



State of Oregon Department of Environmental Quality

# Meeting Summary

Plastic Pollution and Recycling Modernization Act (SB 582, 2001)  
Rulemaking Advisory Committee Meeting 4, Jan. 11, 2023

## Purpose of Meeting

On Jan. 11, 2023, DEQ convened the fourth 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:

- Provide follow-up information regarding the previously presented transportation cost reimbursement rule concept and select responses to comments.
- Present the collection targets, convenience standards and performance standards topics and solicit feedback,
- Present the second half of the Materials Acceptance List topic and solicit feedback from the Committee.

## Meeting Attendees

The meeting attendees included members of the first Rulemaking Advisory Committee for the RMA (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, program manager of the Product Stewardship Team at DEQ, welcomed everyone to the meeting. The first rulemaking is an important foundational piece of the RMA implementation process, though there are many other aspects of implementation that are currently in progress or are launching soon. DEQ acknowledges that the RMA is complex. The goal today is to ensure that everyone has an understanding of the concepts being presented and to clarify any questions before receiving feedback on the concepts. There will be time after the meeting to reflect and provide input in writing.

Stephanie Caldera, DEQ, provided an overview of how to use the tools in the Zoom webinar. The protocols, the agenda, meeting ground rules, and goals for the meeting were reviewed.

Introductions were made for the DEQ project staff participating on the call, the alternates sitting in for absent RAC members, and the newest RAC member, Scott Bruun. Then there was a roll call of the committee members, who were asked to introduce themselves and identify which organizations they were representing.

## Input and engagement

Cheryl Grabham acknowledged and thanked the committee for comments received to date and noted that the meeting presentation and summary notes will be posted within a few days of the meeting. Everyone was reminded that comments received from RAC members within 10 business days help staff prepare responses ahead of the following meeting. However, constructive comments that offer an alternative solution or proposal are welcome throughout this process to help inform the rule content.

## **Rulemaking 1 timeline**

Cheryl Grabham provided an overview of where DEQ is in the first rulemaking timeline. The fifth meeting is scheduled for March 10, 2023. Topics that will be presented include at least some of the draft rules and the fiscal and racial equity impact statements. Everyone was encouraged to sign-up for the GovDelivery email list through the DEQ webpage to receive updates about the rulemaking and public notice.

## **Follow-up from the third RAC meeting**

### **I. Transportation Costs Reimbursement**

Justin Gast provided an update regarding the transportation cost reimbursement rule concept. DEQ first presented this rule concept on November 9, 2022. DEQ made some revisions based on input from RAC members, which will be reflected in the draft rules that will be made available later in the spring. Specific revisions include the addition of “service provider” to the “portion of a load” section, and “transportation costs to be paid in advance or via reimbursement” to the “actual costs” section.

A question that was raised by multiple committee members was also addressed in this update. DEQ revised the concept related to ORS 459.890(2)(a), addressing the transport of covered products from a recycling depot or recycling reload facility to a commingled recycling facility. The statute identifies the starting and ending locations; it does not state that transport must be direct between these two points. Therefore, if there are stops along the way, then they are included, and will be covered by this proposed rule.

No questions or comments were received from the Committee.

### **II. Response to Select Comments**

David Allaway provided responses to input received during and after the November RAC meeting. Questions were asked about the financial impacts of the rulemaking and the Act (RMA). Attendees were reminded that it is important to distinguish between the two and remember that there are both financial impacts of the Act itself, and there are also financial impacts related to this rulemaking.

DEQ presented a slide that outlined some of the anticipated financial impacts and obligations; however, DEQ noted that it was not a comprehensive list. DEQ noted that while this first rulemaking will incur costs on multiple parties, including PROs, this rulemaking only reflects some of the costs from the implementation of the RMA. This rulemaking is one piece of the Act and is limited in scope. The rules proposed in this first rulemaking are foundational and necessary to implement other elements of the Act, which will be presented during the second rulemaking.

The analysis to consider broader questions about the financial impacts of the Act and this rulemaking is still in progress. DEQ is updating financial modeling with the Cascadia Research Group and should have the results from that analysis in February 2023. In advance of the March RAC meeting, DEQ will provide a fiscal impact statement for the Committee’s review and consideration.

A second theme in the comments were related to PRO collection obligations, depots, and user participation. PRO collection locations (points) are intended to supplement local government locations for materials that are not readily commingled. In some cases, depot collection may be more cost effective and potentially more environmentally beneficial. Depot collection also provides an opportunity for the recycling community to gain experience with these materials prior to accepting them in on-route service.

Collection points can take many forms, including but not limited to standalone sites, return to retail locations, or new material drop-off locations. There are no mandates in the statute that retailers provide

collection, meanwhile there are at least 261 retail collection points for plastic film. In other jurisdictions, there are glass drop-off collection points, demonstrating that there is interest in using them.

## Imagining the future

Reflecting on the past and future of recycling. DEQ would like to remind everyone that these rules are being designed for a different future, where many of the underlying issues with recycling have been remedied through changes to service, through improvements in consistency in service, more culturally responsive public outreach, better and enhanced customer feedback, lower contamination, consistent performance requirements of processors, responsible end markets, and financial assistance and assurances to make this possible. California's Truth in Labeling law, which will impact nearly every product brought into Oregon, will also significantly help with the current challenges. The RMA offers the potential for a better future, and this is the focus of DEQ's proposed rules.

No clarifying questions were asked.

### Feedback:

Several RAC committee members expressed concern that the rulemaking effort has been moving too quickly, and the timeline feels rushed. They stated that the quality of their feedback is limited because the pace of the process is moving too quickly.

Other comments DEQ received included:

- DEQ needs to do a better job explaining how the pieces and concepts fit together
- To one member it felt as though the reasoning for including certain materials on the acceptance lists was not inclusive of all perspectives involved in the recycling process.
- The process described is complex and is challenging for those involved with the process
- This approach is moving away from customer education and understanding and focusing on MRFs.
- There is a lot of material to review and it is challenging to keep up.
- There is concern that if the RAC is struggling to understand and consider what is being proposed, the public will struggle as well, and that this effort will not be successful.
- There is concern for the transparency, and about how much of a particular material is actually being recycled. The concept acknowledges that communications must be clear and is reliant on appropriate communication and education. However, education will be challenging; providing a lot of text or written information will not translate well to the methods employed for community education efforts, which, relies on graphical representation and images over written content.
- Another RAC member expressed concern for slowing the process because the statutory deadlines may not get met.
- Can the 10-day RAC input period be extended, can there be more RAC meetings?

DEQ acknowledged that DEQ can do a better job explaining this process and how these concepts are connected. DEQ will look into extending the 10-day input period, additionally DEQ responded to more of the comments received from the RAC:

- The proposals reflect a lot of feedback we have received to date
- DEQ reiterated that there are no predetermined outcome for the materials list. The proposed list is the result of an extensive research effort, but establishing the acceptance list is a process, and it is part of an ongoing conversation until the end of the public comment period. The RAC is encouraged to keep providing constructive feedback.

- DEQ believes the data/evidence used to inform the list have been compelling and high quality. DEQ has also accepted data from processors, waste collectors, and local governments, in addition to producers.
- The dynamic that changes with the implementation of the Act, is that once the Act is in place and verification requirements go into effect, these become regulatory requirements. Not meeting these requirements could result in a civil penalty.
- The RMA is clear, the PRO will pay for contamination.
- The USCL is no more complex than the list currently accepted in the Portland Metro area.
- Generator-facing education and programming is not being abandoned. The amount of resources that will be made available for generator-facing programming is unprecedented and the details will be worked out before July 2025.
- DEQ cannot commit to changing the timeline or process, we understand that there are concerns and want this to succeed too. This request will be considered and DEQ will get back to the Committee.

A RAC member commented that collection events were not included as a method for collecting materials. They asked if this was intentional, is it expected that collection events will be phased out?

DEQ responded that there are no requirements or prohibitions on providing collection events.

Another member commented that they hope the proposal will not combine commingled materials with those collected at depots.

## **Proposed Recycling Materials Acceptance Lists Part Two**

David Allaway recapped the November RAC presentation about the first part of the Materials Acceptance List rule concept where DEQ proposed two lists: a PRO acceptance list and a local government acceptance list. One RAC member requested additional information about materials that score a three or lower, which DEQ provided the RAC as a follow-up document after the meeting.

DEQ used an evaluation criterion as required in statute, plus conducted multiple lifecycle assessments, conducted extensive literature reviews, and referenced many other sources of information to score materials.

The proposed rule concept introduced in this meeting is the second part of the Material Acceptance List rule concept which was first presented in the November 9<sup>th</sup> meeting. There were approximately 10 materials that were not yet recommended. These are the materials that are the focus of the rule concept, "Recycling Materials Acceptance List, Part Two". Together, these documents reflect DEQ's current thinking about materials placement.

### **Clarifying Questions:**

A RAC member commented on the choice to include certain materials on the materials list which would require extra care to be processed in the recycling system. DEQ was asked if there are known end markets for these materials or do they still need to be identified?

A couple of RAC comments centered around the concern about the partial recyclability of paper cans, and the challenges of explaining this to the public and rebuilding trust and understanding.

DEQ clarified that end markets have been confirmed for paper cans; there is interest in recovering the steel. There are few materials in the recycling system that can be 100% recycled. The recyclability of most materials spans a spectrum, and very few materials can be completely recycled.

A RAC member asked if DEQ can find a way to describe or illustrate the vision of the changes anticipated in the system as the Act is implemented. Connecting the seemingly disparate concepts more broadly to show how the changes will allow for the acceptance of the materials will help the committee and the public understand what DEQ is proposing.

A RAC member commented that the uncertainty around generator behavior makes it challenging to know whether it is more effective for a material that can only be partially recycled to be returned to a depot or placed in the commingled recycling system. For example, if a paper can is only partially recyclable, all that is changing is who is transporting the remaining material to the landfill. It is unclear to them how the implementation will handle partially recyclable packaging.

DEQ responded that the PRO will be responsible for setting up the collection points, and producer fees will be used to support the system.

A RAC member commented that they are concerned that the materials list will require changes in a sequence that will not reflect the timing needed for MRFs to adapt their operations.

A RAC member commented that it is challenging for non-industry experts to understand the technical references, like resin codes. They asked if the list aligns with the existing Truth in Labeling laws? What percentages of the listed materials equate to materials known in their common vernacular? From a communications perspective how will we approach telling the public which clear cups are recyclable, or not? Finally, they wanted to provide a response to DEQ's earlier comment that few materials can be 100 percent recycled. They stated that this reality is something we should be transparent with the public about. They do not want to facilitate greenwashing materials or leading the public to believe the materials are 100 percent recyclable. The public should know, and this information should be used to help reduce the use of these materials.

DEQ responded first to the question about plastic cups and storage containers. Approximately 80 percent of clear plastic cups are made of polypropylene or PET thermoform, with the majority currently made of polypropylene, by a factor of 3:1. When DEQ is discussing storage containers (large storage tubs made by brands like Rubbermaid), almost all are made of polypropylene or HDPE.

DEQ envisions the recycling system in 2025 will be designed to manage contamination and the placement of items, like plastic cups, to achieve these contamination reduction standards. The PROs and MRFs will be held to these contamination standards to ensure contamination is removed and that bales meet outbound quality requirements. They will be compensated by the PROs by achieving these standards. DEQ's philosophy is that while there will always be some contamination, the new system will be designed to protect the recycling system, rate payers, and downstream communities from the costs and contamination materials itself.

A RAC member indicated DEQ's responses and clarifications were helpful in developing an understanding that there is a lot of grey area when it comes to the recycling system. Given the unknowns and uncertainty, they believe that the materials list implementation should proceed cautiously.

A RAC member thought it would be helpful to tour a MRF.

A RAC member is unclear about how the system works, and wants to know if a material will be excluded from the acceptance list if there is no market for it.

DEQ agrees that if a material does not have a market, it should not be on the acceptance list.

A RAC member wanted clarification about their understanding for glass collection. They asked DEQ to confirm that on-route commercial collection is being recommended, but local governments will have the option of collecting glass curbside. They are concerned that the current modeling does not include alternative-fuel or low emission collection trucks and other scenarios that offer environmental benefit, like

if glass is collected on the same commingled vehicle. The Metro region wants to retain curbside glass collection but is concerned that may create inconsistencies around the state.

DEQ stated that there is already great inconsistency across the state for glass collection. If the EQC (Environmental Quality Commission) required on-route collection, it would create a significant new service burden for communities outside the Metro region. At a screening level assessment, glass is one of the few materials where the environmental benefits for drop-off are better. However, nothing in the statute prohibits local governments from collecting glass on-route.

A follow-up comment was made, stating that they want to ensure that there are environmental benefits, but must also balance with the strong desire from the public to recycle glass

Another RAC member had a follow-up question related to glass collection: if it becomes the PRO's responsibility to collect glass, can local governments who were previously providing curbside collection if they want to maintain that service?

DEQ responded that the rule concept, page 10, describes this exact scenario. In the example provided, the PRO would have the option to provide depot collection, but if the city wants to provide on-route collection, they can always enter into discussion with the PRO. If they cannot agree, the local government could still offer on-route service, and the PRO can offer depot collection. If they cannot come to an agreement, nothing prohibits the local government from offering on-route system.

## **BREAK**

### **Collection Targets, Convenience Standards and Performance Standards**

David Allaway began the presentation by providing an overview of the collection targets rule concept. Collection targets and performance standards define the outcomes the PROs are required to achieve and the benchmarks for how they will be evaluated. These establish how the PROs will demonstrate compliance with the requirements of the Act.

DEQ invited the RAC to ask clarifying questions before opening the conversation to feedback.

#### **Clarifying Questions:**

DEQ was asked what would be the repercussions if collection targets are not met? Is it comparable to the Bottle Bill or is there another incentive for collection?

DEQ responded that the Act requires that the PRO will self-report and identify how they will come into compliance if they do not meet the targets. Note, the collection target will not be written into rule like with the Bottle Bill.

DEQ was asked if DEQ has considered phasing collection targets similar to the Bottle Bill, giving the PRO time to set-up the system, allow time for outreach and education, etc. Would DEQ accept a proposal from a PRO that has a phased approach to target collection?

DEQ clarified that there are only two materials where numeric targets are recommended. For all other materials, the PRO proposes the target. A phased approach is an option, There will be opportunities to revisit the approach with each PRO program plan cycle (every five years after the initial program period).

A RAC member commented that the current generation data is really limited. They suggested that DEQ should direct the PROs to invest in improving generation data.

DEQ was asked to explain the implications of the statement that "contamination does not equal recovery".

DEQ provided an example: If a depot is providing collection of large Rubbermaid storage containers, and they are receiving a mix of garbage and the storage containers, only the fraction of accepted material would be counted for recovery. This may seem obvious, however recovery rates are frequently calculated based on the total weight of all materials in the recycling bin, including materials that are contaminating the recycling.

**Feedback/comments:** None.

## I. Convenience Standards

David Allaway presented the convenience standard (rule concept 3), which addresses the ease with which users can access recycling collection services. There is a geographic and temporal (frequency) component to considering convenience. An important detail about the Act is that it requires PROs to give priority to existing depots or drop-off centers where possible. Rule concept 3 proposes to define “existing” and “where possible”. To be eligible to contract with a PRO, existing depots or collection sites must meet any of the five criteria described, unlike wine shops that accept corks, or community centers that take eyeglasses. Existing depot or collection site operator are not required to enter into contract with a PRO, however, the PRO is required to contract with facilities that meet the criteria, “where possible.” DEQ proposes to define the meaning of ‘where possible’ to mean depots/collection sites willing and able to contract and provide collection service that meets performance standards. Two other criteria focus on whether the cost of contracting with the existing depot is reasonable.

DEQ is interested in hearing from the RAC how much of a price premium makes sense when contracting with an existing facility. There are advantages to the convenience of being able to take materials to a single location, reducing vehicle miles traveled and multiple trips, but the PRO would also need protections from unusually high costs. DEQ proposes that if an operator is able to provide the service at a significantly lower price than by contracting with an existing facility, then the PRO should be released from the obligation to contract with them.

### **Clarifying questions:**

DEQ was asked about the example cited in the convenience standards rule concept, whether it is possible for the ‘extreme’ option (where there could be upwards to 50 collection points in a watershed) to occur?

DEQ clarified that this example was offered as a numerical example to help illustrate the distinction. It is highly unlikely. The Act discourages this from happening by requiring a PRO to contract with an existing operator where possible. DEQ proposed this approach to give the existing depot operators more flexibility about what they want to collect at their facilities, while also providing for the possibility that having a dispersed network of collection points may be more convenient in some communities.

DEQ was asked how many existing depots fall under the “a” and “b” criteria? Having this information would help their understanding about how many new depots may be required to be established under the new system. DEQ will investigate this question and get back to the committee with more information.

A committee member commented that the “where possible” proposal reflects conversations and input provided by ORRA earlier in the year. Regarding the annual cost threshold that would allow a PRO to contract with a new facility (as opposed to an existing), will the existing and new facilities all be required to meet the same regulatory requirements? If there is a disagreement over the cost difference of working with a new or existing depot, what is the process for resolving the issue and where is it captured?

DEQ responded to the question about whether new depot facilities will be held to the same regulatory standards by clarifying that this is the purpose behind the marginal cost element in the rule concept. Financial burdens should be comparable. If a PRO contracts with a new facility, the PRO is still obligated to comply with the performance standards. In turn, that facility would still need to meet the same requirements as an existing facility would.

DEQ does not have a process for conflict resolution in this rule concept, but it is required to be provided in the PRO program plan, which will be reviewed by the Recycling Council and DEQ and approved by DEQ.

DEQ was asked to confirm a committee member's understanding about the eligibility of previously existing depots that do not currently meet the criterion (a-d) as outlined in the rule concept

DEQ confirmed that the proposed concept only applies to existing, open depots. Not ones that are currently closed.

A committee member asked who is reviewing or verifying the amounts a PRO is paying directly to the depots? What is the reporting and verification process, will it be reported publicly or otherwise available? How or will this be different from the Bottle Bill?

In DEQ's response, the committee was reminded that the PRO is under obligation to enter into negotiation with the depot operators. It is a private negotiation, however to be released from the obligation to contract with an existing depot, they would have to disclose the cost difference in their justification. For publicly owned facilities, the information would be publicly available. DEQ will consider this question further.

#### **Feedback from the RAC:**

DEQ was asked about the puncturing and draining requirement for aerosol and propane canisters at appropriate hazardous waste facilities. It is unclear to them how these materials will be handled and processed.

DEQ responded that this topic will be discussed after the lunch break with the performance standards concept, and it can be discussed in more detail then.

## **II. Continuation of Convenience Standards**

David Allaway gave a brief overview of rule concept 4, including the calculation for determining the minimum number of collection points for an area. For example, the concept proposal includes having a minimum number of collection points and population-based quotas, which supplement the requirement to have collection points at existing depots. Multiple collection points must be distributed throughout the city, and some must be accessible by public transit.

DEQ estimates there will be ~160 collection points for materials that are used less frequently, and approximately 175-195 for materials that are generated in larger quantities. These numbers are very similar to the paint product stewardship and Oregon E-Cycles programs.

DEQ would appreciate feedback from the RAC about days and hours of operations.

The presentation then moved on to providing a high-level overview of rule concept 5. This concept has two parts, first addressing when there is a material that was on the PRO acceptance list, but has been proposed by the PRO (and approved by DEQ) to be moved to the USCL. In that situation, the PRO is only required to offer collection at existing depots that chose to accept the material, source separated.



The second part of rule concept 5 puts forth that the PRO may propose an alternative method for providing collection points if it is not otherwise possible to use a depot.

### **Clarifying Questions:**

A RAC member asked two questions, first, if a depot is serving a particular city, can they be located on the city's boundaries and serve more than one community? The second question was about the timing of identifying service and staffing costs related to the needs assessment.

DEQ clarified that this rule concept is entirely limited to PRO obligations. There are no obligations under this rule concept for local governments to expand depots. However, if there is interest, there will be opportunities later to negotiate with the PROs to enter into contracts related to services.

Regarding depots located at a city's limits or boundaries, a PRO collection point must be located inside the city, but allows for variances, please refer to alternative approaches in the rule concept. Lastly, regarding the question about the needs assessment. The obligation is an obligation for the PROs, not local government, or existing depot operators. However, it is anticipated that a local government that is also an owner-operator of a depot will enter into two sets of negotiations. One under the needs assessment and expansion of service, and the other, whether it is possible to contract with the PRO to provide a collection point on the PRO's behalf.

DEQ was asked how the population estimates for siting the depots were made.

DEQ utilized an iterative process, evaluating several factors, including environmental consequences of having a more or less dense depot network, the effect of depot density on material recovery, and costs to the PRO.

DEQ was asked if the geographic size of a region was included in this proposal? Does statute specify the number of days, hours per week, are convenient or can PROs work with local communities to find out what hours and days of operation make sense for that community?

DEQ responded that the statute does not address days or hours of operation. The statute only requires that DEQ establish convenience standards by rule. DEQ understands that convenience standards have a time and frequency element, and DEQ would appreciate feedback from the RAC about what reasonable standards could look like.

DEQ responded to the question about how geographic density was considered in this proposal and clarified that population density was a factor for calculating the number recommended collection points in the west side of the state. Meanwhile based on conversations with folks in more remote parts of the state, DEQ was not asked to consider increasing the number of collection points, rather, to consider siting them in central gathering location. Harney County was provided as an example, where all residents end up traveling to Burns to purchase groceries. In this area, it makes the most sense to locate collection points in town rather than to base distribution on population density.

Additionally, in some of DEQ's other EPR (extended producer responsibility) programs, when a PRO proposes an alternative collection system, concurrence from the local government solid waste official is required. It may be worth thinking through how this might apply to this concept. It could help ensure local input is considered when a plan amendment is submitted by a PRO. The RAC was encouraged to consider how DEQ could elaborate on this.

A RAC member agreed with the logic of concentrating collection points in the rural areas where ultimately residents all end up visiting the same town centers. Can DEQ provide more information about what the other EPR programs have established for operating days and hours? They asked that DEQ provide examples for the RAC to use as they consider the request for feedback on determining depot operating hours.

## **Feedback:**

A RAC member asked if there will be an opportunity for input on reviewing proposed collection targets in a PRO's program plan. DEQ confirmed that there is a public review process for reviewing PRO program plans and PRO program plan amendment(s). The plan will be presented to the Recycling Council and ultimately receive approval by DEQ. DEQ would expect a plan to include a justification if a PRO proposes to modify the collection targets.

A RAC member offered that they would consider what was proposed and will return with written comments about the per capita recommendations.

Before moving to the next topic, David Allaway highlighted that DEQ is looking for feedback on the "100-x%" figure question. DEQ would like the RAC to consider whether a price preference for consolidated collection is justifiable, and if so, what is that number?

DEQ was asked a clarifying question about this request from a RAC member. To confirm their understanding, they phrased their understanding, as when a PRO pays an existing depot operator a little more because the existing depot operator can provide a single location to the community to bring their materials. The PRO would be required to contract with the existing operator even if the PRO could provide the service at a slightly lower cost. Is DEQ asking the RAC, is this cost difference acceptable and at what price point would a PRO not obligated to contract with that depot (convenience versus added expense)?

Multiple RAC members stated that they do not have the information necessary to propose a percentage. One RAC member added that there also are not the same labor requirements for depots as there will be for MRFs. Can this concept account for facilities that are providing jobs with supportive benefits and living wages compared to those who are not to help ensure that when comparing costs those doing the right thing will not be penalized. They added that this topic likely needs deeper discussion. They also expressed concern that there will likely be consolidation of depots under the PRO-run system, which will represent a barrier for new entrants into the waste system. If there is a consolidation how will equity in the waste management system be assessed over time?

A RAC member asked who will decide what "reasonable" costs are. DEQ responded that under this proposed rule concept, it is possible to expand the definition but if the PRO and depot operator cannot come to an agreement, it can either go into dispute resolution (which will be in the PRO program plan), or, a complaint could be submitted to DEQ, which would then initiate the compliance and enforcement process.

A RAC member asked if DEQ has a recommendation for the price preference question. DEQ is currently leaving it open for suggestion.

## **LUNCH BREAK (11:55 am)**

### **Public Input Period**

Cheryl Grabham reconvened the meeting at 12:25 pm and reiterated that the RAC is welcome to reach out with any questions or to talk through any of the concepts. While these meetings are not the only opportunity to provide comments, ensuring that everyone has a good understanding of the concepts throughout this process is important for capturing perspectives and receiving input.

Three people registered to provide public input.

1. Walter Reiter (EPS Industry Alliance): Is from an expanded polystyrene (EPS) facility in Maryland would like to offer an introduction to companies using the bales: expanded polystyrene has a high yield rate. Additionally, they stated:
  - The facility is a depot and drop-off facility. While they have experienced pushback from various municipalities who think that EPS should be banned, they have used their position to provide public education and outreach.
  - Recommends avoiding a jurisdictional requirement to be eligible to drop-off materials.
  - Using public transportation to reach depots is likely not realistic with EPS materials.
  - Public or privately managed depots should meet new emerging accessibility standards.
  - Asks that labeling not be confused. Resin codes should be retained because the information identifies the type of materials being dropped off.
2. Greg Ryan (Pioneer Recycling): commented on two of the materials that were discussed in the meeting and how they interact in his facility. First, regarding Pringle cans, they have not seen the experience with magnets as described earlier in the meeting. They do see a second effect when the containers are crushed, they become a two-dimensional product and end up on the 'paper line'. Meanwhile the magnets are on the 'container line. Magnets would need to be installed on all the paper lines and the container lines to recover the metal.

Similarly with milk cartons, when they get crushed, they end up on the paper line. If source separation is the goal, not all mills can accept them in the mixed paper bales so they would need additional equipment to recover them from the paper and container lines.

Finally, they have offered to test how materials would move through their facility, and this invitation is still open.

3. Philipp Schmidt-Pathman (Institute for Energy and Resource Management): asked if drop-off locations for glass could be situated around a community rather than having curbside collection. The City of Hamburg has 800 glass drop-off locations, separated by glass color. The efficiency of this system is higher than putting through a MRF. They see in Washington state that glass emerging from a MRF is highly contaminated with plastic, lowering the value of the glass. How will this issue be addressed?

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## Performance Standards

David Allaway presented the performance standards rule concept defining the outcomes PROs are required to achieve in meeting recycling obligations on the PRO materials acceptance list. This concept is focused on the PRO obligations. These obligations extend to other entities that contract with the PROs to provide service on the PRO's behalf. Concepts within the performance standards topic include concept #6 which emphasizes outcome-based standards (as opposed to prescriptive standards). The concept proposes the following criteria: meeting program plan requirements, is free to the public, maintains accessibility, prevents contamination, quality assurance for outbound materials, prevent litter and pollution from the site, compliance, and self-reporting of incidents.

Concept #7 is specific to collection events. Offering collection events is optional. Concept 8 has five standards relating to two materials on the proposed PRO acceptance list: expanded polystyrene and aerosol containers and pressurized cylinders.

DEQ revisited a question asked about propane cylinders earlier in the meeting. A RAC member asked where DEQ expects puncturing and draining of pressurized cylinders and aerosols would occur. Would there be placarding requirements for transportation, and how would depot sites handle containers that were not emptied.

DEQ responded that the rule concept does not address puncturing and draining location. It is highly unlikely that it would happen at the drop-off site because it can result in releases into the environment. The concept stipulates that draining the waste from these containers must occur at a permitted facility. It is very likely that the depot would consolidate and transport the containers to a facility that is permitted to handle the contents. Placarding requirements falls under the Department of Transportation's authority, not DEQ's, and are subject to their regulations. Full containers would be a good topic to discuss further.

The concept applies performance standards universally regardless of who owns the collection site.

A RAC member asked a clarifying question about RCRA exemptions and would like to know how other local government-managed facilities handle household hazardous waste.

DEQ has already spoken with others from the household hazardous waste (HHW) programs. There appears to be a move away from acceptance from commercial generators to avoid triggering RCRA requirements. In the context of the rulemaking, a HHW facility is not on the list of existing depots, but DEQ welcomes feedback on whether this should be reconsidered.

A RAC member offered that their organization is working with manufacturers of pressurized gas cylinders, and they are interested in developing infrastructure to deal with the individual canisters, and others to handle the larger, 20 lbs. containers. Would it be helpful to connect with them?

DEQ responded that they met with Worthington, and pressurized gas cylinders are mentioned in the rule concept. This manufacturer has some other concerns, and because the material is somewhat unique, they have a preference for another EPR system, instead of the RMA, so that they could have a more active role with the PRO. Single-use pressurized containers are a covered product, and the 20 lbs. pressurized containers are exempt under the RMA (not a covered product).

A RAC member asked whose responsibility will be densifying polystyrene.

Everything presented in this concept is a PRO obligation. There was further discussion about potential ways the PROs could run the densification element of the program.

A RAC member asked about the intersection with compliance once an item is on the list, and whether it will then be communicated to the public that the item is recyclable.

DEQ said that question is related to labeling laws, which is not under the purview of this group. However, the RMA changed Oregon's statutory definition of recyclable materials, such that any material designated as recyclable by rule, is recyclable.

A RAC member requested that DEQ keep the committee informed about relevant legislation being proposed this legislative session.

DEQ replied that they will check and see how legislative updates may or may not fit into this process.

A RAC member asked how feasible it would be to add labor standards to the performance standards. For example, whether depots would be allowed to use contract labor.

DEQ responded that more time is needed to plan the equity study project which will occur later in the RMA implementation. We will add provide a brief description about equity components of the RMA at the fifth RAC meeting to more completely address this question.

Another RAC member voiced support for more discussion about labor standards. They also asked DEQ to elaborate on how or why staffing will occur.

DEQ clarified that in this context, staffing is considered a method. In many cases it is expected that the PRO will utilize staffing to meet the performance standards, though it is worth noting that there are some places in the state where staffing may not be necessary. Rogue Waste Disposal has cited success with unstaffed collection. The only exception is at pressurized cylinders and aerosol canister drop-off locations. DEQ welcomes feedback on this approach.

DEQ was asked if there are reporting requirements for the PRO to report to the counties?

DEQ responded that PROs report to the state, and they are reporting statewide. Those reports will be public. In some cases, they may be site-specific. If there is interest in site-specific reporting, DEQ is open to feedback to hearing suggestions on the level of granularity or other details that should be included in the reporting requirements. Additionally, another opportunity to provide input on the reporting requirements is when the PRO program is being reviewed for approval.

A RAC member wanted to provide additional information about the Rogue's glass collection program example. While they are not staffed, they do have staff who are inspecting and cleaning the site regularly.

## **PRO Membership Fees and Yield**

Nicole Portley presented on the rule concepts related to additional requirements for PRO membership fees and yield. The first concept is regarding the fees charged to member producers. The average base rate fee must be higher for materials not accepted for recycling than for materials that are accepted for recycling. The base fees must be proportional to the financial burden placed on the PRO. The proposed rule concept clarifies that "accepted for recycling" means are materials on one of the three materials list (PRO, local government, or USCL, through a PRO plan-triggered process).

The second concept is regarding a proposed yield threshold. Nicole explained how yield relates to the responsible end market requirements, where it will help ensure that claims made to the public are accurate. DEQ is proposing a general threshold of 60 percent on all collected materials accepted for recycling where the responsible end market requirements applies. This yield applies downstream of MRFs, inclusive of the end market. So in a supply chain with multiple nodes after the MRF, this would become a compound yield threshold. Note more is to come about MRF capture rates, which will be addressed during the second rulemaking.

DEQ proposes to apply the yield threshold to each individual material on the list, even if two or more materials are mixed in a bale. The only exception to this proposal, where fractions would be applied instead, are the steel-paper cans, i.e. if the threshold is met for either fraction, the standard would be considered met. This decision was made based on the value of the recovered steel and feedback received from the RAC and others.

### **Clarifying questions:**

There were a number of clarifying questions and discussion asked about the yield concept. One RAC member asked DEQ to clarify how the yield threshold applies to multi-material packaging, like a milk carton, where there is fiber, coatings, etc. How would this impact the recovery of materials that generally are recovered more easily and tend to have a higher yield or recovery rate?

DEQ responded that this yield threshold applies to all materials, by container, while there may be variability across materials, 60 percent is the minimum. DEQ noted that this proposed yield is not a cap and does not preclude achieving higher yields. This 60 percent is intended to be the minimum at the end market, to ensure that claims made to the public are honest.

Another RAC member asked DEQ to clarify, is what is considered within that yield threshold, then the portion of the material is not getting recycled, and is getting landfilled? Additionally, can DEQ explain the relationship between collection targets and the yield threshold. How do these two concepts interact?

DEQ responded, for all multi-material or aggregate products, the yield threshold would apply to the entire product (except for the paper cans, where if either the steel or the paper meets the yield threshold, it would meet the standard). The collection targets do not relate to the yield threshold; they are separate.

Another RAC member stated that it is hard to know whether 60 percent yield threshold is appropriate but trusts in DEQ's analytical work. But for context, what is the yield for the current system? Did the proposed threshold take contamination into account? How did DEQ come to this figure?

DEQ confirmed that it accounts for contamination. The presence of contamination does not discount the yield target. The 60 percent target was aligned with a principle that considered what was being told to the public, where if we are telling the public that something is being recycled, at least half of it should be recycled. There is always going to be yield loss (e.g. 30 percent loss for magazines). Practically, how would this be enforced? Consider polycoat cartons. The materials are mixed at the mill and there is no way to calculate the 60 percent, but you can go to the drum pulper. Knowing that the cartons are 70 percent fiber and 30 percent polyethylene, visually it could be assessed if the 60 percent threshold is being met.

A RAC member asked DEQ if the fees [producer fees] are established on yield or on tonnage being recycled? DEQ responded that the producer fees are based on what the producer is selling into the state. Not how much is being recycled.

Another RAC member commented that while this explanation is helpful, it is concerning to them that this threshold number was not based on more rigorous findings. If we will be telling the public that the 'majority' of the material is being recycled, then why not use a higher number? There should be more thought about where this figure comes from. In the case of paper cans, this material does not even meet this minimum specification. Why would paper cans get an exception? What about aluminum foil, which also will not meet that threshold? It would be more truthful to tell the public that 60 percent will at least be recycled and the rest will be landfilled. In follow-up, they asked if there is any room for negotiation on the USCL because they feel what is being proposed is not environmentally responsible.

DEQ reiterated that the 60 percent is a minimum, and that there is nuance to this figure. It does not equate to 60 percent of what is placed in a recycling cart is being recycled. There will be yield loss at the MRFs, which is not part of this rulemaking. This will be addressed during the second rulemaking. In coming to this figure, first losses at the MRF are subtracted, followed by the losses incurred at the end market. As far as DEQ knows, no one in the industry discusses yield loss. There is not a material that would not experience yield loss because of the second law of thermodynamics. A certain amount of loss is inevitable. Some fibers are not long enough to be recovered. It is impossible to have a recycling system that has no yield loss.

DEQ encourages caution when considering how this is communicated to the public because there is important nuance that could be lost.

In response to the issues with paper cans, Sonoco provided DEQ with research that supports recycling because of the environmental benefit and value of recovering the steel. DEQ is open to reviewing any supporting documentation that shows it is not environmentally protective to recycle these

materials. But currently, based on the general understanding of the value of metal, steel is very good to recycle. With some materials, there are environmental benefits to recycling even if the yield rate is not the highest.

The RAC member responded that they would agree to disagree on this topic. DEQ reminded the RAC that this proposal, including the USCL is only the initial proposal, and that there is still time to provide feedback or supporting documentation that supports alternative approaches. Feedback is welcome throughout this process and through the formal public comment period.

Another RAC member said they appreciate that DEQ is discussing yield. To clarify, was part of the intent of this law to encourage producers to move to better packaging materials? They are concerned when the rules start calling out specific products for exceptions. Would it not be preferred to encourage moving towards more environmentally friendly packaging rather than giving exceptions?

DEQ countered that this is assuming paper-steel cans are not environmentally friendly, and that an alternative format would be. As an example DEQ offered that staff had learned that paper-steel cans were preferred for some products because they could withstand the pressurization process that is required for packaging. Whereas other materials that may be used to package the same product may not have the same recyclability or may have other costs associated with their use. Understanding environmental trade-offs from selecting one type of material over another is a part of DEQ's analyses when proposing which materials to include on the list.

This response generated more comments, which acknowledged this reasoning, but wanted DEQ to consider that an exception should not be offered if it does not encourage the producers to seek alternative packaging options. They also agree that care needs to be taken when communicating the yield to the public; it will seem low. Perhaps more should be done to understand the public's reception and comprehension of concepts like this 60 percent threshold. Additionally, when looking at successful recycling programs, material-specific generation, success with recycling, and the downstream yield are all important to understand the overall success of recycling.

DEQ noted the comment to look at yield across the system.

A RAC member wanted to revisit a previous comment made by another committee member. Acknowledging that they do not have a comprehensive understanding of the recycling system, they wanted to remind members that food packaging is also integral to food safety. There is a high degree of regulation and oversight. Alternative packaging styles are not necessarily readily available. Concerns about the pace of this rulemaking is in part rooted in the amount of time and research it will take to find alternative packaging or develop new processes to recycle. There should be an improved understanding of the reasons why and importance behind packaging selection. Currently the proposed rules and the Act are too prescriptive.

Another member agreed that food safety should take priority, but then, maybe food safety packaging is not compatible with recyclability. They may not align and that should be considered more closely.

A RAC member acknowledged the comments that have been made and agreed that the 60 percent yield may seem low from a public education standpoint. This may fit with the earlier discussions for improving "veracity" within the system. Consumers may realize that only a percentage of a material is being recycled, and that consumption reduction is a personal choice they can make. Consumption reduction is another strategy that could be used in the broader conversations about recycling.

## Additional Requirements Related to Recycling Acceptance Lists

David Allaway introduced two more rule concepts. DEQ is proposing that obligations to collect materials on the acceptance lists would go into effect July 1, 2025. DEQ is also proposing enforcement discretion, providing a 30-month grace period to local governments who are required to meet collection obligations. Realizing that some local governments may be delayed as they wait for PRO financial support for expansion of services, enforcement discretion is proposed for local governments who are in violation of the Opportunity to Recycle Act service requirements related to materials on the newly adopted Local Government Acceptance List that the local government or their service provider were not previously collecting, so long as the community is making a good faith effort and progress towards meeting the requirements.

One RAC member asked what non-regulatory efforts DEQ can do to support local governments and service providers move forward ahead of the July 1, 2025 implementation date. DEQ confirmed that nothing in this rule prohibits a local government from accelerating program changes. DEQ is open to discussing at another time how it may be able to help facilitate early implementation.

Another RAC member reiterated that the amount of time allotted for this process is constraining their ability to engage meaningfully. They think it would be beneficial to have another RAC meeting.

Another RAC member stated that the 30-month grace period will be helpful for local governments. They also agreed with the earlier sentiment that they need more time. Reiterated that the intent is to create a recycling system that everyone can understand and that is effective. They have concerned that there are too many materials on the list to consider. They feel that if this process continues to take on too many changes, it will make it harder to adjust or learn as the program is implemented.

Then DEQ was asked if DEQ omitted some responses received for the '[Selected Responses to DEQ's Recycling Acceptance Lists Request for Information](#)', and if so, where are they available? DEQ clarified that best professional judgement was used in this compilation, as not all the responses were relevant.

## RAC Meeting Schedule and Next Steps

Cheryl Grabham concluded the meeting with a review of the remaining timeline. The last RAC meeting will be held March 10, 2023. DEQ staff are preparing a few additional rule concepts, draft rules, and will provide feedback on what was heard today. It is anticipated that the draft rules will be filed at the end of April or early May, and there will be two formal public hearings scheduled. Once the public comment period closes, DEQ will review and compile all the comments received along with responses into a report for the Environmental Quality Commission while they consider adopting the proposed rules.

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