

**DIVISION 90
HAZARDOUS MATERIALS
Hazardous Substance Possession Fees
Excerpt Only**

1 **837-090-1000**

2 **Coverage**

3 (1) Persons with facilities covered by ORS 453.317 and OAR 837-090-1000 through 837-090-
4 1045 shall be subject to a fee assessment for those hazardous substances classified as minimally,
5 generally, very hazardous, or subject only to a registration fee.

6 (2) Each facility site shall have a separate fee assessed based upon the amounts and classification
7 of hazardous substances possessed.

8 (3) Hazardous Substance Possession Fees assessed by local governments based on quantity or
9 the Hazardous Substance Information Survey shall be billed and collected only through contract
10 with the Office of State Fire Marshal.

11 Stat. Auth.: ORS 453.408

12 Stats. Implemented: ORS 453.396 - ORS 453.414

13 Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM
14 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

15 **837-090-1005**

16 **General**

17 (1) Annually any person possessing a hazardous substance at a covered facility in this state shall
18 pay a fee for each facility site.

19 (2) The annual fee shall be due following the requirement for submission of a Hazardous
20 Substance Survey. See OAR 837-090-1000 to 837-090-1045.

21 (3) The annual fee shall be in accordance with the fee schedules in OAR 837-090-1030 unless
22 the substance is subject only to a registration fee.

23 (4) The assessment of a Hazardous Substance Possession Fee does not relieve any person from
24 any other duty or responsibility imposed by law or rule.

25 (5) The Hazardous Substance Possession Fee imposed by these rules is in addition to all other
26 state, county, or municipal fees on hazardous substances

27 (6) Local government Hazardous Substance Possession Fees shall be in accordance with fee
28 schedules established by local government rule or ordinance.

29 Stat. Auth.: ORS 453.408

30 Stats. Implemented: ORS 453.398 & ORS 353.402

31 Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM
32 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

33 **837-090-1010**

34 **Effective Dates**

35 (1) OAR 837-090-1000 through 837-090-1045 are effective upon date of filing.

36 (2) Local government Hazardous Substance Possession Fee programs shall be in compliance
37 with these rules.

38 Stat. Auth.: ORS 453.408

39 Stats. Implemented: ORS 453.396 - ORS 453.414

40 Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM
41 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

42 **837-090-1015**

43 **Definitions**

44 (1) "Aerosol" means any material which is dispensed from its container as a mist, spray or foam
45 by propellant under pressure.

46 (2) "Blasting Agent" means any material or mixture consisting of a fuel and oxidizer intended for
47 blasting, not otherwise classified as an explosive, in which none of the ingredients are classified
48 as explosives, provided that the finished product as mixed and packaged for use or shipment
49 cannot be detonated by means of a No. 8 test blasting cap when unconfined. Materials or
50 mixtures classified as nitrocarbonitrates by the Department of Transportation regulations shall be
51 included in this definition.

52 (3) "Carcinogen" means any substance that causes the development of cancerous growths in
53 living tissue. A chemical is considered to be a carcinogen if:

54 (a) It has been evaluated by the International Agency for Research on Cancer (IARC) and found
55 to be carcinogenic; or

56 (b) It is listed as a carcinogen in the latest edition of the Annual Report on Carcinogens
57 published by the National Toxicology Program (NTP); or

- 58 (c) It is regulated by the Occupational Safety and Health Administration (OSHA) as a
59 carcinogen.
- 60 (4) "Combustible Liquid" means any liquid having a flash point at or above 100° F. Combustible
61 liquids shall be subdivided as follows:
- 62 (a) Class II liquids shall include those having flash points at or above 100° F. and below 140° F.;
- 63 (b) Class III-A liquids shall include those having flash points at or above 140° F. and below 200°
64 F.;
- 65 (c) Class III-B liquids shall include those having flash points at or above 200° F.
- 66 (5) "Compressed Gas" means:
- 67 (a) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70°
68 F.; or
- 69 (b) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at
70 130° F. regardless of the pressure at 70° F.; or
- 71 (c) A liquid having a vapor pressure exceeding 40 psi at 100° F. as determined by U.F.C.
72 Standard No. 9-5.
- 73 (6) "Corrosive" means any chemical that causes visible destruction of, or irreversible alterations
74 in, living tissue by chemical action at the site of contact. A chemical is considered to be
75 corrosive if, when tested on the intact skin of albino rabbits by the method described in the U.S.
76 Department of Transportation in Appendix A to CFR 49 Part 173, it destroys or changes
77 irreversibly the structure of the tissue at the site of contact following an exposure period of four
78 hours. This term shall not refer to action on inanimate surfaces.
- 79 (7) "Corrosive Liquid" means any liquid which, when in contact with living tissue, will cause
80 destruction or irreversible alteration of such tissue by chemical action. Examples include acid,
81 alkaline or caustic materials.
- 82 (8) "Cryogenic Fluids" means those fluids having a normal boiling point below 150° F. (See
83 Table No. 75.102-B of the Uniform Fire Code).
- 84 (9) "Cutaneous Hazard" means a substance that damages or causes sensitization of the dermal layer
85 of the body.
- 86 (10) "Department" means the Department of Revenue.
- 87 (11) "Dust" means pulverized particles which, if mixed with air in the proper proportions,
88 become explosive and may be ignited by a flame or spark or other source of ignition.

89 (12) "Entity" means any individual, trust, firm, association, corporation, partnership, joint stock
90 company, joint venture, public or municipal corporation, commission, political subdivision, the
91 state or any agency or commission thereof, interstate body, and the Federal Government and any
92 agency thereof.

93 (13) "Explosive" means:

94 (a) A chemical which causes a sudden, almost instantaneous release of pressure, gas and heat
95 when subjected to sudden shock, pressure, or high temperatures; or

96 (b) A material or chemical, other than a blasting agent, that is commonly used or intended to be
97 used for the purpose of producing an explosive effect and is regulated by Article 77 of the
98 Uniform Fire Code.

99 (14) "Eye Hazard" means a substance that causes damage to the eyes, except those that cause
100 damage by mechanical means.

101 (15) "Facility" means all buildings, equipment, structures and other stationary items that are
102 located on a single site or on contiguous or adjacent sites and that are owned or operated by the
103 same person or by any person who controls, is controlled by or under common control with such
104 person.

105 (16) "Fire Hazard" means any thing or act which increases or may cause an increase in the
106 hazard or menace of fire to a greater degree than that customarily recognized as normal by
107 persons in the public service regularly engaged in preventing, suppressing or extinguishing fire;
108 or which may obstruct, delay, hinder or interfere with the operations of the fire department or the
109 egress of occupants in the event of fire.

110 (17) "Firework" means any combustible or explosive composition, or any substance or
111 combination of substances, or device prepared for the purpose of producing a visible or audible
112 effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges,
113 toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers,
114 torpedoes, sky-rockets, Roman candles, Daygo bombs, sparklers or other devices of like
115 construction and any devices containing any explosive or flammable compound, or any tablet or
116 other device containing an explosive substance, except that the term "fireworks" shall not include
117 auto flares, paper caps containing not in excess of an average of 25/100 of a grain of explosive
118 content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps.

119 (18) "Fissile Materials" means radioisotopes which may undergo a nuclear fission reaction and
120 are usually found only at reactor sites or as part of a nuclear weapon.

121 (19) "Flammable Anesthetic" means a compressed gas which is flammable and administered as
122 an anesthetic and shall include among others, cyclopropane, divinyl ether, ethyl chloride, ethyl
123 ether and ethylene.

- 124 (20 "Flammable Gas" means a gas which is flammable at a mixture of 13 percent or less (by
125 volume) with air, or the flammable range with air is wider than 12 percent, regardless of the
126 lower limit.
- 127 (21) "Flammable Liquefied Gas" means a liquefied compressed gas which under the charged
128 pressure is partially liquid at a temperature of 70° F. and which is flammable.
- 129 (22) "Flammable Liquid" means any liquid having a flash point below 100° F. and having a
130 vapor pressure not exceeding 40 pounds per square inch (absolute) at 100° F. Flammable liquids
131 shall be subdivided as follows:
- 132 (a) Class I-A shall include those having flash points below 73° F. and having a boiling point
133 below 100° F.;
- 134 (b) Class I-B shall include those having flash points below 73° F. and having a boiling point at or
135 above 100° F.;
- 136 (c) Class I-C shall include those having flash points at or above 73° F. and below 100° F.
- 137 (23) "Flammable Solid" means a solid substance, other than one which is defined in Article 9 of
138 the Uniform Fire Code as a blasting agent or explosive, that is liable to cause fire through friction
139 or as a result of retained heat from manufacture, or which has an ignition temperature below
140 212° F., or which burns so vigorously or persistently when ignited so as to create a serious
141 hazard. Finely divided solid materials which when dispersed in air as a cloud may be ignited and
142 cause an explosion are flammable solids.
- 143 (24) "Generally Hazardous" means hazardous substances which present a hazard to public health,
144 welfare or safety or the environment.
- 145 (25) "Hazardous Substance" means:
- 146 (a) Any substance or waste known to present a physical or health hazard to employees,
147 emergency response personnel, or the public under normal conditions of use and/or during an
148 emergency situation; or
- 149 (b) Any hazardous chemical which is required to have a Material Safety Data Sheet pursuant to
150 OAR chapter 437, division 155, the Hazard Communication rules of the Oregon Occupational
151 Safety and Health Division of the Department of Consumer and Business Services; or
- 152 (c) Any radioactive substance as defined by ORS 453.005(7); or
- 153 (d) Any radioactive waste as defined by ORS 469.300; or
- 154 (e) Any substance or waste designated as hazardous by the Director of the Department of
155 Insurance and Finance or the State Fire Marshal.

- 156 (26) "Hematopoietic Toxin" means a substance which damages or disrupts the blood system.
- 157 (27) "Hepatotoxin" means a substance that causes damage to the liver.
- 158 (28) "Highly Toxic Material" means a material which produces a lethal dose or lethal
159 concentration which falls within any of the following categories:
- 160 (a) A chemical that has a median lethal dose (LD50) of 50 milligrams or less per kilogram of
161 body weight when administered orally to albino rats weighing between 200 and 300 grams each;
- 162 (b) A chemical that has a median lethal dose (LD50) of 200 milligrams or less per kilogram of
163 body weight when administered by continuous contact for 24 hours (or less if death occurs
164 within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms
165 each;
- 166 (c) A chemical that has a median lethal concentration (LC50) in air of 200 parts per million by
167 volume or less of gas or vapor, or two milligrams per liter of less of mist, fume or dust, when
168 administered by continuous inhalation for one hour (or less if death occurs within one hour) to
169 albino rats weighing between 200 and 300 grams each;
- 170 (d) Mixture of these materials with ordinary materials, such as water, may not warrant a
171 classification of highly toxic. While this system is basically simple in application, any hazard
172 evaluation which is required for the precise categorization of this type of material shall be
173 performed by experienced, technically competent persons.
- 174 (29) "Licensed Vehicle" means a motorized vehicle licensed by the State of Oregon for travel
175 using its own power on public highways.
- 176 (30) "Hypergolic Materials" means any materials which are capable of igniting spontaneously
177 upon contact with another substance.
- 178 (31) "Highly Hazardous" means and is equivalent to very hazardous. See section (56) of this rule.
- 179 (32) "Liquefied Gas" means a gas that is received and stored as a liquid through the use of
180 pressure and/or cryogenic conditions.
- 181 (33) "Liquefied Petroleum Gas" means any material which is composed predominantly of the
182 following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or
183 isobutane) and butylenes.
- 184 (34) "Material Safety Data Sheet" means written or printed material concerning a hazardous
185 chemical which is prepared pursuant to rules OAR chapter 437, division 2 (29 CFR 1910.1200),
186 Subdivision Z, the Hazard Communication Rules of the Oregon OSHA Occupational Safety and
187 Health Division of the Department of Consumer and Business Services.

- 188 (35) "Minimally Hazardous" means hazardous substances which present little hazard to public
189 health, welfare, safety or the environment.
- 190 (36) "Mutagen" means a substance that causes genetic (heritable) changes in the DNA of
191 chromosomes.
- 192 (37) "Nephrotoxin" means a substance that is poisonous to the kidneys.
- 193 (38) "Neurotoxin" means a substance that causes damage to the nervous system.
- 194 (39) "Non-hazardous" means a substances which present no hazard to public health, welfare,
195 safety or the environment.
- 196 (40) "Organic Peroxide" means an organic compound that contains the bivalent -0-0- structure
197 and which may be considered to be a structural derivative of hydrogen peroxide where one or
198 both of the hydrogen atoms have been replaced by an organic radical. Organic peroxides may
199 present an explosion hazard (detonation or deflagration) or they may be shock sensitive. They
200 may also decompose into various unstable compounds over an extended period of time.
- 201 (41) "Oxidizer" means a chemical other than a blasting agent or explosive as defined in Article 9
202 of the Uniform Fire Code that initiates or promotes combustion in other materials, thereby
203 causing fire either of itself or through the release of oxygen or other gases.
- 204 (42) "Peroxide-Forming Chemical" means a chemical which, when exposed to air, will form
205 explosive peroxides which are shock, pressure or heat sensitive.
- 206 (43) "Person" means:
- 207 (a) Any entity including, but not limited to, an individual, trust, firm, joint stock company,
208 corporation, partnership, association, municipal corporation, political subdivision, interstate
209 body, the state and any agency or commission thereof and the Federal Government and any
210 agency thereof;
- 211 (b) Any entity operating a facility that is included in one or more of the standard industrial
212 classification categories identified by the State Fire Marshal under ORS 453.408(2).
- 213 (44) "Pesticide" means any substance or mixture of substances, including fungicides, intended
214 for preventing, destroying, repelling or mitigating any pest and any substance or mixture of
215 substances intended for use as a plant regulator, defoliant or desiccant. Products defined as drugs
216 in the Federal Food, Drug and Cosmetic Act are exempt.
- 217 (45) "Possess" or "Possession" means the physical possession of a hazardous substance within
218 the state.
- 219 (46) "Pyrophoric" means a chemical that will spontaneously ignite in air at or below a
220 temperature of 130° F. (54.4° C.).

- 221 (47) "Quantity Range(s)" means a range of values assigned for reporting the quantities of
222 hazardous materials. It is equivalent to the term Reporting Range.
- 223 (48) "Radioactive Material" means any material or combination of materials that spontaneously
224 emits ionizing radiation.
- 225 (49) "Reactive Materials" means those materials which can enter into a hazardous chemical
226 reaction with other stable or unstable materials.
- 227 (50) "Registration Fee" means a Hazardous Substance Possession Fee assessed in lieu of that set
228 by a fee schedule.
- 229 (51) "Respiratory Hazard" means those materials which cause damage to the respiratory system.
- 230 (52) "Sensitizer" means a chemical that causes a substantial proportion of exposed people or
231 animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.
- 232 (53) "Toxic Material" means a material which produces a lethal dose or a lethal concentration
233 within any of the following categories:
- 234 (a) A chemical or substance that has a median lethal dose (LD50) of more than 50 milligrams per
235 kilogram but not more than 500 milligrams per kilogram of body weight when administered
236 orally to albino rats weighing between 200 and 300 grams each;
- 237 (b) A chemical or substance that has a median lethal dose (LD50) of more than 200 milligrams
238 per kilogram but not more than 1,000 milligrams per kilogram of body weight when
239 administered by continuous contact for 24 hours (or less if death occurs within 20 hours) with the
240 bare skin of albino rabbits weighing between 2 and 3 kilograms each;
- 241 (c) A chemical or substance that has a median lethal concentration (LC50) in air more than 200
242 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more
243 than two milligrams per liter but not more than 20 milligrams per liter of mist, fume or dust,
244 when administered by continuous inhalation for one hour (or less if death occurs within one
245 hour) to albino rats weighing between 200 and 300 grams each.
- 246 (54) "Unstable (reactive) Liquid" means a chemical which in the pure state, or as produced or
247 transported, will vigorously polymerize, decompose, condense, or will become self-reactive
248 under conditions of shock, pressure or temperature.
- 249 (55) "Unstable Materials" means those materials, other than explosives, which in the pure state
250 or as commercially produced will vigorously polymerize, decompose, condense or become self-
251 reactive and undergo other violent chemical changes, including explosion, when exposed to heat,
252 friction, shock, or in the absence of an inhibitor or in the presence of contaminants or in contact
253 with non-compatible materials.

254 (56) "Very Hazardous" means hazardous substances which present a significant hazard to public
255 health, welfare or safety or the environment.

256 (57) "Water-Reactive Materials" means materials which explode violently, react, produce
257 flammable, toxic or other hazardous gases, or evolve enough heat to cause self-ignition or
258 ignition of nearby combustibles upon exposure to water or moisture.

259 [Publications: Publications referenced are available from the agency.]

260 Stat. Auth.: ORS 453.408

261 Stats. Implemented: ORS 453.396 &endash; ORS 453.414

262 Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM

263 7-1992, f. 6-15-92, cert. ef. 7-15-92; FM 5-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 9-2002,

264 f. 11-14-02, cert. ef. 11-17-02

265 **837-090-1020**

266 **Hazardous Classification**

267 (1) Hazardous substances shall be classified according to the hazard(s) they present.

268 (2) Hazardous substances shall be classified as generally hazardous unless they meet the criteria
269 for classification as minimally hazardous, very hazardous or are subject only to a registration fee.

270 (3) For purposes of the Hazardous Substance Possession Fee, the most hazardous classification
271 that can be assigned to a substance will be used.

272 (4) A hazardous substance shall be classified as subject only to a registration fee if, under normal
273 or reasonably expected conditions:

274 (a) Its primary hazard is that only of a nuisance dust and/or minor irritant; and

275 (b) It has no other hazard that would classify it as a minimally, generally or very hazardous
276 substance; or

277 (c) It is classified as such by the Office of State Fire Marshal.

278 (5) A hazardous substance may be classified as minimally hazardous if, under normal or reason-
279 ably expected conditions:

280 (a) It has a National Fire Protection Association (NFPA) 704 rating of 1 or less; and

281 (b) It is not required to have either the signal Words Danger or Warning on container labels; and

- 282 (c) It does not have a Threshold Limit Value (TLV), Permissible Exposure Limit (PEL) or
283 Recommended Exposure (REL) less than 10 mg/m³ of total particulate, 5,000 ppm of gas or
284 vapor or 10 fibers/cc; and
- 285 (d) There has been not one reliable animal or human study showing that it is a hepatoxin,
286 nephrotoxin, neurotoxin, carcinogen, sensitizer, corrosive, hematopoietic toxin, respiratory
287 hazard, reproductive toxin, mutagen, eye hazard, or cutaneous hazard; and
- 288 (e) It is not a hazardous waste; and
- 289 (f) It is not an aerosol, blasting agent, combustible liquid, compressed gas, corrosive, corrosive
290 liquid, cryogenic fluid, explosive, fire hazard, fireworks, fissile materials, flammable anesthetic
291 flammable gas, flammable liquefied gas, flammable liquid, flammable solid or metal, highly
292 toxic material, highly toxic pesticide, hypergolic material, liquefied petroleum gas, natural gas,
293 organic peroxide, oxidizer, peroxide, peroxide-forming chemical, pesticide, pyrometric,
294 radioactive material, reactive material, sensitizer, toxic material, unstable (reactive) liquid,
295 unstable material or water-reactive material; or
- 296 (g) It is classified as such by the Office of State Fire Marshal.
- 297 (6) A hazardous substance will be classified as very hazardous if, under normal or reasonably
298 expected conditions:
- 299 (a) It has a National Fire Protection Association (NFPA), 704 health and/or reactivity rating of 4;
300 or
- 301 (b) It is required to have the signal word Danger on container labels; or
- 302 (c) It is a highly toxic material, human carcinogen, high explosive, highly combustible dust or
303 metal, Class 4 oxidizer, Class I organic peroxide, pyrophoric, Class 4 unstable (reactive)
304 material, Class 3 water-reactive material, radioactive material, hypergolic; or
- 305 (d) It is classified as such by the Office of State Fire Marshal.
- 306 (7) The Office of State Fire Marshal shall make an initial hazard classification of hazardous
307 substances:
- 308 (a) In the absence of information to support classification as minimally hazardous, very
309 hazardous or subject only to a registration fee, each hazardous substance shall be classified as
310 generally hazardous;
- 311 (b) Requests for changes in hazard classifications shall be made in writing to the Office of State
312 Fire Marshal. The request shall include the facility ID number, company name, address and
313 telephone number of the facility requesting the change, the name of the person making the
314 request, the name of the substance and a Material Safety Data Sheet for the substance.

315 (8) If the Material Safety Data Sheet (MSDS) states, or indicates by content a mixture of
316 hazardous substances has been tested as a whole to determine its hazards, the results of such
317 testing shall be used to determine the mixture's hazard classification.

318 (a) If there is other documentation available that indicates there may be other hazards associated
319 with the substance being evaluated, the State Fire Marshal may also consider that information to
320 assist in determining the hazard rank classification.

321 (9) If a mixture of hazardous substances has not been tested as a whole, the health hazard
322 established for the product will be the same as the most hazardous ingredient that makes up 20
323 percent (by weight or volume) or more of the mixture. The mixture shall be considered to have
324 carcinogenic hazards if it contains a listed carcinogen in amounts of 5 percent or more.

325 (10) If the MSDS indicates the ingredients of a mixture are neutralized or would not create a
326 hazard under normal or reasonably expected conditions due to a chemical reaction of ingredients,
327 by encapsulation or bound in a compound, the potential hazard will be evaluated using the
328 MSDS and any other applicable documents.

329 (11) If a mixture of hazardous substances has not been tested as a whole to determine whether
330 the mixture is a physical hazard, the Office of State Fire Marshal may use whatever scientifically
331 valid data is available to evaluate the physical hazard potential of the mixture and its hazard
332 classification.

333 (12) If there is evidence to indicate that a component present in the mixture in concentrations of
334 less than 30 percent (or in the case of carcinogens, less than 10 percent) could be released in
335 concentrations which would exceed an established Permissible Exposure Limit, ACGIH
336 Threshold Limit Value, or Recommended Exposure Limit, or could present a health hazard in
337 those concentrations, the mixture shall be assumed to present the same hazard as the component.

338 Stat. Auth.: ORS 453.408

339 Stats. Implemented: ORS 453.402(2)

340 Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM
341 7-1992, f. 6-15-92, cert. ef. 7-15-92; FM 5-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 9-2002,
342 f. 11-14-02, cert. ef. 11-17-02