



State of Oregon Department of Environmental Quality

Meeting Summary

Plastic Pollution and Recycling Modernization Act (SB 582, 2001)
Rulemaking Advisory Committee Meeting 1, July 20, 2022

Purpose of Meeting

On July 20, 2022, DEQ convened the first meeting of the Plastic Pollution and Recycling Modernization Act (RMA) Rulemaking Advisory Committee (RAC) for the first of two rulemakings via Zoom Webinar. The purpose of the meeting was to:

- Introduce the purpose and intent of the rulemaking process and RAC involvement
- Provide an overview of the Act and rulemaking issue areas
- Present proposed rule concepts related to Administrative Fees, Market Share, PRO Coordination, Responsible End Markets, and “other” rule concepts.

Meeting Attendees

The meeting attendees include members of the RMA Rulemaking 1 Rulemaking Advisory Committee (see attachment 1 for RAC members in attendance), staff members from Oregon Department of Environmental Quality (DEQ), and members of the public.

Welcome, Opening Remarks, and Introductions

Cheryl Grabham, DEQ welcomed everyone to the meeting. Alex Bertolucci, DEQ, provided an overview of how to use the tools in the Zoom webinar, and how to participate if a member wanted to ask questions. Cheryl went on to discuss protocols, provided an overview of the agenda, and goals for the meeting.

DEQ project staff participating on the call were introduced, and then RAC members were asked to introduce themselves and their organization affiliation.

Role of RAC and Public Involvement, EJ and Charter

Cheryl Grabham explained the role of the RAC and the process of public involvement, encouraging everyone interested in the rulemaking to familiarize themselves with the RAC and rulemaking schedule so that they can maximize their time for participation. It was also noted for any members of the public on the call, that time at 2pm was reserved for public comment, and that information they provide will be shared with the RAC members and DEQ staff for consideration.

Cheryl summarized the RAC meeting schedule, and that the formal comment period will occur in May 2023. DEQ’s webpage and the Gov Delivery notice were offered as two other methods for the public to follow the progress of the effort.

An overview of DEQ’s commitment to Environmental Justice was provided. How DEQ is centering it in the rulemaking and the agency’s work was discussed. Per HB 2993, the RAC was told that DEQ will also be providing an impact statement for racial equity for their review. HB 2993 also requires equity studies, and the use of a geospatial mapping tool, however, that tool will not be ready in time for this rulemaking.

The RAC was asked to save substantive discussion among a quorum of the committee for RAC meetings, and not informally over email. Any RAC member who wishes to clarify their input is welcome to do so with DEQ staff.

Discussion

Q: Will DEQ include identified Alternates on mailings and communications?

A: Yes, alternates will be copied on all communications. RAC members are asked to email the Recycling.2023 email address with name and email of the Alternate.

Q: Can future RAC meetings be hosted via Zoom webinar so that panelists can see meeting attendees?

A: DEQ is looking into options but for now, meeting notes, meeting audio, the presentation slides, and the attendee list will be posted on the rulemaking webpage after the meeting.

Q: Representation from brokers is missing on the RAC. It would be helpful to have this perspective.

A: The composition of the RAC will not change. DEQ will look into finding potential representatives from this industry who may be able to attend the meetings as members of the public or provide input during the process.

Q: Several RAC Members asked if DEQ could send the meeting materials further in advance of the meeting, it would give representatives more time to connect with their members and communities that they represent and help improve the quality of participation.

A: Yes, DEQ will aim to send materials as far in advance of the meeting as possible. DEQ also plans to have a 10-day period following the meeting for RAC members to prepare comments and ask questions. The RAC was asked if 10 days is an adequate amount of time. There was general concurrence.

Overview of the Act and Rulemaking Issue Areas

Nicole Portley, DEQ, explained the key obligations, the four areas of the PROs obligations, and the rulemaking timeline.

Roxann Nayar, DEQ, introduced local government compensation and related topics, which will be discussed during the September RAC meeting.

David Allaway, DEQ, introduced the third topic to be addressed in RAC meetings 3 and 4: The list of materials. Materials list will address materials that will not be covered. There are five key questions that will be answered...results from research will be coming out in the coming months. David noted that the Materials List Technical Workgroup met the day before (July 19, 2022), and that three of the RAC members are participating.

Q: Can DEQ provide the membership list for a Technical Workgroup on the Materials List.

Rulemaking 2

Cheryl Grabham explained why DEQ is splitting rulemaking into two phases. She introduced the anticipated topics for Rulemaking 2, which will occur during September 2023-September 2024. A new RAC will be formed for the second rulemaking.

Discussion

Q: Are education materials and culturally relevant materials part of the rulemaking, when will they be available?

A: This may not be clarified in rule, may occur during implementation.

Q: Can DEQ provide a visual explanation of the connection between the materials list, and the five points listed in David's presentation?

A: DEQ is considering different ways to communicate and appreciates hearing from RAC members about what information could be shared visually.

Q: Will DEQ schedule all the other RAC meetings soon?

A: Yes, the Committee can expect to see the rest of the meetings scheduled soon.

Q: Is it assumed that the PROs would run depots, or will the depot potentially receive compensation?

A: Local Governments and operators of depots open to the public will be eligible for compensation for operation and expansion of the depots (re: Section 13). This will be addressed during the second RAC meeting. The Materials List, in the Act requires that the PROs, should provide an opportunity to contract with and expand existing depots. There are two funding mechanisms, and depots will need to contract with PROs for which ones.

Q: Is there room within the scope to consider providing financial incentives for the return of materials directly at the depots?

A: Thank you for the question. This is a topic that warrants more discussion.

Q: How is DEQ preparing the rules to allow the addition or removal of materials from the materials list since conditions may change in the future. How flexible is the rulemaking process?

A: DEQ will address this in a future meeting.

Rule Concept Presentations

Cheryl Grabham introduced the plan for explaining the concepts, and which DEQ staff will present them. Nicole Portley will explain the topic of fees. DEQ is collecting market share data by August and will share with RAC.

Topic 1: Administrative Fees

Nicole Portley, DEQ, presented an overview of the rule concept for administrative fees, where there will be a one-time fee for PRO Plan review (\$150,000), and an annual fee for DEQ administration. DEQ anticipates that annual fees will be \$4 million per year (2025-2028) and then \$3 million afterwards.

Discussion

Q: Multiple RAC Members requested more information about the fees, including a breakdown of the fees paid for by PROs, documentation of fees and what they cover, how DEQ determined administrative costs.

A: DEQ went through a detailed annual budgeting process, and in RAC meeting # 5 there will be a fiscal impact statement (cashflow modeling will be shared). Currently DEQ is considering the interim period before the Program Plans go into effect, where DEQ would bring in an interim coordinator to gather market share data until full implementation begins. This idea will be discussed in the third topic. DEQ is intending that invoicing will be in proportion to market share.

Q: Will costs for positions previously paid for by general fund revenue be passed on to this program?

A: This program does not receive any general funds and is mostly funded through solid waste tipping fees. The new positions, which were approved by the legislature, will be funded through this funding mechanism. Existing staff that is working on this, that are paid through tipping fees, will be phased out when new staff for RMA are hired.

Q: How will enrollment, administrative oversight and enforcement work?

A: PROs will be recruiting producer members, and it is in the interest of the PRO to maximize their membership. DEQ considering PROs submit a list of exempt producers (those that do not meet de minimis requirement)

DEQ does have a regulatory authority to enforce against producers that do not join the PRO. If the PRO fail to capture the producers, they have fewer producers to allocate the recovery of their costs.

Q: Is it DEQ or the PRO's responsibility to enroll all producers.

A: It is in the PROs interest to enroll, while DEQ can follow-up with compliance and enforcement activities. DEQ is prepared to engage in enforcement.

Q: In other jurisdictions checklists were developed to streamline the system, clearly laying out the requirements.

A: DEQ will have a program plan guide for PRO program plan. Fees are not being used to generate revenue, just used to recover costs.

Q: Will overall costs be greater or less if there are multiple PROs?

Comment in the Zoom chat: Based on knowledge about existing EPR systems around the world is that there tend to be lower overall costs with fewer (or one) PRO.

Topic 2: Market Share and further considerations

David Allaway, DEQ, provided an overview of the rule concepts for Market Share, where DEQ proposes a method for calculating market share as directed in Statute. David provided an overview for the options to calculate market share and then provided an example scenario to explain the difference between using material weight versus financial burden to assess market share.

Discussion

Comment: Using weight for paper materials makes the most sense because paper moves through the system, however, containers are what are handled the most, and their weights vary. Maybe DEQ should consider using units to measure weights, but that may be a more complex approach.

Q: Does the burden-approach get used in other DEQ EPR systems?

A: Other Oregon EPR programs do not use burden approach for market share. Financial burden is not used in other programs because the materials are largely homogenous.

Comment: Using a different method for calculating market share in Oregon may make it challenging for other jurisdictions

Comment: Definitions for terms and definitions in this meeting is requested. For example, "market share" has different meanings depending on the sector. For example, using the term "market share" may raise concern about competitiveness and anti-trust. DEQ has not addressed confidentiality or if reporting on market share would be subject to public records requests.

Q: Why is environmental impact is not being used as a factor?

A: DEQ looked at including environmental impact and found that going from weight to financial burden is simpler because all of the information needed to make the determination is readily available. Environmental impact is more complicated because requires additional analysis and is material specific. However, often financial burden and environmental impact often correlate. Financial burden ends up being a proxy for environmental impact

General discussion about this topic continued. Several comments were received that offered general concurrence for using DEQ's proposed approach.

Comment: There is concern that the fee-setting process is already very complex and DEQ's proposed approach may add extra complexity. Ensuring that there is not cross-subsidization is difficult and complicated.

A: The fee-setting process is already in statute, and as an example, is already occurring in Canada. An example calculation is discussed, the PROs will have to generate this math anyway. *Further discussion ensued, and it was suggested that this conversation continue after the meeting for those who want to continue.*

Comment: There is concern about emphasis on market share, and how it does not capture the whole picture. Does market share need to separate from the other costs of the system. Is it possible DEQ is putting too much into the rule, and can it be simplified?

Q: That not relying on only weight for establishing fees makes sense; but what is the environmental justice aspect and how does it factor in?

Q: How does market share impact the statute's requirement for identifying the largest 25 producers? DEQ has not discussed this year, how will it affect those producers are?

Comment: Hearing these conversations between the Committee and DEQ is valuable and should continue during the meetings rather than offline, these conversations should continue during the RAC meetings.

A: The outcome from any additional one-on-one conversations will be shared with the group.

Topic 3: PRO Coordination

Q: Has DEQ had any communications with potential PROs?

A: DEQ has not received notice from any PRO that they intend to submit a program plan. DEQ is discussing having an interim coordination period and coordinator, until the approved long-term PRO program plan is in place.

DEQ posed the following questions for the RAC Members to consider:

1. Do you support the interim coordination body/plan approach to ensuring adequate coordination is in place when the PRO programs begin?
2. Do you have any suggestions for how to improve coordination overall or for any particular timebound coordination activities?

A: Can DEQ email these questions to the RAC members?

A: DEQ noted that the questions will be included on the slide deck which will be posted online.

General support for the approach was received. Questions regarding how much flexibility a PRO coordinating body would have, whether mobile collection events will be eligible for compensation. DEQ replied to the latter, that there is nothing prohibiting compensation for mobile events.

A: Under the Act, depots need to be established for materials on the depot lists. In a PRO coordination process, they would be working out amongst themselves about who would oversee the depots. DEQ thought it might be easiest to have depots set up in time for July 1, 2025 start date, that one PRO would be tasked with setting them up.

Comment: Request for a glossary, and an explanation of the term, "depot".

A: DEQ invited a RAC member from the solid waste industry to explain 'depot'. One member described them as locations where materials can be dropped off. Sometimes they are located on the property of a solid waste company, landfill, transfer station. It is required by law to have a certain number of them within a 'wasteshed', which is usually a county. Portland Metro is different, because encompasses three counties.

Q: What is the role of the Recycling Council?

A: This will be addressed in a later RAC meeting.

Comment: Refill/takeback requirements may not be supported by some industry members.

A: DEQ clarified that the Act requires the PRO to identify potential collection locations. Retailers are not required to participate, though they may be eligible for reimbursement if they continue to collect materials under new Act.

Q: How DEQ will consider using existing infrastructure during the interim coordination period?

Rules Topic 4: Responsible End Markets

This presentation was given by Nicole Portley, DEQ. Nicole provided some background and context of DEQ's general approach given towards end markets, including how in most places recycling end markets are generally considered more broadly as a positive outcome. However, in Oregon the approach is more nuanced, recognizing that recycling is a means to an end to conserving resources and reducing pollution, allowing all Oregonians to live well.

As not all end markets are equal in delivering these outcomes. DEQ is introducing a new term, "responsible end market" in statute, to distinguish between those that provide these benefits to Oregonians and those that do not. The Statute's definition includes those that prioritizes those that minimizes risk to public and worker health and safety, benefits the environment.

The Act places Responsible End Markets obligations on the PRO, to the extent 'practicable'. This obligation will extend to the four types of covered products.

DEQ is proposing rules to clarify definitions of end markets, an operational definition of "responsible", some standards around auditing, and what it means to be 'practicable'.

Discussion

Q: How will this consider federal packaging requirements?

Comments regarding the auditing and tracking requirements:

- How will tracking work considering the term 'practicable' when some materials will undergo several transfers before reaching an end market?
- It is a complex system, and complexity will vary with materials. This will be a challenging requirement for a producer or processor to follow, particularly after they sell to a broker.
- Will tracking requirements need to follow each step to the final end market, or just to the end market? What component of the tracking will need to be reported?
- Will reporting only be for the materials the PRO is responsible for (at the depots) or also, for the other materials being managed by the processors?

A: The four eligible categories were listed.

- How will the PRO be able to track material that is outside of their control? The use of an independent auditor's may be one solution.
- A chain of custody is valuable piece of information and will help build community confidence in the recycling system.
- Is it expected that each receiving facility for the materials will have to meet the responsible end market definition?

A: It will not be possible to know the end market, without knowing what happened in between. Is required by Statute.

- Can criteria for the definition of 'responsible' address worker conditions?

Comment: Including a broker in these discussions will help improve the understand the implications of "responsible" and how will PROs and MRFs, and Processors audit end markets in foreign countries?

A: There are existing independent auditors performing these audits internationally. DEQ noted that more input from brokers is needed.

There was additional discussion about the PRO liability with materials once they leave their possession, how practicable it is to track the movement of materials to its destination.

A: DEQ will work on providing more information. DEQ will reconvene internally and will provide an update to the RAC when more information will be available.

Comment: Disagreement with defining responsible end market by materials. Metro has been conducting a survey tracking recyclables for the last three years. This has been challenging since processors do not have control, but it is a change that needs to happen in the system.

A: Will RAC members provide more clarification about what additional information is needed to help them understand tracking and responsible end market thinking?

Q: How will the reporting requirements connect when there are multiple reporters, and how that information will be synthesized? Are DEQ's expectations above what is feasible?

A: DEQ may not be able to provide an immediate response; it may take some time to incorporate the feedback. DEQ will return at a later meeting to provide more information.

A: When writing rules, rulemaking should reflect the intention of the law. In this case, Oregonians want a system of responsible recycling. The intention was less about holding PRO legally reliable but providing a mechanism to flag when processors are sending materials to an end market that does not meet Oregon's standard. This provides a pathway for the PRO to implement a remedy.

Comment: From the collector's perspective, a lot of reporting is already necessary. The e-waste program's approach may provide an example of how these requirements can be met and provide insight about associated costs.

Q: What is the definition of 'recyclate'?

Q: 'Practicable' needs further clarification and detail (e.g., cost, timeline, etc.). Clearer delineation is needed.

A: Intent with suggestion of the four elements, was the follow the legislative intention of the Act, which described impacts to communities in Oregon.

A: DEQ will provide an official definition at a later RAC meeting however, there is no legal definition, and it needs to be formalized. As DEQ is using it a material that could be recycled, which potentially ends up as recycled feedstock in a recycled product.

Q: Can there be more discussion about the applicability of the law on international worker conditions? Different countries have different standards, and this creates a challenge for defining responsible end market.

A: International impacts are not excluded but there is an emphasis on impacts in Oregon. DEQ is trying to reflect the spirit of the law.

A: Please note that the definition of responsible end markets has four elements, and local laws is only one of the four.

Comment: Agreement with general direction of the concept, realizing that the understanding of the system is dependent on how much information is available.

Comment: Transparency and tracking in foreign markets is important for the industry to be able to tell customers the recyclables are being recycled. Enforceability, and how to best enforce on these standards needs further discussion.

Comment: Canada is trying to develop a system to reduce the uncertainty with foreign end markets by creating a supply chain where the collected materials are sent back straight to the producers. It is still in progress but it is one way to address this issue.

Q: What happens to the materials that cannot be recycled at a responsible end market? Would the result be that those materials would not be produced?

A: Materials that are not to a market aligned with the criteria for being “responsible”, and there is no other option, the intent is that DEQ should be forced to consider whether the material should be collected at all. Should it be on the materials acceptance list? DEQ cannot speculate whether it would stop the production of those materials.

DEQ comments from public attendees are welcome at 2 pm. This is an opportunity to share initial thoughts and ideas for the RAC to consider. Please notify Alex Bertolucci, DEQ, in the Zoom chat if they would like to provide comment at 2pm. Formal public comment period on draft rule revisions will take place later in May 2023.

Discussion:

Comment: Many collected materials are already going to responsible end markets in the Pacific Northwest.

Comment: Will DEQ consider investing in fully developing the information and not be as focused on the rulemaking timeline.

A: will confer against the rulemaking timeline and schedule for bringing the rulemaking to the Environmental Quality Commission.

Comment: Receiving the meeting materials further in advance would help in commitment to sticking with the rulemaking timeline.

A: DEQ will commit to sending out materials at least a week in advance.

Q: Will DEQ discuss application of the materials management hierarchy?

A: DEQ will not be talking about the hierarchy today but welcomes feedback.

Rules Topic 5: Other Concepts Regarding PRO Obligations

Nicole Portley, DEQ, the presented the other concepts regarding PRO concepts including:

1. A process for PROs with less than 10% of market share
2. Reporting for plastics recycling goals.
 - In annual reporting, PRO will need to provide data that DEQ can review. Reporting should align with product speciation with statewide list.
3. Outlining criteria for when a PRO need to provide a plan amendment for fee changes
 - Statute indicates that an amendment will be needed. Amendment is not needed for basic updates, for base rates. Only for more substantive changes. Provisional request can be made for approval until amendment is reviewed.
4. Some housekeeping/statute numbering corrections
 - Addresses numbering errors in statute. Proposes to clarify in rule and refer to the intended elements.

Discussion:

Discussion about the incorrectly numbered statute:

- Where is the number for the incorrectly numbered statute found?
- Has DEQ verified that it has the authority for this proposal?
- What is the issue with incorrectly statute? What are the implications?

A: DEQ provided more detail about the proposal #4 in the background document, and the statute is cited there. Legislative counsel confirmed that it was a scrivener's error. DEQ verified the authority for this proposal (#4) and is aware that the agency does not have the authority to rewrite statute in rule.

Discussion about the 10% market share proposal

- The timeline for a PRO member needing to find a new PRO is short.
- The timeline may be appropriate, but it is important that producers know that they need to move and need to move quickly.

Informal Public Comment

A member of the public, representing themselves, stated that they are concerned as a resident in an apartment building, where many materials are placed in the recycling bin that are not recyclable. They are concerned that there is only one representative for residents on the RAC. Who will be responsible for communicating these requirements to the public?

A: Local governments have some responsibility, and the PRO will be working in partnership to ensure that the public understands how to recycle materials properly.

Discussion:

Q: Would it be helpful to have subcommittees?

Discussion regarding scheduling:

- Can DEQ explain its schedule to providing responses to the questions raised today?

- Can DEQ consider scheduling more meetings for the process?
- Is there flexibility with the 10-day comment period deadline? There are many outstanding questions and information needed before members can provide comment?

A: DEQ is highly conscious the RAC members' capacity to participate in this process. DEQ is striving to use everyone's time well, while thoroughly capturing feedback. The EQC will also want to ensure that DEQ has been thorough and heard from the right people, while keeping in mind that DEQ has statutory deadlines that need to be met.

A: The 10 days deadline is not firm, but the sooner DEQ can receive incorporate feedback, the earlier DEQ can start preparing a response or considering the information received.

A: The presentation slides and the audio recording of the meeting will be posted on the rulemaking website. Video may not be posted because there is a longer delay associated with posting video recordings.

Closing Remarks and Next Steps

Cheryl reminded the group the schedule for the planned meetings and topics to be discussed. An email confirmation for the second RAC meeting will be sent soon, and updates will be sent out on the Gov Delivery list once the meeting materials are posted. DEQ will get back to the group with clarifying information and responses to questions. She also noted that emails from DEQ will be limited to administrative updates, meeting content will be posted online.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.oregon.gov.

El DEQ puede proporcionar los documentos en un formato alternativo o en un idioma distinto al inglés si así lo solicita. Llame al DEQ al 800-452-4011 o envíe un correo electrónico a deqinfo@deq.oregon.gov.

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Tùy theo yêu cầu, cơ quan DEQ có thể cung cấp các tài liệu ở định dạng thay thế hoặc bằng ngôn ngữ khác ngoài tiếng Anh và tiếng Tây Ban Nha. Liên hệ với DEQ theo số 800-452-4011 hoặc gửi email đến deqinfo@deq.oregon.gov.

Attachment 1: RAC Member List

Rulemaking Advisory Committee Members in attendance for all or part of the meeting	
Name	Organization/Affiliation
Trevor Beltz	Tillamook County Creamery Association
Udara Abeysekera Bickett	The Environment Center
Rosalynn Greene	Metro
Sydney Harris	Product Stewardship Institute
Michael McHenry	Pendleton Sanitary Service, Inc.
Kristan Mitchell	Oregon Refuse and Recycling Association
Jeff Murray	EFI Recycling, Inc.
Deveron Musgrave	City of Eugene
Jerry Powell	Resident
Paloma Sparks	Oregon Business and Industry
Craig Smith	Food Northwest
Taylor Cass Talbott	Trash for Peace
Jared Rothstein	Consumer Brands Association
Mallorie Roberts	Association of Oregon Counties
John Salvador	Georgia-Pacific Professional
Nicole Willett	Resource Recovery Alliance
Not present: Katy Nesbitt	Wallowa County