



February 21, 2025

Jeffrey Fieklow
Chief Executive Officer
Circular Action Alliance
Via email

Dear Mr. Fieklow:

Thank you for submitting Circular Action Alliance's third draft producer responsibility program plan (Plan) to the Oregon Department of Environmental Quality on December 6, 2024, for the development and implementation of a producer responsibility program for packaging, printing and writing paper, and food serveware in Oregon under Senate Bill 582 of 2021 (Act).

A program plan is an enforceable document in which a PRO lays out its approach to fulfill its obligations under statute and rule. In addition to being subject to enforcement should a PRO deviate from implementation of the plan without seeking a plan amendment, a PRO is also accountable directly to the statute and rules.

This letter and its attachment comprise DEQ's official response to the third draft plan pursuant to ORS 459A.878(1). DEQ's response was informed by public comment and by input received from the Oregon Recycling System Advisory Council, both of which are available on DEQ's [website](#).

In January and February, 2025, DEQ and Circular Action Alliance discussed the program plan submission and identified certain content changes that would allow for DEQ approval. A version of the plan containing these directed changes is located in the attachments to this letter, and the directed changes are summarized below.

DEQ hereby approves the program plan as amended, effective immediately.

Summary of Directed Changes¹

Page numbers cited are specific to the version of the plan containing tracked-changes in Attachment 1, *CAA Edited Oregon Program Plan 2.21.2025*, unless otherwise noted.

1. System expansion to collect Uniform Statewide Collection List materials. The following edits will ensure that the producer responsibility organization funds all eligible costs requested by local governments through the needs assessment, using a process that engages local governments, service providers, and DEQ for case-by-case circumstances.

¹ Note: additional changes were made to correct typographical and other errors in plan language. The six sets of changes reflected in this list were, by contrast, directed in order for the plan to meet requirements.

- a) Funding Request Review Criteria section, page 26. Language added to clarify that CAA will fund high-priority, eligible costs in the first program plan period. CAA may defer local government needs assessment requests that do not perform well on one or more of the funding request review criteria to the next plan period beginning in 2028, but will treat all such requests as “pending” rather than “closed.” If a rulemaking further defining eligible costs is completed in the plan period, the rules will replace these criteria and will be applied by CAA to issue decisions on all pending requests. CAA will be invited to participate formally in any rulemaking advisory body focused on this topic.

Corresponding changes were also made to relevant language on page 12 (Goals) and page 25 (Proposed Timeline).

- b) Table 1. Local Government Funding Schedule, pages 30-40. Table amended to indicate estimated funds by community for each type of infrastructure (trucks, containers, depots, and reloads), and to denote cases where a request from one local government is included in the funding for another.
- c) System Expansion Funding Administrative Process section, page 42. Language added to clarify that, as part of the outreach process, local governments included in the schedule of investments for system expansion funding will be given the opportunity to update their responses to the ORSOP survey. This will enable communities to true up any discrepancies between what is shown in the program plan and the eligible service expansion requests made on the needs assessment, which were further clarified through responses to the ORSOP.
- d) System Expansion Funding Administrative Process section, page 42. Language added to state that CAA will report quarterly to DEQ throughout the first program plan period on the quantity and type of infrastructure assets that have been confirmed in contract with local governments for funding.
- e) Application Process for Funding Requests section, page 43. Section was renamed “Ensuring Eligible Costs are Funded” and moved to page 43. The new content describes a process whereby communities that filled out the needs assessment but are not in the schedule of investments for system expansion funding will be given the opportunity to fill out the ORSOP (if they did not fill it out in 2024) or update their responses (if they did fill it out).
- f) Itemized Budgets by Program Year, Attachment 2, Appendix E, page 49. Language describing the Local Government Collection Services Expansion budget line item was further clarified to indicate that the level of service to be achieved in the first program plan through CAA’s service expansion investment includes both infrastructure needed for Opportunity To Recycle compliance and additional needs for convenient service.

2. Dispute resolution. The following edits are intended to ensure an effective process when disputes relate to elements of statutory or rule interpretation.

- a) Table 3. Dispute resolution approach, page 44 and Table 25. Dispute Resolution (Local Governments, Service Providers and CRPFs), page 240. An additional step was added into the dispute resolution process during which DEQ would have the option to issue a statutory or rule interpretation.
- b) Dispute Settlement Process Related to Service Expansion Funding Requests section, page 44 and Dispute Resolution (Local Governments, Service Providers and CRPFs) section, page 240. Language added ensuring that DEQ has the right to access information from CAA's dispute resolution process with jurisdictions or service providers if needed for DEQ enforcement actions related to rule or statutory rule interpretation.

3. PRO Recycling Acceptance List Material Collection. The following edits are intended to ensure that CAA successfully establishes a network of collection points that meets the convenience standard before the deadlines indicated in the plan and subject to DEQ administrative discretion.

- a) Administrative Discretion Relating to Block White EPS Collection: Phase One (First 18 Months): Metro, Lane County and Tillamook section, page 94. Language added to indicate that CAA will meet the convenience standard for expanded polystyrene for the metro area, Lane County, and Tillamook County by the end of 2027.
- b) New Interim Reporting section, page 98. New language added to describe that CAA will report quarterly to DEQ throughout the first program plan period on progress toward meeting the convenience standard. Reporting will be in a manner and format prescribed by DEQ, and will include fully-substantiated, site-by-site requests for alternative compliance for DEQ review and approval, as well as reporting on progress of phased approach to meeting the convenience standard for expanded polystyrene.

Accompanying edits also made to pages 61 (PRO Recycling Acceptance List), 72 and 74 (Closing Gaps to Meet Convenience Standards) to clarify that proposals for alternative compliance will be channeled into the quarterly review process, and that no proposals have been made and approved as part of this plan review.

- c) Compensation section, page 102. Language added to indicate that site-specific estimates of facility costs and staffing needs will be used in negotiating the terms of compensation among CAA and a prospective collection point service provider. This includes using site-specific estimates for the purpose of determining whether or not contracting with an existing depot is possible, pursuant to OAR 340-090-0640(1)(b).

Minor accompanying edit also made to pg 100 (Establishment of Depot Sites and Contracts).

4. Ensuring Responsible End Markets. Random Bale Auditing section, page 163. Language updated to reflect DEQ's authorization of a 30-month delay in CAA's obligation to conduct random bale tracking. DEQ may conduct this tracking itself, as it has authority to do so under OAR 340-090-0670(4), and will communicate results to CAA as they become available. As

indicated in the updated language, CAA will remain obligated to report its analysis of, and action steps pertaining to, DEQ's results in its annual reporting.

5. Materials Strategy. The following edits to sections of the plan regarding the waste hierarchy obligation in ORS 459A.896(2)(b) clarify how CAA will fulfill its obligation in the plan period and track its progress.

- a) Strategy for Glass section, page 169. Language amended regarding limiting environmental impact analyses to available markets. This change is made in alignment with OAR 340-090-0670(5)(a)(E), which includes new market development among examples of practicable actions. Language also added to clarify that new market development for glass is not expected of CAA in this program plan period as long as existing market capacity is maintained and qualifies as a responsible end market.
- b) Strategy for All Plastics section, page 169. Language added to clarify that mixed plastics have not yet been prioritized for selective disposition action. Instead, CAA will be conducting preliminary impact evaluation on these materials to help determine whether or not they should be prioritized in a subsequent program plan period.
- c) Goals of the Program section, page 11. Related goal language amended to accommodate a process whereby materials are prioritized for selective disposition action and a methodology is developed by CAA and DEQ to measure compliance for prioritized materials. Also indicates that CAA's obligation is delimited by practicability.

6. Financing.

- a) Membership Fee Structure and Base Fee Rates section, Table 19, page 191. Amended one material category in the base fee schedule and noted that two additional categories will be added in 2026 to meet the requirement in ORS 459A.884(3)(a) that recyclables are charged lower fees compared with non-recyclables. CAA meets this requirement by differentiating recyclables and non-recyclables into separate material categories and applying the state adjustment factor to shift costs from recyclables to non-recyclables.
- b) Flat Fees section, Table 21 page 204. Amended to ensure that the statutory requirement to accommodate producers with *either* 5 metric tons or less in covered product volumes *or* \$10 million or less in global annual revenues is met.
- c) Meeting the Statutory Requirement section, page 207. Language added limiting material-specific use of the state adjustment factor to shift costs away from specifically identified materials that are prioritized for onramping and toward environmentally unfavorable alternatives. This change was made to ensure that this method is not used permanently as a stand-in for ecomodulation penalties, and that it does not run afoul of the statutory requirements that a) recyclables are charged cheaper base fees, and b) materials do not cross-subsidize one another.

A clean copy of the approved plan incorporating these changes is included in Attachment 3, *CAA Final Approved Oregon Program Plan and Appendices 2.21.2025*. If you have questions about this letter or the terms of these approvals, please contact Nicole Portley, PRO Plan Lead at (503)839-9323 or nicole.portley@deq.oregon.gov.

Congratulations on reaching this important milestone. We look forward to working with CAA and other partners to modernize Oregon's recycling system.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Grabham".

Cheryl Grabham
Manager, Product Stewardship Program

Attachments

1. CAA Edited Oregon Program Plan 2.21.2025; with tracked changes
2. CAA Edited Oregon Program Plan Appendices 2.21.2025; with tracked changes
3. CAA Final Approved Oregon Program Plan and Appendices 2.21.2025; clean copy