



State of Oregon Department of Environmental Quality

Notice of Proposed Rulemaking

July 18, 2022

Hazardous Waste 2022 Rulemaking

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules – Edits Highlighted
- Draft Rules – Edits Included (final clean version)

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Introduction

The Oregon Department of Environmental Quality invites public input on the proposed permanent rule amendments to Chapter 340 of the Oregon Administrative Rules.

Request for Other Options

During the public comment period, DEQ will ask for public feedback on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on businesses.

Overview

This rulemaking contains two new rule adoptions technical corrections:

1. A mandatory adoption of a federal rule.
2. A state rule that is a necessary follow-up to action taken by the Oregon Legislature.
3. Two technical corrections to previously adopted rules.

New Rules

1. The U.S. Environmental Protection Agency authorizes the Oregon Department of Environmental Quality to operate the federal Resource Conservation and Recovery Act hazardous waste program in lieu of EPA. Oregon must periodically review and adopt new or amended federal rules to retain this federal authority. DEQ's Hazardous Waste Program must adopt mandatory portions of EPA's Definition of Solid Waste Rule to maintain federal authorization to administer the program in Oregon in lieu of EPA.
2. During the 2021 legislative session, [Senate Bill 57](#) passed and was later signed into law by the Governor. The new law modernizes and streamlines Oregon Revised Statute [465.376](#), which governs disposal fees, also called "tipping" or "tip" fees, for wastes disposed in Oregon's commercially permitted RCRA Subtitle C Hazardous Waste Landfill, Chemical Waste Management of the Northwest, located in Arlington. New fees were set in statute along with the ability to change specific fee rates by rule. Revenue from these fees partially supports both the Hazardous Waste and Cleanup Programs. These changes went into effect on Jan. 1, 2022, and this rulemaking will align administrative rule with the statute.

Technical Corrections

1. Clarification to episodic generation requirements: Amends [OAR 340-102-0230](#)(3) by shortening the start date from 60 to 30 days after notification to align with federal requirements. This amendment will not change any other provision of this rule, such as the amount of time provided to complete an episodic event.
2. Amends [OAR 340-012-0068](#)(2)(a), Oregon's Division 12 enforcement rules, to remove the phrase "or hazardous waste pharmaceuticals." This was an oversight in the original rulemaking.

See the [Proposed Hazardous Waste Rule Considerations](#) section for an overview of each rule and technical correction.

DEQ included small business representatives on the Hazardous Waste 2022 Rulemaking Advisory Committee to help advise DEQ on the potential cost, if any, of compliance for small businesses. The potential fiscal impacts to both the regulated community and DEQ were determined to be minimal, and details are in the [Fiscal Impact Summary](#) section of this report.

Procedural Summary

More Information

Information about this rulemaking can be found on DEQ's rulemaking [webpage](#).

Public Hearings

DEQ plans to hold two virtual public hearings, which will be open everyone.

First Hearing

Date: Wednesday, Aug. 17, 2022

Start time: 5 p.m.

Location: [Virtual via Zoom](#)

Join by phone

Call-in number: 888-475-4499 (Toll-free in the U.S.)

Meeting ID: 816 8262 2017

Passcode: 271657

Second Hearing

Date: Thursday, Aug. 18, 2022

Start time: 11 a.m.

Location: [Virtual via Zoom](#)

Join by phone

Call-in number: 888-475-4499 (Toll-free in the U.S.)

Meeting ID: 811 7523 1474

Passcode: 271657

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments through email, regular mail, during the public comment period or at the public hearing.

Comment deadline

DEQ will only consider comments on the proposed rules DEQ receives by 4 p.m. on Aug. 31, 2022.

Submit comment by email

Any person can submit comments by sending an email. Commenters should include “Rulemaking Comment” in the email subject line. Submit emails to:

hazwaste.2022@deq.oregon.gov

Note for public university students:

ORS 192.345(29) allows Oregon public university and Oregon Health Sciences University students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Ellie Brown
700 NE Multnomah St., Suite 600
Portland, OR 97232-4100

At hearings

Wednesday, 5 p.m., Aug. 17, 2022, and 11 a.m., Thursday, Aug. 18, 2022.

Sign up for rulemaking notices

Get email or text updates about this rulemaking by either:

- Signing up through this link: [GovDelivery](#)
- Signing up on the rulemaking [website](#)

What will happen next?

DEQ will include a written response to comments in the staff report DEQ submits to the Environmental Quality Commission and publicly post. DEQ may modify the rule proposal based on the comments.

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ intends to submit the proposed rule changes to the EQC on or after November 2022.

Proposed Hazardous Waste Rule and Technical Correction Considerations

New Rules

Definition of Solid Waste

The 2015 Revision to the Definition of Solid Waste and 2018 Response to Vacatur of Certain Provisions of the Definition of Solid Waste [[80 FR 1694-1814](#) – Jan. 13, 2015, effective Jul 13, 2015 & [83 FR 24664-24671](#) – May 30, 2018, effective May 30, 2018]

Rule Lead: Jay Collins, Hazardous Waste Compliance Inspector

What the rule does: Defines the terms [Hazardous Secondary Material](#) or HSM; HSM generator; HSM facility; [sham recycling](#), and contained. It also includes EPA’s amended Definition of Solid Waste rule, speculative accumulation and the new legitimacy criteria requirements to ensure all hazardous waste recycling is legitimate, properly managed, and documented. The rule as proposed in Oregon does not include EPA’s HSM exclusion provision. It does provide additional rules for issuing and managing formal Variances.

1. Definitions

Hazardous secondary material: The definition for hazardous secondary material is material that would characterize as hazardous waste except when managed as a non-waste when legitimately recycled or reused. This new class of materials includes material currently managed under Resource Conservation and Recovery Act exclusions or exemptions preexisting this rule. More information on this topic is available from Environmental Protection Agency [here](#).

Hazardous secondary material generator: This definition means any person whose act or process produces hazardous secondary materials at the generating facility. A “generating facility” means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. A facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

Sham recycling: Establishes a functional definition of sham recycling supported by documenting compliance with legitimacy criteria (described below) and how legitimate HSM is being managed. Sham recycling occurs when a recycler doesn’t adhere to legitimacy criteria. The regulated community benefits from greater clarity on what is legitimate recycling. The rule also avoids compliance issues from sham recycling while reducing the risk of environmental liability.

Contained: This definition applies to all hazardous wastes and HSM. Preexisting EPA rules allow management of hazardous waste in specific types of land-based units. EPA

carries this through in their definition of contained for HSM. Oregon has never allowed management of regulated hazardous waste in land-based units, except for hazardous waste-permitted transfer, storage, and disposal facilities (TSDF).

2. **Hazardous secondary material exclusion:** Amends the Definition of Solid Waste rule to establish an HSM exclusion provision and the recycling legitimacy criteria which applies to all recycling and reuse of HSM. Reuse or recycling of what would otherwise be hazardous waste that does not meet these criteria is now defined as sham recycling. Material that is sham recycled is not excluded and is, instead, a solid waste and subject to all applicable hazardous waste regulations. HSM generators must document management of HSM meets legitimacy criteria and complies with records retention requirements.
3. **Speculative accumulation:** The proposed Definition of Solid Waste rule adds additional requirements to preexisting speculative accumulation provisions. A material is “accumulated speculatively” if collected before having a plan in place for legitimate recycling. A material is not accumulated speculatively if documentation shows that the material is potentially recyclable and has a feasible means of being recycled. Additionally, the generator must show that during the calendar year starting Jan. 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must go into a labeled storage unit indicating the first date the material began accumulating. If placing a label on the storage unit is not practicable, the accumulation period gets documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement applies to each material of the same type, such as metal shavings from a knife making process recycled in the same way.
4. **Legitimacy criteria:** New by rule, a generator of HSM must use the following specific criteria to evaluate a material’s legitimacy for recycling.
 1. The process must produce a valuable product or intermediate;
 2. The generator and recycler must manage the HSM as a valuable commodity;
 3. The product must be comparable to a legitimate product or intermediate, and concentrations of hazardous constituents must be comparable to similar legitimate products; and
 4. Records documenting compliance with these provisions must be kept available for review for three years past the conclusion of the recycling activity.
5. **Variances:** Establishes additional variance requirements for non-waste determinations to increase protectiveness while managing. This includes requiring facilities to reapply in the event of a change in process or materials, renotify every two years with updated information, and requiring non-waste petitioners to demonstrate why the existing solid waste exclusions would not apply.

Recommendation: Adopt only the mandatory portions of the federal rule with state-only changes as described below. Note: The following numbering corresponds to section a) 1-5 above.

1. **HSM, HSM generator, sham recycling, and speculative accumulation definitions:**

DEQ is proposing adoption of these new definitions to align with the federal rule and support authority to implement the HSM standards. DEQ is also proposing adoption of the new and more stringent speculative accumulation provisions, include labeling and accumulation start dates.

Contained: Rules currently in effect in Oregon do not allow management of hazardous wastes in land-based units. The DSW federal rule proposes a definition of “contained” to include land-based units for both hazardous waste and HSM. Under the Definition of Solid Waste amendment, EPA preemptively provides “like” requirements in the management of HSM to those for comparable products, some of which are managed by industry on the land. The 2016 DEQ Definition of Solid Waste Advisory Committee voiced both sides of this issue. Oregon is not mandated to adopt this rule provision. DEQ is proposing to remain more stringent than the federal rule by proposing modification to EPA’s language for the definition of contained to remove land-based units in Oregon’s adoption, this is consistent with the protective rules currently in place in Oregon.

2. **Hazardous secondary material exclusion:** Currently, DEQ is not proposing adoption of the HSM exclusion in this rulemaking due to the need of further investigation of potential impacts and needs for additional regulation of this activity. EPA’s new classification of HSM would apply to all used materials that would otherwise characterize as hazardous waste, except reuse and/or recycling as nonhazardous waste is allowed under preexisting RCRA exclusions or exemptions.
3. **Speculative accumulation:** When inspecting a site, DEQ may need to determine the accumulation date associated with accumulated waste and other materials. The rule will require enable generators to more accurately document the accumulation time associated with such materials, thereby providing generators with a framework for management and compliance and DEQ inspectors with more documentation to assess compliance. EPA notes that the speculative accumulation provision only applies to persons who are accumulating hazardous secondary materials. Processes involving hazardous secondary materials returned to the original process via pipes are not considered accumulating hazardous secondary materials for application of this rule. Therefore, the speculative accumulation provision and associated recordkeeping requirements do not apply in this example.
4. **Legitimacy criteria:** These proposed rule changes apply to many materials currently recycled under existing hazardous waste exemptions and exclusions. We see a major role for hazardous waste technical assistance to communicate these new, broadly applicable requirements while assisting facilities with compliance plans incorporating the new HSM legitimacy criteria.

5. **Variance:** The Definition of Solid Waste variance process is like those Oregon currently uses for some existing hazardous waste exclusions. We are uncertain how often Oregon's regulated hazardous waste generators will use this non-waste variance, as it is specific to hazardous secondary materials rather than hazardous waste. EPA's Definition of Solid Waste rule includes additional variance process requirements, including a 10-year review and approval cycle for all variances issued after adoption. DEQ proposes to adopt these required rule changes.

Oregon impact: DEQ's proposed adoption of the Definition of Solid Waste rule will create minimal additional regulatory burden for those impacted by this rule. The legitimacy criteria requirements apply to facilities reusing and recycling hazardous waste under existing exclusions. The criteria will provide increased regulatory certainty regarding legitimate recycling and reduce the likelihood of compliance costs from sham recycling. This change will require additional work by the regulated community and DEQ's Hazardous Waste Program through education and oversight. DEQ is not currently proposing to adopt the optional hazardous secondary material exclusion, to have time to better understand the impacts to Oregon.

Fiscal impact: The fiscal impacts to Oregon generators will be minimal. DEQ assumes the fiscal and economic impacts identified in the federal rulemaking are accurate and apply to Oregon facilities the same as determined during the federal rulemaking. This was confirmed from industry representatives during the rules advisory committee meeting in May 2022. DEQ fiscal impact will be in developing new guidance, training, and designing outreach materials for the regulated community. For more details, see fiscal impacts section below.

Other states: As of March 2022, 21 states have adopted the entire 2018 Definition of Solid Waste rule; five states have adopted the entire 2015 rule; and four states, including Washington, adopted the mandatory sections of the 2015 rule. Washington State's adoption of only the mandatory portions of the 2015 rule is consistent with early DEQ recommendations, including not allowing the management of hazardous waste and hazardous secondary materials in land-based units. See EPA's state adoption map for this rule [here](#).

Additional rule resources:

- [EPA Rule Summary and History](#)
- [McCoy & Associates Whitepaper](#)

Proposed State-only Rule

Follow-up to [Senate Bill 57](#) (SB57) changes to the Hazardous Waste disposal fees.

Rule Lead: Ellie Brown, DEQ senior hazardous waste policy analyst.

- a) **What the rule does:** Oregon Revised Statute 465.376 was amended by SB57 (2021). The Oregon Legislature granted authority to the Environmental Quality Commission to raise or lower fee rates by rule as defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees. This

allows DEQ to establish these fees in the Oregon Administrative Rules Chapter 340 rules through this rulemaking.

- b) **Oregon impact:** The proposed rule allows DEQ to adjust fees for hazardous waste generation and disposal in response to economic factors. This rulemaking will establish these fees in rule.
- c) **Fiscal impact:** Prior to SB57 passage, legislative staff determined and summarized the potential fiscal impacts – see the reports [here](#). DEQ does not anticipate any additional fiscal impacts since the fees already exist and this rulemaking does not change the current fee rates.
- d) **Other states:** As required by ORS 465.378, DEQ conferred with neighboring states having hazardous waste landfills prior to SB57 passage. This confirmed the current statutory fee rates are comparable to those in neighboring states.
- e) **Recommendation:** Establish the fees and fee rates defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees in OAR 340 rule. No increase or decrease in these fee rates is recommended or proposed at this time.

Technical Corrections

Technical Corrections Lead: Ellie Brown, DEQ senior hazardous waste policy analyst.

1. Episodic generation technical correction

Proposal

Clarification to episodic generation requirements: Amend Oregon's [OAR 340-102-0230](#)(3) start date to 30 days after notification to align with federal requirements. This rule change will not impact the amount of time provided to complete an episodic event or any other requirement.

Background

The amount of hazardous waste a business generates monthly determines the generator category. An episodic event, as defined in [40 CFR section 262.231](#) of the hazardous waste regulations, is an activity that does not usually occur during a business operation. These events may cause a business to temporarily exceed the threshold of its normal generator category. In 2016, EPA recognized this and adopted the [Generator Improvements Rule Subpart L - Alternative Standards for Episodic Generation](#) to allow businesses with an approved planned or unplanned episodic event to maintain their existing generator category. This regulation applies to both very small quantity generators and small quantity generators. Examples of planned episodic events are tank or laboratory clean outs, an infrequent maintenance project, or removal of excess chemicals in inventory. Examples of unplanned events are spills caused by a storm, damaged equipment causing a release, or a product

recall. If a business increases hazardous waste production due to an increase in manufacturing, for example, the episodic event option would not apply.

EPA's rule allows for one planned or unplanned episodic event per calendar year with a petition required for a second event, which must be the opposite event type. An episodic event cannot last more than 60 days from the first day generating episodic hazardous waste to the day removing hazardous waste off site or treated on-site if a small quantity generator.

When Oregon adopted this federal rule in 2021, it changed the federal requirement directing the generator to "notify EPA no later than 30 calendar days prior to initiating a planned episodic event." Oregon adopted this requirement as: "Notify DEQ no later than 60 calendar days prior to initiating a planned episodic event." This notification change was based on feedback and lessons learned from other states who struggle to approve planned episodic events within the 30-day window. DEQ wanted to allow sufficient time to process these requests and be able to provide technical assistance to the business ahead of the planned event, if needed. DEQ also wanted to ensure, through prior review and approval, this flexibility was used appropriately. However, this 2021 amendment added an unnecessary burden to petitioners, in having to wait for the remainder of the 60-day notification period prior to proceeding with the approved event. This results in hazardous waste remaining on-site for weeks longer than necessary and increasing the risk of spills and exposure, which was not DEQ's intention in modifying the state rule.

With this rulemaking DEQ proposed to modify the 60-day notification period to align with the federal requirement of 30 days. Based on requests since this rule became effective Jan. 1, 2022, DEQ has sufficient time to both review these requests and provide technical assistance to the generator, if needed.

2. Hazardous waste pharmaceutical enforcement rule technical correction

Proposal

Amend [OAR 340-012-0068](#)(2)(a), Oregon's Division 12 enforcement rules: Remove the phrase "or hazardous waste pharmaceuticals".

Background

Prior to state adoption in 2021 of the federal [Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine](#) rule, DEQ initially proposed to limit the options for documenting or indicating how long hazardous waste pharmaceuticals have been accumulating on-site to just dating each container. This appeared to be the easiest way to quickly identify the one-year accumulation compliance requirement.

Through public comment, DEQ received a request from the regulated community to include all three federal options. DEQ's proposal was not intended to create an undue burden on healthcare facilities by limiting options; the intention was to easily confirm on-site compliance and be more time efficient and less disruptive to the generator. From this request, DEQ reevaluated and included all three options provided in the federal rule, without change from the federal language at 40 CFR Part 266.502(f)(2)(i) through (iii). Oregon's

rule became effective on Jan. 1, 2022. However, DEQ failed to change the associated proposed language in Division 12 to match, and inadvertently adopted changes to Division 12 that do not match the requirements in OAR 340-012-0068. Following this change, if a generator fails to perform any of the three compliance demonstration options in 40 CFR Part 266.502(f)(2)(i) through (iii), then the associated violation would be a Class II, unclassified violation under OAR 340-012-0053(2).

Statement of Need

Proposed Rule	Discussion
Definition of Solid Waste Rule	
What need would the proposed rule address?	DEQ rules are no longer consistent with the federal rules. Federal law requires a state to adopt the current federal rules to retain federal authorization to operate the state's hazardous waste program.
How would the proposed rule address the need?	Adopting the relevant federal regulations will align the state with the current federal regulations and allow Oregon to seek continued federal authorization for its hazardous waste program. Differences in the draft state rule: DEQ is not proposing adoption of management of hazardous waste in land-based units in except for approved units at permitted TSDFs. See the definition of "contained" proposed for adoption at OAR 340-100-0010. DEQ is not proposing adopt the Defintion of Solid Waste exclusion.
How will DEQ know the rule addressed the need?	DEQ will maintain federal authorization to operate the state's hazardous waste program. Additionally, the regulations provide increased regulatory certainty and framework to promote the legitimate recycling of hazardous secondary materials. This rule will remove some existing barriers to legitimate recycling for business, leading to conserving natural resources, reducing waste, saving energy, and ensuring greater environmental protection.
Follow-up to Oregon Senate Bill 57A: Changes to Hazardous Waste Disposal Fees	
What need would the proposed rule address?	Follows the 2021 Oregon Senate Bill 57A passage giving DEQ the authority to move the ORS 465.375 and 465.376 statutory fees into Oregon Administrative Rule. This rulemaking does not change the current fee rates.

How would the proposed rule address the need?	The proposed rulemaking aligns OAR 340 with ORS 465.375 & 465.376 by establishing the hazardous waste disposal fees in rule.
How will DEQ know the rule addressed the need?	DEQ will have increased responsiveness in setting fees in the future.
Episodic Generation Technical Correction	
What need would the proposed rule address?	Corrects state-only amendment from the 2021 state adoption of the federal Generator Improvements Rule episodic provision. Specifically removes the phrase “or hazardous waste pharmaceuticals.”
How would the proposed rule address the need?	By removing the state added phrase, the state rule will align with the state adoption.
How will DEQ know the rule addressed the need?	Very small and small quantity generators of hazardous waste will be allowed to proceed with approved episodic events within 30 days of notification to DEQ, and not wait the full 60 days to proceed.
Division 12 Enforcement Rule Technical Correction	
What need would the proposed rule address?	Corrects state-only amendment from the 2021 state adoption of the federal Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine rule. Specifically removes the added phrase “or hazardous waste pharmaceuticals” from 340 Division 12 rules.
How would the proposed rule address the need?	By amending OAR 340-012-0068(2)(a) to remove the phrase the state adoption rules will align.
How will DEQ know the rule addressed the need?	There will be consistency between the requirements of the Pharmaceutical Rule and the Division 12 enforcement rules.

Rules Affected, Authorities, Supporting Documents

Lead divisions

- Land Quality
- Office of Compliance and Enforcement for Division 12

Program or activity

Hazardous Waste Program

Chapter 340 action

Hazardous Waste Program Rules

Adopt – OAR				
340-100-0042	340-100-0043			
Amend – OAR				
340-100-0002	340-100-0010	340-101-0004	340-102-0230	340-105-0120

Statutory Authority – ORS				
183	192	459	465.009	465.375
465.376	465.400	465.405	465.505	466.015
466.020	466.075	466.090	466.105	466.165
466.180	466.195	468	468.020	646

Statutes Implemented – ORS				
465.003	465.009	465.375	465.376	465.505
466.005	466.015	466.020	466.075	466.090
466.105	466.165	466.195	468.020	

Office of Compliance and Enforcement – Division 12 Rules

Amend – OAR				
340-012-0068				

Statutory Authority – ORS				
459.995	466.070-466.080	466.625	468.020	

Statutes Implemented – ORS				
466.63-466.680	466.990-466.994	468.090-468.140		

Documents Relied on for Rulemaking

These are reports, studies, and documents used in completing this rulemaking.

Document title	Document location
Federal Register entries for the incorporated rule and amendments	Federal Register
Federal: <i>Regulatory Impact Analysis: EPA's 2014 Revision to Industrial Recycling Exclusion Potential Adverse Impacts (including Minority and Low-income Populations)</i>	EPA 2014 DSW Regulatory Impact Analysis Potential Adverse Impacts (including Minority and Low-income Populations).
Oregon Annual Hazardous Waste Reporting for reclamation and disposal, years 2017 to 2019	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232
Oregon Department of Employment 2nd quarter 2019 data	Employment Department 875 Union St. NE Salem OR 97311

Statement of Fiscal and Economic Impact

This is a discussion of the financial impact of the proposed rule changes on various parties.

Definition of Solid Waste Rule: Summary of Fiscal and Economic impacts

DEQ assumes the fiscal and economic impacts identified in the federal rulemaking are accurate and apply to Oregon facilities the same as determined during the federal rulemaking.

At this time, DEQ is unable to quantify any additional potential Oregon economic impacts of this rule, as there are no known additional fees or costs associated with the mandatory or optional provisions of this rule.

Overall, DEQ does not expect generator costs to significantly increase because of adoption of this proposed rule. The regulations resulting from this rule provide much-needed regulatory certainty and a commonsense framework to promote the legitimate recycling of hazardous secondary materials. Removing barriers to legitimate recycling is good for business and the environment, and would result in conserving natural resources, reducing waste, saving energy, and reducing costs. Facilities may incur initial minimal cost increases because of complying with the new mandatory provisions.

Statement of Cost of Compliance

State agencies

DEQ would incur costs to develop new guidance materials, train staff, provide technical assistance outreach, adopt new enforcement guidance, and implement the rule during compliance inspections.

Local governments

DEQ does not anticipate local governments would incur any additional costs due to this rulemaking.

Public

DEQ does not anticipate the public would incur any additional costs due to this rulemaking.

Large businesses - businesses with more than 50 employees

DEQ anticipates large businesses may incur minor additional costs. Examples of these costs include training, conducting legitimacy criteria reviews and maintaining documentation for review onsite, along with meeting speculative accumulation and storage provisions. Additional costs would only be incurred when reclaiming what would otherwise be hazardous waste under current exemptions and exclusions. These reviews are one-time requirements if the waste and recycling process remain the same. Generators of hazardous secondary materials must maintain this documentation for three years past the date recycling concludes.

Small businesses – businesses with 50 or fewer employees

DEQ anticipates small businesses may incur minor additional costs. These costs would likely include training, conducting legitimacy criteria reviews and maintaining documentation for review on site, and meeting speculative accumulation and storage provisions only if reclaiming waste under current exemptions and exclusions. Legitimacy criteria reviews are onetime requirements if the waste and recycling process remain the same. Generators of hazardous secondary materials must maintain this documentation for three years past the date recycling concludes.

ORS 183.336 - Cost of Compliance for Small Businesses

1. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

During the federal rulemaking, the U.S. Environmental Protection Agency identified fiscal and economic impacts. For this purpose, EPA identified a small business as one with 50 or fewer employees.

The Regulatory Flexibility Act requires EPA to conduct economic assessments for small businesses before adopting rules. EPA determined the proposed rules would not have a significant economic impact on small businesses.¹

EPA's small business impacts were only estimated for 27 of the industries that would have the largest number of impacted facilities out of 622 North American Industry Classification System (NAICS) code industries² that may be affected by the pre-2008 Definition of Solid Waste exclusions. EPA assumes these 27 largest impacted industries represent the largest potential impact to small entities for purposes of their impact evaluation. There may be additional significant impacts to small businesses in some of the industries that were not evaluated.³ Refer to appendices A and B for Estimated Average Annual Impact of the 2014

¹ Source: *Federal Register* (80 FR 1694-1814), C. Regulatory Flexibility Act, p.1769

² Source: *EPA 2014 DSW Regulatory Impact Analysis, Appendix A*

³ Source: *EPA 2014 DSW Regulatory Impact Analysis, p.7-7*

Definition of Solid Waste Revisions on Small Businesses and Estimated Maximum Average State Cost Burden Associated with 2014 Definition of Solid Waste Revisions, respectively.

a. Estimated number and type of small businesses subject to the proposed rule.	Using 2019 employment data, DEQ found an estimated 839 Oregon businesses, with 708 having less than 50 employees that may be impacted by this rule. Using the EPA identified 27 small business North American Industry Classification System codes, ⁵ DEQ found the following:
	323110 – Commercial lithographic printing 0
	324110 – Petroleum refineries 0
	325188 – All other basic inorganic chem manuf. 0
*Industry eligible for remanufacturing exclusion ⁴	325199 – *Basic Organic Chemical Manuf. 9
	325211 – *Plastic & Resin Manufacturing 9
	325412 – *Pharmaceutical Manufacturing 40
	325510 – *Paint & Coating Manufacturing 14
	325998 – All other misc. chem product prep manuf. 42
	326199 – All other plastic product manufacturing 66
	331111 – Iron & steel mills 0
	331492 – Secondary smelting, non-ferrous 2
	332312 – Fabricated structural metal manuf. 31
	332812 – Metal coating, engraving manuf. 59
	332813 – Electroplating, polishing, anodizing 29
	332999 – All other misc. fabrication metal manuf. 80
	333415 – Air condition, heating, refrig. equip. 9
	334412 – Bare printed circuit board manuf. 8
	334413 – Semi-conductor & related manuf. 37
	334418 – Printed circuit assembly manuf. 17
	336399 – All other motor vehicle parts manuf. 0
	336412 – Aircraft engine & parts manuf. 2
	336413 – Other aircraft part & equip manuf. 17
	541710 – Research/development phys, eng, life sci. 1
	562211 – Hazardous waste treatment & disposal 3
	611310 - College, university, prof. schools 217
	622110 – General medical & surgical hospitals 15
	928110 – National security 2

2. Projected reporting, recordkeeping, and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The proposed rule would not require any additional reporting or administrative activities. Adopting this rule would cause generators of hazardous secondary material, or HSM generators to document legitimacy criteria and keep records available for review documenting that HSM recycling activity meets the criteria. Generators may choose to pay

⁴ Source: EPA 2014 DSW Regulatory Impact Analysis, p.2-13

⁵ Source: EPA 2014 DSW Regulatory Impact Analysis, Exhibit 7A table, p.7-4

costs associated with procuring professional services if the company outsources a firm to evaluate and produce legitimacy criteria for each HSM.

3. Projected equipment, supplies, labor, and increased administration required for small businesses to comply with the proposed rule.

The proposed rule would not require additional equipment, supplies, labor, or increased administration except as noted above. DEQ Hazardous Waste Technical Assistance is especially designed to assist smaller businesses with Resource Conservation and Recovery Act, compliance, and hazardous waste reduction.

4. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included small business representatives on the Hazardous Waste 2022 Rulemaking Advisory Committee who advised DEQ on the cost of compliance for small businesses. DEQ anticipates working with industry representatives to develop templates for documenting legitimacy criteria for small businesses; for example, when autobody businesses recycle hazardous secondary material solvent and paint by onsite distillation.

Documents relied on for fiscal and economic impact

The requirement to list the documents relied on to determine fiscal impact is separate from and in addition to the similar list in the Rules affected, authorities, supporting documents section above.

Document title	Document location
Federal Register entries for the incorporated rule and amendments	Federal Register
Federal: <i>Regulatory Impact Analysis: EPA's 2014 Revision to Industrial Recycling Exclusion Potential Adverse Impacts (including Minority and Low-income Populations)</i>	EPA 2014 DSW Regulatory Impact Analysis Potential Adverse Impacts (including Minority and Low-income Populations).
Oregon Annual Hazardous Waste Reporting for reclamation and disposal, years 2017 to 2019	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232
Oregon Department of Employment 2nd quarter 2019 data	Employment Department 875 Union St. NE Salem OR 97311

Advisory committee fiscal review

DEQ appointed an advisory committee for this rulemaking.

As ORS 183.33 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement, and its findings are stated in the approved minutes.

The committee determines if the proposed rules would or would not have a significant adverse impact on small businesses in Oregon.

If a significant impact is identified by the committee, as ORS 183.333 and 183.540 requires, the committee will consider how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or timetables for small business;
- Clarifying, consolidating, or simplifying the compliance and reporting requirements under the rule for small business;
- Using objective criteria for standards;
- Exempting small businesses from any or all requirements of the rule; or
- Otherwise establishing less intrusive or less costly alternatives applicable to small business.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000 square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because the proposed rule only affects businesses subject to the hazardous waste regulations.

Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

Adoption of this rule will provide further clarification regarding federal regulations that are implemented by DEQ. Regulated entities and the public will benefit from this increased clarity. As there are no expected changes to practical implementation of these federal standards based on the clarification of applicable terms and definitions, there is no expected impact on racial equity in Oregon.

Appendix A

Exhibit 7C Estimated Average Annual Impact of the 2014 DSW Revisions on Small Businesses (54% notification rate, 3% discount rate) ^a				
NAICS	Industry	Small Company Average Annual Revenue (2012) ^b	Average Annual Cost Impact per Facility (2012) ^c	Annual Cost Impact as a Percent of Annual Revenue
323110	Commercial Lithographic Printing	\$8,161,602	\$689	0.00844%
324110	Petroleum Refineries	\$1,537,248,716	\$689	0.00004%
325188	All other Basic Inorganic Chemical Manuf.	\$49,023,390	\$689	0.00141%
325199	All other Basic Organic Chemical Manuf.	\$118,588,973	\$689	0.00058%
325211	Plastics Material and Resin Manufacturing	\$94,751,550	\$689	0.00073%
325412	Pharmaceutical Preparation Manufacturing	\$94,154,056	\$689	0.00073%
325510	Paint and Coating Manufacturing	\$31,468,344	\$689	0.00219%
325998	All other Misc. Chemical Product & Prep Manuf.	\$28,444,332	\$689	0.00242%
326199	All other Plastics Product Manufacturing	\$13,246,157	\$689	0.00520%
331111	Iron and Steel Mills	\$145,513,720	\$689	0.00047%
331492	Secondary Smelting, Refining Alloying-Non-ferrous	\$55,535,573	\$689	0.00124%
332312	Fabricated Structural Metal Manufacturing	\$13,709,787	\$689	0.00503%
332812	Metal Coating, Engraving & Allied Services Manuf.	\$11,729,470	\$689	0.00587%
332813	Electroplating, Plating, Anodizing, Coloring	\$4,751,901	\$689	0.01450%
332999	All Other Misc. Fabricated Metal Product Manuf.	\$9,300,367	\$689	0.00741%
333415	Air-Condition, Heating, Refrigeration Equip Manuf.	\$22,934,067	\$689	0.00300%
334412	Bare Printed Circuit Board Manufacturing	\$3,959,633	\$689	0.01740%
334413	Semiconductor and Related Device Manufacturing	\$29,146,505	\$689	0.00519%
334418	Printed Circuit Assembly Manufacturing	\$13,273,845	\$689	0.00274%
336399	All other Motor Vehicle Parts Manufacturing	\$18,009,218	\$689	0.00383%
336412	Aircraft Engine and Engine Parts Manufacturing	\$29,103,856	\$689	0.00237%
336413	Other Aircraft Part and Auxiliary Equipment Manuf.	\$25,126,126	\$689	0.00274%
541710	R&D in Physical, Engineering & Life Sciences	\$6,662,747	\$689	0.01034%
562211	Hazardous Waste Treatment and Disposal	\$6,966,571	\$689	0.00989%
611310	Colleges, Universities and Professional Schools	\$8,352,604	\$689	0.00825%
622110	General Medical and Surgical Hospitals	NA	\$689	NA
928110	National Security	NA	\$689	NA
^a The 54% notification rate assumes that 3.2% of facilities notify under the 2008 DSW exclusions as revised under the 2014 DSW rule each year. By year 2063 a total of 3,865 facilities will have notified under one of the 2008 DSW recycling exclusions. In addition, 1% of 7,500 facilities (midpoint between 5,000 and 10,000 facilities) or 75 facilities that operate under pre-2008 exclusions may be affected. Annual cost impact per facility is discounted by 3% to reflect change in price level from 2016 to 2012. The total number of affected facilities is 3,940 (3,865 + 75).				
^b Small company annual revenue is approximated using the average establishment value of shipments from Census of Manufacturers Data. For example, the number is the average establishment value of shipments for small establishments (e.g., for industries with an Small Business Administration small business size standard of 1,000 employees, the number is the average value of shipments for facilities with less than 500 employees). This estimate is intended to serve as a conservative value of annual revenue for small businesses.				
^c Average Annual Cost Impact per Facility divided by Small Company Average Annual Revenue times 100.				

Source: EPA 2014 Regulatory Impact Analysis, pp. 7-8

Appendix B

Exhibit 7D Estimated Maximum Average State Cost Burden Associated with 2014 DSW Revisions (2012 dollars) ^a				
		54% Notification Rate		
Item	Type of Direct Compliance Cost	Count of Submissions per Year	State Cost per Submission	Total Annual Cost
1 ^b	Receive, Review and File Biennial Notifications (Revision 3 Requirement 3A, Revision 3 Requirement 3B, Revision 4 Requirement 4B, Revision 4 Requirement 4C)	921	\$6.34	\$5,843
2 ^g	Receive, Review and File Verified Recycler Exclusion Variance (Revision 1 Requirement 1B)	14	\$6,257.93	\$87,611
3 ^{c, d}	Evaluation of Legitimacy Documentation (Revision 3 Requirement 3A and 3B)	45	\$2,158.76	\$97,144
4 ^e	All other Basic Organic Chemical Manuf. Receive, Review and File Re-application for Variance or Non-waste Determination (Revision 4 Req. 4A)	11	\$8,635.06	\$94,144
5 ^f	Plastics Material and Resin Manufacturing Review Partial Reclamation Variance (Revision 4 Req. 4C)	4	\$6,254.05	\$25,016
6 ^f	EPA provides online public access to a list (including supporting documentation) of facilities receiving non-waste determinations (Revision 4)	7	\$76.07	\$533
7 ^f	Petition Process for Remanufacturing Exclusion (Revision 5 Requirement 5C)	1	\$13,774.58	\$6,887
Explanatory Notes: ^a Data depict the estimated annual costs that will be incurred by states in any one year. The cost is overestimated for the earlier years of the period of performance evaluated (2014 through 2063) and reflective of the maximum number of submissions in later years. ^b 50% for the total number of wastes covered under the rule submit notifications every year. State cost estimate obtained from the “Supporting Statement for Revisions to the RCRA Definition of Solid Waste (Proposed Rule), June 30, 2011 (i.e., 2011 DSW ICR) inflated to 2012 dollars. The notification agency costs under Revision 1, Revision 2, and Revision 5 are covered by the 2008 DSW Rule and not the 2014 DSW Revisions. The estimated number of notifications under Revision 3 is 1% of 7,500 facilities recovering 11 wastes each for pre-2008 exclusion facilities and 1% of 3,821 RCRA recycling facilities recovering 2.2 wastes each. The estimated number of notifications under Revision 4 is 74 non-waste determinations, 4 variances, and 4 partial reclamation variances. ^c Assumes that legitimacy documentation is prepared for 1% of affected pre-2008 wastes and 2008 DSW transfer-based exclusion wastes (revised to be the 2014 verified recycler exclusion) and revised every three years. Assume State reviews legitimacy documentation for 5% of wastes every year. State cost estimate obtained from 2011 DSW ICR inflated to 2012 dollars. ^d Assumes that legitimacy documentation is prepared for all 2008 DSW generator-controlled exclusion wastes. Non-waste determination exclusion waste agency costs are assumed to be covered under the determination process. Assume State reviews legitimacy documentation for 5% of wastes every year. State costs obtained from 2011 DSW ICR inflated to 2012 dollars. ^e Assumes non-waste determination is resubmitted every 10 years (74/10 = seven per year) resulting in seven non-waste determination applications per years. Every year four variances are filed. State cost estimate obtained from 2011 DSW ICR inflated to 2012 dollars. ^f State cost estimate obtained from 2011 DSW ICR inflated to 2012 dollars. ^g This RIA uses agency burden estimates from EPA’s ICR for the “Supporting Statement for EPA Information Collection Request Number 1189.24 Identification, Listing and Rulemaking Petitions (Renewal)” in January 2012. The variance from “Classification as Solid Waste Material that are Reclaimed but Must Be Reclaimed Further” under 40 CFR 260.31(c) is assumed to be similar in scope to preparing a variance for the verified recycler exclusion. Labor rate estimates reflect estimated from EPA’s ICR for the “Supporting Statement for Revisions to the RCRA Definition of Solid Waste (Proposed Rule) OMB Control No. 2050-0202, EPA ICR No. 2310.02,” June 30, 2011. State costs are inflated to 2012 dollars.				

Source: EPA 2014 Regulatory Impact Analysis, pp. 7-12

Summary of Fiscal and Economic impacts:

Follow-up to [Senate Bill 57](#) (SB57): Changes to Hazardous Waste disposal fees

Fee Analysis

The proposed rule would establish existing statutory fees in rule. ORS 465.376 was amended by [SB57](#) on June 25, 2021. The purpose of this bill was to modernize and streamline one statute, ORS 465.376, which governs disposal fees, also called “tipping” fees, for wastes disposed of in Oregon’s only commercially permitted RCRA Subtitle C Hazardous Waste Landfill, Chemical Waste Management of the Northwest, located in Arlington. With the passage of SB57, Oregon Legislature granted authority to the Environmental Quality Commission, or EQC, to raise or lower fee rates defined in [ORS 465.375](#): Monthly fee of operators and [ORS 465.376](#): Special hazardous waste management fees.

Brief description of proposed fees

Below is a summary of the statutory changes made to ORS 465.376 via SB57. All these changes were effective Jan. 1, 2022. No further changes are proposed by this rulemaking, rather these fees and EQC authority will be defined in rule.

Removed

- Subsection (1)(a): “\$7.50 per ton for waste from the primary production of steel in electric furnaces that is emission control dust or emission control sludge identified as United States Environmental Protection Agency hazardous waste number K061 in 40 C.F.R. 261.32.”
- The fee tiers under subsection (1)(b).
- Subsection (1)(c): “\$15 per ton for waste that is hazardous waste when received and treated at the facility so that the waste is no longer a solid waste as defined in ORS 459.005.”
- The “one-third/two-thirds” split in revenue defined in subsections (3) and (4).
- Subsection (5)(b): “Hazardous debris” is removed from the definition of “waste.”

Modifications

- The tiered fees defined in subsection (1)(b) were converted to a flat fee of \$20 per ton.
- The fee defined in subsection (1)(d): \$2 per ton was increased to \$5 per ton.

Additions

- Ability for EQC by rule to raise or lower fee rates defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees.

Reasons

The proposed rules would address statutory changes by aligning Chapter 340 of Oregon Administrative Rules with ORS 465.376. Via SB57, DEQ Hazardous Waste Program modernized and streamlined hazardous waste disposal fees, also called “tip fees” or “tipping fees.”

DEQ collapsed the tiered fees portion of ORS 465.376 and set this fee at a flat rate of \$20 per ton. Prior to this change, only the top tier, which was set at \$20 per ton, was generating revenue. The tiered fee structure created additional administrative work in tracking multiple fees instead of just one.

DEQ raised the fee for disposal of waste that does not require treatment prior to disposal from \$2 per ton to \$5 per ton. The new rate matches Idaho hazardous waste landfill fees. DEQ reviewed other nearby states' fees as well, identifying similar fees charged.

These specific fees have remained unchanged since establishment, and include outdated waste streams, such as “waste from the primary production of steel in electric furnaces.” DEQ has modernized the statute by removing outdated waste streams and their associated fees.

The proposed fee structure will provide DEQ with increased responsiveness to economic conditions and timely fee setting.

Fee proposal alternatives considered

This rulemaking would establish statutory changes in rule. The alternative considered was to not pursue this rulemaking which would leave a discrepancy between statute and rule. This would impact DEQ's authorization from EPA to operate the hazardous waste program in lieu of EPA.

Fee payer

These fees are paid by entities who choose to dispose of any of the wastes defined in [ORS 465.375](#): Monthly fee of operators and [ORS 465.376](#): Special hazardous waste management fees. Oregon has one commercially permitted operating hazardous waste landfill which collects these fees on DEQ's behalf and submits payments to DEQ monthly. Most hazardous waste disposed in Oregon is not generated in Oregon, which means the financial burden related to the fee payers is not placed solely on Oregonians.

Affected party involvement in fee-setting process

DEQ Hazardous Waste Program worked directly with the only commercially permitted operating hazardous waste landfill in Oregon in the creation of SB57.

Statement of fiscal and economic impact

Impacts were determined and summarized by legislative staff prior to passage of SB57. Reports can be found [here](#).

- Revenue impacts: None

- Fiscal impacts: Costs related to the measure may require budgetary action.

Statement of Cost of Compliance

State agencies

DEQ anticipates no additional fiscal impact because this rulemaking only establishes existing statutory fees in rule without change.

Local governments

DEQ does not anticipate any fiscal impact to local governments because of this rulemaking because this rulemaking would establish existing statutory fees in rule.

Public

DEQ does not anticipate any fiscal impact to the public because of this rulemaking because this rulemaking would establish existing statutory fees in rule. These fees apply only to entities, not individuals or households, which choose to dispose of any of the wastes defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees in Oregon's only commercially permitted RCRA Subtitle C Hazardous Waste Landfill.

Large businesses - businesses with more than 50 employees

DEQ does not anticipate any additional fiscal impact to large businesses because of this rulemaking because this rulemaking would establish existing statutory fees in rule.

Small businesses – businesses with 50 or fewer employees

DEQ does not anticipate any additional fiscal impact to small businesses because of this rulemaking because this rulemaking would establish existing statutory fees in rule.

ORS 183.336 Cost of Compliance Effect on Small Businesses

1. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

DEQ does not anticipate any additional fiscal impact to small businesses because this rulemaking would establish existing statutory fees in rule. Further, it is not feasible to determine the number and type of small businesses that might pay these fees because these fees are paid by those entities that choose to dispose in Oregon any of the wastes defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees in Oregon's only commercially permitted RCRA Subtitle C Hazardous Waste Landfill. These entities need not be in Oregon.

2. Projected reporting, recordkeeping, and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The proposed rules do not require any additional activities. These fees are already established.

3. Projected equipment, supplies, labor, and increased administration required for small businesses to comply with the proposed rule.

The proposed rules do not require any additional activities. These fees are already established.

4. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included small business representatives on the 2022 Hazardous Waste Rules Advisory Committee that advised DEQ on the cost of compliance for small businesses.

Advisory committee fiscal review

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rule would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rule would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement, and its findings will be stated in the approved minutes.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

DEQ determined the proposed rule would have no effect on development costs because these fees are paid only by those entities that wish to dispose of any of the wastes defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees in Oregon's only commercially permitted RCRA Subtitle C Hazardous Waste Landfill.

Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

Adoption of these rules will provide simplification and clarification of the fee structure. Entities wishing to dispose of these specific wastes will benefit from simplification and increased clarity. As there are no expected changes to practical implementation other than simplifying the fees disposers pay, there is no expected disproportionate impact on racial equity in Oregon.

Summary of Fiscal and Economic impacts: Technical Corrections

The two proposed technical corrections do not have associated fiscal or economic impacts and do not include fees.

Federal Relationship

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The following proposed rule would adopt federal requirements with noted state-only amendments:

**2018 Definition of Solid Waste (DSW) Response to Court Vacatur
83 FR 24664-24671: May 30, 2018, effective May 30, 2018
(CL 233 A, B, C, optional D2 & E)**

EPA SUMMARY: The final rule implements the March 6, 2018, court decision regarding the 2015 revisions to the Definition of Solid Waste rule on the recycling of hazardous secondary materials. The court replaced specific provisions of the 2015 rule with the requirements from the 2008 version of the rule. In issuing this final decision, the court agreed with EPA's requested clarification regarding defining legitimate recycling of hazardous secondary materials as it applies in all circumstances. This decision ensures businesses and states have a consistent and clear definition of legitimate recycling of hazardous secondary materials.

The regulations resulting from this response to the court provide much-needed regulatory certainty and a common-sense framework to promote the legitimate recycling of hazardous secondary materials. Removing barriers to legitimate recycling is good for business and the environment, and will result in conserving natural resources, reducing waste, saving energy, and reducing costs.

Differences in the draft state rule: DEQ is not proposing adoption of management of hazardous waste in land-based units in except for approved units at permitted treatment, storage, and disposal facilities. See the definition of "Contained" proposed for adoption at OAR 340-100-0010. DEQ is not proposing adopt the Definition of Solid Waste exclusion.

What alternatives did DEQ consider, if any?

The proposed rules add a few additional requirements to the federal requirements. Where federal requirements include biennial reporting and no fees, state adoption adds annual reporting and existing fees to align with existing hazardous waste generator requirements.

DEQ considered:

- Not adopting standards to implement the updated federal standards. DEQ rejected this alternative because it would establish two different standards – the federal and the state – with which a facility would need to comply. This would complicate DEQ's ability to ensure generator compliance and reduce DEQ's ability to provide effective assistance to Oregonians.
- Making state-specific changes to some federal standards. DEQ rejected this alternative in most part because the federal rules address Oregon's immediate concerns, and consistency with the federal rules reduces cost and complexity for

affected parties. DEQ did retain Oregon’s prohibition to manage hazardous waste in land-based units without a treatment, storage, and disposal facility – or TSDF – permit in our proposed definition of “contained.”

Land use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 requires DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that the rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objects, or areas identified in the statewide planning goals, or
 - Present or future land uses identified in comprehensive plans.

DEQ determined whether the proposed rules involve programs or actions affect land use by reviewing its State Agency Coordination Plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Land-Use Determination

DEQ determined these proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

EQC Prior Involvement

DEQ will share information about this rulemaking with the EQC through informational items in the Director's Report during the July 2022 meeting. These documents are publicly available from the agency website [here](#).

Advisory Committee

DEQ convened the Hazardous Waste Rules 2022 Rulemaking Advisory Committee. In convening this committee, DEQ selected members who reflect the range of entities directly and indirectly affected by the proposed hazardous waste rule changes. Representatives were able to consider the technical, fiscal, and economic impact of the proposed rules for the organizations they represent. Efforts were made to represent numerous sectors, including public, private, nonprofit, communities facing environmental justice issues, as well as small and large businesses and all DEQ regions to ensure rural representation.

The committee met once. The committee's web page is located at: [Hazardous Waste Rules 2022](#).

Hazardous Waste Rules Advisory Committee Roster		
Name	Affiliation	Representing
Marjorie MartzEmerson	Independent Environmental Consultant Formerly: PNW Pollution Prevention Resource; Coyote & Chirp Biosphere LLC	• Environmental Advocates • Small businesses • Rural Oregon • Located in Joseph
Jim Denson	PNW/BC Environmental Protection Manager, WM	• Chemical Waste Management • Only hazardous waste landfill in Oregon • Located in Arlington
Lisa Arkin	Executive Director, Beyond Toxics	• Environmental Advocates • Environmental Justice • Located in Eugene
Jenna Kube	Environmental Engineer, Intel	• Large businesses • Large quantity generators • Located in Portland
Marty French	Laboratory Director, Specialty Analytical	• Small Businesses • Environmental and analytical testing • Located in Clackamas

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - DEQ Public Notices – 14,754
 - Rulemaking – 16,493

- Hazardous Waste – 3,954
- DEQ also sent a notice on April 27, 2022, to the GovDelivery lists for public notices, rulemaking and hazardous waste to describe how to sign up and attend the committee meetings.
- Notified EPA by email to Margaret Olson, EPA Region 10, on April 28, 2022.
- Posted the Notice and meeting supporting documents on the web page for this rulemaking, located at: [Hazardous Waste Rules 2022](#).
- Added advisory committee announcements to DEQ’s calendar of public meetings at [DEQ Calendar](#).

Committee discussions

In addition to the recommendations described under the [Statement of Fiscal and Economic Impact](#) section above, the committee provided input and discussion on the proposed draft rules, which were captured in the May 9, 2022, meeting notes. Once finalized, these notes will be available on the committee’s webpage at [Hazardous Waste Rules 2022](#) under “Advisory Committee”.

Agenda, rule information, and presentation slides are also available on the committee’s webpage at [Hazardous Waste Rules 2022](#) under “Advisory Committee.” The Advisory Committee [Roster](#), [Charter](#) and [Job Description](#) are also available at the links provided.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On July 18, 2022, filing notice with the Oregon Secretary of State for publication in the August 2022 Oregon Bulletin;
- Notifying the EPA by email;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located [here](#);
- Notifying approximately 25,297 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - DEQ Public Notices
 - Hazardous Waste
 - Hazardous Waste Training
 - Toxics Use and Hazardous Waste Reduction Program
- Emailing approximately 1,014 hazardous waste generators reporters for last three years in DEQ's reporting database;
- Emailing the following key Oregon legislators required under [ORS 183.335](#):
 - Sen. Kate Lieber, Chair Senate Interim Committee on Energy and Environment
 - Sen. Lynn Findley, Vice-Chair Senate Interim Committee on Energy and Environment
 - Rep. Pam Marsh, Chair House Interim Committee on Environment and Natural Resources
 - Rep. Zach Hudson, Vice-Chair House Interim Committee on Environment and Natural Resources
 - Rep. David Brock Smith, Vice-Chair, House Interim Committee on Environment and Natural Resources.
- Emailing advisory committee members;
- Posting on the DEQ event calendar: [DEQ Calendar](#)

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by regular mail, email or at the public hearing.

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m. on Aug. 31, 2022.

Submit comment by email

Any person can submit comments by sending an email. Commenters should include “Rulemaking Comment” in the email subject line. Submit emails to:

hazwaste.2022@deq.oregon.gov

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Ellie Brown
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

At hearing

Aug. 17 and 18, 2022

Public Hearing

DEQ plans to hold two virtual public hearing(s). The public hearing is online and by teleconference only, and anyone can attend a hearing by webinar or teleconference.

DEQ plans to hold two virtual public hearings. Anyone can attend a hearing.

First Hearing

Date: Wednesday, Aug. 17, 2022

Start time: 5 p.m.

Location: [Virtual via Zoom](#)

Join by phone

Call-in number: 888-475-4499 (Toll-free in the U.S.)

Meeting ID: 816 8262 2017

Passcode: 271657

Second Hearing

Date: Thursday, Aug. 18, 2022

Start time: 11 a.m.

Location: [Virtual via Zoom](#)

Join by phone

Call-in number: 888-475-4499 (Toll-free in the U.S.)

Meeting ID: 811 7523 1474 Passcode: 271657

Instructions on how to join webinar or teleconference: [Instructions](#)

DEQ will consider all comments and testimony received before the closing date. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Accessibility Information

You may review copies of all documents referenced in this announcement electronically. To schedule a review of all websites and documents referenced in this announcement, call Ellie Brown, DEQ senior hazardous waste policy analyst, at 503-863-1431.

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format, or any other arrangements necessary to accommodate a disability. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll free in Oregon at 800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

Draft Rules – Edits Highlighted (Redlined)

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340-100-0043 (New) - Legitimacy Criteria

Division 101 – Identification and Listing of Hazardous Waste

340-101-0004 - Exclusions

Division 102 - Standards Applicable to Generators of Hazardous Waste

340-102-0230 – Episodic Generation

Division 105 - Management Facility Permits

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Division 12 - Enforcement Procedure and Civil Penalties

340-012-0068 - Hazardous Waste Management and Disposal Classification of Violations

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- Insertions Underlined Blue
- Deletions ~~Strikethrough Red~~
- Moved from ~~Double Strikethrough Green~~
- Moved to Double Underlined Green

Division 100 HAZARDOUS WASTE MANAGEMENT

340-100-0002

Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations

(1) Except as otherwise modified or specified by OAR 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142, the Commission adopts by reference, and requires every person subject to ORS 466.005 to 466.080 and 466.090 to 466.215, to comply with the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, as the United States Environmental Protection Agency prescribes in 40 C.F.R. Parts 260 to 268, 270, 273 and Subpart A and Subpart B of Part 124, as enacted through July 30, 2020, except as modified below in sections (2), (3) and (4).

(2) The Commission expressly adopts only 40 C.F.R. § 270.14(a) and § 270.28 as amended in adoption of 63 Federal Register 56710 (c174), October 22, 1998.

(3) The Commission excludes from the rules adopted in Section (1) of this rule, and does not adopt by reference 40 C.F.R. § 266.504(d), 40 C.F.R. § 260.2, [40 C.F.R. § 260.10 “contained,”](#) and the amendments to 40 C.F.R. Parts 124, 260 to 268, 270 and 273 as enacted at:

(a) 63 Federal Register 56710-56735 (c174), October 22, 1998 (amendments to 40 C.F.R. § 264-265 and § 270(1)(c));

(b) 69 Federal Register 21737-21754 (c204), April 22, 2004;

(c) 69 Federal Register 62217-62224 (c204.1), October 25, 2004;

(d) 73 Federal Register 57-72 (c216), January 2, 2008;

(e) 73 Federal Register 64668-64788 (c219), October 30, 2008;

(f) 73 Federal Register 77954-78017 (c221), December 19, 2008;

(g) 79 Federal Register 350-364 (c230), January 3, 2014;

(h) 80 Federal Register 1694-1814 (c233[D and E](#)), January 13, 2015; and

(i) 83 Federal Register 24664-24671 (c233[D and E](#)), May 30, 2018.

(4) Except as otherwise modified or specified by OAR 340, division 111, the Commission adopts by reference, and requires every person subject to ORS 466.005 to 466.080 and 466.090 to 466.215, to comply with the rules and regulations governing the standards for managing used oil, the United States Environmental Protection Agency prescribes in 40 C.F.R. Part 279, enacted through July 30, 2003.

[COMMENT: The Department uses the federal preamble accompanying the federal regulations and federal guidance as a basis for regulatory decision-making.]

Statutory/Other Authority: ORS 465.009, 465.505 & 466.020

Statutes/Other Implemented: ORS 465.003, 465.009, 465.505, 466.005, 466.075 & 466.105

340-100-0010

Definitions

(1) The definitions in this rule modify, or are in addition to, the definitions contained in 40 C.F.R. § 260.10 and as specified below.

(2) When used in divisions 100 to 110 and 120 of this chapter, the following terms have the meanings given below:

(a) "Administrator" means:

(A) The "Department", except as specified in paragraph (2)(a)(B) or (C) of this rule;

(B) The "Commission," when used in 40 C.F.R. §§ 261.10 and 261.11; or

(C) The Administrator of the U.S. Environmental Protection Agency, when used in 40 C.F.R. § 262.50.

(b) "Aquatic LC50" (median aquatic lethal concentration) means that concentration of a substance which is expected in a specific time to kill 50 percent of an indigenous aquatic test population (e.g., fish, insects or other aquatic organisms). Aquatic LC50 is expressed in milligrams of the substance per liter of water.

(c) "Beneficiation of Ores and Minerals" means upgrading ores and minerals by purely physical processes (e.g., crushing, screening, settling, flotation, dewatering and drying) with the addition of other chemical products only to the extent that they are a non-hazardous aid to the physical process (such as flocculants and deflocculants added to a froth-flotation process).

(d) "CEG" or "conditionally exempt generator" or "conditionally exempt small quantity generator" is equivalent to very small quantity generator as defined under 40 C.F.R. 260.10.

(e) "Collection." See "Storage."

(f) "Commission" means the Environmental Quality Commission.

(g) "Contained" means stored in a container, tank or containment building in compliance with the generator standards of 40 C.F.R. 262, or at a permitted TSDF.

(g) "Demilitarization" means all processes and activities at the Umatilla Chemical Depot (OR 6213820917) and Umatilla Chemical Agent Disposal Facility (ORQ 000009431) from February 12, 1997, through Department approval of the closure of all permitted treatment, storage and disposal units and facility-wide corrective action.

(h) "Demilitarization Residue" means any solid waste generated by demilitarization processes and activities as defined in 340-100-0010(2)(f), except for:

(A) Waste streams generated from processes or activities prior to the introduction of nerve or blister agent into the treatment unit; and

(B) Waste streams generated from maintenance or operation of non-agent contaminated process utility systems.

(i) "Department" means the Department of Environmental Quality except it means the Commission when the context relates to a matter solely within the authority of the Commission such as: The adoption of rules and issuance of orders thereon pursuant to ORS 466.020, 466.075, and 466.510; the making of findings to support declassification of hazardous wastes pursuant to ORS 466.015(3); the issuance of exemptions pursuant to ORS 466.095(2); the issuance of disposal site permits pursuant to ORS 466.140(2); and the holding of hearings pursuant to ORS 466.130, 466.140(2), 466.170, 466.185, and 466.190.

(j) "Director" means:

(A) The "Department", except as specified in paragraph (2)(i)(B) of this rule; or

(B) The "permitting body", as defined in section (2) of this rule, when used in 40 C.F.R. §§ 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17.

(~~kl~~) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste or hazardous substance into or on any land or water so that the hazardous waste or hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468B.005.

(~~lm~~) "Dry Cleaning Facility" means any facility as defined by 40 C.F.R. § 260.10 and adopted under OAR 340-100-0002, located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than:

(A) A facility located on a United States military base;

(B) A uniform service or linen supply facility;

(C) A prison or other penal institution; or

(D) A facility engaged in dry cleaning operations only as a dry store and selling less than \$50,000 per year of dry cleaning services.

(~~mn~~) "Dry Cleaning Operator" means a person who has, or had, a business license to operate a dry cleaning facility or a business operation that a dry cleaning facility is a part of or any person that owns the dry cleaning business, leases the operation of the dry cleaning business from the owner, or makes any other kind of agreement or arrangement whereby they operated the dry cleaning business.

(~~no~~) "Dry Cleaning Wastewater" means water from the solvent/water separation process of the dry cleaning machine.

(~~ep~~) "EPA" or "Environmental Protection Agency" means the Department of Environmental Quality.

(~~pq~~) "EPA Form 8700-12" means EPA Form 8700-12 as modified by the Department.

(~~qr~~) "Existing Hazardous Waste Management (HWM) Facility" or "Existing Facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, or is in existence on the effective date of statutory or regulatory changes under Oregon law that render the facility subject to the requirement to have a permit. A facility has commenced construction if:

(A) The owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either

(B)(i) A continuous on-site, physical construction program has begun; or

(ii) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the facility to be completed within a reasonable time.

(~~rs~~) "Extraction of Ores and Minerals" means the process of mining and removing ores and minerals from the earth.

(~~st~~) "Generator" means the person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(~~tu~~) "Hazardous Substance" means any substance intended for use which may also be identified as hazardous under division 101.

(~~uv~~) "Hazardous Waste" means a hazardous waste as defined in 40 C.F.R. 261.3, OAR 340-101-0033 and 340-102-0011.

(~~wy~~) "Identification Number" means the number assigned by DEQ to each generator, transporter, and treatment, storage and disposal facility.

(~~wx~~) "Ignitable" or "exhibits the characteristic of ignitability" means it is a liquid, other than a solution containing less than 24 percent ethyl alcohol by volume, at least 50 percent water by weight, and no other ignitable constituents, that has a flash point less than 60°C (140°F) as determined under 40 C.F.R. 261.21(a)(1). Or if a representative sample of the waste has any of the properties referenced in 40 C.F.R. §§ 261.21(a)(2) through 262.21(a)(4).

(~~xy~~) "License." See "Permit."

(~~yz~~) "Management Facility" means a hazardous waste treatment, storage or disposal facility.

(~~zaa~~) "Off-site" means any site which is not on-site.

(~~aabb~~) "Oxidizer" means any substance such as a chlorate, permanganate, peroxide, or nitrate, that yields oxygen readily or otherwise acts to stimulate the combustion of organic matter (see 49 C.F.R. 173.127).

(~~bbcc~~) "Permitting Body" means:

(A) The Department of Environmental Quality, when the activity or action pertains to hazardous waste storage or treatment facility permits; or

(B) The Environmental Quality Commission, when the activity or action pertains to hazardous waste disposal facility permits.

(~~eedd~~) "Permit" or "License" means the control document that contains the requirements of ORS Chapter 466 and OAR 340, divisions 104 to 106 and 120. Permit includes permit-by-rule and emergency permit. Permit does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit.

(~~ddcc~~) "RCRA" or "Resource Conservation and Recovery Act", when used to refer to a federal law, means Oregon law.

(~~eeff~~) "RCRA Permit" means Oregon hazardous waste management facility permit.

(~~ffgg~~) "Regional Administrator" means:

(A) The "Department", except as specified in paragraph (2)(dd)(B) or (C) of this rule;

(B) The "permitting body", as defined in section (2) of this rule when used in 40 C.F.R. §§ 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17;

(C) The "Commission", when used in 40 C.F.R. §§260.30 through 260.41.

(~~gg~~hh) "Residue" means solid waste as defined in 40 C.F.R. § 261.2.

(~~hh~~ii) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(~~ii~~jj) "Spill" means unauthorized disposal.

(~~jj~~kk) "Storage" or "Collection" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

(~~kk~~ll) "Waste Management Unit" means a contiguous area of land on or in which waste is placed. A waste management unit is the largest area in which there is a significant likelihood of mixing of waste constituents in the same area. Usually, but not always, this is because each waste management unit is subject to a uniform set of management practices (e.g., one liner and leachate collection and removal system). The provisions in the OAR 340, Division 104 regulations (principally the technical standards in Subparts K–N of 40 C.F.R. Part 264) establish requirements that a person subject to these rules must implement on a unit-by-unit basis.

(3) When used in divisions 100 to 106, 109, 113 and 142 of this chapter, the following terms have the meanings given below:

(a) "Aeration" means a specific treatment for decontaminating an empty volatile substance container by removing the closure and placing the container in an inverted position for at least 24 hours.

(b) "Beneficial Use" means returning without processing unused pesticide product (e.g., pesticide equipment rinsing, excess spray mixture) or empty pesticide containers to the economic mainstream as a substitute for raw materials in an industrial process or as a commercial product (e.g., melting a container for scrap metal).

(c) "Department" means the Department of Environmental Quality.

(d) "Empty Container" means a container from which:

(A) All the contents have been removed that can be removed using the practices commonly employed to remove materials from that type of container; and

(B)(i) No more than one inch of residue remains on the bottom of the container; or

(ii) No more than three percent of the total capacity of the container remains in the container if the container is less than or equal to 110 gallons in size; or

(iii) No more than 0.3% of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size; or

(iv) If the material is a compressed gas, the pressure in the container is atmospheric.

(e) "Household Use" means use by the home or dwelling owner in or around households (including single and multiple residences, hotels and motels).

(f) "Jet Rinsing" means a specific treatment for an empty container using the following procedure:

(A) A nozzle is inserted into the container, or the empty container is inverted over a nozzle such that all interior surfaces of the container can be rinsed; and

(B) The container is thoroughly rinsed using an appropriate solvent.

(g) "Multiple Rinsing" means a specific treatment for an empty container repeating the following procedure a minimum of three times:

(A) An appropriate solvent is placed in the container in an amount equal to at least 10% of the container volume; and

(B) The container is agitated to rinse all interior surfaces; and

(C) The container is opened and drained, allowing at least 30 seconds after drips start.

(h) "Pesticide" means any substance or combination of substances intended to defoliate plants or to prevent, destroy, repel, or mitigate insects, fungi, weeds, rodents, or predatory animals. Pesticide includes but is not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006.

(i) "Pesticide Equipment" means any equipment, machinery or device used in pesticide manufacture, repackaging, formulation, bulking and mixing, use, cleaning up spills, or preparation for use or application of pesticides, including but not limited to aircraft, ground spraying equipment, hoppers, tanks, booms and hoses.

(j) "Pesticide Residue" is a waste that is generated from pesticide operations and pesticide management, such as from pesticide use (except household use), manufacturing, repackaging, formulation, bulking and mixing, and spills.

(A) Pesticide residue includes, but is not limited to, unused commercial pesticides, tank or container bottoms or sludges, pesticide spray mixture, container rinsings\ and pesticide equipment washings, and substances generated from pesticide treatment, recycling, disposal, and rinsing spray and pesticide equipment.

(B) Pesticide residue does not include pesticide-containing materials that are used according to label instructions, and substances such as, but not limited to, treated soil, treated wood, foodstuff, water, vegetation, and treated seeds where pesticides were applied according to label instructions. Pesticide residue does not include wastes that are listed in 40 C.F.R. Part 261 Subpart D or that exhibit one or more of the characteristics identified in 40 C.F.R. Part 261 Subpart C.

(k) "Public-Use Airport" means an airport open to the flying public which may or may not be attended or have service available.

(l) "Reuse" means the return of a commodity to the economic mainstream for use in the same kind of application as before without change in its identity (e.g., a container used to repackage a pesticide formulation).

Statutory/Other Authority: ORS 465.009 & 466.020

Statutes/Other Implemented: ORS 465.003, 465.009, 466.005, 466.075 & 466.105

340-100-0042
Variance Reporting

(1) The provisions of this rule replace the provisions of 40 C.F.R. § 260.42(a) and § 260.42(a)(5).

(2) The provisions of § 260.42(a)(5) are removed and reserved.

(3) Facilities managing materials under a variance must send a notification prior to operating under the regulatory provisions and by March 1 of each year.

Statutory/Other Authority: ORS 183, 459, 465.009, 466.020 & 468

Statutes/Other Implemented: ORS 465.003, 465.009, 466.005, 466.020, 466.075, 466.105 & 468.020

340-100-0043
Legitimacy Criteria

The provisions of this rule replace the provisions of 40 C.F.R. § 260.43(a)(3) “Where there is an analogous raw material, the hazardous secondary material must be “contained”, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material,” is deleted.

Statutory/Other Authority: ORS 183, 459, 465.009, 466.020 & 468

Statutes/Other Implemented: ORS 465.003, 465.009, 466.005, 466.020, 466.075, 466.105 & 468.020

Division 101
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

340-101-0004
Exclusions

(1) Residue described in 40 C.F.R. § 261.4(b)(9) is exempted from divisions 100-106 and 109.

(2) Dry cleaning wastewater subject to the requirements in OAR 340 division 124 is not excluded under 40 C.F.R. §§ 261.4(a)(1)(i) and (ii).

(3) The phrase “or labeled with equivalent wording describing the contents of the container and recognizing the exclusion” is added to the end of the first sentence in 40 C.F.R. § 261.4(a)(26)(i) and 40 C.F.R. § 261.4(b)(18)(i).

(4) The phrase “To a municipal solid waste landfill regulated under 40 C.F.R. part 258, including 40 C.F.R. § 258.40, or” is deleted from 40 C.F.R. § 261.4(b)(18)(vi)(A).

(5) The phrase “To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or” in 40 C.F.R. 261.4(b)(18)(vi)(B) is deleted.

(6) Selmet, Inc, or its corporate successor (Selmet). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:

(a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at Selmet’s facility in, Albany, Oregon, and contained in an on-site surface impoundment, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. This is a one-time exclusion. [Note: The petition is attached as Appendix 1 to this rule.]

(b) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at Selmet’s facility in Albany, Oregon, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. The exemption is limited to a maximum annual rate of 3120 cubic yards per year. Selmet must have the sludge disposed of in a Subtitle D landfill the department licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [Note: The petition is attached as Appendix 1 to this rule.]

(c) The exemption described in subsection 6(b) of this rule remains in effect only as long as Selmet meets the following conditions:

(A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.2; chromium-4.9; nickel-32.7; cyanide-7.5 and fluoride-94.8.

(B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, Selmet, Inc. must collect and analyze one waste sample annually using methods with appropriate detection concentrations and elements of quality control. Selmet may use a total analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure concentration as provided for in section 1.2 of Method 1311 as described in EPA SW 846. The Toxicity Characteristic Leaching Procedure is attached to this rule as Appendix 3.]

(d) Changes in Operation Conditions:

(A) If Selmet significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, Selmet must notify DEQ not more than 30 days after making the change.

(B) Selmet must handle the wastes generated after the process change as hazardous until DEQ notifies Selmet in writing that DEQ has determined the wastes continue to meet the delisting concentrations in subparagraph (6)(c)(A), that Selmet has demonstrated that no new hazardous constituents listed in appendix VIII of 40 C.F.R. part 261 have been introduced, and that the department approves Selmet’s not handling the wastes as hazardous.

(e) Data Submittals: Selmet must submit the data obtained through verification testing, or as required by other conditions of this rule, to DEQ. Selmet must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. Selmet must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. Selmet must make these records available to DEQ for inspection.

Selmet must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(f) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, Selmet possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in subparagraph 6(c)(A), then Selmet must report such data, in writing, to DEQ, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (6)(d) and (6)(e), and any other information received from any source, DEQ will make a preliminary determination as to whether the reported information requires department action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If DEQ determines that the reported information does require DEQ action, DEQ will notify Selmet in writing, of the actions DEQ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing Selmet with an opportunity to present information as to why the proposed DEQ action is not necessary or to suggest an alternative action. Selmet must provide to DEQ in writing its information in response to the notice within 30 days from the date DEQ mails its notice requesting the information.

(D) DEQ will issue a final written determination. DEQ will issue the written determination no sooner than 30 days after DEQ mailed its notice to Selmet. Before issuing its determination, DEQ will consider any additional information Selmet submitted to DEQ within 30 days after DEQ issued its notice. The written determination will describe DEQ's actions that are necessary to protect human health and the environment. Any required action described in DEQ's determination is effective immediately, unless DEQ provides otherwise.

(7) Pacific Cast Technologies, Inc., or its corporate successor (PCT). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:

(a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at PCT's, Albany, Oregon facility as described in the delisting petition PCT provided on April 11, 2019. The exemption is limited to a maximum annual rate of 9,000 cubic yards per year. PCT must have the sludge disposed of in a Subtitle D landfill that DEQ licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [Note: The petition is attached to this rule as Appendix 2.]

(b) The exemption described in OAR 340-101-0004(7)(a) remains in effect only as long as PCT meets the following conditions:

(A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.0911; chromium-2.27; nickel-13.5; and cyanide-3.08.

(B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, PCT must collect and analyze one waste sample annually using methods with

appropriate detection limits and elements of quality control (similar to those in the delisting petition). PCT may use a total analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure concentration as provided for in section 1.2 of Method 1311.

(bc) Changes in Operation Conditions:

(A) If PCT significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, PCT must notify DEQ not more than 30 days after making the change.

(B) PCT must handle the wastes generated after the process change as hazardous until DEQ notifies PCT in writing DEQ has determined that the waste continues to meet the delisting concentrations in OAR 340-101-0004(7)(b)(A), that PCT has demonstrated that no new hazardous constituents listed in appendix VIII of 40 CFR part 261 have been introduced, and that the department approves PCT's not handling the wastes as hazardous.

(ed) Data Submittals: PCT must submit the data obtained through verification testing, or as required by other conditions of this rule, to DEQ. PCT must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. PCT must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. PCT must make these records available to DEQ for inspection. PCT must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(de) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, PCT possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in paragraph 7(b)(A), then PCT must report such data, in writing, to DEQ, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (7)(b) and (7)(c), and any other information received from any source, DEQ will make a preliminary determination as to whether the reported information requires DEQ action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If DEQ determines that the reported information does require DEQ action, DEQ will notify PCT in writing, of the actions DEQ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing PCT with an opportunity to present information as to why the proposed DEQ action is not necessary or to suggest an alternative action. PCT must provide to DEQ in writing its information in response to the notice within 30 days from the date the department mails its notice requesting the information.

(D) DEQ will issue a final written determination. DEQ may issue the determination at the later of either 30 days after it mailed notice to PCT, if PCT presented no additional information during that interval, or after reviewing any information Pacific submitted during the 30-day interval. The written determination will describe DEQ actions that are necessary to protect human health and the

environment. Any required action described in DEQ's determination is effective immediately, unless the DEQ provides otherwise.

[\(8\) The provisions contained in 40 C.F.R. 261.4\(a\)\(23\), \(a\)\(24\), \(a\)\(25\), and \(a\)\(27\) are deleted.](#)

[NOTE: View a PDF of Appendices by clicking on "Tables" link below.]

[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.]

Statutory/Other Authority: ORS 192, 465.009, 466.015, 466.020, 466.075, 466.090, 466.180, 468.020 & 646

Statutes/Other Implemented: ORS 466.015, 466.075 & 466.195

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## **Division 102**

### **STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

#### **340-102-0230**

##### **Episodic Generation**

(1) The provisions of this rule are in addition to the requirements of 40 C.F.R. 262 Subpart L.

(2) All episodic generators, ~~including very small quantity generators~~ are required to ~~notify the Department per 40 C.F.R. 262.232, obtain a Department or EPA identification number,~~ submit an annual hazardous waste generator report, and pay hazardous waste generation fees as required by OAR 340-102-0041 and OAR 340-102-0065.

~~(3) When notifying the Department, generators must use the form provided by the Department and submit notification 60 days in advance of initiating a planned episodic event.~~

~~(4)~~(3) Planned events require prior written Department approval to qualify as episodic.

~~(5)~~(4) Generators must submit written notification on the form provided by the Department to DEQ within five days of submitting the initial 72-hour notification for unplanned events.

**Statutory/Other Authority:** ORS 183, 459, 466.020, ~~ORS~~ 466.075, 466.105, 466.165, 466.195 & 468

**Statutes/Other Implemented:** ORS 466.075 & 466.090

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Division 105

MANAGEMENT FACILITY PERMITS

340-105-0120

Hazardous Waste Management Fee

(1) Every person who operates a facility for the purpose of disposing of hazardous waste or polychlorinated biphenyl (PCB) that is subject to interim status or a permit issued under ORS Chapter 466 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount authorized by ORS 465.375. For purposes of calculating the fee required by this section, the facility operator does not need to include hazardous waste resulting from on-site treatment processes used to render a waste less hazardous or reduced in volume prior to land disposal.

(2) The term “hazardous waste” means any hazardous waste as defined by rules adopted by the Environmental Quality Commission and includes any hazardous waste as defined in OAR 340, division 100 or 101 or 40 CFR Part 261 handled under the authority of interim status or a management facility permit.

(3) The term “PCB” shall have the meaning given to it in OAR 340, division 110.

(4) The term “ton” means 2,000 pounds and means the weight of waste in tons as determined at the time of receipt at a hazardous waste or PCB management facility. The term “ton” shall include the weight of any containers treated or disposed of along with the wastes being held by the container.

(5) In the case of a fraction of a ton, the fee imposed by section (1) of this rule shall be the same fraction multiplied by the amount of such fee imposed on a whole ton.

(6) Every person subject to the fee requirement of section (1) of this rule shall record actual weight for all waste received for treatment by incinerator or disposal by landfilling in tons at the time of receipt. The scale shall be licensed in accordance with ORS Chapter 618 by the Weights and Measures Division of the Department of Agriculture.

(7) Accompanying each monthly payment shall be a detailed record identifying the basis for calculating the fee.

(8) Notwithstanding section 1 of this rule, the hazardous waste disposal management fee shall be:

(a) \$20 per ton for waste received by the facility that is:

(A) PCB under Oregon or federal law;

(B) Hazardous waste that becomes subject to regulation solely as a result of removal or remedial action taken in response to environmental contamination; or

(C) Hazardous waste that results from corrective action or closure of a regulated or nonregulated waste management unit.

(b) \$5 per ton for waste that is:

(A) A characteristic hazardous waste at the point of generation and that has been treated at the facility or at an off-site location so that the waste no longer exhibits the characteristics of hazardous waste and so that the waste complies with any applicable land disposal requirements;

(B) Liquid waste when the waste is received and treated at a wastewater treatment unit at the facility so that the waste does not exhibit any characteristics of hazardous waste and so that the resulting liquid is managed at a permitted unit at the facility;

(C) Solid waste that results from cleanup activities and that must be disposed of in a facility for the disposal of hazardous waste as a result of restrictions imposed under ORS 459.055(8) or 459.305(7);
or

(D) Solid waste that is not hazardous waste or PCB under a state or federal law at the point of generation and that is not a hazardous waste under Oregon law.

(98) All fees shall be made payable to the Department of Environmental Quality. All fees received by the Department of Environmental Quality shall be paid into the State Treasury.

Statutory/Other Authority: 465.400(1), 465.405, [465.375](#), [465.376](#), [466.020](#), [466.075](#), [466.165](#), [466.195](#), & 468.020

Statutes/Other Implemented: ORS [465.375](#), [465.376](#) & 466.165

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## **Division 12**

### **ENFORCEMENT PROCEDURE AND CIVIL PENALTIES**

#### **340-012-0068**

#### **Hazardous Waste Management and Disposal Classification of Violations**

(1) Class I:

(a) Failing to make or document a complete and accurate hazardous waste determination of a residue as required;

(b) Failing to meet Land Disposal Restriction (LDR) requirements when disposing of hazardous waste;

(c) Operating a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status;

(d) Treating, storing or accumulating hazardous waste in a hazardous waste management unit, as defined in 40 C.F.R. 260.10, that does not meet the unit design or unit integrity assessment criteria for the hazardous waste management unit;

(e) Accepting, transporting or offering for transport hazardous waste without a uniform hazardous waste manifest; (f) Transporting, or offering for transport, hazardous waste or hazardous waste to a facility not authorized or permitted to manage hazardous waste or hazardous waste pharmaceuticals;

(f) Transporting, or offering for transport, hazardous waste or hazardous waste pharmaceuticals to a facility not authorized or permitted to manage hazardous waste or hazardous waste pharmaceuticals;

(g) Failing to comply with management requirements for ignitable, reactive, or incompatible hazardous waste;

- (h) Illegally treating or disposing of a hazardous waste;
- (i) Failing to submit Land Disposal Restriction notifications;
- (j) Failing to have and maintain a closure plan or post closure plan for a TSD facility, reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals or for each regulated hazardous waste management unit, as defined in 40 C.F.R. 260.10, by the owner or operator of facility or unit;
- (k) Failing to carry out closure or post closure plan requirements, by an owner or operator of a TSD facility, such that the certification for completing closure or post closure work is not submitted, or is incomplete, inaccurate, or non-compliant with the approved plans;
- (l) Failing to establish or maintain financial assurance or hazard liability requirements in 40 C.F.R. 264.147 or 40 C.F.R. 265.147, by an owner or operator of a TSD facility;
- (m) Failing to follow emergency procedures in a Contingency Plan or other emergency response requirements during an incident in which a hazardous waste or hazardous waste constituent is released to the environment or the incident presents a risk of harm to employees, emergency responders or the public;
- (n) Failing to comply with the export requirements in 40 C.F.R. 262.52 for hazardous wastes, 40 C.F.R. 266.508(b) for non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, or 40 C.F.R. 266.509(d) for potentially creditable hazardous waste pharmaceuticals;
- (o) Failing to properly install a groundwater monitoring system in compliance with permit requirements, by an owner or operator of a TSD facility;
- (p) Failing to properly control volatile organic hazardous waste emissions, by a large-quantity hazardous waste generator or TSD facility, when such failure could result in harm to employees, the public or the environment;
- (q) Failing to inspect, operate, monitor, keep records or maintain in compliance with a permit: hazardous waste landfill units, incineration equipment, Subpart X treatment equipment, hazardous waste treatment units, pollution abatement equipment for hazardous waste treatment or disposal, or hazardous waste monitoring equipment;
- (r) Failing to immediately clean up spills or releases or threatened spills or releases of hazardous waste, or hazardous waste pharmaceuticals, by any person having ownership or control over hazardous waste;
- (s) Failing to submit an exception report for generators shipping hazardous waste, for healthcare facilities shipping non-creditable hazardous waste pharmaceuticals, or for reverse distributors shipping evaluated hazardous waste pharmaceuticals;
- (t) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall;
- (u) Failing to accurately determine generator status;

- (v) Failing to notify or withdraw for healthcare facilities or reverse distributors;
- (w) Failing to comply with the prohibition against sewerage hazardous waste pharmaceuticals;
- (x) Transporting, or offering for transport, hazardous waste other than potentially creditable hazardous waste to a facility other than a reverse distributor;
- (y) Failing to submit an unauthorized waste report;
- (z) Accepting hazardous waste pharmaceuticals at a facility not authorized or permitted to manage the specific type of hazardous waste pharmaceuticals received; or
- (aa) Failing to provide confirmation to the healthcare facility or reverse distributor that shipment of potentially creditable hazardous waste pharmaceuticals has arrived at its destination and is under the control of the reverse distributor.

(2) Class II:

- (a) Failing to place an accumulation start date on a container used for accumulation or storage of hazardous waste ~~or hazardous waste pharmaceuticals~~;
- (b) Failing to label tanks or containers used for accumulation or storage of hazardous waste with “hazardous waste,” hazards of the contents, waste codes, or “hazardous waste pharmaceutical”;
- (c) Failing to post required emergency response information next to the telephone, by a small quantity generator;
- (d) Accumulating hazardous waste, non-creditable hazardous waste pharmaceuticals, potentially creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals more than thirty (30) days beyond the specified accumulation time frame;
- (e) Failing to submit a manifest discrepancy report;
- (f) Shipping hazardous waste on manifests that do not comply with DEQ rules;
- (g) Failing to prevent the unknown or unauthorized entry of a person or livestock into the waste management area of a TSD facility or into a portion of a reverse distributor’s facility where potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are kept;
- (h) Failing to conduct required inspections at hazardous waste generator or reverse distributor accumulation sites or at hazardous waste permitted storage areas;
- (i) Failing to prepare a contingency plan;
- (j) Failing to comply with the requirements of a groundwater monitoring program, unless otherwise classified;

- (k) Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;
- (l) Generating, treating, storing or disposing of hazardous waste, non-creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals, without complying with the Personnel Training requirements;
- (m) Failing to keep containers of hazardous waste, non-creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals closed, except when adding or removing wastes;
- (n) Failing to comply with the requirements for management of containers, including satellite accumulation, other than the requirements for ignitable, reactive or incompatible waste, by a hazardous waste generator, storage facility, health care facility, or reverse distributor;
- (o) Failing to comply with the preparedness, prevention, contingency plan or emergency procedure requirements, unless otherwise classified;
- (p) Failing to manage universal waste and waste pesticide residue in compliance with the universal waste management requirements or waste pesticide requirements;
- (q) Failing to obtain a hazardous waste EPA identification number when required;
- (r) Failing to comply with 40 C.F.R. 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;
- (s) Failing to comply with 40 C.F.R. 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified;
- (t) Failing to timely submit an annual report by a hazardous waste generator, TSD facility, reverse distributor, or hazardous waste recycling facility;
- (u) Failing to comply with recalled airbag recordkeeping, management, or disposal requirements, unless otherwise classified;
- (v) Failing to timely notify DEQ of LQG closure;
- (w) Failing to comply with episodic generation conditions, not otherwise classified; or
- (x) Failing to notify, keep records, or other requirements for consolidation of VSQG waste at LQG owned by the same person, by the LQG.

(3) Class III:

- (a) Accumulating hazardous waste, non-creditable hazardous waste pharmaceuticals, potentially creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals, up to thirty (30) days beyond the specified accumulation time frame;
- (b) Failing to maintain on site, a copy of the one-time notification regarding hazardous waste that meets treatment standards by a hazardous waste generator; or

(c) Failing to submit a contingency plan to all police, fire, hospital and local emergency responders.

**Statutory/Other Authority:** ORS 459.995, 466.070 - 466.080, 466.625 & 468.020

**Statutes/Other Implemented:** ORS 466.635 - 466.680, 466.990 - 466.994 & 468.090 - 468.140

# Draft Rules – Edits Included (Non-Redlined)

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## **Division 100**

### **HAZARDOUS WASTE MANAGEMENT**

#### **340-100-0002**

#### **Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations**

(1) Except as otherwise modified or specified by OAR 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142, the Commission adopts by reference, and requires every person subject to ORS 466.005 to 466.080 and 466.090 to 466.215, to comply with the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, as the United States Environmental Protection Agency prescribes in 40 C.F.R. Parts 260 to 268, 270, 273 and Subpart A and Subpart B of Part 124, as enacted through July 30, 2020, except as modified below in sections (2), (3) and (4).

(2) The Commission expressly adopts only 40 C.F.R. § 270.14(a) and § 270.28 as amended in adoption of 63 Federal Register 56710 (c174), October 22, 1998.

(3) The Commission excludes from the rules adopted in Section (1) of this rule, and does not adopt by reference 40 C.F.R. § 266.504(d), 40 C.F.R. § 260.2, 40 C.F.R. § 260.10 “contained,” and the amendments to 40 C.F.R. Parts 124, 260 to 268, 270 and 273 as enacted at:

(a) 63 Federal Register 56710-56735 (c174), October 22, 1998 (amendments to 40 C.F.R. § 264-265 and § 270(1)(c));

(b) 69 Federal Register 21737-21754 (c204), April 22, 2004;

(c) 69 Federal Register 62217-62224 (c204.1), October 25, 2004;

(d) 73 Federal Register 57-72 (c216), January 2, 2008;

(e) 73 Federal Register 64668-64788 (c219), October 30, 2008;

(f) 73 Federal Register 77954-78017 (c221), December 19, 2008;

(g) 79 Federal Register 350-364 (c230), January 3, 2014;

(h) 80 Federal Register 1694-1814 (c233D and E), January 13, 2015; and

(i) 83 Federal Register 24664-24671 (c233D and E), May 30, 2018.

(4) Except as otherwise modified or specified by OAR 340, division 111, the Commission adopts by reference, and requires every person subject to ORS 466.005 to 466.080 and 466.090 to 466.215, to comply with the rules and regulations governing the standards for managing used oil, the United States Environmental Protection Agency prescribes in 40 C.F.R. Part 279, enacted through July 30, 2003.

[COMMENT: The Department uses the federal preamble accompanying the federal regulations and federal guidance as a basis for regulatory decision-making.]

**Statutory/Other Authority:** ORS 465.009, 465.505 & 466.020

**Statutes/Other Implemented:** ORS 465.003, 465.009, 465.505, 466.005, 466.075 & 466.105

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## **340-100-0010**

### **Definitions**

(1) The definitions in this rule modify, or are in addition to, the definitions contained in 40 C.F.R. § 260.10 and as specified below.

(2) When used in divisions 100 to 110 and 120 of this chapter, the following terms have the meanings given below:

(a) "Administrator" means:

(A) The "Department", except as specified in paragraph (2)(a)(B) or (C) of this rule;

(B) The "Commission," when used in 40 C.F.R. §§ 261.10 and 261.11; or

(C) The Administrator of the U.S. Environmental Protection Agency, when used in 40 C.F.R. § 262.50.

(b) "Aquatic LC50" (median aquatic lethal concentration) means that concentration of a substance which is expected in a specific time to kill 50 percent of an indigenous aquatic test population (e.g., fish, insects or other aquatic organisms). Aquatic LC50 is expressed in milligrams of the substance per liter of water.

(c) "Beneficiation of Ores and Minerals" means upgrading ores and minerals by purely physical processes (e.g., crushing, screening, settling, flotation, dewatering and drying) with the addition of other chemical products only to the extent that they are a non-hazardous aid to the physical process (such as flocculants and deflocculants added to a froth-flotation process).

(d) "CEG" or "conditionally exempt generator" or "conditionally exempt small quantity generator" is equivalent to very small quantity generator as defined under 40 C.F.R. 260.10.

(e) "Collection." See "Storage."

(f) "Commission" means the Environmental Quality Commission.

(g) "Contained" means stored in a container, tank or containment building in compliance with the generator standards of 40 C.F.R. 262, or at a permitted TSDF.

(h) "Demilitarization" means all processes and activities at the Umatilla Chemical Depot (OR 6213820917) and Umatilla Chemical Agent Disposal Facility (ORQ 000009431) from February 12, 1997, through Department approval of the closure of all permitted treatment, storage and disposal units and facility-wide corrective action.

(i) "Demilitarization Residue" means any solid waste generated by demilitarization processes and activities as defined in 340-100-0010(2)(f), except for:

(A) Waste streams generated from processes or activities prior to the introduction of nerve or blister agent into the treatment unit; and

(B) Waste streams generated from maintenance or operation of non-agent contaminated process utility systems.

(j) "Department" means the Department of Environmental Quality except it means the Commission when the context relates to a matter solely within the authority of the Commission such as: The adoption of rules and issuance of orders thereon pursuant to ORS 466.020, 466.075, and 466.510; the making of findings to support declassification of hazardous wastes pursuant to ORS 466.015(3); the issuance of exemptions pursuant to ORS 466.095(2); the issuance of disposal site permits pursuant to ORS 466.140(2); and the holding of hearings pursuant to ORS 466.130, 466.140(2), 466.170, 466.185, and 466.190.

(k) "Director" means:

(A) The "Department", except as specified in paragraph (2)(i)(B) of this rule; or

(B) The "permitting body", as defined in section (2) of this rule, when used in 40 C.F.R. §§ 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17.

(l) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste or hazardous substance into or on any land or water so that the hazardous waste or hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468B.005.

(m) "Dry Cleaning Facility" means any facility as defined by 40 C.F.R. § 260.10 and adopted under OAR 340-100-0002, located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than:

(A) A facility located on a United States military base;

(B) A uniform service or linen supply facility;

(C) A prison or other penal institution; or

(D) A facility engaged in dry cleaning operations only as a dry store and selling less than \$50,000 per year of dry cleaning services.

(n) "Dry Cleaning Operator" means a person who has, or had, a business license to operate a dry cleaning facility or a business operation that a dry cleaning facility is a part of or any person that owns the dry cleaning business, leases the operation of the dry cleaning business from the owner, or makes any other kind of agreement or arrangement whereby they operated the dry cleaning business.

(o) "Dry Cleaning Wastewater" means water from the solvent/water separation process of the dry cleaning machine.

(p) "EPA" or "Environmental Protection Agency" means the Department of Environmental Quality.

(q) "EPA Form 8700-12" means EPA Form 8700-12 as modified by the Department.

(r) "Existing Hazardous Waste Management (HWM) Facility" or "Existing Facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, or is in existence on the effective date of statutory or regulatory changes under Oregon law that render the facility subject to the requirement to have a permit. A facility has commenced construction if:

(A) The owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either

(B)(i) A continuous on-site, physical construction program has begun; or

(ii) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the facility to be completed within a reasonable time.

(s) "Extraction of Ores and Minerals" means the process of mining and removing ores and minerals from the earth.

(t) "Generator" means the person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(u) "Hazardous Substance" means any substance intended for use which may also be identified as hazardous under division 101.

(v) "Hazardous Waste" means a hazardous waste as defined in 40 C.F.R. 261.3, OAR 340-101-0033 and 340-102-0011.

(w) "Identification Number" means the number assigned by DEQ to each generator, transporter, and treatment, storage and disposal facility.

(x) "Ignitable" or "exhibits the characteristic of ignitability" means it is a liquid, other than a solution containing less than 24 percent ethyl alcohol by volume, at least 50 percent water by weight, and no other ignitable constituents, that has a flash point less than 60°C (140°F) as determined under 40 C.F.R. 261.21(a)(1). Or if a representative sample of the waste has any of the properties referenced in 40 C.F.R. §§ 261.21(a)(2) through 262.21(a)(4).

(y) "License." See "Permit."

(z) "Management Facility" means a hazardous waste treatment, storage or disposal facility.

(aa) "Off-site" means any site which is not on-site.

(bb) "Oxidizer" means any substance such as a chlorate, permanganate, peroxide, or nitrate, that yields oxygen readily or otherwise acts to stimulate the combustion of organic matter (see 49 C.F.R. 173.127).

(cc) "Permitting Body" means:

(A) The Department of Environmental Quality, when the activity or action pertains to hazardous waste storage or treatment facility permits; or

(B) The Environmental Quality Commission, when the activity or action pertains to hazardous waste disposal facility permits.

(dd) "Permit" or "License" means the control document that contains the requirements of ORS Chapter 466 and OAR 340, divisions 104 to 106 and 120. Permit includes permit-by-rule and emergency permit. Permit does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit.

(ee) "RCRA" or "Resource Conservation and Recovery Act", when used to refer to a federal law, means Oregon law.

(ff) "RCRA Permit" means Oregon hazardous waste management facility permit.

(gg) "Regional Administrator" means:

(A) The "Department", except as specified in paragraph (2)(dd)(B) or (C) of this rule;

(B) The "permitting body", as defined in section (2) of this rule when used in 40 C.F.R. §§ 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17;

(C) The "Commission", when used in 40 C.F.R. §§260.30 through 260.41.

(hh) "Residue" means solid waste as defined in 40 C.F.R. § 261.2.

(ii) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(jj) "Spill" means unauthorized disposal.

(kk) "Storage" or "Collection" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

(ll) "Waste Management Unit" means a contiguous area of land on or in which waste is placed. A waste management unit is the largest area in which there is a significant likelihood of mixing of waste constituents in the same area. Usually, but not always, this is because each waste management unit is subject to a uniform set of management practices (e.g., one liner and leachate collection and removal system). The provisions in the OAR 340, Division 104 regulations (principally the technical standards in Subparts K–N of 40 C.F.R. Part 264) establish requirements that a person subject to these rules must implement on a unit-by-unit basis.

(3) When used in divisions 100 to 106, 109, 113 and 142 of this chapter, the following terms have the meanings given below:

(a) "Aeration" means a specific treatment for decontaminating an empty volatile substance container by removing the closure and placing the container in an inverted position for at least 24 hours.

(b) "Beneficial Use" means returning without processing unused pesticide product (e.g., pesticide equipment rinsing, excess spray mixture) or empty pesticide containers to the economic mainstream as a substitute for raw materials in an industrial process or as a commercial product (e.g., melting a container for scrap metal).

(c) "Department" means the Department of Environmental Quality.

(d) "Empty Container" means a container from which:

(A) All the contents have been removed that can be removed using the practices commonly employed to remove materials from that type of container; and

(B)(i) No more than one inch of residue remains on the bottom of the container; or

(ii) No more than three percent of the total capacity of the container remains in the container if the container is less than or equal to 110 gallons in size; or

(iii) No more than 0.3% of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size; or

(iv) If the material is a compressed gas, the pressure in the container is atmospheric.

(e) "Household Use" means use by the home or dwelling owner in or around households (including single and multiple residences, hotels and motels).

(f) "Jet Rinsing" means a specific treatment for an empty container using the following procedure:

(A) A nozzle is inserted into the container, or the empty container is inverted over a nozzle such that all interior surfaces of the container can be rinsed; and

(B) The container is thoroughly rinsed using an appropriate solvent.

(g) "Multiple Rinsing" means a specific treatment for an empty container repeating the following procedure a minimum of three times:

(A) An appropriate solvent is placed in the container in an amount equal to at least 10% of the container volume; and

(B) The container is agitated to rinse all interior surfaces; and

(C) The container is opened and drained, allowing at least 30 seconds after drips start.

(h) "Pesticide" means any substance or combination of substances intended to defoliate plants or to prevent, destroy, repel, or mitigate insects, fungi, weeds, rodents, or predatory animals. Pesticide includes but is not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006.

(i) "Pesticide Equipment" means any equipment, machinery or device used in pesticide manufacture, repackaging, formulation, bulking and mixing, use, cleaning up spills, or preparation for use or application of pesticides, including but not limited to aircraft, ground spraying equipment, hoppers, tanks, booms and hoses.

(j) "Pesticide Residue" is a waste that is generated from pesticide operations and pesticide management, such as from pesticide use (except household use), manufacturing, repackaging, formulation, bulking and mixing, and spills.

(A) Pesticide residue includes, but is not limited to, unused commercial pesticides, tank or container bottoms or sludges, pesticide spray mixture, container rinsings\ and pesticide equipment washings, and substances generated from pesticide treatment, recycling, disposal, and rinsing spray and pesticide equipment.

(B) Pesticide residue does not include pesticide-containing materials that are used according to label instructions, and substances such as, but not limited to, treated soil, treated wood, foodstuff, water, vegetation, and treated seeds where pesticides were applied according to label instructions. Pesticide residue does not include wastes that are listed in 40 C.F.R. Part 261 Subpart D or that exhibit one or more of the characteristics identified in 40 C.F.R. Part 261 Subpart C.

(k) "Public-Use Airport" means an airport open to the flying public which may or may not be attended or have service available.

(1) "Reuse" means the return of a commodity to the economic mainstream for use in the same kind of application as before without change in its identity (e.g., a container used to repackage a pesticide formulation).

**Statutory/Other Authority:** ORS 465.009 & 466.020

**Statutes/Other Implemented:** ORS 465.003, 465.009, 466.005, 466.075 & 466.105

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### **340-100-0042**

#### **Variance Reporting**

(1) The provisions of this rule replace the provisions of 40 C.F.R. § 260.42(a) and § 260.42(a)(5).

(2) The provisions of § 260.42(a)(5) are removed and reserved.

(3) Facilities managing materials under a variance must send a notification prior to operating under the regulatory provisions and by March 1 of each year.

**Statutory/Other Authority:** ORS 183, 459, 465.009, 466.020 & 468

**Statutes/Other Implemented:** ORS 465.003, 465.009, 466.005, 466.020, 466.075, 466.105 & 468.020

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### **340-100-0043**

#### **Legitimacy Criteria**

The provisions of this rule replace the provisions of 40 C.F.R. § 260.43(a)(3) “Where there is an analogous raw material, the hazardous secondary material must be “contained”, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material,” is deleted.

**Statutory/Other Authority:** ORS 183, 459, 465.009, 466.020 & 468

**Statutes/Other Implemented:** ORS 465.003, 465.009, 466.005, 466.020, 466.075, 466.105 & 468.020

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## **Division 101 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

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### **340-101-0004**

#### **Exclusions**

(1) Residue described in 40 C.F.R. § 261.4(b)(9) is exempted from divisions 100-106 and 109.

(2) Dry cleaning wastewater subject to the requirements in OAR 340 division 124 is not excluded under 40 C.F.R. §§ 261.4(a)(1)(i) and (ii).

(3) The phrase “or labeled with equivalent wording describing the contents of the container and recognizing the exclusion” is added to the end of the first sentence in 40 C.F.R. § 261.4(a)(26)(i) and 40 C.F.R. § 261.4(b)(18)(i).

(4) The phrase “To a municipal solid waste landfill regulated under 40 C.F.R. part 258, including 40 C.F.R. § 258.40, or” is deleted from 40 C.F.R. § 261.4(b)(18)(vi)(A).

(5) The phrase “To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or” in 40 C.F.R. 261.4(b)(18)(vi)(B) is deleted.

(6) Selmet, Inc, or its corporate successor (Selmet). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:

(a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at Selmet’s facility in, Albany, Oregon, and contained in an on-site surface impoundment, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. This is a one-time exclusion. [Note: The petition is attached as Appendix 1 to this rule.]

(b) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at Selmet’s facility in Albany, Oregon, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. The exemption is limited to a maximum annual rate of 3120 cubic yards per year. Selmet must have the sludge disposed of in a Subtitle D landfill the department licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [Note: The petition is attached as Appendix 1 to this rule.]

(c) The exemption described in subsection 6(b) of this rule remains in effect only as long as Selmet meets the following conditions:

(A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.2; chromium-4.9; nickel-32.7; cyanide-7.5 and fluoride-94.8.

(B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, Selmet, Inc. must collect and analyze one waste sample annually using methods with appropriate detection concentrations and elements of quality control. Selmet may use a total analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure concentration as provided for in section 1.2 of Method 1311 as described in EPA SW 846. The Toxicity Characteristic Leaching Procedure is attached to this rule as Appendix 3.]

(d) Changes in Operation Conditions:

(A) If Selmet significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, Selmet must notify DEQ not more than 30 days after making the change.

(B) Selmet must handle the wastes generated after the process change as hazardous until DEQ notifies Selmet in writing that DEQ has determined the wastes continue to meet the delisting concentrations in subparagraph (6)(c)(A), that Selmet has demonstrated that no new hazardous constituents listed in appendix VIII of 40 C.F.R. part 261 have been introduced, and that the department approves Selmet’s not handling the wastes as hazardous.

(e) Data Submittals: Selmet must submit the data obtained through verification testing, or as required by other conditions of this rule, to DEQ. Selmet must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. Selmet must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. Selmet must make these records available to DEQ for inspection. Selmet must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(f) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, Selmet possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in subparagraph 6(c)(A), then Selmet must report such data, in writing, to DEQ, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (6)(d) and (6)(e), and any other information received from any source, DEQ will make a preliminary determination as to whether the reported information requires department action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If DEQ determines that the reported information does require DEQ action, DEQ will notify Selmet in writing, of the actions DEQ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing Selmet with an opportunity to present information as to why the proposed DEQ action is not necessary or to suggest an alternative action. Selmet must provide to DEQ in writing its information in response to the notice within 30 days from the date DEQ mails its notice requesting the information.

(D) DEQ will issue a final written determination. DEQ will issue the written determination no sooner than 30 days after DEQ mailed its notice to Selmet. Before issuing its determination, DEQ will consider any additional information Selmet submitted to DEQ within 30 days after DEQ issued its notice. The written determination will describe DEQ's actions that are necessary to protect human health and the environment. Any required action described in DEQ's determination is effective immediately, unless DEQ provides otherwise.

(7) Pacific Cast Technologies, Inc., or its corporate successor (PCT). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:

(a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at PCT's, Albany, Oregon facility as described in the delisting petition PCT provided on April 11, 2019. The exemption is limited to a maximum annual rate of 9,000 cubic yards per year. PCT must have the sludge disposed of in a Subtitle D landfill that DEQ licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [Note: The petition is attached to this rule as Appendix 2.]

(b) The exemption described in OAR 340-101-0004(7)(a) remains in effect only as long as PCT meets the following conditions:

(A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.0911; chromium-2.27; nickel-13.5; and cyanide-3.08.

(B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, PCT must collect and analyze one waste sample annually using methods with appropriate detection limits and elements of quality control (similar to those in the delisting petition). PCT may use a total analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure concentration as provided for in section 1.2 of Method 1311.

(c) Changes in Operation Conditions:

(A) If PCT significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, PCT must notify DEQ not more than 30 days after making the change.

(B) PCT must handle the wastes generated after the process change as hazardous until DEQ notifies PCT in writing DEQ has determined that the waste continues to meet the delisting concentrations in OAR 340-101-0004(7)(b)(A), that PCT has demonstrated that no new hazardous constituents listed in appendix VIII of 40 CFR part 261 have been introduced, and that the department approves PCT's not handling the wastes as hazardous.

(d) Data Submittals: PCT must submit the data obtained through verification testing, or as required by other conditions of this rule, to DEQ. PCT must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. PCT must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. PCT must make these records available to DEQ for inspection. PCT must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(e) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, PCT possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in paragraph 7(b)(A), then PCT must report such data, in writing, to DEQ, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (7)(b) and (7)(c), and any other information received from any source, DEQ will make a preliminary determination as to whether the reported information requires DEQ action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If DEQ determines that the reported information does require DEQ action, DEQ will notify PCT in writing, of the actions DEQ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing PCT with an opportunity to present information as to why the proposed DEQ action is not necessary or to suggest an alternative action. PCT must provide to DEQ in writing its information in response to the notice within 30 days from the date the department mails its notice requesting the information.

(D) DEQ will issue a final written determination. DEQ may issue the determination at the later of either 30 days after it mailed notice to PCT, if PCT presented no additional information during that interval, or after reviewing any information Pacific submitted during the 30-day interval. The written determination will describe DEQ actions that are necessary to protect human health and the environment. Any required action described in DEQ's determination is effective immediately, unless the DEQ provides otherwise.

(8) The provisions contained in 40 C.F.R 261.4(a)(23), (a)(24), (a)(25), and (a)(27) are deleted.

[NOTE: View a PDF of Appendices by clicking on "Tables" link below.]

[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.]

**Statutory/Other Authority:** ORS 192, 465.009, 466.015, 466.020, 466.075, 466.090, 466.180, 468.020 & 646

**Statutes/Other Implemented:** ORS 466.015, 466.075 & 466.195

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Division 102

STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

340-102-0230

Episodic Generation

(1) The provisions of this rule are in addition to the requirements of 40 C.F.R. 262 Subpart L.

(2) All episodic generators are required to submit an annual hazardous waste generator report and pay hazardous waste generation fees as required by OAR 340-102-0041 and OAR 340-102-0065.

(3) Planned events require prior written Department approval to qualify as episodic.

(4) Generators must submit written notification on the form provided by the Department to DEQ within five days of submitting the initial 72-hour notification for unplanned events.

Statutory/Other Authority: ORS 183, 459, 466.020, 466.075, 466.105, 466.165, 466.195 & 468

Statutes/Other Implemented: ORS 466.075 & 466.090

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## **Division 105**

### **MANAGEMENT FACILITY PERMITS**

#### **340-105-0120**

##### **Hazardous Waste Management Fee**

(1) Every person who operates a facility for the purpose of disposing of hazardous waste or polychlorinated biphenyl (PCB) that is subject to interim status or a permit issued under ORS

Chapter 466 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount authorized by ORS 465.375. For purposes of calculating the fee required by this section, the facility operator does not need to include hazardous waste resulting from on-site treatment processes used to render a waste less hazardous or reduced in volume prior to land disposal.

(2) The term “hazardous waste” means any hazardous waste as defined by rules adopted by the Environmental Quality Commission and includes any hazardous waste as defined in OAR 340, division 100 or 101 or 40 CFR Part 261 handled under the authority of interim status or a management facility permit.

(3) The term “PCB” shall have the meaning given to it in OAR 340, division 110.

(4) The term “ton” means 2,000 pounds and means the weight of waste in tons as determined at the time of receipt at a hazardous waste or PCB management facility. The term “ton” shall include the weight of any containers treated or disposed of along with the wastes being held by the container.

(5) In the case of a fraction of a ton, the fee imposed by section (1) of this rule shall be the same fraction multiplied by the amount of such fee imposed on a whole ton.

(6) Every person subject to the fee requirement of section (1) of this rule shall record actual weight for all waste received for treatment by incinerator or disposal by landfilling in tons at the time of receipt. The scale shall be licensed in accordance with ORS Chapter 618 by the Weights and Measures Division of the Department of Agriculture.

(7) Accompanying each monthly payment shall be a detailed record identifying the basis for calculating the fee.

(8) Notwithstanding section 1 of this rule, the hazardous waste disposal management fee shall be:

(a) \$20 per ton for waste received by the facility that is:

(A) PCB under Oregon or federal law;

(B) Hazardous waste that becomes subject to regulation solely as a result of removal or remedial action taken in response to environmental contamination; or

(C) Hazardous waste that results from corrective action or closure of a regulated or nonregulated waste management unit.

(b) \$5 per ton for waste that is:

(A) A characteristic hazardous waste at the point of generation and that has been treated at the facility or at an off-site location so that the waste no longer exhibits the characteristics of hazardous waste and so that the waste complies with any applicable land disposal requirements;

(B) Liquid waste when the waste is received and treated at a wastewater treatment unit at the facility so that the waste does not exhibit any characteristics of hazardous waste and so that the resulting liquid is managed at a permitted unit at the facility;

(C) Solid waste that results from cleanup activities and that must be disposed of in a facility for the disposal of hazardous waste as a result of restrictions imposed under ORS 459.055(8) or 459.305(7); or

(D) Solid waste that is not hazardous waste or PCB under a state or federal law at the point of generation and that is not a hazardous waste under Oregon law.

(9) All fees shall be made payable to the Department of Environmental Quality. All fees received by the Department of Environmental Quality shall be paid into the State Treasury.

Statutory/Other Authority: 465.400(1), 465.405, 465.375, 465.376, 466.020, 466.075, 466.165, 466.195, & 468.020

Statutes/Other Implemented: ORS 465.375, 465.376 & 466.165

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Division 12 ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0068

Hazardous Waste Management and Disposal Classification of Violations

(1) Class I:

(a) Failing to make or document a complete and accurate hazardous waste determination of a residue as required;

(b) Failing to meet Land Disposal Restriction (LDR) requirements when disposing of hazardous waste;

(c) Operating a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status;

(d) Treating, storing or accumulating hazardous waste in a hazardous waste management unit, as defined in 40 C.F.R. 260.10, that does not meet the unit design or unit integrity assessment criteria for the hazardous waste management unit;

(e) Accepting, transporting or offering for transport hazardous waste without a uniform hazardous waste manifest; (f) Transporting, or offering for transport, hazardous waste or hazardous waste to a facility not authorized or permitted to manage hazardous waste or hazardous waste pharmaceuticals;

(f) Transporting, or offering for transport, hazardous waste or hazardous waste pharmaceuticals to a facility not authorized or permitted to manage hazardous waste or hazardous waste pharmaceuticals;

(g) Failing to comply with management requirements for ignitable, reactive, or incompatible hazardous waste;

(h) Illegally treating or disposing of a hazardous waste;

(i) Failing to submit Land Disposal Restriction notifications;

- (j) Failing to have and maintain a closure plan or post closure plan for a TSD facility, reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals or for each regulated hazardous waste management unit, as defined in 40 C.F.R. 260.10, by the owner or operator of facility or unit;
- (k) Failing to carry out closure or post closure plan requirements, by an owner or operator of a TSD facility, such that the certification for completing closure or post closure work is not submitted, or is incomplete, inaccurate, or non-compliant with the approved plans;
- (l) Failing to establish or maintain financial assurance or hazard liability requirements in 40 C.F.R. 264.147 or 40 C.F.R. 265.147, by an owner or operator of a TSD facility;
- (m) Failing to follow emergency procedures in a Contingency Plan or other emergency response requirements during an incident in which a hazardous waste or hazardous waste constituent is released to the environment or the incident presents a risk of harm to employees, emergency responders or the public;
- (n) Failing to comply with the export requirements in 40 C.F.R. 262.52 for hazardous wastes, 40 C.F.R. 266.508(b) for non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, or 40 C.F.R. 266.509(d) for potentially creditable hazardous waste pharmaceuticals;
- (o) Failing to properly install a groundwater monitoring system in compliance with permit requirements, by an owner or operator of a TSD facility;
- (p) Failing to properly control volatile organic hazardous waste emissions, by a large-quantity hazardous waste generator or TSD facility, when such failure could result in harm to employees, the public or the environment;
- (q) Failing to inspect, operate, monitor, keep records or maintain in compliance with a permit: hazardous waste landfill units, incineration equipment, Subpart X treatment equipment, hazardous waste treatment units, pollution abatement equipment for hazardous waste treatment or disposal, or hazardous waste monitoring equipment;
- (r) Failing to immediately clean up spills or releases or threatened spills or releases of hazardous waste, or hazardous waste pharmaceuticals, by any person having ownership or control over hazardous waste;
- (s) Failing to submit an exception report for generators shipping hazardous waste, for healthcare facilities shipping non-creditable hazardous waste pharmaceuticals, or for reverse distributors shipping evaluated hazardous waste pharmaceuticals;
- (t) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall;
- (u) Failing to accurately determine generator status;
- (v) Failing to notify or withdraw for healthcare facilities or reverse distributors;
- (w) Failing to comply with the prohibition against sewerage hazardous waste pharmaceuticals;

- (x) Transporting, or offering for transport, hazardous waste other than potentially creditable hazardous waste to a facility other than a reverse distributor;
 - (y) Failing to submit an unauthorized waste report;
 - (z) Accepting hazardous waste pharmaceuticals at a facility not authorized or permitted to manage the specific type of hazardous waste pharmaceuticals received; or
 - (aa) Failing to provide confirmation to the healthcare facility or reverse distributor that shipment of potentially creditable hazardous waste pharmaceuticals has arrived at its destination and is under the control of the reverse distributor.
- (2) Class II:
- (a) Failing to place an accumulation start date on a container used for accumulation or storage of hazardous waste;
 - (b) Failing to label tanks or containers used for accumulation or storage of hazardous waste with “hazardous waste,” hazards of the contents, waste codes, or “hazardous waste pharmaceutical”;
 - (c) Failing to post required emergency response information next to the telephone, by a small quantity generator;
 - (d) Accumulating hazardous waste, non-creditable hazardous waste pharmaceuticals, potentially creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals more than thirty (30) days beyond the specified accumulation time frame;
 - (e) Failing to submit a manifest discrepancy report;
 - (f) Shipping hazardous waste on manifests that do not comply with DEQ rules;
 - (g) Failing to prevent the unknown or unauthorized entry of a person or livestock into the waste management area of a TSD facility or into a portion of a reverse distributor’s facility where potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are kept;
 - (h) Failing to conduct required inspections at hazardous waste generator or reverse distributor accumulation sites or at hazardous waste permitted storage areas;
 - (i) Failing to prepare a contingency plan;
 - (j) Failing to comply with the requirements of a groundwater monitoring program, unless otherwise classified;
 - (k) Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;

- (l) Generating, treating, storing or disposing of hazardous waste, non-creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals, without complying with the Personnel Training requirements;
 - (m) Failing to keep containers of hazardous waste, non-creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals closed, except when adding or removing wastes;
 - (n) Failing to comply with the requirements for management of containers, including satellite accumulation, other than the requirements for ignitable, reactive or incompatible waste, by a hazardous waste generator, storage facility, health care facility, or reverse distributor;
 - (o) Failing to comply with the preparedness, prevention, contingency plan or emergency procedure requirements, unless otherwise classified;
 - (p) Failing to manage universal waste and waste pesticide residue in compliance with the universal waste management requirements or waste pesticide requirements;
 - (q) Failing to obtain a hazardous waste EPA identification number when required;
 - (r) Failing to comply with 40 C.F.R. 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;
 - (s) Failing to comply with 40 C.F.R. 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified;
 - (t) Failing to timely submit an annual report by a hazardous waste generator, TSD facility, reverse distributor, or hazardous waste recycling facility;
 - (u) Failing to comply with recalled airbag recordkeeping, management, or disposal requirements, unless otherwise classified;
 - (v) Failing to timely notify DEQ of LQG closure;
 - (w) Failing to comply with episodic generation conditions, not otherwise classified; or
 - (x) Failing to notify, keep records, or other requirements for consolidation of VSQG waste at LQG owned by the same person, by the LQG.
- (3) Class III:
- (a) Accumulating hazardous waste, non-creditable hazardous waste pharmaceuticals, potentially creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals, up to thirty (30) days beyond the specified accumulation time frame;
 - (b) Failing to maintain on site, a copy of the one-time notification regarding hazardous waste that meets treatment standards by a hazardous waste generator; or
 - (c) Failing to submit a contingency plan to all police, fire, hospital and local emergency responders.

Statutory/Other Authority: ORS 459.995, 466.070 - 466.080, 466.625 & 468.020
Statutes/Other Implemented: ORS 466.635 - 466.680,