



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Meeting

Nov. 21-22, 2024

Rulemaking Action Item K Plastic Pollution and Recycling Modernization Act

Table of Contents

DEQ recommendation to the EQC	1
Introduction	1
Overview	2
Statement of need	4
Federal relationship.....	15
Rules affected, authorities, supporting documents.....	17
Documents relied on for rulemaking.....	17
Fee analysis	20
Statement of fiscal and economic impact.....	23
Racial equity.....	37
Advisory Committee Review of Racial Equity Impact Statement.....	37
Environmental justice considerations	39
Advisory Committee Review of Environmental Justice Considerations.....	40
Land use	41
EQC prior involvement	42
Advisory committee	43
Public engagement.....	44
Implementation.....	52
Five-year review	53
Non-discrimination statement.....	54

Translation or other formats

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



DEQ recommendation to the EQC

The Oregon Department of Environmental Quality recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

Language of Proposed EQC Motion:

“I move that the commission adopt the proposed rule amendments in Attachment A as part of chapter 340 of the Oregon Administrative Rules.”

Introduction

DEQ proposes new and permanent rule amendments to chapter 340 of the Oregon Administrative Rules. Parameters and requirements for the proposed rules specific to the Plastic Pollution and Recycling Modernization Act are set forth in Senate Bill 582, enacted by the 2021 Oregon Legislature. DEQ proposes changes to OAR 340, divisions 12, 90, 93, 96 and 97 to align the newly adopted RMA rules with the existing Opportunity to Recycle program.

Overview

DEQ is undertaking the second of two rulemakings to clarify and implement the Plastic Pollution and Recycling Modernization Act (SB 582, 2021), also referred to as the RMA. The Act requires producers of packaging, paper products and food serviceware to support and expand recycling services in Oregon for their products.

The purpose of the proposed rules is for:

1. Clarifying obligations for Commingled Recycling Processing Facilities, including:
 - Establishing a commingled recycling processing permit and certification program, including performance standards.
 - Defining and clarifying requirements for providing living wages and supportive benefits to CRPF workers.
 - Establishing the CRPF permit fees.
 - Clarifying requirements for commingled materials, limited sort and reload facilities.
 - Clarifying responsible end market obligations for CRPFs.
2. Clarifying covered products and covered product exemptions.
3. Clarifying Producer Responsibility Organization obligations; including:
 - Establishing the Processor Commodity Risk Fee.
 - Establishing the Contamination Management Fee.
 - Establishing the Waste Prevention and Reuse Fee.
 - Amending Recycling End Market Obligation rules.
 - Clarifying Compensation to Local Governments for Evaluation of Contamination and Contamination Reduction Programming.
 - Clarifying annual reporting requirements for 2024.
 - Amending Market Share rules.
4. Clarifying producer obligations; including:
 - Clarifying producer definitions.
 - Clarifying associated producers and designations for large and small producers.
 - Clarifying producer pre-registration.
5. Establishing Standards for Life Cycle Evaluations.
6. Clarifying local government obligations for multifamily recycling enclosures.
7. Amending enforcement rules in Division 12 to align with the proposed rules.
8. Other clarifications and amendments to ensure successful implementation of the RMA.

The proposed rules are informed by discussions with, and input provided by, DEQ's RMA Rulemaking Advisory Committee. The advisory committee included members from the regulated community, non-profit and community-based organizations, producers, prospective producer responsibility organizations and other interested parties, including members of the public.

Affected parties

The following parties are directly affected by the proposed rules:

- Commingled Recycling Processing Facilities.
- Limited sort facilities.
- Non-profit and community-based organizations.
- Local governments.
- Waste collection service providers.
- Producers of packaging, printing and writing paper, and food serviceware that become waste in Oregon.
- Producer Responsibility Organization(s), a nonprofit organization established to administer a producer responsibility program. For this rulemaking, the producer responsibility program will be implemented statewide for the responsible management of covered products.

Indirectly affected parties

The following parties are indirectly affected by the proposed rules:

- Customers/residents who recycle in Oregon.
- End markets and the people who live in the communities where end markets are located.

Statement of need

Proposed Rule or Topic	Discussion
1. Recycling Processor Obligations	
Commingled Recycling Processing Facility Permitting Program	
What need would the proposed rule address?	These rules satisfy ORS 459A.955, which establishes that a person (in this case, a CRPF) may not establish or operate a CRPF in Oregon unless the person obtains a disposal site permit from DEQ.
How would the proposed rule address the need?	The proposed rules establish the requirements for the CRPF permit program and will ensure that CRPF facilities meet the new requirements of the RMA.
How will DEQ know the rule addressed the need?	Permitted in-state processors are operating in a more effective, efficient, transparent and environmentally preferable manner, producing cleaner, higher quality material destined for responsible end markets.
Commingled Recycling Processing Facility Certification Program	
What need would the proposed rule address?	These rules satisfy ORS 459A.956, which requires DEQ to establish a program or approve a program established by a third party to certify CRPFs located outside of Oregon.
How would the proposed rule address the need?	The proposed rules establish the requirements for the CRPF certification program.
How will DEQ know the rule addressed the need?	Out-of-state processors are part of a program that ensures they are operating in a more effective, efficient, transparent and environmentally preferable manner, producing cleaner, higher quality material destined for responsible end markets.
Living Wage and Supportive Benefits	
What need would the proposed rule address?	The proposed rules address the need to clarify and define the terms in ORS 459A.905(2)(c) “living wage,” “supportive benefits,” “workers,” and the elements required to inform the

Proposed Rule or Topic	Discussion
	household composition to assess the living wage amount.
How would the proposed rule address the need?	The proposed rules provide the necessary definitions and clarity to implement statute.
How will DEQ know the rule addressed the need?	Once CRPFs are implementing these standards successfully.
Limited-Sort Facilities, Commingled Materials and Reload Facilities	
What need would the proposed rule address?	The proposed rules establish the differences between a reload facility/commingled recycling reload facility and a limited sort facility. ORS 459A.863(3)(b)(l) authorizes the EQC to define the term “limited sort facility.”
How would the proposed rule address the need?	By establishing requirements for facilities other than CRPFs that are removing any amount of Uniform Statewide Collection List material collected to meet the Opportunity to Recycle requirements and sending that material to an end market. The rules also amend the agency’s existing Transfer Station/CRPF disposal site permit to include the new requirements specific to limited sort facilities only.
How will DEQ know the rule addressed the need?	Limited sort facilities are operating in a more transparent and environmentally preferable manner, sending all materials processed to responsible end markets.
Responsible End Market Obligations for Commingled Recycling Processing Facilities	
What need would the proposed rule address?	These rules clarify the joint responsibility that CRPFs share with PRO(s) to ensure materials are sent to responsible end markets.
How would the proposed rule address the need?	The rules assign specific material tracking and market verification responsibilities to CRPFs to enable their fulfillment of the responsible end market obligation. Opportunities for PRO(s) and CRPFs to collaborate to reduce duplication of effort are also enabled.

Proposed Rule or Topic	Discussion
How will DEQ know the rule addressed the need?	These rules will ensure that the facilities handling materials from Oregon are sent to end markets that are meeting the responsible end market criteria.
2. Covered Products	
Clarifications to the Definition of Covered Products	
What need would the proposed rule address?	These proposed rules provide further clarity as to what is “packaging” and how to differentiate “packaging” from “food serviceware.”
How would the proposed rule address the need?	These proposed rules clarify that three types of packaging which reach the consumer empty - storage items, service packaging, and consumer wraps - are considered “packaging.” These proposed rules also clarify that food serviceware reaches a retailer or restaurant <i>empty or unused</i> , and is used to contain food that is <i>ready to eat</i> . This will 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.
How will DEQ know the rule addressed the need?	At the start date of the program, producers will be able to identify what products in their portfolio are covered under the law and will know which producer in the supply chain is obligated to pay fees for which products.
Covered Product Exemptions	
What need would the proposed rule address?	These proposed rules implement ORS 459A.863(6)(b)(R), which allows exemptions to “covered product” in rule.
How would the proposed rule address the need?	These proposed rules propose five product categories for exemption from “covered product” which were selected according to fixed criteria and a producer request process that engaged the Recycling Council in a statutorily mandated advisory role.

Proposed Rule or Topic	Discussion
How will DEQ know the rule addressed the need?	Fewer of these exempt products appearing in the commingled system would be a sign of success in the exemption rulemaking process.
Exemptions for Materials Collected Outside of the Opportunity to Recycle	
What need would the proposed rule address?	<p>These proposed rules provide clarity that would allow producers to ascertain whether their materials could qualify for statutory exemption ORS 459A.869(13) for materials collected outside of Opportunity to Recycle.</p> <p>The proposed rules clarify that materials collected at PRO depots or otherwise counted toward compliance with the PRO convenience standard are not eligible for this exemption.</p>
How would the proposed rule address the need?	Material must meet three statutory criteria to qualify for this exemption (ORS 459A.869(13)(a)(A)-(C), and each of these criteria are further clarified in the proposed rules. Examples of non- Opportunity to Recycle collection are provided, “separation” is defined, and the method for proving that the end market meets the “responsible” standard is mandated.
How will DEQ know the rule addressed the need?	PRO(s) have adequate clarity to work with producers interested to pursue this exemption.
3. PRO Obligations	
Processor Commodity Risk Fee	
What need would the proposed rule address?	These rules satisfy ORS 459A.923, which instructs the EQC to adopt and periodically revise a processor commodity risk fee using a third-party independent contractor to conduct periodic studies.
How would the proposed rule address the need?	The proposed rules establish the statewide, per-ton average eligible processing cost and the process to determine the average commodity value, both of which will determine the per-ton funding available to CRPFs on a monthly basis. The rules also establish the invoicing approach for the Processor Commodity Risk Fee, plus a review process

Proposed Rule or Topic	Discussion
	and new reporting requirements to ensure the fee is being appropriately charged.
How will DEQ know the rule addressed the need?	The fee is being appropriately charged and producers are sharing in the costs of fully processing commingled recyclable material, protecting ratepayers in the process.
Contamination Management Fee	
What need would the proposed rule address?	These rules satisfy ORS 459A.920, which requires the EQC to adopt and periodically revise a contamination management fee to be paid by PRO(s) to CRPFs to compensate the facilities for the costs of removing and disposing covered products that are contaminants.
How would the proposed rule address the need?	The proposed rules establish the per-ton fee to be paid to CRPFs for removing and disposing of covered products that are contaminants. The rules also establish the requirements related to the processing and marketing of covered product contamination for the purposes of recycling. Additionally, the rules establish a review process and new reporting requirements to ensure the fee is being appropriately charged.
How will DEQ know the rule addressed the need?	CRPFs are successfully removing higher levels of contamination from the processed commingled stream, ensuring cleaner, higher quality material destined for responsible end markets.
Waste Prevention and Reuse Fee	
What need would the proposed rule address?	The proposed rules address the need to establish the elements of the waste prevention and reuse fee (ORS 459A.941) clarifying the amount of the fee, which is the amount the PRO(s) will pay into the fund and clarifies the activities eligible for funding.
How would the proposed rule address the need?	The proposed rules specify the amount of the fee, which establishes the program that will

Proposed Rule or Topic	Discussion
	support a list of eligible activities that can be funded using this money.
How will DEQ know the rule addressed the need?	The proposed rules establish the amount of the fee, administrative details needed for implementation, and clarifies what types of activities will be eligible for funding. These rules will allow DEQ to invoice the PRO(s) and implement the program, while providing clarity about what activities can be supported with this funding.
Amendments to Responsible End Market Rules	
What need would the proposed rule address?	PRO(s) and CRPFs have a joint obligation to ensure that materials collected for recycling in Oregon go to responsible end markets. Rules for both entities (rules from the first rulemaking regarding the PRO's obligation and rules from the current rulemaking regarding the processor's obligation) need to be aligned with one another to ensure functionality and limit duplication of effort.
How would the proposed rule address the need?	The proposed edits to the rules in OAR 340-090-0670 and additions to the PRO rules would enable parallel disposition reporting requirements for PRO(s) and processors. Methods for calculation of recycling yield and timelines for verification of markets are also clarified.
How will DEQ know the rule addressed the need?	Visible efforts to address environmental issues in recycling supply chains that process materials from Oregon.
Local Government Compensation for Evaluation of Contamination	
What need would the proposed rule address?	ORS 459A.890(3) obligates a PRO to fund eligible costs related to the periodic evaluation of recycling contamination that occurs at a location other than a commingled recycling processing facility but does not define eligible costs.

Proposed Rule or Topic	Discussion
How would the proposed rule address the need?	The proposed rules define eligible and ineligible costs for compensation under ORS 459A.890(3).
How will DEQ know the rule addressed the need?	Local governments and their service providers will understand how to plan for and receive compensation for eligible costs under ORS 459A.890(3)
Local Government Compensation for Contamination Reduction Programming	
What need would the proposed rule address?	The proposed rules amend rules adopted in Nov. 2023 and clarify the amount of compensation for contamination reduction programming, per ORS 459A.890(4).
How would the proposed rule address the need?	The proposed rules amend OAR 340-090-0810 to provide more detail about how the funding amount will be calculated each year and how much compensation local governments and service providers will be eligible for, to enable all parties to plan with certainty and fully utilize the compensation available through ORS 459A.890(4).
How will DEQ know the rule addressed the need?	Local governments understand how much contamination reduction programming compensation they are eligible to receive.
PRO 2024 Annual Reporting	
What need would the proposed rule address?	Per statute, DEQ in the annual report review process must assess whether the PRO's fee schedule was adequate to cover system costs. To assess this, DEQ needs to know what system costs were, including those borne by the PRO prior to the start date.
How would the proposed rule address the need?	The proposed rule would require the PRO to report 2024 system expenditures in a separate addendum to its annual report for 2025.
How will DEQ know the rule addressed the need?	DEQ is better able to assess the adequacy of the PRO's fee schedule when reviewing the 2025 annual report.
Amendments to Market Share Rules	

Proposed Rule or Topic	Discussion
What need would the proposed rule address?	These amendments to the existing market share rules align the year for which producers are reporting supply data, the reporting year in which the data are reported, and the program year in which the data are used to generate market share calculations and producer fees. This will ensure more accurate market share calculations in a multi-PRO scenario.
How would the proposed rule address the need?	The proposed rules establish a calendar whereby supply data from two years prior will be used by PRO(s) to set fees for a given program year, which follows the continental norm set by Canadian packaging EPR programs. They also clarify when preliminary market share calculations are to be updated with corrections to producer reporting and finalized, for the purpose of reconciling expenses among multiple PRO(s).
How will DEQ know the rule addressed the need?	The program calendar functions from the start date with respect to the timing of supply data submissions and their application to the market share calculations and associated enforcement roles.
4. Producer Obligations	
Clarifications to Producer Definitions	
What need would the proposed rule address?	There is ambiguity with respect to how the decision tree at ORS 459A.866(1)(a)(A)-(C) for identifying the obligated producer of packaged items sold at physical retail applies to items produced through contract manufacturing, as well as to packaging that may reach the consumer empty.
How would the proposed rule address the need?	These proposed rules would assign obligation to the brand owner that contracted for the manufacturing if it is deemed to have directed the manufacturing. The proposed rules also provide decision trees adapted from statute for identifying the obligated producer of storage items and

Proposed Rule or Topic	Discussion
	consumer wraps, and designate the first distributor of service packaging in or into the state as the obligated producer for service packaging.
How will DEQ know the rule addressed the need?	At the start date, producers will have greater clarity as to who the obligated producer is for items produced through contract manufacturing and for packaging that may reach the consumer empty. This should result in more equitable distribution of system costs among obligated producers, as lack of clarity in producer definitions will not hold producers back from engagement with a PRO.
Associated Producers and Designations for Large and Small Producers	
What need would the proposed rule address?	The proposed rule clarifies how the “large producer” designation, which carries an additional disclosure obligation per ORS 459A.944, and the “small producer” designation, which exempts a producer from the law per ORS 459A.863(32), are to be applied to producers that are associated with one another, for example, a parent company with a subsidiary.
How would the proposed rule address the need?	The proposed rule sets a definition for “associated producer” drawn from the definition of “related parties” in the US tax code and requires that associated producers lump their production and revenue data together for the purposes of applying the large and small producer definitions.
How will DEQ know the rule addressed the need?	The PRO will report market share data on an annual basis to the department and in doing so will identify member producers that are associated.
Producer Pre-Registration	
What need would the proposed rule address?	Without being able to accurately estimate supply of covered product into the state prior to the program start date, the PRO will need to set

Proposed Rule or Topic	Discussion
	the producer fees higher to manage for uncertainty.
How would the proposed rule address the need?	The proposed rule requires producers to pre-register with and provide 2024 supply data to the PRO for an advance deadline of March 31, 2025. This will allow the PRO to better estimate supply represented by its member producers and charge more accurate fees.
How will DEQ know the rule addressed the need?	The PRO is able to set fees for the first program year in a way that covers system costs, manages uncertainty, and does not result in a considerable overage/carry-over to the next year.
5. Standards for Life Cycle Evaluations	
What need would the proposed rule address?	Statute requires the EQC to set standards and methods for large producers to use in fulfilling their additional obligation to evaluate and disclose the impacts of one percent of their products on a biennial basis. These same standards and methods are to be factored by a PRO into their approach to membership fee adjustments, i.e., fee bonuses and penalties that continually incentivize producer actions to reduce life cycle impacts of their products.
How would the proposed rule address the need?	These proposed rules describe the methodology and format for evaluations that producers would carry out and submit to their PRO and to DEQ to either fulfill their large producer disclosure requirement or to voluntarily apply for a fee bonus from the PRO. The proposed rules also mandate two bonuses that the PRO must make available to member producers that conduct evaluations according to these standards and methods.
How will DEQ know the rule addressed the need?	After the start date, all large producers evaluate and disclose the life cycle impacts of their covered products, and many other producers are compelled by the fee bonus opportunity to do so as well.

Proposed Rule or Topic	Discussion
6. Local Government Obligations	
Multifamily Recycling Enclosures	
What need would the proposed rule address?	The rule provides clarity to local governments by laying out a clear path and timeline for compliance with ORS 459A.911.
How would the proposed rule address the need?	The rule clarifies that compliance requires local governments to develop an implementation plan indicating their approach to accomplish the requirements of ORS 459A.911.
How will DEQ know the rule addressed the need?	Local governments will successfully develop implementation plans for compliance with ORS 459A.911.
7. Other Rules	
Enforcement	
What need would the proposed rule address?	These proposed rule amendments align the existing enforcement rules in Division 12 with the proposed rules.
How would the proposed rule address the need?	The amendments will ensure that Division 12 reflects the new proposed requirements and provides DEQ the ability to enforce and monitor for compliance.
How will DEQ know the rule addressed the need?	DEQ will know the amendments addressed the need if the requirements of the rules are enforceable.
Subscription Service for Materials on PRO Recycling Acceptance List	
What need would the proposed rule address?	The RMA changed the definition of “recyclable material” in ORS 459.005(20), to include items on the PRO Recycling Acceptance List. Due to the limitation on charging for recycling in ORS 459A.070(1), the new definition has potential implications for programs that collect items on the PRO Recycling Acceptance List and charge a fee in addition to the garbage and recycling bundled rate.

Proposed Rule or Topic	Discussion
How would the proposed rule address the need?	The proposed rule clarifies in rule that ORS 459A.070(1) does not apply to materials on the PRO Recycling Acceptance List (OAR 340-090-0630(3)).
How will DEQ know the rule addressed the need?	Services that collect materials on the PRO Recycling Acceptance List for an additional fee beyond the bundled rate for garbage and recycling will continue to operate with a clear understanding of the rules.
Other Amendments and Housekeeping	
What need would the proposed rule address?	Revisions to the recycling material acceptance lists are needed to reflect that many storage items are exempt from “covered product” due to the exemption for durable packaging that contains durable goods, and as such storage containers should be removed from the PRO recycling acceptance list. Revisions to criteria for considering PRO proposals for alternative compliance to convenience standards are needed so DEQ can better evaluate potential impacts of proposals.
How would the proposed rule address the need?	Storage containers are proposed for removal from the PRO Recycling Acceptance List. Proposed rules also broaden criteria for consideration of PRO proposals for alternative compliance to convenience standards.
How will DEQ know the rule addressed the need?	The PRO educates the public about what is on the PRO recycling acceptance list. PRO alternative compliance to convenience standards, if proposed, provides favorable outcomes.

Federal relationship

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules are not different from or in addition to federal requirements.

Rules affected, authorities, supporting documents

Lead division

Materials Management Program

Program or activity

Plastic Pollution and Recycling Modernization Act

Chapter 340 action

OAR Chapter 340, Divisions 12, 90, 93 and 96

Adopt				
340-012-0098	340-090-0690	340-090-0810	340-090-0820	340-090-0830
340-090-0840	340-090-0850	340-090-0860	340-090-0870	340-090-0900
340-090-0910	340-090-0920	340-090-0930	340-090-0940	340-096-0300
340-096-0310	340-096-0820	340-096-0840		
Amend				
340-012-0045	340-012-0065	340-012-0140	340-090-0010	340-090-0030
340-090-0035	340-090-0620	340-090-0630	340-090-0640	340-090-0670
340-090-0700	340-090-0810	340-093-0030	340-093-0050	340-093-0105
340-093-0160	340-096-0001	340-097-0001	340-097-0110	

Statutory Authority - ORS				
468.020	468.065	459A.975		

Statutes Implemented - ORS				
459A.863	459A.866	459A.869	459A.884	459A.887
459A.890	459A.905	459A.911	459A.920	459A.923
459A.929	459A.941	459A.944	459A.955	459A.956
459A.959	459A.975			

Documents relied on for rulemaking

Document title	Document location
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Bjørn, A., Sim, S., King, H. et al. Life cycle assessment applying planetary and regional boundaries to the process level: a model case study. <i>Int J Life Cycle Assess</i> 25, 2241–2254 (2020).	https://doi.org/10.1007/s11367-020-01823-8
European Commission. Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards.	https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj
European Commission. Commission Recommendation (EU) 2021/2279 of 15 December 2021 on the use of Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organizations. Annex A.	https://eur-lex.europa.eu/eli/reco/2021/2279/oj
European Commission, PEFCR Guidance document, Guidance for the development of Product Environmental Footprint Category Rules (PEFCRs), version 6.3, May 2018.	https://eplca.jrc.ec.europa.eu/permalink/PEFCR_guidance_v6.3-2.pdf
Global Reporting Initiative 416-2: 206. Customer Health and Safety.	https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/
ISO 14025:2006. Environmental labels and declarations – Type III environmental declarations – Principles and procedures. Geneva: International Organization for Standardization.	Copywritten standard available by subscription only.
ISO 14040:2006. Environmental management — Life cycle assessment — Principles and framework. Geneva: International Organization for Standardization.	Copywritten standard available by subscription only.
ISO 14044:2006. Environmental management — Life cycle assessment — Requirements and guidelines. Geneva: International Organization for Standardization.	Copywritten standard available by subscription only.
ISO 21930:2017. Sustainability in buildings and civil engineering works —	Copywritten standard available by subscription only.

Core rules for environmental product declarations of construction products and services. Geneva: International Organization for Standardization.	
ISO 22095:2020. Chain of custody — General terminology and models. Geneva: International Organization for Standardization.	Copywritten standard available by subscription only.
ISO/TS 14067:2013. Greenhouse gases -- Carbon footprint of products -- Requirements and guidelines for quantification and communication. Geneva: International Organization for Standardization.	Copywritten standard available by subscription only.
PR3. Core normative standards: Parts 1-7. Drafts for Review. (2021-2023)	https://www.pr3standards.org/the-pr3-standards
Plastic Footprint Network. Assessment methodology: Guidance, Strategic Modules, and Technical Modules. (2024).	https://www.plasticfootprint.earth/assessment-methodology/
Processor Commodity Risk Fee – Contamination Management Fee Study Report	https://www.oregon.gov/deq/recycling/Documents/croweCRPFfeesRep.pdf
Quantis. Evaluation of actions to support product environmental footprinting in the Pacific Northwest: Findings and recommendations from research, surveys and interviews of business leaders. (2014).	https://www.oregon.gov/deq/FilterDocs/QuantisPEFResearchReport.pdf
Quantis and EA. Plastic Leak Project: Methodological Guidelines. (2020), v. 1.3.	https://quantis.com/report/the-plastic-leak-project-guidelines/
Rugani, B.; Osset, P.; Blanc, O.; Benetto, E. Environmental Footprint Neutrality Using Methods and Tools for Natural Capital Accounting in Life Cycle Assessment. Land (2023), 12, 1171.	https://www.mdpi.com/2073-445X/12/6/1171
Sala S., Cerutti A.K., Pant R., Development of a weighting approach for the Environmental Footprint, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79- 68042-7, EUR 28562.	https://eplca.jrc.ec.europa.eu/permalink/PEFCR_guidance_v6.3-2.pdf

Fee analysis

These proposed rules would establish new fees. EQC authority to act on the proposed fees is ORS 459A.941, ORS 459A.955, ORS 459.205 and ORS 459.235.

Brief description of proposed fees

The proposed rules establish new fees for commingled recycling processing facility owner/operators to pay to DEQ:

Commingled Recycling Processing Facility Permitting Application and Annual Compliance Fees

The establishment of a new permit program for commingled recycling processing facilities requires the establishment of permit application and annual compliance fees for that permit program.

These rules establish new fees for:

- Permit and Registration Application Fee: \$100-500 depending on anticipated tons received annually by the facility
- Annual Compliance Fee: \$50-\$1,000 depending on the tons accept annually by the facility

Waste Prevention and Reuse Fee

These rules establish a new fee to be funded by the PRO(s) and administered by DEQ for:

- Waste Prevention and Reuse Fee: up to \$15 million annually to fund a grant program that will be focused on reducing the impacts of covered products through material reduction and reuse. The fee will be the lower of either the \$15 million or 10% of the three-year average of all PRO(s) annual expenditures.

Reasons

The proposed fees would address the statutory requirements requiring DEQ to create the new commingled recycling processing facility permit and waste prevention and reuse fee.

Fee proposal alternatives considered

These fees are required by statute, DEQ did not consider any alternatives.

Fee payer

Owners and operators of commingled recycling processing facilities will pay for the CRPF permit application and compliance fees and PRO(s) will pay for the Waste Prevention and Reuse Fee.

Affected party involvement in fee-setting process

DEQ convened the Rulemaking Advisory Committee, including representatives from commingled recycling processing facilities, producer responsibility organization(s) and non-profit organizations involved in waste reduction and reuse. The committee met on Sept. 19, 2023 to consider the proposed fee for the Waste Prevention and Reuse Fee, and on April 3, 2024 to consider the proposed CRPF permit application and compliance fees.

Summary of impacts

Impacts of the CRPF permit application and compliance fees should be minimal because most of the state's commingled recycling processing facilities are already operating under DEQ's existing Transfer Station/Material Recovery Facility disposal site permit. The fee amounts are identical to the fees proposed for this program, and facilities already operating under the Transfer Station/Material Recovery Facility permit will not be assessed a second time when they are required to obtain the first the CRPF permit.

The producer responsibility organization(s) will be directly impacted and producers of covered products will be indirectly impacted by the creation of the Waste Prevention and Reuse Fee. The PRO(s) will use a portion of the membership fees paid by the producers to fund this program.

Fee payer agreement with fee proposal

The fee proposal for the Waste Prevention and Reuse Fee was introduced to the Rulemaking Advisory Committee during the Sept. 18, 2023 meeting, and included representatives from producer responsibility organization(s) and producers. The committee was supportive of DEQ's approach to establishing the new fund and provided feedback requesting the agency to consider removing the cap or increasing the fund amount.

The fee proposal was introduced to the rulemaking advisory committee at the April 3, 2024 meeting, which included CRPF representatives. The RAC agreed with the proposal.

How long will the current fee sustain the program?

DEQ regional staff administer the existing Transfer Station/Material Recovery Facility disposal site permit program, and the same staff will administer the new CRPF permit program, including overseeing assessments of the permit's capture rates and outbound contamination rate performance standards. The one-time permit application and annual compliance fees proposed for the new CRPF permit program will not generate enough funding to cover DEQ's annual costs of overseeing the assessments. The difference in costs for sustaining the assessment process will be paid using permit tipping fees.

The Waste Prevention and Reuse Fee will be adjusted annually to sustain the program it is establishing. The fee will be calculated based on the lower of a base amount of \$15

million, adjusted upward based on the Consumer Price Index, or, based on 10% of the three-year average of all producer responsibility organization(s)' annual expenditures. Existing DEQ staff will administer the program.

Fee Summary		
	Existing	Proposed- New fees
CRPF Permit Application Fee	N/A	\$100- \$500 depending on anticipated tons received annually.
CRPF Annual Compliance Fee	N/A	\$50- \$1,000 depending on the tons accepted annually by the facility.
Waste Prevention and Reuse Fee	N/A	The lower of: <ul style="list-style-type: none"> • \$15 million annually adjusted upwards based on the Consumer Price Index, or, • 10% of the three-year average of all Producer Responsibility Organization(s) annual expenditures summed

Fee schedule

The new CRPF permit program will assess the following fees for in-state CRPFs:

- A permit application fee of \$100 – \$500, to be assessed depending on the anticipated tons received annually by the facility.
- An annual permit compliance fee of \$50 – \$1,000, to be assessed depending on the tons accepted annually by the facility.

DEQ does not have the authority to charge fees to out-of-state facilities under the new CRPF certification program, thus there will be no application and annual compliance fees assessed to out of state facilities handling Oregon-originated material.

Statement of fiscal and economic impact

Overview

This proposed rulemaking will clarify and implement portions of the Act, passed in 2021 by the Oregon Legislature. The Act requires producers of covered products to support and expand recycling services for their products in Oregon and requires local governments and the facilities that process commingled (mixed) recyclables to meet several new requirements.

These proposed rules are specific to the following topics:

1. Recycling processor obligations
 - Commingled Recycling Processing Facility Permit Program
 - Certification program for out-of-state CRPFs
 - Living wages and supportive benefits
 - Permit fees
 - Commingled materials, limited sort and reload facilities
 - Responsible end market obligations for CRPFs
2. Covered Products
 - Clarifications to the definition of Covered Products
 - Covered product exemptions
 - Exemptions for materials collected outside of the Opportunity to Recycle
3. Producer Responsibility Organization obligations
 - Waste Prevention and Reuse Fee
 - Amendments to Recycling End Market Obligation Rules
 - Local government compensation for evaluation of contamination
 - Local government compensation for contamination reduction programming
 - Processor Commodity Risk Fee
 - Contamination Management Fee
 - PRO 2024 annual reporting
 - Amendments to market share rules
4. Producer Obligations
 - Clarifications to producer definitions
 - Associated producers and designations for large and small producers
 - Producer pre-registration
5. Standards for Life Cycle Evaluations
6. Local Government Obligations
 - Multifamily recycling enclosures
7. Other
 - Amendment to enforcement rules
 - Amendments to Recycling Acceptance List Rules
 - Amendments to Convenience Standard Rules – Alternative Compliance Proposal Criteria
 - Housekeeping rules

The proposed rules and rule revisions included in the rulemaking are based on discussions with, and input provided by, DEQ's Rulemaking Advisory Committee. The advisory committee included representatives from service providers and commingled recycling processing facilities, local governments, non-profit organizations, waste generators, PRO(s) and producers of covered products.

Fiscal and Economic Impact Overview

The proposed rules would address specific topics needed to establish a new statewide system that standardizes the types of materials that will be accepted for recycling, while providing a source of funding to reduce the impacts of covered products through means other than waste recovery. These rules propose the requirements for living wages and supportive benefits for CRPF workers, life cycle evaluation, including methodology and the procedures to be used by producers when evaluating the life cycle environmental impacts of covered products. Note that many fiscal impacts of the program are related to obligations and are not described again in this document, which summarizes impacts related to the rules.

I. Recycling Processor Obligations

1) Fiscal Impacts of Commingled Recycling Processing Permit Program and Certification Program for Out-of-State Commingled Recycling Processing Facilities

These proposed rules create new permitting and certification programs for commingled recycling processing facilities operating inside and outside of Oregon, including new fees for the permitted CRPFs operating in Oregon. There are anticipated fiscal impacts to permitted and certified CRPFs to meet the new capture rates and outbound contamination performance standards, however these costs are eligible expenses that will be funded by the Processor Commodity Risk Fee. It should be noted that out-of-state CRPFs will only receive PRO funding for the percentage of materials handled that originated from Oregon.

There will be fiscal impacts to DEQ, who is responsible for the associated costs with conducting the first initial evaluation assessment. If follow-up assessments are necessary to determine a facility's compliance with the capture rate and outbound contamination rate performance standards, the costs of those follow-up assessments are not an eligible expense for the Processor Commodity Risk Fee and will be paid for by the CRPF.

There will also be fiscal impacts to DEQ to pay for initial evaluation assessments undertaken at an out-of-state CRPF by a third-party certifier or a contractor to a third-party certifier, which will be paid for using funding from solid waste tipping fees. Any follow-up samplings, including compliance assessment for capture rates and outbound contamination rate performance

standards are not eligible for the Processor Commodity Risk Fee and will be paid for by the facility.

2) Fiscal Impacts of Living Wages and Supportive Benefits for CRPF Workers

The proposed rules clarify a CRPF's obligation to pay workers living wages and provide supportive benefits. There will be fiscal impacts related to meeting requirements of these rules, however the costs will be paid through the Processor Commodity Risk Fee. Living wages and supportive benefits were included under the "anticipated program costs" portion of the PRCF to establish the statewide, per-ton average eligible processing cost. The PRCF is funded through the producer membership fees paid to the PRO(s).

DEQ anticipates several quantifiable and non-quantifiable beneficial fiscal impacts related to providing living wages and supportive benefits to the workers at these facilities. Impacts include, but not limited to, improving health outcomes by providing health insurance, improved stability and reduced stress and improved spending power. Positive impacts to the facilities may include reduced costs related to staff turnover, such as hiring and training new employees. CRPFs will not be directly, negatively impacted by the increase in wages and the establishment of supportive benefits because labor is one of the many eligible processing costs covered by the Processor Commodity Risk Fee. Processors will receive that funding in the new system through producer responsibility organizations. However, there may be indirect impacts of "wage compression" related to increasing wages of lower-paid workers at the facilities. Information to estimate the potential indirect impact is not available at this time.

3) Fiscal Impacts of Commingled Recycling Processing Facility Permit Fees

The proposed rules establish the permit application processing fee and the annual permit compliance fee for permitting of commingled recycling processing facilities operating in Oregon. There are anticipated fiscal impacts to permitted CRPFs but these costs are eligible expenses that will be funded by the Processor Commodity Risk Fee.

4) Fiscal Impacts of Limited Sort Facilities

The proposed rules create new permitting requirements for limited sort facilities processing and marketing any amount of Uniform Statewide Collection List-related material collected to meet Opportunity to Recycle requirements. This permit will include new requirements not currently established under the existing Transfer Station/Material Recovery Facility disposal site permit. And, if a limited sort facility moving material to an end market is already operating under an existing permit, they will need to have their existing permit updated to recognize the new permit requirements. Under the permit limited sort facilities will need to obtain (or have amended),

the facility must meet all the requirements of the commingled recycling processing facility permit program, excluding those tied to the capture rates performance standard.

Limited sort facilities will receive no funding from PRO(s) relevant to the Contamination Management fee and the Processor Commodity Risk Fee.

DEQ anticipates fiscal impacts to limited sort facilities for obtaining and complying with the new permit requirements.

5) Fiscal Impacts of Responsible End Market Obligations for CRPFs

DEQ anticipates temporary, but not long-term fiscal impacts on commingled recycling processing facilities because of these proposed rules. Associated expenses will ultimately be paid for by the Processor Commodity Risk Fee, which is funded by the producer fees collected by the PRO(s). So, costs borne by the CRPFs associated with tracking downstream disposition of their materials, obtaining self-attestations of all downstream facilities that they meet the "responsible" standard, and addressing any non-conformances detected through verifications will ultimately be covered by the PRO(s). These costs would be recalculated and incorporated into fees paid by the PRO(s) in subsequent rulemakings.

The proposed rules are also anticipated to provide a positive fiscal impact by reducing duplication of effort between the two entities. The rules propose giving responsibility for the auditing and verification to the PRO(s), allowing the PRO(s) and CRPFs to coordinate with securing one self-attestation, verification or a certification per end market, and disposition data reporting to the CRPFs.

II. Covered Products

1) Fiscal Impacts of Clarifications to the Definitions of Covered Products

The proposed rules clarify that three types of packaging that may reach the consumer empty—storage items, service packaging, and items used in shipping and moving—are “covered products” under the law and subject to producer fees. They also provide additional clarity on how to distinguish two types of covered products from one another, packaging and food serviceware. For the implementation of the RMA, covered products will be categorized and will be assessed fees in proportion to the costs that the particular products place on the system.

These fiscal impacts on producers are already in statute and these rules do not impose additional fiscal impacts.

2) Fiscal Impacts of Covered Product Exemptions

The proposed rules define five types of packaging that are exempt from the definition of “covered product,” meaning producers of these products will not have to pay fees for them. Producers of these products will have positive fiscal impacts, while producers of other products that remain covered will likely pay slightly higher fees than they would have otherwise, as they will need to cover the system costs associated with the exempt products. There may be minor fiscal impacts to the PRO(s), who may incur administrative and staffing-related expenses to implement the exemptions.

3) Fiscal Impacts of Exemptions for Materials Collected Outside of the Opportunity to Recycle

The proposed rules provide clarity for producers and PRO(s) to understand what materials could qualify for the statutory exemption at ORS 459A.869(13) for materials collected outside of the Opportunity to Recycle framework. This is a statutory exemption and as such the main fiscal impacts are applied through the statute rather than these clarifying rules. The clarifying rules do require PRO verification or third-party certification to the “responsible” standard of markets that recycle these materials in order for the producer to qualify for the exemption. As such, the rules may impose some limited fiscal impacts on a producer seeking to claim this exemption—the producer may need to pay a fee to the PRO in order to conduct a verification of the market(s), particularly if no other materials that the PRO is responsible for are being processed at the market(s).

III. PRO Obligations

1) Fiscal Impacts of Processor Commodity Risk Fee

The draft rules propose a per-ton fee paid to recycling processors to ensure producers share in the costs of fully processing commingled recyclables that are covered products. It is one of the largest costs PRO(s) will incur in the program.

The PRCF includes two major components that determine the monthly per-ton fee PRO(s) pay to commingled recycling processing facilities:

- The statewide, per-ton average eligible processing cost that will be fixed in rule covers eligible processing costs of owning and operating a CRPF, and anticipated additional program costs related to any new requirements of the law. These costs may include new administrative and software costs, meeting the law’s living wages and supportive benefits requirement, equipment or staffing upgrades needed to meet new performance standards associated with the permit program established under ORS 459A.955 and meeting the requirements associated with ORS 459A.959.

- The average commodity value represents the value of outbound recyclable materials processed by CRPFs. DEQ will update this figure monthly.

The difference between the statewide, per-ton average eligible processing cost and the average commodity value is the per/ton value producer responsibility organizations will be required to pay CRPFs for the eligible tons processed.

DEQ anticipates this fee will create positive fiscal impacts to CRPF owners and operators by providing more stability with respect to fluctuating commodity markets. Funding from the PCRPF can also be used toward facility upgrades, if the processor chooses to use funding in that matter. There should also be indirect fiscal impacts to ratepayers, to stabilize rates and reduce the financial impacts on ratepayers by requiring producers to contribute to the costs of this system.

There will be indirect fiscal impacts to the PRO(s), who will be required to calculate and fund this fee, and directly impacts the producers, who will be paying into the fee via their membership fees.

2) Fiscal Impacts of Contamination Management Fee

This fee will be paid by PRO(s) to CRPFs to compensate the facilities for the costs of removing and disposing of covered products that are contaminants. There are no direct fiscal impacts to the facilities because the funding source is from the producer membership fees paid to the PRO(s). There will be indirect fiscal impacts to the PRO(s), who will be required to calculate and fund this fee and impacts the producers, who will be paying into the fee via their membership fees.

There will be positive fiscal impacts to the CRPFs for managing contamination in the recycling stream, this includes CRPFs receiving CMF funding for covered product contamination that can be properly processed and moved to a responsible end market.

3) Fiscal Impacts of Waste Prevention and Reuse Fee

The new Waste Prevention and Reuse Fee does not create new fees but uses a portion of the membership fees collected by the PRO(s) from the producers of covered products to fulfill statutory requirements to support reduction and reuse efforts. DEQ anticipates a positive fiscal impact for community organizations and others who receive grant funds through the new program DEQ establishes with revenue from these fees.

DEQ anticipates indirect negative impacts to producers of covered products, as a portion of their PRO membership fees will be used to pay into the fund.

4) Fiscal Impacts of Amendments to Recycling End Market Obligation Rules

This is an amendment to rules approved by the Environmental Quality Commission in Nov. 2023. These rules clarified requirements from statute that requires PRO(s) to send materials to responsible end markets and report materials disposition on a quarterly basis to DEQ. The proposed amendment aligns the joint obligation rules among PRO(s) and CRPFs. The proposed rules clarifying disposition reporting requirements may create fiscal impacts on the PRO(s) to set up a system and protocols for tracking materials.

5) Fiscal Impacts of Local Government Compensation for Evaluation of Contamination

These rules clarify local government costs eligible for compensation by the PRO under ORS 459A.890(3) to carry out the periodic contamination evaluation procedures established as required by DEQ per ORS 459A.959. The cost of the local government obligation to cause commingled recycling to be periodically evaluated for quality and contamination is borne by the PRO and its member producers.

6) Fiscal Impacts of Local Government Compensation for Contamination Reduction Programming

These rules clarify that local governments may request and receive \$3 per capita per fiscal year for eligible contamination reduction programming costs and that smaller communities may request and receive up to two years in advance funding. The rules propose the maximum potential fiscal obligation of the PRO to local governments allowed under ORS 459A.890(4), resulting in a potential positive fiscal impact for local governments, their designated service providers, and other authorized persons, and a potential negative fiscal impact for producers of covered products.

7) Fiscal Impacts of PRO 2024 Annual Reporting

The proposed rules clarify that PRO(s) must include information on 2024 system costs when submitting their annual report to DEQ for 2025. DEQ anticipates minimal fiscal impacts to the PRO(s) who will need to develop an additional, but simple accounting report for DEQ. The report will allow DEQ to fulfill its statutory obligation of assessing whether the PRO(s)' fee schedules were adequate to cover system costs.

IV. Producer Obligations

1) Fiscal Impacts of Clarification to Producer Definitions

The proposed rules provide clarity to the producer definition for items sold in packaging at physical retail, enabling more accurate identification of the obligated producer for items produced through contract manufacturing, and for packaging that may reach the consumer empty.

The requirement that producers of packaging pay fees to a PRO is imposed by statute, and as such these rules do not have fiscal impacts; they rather clarify the statute.

2) Fiscal Impacts of Defining Associated Producers and Designations for Large and Small Producers

The proposed rules require associated producers, such as a parent company and its subsidiaries, to lump together their supply and revenue data for the purposes of applying the “small producer” and “large producer” definitions. The proposed rule is intended to ensure that it will be in fact the largest 25 producers selling or distributing their products in or into the state that will bear the additional obligation to evaluate and disclose environmental impacts of one percent of their covered products on a biennial basis, and that producer cannot become exempt from the law by incorporating as multiple smaller corporations and dividing supply and revenue among them.

These proposed rules could impose a minor fiscal burden on producers and PRO(s) associated with the need to reflect in their data reporting the producers that are associated with one another per the definition in the rules. They will have positive outcomes, however, in terms of equitable application of the large producer obligation and of the small producer exemption.

3) Fiscal Impacts of Producer Pre-Registration

Under this rule, producers would need to pre-register with and provide supply data to a PRO by March 31, 2025, three months before the start date of the program.

The proposed rule may impose very minor fiscal impacts to producers associated with the need to expend staff and administrative time on compliance three months prior to the statutory deadline for doing so. But this proposed rule will result in the PRO having a better understanding of the volume of covered product supply into the state, which will allow for more accurate and lower fee setting, which will be a positive fiscal impact for producers.

V. Fiscal Impacts of Standards for Life Cycle Evaluations

Statute requires that large producers evaluate and disclose the environmental impacts of one percent of the covered products they sell into Oregon. The proposed rules establish the methodology, procedures, and requirements to be used by producers when conducting these evaluations. They also propose

to clarify the approach to calculating ecomodulation of producer fees, which incentivizes producers to reduce the impacts of their products by offering lower fees to be paid to the PRO.

DEQ anticipates direct fiscal impacts to producers from these proposed rules. Impacts may be related to recordkeeping and documentation to demonstrate that the requirements in statute are being met. Related activities may include data gathering, analysis, results generation, report writing, and potentially development of a custom tool to conduct assessments according to these rules.

Costs associated with performing similar life cycle assessments fall in the range of \$40,000-\$90,000 USD per evaluation when hiring a third-party consultant. Costs could be reduced substantially if the analyses are performed in-house by staff, multiple products within a product family are assessed as a batch, and/or a custom software tool is developed specific to Oregon's standards for life cycle evaluation. DEQ anticipates other costs related to third-party verification of the project report (the main output of these rules) and these costs can range between \$5,000-\$10,000 USD. DEQ expects fiscal impacts to be within the above ranges initially, but then decrease over time as the process becomes streamlined and repeatable with practice.

Positive fiscal impacts are anticipated from the resulting information gathered through the life cycle evaluation process, as both the largest 25 producers and all other member producers will be able to use this information to potentially qualify for ecomodulated fee reductions, especially if they have demonstrably reduced the impacts of their products. Producers that qualify for the substantial impact reduction fee reduction may particularly realize positive fiscal impacts, as this is the larger of the two ecomodulation bonuses mandated under these rules. The PRO will need to balance for the fee reductions that it offers by either giving fee penalties to other producers or by applying a surcharge across all fees, meaning minor negative fiscal impacts will result for those producers that do not qualify for bonuses.

- **Fiscal Impacts of Local Government Obligations**

- 1) Fiscal Impacts of Multifamily Recycling Enclosures**

- These rules clarify how and when local governments will comply with ORS 459A.911. Local governments will incur administrative cost developing an implementation plan and updating service standards and codes; however, DEQ will provide a plan template and model code language.

VI. Other

1) Fiscal Impacts of Amendments to Enforcement Rules

These amendments propose to align the existing rules in Division 12 with the rules proposed in this rulemaking. DEQ does not anticipate any fiscal impacts because of these changes.

2) Fiscal Impacts of Subscription Service for Materials on PRO Recycling Acceptance List

These rules clarify that ORS 459A.070(1), which limits how much collection companies may charge for recycling collection, does not apply to materials on the PRO Recycling Acceptance List (OAR 340-090-0630(3)). These rules have a positive fiscal impact for companies charging a fee for subscription services to collect materials on the PRO Recycling Acceptance List.

3) Fiscal impacts of Other Amendments and Housekeeping Rules

Under these rules, storage containers would be removed from the PRO Recycling Acceptance list. DEQ does not expect substantial fiscal impacts from the proposed rules, as storage containers comprise a minority proportion of the material that PRO(s) are slated to manage through their collection point network. DEQ would not expect the prospective PRO to downsize plans for collection points on the basis of storage containers' exclusion from the PRO Recycling Acceptance alone.

These rules also propose to broaden the criteria by which DEQ will consider PRO proposals for alternative compliance to convenience standards. Fiscal impacts would depend on the nature of the proposal, if any, made through the program plan process.

Statement of Cost of Compliance

State agencies

The rules drafted for this rulemaking propose new requirements and programs for the Recycling Modernization Act. The proposed rules that may create compliance costs for state agencies, including DEQ:

- **CRPF Permitting and Certification Program:** For the permitting program, DEQ will pay for the initial assessment to assess performance standards, using permitting and permit tipping fee funding to cover those costs. DEQ estimates that the costs associated with conducting these assessments every two years will be approximately \$430,000.

For the certification program, DEQ will pay for the initial conventional evaluation method assessment to assess performance standards, using CRPF assessments. DEQ will use solid waste tipping fee funding to cover those costs.

- **Contamination Management Fee:** DEQ will incur new administrative costs associated with the proposed reporting requirements to the CRPFs for the CMF. DEQ will use administrative fees from the PRO to cover these costs.
- **Processor Commodity Risk Fee:** DEQ will incur new administrative costs associated with the proposed reporting requirements to the CRPFs for the PCRF. DEQ will use administrative fees from the PRO to cover these costs.

Local governments

DEQ anticipates that local governments may incur compliance costs, including planning, recordkeeping, and reporting. Rule topics that will incur compliance costs on Local Governments are:

- Multifamily recycling enclosures: The proposed rules require local governments to develop an implementation plan indicating their approach to accomplish the requirements of ORS 459A.911.

Producer Responsibility Organizations

As defined in ORS 459A.863, a Producer Responsibility Organization is a nonprofit organization established to administer a producer responsibility program. By administering many elements of this Act and to meet the requirements of the proposed rules, PRO(s) will incur compliance costs through funding or reimbursing various fees and expenses described in the proposed rules. Using the fees PRO(s) will collect from producers of covered products, PRO(s) will fund the following requirements that are described in the RMA and that are addressed in this rulemaking:

- Contamination Management Fee.
- Producer Commodity Risk Fee.
- Waste Prevention and Reuse Fee.
- Obtaining self-attestation and verifications to meet responsible end market obligations that apply jointly to CRPFs and PRO(s).
- Compensation for the periodic evaluation of the quality and contamination of collected materials.
- Compensation for contamination reduction programming.

Public

The proposed rules establish no compliance obligations directly on the public.

Anticipated Business Impacts

Large businesses - businesses with more than 50 employees

Large Business/ Sector Type	Business Count
Privately owned reload facilities	Approximately 36 known facilities

Commingled recycling processing facilities	2 known facilities
Producers of covered products	Information unavailable at this time ¹

Proposed rules which may have compliance costs associated with them and which may impact large businesses include:

- The CRPF permitting and certification rules: if a CRPF does not pass the initial performance standards assessment of capture and outbound contamination rates, the facility will be responsible for paying the costs associated with the required follow-up assessments.
- Responsible End Market Obligations: if a CRPF sends covered products to an end market or other downstream facility that does not meet the responsible end market criteria, the CRPF and/or the PRO could be responsible (if the facility does not independently address being in non-compliance) for any associated costs with the required follow-up to come into compliance with the requirements.
- Definition of Covered Products:
 - For member producers of the Ag Container Recycling Council to qualify for a proposed exemption, ACRC will need to report annually to DEQ on the performance of its take back program. ACRC will incur a minor fiscal impact to fulfill this obligation, one that may be funded by its producer members, some of which are large businesses.
 - Producers of material that can qualify for the exemption at ORS 459A.869(13) for material recycled outside of Opportunity to Recycle may incur a cost of compliance associated with proving that the material is going to a responsible end market, which may involve commissioning a verification study by a producer responsibility organization.
- Producer Pre-Registration: there will be some limited fiscal impact on all producers, including those that are large businesses, associated with the need to provide records and data to the PRO three months prior to the start date. But these impacts may be offset by the reduction to first year fees that the PRO may be able to implement due to the reduced uncertainty in supply afforded through early producer reporting.
- Life Cycle Evaluation: these rules will impose compliance costs on producers for the evaluation and disclosure of the impacts of their products.

¹ While DEQ does not have a precise estimate of the number of large businesses that will be obligated to pay producer fees under the law, Canadian packaging EPR programs report that the top 100 companies selling into their provinces by volume account for approximately 90% of the system tonnage, and hence bear the great majority of program costs

Small businesses – businesses with 50 or fewer employees

ORS 183.336 - Cost of Compliance for Small Businesses

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

The types of small businesses that will incur compliance costs with the proposed rules include commingled recycling processing facilities, reload facilities, and producers of covered products. Currently DEQ does not have employer information to determine how many CRPFs or reload facilities meet the small business definition, and the data that will identify small and large producers will not be available until after July 1, 2025.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The proposed rules will create some additional reporting, recording keeping and self-verification related activities for CRPFs, producers of covered products, and reload facilities.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The proposed rules will require an increase in supplies, labor and increased administration for some small businesses but those expenses will largely be funded through the Processor Commodity Risk Fee or by the PRO(s).

d. Describe how DEQ involved small businesses in developing this proposed rule.

This rulemaking convened several different advisory groups, including technical workgroups and an advisory panel. Representatives from small businesses and membership groups were included when these groups were convened to assist with the development of the rules, certification and permitting programs. DEQ also issued GovDelivery notices about the rulemaking to everyone who registered for updates, and this list serv included representatives from small businesses.

Documents relied on for fiscal and economic impact

Document title	Document location
Plastic Pollution and Recycling Modernization Act (Senate Bill 582, 2021)	https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB582

Processor Commodity Risk
Fee/Contamination Management
Fee

<https://www.oregon.gov/deq/recycling/Documents/croweCRPFfeesRep.pdf>

Racial equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state. DEQ anticipates the following proposed rule will positively affect racial equity:

- **Living Wage and Supportive Benefits:** These rules are anticipated to have positive racial equity in Oregon by improving the living and working conditions for a demographic of worker that is disproportionately represented by people who reflect the global majority.

After the eighth RAC meeting, DEQ used the EPA EJSCREEN tool to investigate whether there are racialized impacts associated with the residents within a one-mile radius of existing commingled recycling processing facilities. As discussed below, DEQ used the EJSCREEN tool to assess the 12 existing facilities subject to these proposed rules – 10 of which are in Oregon, one in Washington and one in California.

DEQ found that residents who self-report as non-white/people of color, per the U.S. Census data used by the EJSCREEN tool, and live within a one-mile radius of five of the 12 facilities experience disproportionate heightened exposure to either diesel particulate matter or rates of asthma above the 80th percentile for the relevant state averages. To note, these exposures are occurring in the current state of Oregon's recycling system and the facilities are not necessarily the sole cause of diesel particulate matter (PM) or sole factor for asthma rates for the nearby residents. However, DEQ anticipates that these proposed rules could result in indirect negative impacts to racial equity in the form of increases of diesel PM or asthma rates if the modernization of Oregon's recycling system leads to an increase in commingled recyclable materials collected and transported by the same types of trucks used today.

That potential increase in materials could result in an increase in truck trips to the existing facilities, and the emissions from those additional trucks would further expose the residents near facilities to disproportionately high diesel PM and risk for asthma. To reduce the potential disproportionate pollution burden based on racialized factors, DEQ will work with permitting, technical assistance, grant and other programs offered by DEQ and other state agencies that could help reduce the diesel particulate emissions from trucks used for recycling, which also contribute to elevated asthma rates. DEQ will also evaluate the issues of disproportionate pollution exposure based on racial identity as part of the Recycling Modernization Act Equity Study, which is in-progress for the 2024 report and will be repeated at least once every four years.

Advisory Committee Review of Racial Equity Impact Statement

DEQ asked for the Committee's input on how adoption of these rules would affect racial equity in the state. Their comments are summarized in the eighth RAC meeting written meeting summary. Some comments provided during the meeting included:

- DEQ should examine whether potential increases in vehicle emissions resulting from increasing recycling rates and collection volumes will impact the environmental justice communities identified in the next section.

Environmental justice considerations

ORS 182.545 requires natural resource agencies to consider the effects of their actions on environmental justice issues.

Environmental Justice analysis

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

DEQ used EPA's EJSCREEN tool for the purpose of supplying information needed for this section of the rulemaking notice to evaluate potential human health and environmental disparities for people who live near the 12 existing recycling processing facilities subject to this proposed rulemaking. For 11 of the 12 facilities, EJSCREEN showed that residents within a one-mile radius experienced exposure to diesel particulate matter (PM) or asthma rates at or above the 80th percentile of state-averaged data. Of these 11, six facilities were located in communities where the population was above the 80th percentile for self-reporting as non-white/people of color or people with low incomes. These two sociodemographic factors are considered main factors of communities with environmental justice concerns, indicating that half of facility locations are in communities with environmental justice concerns.

Of those six facilities in communities with EJ concerns, one facility is located in a community where the residents within a one-mile radius experience disproportionate exposure to diesel PM and asthma rates related to income level, but not race; two are in communities with disproportionate exposure related to race but not income; and three are in communities with disproportionate exposure related to race and income.

To note, these factors are not likely to be directly affected by this proposed rulemaking, as the facilities subject to the requirements of the proposed rulemaking are already processing commingled materials for recycling from Oregon's local governments. Some of the disproportionate environmental and human health outcomes shown in EJSCREEN may also be related to factors outside the scope of this rulemaking, including proximity to transportation corridors and historic prevalence of redlining and other exclusionary zoning practices related to housing discrimination. However, potential increases in volume of materials processed at these facilities may occur as a result of this proposed rulemaking, when Oregon's modernized recycling system increases availability and potential use of the system by more people across the state. Those potential increases could result in more air pollution due to increased truck traffic for the delivery of commingled materials, depending on the type of engine and fuel sources used to power those vehicles.

DEQ's Materials Management Program will work closely with permitting programs in solid waste and air quality to solicit and consider community concerns about facility

operations in future permit conditions. Community engagement will be conducted more thoroughly through the Recycling Modernization Act Equity Study and the work of the Recycling Council. DEQ will also seek other opportunities for collaborating with other state agencies or across DEQ programs related to technical assistance, grants or other non-regulatory actions to reduce the likelihood that people living near these facilities are subjected to increased pollution due to the expansion and modernization of Oregon's recycling systems.

Advisory Committee Review of Environmental Justice Considerations

DEQ asked for the Committee's input for the environmental justice considerations from adopting the proposed rules. Their comments are summarized in the eighth RAC meeting [written meeting summary](#). Comments from the Committee provided during the meeting included:

- DEQ was asked if any of the identified environmental justice communities were met with or consulted in the development of this analysis.
- DEQ was asked if there would be an opportunity for the agency to engage with and meet the identified EJ communities, noting that many RAC members live out-of-the region and may not be able to adequately speak to the impacts these communities are experiencing.
- DEQ was asked about land use decisions and whether there it was possible to ensure that any new facilities would not be built near communities that are already disproportionately impacted by pollution.
- DEQ should consider providing operational recommendations to facilities to lessen their impact on nearby communities.

Land use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
- Resources, objects, or areas identified in the statewide planning goals, or
- Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

EQC prior involvement

DEQ presented this proposed rulemaking as an informational item to the EQC in September 2024.

Advisory committee

Background

DEQ convened the Plastic Pollution and Recycling Modernization Act Rulemaking Advisory Committee. The advisory committee included representatives from collection service providers, commingled recycling processing facilities, producer responsibility organization, industry, and environmental groups and met eight times. For more information, please visit the [committee's web page](#).

The committee members were:

Advisory Committee	
Name	Representing
Maria Gabriela Buamscha	Lanin Iman Consulting
Claire Dorfman	Amazon
Chris Drier	Waste Management (WM)
Sydney Harris	Upstream Solutions
Marcel Howard	GAIA
Warren Johnson	Metro
Kristin Leichner	Pride Disposal
Doug Mander	Circular Action Alliance
Catherine McCausland (resigned)	Reverse Logistics Group, Americas
Neil Menezes	General Mills
Katy Nesbitt	Wallowa County
Rick Paul	Rimrock Recycling
Will Posegate	Garten Services Inc.
Tracey Reed	Rogue Basin Partnership
Greg Ryan	Pioneer Recycling Services
Aimee Thompson	Thompson Sanitary Service
Rick Dukes (resigned)	H2 Compliance

Public engagement

Public notice DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On May 29, 2024 filing notice with the Oregon Secretary of State for publication in the June 2024 Oregon Bulletin;
- Notifying the EPA by mail;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Recycling 2024](#);
- Emailing approximately 23,567 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - DEQ Public Notices
 - Recycling Modernization Act
- Emailing the following key legislators required under ORS 183.335:
 - Senator Mike Dembrow
 - Senator Janeen Sollman
 - Senator Lynn Findley
 - Senator Jeff Golden
 - Senator Cedric Hayden
 - Senator Kate Lieber
 - Representative John Lively
 - Representative Bobby Levy
 - Representative Emerson Levy
 - Representative Tom Andersen
 - Representative Mark Gamba
 - Representative Christine Goodwin
 - Representative Ken Helm
 - Representative Pam Marsh
 - Representative Virgle Osborne
 - Representative Mark Owens
 - Representative Khanh Pham
 - Representative Kim Wallan
- Emailing advisory committee members
- Posting on the [DEQ event calendar](#)

Public hearing

DEQ held two public hearing(s). DEQ received eight comments during the first hearing and one comment during the second hearing comments at the hearing. Later sections of this document include a summary of the 62 comments received from 76 distinct entities during the open public comment period, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

Presiding officers' record

Hearing 1

Date	June 27, 2024
Place	Zoom Webinar
Start Time	11 a.m.
End Time	12:10 p.m.
Presiding Officer	Roxann Nayar

Hearing 2

Date	June 27, 2024
Place	Zoom Webinar
Start Time	5 p.m.
End Time	5:38 p.m.
Presiding Officer	Roxann Nayar

Presiding officer:

The presiding officer convened the hearings, summarized procedures for the hearings, and explained that DEQ was recording the hearings. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

118 people attended the first hearing and 20 people attended the second hearing. Both hearings were hosted on Zoom webinar. A total of nine people provided verbal comments and no people provided written comments at the hearings.

Summary of public comments and DEQ responses

Public comment period

DEQ accepted public comment on the proposed rulemaking from May 29, 2024 until 4 p.m. on July 26, 2024.

DEQ received 62 written and verbal comments from 76 distinct entities, suggesting 436 changes to draft rules.

Several comments were submitted on behalf of multiple entities, and some entities commented more than once. Therefore, the list is provided alphabetically by commenter here, and also by commenter number for the reader's convenience in Attachment 2.

Commenters

Organization name	Commenter Number
AdvaMed	36
Ag Container Recycling Council	8, 52
Alliance for Automotive Innovation	49
American Chemistry Council	40
American Coatings Association	38
American Forest and Paper Association	51, 57
AMERIPEN	30, 53
Association of Home Appliance Manufacturers	39
Association of Plastics Recyclers	27, 28
Astro-Nought	54
Berry Global Group, Inc.	11
Beyond Toxics	21
Biodegradable Products Institute	45
Bring Recycling	29
Carton Council North America	15
Circular Action Alliance	3, 46
City of Hillsboro	29
City of Beaverton	29
City of Eugene	29
City of Gresham	29

Organization name	Commenter Number
City of Lake Oswego	29
City of Portland	23, 29
City of Troutdale	29
Clackamas County	29
Consumer Healthcare Products Association	42
Consumer Technology Association	41
Denton Plastics	18
EFI Recycling	2
Environment Oregon	21
Faegre Drinker Biddle & Reath	48
Flexible Packaging Association	25
Food Northwest	55, 60, 62
Foodservice Packaging Institute	26, 58
GAIA	16
Glass Packaging Institute	50
Ground Score Association	29
Helix Innovations LLC	47
Household and Commercial Products Association	31
John Middleton Co	47
KW Plastics	14
Lane County	29
Lanin Iman	16
Lubricant Packaging Management Association	43
Merlin Plastics	13
Metro Regional Government	29, 59
Multnomah County	29
Ocean Conservancy	21
Oregon Business and Industry	44, 56
Oregon Refuse and Recycling Association	3, 20
Oregon Wine Council	35
Oregon Winegrowers Association	35
Oregonians for Food and Shelter	10, 57

Organization name	Commenter Number
ORPET	37
OSPIRG	21
OSPIRG Students	21
Pak Tech	19
Personal Care Products Council	61
Philip Morris USA Inc.	47
Proctor and Gamble	12
Ridwell	17
Start Consulting	29
Story of Stuff	21
Surfrider Foundation	21
The Recycling Partnership	32
Trex	24
U.S. Smokeless Tobacco Company LLC	47
Upstream Solutions	16
Washington County	22, 29
Waste-Free Advocates	21
Wine Institute	35
Pat Guild	7
John Holden	34
Brad Humbert	5, 6
Sharon Landis	33
Shawn Looney	4
John Oluwaleye	9

Public comments touched on most of the rule topics, and in many cases commenters proposed changes to the draft rules. Comments ranged between general support or opposition to rule proposals, comments about requirements from statute, comments on topics outside the scope of the rulemaking, and substantive input about technical aspects of the draft rules. DEQ revised the draft rules in response to many of the substantive comments. Highlights of the changes include:

- Enforcement Procedure and Civil Penalties:** Clarified that Class II violations do not apply to accepting or promoting materials not on the USCL if the activity occurs as part of a trial or research program; and clarified that the \$3,000 penalty

matrix applies to certain violations by local governments with a population of 5,000 people or less.

- **Local Government Obligations:** Expedited the date an implementation plan is due for ensuring adequate space for recycling at multifamily properties; and added new language that addresses scenarios where materials from two different acceptance lists may be mixed together at a depot.
- **PRO Obligations:** Delayed the date a PRO must accept aerosols and pressurized cylinders; reinstated gift wrap to the Uniform Statewide Collection List; updated definitions of 'polyethylene film and packaging' and 'paperboard boxes and packaging'; revised the de minimis exemption for responsible end markets reporting; and extended the first disposition report deadline. Revised draft rules related to local government compensation and invoicing, the Processor Commodity Risk Fee and Contamination Management Fee to support transparency and accountability.
- **Covered Products:** Revised definitions related to food serviceware to reduce confusion; expanded the exemption for plastic packaging for specific agricultural products; and added a requirement for regularly occurring third-party audits. Revisions to the definition for storage tote and ornament boxes were also made by referencing the Bureau of Economic Analysis' definition for the term "durable good".
- **Producer Obligations:** Clarified the definitions for "service packaging" and "printing and writing paper".
- **Standards for Life Cycle Evaluations:** Added definition for "refillable packaging product"; amended the definition for "hazardous substance".

Revised rules for how ecomodulated fee are calculated, to add more qualification requirements for third-party reviewers; increased the weighting factor for plastics; and provided an option to producers not to report on a specific contaminant if they can demonstrate due diligence to exclude it from use.

- **Recycling Processor Obligations:** Added a requirement that allows local governments to request recycling processors' monthly transactional data; and clarified that employers have the discretion to specify how holiday pay and days off are allocated for the living wage and supportive benefit requirements.

DEQ did not propose changes to draft rules in response to some comments that were received. Highlights of suggestions that did not result in changes include:

- **Local Government Obligations:** Requests to improve transparency about the fees CRPFs are charging to service haulers to help protect ratepayers or adding additional requirements in rule about ensuring adequate service at multifamily properties.
- **PRO Obligations:** Revising the list of materials the PRO must collect or the definition of end market, and, shortening the verification timelines. DEQ did not remove the proposed cap for the Waste Prevention and Reuse Fee.

- **Covered Products:** Requests to modify proposed exemptions, including removing “service packaging”, broaden the medical device packaging to include all Class I and II devices, or for exemptions for products that did not have a submission made during the solicitation process.
- **PRO Reporting:** Requests to require the PRO(s) to provide the recycling processors’ transactional data in the PRO annual report.
- **Producer Obligations:** Requests to revise the producer definitions and to remove requests for producer pre-registration.
- **Standards for Life Cycle Evaluations:** Requests to narrow definition of PFAS, removal of mandated bonuses, specific information that would be considered confidential, removing plastics from life cycle impact assessment or greatly increased their weighting factor.

For public comments received by the close of the public comment period, Attachment B organizes comments into three main categories: Changes Made to Draft Rules in Response to Comment, No Changes Made to Draft Rules in Response to Comment, and No Agency Response Required. Comments within these categories are listed by 10-digit rule number, with cross references to the commenter number. DEQ’s response follows the summary. Original comments are on file with DEQ.

Implementation

Notification

The proposed rules would become effective upon filing on approximately Nov. 22, 2024. DEQ would notify affected parties by:

- Sending a GovDelivery Notification
- Updating the Rulemaking 2024 webpage

Compliance and enforcement

Affected parties – Facilities that will be required to obtain the new Commingled Recycling Permitting Facility Permit or Certification will be expected to obtain and comply with the new requirements. PROs, producers, and local governments will be required to comply with obligations clarified in rules.

DEQ staff – Staff will be expected to ensure compliance with applicable requirements. Staff will follow updated Enforcement Guidance for any alleged violations. Additional internal guidance will be developed to articulate DEQ’s technical assistance approach at the onset of the new program.

Measuring, Sampling, Monitoring and Reporting

Affected parties- affected entities will be expected to comply with verification and auditing, monitoring and reporting requirements.

Training

Affected parties- DEQ Regional Specialists and Circular Action Alliance will be working together to inform the public about upcoming changes created by the two rulemaking and the PRO Program Plan.

Affected Parties- DEQ's Regional Specialists and the PRO will be providing education and outreach to inform local government and the public about changes coming to the recycling system.

Five-year review

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts some of the proposed rules from the five-year review because the proposed rules would:

- Amend or repeal an existing rule. ORS 183.405(4).

Rules exempt from 5-year review				
340-012-0045	340-012-0065	340-012-0140	340-090-0010	340-090-0030
340-090-0035	340-090-0620	340-090-0630	340-090-0640	340-090-0670
340-090-0700	340-090-0810	340-093-0030	340-093-0050	340-093-0105
340-093-0160	340-096-0001	340-097-0001	340-097-0110	

Five-year rule review required

No later than five years from the date of adoption. DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

- The rule has had the intended effect
- The anticipated fiscal impact of the rule was underestimated or overestimated
- Subsequent changes in the law require that the rule be repealed or amended
- There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).

Rules subject to 5-year review				
340-012-0098	340-090-0690	340-090-0810	340-090-0820	340-090-0830
340-090-0840	340-090-0850	340-090-0860	340-090-0870	340-090-0900
340-090-0910	340-090-0920	340-090-0930	340-090-0940	340-096-0300
340-096-0310	340-096-0820	340-096-0840		

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities.

Visit DEQ's [Civil Rights and Environmental Justice page](#).