



State of Oregon Department of Environmental Quality

Written Comments

Plastic Pollution and Recycling Modernization Act 2022 Rulemaking
Advisory Committee Meeting 3 of 5, Rulemaking 1

This document is a revised compilation of received written comments related to the third meeting of the advisory committee for the Plastic Pollution and Recycling Modernization Act Rulemaking held Nov. 9, 2022

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November 18, 2022

Oregon Department of Environmental Quality
700 NE Multnomah St., Suite 600
Portland, OR 97232

Submitted via email

RE: Rulemaking/RAC Comment

To whom it may concern:

The Consumer Brands Association appreciates the opportunity to provide written feedback on the Oregon Department of Environmental Quality's (DEQ) rulemaking efforts to clarify and implement the Plastic Pollution and Recycling Modernization Act of 2021. Consumer Brands represents the consumer packaged goods (CPG) industry and the world's leading food, beverage, personal care, and household product brands.

Regarding the question posed at the November 9th meeting, "how detailed and/or inclusive should the materials acceptance list be?" Consumer Brands strongly advises an extensive list. The intent of the Plastic Pollution and Recycling Modernization Act is to improve upon Oregon's recycling system and environmental impact; therefore, it follows that recycling requirements should push for advancements to the system and increased materials collection rates over time. We caution against a limited list that will ultimately encourage stakeholders to extend the inadequate status quo, ultimately impeding significant opportunities to divert material from waste streams and the expansion of the post-consumer recycled content market. As the intent of this legislation is to improve Oregon's recycling system, support the Oregon economy, and preserve Oregon's natural environment, we recommend systems that promote increased recyclability of all materials within reasonable means. Modest investments to the existing system may initially be necessary to create lasting, positive change.

As such, our feedback on the rule concepts is as follows:

Rule Concept – Materials Acceptance Lists, Part 1:

- Paper "cans" with metal ends.
 - Consumer Brands recommends the DEQ include paper "cans" with metal ends in the collection system. Recent studies demonstrate when sorted with steel at Materials Recovery Facilities, magnets successfully capture the paper "cans" with steel ends. With the current MRF infrastructure, these materials can be effectively collected without costly adjustments to the existing system. Not only does the capture of paper "cans" with steel ends divert additional waste from the environment, but greenhouse gas emissions are significantly reduced by recycling the included steel.
- Polypropylene Lids

- One of the largest, looming challenges to an effective recycling system is consumer confusion. Mandating a separate disposal method for polypropylene lids from their containers will markedly inhibit recycling by contributing to the confusion of citizens. This confusion will ultimately lead to a decrease in viable PCR material recovered and increase the amount of material lost into Oregon's already burdened waste streams. Additionally, while lids may have a 2D shape the rigid nature allows for it to "bounce" around and still flow to the container line rather than in with fibers. As reasonable end markets currently exist for polypropylene lids, we believe their collection is already possible and can become increasingly risk free with minor improvements to the existing MRF systems.
- Glass
 - We advise the DEQ to consider the addition of glass to the curbside collection program. Glass is in the top 7 materials with the highest recycling rates, according to the EPA's Advancing Sustainable Materials Management report. The majority of the country collects glass curbside and national producers base their designs on nation-wide norms. Adhering to nation-wide recycling norms prevents consumer confusion and the resulting loss of viable PCR material into waste streams.
- Plastic Bottles/Jugs
 - The current DEQ standard, based on a measurement of 6 ounces, is inconsistent with nationwide recycling requirements. It poses significant problems for producers aiming to design their products to meet recyclability standards nationwide. Consumer Brands recommends that instead of measuring and restricting plastics by net content- with the current measurement of 6 ounces- considering the standards set by the APR Design guide (ex. <https://plasticsrecycling.org/hdpe-design-guidance>). Many producers currently design their products utilizing the guides; if the Local Government Recycling Acceptance Lists ignores the preexisting standards a significant amount of viable material is likely to be lost from recycling collection.
- Plastic Deodorant Canisters
 - We recommend that plastic deodorant canisters be considered for addition under the forms of polypropylene collected.
- Plastic Tubes
 - Consumer Brands advises the exploration of solutions to recover as much material from waste streams as possible. We recommend the DEQ continue assessing and determining a collection method for plastic tubes. Consumer Brands suggests discussing splitting plastic tubes into 2 categories: all plastic layers, and plastic materials with a thin foil layer.
- Polyethylene Film
 - We would like the DEQ to consider splitting the Polyethylene film categorization into Polyolefin film and Polyethylene film (PP and PE rather than just PE).
- PET Thermoform Packaging
 - PET Thermoforms ranked relatively high in almost all of the DEQ's Qualitative Evaluation Results categories. Consumer Brands recommends the collection of all PET Thermoform packaging.
- Language Adjustment- "For example, a material that lacks stable, mature or viable end markets is a poor candidate for inclusion, even if there are large amounts of material available"
 - CBA recommends an expansion upon this definition; the existing language is too vague. The majority of recycling streams in the US are new or undergoing

immense infrastructural change. Few legitimately meet the qualifier of “stable.” Therefore, this language leaves too much up to the discretion of the program. This may result in disadvantages by encouraging a "pick & choose" system, rather than the establishment of a standard. For example, a PE store drop-off where only 6% of material is actually being recycled.

Transportation Cost Reimbursement

- Consistent with concerns presented by other stakeholders at the November 9th meeting, Consumer Brands recommends the establishment of a minimum weight per truckload of material specification. Given rising fuel costs, driver shortages, and the GHG impacts of transportation, requiring a minimum weight for transportation will maximize resources management and decrease overall transportation emissions. We recognize the need for requirements to vary on a per material basis and advise the PRO to conduct a study to determine specifications using data collected on Oregon’s recycling systems and market. Finally, we recommend a pro-rated reimbursement solution based on the established weight specifications. For example, if a municipal program hauls only half of a truckload, they will be designated to receive producer reimbursement for half the cost of a full truckload.

Thank you again for the opportunity for comment, we appreciate the efforts of DEQ and the RAC to develop rules to implement Oregon’s packaging extended producer responsibility (EPR) law and strengthen the state’s recycling system. The CPG industry has made packaging sustainability a top priority and we look forward to continued engagement throughout this process.

Respectfully,

Lauren Janes
Specialist, Packaging Sustainability
Consumer Brands Association



We Feed You

Food Northwest Comments

RAC Meeting #3

Food Northwest is submitting the following general comments and specific comments on topics discussed at the third meeting of the Recycling Modernization Act Rules Advisory Committee. As we have outlined below, Food Northwest continues to have serious concerns about the speed of the process and the structure and viability of the overall program as we understand it.

General Comments Following Three RAC Meetings

DEQ has asked the RAC to give advice on key components to the program without giving the RAC any background on current practices, the viability of what is being proposed or the cost. For those of us who are not part of the recycling industry, the terminology alone is a major hurdle to understanding what is being discussed.

A key case in point from the last meeting is the proposed Materials Acceptance List. This list is incredibly important in the development of the program. Yet, DEQ has not explained to the RAC why each item on the list was chosen, the economics and practicability of recycling these items, nor the impact on current recycling efforts. Some of this information comes up in discussion, but most of that conversation is between DEQ staff and the operators of current recycling operations. We have no information on the baseline that currently exists in the state in terms of the extent or cost of recycling activities.

Consequently, these RAC conversations are incredibly difficult to follow and at times very discouraging. The Materials Acceptance List discussion at the last meeting revealed a potentially major issue. It seems that prior to the passage of the legislation there was some kind of agreement between DEQ and the MRF operators to propose a program design that would constrain competition between MRF operators. This comes from a statement made by David Alloway in response to a RAC member that is also a MRF operator. I am assuming this agreement was made as DEQ met with the Recycling Steering Committee from 2018 to 2020. There were no producers invited to those conversations and DEQ never reached out to food manufacturers to ask our opinion of the recommendations that were used to develop the agency request legislation. An agreement to constrain competition will negatively impact the ability of PRO's to seek the most cost effective partners in their program design and consequently impair the effectiveness of the program.

Those of us who were not part of this Recycling Steering Committee process simply do not have the depth of understanding that is required to look at a Materials Acceptance list with no background

and make any kind of an informed comment on whether it is something we can support or should ask to be modified. If DEQ is serious about receiving useful and informed feedback on this program rule you must commit to helping educate us on the current process used to recycle materials in Oregon and the impact, both financially and operationally, of the rule. DEQ appears to have no idea how much this will cost producers but is preparing a program that looks to us like a blank check that we will be asked to sign.

These comments are not intended to be critical of the agency but to be constructive. When you have been deeply immersed in a program for a long period of time, it is easy to assume that everyone has the same level of understanding of the basics. Many of us who have not been so immersed need more background on the status of the current program and an idea of how much the current system costs to operate. Without that basic information it is nearly impossible to give you the kind of feedback you are requesting.

Here are our specific comments on the agenda items presented in the third RAC meeting:

Local Government Compensation

The legislation mandates that costs be reimbursed by the PRO if the transport of a covered product is 50 miles or greater. Beyond that, we believe the rule should allow the PRO to negotiate the most cost-effective means of transport that meets their program requirements. The approach outlined in the concept paper is far too detailed and prescriptive. It appears to be a way to insure local governments and their haulers a predictable level of compensation regardless of efficiency or economies of scale. We believe that the best way to build capacity in the system is to let the marketplace dictate efficiencies. We would advise DEQ to define the statutory requirements and let the PRO's and processors work out the most cost-effective ways to meet the statutory requirements.

PRO's need the flexibility to select the MRF that will best meet their program plan which includes the cost. Protecting MRF's that are less productive or cost-effective will hinder the program and drive-up costs to consumers. This program's intent is to modernize the recycling system and any rule that impedes that process by keeping inefficient operators in business will seriously hinder the intent and effectiveness of the law.

Material Acceptance List

In general, we believe that the list should be as robust as possible. Consumers want to have confidence that the recycling system is reusing as many products as possible. That of course is balanced by feasibility and access to markets.

Specifically, we believe that paper cans with steel ends should be included on the list. These can be recycled as metals and should be accepted in the curbside process.

We also believe that accepting plastic tubs and the lids is very important. It makes no sense to exclude the lids, which are made from the same material. Educating the public to recycle the tubs with the lids attached seems to be a possible way to resolve the sorting issues at the MRF.

Thank you for the opportunity to submit our comments. We look forward to continuing the conversation.

Craig Smith
Food Northwest

SENT VIA EMAIL: Recycling.2023@deq.oregon.gov

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To: Roxann Nayar, Oregon Department of Environmental Quality

From: Paloma Sparks, Oregon Business & Industry

Re: Draft recycling rules, Nov. 9 RAC

Date: Nov. 23, 2022

Thank you for the opportunity to submit comments on the initial proposed rules for the Recycling Modernization program for Oregon Business & Industry members. OBI is Oregon's most comprehensive business association representing over 1,600 businesses that employ over 250,000 people. We represent multiple sectors and serve as the state's Retail and Manufacturing Councils.

Our comments here will focus on the materials acceptance lists as discussed at the Nov. 9 rulemaking advisory committee meeting.

As we have stated in the past, DEQ is assuming that vast expansions of what is deemed "recyclable" can easily be done through Producer Responsibility Organization (PRO) recycling depots. It cannot. While, certainly, we would all like more materials recycled the models and draft rules we have seen thus far are not realistic and could cause this experiment to fail.

First, we once again urge the Department to recognize that while depot collection is working in other countries it took a long time to get there. Oregonians simply are not accustomed to depot recycling. Many will not actually take the additional steps of storing items in their home, loading them into their cars and driving them to a depot. The individuals who will go to such lengths are already motivated to recycle. The more complicated we make the system, the fewer people will participate. That could well make our recycling system simpler, but it will not result in more recycling in total.

As described in the documents we discussed on Nov. 9, this creates a duplicate system where there seems to be two recycling systems that may be fighting for customers. The legislative intent statements in SB 582 seemed to suggest the goal of the new law was for producers to "share" in the system not have to duplicate it. At a minimum, recycling depots should be reserved only for items that are not included in curbside recycling acceptance lists.

We urge DEQ to understand that PROs will have no easier time of finding sites for recycling than counties or OBRC. Neighborhoods don't want them. Land use laws often restrict where they can be located. There is already a recycling system in Oregon and sites that can be utilized to accept materials. A better use of resources would be to expand existing infrastructure to meet modern recycling needs. If the point of SB 582 was to ensure that producers "help finance the management of, and ensure an environmentally sound stewardship program for, their products," it would seem to make more sense to utilize existing systems rather than create new ones. This

is even more true when considering the environmental impacts depots could have in terms of customer miles traveled, land use and heavy vehicle traffic.

Many of the comments we saw in the background documents seemed to take into account only the cost or complication for local governments and not for the PRO. The PRO will have to balance the needs of DEQ, local governments, the public and its own members. For example, DEQ appears to consider the transportation and labor costs for existing recycling systems but has not engaged in a meaningful analysis of the impacts of the depot model.

Finally, we remain concerned that DEQ keeps on pursuing the “perfect” at the expense of the good. The goal of SB 582 is to improve and modernize the system, not create an idealized version of a recycling system. If we make it too complicated from the start, the model will collapse under its own weight. DEQ should focus on making sure the system is improved and that it will be nimble enough to be continuously improved. But, we have to make sure it will actually function before making it more complicated. We are strongly urging DEQ to make sure the plane can actually fly first.

Thank you for considering our comments.

November 22, 2022

Oregon Department of Environmental Quality
700 NE Multnomah St #600
Portland, OR 97232

Re: 10-day comment period for Nov 9th RAC meeting

The following feedback is shared in response to the last Rulemaking Advisory Committee (RAC) meeting that occurred on Nov 9th.

1. Transportation Costs

- For this issue, DEQ requested feedback on what is the right level of detail that needs to be decided now versus by the program plan. Someone on the committee claimed this issue was left unresolved during the RSC process and more than one producer said our discussion was too in the weeds and needed to pause until the PRO was established. The way the information on this topic was presented was confusing and hard to engage or weigh in on. Our recommendation is to focus on the details of how disputes are resolved if it makes sense to work out the details now and save the rest for the program plan.

2. Materials Lists

- We want to reinforce the intent of the RMA is to **modernize** the recycling system in Oregon. This means our system needs to change and evolve and the status quo is not enough. The people of the greater Portland area want to recycle – they want to do their part to be responsible stewards of materials thrust upon them as consumers. It is our job as the architects of the system to build the capabilities to do just that. Yes, we want to avoid wish cycling and require responsible end markets **AND** we should not be afraid to change, grow and invest in the system. We need investments and new MRF capabilities that can sort more materials and decrease contamination, eliminate the human health impacts for the people living next to sorting facilities and create better conditions and pay for MRF workers. We are very interested in how this will be incorporated into DEQ certification and oversight of MRFs. We also hope the RMA will influence producers to redesign and improve packaging. That is the modern EPR system envisioned by the legislature and Oregonians and that should be our North Star.
- We understand that Waste Management is considering building a new MRF in the Portland area in 2024. We encourage DEQ to meet with WM and learn more about their intent (if they have not already) and how this will impact the implementation of the RMA.

- We are pleased that scrap metal, even though it's not a covered product, is proposed to stay on the uniform statewide collection list. Similarly, we are glad to see yogurt and salsa containers (referred to during the RMA process as tubs) remain on the list as well. These are two materials that are currently on the greater Portland area's list.
- There are three items currently on Metro's list that are proposed to be removed from curbside and those are aluminum foil, shredded paper, and aerosol cans. We agree with the recommendation to remove aluminum foil and shredded paper and are happy to see the proposal that they be moved to the depot list.
- We continue to have concerns about removing aerosol cans from curbside. Empty aerosol cans are recyclable and removing them from the yes list could result in a net loss for recovery. If residents in the greater Portland area are directed to take them to a depot for recycling, would someone be at the depot to sort the empty cans from the full cans, and would the depot need a permit, or would they all be sent to Metro's HHW facility for sorting? Aerosol cans are ubiquitous and requiring everyone to take them to a depot would be onerous and could lead to more of them in the garbage, empty and full, because they refuse to do something more difficult. Additionally, to our knowledge, there is no evidence that people are placing aerosol cans in the recycling that are not empty.
- We are concerned about generators ability to identify the types of single use plastic and paper cups proposed for the uniform list which may contribute to increased contamination. In addition, while waste prevention is not included in the bill as criteria for determining what should be on the uniform collection list, DEQ should consider how including these single use cups could impact waste prevention and potentially undermine business commitments to switch to reusable cups. Additionally, we believe the waste prevention grants should support the switch to reusables especially if single use cups are added to the list of acceptable items.



December 9, 2022

To:
Members of DEQ, RMA Rulemaking Advisory Committee
Via email to DEQ staff

Re: Proposed materials for the Universal Statewide Collection List (USCL)

EFI Recycling, a locally owned Oregon processor, has been and remains committed to modernizing our facility to efficiently and effectively handle the materials set out at the curb for recycling and that will be on the Uniform Statewide Collection List (USCL). During the past four years, EFI has invested millions of dollars in upgrades to our sort system to allow us to meet and exceed the material quality standards established by our end- markets.

The Recycling Modernization Act (RMA) gives us the opportunity to re-set our curbside list. The initial USCL should only contain materials that processors have the ability to sort to high quality market grades and meet the standards established in our permits. As we, and other Oregon processors continue to upgrade our facilities in accordance with the materials on the USCL, we should have the ability to sort all paper and containers on the USCL to appropriate market specifications. Our concern is that some materials currently recommended by DEQ for the USCL should not be included at this time. There is little evidence, or only inconclusive data, that these materials meet the criteria established in ORS 459A.914 (3) for inclusion in a commingled recycling program.

We believe that each material on the initial USCL should have readily available and well established, responsible end markets. The materials should be reasonable to be sort from the other commingled materials. The materials currently included on the USCL that cause us significant concern include Polycoated Cartons (gable top cartons, aseptic cartons and polycoated paper cups), Plastic Tubs (e.g., cottage cheese), 6 ounces or larger: PET (#1), HDPE (#2). LDPE (#4), and PP (#5), clear plastic cups PET (#1), PP #5. We believe, that these containers do not satisfy the considerations in the above statute, specifically:

- (a) The stability, maturity, accessibility and viability of responsible end markets;
- (b) Environmental health and safety considerations;
- (c) The anticipated yield loss for the material during the recycling process;
- (d) The material's compatibility with existing recycling infrastructure;
- (f) The practicalities of sorting and storing the material;

To the contrary, we believe that these materials satisfy the criteria for Specifically Identified Materials (SIM) identified in ORS 459A.917 and should be collected, handled and marketed as such. The specific criteria includes:

- (a) Whether recycling processing equipment improvements are needed to sort the material and when producer responsibility organizations will fund those improvements;
- (b) The availability of viable responsible end markets for the material;
- c) Economic factors affecting the value of the material; and



(d) Whether the inclusion of the covered product in recycling collection programs could cause an increase in costs.

Please understand, we are not saying that these materials may not be added to the USCL at some point in the future. In fact, it is our understanding that based upon ever-changing circumstances such as improved market conditions, economic factors and improved processing equipment a material

could (and should) be added to the USCL when they meet the criteria in ORS 459A.914 (3) . Therefore, the materials we have identified as not currently appropriate for the USCL could be added if they are treated as a SIM or meet the statutory requirements in the future. One factor in gaining approval for a move from being a SIM to inclusion on the USCL is the investment by the PRO(s) in new processing equipment necessary to effectively and efficiently sort the materials.

The Recycling Modernization Act (RMA) was established in response to citizens' concern that materials collected for recycling were not being sent to responsible end markets for the manufacture of new products. The RMA included a "shared responsibility" concept and commitment that producers of products would contribute financially and invest as needed to ensure the success of the new system. This includes, but is not limited to, investments in transportation, processing equipment, education, contamination reduction and marketing.

In fact, the statutory language of ORS 459A.917 regarding Specifically Identified Materials supports our position. As noted above, (2)(a) acknowledges that recycling processing equipment improvements may be needed to sort the SIM and that a producer responsibility organization (PRO) may be called upon to fund those improvements. Therefore if a PRO wants a SIM to be included on the USCL it can propose that in its plan and commit to finding long-term, responsible end markets as well as funding the necessary recycling processing equipment. When this funding takes place and other statutory SIM factors are satisfactorily addressed, the material may be appropriate for the USCL.

We realize that the materials we have identified as problematic (such as gable top cartons, aseptics and tubs) have been collected curbside for years. That is true. However, just because they were being collected does not mean they were all being recycled. In fact these materials have been a problem since they were originally added to local collection lists. This has not been an issue limited to Oregon. Regardless of how "modernized" recycling processing facilities have become, the new equipment is primarily installed to improve basic sort efficiencies of the primary materials collected in the commingled recycling; remove glass from paper and reduce labor while increasing through put. The addition of this modern equipment has not necessarily led to the needed detailed sorting of gable top and aseptic cartons and non-bottle plastic containers. A significant amount of non-bottle containers and tubs continue to end up in a 3 through 7 mix or in the residual of the facility. Many paper mills are not able to pulp all of the polycoated gable tops and aseptics. This has resulted in the problems we have had with customer confidence and domestic and overseas markets. The establishment of the USCL is the opportunity we have been looking for. Now is the time to admit a mistake was made when these materials were added to the "old" list and time to fix it with the "new" list. Again, we want to be clear. The problematic materials could be added to the USCL before the list becomes final IF PROs commit the



funds necessary to provide the needed sort equipment and help establish responsible end markets for those materials that are currently challenging to recycle.

I think we can all agree that it is better to keep difficult to recycle materials off the USCL initially rather than have to admit we made a mistake and remove the materials later. If further study or needed improvement indicates the time is right for inclusion on the USCL it is a win for us all. Let's work together...citizens, processors, producers and governments...to do everything we can to ensure the success of the RMA. The time is now to use the information and experience we have gained over the many years of Oregon recycling and make well thought out and informed decisions. The time for wishful recycling is over!

Thank you for considering these comments. Please don't hesitate to contact me if you have questions or would like to discuss the USCL further.

Respectfully submitted,

Jeff Murray
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