

SB 263 Materials Management Rulemaking

Advisory Committee Meeting Minutes

Tuesday, Sept. 13, 2016
 Oregon Department of Environmental Quality Headquarters
 811 SW 6th Ave
 Portland, OR 97204



State of Oregon
 Department of
 Environmental
 Quality

List of Advisory Committee Members

Environmental Solutions Materials Management

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

| Attending? | Name | Title | Affiliation |
|---|---------------------------|---|--------------------------------|
| Y | Matt Korot | Program Director, Resource Conservation & Recycling | Metro |
| Y | Willie Tiffany | Governmental Affairs | ORRA |
| Y | Mark Nystrom | Policy Manager | Association of Oregon Counties |
| N | Tracy Rutten | Intergovernmental Relations Associate | League of Oregon Cities |
| N | Mark Morgan | Assistant City Manager | City of Hermiston |
| Y | Pete Chism-Winfield | Materials and Waste Specialist | City of Portland |
| Y | Stephanie Scafa | Waste Prevention and Green Building Analyst | City of Eugene |
| Y | Contracia (Traci) Carrier | Budget Analyst | Jackson County |
| Y | Bailey Payne | Recycling Coordinator | Marion County |
| Y | Sarah Grimm | Waste Diversion Specialist | Lane County |
| N – on phone for portion but not FIS discussion | Mark Saelens | Solid Waste District Program Manager | Lincoln County |
| Y | Vinod Singh | Operations Manager | Far West Recycling |
| Y | Dave Larmouth | Rate Analyst | Recology Western Oregon |
| Y | Kim Kaminski | Government Affairs | Waste Management |
| Y | Rob Guttridge | Vice President | Recycling Advocates |

Members of the Public Attending in person:

- Kristan Mitchell, ORRA
- Laura Leebrick, Rogue Disposal
- Mike Dewey, Waste Management
- Dean Kampfer, Waste Management

Members of the Public Attending via webinar:

- Kathy Boutin-Pasterz
- Rick Hlavka
- Shannon Martin
- Tim Shestek
- Chip Canty

List of Handouts and Presentation Notes

- Meeting Agenda
- Draft Rules Redline
- Draft Rules Clean
- Draft Fiscal Impact Statement

| Time | Presentation and Discussion Topic |
|-------------------|--|
| 10:00 a.m. | Welcome and Introduction <u>Notes:</u> David Allaway, DEQ, went over meeting logistics. |
| 10:05 a.m. | Food Waste Recovery Goal – Follow up from Meeting #3 <u>Notes:</u> Peter Spendelow, DEQ, presented. <u>Pete C-W.:</u> New technology can track on-site generation of food waste (e.g., WISErg). Peter S. responded: If we can measure it, we can include it. Wiser would need to share its data, would be counted at point of collection. <u>Pete C-W.:</u> Tons of food from wholesalers going to farms is quite significant – nearly half of all food waste generated in Portland. Holly Stinrkorb, DEQ, responded: Good point, DEQ plans to address gaps like this in development of our food waste recovery strategy. <u>Matt K.:</u> Following up on Holly’s point – any immediate implication for this data? Peter S. responded: No, not yet. David A. added: If materials need to be added for counting, they can be. Peter S. added: Yes, if any of you know of food waste that is going to recovery that we don’t know about, please let us know. |

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| | <p><u>Willy T.</u>: How will you handle exempt uses, such as through the Agriculture Use Exclusion?</p> <p>Peter S. responded: We do not intend to include those uses as they are generally classified as industrial waste and are excluded from counting by statute.</p> |
| <p>10:15 a.m.</p> | <p>Draft Proposed Rules – Overview of Changes Since Meeting #3</p> <p><u>Notes:</u> Matt Raeburn, DEQ, presented. He went over housekeeping changes and stylistic changes (“shall” to “must,” etc.). He also provided an overview of sections containing substantive changes (slides 9 and 10), including pending changes, citing the example on page 17 of the latest draft of the rules regarding voluntary food waste collection from commercial and institutional generators. As currently written, the rule implies that “other compostable waste” must also be collected, which is not the intent. He also pointed out a requirement to assess recycling depots that had been placed into new contamination prevention section of the Expanded Education and Promotion program rules which, upon reconsideration, will be removed.</p> <p><u>Matt K.</u>: If something in the draft rules was previously discussed, input was taken and the issue is still there unchanged, are such issues still up for discussion?</p> <p>David A. responded: Yes.</p> |
| <p>10:20 a.m.</p> | <p>Draft Proposed Rules – Advisory Committee Comments</p> <p><u>Notes:</u></p> <p><u>Willie T.</u>: The definition of “Compostable waste” states “waste that is acceptable for composting at a composting facility.” This seems restrictive. Is the intent for such waste to be compostable at <i>any</i> facility?</p> <p>David A. responded: Yes, thanks for pointing this out. That is an easy fix.</p> <p><u>Steph S.</u>: Under the Waste Prevention & Reuse programs, we talked last time about the contribution level per resident for implementing repair and reuse or food rescue programs. Is the level indicated, \$0.25 per local government unit resident, going to remain?</p> <p>Elaine Blatt, DEQ, responded: Initially, there were two different cost-levels per head, \$0.50 and \$0.25. This was later changed to \$0.25 for both types of programs. In working the numbers, we found the existing costs cities were spending on such programs, from which this figure was derived, appeared to have very little impact on cities.</p> <p><u>Sarah G.</u>: In counting these numbers at \$0.25 per head, does it refer to county population, city population, UGB population or what?</p> <p>David A. responded: The Intent is to indicate population of the local government unit subject to this rule, but, but we will clarify the language.</p> <p><u>Pete C-W.</u>: The findings in the fiscal impact statement vs. the \$0.25 per head funding level – the math doesn’t seem to work.</p> |

David A. responded: Let's use element five of the WP&R programs as an example. Local governments may provide funding (at \$0.25 per capita) or provide infrastructure support. In the case of PDX we feel existing infrastructure support would qualify, meaning no additional costs. Likely all local gov'ts in Metro would also qualify because of Metro programs.

Mark N.: So those other pathways are for entities that don't already have such programs, unlike Portland?

David A. responded: no, they're for anyone.

Mark N., following up: So the bar is still set pretty high for this element.

David A. responded: Local gov'ts have several choices. No one will be required to use this financial pathway. Because this requirement is in statute, we needed to define funding support in some way have proposed this formula.

Kim K.: At OAR 340-090-0015(1), DEQ added the word "many" in front of the phrase "industrial wastes." Why? What other such wastes does this not include?

Matt R. responded: This is in the applicability section. If you look at definition of "industrial waste," you'll see several examples listed. Maybe removing some wording will clarify this.

Peter S. responded: An example might be food waste coming from a processor or manufacturer could be interpreted as industrial waste; however, if it came from other sources it would not be classified that way. This would either require rewriting the definition or taking out some of the confusing words (p. 8).

Kim K.: There are lots of plans that need to be submitted to DEQ for approval – what is the time frame for approval? Would there be any written approval?

David A. responded: No, nothing firm.

Cathie Rhodes, DEQ, responded: That depends. Some TAs will get 2 plans, others will get 20. Maybe 60 days?

David A. added: It is our intent to put together templates for such plans to help streamline their preparation and review.

Matt K.: \$0.25 per capita contribution for food rescue – liking where Stephanie S. was going with a funding cap. This would amount to around \$370K per year for Metro. A lower cap would incentivize use of this program element and encourage others to use it, as opposed to being a barrier.

Steph S. added: Thinking of it in terms of reuse and repair, e.g. a tool library, one just started up in Eugene with its own space. Under this formula, we'd have to give them \$40k annually, which we can't see doing.

Matt K. added: Maybe more doable on a multi-year basis. Steph S. agreed.

Matt K.: On page 10 of the clean version of the draft rules, at (1)(a)(A) is this missing the word “or”?

Matt R. clarified by explaining the rule structure.

Matt K. acknowledged he was misreading this section.

Matt K.: On page 19 of the clean version of the draft rules, at (L)(C)(i), where it says this applies to C&D generators of 2 yd³ minimum. This threshold, practically speaking, will be very challenging to assure separation or MRF delivery. Most such loads come in pickup trucks, and are often pretty mixed with other materials, which can add to the problem. It is challenging to enforce this requirement for such small quantities. Metro is now working to focus on various vehicle types in. Strongly urge considering a larger minimum quantity, say a 6 yd³ minimum load to distinguish homeowner from contractor loads.

Peter S. responded: No particular objections.

Matt K.: On page 34 of the clean version of the draft rules (page 38 of the redline) at OAR 340-090-0060(3), “Determination of Wasteshed and Overall Statewide Recovery Rates,” a viable market definition was added, which suggests recovery may include material recovery or burning for energy if no viable market. Now says okay if someone accepts this material free of charge. If Vinod is charging for this, then Metro can get recovery credit if this material goes for energy recovery at a lower cost.

Peter S. responded: This definition is in statute and we don’t have the ability change it, despite such potential unintended consequences.

Sarah G.: The threshold of 2 yd³ of C&D would also be difficult for Lane Co. to implement, and propose 10 yd³ instead of 6 yd³.

Sarah G.: Re: funding and infrastructure, if we were to choose it, could we put in, say \$4K for infrastructure, and maybe \$12K for advertising and count this mix of funding for different purposes together?

David A. responded: Yes. Some examples are listed in the draft rules. Remember that funding and outreach for this element cannot also be used to satisfy element (6).

Sarah G.: If a larger entity were doing something, the city could take advantage of that as part of their commitments under the requirements. Does this require a formal arrangement between these entities for this to count? Is that only in the TA section and is it applicable to other sections, such as funding and infrastructure?

Elaine B. responded: Summarized the thinking behind the TA component. Funding thought to be a direct contribution.

David A. added: No formal written commitment was intended, and is not explicitly required. Asked Elaine B. to find language about this (found in statute – ORS 459A.007(8)(a): “For a city using waste prevention and reuse elements set forth under subsection (2) of this section to satisfy requirements set forth in subsection (6) or (7) of this section, waste prevention and reuse elements may be provided by the county or

metropolitan service district where the city is located, provided that implementation or provisions [sic] of such elements are made available throughout the city.”

Willie T.: On page 18 of the redline version of the draft rules, under the mandatory commercial recycling program at OAR 340-090-0040(j)(C)(ii) “Self-haul or arrange for collection service...” This language was apparently changed based on comments. Suggest inclusion of the word “legal” before “collection service,” or wording to require governmentally authorized collection service.

Pete C-W., objecting: If you are an independent recycler, may not have formal governmental approval for your service, but could still be legal.

David A. clarifying: Your concern is that it needs to be legal, yes?

Willie T.: Yes.

Peter S. responded: If your only intent is that such service is legal, there are lots of hauling that is not covered under franchise agreements or is otherwise exempted, and is still legitimate. It not necessary to add this legal requirement.

Willie T.: Disagrees.

David A., clarifying: Adding such language does not make illegal collection less illegal, but could put local gov’ts in jeopardy for not checking or enforcing such a requirement.

Willie T.: Re plans, if a local gov’t submits a plan, wants a clause added stating that it won’t be disapproved or considered non-compliant until a new one is approved. David A. responded: Not necessary to specify in rule, but more appropriately as a policy.

Dave L.: At OAR 340-090-0090, re: collection of improperly prepared materials – this is old language, but the concern is in section 3, where the choices are to leave with the generator or collect and sort but cannot dispose of such material. Recommend the ability to dispose of heavily contaminated loads. Asked for clarification of intent of this language – we see lots of contamination at multifamily dwellings.

Peter S. responded: Yes, old rules intended for material set out at the curb at a time when recyclables and garbage were collected together on same truck. He concurs that very contaminated recycling is not reasonable to sort. Acknowledged that leaving with the landlord is also not necessarily a reasonable option. Will take this recommendation under advisement.

Dave L. added: We usually have to switch out a full container, but then what do we do with the full one?

Dave L.: On page 55 of the redline version of the draft rules, re: scrap metal survey – DEQ *must* survey, but industry *may* report. David A & Peter S. responded: This change would require legislative action.

Pete C-W.: Said he would send an email re: minimum content rules.

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| | <p><u>Dave L.</u>: Re: scrap metal again, mentioned some recent identification requirements for scrap metal dealers to discourage metal theft that might impact reporting.</p> <p><u>Dave L.</u>: On page 51 of the redline version of the rules, at our 340-090-100(2)(E), there is a requirement for wastesheds to summarize “education and promotion activities planned for implementation in the coming two years...” What is the intent of this requirement? David A. responded that will provide clarification.</p> <p>UPDATE: Cathie Rhodes later observed that this section of rule applies only to Expanded Education and Promotion Plans, of which there appears to be only one county in the state (Polk) which implements this option.</p> <p>Matt R.: Reminded group of final AC comment deadline – 9/16/16 at 5 p.m. Will have another opportunity during public comment after rules are published.</p> |
| <p>11:20 a.m.</p> | <p>Fiscal Impact Statement – Methodology & Conclusions</p> <p><u>Notes</u>: David A presented a summary.</p> |
| <p>11:35 a.m.</p> | <p>Fiscal Impact Statement – Questions & Answers</p> <p><u>Notes</u>: Holly S. facilitated.</p> <p><u>Willie T.</u>: Were costs for local gov’t enforcement of these rules included in the model? Implementation plus enforcement, not just implementation:</p> <p>David A. responded: Are there examples you’d like to discuss?</p> <p><u>Willie T.</u>: Expanded Ed. & Promo was his concern, with respect to contamination prevention.</p> <p>David A. responded: Using the multifamily recycling program element and the new landlord notification requirement as an example, these additional costs were included. All costs were averaged over 5 years, assuming costs in the first year of program implementation would be higher and lower in subsequent years when such programs go into more of a maintenance mode.</p> <p>Holly S. added: For contamination prevention we modeled what we thought cities would actually do.</p> <p><u>Willie T.</u>: What about cost factors for the WP&R program elements?</p> <p>David A. responded: In all cases we assumed cities would choose the lowest cost option and modeled only those to answer the question: What is the financial impact to implement these rules? Cities can choose other, more expensive options, but that becomes very hard to predict.</p> <p><u>Willie T.</u>: Fiscal analyses he’s seen have low, medium and high estimates to show the possible range of impacts. It may be necessary from a messaging standpoint to stress that this analysis was based on lowest cost assumptions.</p> |

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| | <p><u>Kim K.</u>: Following up on Willie’s first question re: enforcement, using program elements (j) and (m) as an examples (which require local gov’ts to id large generators of certain materials) – were these costs modelled?</p> <p>David A. responded: No, because only 6 cities have to implement additional recycling programs and we consulted with staff to ascertain which elements they would likely implement. In some cases, such as Junction City, they told us what they intended to do. Because program elements (j) and (m) would likely be more expensive to implement than other elements it did not seem reasonable to model them given our baseline assumption. We explicitly went with the lowest cost assumption because over the past 5 years we’ve heard local gov’ts express a lot of concern over program costs.</p> <p><u>Dave L.</u>: Referring to the fiscal impact statement summary table on p. 18, it might be useful to have examples as opposed to minute percentages.</p> <p>David A. responded: This results of this analysis were portrayed in dollars per unit time in but percentage change. If rate goes up 0.1 %, and operating costs are 0.2 %, the overall impact equals 0.02 %.</p> <p><u>Dave L.</u>: Expressed understanding, but suggested that it might be useful to have more concrete examples using dollars, especially if haulers are going to have to explain this to city councils, etc., which would require them to essentially recreate this work to frame the impacts in this way.</p> <p>David A. replied: Because we did take that approach we don’t have such information. He suggested asking some of their business customers for their cost numbers and apply these percentages to them.</p> <p><u>Pete C-W.</u>: Is there a small business definition?</p> <p>Matt R. responded: Yes: 50 full-time equivalent employees or less.</p> |
| <p>11:50 p.m.</p> | <p>Fiscal Impact Statement – Questions for the Advisory Committee: Matt explained the questions and terms and facilitated the polling. See the separate tally sheet for voting results.</p> <p><u>Dave L.</u>: How are we are to consider impacts to small business vs large businesses engaged in the same activity? How do we know the difference?</p> <p>David A. responded: We could not find sufficient to answer this question. The best we could do is what we reflected in the rate changes for the cities profiled.</p> <p>(1) Will the proposed rules would have a fiscal impact?</p> <p><u>Notes:</u> What is the extent of that fiscal impact?</p> <p>All advisory committee members voted YES.</p> <p>(2) What is the extent of that fiscal impact? In other words, do you agree with DEQ’s assessment in its Fiscal Impact Statement of the extent of the proposed rules’ fiscal impact?</p> <p><u>Notes:</u></p> |

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| | <p>DON'T KNOW: Willie T., Dave L., Kim K.</p> <p>YES: All other attendees.</p> <p><u>Willie T.</u>: The analysis based on least cost options, not the most likely options. Concerned that estimates might not match reality following implementation.</p> <p><u>Kim K.</u>: Agrees with Willie.</p> <p><u>Dave L.</u>: Remember answers given during data gathering for this process (the input), but don't understand the black box that produced the output as represented by these small percentages. No access to the model used. Familiar with similar models, but can be flawed.</p> <p>(3) Will the proposed rules have a significant adverse impact on small businesses?</p> <p><u>Notes:</u></p> <p>DON'T KNOW: Pete C-W</p> <p>NO: All other attendees.</p> <p>No questions or comments.</p> |
| <p>12:20 p.m.</p> | <p>Fiscal Impact Statement – Summarize Committee’s Findings</p> <p><u>Notes:</u></p> <p>Pete C-W.: Looking at total numbers distributed among three areas (slide 14), WP&R program elements represent the least amount of money. More than half would be going toward implementing the contamination prevention component of Expanded Ed. & Promo. Wouldn't it be better, over time, to have more money flow towards implementation of WP&R program elements?</p> <p>David A. responded: The costs modeled are for compliance with the proposed rule. There are lots of ways for communities to go above and beyond the minimum requirements. We are helping with our grants program, through focus points. There are ways to make waste prevention and reuse happen without strictly necessarily complying with these rules.</p> <p>Matt R. added: DEQ hopes to reduce the cost of compliance through design of templates, campaigns, etc.</p> <p>David A. added: We hope to reconnect with AC members to review these materials and seek comments to improve them after they've been developed, so stay tuned.</p> |
| <p>12:25 p.m.</p> | <p>Draft Proposed Rules – Advisory Committee Comments, Continued</p> <p><u>Notes:</u> Matt prefaced this portion of the meeting by reading written comments from Mark Morgan and a local mayor generally opposing SB 263.</p> <p>David A.: Asked about public comment later in the meeting – asked for a show of hands from the audience and on the webinar. There were none. He reminded folks about the 9/16, 5 p.m. deadline for AC comments.</p> |

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| | <p><u>Final thoughts:</u></p> <p><u>Matt K.:</u> Great job, great responsiveness. On a practical note, it is hard to track rules that implicitly include statutory requirements, as opposed to those that explicitly include statutory requirements in the rule language.</p> <p><u>Willie K.:</u> Commend DEQ on its flexibility, e.g., contamination, agricultural use exemption. Thinks DEQ handled the process really well.</p> <p><u>Mark N.:</u> No comment.</p> <p><u>Pete C-W.:</u> The rules process is very complicated; appreciate the involvement and help with its creation and look forward to building programs around the rules.</p> <p><u>Steph S.:</u> Question on process – the notes taken from today, will we hear back about them?</p> <p>Matt R. responded: Meeting notes will be provided, along with voting results.</p> <p>Cathie Rhodes following up: On changes to the rules discussed today, we'll get back to them no those too?</p> <p>Matt R. responded: Yes, I will highlight and distribute these changes to everyone before it goes to public comment.</p> <p><u>Traci C.:</u> Thanks to staff.</p> <p><u>Sarah G.:</u> Thanks to commitment of staff, depth, detail and attention to questions and comments.</p> <p><u>Vinod S.:</u> Agree with Matt and Willie.</p> <p><u>Dave L.:</u> Wish all gov't agencies ran like DEQ.</p> <p><u>Kim K.:</u> Lots of great folks on work group, appreciate staff responsiveness.</p> <p><u>Rob G.:</u> Excellent process, compliment AC members on congeniality, cooperation. Chose a good group of people to participate.</p> <p>Matt R. reviewed the schedule for the remainder of the rules process.</p> <p>David A.: Reiterated grant round, implementing the rules in 2017 and working with TAs on rule implementation. Reminder – some sections of SB 263 that were not part of this rulemaking (e.g., outcome based measures) stay tuned, there will be another rulemaking in the near future.</p> |
| <p>12:55 p.m.</p> | <p>Public Comment Opportunity</p> <p><u>Notes:</u> None</p> |

1:00 p.m.

Adjourn

Notes: 12:17 p.m.

Next meeting scheduled: N/A

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