

Oregon Recycling Modernization Act Rulemaking

#3: Recycling Acceptance Lists Technical Workgroup

Recyclability categorization of antimicrobial and low-risk pesticides

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Regulatory background



- Oregon is the first state to implement packaging EPR and INCLUDE FIFRA-regulated pesticide products
- Current Oregon regulations:
 - **OAR 340-090-0630(2)(j) and OAR 340-090-0630(3)(e)**
 - Identifies packaging accepted on the USCL and the PRO List
 - “**Plastic that fits loosely in the generator’s provided on-route collection container, excluding any such item that was used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides, or other hazardous materials (flammable, corrosive, reactive, toxic), as follows:**”
 - “**Plastic buckets and pails made of HDPE (#2) or PP (#5) and the lids of such items, but excluding such items if used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides, or other hazardous materials (flammable, corrosive, reactive, toxic);**”
 - **OAR 340-090-0840(2)(d)**
 - Exempts restricted-use pesticides, returnable or refillable commercial-use pesticide containers, and rigid HDPE packaging of commercial-use pesticides collected via separate systems (ex. the Ag Container Recycling Council) from the RMA

What does DEQ consider a pesticide?

DEQ explanation:

The word “pesticide” is a term of art in solid waste regulations and is generally used in alignment with the federal definition of the term under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Therefore, although no specific definition of “pesticide” is applied at OAR 340-090-0630(2)(j), we interpret the term to align to the following definitions in Oregon’s statute and rules, as well as in FIFRA:

1. Oregon Statute at ORS 634.006 contains definitions that include “pesticide.” The relevant passage defines “pesticide” as:

“Any substance or mixture of substances intended for use for defoliating plants or for preventing, destroying, repelling, or mitigating all insects, plant fungi, weeds, rodents, predatory animals, or any other form of plant or animal life which the department declares to be a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof.”

2. Oregon Administrative Rules OAR 340-100-0010, the “Definitions” section defines “pesticide” as:

“Any substance or combination of substances intended to defoliate plants or to prevent, destroy, repel, or mitigate insects, fungi, weeds, rodents, or predatory animals. Pesticide includes but is not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006 (Definitions).”

3. Federal (EPA) Definition

EPA defines “pesticide” under **FIFRA Section 2(u)**, codified at **40 CFR § 152.3**, as:

“Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or intended for use as a plant regulator, defoliant, or desiccant — with certain exclusions (e.g. new animal drugs, animal feed, etc.).”

This federal definition is what applies under EPA’s regulatory program for pesticides (e.g., registration).

Current status



- CAA reporting guidance:
 - “Plastic containers for motor oil, antifreeze, and other automotive fluids; non-exempted pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and consumer products regulated under the Federal Hazardous Substances Act (FHSA) displaying the signal words "Poison", "Danger", "Warning" or "Caution" and one of the following hazards, "Toxic", "Highly Toxic", "Corrosive", "Flammable" "Highly Flammable" or "Combustible".”



FIFRA definition is too broad



- Designed to address product efficacy and safety, not packaging recyclability
- Inclusive of:
 - High-toxicity pest management products
 - Toxicity Category I and II
 - Display the signal words “Poison”, “Danger”, and/or “Warning”
 - May include, for example, anticoagulant rodenticides
 - Low-toxicity pest management products
 - Toxicity Category III and IV
 - Display the signal word “Caution” or no signal word
 - May include, for example, down-the-drain insect killer or rabbit repellent
 - Antimicrobial products
 - Disinfectants and sanitizers are ALSO pesticides under FIFRA
 - May include, for example, disinfecting wipes or cleaners that also sanitize and disinfect

Proposal



- Adhere to EPA FIFRA regulations on Container Design and Residue Removal, 40 CFR § 165 Subpart B
- Amend Oregon EPR regulations OAR 340-090-0630 (2)(j) and OAR 340-090-0630(3)(e)
 - “Plastic that fits loosely in the generator’s provided on-route collection container, excluding any such item that was used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides **subject to 40 CFR § 165 Subpart B**, or other hazardous materials (flammable, corrosive, reactive, toxic), as follows:”
 - “Plastic buckets and pails made of HDPE (#2) or PP (#5) and the lids of such items, but excluding such items if used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides **subject to 40 CFR § 165 Subpart B**, or other hazardous materials (flammable, corrosive, reactive, toxic);”
- Maintain current Material Acceptance List work group to address more nuanced future implementation questions
- Align consumer communication with that for other product categories that are a mix of hazardous and non-hazardous

Questions

