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Oregon's EPR Law – Producer Perspectives

Alia S. Miles, Of Counsel

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Agenda

- Introduction
- Key Concepts
  - Covered Products and Exemptions
  - Evaluating Producer Responsibility
  - Reporting and Fees
  - Enforcement
- Challenges & Uncertainty

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Introduction

- Oregon's Recycling Modernization Act was passed in 2021.
- First in the nation, but not the last.
- After years of program design and preparation by both DEQ and CAA, 2025 was the first year with deadlines for producers.
- As a result, we received a first wave of questions in early 2025, and the need for compliance advice remains strong.
- Stoel has a producer focus, across many industries.

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Overview of the RMA

- 2025 required producers to quickly adapt to the new requirements of Oregon and other state EPR laws.
- Producers of covered products must:
  - Join a PRO (CAA);
  - Report data regarding the weight of the covered product materials they sold or distributed in or into Oregon; and
  - Pay the fees established by CAA.
- DEQ is responsible for ensuring that Oregon's implementation of the Act is consistent with the law.
- Sounds straightforward, but so many questions!

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What Is a Covered Product?

- The threshold question for a potentially responsible "Producer" is whether it sells or distributes any items that are "Covered Products" in or into Oregon.
- The Act breaks "Covered Products" into three categories:

PAPER	FOOD SERVICEWARE	PACKAGING

- Whether an entity has producer obligations for a material sold or distributed in Oregon is very fact-specific.
  - *First*, does it sell or distribute a material in or into Oregon that falls within any of three categories?
  - *Second*, does the material fall within an exemption?

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Items Exempt from "Covered Product"

- The Act has exemptions for all three categories of Covered Products, for example:

Covered Products	Paper	Food Serviceware	Packaging
Exemptions	Books	Napkins	Pallets, specialty packaging, packaging associated with certain products

- Other key exemptions:
  - Any item that is not ultimately discarded in Oregon.
  - Any other material that EQC exempts from being a covered product.
  - Items recycled through a DEQ-approved private recycling program.

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Producer Responsibility

- Small producer exemption? <$5M revenue, <1 metric ton.
- If material sold or distributed in Oregon is a covered product, who is the responsible producer?
- Producer responsibility rules are different for each covered product category.
- Producer responsibility for packaging is especially complicated and depends on specific facts.
- Producers may shift responsibility by agreement, and only one producer is required to register and pay fees for each covered product.

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Producer Obligations – Report & Pay Fees

- For an entity that determines it is the producer responsible for covered products, next step was (and still is) reporting.
  - CAA published guidance establishing 60+ material reporting categories within the following material classes.
  - At least for the first reporting year, many producers find it very challenging to assemble data required for reporting.
- CAA determines producer fees by multiplying producer's proportional share of each material by fees per pound per material.
- For 2025, producer fees ranged from hundreds to millions of dollars.

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DEQ/CAA Enforcement

- Failure to register - Class I violation (up to $25,000/day).
- Oregon DEQ may bar the sale of a product into Oregon.
- CAA must report noncompliant producers to DEQ within 30 days of the end of 90 days of CAA effort to obtain compliance.
- CAA to publish a searchable registry of both compliant and noncompliant members on its website.
- CAA's plan and guidance materials state that it will not refer a producer to DEQ for enforcement unless and until other strategies have failed.

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Oregon EPR Compliance Strategy

- Determining producer responsibility requires consideration of multiple sources:
  - Oregon's statute;
  - DEQ regulations; and
  - Nonbinding CAA and DEQ guidance.
- Parties who sell or distribute covered products in or into Oregon may benefit from careful analysis of their various product streams to determine whether the products are in fact "covered" and, if so, whether the party or another entity has producer responsibility under the law.

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Producer Concerns

- Compliance Concerns
  - Unclear application to business scenarios / products / packaging
  - Reporting requires tracking of materials in wholly new ways
  - New systems, new staff, new budget
- Business Concerns
  - Fees and profit margins
  - Supply chain tensions
- Policy Concerns
  - Fairness (participants carrying nonparticipants)
  - Very different scope in each state with an EPR law
  - Transparency and oversight of PRO

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EPR – Still Evolving

- Pending Matters
  - Exemption requests and rulemaking
  - Constitutional challenge – *NAW v. Feldon*
  - SBA Advocacy request for federal preemption
- Next Up
  - CAA Reporting in OR – **next reporting period is for 2025 product data**
  - Other states:
    - Washington – producer registration deadline of 12/15/25
    - Minnesota – producer registration of 7/1/2025

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Questions?

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