



State of Oregon Department of Environmental Quality

Written Comments- Part 1

Plastic Pollution and Recycling Modernization Act Rulemaking 2

This document is a compilation of written comments received during the formal public comment period for the Plastic Pollution and Recycling Modernization Act 2024 Rulemaking.

Comments

Paul Johnson	2
Kristan Mitchell – Oregon Refuse and Recycling Association	3
Scott Jenkins – EFI Recycling	4
Brad Humbert - 1	5
Brad Humbert - 2	6
Patricia Guild	7
Shawn Looney	8
Mark Hudson – Ag Container Recycling Council.....	9
John Oluwaleye	12
Katie Murray – Oregonians for Food & Shelter	13
Phil Stolz – Berry Global Group, Inc.	15
Kristan Mitchell – Oregon Refuse and Recycling Association.....	16
Jonathan Levy - PakTech.....	26
Nicole Janssen – Denton Plastics	36
Caleb Weaver - Ridwell	37
Sydney Harris – Upstream (Joint Letter)	43
Jordan Fengel – Carton Council North America	57
Scott Saunders – KW Plastics	58
Tony Mouchachen – Merlin Plastics	59
Joan Popowics – Procter & Gamble	62
Erin Stein – Washington County	66
Celeste Meiffren-Swango – Environment Oregon (Joint Letter).....	70
Pete Chism-Winfield - City of Portland, Bureau of Planning & Sustainability	72
Tom Egleston – Metro (Joint Letter)	78
Kate Bailey – Association of Plastic Recyclers	88
Carol Patterson – Foodservice Packaging Institute.....	100

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From: [Paul Johnson](#)
To: [2024 Recycling * DEQ](#)
Subject: Scope of Rule Making?
Date: Sunday, June 2, 2024 8:33:00 PM

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I have recycled, reused or repurposed to avoid adding to landfills from the start. Early programs encouraged recycling by establishing a positive value for recycled material and paid those who turned in materials in usable condition. If materials do indeed have value not only should people be rewarded for good stewardship but a positive incentive should be in place. Charging a fee encourages no one. It creates the perverse incentive to avoid the system entirely. As is, people are being charged for recycling whether they have anything to recycle or not. Those who are not contributing to the problem should not be so penalized. People who abuse the system should suffer consequences if it is found they are contaminating material and/or failing to separate materials not compatible. However, those who are victims of other peoples misdeeds should never be held accountable for those misdeeds. As for materials not compatible no one should be charged for anything that isn't actually put out for pickup whether recycling or garbage. That is happening routinely now. Paying a monthly fee when there is nothing to pickup is simply wrong. Paying extra for excess should be proportional, not a penalty. I have considered cancelling service entirely for a period and accumulating sufficient material for pickup, then resuming service in a cyclic manner, not to game the system but to make the service fair and equitable. At the moment it is not. If rules do not address inequities I see little chance of getting broad cooperation. Washington County refuses to recognize it as a problem.

From: [Kristan Mitchell](#)
To: [NAYAR Roxy * DEQ; 2024 Recycling * DEQ; Doug Mander](#)
Cc: [Andrea Fogue; Kim Holmes; Dan Leif](#)
Subject: Request for extension on deadline for written comments and times for public hearings for DEQ Phase II Posted Rules
Date: Monday, June 3, 2024 2:27:13 PM
Attachments: [image001.png](#)

Hello Roxy – CAA and ORRA request a 30 day extension on the written comment deadline for RAC#2, revising the deadline from July 5 to August 5, 2024. I understand a written request is sufficient for the DEQ to grant the extension, but if you need detailed reasons for the need, please let me know. CAA and ORRA also request that DEQ revise the dates of the public hearings to correspond more closely to any extended written comment deadline, as oral commentators will have similar challenges to reviewing and responding to the 300 page rulemaking document.

On behalf of both CAA and ORRA, thank you for your consideration. We look forward to your response.

Kristan
Kristan S. Mitchell, Executive Director and CEO
Oregon Refuse and Recycling Association
727 Center Street NE, Suite 350
PO Box 2186
Salem, OR 97308-2186
800-527-7624 or 503-588-1837
cell: 503-931-6924
fax: 503-399-7784
kristan@orra.net

Doug
On behalf of Circular Action Alliance



Doug Mander
Oregon Program Manager
Doug.mander@circulaction.org | 416-346-2294

From: [Scott Jenkins](#)
To: [2024 Recycling * DEQ](#); roxy.navar@deq.oregon.gov; [GRABHAM Cheryl * DEQ](#)
Cc: [Jeff Murray](#)
Subject: Extension for comments to RMA RAC 2 Rules
Date: Tuesday, June 4, 2024 2:05:10 PM
Attachments: [image001.gif](#)
[image002.png](#)
[image003.gif](#)
[image004.gif](#)

Some people who received this message don't often get email from scottj@efirecycling.com. [Learn why this is important](#)

June 4, 2024

Via Email Only:

Recycling.2024@deq.oregon.gov

Roxy.Nayar@deq.oregon.gov

Cheryl.GRABHAM@deq.oregon.gov

David.ALLAWAY@deq.oregon.gov

Justin.GAST@deq.oregon.gov

Re: Plastic Pollution and Recycling Modernization Act, Rulemaking 2
May 29, 2024, Notice of Proposed Rulemaking

Dear Department of Environmental Quality,

In its capacity as an interested party with regard to the Plastic Pollution and Recycling Modernization Act Rulemaking 2, Environmental Fibers International, Inc. (“EFI”) hereby requests that the Department of Environmental Quality postpone the proposed rule comment deadline from July 5, 2024, to September 9, 2024. This request is made consistent with ORS 183.335 to allow EFI an opportunity to submit data, views or arguments concerning the Department’s proposed action.

Respectfully,

Scott Jenkins

EFI Recycling, Inc.



SCOTT JENKINS President/CEO

971.244.4450 direct

503.737.2100 main

efirecycling.com

From: [Brad Humbert](#)
To: [2024 Recycling * DEQ](#)
Subject: Question
Date: Tuesday, June 11, 2024 1:27:35 AM

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How's that for a question you won't answer????

Sent from my iPhone

From: [Brad Humbert](#)
To: [2024 Recycling * DEQ](#)
Subject: Recycling
Date: Tuesday, June 11, 2024 1:26:42 AM

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Are you going to tell the truth about plastic recycling??????

Sent from my iPhone

From: [Pat Guild](#)
To: [2024 Recycling * DEQ](#)
Subject: Plastic recycling
Date: Tuesday, June 11, 2024 2:12:22 PM

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I am hoping that those producers that use plastic packaging for their goods will also need to share in that cost.

Maybe they will decide to use a more environmentally friendly package, to reduce the need to recycle to begin with.

Thank you for your consideration,
Patricia Guild

From: [Shawn Looney](#)
To: [2024 Recycling * DEQ](#)
Subject: Proposed rules
Date: Tuesday, June 11, 2024 6:46:07 AM

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I was hoping DEQ would be a bit more specific about what comments it was seeking. Without much clue in which direction your rules are going, I can only say that I pay Ridwell \$18 a month so that I can avail myself of the “mixed plastic” recycling category that includes items such as food wrappers and the plastic bags that snack chips come in. It shouldn't be this hard to get manufacturers make their products recyclable.

I hope DEQ helps pave the way for more plastic products to be recycled, since at this point it's simply impossible to avoid purchasing plastic products—and it'll only get worse with the petroleum industry working overtime to make more and more items out of plastic.

Thank you,
Shawn Looney



PO Box 1928, Apex, North Carolina 27502 | 877.952.2272 | info@agrecycling.org | agrecycling.org

June 14, 2024

Oregon Department of Environmental Quality
recycling.2024@deq.oregon.gov

SUBJECT: Notice of Proposed Rulemaking, Plastic Pollution and Recycling Modernization Act, Rulemaking 2

To Whom It May Concern:

The Ag Container Recycling Council (ACRC) appreciates the opportunity Oregon Department of Environmental Quality (OR DEQ) has provided to submit exemption requests to the Oregon Plastic Pollution and Recycling Modernization Act, Rulemaking 2. The OR DEQ can reach the ACRC for further follow-up as follows:

ACRC Contact Information:

Mark Hudson, Executive Director
Ag Container Recycling Council
PO Box 1928
Apex, NC 27502

Email: mhudson@agrecycling.org
Office: 877-952-2272

Who is the ACRC?

The Ag Container Recycling Council (ACRC) is a 501(c)(6) nonprofit association that promotes and funds programs in the United States for the collection and recycling of plastic containers (up to and including 55 gallon) from agricultural pesticide, animal health, specialty pest control, micronutrient, biologicals, fertilizer and adjuvant products. It also funds research for determining acceptable end uses for the plastic collected in the program. ACRC was founded in February 1992 by 11 manufacturers, formulators or packagers of such products. The ACRC was an instrumental resource in the development of the ANSI/ASABE S596 Standard, a standard specifying how to handle, clean and recycle pesticide containers. Today, the ACRC has 36 Regular Members and 18 Affiliate Member companies. Manufacturers, formulators or packagers of agricultural pesticide, animal health, specialty pest control, micronutrient, biologicals, fertilizer and adjuvant products can be Regular Members. Any manufacturer of HDPE plastic containers or container components used by the companies that qualify for Regular Membership may be an Affiliate Member. ACRC is funded entirely by member dues. Since 1992, ACRC has collected and ACRC contractors have recycled, over 246,000,000 pounds of HDPE containers. ACRC began collecting in Oregon in 1993, the first year of nationwide collection by the program. Since that time, ACRC has collected approximately 9,900,000 pounds of ag chemical containers in Oregon, which translates to approximately 12,500,000 empty rinsed containers.

In addition to exemption language included in statute, existing exemption language currently in Rulemaking 2, and relevant to the agricultural chemical containers collected by the ACRC program:

(d) Packaging of the following agricultural chemicals:

(A) Pesticides classified as restricted-use under the Federal Insecticide, Fungicide and Rodenticide Act at 7 U.S.C. Sec. 136a and 40 CFR part 152, subpart I, and sold to licensed commercial applicators.

(B) Returnable or refillable intermediate bulk containers containing commercial-use pesticides, fertilizers and agricultural amendments.

(C) Returnable or refillable asset totes, drums, and kegs containing commercial-use pesticides, fertilizers and agricultural amendments.

(D) Rigid HDPE packaging of commercial-use pesticides, fertilizers and agricultural amendments produced by members of the Ag Container Recycling Council or ACRC and eligible for collection by ACRC. This exemption does not apply in any year that ACRC fails to submit data to DEQ, in a form and manner provided by DEQ, that demonstrates ACRC's maintenance of a consistent collection rate and standard of convenience compared with a baseline year of 2023, and that ACRC is recycling the containers at responsible end markets.

ACRC Packaging Material Exemption Request for Rulemaking 2:

As shared in previous communications with OR DEQ, the full scope of products collected by ACRC is **pesticides, animal health, specialty pest control, micronutrient, biologicals, fertilizer, and adjuvant/surfactant products**. The underlined items are all included in the existing exemption language in red above OR in statute. The only category seemingly not included are adjuvant/surfactants. These are the products that are mixed with the other listed products (like pesticides) to help the chemicals spread on the leaf of the plant for proper protection or absorption. They are essential to agricultural practices. Wherever these products are sold or used on farms or nurseries, they would also be exempt by way of 459A.863(6)(b)(K and L). However, in other applications like golf courses, forestry, vegetation management, etc., there would still be a gap – they would seem to not be exempt.

ACRC requests to eliminate this gap in item (D) above, by proposing at least two possible suggestions. Ultimately, ACRC's request is to insure that OR DEQ exempts by rule the full scope of products collected and recycled by the ACRC program, as listed above.

EITHER:

(D) Rigid HDPE packaging of commercial-use pesticides, fertilizers, **adjuvants/surfactants**, and agricultural amendments produced by members of the Ag Container Recycling Council or ACRC and eligible for collection by ACRC. This exemption does not apply in any year that ACRC fails to submit data to DEQ, in a form and manner provided by DEQ, that demonstrates ACRC's maintenance of a consistent collection rate and standard of convenience compared with a baseline year of 2023, and that ACRC is recycling the containers at responsible end markets.

OR the following language would be ideal to ensure that the full scope of existing products being collected and recycled by ACRC, are not inadvertently left out of the exemption:

(D) Rigid HDPE packaging of commercial-use pesticides, fertilizers, agricultural amendments, and other products produced by members of the Ag Container Recycling Council or ACRC and eligible for collection by ACRC. This exemption does not apply in any year that ACRC fails to submit data to DEQ, in a form and manner provided by DEQ, that demonstrates ACRC's maintenance of a consistent collection rate and standard of convenience compared with a baseline year of 2023, and that ACRC is recycling the containers at responsible end markets.

ACRC is happy to explain or discuss the above if further clarification is necessary.

Sincerely,

J. Mark Hudson

J. Mark Hudson
Executive Director

From: [Oluwaleye John](#)
To: [2024 Recycling * DEQ](#)
Subject: Public comment
Date: Thursday, July 11, 2024 10:36:30 AM

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My comment go with civil rights I do to the rule and regulation >

Civil Rights Act of 1964. DEQ does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities. DEQ does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected, or oppose action prohibited, by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

This needed for the request of getting my state ID in respect of the social security citizen

John Oluwaleye
Environmental Justice



OREGONIANS FOR FOOD & SHELTER

1320 Capitol Street NE • Suite B-50 • Salem, Oregon 97301

ofsonline.org; 503-370-8092

A non-profit coalition to promote the efficient production of quality food and fiber while protecting human health, personal property and the environment, through the integrated, responsible use of pest management products, soil nutrients and biotechnology.

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Kim Anderson, Ex Officio
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Oregon Department of Environmental Quality Plastic Pollution and Modernization Act Rulemaking Advisory Committee Re: June 10th 2024 Notice of Proposed Rulemaking, Rulemaking 2

Submitted via email July 15 2024 to: recycling.2024@deq.oregon.gov

Dear Rulemaking Advisory Committee:

On behalf of the members of Oregonians for Food & Shelter, I would like to submit the following written comments to be considered as part of the second rulemaking of the Plastic Pollution and Recycling Modernization Act, regarding covered product exemptions.

Oregonians for Food & Shelter is a non-profit trade organization working to ensure science-based policies related to the critical tools needed by Oregon's natural resource sectors to produce food and fiber and protect against invasive species.

Last year, OFS requested covered product exemptions for pesticides, fertilizers, and agricultural amendments. These exemptions would align with and help clarify an existing statutory exemption for products used on farms and nurseries, which we estimate already accounts for around 90% of the overall market for these products. Second, this would provide harmonization with other state programs including Colorado, and likely Washington once their program is up and running, that have included exemptions for these products. Third, there are health and safety reasons why other states have exempted these products, including protection of health and safety of workers at depots and recovery centers, and ensuring that agricultural chemicals and containers that by law require triple rinsing or not recycling do not enter the recycling stream. Finally, through existing industry recycling programs such as the Ag container recycling council and others, the majority of these products already bypass the commingled system and end up in responsible end markets.

Given the support expressed by the Recycling Council for this exemption request, we again want to reiterate our request for a broad exemption for pesticides, fertilizers, and agricultural amendments as defined in Oregon statute.

We understand that DEQ staff would like to keep household/consumer use products in the program, and a lot of time has been invested researching ways to draw that distinction in rule. We want to reiterate that consumer/household use products are estimated to be 1% or less of the overall market – so separating consumer from commercial will not have a major impact or gain to the program. The majority of these products are already exempted with the farm use exemption, however there are other professional uses of these products that are not currently covered under the exemption.



We also want to point out that the current additional categories proposed in the rulemaking for exemption related to these products represent only a small proportion of commercial use products. Restricted use likely captures less than 5% of all commercial use pesticides. While we appreciate the addition of returnable/refillable bulk containers and drums, etc – these again represent a small proportion of commercially used containers. And finally, although fertilizers and agricultural amendments are noted in the introductory section of the proposed exemption language, the limitations posed by the categories themselves offer few exemptions for fertilizer and ag amendment containers.

Our members are also alarmed at the skyrocketing projected costs of the program, and will be asking for greater legislative oversight as the implementation continues.

We thank DEQ and the Council for all the work toward this exemption, but we want to repeat our request for a simple broad exemption for pesticides, fertilizers, and ag amendments as defined by Oregon statute, the bulk of which are already exempted from the program through the initial bill language. If the goal is to limit the exemption to commercial use only, then we request language that would align with this intent and exempt all commercial use containers rather than a very limited proportion.

Thank you,

A handwritten signature in black ink, appearing to read "Katie Murray".

Katie Murray
Executive Director
Oregonians for Food & Shelter
katiemurray@ofsonline.org

July 15th, 2024

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 2

Dear Members of the Oregon Department of Environmental Quality,

I am writing on behalf of Berry Global Group, Inc., a leading manufacturer of packaging and engineered materials. Berry employs over 40,000 people at more than 250 locations worldwide, including 85 employees at our St. Helens, OR production site. Berry possesses a broad portfolio comprised of many product lines. As part of its retail bag and institutional can liner product lines, Berry manufactures a variety of garbage bags that range from household waste bin and kitchen trash bags to can liners used in construction and janitorial applications.

I appreciate the opportunity to provide comments in response to DEQ's Plastic Pollution and Recycling Modernization Act, Rulemaking 2. DEQ's goals to increase recycling rates and promote the transition to a circular economy for packaging align with Berry's sustainability goals as well as those of many of our customers. As one of the world's largest packaging manufacturers, we understand the role we play in championing environmental stewardship and innovating sustainable solutions. While we look forward to the progress extended producer responsibility (EPR) will bring, I am writing to share my concern with the inclusion of garbage bags as packaging in DEQ's proposed regulations.

With the proposed regulation in OAR 340-090-0840 Covered Products (1)(a), DEQ interprets Section 2 (18)(a)(C) of the Plastic Pollution and Recycling Modernization Act to include garbage bags as "packaging" by listing them as a "materials used in storage." We believe the Department's inclusion of garbage bags in this list to be an overly broad interpretation of the statute. There is a distinct difference between garbage bags and the other items on the list that are traditionally considered packaging. While the other items are designed and marketed for use in storage and moving applications, garbage bags are intended for the disposal of waste.

Moreover, while EPR programs aim to incentivize circularity of covered items, it is unlikely garbage bags can achieve circularity because of their intended use. It is, however, a reasonable expectation that as recycling rates increase with the implementation of EPR, fewer garbage bags will be needed.

As both a manufacturer of packaging and garbage bags, Berry is uniquely positioned to offer commentary on this topic. **We respectfully request that DEQ reconsider its inclusion of garbage bags as packaging for the reasons stated above.** Please do not hesitate to contact me to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Stolz", with a long, sweeping horizontal line extending to the right.

Phil Stolz
EVP & General Manager
Berry Global Group, Inc.
PhilStolz@berryglobal.com



OREGON REFUSE & RECYCLING ASSOCIATION

July 24, 2024

Ms. Roxann Nayar, Oregon DEQ
700 NE Multnomah ST #600
Portland, OR 97232

via email only to: recycling.2024@deq.oregon.gov

RE: Comments on RMA RAC #2 Notice of Proposed Rules

Dear Ms. Nayar:

Thank you for the opportunity to offer comments on the Notice of Proposed Rulemaking 2, continuing the implementation of the Plastic Pollution and Recycling Modernization Act of 2021 (RMA).

Oregon Refuse and Recycling Association (ORRA) is the statewide trade association representing solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate material recovery facilities, compost facilities, and many of Oregon's municipal solid waste transfer stations and landfills.

Five ORRA members – Kristin Leichner, Pride Disposal; Aimee Thompson, Thompson Sanitary Service; Will Posegate, Garten Services; Greg Ryan, Pioneer Recycling Services; and Chris Drier, WM, served on this second Rulemaking Advisory Committee (RAC). In addition to the five ORRA members serving on the RAC, ORRA has a larger group of members dedicated to reviewing the work of the RMA RAC. The five ORRA members bring many years of experience working on these issues, and the larger ORRA group has similar expertise.

Most of the members of the larger ORRA group have actively participated in conversations and worked to develop the RMA since the convening of the Recycling Steering Committee to address China's National Sword policy. ORRA's group of experts has devoted many hours to reviewing documents, discussing possible outcomes, and offering feedback and solutions, both during RAC meetings, and in multiple meetings with DEQ staff and others.

Again, ORRA appreciates the work that DEQ has done, and is doing, and recognizes that many other interested parties are also working hard to implement the RMA. We all have the same goal – implementing a complex law designed with shared responsibility at the forefront, to improve the sustainability and resiliency of Oregon's recycling system. ORRA offers these comments in the spirit of that shared goal, and we look forward to continuing as a partner in this effort.

Process and timing concerns need to be addressed. Just as in the first round of rulemaking, ORRA and its members continue to express concerns about process and timing issues, as they may jeopardize the successful implementation of the RMA. During this RAC process, ORRA and other RAC members again noted that the RAC process moved too fast for well-considered input. The pace of the RAC meetings and the amount of complex, detailed, and sometimes highly technical materials the RAC was expected to review, digest, and understand in advance of the meetings, in order to have thoughtful discussions, combined to threaten the value of the RAC's input. There was often inadequate time for discussion, which meant RAC discussions were often cut off prematurely (with promises to circle back and then not doing so).

After many requests, ORRA appreciated that DEQ did start providing the presentation slides in advance of meetings, which was helpful for all participants, including RAC members and the larger viewing audience. However, the time in the meetings themselves could have been used more effectively – for example, it is unproductive to read slides out loud, word for word, in meetings. There should be an expectation that all RAC members come prepared to discuss topics, and to provide the time to allow them to do so instead of using most of the time to present topics. There were many RAC members in addition to the ORRA members on the RAC who also asked for more time, better facilitation, and more discussion, etc.

It is past time for the DEQ to have a consistent meeting process so that these frustrations stop arising. We appear to be in a remote meeting “mode” for the long haul, and it is a shame if uncorrected process concerns diminish input to the point that public policy is adversely affected. Another request ORRA has made is that DEQ meetings are offered in a hybrid format, to allow for better discussion and the building and maintaining of relationships that are at the heart of good process and successful outcomes for the long term.

ORRA shares in the aspiration of the RMA: that Oregon continues to be a leader and environmental steward in creating a transparent system that fosters environmentally beneficial recycling, beginning with how materials are labeled and packaged, to the choices consumers make, to ultimately getting materials to responsible end markets. ORRA offers comments to these rules with the goal of ensuring that changes to Oregon's recycling system are made in a way that is transparent and truthful so that the public has a high level of confidence and trust that what we are collectively saying can be recycled is, in fact, recycled responsibly.

Issues in the proposed rules. ORRA comments on some sections of the proposed rules, citing the page number and rule notation of the proposed rule, with some notes on specific issues, including the following suggested changes:

1. Definitions in Recycling and Waste Reduction: The new definition of “commingled materials” on page 49, OAR 340-090-010(6) is a good addition to the rules and provides greater clarity and better understanding of what these items are.

2. Multifamily Recycling Space. Page 54, OAR 340-090-0030(7)(b), the timelines for a local government to initiate an implementation plan to ensure adequate space for multifamily recycling are too long. ORRA agrees it is reasonable to have two years to submit the plan to DEQ, or until November 1, 2027. However, to grant two more years to initiate the plan is an unnecessary delay. Other participants in the RMA implementation will be adversely affected by this delay, as they work to meet the requirements of multifamily recycling collection. Most

importantly, the tenants in those properties will be waiting that much longer to be able to recycle materials conveniently. **ORRA recommends that initiation of the plan should begin no later than one year after the plan is submitted, or on November 1, 2028.**

3. The Contamination Reduction Programming Elements. This section, p.56-58, OAR 340-090-0035, includes a number of important elements, in the effort to curtail contamination at the “front end” of the process. This goes to the shared responsibility that is a core tenet of the RMA – everyone in the recycling system has a responsibility to do their part to improve the entire system. However, this section is so heavily weighted in favor of the non-complying customers as to render the programming ineffective, and much of the language in this section is open to interpretation:

- Page 57, under (3)(B), how will “targeted feedback” be provided to the tenants? It is very rare for service providers to have a business relationship with individual tenants, and if the material is collected in a common container, how will anyone know who is contaminating the material? **The rule language should be revised to require communication to the customer only (owner or property manager), with requirements that the customer communicate to the tenants.**
- Under (3)(B)(ii), who decides if 25% of the material by volume is not on the Uniform Statewide Collection List (USCL)? And must the “decider” be a driver, or could it be from route cameras or other possible artificial intelligence options that will continue to evolve? **The rule language should be revised to allow more flexibility in determining the presence of contamination.**
- In addition, and even more importantly, 25% is much too high a threshold, well beyond what DEQ’s most recent studies show the inbound contamination is at processing facilities. It does not make sense to set a number beyond the goal number of inbound contamination. The processors will not be able to meet their outbound contamination goals if the inbound contamination is not improved. **The rule should state contamination of 10% by volume will trigger consequences.**
- As Section (4) is written, ORRA thinks it is unlikely that any multifamily customer/tenant will ever see a financial, or service consequence for contamination. The goal is to help generators be successful, and consequences are not intended to be punitive, but there is a natural consequence to actions – cause and effect – and it should apply to customers and tenants, just as it applies to producers, processors, local governments, and their service providers under the RMA. **This entire section needs to be tightened up to have real value in contamination reduction efforts.**

4. The Recycling Acceptance Lists. This section, starting at page 59, OAR 340-090-0630, includes changes surprising to ORRA, with comments as follows:

- Page 59, **do not delete the definition at (1)(g) for non-metalized gift wrap, nor delete (2)(g) non-metalized gift wrap from the Local Government (LG) Recycling**

Acceptance List. This material is already on the metro-area recycling collection list, and with the addition of (6) on page 63, DEQ is allowing the metro-region to keep its current list in place until the Producer Responsibility Organization (PRO) meets the convenience standard for materials that would otherwise have been removed from the USCL. It will be nearly impossible to educate customers now to remove this material, so processors will get it anyway. Plus, ORRA sees no equitable reason to give a free ride to the producers of this material.

- Page 60, (2)(e), ORRA believes this is supposed to define molded pulp take out containers for ready-to-eat foods. As written, it could include egg cartons. **ORRA suggests a re-write as follows: Molded pulp packaging, excluding food service take out containers.** People will understand what this means, as compared to the current language.
- Page 61, (3), the PRO Recycling Acceptance List. Why is DEQ proposing to delete “through recycling depot or mobile collection events” from this section?
- Page 63, (6), ORRA agrees it makes sense to allow the metro-area to continue to collect an expanded USCL list on a conditional basis, however, it is odd that this decision has been made – now – during the second rulemaking process, when it was discussed and denied during the first rulemaking process. **ORRA will support this language, with the caveat that any approval by DEQ should be contingent upon safety considerations.** Specifically, ORRA opposes the continued collection of aerosol cans. Recently, an ORRA member in the metro-area had a full can of bear spray puncture at a recycling depot. It was unknown what the substance was, and employees were affected and worried. The fire department was called and responded, and the depot was shut down – twice – before the problem was identified. Aerosol cans should be collected through HHW programs, they do not belong in the commingled waste stream.

5. Responsible End Markets. OAR 340-090-0670, on page 64, ORRA disagrees with 50% as an acceptable yield for shredded paper processed into high-grade office paper and carton processed into tissue. There is no justification for the decreased yield standard. **ORRA suggests the yield be set to at least 60%, comparable to other materials listed in this section.**

6. Section-640 is out of order. Housekeeping issue, OAR 340-090-0640 is out of order in the proposed rules.

7. Covered Products. OAR 340-090-0840, page 85, while (1)(c) is directed at food wraps, it is another example of what could be confused for non-metalized gift wrap, and another reason to keep it in place on the LG Recycling Acceptance List.

8. Definitions in Solid Waste General Provisions.

- OAR 340.093.0030, page 110, (18) the Capture Rate definition is understandable, but its application will not affect CRPFs equitably. Unless the USCL material comes straight to a CRPF, without any material removal at a Limited Sort Facility, then the material

characterization at curbside collection will not match the incoming material at the CRPF, and that misalignment will skew the capture rate. **ORRA requests this definition, and the use of the capture rate as a measurement, should be modified accordingly.**

- Page 110, (23) Commingled Recycling Reload Facility (CRRF) and page 116, (86) Recycling Reload Facility (RRF) – neither of these facilities is required to have solid waste permits. How will DEQ, or the PRO, ensure that CRRFs and RRFs manage all materials appropriately under the RMA? There is a reference to performance standards as an enforcement mechanism for these facilities in the proposed definition above at OAR 340-012-0065(m), but ORRA could find no reference in statute or in rule – existing or proposed – that outlines performance standards for CRRFs or RRFs. **ORRA requests that DEQ expound on this question in order to determine if there are sufficient regulatory controls in place to meeting the goal of the RMA, and that means either CRRFs and RRFs should be required to have permits as other solid waste facilities do, or the rules need revision to ensure that performance standards are written to hold those facilities to the same standards as the CRPFs and LSFs, where relevant.**
- Page 117, (101) Source Separate definition – ORRA appreciates this definition amendment. It is important to note that source separation is the process by which recyclable materials are separated from **other** solid waste. Recyclable materials are a part of solid waste up to and until that separation occurs.

9. Place for Collecting Recyclable Material. OAR 340-093-0160, page 124. This is a good update to the previous rule, noting that solid waste permittees will offer a drop off for the LG Recycling Acceptance Materials List with reasonable exceptions, while also noting that they **may** provide drop off for composting and materials on the PRO list, but are not required to do so.

10. Commingled Recycling Procession Facilities (CRPFs) and Limited Sort Facilities.

OAR 340-093-0300, page 126 and continuing.

- Housekeeping issues – page 126, (1)(c), “facilities” should be “facility”. On page 127, (B) - for clarity, the second to last sentence should state, “by capturing the material at its own facility or directing material to a **Limited Sort Facility** (for secondary processing) that”...
- Page 126-127, (3) Recyclable Material Processing Performance Standards, (b) Outbound Contamination, (A) should be revised for clarity as follows:

All USCL material in OAR 340-0090-0630, **whether delivered from a CRPF or a LSF, and** sent to a responsible end market (REM)...
- Continuing in this section at 340-093-0300(3)(A), it is not feasible to require that there cannot be more than 5% contamination by weight in this outbound material, especially at the beginning of the RMA implementation. It is unclear where the 5% number

originated, but regardless, ORRA is not opposed to the number; rather it should be a target to be met over time. Instead of starting with 5%, the rules should match the reality of current inbound contamination in the material as delivered to the first processing facility, whether a CRPF or a LSF, and using an average current inbound contamination number from the results of recent contamination studies shared by DEQ at the Association of Oregon Recyclers' Conference in June 2024 as the appropriate starting point. The study shows the inbound contamination is much higher than previously known and considered in this rulemaking, or the previous rulemaking that ended in 2023.

It is not feasible to begin at a 5% goal, when there will not have been any contamination reduction efforts, nor PRO funding at CRPFs to help combat inbound contamination. **ORRA recommends the 5% goal become effective on January 1, 2028, to allow for contamination reduction efforts to work.** This also supports ORRA's position noted above in 3. Contamination Reduction Programming, that the standards of allowable contamination of 25% before enforcement, and the difficulty of enforcement, need to be revised to give the facilities any chance at all to meet outbound contamination goals.

- Finally, it is important to note that contamination issues cannot be considered in a vacuum, or that one measure is the deciding factor of whether facilities are successful, or failing to meet requirements. As noted above in 8., first bullet, capture rates may not apply equitably to CRPFs, as the material actually received will depend upon whether it came directly to the CRPF from a collection program, or if it went first to a LSF where material, such as cardboard, was removed. If a CRPF receives that presorted material, and the outbound contamination rate is being met, and the residual doesn't have recycling in it, but the capture rate is low (due to the pre-sort), that should still be a win for the system. Under these rules, will that be the result?

11. Living Wage and Supportive Benefits. OAR 340-096-0840, page 135-137.

- Page 135, (1) ORRA disagrees that the definition of a "worker" at a CRPF should be limited to those whose primary work tasks are directly associated with the mechanical or physical activities of processing material at a CRPF. (The definition specifically includes sort line workers and persons performing other materials processing tasks.) So much of the RMA focuses on equity – how is this equitable? Are the other workers who are excluded from this definition not of sufficient value to warrant living wage and supportive benefits? Who decided that? What if this definition were reversed, and only administrative or clerical workers, truck drivers, maintenance or other similar occasional workers were the only ones included in the definition? Would that be equitable to the excluded workers?

In addition to the "on its face" inequity of this definition, ORRA has concerns with how this definition might conflict with current or future employment or pay equity laws.

Finally, the PRO Processor Commodity Risk Fee only covers this subset of defined workers at a CRPF. There is more to ensuring equity than just through this limited definition of a worker, which means that the CRPF will likely be subject to higher

costs that will not be supported by the PRO fee, and that will cause the gate fee for inbound materials to increase.

The EQC has the authority to define a worker for this section of the RMA. **Now is the time to get it right, so for all of these reasons, ORRA recommends revising the rule definition of “worker” to include all CRPF workers.**

- Page 135, (2) and as it references Table A, page 137, the RAC considered information from the [Oregon Office of Economic Analysis](#) in its February 2023 report about Oregon’s population (attached). A few key points from that report:

The mode household Oregon, or the most common type is a 2 adult household with no young children living at home. A bit more than 1 in 3 households in the state fit that description. Remember that for the mode it’s not that it describes the majority of us, but rather the most common. And if we dig into the composition of 2 adult households, 66 percent are married couples, another 15 percent are unmarried partners, 11 percent are other relatives like siblings, or adult children, while the remaining 7 percent are two unrelated roommates.

The dated stereotype of the 2 parent, 2 child household is just 7 percent of all households today in the state.

With this information, and none that countered it, why are the draft rules using the MIT Living Wage Calculator at 0.35 multiplied by the county-specific wage figure for 2 workers/0 dependents added to 0.65 multiplied by the county-specific wage figure for 2 workers/2 dependents? (See footnote 1 on Table A, page 137). The larger percentage is used for the four person household, when state data shows **only 7 percent of all households in the state** are of that composition. **ORRA would revise the calculation to match the Oregon Office of Economic Analysis.** It is unfair to require wages higher than the reality of Oregon’s household make up, and ORRA can see no justification for doing so.

- Page 136, (3)(e)(D), regarding paid holidays, ORRA would revise this sentence to add at the end of the sentence ... (eight hours of work), **at employer’s discretion.** As written, either taking the day off, or being paid for the holiday, are options. An employer must be able to schedule and ensure there are sufficient employees to perform work, and to determine the best approach.

In conclusion, this rulemaking process has been intense, technical, and demanding for all participants. ORRA appreciates the work of the DEQ, as well as every RAC member and every other person attending meetings to add to their understanding of this program and bring their best

ideas to this effort to modernize Oregon's recycling system. There is still a lot to be done, and ORRA and its members are committed to working together to complete this effort and to make Oregon's program succeed.

Sincerely,



Kristan S. Mitchell
Executive Director and CEO

Attachment: Oregon Office of Economic Analysis Report, February 10, 2023

C: ORRA Steering Committee
ORRA Board of Directors
ORRA RAC#2 Workgroup

Oregon Office of Economic Analysis

Oregon Economic News, Analysis and Outlook
Posted by: **Josh Lehner** | February 10, 2023

Fun Friday: Household Composition in Oregon

One benefit of downloading a lot of household data to create different measures of housing cost burdens (<https://oregoneconomicanalysis.com/2023/01/25/oregon-households-struggling-with-housing-costs/>), like residual income and MIT'S Living Wage, is, well, you have a lot of Census data at your fingertips. Let's have some fun ahead of the weekend and Super Bowl.

First, let's revisit middle school. No, not like that. In a fun, math way. Remember mean, median, and mode? The mean, is the average. The median is the midpoint where half of all observations are smaller and half are larger. The mode is the most common observation. See? It is fun. These measures do matter.

Next, let's talk about Oregon's population. In 2021, Oregon's median age was 40.1 years old according to Census. Half us were younger than that and half of us were older than that. The median age nationwide was 38.8. By this measure, Oregon ranks as the 14th oldest state. Based on our office's estimates (<https://oregoneconomicanalysis.com/2022/02/25/oregon-demographics-2022/>), the mode — the single most common age — in 2021 was 30 years old. That means today the most common age in Oregon is 32 years old, as the bulk of the large Millennial cohort enters into their prime-working and first-time homebuying years.

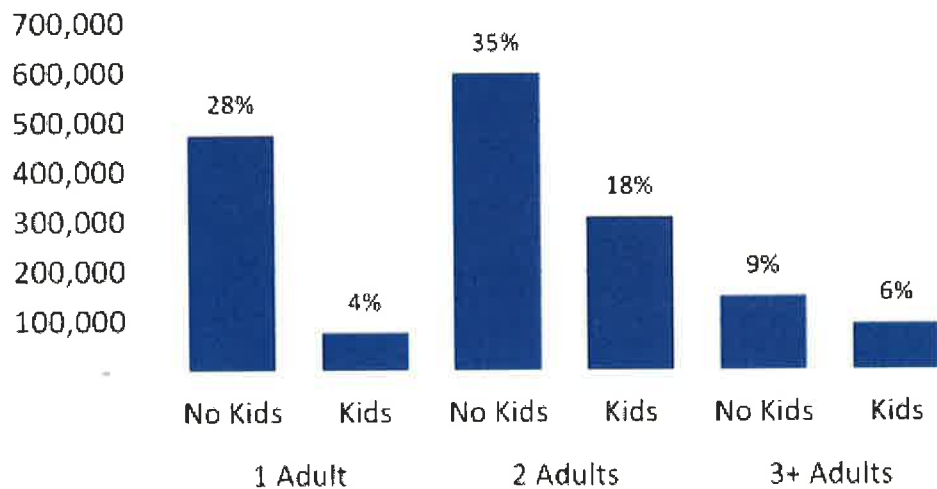
Finally, let's talk about Oregon households. In 2021, Oregon had 1.7 million households. The average household had 2.44 people, ranking the 15th smallest among all states and lower than the 2.54 national average. That relative difference may not seem like much but it is roughly equivalent to 70,000 households locally. That is 3-4 years of new construction activity. And given the household formation boom during the pandemic (<https://oregoneconomicanalysis.com/2022/09/16/oregon-household-formation-boomed-during-the-pandemic-table-of-the-week/>) when people dropped roommates, 2021 household size is smaller than the 2.5 average size in Oregon and 2.6 average size nationally pre-pandemic. Even so, today's average household size is what it was back in 2010 or so.

The mode household Oregon, or the most common type is a 2 adult household with no young children living at home. A bit more than 1 in 3 households in the state fit that description. Remember for the mode it's not that it describes the majority of us, but rather the most common. And if we dig into the composition of 2 adult households, 66 percent are married couples, another 15 percent are unmarried partners, 11 percent are other relatives like siblings, or adult children, while the remaining 7 percent are two unrelated roommates.

If we line up all Oregon households from smallest to largest, and youngest to oldest, the median household in Oregon is a 70 year old married couple without children at home. And if we add an urban-rural dimension to the typical household in Oregon, this 70 year old married couple lives in Springfield.

Oregon Household Composition

Decomposing household size based on number of adults and children



Data: 2021 ACS | Source: IPUMS USA, Oregon Office of Economic Analysis

(<https://oregoneconomicanalysis.com/wp-content/uploads/2023/02/hhcomposition2021.png>)

A few other observations.

The dated stereotype of the 2 parent, 2 child household is just 7 percent of all households today in the state. Now, part of this is the simple life cycle trajectory. Even if a household at one point is a 2 parent, 2 child household, that time, given life expectancies and kids moving out as they get older etc, is likely just about 20-25 percent of their lifetime, which can be bittersweet when you think about it like that. And so taking a snapshot of all households today is great, but it does miss how our lives evolve over time.

Lastly, it is clear that households with no young children (18 or younger) are more common than those with kids at home. Part of that is the age structure, part is the lower birth rate and the like. But you can see that single-person households are the second most common type of household, and we know that [single-person households are a growing share](https://oregoneconomicanalysis.com/2019/06/18/on-the-rise-single-person-households/) (<https://oregoneconomicanalysis.com/2019/06/18/on-the-rise-single-person-households/>) of our society.

Have a good weekend everybody.

Posted in [Demographics](#), [Graph of the Week](#), [Housing](#), [Miscellaneous](#), [News](#) | Tags: [adults](#), [children](#), [composition](#), [household](#), [number](#), [Oregon](#), [size](#)

How are college students accounted for?

Also, as you point out, and individual household's composition changes over time. So is there any way to determine whether a household was for some period, e.g., a "stereotypical" 2 adults and 2 (or more kids)?

It would also be interesting to have a table of HH composition and number of separate sleeping areas.

All of the above (and trends) would be very helpful in more accurate planning for housing needs than just a questionable conclusion from *average* HH size.

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking #2

Submitted by:

PakTech
Jonathan Levy
Manager, Public Policy and Sustainability
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July 24, 2024

Roxann Nayar
Oregon DEQ
700 NE Multnomah
Materials Management
Suite 600
Portland, Oregon 97232

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 2

Dear Ms. Nayar,

PakTech would like to thank DEQ for giving us an opportunity to share our thoughts related to the *Plastic Pollution and Recycling Modernization Act, Rulemaking 2 (Draft Regulations)*. We congratulate DEQ for its yeoman work on developing these regulations and the countless hours of stakeholder input and feedback it has solicited that have led to the release of the Draft Regulations. With that in mind, we hope our comments are received in the spirit they were written as we are interested in seeking clarity with some of the sections and helping to improve the final draft.

Founded in 1991, PakTech's facilities are located in Eugene, Oregon and is a manufacturer of HDPE plastic carrier handles that exclusively utilize recycled resin as a feedstock. We use approximately 1.4 million pounds of recycled HDPE resin per month and is part of our commitment to sustainability and ensuring this material remains in the circular economy. Our commitment to sustainability doesn't end with the use of recycled resin as we also use over 170,000 pounds of recycled fiber per month.¹ From purchasing shipping containers and boxes that contain recycled fiber, to using energy efficient and sustainable power sources, to sustainable water use, we are committed to utilizing sustainable business practices throughout the manufacturing process. Our commitment to sustainability and good manufacturing procedures demonstrates our belief a manufacturing facility can provide a quality product while still being environmentally responsible.

¹ Through the use of purchasing shipping containers made with recycled fiber content. As such, we are a significant market for recycled fiber products and are proud to support the recycled fiber industry.



DISCUSSION:

1. OAR 340-090-0630 – Recycling Acceptance Lists

We note with interest that in this rulemaking there were several changes and modifications to the Uniform Statewide Collection List for several categories. Until we reviewed the Draft Regulations, we were under the impression this section was not up for revision or comment. But since DEQ has taken the step to reopen this section, we feel it is a perfect opportunity to once again advocate for our 4-Pack and 6-Pack carrier handles to be placed on the Local Government Recycling Acceptance List. We believe we meet all of the criteria set out in Section 459A.914 and ask all stakeholders to seriously take into consideration the following:

a. The Stability, Maturity, Accessibility and Viability of Responsible End Markets

PakTech carrier handles are produced using recycled HDPE resin for which vibrant markets exist here and across the country. In fact, this material is typically included in various scrap specifications such as ISRI's Mixed Small Rigid Plastic² specification and HDPE Natural Bottles³ specification.

If an item can be included in an ISRI scrap specification, it is an excellent indication the material is in demand by buyers and sellers of materials. In fact, HDPE is one of the most sought-after scrap plastic resins in the recycling industry.

b. Environmental Health and Safety Considerations

PakTech maintains a myriad array of international and domestic certifications from groups such as:

- a. How2Recycle
- b. Association of Plastic Recyclers
- c. Australasian Recycling Label
- d. CIRCPACK by Veolia (RecyClass)
- e. Association of Plastic Recyclers
- f. SCS Global Services
- g. RE:think Business (BRING)
- h. British Retail Consortium (BRC)
- i. EcoVadis
- j. SEDEX

² Institute of Scrap Recycling Industries, Small Rigid Plastics, https://www.isrispecs.org/orpheus_resource/mixed-small-rigid-plastic/

³ Institute of Scrap Recycling Industries, HDPE Natural Bottles, https://www.isrispecs.org/orpheus_resource/hdpe-natural-bottles/

Such certifications indicate that we are sustainable in a number of categories and are committed to ensuring our products are handled responsibly as well as being environmentally friendly.

c. Anticipated Yield Loss for the Material During the Recycling Process

Although there is some yield loss present in every materials recovery facility during the recycling process, we have received the Association of Plastic Recyclers “APR Design for Recyclability” recognition and do not expect many of our handles will be misdirected throughout the sortation process. In fact, we commissioned a study that indicates an “insignificant 0.03 percent”⁴ of handles may be misdirected to the fiber line.

With regard to our manufacturing process, due to our efficiency and continual improvement, we experience a yield loss of approximately 3%. This material is collected and sold back to our suppliers which can then be incorporated back into the recycling process. We are continually ensuring that as much of the recycled HDPE remains in the circular economy as possible.

d. The Material’s Compatibility with The Existing Recycling Infrastructure

As stated earlier, our handles are made from PCR HDPE and as such are 100% compatible with the current recycling infrastructure. In fact, our material is easily identified by existing technology across the country and the data clearly supports the sortability of PakTech products.

e. The Amount of Material Available

PakTech handles are made of PCR HDPE. This is one of the most easily supplied commodity resins in the recycling industry and has experienced steady growth over the past several years. With a rising interest in eco-friendly products consumers are turning to products that contain recycled resins. This consumer demand is driving the industry and pushing PCR HDPE demand ever higher.⁵

f. The Practicalities of Sorting and Storing the Material

As mentioned earlier, our data shows that our PCR HDPE 4 and 6 pack carrier handles are fully recoverable and sortable. Storing the material is also of little concern to the typical MRF and reclaimer as this material is in high demand. It is doubtful that any recycling facility would seek to store the material long term. As such, these concerns are trivial when applied to our handles.

⁴ Circular Matters, PakTech Can Handles Materials Recovery Facility Flow Study – Sorting Results, January 2024, 7

⁵ Carolyn Fuller, *Analyzing HDPE PCR Resin Market: Global Industry Perspective and Forecast (2023 to 2030)*, December 2023, <http://tinyurl.com/yev5748v>



g. Contamination

As a product manufactured from PCR HDPE, PakTech's handles are a sought-after commodity, and we dispute the term "contamination" very strongly when applied to our products. Using the common parlance of the recycling industry, a "contaminant" is material that a material recovery facility does not want or is not deemed recyclable. The term defines a product, or material, it does not define a process or collection system. If one were to ask any recycler across the country, most would suggest that due to the high value of PCR HDPE, such materials are extremely valuable.

Although our handles are considered recyclable when collected through the depot system those that are collected through curbside collection systems are considered a contaminant. We believe this "dual status" depending on how our handles are collected is misguided. The Draft Regulations place too much emphasis on process, and not enough on the result. The desired result should be to encourage recycling and keep as much material out of the landfill as possible.

As a practical matter, the physical nature of the material has not changed, regardless of which system (depot or curbside) they are collected from. It has been, and always will be recoverable. We have proved this through the passage of industry standard sortation protocols and studies confirming they are easily recoverable. As such, we believe there is no basis to define them as a contaminant, regardless of which system they are collected from.

h. The Ability for Waste Generators to Easily Identify and Properly Prepare the Material

Our product is manufactured using PCR HDPE and conforms to the Association of Plastic Recyclers (APR) Design for Recycling Guidelines and follow the APR size sortation protocol standards. Additionally, the pigmented nature of our handles allows it to be easily identified by optical sorters and we have also been recently made aware that innovative technologies such as artificial intelligence can also recognize its size and shape.

Our continual adherence to industry standards allows our product to be easily recovered and prepared by MRFs and reclaimers across the country.



i. Economic Factors

As stated earlier, PCR HDPE is in demand throughout the recycling industry with more and more brand owners selecting PCR HDPE as their resin of choice for their product. As our handle is manufactured using PCR HDPE, once recovered by the MRF it can be easily included into industry standard scrap specification bales such as the Mixed Small Rigid Plastic⁶ specification or the HDPE Natural Bottle⁷ bale. Both of these specifications trade at a premium as it contains the highest grade and quality plastic.

j. Environmental Factors from A Life Cycle Perspective

From a lifecycle perspective, our PCR HDPE handles provide benefits in the form of lower greenhouse gas emissions, smaller carbon footprint and a much higher degree of sustainability and recyclability when compared to paperboard and other alternative materials. According to a lifecycle analysis that specifically compares our product to competitive paperboard designs:

Paktech rHDPE handles have the lowest potential environmental impacts as this design has the lowest material mass and consists of 100% Recycled Content. The PakTech rHDPE handle, has the overall lightest weight packaging option, and is associated with the lowest climate change impact.

The results show that if beverage manufacturers were to switch from paperboard carton or carriers to PakTech recycled rHDPE handles, they would reduce the potential environmental impacts of beverage can packaging. The paperboard products measured are generally associated with the highest potential environmental impacts⁸

Our 4-Pack and 6-Pack carrier handles meet every criterion necessary to be included as part of the Local Government Recycling Acceptance List. Since DEQ has opened this section for revision, we believe this is an appropriate time to request our 4-pack and 6-pack carrier handles be included in the Local Government Recycling Acceptance List. We look forward positive communications with both DEQ and CAA to make this transition necessary and are happy to supply any data needed.

OAR 340-090-0670 – Responsible End Markets

The proposed rule uses the word “downstream” in subsection (2) (a) and we are unsure of what entity is “downstream” from the CRPF. We consider the term “downstream” to mean “before” or “prior to” another entity in the recycling stream. This is where our confusion lies - it is common practice to consider the hauler or the CRPF to be the first step in the recycling chain.

⁶ https://www.isrispecs.org/orpheus_resource/mixed-small-rigid-plastic/

⁷ https://www.isrispecs.org/orpheus_resource/hdpe-natural-bottles/

⁸ Sphera, *Comparative Life Cycle Assessment of Beverage Packaging*, May 2023, 3.



From the CRPF, material usually goes to a processor or recycler that turns the baled material received from the CRPF into a size reduced form that a consumer⁹ can use as a feedstock to manufacture a new product. Using this model, we are unsure of what entity would be “downstream” from the hauler or commingled recycling processing facility as there are no entities that operate prior to the hauler. We suggest that you use clarifying language to define “downstream”. If the regulations are referring to entities that take materials that have been collected and processed by the CRPF, then we suggest using the term “upstream” instead.

OAR 340-090-0830 – Contamination Management Fee

We have significant concerns with the concept of a “contamination management fee” and believe this rule will hinder the recycling of recyclable materials. While we are aware this fee is part of the statute and DEQ has no option but to develop rules to put it in practice, we believe the way this rule is written may reinforce the public’s perception that “recycling doesn’t work” and hinder successful recovery of recyclable materials. We take this view because the fee is applied to those commingled recycling processing facilities that remove covered materials and dispose them.

As stated in the rule:

*“A producer responsibility organization shall pay a commingled recycling processing facility...**for the cost of removing and disposing of covered products**¹⁰ that are contaminants as provided by this rule.”*

Based on this text, the rule very clearly describes the purpose of the fee, which is to reward CRPFs to dispose of covered materials. We question why the Draft Regulations would reward a CRPF for landfilling materials that could be easily sent to a responsible end market.

At this juncture, we must ask the question “how can a covered material that is recyclable be considered a contaminant?” Materials that can be recycled are, by definition, not contaminants. While the question is rhetorical, the impact on the recycling system is practical. For example, our HDPE carrier handles are made exclusively of recycled feedstocks and have passed industry standard protocols such as APR’s “Evaluation of the Two Dimensional/Three Dimensional (2d3d) Sorting Potential of a Whole Article”¹¹. Such industry standard protocols are used throughout the country to evaluate the sortability and recyclability of materials. PakTech’s 4-Pack Can Carrier and 6-Pack Can Carriers have both received APR’s highest evaluation of “APR Design® Preferred”. This designation indicates our can carrier handles do not pose a problem for material recovery facilities to properly sort our products. As we have mentioned elsewhere, we believe the Draft Regulations should focus on the result, and not the collection method to keep materials in the recycling stream.

⁹ “consumer” in this context means an entity that uses sized reduced material as a feedstock to manufacture a new product

¹⁰ Bolded text to add emphasis

¹¹ <https://plasticsrecycling.org/sortation-nir-metals-size>

As such, this rule may limit the ability of the state to meet its recycling goal as materials that are highly sought after and easily recycled will be sent to the landfill in order for the CRPF to receive the fee.

To make the situation more confusing, it appears that CRPF's are allowed to market covered materials that are eligible for the fee.

Specifically, section OAR 340-090-0830 (4)(a), states:

“a commingled recycling processing facility may include in the contamination management fee all tons of Oregon-generated covered product contamination processed and marketed, provided that the covered product is accepted and desired by the responsible end market and all other standards for reporting and responsible end markets are met, as stated under OAR 340-096-0310”

If a CRPF can successfully recover material from the recycling stream and market that material, they are in essence proving the material is not contamination but a highly valuable resource. We believe that materials that can be successfully recovered and marketed should not be placed on the PRO Recycling Acceptance List, but rather the Local Government Acceptance List. Such materials have value, can be easily sorted, recovered, and have viable end markets that are looking for these materials.

Materials that can be recovered should be sent to an end market, and the Draft Regulations should discourage whenever possible a CRPF from sending this material to a landfill. Unfortunately, CRPF's that decide to landfill recyclable materials such as our 4-Pack and 6-Pack carrier handles in order to receive the fee will be disposing of valuable material and hindering the state from reaching the recycling rate goals that are clearly set out in statute. Additionally, materials that are sent to a landfill instead of an end market will reinforce the perception in the minds of the public that “recycling is a myth”. This is because they will see that after all of their hard work in segregating and placing recyclable material in the curbside bin, this material is still going to a landfill. They will not understand the intricacies or details of an arcane rule that is far removed from the public consciousness, nor will they understand that the CRPF is landfilling such materials in order to receive a fee instead of doing the right thing and finding markets that would accept it.

We strongly urge DEQ to reconsider the rule as currently written and to revise accordingly:

1. Covered materials that have been successfully recovered and sent to a responsible end market should be transitioned off of the PRO Recycling Acceptance List as expeditiously as possible;
2. Covered materials that are successfully recovered and deemed recyclable but are disposed of and sent to a landfill **should not** be eligible for the Contamination Management Fee;



3. Materials that are disposed and sent to a landfill and are not covered materials **should be** eligible for the Contamination Management Fee.

We look forward to working with all stakeholders and continuing this dialogue to create a fee that will reward CRPF's for disposing of contamination and not covered materials that can be easily recovered and recycled.

OAR 340-090-860 – Producer Definitions

We applaud DEQ for clarifying the definition of “Producer” and including in the definition those entities that direct the manufacturing of an item, including specifications for an item’s packaging. While this language provides more clarity to the definition and provides a greater understanding of who is, and who isn’t a producer, we suggest DEQ go one step further and include a definition of “component” and specify that manufacturers of component parts are not considered producers. We suggest the DEQ consider the following language:

“Component” with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function. Manufacturers of “component” parts are not considered producers.

We believe that adding such language would further refine and add clarity to who is considered a producer. Such clarity allows DEQ to focus its efforts on where it belongs, namely, the producers that are directing the production, marketing, and sale of the products the RMA is meant to regulate.

OAR 340-090-0900 through 0940

We applaud DEQ for applying a science-based methodology to determine the impact covered materials will have on Oregon’s environment. At PakTech we have conducted such lifecycle analysis of substituting our product with a paperboard alternative. In almost every category, our product provides both economic and environmental advantages over the alternative. We are concerned, however, that due to the placement of our carrier handles on the PRO Recycling Acceptance List and not the Local Government Acceptance List, stakeholders that are not sophisticated enough to understand that our materials are recyclable may choose to use more energy intensive, harder to recycle alternatives. Such substitutions will increase the amount of material that is sent to landfill, produce more greenhouse gas emission, and further exacerbate climate change.

To prevent such harm to the environment, we suggest adding language to this section that requires producers to justify through a lifecycle analysis they are using materials in their design that provide significant benefits to the environment, not harm responsible end markets, and in the case of plastic, provide significant reductions in virgin plastic and increased usage of recycled content. Such justifications should be reported to DEQ and be open to public inspection.



Finally, while we approve the use of a life cycle approach to determine the impact covered materials have on the environment, we are concerned there are specific criteria that single out plastic. This would appear to show a bias against plastic and cause plastic to not perform as well as other materials. No other material type will have to overcome such bias and in fact, may benefit from it. We ask that such bias be removed from the LCA criteria.

Conclusion

We look forward to working with all stakeholders in this process to develop rules for the RMA that will ensure that the maximum amount of material is recycled and handled responsibly.





July 24, 2024

To: DEQ Oregon

Re: Letter of Comment re: Modernization Act Rulemaking 2,

Submitted via email to recycling 2024@deq.oregon.gov

Dear DEQ staff,

My name is Nicole Janssen and I am President of Denton Plastics in Portland, OR. We are a family-owned recycling business that has spent more than 40 years pioneering plastics recycling into custom blends that are pelletized or pulverized for reuse by local companies.

I'm writing to you today about the Responsible End Market (REM) regulations under the Recycling Modernization Act Rulemaking 2, and to request that those regulations proposed do not create more constraints for recyclers like us, who have been responsible manufacturers for over 40 years. The focus should be on the bad actors who are not being honest about their business practices. I'm concerned now that the voices of REM representatives are not at the table and are not being heard. I have been engaged with the Oregon Recycling Steering Committee, which created legislation SB 582 that passed in 2021. I work with Metro and DEQ by engaging in all the work group calls, as well as serving on the Governor's Advisory 2023 "Truth in Labeling" committee. However, there has not been strong engagement with recyclers like myself in developing these end market standards.

Denton Plastics recently added a wash line to our operations almost 2 years ago, and we now work with residential post-consumer plastics that we formulate into post-consumer recycled PCR resin. We are currently under the State's water permit management system for our wash line. In addition, we are PCR-certified for our post-consumer resins. We have a Quality Management system, material traceability procedures and we currently reporting annually to DEQ on our post-consumer recycling numbers. In short, we are a responsible, local market for Oregon's discarded plastics packaging, the same type of market these regulations should be prioritizing.

Currently, the proposed REM regulations will place a burden on local companies like ours by asking us to give up confidential information regarding our customers and the industries where PCR resin is used. Instead of helping us, it harms us. Our customers would find this is another layer that could discourage PCR demand or push our customers to buy PCR from other states or countries that do not require this disclosure. There seems to be no incentive in creating greater demand with the proposed regulation, meaning there is nothing that helps us to better sell our product, which would enable us to accept more materials and increase Oregon's recycling rate.

What we need to help local recyclers become successful with this new legislation coming into effect next year is greater demand for buying PCR content, remove the requirement to disclose our confidential buyer information, and a simplified, more streamlined process to support and prioritize local responsible recyclers rather than lumping us in with the bad actors. That is how we will also help complete the circle of sustainable materials to be attainable long into the future of Oregon's recycling programs.

I hope to continue the dialogue and to be a voice at the table once again, along with other regional partners.

Thank you,

Nicole Janssen

President, Denton Plastics

Phone: 503-257-9945

Toll Free: 1-800-959-9945

18811 NE San Rafael St. Portland, OR 97230

www.dentonplastics.com



July 24, 2024

Attn: Roxann Nayar
Materials Management
Oregon DEQ
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

Re: Public Comment to Draft Rules Published May 29, 2024

Dear Ms. Nayar:

We appreciate the opportunity to submit public comments to the Recycling Modernization Act's, Rulemaking 2 process.

As a company founded solely to help households reduce waste, Ridwell strongly supports Oregon's Recycling Modernization Act (RMA) and looks forward to the opportunity to support its successful implementation and achieve the state's policy goals.

Ridwell provides a supplemental diversion service to households, collecting materials for reuse and recycling that are not eligible to be collected through on-route franchised recyclable material collection. If not collected by Ridwell, these materials are often either deposited in the landfill or inadvertently placed in the commingled recycling bin, contaminating the recyclable material sent to the commingled recycling facilities. Put simply, Ridwell's service increases recycling, decreases contamination at commingled recycling facilities, and helps drive the development and expansion of responsible end markets for harder-to-recycle items.

Our comments to the draft rules aim to clarify how supplemental diversion services like Ridwell can support the successful implementation of the Act and increase the variety and volume of materials collected for recycling. Our comments are organized by topic in the order they are presented in the Notice of Proposed Rulemaking, with specific line item edits to the draft and adopted rules shown in Attachment A.

Topic 1. Recycling Processor Obligations

A Reload Recycling Facility definition. We propose a clarification to the definition of "Reload Recycling Facility," to distinguish it from "Commingled Reload Recycling Facility" and "Commingled Recycling Facility." In order to better effectuate the use of these two different terms for facilities, we suggest additions to the definition of "Reload Recycling Facility" in OAR 340-093-0030 to clarify that it handles "source separated materials," including "covered products" and "recyclable materials." Having clarity around these terms will promote precision

in regulating these facilities, while also ensuring that the permit requirements apply to facilities handling all source separated materials, not just those handling “recyclable materials.”

B. Permit Action. We also propose that “Reload Recycling Facility” be added to the category levels for permit action in OAR 340-093-0105.

Topic 2. Covered Products and Covered Products Exemptions

A. Covered Product Collections by the PRO

While the PRO’s primary avenue to collect covered products on the PRO Recycling Acceptance List will be the recycling depots and collection events outlined in ORS 459A.896(1)(a) – (c), importantly, the PRO is also authorized in ORS 459A.896(1)(d) to use “other arrangements” to meet collection targets.

Supplemental services like Ridwell are examples of these “other arrangements” and have demonstrated over the last several years that there is demand for services that provide a convenient option for those who are unable or unwilling to use recycling depots, drop offs, or collection events, but still desire to recycle more than they can through their curbside service. Such supplemental services like Ridwell have also been an important tool for developing responsible end markets for particularly challenging materials, shifting community awareness and expectations around hard to recycle items, and facilitating expansion of reuse opportunities. As “other arrangements,” these services are outside the limitation on charging the public set forth in OAR 340-090-0650(1)(b) and therefore will only be used to supplement the existing networks provided free of charge.

For example, the strong willingness of tens of thousands of Portland area households to source separate batteries, plastic film, and plastic clamshell containers through Ridwell prompted a renewed interest in these items across the region. This interest led to the development of multiple new recycling opportunities, expanded curbside programs, new dropoff opportunities, and new supplemental service options that have collectively kept millions of pounds of these common household materials out of the landfill.

To ensure that the PRO has the opportunity to leverage these types of other arrangements to further the success of their work and the goals of the program, we propose the below revisions:

- ***Definitions.*** Defining “supplemental collection services” as “a service that collects source separated materials, including covered products, for reuse or recycling, not collected by a collection service franchise holder under ORS 459A.085” (OAR 340-090-0010 Definitions).
- ***Supplemental Collection Services and valet services.*** Clarifying that “supplemental collection services” can be used by the PRO as “other arrangements” under ORS 459A.896(1)(d) to meet convenience standards, performance standards, collection targets, and also as a valet service to support populations that may otherwise find it difficult to participate in service at collection points (OAR 340-090-0640).
- ***Reporting and Responsible End Markets.*** Requiring that “supplemental collection

services” must meet all reporting and responsible end market requirements (OAR 340-090-0660 Collection Targets and OAR 340-090-0670 Responsible End Markets).

Source separate

We also propose minor changes to the definition of “Source Separate” in OAR-340-090-0010 to clarify that it applies to the source separation of all materials, not just “recyclable materials.” This clarification helps to support the State’s goals of expanding the variety of materials eligible for recycling beyond those identified as “recyclable material.”

B. Covered Product Exemptions

Finally, we offer additions to OAR 340-090-0840(3)(a) that clarify avenues for how covered products seeking an exemption can be collected and stored before being transported to responsible end markets.

Thank you again for the opportunity to submit public comments and support the development and implementation of the RMA and the Department’s overall efforts to reduce waste and protect our environment.

Sincerely,

A handwritten signature in black ink that reads "Caleb Weaver" with a long horizontal flourish extending to the right.

Caleb Weaver
Vice President of Public Affairs
Ridwell

Attachment A

Topic 1: Recycling Processor Obligations

Our proposed revisions to the draft rules are in blue, bold and underlined and the draft rules are in black text, bold and underlined, as written in the May 29, 2024 Notice of proposed rulemaking.

A. Definitions. OAR 340-093-0030

(85) Recycling Reload Facility” means a facility other than a recycling depot where source separated recyclable materials, including covered products and recyclable materials, are received, consolidated and made ready for transport to another location for processing or to a responsible end market.

B. Categories for Permit Actions. OAR 340-093-0105

We propose adding new and renewal “recycling reload facility” permits to Category 2 or 3 of OAR 340-093-0105.

Topic 2: Covered Products and Exemptions to Covered Products.

Our proposed revisions to the draft rules are in blue, bold and underlined and the draft or adopted rules are in black regular font text, as written in the May 29, 2024 Notice of proposed rulemaking.

A. Covered Product Collections

1. Definitions OAR 340-090-0010

(43) "Source separate" means that the person who last uses material, including covered products and recyclable material, separates the ~~recyclable~~ material from other solid waste.

(44) “Supplemental collection service,” means a service that collects source separated materials, including covered products, for reuse or recycling, not collected by a collection service franchise holder under ORS 459A.085.

2. OAR 340-090-0640. Convenience Standards.

1. For purposes of ORS 459.896(1) and this rule:

(g) In accordance with ORS 459A.896(1)(d), a producer responsibility organization may use other arrangements, including a supplemental collection service, for the collection of covered products to meet collection targets, convenience standards and

performance standards.

2. Minimum number of collection points. For purposes of this section a collection point is a location that accepts from the public one or more materials on the Producer Responsibility Organization Recycling Acceptance List pursuant to OAR 340-090-0630(3) and which meets all performance standards as described in OAR 340-090-0650. A producer responsibility organization must provide the following minimum number of collection points:

(h) A producer responsibility organization must describe in its program plan how it will provide enhanced access to recycling of materials on the producer responsibility organization acceptance list for populations that may otherwise find it difficult to participate in service at collection points (for example **use of a supplemental collection service to provide a** valet service for vehicle users in wheelchairs and partnering with service organizations that work with homebound populations).

3. Reporting of Covered Product Collection

OAR 340-090-660 Collection Targets

(1) Collection Targets Generally. A collection target or collection rate is a percentage of total amount of a material generated and is calculated using weight.

(a) For each material on the producer responsibility organization recycling acceptance list pursuant to OAR 340-090-0630(3), for which collection targets are established, a producer responsibility organization must report, in the annual report required under ORS 459A.887, the weight of collected materials, an estimate of the weight of materials generated, and the ratio of the two, where the weight of collected materials is the numerator and the estimate of weight of materials generated is the denominator. For materials without collection targets only the weight of collected materials must be reported. **A supplemental collection service must report the weight of collected covered products on the producer responsibility organization recycling acceptance list to the producer responsibility organization.**

(b) A collection rate will be calculated by dividing the weight of materials collected (numerator) by the weight of materials generated (denominator).

(g) For covered products collected that are not on the producer responsibility organization recycling acceptance list, a producer responsibility organization must report the weight of collected covered products in the annual report required under ORS 459A.887. A supplemental collection service must report the weight of collected covered products to the producer responsibility organization to include in

[its annual report.](#)

4. Covered Products delivered to Responsible End Markets

OAR 340-090-0670 Responsible End Markets

(3) Implementation of the responsibility standard by a producer responsibility organization

(b) For materials described under ORS 459A.869(7)(a) and any other materials collected by a producer responsibility organization (including collected through contract with a producer responsibility organization [or collected by a supplemental collection service](#)), a producer responsibility organization must complete the step provided by paragraph (a)(A) by the start date of the program (as defined in OAR 340-090-0720). For materials delivered to end markets for recycling on or before June 30, 2026, the step required under paragraph (a)(B) must be completed by July 1, 2027. For materials delivered to end markets for recycling after June 30, 2026, a producer responsibility organization must complete the step provided by paragraph (a)(B) within 12 months of first delivery to the end market.

B. Covered Product Exemptions

OAR 340-090-0840 Covered Products

(3) For purposes of ORS 459A.869(13):

(a) Collection services not provided under the opportunity to recycle include but are not limited to the following.

(B) Any collection of materials from residential generators, [including collection by a supplemental collection service](#), that is not used by a local government to comply with ORS 459A.005 or .007 and sends materials directly to end markets. [Materials may be stored in the interim at a permitted facility, provided such storage and related costs are not funded through ORS 459A.890.](#)



July 25, 2024

Oregon Department of Environmental Quality (DEQ)
ATTN Roxann Nayar, Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Proposed Administrative Rules for Plastic Pollution and Recycling Modernization Act

Dear Ms. Nayar and team,

Thank you for the opportunity to submit comments on behalf of Upstream, Lanin Iman, and GAIA regarding the draft packaging Extended Producer Responsibility (EPR) administrative rules for Oregon's Plastic Pollution and Recycling Modernization Act (RMA). Upstream is a US-based non-profit and leading change agency for the reuse movement in the US and Canada. We accelerate the transition from our current throw-away economy to one that is regenerative, circular, and equitable by normalizing reuse, growing and supporting the reuse industry, and creating an enabling policy environment for reuse. Lanin Iman is a multilingual natural resources and sustainability consultancy based in Oregon, and working in the U.S. and across Latin America. The Global Alliance for Incinerator Alternatives (GAIA) is a global network of grassroots organizations catalyzing a global shift towards a zero waste strategy by strengthening grassroots social movements that advance solutions to waste and pollution. We envision a just, zero waste world built on respect for ecological limits and community rights, where people are free from the burden of toxic pollution, and resources are sustainably conserved, not burned or dumped.

Oregon DEQ ran a thorough, thoughtful process to draft these rules, and we thank the Department for its extensive efforts to provide as many opportunities as possible for us and other organizations to weigh in. We were honored to be appointed to the second Rulemaking Advisory Committee (RAC) for the RMA and appreciate this chance to provide further comments on the proposed rules, particularly as they pertain to reuse. As we have noted in earlier comments, packaging EPR programs like Oregon's represent a vital opportunity to scale reusable packaging systems. **According to [DEQ's own estimates](#), even flawless recycling implemented nationwide could only deliver roughly one third of the necessary greenhouse gas emissions reductions needed within the packaging sector to live within our planetary**

boundaries. The RMA must emphasize source reduction and reuse over recycling and other forms of downstream management if we wish to address the significant carbon footprint of consumer goods.

Overall, we support DEQ's proposed rules, but do suggest some revisions to strengthen the program and optimize reuse outcomes. We also offer comments on other critical areas of the program, such as living wages and benefits, responsible end markets, and proposed covered product exemptions. Our detailed comments are outlined below.

Sections pertaining to Reuse:

OAR 340-090-0690 Producer Responsibility Organization Fees - Waste Prevention and Reuse Fee

The proposed regulatory language sets a total cap of \$15 million per year for the Waste Prevention and Reuse Fee. While we appreciate that this amount has increased from the \$10 million cap originally considered by the RAC, **we suggest entirely eliminating additional caps on the Waste Prevention and Reuse Fee, which is already limited to 10% of the three-year average of overall program costs in statute.** Reuse is a significantly more beneficial treatment of packaging than recycling in nearly every case; further restricting these funds is inconsistent with DEQ's commitments to sustainable materials management. If the Department were to truly align program funding under the RMA with its own materials management hierarchy, the vast majority of program funds would be directed towards packaging reduction and reuse programs, with a small amount of remaining funds allocated to recycling.

In an ideal scenario, demand for the Waste Prevention and Reuse Fund will increase over time as reusable packaging and foodservice ware gain market share. DEQ should ensure that as much funding as possible is available to accommodate this increased demand over time. Understanding that this program is complex and there may be a learning curve associated with administering these funds, our organizations could support a cap of \$15 million per year (adjusted according to the Consumer Price Index) for the first program plan cycle only. We feel that any additional funding cap beyond the first plan cycle will harm the program and perpetuate a perverse emphasis on downstream materials management.

Additionally, **we urge DEQ to strike the proposed language allowing the department to reduce the waste prevention and reuse fee in a given year if the full amount is not required to administer and implement the program in that year.** As worded, this language limits DEQ's flexibility to develop a program spanning multiple years, providing desperately needed long-term funding for reuse programs. By far the most compelling funding for the buildout of reuse infrastructure and systems is multi-year grant funding, with most large-scale reuse programs needing years to realize their full potential and achieve success. DEQ should avoid unnecessary administrative complexity and arbitrary time constraints on waste prevention and reuse grants to maximize impacts from eligible projects across the state.

OAR 340-090-0900 through OAR 340-090-0950 - Life Cycle Evaluation (LCE) Rules

Our organizations strongly support the proposed high standards for evaluation and disclosure of life cycle impacts from products sold or distributed by large producers. The resulting transparency in product and

packaging impacts will increase consumer trust in sustainability claims on everyday goods and incentivize producers to minimize the negative impacts of their products and packaging.

However, **we believe DEQ should include stronger incentives for producers to reduce product and packaging impacts by requiring the producer responsibility organization to collect malus fees (i.e., higher fees) from producers whose life cycle evaluations (either mandatory or voluntary) show substantial *negative* product or packaging impacts.** We have found that an over-emphasis on bonuses and an under-emphasis on malus fees does not satisfactorily influence packaging design in existing EPR programs. For instance, under France's packaging EPR eco-modulated fee structure, [malus fees account for just 5%](#) of the total value of eco-modulated fees and they are disproportionately applied to paper packaging (roughly 93% of malus fees are applied to paper in France). A [recent analysis of France's Anti-Waste and Circular Economy Law](#) conducted by the European Environment Agency revealed that packaging waste has *increased* over the past four years in France and the program is not on track to meet its recycling or waste reduction targets.

France's eco-modulation structure also [provides a cautionary tale](#) when it comes to the overall weight of eco-modulation factors versus base fees. As of 2022 in France, eco-modulation contributions from producers totaled less than €60 million - less than 10% of the total fees collected (over €900 million). In order to truly influence producers' packaging choices, eco-modulation incentives must play a significant role in the overall fee structure. This under-use of eco-modulation as an overall fee factor in France has failed to push producers to choose more sustainable packaging at scale, which is why France's packaging EPR scheme was [recently amended](#) to incorporate explicit reuse requirements. **It is imperative to heavily weight eco-modulated fees - especially malus fees - against the base fees for an EPR program to ensure that program targets are met without needing to amend the statute in future years.** Charging malus fees for substantially negative environmental impacts will help achieve this goal.

Additionally, the LCE rules must establish a thorough and fair framework for evaluating reusable packaging and products and comparing them to single-use alternatives. We strongly recommend aligning the LCE definitions with [Upstream's recommended definitions](#) for reusable packaging and products, which [differentiate between returnable reusable and refillable formats](#). The resulting incentives should align with common sense and proven LCE results, **providing greater incentives for returnable reusable packaging systems, lesser incentives for refillable packaging and products, and no discounts or incentives for single-use packaging associated with reusables**, even if these single-use materials help to enable reuse systems (e.g., a single-use sachet containing a concentrated dish detergent to which a consumer can add water in a refillable container at home). **With the recent increase in market share of *refillable* packaging and associated claims of sustainability, it will be critical to require producers to calculate anticipated and actual *refill* rates and associated break-even points for any *refillable* packaging products they market or distribute.** As written, the rules will not require this because refillables are not captured under the definition of reusable packaging and therefore are not subject to the reuse-related LCE provisions. We suggest including a definition of *refillable packaging* within OAR 340-090-0900, as well as a parallel section to OAR 340-090-0930(2)(e) that outlines similar requirements for developing a life cycle inventory for evaluation of refillable packaging.

We further suggest defining use/reuse cycles, as well as refill cycles, in accordance with applicable international or national standards. Generally speaking, a *reuse* cycle is considered complete when a package or product has been emptied by the consumer, returned to a producer or third party system, reused for its original intended purpose in its original format, and *returned to the market*. A *refill* cycle is considered complete when a consumer has emptied the packaging, obtained a new supply of the product intended to be used, and *refilled* the packaging with said supply.

Additionally - and especially important given [several recent examples of industry-funded life cycle assessments that inaccurately claim reusables are poor environmental performers](#) compared to their single-use counterparts - it is crucial that the LCE framework addresses *all* of the necessary considerations for conducting a life cycle assessment for reusables. In an [open letter](#) to the European Commission, 58 Life Cycle Assessment researchers across Europe outlined eight crucial parameters for a robust life cycle evaluation of reusables, especially when compared to their single-use alternatives. Nearly all of these criteria are satisfactorily met by the proposed rules, and we applaud DEQ for its thoroughness and thoughtfulness in this regard. However, we do suggest (in red font) the following minor clarifications to fully align any producer evaluations of reusables with these criteria:

*(4) Break-even point means the number of reuses required for the environmental impact of a reusable packaging product to equal the environmental impact of an alternative single use covered product. Any additional reuse cycles of a reusable packaging product beyond the break-even point would result in **increased** environmental savings.*

*(C) Notwithstanding Subparagraph (B)(i), if a covered product is a reusable packaging product the system boundary shall include the use related activities associated with recovering, washing, sterilizing, and redistributing reusable packaging products. **For comparisons of reusable packaging with single-use packaging, use related activities and emissions shall also be considered for the single-use packaging.***

*(B) If a producer transitions a covered product from single-use to reusable and seeks the fee adjustment pursuant to ORS 459A.884(4) and OAR 340-090-0910(3)(b), projections of the information required in Subparagraph (A)(i)-(ii) of this Subsection, rather than actual data, may be used for evaluation for the first three years. Thereafter, a producer shall use actual data to perform the evaluation. **Data shall be obtained using real-world tracking of reusable packaging assets across the entire state for each individual SKU and shall be consistent with applicable global and national standards.***

Additional Sections:

OAR 340-090-0840 Clarifications to the Definition of Covered Products

Overall, we do not support exemptions for specific types of packaging or products under EPR legislation. One of the major benefits of legislating EPR programs is to level the playing field among producers and ensure all pay their fair share into the system. Exemptions create free riders, requiring other producers to cover the costs to manage exempt packaging and products. They should only be granted when there is

a need to create strong financial incentives among producers. Furthermore, the RMA does not require producers to change their packaging - it merely incentivizes them to do so. It thus logically does not follow that producers who are unable to innovate their packaging and products according to the RMA's incentive structure should be exempt. Producers who truly can't innovate - and this is a much smaller group than typically requests exemptions under EPR programs - could perhaps be exempted from eco-modulated fees to avoid them having to pay unavoidable fines; but beyond this, they should be required to participate in the program.

The proposed rules would exempt Class II medical devices that are labeled as sterile and have a 510(k) premarket notification on file with the federal Food and Drug Administration. **We suggest DEQ do not exempt such devices, which include common consumer goods such as contact lens solution and blood lancets** (see examples in Appendix A) that can easily be innovated to maximize their sustainability. Packaging from these everyday household staples will end up in Oregon's recycling system regardless of its exemption status, and will therefore represent common free rider contamination in the system. DEQ should require medical packaging producers to pay their fair share of system costs.

Further, the proposed rules would exempt rigid HDPE packaging of commercial-use pesticides, fertilizers, and agricultural amendments produced by members of the Ag Container Recycling Council (ACRC) and eligible for collection by ACRC. While we appreciate that ACRC runs a voluntary collection and recycling program, the proposed regulatory language allows for self-reported data from this program to qualify this packaging for a full exemption from the RMA. This is too much leniency for an industry that produces harmful toxic chemicals and, by association, packaging contaminated with these toxic substances - even if limited to commercial uses. **We suggest that DEQ update this language to require an independent audit of ACRC's collection and recycling rates and end markets.** The audit should reveal equal or better results from ACRC's program to those that could be achieved - and are achieved in practice for similar materials - under the RMA in order for these containers to qualify for an exemption. **Ultimately, no product should be exempt from the RMA unless it can verifiably demonstrate that it is out-performing - or at the very least performing on par with - the EPR system.**

OAR 340-090-0035 Contamination Reduction Programming Elements

Our organizations urge DEQ to be cautious about creating consequences for contamination that result in revoking recycling services from customers. This may lead to an inequitable system with major gaps throughout. This framework also puts unwarranted responsibility on residents rather than producers, which acts in direct opposition to the purpose of the RMA. Instead, **DEQ should emphasize robust community engagement and education over financial penalties for residents with high and continuous contamination.** Continued contamination can often be the result of poor quality outreach, including confusing materials and poor distribution, along with potential cultural traditions and differences. Customers should always be given the benefit of the doubt and provided multiple opportunities - certainly more than three - to improve their recycling performance. DEQ should require producers to host educational public workshops to engage with communities, and to tailor educational materials to the needs and challenges of each community. Several of these workshops should take place each year within the first five years of RMA implementation, followed by at least two annual workshops thereafter.

A strong emphasis on community engagement and education is needed for DEQ to maintain the goal of providing recycling services to everyone in the state, and not just to the individuals who can respond to a notice or financial consequence.

OAR 340-090-0670 Responsible End Markets

The proposed regulatory language requires commingled processing facilities to verify responsible end markets to which they deliver materials within a 12 month timeframe. While we feel this is reasonable for the first few years of the program as processing facilities and end markets alike become accustomed to the new requirements, it is likely unnecessary and potentially risky to allow a full year for responsible end market verification in perpetuity. **We suggest that DEQ add additional language specifying that for materials delivered to end markets for recycling after 2028, verifications should be completed within 6 months, and after 2030 they should be completed within 3 months** - or some similar progressively shortened deadline for end market verification over time that is practicable given the verification process yet stringent enough to limit the volume of materials potentially sent to *irresponsible* end markets before verification is complete.

We also urge DEQ to ensure there is sufficient tracking and enforcement of environmentally sound management should any instances arise wherein the entity with physical possession of materials does not also have legal possession as outlined in the proposed rules. It is important to ensure that all physical handlers of material are meeting the “environmentally sound” standard, including willingness to be audited and monitored, avoiding release into the environment, and demonstrating an adequate emergency response and environmental health, safety and management plan from the point the material is collected to the time it is received at the end market.

Most importantly: We strongly urge DEQ to ensure that feedback and input from fenceline and frontline communities along the recycling supply chain is directly incorporated into the responsible end market certification process. This is essential in ensuring the RMA is rooted in the concepts of equity and justice. **Specifically, DEQ should develop a thorough and accessible public engagement process that is designed to address any environmental justice concerns of the affected communities.** This engagement process should be mandated to directly inform the responsible end market certification process, and should take place every time a responsible end market is proposed. In addition, the affected communities should be given opportunities to continuously provide input on the effects an end market has after its establishment. This information should then be evaluated following the verification timeline addressed above to confirm the eligibility of an end market being classified as responsible. With these more robust practices in place, DEQ can ensure Oregonians are not participating in waste colonialism practices that burden and require other communities to handle their waste.

Finally, please ensure that all information regarding material handling from collection through to end market delivery is fully transparent and available to the public. This is *the* most critical step toward rebuilding the public’s trust in the recycling system. **DEQ should develop best practices and guidelines for how jurisdictions engage with their constituencies, providing plain language adaptations of federal**

guidelines and using the Americans with Disabilities Act (ADA) to address accessibility concerns. DEQ should specifically prioritize the following:

- Translation of outreach materials to the five most commonly spoken languages in the local community (using existing voter pamphlets to understand what languages are needed and have already been identified by the state);
- Outreach materials that are accessible to those with hearing and vision impairments;
- Outreach materials using images that are culturally relevant to each community; and
- Providing mandated opportunities for feedback from the public via phone, email, online, and in-person.

OAR 340-090-0840 Living Wage and Supportive Benefits

Our organizations strongly support the inclusion of living wage and supportive benefits requirements for the recycling - and reuse - workforce in the RMA. However, we feel **the proposed regulatory language should be broadened to include all workers at Commingled Recycling Processing Facilities (CRPFs) - even administrative and clerical workers.** There is no reason these employees should be treated differently from others, and in fact the calculation of PRO payments to CRPFs from the [study conducted by Crowe LLP](#) to inform this rule already included one Full Time Employee (FTE) per facility per year for administrative and clerical work. Furthermore, by including all workers at a CRPF, there might be less wage compression - a concern we heard raised in discussions on the RAC.

Additionally, **we urge DEQ to consider clarifying in the rules that the minimum living wage is the amount paid to the worker, excluding all administrative and other costs paid to third parties for hiring workers (e.g. staffing agencies).** We also suggest amending the threshold for a worker's hours to be eligible for living wages and benefits from "primary work tasks," which DEQ mentioned during RAC discussions equates to at least 50% of working hours, to "at least one hour." If mechanical and physical activities for processing materials at CRPFs are deserving of a living wage, then every hour spent on these activities is equally deserving. This will prevent the creation of an incentive for facilities to schedule workers below the primary threshold so as to avoid paying the living wage or providing supportive benefits. The following revisions (in red font) to the proposed language could address this concern more clearly:

A living wage is a wage one full-time worker must earn, calculated on an hourly basis, to cover the cost in the place where they live of their household's minimum basic need without additional income or subsidization. The living wage is paid on every hour a worker has worked; it is not dependent on the employer's schedule for the worker, whether that is full time or not.

In future deliberations, it is key DEQ includes the CRPF workers in addition to facilities owners. Workers are the ones who will hopefully benefit from increased wages and improved benefits. Their voices must be brought to the table.

Finally, **please ensure there is adequate reporting required from CRPFs to local governments to support their statutory requirements to direct recyclable materials only to facilities that provide living wages**

and supportive benefits. We suggest including an option for local governments - or DEQ - to request a third-party audit of any CRPF to verify any self-reported data.

Oregon's packaging EPR program is an opportunity to transform the way packaging and products are designed, manufactured, and managed. As DEQ finalizes the regulations for this paradigm-shifting program, we encourage the department to remember that the purpose of EPR is to incentivize producers to innovate these transformations within their own supply chains by internalizing the negative environmental and social externalities imposed upon communities and taxpayers by our current system. At many points throughout DEQ's extensive, multi-year process to craft and refine the RMA, producers have expressed concerns about the overall cost of this program. We respectfully note that the power to keep costs to a minimum within a packaging EPR program is in producers' hands. Producers who innovate to reduce the overall amount of packaging and covered products they place onto the market, and who optimize what they need to use for environmental and social benefits in addition to product protection, will pay less into the system and thereby minimize their costs. This is the change we need in our supply chains to achieve a sustainable circular economy.

Thank you again for the opportunity to comment on the draft administrative rules for Oregon's Recycling Modernization Act. For any questions, please feel free to contact us at sydney@upstreamolutions.org, farmagonia10520@gmail.com, and marcel@no-burn.org. We are happy to discuss any of these points in detail and look forward to continuing to work with DEQ and other stakeholders to support a robust reuse program under the RMA.

Sincerely,

Sydney Harris
Policy Director, Upstream
Maria Gabriela Buamscha

President, Lanin Iman
Marcel R. Howard

Zero Waste Program
Manager - US/CAN, GAIA

Appendix A - Class II Medical Device Examples

The following are two examples of highly common household goods that would meet the proposed exemption for Class II medical devices with 501(k) premarket notifications that are labeled as sterile. Not only are these products commonly sold in readily recyclable packaging (paperboard boxes and rigid plastic containers) that would otherwise qualify for the [uniform statewide collection list](#); they are indistinguishable from a consumer point of view from other forms of covered materials and will therefore commonly be disposed of in the recycling system.

Example 1: Contact Lens Solution

Screenshot from [US FDA 510\(k\) Premarket Notification Database](#) showing examples of 510(k) premarket notifications on file with the FDA for contact lens solution:

The screenshot displays the FDA's 510(k) Premarket Notification Database. The page header includes the U.S. Department of Health & Human Services logo and the U.S. Food & Drug Administration logo. A search bar is visible with the text "Follow FDA | En Español" and a "SEARCH" button. Below the header, there are navigation tabs for various FDA categories: Home, Food, Drugs, Medical Devices, Radiation-Emitting Products, Vaccines, Blood & Biologics, Animal & Veterinary, Cosmetics, and Tobacco Products. The main content area is titled "510(k) Premarket Notification" and shows a list of results. The list includes columns for Device Name, Applicant, 510(K) Number, and Decision Date. The first few entries are:

Device Name	Applicant	510(K) Number	Decision Date
Eye See Multipurpose Contact Lens Solution	LAPIS LAZULI INTERNATIONAL NV	K070767	07/24/2007
Altaire Mps#1 Multipurpose Contact Lens Solution	ALTAIRE PHARMACEUTICALS, INC.	K062332	04/25/2007
Jsz Multiaction Gp Contact Lens Solution	SZABOCSIK AND ASSOCIATES	K060924	06/28/2006
Eye See Multipurpose, No-Rub Contact Lens Solution	LAPIS LAZULI, NV	K051104	05/31/2006
Soft (Hydrophilic) Contact Lens Care Solution	ALCON, INC.	K031193	07/03/2003
Rigid Gas Permeable Contact Lens Solution	POLYMER TECHNOLOGY CORP.	K011945	09/12/2001
Delta Plus Multiaction Solution For Rigid Gas Permeable Contact Lenses	SAUFLON PHARMACEUTICALS, LTD.	K011456	07/17/2001
Contactair Multi-Purpose Contact Lens Solution	STRIETER CLINICAL RESEARCH LABORATORIES, INC.	K994021	02/22/2000
Resolution 5x (Spherical) And Ultra Gel 5x (Toric) (Hioxifilcon A) Soft Daily Wear Contact Lens, (Clear & Blue Visibility	OPTI-CENTRE LABORATORIES	K992589	08/26/1999
Resolution 45 (Spherical) And Ultra Gel (Toric) (Hioxifilcon B) Soft Daily Wear Contact Lens, (Clear & Blue Visibility T	OPTI-CENTRE LABORATORIES	K983496	03/29/1999

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Screenshot from [US FDA Product Classification Database](#) showing contact lens solution as a Class II (2) medical device:

The screenshot displays the FDA's Product Classification Database interface. At the top, the FDA logo and 'U.S. FOOD & DRUG ADMINISTRATION' are visible. A navigation bar includes links for Home, Food, Drugs, Medical Devices, Radiation-Emitting Products, Vaccines, Blood & Biologics, Animal & Veterinary, Cosmetics, and Tobacco Products. A 'SEARCH' button is located in the top right corner. The main heading is 'Product Classification', with breadcrumb links for 'FDA Home', 'Medical Devices', and 'Databases'. On the right side, there are icons for printing, a plus sign, and an email icon. The central content area is titled 'New Search' and includes a 'Back to Search Results' link. The product details are as follows:

Device	Accessories, Solution, Ultrasonic Cleaners For Lenses
Regulation Description	Soft (hydrophilic) contact lens care products.
Regulation Medical Specialty	Ophthalmic
Review Panel	Ophthalmic
Product Code	LYL
Premarket Review	Office of Ophthalmic, Anesthesia, Respiratory, ENT and Dental Devices (OHT1) Ophthalmic Devices (DHT1A)
Submission Type	510(k)
Regulation Number	886.5928
Device Class	2
Total Product Life Cycle (TPLC)	TPLC Product Code Report
GMP Exempt?	No
Summary Malfunction Reporting	Eligible
Implanted Device?	No
Life-Sustain/Support Device?	No

Recognized Consensus Standards

- 10-77 ISO 9394 Third edition 2012-10-01
[Ophthalmic optics - Contact lenses and contact lens care products - Determination of biocompatibility by ocular study with rabbit eyes](#)
- 10-85 ISO 11980 Third edition 2012-11-15 Corrected version 2012-12-01
[Ophthalmic optics - Contact lenses and contact lens care products - Guidance for clinical investigations](#)
- 10-86 ISO 14729 First edition 2001-04-15
[Ophthalmic optics - Contact lens care products - Microbiological requirements and test methods for products and regimens for hygienic management of contact lenses, \[including, Amendment 1 \(2010\)\]](#)
- 10-103 ANSI Z80.18-2016 (R2021)
[American National Standard for Ophthalmics - Contact Lens Care Products - Vocabulary, Performance Specifications, and Test Methodology](#)
- 10-111 ISO 11981 Third edition 2017-11
[Ophthalmic optics - Contact lenses and contact lens care products - Determination of physical compatibility of contact lens care products with contact lenses](#)
- 10-112 ISO 11986 Third edition 2017-11
[Ophthalmic optics - Contact lenses and contact lens care products - Determination of preservative uptake and release](#)

Third Party Review

- Eligible for [510\(k\) Third Party Review Program](#)

Accredited Persons

- [Center For Measurement Standards Of Industrial](#)
- [Global Quality And Regulatory Services](#)
- [Regulatory Technology Services, Llc](#)
- [Third Party Review Group, Llc](#)

Photos of generic contact solution clearly labeled as sterile and packaged in a recyclable rigid PETE plastic container:



Example 2: Blood Lancets

Screenshot from [US FDA 510\(k\) Premarket Notification Database](#) showing examples of 510(k) premarket notifications on file with the FDA for lancets:

The screenshot displays the FDA's 510(k) Premarket Notification Database search results page. The page header includes the FDA logo and navigation links for various product categories. The search results are filtered for 'blood lancet' with a decision date up to 07/24/2024. The results table lists 10 entries, each with a device name, applicant, 510(k) number, and decision date.

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510(k) Premarket Notification

FDA Home | Medical Devices | Databases

1 to 10 of 20 Results
Device Name: *blood lancet* Decision Date To: 07/24/2024

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Device Name	Applicant	510(K) Number	Decision Date
Disposable Safety Lancet (Impress); Disposable Safety Lancet (Impress Pro); Disposable Safety Lancet (Lite4); Disposable Blood Lancet (Elite); Disposable Blood Lancet (Elite Pro)	SteriLance Medical (Suzhou) Inc.	K233796	01/16/2024
Disposable Blood Lancets	HUAIAN HENING MEDICAL INSTRUMENTS CO., LTD	K223314	01/25/2023
Medipoint Blood Lancets	Medipoint Holdings, LLC	K223480	01/13/2023
Facet Blood Lancets	Facet Technologies LLC	K222539	11/18/2022
Medfine Blood Lancet	Shanghai Carelife International Trading Co. Ltd.	K221383	09/21/2022
Disposable Blood Lancet	SteriLance Medical (Suzhou) Inc.	K221507	08/31/2022
Disposable Blood Lancets	Suzhou Kyuan Medical Apparatus Co., Ltd.	K220387	08/17/2022
Promisemed Blood Lancet; Verifine Safety Lancet; Verifine Mini-Safety Lancet	Promisemed Hangzhou Meditech Co., Ltd.	K221368	06/09/2022
Promisemed Heel Blood Lancet	Promisemed Hangzhou Meditech Co., Ltd.	K221371	06/08/2022
Promisemed Heel Blood Lancet	Promisemed Hangzhou Meditech Co., Ltd.	K193009	12/03/2019

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Screenshot from [US FDA Product Classification Database](#) showing blood lancets as a Class II (2) medical device:

The screenshot displays the FDA's Product Classification Database interface. At the top, there is a navigation bar with the FDA logo and the text "U.S. FOOD & DRUG ADMINISTRATION". Below this is a search bar with a "SEARCH" button. The main content area is titled "Product Classification" and includes a breadcrumb trail: "FDA Home > Medical Devices > Databases".

The product details are as follows:

New Search		Back to Search Results
Device	Single Use Only Blood Lancet With An Integral Sharps Injury Prevention Feature	
Regulation Description	Blood lancets.	
Definition	A disposable blood lancet intended for a single use that is comprised of a single use blade attached to a solid, non-reusable base (including an integral sharps injury prevention feature) that is used to puncture the skin to obtain a drop of blood for diagnostic purposes. The integral sharps injury prevention feature allows the device to be used once and then renders it inoperable and incapable of further use.	
Physical State	A single use blade attached to a solid, non-reusable base (including an integral sharps injury prevention feature).	
Technical Method	Device used to puncture skin.	
Target Area	Skin.	
Regulation Medical Specialty	General & Plastic Surgery	
Review Panel	General & Plastic Surgery	
Product Code	FMK	
Premarket Review	Office of Surgical and Infection Control Devices (OHT4) General Surgery Devices (DHT4A)	
Submission Type	510(k)	
Regulation Number	878.4850	
Device Class	2	
Total Product Life Cycle (TPLC)	TPLC Product Code Report	
GMP Exempt?	No	
Summary Malfunction Reporting	Eligible	
Implanted Device?	No	
Life-Sustain/Support Device?	No	
Third Party Review	Not Third Party Eligible	

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Photos of generic blood lancets clearly labeled as sterile and packaged in recyclable paperboard containers:





July 24, 2024

TO: Oregon DEQ via email to: recycling.2024@deq.oregon.gov
FROM: Carton Council of North America Policy Committee
RE: Recycling Modernization Act Phase 2 Draft Rule Comments

The Carton Council of North America (CCNA) appreciates the opportunity to submit comments to Oregon DEQ pertaining to Oregon's Recycling Modernization Act Phase 2 Rules. The Carton Council of North America's has been working since its inception in 2008 to build a sustainable infrastructure for carton recycling nationwide and to improve access to cartons recycling.

CCNA would like to submit a comment regarding **OAR 340-096-0300 Commingled Recycling Processing Facilities and Limited Sort Facilities, (3) Recyclable Material Processing Performance Standards, (a) Capture rate.**

While CCNA supports the idea of minimum capture rates at MRFs, as well as in improving those capture rates over time through the use of improved technology, we believe the capture rates should be realistic and achievable using current technology.

In the Phase 2 Rules, the proposed capture rates for cartons are:

- July 1, 2025 – 78%
- Jan. 1, 2028 – 88%

We are uncertain how these capture rates were established. However, in The Recycling Partnership's [2024 State of Recycling Report](#), the average rate for cartons capture at MRFs nationally was 70%. CCNA has also been involved in studies that assessed the effectiveness of robots to sort cartons as robots are commonly used to sort cartons from mixed containers. Those studies confirm 70% as an appropriate target for the capture rate for cartons in DEQ's rules. Again, CCNA would like to see relatively high capture rates for cartons, however we believe the capture rates should be realistic and achievable. We realize that capture rates for specific material types can be impacted by many factors beyond technology and operational protocols, such as the order in which materials are sorted (e.g., the layout of the facility). We suggest DEQ reconsider these rates to ensure they are realistic for all of Oregon's commingled recycling processing facilities.

Sincerely,

Ed Klein,
President, Carton Council North America



KW Plastics Recycling Division

279 Pike County Lake Road, Troy, AL 36079 • P.O. Drawer 707, Troy, AL 36081

July 25, 2024

State of Oregon
Department of Environmental Quality

Re: Letter of Comment - Modernization Act Rulemaking 2

Dear DEQ Staff,

KW Plastics purchases over 575 million pounds of curbside collected HDPE and PP from MRF's throughout the US, Canada, Mexico and the Caribbean and converts that material in Post Consumer Resin (PCR) that is supplied to a wide variety of markets. We have purchased bales from Oregon MRF's for over 2 decades and actively buy material in the Pacific Northwest through all market conditions.

I am submitting comments today regarding the Responsible End Market (REM) regulations under the Recycling Modernization Act Rulemaking 2 and to request that the final regulations actually encourage additional recycling of covered materials and not create needless impediments to recycling. The North American Container Recycling Industry has successfully recycled PET, HDPE and PP containers into usable products for almost 40 years. Containers that are properly collected, sorted and baled are able to access a vibrant, healthy, competitive marketplace with several buyers of each commodity. In our opinion, DEQ rules should focus on collection and making properly sorted, minimally contaminated bales. If the material is collected and properly sorted, vibrant markets await and there is no risk that the material will be improperly managed.

The proposed REM regulations are overly burdensome by requiring companies, like KW, to report confidential information regarding our customers and the industries that consume our PCR. This rule will create a situation where Oregon material will become less desired and will lose access to markets that are not willing to divulge this information to DEQ. We request that this rule be changed and the requirement to disclose confidential buyer information be eliminated.

Thank you for the opportunity to submit comments to this important legislation.

Many Regards,

J. Scott Saunders, GM

(334) 566-1563 • www.kwplastics.com

Protecting America's Future Through Recycling



July 25, 2024

To: DEQ Oregon

Re: Letter of Comment re: Modernization Act Rulemaking 2

Submitted via email to recycling.2024@deq.oregon.gov

Dear DEQ staff,

The Merlin Plastics group is very much aligned with your goal of enhancing plastics recycling in North America.

Merlin Plastics has been in the recycling business for 35 years. We have invested in many recycling plants on the west coast including in Oregon through our investment in ORPET. In the past, Merlin Plastics received the "Outstanding Contribution to Recycling" award from the Recycling Council of Alberta; and the Recycling Council of BC recognized Merlin Plastics with an award "in recognition of ongoing commitment to the ideals of responsible environmental stewardship in the province of British Columbia".

We firmly believe that all packaging should be kept out of the natural environment, regardless of whether it is plastics, paper, aluminum or glass.

We write this letter to express our serious concerns in regard to what we believe will be the unintended consequence of the newly proposed DEQ regulations, whereby plastics recyclers are being forced to disclose the names of their customers and to disclose into what application the PCR is used by their customers.

As a plastics recycler in North America, and specifically on the west coast, we are facing a lot of challenges from suppliers all over the world including from Asia and Africa. If we are put in a position where we are forced to disclose our customers' names and the applications into which they have used the PCR, this would result in us potentially being forced to breach our confidentiality obligations that we have with these customers. And it will also lead our customers to examine their PCR buying habits. They may thereafter choose to buy feedstock

from non-North American suppliers who are not subject to the same rules. Finished plastics PCR is already making its way from Asia to the U.S., and we are concerned our customers could start preferring to buy from those supply sources over recyclers here due to the customer disclosure obligations for food-contact and children toy application.

The above are some of the reasons why we respectfully request that plastics recyclers should also be considered an “end market” for the purposes of REM verification, in the same way that the recyclers of all other commodities are considered (glass, paper, aluminum). Eliminating this inconsistency will align with how all other recyclers of other commodities are treated.

Below is a summary of inconsistencies in the definition of what is an “end market” and how it is applied to different types of recyclers. For example:

1. For glass - the end market is the glass recycler, and the glass recycler does not make a finished product;
2. For aluminum - the aluminum mill is considered an end market. They make aluminum rolls that they sell to customers who turn it into different products, such as aluminum cans or aluminum plate or sell the aluminum in automotive application; The aluminum mill does not make a finished product
3. For steel – the same principle applies as stated above for aluminum.
4. For paper mills – some of them make rolls of paper, and then they sell these rolls to customers who make products out of them.

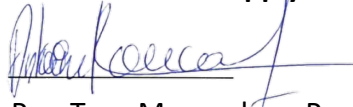
In the case of plastics recyclers – we make pellet, which basically goes through the same melting process as the making of a sheet material. In sheet, you melt the commodity product into a sheet form, and for pellet, you melt it into spaghetti-like strips and then cut them up into smaller pellet-size pieces. Both applications are considered to be a commodity and are not a finished product, the same as for glass, aluminum, steel and paper.

If we do not level the playing field for plastics recyclers, then the unintended consequences will be that PCR customers will look to other suppliers who are not subject to these same disclosure rules. While I believe the intent of the proposed regulations is to ensure the packaging recovered in Oregon is being recycled responsibly, the current end market definition will have the unintended effect of dampening the plastics recycling movement in North America. It will make us uncompetitive. This is the exact opposite of what I believe the DEQ is trying to promote. For a plastic recycler to be successful, we need to encourage customers to buy from us and reduce the burden on customers, rather than increase the burden and disclosure requirements. But taking REM verification beyond the plastics recycler will be problematic and likely cause market disruptions for those of us processing materials from Oregon.

Many thanks again for your continued efforts in recycling, which we very much appreciate. And if you have any feedback or questions on the above, please let us know as we would be happy to answer them.

Yours truly,

Merlin Plastics Supply Inc.

A handwritten signature in blue ink, appearing to read 'Tony Moucachen', written over a horizontal line.

Per: Tony Moucachen, President

tony@merlinplastics.com

phone: 604-968-0258



Procter & Gamble
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Cincinnati, Ohio 45202-3314
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July 25, 2024

Oregon Department of Environmental Quality
(via email to: recycling.2024@deq.oregon.gov)

Re: RMA Rulemaking 2 Draft Regulation

Below are Procter & Gamble's comments on the referenced draft rulemaking by section:

OAR 340-090-0900 Life Cycle Evaluation Definitions

"Contaminant" Definition

We recommend that the definition of contaminant be modified to add the underlined language as follows to reference "at concentrations above 100 parts per million" consistent with the requirement for the evaluation to include a list of contaminant hazardous substances above that level.

(7) Contaminant means trace amounts of chemicals at concentrations above 100 parts per million that are incidental to manufacturing and that serve no intended function in the product component..."

"Hazardous substance" Definition

We recommend the definition of hazardous substance be revisited as the current references are to restricted chemicals in cosmetic products (ORS 431A.345) and chemicals subject to a reporting requirement but no restrictions in children's products (OAR 333-016-2020). Neither list was intended as a list of chemicals of concern in packaging. Indeed, the language of OAR 333-016-2001 makes clear that these chemicals have not been deemed harmful even in the limited context of children's products as follows: "The presence of a high priority chemical of concern in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws. The information required to be reported in these rules will help fill a data gap that exist for both consumers and agencies." Instead, our recommendation is to consider the Toxics in Packaging Clearinghouse which has formed the basis of packaging legislation in 19 states.

"Intentionally-added" Definition

We recommend the definition of intentionally-added be modified to remove the struck through language and add the underlined language as follows consistent with our comments below on section OAR 340-090-0940 that producers know whether they intentionally added a material regardless of its quantification limit:

(20) Intentionally-added means a ~~hazardous~~ substance that serves a technical or functional purpose deliberately used in the formation of a in the finished covered product where its continued presence is desired in the finished product to provide a specific characteristic, appearance, or quality.

~~(a) The use of a hazardous substance as a processing agent, mold release agent or intermediate is considered intentional introduction where the hazardous substance is present at a concentration above the practical quantification limit in the finished product.~~



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(b) The use of PFAS is presumed intentional if any total organic fluorine is present in the finished covered product. Producers may rebut this presumption by providing credible evidence to demonstrate that PFAS were not intentionally added.

“Practical quantification limit” Definition

We recommend removing this definition consistent with our comments below on section OAR 340-090-0940.

“Reusable packaging product” Definition

We recommend that the definition of reusable packaging product be modified to include packages that are refilled by the consumer in the home as this is a viable reuse model that is not captured by the current definition.

Add Definition for “Comparative Lifecycle Assessment”

We recommend the addition of a definition of “Comparative Lifecycle Assessment” that references the ISO definition: *Lifecycle Assessment that is made with the purpose of making public comparative assertions, and claiming that an organization’s product is environmentally better than alternative options.*

OAR 340-090-0910 Scope and Applicability

(2) Large producers

We recommend that the method of identification of the top 1 percent of SKUs that large producers are responsible for conducting lifecycle evaluation studies on be based not only on sales volume but also packaging weight as packaging weight is the framework for producer reporting and fees. We recommend the relevant section of the draft regulations be modified to add the underlined language as follows:

(2) Large producers shall do the following:

(a) Perform an evaluation, using the standards and methods of the LCE rules, of the life cycle impacts of at least one percent of the covered products that the large producer sells or distributes in or into this state.

(b) Identify the one percent of the covered products for evaluation and disclosure as follows as provided by this Subsection.

(A) A Large producer must order by the product of annual Oregon sales volumes and packaging weight all individual Stock Keeping Units that the producer sold in or into the state that are covered products or that have associated packaging which is a covered product.

...

(B) The evaluation required by Subsection (a) shall be performed on each of the Stock Keeping Units that make up the one percent of Stock Keeping Units with the highest product of sales volume and packaging weight from the list described in paragraph (b)(A). The evaluation must include any primary, secondary, and tertiary packaging associated with a Stock Keeping Unit, as well as the product contained or protected by the packaging if it is a covered product.

In addition, this section should reiterate the ability to use national sales volume data and a population-based percentage to reflect Oregon sales volume.



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OAR 340-090-0920 Project Report

(4) Third-Party verification and validity of Life Cycle Evaluation.

While subsection (b) requires the critical review to be conducted according to ISO standards, procedural requirements are not defined in the ISO standards. We recommend that DEQ include specific criteria for the critical review. Criteria should include but not be limited to establishment of standards for qualified reviewers and reviewer independence. We also recommend that the key objectives of the review be clearly outlined. Key objectives should include not only ensuring ISO standards are followed but also review of the impact assessments and interpretation of results.

OAR 340-090-0930 Core Product Category Rule

(1) Methodological Framework.

(a) Functional Unit.

Given that packaging weight forms the basis for all elements of the EPR program, we recommend the functional unit be defined as a fixed mass unit of a material type (e.g., 1 ton) per package placed on the market.

(2) Life Cycle Inventory Analysis.

(e) Reusable packaging product.

(B) Projections/actual data on reuse rate.

We recommend that actual data on reuse rate be required for fee reduction rather than projections to ensure that the fee is incentivizing actual impact reduction. For reusable packaging refilled by the consumer in the home, we recommend use of market data to determine the typical number of refills by looking at the ratio of the number of reusable packages sold compared to the number of refills sold.

(g) Plastic leakage inventory.

We recommend not including an assessment of plastic leakage as part of the evaluation and required impact indicator. Plastic leakage is a shared issue across the supply chain and is not specific to an individual package or supplier.

(h) Methane leakage.

Publicly available lifecycle inventory databases include methane leakage that occurs at various points of the oil and gas supply chain. This is likely less relevant than methane emissions that may occur in different end of life scenarios, so we recommend that methane leakage not be specifically required.

(3) Life Cycle Impact Assessments.

(c) Single score impact profile.

Given that a lifecycle assessment (LCA) is valid for a specific functional unit and defined boundary conditions and represents a point in time, we recommend that in order to qualify for a substantial impact reduction bonus, the comparative LCA is based on a set of comparable conditions that represent the same point in time. In order to accomplish this, a comparative LCA is needed that utilizes the same allocation methods, energy grid assumptions, and is detailed in the same LCA study and report.



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(4) Interpretation.

We recommend that a sensitivity analysis as described not be included as a requirement. Sensitivity analysis conducted across all variables included in an LCA will be overly complex when considering mix of primary, secondary, and proxy data sources. If a sensitivity analysis is required, then it should be limited to a minimal set of key data used in the LCA.

OAD 340-090-0940 Additional Environmental and Human Health Information

(1) Material Content

We recommend that the language regarding material content of covered product be modified to remove the struck through language and add the underlined language as follows given that producers know whether they intentionally added a material regardless of its quantification limit:

- (1) The evaluation must include a list of the material content of the covered product that, at a minimum, states any intentionally-added ~~hazardous~~ substances in the covered product ~~that are at or above practical quantification limits~~, as well as any contaminant hazardous substances in the covered product at concentrations above 100 parts per million.

General Recommendation

To truly meet the intent of the statute, we recommend that DEQ support ecomodulation approaches that are simpler than conducting LCA studies and thus would incentivize more producers. Our experience with packaging LCA shows that the other criteria identified in the statute (i.e. choice of material, inclusion of PCR, product to package ratio, and recyclability of the packaging material) are the primary determinants of the LCA footprint of packaging regardless of what endpoint you consider (e.g. greenhouse gas, particulates, ocean impacts, etc.). An ecomodulation approach based on these primary determinants would avoid the unnecessary complexity of conducting LCA studies. An approach that takes advantage of the existing LCA software and databases that many producers are already using (e.g. those that are accepted under the Partnership for Carbon Transparency Pathfinder Framework) would also make sense to build on.

We look forward to continued engagement with DEQ regarding this subject.

Thank you for considering our feedback.

Joan Popowics
Global Product Stewardship
Procter & Gamble
Cincinnati, OH 45217
popowics.jb@pg.com



July 25, 2024

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

Re: Comments on proposed administrative rules

Greetings,

Washington County (County) appreciates the opportunity to participate in DEQ's second rule-making by providing comments on the proposed rule amendments. The Recycling Modernization Act (RMA) implementation in 2025 will bring exciting changes to the recycling system here in Oregon, and the County looks forward to the community receiving enhanced, long-term benefits from these changes. Outcomes centered in equity and accessibility are a priority for the County. We appreciate DEQ's acknowledgment that each community's needs are unique by maintaining rules and approving a flexible and adaptable Producer Responsibility Organization (PRO) plan. Leveraging the substantial investments the RMA will bring to Oregon by centering the user experience and requiring a data-driven approach to the work will allow full transparency for the rate payers, which is important for building trust in the new system. The County appreciates DEQ staff's and the Recycling Advisory Committee's time and attention to date, and the overall alignment with our strategic priorities which lean into rebuilding a system that continues to benefit the environment while remaining accessible and easily understood to those it services.

General Comments:

Funding for system expansion appears to flow through local governments – which will likely lead to IGAs with individual cities needing to be changed. Washington County prefers that there be a mechanism to have the PRO directly reimburse the garbage and recycling collection companies, as most collection companies operate in multiple jurisdictions. Otherwise, the County will need to establish a payment process, which would include additional administrative and financial analyst support. It is not clear if those expenses are reimbursable. Alternatively, the County supports a watershed-centered approach for reimbursable costs, thereby releasing the County and our cooperative cities from the additional financial management burden.

Local governments, including Washington County, complete an annual rate review process. Reporting will require a new Detailed Cost Report process to align with RMA rules effective on July 1, 2025. The need is driven from benefits expected from equipment purchases/upgrades and covered recycling processing costs being offset by PRO funding. Local governments will need to plan for the changes in advance of July 2025; the process will require a significant investment in staff and rate consultant time. The PRO plan should outline a mechanism for watershed level assessment of operating and processing costs to be available for inclusion in the annual rate review process, with a deadline of March 1 for the full prior year's data. This data should be searchable by collection company and jurisdiction.

Washington County encourages DEQ and the PRO to provide long-term commitments to funding, such as contamination reduction programming funding, when the program launches in July 2025. These new requirements will require additional staff time, and the County may need to add new positions to manage this work. The County has found that short-term funding of positions causes challenges to recruiting and retaining qualified staff and would like to see funding commitments that align with the dates of the PRO's program plan.

Department of Health and Human Services • Solid Waste & Recycling

155 N. First Avenue, Suite 160, MS 5A • Hillsboro, OR 97124-3072

phone: 503-846-3605 • fax: 503-846-4490

website: WashingtonCountyRecycles.com • email: recycle@washingtoncountyor.gov

Washington County would like to comment on the following specific rules.

OAR 340-012-0140 Determination of Base Penalty

- Note that Washington County solid waste code and administrative rules do not have provisions for violations or fines.
- Clarify that if statewide, why not apply to all jurisdictions with populations over 4,000 in alignment with other requirements?
- Clarify how watershed-level fines assessed to 'unincorporated Washington County' apply when doing work on behalf of the Washington County Technical Wasteshed (Cooperative). How is that applied? Only to unincorporated or it is incurred by the city members and the County?
- Unclear if the cities with fewer than 4,000 will even get funding. If using a total watershed approach, would the small cities qualify?

OAR 340-090-0010 Definitions

- Note that the use of the terminology “commingled materials” will require local governments such as unincorporated Washington County to change definitions in Rules to replace “mixed recycling” and align definitions.

OAR 340-090-0030 General Requirements

- Clarify, through providing details, what/how are the standards required to be met in order for Washington County to ensure adequate space for collection in existing buildings. Create multifamily service level standards through a regional approach.
- Proposed rules require that a local government shall submit an implementation plan to DEQ in a manner and form prescribed by DEQ. No form has been provided. It would be helpful to review the forms at the same time the Rules are in effect. Suggest an online form for ease of reporting.
- Washington County proposes that DEQ develops adequate space standards and engages local governments in order to align with current local government processes. Washington County’s Solid Waste & Recycling (SWR) division follows a service level provider process and engages Land Use & Transportation and the collection service provider.
- Clarify how implementation plans are impacted if each jurisdiction has different regulations. For example, Washington County SWR accepts grant funds and reports on all activities within the Washington County Technical Wasteshed (all cities except Beaverton).

OAR 340-090-0035 Contamination Reduction Programming Elements

- Washington County suggests more time be allowed to create a system for contamination reduction programming. Washington County administrative rules currently do not contain fines for contamination. Further, the County has not established a collection rate element for fines. The County would like to see data around financial penalties being successfully applied as part of this policy decision. An incentive-based system is more in line with our equity strategies.
- Washington County encourages DEQ to provide details about accepted contamination reduction program elements in the second half of 2024 to allow staff to start planning to meet the new requirements.

- It will take some time to align Washington County rules and rates with DEQ rule requirements. Further, it will require Washington County administrative rules changes to ensure that all garbage and recycling collection companies (haulers) are applying the financial and/or service restrictions in the same fashion.
- Washington County staff have consistently provided enhanced education rather than monetary or service consequences for recycling contamination issues. Washington County continues to advocate for an educational reinforcement approach that is tailored to specific groups.
- Washington County believes that fines will disproportionately affect low-income households. It does not seem to be an equity-centered approach.
- Ensure that fines are a last-resort measure and are only corrective and not punitive. Require the garbage and recycling collection companies to track and report on which addresses received fines and how the revenue from fines is used. This would allow for evaluation of any potential equity concerns for communities that may be disproportionately impacted by contamination fines and service penalties.
- Any penalties or fees assessed should be done through a prescribed process which is consistently applied statewide. DEQ should provide direction as to what specific communication steps need to be taken by service providers when notifying an account holder, and guidance on when fees are to be applied and/or reversed. Further defining is needed on how any penalties (specific dollar amounts) should be applied to a commercial, multi-family or residential customer.
- Clarify whether the rule means that if Washington County violates any condition, can DEQ fine the County? For example, if unincorporated Washington County chooses to opt out of corrective punishment for contamination in exchange for an education-based approach, could Washington County be fined?

OAR 340-090-0630 Recycling Acceptance Lists

- Washington County supports changes to recycling acceptance lists that include more materials to be recycled in advance of the July 1, 2025 implementation date. While there are many important aspects of the RMA that will improve the overall system, the public wants to see additional items included in on-route collection. The primary way the public interacts with the recycling system is by putting items in the correct bin and by including more materials on the Uniform Statewide Collection List (USCL) when the program launches it will increase public perception that Oregon’s recycling system is modernizing. Specifically:
 - Keep non-metallicized gift wrap on the USCL. Removing this material would cause confusion as this is currently accepted in the recycling bin and it is difficult for the public to understand the difference between this material and other paper included on the USCL. Additionally, there is concern that if this material is removed from the list because the gift-wrapping paper industry does not consider it to be packaging, it may lead to other materials coming into question for removal, such as newspaper/newsprint, magazines, catalogs and similar paper. These materials have been collected in Oregon’s recycling system for decades and should continue to be.
 - Add aluminum foil and pressed foil products and empty non-hazardous aerosol cans to the USCL; these materials have been collected in the Portland Metro region for decades and have responsible end markets. We understand there are challenges in sorting and public education, specifically around hazardous versus non-hazardous aerosol cans, and encourage the PRO to make investments and coordinate with local governments to address those concerns.
 - Add paper and plastic cups to the USCL, as DEQ’s first rulemaking noted that there are stable and available end markets for these materials.

- Add spiral-wound containers to the USCL if there are responsible end markets, as noted by multiple producers in the PRO program plan written comments.
- Clarify that the rules would allow for the alternative practice of commingled collection of materials such as glass and household batteries.
- Clarify that the proposed rules allow for additional curbside recycling collection programs (such as Washington County’s Recycle+ program) as an opt-in fee-based program which includes PRO acceptance list materials.

OAR 340-090-0810 Local Government Compensation and Invoicing

- Washington County supports local government flexibility regarding the timing of payments.
- Washington County suggests that the population level required for up-front cost reimbursement be removed. One shouldn’t assume that more residents equals having an adequate budget to cover costs and then be reimbursed.
- The July 1, 2025, implementation date results in an “unfunded mandate” that may have a significant effect on the Washington County Solid Waste & Recycling program budget or other local government budget processes.
- With regard to the Washington County Technical Wasteshed, we have already exceeded 50,000 in population in our jurisdiction. If accounting for all of Washington County (except Beaverton), this affects our ability to advance work.
- Washington County provides education, outreach and technical assistance to the community and to businesses. The funding mechanism outlined is centered around the residential population and may not adequately fund outreach specific to the commercial sector, which makes up some of the largest generators in the community.

OAR 340-096-0840 Living Wage and Supportive Benefits

- Washington County supports DEQ’s efforts to include a definition of living wages within the statewide recycling system.
- Needs clarification as to why only processing workers receiving a “living wage.” Washington County proposes changing the definition of worker to include administrative and clerical workers.

Washington County thanks the DEQ for its efforts to modernize Oregon’s recycling system. The exciting journey of updating the recycling system is just beginning, and the County looks forward to continuing to inform and support these efforts.

Best regards,



Erin Stein
Interim Solid Waste & Recycling Manager
Washington County

From: [Celeste Meiffren-Swango](#)
To: [2024 Recycling * DEQ](#)
Subject: Public comments: Second RMA rulemaking
Date: Thursday, July 25, 2024 3:38:52 PM

You don't often get email from celeste@environmentoregon.org. [Learn why this is important](#)

Dear Department of Environmental Quality staff,

Thank you for all of your hard work on the implementation of the Recycling Modernization Act and for the opportunity to provide public comment.

The undersigned group of environmental advocates are writing to urge you to amend your proposed rules regarding the Waste Prevention and Reuse Fee to ensure that Oregon fulfills the full potential of the Recycling Modernization Act by assessing the largest fee allowable.

One of the most promising elements of the Recycling Modernization Act is that while we are fixing and expanding the recycling system, there is also a built-in mechanism for investment in waste prevention. The Producer Responsibility Organization (PRO) is required, by statute, to pay a Waste Prevention and Reuse fee every year that can be used to stop waste at the source through waste reduction and reuse in a variety of ways, including investing in the infrastructure needed for replacing single-use items with reusables, pollution control technology, repair and lifespan extension of covered products and much more.

Through this rulemaking, DEQ is proposing that the annual fee paid by the PRO be the lower of either \$15 million or 10 percent of the three-year average of PRO annual expenditures. We'd like you to consider amending the rule to say that the fee be the *higher* of the two. In order to have the biggest possible impact for the environment and public health, we need to be making big investments in systems that will focus efforts on the top end of the waste hierarchy. We have an unprecedented opportunity to bring in the funds needed to make those big investments, and we should seize it.

For too long, taxpayers, ratepayers, the environment, and future generations have been bearing the costs of our waste management system. Oregon is now bringing in the producers of covered products to help bear some of the costs alongside the rest of us. The Recycling Modernization Act is intended to help build a future with less waste and pollution, and requiring producers to significantly invest in waste prevention is among the biggest opportunities we have to build that future here in Oregon.

Please consider assessing the largest fee allowed under statute to fulfill all of the potential of the Recycling Modernization Act and build a cleaner, greener future.

Sincerely,

Lisa Arkin
Executive Director
Beyond Toxics

Celeste Meiffren-Swango
State Director
Environment Oregon

Anja Brandon
Associate Director, U.S. Plastics Policy
Ocean Conservancy

Charlie Fisher
State Director
OSPIRG

Sam Broussard
State Board Chair
OSPIRG Students

Miriam Gordon
Reuse Program Director
Story of Stuff

Charlie Plybon
Senior Oregon Policy Manager
Surfrider Foundation

Alaina Labak
Vice President
Waste-Free Advocates



PUBLIC COMMENT

Date: July 26th, 2024

From: City of Portland, Bureau of Planning and Sustainability (BPS)

To: Oregon DEQ

Re: Plastic Pollution and Recycling Modernization Administrative Rule Making 2 - Public comment

Dear DEQ staff,

Thank you for taking public comment in the second rule making process for the Plastic Pollution and Recycling Modernization Act (PPRMA). Solid waste staff with Portland's Bureau of Planning and Sustainability (BPS) extend our appreciation to and support for DEQ staff, who have worked tirelessly to implement this substantive and nationally leading policy. We also appreciate this commission for your service to Oregonians.

BPS supports this rule-making process and support the public comments submitted by Metro Regional government on behalf of our region.

As an agency with regulatory authority over garbage and recycling collection, the City of Portland has a strong commitment to equitable delivery of services to residents and businesses. The PPRMA prioritizes equity through improvements to the multifamily system, workforce pay and benefits, and delivery of culturally specific outreach materials to diverse communities. BPS supports and applauds these efforts and recommends that future amendments to the PPRMA include opportunities to support equity through greater diversity in, or more local, ownership and management of private companies providing services in the waste system.

In our estimation, the best way to support the opportunity to recycle for tenants of multifamily buildings, is to maintain our current list of acceptable materials in commingled recycling and add materials from the PRO list to the USCL as soon as possible. Many multifamily tenants lack transportation to a depot and even with depots located near public transit, asking folks to load up bags of recycling onto a bus is less than desirable. For this reason, BPS strongly opposes taking gift wrap or any other material off the USCL and to resist any other producers moves to reduce any corporate responsibility from funding and improving the recycling system.



City of Portland, Oregon | Bureau of Planning and Sustainability | www.portland.gov/bps
1810 SW 5th Avenue, Suite 710, Portland Oregon, 97201 | Phone: 503-823-7700 | Relay: 711

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Traducción e Interpretación | Biên Dịch và Thông Dịch | अनुवादन तथा व्याख्या | 口笔译服务 | Устный и письменный перевод | Turjumaad iyo Fasiraad | Письмовий і усний переклад | Traducere și interpretariat | Chiaku me Awewen Kapas | 翻訳または通訳 | ການແປບັນຍາຍ ຫຼື ການອະທິບາຍ | الترجمة التحريرية أو الشفهية | Portland.gov/bps/accommodation

Focused comments from BPS staff on proposed rules include the following:

OAR- 340-090-0010 Definitions

- (28) "Multi-family" means dwellings of five or more units.
 - *BPS comment: We strongly support draft rules intended to improve recycling access for residents of multifamily communities. Residential infill planning has resulted in positive density development and has manifested in many single-family buildings into significant increases in living space on Portland tax lots. This development faces the challenge of adequate space for garbage and recycling. BPS staff are working to address this, and it's important to include middle housing development as defined in state building code: 660-046-0020, Definitions (12). Oregon's building code definitions (middle housing = 2-8-units) differ from solid waste code definitions (multifamily 5+ units) and its unclear what impact this will have on the implementation of space requirements for garbage and recycling through the PPRMA implementation process. BPS ask that DEQ staff take this into consideration when developing these rules.*
- (44) "Technical Assistance" means assistance in support of reuse, repair, leasing or sharing provided to businesses or non-profit staff or programs, such as: program design and implementation; publicizing and promoting opportunities through channels such as directories of reuse and repair operations; research to support technical assistance efforts; and expending funds to hire specialists or contractors who provide information and advice in topics such as business planning, operations, facility design, market research, and marketing.

- *BPS comment: Consider adding contamination reduction to this term as a function of work.*

OAR 340-090-0030 General Requirements

- (7)(b) (b) To comply with the requirements of ORS 459A.911 to ensure adequate space for the recycling collection of materials identified on the uniform statewide collection list at multifamily properties, a local government shall submit an implementation plan to DEQ in a manner and form prescribed by DEQ and shall report on activities undertaken to execute the implementation plan in the periodic report submitted according to the requirements of OAR 340-090-0100. The implementation plan shall be submitted to DEQ by November 1, 2027, and implementation shall be initiated no later than January 1, 2030. The implementation plan shall describe how the local government will:...
 - *BPS comment: Consider changing the term 'local government' to 'city or county', which would be consistent with the language employed in the preceding paragraph (7), Cities and counties have the Zoning and Development ordinances that specify these requirements and conduct design review processes.*
- (7)(b)(B) Ensure adequate space for collection in existing buildings.
 - *BPS comment: Requiring existing buildings have adequate access is well meaning and we agree with this target, however costs associated with provide access for existing buildings can be very expensive. BPS recommends financial assistance in addition to this requirement, so properties can have help implementing infrastructure improvements.*
- (7)(b)(D) Requires that containers be accessible to residents including children and individuals with wheelchairs.



- *BPS comment: We support access and believe that this requirement may benefit from further refinement and understanding of the implications. At what age should children be expected to be able to use a garbage or recycling container at a multifamily property? Does this imply that the opening for a container in a multifamily property must not exceed a certain height or a ramp would be required? Some multifamily properties limit access to recycling and garbage space to prevent theft of service, dumping, or for safety (e.g., a compactor with keyed access, or interior rooms with doors). Others provide access points separately from containers (e.g., chutes) Alternatively, DEQ could amend and simplify the rule to direct cities and counties to consider access in their implementation plans for people using wheelchairs and children aged 12 and above. It may also make sense to clarify that this requirement would apply to new or significantly remodeled multifamily properties.*

OAR 340-090-0035 Contamination Reduction Program Elements

- (1) A local government or local government's service provider must implement a contamination reduction program pursuant to ORS 459A.929(2) that includes but is not limited to the following elements:
 - (a) Customer-facing contamination reduction materials and methods that are responsive to the needs of diverse populations.
 - *BPS comment: Add the phrase 'outreach and education' before 'materials and methods'.*
 - (3) Financial or service consequences pursuant to subsection 1(c) of this rule must be in accordance with this section.
 - (a) Local governments and service providers must implement the following procedures before applying consequences:
 - (A) Contamination must be identified using a method that is applied consistently and equitably across all customers.
 - (B) For all instances where significant recycling contamination is documented, targeted feedback must be provided to the customer and tenants and documented. To qualify as significant, recycling contamination must be documented and consist of either:
 - *BPS comment, (3)(a)(B): We appreciate that a high bar is set including multiple rounds of documentation and notification before the possibility of a financial or service consequence for recycling customers. We have three comments for this section:*
 1. *Significance by volume. The proposed approach to define 'significant' recycling contamination as the presence of at least 25% by volume of materials not on the USCL may be difficult to implement in practice using known methods to identify customer-level contamination. For example, cart tagging typically involves a visual scan of materials in the top quarter or third of a roll cart. Therefore, it is important to ensure that this language does not prevent a city or county or their service provider from providing documented, targeted feedback where contamination is obvious but may not be provably 'significant' if such feedback is provided consistently and equitably within a service provider's service area, or on a route that has been identified to have higher levels of contamination. We support the requirement that contamination be provably significant before a financial or service consequence is applied.*



2. (2) Significant contamination as defined in (3)(a)(B)(i) should also include one or more of these non-hazardous items, such as any amount of putrescible or organic waste (e.g., food, yard debris) or any bagged recycling.
3. (3)(a)(C): We would appreciate a broad understanding of “opportunity to remedy” that allows operational flexibility. This could include leaving a contaminated container until the contamination is removed, or taking the contaminated container full as garbage and allowing the customer to ensure that the next set-out or load is free of contamination, or other options that may emerge.

OAR 340-090-0035 Contamination Reduction Programming Elements

- *BPS seeks more information: Does this level of prescription make sense? Can we get clarification on what service consequences means? Will the DEQ provide a template for reporting contamination and LG/hauler response? Can a financial consequence include assessing an extra garbage fee onto a contaminated recycling cart? What was the rationale behind the three strikes in three months rule?*

OAR 340-090-0630 Recycling Acceptance Lists

- *BPS comment: The implementation of the PPRMA needs to center tenants of multifamily buildings. To support the opportunity to recycle in multi-tenant buildings, maintaining the current Metro acceptance list, including gift wrap and pressed aluminum products, and adding one or two additional materials like plastic cups and HDPS package handles will ensure that this audience gets the access they need, without a separate bin that would need additional space in multifamily enclosures that already are stretched for space.*

OAR 340-090-0640 Convenience Standards

- *BPS comment: This section should be amended to explicitly allow for on route collection as meeting any convenience standard for the commercial sector, residents, independently or together depending on the scope of collection.*
- *BPS comment: This section has led to proposed nomenclature from CAA in which ‘base’ depots will accept the most materials and ‘enhanced’ depots will offer more locations but access to a smaller subset of materials. While we understand that this makes sense from the perspective of the materials where some need ‘enhanced’ number of collection points, from a customer perspective these terms are better used to indicate how the depots differ from each other. A ‘base’ depot would be intuitively understood as a depot with fewer materials, and an ‘enhanced’ depot as one that accepts more materials.*
- (2)(h) A producer responsibility organization must describe in its program plan how it will provide enhanced access to recycling of materials on the producer responsibility organization acceptance list for populations that may otherwise find it difficult to participate in service at collection points (for example valet service for vehicle users in wheelchairs and partnering with service organizations that work with homebound populations).
 - *BPS comment: As with other collection strategies these services should be subject to city and county support or through regulated collection services.*



- *BPS comment: Depots should include signage clearly indicating that the collection services being provided are provided under the guidance of Oregon's Plastic Pollution and Recycling Modernization Act administered by DEQ, contact information for the PRO for users to report issues (particularly if the depot is not staffed during all operation hours), and links to information about the law such as a DEQ website.*

ORAR 340-090-0670 Responsible End Markets

- (3) Implementation of the responsibility standard by a producer responsibility organization.
- (a) A producer responsibility organization must ensure that materials collected for recycling go to responsible end markets as detailed in ORS 459A.896(2) and this rule by completing the following two steps successively:
 - (A) First, a producer responsibility organization must, using a screening assessment form provided by DEQ, receive, and corroborate written verification from each end market and other downstream entity that it meets the standards set forth in Section 2 of this rule.
 - (B) Next a producer responsibility organization must conduct a more detailed assessment of whether each end market and other downstream entity meets the responsible standard provided by section 2 of this rule, either through a verification by the producer responsibility organization as provided by subsection (g) of this rule or through third-party certification from an Environmental Quality Commission-approved program.
- (4) Auditing. To demonstrate compliance with the requirement that materials collected for recycling go to responsible end markets as required by ORS 459A.896(2) and this rule, a producer responsibility organization must conduct auditing and provide audit results in annual reporting to DEQ. These audits must include results of random bale tracking to verify chain of custody and must demonstrate and certify that end markets meet the requirements of section 2 and 3 of this rule. For the purposes of enforcement, DEQ may conduct its own random bale tracking.
 - *BPS comment: BPS staff recommend the Oregon DEQ take more of a leadership/oversight role over the auditing and verification of responsible end markets. Relying heavily on the PRO to self-verify and audit responsible end markets could result in conflicting variables of cost and integrity.*

ORAR 340-090-0690 Producer Responsibility Organization Fees

- (3) Producer responsibility organizations shall pay a waste prevention and reuse fee each year as described in ORS 459A.941. DEQ will invoice a producer responsibility organization on or before September 1 for payment within 30-days of invoicing.
- The fee shall be the lesser of:
 - \$15 million, each year after 2025 adjusted based on the Consumer Price Index for all Urban Consumers (CPI-U) as published by the U.S. Bureau of Labor Statistics; or
 - 10 percent of the three-year average of all producer responsibility organization's annual expenditures summed, excluding payments of the fee established under this rule, as described in the organizations' annual reports submitted to DEQ.



- *BPS comment: BPS staff recommend the waste prevention and reuse fee to be administered evenly throughout the state based on population. Local government should also play a role in strategically using the funding based on community engagement and climate impacts.*

OAR 340-090-0820 Processor Commodity Risk Fee

- *BPS comment: Residential, nonprofit, and business customers should not have to pay for the processing of any covered materials. BPS supports the proposal to provide quarterly analysis of material disposition data, to keep the cost of processing up to date. This is important, especially if cardboard is gleaned by LSF allowed in the system. Market prices will rise and fall, and gleaning will follow that trend, causing instability in the system costs. In general, the costs to separate materials through CRPFs should fall on the PRO and CRPFs in the system, not the customers.*

OAR 340-090-0810 Local Government Compensation and Invoicing

- *BPS comment: To be streamlined and efficient with use of contamination reduction funds, BPS desires to a) work directly with the PRO to identify appropriate strategies for reducing recycling contamination, b) receive advanced funding annually for achieving results, and c) annual reporting following fund allocation.*
- *BPD comment: Recommend the DEQ help explore options that would streamline funding processes on behalf of cities, counties, and PRO. For example, could there be a statewide contract, agreement or template that allows cities, counties, or their service providers to simplify, streamline their agreements or rely on a DEQ-sponsored list? The coming months would be a good time to convene city and county staff with expertise in grants and procurement to provide input to DEQ and the PRO and identify opportunities to streamline and reduce the transactional costs of developing and implementing contamination reduction plans.*

In summary, BPS supports this rule making process and proposed rules and we look forward to future engagement and improvements in the Oregon waste system. If DEQ staff has time to discuss any of the comments or questions in this letter, please reach out, we'd be delighted to discuss further. Thank you for your time and service to Oregonians in resetting the Oregon recycling system.

Sincerely,



Pete Chism-Winfield
Sustainable Materials and Waste Policy Manager, City of Portland, BPS





July 26, 2024

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

Re: Proposed administrative rules - public comment

Greetings,

Metro, in coordination with staff representing cities, counties and community partners identified below, appreciate the opportunity to provide public comment on the proposed amendments to administrative rule. The Portland metropolitan region accounts for more than 40 percent of Oregon's population and has provided community members with the opportunity to recycle much of the paper and packaging they interact with for decades. With the upcoming implementation of the Plastic Pollution and Recycling Modernization Act (RMA), we are thrilled to see that recycling services will expand within the Portland metro region and across the state. We want to do our part to ensure it is convenient and accessible for those who call Oregon home, with program and service implementation placing the least amount of burden on the public.

Through participation in Oregon Department of Environmental Quality's (DEQ) thoughtful process to develop the proposed administrative rules, we have seen DEQ demonstrate how Oregon can be a leader in maximizing the environmental and social benefits from waste management. This feedback reflects the commitments the Portland metropolitan region made in the 2030 Regional Waste Plan to modernize our recycling system and is informed by our ongoing conversations with diverse communities, local governments, and industry participants. Additionally, this feedback also reflects our shared responsibility for regulatory oversight of different aspects of the region's solid waste system and our shared commitments to improvements to service for multifamily residents.

We thank DEQ for including Metro, community partners and city and county staff as members of the Recycling Council, Rulemaking Advisory Committee, and Commingle Recycling Processing Facility Technical Workgroup. The following is feedback to be taken into consideration on the proposed rules.

Building a recycling system for tomorrow.

Metro and its below signed partners support DEQ's proposed rules in general and would like to see more opportunities to recycle and prevent waste than what is available in our current system, while having trust and confirmation that materials are managed responsibly. We applaud DEQ for leading meaningful engagements with stakeholders and maintaining momentum for implementing the

modern system. We encourage DEQ to leverage this momentum to address local government and Producer Responsibility Organization (PRO) funding and roles to ensure recycling is convenient, accessible, equitable, and efficient for all community members. The modern system needs to grow capacity for upstream waste prevention efforts such as reuse and repair. We want rate payers to benefit from producers' paying their share of the costs of the system. We want transparent and timely facility performance data and processes that ensures our communities' collected material is high quality, meets the specifications of multiple end markets, and is truly responsibly recycled. We also want employers in this regulated system to provide living wages and permanent jobs with supportive benefits for employees and their families.

Specific rules we would like to comment on are included below.

OAR 340-090-0030 General Requirements

- We applaud DEQ's ongoing work to ensure adequate service for multifamily residences. We support the proposed implementation plan timeline (November 1, 2027 plan submittal and January 1, 2030 implementation) and find they are practical steps for implementing ORS 459A.911.
- The proposed administrative rules do not provide sufficient details on standards for implementing multifamily recycling improvements. DEQ should add more substantive information in the rules or provide local governments with supplemental guidance to support developing their local implementation plans. For example, we need a shared understanding of what qualifies as adequate service and what equipment is considered accessible for a child and individuals who use a wheelchair. Likewise, we seek guidance on how service improvements outside a narrow interpretation of enclosures, such as a recycling chute in a building, an open space in a parking lot, or a valet service, could combine to provide adequate service.
- Add milestones on the path to compliance with ORS 459A.911 that ensure a clear set of actions to complete in the first five and ten years of implementation. Improvements to multifamily service, especially infrastructure improvements, are likely to unfold over the course of several years, plans with clear milestones will help ensure progress continues.
- Encourage consistent container colors that align with Metro's Regional Service Standard and overall industry standards: Mixed recycling = Blue, Glass = orange, Garbage = Gray/black, Compost = Green. Consistent container colors that mirror educational materials will help promote statewide consistency and reduce contamination and confusion.
- Add language to support transparency and accountability for Commingled Recycling Processing Facilities (CRPF) charges to haulers. We want to ensure the significant PRO funding will fulfill the direction in ORS 459A.923 to "allow local governments to reduce the financial impacts on ratepayers."

OAR 340-090-0035 Contamination Reduction Programming Elements

- Clarify proposed rule 340-090-0035 (3) to ensure that all generators that share a collection bin (including all commercial, multifamily, and single-family users) are not adversely impacted by any consequences resulting from contamination caused by an out-of-

compliance generator. While our current system does not appear to have many shared services in the single-family sector the practice should not be discounted.

- Ensure financial and service consequences for contamination of recycling bins are corrective, not punitive. Financial and service consequences should be a last resort and only applied with reasonable discretion with sufficient oversight by DEQ and local governments.
- Strengthen the transparent, efficient evaluation of how contamination reduction corrective measures are working, such as by adding requirements to:
 - Describe how any revenue generated from collected fines are used.
 - Maintain a five-year record retention requirement for all fines and service consequences by address. Keeping track of addresses is key, as addresses can be used to evaluate equity implications in areas that may be disproportionately impacted by contamination fines and service consequences.

OAR 340-090-0630 Recycling Acceptance Lists

- Make changes to the uniform statewide collection list that allows more materials to be responsibly recycled beyond the status quo. Specifically:
 - Add aluminum foil and pressed foil products to the uniform statewide collection list. These items have been accepted in the Portland Metro region for decades and have responsible end markets as evidenced by their inclusion on the PRO acceptance list. We understand there are current challenges separating aluminum foil from other non-ferrous metals in regional materials recovery facilities, however we believe the PRO can and will support simple process improvements, such as adding post eddy current sortation, that will facilitate successful separation of foil and pressed foil products from other non-ferrous metals.
 - Add empty non-hazardous aerosol cans to the uniform statewide collection list. These items have been accepted in the Portland Metro region for decades and have responsible end markets as evidenced by their inclusion on the PRO acceptance list. Non-hazardous aerosol cans are ubiquitous in households and businesses from cooking spray to sunscreen to deodorant. Since our region has been collecting aerosols over the last several decades, we have not been made aware of any critical incidents or exposures. We are also aware that these materials are safely collected and sorted in material recovery facilities across North America. We understand there is nuance and that special instructions are needed for these empty non-hazardous aerosol cans to be properly and safely recycled. Metro will work with the PRO and local governments to ensure that effective messaging reaches community members.
 - Add paper and plastic cups to the uniform statewide collection list. In its first rulemaking, DEQ noted that there are stable and available end markets for paper and plastic cups. These items were reportedly removed from the uniform statewide collection list due to their potential contribution to contamination and negative reuse impacts. We recognize these items are used and thrown away daily, for example Starbucks uses 8,000 cups per minute, which adds to more than 4 billion a year. If there are capabilities to process and recycle these items meeting the proposed responsible

end market standards, we need to do it now. We also recognize and celebrate the upcoming Oregon Material Impact Reduction and Reuse Program and have and are currently supporting reuse programs like OKAPI Reusables and Bold Reuse. We believe the path to reducing plastic pollution involves both responsible recycling and reuse.

- Add spiral wound containers to the uniform statewide collection list. In its first rulemaking, DEQ noted that the removal of these items from the uniform statewide collection list provided Cascade Steel Rolling Mills and Sonoco additional time to evaluate impacts of adding these materials to their steel recycling process. We believe Cascade Steel Rolling Mills and Sonoco have had sufficient time to evaluate the impacts of adding these materials and that if this outlet or additional end markets found by the PRO have provided sufficient proof of the net environmental benefit to processing these containers, they should be added to the uniform statewide collection list.
- Keep non-metallized gift wrap on the uniform statewide collection list and do not exempt it as a covered product. Clarify the definition of the material by adding to OAR 340-090-0630 the following underlined text:
 - (g) “Non-metallized gift wrap” means paper gift wrap used for packaging and devoid of non paper additives like metal flakes, glitter, metallized mylar or any similar material.

Statute, administrative rules, and a DEQ rule concept language provide precedence for gift wrap to continue to be considered a packaging material regardless of the material’s use for ‘presentation’. For example:

- The clarification aligns the definition of gift wrap with the existing statute definition for “Tissue paper used for packaging” [OAR 340-090-0630 2(F)]
- Statute defines packaging as “(A)Materials used for the containment or protection of products, including but not limited to paper, plastic, glass or metal or a mixture thereof” [ORS.459A.863 18].
- Administrative rules already include other gift-based packaging as covered packaging. Use of a material as part of a gift does not disqualify tissue paper for packaging purposes. In DEQ’s 2022 rule concept on the Recycling Material Acceptance Lists, DEQ assessed tissue paper as it “refers to gift based/ packaging-based tissue paper only.”
- It is not clear why use of a material for ‘presentation’ is a rationale for exemption. Many other covered materials on the uniform statewide collection list are used for ‘presentation’ of products as well.

Exempting this material and removing it from the uniform statewide collection list would effectively create a free rider in the RMA recycling system and add confusion about what belongs in the recycling bin. Portland metropolitan area communities already put gift wrap in the recycling bin. Under the RMA system, gift wrap will continue to look very similar to other paper still included on the list, such as tissue paper, and if excluded without a commonsense rationale consumer confusion will likely continue to result in its inclusion.

- Clarify how PRO materials could be collected commingled together. Current collection practices in the Portland metropolitan area demonstrate how a PRO could create an

alternative collection network with high participation without detrimental effect on the quality of the primary system for USCL materials:

- Regular battery collection combined with glass pickup.
- Voluntary program for additional ongoing collection and monthly specials (e.g. Recycle+ and Ridwell)
- Clarify whether PRO list materials can be collected commingled at a depot. For example, it is not clear whether a depot would need separate bins for collecting plastic buckets and pails made of HDPE and PP, lids and caps made of PE and PP, and package handles made of HDPE. Combining similar materials in a single container at depots will reduce space requirements and improve consumer convenience.
- Reduce the burden on local governments' request process to keep materials in the USCL commingled recycling programs as alternative options mature. Local governments, especially governments with limited staff time for solid waste planning, may face challenges moving through the process. Additionally, this may cause confusion for customers should neighboring communities have different USCL programs.
 - Allow wasteshed representatives to also facilitate a coordinated approach to extending the timeline for removal of materials from the USCL.
 - Remove the burden from local governments for the acquisition of accurate, timely information about the PRO's collection network and convenience standard compliance.

OAR 340-096-0310 Responsible End Markets

- Ensure there is adequate oversight of end markets, including the timely and transparent assessment of end markets. Producers can innovate to reduce their cost to implement the social and environmental standards set in statute and rule. Specifically:
 - Set a progressively shorter timeline for the detailed end market assessment. We understand that it will take time for the first assessments. However, 12 months is a long time for our communities to lack a detailed end market assessment. In that time, substantial tons could be sent to questionable end markets.
 - Ensure there is sufficient tracking and enforcement of environmentally sound management when the entity with physical possession does not also have the legal status referred to in the proposed rules. It is important to ensure that all physical handlers of material are meeting the environmentally sound standard, including willingness to be audited and monitored, avoiding release into the environment, and demonstrating an adequate emergency response and environmental health, safety, and management plan from the point the material is collected to the time it is received at the end market.
- Make information covering material tracking from collection to end market transparent and available to local governments and the public.
- Clarify how end markets will be determined as "willing to be audited and monitored" and be determined to have an "adequate emergency response and environmental health, safety, and management plans" (OAR 340-090-0670), especially in a way that centers the experiences of communities living near the end market. For example, demonstrate as part

of the detailed assessment process how communities impacted by end markets will be invited to give input and then transmit received input to DEQ.

- Remove the proposed disposition exemption of 1%/10% quarterly, as it weakens the transparency and accountability in truly achieving recycling at responsible end markets. It is unclear why organizations cannot track and report on all or a much higher proportion of material disposition each quarter.

OAR 340-090-0690 Producer Responsibility Organization Fees

- Remove the proposed additional annual cap for the waste prevention and reuse fee. The fee is already bound by the 10% calculation set in statute and would be unnecessarily limited by a further reduction in usable funds. Appropriately scaling waste prevention and reuse across Oregon, especially in hard to serve rural communities, is likely to need significant funding. Over time it is also likely the demands on program funds will increase as more organizations build capacity to apply and consumer demand for reuse flourishes. Also, producers can do their own work to limit their fee obligations by using their expertise as innovators to reduce annual PRO expenditures.
- Remove the one-year time frame for DEQ's determination of whether to reduce the waste prevention and reuse fees and clarify DEQ's ability to maintain a fund balance to support an efficient implementation of the MIRROR grant and loan program. DEQ should retain utmost flexibility in undertaking the determination process when it makes sense for the grant cycle, not necessarily on an annual basis. The proposed "in that year" time frame for evaluating the fee presents challenges for administering a multi-year cycle for funding substantive grants and loans.

OAR 340-090-0810 Local Government Compensation and Invoicing

- Metro supports the proposed flexibility for local governments to designate an entity to receive payment.
- Add the underlined text to the proposed OAR 340-090-0810 Section (2) to ensure consistent flexibility for local governments: "(2) Costs incurred by a local government or a local government's service provider, or other person authorized by a local government to receive payment, including reload facilities and limited sort facilities that are also reload facilities, to implement the contamination evaluation 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)."
- Add rules that limit the use of contamination reduction funding to technology and systems that have the primary purpose of reducing contamination, not other uses – like overcapacity garbage container fees.

OAR 340-090-0820 Processor Commodity Risk Fee

- Clarify the reporting and review requirements for permitted and certified CRPFs to include providing fee information needed to establish a review process to ensure that the fee is appropriately charged (ORS 459A.923 (c) and to support determination of potential

noncompliance and to take corrective measures on ORS 459A.923 (g), such as by adding the following underlined text:

(5) Reporting and Review. (a) Commingled recycling process facility shall report information related to the fee, including information 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, including protection from the volatility of commodity markets, as described in this rule as required by DEQ, including but not limited to providing on forms provided by DEQ monthly transactional data associated with each inbound load of commingled recyclables received by the processing facility, such as the transaction level data identifying the number of tons received per jurisdiction(s) the hauler gathered the load from and whether the inbound load contamination per transaction led to a tip fee above 0 or additional charge.

OAR 340-090-0840 Covered Products

- Further limit the exemption for medical packaging. The proposed medical packaging exemption may result in medical packaging producers not paying their share of system costs for their products that continue to be in the RMA recycling system.
- Further limit the agricultural exemption to commercial use products only. The agricultural exemption may result in agricultural chemical package producers not paying their share of system costs for their products that continue to be in the RMA recycling system.
- Require the Ag Container Recycling Council (ACRC) to request an exemption with data regularly gathered through an independent audit process in a form and manner prescribed by DEQ. The Recycling Council and Rulemaking Advisory Committee both encouraged DEQ to evaluate the performance of the ACRC take-back program. DEQ should not rely on self-reported data to grant an initial exemption nor regularly accept self-reported data. Additionally, it is unclear how the proposed ACRC 2023 baseline collection and convenience rate compares to the RMA's requirements for non-exempt products. If this collection-based exemption is granted, it should perform at or above performance for covered products.

OAR 340-090-0850 2024 Producer Responsibility Organization Annual Reporting

- Identify the data and analysis needed to generate clear and regular annual (or more frequent) reports on the PRO's responsibilities, which include:
 - Allowing the average fee charged by commingled recycling processing facilities for accepting commingled recyclables from Oregon to target a price of \$0 per ton (under ORS 459A.923).
 - Providing funding to protect ratepayers from increased costs.
 - Promptly notifying the department of potential noncompliance.
 - Accessing reserve funds or other contingency plans as outlined in ORS 459A.875.

This request also pertains to ORS 459A.887 (l)(u) and DEQ's ability to request additional information under ORS 459A.887 (y). The clarification should include, at a minimum:

- The schedule and steps for a prompt notification timeline. Local governments need information on a more than annual basis in order to inform their ongoing oversight of the recycling collection system, including decision making about where their materials should be taken to be processed.
- A requirement that the PRO must gather information on a transactional level, by month, for use in identifying any deviation from the target price of \$0 per ton for material delivered to a commingled recycling processing facility, including an assessment of the cause of such deviation.
- This information is already required to be provided under ORS 459A.887 (l)(u).
- DEQ is able to ask for additional information under ORS 459A.887 (y).
- Add the addendum to the proposed OAR using the following underlined text:
 - DEQ may require the PRO to share the information used to create the ratepayer protection information with DEQ in a form and manner sufficient to support DEQ's ongoing assessment of PRO or CRPF compliance with ORS 459A.923.
 - If DEQ determines there is potential noncompliance with ORS 459A.923, DEQ may require a ratepayer protection study which must be conducted in a form, manner and timeline approved by DEQ. DEQ may share the information provided by the PRO with impacted local governments.

OAR 340-090-0900 Life Cycle Evaluation Definitions through OAR 340-090-0940 Additional Environmental and Human Health Information

- Maintain the proposed high standards for evaluating and disclosing the environmental impacts of products.
- Create a stronger incentive structure for producers to reduce product impacts, including expanding the application of malus incentives. Producers can innovate to lower costs. Tweaks to the status quo will not secure meaningful reductions in environmental harm for future generations.
- Ensure the incentive structure sufficiently values producer return/refill systems over the lesser performing at home refillable systems. The rules could be strengthened to incentivize best in class return/refill systems for Oregonians, just as Oregon led with the first US bottle bill. At a minimum, single use consumer packaging pieces should not be a part of any incentive, even if it is enabling reuse.

OAR 340-096-0300 Commingled Recycling Processing Facilities and Limited Sort Facilities

- Ensure stronger recovery of plastics where plastic is present in limited quantities in other bales. Given the relative weight and amount of plastic in the incoming material, even if plastics are 1% of contamination in a paper bale, that plastic contamination could represent 6% of all plastic collected.
- Ensure use of recovered glass does not default to applications like aggregate and is processed to obtain the most environmental benefit whenever possible.
- Add complete references to relevant ORS to ensure a comprehensive list of data requirements for inbound data reporting, such as by adding the following underlined language:

In addition to describing normal facility operations, the facility operations plan must include, among other things, a description of how the facility will implement the forms and procedures established by the DEQ for evaluating and describing of cost increases passed on to local governments as required by ORS 459A.923.

OAR 340-096-0820 Commingled Recycling Processing Facility Certification Program

- Clarify that out-of-state CRPFs must also meet the same qualifications that separate an in-state CRPF from a Limited Sort Facility. Including pre-sort, two-stream, and the 95% threshold for fiber sent to responsible end markets.

OAR 340-096-0840 Living Wage and Supportive Benefits

- We appreciate DEQ's commitment to building a modern recycling system with truly modern workforce equity requirements, including a definition of living wages that supports households.
- Do not create gaps in the implementation of the living wage and benefits standard because it requires a change from the status quo. Fulfilling this requirement may take administrative and software changes for CRPFs to ensure wages and benefits, those CRPF costs are included in the calculation of PRO payments to CRPFs.
- Ensure all workers at CRPFs receive the living wage and supportive benefits set in the proposed rule. Specifically:
 - Add language to the rules clarifying that the minimum living wage is the amount that must be paid to the worker and cannot include any administrative and other costs paid to a third party for hiring workers. For example, if the RMA living wage is \$32.58 for Washington County, a CRPF in Washington County would not meet the living wage standard by paying a third-party company \$2.58/hr for workers that receive \$30.00/hr.
 - Replace the "primary" threshold for a worker's hours to count for living wages and benefits with a threshold that reflects modern accounting practices, such as one hour.
 - Employers already track hours to ensure people receive payment for the hours they worked at an organization. For example, Metro successfully tracks each job classification down to the quarter hour, including different wages by shift and by seniority level.
 - The proposed rules may incentivize an employer to schedule workers below the primary threshold.
 - Change the definition of worker to include facility administrative and clerical workers. Those workers were already included in the calculation of the PRO payments to CRPFs as completed by the Crowe study, at one FTE per facility per year.
 - Require CRPFs to provide local governments with quarterly data sufficient to support local governments in meeting their statutory obligation to only direct materials to facilities that provide living wages and supportive benefits.
 - Require CRPFs to participate in an audit to determine compliance with the statute if requested by a local government or DEQ.

OAR 340-012-0065 Solid Waste Management Classification of Violations ; OAR 340-012-0098 Classification of Violations for ORS 459A.860 to 459A.975 and related rules ; OAR 340-012-0140 Determination of Base Penalty

- Maintain the proposed penalties for producer responsibility organizations to ensure compliance among companies that can benefit from non-disclosure and can absorb significant penalties. PRO members include companies among the top ten largest revenue earning companies in the world.

Thank you for your leadership in developing Oregon's recycling system to maximize benefits for underserved communities and our environment.

Thomas Egleston, Policy and Program Development Manager, Metro

Names and organizations/jurisdictions listed below support and approve this submission of Recycling Modernization Act second rulemaking public comments.

Elizabeth Chin Start, Principal Consultant, Start Consulting
Sonya Carlson, Executive Director, Bring Recycling
Taylor Cass Talbott, Co-Director, Ground Score Association

Scott Keller, Senior Program Manager, Sustainability & Recycling, City of Beaverton
Deveron Musgrave, Waste Prevention Program Manager, City of Eugene
Shannon Martin, Solid Waste & Sustainability Manager, City of Gresham
Andrew Bartlett, Program & Support Manager, City of Hillsboro
Amanda Watson, Sustainability Program Manager, City of Lake Oswego
Eben Polk, Solid Waste & Recycling Manager, City of Portland
Pete Chism-Winfield, Sustainable Materials and Waste Policy Manager, City of Portland
Ryan Largura, Environmental Specialist, City of Troutdale

Rick Winterhalter, Solid Waste & Recycling Manager, Clackamas County
Angie Marzano, Waste Reduction Program Manager, Lane County
Heidi Konopnicki, Solid Waste & Recycling Program Specialist, Multnomah County
Erin Stein, Interim Solid Waste & Recycling Manager, Washington County

July 26, 2024

Oregon Department of Environmental Quality
Attn: Roxann Nayar/Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100
Submitted via email to recycling.2024@deq.oregon.gov

RE: Letter of Comment re: Recycling Modernization Act Rulemaking 2

Dear Oregon Department of Environmental Quality:

The Association of Plastic Recyclers (APR) is committed to expanding and improving plastics recycling in Oregon and supporting the effective implementation of the Plastic Pollution and Recycling Modernization Act (RMA). APR appreciates the opportunity to provide written comments on the June 10, 2024, State of Oregon DEQ Notice of Proposed Rulemaking, Plastic Pollution and Recycling Modernization Act, Rulemaking 2.

[The APR is a U.S.-based, international non-profit association](#) and the only North American organization focused exclusively on improving the recycling of plastics. [APR members represent more than 90% of the post-consumer processing capacity of the US and Canadian recycling industry across all plastic resins, including two Oregon-based processors \(reclaimers\) and over a dozen West Coast-based processors.](#) The majority, if not all, of Oregon's recyclable plastics flow through APR member facilities each and every day on their path to being responsibly recycled into new products and packaging.

SUMMARY OF COMMENTS

APR has strong objections to the definitions for Responsible End Markets (REMs) for plastics and the heavy auditing and reporting requirements on plastic REMs. APR supports the intent of the rules to ensure materials are processed responsibly through regional and North American markets. We recognize that Oregon has been particularly reliant on overseas markets and was hit hard by the repercussions of China's National Sword policy. We support the goals of DEQ to specifically address these issues, and it is our interpretation that many of the proposed regulations will do just this by directly addressing the problems that led to

exporting recyclables to subpar markets. Most importantly, the contamination standards on CRPFs and requirements for CRPFs to use responsible end markets are the most effective strategies to prioritize responsible North American markets.

However, the heavy auditing, reporting, and disclosure requirements proposed on plastics recyclers will likely result in negative adverse impacts that likely drive up the costs of recycling in Oregon, deter the use of existing responsible recycling markets, potentially increase use of export markets, and incentivize packaging companies to source recycled content from overseas markets with no disclosure requirements. These regulations could deter better recycling, not develop stronger US and Canadian markets.

The Recycling Modernization Act is complex legislation and the requirements around REMs are the first of their kind to our knowledge. **Substantial discussions are needed to revise the requirements for plastics recycling to align with business operations, available data, proprietary concerns, and other significant issues.** A streamlined, start and strengthen approach that can evolve effectively over time as the program develops is the suggested course of action, allowing for more time to work through these challenges while focusing on the existing requirements in the RMA that will promote responsible recycling.

APR recommends:

1. Remove the separate definition for plastics recyclers for plastic food/beverage packaging and children's toys, OAR 340-090-0670 (1)(e)
2. Provide a streamlined path for proven, existing responsible recyclers to continue to process Oregon materials as REMs without heavy auditing and reporting.
3. Continue discussions, through a working group or other forum, toward solutions to address the confidentiality issues for CRPFs and recyclers, including self-certification or third-party certifications. APR has discussed this with several interested partners and there is strong interest in moving forward quickly.

APR is committed to working with DEQ, Circular Action Alliance (CAA), and other stakeholders to implement practical, effective solutions to achieve our common goals. Detailed comments and suggestions are provided below. The APR staff are available at your convenience to provide further information and look forward to continuing to engage in a constructive manner to deliver a top-performing recycling program for Oregon.

COMMENTS ON RESPONSIBLE END MARKETS

OAD 340-090-0670, Responsible End Markets (page 63 - 69); OAD 340-096-0310 Responsible End Markets (page 132 - 134)

The current definition of REMs for food/beverage packaging and children's toys would require plastics reclaimers and converters to disclose the proprietary information of their buyers. This is impractical, risky, and detrimental to existing responsible recyclers, and is not necessary to achieve the goals of the RMA. APR recommends DEQ eliminate the separate definition for REMs for food/beverage and children's toys – p. 174, "(e) For plastic that is recycled to produce packaging for food and beverage applications or for production of children's products, the end market is the entity that places it into a mold for the manufacturer of such packaging or product. This definition applies to both mechanical and non-mechanical recycling pathways."

APR recognizes the need to improve the transparency and accountability of recycling. However, the scope of the disposition data associated with this definition undermines the ability for recyclers to conduct their businesses and can even be prohibited by contractual relationships with buyers. Plastic reclaimers and converters could choose to no longer buy bales from Oregon due to the reporting burden, which would destabilize markets, disrupt existing responsible recycling, and raise the overall system costs. The additional reporting and unnecessary complexity will likely increase the cost to consumer goods companies of using recycled plastic in new products, which could drive companies to use cheaper virgin plastic feedstocks. In sum, these regulations may actually work counter to the goals of the RMA to reduce the environmental impacts of packaging. Further, the value of tracking the materials through to the manufacturer level is unclear. There is no measurable yield loss at the manufacturer level, and the FDA guidelines are the industry standard for using recycled plastics in food-contact applications.

The following sections expand more on the problems these regulations would likely cause:

- **Undermines competitive environment and will increase costs:** Buying and selling recyclable plastics is a relatively small industry, which means it is highly competitive and business relationships are closely guarded. Competitors will use this data on end market buyers and tons to undermine contracts, both as recyclers and as brand

companies. This will not lead to better performance—it will create instability in the marketplace that will lead to higher costs. In addition, plastics reclaimers and converters often have NDAs with buyers that do not allow the recycler to share the buyers' information.

- **Recyclers may choose to not buy Oregon's materials.** APR spoke to several companies that would strongly consider not buying materials from Oregon under these proposed requirements. Plastic reclaimers we talked to questioned why the reporting of their end market specifics is necessary, assuming these reclaimer markets are producing material responsibly (as per Oregon rules) and are following all other applicable local, state and federal laws. If the intentions of market disclosures are to track PCR applications, and/or to address toxicity concerns, there are more effective or established ways to achieve these ends, as noted below under incentivizing recycled content and FDA regulation.
- **Disadvantages recycled plastic compared to virgin plastics.** Recycled plastics are a cost-sensitive market and currently under sharp price pressure from the low cost and overproduction of virgin plastics, cheap imported recycled content from overseas that is replacing domestic sources, limited supply of collected recycled materials, scaled back corporate commitments to buy recycled content, and other significant market challenges. The proposed additional and complex reporting on recycled plastics will likely increase the price of recycled plastic. Food and beverage companies are under no obligation to purchase recycled content plastics from Oregon programs, and the proposed reporting requirements will be a deterrent for companies to use recycled content from Oregon. Companies are already turning toward cheaper imported recycled plastics, rather than buying recycled plastics from domestic recyclers, and these requirements will likely only exacerbate this problem. There is no guarantee, or even any incentives, for manufacturers to buy recycled content from Oregon under these regulations.
- **Disadvantages plastics against other commodities.** Non-plastics recyclable materials have previous histories of irresponsible export markets, negative environmental impacts, etc. It is not justified to only require manufacturing data from plastics recycling and not other material types, as proposed by the definition of REMs for food and

beverage packaging.

- **Potential to favor overseas markets:** West Coast CRPFs, including Oregon's, have relied more heavily on overseas markets for paper and plastics over the years compared to other regions. They continue to do so, although this reliance has certainly lessened for plastics in recent years. While overseas markets will need to meet REM requirements, many have cheaper labor and more margin to absorb additional reporting costs, potentially allowing for a price advantage that makes exporting materials more attractive. Throughout this regulation, there is no requirement or incentives for buyers to purchase recycled content from US/Canada, and combined with the increased reporting, this puts more risk and pressure on US/Canadian processors rather than driving materials away from export markets.
- **No safeguards for proprietary information:** There is no information on how DEQ, the PRO, or other entities would safeguard the proprietary information required from recyclers or CRPFs. The only reference to confidentiality (p. 95) pertains only to producer data. This confidentiality of business relationships and buyers/sellers is a paramount concern for both CRPFs and plastic reclaimers and cannot be ignored. Because the REM verification is a new component of EPR worldwide, this will take some time to develop and fully implement. A start and strengthen approach that can evolve with the RMA implementation is a more practical goal.
- **Additional risks of disclosure to PRO:** There can be additional risk to the recycler in disclosing buyer information to the PRO because PRO members may be direct buyers from the REM, or buying from a competitor REM, or even invested in another facility or technology that competes for materials with other REMs. The risk of conflicting business relationships between the PRO members and the REM necessitates clear safeguards on proprietary business information and is a crucial missing piece of these regulations.
- **FDA regulation is the industry standard for food-contact safe PCR:** The FDA Letter of Non-Objection is the industry standard to oversee the use of recycled content plastic in food and beverage applications. The FDA process does not require sharing confidential buyer information as is being proposed in Oregon, and is based on the

reclaimer process to manage incoming feedstock and remove contamination, in many cases to levels below what is required by virgin resin producers. The LNO process (or LONO for Health Canada) consists of a series of technical tests and process safeguards that ensure, through a combination of feedstock control and process, that the resulting recycled material is safe for food contact applications. The reclaimer LNO is public record on the FDA's website so there is no additional function in having the plastics reclaimer, or downstream buyer, submit this data to DEQ. While the LNO process is technically voluntary, it is the industry standard and widely treated as a condition of sale. DEQ is not accurate to say that this is "voluntarily sought by some plastics reclaimers." It is the industry standard utilized as a measure of safety and risk reduction for recycled plastic users in Europe and widely accepted by Health Canada which has a nearly exact equivalent process and testing protocol. While described as "informal advice" from the FDA, the approach is similar to how the FDA handles other issues, such as federally regulated Food Contact Notifications (FCN). In FCNs, the FDA reviews submissions and does not approve, but formally does not object to the submission, thus allowing it to enter the market. Further, numerous consumer goods companies conduct additional due diligence on recyclers to ensure the quality of their recycled plastics. As proposed, these regulations are unduly burdensome for proven recyclers. In addition, we question why these toxicity requirements apply only to plastics when there is precedent of potentially hazardous chemicals used in other materials, such as PFAS coating on paper packaging or BPA-based linings on metal cans.

THERE ARE BETTER EXISTING STEPS TO ADDRESS SUBSTANDARD RECYCLING ALREADY IN THE RMA

There were numerous responsible plastics recyclers in the US when many Oregon and West Coast facilities were instead choosing to export materials overseas. Haulers, MRFs, and brokers chose substandard markets in large part because it was cheaper to export materials than to use more responsible domestic markets, or because the bales were so contaminated that they were not acceptable at domestic recyclers (contamination was more tolerated by overseas buyers). While export markets continue to be utilized, reliance on overseas markets has lessened over the years and will be further reduced by responsible market requirements.

The RMA and rulemaking already have several key elements that will greatly improve responsible recycling for plastics and all materials. The impacts of these regulations will be far more impactful and less detrimental than trying to track recycled plastics all the way to the plastics manufacturer and the excessive auditing of proven REMs:

1. The state manages the material acceptance list. The state has already screened the existing markets for plastic packaging and only allows for collection of materials with existing responsible markets.
2. The state sets performance standards and contamination levels for CRPFs. With cleaner bales, there is less reliance on cheaper overseas labor to sort the excess contamination, and less contamination improves the yield and environmental benefits of the recycling process.
3. The commodity risk payments provide stability. CRPFs have greater financial stability to focus on material quality and responsible markets, and are no longer incentivized toward the cheapest, lowest standard.
4. CRPFs are required to send to REMs. This guarantees the materials are sent to strong markets. Further, over 92% of US plastics were recycled in North America in 2022, showing the market has already shifted since 2018.

All of these elements combined will directly address the problems of the substandard recycling previously experienced in Oregon and lead to more materials being more responsibly recycled. These regulations are the best path forward to achieving these goals and achieve these goals independent of the auditing and data requirements on plastic REMs.

COMMENTS ON DEFINITIONS

OAR- 340-090-0010, Definitions (page 48 - 52)

(35) Add specific definition of post-consumer recycled content: APR encourages DEQ to add a specific definition for post-consumer recycled content to align with ISO standards and other states. The current definition does not provide sufficient distinction between consumer and manufacturing waste for plastics, as well as other materials. In addition, it is unclear why there is a separate definition for recycled content newsprint (37).

The recommended definition used by ISO 14021:2016 Environmental labels and declarations and Washington's SB5022 content law is: *“Postconsumer material” means material generated by households or by commercial, industrial and institutional facilities in their role as end users of the product which can no longer be used for its intended purpose. This includes returns of material from the distribution chain.*

(36) Unnecessary and conflicting cost comparison in the definition of recyclable: it is unclear why the cost differential between recycling and disposal is part of the definition of recyclable. Mandated collection programs such as the RMA that fund recycling programs remove the need to have fully funded recycling markets. In addition, OR DEQ states that recycling has a net value of over \$2000 per ton, yet it is unclear if this value is considered in this definition.

(38) The definition of recycling is not aligned with other states, leading organizations: It is unclear why this definition is used.

COMMENTS ON RECYCLING ACCEPTANCE LIST

OAR 340-090-0630, Recycling Acceptance Lists, pages 59 - 63:

(1)(m)“Tub” APR would like to express some concerns with the definition of Tub as “a rigid container that has a neck or mouth similar in size to its base. “Tub” does not include a clamshell or similar container with a lid that is affixed to the base using a hinge or similar mechanism.”

A clamshell is generally considered a type of thermoformed container. If this definition is intended to: 1) include various tub formats, primarily polyolefin, which can be thermoformed or injection molded, and 2) exclude PET and similar look-alike thermoformed (clamshell) material— with hinged, or other non-hinged lids or seals—we suggest the following revision to the second sentence for greater clarity::

“Tub” does not include non-bottle PET containers other than those with screw-on closures.” This would allow for polyolefin clamshells (e.g., a polypropylene foodservice container), as well as the occasional PET tub (e.g., a gelato container with a screw-on closure.)

(2)(j)(A)(i) PET (#1). APR has repeatedly asked DEQ to expand this definition to include “clear and **light blue** only.” As noted in our earlier comments, light blue bottles can improve the quality of the post-consumer recycled content. The benefits of capturing the light blue material volumes for recycling (vs. landfill) will far outweigh the potential detriment of occasional darker blue bottles, which are estimated to make up a fraction of a percent of the PET bottle stream. Since many plastic beverage bottles fall into the clear to light blue category, expanding this definition would arguably be the simpler path for effective education, reducing the need for constant consumer evaluation of their bottle color.

(3)(d)(A-C) Polyethylene film

APR is pleased to see the design guidance for mono-material polyethylene film but would like to raise concerns both about whether the level of detail is appropriate, and to suggest a more appropriate number.

First, since the specifics of package design are not visibly discernable at collection points, it is not clear how effective it is to detail the packaging composition in this section. In addition, this detail exceeds the descriptions for similar packaging formats. Since packaging design is continuously changing, APR suggests it would be more effective and remain more relevant to instead refer more generally to the APR design guidance in the Recycling Acceptance Lists rules, as in, “(d) Polyethylene film and packaging that is designed to be compatible with the North American recycling stream based on the APR Design® Guide, Recyclability Recognition program, or equivalent.” The more detailed criteria in the proposed rulemaking could then be integrated into the eco-modulation analysis rather than in statute.

Second, criteria (C) of the guidance, “free of or including flexible seals, closures or dispensers so long as they are made of polyethylene and contribute less than 10 percent of the total package by weight,” is unnecessarily restrictive. There are numerous examples of all-PE closures, such as zippers, in the 10-20% of total weight range. We are assuming that the intent of this section is to eliminate rigid attachments such as spouts, etc., not to exclude zippers, which can be designed to be fully compatible with the film stream.

While APR prefers to reduce this level of detail overall and instead refer to the APR Design Guide, if this section remains, we recommend increasing the flexible closure weight percentage, as in, “(C) free of or including flexible seals, closures or dispensers so long as they are made of polyethylene and contribute less than 10 percent of the total package by weight,

or no more than 20% for flexible PE seals or closures.” This will still require all-PE structures, but will not inadvertently incentivize thicker packages to offset the weight of a zipper.

Allowance for small format materials that pass APR testing protocols, p. 60

APR appreciates the work of DEQ to adopt the two-inch threshold for plastics. While this is a strong generalization for determining likely sortation for recycling in a CRPF system, there are exceptions for smaller articles that are successfully evaluated for sortation using the APR’s [“Evaluation of the Size Sorting Potential for Articles with at Least 2 Dimensions Less than 2 Inches”](#) sorting potential test method. APR suggests adding language that allows for exceptions when successfully evaluated by APR, and allows for the PRO and other stakeholders to educate consumers to properly recycle these approved formats.

MISCELLANEOUS TOPICS

OAR 340-090-0820, Processor Commodity Risk Fee (p. 81)

While DEQ has identified the best available data sources for plastic commodities, APR would like to suggest that there are some extenuating circumstances where market data does not reflect the actual operational conditions. Here are two plausible examples:

- 1) A buyer has an unexpected plant shutdown that impacts their purchasing of bales. Only one or some CRPFs are impacted, so the impact may not be directly or immediately reflected in a reduced regional market price, but the event puts financial strain on the CRPFs and communities, and may trigger the need for higher payments.
- 2) A fast-acting market change such as the 2020 Gulf Coast storm that knocked many virgin plastics producers offline and resulted in rapid increases in recycled prices in just a month. This situation may warrant reviewing the payments more frequently than quarterly.

APR recommends DEQ and/or the PRO establish a petition process to address extenuating circumstances such as these that may include formal feedback from material trade groups or other identified experts on the circumstances and their impacts.

Data uncertainty, P. 69 (ii): Some commodities are collected and consolidated regionally, rather than just in-state, and many recyclers are unlikely to be able to provide specific data to

Oregon locations. This particularly applies to depot collection, store take-back that may involve regional, multi-state reverse distribution hubs, and other smaller quantity material types where loads picked up in Oregon may be consolidated with loads from nearby states. This is similar to how haulers may cross city or county lines in collecting recyclables. As a result, the data has some inherent rounding that should be recognized under the reporting details.

Developing a new market, P. 67, (E): This should be expanded to “developing new processing and markets” to emphasize two points. First, there is a need for multiple buyers for each material, and second, in addition to new buyers, there may also be a need for new processing equipment and/or additional processors.

Agricultural containers: APR supports the request of the Ag Container Recycling Council (ACRC) to exempt the full scope of products collected and recycled by the ACRC program so long as the program meets appropriate performance standards.

Yield calculations, P. 65,(C): APR would like to emphasize the need to account for moisture in yield loss. For example, a typical HDPE milk bottle weighs 80-90 grams, and when recycled, often contains residual liquid, roughly two teaspoons of residue milk at about 10 grams. This means a bale of milk bottles could have up to 10% liquid weight that is washed away during reclamation. This is also the case for a material such as Color HDPE where residue bottle contents (such as soaps, detergents) are more viscous and harder to completely remove from the container. APR also requests that yield loss calculations provide for an allowance for by-products sold that are different from the primary bale contents, e.g., polyolefin cap material that is separated and sold as a saleable byproduct of PET bottle reclamation. These materials are recycled responsibly, and the regulations should encourage utilization of byproducts when feasible.

Setting these limits in rulemaking provides challenges as packaging and recycling processes evolve, and might instead be considered as part of the Program Plan or another more flexible process.

P. 57, (B) (ii): 25% contamination volume: The proposed 25% contamination threshold seems too high given the 5% contamination standard set for CRPFs.

P. 130, Table A, Commingled Recycling Processing Facility Permit Material Capture Rates: APR cautions against using fixed capture rates for each material type because of the wide variations in CRPF operations and equipment. While these numbers are within reason, APR and others have moved away from a fixed number as it does not represent actual performance and there is not a substantial baseline of data to justify a fixed number. A range of acceptable rates with incentives for higher performance would be a more accurate expectation at this point in the program development.

MOVING FORWARD

The APR appreciates the tremendous work of the DEQ and many others on this cutting-edge program. We would like to reiterate our commitment to work through these challenges. Our staff and members are available to discuss these comments, share further information, and collaboratively craft solutions for the effective implementation of the RMA. Please contact Kate Bailey, Chief Policy Officer, at katebailey@plasticsrecycling.org.

Sincerely,



Kate Bailey
Chief Policy Officer
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Submitted via email: recycling.2024@deq.oregon.gov

July 26, 2024

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 2

Founded in 1933, the Foodservice Packaging Institute (FPI) is the leading authority on foodservice packaging in North America. FPI supports the responsible use of all foodservice packaging, while advocating an open and fair marketplace for all materials. Our core members include raw material and machinery suppliers as well as packaging manufacturers, which represent approximately 90 percent of the industry. Additionally, a number of distributors and purchasers of foodservice packaging are part of FPI's affiliate membership.

The foodservice packaging industry is committed to reducing the impact of its products on the environment and is dedicated to increasing their recovery. FPI has several special interest groups that bring together the supply chain to develop and promote economically viable and sustainable recovery solutions for foodservice packaging. These special interest groups include the Paper Recovery Alliance, Plastic Recovery Group, Paper Cup Alliance and Foam Recycling Coalition. More information on these groups and their efforts can be found [here](#).

FPI continues to appreciate the Department of Environmental Quality's (DEQ) dedication to managing this significant rulemaking process within the mandated timeline. We look forward to continued engagement as this rulemaking advances. To this end, we would kindly ask that DEQ reach out to FPI concerning any modifications to the proposed rules that may impact foodservice packaging to allow for further engagement/discussion in advance of a final decision.

This letter provides FPI's feedback in response to the Notice of Proposed Rulemaking, June 10, 2024, for the Plastic Pollution and Recycling Modernization Act, Rulemaking 2, as detailed below.

Covered Products (OAR 340-090-0840) and Producer Definitions (OAR 340-090-0860)

FPI appreciates and acknowledges DEQ's efforts to provide further clarity as to what is "packaging" and how to differentiate "packaging" from "food serviceware" to enable producers to more readily distinguish food serviceware from packaging for items (e.g. cups, bowls, trays) that could fall into either category depending on how they are used.

However, it is our view that the proposed new packaging types and associated producer definitions do not result in the necessary clarification and may create further ambiguity and duplication.

The proposed language for covered products (OAR 340-090-0840) is as follows (for ease of reference):

OAR 340-090-0840(1) (b) Packaging includes service packaging. Service packaging is packaging that is filled at the point of sale for the purpose of transferring goods to a consumer. Service packaging includes but is not limited to:

- (A) Single-use shopping bags, including checkout, produce, and bulk food bags;*
- (B) Bags, wraps, single-use trays and associated items such as paper used to separate slices of cheese, and used by a retailer for packaging cheese, tofu, produce, meat, and fish;*
- (C) Trays provided to a consumer for containing multiple plants purchased at a nursery; and*
- (D) Bags or envelopes used to contain screws, nails and other bulk fasteners at a hardware store.*

(c) Packaging includes wraps sold directly to consumers, including but not limited to aluminum foil, film wrap, wax paper, and parchment paper.

(d) Food serveware is used to contain or consume food or drink that is ready to eat. Food serveware is sold empty or unused to a retailer, a dine-in food establishment or a take-out food establishment, regardless of whether the item is used to prepackage food for resale, is filled on site for food ordered by a customer or is resold as is.

Firstly, we note that adding a reference to "ready to eat" to the food serveware definition, while also proposing the concept of "service packaging" for items used by retailers to package foods like cheese that are also "ready to eat", creates duplication and ambiguity between these categories. FPI also notes that under the proposed language, "wraps" are listed under OAR 340-090-0840(1)(b), (c) and may also be included as part of (d), creating further uncertainty.

More generally on the matter of "service packaging", it is our understanding that in other EPR programs this category has traditionally been utilized to capture those covered materials filled/added at point of sale, including food serveware. As an example, in [Colorado's Section 18 Producer Responsibility Regulations](#) "service packaging" is defined as follows:

"Service packaging" means material that is added at the point of sale by retail, food service, or other service entities to facilitate the delivery or consumption of products, which includes but is not limited to all bags, boxes, cups, plates, containers and other items for the direct or indirect containment of products.

Examples of service packaging include but are not limited to:

- 1) Single-use carry-out bags provided at checkout;*
- 2) Bags filled at in-store with items such as produce, bulk goods, and baked goods;*
- 3) Food wraps, single-use trays, bags and associated items provided by bakeries, delis, or used for meat or fish;*
- 4) Flow boxes & wraps / trays provided for containing multiple plants purchased at a nursery;*
- 5) Single-use plates/containers/cups and associated items provided to residential consumer to facilitate delivery of food/beverages;*
- 6) Take-out and home delivery food service packaging such as but not limited to pizza boxes.*

We believe that with the separate food serveware definition in Oregon, the proposed "service packaging" category introduces more vagueness and does not reflect all covered materials filled/added at the point of sale.

FPI is also concerned with respect to the producer definitions associated with the newly proposed packaging categories.

As DEQ cites under the “Statement of need” section, the clarifications to the definitions of covered products are intended to enable producers to more readily distinguish food serviceware from packaging for items (e.g. cups, bowls, trays) that could fall into either category depending on how they are used. However, in the instance of food serviceware and service packaging, the obligated party does not necessarily have visibility as to how, when and where the covered product is used.

As it relates to food serviceware, we note that in the six scenarios presented by DEQ during the June 11, 2024, [Oregon Packaging EPR: Food Serviceware Webinar](#), the end-user in Oregon is a restaurant where the “use” as food serviceware may be more straightforward.

It is important to recognize that based on the definition of food serviceware, other locations such as retailers will also provide food serviceware to consumers. These scenarios present significant challenges for obligated producers, as in most instances they will not have visibility to the covered products ultimate “use”. For instance, a manufacturer or distributor may sell cups to a grocery store which may then use them in their deli area to package items from their hot/cold counter as ordered in store, placed on shelves containing fresh fruit for purchase, or sold as is to consumers for their personal use. These examples provide some context for how challenging it may be for a producer of food serviceware to determine the final use of the products they sell or distribute.

Furthermore, the scenarios provided to date from DEQ do not contemplate how a manufacturer that sells to a distributor in Oregon will know where the items were ultimately used, including whether they were shipped out of state.

It is our view that if DEQ can add clarity to the producer of food serviceware definition, then all other covered materials can be captured under “packaging” and the broader producer definition, eliminating the need for new covered material categories and associated producer definitions.

Working within the parameters of the law and recognizing that the statute exempts users of food serviceware, FPI suggests that the following language in orange be added to the definition of the producer of food serviceware:

The producer of food serviceware is the person that first sells the food serviceware **to a retailer or a dine-in food establishment or a take-out food establishment** in or into this state.

While still not the ideal approach, this additional language allows for the obligated producer to be the party most closely associated with the sale to the user of food serviceware. Additionally, this approach may serve to increase accuracy by obligating only the food serviceware that is used in Oregon while simplifying identification of producers in this category.

Further, FPI recommends that DEQ establish a reporting requirement for users of food serviceware to the obligated producer (the entity that sells the food serviceware to them as in the definition above). Without such a requirement obligated parties will lack the information needed for compliance and accurate reporting.

We believe these recommendations will simplify identifying the obligated party for food serviceware, ensure the party knows how/where covered products are used in the state and increase compliance.

Recycling Acceptance Lists (OAR 340-090-0630)

This package of regulations lays out a comprehensive view of how the various pieces of the recycling supply chain in Oregon will work together by specifying the obligations of recycling processors, local governments and producers. It is FPI's view that the framework for the larger system articulated through these regulations raises questions about previous decisions on Recycling Acceptance Lists (OAR 340-090-0630).

In addition to the changes proposed in the regulation, FPI recommends that Oregon DEQ consider broadening the local government recycling acceptance list (OAR 340-090-0630(2)) to include a broader category of PET and PP plastic cups and containers. The inclusion of only bottles and tubs is not consistent with common sorting practices or end market acceptance standards. This change is particularly critical in light of the overall framework of fees and recycling processor requirements proposed in this regulation.

The comingled recycling processing facility (CRPF) permit material capture rates presented in Table A of AOR 340-096-0300 include a capture rate for PET Thermoformed Containers, even though the current recycling acceptance lists exclude most PET thermoformed containers. It is inconsistent to evaluate CRPF's based on their ability to capture a material that is not included in the recycling acceptance list. For consistency, PET thermoformed containers should be added to the local government recycling acceptance list.

Furthermore, according to OAR 340-090-0830(4)(b) the contamination management fee can only be collected on material that is baled or marketed separately from the uniform statewide collection list material. It is highly unlikely that a CRPF would bale PET or PP tubs separately from other PET and PP containers, meaning that other PET and PP containers would not likely be subject to a contamination management fee.

A CRPF's operations will not likely discern whether a PET or PP containers meets the definition of tub (OAR 340-090-0630(1)(m)), and is therefore on the list, or not. Optical sorters would not differentiate between formats based on whether or not it has an affixed lid – the distinguishing factor between a tub that is on the list and another container that is not on the list. A manual sorter may not be able to distinguish either, since a lid may very well be removed in the collection and sorting process. End markets also do not distinguish between tubs and other PET or PP containers. FPI recently completed a survey of PP end markets that found that end markets do not distinguish between cups, containers and tubs. That finding is supported by the updated specification adopted by the Association of Plastic Recyclers and the Recycled Materials Association which include all PP containers, packaging or products. Similarly, PET reclaimers either accept bales of mixed bottles and thermoforms or all thermoforms; the bale specifications do not distinguish between types of thermoformed containers (e.g., tub, cup or clamshell). [APR bale specifications are available [here](#).]

These inconsistencies in how PP and PET formats are treated throughout the proposed rules leads to an unfair penalty on containers that do not meet the definition of tubs. Pursuant to the law, the producer responsibility organization (PRO) is required to assess higher fees on materials that are not included on the recycling acceptance list, presumably to cover higher system costs. However, PET and PP containers are likely to flow through the system and be sorted into commodity bales whether they at one point had an affixed lid or not. Penalizing producers who use materials that do not trigger contamination management fees and are compatible with the collection and sorting system does not align with the program goals and objectives.

Responsible End Markets (OAR 340-090-0670)

As DEQ contemplates modifications to the rules adopted in the fall of 2023, we urge consideration to change the unique responsible end market requirements for plastics used for food and/or beverage applications.

Similarly to our comments concerning the first rulemaking, we believe the unique definition of the end market for plastics used for food and beverage applications is problematic. As written, the rule would require the PRO to acquire knowledge of the specific use of recycled commodities by a manufacturer that is a buyer of material from a recycler that purchased material from a recycling facility in Oregon. For example, a plastic reclaimer that buys materials from a recycling facility in Oregon is likely to produce flake or pellet that is sold to a host of end markets, some of which may be manufacturers of food and/or beverage packaging. An entity that purchases recycled flake or pellet and molds it into new products probably purchases a mix of virgin and recycled plastic from multiple suppliers and may manufacture many kinds of products. How manufacturers use their raw materials is proprietary. Requiring them to disclose intended uses (and report on actual uses) may impose costs, administrative burdens, or competitive disadvantages that force them to refuse to purchase recycled plastic from Oregon's processors. Overall the definition of the end market for plastics used for food and/or beverage applications extends beyond the reach of the recycling system and is arbitrarily applied exclusively to one type of material in the recycling stream.

It also is important to note that any manufacturer of food and/or beverage packaging that purchases or uses flake or pellets purchased from a plastic reclaimer that is sourcing materials from an Oregon recycler is already required to obtain a letter of non-objection from the US Food and Drug Administration that confirms it has appropriate processes in place to protect public health.

FPI continues to suggest that the unique definition of end markets for food and/or beverage applications should be removed.

Processor Commodity Risk Fee (340-090-0820)

As proposed under OAR 340-090-0820 (3) (A) (vi), calculating the commodity risk fee for plastic based on average commodity weighting factors that refer to mixed plastic seems inconsistent with the program's intent to currently accept only PET, HDPE and PP. We note that PET and HDPE have specific weighting factors, however PP does not. Since PP has a specific indexed commodity value and dedicated bale specifications, it would be consistent to have the risk fee for PP based on its commodity value, rather than a mixed plastic value.

Life Cycle Evaluation Definitions (OAR 340-090-0900)

With respect to the definition of reusable packaging in OAR 340-090-0900(37), FPI recommends a definition that differentiates between producer reuse systems and consumer reuse. A consumer reuse definition should reflect the ability of the packaging to be reused for the same or similar general purpose for which it was conceived (for example, for food storage purposes), as well as that formal systems are not always needed in these instances.

We appreciate your consideration of our feedback and look forward to further discussion.

Sincerely,



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