

Date: Sept. 9, 2024

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item D, Informational item: Plastic Pollution and Recycling Modernization Act Rulemaking 2
Sept. 26-27, 2024, EQC meeting

Why this is important DEQ's Materials Management program will update the commission on implementation of the Plastic Pollution and Recycling Modernization Act including the rulemaking that DEQ intends to request EQC action on in November 2024.

Prior EQC involvement The program has already completed one RMA rulemaking when the commission approved rule adoption in November 2023.

Background The 2021 Oregon Legislature passed a law to transform recycling in Oregon: the Plastic Pollution and Recycling Modernization Act ([Senate Bill 582](#)). This law creates an improved system for responsibly managing packaging, printing and writing paper and food serviceware. It requires producers of packaging and paper products to pay fees for the modernization of the state's recycling system, thus extending producer responsibility to include end-of-life costs of their products. The law uses a shared responsibility model to improve the recycling system by also placing new requirements on local governments and recycling processors to help ensure recycling occurs in an environmentally and socially responsible manner, aligning with the [2050 Vision for Materials Management in Oregon](#). The Act became effective in January 2022 and requires recycling system changes that will begin on July 1, 2025.

Rulemaking development processes DEQ convened a Rulemaking Advisory Committee and consulted with the Oregon Recycling System Advisory Council and multiple technical workgroups to gather feedback and input in developing the proposed rule language. Formal comments were solicited through the public comment period which was open in June-July 2024.

The Rulemaking Advisory Committee (RAC) was a 17-member, Director-appointed committee charged with reviewing the technical, fiscal, and equity impacts related to the proposed rules. DEQ convened a committee comprised of members who reflect the range of entities and communities both directly and indirectly affected by the proposed rules.

DEQ intends to bring proposed rules for commission consideration and action at the November 2024 EQC meeting.

Key issues DEQ developed draft rule concepts and shared them with the RAC over the course of eight meetings held between July 2023- April 2024. Several topics were the subject of significant conversation during the RAC meetings:

1. Recycling Processor Obligations

The Act requires the EQC to establish the start date for the new permitting program for commingled recycling processing facilities. The proposed rules establish a new permit and certification program. The permit program will apply to Oregon facilities and the certification program is for facilities outside Oregon handling Oregon-originated commingled recyclable material. These new programs will establish new performance standards and responsible end market requirements. There are also proposed rules for recycling processors that will provide living wages and supportive benefits to workers. The RAC had several conversations about:

- Definitions and permitting standards for limited sort facilities, and the implications of what was being proposed. Draft rule concepts incorporate changes in response to concerns raised by Rulemaking Advisory Committee members, as well as local processing facilities.
- The potential implications of providing living wages and supportive benefits to commingled recycling processing facilities workers in relation to other employees at the facility.

2. Covered Products

This rulemaking sought to further clarify and provide definitions to terms in statute related to the scope of ‘covered product’ and exemptions from it.

The RAC engaged in extensive conversation about proposals to exempt from the definition of ‘covered product’, which would mean that producers of these products would need not pay fees for them, despite the materials still entering the system.

3. Producer Responsibility Obligations

The Act requires the EQC to establish by rule obligations for producer responsibility organizations. PROs are proposed to be required to collect fees from producers of covered products, and use those funds to support a number of new programs and services including: the waste prevention and reuse fee (paid to DEQ), the Processor Commodity Risk Fee and the Contamination Management Fee (paid only to commingled recycling processing facilities). This rulemaking also establishes other definitions and clarifications to statute related to: responsible end market disposition reporting requirements, the timing and deadlines for reporting market share data, and 2024 annual reporting requirements.

RAC discussions about this topic were focused on:

- Whether or not there should be a monetary cap on the waste prevention and reuse fee,

- Adjustments to the two fees paid to commingled recycling processing fees, to prevent double-counting and improve accuracy, and
- Whether or not responsible end market disposition reporting requirements should include accommodations for brokers regarding confidentiality and exceptions for small tonnages.

4. Standards for Life Cycle Evaluations

The Act requires that the EQC establish by rule the methodology, procedures and requirements to be used by producers of covered products when evaluating life cycle environmental impacts. These rules will be used by the largest 25 producers in the state in fulfilling the mandate to evaluate and disclose the environmental impacts of 1% of their products every two years. DEQ further proposes to require PROs to offer two fee bonuses to their member producers for voluntary evaluation and disclosure of environmental impacts, with the larger of the two granted for an evaluation that meets a threshold for substantial impact reduction.

This topic was presented in iterations to the RAC over multiple meetings. While there was general support for an approach that rewards measurable, substantial impact reduction, it did generate discussion and many questions regarding:

- Whether or not the proposed approach and weightings for factoring the impacts of plastics, microplastics and nanoplastics into assessment of substantial impact reduction is appropriate.
- Whether or not in addition to fee incentives, there should also be financial disincentives, or malus fees.
- Whether or not it is appropriate to exclude toxicity from calculation of substantial impact reduction due to error in assessment methodology, and whether or not it is sufficient to instead mandate toxicity disclosures.

5. Producer Obligations

The Act requires producers of covered products to join PROs, report data on their products sold in or into the state, and pay fees for those products. Statute describes how the producer obligation is to be assigned to different covered products (e.g. packaging of items sold at retail, packaging of items sold through remote distribution, paper, and food serviceware). This rulemaking proposes clarifications to enable clear assignment of producer obligations. It also requires associated producers to lump their global annual revenues and volumes of covered product sold or distributed into the state for the purposes of identifying producers that qualify as small and large producers. Small producers are exempt from these obligations while large producers will have an additional disclosure requirement.

The RAC's discussion focused primarily on a proposal to clarify that manufacturing of a packaged item, a key determinant in assignment of obligation, includes directing manufacturing by contract, and the question of

where to draw the line on what is and is not considered directing manufacturing.

6. Local Government Obligations

The Act provides funding to support and improve recycling contamination reduction programming by local governments and that education and outreach material be easy to understand for a diverse range of communities and specify steps local governments must take before enforcing consequences for contamination.

The Act also requires that local governments or their service providers conduct periodic contamination evaluation assessments. DEQ is proposing amendments to existing rules that were approved in November 2023 to add the eligible expenses a local government or their service provider may incur to conduct contamination evaluation assessments.

The RAC's discussion mainly focused on the proposal to provide advanced funding to local governments and recommended that DEQ provide more specific criteria that would be used to be eligible for it.

7. Other

Other rules proposed in this rulemaking include updates to Division 12 enforcement rules and exclusion of two products (gift wrap and storage containers) from the material acceptance lists developed in the first rulemaking due to producers not paying fees for the products.

EQC involvement

DEQ intends to bring the rule proposal for commission action at the Nov. 21-22, 2024, meeting.

Supporting materials

- A. [Recycling 2024 Rulemaking website](#)
- B. Plain Language Guide to the Draft Rules

*Report prepared by Roxann Nayar
Land Quality Division, Recycling Program Analyst*

Translation or other formats

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800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

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