



State of Oregon Department of Environmental Quality

# Hazardous Waste Program Rulemaking Advisory Committee

Meeting Notes and Committee Recommendations  
Aug. 8, 2018

## Overview and purpose

The Oregon Department of Environmental Quality is convening advisory committee meetings to review proposed revisions to Oregon’s Hazardous Waste program rules and give input on the potential fiscal impacts to businesses. The committee is called the Hazardous Waste Fees Rulemaking Advisory Committee. After considering the proposed fee increase options, DEQ will ask the committee:

- Will the rule have a fiscal impact?
- If so, what is the extent of the fiscal impact?
- Will the rule have a significant adverse impact on small businesses (<50 employees)?
- If so, how can DEQ reduce the economic impact of the rule on small business?

## August committee meeting

The first committee meeting was held Aug. 8, 2018, from 9 a.m. to 3 p.m. in DEQ’s 700 Lloyd office in Portland. Before the meeting, DEQ provided the committee with background information on Oregon’s Hazardous Waste program. The meeting notes summarize the information contained in the presentation and shared with committee members.

 <b>Committee Members</b> Except where noted with an asterisk, all committee members attended the meeting	
Name	Affiliation
Bruce Johnson	Lonza Group (Bend Research, Inc.)
Geoffrey B. Tichenor	Stoel Rives LLP for Oregon Business & Industry
Jim Denson*	Chemical Waste Management of the Northwest
Keri Bishop	Oregon Health & Sciences University
Leah Shannon (Alternate)	Chemical Waste Management of the Northwest
Lori Grant	Oregon Environmental Council



## Committee Members

Except where noted with an asterisk,  
all committee members attended the meeting

Name	Affiliation
Marjorie MartzEmerson	Coyote & Chirp Biosphere, LLC
Matthew Sauvageau	Safety-Kleen Systems, Inc. (Clean Harbors/Emerald Svcs)
Michael Doherty	Lotus Precision Coating Inc.
Mike Standen	Valliscor LLC
Sheila Smith	Safety-Kleen Systems, Inc. (Clean Harbors/Emerald Svcs)



## Committee Member Alternates Attending (not participating)

Name	Affiliation
Amber Peterson	Lonza Group (Bend Research, Inc.)



## Non-Committee Members DEQ members at the meeting

Name	Affiliation
Audrey O'Brien	Hazardous Waste Manager, Committee Advisor
Abby Boudouris	Senior Legislative Analyst, Office of Policy & Analysis
David Livengood	Sponsor, HQ Hazardous Waste Program Manager
Denise Miller	Project Coordinator
Eileen Naples	Sr. Hazardous Waste Policy Analyst
Jeannette Acomb	Sr. Hazardous Waste Policy Analyst
Killian Condon	Generator Rule Lead, Hazardous Waste Inspector
Lydia Emer	Land Quality Administrator
Rich Duval	Permit Rule Lead, Hazardous Waste Inspector
Sandra James	Fiscal Analyst, Office of Policy & Analysis
Sharon Al-Najran	Project Administrative Assistant

## Presentation notes

- Slide Presentation (without graphics) [Advisory committee 1 presentation](#)
- Link to [Advisory Committee Charter](#) and [HW Fees 2019 Rulemaking webpage](#)

## Background of the proposed rule

Since 1981, the United States Environmental Protection Agency has authorized Oregon to manage the State of Oregon hazardous waste or Resource Conservation and Recovery Act (RCRA) program. DEQ implements the state program, as defined in Oregon laws and rules, to ensure harmful wastes are managed properly from “cradle to grave.”

Annually, DEQ receives approximately \$3.5 million from multiple sources, including annual generator fees (76 percent), a federal grant (22 percent), and small cost recovery funds (1 percent). The majority of fees have not changed in 20 years. The program’s General Fund allocation ended in 2014 due to required state general fund reductions and shifts to grant-and fee-based program. Currently, the program’s revenue supports 19 full-time staff. By July 2019, funding will be insufficient to support current service levels. This is why DEQ proposed the suggested fee increases it is asking the committee to consider.

In this rulemaking, DEQ proposes to increase fees as part of a multi-phase approach to stabilize funding over the next seven years.

- In **phase one**, the current rulemaking; DEQ is considering increasing annual generator and permit fees.
- In **phase two**, DEQ is considering changing statutory fees through the Oregon legislature and or rule fee changes.

The proposed fee increases, along with any additional recommended streamlining efforts and staff reductions, should provide funding for EPA-required hazardous waste work while also ensuring hazardous wastes in Oregon are properly managed. These changes will better position Oregon to maintain its EPA state hazardous waste program authorization.

DEQ is convening the Hazardous Waste Rulemaking Advisory Committee to inform the first phase of the multi-phase approach to stabilize RCRA hazardous waste funding. DEQ will hold committee meetings through October 18, 2018, to review the proposed fee increases and associated rules. Once the Committee meetings are complete, DEQ will begin the formal rulemaking process.

DEQ will seek public comment on the proposed fee increases when it opens a formal public comment period later this year. DEQ will consider all comments before preparing a final proposal rule package for the Environmental Quality Commission to consider in mid-2019.

## Meeting discussion summary

At the beginning of the meeting, DEQ staff explained the need for the advisory committee and gave a presentation on the history and current funding of the hazardous waste program. The committee discussion addressed:

1. A focused discussion of the impacts from declining revenue,
3. The ideal service level for DEQ’s Hazardous Waste Program,
4. The committee’s recommendation on possible solutions for the budget shortfall, and
5. DEQ’s responses to comments or questions addressed at the meeting.

Below is a brief summary of the meeting presentation and committee discussions.

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### **Presentation - Overview and Committee Charter**

DEQ shared with the committee an overview of the rulemaking process. We are currently in Phase 1 of this multi-year fee increase and will be seeking input on the following considerations:

- Existing program budget, funding, and fee structures;
- Stakeholder needs; and
- How DEQ can protect the environment and meet the needs of the regulated community.

### **Presentation - Overview of HW Program**

DEQ's hazardous waste program currently receives 80 percent of its funding from permit and generator fees and 20 percent from other, including EPA grant funding. The program does not receive state general funds so no taxpayer money goes to the program.

- These funds support EPA commitments including inspections, permitting, compliance and enforcement, corrective action, rule adoption, policy work, support services (such as, reporting, invoicing, data sharing, and administrative services) and additional core work including technical assistance and information technology systems.

DEQ has not changed the annual compliance determination fee since 1997. DEQ has not changed the permit modification fee since 1998. The annual hazardous waste activity verification fee has remained the same since 1997. DEQ has not changed the internal codes it uses to calculate fees since establishing them in 1992. Federal grants have declined since 2014.

**Discussion:** The following are highlights of the committee members' discussion:

- Why have there not been recent fee increases and has DEQ considered adding an inflation factor with the fees? *DEQ responded there are competing agency priorities. We need to go through a rulemaking approval process before increasing fees. While we have not yet added an inflation factor, DEQ can consider this as an option this rulemaking.*
- Whether specific groups, such as state-funded academic institutions, could receive a lower fee rate. *DEQ responded specific implementation questions need be addressed on a case-by-case basis as the committee considers fee options.*
- Has DEQ encountered any challenges or opposition with the 2008 fee increase? *DEQ responded the 2008 fee increase did not have substantial challenges or encounter significant opposition. DEQ noted fee streams could be inconsistent due to changes in generator status and the amount of hazardous waste generated, and identified a need to stabilize funding.*

### **Presentation - Introduction: Hazardous Waste Program**

Staff presented a brief background on the Hazardous Waste Program. This included EPA's authorization for DEQ to operate Oregon's hazardous waste program in lieu of EPA's federal authority.

- In 1981, EPA granted Oregon interim authorization to implement the program in Oregon.
- Final program authorization followed in 1986.

As a condition of the authority, Oregon must periodically review and adopt new, or amended existing federal rules to retain authorization.

On a national level, there are currently 50 states and territories authorized to implement state hazardous waste programs.

## **Presentation – Hazardous Waste Program Roles & Commitments**

Staff presented DEQ's program priorities: minimizing waste, safely managing hazardous wastes and protecting the environment. The program strives to maintain a balance between generator compliance, technical assistance and pollution prevention, enforcement, and implementing policies and rules.

- The program's current 19 full-time staff give technical assistance, compliance inspection and monitoring, permitting operating treatment, storage or disposal sites, corrective action activities, enforcement, policy and development rules.

Since 2009, the hazardous waste staff was reduced by a third. The number of generators in the state has remained mostly consistent the last 10 years.

Oregon currently has 478 reporting generators. There are 302 small quantity generators, or SQGs, and 176 large quantity generators or LQGs. Conditionally exempt generators, or CEGs, are not required to report. DEQ does not know how many currently operate within the state. When DEQ formerly asked CEGs to register and report during the 1990's, Oregon had approximately 10,000 CEGs in the database. DEQ eventually, in about 2012, asked CEGs to withdraw their hazardous waste identification number, since they do not pay fees.

### **Inspector work**

Currently, DEQ's field inspectors:

- Conduct on average 140 inspections combined annually, with 50 percent of those inspections leading to at least one enforcement action;
- Receive a combined 163 complaints and conduct approximately 26 high-priority complaint site visits each year;
- Assist headquarters with reporting requests and policy development;
- Do compliance technical assistance even though it is not their primary task.

### **Technical assistance work**

Technical assistance staff work mostly with medium and large sized businesses. They provide 18-20 trainings (such as solvent rag update training) and approximately 30 compliance and other technical assistance trainings (such as toxics reduction) annually. They also respond to over 2,000 phone calls and emails annually.

### **Permit work**

Permitting staff work with two large, active operating permitted facilities, as well as seven other sites in post closure or corrective action. DEQ renews hazardous waste permits every 10 years.

### **Policy and reporting work**

DEQ's policy and program development staff:

- Work to identify regulatory gaps for policy development;
- Conduct regulatory interpretations;
- Adopt federal rules and maintain program authorization;
- Assist with outside and internal audits;

- Coordinate with EPA oversight activities; and
- Maintain the website and generate guidance documents.

DEQ's data reporting and invoicing staff work with businesses generating hazardous waste and assist generators with annual reporting activities and fee inquiries. Staff also issue RCRA ID numbers, perform quality assurance, and report to EPA.

**Discussion:** Highlights of the Committee member's discussion on DEQ Hazardous Waste program's roles and commitments:

- Would DEQ add staff to monitor paperwork and ensure generators are complying with hazardous waste rules? *DEQ responded we do have the authority to add staff, but do not currently have the funding. DEQ is seeking program funding to support a half-time program analyst the Oregon Legislature already approved as a position, to assist with information and data needs.*
- Can the same person perform both technical assistance and compliance roles even though the roles may inherently conflict? *DEQ responded that, while technical assistance staff and compliance staff occasionally have a difference of opinion due to the nature of the roles, DEQ currently has some staff working in both roles. When that happens, staff working on site visits clarify their role with the business before going on a site.*
- How long is a typical large quantity generator or LQG site visit? *DEQ responded that while the length of a site visit depends on size and complexity of site along with travel time, the typical LQG site visit is between 3-4 hours. However, there are outliers, including one site visit that took 2 days due to the complexity of the visit. In addition, each visit requires 2-4 hours of pre-visit preparation, as well as several hours in follow-up work. DEQ has worked to streamline the site visit process as much as possible using common templates, checklists, and timelines. The next meeting will provide more discussion on topic.*
- Does DEQ seek input on Green Chemistry and Pollution Prevention from Oregon's private industry? *DEQ responded we typically follow a process where we seek input from global experts (e.g., OSU chemists, scientists, etc.) and then invite others to collaborate.*
- Does DEQ permit all generators? *DEQ responded permitted entities are those who actively treat, store, and dispose of wastes while generators produce the waste. Federal and state rule drive this distinction, unlike other programs such as solid waste.*

## **Presentation - HW Program Budget**

For many years, DEQ has run a lean hazardous waste program achieving efficiencies through electronic reporting, deferring hiring, keeping positions vacant, and reducing overhead. Even with these efficiencies, DEQ's hazardous waste program is operating at a deficit. DEQ anticipates a \$1.2 million deficit for the 2017-19 biennium. At the current cost level, the program will not have sufficient funds for staffing by July 2019. The program lacks funding to fill DEQ-authorized hazardous waste positions.

Funding sources have not kept pace with program expenditures. Inflation has been a contributing factor. For every two positions today, we could afford three in 1999.

**Discussion:** The following are the main highlights of the Committee member's program budget discussion:

- Why does the program no longer receive general funding? *DEQ responded all general funds have been reduced across the agency. While DEQ's air and water programs still*

*have access to general funds, the hazardous waste program no longer does. This changed in 2014 based on agency priorities.*

- Does DEQ's hazardous waste program have a contingency plan to cover any losses of federal grant money? *DEQ responded, at present we do not have an option to address any potential loss of federal grant dollars. We rely on federal grants for a portion of our funds and that grant amount tends not to fluctuate. Projections indicate we will receive the same amount of funds in the next two years.*
- What are the potential barriers to raising hazardous waste fees? *DEQ responded statute requires us to go through a public rulemaking process in order to raise fees. The public process will involve a number of different stakeholders and will include considerations to upgrade information technology systems to provide a high level of customer service.*

### **Key Question for Committee**

The following are the main highlights of the committee members' discussion surrounding the impacts of declining hazardous waste program revenue and the ideal level of hazardous waste service in Oregon.

DEQ's agreement with EPA is to inspect all of Oregon's large hazardous waste generators, entities that generate more than 2,200 pounds of hazardous waste per calendar month, once every five years. However, as a best practice, DEQ inspects all large quantity and small quantity generators once every 3 years. DEQ also inspects Treatment Storage and Disposal Facilities once every year. This exceeds the EPA commitment of once every two years.

- Has DEQ met its stated goals of inspecting LQGs and SQGs every 3 years? *DEQ responded yes, we have been able to meet our goal of inspecting generators every three years. However, with anticipated upcoming retirements, DEQ expects that it will not be able to meet this goal. DEQ predicts the reduced inspection frequency will cause compliance challenges. DEQ observes a three-year inspection schedule, addresses staff turnover at facilities DEQ inspects, and improves overall compliance.*
- Do generator fees pay for used oil transporter inspections? *DEQ responded yes, the inspection work of used oil processors and transporters comes out of the hazardous waste generator fees.*

### **Regarding technical assistance**

- To whom does DEQ provide technical assistance? *DEQ offers technical assistance to any generator requesting help, as well as to focus sectors, such as generators of certain contaminants. DEQ uses tools including in-person classes, phone consultations, and written documents to provide technical assistance.*
- Does DEQ charge a fee for technical assistance or the trainings? *DEQ might consider charging a technical assistance surcharge to all generators. No, DEQ found charging a fee for technical assistance trainings resulted in fewer participants, even when it was a nominal \$10-30 fee.*
- Are DEQ's technical assistance documents and tools available on DEQ's website? *DEQ technical assistance tools, including fact sheets, are available on DEQ's website.*
- How does DEQ prioritize technical assistance needs? *DEQ assesses technical assistance needs according to emergent threats or agency priorities.*
- What is the level of technical assistance for permitted facilities, such as treatment, storage, and disposal facilities? *One committee member expressed support for continued permitting technical assistance. DEQ's permitted facilities require complex technical assistance at times due to new technologies or processes in managing wastes.*

- Does DEQ offer amnesty if generators request technical assistance? *DEQ responded yes, we offer a grace period. We will share with you our current guidance posted to our web. [Using Immunity from Enforcement in the Hazardous Waste Technical Assistance Program - 2015](#)*

### **Regarding business compliance**

- Is inspection data publically available? *DEQ transfers its inspection information to EPA's RCRA database. EPA's RCRA database feeds into EPA's Enforcement and Compliance History Online or ECHO database. This is an externally facing, publicly available database. Additionally, DEQ maintains Enforcement Actions. This is an externally-facing enforcement database that reflects facilities subject to formal enforcement actions. Warning letters are not included in this database. In addition, if there is a large penalty amount associated with the violations, then DEQ will post a news release to notify the public.*
- Who determines enforcement penalties? *DEQ's Office of Compliance and Enforcement uses DEQ's regulations to determine the penalty amount.*

### **Committee members raised the following ideas:**

- Create a benchmark to identify what percentage of revenue comes from different types of generators and determine how an increase in fees might affect these different generators.
- Consider presenting generators with a range of revenue options along with a range of services to match the revenue options.
- Consider implementing a sliding scale model to reflect the difference between generator size and business models.
- Consider the possible impacts associated with a reduced inspection frequency, such as accidents, that may be more costly to generators than an increased fee structure.
- Consider coordinating technical assistance and inspection schedules.
- Consider increasing current level of technical assistance available throughout the state.
- Consider charging large and small quantity generators a small fee for technical assistance training to allow generators to meet annual training certifications.
- Consider charging a small registration fee to conditionally exempt generators.
- Consider knowledge transfer of generator information between retiring staff and new staff as well as knowledge transfer between DEQ inspector and technical assistance.

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### **Committee topics after the first meeting**

The committee asked about hazardous waste technical assistance funding. They specifically asked about the State Fire Marshal Hazardous Substance Possession fees, which have been about 21 percent or \$500,000 of our total program yearly funding. This has slightly declined, about 2.5 percent or less, over the last six years. The committee also asked about the three other primary funding sources for technical assistance that include a small portion of the hazardous generator fees, part of the annual hazardous waste disposal fees, and an intermittent Region 10 EPA Pollution Prevention competitive grant, about \$300,000, over four years. Generator fees make up the remainder not covered. DEQ can afford currently only three technical assistance staff with one not fully funded through the biennium. To fully cover the needs of Oregon businesses geographically, the program will need to add 2 or 3 more staff.

## **Parking Lot items**

We will discuss the few parking lot items not addressed during our first two meetings. This may include addressing compliance monitoring; where do enforcement fees go; and possible spot check visits or checklist submittals tied in with technical assistance between inspections.

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DEQ asked the committee to help identify other stakeholders interested in the proposed rules.

DEQ thanked the committee for participating and commenting on the proposed rules and fiscal impacts. Meeting adjourned.