

March 2, 2021

**SB 582-1 Public Hearing Follow-up
Plastic Pollution and Recycling Modernization Act**

DEQ is providing the following additional information in response to written and oral testimony, received during public hearings on February 23 and 25, regarding SB 582-1.

1. **Comment:** *Producers are going to pass costs on to consumers.*

Response: [Recent research](#) into grocery prices in Canadian provinces with and without extended producer responsibility (EPR) for packaging found no significant correlation between shelf prices and the fees producers pay to producer responsibility organizations (PROs). For example, Walmart was found to charge the same shelf prices for 17 different consumer items in Winnipeg and Vancouver (provinces with EPR) as in Calgary and Edmonton (provinces without EPR).

Producers may pass costs on to consumers when the market allows but in many cases, those costs will be distributed across a large consumer base – not only Oregon. Large multinational producers may find it administratively more efficient to embed in national prices what are to them relatively small costs, as opposed to isolating increases in Oregon.

2. **Comment:** *This new system will be expensive, and it is unclear whether the cost estimates include litter, multifamily improvements, DEQ studies, the contamination management fee, the processor commodity risk fee, the waste prevention program, administrative costs, and more. What has DEQ estimated the costs will be?*

Response: Oregon's current ratepayer-funded system costs approximately \$194 million. DEQ estimates the shared responsibility system of SB 582-1 may require producers to provide funding ranging from roughly \$91 million to \$113 million annually for the three years of the producer responsibility organization's (PRO) first program plan. These costs will be spread over a large number of producers and an even larger number of products. These cost estimates include compensation of local governments (Section 13), multifamily improvements, DEQ studies, contamination management fees, the processor commodity risk fee, the waste prevention program, and administrative costs. They exclude litter programming, which DEQ proposes would not go into effect until later, after some recycling start-up costs have been paid. They also include some of the costs of achieving the 25 percent plastic recycling goal.¹

Some of the benefits of an improved recycling system include avoided greenhouse gas emissions and reductions of marine plastics. Producer responsibility better aligns who benefits with who pays by incorporating into the system the parties most responsible for adding more material.

3. **Comment:** *Is SB 582-1 the "most expensive" producer responsibility for packaging program in the U.S.?*

Response: There are a [number of other bills](#) being considered in Oregon and other states that are more expansive in scope than what is being proposed in SB 582-1.

Comparing the ultimate costs of these proposed programs is difficult until final bills have been passed, but it is highly unlikely that SB 581-1 would be the most expensive for producers, since SB 582-1 proposes a *shared* responsibility model, and all other proposals under consideration in the U.S. would require producers to fund the full costs of the recycling system. In SB 582-1, producers would be responsible for funding a portion of recycling system costs, and ratepayers would continue to pay most of their existing collection costs. DEQ estimates that producers will fund roughly 1/3 of a modernized recycling system. While nine other states have introduced, or are expected to introduce, producer responsibility-related legislation for packaging and printed paper, DEQ is not aware of any publicly available cost estimates at this time.

¹ These estimates assume average end-market prices; producer obligations could be lower or higher depending on commodity values.

March 2, 2021

4. **Comment:** *Paper does not need to be included in this new program because we already have effective voluntary recycling programs for almost all paper products.*

Response: In order to have an effective system, it is vital that paper and plastic are both covered by the changes made in this bill.

While paper and cardboard have high recycling rates – upwards of 65% in Oregon – these materials still experience the same issues as other materials in the recycling stream, including public confusion about how to recycle them, price volatility, high processing costs, and lack of transparency about where they go. Mixed paper was a particular focus when China and other countries began enforcing strict contamination standards during National Sword. Many materials in the recycling stream are recycled at high rates in Oregon – such as aluminum, which is recycled at a rate of nearly 75% — but the challenges with the state’s outdated recycling system apply just as much to these materials. SB 582-1 would increase the amount of recycling, but it would also modernize the recycling system in order to be more transparent, equitable and responsible. Producer responsibility for paper is necessary to ensure those outcomes.

5. **Comment:** *Would SB 582-1 would still require Oregon-specific labels?*

Response: No, SB 582-1 would *not* require producers to label products with labels that are only applicable in Oregon. In fact, SB 582-1 prohibits rules that would require the contents of the label be specific to Oregon. It would require a label for products or packaging sold in Oregon, but the label itself would be broadly applicable so that items with the label *could be sold anywhere*. DEQ’s intention is to allow producers to use statements that would qualify claims of recyclability and could be distributed on labels uniformly across different markets. For example, a statement like “please check with your local program” or “not recyclable in all areas.”

6. **Comment:** *SB 582-1 would penalize producers \$25,000 per day for being out of compliance.*

Response: Oregon law allows a \$25,000 per day maximum penalty for violations of solid waste and recycling statutes. SB 582-1 does not change current law. However as is customary with DEQ’s normal enforcement processes, the agency does not assess penalties for most violations. In most cases, warning letters with the opportunity to correct are sufficient at bringing violators into compliance and to achieve deterrence. When penalties are assessed, the amounts are typically much smaller and would be determined based on factors in rule including violator size, history, impact, intent, and efforts to correct.

7. **Comment:** *Producers were left out the Recycling Steering Committee and many of those meetings were private.*

Response: When the Recycling Steering Committee (RSC) formed in 2018, the group did not know that it would propose a shared responsibility framework that included producers – they were starting a process of intense research, collaboration and negotiation to fix the recycling system. However, DEQ solicited feedback and engaged in meaningful conversations with producer representatives, both within the state and on a national level, throughout the RSC process and after it concluded. Producers locally and elsewhere have been aware of the producer responsibility discussions in Oregon throughout the process. Decisions of the RSC were only made during full meetings of the Committee. Every one of those meetings was public – in person and via webinar – and every agenda included a public comment period. All RSC meeting dates and agendas were posted on DEQ’s website in advance and notifications were sent to an email list of over 1,000 interested parties. Subcommittees met to explore specific issues and make recommendations to the full RSC. Many subcommittee meetings were also public, although they were not all posted.

One of the benefits of producer responsibility is that it allows producers to engage in design and implementation of the modernized recycling system. Producer responsibility is a model already used in Oregon for other materials, like electronics. After this bill is passed, there will be an extensive rulemaking process, which producers can actively participate in, to determine many of the implementation details.

March 2, 2021

Producers will also work with their PROs on the fee-setting process, and other elements of the PRO's program plan. Producers will have two seats on the advisory council, which will review and advise on many components of recycling programs – including PRO program plans, the statewide recycling list, and more. DEQ continues to meet with producers and make adjustments to make the bill work better.

8. **Comment:** *Packaging used by commercial businesses and secondary and tertiary packaging should be exempt. It will be too difficult to track this material.*

Response: Commercial packing is a large percentage of what material is recycled in Oregon. All of the problems Oregon's recycling system faces – including public confusion, contamination, ratepayer burdens, market volatility, inequities, and missed environmental opportunities – apply to both commercial and residential commingled recycling. In fact, commercial commingled recycling programs have higher levels of contamination than single-family residential programs (about 13% vs. 8% on average).

SB 582-1 already exempts many industrial packaging materials such as pallets (Section 2(7)). Producer obligations to ensure responsible end markets also exclude some materials that are recycled outside the commingled collection system, such as pure loads of cardboard (Section 4(5)). Secondary packaging (e.g., a beer carton and six-pack rings, or toothpaste box) is often consumer-facing and contributes to the same recycling challenges as primary packaging (e.g., the beer can or toothpaste tube). While some tertiary packaging (cardboard boxes, pallets, shrink-wrap) still ends up in both commercial and residential commingled recycling and contributes to the same problems, it may pose different administrative challenges. Additionally, DEQ has learned of some special cases where packaging never or only very rarely enters the commingled recycling system, or which could be difficult for producers to track. DEQ is open to discussion of these issues to provide clarity and make adjustments to ensure the bill is workable.

9. **Comment:** *Is the definition of "producer" is too prescriptive?*

Response: The definition of "producer" provides clarity while Section 4(2) offers flexibility. Based on the different ways that different covered products are distributed into the state, the definition of "producer" in Section 3 is detailed in order to provide clarity for producers and the producer responsibility organization. However, Section 4(2) provides broad flexibility for producers and other companies in product supply chains to designate a different entity as the "producer." Every covered product requires only one producer. If another entity registers with a producer responsibility organization as the entity responsible for a specific covered product, then the producer as defined in Section 3 does not need to register.

10. **Comment:** *Where does DEQ have discretion to name materials that producers have to pay for?*

Response: DEQ does not have authority to add to the list of covered products on which producers will be required to pay fees as defined in statute, only to make exemptions.

DEQ's only discretion is related to the recycling collection lists and specifically identified materials. That discretion is subject to evaluation against multiple criteria – including availability of viable end markets, technological capacity, and environmental and economic factors. Producers can also propose to add materials to recycling collection lists, if they are environmentally beneficial to recycle, and do not create technical challenges for the recycling system. DEQ would review and resolve any suggestions from producers to add new materials to the collection list.

11. **Comment:** *Producer fees are undefined and DEQ has too much discretion to define fees that producers pay.*

Response: All producer funding responsibilities in SB 582-1 are narrowly defined and prescribed by statute, both in their design and how the funds are used. DEQ would set administrative fees according to statutory direction. The waste prevention and reuse fee is defined by the bill but not currently capped.

March 2, 2021

12. **Comment:** *The wine industry should have more time to decide whether to join the shared responsibility program in SB 582-1 or the Bottle Bill.*

Response: The wine industry has four years to decide whether to join the shared responsibility program or the Bottle Bill. In SB 582-1, producers are not required to join and pay fees to a producer responsibility organization until July 1, 2025. SB 582-1 exempts Bottle Bill materials from the definition of “covered product.” So if the wine industry eventually joined the Bottle Bill, wine bottles would be automatically exempted from PRO fees. This gives the wine industry close to four years to understand and evaluate the two programs.

13. **Comment:** *The restaurant industry needs more time to get back on track before new regulations.*

Response: Most restaurants, hotels, and offices do not qualify as producers under the -1 version of the bill.

The definition of “producer” in the amended version of the bill focuses compliance obligations higher in the supply chain, thereby excluding most of these entities. Relatively few restaurants, hotels or offices would meet the definition of “producer” and DEQ is open to further amendments to reduce that number even further. Where restaurant and lodging enterprises are not producers, this bill would affect them in their role as consumers if producers of covered products, such as food serviceware, choose to increase product prices. Restaurants and other commercial businesses should also see their cost of recycling service decrease under this bill.

Under the proposed legislation, producers are not required to join and pay fees to a producer responsibility organization until July 1, 2025. That gives the restaurant industry more than four years to fully recover. There is also a two-year grace period on the labeling requirements of the bill, so it is possible that those changes will take even more time.