



OREGON REFUSE & RECYCLING ASSOCIATION

April 18, 2023

Ms. Roxann Nayar, Oregon DEQ
700 NE Multnomah ST #600
Portland, OR 97232

Via email only: Recycling.2023@deq.oregon.gov

RE: Comments on RMA RAC #6

Dear Ms. Nayar:

Thank you for this opportunity to offer comments related to the April 11, 2023, meeting of the Recycling Modernization Act (RMA) Rulemaking Advisory Committee (RAC), the sixth and final meeting of this committee (RAC #6).

Oregon Refuse and Recycling Association (ORRA) is the statewide trade association representing solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate material recovery facilities, compost facilities, and many of Oregon's municipal solid waste transfer stations and landfills.

Two ORRA members – Mike McHenry and Jeff Murray – serve on the RAC. I serve on the RAC as well, in my capacity as ORRA's Executive Director and CEO. These comments are on behalf of those RAC members, and are specifically related to the information presented during the meeting related to the follow up from RAC #5 on Specifically Identified Materials (SIMs), glass, and the transition period, as well as the Draft Fiscal and Racial Equity Impact Statement. Finally, ORRA is offering a brief follow up on the comment made at the April 11 meeting about possible intentional disposal of glass set out for recycling collection.

2. Follow up on RAC #5 – SIMs, glass and transition period.

SIMs and transition period. ORRA is particularly interested in DEQ's April 11 presentation about the SIMs and how those might affect the transition period. As a reminder, ORRA had recommended in comments submitted on March 24 that metro-area collection programs be the "pilot program" for the marginal, or emerging items suggested for the Uniform Statewide Collection List (USCL), with initial "conditional acceptance" on the USCL (they could be noted with an appropriate symbol to indicate they are in a testing stage), until their sortability and marketability challenges are addressed. That way, the remaining programs outside the metro-region that do not collect those materials currently won't add to the problems at the processing level until those sorting challenges are resolved. Again, ORRA believes four types of materials on the proposed USCL list currently are marginal and emerging, and have "sortability" and market challenges: paper cans; cartons and aseptics; nursery packaging, and; paper cups.

If ORRA understood DEQ correctly during the April 11 meeting, DEQ will continue to recommend that those marginal and emerging items be included on the Local Government Recycling Acceptance List. DEQ also noted at the April 11 meeting that some items may be designated as SIMs, pursuant to ORS 459A.917:

459A.917 Specifically identified materials. (1) The Department of Environmental Quality, in consultation with producer responsibility organizations and the Oregon Recycling System Advisory Council, shall establish and maintain a list of specifically identified materials.

(2) In determining whether a covered product is a specifically identified material, the department shall consider criteria that include, but need not be limited to:

- (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. [2021 c.681 §23]

To confirm, ORRA understood that DEQ would follow the statutory process noted at ORS 459A.917, which requires that DEQ, in consultation with producer responsibility organizations, (PROs) and the ORSAC, to establish and maintain the list of SIMS. At the April 11 meeting, ORRA understood DEQ to state that such designations would be expected to occur in Fall 2023, in order to allow the PROs time to plan for, and address how to manage the SIMs before submitting PROs plans in March 2024, and before the program begins in July 2025.

The statutes relating to SIMs may be an appropriate tool to use to ensure that those materials will have the PRO support to be successfully recovered and marketed, however it would be more successful, and in line with ORRA's suggested "pilot" approach, if the materials are designated as SIMs, and are included on the Local Government Recycling Acceptance Lists, but not added to the USCL for the July 1, 2025, start date. Instead, ORRA proposes that those materials are subject to the trial or research program element of ORS 459A.914(6), which states:

(6) A material that is not identified for collection as part of a commingled recycling program on the uniform statewide collection list may be collected as part of a commingled recycling program if:

- (a) The material is collected as part of a trial or research program;
- (b) The trial or research program is of limited duration; and
- (c) The trial or research program is conducted in a limited area.

There are many benefits to taking this two-pronged approach of SIMs designations and a trial program:

1. Those materials already on the metro-area program lists could continue to be collected, and the new materials could be added. The time for the trial program could be limited. This would meet the statutory requirements of limited area and limited duration.

2. This pathway would give these marginal or emerging materials the PROs support required as SIMs to prove that they are ready to be on the USCL.
3. There would be an opportunity for processing to get up to speed to meet the new requirements – whether sites add processing equipment, add sorters, or move materials to secondary processing.
4. Markets that at this point are still unproven would be tested in a practical, real world way, instead of the theoretical, academic approach of what should work based on what we have been told in this rulemaking. Do the promised markets really function? Do the yields meet the goals? Will Oregonians' materials be responsibly recycled?
5. Proving up what we have been told will meet another important element of the RMA – developing a transparent program that builds the confidence of Oregonians in the recycling system.
6. If the SIMs are successful, the USCL could be updated to include them, as the RMA provides for on-ramps to do that. The uniform, statewide list would be in place and collected by January 1, 2028.

ORRA has spent considerable time working on possible solutions for these materials, the USCL, and this rulemaking in general, all with one goal – how can we make sure the RMA is successful? DEQ is working in good faith to do the same. To both of us, here is a question to answer when considering our approaches: **What if you are wrong?** If ORRA is wrong, and these marginal, emerging materials that are SIMs prove through the trial program that they are recovered and go to responsible markets, then we will follow a process set forth in statute to add them to the USCL, and the entire state will be able to recycle the same expansive list at the same time. What happens if DEQ is wrong? ORRA will look forward to hearing DEQ's response.

Glass. ORRA appreciated the clarification that glass can continue to be collected curbside if that is the decision of the local government, with financial support from the PROs that would be in lieu of setting up a separate PROs collection option. This should allow for maximum efficiency in glass collection, as well as allowing for local choices that best suit communities.

2. Draft Fiscal and Racial Equity Impact Statement. ORRA realizes the difficulty of analyzing these important elements for the rulemaking; it is correspondingly difficult to comment effectively for the RAC. It is important to consider the Racial Equity and Fiscal Impacts of the rule, but there is so much that cannot be quantified, it is complicated to determine if these reviews can be useful.

As ORRA noted during the April 11 meeting, ORRA requests that DEQ cite sources with specificity, especially as to financial estimates noted throughout the document. Referring RAC members to the DEQ website, the legislative website for SB 582, or the Cascadia document in the "Documents relied on" section (page 17), without specific citation, makes it impossible for ORRA or other RAC members to confirm the sources for how the estimates were established.

ORRA also noted at the meeting on April 11 that there are a number of broad statements supporting the positive impacts of the rulemaking without citation, while also offering vague, or even seemingly dismissive comments about potential negative impacts. DEQ should be consistent in the document about what is known, or what is not known, in language that is

analytical, and not aspirational. Here are a couple examples of both, found in the section relating to the public (page 13):

Negative: “One potential negative impact on the public depends on whether and how producers pass on additional costs to consumers in Oregon. This has been difficult to estimate, although a DEQ-commissioned study of the impact of similar requirements in Canada indicate that the costs to the public will be minimal.” (page 13, second paragraph)

This statement is vague, it starts as a possible negative, but ends dismissing that by referencing one review of Canadian product pricing, converting this statement to a positive, or at least neutral statement. ORRA’s recollection of that work is that it would be a stretch to call it a study - there was dispute over that during the years-long discussion of EPR programs leading up to the RMA. In addition, ORRA believes DEQ stated in the April 11 meeting that there was no attempt to quantify shelf price changes. The accurate answer is that we do not know what the impact could be on Oregon consumers, and that is what this document should state.

Positive: The improvements in Oregon’s recycling system will transfer some expenses from ratepayers to PROs and, “All other things being equal, this should reduce the rates charged to ratepayers, such as households and businesses.” (page 13, first bullet under anticipated positive impacts).

All other things are likely not equal – labor, cost of trucks and fuel, inflation, are all components of the rates paid by customers, and there are intricacies of how ratemaking works in every jurisdiction that should be considered. This is an example of what DEQ does not know, so it should not be making positive statements that could turn into the sound bites that become the expectation of customers. Yes, it will transfer some expenses; DEQ should leave it at that.

Regarding societal costs, “...the emotional benefits that individuals realize from increased confidence that the materials they separate for recycling will be managed in responsible ways, are very real economic benefits that DEQ has not attempted to quantify.” (page 13, last paragraph).

If DEQ has not attempted to quantify this, DEQ should not be making this assertion in a Fiscal Impact Statement, claiming there is a “very real economic impact” when none has been presented. Yes, it is an important goal of the RMA to restore confidence in Oregon’s recycling system, but what does this statement mean? It has been the experience of ORRA members that some customers will say, particularly with regard to plastic containers, “now that I can recycle it, I can and will buy more of it.” That is definitely not a goal for a sustainable program, as we cannot recycle our way out of plastic pollution issues, and consumers should not be led down that path.

USCL: Option comparisons and associated costs. There are some points within this section that merit comment:

- Fixed costs – certain costs are constant, but not in areas where there is currently no curbside recycling service that may move to curbside programs. Those costs will change significantly. In addition, ongoing costs will be the responsibility of ratepayers.
- Existing collection infrastructure – the assumption about route efficiencies is inaccurate. Unless garbage customers move to less frequent service levels (ex: weekly to less than

weekly), there will still be the same number of pickups, and the materials moving to recycling are generally light and will not change the number of stops. It is more likely that people will not move to lower service frequency (from weekly to less than weekly) garbage service, but will instead opt for a smaller garbage cart if that's an option – from a 95 or 65 to a 35 gallon cart weekly. Since all costs of the suite of services provided is pinned to the size of garbage cart, this will impact revenue, though the costs of collection won't actually decrease. The change in cost of disposal is "de minimis" lightweight materials (plastic cups, aseptics, cartons, pringles cans, 5-gallon buckets) that will now need to go into the recycle cart have volume, and will no longer take up space in a garbage cart, but they will not move the needle much with weight.

- Processing system efficiencies – assumption of automation relies heavily on capital costs being lower than labor. Who will pay for this change? How often does it break, and how does it get fixed, how frequently must it be replaced?
- Comparison to Existing System Costs – of the total estimate, is there any accounting for overall system administration in recycling costs, not just garbage collection costs? Customer service is a very large component of recycling programs, how is that noted? Time studies could show the difference in time per stop between garbage and recycling - and if cart inspection and “oops” tags are needed, and volume of recycling goes up, then this will increase time per stop on recycling.

3. Scenario noted of possible intentional disposal of glass set out for recycling collection.

There was a comment made at the April 11 meeting that it had been said that if recycling collection occurred in split trucks (containers, including glass on one side; fiber on the other side), it was possible if the container side were full that a driver might choose to load glass on the fiber side, contaminating the material in an effort to finish a route more quickly instead of returning to collect the material properly.

There are no split truck routes in Oregon, so despite the speculation this requires, ORRA again notes for the record that this could violate state law, certainly would violate local regulations, and any employee so doing would be subject to discipline and potential termination. It is one thing to have a lack of training that might result in an inadvertent act; it is another to violate company rules and state and local laws for expediency. That is not the way ORRA members run their businesses, or train their employees, yet there is a persistent misguided belief among some that solid waste companies routinely dispose of recycling because they are garbage companies and make more money if they throw it away. ORRA does not believe this type of speculation is appropriate for public meetings, but if there are real life, Oregon-based examples of any such problems, please do bring those to the attention of ORRA and its members so they can be addressed appropriately.

In conclusion, this rulemaking process has been intense, technical, and demanding for all participants. ORRA appreciates the work of the DEQ, as well as every RAC member and every other person attending meetings to add to their understanding of this program and bring their best

ideas to this effort to modernize Oregon's recycling system. There is still a lot to be done, and ORRA and its members are committed to working together to complete this effort and to make Oregon's program succeed.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristan S. Mitchell', with a stylized, cursive script.

Kristan S. Mitchell
Executive Director and CEO

C: ORRA leadership
ORRA RAC Workgroup