



State of Oregon Department of Environmental Quality

# Meeting Notes and Committee Recommendations

Hazardous Waste Rules 2022 Advisory Committee Meeting, May 9, 2022

## Overview and Purpose

DEQ's Hazardous Waste Program is preparing a rulemaking package containing a federal rule, a follow-up rulemaking to legislative action, and two technical corrections.

The federal rule: Hazardous Waste Program must adopt the Environmental Protection Agency's Definition of Solid Waste Rule, which includes both 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 July 13, 2015, & 83 FR 24664-24671 – May 30, 2018, effective May 30, 2018], to maintain authorization allowing Oregon to administer the program in lieu of the U.S. Environmental Protection Agency.

The follow-up rule to legislative action: During the 2021 legislative session, [Senate Bill 57](#) passed and was signed into law by the Governor. The new law modernizes and streamlines [ORS 465.376](#), which governs disposal fees, also called “tipping” or “tip” fees, for wastes disposed in Oregon's only commercially permitted RCRA Subtitle C Hazardous Waste Landfill, Chemical Waste Management of the Northwest, located in Arlington. New fee increases were set in statute in 2021 along with the ability to change specific fees by rule. Revenue from these fees partially supports both the DEQ Hazardous Waste and Cleanup Programs. These changes went into effect on Jan. 1, 2022, and this rulemaking is “housekeeping” to align rule with the statute.

Technical corrections in this rule: DEQ proposes to issue two technical corrections to previously adopted rules:

- Clarification to episodic generation requirements: Shorten notification period.
- Amend Division 12 enforcement rules: Remove the phrase “or hazardous waste pharmaceuticals”.

As part of the rulemaking process, DEQ convened a Rules Advisory Committee (RAC) to provide comments and recommendations on the proposed rules.

## RAC Committee Formation and Process

The advisory committee convened by DEQ is known as the Hazardous Waste 2022 Rules Advisory Committee. DEQ asked the committee to provide comments and recommendations on DEQ's proposed rule recommendations, in addition to fiscal impact questions as required by the Administrative Procedures Act (Oregon Revised Statutes 183.333).

Regarding each proposed rule and technical correction, DEQ asked the committee:

- Will the proposed rule have a fiscal impact?
  - If so, what will the extent of the fiscal impact be?
- Will the rule have a significant adverse impact on small businesses?
  - If so, how can DEQ mitigate that impact?

This document includes a summary of the committee’s recommendations and responses to the above questions. The public notice for this proposed rulemaking will also include those recommendations.

DEQ convened the advisory committee meeting virtually via Zoom on Monday, May 9, 2022, from 9 a.m. to 2:18 p.m. Prior to the meeting, DEQ provided the committee with proposed federal and state RCRA hazardous waste rule considerations, a definition of solid waste adoption table, and draft fiscal impact statements. The proposed rule recommendations and fiscal impact statements provided to the Committee were drafts and subject to further development before DEQ opens public comment in summer 2022. DEQ will consider all RAC and public comments in preparing a final rule proposal anticipated to go before the Environmental Quality Commission for adoption consideration in November 2022.

### Committee Members

Five committee members attended the virtual meeting on May 9, 2022:

Name	Affiliation
Marjorie Martz-Emerson	Formerly with Pollution Prevention Resource Center and Coyote & Chirp Biosphere LLC
Jim Denson	Chemical Waste Management
Lisa Arkin	Beyond Toxics
Jenna Kube	Intel
Marty French	Specialty Analytical Laboratory

### Non-committee members

DEQ staff in attendance:

Name	Role, Title
Ellie Brown	Rulemaking Lead/Facilitator, Senior Hazardous Waste Policy Analyst
Audrey O’Brien	Special Advisor to the RAC Committee, Environmental Partnership Manager
Svetlana Lazarev	Project Manager, Air Quality Modeling Specialist
David Livengood	Project Sponsor, Hazardous Waste Program Manager
Sarah Wheeler	Project Enforcement Consultant, Environmental Law Specialist
Ron Doughten	Materials Management and Hazardous Waste Manager
Jay Collins	DSW Rule Lead, Northwest Region Hazardous Waste Inspector
Zeb Bates	Rule Support, Northwest Region Hazardous Waste Inspector
Rich Duval	Rule Support, Environmental Engineer, Eastern Region
Alex Bertolucci	Northwest Region Hazardous Waste Technical Assistance Specialist

### Stakeholders and interested parties

Approximately 10 members of the public were in attendance.

## Proposed Rules

The following proposed rules were discussed during the May 9, 2022, meeting:

1. Proposed technical corrections to previously 2021 adopted rules.
2. [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 July 13, 2015 & 83 FR 24664-24671 – May 30, 2018, effective May 30, 2018].
3. Proposed incorporation in rule of changes made to [ORS 465.376](#) by [SB57](#), governing some of the hazardous waste disposal fees for disposal in Oregon’s only commercially permitted RCRA Subtitle C Hazardous Waste Landfill.

## Discussion Summary

At the beginning of the meeting, DEQ staff explained the advisory committee’s role. Staff also provided a summary of the proposed new rules and rule changes listed above.

The following are discussion highlights from the advisory committee meeting split into three parts for each rule:

1. Committee members’ discussion, comments, and questions on each proposed rule.
2. Committee members’ responses to the fiscal impact questions required by Oregon Administrative Rule 183.333; and
3. DEQ’s responses to comments or questions not addressed during the meeting.

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## Proposed Technical Corrections to previously adopted rules

### 1. Clarification of episodic generation requirements: Shorten notification period.

The amount of hazardous waste a business or an organization generates monthly determines their generator category. An episodic event as defined in 40 CFR section 262.231 is an activity that does not normally occur during a business operation and may cause a business to temporarily exceed the threshold of their normal operating generator category. In 2016, EPA adopted the Generator Improvement Rule in part to allow businesses with approved planned or unplanned episodic events to maintain their generator category. One planned and one unplanned event are allowed each calendar year. This regulation applies to both Very Small Quantity Generators and Small Quantity Generators. An episodic event cannot last more than 60 days beginning from the first day episodic hazardous waste generation starts to the last day when the generator ships hazardous waste off site.

The federal rule requires the generator to notify EPA no later than 30 calendar days prior to initiation of a *planned* episodic event using EPA form 8700-12. When DEQ adopted the rule (ORS 340.102.0230 part 3), we doubled the notification time with the intent to allow enough time for DEQ to process the requests and provide technical assistance to businesses ahead of planned events. Since the rule became effective January 2022, it is clear a 60-day notification period was not needed and has resulted in waste stored on-site for weeks longer than necessary. DEQ proposes to shorten the notification period to align with the federal 30-day requirement.

### 2. Amend Division 12 enforcement rules: Remove the phrase “or hazardous waste pharmaceuticals”.

This amendment is related to the Oregon adoption of the Pharmaceutical Rule.

Initially, DEQ proposed to limit options for indicating how long hazardous waste pharmaceuticals have been accumulating on-site. DEQ proposed to only allow dating each container to be able to easily identify the 1-year accumulation compliance requirement. During the public comment period, DEQ received a request from the regulated community to include all three options in the federal rule. DEQ re-evaluated and, in November 2021, included all three options in the adopted rule including adopting that portion of the rule without change to the federal rule language. However, DEQ did not change Division 12 enforcement language associated with this rule and inadvertently adopted Division 12 changes which do not match the requirements in the rule. The proposed amended language will remedy this misalignment.

## **Part 1: Committee discussion, comments, and questions**

**It doesn't seem necessary to shorten the notification period. Why can't the DEQ keep the 60-day notification period requirement adding to the rule the language that would allow the generator to begin the episodic event upon DEQ's approval without having to wait until the 60-day period is up?**

A. We are exploring the option of keeping the 60-day notification period and amending the rule with language to allow hazardous waste generators to begin an event immediately after DEQ's approval. DEQ needs to discuss this with EPA to ensure that this rule cannot be interpreted as less stringent than the federal rule. Since EPA has the 30-day requirement, DEQ may not be able to allow the beginning of the episodic event before the expiration of the 30-day period.

*[Update] EPA completed the review, and the above state adoption is "less stringent" than the federal rule. Additionally, changing the date of initiation creates logistic problems within RCRAInfo, an EPA data collection system DEQ uses to report hazardous waste generator information. If generators were allowed to start the event prior to the start date on their notification, they would need to amend the end date on the notification as the time limit on any episodic event is 60 days. This means they would need to amend and re-submit their notification. DEQ has already translated the data to RCRAInfo, which may cause subsequent data system tracking problems.*

**Does rule provide for a notification to potentially impacted neighborhoods about planned episodic event?**

A. The rule has no notification requirements to potentially impacted neighborhoods. DEQ will bring this concern to EPA's attention as we work together to revise the rule.

**DEQ is required to consider public impacts and not only impacts to businesses under Oregon Administrative Rules.**

A. Yes, DEQ concurs and will work with EPA on this. Thank you for this comment.

**This information was not provided to the Advisory committee ahead of the meeting. Advisory committee members may need more time to consider the pharmaceutical rule language amendment.**

A. We propose to amend OAR 340-012-0068(2)(a), Oregon’s Division 12 enforcement rules, to remove the phrase “or hazardous waste pharmaceuticals”.

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).

More information on this proposed technical correction to Division 12 enforcement rules regarding dating containers of pharmaceutical waste can be found in the Notice of Proposed Rulemaking, which is available online here: <https://www.oregon.gov/deq/rulemaking/Documents/hw2022pnp.pdf>

**What types of wastes are usually involved in episodic generation? What quantity of waste can be generated during an episodic event?**

A. Expired flavoring for soda beverages, for example, is potentially hazardous waste. If determined to be so, the waste needs to get disposed of during an episodic event. Any quantity of any hazardous waste normally generated by a facility can be a part of a planned or unplanned episodic event.

**Help us to understand the differences between large and small generators?**

A. The amount of hazardous waste generated in each calendar month determines the category of a generator, also referred to a “generator status.” Generators must store, label, and properly manage hazardous waste produced.

- Large Quantity Generators (LQGs) generate 2200 pounds or more of hazardous waste in a calendar month.
- Small Quantity Generators (SQGs) generate 220 pounds or more of hazardous waste in a calendar month.
- Very Small Quantity Generators (VSQGs) generate less than 220 pounds of hazardous waste in a calendar month.

*[NOTE: More information on hazardous waste generator categories can be found here:* <https://www.epa.gov/hwgenerators/categories-hazardous-waste-generators>*]*

Episodic generation allows an operator to generate a larger amount of waste than the monthly generator status would typically allow. The episodic generation provision is only available to very small and small quantity generators, and not large quantity generators of hazardous waste.

## **Part 2: Fiscal Impact Questions**

### **Will the proposed rule have a fiscal impact? If so, what will the extent of the impact be?**

The committee members agreed changing the episodic event notification period from 60 to 30 days will be beneficial to hazardous waste generators and identified no negative fiscal impact on business. The following comment was made during the fiscal impact discussion:

- Impact on potentially affected communities needs to be considered before a final determination of the impact can be made.

The committee members agreed the Division 12 rules will have no fiscal impact on businesses.

### **Will rule changes have a significant adverse impact on small businesses? If so, what can DEQ do to mitigate that impact?**

Most of the committee members agreed changing the episodic generation notice from 60 to 30 days will not have a negative fiscal impact on small businesses. One committee member needs more time to think about this.

The committee members agreed the Division 12 rules will have no fiscal impact on businesses.

## **Part 3. DEQ's responses to comments or questions not addressed at the meeting**

### **Is DEQ required go through a public notice process before it approves a planned episodic generation event? Do Environmental Justice (EJ) statutes apply? Please look at ORS 183.335, ORS 182.545, and SCR 17.**

A: Approving a planned episodic event is not a rulemaking, rule suspension, or permit, so ORS 183.335 does not apply. Regarding ORS 182.545: Any very small or small quantity hazardous waste generator can apply to use the episodic event provision. This provision does not change hazardous waste management – under this rule it simply does not move the very small or small quantity generator up in generator status as it would have in the past. DEQ sees this as a benefit to all parties. Hazardous waste moves to off site management where it can be disposed safely. VSQGs and SQGs, which are frequently small businesses, do not have to spend additional funds to adhere to the requirements of LQG standards, such as providing staff training on hazardous waste management. Additionally, EPA does not require agency approval of planned episodic events to use this provision. DEQ added this requirement to ensure proper use of the provisions and provide support to the generator. The application and approval processes give the Hazardous Waste Program an opportunity to work with the generator via technical assistance, or to send a compliance inspector on site prior to the approval of a planned episodic event.

After consultation with the Oregon Department of Justice, DOJ counsel added this information:

- Regarding ORS 183.335:
  - Approval of an episodic event would be an order not a rule, so no rulemaking requirements would apply to it.

- The original rulemaking was subject to all requirements of the Administrative Procedures Act and public input, etc., were considered as part of that process.
- Regarding ORS 182.545: To comply with this statute, DEQ should consider EJ effects when reviewing an approval request for a planned episodic generation event, and if applicable, should engage in some sort of outreach to communities that will be affected by the decision. The statute does not describe exactly what that outreach needs to look like.
- Regarding SCR 17: This is a policy statement by the legislature, and it carries no requirements for DEQ.

## **SB 57 Follow-up Rulemaking: Hazardous Waste Disposal Fees**

The proposed rule follows the 2021 Oregon legislative amendment action related to the passage of [Senate Bill 57](#). This law streamlined Oregon Revised Statute (ORS) 465.376, Special hazardous waste management fees and added new fee rates effective Jan. 1, 2022.

The 2021 legislature amended the statute due to:

1. Failure to increase fees since establishment.
2. Inclusion of outdated waste streams and a complex tiered fee system.
3. Need for flexibility to set these fees in rule rather than in statute, to respond more quickly to ensure DEQ is not over or undercharging for disposal of hazardous waste.

The proposed rule aligns our hazardous waste rules with the statute. With this rulemaking, DEQ is establishing the definition and a place for the fees in rule. We do not propose changing any fees.

### **Part 1: Committee discussion, comments, and questions**

The highlights of the committee members' discussion on the Hazardous Waste Disposal Fees and its potential fiscal impacts are below.

#### **Clarify the language about uncertainty regarding the rates of disposal. Do facilities report how much has been disposed?**

A. Amounts of waste generated and, therefore, the amount of hazardous waste requiring disposal, are tied to the economy, among other factors. We do not anticipate any disposal rate fluctuations. To keep program revenue reasonably steady, DEQ will need to lower the fees if there is a high disposal rate and raise if there is a lower rate.

This rulemaking will allow for future incremental changes to hazardous waste disposal fees, rather than legislatively approved increases or decreases needed to adjust for changing fee rates. This rule creates efficiencies and streamlines steps needed to make fee adjustments.

A large portion of the hazardous waste disposed in Oregon comes from out of state. DEQ receives monthly reports on how much and what types of hazardous waste are disposed in the state's only hazardous waste landfill, Chemical Waste Management, located in Arlington.

#### **1. Does the fee cover orphan sites cleanups?**

A. Yes, orphan site cleanups are currently partially funded through this specific fee. Cleanups at other orphan sites, known as industrial orphans, get funding through the sale of long-term bonds. Since 1992, DEQ has issued bonds totaling approximately \$38 million. Debt on these bonds has been repaid with

state general funds and hazardous-substance possession fees. When industrial orphan funds are recovered from identified responsible parties or through agreements with persons wishing to purchase orphan sites, the funds may then be spent on other orphan cleanups.

**2. Do generators have sufficient funds to manage their waste?**

A. DEQ works with all generators to ensure they have sufficient funds to manage their waste; that’s an expectation and a requirement of being a hazardous waste generator. Many generators have insurance for cleanups to ensure compliance with environmental requirements.

**Is insurance required or only expected?**

A. Insurance is not required for the generators. Disposal sites have regulations and insurance requirements through DEQ’s solid waste program. Some disposal sites, including Chemical Waste Management in Arlington, carry required financial assurance expected to meet costs for facility closure including monitoring.

**How much do other states contribute to our disposal sites and what are the fee rates at other states?**

Oregon Revised Statute [465.378](#) directs DEQ to work cooperatively with other states to avoid disrupting or changing waste flows between states that may be caused by the establishment or adjustment of state disposal fees. In other words, DEQ must set rates consistent with other state fee rates and would not adopt rates that were not comparable with those in neighboring states. Other state businesses contribute to our disposal sites fees, as most of the hazardous waste disposed in Oregon comes from outside the state.

*[NOTE: The following table was mentioned during the meeting but was not shared during the meeting. It is included here to fully respond to the RAC member’s question.]*

**Neighboring States Hazardous Waste Disposal Fees**

[Idaho](#)

<b>Commercial Disposal Fees</b> - the lowest applicable fee for each ton of waste or fraction thereof, as follows:	\$30 per ton
All manifested waste not otherwise defined	\$35 per ton
All manifested remediation waste not otherwise defined	\$2 per ton
More than 2,500 cubic units of hazardous waste from same site/property/unit.	\$20 per ton
More than 2,500 tons up to 12,500 tons (same site/prop/unit)	\$10 per ton
More than 12,500 tons to 25,000 tons (same site/prop/unit)	\$5 per ton



More than 25,000 tons site/prop/unit)	(same	\$2.50 per ton
Delisted/treated/PCB so no longer HW		\$5 per ton

### Nevada

Permitted Activity or Regulated Unit	Quarterly Permit Fee
RCRA HW	\$19 per ton
Treated no longer HW	\$4 per ton
PCB/Other waste designated as state HW (non-RCRA)	\$3.50 per ton
Treatment/storage of waste for offsite disposal	\$5 per ton

### Utah

**Hazardous waste flat fee (per year) \$2,444,800.00**

HW flat fee provides for implementation of waste management programs and oversight of the HW Industry in accordance with UCA 19-6-118.

## Waste Disposal Data

### Waste from neighboring states vs within state

The data in the table below was pulled on Nov. 12, 2020, from DEQ database hazwaste.net for all shipments received at CWM from 2008 to 2018. The totals are the complete totals for the period, not just the totals of the five states shown.

State of Origin	Pounds of waste	Tons of waste	Percentage of all waste
WA	745,059,179	372,530	49%
NV	23,352	12	Less than 1%
ID	9,041,032	4521	Less than 1%
UT	3,177,498	1589	Less than 1%
OR	292,509,104	146,255	19%
<b>All</b>	<b>1,527,751,215</b>	<b>763,876</b>	<b>100%</b>

### 3. Q. What are the Washington hazardous waste disposal fees?

A. Washington does not have a hazardous waste disposal facility, and as such there are no hazardous waste disposal fees.

## **Part 2: Fiscal Impact Questions**

The committee discussed DEQ's questions derived from OAR 183.333. Fiscal impact analysis attempts to project future impacts based on currently available information. The committee's summarized responses to the required questions are:

- **Will the rule have a fiscal impact?**
  - o **If so, what is the extent of the fiscal impact?**

The committee identified there will be fiscal impacts if the fees increase. However, this specific rulemaking will not have a fiscal impact as the fee requirements are already in place in Oregon Statute.

- **Will the rule have a significant adverse impact on small businesses (less than 50 employees)?**
  - o **If so, how can DEQ reduce the economic impact of the rule on small businesses?**

The committee members agreed there will be a minimal fiscal impact associated with increasing fees to all businesses, large or small, which generate hazardous waste. This is part of the cost of doing business. This current rulemaking will not have any fiscal impact to small businesses as it is just moving the established fees from statute to rule, and the fee rates are already in place.

## **Part 3: DEQ's responses to comments or questions not addressed at the meeting**

DEQ did not identify any unanswered questions regarding the Senate Bill 57 follow-up rulemaking.

## **Definition of Solid Waste Amendments**

The proposed rule defines the terms Hazardous Secondary Material (or "HSM"); HSM Generator; HSM Facility; Sham Recycling; and contained. The rule also includes the Environmental Protection Agency's Definition of Solid Waste (or "DSW") and new legitimacy criteria requirements to ensure all hazardous waste recycling is legitimate, properly managed, and well documented. Oregon's proposal does not adopt EPA's DSW exclusion provision.

### **Part 1: Committee discussion, comments, and questions**

The following are the highlights of the committee members' discussion and comments on the Definition of Solid Waste rule and its potential fiscal impacts.

#### **What are the four improved applications? Does that include sewage sludge being used as a soil amendment?**

A. Hazardous waste is not allowed to be placed on the ground unless it meets Land Disposal Restriction (LDR) requirements set out in 40 CFR 268. In Oregon, this would be limited to disposal facilities permitted to accept and manage these materials. The recycling variance would allow a generator to propose consideration of a rule adoption to define a specific waste they generate (recycle) to be non-hazardous given conditions specific to its use.

It could include sewage sludge being used as a soil amendment. The reason it would not be excluded today is because it's being placed on the ground. To be legitimate, a material that exhibits a characteristic of hazardous waste and is placed on the ground must have a valid use. The new variance option gives generators an opportunity to confer with DEQ that what they are doing is legitimate and the materials they are putting on the ground have valid use.

**Are there considerations of bio-persistence or levels of toxicity for the land in the criteria for valid use?**

A. Yes, these are all considerations. DEQ's Water Quality program limits land application of biosolids containing small amounts of metals. There's a limit of how much metal can be put on the ground on the particular property. The higher the concentration of metals, the less of the material can be put on the ground. These biosolids are considered hazardous waste because the metals in them are leachable. More leachable means more mobile and able to move around. In most of the water quality applications, biosolids have metals in them that are not leachable. Leachable metals are a major concern and some demetallization may be required before those biosolids can be placed on the land. Many things can be proposed, right now there is no mechanism for the hazardous waste generators to do so. The variance option allows generators to propose land applications that address any environmental risks, including exposure pathway.

In addition to the application and fee, a variance is a rulemaking process, and any proposed variance goes through the public hearing and comment process.

**How often does DEQ inspect HSM facilities?**

A. DEQ does not have an established policy for inspecting HSM facilities that are not registered hazardous waste generators. As most HSM facilities are also large quantity generators, they are inspected by DEQ Hazardous Waste on a three-year cycle. Small quantity generators are inspected every five years or as time allows. Very small quantity generators are inspected on complaint response basis. In addition to the requirement for legitimacy criteria documentation to be kept on-site, the documentation must also be submitted to DEQ upon request. So, if DEQ asked to see this documentation, a generator would need to provide it. HSM records must be kept for three years after the recycling activity has stopped.

**How many complaint responses are addressed in a typical year?**

A. Program-wide, less than 100 complaint responses, and some of those are existing small and large quantity generator facilities. There is no differentiation in complaint investigation based on the size of the generator; DEQ responds to all complaints.

**Do requirements for storing waste apply to waste generated at a medical facility?**

A. Hazardous waste is generally toxic, flammable, corrosive, or reactive waste. Medical waste is commonly a biohazardous waste regulated by Oregon Health Authority. DEQ has some similar requirements under the solid waste program for infectious wastes. The HSM requirements apply only to medical waste that is also hazardous waste. For example, if the waste has spent toluene in it, then the waste would fall under both the hazardous waste and biochemical waste rules. HSM requirements apply

only if material is being recycled. If it has been disposed, then HSM requirements do not apply, and all hazardous waste requirements may apply.

**Is generating electricity a form of recycling? Waste to energy systems for example a waste incinerator that generates electricity from solid waste.**

A. If hazardous waste material is burned for energy production, it is considered disposal under RCRA regulations. An example is hazardous waste fuel burned at a hazardous waste-permitted facility's industrial furnace and boiler. A variance would be required to conduct this activity. An example of a facility that might conduct this type of activity is a cement manufacturer. Oregon does not have such facilities and such a facility would be required to have a permit. Solid waste is not covered under this rule.

**Would holding ponds be included in the definition of "contained"?**

A. Not under Oregon's proposed rule definition. In Oregon, storage of hazardous waste is not allowed in land-based units unless the facility first obtains a RCRA Treatment, Storage and Disposal Facility (TSDF) permit. The unit would have to be specified and approved in the permit and approval would require passing through the public notice process.

DEQ regulates hazardous waste generator activity by rule. Storage facilities, off-site hazardous waste disposal facilities, and select cleanup sites are the only ones with permits. Chemical Waste Management is the only commercially permitted hazardous waste TSDF disposal facility in Oregon.

**What If someone tried to turn hazardous waste into solid waste using an open holding pond; would the definition apply?**

A. The definition of a tank means that it is not constructed of earthen material and that it's self-supporting. A holding pond with a clay liner does not meet the definition of a tank. The new definition doesn't change anything DEQ has been doing over the past 35 years - and it maintains how DEQ has regulated tank and container management in the past. Operation of such a pond is both storage and treatment and would require a treatment, storage, and disposal facility, or TSDF, permit.

**Verification process and relying solely on the facility to provide data is of concern.**

A. Any facility which manages HSM is required to document legitimacy criteria and to maintain this documentation on site, available for review. Here are three examples of violations:

- A DEQ inspector asks for the generator's legitimacy criteria, and they don't have it,
- A DEQ inspector reviews the legitimacy criteria, and it doesn't have all the factors,
- A DEQ inspector finds the legitimacy criteria valid, but any part of the process does not match the legitimacy criteria

The rule is designed to allow DEQ to confirm legitimacy, and when HSM is not managed to these requirements it is not HSM, but sham recycled. Waste found to be sham recycled is no longer subject to the conditions of the pertinent exemption but is instead subject to the full standards for hazardous waste

management. Thus, DEQ could cite failure to characterize this waste, failure to meet hazardous waste management standards, and illegal hazardous waste disposal.

**Give an example of legitimate recycling operation.**

A. An example is a very small quantity generator which performs autobody work and generates paint solvent which the facility recycles in an onsite distillation unit producing good solvent for use in paint gun cleaning.

Before the legitimacy criteria, DEQ inspectors had no instructions for proving hazardous waste recycling was legitimate. The legitimacy criteria make the generator responsible for tracking the time since they made a recycling request, to document the materials were recycled, how the product itself met legitimacy criteria, and that those wastes were properly managed and disposed.

**Would the rule changes allow for offsite shipment of hazardous secondary materials (HSM) to a verified recycler in another state?**

A. Since DEQ is not proposing to adopt the DSW exclusion, so any materials, HSM or materials not managed under a pre-existing exclusion, that are shipped offsite will have to use a hazardous manifest, the wastes would count towards the facility's hazardous waste generator status and must be transported according to hazardous waste and Oregon Department of Transportation requirements. If the materials go to a state that adopted the exclusions, they then will have to comply with the requirements of that state, as well. While in Oregon, the material would be a hazardous waste.

**What resources will be available once the rule is adopted?**

A. DEQ will provide outreach to businesses along with guidance, factsheets, training, and offer on-site technical assistance. To learn more about DEQ's Technical Assistance Program see: <https://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/Technical-Assistance.aspx>

**Part 2: Fiscal Impact Questions**

The committee discussed DEQ's questions derived from OAR 183.333. Fiscal impact analysis attempts to project future impacts based on currently available information. The committee's summarized responses to the required questions are:

- **Will the rule have a fiscal impact?**
  - o **If so, what is the extent of the fiscal impact?**

The committee members agreed there will be some fiscal impact. Most of the impact will be from training and technical assistance for both generators and DEQ staff during the first year. Past the first year, the fiscal impact will be minimal, and will become a positive fiscal impact longer term.

- **Will the rule have a significant adverse impact on small businesses (less than 50 employees)?**
  - o **If so, how can DEQ reduce the economic impact of the rule on small businesses?**

The committee members agreed there will be some impact to small businesses which generate hazardous wastes and manage it through recycling, such as potentially having to hire a consultant. However, the new rule will also provide an opportunity to learn and investigate new recycling technologies. Eventually, the rule will become a positive impact to small businesses. Most of the impact will be on DEQ. DEQ's Hazardous Waste Technical Assistance Program will help mitigate any potential impacts to small businesses.

### **Part 3: DEQ's responses to comments or questions not addressed at the meeting.**

There were no unanswered Definition of Solid Waste questions.

DEQ thanked the Committee and the public for participating, expressing appreciation to the Committee for commenting on the proposed rules and fiscal impacts. The meeting was adjourned.

### **Alternative formats**

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov).