



State of Oregon Department of Environmental Quality

Written Comments

Plastic Pollution and Recycling Modernization Act 2023
Rulemaking Advisory Committee Meeting 5

This document is a compilation of written comments received related to the fifth meeting of the advisory committee for the Plastic Pollution and Recycling Modernization Act 2023 Rulemaking held March 10, 2023.

Comments

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OREGON REFUSE & RECYCLING ASSOCIATION

March 24, 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 #5

Dear Ms. Nayar:

Thank you for this opportunity to offer comments related to the March 10, 2023, meeting of the Recycling Modernization Act (RMA) Rulemaking Advisory Committee (RAC), the fifth meeting of this committee (RAC #5).

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 request for feedback on the Transition Period proposal, and the questions posed to RAC members regarding that proposal, as well as the Materials List agenda item.

With regard to the Transition Period proposal, ORRA appreciates DEQ's recognition of the work that will need to happen after the July 1, 2025, Recycling Modernization Act (RMA) implementation deadline, and thus the need for a transitional period. Many of the following comments were made by ORRA members during the March 10 meeting, so they are restated in writing here.

The first two points and headings correspond to tables found on pages 2-3 of the "Draft proposal for discussion: RMA Implementation Transition Period" document considered at the March 10 RAC meeting.

1. RMA elements that will roll out by July 1, 2025

As noted, ORRA's primary concern revolves around the establishment of the Uniform Statewide Collection List (USCL), and timing of action required of Producer Responsibility Organizations (PROs), Local Governments (LGs) and their service providers, and Commingled Recycling Processing Facilities (CRPFs).

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As ORRA understands, by July 1, 2025, the PROs must develop educational resources and campaigns to promote the USCL, and the CRPFs must accept all materials on the USCL. While the CRPFs must accept the USCL by July 1, 2025, there are no PRO funds available to CRPFs prior to July 1, 2025. This puts the cart before the horse – the materials will arrive at CRPFs and there may not be systems in place to sort appropriately, which will cause issues in marketing the materials to responsible end markets. This will continue until such time as there is funding to upgrade CRPF equipment to adequately manage some of the materials that are currently problematic.

As ORRA noted in its February 1, 2023, comments regarding the January 11 RAC meeting, a short list of the materials recommended for the USCL are marginal, or emerging at best, and while the quantities are admittedly small, the potential for the materials becoming contamination is great, given current limitations in technology. Cartons and aseptics, for example, cannot be effectively removed in all of the existing MRFs. Specialized sorting equipment and storage would need to be added to the existing infrastructure to manage these materials. To ask the CRPFs to invest on their own before validation of markets, and/or a pilot that proves sorting and markets are working, is not well considered to meet the goal of the RMA - sorting and delivering clean materials to responsible end markets.

ORRA believes the issue is the timing and structure of PRO investment. Without knowing what potential investment from the PROs looks like, it is difficult to know what short-term needs should be addressed, and what solutions the PROs will fund in the future. What should be happening for the CRPFs is a process similar to what the LGs are engaged in - needs assessments, combined with recognition of the fact that LGs will not be ready to roll out expanded services until funding is confirmed. Why is this the path for collection, but not the path for material recovery at CRPFs?

2. RMA elements that will have a transition period from July 1, 2025, to December 21, 2027

At the March 10 RAC meeting, DEQ confirmed the Transition Period proposal is to allow LGs to have more time to implement/phase in the USCL that will be set by rule before 2025. For collection service providers, ORRA appreciates that it will take some time to make the changes that will need to be made to accommodate new requirements. However, for the CRPFs, ORRA does not follow the logic of allowing LGs and collection service providers time to phase in collection of USCL materials, and phase in implementation of Opportunity to Recycle requirements dependent on PRO funding (such as service expansion identified through the needs assessments), while not extending that same transitional approach to the CRPFs.

The concession to the CRPFs appears to be that they “will have a grace period associated with certain permitting standards reliant on PRO funds.” (See, “Draft proposal for discussion: RMA Implementation Transition Period” document, page 2, Table 2). How long will the grace period last? Is it until there is adequate PRO funding for new technology that will allow CRPFs to manage and sort some of the proposed USCL materials that are currently problematic, and likely will continue to show up as contamination in outbound bales? This is of great concern to ORRA – why support adding materials to the USCL now that will still functionally be considered

contaminants when delivered to CRPFs, at least until CRPFs can get assistance in funding the technology they need to improve sorting effectiveness and decrease contamination in outbound bales? **DEQ offering more relaxed enforcement from the July 2025 deadline until the end of 2027 does not solve the important public trust concern - customers will believe what they put in the recycling cart is ending up in responsible end markets, and that may not be true.**

ORRA has previously noted four types of materials on the proposed USCL list that currently have “sortability” and market challenges: paper cans; cartons and aseptics; nursery packaging, and; paper cups. ORRA’s position has not wavered on these items – we must ensure CRPFs can sort them and market them before we put them on the USCL. As was shared at the recent RAC meeting, ORRA is working with the Carton Council on a CRPF project now – looking at the sorting needs at CRPFs in order to be prepared for the incoming cartons and aseptics. ORRA’s goal is to ensure that the processing and the marketability of these materials will work as projected prior to the July 1, 2025, launch date, when CRPFs will to be required to accept these materials. ORRA has requested that this should be the process for all marginal and emerging materials - this could serve as a protocol by which new materials can reasonably be added to the USCL in the future.

ORRA would like to offer a reasonable, practical way to address the issues around the timing of RMA implementation. A primary criticism heard for a phased-in approach to materials being added to the USCL appears to be based the million Oregonians in the metro-region who are currently able to put those marginal materials in their curbside collection programs. This includes the very reasonable concern that taking those materials off of those current acceptance lists will be very difficult, especially if some of those materials may be added back to the curbside program within a relatively short period of time.

To accommodate this, ORRA member Laura Leebrick, in her role on the Oregon Recycling Council, proposed that we allow those programs to be the “pilot program” materials, 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.

ORRA has expressed concerns about confusing educational messaging if there were to be a phased-in approach to the USCL Materials List, but frankly, no matter what, there is going to be confusion during the proposed two-year transition period, and as DEQ noted, some important messaging that will be consistent is about keeping garbage out of recycling. Much of the expected confusion is going to happen outside the major population hub in Oregon - if LGs and service providers can’t pivot to the new USCL and changes to Opportunity to Recycle requirements (OTR) as of day one, July 1, 2025, then their “list” will look different than the metro region, and that list will need to change as funding becomes available and facilities are built, depots sited, trucks and carts made available, etc. Therefore, under Laura Leebrick’s suggested approach, the impact is functionally the same. Programs outside the Metro region would be different until they could make all the changes they need to make, and having the CRPFs and markets test for the *USCL (* = conditionally accepted/pilot test materials) to

confirm success would then allow those materials to be adopted in programs statewide. Programs in the Metro region will be minimally affected – a few materials will come off the list, but there would be no need to in a massive, possibly temporary campaign to remove the pilot materials. Their education can focus solely on generator-facing contamination reduction efforts and changing behaviors around the handful of materials being moved from curbside commingle to segregated collection.

Either way, the programs are not all going to be identical on day one across the state, but the goal in both cases is to have a universal statewide list in place and collected by January 1, 2028. The difference is, the CRPFs will be able to handle that material, and it will have proven stable, consistent, responsible end markets. And the most important point? Our customers will have honest information about recycling recovery that will allow us all to continue to restore public trust in Oregon's recycling system.

Finally, cups are the one material on the proposed USCL that ORRA does not believe is being collected in any curbside commingle program currently. ORRA proposes that cups are not added - even conditionally - until a pilot can be run that will show education to customers will avoid potential contamination based on confusion, that cups can be sorted at CRPFs, and delivered to responsible end markets.

3. Other Materials List Issues

Despite DEQ's efforts to add more time for discussion, there has not been a single RAC meeting with enough time for a complete discussion of the USCL. ORRA has noted this before - this is the result of having too much to consider in too short a timeframe. This does not change the fact that the USCL is the foundation for much of the RMA.

ORRA, through the pilot approach described above, is offering a way to test materials for the USCL – we should try it now, in order to be prepared in the future when these questions are asked again. ORRA has consistently advocated that items that are marginal should not make the first USCL list effective July 1, 2025, but there must be a pathway for adding them in the future, as well as an approach for removing them if they are not successful.

Thank you for your consideration.

Sincerely,



Kristan S. Mitchell
Executive Director and CEO

C: ORRA leadership
ORRA RAC Workgroup