of Oregon Department of Environmental Quality

Written Comments

Plastic Pollution and Recycling Modernization Act 2024 Rulemaking Advisory Committee Meeting 8

This document is a compilation of written comments received related to the eighth meeting of the advisory committee for the Plastic Pollution and Recycling Modernization Act 2023 Rulemaking held April 16, 2024.

Comments

Circular Action Alliance2



April 23, 2024

Memorandum to: Nicole Portley, DEQ
Arianne Sperry, DEQ

From: Doug Mander
CAA Oregon Program Manager

Re: Draft Fiscal and Racial Equity Impact Statement
Rules Advisory Committee Meeting 8, Rulemaking 2

I am writing in relation to the Draft Fiscal and Racial Equity Impact Statement reviewed during the April 16, 2024 Rule Advisory Committee Meeting and in particular the estimated fiscal impacts associated with DEQ's proposed rules related to compensation to local governments for periodic evaluation of contamination reduction programming.

As you know, under the RMA 459A.890 producer responsibility organizations are responsible for funding certain eligible expenses of local governments or their services providers, including as provided under subsection (3) "the cost of periodically evaluating the quality and contamination of collected materials as required by ORS 459A.929, if the evaluation occurs at a location other than a commingled processing facility". In addition, producer responsibility organizations are responsible for funding the "cost of contamination reduction programming for residential customers" under subsection (4)(a). The contamination reduction and programming costs under subsection 4(a) are capped at \$3 per capita per year under subsection (4)(b) of 459A.890.

The rules first proposed by DEQ on April 3, 2024 and revised for inclusion in the preliminary draft rules provided for the RAC review at the April 16, 2024 clarify eligible expenses under 459A.890 (3). The draft Fiscal and Racial Equity Impact Statement indicates that these rules could "have some positive fiscal impacts for local governments and their designated service providers and some negative fiscal impacts for producers of covered products."

While the draft Fiscal and Racial Equity Impact Statement does not directly quantify these impacts, the DEQ referenced initial CAA estimates related to contamination reduction funding of \$13.1 million per year (these estimates include costs under both 459A.890 (3) and (4)).

In the view of CAA, the rules proposed by DEQ related to periodically evaluating the quality of contamination would significantly increase producer costs in this area. The \$13.1 million annual estimate above related to contamination reduction funding included funding costs associated with both 890 (3) and 890 (4). The 890 (3) portion of this cost was approximately \$1 million with the remainder related to costs associated with 890 (4). While an exact cost estimate of the proposed rule is difficult, the likely impact of DEQ's proposed rules would result to a 10 to 15-fold increase in the annual costs associated with periodically evaluating contamination as the



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costs of onboard cameras and related AI monitoring equipment, on an ongoing basis, would be an eligible cost or local government entitlement under 890 (3).¹ In other words, the costs of periodically evaluating the effectiveness of contamination reduction funding initiatives would be the same or higher than the actual contamination reduction funding programs.

In CAA's view the proposed DEQ rules effectively eliminates the statutory cap associated with contamination reduction programs by proposing that a contamination reduction programming tool (which should be funded under 890 (4)(a)) be an entitlement under the PRO obligation to provide funding to periodically evaluate the quality of contamination under 890 (3). [For which there is no statutory cap.] These concerns are described in more detail below.

The Proposed Rule

The proposed rule included in DEQ's Preliminary draft rules provided to the RAC on April 16, 2023 were the following:

- (1) Costs incurred by a local governments or a local government's service provider, including reload facilities and limited sort facilities that are also reload facilities, to implement the procedures established by DEQ to meet the requirements of ORS 459A.929(2)(b) are eligible for funding or reimbursement pursuant to ORS 459A.890(3). Such costs include, but are not limited to:

- (a) Staffing and administrative costs to carry out the contamination evaluation procedures established by DEQ per ORS 459A.959;

- (b) Costs associated with hiring a contractor to carry out the contamination evaluation procedures established by DEQ per ORS 459A.959; and

- (c) Costs associated with purchase, installation, and ongoing use and maintenance of on-board contamination monitoring equipment and software for use on collection vehicles to carry out the contamination evaluation procedures established by DEQ per ORS 459A.959.

- (2) The following costs are not eligible for funding or reimbursement pursuant to ORS 459A.890(3):

- (a) Costs associated with system expansion requests made under OAR 340-090-0800;

- (b) Costs for contamination reduction programming compensated under ORS 459A.890(4);

- (c) Staffing and administration costs beyond what is necessary to carry out the contamination evaluation procedures established by DEQ per ORS 459A.959;

- (d) Costs incurred at limited sort facilities that are not also reload facilities; and

- (e) Costs incurred at commingled recycling processing facilities.

¹ This estimate is based on a rough estimate of \$20,000 to \$30,000 per truck utilizing a rough estimate of 1,500 trucks spread out over the course of three years.



In CAA's view if contamination evaluation procedures are ongoing, then these activities are clearly part of the contamination reduction program and not what the legislature contemplated with respect to periodic evaluations regarding the quality of contamination.

There is a distinction to be made between monitoring contamination in order to support contamination reduction measures and the process of periodically evaluating, over time, whether the contamination reduction measures are having the intended effect on contamination rates.

In CAA's view placing cameras on trucks, supported by AI software, to monitor contamination is one potential tool local governments may utilize to support contamination reduction programming. [CAA also notes that "On-board contamination monitoring equipment and software" is already an eligible expense under RMA Rule 340-090-0880 (1)(c)(A)(iii)]. However, there are limitations to this tool specific to the nature of the collection route and the types of contamination present in commingled streams.

In more densely populated areas, it is extremely difficult for truck camera technologies to assign carts to specific households as curbside bins from multiple locations are often located together on the curb. Secondly, the technology only works for a subset of material contaminant types. It is very difficult for cameras on trucks to pick up contaminants such as smaller batteries which can be extremely problematic for sorting facilities. As such this contamination reduction option and the ongoing costs associated with utilizing this equipment should be assessed on a case-by-case basis by local governments and their service providers to determine whether they believe this approach will be an effective contamination reduction tool in relation to other monitoring and prevention options.

More importantly from the perspective of periodically evaluating the effectiveness of contamination measures, onboard monitoring equipment on trucks is not an appropriate technology. This technology will not provide an accurate or full assessment of various material contamination levels.

As such CAA recommends that DEQ's proposed rules be amended to clarify the distinctions between monitoring contamination as part of contamination reduction programming and periodically evaluating the effectiveness of that programming in the following manner:

- (2) Costs incurred by a local governments or a local government's service provider, including reload facilities and limited sort facilities that are also reload facilities, to implement the procedures established by DEQ to meet the requirements of ORS 459A.929(2)(b) are eligible for funding or reimbursement pursuant to ORS 459A.890(3). Such costs include, but are not limited to:
 - (a) Staffing and administrative costs to carry out the **periodic evaluation of** contamination ~~evaluation procedures established as required~~ by DEQ per ORS 459A.959; **and**
 - (b) Costs associated with hiring a contractor to carry out the **periodic evaluation of** contamination ~~evaluation procedures established as required~~ by DEQ per ORS 459A.959; **and**
 - (c) ~~Costs associated with purchase, installation, and ongoing use and maintenance of on board contamination monitoring equipment and software for use on collection vehicles to carry out the contamination evaluation procedures established by DEQ per ORS 459A.959.~~

(2) The following costs are not eligible for funding or reimbursement pursuant to ORS 459A.890(3):



- (b) Costs associated with system expansion requests made under OAR 340-090-0800;
- (b) Costs for contamination reduction programming compensated under ORS 459A.890(4);
- (c) Staffing and administration costs beyond what is necessary to carry out the **periodic evaluation of** contamination ~~evaluation procedures established~~ **as required** by DEQ per ORS 459A.959;
- (d) Costs incurred at limited sort facilities that are not also reload facilities; and
- (e) Costs incurred at commingled recycling processing facilities.

In CAA's view, these amendments are consistent with the language of the RMA. The costs associated with the purchase and installation of onboard monitoring equipment is already an eligible expense under 890 (5) and the maintenance costs associated with the operation of this equipment is not a periodic evaluation cost but a potential contamination reduction programming initiative to be funded under 890 (4).

Thank you for your attention in this matter.

Doug Mander
CAA Oregon Program Manager