



State of Oregon Department of Environmental Quality

# Notice of Proposed Rulemaking

**June 29, 2021**

Hazardous Waste Federal Rule Alignment 2021

This package contains the following documents:

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

## **Note for Readers:**

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

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## Introduction

DEQ invites public input on 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 comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on businesses.

## Overview

The U.S. Environmental Protection Agency (EPA) authorizes the Oregon Department of Environmental Quality (DEQ) to operate the federal Resource Conservation and Recovery Act (RCRA) hazardous waste program in lieu of EPA. Oregon must periodically review and adopt new or amended federal rules to retain this federal authority. DEQ last updated its rules in July 2017. In that rulemaking, DEQ incorporated by reference most federal rules enacted through June 30, 2015.

In this rulemaking, DEQ proposes to align its hazardous waste rules with the federal rules. DEQ will do this by incorporating new federal rules that have not been previously adopted. These changes will enable Oregon to ask EPA to continue authorizing Oregon to operate its RCRA hazardous waste program in lieu of EPA. To ensure DEQ issues fair and appropriate civil penalties for noncompliance of the adopted rules, DEQ is also including proposed changes to its Division 12 enforcement rules with this rulemaking.

The proposed federal rules to be adopted in this Hazardous Waste Program rulemaking are as follows (Note: mandatory federal rule adoptions are indicated with an asterisk (\*)):

- Hazardous Waste Generator Improvements Rule\*
- Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine\*
- Modernizing Ignitable Liquids Determinations
- Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations
- Safe Management of Recalled Airbags
- Hazardous Waste Management System: User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations\*
- Automated Export System: Hazardous Waste Export-Import Revision\*
- Confidentiality Determinations for Hazardous Waste Export and Import Documents\*

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

DEQ included small business representatives on the Hazardous Waste Federal Rules Alignment 2021 Rulemaking Advisory Committee (RAC) to help advise DEQ on the potential cost, if any, of compliance for small businesses. DEQ also provided rulemaking notice to all manufacturers registered with Oregon DEQ as small and large quantity generators. These generator groups include small businesses. The potential fiscal impacts to both the regulated community and DEQ



## **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:

[hazwaste2021@deq.state.or.us](mailto:hazwaste2021@deq.state.or.us)

## **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., Suite 600  
Portland, OR 97232-4100

## **At hearings**

Wednesday, 5 to 7 p.m. Aug. 4, 2021, and 11 a.m. to 1 p.m. Thursday, Aug. 5, 2021

## **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. DEQ may modify the rule proposal based on the comments.

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ’s intends to submit the proposed rule changes to the EQC on or after Aug. 18, 2021.

# Proposed Federal RCRA Hazardous Waste Rule Considerations

## Hazardous Waste Generator Improvements Rule

[[81 FR 85732-85829](#) – Federal Rulemaking Nov. 28, 2016, effective May 30, 2017]

a) **What the rule does:** Amends existing hazardous waste generator regulatory program.

1. Reorganizes the hazardous waste generator regulations to make those regulations more user friendly. A summary of the main organizational changes are in the table below.

Provision	Existing Citation §	New Citation §
Generator Category Determination	261.5(c)-(e)	262.13
Very Small Quantity Generator (VSQG) Provisions	261.5(a), (b), (f)-(g)	262.14
Small Quantity Generator (SQG) Provisions	262.34(d)-(f)	262.16
Large Quantity Generator (LQG) Provisions	262.34(a), (b), (g)-(i), (m)	262.17
Satellite Accumulation Area (SAA) Provisions (SQG and LQG)	262.34(c)	262.15

Also of note:

- The term “conditionally exempt small quantity generator” (CEG) changes to “very small quantity generator” (VSQG).
- Generator requirements in §265, such as emergency preparedness and container management, are now in §262.
- For more detailed information on the reorganization, see the U.S. Environmental Protection Agency’s [Crosswalk of Previous Regulations to Reorganized Regulations](#).

2. Provides further clarity and strengthens environmental protection by addressing regulatory gaps and adopting guidance:

- Clarifies a hazardous waste determination (HWD) must be accurate and made at point of generation, and provides information on how to make and document the determination.
- Small quantity generators and large quantity generators must label containers with the hazards of the contents upon generation, as well as waste codes prior to off-site shipment.
- Clarifies waste counting requirements, especially relating to acute and non-acute waste, and mixing of hazardous and non-hazardous waste.
- Clarifies difference between independent requirements and conditional requirements.
- Large quantity generators (LQG) must notify DEQ of a facility closure 30 days prior to closing; large quantity generators must notify within 90 days after closure that

performance standards were met, or that it can't clean close, in which case it must close as a landfill.

- Large quantity generators must prepare a quick reference guide for contingency plans.
- Must document attempts to make arrangements with local emergency responders.
- Clarifies small quantity generators (SQG) accumulating hazardous wastes on drip pads and in containment buildings must meet the standards in §265 subparts W and DD, as well as §262.16.
- Multiple clarifications about satellite accumulation areas (SAA): defines three days to mean three consecutive calendar days; consistent labeling requirements with central accumulation areas (CAA); and allows for containers to remain temporarily open under limited circumstances for safety.

3. Provides greater flexibility for hazardous waste generators to manage hazardous waste in a cost-effective and protective manner.

4. Makes technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist.

Optional provisions:

- Waiver of 50-foot Property Line rule: Allows waiver from the State Fire Marshal, or other authority having jurisdiction over fire regulations, if generator cannot comply with the rule for storage of ignitable or reactive waste.
- Large Quantity Generator Consolidation: Allows a very small quantity generator to send its hazardous waste to a large quantity generator under control of the same person without the large quantity generator needing a permit:
  - Very small quantity generator must label containers with the words "hazardous waste" and the hazards of contents.
  - Receiving large quantity generator must notify the state, keep records, and report waste under a new source code.
  - DEQ proposes to not charge the generation and management fees related to very small quantity generator waste disposal to incentivize the use of this provision.
- Episodic Generation:
  - Hazardous waste generated during an [episodic event](#) does not count towards generator status; the generator can maintain its usual status and avoid the increased requirements of a higher generator status.
  - Episodic event is a planned or unplanned activity not normally occurring during generator operations, such as a recall or emergency cleanup, resulting in an increase in waste generation that would bump up the generator's typical status.
  - Maximum of one unplanned and one planned per year, with petition to state.
  - For hazardous waste generated during episodic events, a generator must still dispose of such waste as hazardous waste, notify DEQ, and pay existing DEQ generation and management fees on the episodic hazardous waste.

b) **Oregon impacts:**

- Hazardous Waste Program: There will be significant work associated with the implementation of this rule as citations are changing, requiring additional staff time.
- Regulated community: Regarding public outreach and training; the main substantive topics to educate generators on are labeling, large quantity generator consolidation, episodic generation, and the quick reference guide for contingency plans. Overall, the rule should benefit generators in terms of increased flexibility of hazardous waste management.

c) **Fiscal impacts:**

- Hazardous Waste Program: Impact to fee revenue is expected to be minimal. DEQ will lose some annual activity verification fees with the episodic generation provision, but would still collect generation and management fees on episodic waste.
- Regulated community: Overall, EPA has stated the rule will lessen the regulatory burden for the majority of generators and they will see cost savings.
- Both DEQ and the regulated community will have additional costs related to training and implementation.

d) **Other states:** Approximately half of the states have adopted the rule, including Washington and Idaho. Washington elected to adopt the three optional provisions. State adoption map is available [here](#).

e) **Recommendations:**

1. Adopt all mandatory provisions as written.
2. Adopt LQG consolidation as written.
3. Adopt waiver of 50-foot property line rule as written.
4. Adopt episodic generation, with additional state rules to ensure episodic events are appropriately limited to avoid abuse for deferred maintenance, etc.

f) **Additional Resources:** [EPA FAQ](#), [McCoy and Associates](#)

## **Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine**

[\[84 FR 5816-5950](#) – Federal Rulemaking Feb. 22, 2019, effective Aug. 21, 2019]

a) **What the rule does:** Establishes cost savings by streamlining standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector while helping protect human health and the environment.

This rule will make our drinking and surface water safer by reducing the amount of hazardous waste pharmaceuticals entering our waterways under the sewerage prohibition. Federal Drug Administration approved over-the-counter nicotine replacement therapies, such as nicotine patches, gums and lozenges, will no longer be a hazardous waste when discarded. This will result in significant cost savings and burden reduction in the management of nicotine wastes.



## Definitions

- *Pharmaceutical* includes, but is not limited to: dietary supplements, prescription drugs, over-the-counter drugs, homeopathic drugs, compounded drugs, investigational new drugs, pharmaceuticals remaining in containers, personal protective equipment contaminated with pharmaceuticals, and clean-up material from spills of pharmaceuticals.
  - *Pharmaceutical* does not include dental amalgam, sharps, or medical waste.
- *Healthcare Facility* includes, but is not limited to: military medical logistics facilities, hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, pharmacies, long-term care pharmacies, veterinary clinics and hospitals.
  - *Healthcare Facility* does not include pharmaceutical manufacturers, reverse distributors, or reverse logistics centers; and
  - *Healthcare Facilities* do include long-term care facilities with nursing care and hospice facilities, or independent living communities, assisted living facilities, and group homes.
- *Potentially creditable hazardous waste pharmaceutical* means a prescription hazardous waste pharmaceutical that has a reasonable expectation of receiving manufacturer credit and is 1) in original manufacturer packaging, 2) undispensed, and 3) unexpired, or less than one year past its expiration date.
- *Non-creditable hazardous waste pharmaceutical* means a prescription hazardous waste pharmaceutical that does not have a reasonable expectation to be eligible for manufacturer credit or a nonprescription hazardous waste pharmaceutical that does not have a reasonable expectation to be legitimately used/reused or reclaimed.
- *Reverse distributors* are the entities that receive potentially creditable hazardous waste pharmaceuticals from healthcare facilities and evaluate them to determine if they are eligible for manufacturer credit. The reverse distributor must evaluate each potentially creditable hazardous waste pharmaceutical within 30 calendar days of receipt. Once the evaluation is complete, the material becomes known as an *evaluated hazardous waste pharmaceutical*.

The diagram below shows a summary of the requirements for non-creditable, potentially creditable, and evaluated hazardous waste pharmaceuticals.

**Non-Creditable**  
 Broken or leaking  
 Repackaged  
 Dispensed  
 Expired over a year ago  
 Investigational new drugs  
 Contaminated PPE  
 Floor sweepings  
 Clean-up material

**Potentially Creditable**  
 Original manufacturer packaging (except recalls)  
 Undispensed  
 Unexpired or less than one year past expiration

**Evaluated**  
 No further evaluation  
 or verification of  
 manufacturer credit  
 is necessary

**Applicability**

The Pharmaceutical Rule is both sector- and waste-specific. The rule applies to small quantity generators and large quantity generators that are healthcare facilities, and it applies to the management of pharmaceutical hazardous waste. Very small quantity generators (VSQG) may opt-in. However, VSQG healthcare facilities are automatically subject to the [sewer ban](#). Reverse distributors are also subject to this rule. The rule regulates potentially creditable, non-creditable, and evaluated hazardous pharmaceutical waste. Facilities are also encouraged, but not required, to include non-hazardous pharmaceuticals.

Healthcare facilities subject to the Pharmaceutical Rule will no longer need to count or report pharmaceutical hazardous wastes. Reverse distributors are subject to reporting the pharmaceutical waste they evaluate. The P075 revision is not sector specific, but it is waste specific, for lozenges, gum, and nicotine patches only.

	Healthcare Facilities (HCF)		Reverse Distributors (RD)	
<b>Notify</b>	Yes*		Yes*	
	potentially creditable	non-creditable	potentially creditable	evaluated
<b>Container standards</b>	No	Yes	No	Yes
<b>Labelling</b>	No	Yes	No	Yes
<b>Accumulation times</b>	No	1-year**	30 days (210 max)	180 days
<b>Weekly inspections</b>	No	No	No	Yes
<b>Employee training</b>	No	Yes	No	Yes–LQG like
<b>Contingency planning</b>	No	No	Yes	Yes
<b>Record keeping/tracking</b>	Yes	Yes	Yes	Yes

<b>Reporting</b>	No	No	No	Biennial***
<b>Manifest</b>	No	Yes	No	Yes
<b>Hazardous waste transporter</b>	No	Yes	No	Yes
<b>Shipping to</b>	Reverse distributor	Transfer, Storage, Disposal Facility (TSDF)	Another reverse distributor	Transfer, Storage, Disposal Facility (TSDF)
<b>Empty containers</b> ****	Yes	Yes	Yes	Yes

\***Notification** will be done in DEQ timeframe on state Site Identification form;

\*\***1-year accumulation** time-frame can be proven with flexible options- DEQ to be more stringent (dates on containers only);

\*\*\***Biennial reporting for RDs** will be changed to annual reporting for DEQ;

\*\*\*\***Empty container standards** found in § 266 Subpart P can be used by any generator of hazardous waste pharmaceuticals, not just healthcare facilities.

b) **Oregon impact:** In addition to the reduced management standards in the table above, the rule reduces fiscal and regulatory impact by:

- Eliminating certain nonprescription pharmaceutical waste from the P075 listing.
- Removing large quantity generator-like training requirements for healthcare facilities; not for reverse distributors.
- Providing more flexibility for determinations for hazardous waste pharmaceuticals.
- Creating conditional exemption for Drug Enforcement Agency-controlled substances.
- Clarifying RCRA-empty hazardous waste pharmaceutical containers to reduce unnecessary hazardous waste.

c) **Fiscal impact:**

- Hazardous Waste Program: Annual generator activity verification fees may decline by up to approximately \$13,500. Additional staff will be needed to document updates and conduct generator outreach.
- Regulated community: EPA's small business fiscal impact analysis finds:
  - Cost of compliance represents only 0.13% of revenue at healthcare facilities and 0.002% of revenue at hospitals.
  - Cost impact to small entity reverse distributors at \$5,300 annually, and do not anticipate this to be a hardship.

d) **Other states:**

- Optional Nicotine P075 rule: Washington has adopted, California may not.
- Pharmaceutical Rule: Washington has adopted with one state-only amendment.
- State adoption map can be found [here](#).

e) **Recommendations:**

**P075:** Adopt by reference

**Pharmaceutical Rule:** Adopt by reference, **except:**

- Notification on Oregon Site Identification form for all healthcare facilities and reverse distributors within 60 days of being subject to the rule.
- Do not adopt the presumption that long-term care facilities with less than 20 beds are very small quantity generators.
- Do not adopt more flexible options for proving one-year accumulation; use only the option for labelling each container.
- Reverse distributors report annually to DEQ, not biennially to EPA.
- For empty container residuals follow 110 gallons not 119 gallons, per DEQ established definitions.

f) **Additional Resources:** [EPA FAQ](#), [McCoy and Associates](#)

## Modernizing Ignitable Liquids Determinations

[[85 FR 40594-40608](#) – Federal Rulemaking July 7, 2020, effective Sept, 8, 2020]

a) **What the rule does:**

- Updates ignitability test methods to, among other things, allow the use of modern laboratory equipment, including non-mercury-containing thermometers.
- Updates cross-references to U.S. Department of Transportation hazardous materials regulations.
- Codifies existing guidance that defines “aqueous” as at least 50% water by weight, as it pertains to the alcohol-content exclusion.

b) **Oregon impact:** DEQ is not aware of any negative impacts to the public, businesses, or local and state agencies. Analytical laboratories are likely to benefit financially through approval of additional analytical methods, and the ability to use alternatives to mercury containing thermometers.

c) **Fiscal impact:** Analytical laboratories are likely to experience slight positive fiscal impacts. The proposed state amendments are unlikely to result in a substantive fiscal impact.

d) **Other States:** California and Washington have not yet adopted this rule; however, numerous other states including West Virginia, Kentucky, Pennsylvania, Colorado, and Idaho have adopted the federal rule by reference.

e) **Recommendation:** Adopt the rule as written, with minor amendments. DEQ proposes to modify EPA’s rule language pertaining to the alcohol-content exclusion to narrow the exclusion to apply to a single alcohol, ethanol (ethyl alcohol), as was originally intended, and to ensure other ignitable constituents do not “carry over” with the exclusion.

f) **Additional Resources:** [EPA Rule History and Info](#), [McCoy and Associates](#)

## Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations

[[84 FR 67202-67220](#) – Federal Rulemaking Dec. 9, 2019, effective Feb. 7, 2020]

a) **What the rule does:** Adds an option for generators of waste aerosol cans to manage under the Universal Waste Rule of Title 40, Code of Federal Regulations (CFR) 273, rather than characterize them as a hazardous waste.

Aerosol cans managed as universal waste are not subject to the full RCRA management requirements, and are exempt from 40 CFR Parts 260 through 268, as managed to the conditions of this exclusion. The rule does not require generators to store waste aerosol cans in closed containers. The rule is less stringent than existing federal regulations, and adds safety measures not found in the hazardous waste generator requirements.

b) **Oregon impact:** Affects facilities that generate waste aerosol cans, such as automotive repair, fabricators, manufacturing, industrial machining, printing, publishing, furniture, and military bases. If generators choose to use this exemption, an aerosol management plan must show how they will comply with the requirements.

c) **Fiscal impact:** As the rule adds another option for management, generators of waste aerosol cans may determine their preferred management methods and associated costs.

d) **Other states:** Five states have adopted the federal rule: Georgia, Kentucky, Michigan, North Carolina and Pennsylvania. Washington State anticipates adopting this rule without variation in 2021. In addition, five states have adopted similar state-only universal waste-like aerosol can programs. Colorado, New Mexico, Ohio, and Utah allow generators or universal waste handlers to puncture and drain cans prior to recycling. California has similar rules, but does not allow off-site commercial processors to puncture and drain cans without a permit and notification.

e) **Recommendation:** Adopt the rule as written. Recommend generator guidance to manage the waste in closed containers for additional human health and safety considerations.

f) **Additional Resources:** [EPA Rule History](#), [McCoy and Associates](#)

## **Safe Management of Recalled Airbags**

[[83 FR 61552-61563](#) – Federal Rulemaking Nov 30, 2018, effective Nov 30, 2018]

a) **What the rule does:** Provides better guidance for managing and disposing of non-deployed airbags.

The rule facilitates a more expedited removal of defective Takata airbag inflators from vehicles by dealerships, salvage yards, and other locations, for safe and environmentally sound disposal through exempting collection of wastes from the hazardous waste requirements, if conditions are met.

b) **Oregon impact:** No known impacts as the rule improves the management of airbags and allows the regulated community to decide to manage waste airbags as hazardous waste or under the less stringent rule. DEQ will need to provide technical assistance and outreach to the regulated community.

c) **Fiscal impact:** As the rule offers another regulatory option, there is the potential for generators to save money on management and disposal costs. DEQ Hazardous Waste Program will not incur any additional cost or receive any added revenue.

d) **Other states:** Twenty-five states have adopted this rule, including Washington, Idaho, Utah and Colorado. State adoption map is [here](#).

e) **Recommendation:** Adopt the rule as written.

f) **Additional resources:** [EPA FAQ](#), [McCoy and Associates](#)

## **Hazardous Waste Management System: User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations**

[[83 FR 420-462](#) – Federal Rulemaking Jan. 3, 2018, effective June 30, 2018]

a) **What the rule does:** Allows EPA to establish a methodology to determine and revise user fees and to collect those fees.

In addition, the rule contains three non-fee related matters:

1. Allows for changes to the transporters listed on a manifest while shipment is en route.
2. Defines how data corrections may be made in the database.
3. Amends the “[One-Year Rule](#)” to allow for hybrid manifests.

The rule also includes two provisions states must receive authorization for:

1. Requires hazardous waste receiving facilities, including state-only hazardous waste receiving facilities, to pay fees to EPA for e-Manifest use.
2. Requires receiving facilities to submit a signed copy of the manifest and data to the system.

b) **Oregon impact:** Impacts to hazardous waste receiving facilities include fees and data submittal requirements. Program impacts include outreach and guidance to the regulated community.

c) **Fiscal impact:** Hazardous waste generators may experience a fee impact if receiving facilities pass on those fees.

d) **Other States:** Twenty-four states have adopted this rule. Idaho and Washington adopted the rule as written.

e) **Recommendation:** Adopt the rule as written. DEQ must adopt most provisions of this rule to maintain consistency across the regulated community.

f) **Additional resources:** [EPA FAQ](#), [McCoy and Associates](#)

## Automated Export System: Hazardous Waste Export-Import Revision

[[81 FR 85696-85729](#) – Federal Rulemaking Nov. 28, 2016, effective Dec. 31, 2016]

a) **What the rule does:** Revises existing regulations by providing greater protection to human health and the environment by making requirements more consistent on commerce shipped. Ninety percent of all of U.S. imports or exports of hazardous wastes are between the U.S. and Canada and the U.S. and Mexico. Under preexisting regulations, these imports or exports were less stringent than other international standards. This rule corrects this by making all U.S. hazardous waste import and export requirements the same under 40 CFR 262 subpart H.

Provisions of the rule include:

- All U.S. imports and exports are now subject to international standards.
- Mandates electronic management of all import/export shipments.
- Adds receiver consent to prevent non-compliance shipments of hazardous waste entering a country without destination approval to reduce risks associated with recycling and disposal.
- Applies a limit of 25 kilograms to all excluded hazardous waste samples imported and exported to limit mass export of “testing samples.”

b) **Oregon Impact:** None as EPA, and not states, regulates imports and exports. There are no associated functions or state fees.

c) **Fiscal Impact:** Applies to importers, exporters and arrangers of these activities. The rule will result in cost savings and greater efficiency for EPA and the regulated community, as well as facilitate transparency with respect to documentation. The rule is unlikely to change fees or present a financial burden to generators.

d) **Other States:** All states must adopt. So far, 27 states have adopted this rule, including Washington, California, Idaho, Nevada and Colorado.

e) **Recommendation:** Adopt as written. Since EPA and other federal agencies administer import and export requirements as a matter of foreign policy, this is a required adoption to maintain equivalency with EPA’s program.

f) **Additional Resources:** [EPA FAQ](#), [McCoy and Associates](#)

## Confidentiality Determinations for Hazardous Waste Export and Import Documents

[[82 FR 60894-60901](#) – Federal Rulemaking Dec. 26, 2017, effective June 26, 2018]

a) **What the rule does:** Revises existing regulations to require a confidentiality determination that no person can assert confidential business information (CBI) claims for

documents related to export, import, and transit of hazardous waste. EPA is applying these changes for increased consistency.

Provisions of this rule include:

- No CBI documentation claims by any person for import/export of cathode ray tubes, spent lead acid batteries, universal waste or hazardous waste for recycling or disposal.
- No CBI documentation claims for any import and export contracts, notifications of intent to import/export, confirmations of receipt of recovery or disposal of hazardous wastes, transporters, receiving facilities, or treatment, storage or disposal facilities related to exports and imports.

b) **Oregon Impact:** None, as EPA, and not states, regulates imports and exports. There are no associated functions or state fees.

c) **Fiscal Impact:** Applies to importers, exporters, and arrangers of these activities. The rule will result in cost savings and greater efficiency for EPA and the regulated community, as well as facilitate transparency with respect to documentation. The rule is unlikely to change fees or present a financial burden to generators.

d) **Other States:** All states must adopt. Twenty-six states have adopted this rule, which does not include our nearest neighbors of California and Washington.

e) **Recommendation:** Adopt as written. Since EPA and other federal agencies administer import and export requirements as a matter of foreign policy, this is a required adoption to maintain equivalency with EPA's program.

f) **Additional Resources:** [EPA FAQ](#)

## Introduction to Division 12 – Enforcement Rules

DEQ assesses penalties according to Oregon Administrative Rules (OAR) Chapter 340, Division 12. DEQ is including revisions to Division 12 in this rulemaking to ensure DEQ can issue fair and appropriate civil penalties for non-compliance with the adopted rules.

Division 12 Enforcement Goals, as stated under [OAR 340-012-0026](#):

- (1) The goals of enforcement are to:
  - (a) Protect public health and the environment;
  - (b) Obtain and maintain compliance with applicable environmental statutes and the department's permits, rules and orders;
  - (c) Deter future violators and violations; and
  - (d) Ensure an appropriate and consistent statewide enforcement program.

DEQ endeavors to address violations in order of priority, based on the actual or potential impact to human health or the environment, using increasing levels of enforcement as necessary to achieve these goals. For most documented violations, DEQ issues a warning letter. For violations that remain uncorrected after a warning letter, and for more serious



violations, DEQ issues penalties and compliance orders. The administrative process allows for appealing the penalty assessment and order, as outlined in ORS Chapter 183 and OAR Chapter 340, Division 11.

When a penalty assessment is warranted, Division 12 provides a formula for DEQ to apply the facts and law to determine the appropriate amount of penalty for any given violation. That formula, found in OAR 340-012-0045, is:

$$\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$$

BP (base penalty) is a function of three elements:

1. **Penalty Matrix** (OAR 340-012-0140) ranges from \$1,000 to \$12,000 and is based upon the type of responsible party, e.g. hazardous waste generator status.
2. **Classification** of the violation (OAR 340-012-0053 and -0068). Class I is the most serious; Class III is the least.
3. **Magnitude** or the impact of the violation (OAR 340-012-0130 and 0135(4)). Magnitude is “the extent and effects of a respondent's deviation from statutory requirements, rules, standards, permits or orders.” Magnitude reflects the violation’s actual impact to the environment or risk of impact, and the importance of the requirement violated in the overall regulatory scheme. Major magnitude has a more significant impact; minor has less.

Applying these three elements to the facts will result in a variety of base penalties. For instance, if a large quantity generator (LQG) commits a Class I, major magnitude violation, the base penalty will be \$12,000. Towards the other end of the spectrum, a conditionally exempt generator (CEG) - very small quantity generator (VSQG) under the Generator Improvement Rule (GIR) - committing a Class II, minor magnitude violation would result in a base penalty of \$375. The base penalty is then multiplied by the aggravating and mitigating factors provided in [OAR 340-012-0145](#).

DEQ evaluated all of the proposed rules with respect to Division 12 needs, and recommends making specific changes to Division 12 enforcement rules in support of adoption of the following federal rules:

- Generator Improvements Rule
- Management Standards for Hazardous Waste Pharmaceuticals
- Safe Management of Recalled Airbags Rule

The elements of Division 12 proposed for amendment to align with these proposed rules include:

- Housekeeping
  - E.g. Update terminology, such as conditionally exempt generator (CEG) to very small quantity generator (VSQG) to align with the Generator Improvement Rule at OAR 340-012-0140(4)(K), (N).

- Classifications
  - E.g. Add a Class I for reuse of defective recalled airbags and a Class II for other, unclassified violations of the Safe Management of Recalled Airbags Rule and proposed revisions at OAR 340-012-0068(1)(t) & (2)(u).
- Penalty Matrix
  - E.g. add a specifying matrix that applies to reverse distributors to align with the Management Standards for Hazardous Waste Pharmaceuticals at OAR 340-012-0140.

To the extent Division 12 does not specifically reflect a particular rule, there are “catch-all” provisions in all the relevant provisions. See [OAR 340-012-0053](#) (classification); [OAR 340-012-0130](#) (magnitude); [OAR 340-012-0140\(4\)\(a\)\(A\)](#) (penalty matrix). For those rules not specifically addressed in the proposed Division 12 amendments, DEQ considered the existing Division 12 rules sufficient.

## Statement of Need

Proposed Rule	Discussion
<b>Hazardous Waste Generator Improvements Rule</b>	
What need would the proposed rule address?	This rule finalizes a much needed update to the hazardous waste generator regulations to make the rules easier to understand, facilitate better compliance, provide greater flexibility in how hazardous waste is managed, and close important gaps in the regulations.
How would the proposed rule address the need?	<p>Two key provisions where EPA is finalizing flexibility are:</p> <ol style="list-style-type: none"> <li>1. Allowing a hazardous waste generator to avoid the increased burden of a higher generator status when generating episodic waste, provided the episodic waste is properly managed, and</li> <li>2. Allowing a very small quantity generator to send its hazardous waste to a large quantity generator under control of the same person.</li> </ol> <p>In addition to finalizing key flexibilities, the rule enhances the safety of facilities, employees, and the general public by improving hazardous waste risk communication and ensuring that emergency management requirements meet today’s needs.</p>

	<p>Further, EPA is finalizing a number of clarifications, including a reorganization of the hazardous waste generator regulations so that all of the generator regulations are in one place.</p>
<p>How will DEQ know the rule addressed the need?</p>	<ul style="list-style-type: none"> <li>• Generator compliance will increase.</li> <li>• DEQ will retain its authorization to operate the RCRA hazardous waste program in lieu of EPA.</li> </ul>
<p><b>Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine</b></p>	
<p>What need would the proposed rule address?</p>	<p>This rule establishes cost-saving, streamlined standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector while maintaining protection of human health and the environment.</p>
<p>How would the proposed rule address the need?</p>	<p>This rule will make our drinking and surface water safer by reducing the amount of hazardous waste pharmaceuticals entering our waterways by prohibiting all facilities subject to the rule from sewerage them. This action will help address the issue highlighted by a growing body of publicly available studies documenting the presence of pharmaceuticals in drinking and surface waters, as well as their negative impacts to aquatic and riparian ecosystems.</p> <p>Federal Drug Administration-approved, over-the-counter nicotine replacement therapies (i.e., nicotine patches, gums and lozenges) will no longer be considered hazardous waste when discarded, which will result in significant cost savings and burden reduction in the management of these types of nicotine wastes.</p> <p>The rule reaffirms EPA’s long-standing policy that non-prescription pharmaceuticals and other unsold retail items that have a reasonable expectation of being legitimately used/reused or reclaimed are not solid waste. It also provides regulatory certainty that RCRA applies when healthcare facilities send unused, unsaleable prescription hazardous waste pharmaceuticals to reverse distributors to receive manufacturer credit. Simultaneously, the rule incorporates flexibilities to accommodate current</p>

	reverse distribution business practices to facilitate its implementation.
How will DEQ know the rule addressed the need?	<ul style="list-style-type: none"> <li>• The presence of pharmaceuticals in drinking and surface waters will decrease.</li> <li>• Generators of nicotine replacement therapy waste and hazardous pharmaceutical waste will realize a cost savings in terms of waste disposal.</li> <li>• DEQ will retain its authorization to operate the RCRA hazardous waste program in lieu of EPA.</li> </ul>
<b>Modernizing Ignitable Liquids Determinations</b>	
What need would the proposed rule address?	Due to the scientific and technological advances over the last few decades, certain test methods became outdated, and their use presents several challenges to the regulated community.
How would the proposed rule address the need?	<p>Through this rule, EPA finalized changes to the hazardous waste regulations that modernize how to determine the hazardous waste characteristic of ignitability under RCRA.</p> <p>This rule provides flexibility and cost savings to the regulated community by allowing the use of additional test procedures that use more readily available, modern laboratory equipment.</p> <p>The rule allows the use of non-mercury thermometers in a variety of EPA’s analytical methods that currently require mercury thermometers. These amendments also allow for the use of modern equipment and techniques for making ignitability determinations for waste. These changes reduce potential mercury exposures to humans and the environment by reducing the overall use of mercury-containing products.</p> <p>This rule also finalized the codification of existing guidance to define “aqueous” as “50% water by weight.”</p> <p>State amendments include defining the ignitability exclusion to be based only on the presence of ethyl alcohol.</p>

<p>How will DEQ know the rule addressed the need?</p>	<ul style="list-style-type: none"> <li>• Laboratories may realize a cost savings through the ability to choose which test methods and equipment best meet their needs.</li> <li>• There will be a decrease in confusion around, or abuse of, the definition of aqueous.</li> </ul>
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**Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations**

<p>What need would the proposed rule address?</p>	<p>Aerosol cans are widely used for dispensing a broad range of products including paints, solvents, pesticides, food, personal care products, and many others. The Household &amp; Commercial Products Association estimates that 3.75 billion aerosol cans were filled in the United States in 2016 for use by commercial and industrial facilities, as well as by households. Aerosol cans account for nearly 40 percent of retail items that are managed as hazardous waste at large retail facilities.</p>
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<p>How would the proposed rule address the need?</p>	<p>With this rule, EPA adds hazardous waste aerosol cans to those “universal wastes” regulated under title 40 C.F.R. part 273. This change in RCRA regulations is expected to reduce regulatory costs for a wide variety of establishments generating and managing aerosol cans, including the retail sector, by providing a clear, protective system for handling waste aerosol cans.</p>
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<p>How will DEQ know the rule addressed the need?</p>	<ul style="list-style-type: none"> <li>• Regulatory burdens on retail stores and other hazardous waste generators that discard aerosol cans will be eased.</li> <li>• The collection and recycling of aerosol cans will increase.</li> <li>• Municipal and commercial programs will be developed to reduce the quantity of these wastes going to municipal solid waste landfills or combustors.</li> </ul>
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**Safe Management of Recalled Airbags**

<p>What need would the proposed rule address?</p>	<p>EPA is issuing this interim final rule in response to the urgent public health issue posed by recalled Takata airbag inflators still installed in vehicles. With this rule, EPA is facilitating a more expedited removal of defective Takata airbag inflators from vehicles by dealerships, salvage yards and other</p>
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	<p>locations for safe and environmentally sound disposal by exempting the collection of airbag waste from hazardous waste requirements, as long as certain conditions are met.</p> <p>While the Takata recall is the impetus for the rule, the airbag waste exemption also includes non-Takata airbag waste.</p>
<p>How would the proposed rule address the need?</p>	<p>This rule provides a conditional exemption from RCRA hazardous waste requirements for entities that remove airbag modules and inflators, i.e. airbag waste, from automobiles. Under this rule, the entities that generate the airbag waste are “airbag waste handlers” and include automobile dealerships, automotive salvage and scrap yards, independent repair facilities, and collision centers. EPA is exempting from the RCRA hazardous waste requirements the generation and accumulation of airbag waste at the airbag waste handler location and during transport to an airbag waste collection facility or designated facility, as long as certain conditions are met. Once collected at the airbag waste collection facility, the airbag waste will be managed as RCRA hazardous waste and must be sent to RCRA disposal or recycling facilities.</p>
<p>How will DEQ know the rule addressed the need?</p>	<p>Managing all airbag waste under the same protective requirements will avoid confusion, increase efficiency and will help prevent non-Takata airbag waste from being diverted into the municipal waste stream.</p>
<p><b>Hazardous Waste Management System: User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations</b></p>	
<p>What need would the proposed rule address?</p>	<p>The rule establishes the methodology that EPA uses in setting and revising user fees in order to recover the full costs of the electronic manifest system. This includes costs incurred in developing, operating, maintaining, and upgrading a national e-Manifest system, as well as any costs incurred in collecting and processing data from any paper manifest submitted to the e-Manifest system after the system began to operate on June 30, 2018.</p>

<p>How would the proposed rule address the need?</p>	<p>The e-Manifest user fee rule addresses several key issues:</p> <ul style="list-style-type: none"> <li>• Who must pay e-Manifest user fees;</li> <li>• What types of transactions give rise to fees;</li> <li>• What formula EPA is using to set fees;</li> <li>• What the available options are for users to make their fee payments;</li> <li>• What process EPA will follow to revise user fees; and</li> <li>• What the sanctions are for non-payment.</li> </ul> <p>EPA is also tailoring user fees according to the method of submission to reflect the varying processing costs of these options.</p> <p>This action also finalizes several amendments to the regulations governing the use of electronic hazardous waste manifests and the completion of manifests.</p>
<p>How will DEQ know the rule addressed the need?</p>	<ul style="list-style-type: none"> <li>• There will be an increase in the use of e-Manifests by the regulated community and a decrease in non-payments.</li> <li>• DEQ will retain its authorization to operate the RCRA hazardous waste program in lieu of EPA.</li> </ul>
<p><b>Automated Export System: Hazardous Waste Export-Import Revision</b></p>	
<p>What need would the proposed rule address?</p>	<p>With this rule, EPA finalized changes to existing regulations regarding the export and import of hazardous wastes from and into the United States.</p>
<p>How would the proposed rule address the need?</p>	<p>The new requirements finalized in this rule will provide greater protection to human health and the environment by providing increased transparency, data sharing, and more efficient compliance monitoring.</p> <p>The rule establishes:</p> <ul style="list-style-type: none"> <li>• Improved export and import shipment tracking;</li> <li>• One consolidated and streamlined set of requirements applying to all imports and exports;</li> </ul>

	<ul style="list-style-type: none"> <li>• Mandatory electronic reporting to EPA; and</li> <li>• Linking the consent to export with the electronic export information submitted to U.S. Customs and Border Protection (CBP).</li> </ul> <p>These new requirements strengthen tracking of, and reporting on, individual export and import shipments, and are responsive to the concerns raised by EPA’s Office of Inspector General and the Commission for Environmental Cooperation.</p> <p>This action also brings the United States into compliance with its legal obligations under the Organization for Economic Cooperation and Development (OECD) 2001 Council Decision, and complies with Executive Order 13659 on streamlining the export/import process for U.S. businesses.</p> <p>Lastly, this action establishes appropriate transition periods to provide for implementation while minimizing the burden of implementing new requirements.</p>
<p>How will DEQ know the rule addressed the need?</p>	<ul style="list-style-type: none"> <li>• Burden to regulated community will be minimized due to consolidated and streamlined requirements.</li> <li>• Increased tracking of the transportation and disposition of individual imported and exported shipments of hazardous wastes and other materials, improving the DEQ’s ability to monitor compliance with applicable legal requirements.</li> <li>• Regulated entities, DEQ, and the federal government will be enabled to benefit from the electronic submission of data.</li> <li>• The process of notification with foreign governments, consolidated under a unified regulation, will increase efficiency and ensure the process is consistent with the requirements of the OECD controlling transboundary movements of hazardous waste.</li> <li>• DEQ will retain its authorization to operate the RCRA hazardous waste program in lieu of EPA.</li> </ul>



## Confidentiality Determinations for Hazardous Waste Export and Import Documents

<p>What need would the proposed rule address?</p>	<p>With this rule, EPA is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and excluded cathode ray tubes. EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation.</p>
<p>How would the proposed rule address the need?</p>	<p>By providing a consistent approach to addressing confidentiality claims with respect to the documents within the scope of this rulemaking, this action will result in cost-savings and greater efficiency to both the regulated community and EPA. DEQ will not incur the costs associated with developing and publishing the annual Federal Register notice requesting comment from affected businesses, other than original submitters, as defined in 40 CFR Section 2.201(d), on their need to assert confidentiality claims for documents submitted to EPA related to hazardous waste exports and imports. Industry savings will result from the avoided costs associated with reading and responding to the Federal Register notice. Furthermore, this action will facilitate greater transparency with respect to the documents that are within the scope of this rulemaking.</p>
<p>How will DEQ know the rule addressed the need?</p>	<ul style="list-style-type: none"> <li>• There will be cost-savings and greater efficiency for EPA and the regulated community, as well as greater transparency with respect to the documents that are within the scope of this rulemaking.</li> <li>• DEQ will retain its authorization to operate the RCRA hazardous waste program in lieu of EPA.</li> </ul>

## 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

<b>Adopt – OAR</b>				
340-102-0230	340-102-0500			
<b>Amend – OAR</b>				
340-100-0002	340-100-0003	340-100-0010	340-101-0007	340-101-0033
340-102-0011	340-102-0012	340-102-0034	340-102-0041	340-120-0001
340-135-0030	340-135-0105			
<b>Renumber – OAR</b>				
340-102-0012 to 340-102-0018				

<b>Statutory Authority – ORS</b>				
183	183.745	192	459	465.003-465.037
465.009	465.505	466	466.015	466.020
466.075	466.090	466.105	466.165	466.180
466.195	468	468.020	646	

<b>Statutes Implemented – ORS</b>				
192.410-192.505	465.003	465.009	465.012	465.027
465.034	465.505	466.005	466.010	466.015
466.020	466.025	466.030	466.035	466.075
466.090	466.105	466.195	468.020	

#### Office of Compliance and Enforcement – Division 12 Rules

<b>Amend – OAR</b>				
340-012-0068	340-012-0140			

Statutory Authority – ORS				
459.995	466.070-466.080	466.625	468.020	468.090-468.140

Statutes Implemented – ORS				
459.995	459A.655	459A.655	459A.660	459A.685
466.635-466.680	466.990-466.994	468.035	468.090-468.140	

## Documents Relied on for Rulemaking

ORS 183.335(2)(b)(D)

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

Document title	Document location
Oregon Department of Employment 2019 and 2020 data	Employment Department 875 Union St.NE Salem, OR 97311
2017 - 2020 Oregon Annual Hazardous Waste Reporting	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232
Federal Register for the Generator Improvements Rule	<a href="https://www.federalregister.gov/documents/2016/11/28/2016-27429/hazardous-waste-generator-improvements-rule">https://www.federalregister.gov/documents/2016/11/28/2016-27429/hazardous-waste-generator-improvements-rule</a>
Federal Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule	<a href="https://www.regulations.gov/document/EPA-HQ-RCRA-2012-0121-0313">https://www.regulations.gov/document/EPA-HQ-RCRA-2012-0121-0313</a>
Federal Register for the Management Standards for Hazardous Waste Pharmaceuticals	<a href="https://www.federalregister.gov/documents/2015/11/05/2015-28100/management-standards-for-hazardous-waste-pharmaceuticals">https://www.federalregister.gov/documents/2015/11/05/2015-28100/management-standards-for-hazardous-waste-pharmaceuticals</a>
Summary of Regulatory Impact Analysis, Preamble Outline XI. 80 Federal Register 58014	<a href="https://www.regulations.gov/document?D=EPA-HQ-RCRA-2007-0932-0150">https://www.regulations.gov/document?D=EPA-HQ-RCRA-2007-0932-0150</a>
Only Half of Drugs Removed by Sewage Treatment. Environmental Health News	<a href="https://www.scientificamerican.com/article/only-half-of-drugs-removed-by-sewage-treatment/">https://www.scientificamerican.com/article/only-half-of-drugs-removed-by-sewage-treatment/</a>
Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams. Environmental Science & Technology	Kolpin, D.W., Furlong, E.T., Meyer, M.T., Thurman, E.M., Zaugg, S.D., Barber, L.B., Buxton, H.T., 2002. Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams, 1999-2000: A National Reconnaissance. Environmental Science & Technology; v. 36, pp. 1202-1211 <a href="https://pubs.acs.org/doi/10.1021/es011055j">https://pubs.acs.org/doi/10.1021/es011055j</a>

<p>A National Reconnaissance for Pharmaceuticals and Other Organic Wastewater Contaminants in the United States – II: Untreated Drinking Water Sources. Science of the Total Environment</p>	<p>Facazio, M.J., Kolpin, D.W., Barnes, K.K., Furlong, E.T., Meyer, M.T., Zaugg, S.D., Barber, L.B., Thurman, M.E., 2008. A National Reconnaissance for Pharmaceuticals and Other Organic Wastewater Contaminants in the United States – II: Untreated Drinking Water Sources. Science of the Total Environment; 402, pp. 201 – 216  <a href="https://pubmed.ncbi.nlm.nih.gov/18433838/">https://pubmed.ncbi.nlm.nih.gov/18433838/</a></p>
<p>Federal Register for Modernizing Ignitable Liquids Determinations</p>	<p><a href="https://www.federalregister.gov/documents/2020/07/07/2020-12695/modernizing-ignitable-liquids-determinations">https://www.federalregister.gov/documents/2020/07/07/2020-12695/modernizing-ignitable-liquids-determinations</a></p>
<p>Federal Regulatory Impact Analysis of the Modernization of Ignitable Liquid Determination Rule</p>	<p><a href="https://downloads.regulations.gov/EPA-HQ-OLEM-2018-0830-0180/content.pdf">https://downloads.regulations.gov/EPA-HQ-OLEM-2018-0830-0180/content.pdf</a></p>
<p>Federal Register for Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations</p>	<p><a href="https://www.federalregister.gov/documents/2019/12/09/2019-25674/increasing-recycling-adding-aerosol-cans-to-the-universal-waste-regulations">https://www.federalregister.gov/documents/2019/12/09/2019-25674/increasing-recycling-adding-aerosol-cans-to-the-universal-waste-regulations</a></p>
<p>Federal Regulatory Impact Analysis of Proposed Rule To Add Aerosol Cans to the Universal Waste Rule</p>	<p><a href="https://www.regulations.gov/document/EPA-HQ-OLEM-2017-0463-0102">https://www.regulations.gov/document/EPA-HQ-OLEM-2017-0463-0102</a></p>
<p>Federal Register for the Safe Management of Recalled Airbags</p>	<p><a href="https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-25892.pdf">https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-25892.pdf</a></p>
<p>Federal Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule</p>	<p><a href="https://www.regulations.gov/document/EPA-HQ-OLEM-2018-0646-0023">https://www.regulations.gov/document/EPA-HQ-OLEM-2018-0646-0023</a></p>
<p>Federal Register for Establishing User Fees for the RCRA Electronic Hazardous Waste Manifest System (e-Manifest)</p>	<p><a href="https://www.gpo.gov/fdsys/pkg/FR-2018-01-03/pdf/2017-27788.pdf">https://www.gpo.gov/fdsys/pkg/FR-2018-01-03/pdf/2017-27788.pdf</a></p>
<p>Federal Regulatory Impact Analysis, EPA's 2017 Final Rule, Establishing User Fees for the RCRA Electronic Hazardous Waste Manifest System (e-Manifest)</p>	<p><a href="https://www.regulations.gov/document/EPA-HQ-OLEM-2016-0177-0090">https://www.regulations.gov/document/EPA-HQ-OLEM-2016-0177-0090</a></p>

## **Fee Analysis**

This rulemaking does not involve new fees.

## **Statement of Fiscal and Economic Impact**

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

### **Hazardous Waste Generator Improvements Rule**

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 as a result of adoption of this proposed rule. The rule offers greater flexibility in management, and DEQ does expect a decrease in net costs to generators.

Facilities may incur initial minimal cost increases as a result of complying with the new mandatory provisions related to:

- Preparing a quick reference guide to the contingency plan: applicable to large quantity generators.
- Closure notification: applicable to large quantity generators.
- Labeling hazardous waste with the hazards and waste codes: applicable to small quantity generators and large quantity generators; applicable to very small quantity generators, if consolidating.
- Training personnel on the changes in the rules: applicable to all hazardous waste generators.

If adopted, DEQ anticipates the optional LQG consolidation and episodic generation provisions will create cost savings for businesses utilizing these provisions.

#### **LQG Consolidation**

The proposed rule allows VSQGs to send hazardous waste to an LQG under the control of the same person, which will likely result in a net cost savings due to the reduced management costs of disposal and transportation. Organizations will realize a cost savings associated with managing waste quantities in bulk. EPA industry sources estimate standalone VSQG facilities incur an average cost premium of ten percent to dispose of their hazardous waste relative to LQGs. Organizations consolidating VSQG waste to LQGs can reduce costs incurred to ship hazardous waste to treatment, storage, and disposal facilities due to the per-ton fee basis when combined with LQGs wastes. Since LQGs are subject to more stringent hazardous waste handling requirements than VSQGs, transferring these wastes to the associated LQG can result in savings, as well as improved oversight and management of the VSQG wastes. Furthermore, consolidation of VSQG waste to associated LQGs will divert these wastes to a more environmentally protective disposal through a

RCRA Subtitle C hazardous waste facility. Because the VSQG waste will be tracked separately via a special code, DEQ will be able to distinguish waste generated by VSQGs, and will not charge [generation fees](#) on hazardous waste generated by VSQGs in order to incentivize use of this provision.

## **Episodic Generation**

The episodic provision will result in a cost savings for facilities by allowing them to avoid the costs associated with an increase in generator status. Cost savings are expected related to RCRA generator requirements for training, inspections, manifesting, contingency plan updating, reporting, and administrative requirements associated with facilities maintaining a more consistent RCRA generator status over time.

DEQ's [annual generator fee](#) is called the "Annual Activity Verification Fee" – see Oregon Administrative Rules (OAR) [340-102-0065](#). This fee is associated with generator categories, which are based on amounts of hazardous wastes generated annually. Under this rule, generators will not be required to pay the annual activity verification fee for the higher generator category which may otherwise have been associated with the qualifying episodic event. In other words, generators will continue to pay the DEQ fees they would have paid based on the amount of hazardous waste generated annually *regardless* of the qualifying episodic event's impact.

## **Statement of Cost of Compliance**

### **Federal fiscal analysis**

In 2016, EPA published the fiscal analysis for this rule, and concluded that many of the fiscal impacts could not be quantified. EPA determined this rule may yield a variety of benefits, as generators have additional options for hazardous waste management. These benefits reflect the rule's focus on enhancing human health and environmental protections, and improving the efficiency of the RCRA hazardous waste generator standards. EPA found the overall effects of this rule will lessen the regulatory burden for the majority of generators, and can reduce generator hazardous waste management costs.

### **Local and state agencies**

DEQ anticipates the proposed rule will have no substantive adverse fiscal or economic impacts on local, state or other federal agencies, as the rule adds options that may result in net cost savings.

### **Oregon DEQ**

DEQ expects significant impacts for staff training and performing additional outreach to those impacted businesses through the [Hazardous Waste Technical Assistance Program](#) and enforcement guidance. Overall, DEQ estimates these costs to be low, with the exception of incorporation of the reorganization of the rules and program management of specific provisions of the rules as identified below.

## **Episodic Generation**

Revenue: The proposed rule will negatively impact DEQ's fee revenue. To what extent will depend on how many generators take advantage of this option, and the limitations imposed on what events qualify. DEQ estimates that between 1-10% of facilities will take advantage of this new provision, for an average of two to twenty qualifying events per year. DEQ estimates the range of fees lost to be from \$810 to \$18,900 per year. If twenty VSQGs took advantage, and avoided LQG fees, it would result in a loss of \$18,900 per year. DEQ will still collect the hazardous waste generation fee on the amount of waste generated during episodic events.

Costs: Additional costs related to implementation, education, and enforcement are associated with this provision of the rule. DEQ estimates these to be moderate to low, depending on how many generators take advantage of this provision.

## **LQG Consolidation**

Revenue: DEQ estimates the overall impact to fee revenue to be minimal. DEQ could receive slightly more disposal fee revenue if very small quantity generator hazardous waste, currently going to Subtitle D solid waste landfills, would instead be combined with LQG wastes sent to Subtitle C hazardous waste landfills. However, this is difficult to quantify as DEQ does not know how many VSQGs currently dispose of hazardous waste at Subtitle D solid waste landfills, or how many might change disposal practices if they qualify for this option. Note: VSQGs do not need to report their annual hazardous waste generation or disposal to DEQ.

DEQ proposes to exempt the generation fee for hazardous waste generated by VSQGs and as consolidated by LQGs in order to incentivize disposal at Subtitle C landfills. However, because VSQGs are currently allowed to dispose of hazardous wastes at Subtitle D landfills, this should not result in a significant— if any — loss in generation and management fees.

Costs: Additional costs related to implementation, education, and enforcement are associated with this provision of the rule.

## **Oregon State Fire Marshal & Local Fire Authorities**

The proposed rule allows generators to seek a 50-foot waiver from the local authority having jurisdiction, which may result in additional fees to complete the authority's review and documentation.

## **Public**

DEQ identified no significant fiscal impacts to the public for this rule adoption.

## **Large and small businesses**

EPA's fiscal analysis for this rule concluded that the added options and flexibilities to manage wastes will likely result in net cost savings, regardless of the size of the business.



**Small businesses – businesses with 50 or fewer employees.**

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

DEQ does not expect the proposed rule to negatively impact small businesses in Oregon.

**b. 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 requires additional compliance with documentation of hazardous waste determinations and labeling requirements, as well as preparation of a quick reference guide to contingency plans for large quantity generators, and additional notifications, such as notice of closure, and other administrative activities.

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

The proposed rule will require training of staff and adding implementation standards to comply, which may incrementally increase staff time and compliance cost.

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

DEQ included small business representatives on the Hazardous Waste Rulemaking Advisory Committee who advised DEQ on the cost of compliance for small businesses.

**Documents relied on for fiscal and economic impact**

<b>Document title</b>	<b>Document location</b>
Federal Register for the Final Rule	<a href="https://www.federalregister.gov/documents/2016/11/28/2016-27429/hazardous-waste-generator-improvements-rule">https://www.federalregister.gov/documents/2016/11/28/2016-27429/hazardous-waste-generator-improvements-rule</a>
Federal Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule	<a href="https://www.regulations.gov/document/EPA-HQ-RCRA-2012-0121-0313">https://www.regulations.gov/document/EPA-HQ-RCRA-2012-0121-0313</a>
Oregon Department of Employment 2020 data	Employment Department 875 Union St. NE Salem, OR 97311
2020 Oregon Annual Hazardous Waste Reporting	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232

## **Advisory committee fiscal review**

The committee reviewed the draft fiscal and economic impact statement and determined that the proposed rules would not have a significant adverse impact on small businesses in Oregon.

The committee did determine that the rules may have a minor initial impact on businesses as they work to come into compliance, and recommended DEQ provide training, guidance, technical assistance, and discretion regarding enforcement in order to mitigate that impact.

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## **Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine**

In this analysis, DEQ assumes the fiscal and economic impacts identified in federal rulemaking are accurate estimates for Oregon businesses. EPA's estimates, presented below, are based on the known population of entities regulated by EPA's rules. If adopted, DEQ anticipates the proposed rules will generate cost savings for businesses defined as healthcare facilities and reverse distributors. Additionally, the ban on sewerage of hazardous waste pharmaceuticals will generate cost savings for municipalities and service districts managing municipal wastewater.

DEQ's Hazardous Waste Program anticipates a loss in [activity and generation fees](#) representing approximately 1.80% of total fees invoiced annually.

## **Statement of Cost of Compliance**

### **State agencies**

#### **DEQ**

DEQ's Hazardous Waste Program will experience a decrease in revenue for overseeing hazardous waste management in Oregon with the adoption of these proposed rules.

Under the proposed rules, healthcare facilities will determine their generator category, such as large quantity generator (LQG) or small quantity generator (SQG), by factoring the weight of both their pharmaceutical hazardous waste and non-pharmaceutical hazardous waste. After making this determination, healthcare facilities that are small quantity generators and large quantity generators must comply with part 266 subpart P for the management of their hazardous waste pharmaceuticals. However, once under subpart P of EPA's 2019 rule, healthcare facilities do not need to count their hazardous waste pharmaceuticals for their generator category. Given this option, EPA's regulatory impact analysis anticipates many healthcare facilities will change generator category to either a SQG or very small quantity generator (VSQG). Additionally, as detailed below, the revision of the P075 nicotine listing will also provide an opportunity for healthcare facilities to

reduce their generator category. DEQ believes these changes are likely to reduce revenue for DEQ's oversight of hazardous waste management in Oregon.

In response to comments EPA received from retail associations during rule development, the 2019 rule removes low-concentration, FDA-approved, over-the-counter (OTC) replacement products such as lozenges, gums, and patches from the acute hazardous waste P075 classification. With this P075 classification revision, OTC nicotine replacement products become solid waste rather than hazardous waste. As a result, healthcare facilities - particularly pharmaceutical retailers - will likely be able to reduce their generator status to SQG or, possibly, VSQG.

With healthcare facilities able to potentially reduce reporting costs and generator fees, DEQ's Hazardous Waste Program will experience a decrease in revenue for overseeing management of these wastes in Oregon. For this fiscal impact analysis, DEQ analyzed annual report data from 2017 through 2019 from DEQ's HazWaste.net database. DEQ's analysis included generators reporting waste streams with descriptions of medicine and medical, pharmaceuticals, nicotine, Warfarin, or waste codes P075 and P001, as these generators are likely to meet the regulatory definition of healthcare facilities. Additionally, DEQ's fiscal impact analysis did not consider generators reporting one-time events, such as for "medicine cabinet" cleanouts. DEQ determined that removing hazardous waste pharmaceuticals from the waste stream calculation would lower a generator's category, resulting in lower costs to the generator.

DEQ presents these fiscal impact estimates to its Hazardous Waste Program resulting from the adoption of these proposed rules. The P075 revision will reduce SQG and LQG annual verification fees between \$8,500 and \$14,200 due to large retail pharmacies dropping their status from LQG to SQG or VSQG. For example, one national over-the-counter retail pharmacy reported all of their facilities as SQGs due to small amounts of hazardous waste pharmaceuticals, as well as non-pharmaceutical hazardous waste. Although another retailer reported all stores as SQGs, these stores may no longer need to report as such under this rule and, therefore, can operate as VSQGs. This example shows how healthcare facilities could adjust management of hazardous waste pharmaceuticals to help minimize their waste management costs.

With hazardous waste pharmaceuticals no longer counting toward generator status under these proposed rules, DEQ also anticipates several hospitals and medical centers would move from LQG status to VSQG status, depending on the amount of hazardous waste pharmaceuticals generated. DEQ estimates this shift would result in a loss of activity fees of approximately \$14,330 from hospital and medical pharmacies. Additionally, using DEQ's 2019 HazWaste.net reporting data, DEQ estimates a loss of \$10,000 in revenue from generation fees.

Given the above estimates, DEQ anticipates a total loss in activity and generation fees of approximately \$38,500. This represents about 1.80% of the total amount of invoice fees in 2019, which was \$2,147,000.

## Local governments

DEQ's analysis of the fiscal impact for local governments relied on EPA's 2019 regulatory impact analysis. Unlike the other provisions of the 2019 rule, the sewerage ban applies to all levels of generators, including VSQGs. EPA estimates the sewerage prohibition will help eliminate the need for future wastewater treatment for pharmaceuticals in wastewater, reducing future treatment costs. In our review of the literature, some pharmaceuticals in wastewater are discharged into receiving water, indicating current wastewater treatment systems cannot remove these particular pollutants in wastewater prior to discharge.

In a study commissioned by International Joint Commission of U.S. and Canadian officials studying the Great Lakes, sewerage hazardous waste pharmaceuticals are often untreated by municipal wastewater treatment plants. The Commission's review identified national studies detecting pollutants, such as pharmaceuticals, pesticides, consumer products, and industrial chemicals, in 80 percent of streams sampled. Additionally, in a statewide water quality toxics assessment, DEQ detected at least one specific pharmaceutical in 31 percent of the streams studied. This pharmaceutical was the common antibiotic sulfamethoxazole. In its regulatory impact analysis, EPA anticipates preventing 6,400 tons of hazardous waste pharmaceuticals from reaching waterways by the adoption of this rule nationally. EPA estimates the savings from this sewerage ban in its 2019 rule to be \$4.3 million annually for municipalities and service districts managing municipal wastewater.

## Public

As discussed in the sections below, the proposed rules present several opportunities for healthcare facilities to reduce their hazardous waste management costs. These potential cost savings may translate into lower costs to consumers of pharmaceuticals dispensed at healthcare facilities.

## Large businesses - businesses with more than 50 employees

DEQ finds the fiscal impacts for large businesses will be identical to the impacts for small businesses as defined under the small business section below.

## Small businesses – businesses with 50 or fewer employees

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

The number of small businesses in Oregon affected by the proposed rules is estimated in the table below. This information is from 2019 data.

<b>Oregon Small Businesses Affected by Rules</b>		
<b>Business Classes Affected by Rule</b>	<b>North American Industry Classification System (NAICS) Code</b>	<b>Number of Small Businesses</b>

Pharmacies	44611	421*
Vet Clinics	54194	545
Physician Offices	6211	2078
Dentist Offices	6212	1891
Other Health Practitioners	6213	743
Outpatient Care Centers	6214	174
Other Ambulatory Healthcare Services	6219	34
Hospitals	622	28
Nursing Care Facilities	6231	56
Continuing Care Retirement Communities	623311	1364
Medical Examiners & Coroners' Offices	Subset of 92219	5**
Reverse Distributors	Various NAICS	Unknown

\* This estimate includes pharmacy departments meeting the definition of a small business but are part of a large business with an institutional support system characteristic of large businesses.

\*\*This is the number of municipal listing in this class that are likely to have a coroner's office.

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

In the federal regulatory impact analysis, EPA estimates the rule to impact approximately 144,228 small businesses nationwide based on the thresholds from the Small Business Administration (SBA) in the 2007 economic analysis of census data. EPA estimates the highest cost impact to small entities will be 0.013% of revenues at healthcare facilities, and 0.002% of revenues at hospitals. EPA did not obtain revenue fiscal impact data on reverse distributors as they are identified by a variety of industrial codes. However, EPA estimates the cost impact to small entity, pharmaceutical reverse distributors at \$5,300 and does not anticipate the rule will cause significant hardship.

In DEQ's fiscal analysis of both small and large businesses, DEQ considered how the changes in management standards and P075 listing changes may affect hazardous waste management costs. DEQ believes these changes provide a number of additional opportunities to reduce hazardous waste management costs as discussed in the sections below for small and large businesses.

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

For healthcare facilities, the premise for EPA's adoption of the 2019 rule is based in part upon the wide variety of small quantity pharmaceutical waste streams generated by healthcare facilities and reverse distributors. Under current Oregon adopted-federal rules, this fact increases the cost of hazardous waste management and disposal for generators and increases costs for reverse distributors who provide credit for pharmaceuticals. The occurrence of P-listed, i.e., acute, hazardous waste pharmaceuticals often pushes healthcare

facilities into the large quantity generator category and the increased requirements associated with this category. The LQG regulatory requirements increase management costs of hazardous waste pharmaceuticals for healthcare facilities. Moreover, employees working in healthcare facilities often lack the training and, therefore, the knowledge, to perform hazardous waste determinations. As a result, this creates inconsistent compliance with regulations and increased management cost due to noncompliance with hazardous waste rules.

To address these concerns, EPA's 2019 rule allows certain generators meeting the definition of a healthcare facility to streamline requirements and to simplify their management approach. In adopting EPA's 2019 rule, DEQ believes that the streamlining of requirements targeted at pharmaceuticals and the simplification of the management of hazardous waste pharmaceuticals will ultimately lower waste management costs for healthcare facilities. The proposed rule also provides generators and reverse distributors more flexibility in managing hazardous waste pharmaceuticals. The simplification, streamlining, and greater flexibility provides generators and reverse distributors an opportunity to develop more cost-effective management strategies. As discussed below, the reduction in management standards in the rule capitalizes on hazardous waste pharmaceuticals destined for a reverse distributor having value, such as potentially creditable hazardous waste pharmaceuticals. This value will help ensure healthcare facilities and reverse distributors provide proper container management for potentially creditable hazardous waste pharmaceuticals.

To refine risk management, the rule defines two types of hazardous waste pharmaceuticals: potentially creditable or non-creditable. Using this distinction, the rule adjusts management requirements based on the hazardous waste pharmaceutical type. Reverse distributors associated with pharmaceutical manufacturers provide credit for unused pharmaceuticals. This credit provides healthcare facilities the incentive to carefully manage creditable hazardous waste pharmaceuticals to recoup this value from this waste stream when destined to a reverse distributor.

The list below highlights specifically how EPA's 2019 rule minimizes the costs to generators meeting the definition of healthcare facility and reverse distributor.

Example cost saving opportunities for all healthcare facilities:

- Once a healthcare facility determines its generator status for all its hazardous wastes, such as hazardous waste pharmaceuticals and non-hazardous waste pharmaceuticals, the facility is subject to subpart P if it is a SQG or LQG after making this determination. Once under subpart P, the facility no longer has to count hazardous waste pharmaceuticals, since the proposed rule lacks generator category distinctions. This allows generators to potentially reduce waste management costs by lowering generator status as discussed above.
- VSQGs will have flexibility to pursue one of the following three paths to optimize hazardous waste pharmaceuticals management: (1) under part 262 rules for VSQGs; (2) under part 266.504(a) and (b) allowing a VSQGs to send hazardous waste pharmaceuticals to an off-site healthcare facility under the control of the same person; or, (3) under subpart P provisions of 266.501(b) and (d) concerning management

standards for non-creditable and creditable hazardous waste pharmaceuticals. This flexibility provides an opportunity to select the most cost-effective pathway.

- LQG-level training is not required to manage hazardous waste pharmaceuticals, and generators can use facility-specific training similar to SQGs and small quantity universal waste handlers.
- The P075 listing is revised to eliminate low risk, over-the-counter nicotine replacement therapy products, such as gums, lozenges, and patches. The facilities can now discard the products. This reduces management costs, reporting costs and, potentially, generator fees.
- Healthcare facilities must perform hazardous waste determinations on pharmaceutical waste. If comingling non-hazardous waste pharmaceuticals with the non-creditable hazardous waste pharmaceuticals and properly managing under subpart P, then facilities do not have to retain hazardous waste determination documents.
- “RCRA-empty” for pharmaceutical containers is defined in subpart P for all pharmaceuticals. This additional “RCRA-empty” definition differs from the current definition in part 261. This distinction makes it easier for all generators to dispose of containers with residues of hazardous waste pharmaceuticals as non-hazardous waste.
- A conditional exemption is provided for Drug Enforcement Agency-controlled substances allowing all generators to streamline compliance with hazardous waste management and DEA-controlled substance requirements.

Example cost saving opportunities for managing potentially creditable hazardous waste pharmaceuticals:

- A VSQG can ship potentially creditable hazardous waste pharmaceuticals to a reverse distributor under the optional provisions of subpart P without opting in and following all the subpart P standards, which can increase hazardous waste management costs.
- There are no accumulation time limits, container labeling, or container management standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals. This eliminates the potential for violating these requirements.
- Healthcare facilities do not have to use uniform hazardous waste manifests and land disposal restriction forms when shipping potentially creditable hazardous waste pharmaceuticals thus reducing management cost and potential penalties for noncompliance with these requirements.
- Healthcare facilities and large quantity generators can accept potentially creditable hazardous waste pharmaceuticals from an off-site VSQG under the control of the same “person” if specific standards in part 266 for healthcare facilities are followed or, if an LQG, consolidation standards in part 262 are followed. Relying on the capacity and expertise available at a larger facility could potentially reduce costs and liability for the VSQG.
- To avoid duplicative inventory management requirements, reverse distributors may follow, for example, State Board of Pharmacy inventory requirements to meet subpart P inventory requirements. Avoiding duplicative requirements presents potential cost savings.
- Reverse distributors have flexibility with the allowance of 30 days to evaluate potentially creditable hazardous waste pharmaceuticals and, once evaluated, have an

accumulation time limit of 180 days. These accumulation time limits can be more flexible than requirements in part 262 and may provide cost savings.

- A performance-based container storage standard is provided for a reverse distributor's accumulation areas for more flexibility or, to avoid duplicative requirements, the reverse distributor may manage storage area security requirements following, for example, those established by the State Board of Pharmacy.

Example cost saving opportunities for managing non-creditable hazardous waste pharmaceuticals:

- Central accumulation areas and satellite accumulation areas are not required for healthcare facilities managing non-creditable hazardous waste pharmaceuticals, thus simplifying requirements and, presumably, decreasing the potential violations.
- Healthcare facilities may choose to manage non-hazardous waste pharmaceuticals as non-creditable hazardous waste pharmaceuticals to streamline waste management approach for cost savings.
- Healthcare facilities can accumulate non-creditable hazardous waste pharmaceuticals for up to a year to reduce shipping costs. This flexibility in management standards may generate cost savings.
- Although a uniform hazardous waste manifest form is a requirement, healthcare facilities and reverse distributors may use the word "Pharms" or "Pharmaceuticals" in the waste code block of the manifest, thereby simplifying this step and avoiding omissions of specific waste codes leading to violations and associated penalties.
- Land Disposal Restrictions paperwork is required when shipping to a Transfer Storage and Disposal Facility (TSDF). However, to simplify compliance, the proposed rule does not require waste codes on this manifest and allows a generic treatment standard, such as combustion, except for hazardous waste pharmaceuticals subject to the dilution prohibition.
- Container management standards for non-creditable hazardous waste pharmaceuticals are similar to those for a SQG under part 262, thus simplifying the management of hazardous waste pharmaceuticals by avoiding prescriptive standards and relying on performance-based standards, such as ensuring a container is secure. Although necessary at times to protect human health and the environment, performance based standards provide an opportunity to develop a compliance better tailored to an entity's operations.
- Healthcare facilities and large quantity generators are allowed to accept non-creditable hazardous waste pharmaceuticals from an off-site VSQG under the control of the same person if specific standards in part 266 for healthcare facilities are followed, or if an LQG, consolidation standards in part 262 are followed. Relying on the capacity and expertise available at a larger facility could potentially reduce costs and liability for the VSQG.
- Non-creditable hazardous waste pharmaceuticals do not have to be included in annual reporting, thus reducing accounting costs for generators subject to reporting requirements.



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

DEQ included small business representatives on the rulemaking advisory committee who advised DEQ on the potential cost of compliance for small businesses. DEQ will also provide rulemaking notice to all manufacturers registered with Oregon DEQ as a small and large quantity generator. These generator groups include small businesses.

**Documents relied on for fiscal and economic impact**

Document title	Document location
80 Federal Register 58014, Sept. 25, 2015	<a href="https://www.federalregister.gov/documents/2015/11/05/2015-28100/management-standards-for-hazardous-waste-pharmaceuticals">https://www.federalregister.gov/documents/2015/11/05/2015-28100/management-standards-for-hazardous-waste-pharmaceuticals</a>
Summary of Regulatory Impact Analysis, Preamble Outline XI. 80 Federal Register 58014	<a href="https://www.regulations.gov/document?D=EPA-HQ-RCRA-2007-0932-0150">https://www.regulations.gov/document?D=EPA-HQ-RCRA-2007-0932-0150</a>
Only Half of Drugs Removed by Sewage Treatment. Environmental Health News	<a href="https://www.scientificamerican.com/article/only-half-of-drugs-removed-by-sewage-treatment/">https://www.scientificamerican.com/article/only-half-of-drugs-removed-by-sewage-treatment/</a>
Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams. Environmental Science & Technology	Kolpin, D.W., Furlong, E.T., Meyer, M.T., Thurman, E.M., Zaugg, S.D., Barber, L.B., Buxton, H.T., 2002. Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams, 1999-2000: A National Reconnaissance. Environmental Science & Technology; v. 36, pp. 1202-1211 <a href="https://pubs.acs.org/doi/10.1021/es011055j">https://pubs.acs.org/doi/10.1021/es011055j</a>
A National Reconnaissance for Pharmaceuticals and Other Organic Wastewater Contaminants in the United States – II: Untreated Drinking Water Sources. Science of the Total Environment	Facazio, M.J., Kolpin, D.W., Barnes, K.K., Furlong, E.T., Meyer, M.T., Zaugg, S.D., Barber, L.B., Thurman, M.E., 2008. A National Reconnaissance for Pharmaceuticals and Other Organic Wastewater Contaminants in the United States – II: Untreated Drinking Water Sources. Science of the Total Environment; 402, pp. 201 – 216 <a href="https://pubmed.ncbi.nlm.nih.gov/18433838/">https://pubmed.ncbi.nlm.nih.gov/18433838/</a>
Statewide Water Quality Toxics Assessment Report. DEQ, April 2015	<a href="https://www.oregon.gov/deq/FilterDocs/WQToxicsAssesmentReport.pdf">https://www.oregon.gov/deq/FilterDocs/WQToxicsAssesmentReport.pdf</a>

**Advisory committee fiscal review**

In response to the concerns noted above, the committee advised DEQ that there is potential for the rule to negatively impact generators in the near term and to negatively impact DEQ’s revenue from hazardous waste generation fees. However, in the long term, the committee believes the adoption of the rule will be beneficial for healthcare facilities due to the reduced management standards, streamlined requirements, and increased flexibility for the

management of hazardous waste pharmaceuticals. Additionally, the committee believes there is potential for a negative impact for small healthcare facilities, but DEQ can minimize these impacts by providing:

- Guidance for navigating the rule;
  - Training on the rule; and
  - One-on-one technical assistance.
- 

## **Modernizing Ignitable Liquids Determinations**

DEQ anticipates the federal rule and state-specific amendments will have little to no fiscal or economic impact. The rule applies only to analytical laboratories, which will have additional methods to employ when determining the ignitability characteristic, in addition to hazardous waste facilities that use the alcohol exclusion. Currently, there are none of these facilities in Oregon.

DEQ assumes the fiscal and economic impacts identified in federal rulemaking are accurate and will have no impact on Oregon facilities.

## **Statement of Cost of Compliance**

### **Local, State and federal agencies**

DEQ anticipates the proposed rule will have no adverse fiscal or economic impacts on local governments or state and federal agencies, as the rule applies only to analytical laboratories that perform ignitability testing.

### **Public**

DEQ anticipates there will be no fiscal and economic impacts to the public based on the fiscal and economic impact assessment EPA performed in adopting the rule.

### **Large and small businesses**

EPA's economic analysis suggested that nationwide, 235 commercial laboratories are likely to experience an annualized combined cost savings of between \$78,500 and \$477,000 based on a discount rate of seven percent. Specifically, EPA economic assessment, required under the Regulatory Flexibility Act (RFA), concluded that "...this action will either relieve regulatory burden or have no net regulatory burden for all directly regulated small entities"<sup>1</sup>. The narrowing of the alcohol exclusion to only ethanol alcohol could potentially increase costs for hazardous waste generators using this exclusion; however, DEQ's analysis did not identify any such businesses in Oregon. DEQ does not expect the proposed rule to negatively impact any businesses, large or small.

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<sup>1</sup> Source: EPA Federal Register Regulatory Flexibility Act: [Modernizing Ignitable Liquids Determinations](#)

## Small businesses – businesses with 50 or fewer employees

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

DEQ does not expect the proposed rule to negatively impact any small business.

### b. 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.

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

The proposed rules will not require any additional resources.

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

DEQ included small business representatives on the Hazardous Waste Rulemaking Advisory Committee who advised DEQ on the cost of compliance for small businesses.

## Documents relied on for fiscal and economic impact

Document title	Document location
Federal Register: Modernizing Ignitable Liquids Determinations	<a href="https://www.federalregister.gov/documents/2020/07/07/2020-12695/modernizing-ignitable-liquids-determinations">https://www.federalregister.gov/documents/2020/07/07/2020-12695/modernizing-ignitable-liquids-determinations</a>
Federal: Regulatory Impact Analysis of the Modernization of Ignitable Liquid Determination Rule	<a href="https://downloads.regulations.gov/EPA-HQ-OLEM-2018-0830-0180/content.pdf">https://downloads.regulations.gov/EPA-HQ-OLEM-2018-0830-0180/content.pdf</a>
Oregon Annual Hazardous Waste Reporting for disposal in 2020	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232
Oregon Department of Employment 2020 data	Employment Department 875 Union St. NE Salem OR 97311

## Advisory committee fiscal review

The committee identified no negative fiscal impacts associated with adopting the rule. One committee member expressed concern of potential impacts if small businesses were no longer able to use mercury-containing equipment and older test methods. DEQ clarified this

rule adds options for labs, and so each can determine what equipment and methods work best for them.

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## **Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations**

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

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

### **Fiscal and Economic Impact**

This rule adds another option for the management of waste aerosol cans. Generators of this waste may determine preference for managing as hazardous waste or universal waste while weighing associated costs.

### **Statement of Cost of Compliance**

#### **DEQ**

DEQ expects minor impacts for staff training and performing additional outreach to those eligible businesses through the Hazardous Waste Technical Assistance Program and enforcement guidance. This rule will require training due to additional safety measures not found in the current generator requirements under RCRA, or the state hazardous waste rules.

#### **Local, state and federal agencies**

DEQ anticipates the proposed rule will have no adverse fiscal or economic impacts on local, state or other federal agencies as the rule adds another option to manage waste aerosol cans, and may result in a cost savings.

#### **EPA**

EPA estimates the national cost savings will be \$5.3 million per year. The majority of these cost savings result from a reduction in the fixed annual costs to facilities, largely attributable to facilities changing generator status as a result of no longer having to count aerosol cans towards their generator status. EPA estimates the “fixed annual cost” savings by dropping in generator status: a large quantity generator (LQG) dropping to a small quantity generator (SQG) is expected to save a facility approximately \$3,400 each year, and a LQG dropping to

a very small quantity generator (VSQG) may save a facility approximately \$6,300 to \$7,000 each year. A baseline SQG that becomes a VSQG may see its “fixed annual costs” reduced by approximately \$2,800 to \$3,600.<sup>1</sup>

**Public**

DEQ identified no impacts to the public for this rule adoption.

**Large businesses - businesses with more than 50 employees**

DEQ finds the fiscal impacts for large businesses will be identical to the impacts for small businesses as defined under the small business section below.

**Small businesses – businesses with 50 or fewer employees**

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

DEQ reviewed its current list of conditionally exempt, small and large quantity generators and found this rule may affect approximately 379 active Oregon generators based on 2020 hazardous waste reporting. Using recent employment data, DEQ identified approximately 137,703 active registered businesses that may be impacted by this rule, of which 133,378 were identified with less than 50 employees in Oregon.

<b>National Primary Business By NAICS Codes</b>			
<b>Source: EPA<sup>2</sup></b>			
<b>NAICS code</b>	<b>Primary NAICS description</b>	<b>Total affected LQGs</b>	<b>Generated tons</b>
44-45	Retail Trade	4,225	395.8
31-33	Manufacturing	1,327	6,767.2
48-49	Transportation and Warehousing	138	1,214.9
62	Health Care and Social Assistance	179	29.5
92	Public Administration	116	186.8
61	Educational Services	126	18.0
54	Professional, Scientific, and Technical Services	81	63.6
56	Administrative, Support, Waste Management, Remediation Services	112	2,655.2
42	Wholesale Trade	73	130.0
22	Utilities	32	6.8
81	Other Services (except Public Administration)	65	4.2
21	Mining, Quarrying, and Oil and Gas Extraction	28	10.3
23	Construction	4	24.1
71	Arts, Entertainment, and Recreation	3	3.2
55	Management of Companies and Enterprises	6	0.6
53	Real Estate and Rental and Leasing	3	0.6

51	Information	1	0.5
11	Agriculture, Forestry, Fishing and Hunting	1	0
<b>Totals</b>		<b>6,520</b>	<b>11,115.5</b>

<sup>1</sup>EPA: <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2017-0463-0102>

<sup>2</sup>EPA: <https://www.govinfo.gov/content/pkg/FR-2019-12-09/pdf/2019-25674.pdf>

**b. 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 does not require any additional activities.

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

The proposed rule will not require any additional resources, such as equipment or supplies. Businesses currently generating aerosol cans either dispose of un-punctured aerosols through a certified waste hauler and pay associated disposal fees, or recycle punctured aerosol cans through a recycling firm.

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

DEQ included small business representatives on the hazardous waste rulemaking advisory committee to advise DEQ on the potential cost, if any, of compliance for small businesses. DEQ also provided rulemaking notice to all manufacturers registered with Oregon DEQ as small and large quantity generators. These generator groups include small businesses.

**Documents relied on for fiscal and economic impact**

Document title	Document location
Federal Register for the incorporated rule	<a href="https://www.regulations.gov/document/EPA-HQ-OLEM-2017-0463-0096">https://www.regulations.gov/document/EPA-HQ-OLEM-2017-0463-0096</a>
Federal: Regulatory Impact Analysis of Proposed Rule To Add Aerosol Cans to the Universal Waste Rule	<a href="https://www.regulations.gov/document/EPA-HQ-OLEM-2017-0463-0102">https://www.regulations.gov/document/EPA-HQ-OLEM-2017-0463-0102</a>
2020 Oregon Annual Hazardous Waste Reporting	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232
Oregon Department of Employment 2020 data	Employment Department 875 Union St. NE Salem, OR 97311

## **Advisory committee fiscal review**

Most committee members agreed the adoption of the aerosol cans rule will not have an adverse fiscal impact on small businesses. Some members voiced training and safety concerns, and staff shared DEQ educational materials with cover these topics.

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## **Safe Management of Recalled Airbags**

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

DEQ is unable to quantify any additional fiscal impacts at this time because there is no known additional fees or costs associated with the management and disposal of undeployed and recalled airbags in Oregon.

At the national level, adding the Safe Management of Recalled Airbags rule ensures safe handling, while ensuring the airbags are transported to an appropriate destination facility where they will be correctly managed as hazardous waste.

## **Statement of Cost of Compliance**

### **DEQ**

DEQ expects minor impacts for staff training and performing additional outreach to those eligible businesses through the hazardous waste technical assistance program and enforcement guidance. Some airbag handlers will have costs to cover additional management, training, and record keeping requirements.

### **Local, state and federal agencies**

DEQ anticipates the proposed rule will have no adverse fiscal or economic impacts on local, state or other federal agencies.

### **EPA**

EPA estimated the national total cost of inflator management and disposal under baseline scenarios and the post-rule scenario. EPA found the post-rule scenario results in total cost savings of \$7.55 million (discounted at 7 percent) from 2019 to 2023 period relative to the baseline scenario, and total cost savings of \$56.9 million (discounted at 7 percent) relative to the generator scenario baseline over this same period. Exhibit ES-1 summarizes the total costs and cost savings for each scenario.<sup>1</sup>

### **Public**

DEQ identified no impacts to the public for this rule adoption.

## Large businesses – businesses with more than 50 employees

DEQ finds the fiscal impacts for large businesses will be identical to the impacts for small businesses as defined under the small business section below.

## Small businesses – businesses with 50 or fewer employees

### a. Estimated number of small businesses and types of business and industries with small businesses subject to proposed rule.

Using recent employment data, DEQ identified approximately 1,079 active registered businesses that may be impacted by this rule of which 954 were identified with less than 50 employees in Oregon.

EPA stated that the recall of millions of Takata airbag inflators has resulted in a vast number of defective airbag inflators requiring removal and replacement. Since a car's warranty covers this work, the service is generally done at a franchised auto dealership with a repair shop onsite. The dealerships performing this recall work constitute the majority of the facilities that will be impacted by this rule.<sup>2</sup> These dealerships fall under NAICS code 441: Motor Vehicle and Parts Dealers.

### b. 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 does not require any additional activities.

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

The proposed rule will not require any additional resources, such as equipment, labor, or supplies. Businesses currently generating deployed airbags dispose of the components as non-hazardous waste. Dealerships, salvage yards or other locations managing airbags under this exclusion are managing them as non-hazardous waste. However, once the collection facility receives the airbags, additional RCRA hazardous waste regulations apply.

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

DEQ included small business representatives on the hazardous waste rulemaking advisory committee to help advise DEQ on the potential cost, if any, of compliance for small businesses. DEQ also provided rulemaking notice to all manufacturers registered with Oregon DEQ as a small and large quantity generators. These generator groups include small ~~businesses~~

## Documents relied on for fiscal and economic impact

Document title	Document location
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Federal Register entries for the incorporated rule	<a href="https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-25892.pdf">https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-25892.pdf</a>
Federal Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule	<a href="https://www.regulations.gov/document/EPA-HQ-OLEM-2018-0646-0023">https://www.regulations.gov/document/EPA-HQ-OLEM-2018-0646-0023</a>
2020 Oregon Annual Hazardous Waste Reporting	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232
Oregon Department of Employment 2020 data	Employment Department 875 Union St. NE Salem, OR 97311

## Advisory committee fiscal review

Committee members agreed the proposed rule, being less stringent, will not have a fiscal impact.

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<sup>1</sup>EPA: <https://www.regulations.gov/document/EPA-HQ-OLEM-2018-0646-0023>

<sup>2</sup>EPA: <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2018-0646-0023>

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## Hazardous Waste Management System: User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations

EPA estimated cost savings and other benefits as the result of electronic manifests. They are estimated to accrue for both industrial and state government users of electronic manifests. Over the six-year period of analysis modeled in EPA's Regulatory Impact Analysis, the annualized post-rule costs of manifesting were estimated to be \$172 million when discounted at seven percent. Since the pre-rule cost of manifesting is estimated to be \$238 million, annualized cost savings from electronic manifests are estimated to be \$66 million.

## Statement of Cost of Compliance

### DEQ

DEQ expects minor impacts for staff training and performing additional outreach to those affected businesses through the hazardous waste technical assistance program, which will supplement EPA's outreach on this rule.

## **Local and state agencies**

DEQ anticipates the proposed rule will have no adverse fiscal or economic impacts on local or other state agencies, and will likely result in an overall cost savings.

## **Public**

DEQ identified no impacts to the public for this rule adoption.

## **Large businesses – businesses with more than 50 employees**

DEQ finds the fiscal impacts for large businesses is identical to the impacts for small businesses, as defined under the small business section below.

## **Small businesses – businesses with 50 or fewer employees**

### **ORS 183.336 - Cost of Compliance for Small Businesses**

#### **a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.**

DEQ reviewed its current list of conditionally exempt, small and large quantity generators and found this rule may affect approximately 3,736 listed active Oregon generators based on 2020 hazardous waste reporting with 2,347 identifying as small businesses.

#### **b. 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 does not require any additional state activities.

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

The proposed rule may require additional resources, such as computer equipment, to enter data into the EPA national e-Manifest system. Businesses currently using computers in daily work will not need any additional resources to comply with the proposed rule.

#### **d. Describe how DEQ involved small businesses in developing this proposed rule.**

DEQ included small business representatives on the hazardous waste rulemaking advisory committee to advise DEQ on the potential cost, if any, of compliance for small businesses. DEQ will also provide rulemaking notice to all manufacturers registered with DEQ as small and large quantity generators. These generator groups include small businesses.

## **Documents relied on for fiscal and economic impact**

Document title	Document location
Federal Register entries for the incorporated rule	<a href="https://www.gpo.gov/fdsys/pkg/FR-2018-01-03/pdf/2017-27788.pdf">https://www.gpo.gov/fdsys/pkg/FR-2018-01-03/pdf/2017-27788.pdf</a>
Federal Regulatory Impact Analysis, EPA's 2017 Final Rule, Establishing User Fees for the RCRA Electronic Hazardous Waste Manifest System (e-Manifest)	<a href="https://www.regulations.gov/document/EPA-HQ-OLEM-2016-0177-0090">https://www.regulations.gov/document/EPA-HQ-OLEM-2016-0177-0090</a>
Oregon Annual Hazardous Waste Reporting for disposal in 2020	Oregon Department of Environmental Quality Hazardous Waste Program 700 NE Multnomah St., Suite 600 Portland, OR 97232
Oregon Department of Employment 2020 data	Employment Department 875 Union St. NE Salem, OR 97311

### **Advisory committee fiscal review**

Most committee members agreed the adoption of the e-manifest rule will have some fiscal impact on generators and permitted facilities in terms of fees. It was suggested DEQ can mitigate the impact by providing training.

### **Automated Export System: Hazardous Waste Export-Import Revision**

Fiscal Impact Summary: EPA administers import and export functions. EPA has identified this rule will result in cost savings and great efficiency for EPA and the regulated community. With an Oregon adoption, this rule is unlikely to change fees or present a financial burden to generators as there are no associated state fees.

### **Confidentiality Determinations for Hazardous Waste Export and Import Documents**

Impact Summary: EPA administers import and export functions. EPA has identified this rule will result in cost-savings and great efficiency for EPA and the regulated community. With an Oregon adoption, this rule is unlikely to change fees or present a financial burden to generators as there are no associated state fees.

## **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 rules only affect DEQ-regulated facilities.

## 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.

These proposed rules would adopt federal requirements with noted state-only amendments:

### **Hazardous Waste Generator Improvements Rule**

**Nov. 28, 2016, 40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 273 and 279, 81 FR 85732** (CL 237)

**EPA SUMMARY:** The United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions including: reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

**Differences in the draft state rule:** Several differences for episodic generation with state-only amendments for planned 60-day notification, not 30 days as federal rule defines; for unplanned episodic events the state defines the timeline of the follow-up notification after the initial 72-hour notification to be within 5 days of event; adds state written approval for the second petitioned planned event to match same federal requirements for first petitioned planned event; and subject to existing annual reporting and fees. The rest of this federal rule is incorporated by reference at OAR 340-100-0002.

### **Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations**

**Dec. 9, 2019, 40 CFR Parts 260, 261, 264, 265, 268 and 270, and 273 84 FR 67202** (CL 242)

**EPA SUMMARY:** The Environmental Protection Agency is adding hazardous waste aerosol cans to the Universal Waste Program under the RCRA regulations. This change will benefit the wide variety of establishments generating and managing hazardous waste aerosol cans, including the retail sector, by providing a clear, protective system for managing discarded aerosol cans. The streamlined universal waste regulations are expected to ease regulatory burdens on retail stores and others that discard hazardous waste aerosol cans; promote the collection and recycling of these cans; and encourage the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills or combustors.

**Differences in the draft state rule:** No differences in the state rule. This federal rule is incorporated by reference at OAR 340-100-0002.

### **Modernizing Ignitable Liquids Determinations**

**July 7, 2020, 40 CFR Parts 260 and 261, 85 FR 40594** (CL 243)

EPA SUMMARY: EPA is finalizing updates to the regulations for the identification of ignitable hazardous waste under RCRA, and to modernize the RCRA test methods that currently require use of mercury thermometers. These revisions provide greater clarity to hazardous waste identification, provide flexibility in testing requirements, improve environmental compliance, and, thereby, enhance protection of human health and the environment.

**Differences in the draft state rule:** Two differences in the state rule with state-only amendments: 1. Ethyl alcohol only exclusion, and 2. Ignitability based only on the presence of ethyl alcohol. The rest of this federal rule is incorporated by reference at OAR 340-100-0002.

#### **Safe Management of Recalled Airbags**

**Nov. 30, 2018, 40 CFR Parts 260, 261, and 262, 83 FR 61552** (CL 240)

EPA SUMMARY: EPA is issuing this interim final rule in response to the urgent public health issue posed by recalled Takata airbag inflators still installed in vehicles. With this rule, EPA is facilitating a more expedited removal of defective Takata airbag inflators from vehicles by dealerships, salvage yards, and other locations, for safe and environmentally sound disposal by exempting the collection of airbag waste from hazardous waste requirements, so long as certain conditions are met. EPA is also seeking comment on this interim final rule.

**Differences in the draft state rule:** No differences in the state rule. This federal rule is incorporated by reference at OAR 340-100-0002.

#### **Management Standards for Hazardous Waste Pharmaceuticals and Amendment to P075 Listing for Nicotine**

**Feb. 22, 2019, 40 CFR Parts 261, 262, 264, 265, 266, 268, 270 and 273, 84 FR 5816** (CL 241)

EPA SUMMARY: EPA is revising regulations to add the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors. Healthcare facilities - for both humans and animals - and reverse distributors will manage their hazardous waste pharmaceuticals under this new set of sector-specific standards in lieu of the existing hazardous waste generator regulations. Among other things, these new regulations prohibit the disposal of hazardous waste pharmaceuticals down the drain and eliminate the dual regulation of RCRA hazardous waste pharmaceuticals that are also Drug Enforcement Administration (DEA) controlled substances. The new rules also maintain the household hazardous waste exemption for pharmaceuticals collected during pharmaceutical take-back programs and events, while ensuring proper disposal. The new rules codify EPA's prior policy on the regulatory status of non-prescription pharmaceuticals going through reverse logistics. Additionally, EPA is excluding certain U.S. Food and Drug Administration (FDA) approved over-the-counter nicotine replacement therapies from regulation as hazardous waste and is establishing a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics, fulfilling the commitment EPA made in the [Retail Strategy of September 2016](#).

**Differences in the draft state rule:** Requires all healthcare facilities and reverse distributors to notify using Oregon's [Site Identification Form](#) within 60 days of being subject to the rule; requires reverse distributors to report annually to DEQ. Oregon expressly does not adopt the less than 20-bed long term care facility very small quantity generator presumption, nor the more flexible options for proving one-year accumulation documentation, except only the option for labeling each container. The rest of this federal rule is incorporated by reference at OAR 340-100-0002.

#### **Confidentiality Determinations for Hazardous Waste Exports and Import Documents**

**Dec. 26, 2017, 40 CFR Parts 260, 261 and 262, 83 FR 60894** (CL 238)

EPA SUMMARY: EPA is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs). EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation. The rule will result in cost-savings and greater efficiency for EPA and the regulated community, as well as facilitate transparency with respect to the documents that are within the scope of this rulemaking. EPA is not finalizing the proposed internet posting requirement that was put forward in the proposed rule.

**Differences in the draft state rule:** No differences in the state rule. This federal rule is incorporated by reference at OAR 340-100-0002.

#### **Imports and Exports of Hazardous Waste**

**Nov. 28, 2016 & Aug. 29, 2017 & Aug. 6, 2018, 40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 267 and 273, 81 FR 85696, 82FR 41015 & 83 FR 38263** (CL 236)

EPA SUMMARY: EPA is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA is making these changes to: provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD); enable electronic submittal to EPA of all export and import-related documents, e.g., export notices, export annual reports; enable electronic validation of consent in the Automated Export System (AES) for export shipments subject to RCRA export consent requirements prior to exit. The AES resides in the U.S. Customs and Border Protection's Automated Commercial Environment (ACE).

EPA is also making conforming changes to the EPA office and address to which paper documents concerning imports and exports of hazardous waste and conditionally excluded cathode ray tubes must be sent. The change in address is needed to reflect the reorganization of hazardous waste import-export functions on April 29, 2018, from the Office of Federal Activities' International Compliance Assurance Division, in EPA's Office of Enforcement and Compliance Assurance, to the International Branch within the Office of Resource Conservation and Recovery's Materials Recovery and Waste Management Division, in EPA's Office of Land and Emergency Management. The change in address will ensure that such paper documents will continue to be received by the appropriate personnel in a timely manner.

**Differences in the draft state rule:** No differences in the state rule. This federal rule is incorporated by reference at OAR 340-100-0002.

#### **Hazardous Waste Electronic Manifest System User Fee; Final Rule**

**Jan. 3, 2018, 40 CFR Parts 260, 262, 263, 264 and 265, 83 FR 420** (CL 239)

EPA SUMMARY: EPA is establishing, by this regulation, the methodology the Agency will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest (e-Manifest) system that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act. After the e-Manifest system's implementation date, certain users of the hazardous waste manifest will be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the national system so that EPA can recover the costs of developing and operating the national e-Manifest system. This final rule also announces the date when EPA expects the system to be operational and available to users. EPA will begin accepting manifest submissions and collecting the corresponding manifest submission fees on this date.

In addition, this action announces final decisions and regulations relating to several non-fee related matters that were included in the proposed rule. This includes modifying the existing regulations to: allow changes to the transporters designated on a manifest while the shipment is en route; describe how data corrections may be made to existing manifest records in the system; and amend the previous e-Manifest regulation (“One Year” Rule) to allow the use, in certain instances, of a mixed paper and electronic manifest to track a hazardous waste shipment.

**Differences in the draft state rule:** No differences in the state rule. This federal rule is incorporated by reference at OAR 340-100-0002.

## 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.
- Where federal requirements include 30-day notifications for planned episodic events under the **Generator Improvements Rule**, the state adoption modifies this requirement to a 60-day notification. Where federal requirements include a 72-hour notification for unplanned episodic generation with unspecified follow up notification, the state amendments define follow up notification as written notification within 5 calendar days of the initial notification. Where federal requirements include written approval of a second petitioned planned episodic generation event, the state amendments add a requirement for the same written approval for the first petitioned planned event.
- Where federal requirements do not specify the type of alcohol in the aqueous alcohol-content exclusion in the **Modernizing Ignitable Liquids Determination Rule**, the state amends the definition to specify “ethyl” alcohol only, along with the requirement to not contain any other ignitable constituents.
- Where the federal requirement includes a 30-day notification for all healthcare facilities and reverse distributors to notify under the **Management Standards for Hazardous Waste Pharmaceuticals Rule**, state adoption modifies this to require all healthcare facilities and reverse distributors to notify using Oregon’s Site Identification Form within 60 days of being subject to the rule. Where federal requirements presume long term care facilities with less than 20-beds are very small quantity generators, the state expressly does not adopt this presumption and instead requires long term care facilities to prove generator status. Where the federal requirements include more flexible options in documenting one-year accumulation,



the state expressly adopts only the option for labeling each container for increased staff and emergency responder safety.

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 because the federal rules address Oregon’s immediate concerns, and consistency with the federal rules reduces cost and complexity for affected parties.

# 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:

<b>Goal</b>	<b>Title</b>
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 shared information about this rulemaking with the EQC through informational items on the Director's Report for the following dates of the EQC agenda. These documents are publicly available from the agency website at the links below.

- March 26, 2021: [2.3. Land Quality: Hazardous Waste Program's Rulemaking](#)
- May 20, 2021: [1.2. Hazardous Waste Program's Federal Rule Alignment \(Land Quality\)](#)

## Advisory Committee

DEQ convened the Hazardous Waste Federal Rule Alignment 2021 Rules 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 three times. The committee's web page is located at: [Hazardous Waste Federal Rules Alignment 2021](#).

Hazardous Waste Rules Advisory Committee Roster		
Name	Affiliation	Representing
Marjorie MartzEmerson	Coyote & Chirp Biosphere, LLC	Environmental Advocates Small businesses Rural Oregon, Joseph
Jim Denson	Chemical Waste Management	Only Hazardous Waste landfill in Oregon Located in Portland
Jennifer Losson	Oregon Military Department	Military Located in Salem
Jennifer Eisele	Beyond Toxics	Environmental Advocates/Justice Located in Eugene
Keri Bishop	OHSU	Healthcare Providers, Laboratories & Public University System Located in Portland
Patrick Gottsacker	Intel	Large Quantity Generators Located in Portland
Cynthia Holm	Providence - Medford	Healthcare Providers Rural Oregon, Medford
Max Yoklic	Stoel Rives LLP	Oregon Business and Industry Small Businesses Located in Portland
Ryan Binford	VA Hospital	Veterans & Healthcare Providers Rural Oregon, Roseburg

## 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 (12,185)
  - Rulemaking (14,469)

- Hazardous Waste (3,735)
- Notified EPA by email
- Posted the Notice and meeting supporting documents on the web page for this rulemaking, located at: [Hazardous Waste Federal Rules Alignment 2021](#)
- 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 [March 30](#), April 27 and May 18 notes. Meeting notes from April 27 and May 18 are currently being reviewed. Once finalized, these notes will also be available on the committee's webpage at [Hazardous Waste Federal Rules Alignment 2021 Rulemaking](#) under "Advisory committee meeting schedule."

Agendas, meeting summaries, and presentation slides are also available on the committee's webpage at [Hazardous Waste Federal Rules Alignment 2021 Rulemaking](#) under "Advisory committee meeting schedule." The Advisory Committee [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 June 29, 2021 filing notice with the Oregon Secretary of State for publication in the July 2021 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](#);
- Emailing approximately 22,733 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 1,014 hazardous waste generators reporters for last three years in DEQ's reporting database;
- Emailing the following key legislators required under [ORS 183.335](#):
  - Senate President Courtney
  - House Speaker Kotek
  - Senator Beyer, Chair Senate Energy and Environment Committee
  - Representative Marsh, Chair, House Energy and Environment Committee;
- 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. 4, 2021.

### 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: [hazwaste2021@deq.state.or.us](mailto:hazwaste2021@deq.state.or.us).

### 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. 4 and 5, 2021

## Public Hearing

DEQ plans to hold two virtual public hearings. The public hearings will be 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. 4, 2021  
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: 810 4274 2880

Passcode: 271657

**Second Hearing**

Date: Thursday, Aug. 5, 2021

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: 810 4274 2880

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 (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 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). Hearing impaired persons may call 711.

# Draft Rules – Edits Highlighted (Redlined)

## Table of Contents – Oregon Administrative Proposed Rules

### **Division 100 – Hazardous Waste Management**

- 340-100-0002 – Adoption of US EPA Hazardous Waste and Used Oil Management Regulations
- 340-100-0003 – Public Disclosure and Confidentiality
- 340-100-0010 – Definitions

### **Division 101 – Identification and Listing of Hazardous Waste**

- 340-101-0007 – Special Requirements for Hazardous Waste Generated By Very Small Quantity Generators
- 340-101-0033 – Additional Hazardous Wastes

### **Division 102 - Standards Applicable to Generators of Hazardous Waste**

- 340-102-0011 – Hazardous Waste Determination
- 340-102-0012 (Renumbered) – Identification Number and Verification
- 340-102-0034 – Accumulation Time, Container and Tank Management Standards
- 340-102-0041 – Generator Reporting
- 340-102-0230 (New) – Episodic Generation
- 340-102-0500 (New) – Healthcare Facilities and Reverse Distributors

### **Division 120 – Additional Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities**

- 340-120-0001 – Purpose and Applicability

### **Division 135 – Toxic Use Reduction and Hazardous Waste Reduction Regulations**

- 340-135-0030 – Applicability
- 340-135-0105 – Technical Assistance and Restrictions on Enforcement

### **Division 12 - Enforcement Procedure and Civil Penalties**

- 340-012-0068 - Hazardous Waste Management and Disposal Classification of Violations
- 340-012-0140 - Determination of Base Penalty

### **Draft redline legend**

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

**Chapter 340**  
**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 ~~June~~July 30, 2020~~15~~, 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. §§ 266.502\(f\)\(2\)\(ii\) and \(f\)\(2\)\(iii\)](#), [40 C.F.R. § 266.504\(d\)](#), 40 C.F.R. § 260.2 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; and
- (h) 80 Federal Register 1694-1814 (c233), January 13, 2015 [and 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 &

**340-100-0003**

**Public Disclosure and Confidentiality**

- (1) The provisions of this rule replace the provisions of 40 C.F.R. § 260.2.
  - (2) All records, reports, and information submitted pursuant to the hazardous waste statutes, rules, and regulations are open for public inspection and copying except as provided in sections (3) to (7) of this rule. Provided however, that nothing in this rule is intended to alter any exemption from public disclosure or public inspection provided by any provision of ORS Chapter 192 or other Oregon law.
  - (3)(a) A person may claim the submitted records, reports, or information are a trade secret in accordance with ORS 192.410 through 192.505 and 466.090.
  - (b) The Department will designate a Document Control Officer for the purpose of receiving, managing, and securing confidential information. The Document Control Officer will secure the following information:
    - (A) Claimed trade secret information until the claim is withdrawn by the submitter, determined not to be confidential under section (6) of this rule, or invalidated;
    - (B) Information determined to be trade secret; and
    - (C) Any other information determined by court order or other process to be confidential.
  - (c) All Uniform Hazardous Waste Manifest information submitted on any required report under the hazardous waste statutes, rules, and regulations is publicly available and is not subject to trade secret confidentiality claims.
  - (d) The Department will deny confidentiality claims for the name and address of any permit applicant or permittee.
- (4) The following procedures shall be followed when a claim of trade secret is made:
- (a) A person claiming trade secret must clearly mark each individual page of any submission that contains the claimed trade secret information as "trade secret," "confidential," "confidential business information," or the equivalent. If no claim by appropriate marking is made at the time of submission, the submitter may not afterwards make a claim of trade secret.
  - (b) A late submission of the trade secret substantiation will invalidate the trade secret claim. Written substantiation in accordance with paragraph (4)(d) of this rule:

(A) Must accompany any information submitted pursuant to OAR 340-102-0012, 340-102-0041, 340-104-0075, 340-105-0010, 340-105-0013, 340-105-0014, 340-105-0020, 340-105-0021, 40 C.F.R. §§262.128, 264.11, 265.11 or 270.42, or

(B) For all other information submitted to the Department, written substantiation must be provided pursuant to subsection 5 of this rule.

(c) Trade secret information must meet the following criteria:

(A) Not the subject of a patent;

(B) Only known to a limited number of individuals within an organization;

(C) Used in a business which the organization conducts;

(D) Of potential or actual commercial value; and

(E) Capable of providing the user with a business advantage over competitors not having the information.

(d) Written substantiation of trade secret claims shall address the following:

(A) Identify which portions of information are claimed trade secret;

(B) Identify how long confidential treatment is desired for this information;

(C) Identify any pertinent patent information;

(D) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others;

(E) Describe the nature of the use of the information in business;

(F) Describe why the information is considered to be commercially valuable;

(G) Describe how the information provides a business advantage over competitors;

(H) If any of the information has been provided to other government agencies, identify which one(s);

(I) Include any other information that supports a claim of trade secret.

(e) The person must submit a public version of the document containing the claimed trade secret information at the time the trade secret substantiation is required as provided in subsection (4)(c)(B)(b)(A) and subsection (5)(a) of this rule.

(5) Written trade secret substantiation as required under subsection (4)(b)(B) and a public version of the information as required by subsection (4)(e) shall be provided within 15 working days of receipt of any Department request for trade secret substantiation or the public version of the information. The Department may extend the time, either at the Department's initiative or the claimant's request, up to an additional 30 consecutive days in

order to provide the substantiation and public version, if the complexity or volume of the claimed trade secret information is such that additional time is required for the claimant to complete the response. The Department shall request the written trade secret substantiation or the public information version if:

(a) A public records request is received which would reasonably include the information, if the information were not declared as trade secret, or

(b) It is likely that the Department eventually will be requested to disclose the information at some future time and thus the Department will have to determine whether the information is entitled to trade secret confidentiality. This includes information that relates to any permit, corrective action, or potential violation information.

(6) When evaluating a trade secret claim, the Department shall review all information in its possession relating to the trade secret claim to determine whether the trade secret claim meets the requirements for trade secret as specified in paragraphs (4)(c) and (4)(d) of this rule. The Department shall provide written notification of any final trade secret decision and the reason for it to the person submitting the trade secret claim within 10 working days of the decision date.

(a) If the Department or the Attorney General determines that the information meets the requirements for trade secret, the information shall be maintained as confidential.

(b) If the Department determines that the information does not meet the requirements for trade secret, the Department shall request a review by the Attorney General. If the Attorney General determines that the information does not meet the requirements for trade secret, the Department may make the information available to the public no sooner than 5 working days after the date the Department mails notification to the person submitting the trade secret claim.

(c) A person claiming information as trade secret may request the Department to make a trade secret determination. The person must submit the written substantiation in accordance with paragraph (4)(d) of this rule and the public version in accordance with paragraph (4)(e) of this rule. The Department shall make the determination within 30 days after receiving the request, written substantiation, and the public version.

(7) Records, reports, and information submitted under to these rules shall be made available to the Environmental Protection Agency (EPA) upon request. If the records, reports, or information has been submitted under a claim of confidentiality, the state shall make that claim of confidentiality to EPA for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.

NOTE: It is suggested that claims of trade secret be restricted to that information considered absolutely necessary and that such information be clearly separated from the remainder of the submission.

**Statutory/Other Authority:** ORS 466.020, 468.020 & 646

**Statutes/Other Implemented:** ORS 192.410-505, 466.015, 466.075 & 466.090

**History:** DEQ 5-2015, f. & cert. ef. 4-15-15

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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~~) "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.

(g) "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 steams generated from maintenance or operation of non-agent contaminated process utility systems.

(h) "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.

(i) "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.

(j) "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.

(k) "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.

(l) "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.

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

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

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

(~~eq~~) "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.

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

(~~es~~) "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.

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

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

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

(~~w~~) "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 261.21(a)(4).

(~~v~~x) "License." See "Permit."

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

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

(~~y~~aa) "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 ~~40~~9 C.F.R. §-173.1~~5~~~~1~~27).

(~~z~~bb) "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.

(~~a~~acc) "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.

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

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

(~~d~~ff) "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.

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

(~~f~~hh) "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.

(~~e~~gi) "Spill" means unauthorized disposal.

(~~hh~~jj) "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~~) "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 ~~CFR~~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 rinsings, 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

**History:** DEQ 11-2019, minor correction filed 03/06/2019, effective 03/06/2019

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## Chapter 340

### Division 101

### IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

#### 340-101-0007

#### Special Requirements For Hazardous Waste Generated By Very Conditionally Exempt Small Quantity Generators

(1) The provision of ~~40 CFR 261.5(f)(3)(iv) and (v) and 40~~ ~~CFRC.F.R. 261.5(g)(3) 262.14(a)(5)(iv) and (v) and 40~~ ~~CFRC.F.R. 261.5(j) 262.13(f)(1)(iii)~~ do not apply to generators of hazardous waste, including dry cleaning wastewater, generated from dry cleaning operations at dry cleaning facilities.

(2) In addition to the requirements of 40 ~~CFRC.F.R. 261.5(f)(2)~~ ~~262.14(a)(3)~~ and 40 ~~CFRC.F.R. 261.5(g)(2)~~ ~~262.14(a)(4)~~, generators of hazardous waste, including dry cleaning wastewater, derived from dry cleaning operations at dry cleaning facilities shall comply with additional management requirements in OAR 340-124.

(3) All healthcare facilities, including very small quantity generators “operating under §262.14 in lieu of 40 C.F.R. 266 subpart P” and reverse distributors, are prohibited from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works.

**Statutory/Other Authority:** ORS 466.015, 466.180 & 465.505

**Statutes/Other Implemented:** ORS 466.075, 466.195 & 465.505

**History:** DEQ 13-2002, f. & cert. ef. 10-9-02

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#### 340-101-0033

#### Additional Hazardous Wastes

(1)(a) This section applies to residues that have been determined not to be hazardous waste under 40 ~~CFRC.F.R. 261~~, Subparts C and D.

(b) This section does not apply to residues that have been identified as hazardous waste under 40 ~~CFRC.F.R.~~ 261, Subparts C and D.

(2) Except as provided in section (4) of this rule, the residues identified in subsections (2)(a) and (2)(b) of this rule are hazardous wastes and are added to and made a part of the list of hazardous wastes in 40 ~~CFRC.F.R.~~ 261.33.

(a) Any residue, including but not limited to manufacturing process wastes and unused chemicals that has either:

(A) A 3 percent or greater concentration of any substance or mixture of substances listed in 40 ~~CFRC.F.R.~~ 261.33(e);

(B) A 10 percent or greater concentration of any substance or mixture of substances listed in 40 ~~CFRC.F.R.~~ 261.33(f); or

(b) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water, of either:

(A) A residue identified in subsection (2)(a)(A) of this rule; or

(B) A residue identified in subsection (2)(a)(B) of this rule.

(3) A residue identified as a hazardous waste in subsections (2)(a) or (2)(b) of this rule, and not excluded under section (4) of this rule, has the hazardous waste letters “OR” followed by the corresponding hazardous waste number(s) in 40 ~~CFRC.F.R.~~ 261.33(e) and (f).

(4) The following residues are not additional hazardous wastes under section (2) of this rule:

(a) Mixtures of pesticides identified in section (2) of this rule that are listed in 40 ~~CFRC.F.R.~~ 261.33(e) and (f);

(b) Those substances or mixtures of substances with individual constituents only listed in both 40 ~~CFRC.F.R.~~ 261.24, Table 1, and 40 ~~CFRC.F.R.~~ 261.33(e) and (f); and

(c) U075 (Dichlorodifluoro-methane) and U121 (Trichloromonofluoromethane) when they are intended to be recycled.

NOTE: Pesticide mixtures excluded in Section (4)(a) of this rule are regulated as pesticide residue in Section (6) of this rule.

(5) The wastes identified in subsections (2)(a)(A) and 2 (b)(A) of this rule are identified as acutely hazardous wastes (H) and are subject to the very small quantity generator exclusion defined in 40 ~~CFRC.F.R. 261.5(e)~~262.13 and § 262.14.

(6) Any pesticide residue, except residue listed in Table 1 of 40 [CFRC.F.R.](#) 261.24 and which passes the evaluation requirement of 40 [CFRC.F.R.](#) 261.24(a), is a hazardous waste and is added to and made a part of the list of hazardous waste in 40 [CFRC.F.R.](#) 261.31 until it is first managed in accordance with the standards in OAR 340-109-0010(2)(a).

NOTE: 340-101-0033(7) and 340-101-0033(8) have been moved to 340-102-0011(c).

(7) Except as otherwise specified in OAR 340-109-0010(4)(b) hazardous waste identified in this rule is not subject to 40 [CFRC.F.R.](#) Part 268.

**Statutory/Other Authority:** ORS 466.020 & 466.180

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

**History:** DEQ 10-2000, f. & cert. ef. 7-21-00

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## Chapter 340

### Division 102

#### STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

##### 340-102-0011

##### Hazardous Waste Determination

- (1) The provisions of this rule ~~replace~~ are in addition to the requirements of 40 [CFRC.F.R.](#) §262.11.
- (2) A person who generates a residue as defined in OAR 340-100-0010 must determine if that residue is a hazardous waste using the following method:
  - (a) Persons should first determine if the waste is excluded from regulation under 40 [CFRC.F.R.](#) §261.4 or OAR 340-101-0004;
  - (b) Persons must then determine if the waste is listed as a hazardous waste in Subpart D of 40 [CFRC.F.R.](#) Part 261;
  - (c) Persons must then determine if the waste is listed under the following listings:
    - (A) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates identified in 340-102-0011(2)(c)(A)(i) and (ii) are added to and made a part of the list in 40 [CFRC.F.R.](#) §261.33(e).
      - (i) P998...Blister agents (such as Mustard agent)
      - (ii) P999...Nerve agents (such as GB (Sarin) and VX); or

(B) Hazardous waste identified in 340-102-0011(2)(c)(B)(i) and (ii) are added to and made a part of the list in 40 [CFR C.F.R.](#) § 261.31.

(i) F998...Residues from demilitarization, treatment, and testing of blister agents (such as Mustard agent).

(ii) F999...Residues from demilitarization, treatment, and testing of nerve agents (such as GB (Sarin) and VX).

**NOTE:** Even if the waste is listed, the person still has an opportunity under OAR 340-100-0022 to demonstrate to the Commission that the waste from their particular facility or operation is not a hazardous waste.

(d) Regardless of whether a hazardous waste is listed through application of subsections (2)(b) or (2)(c) of this rule, persons must also determine whether the waste is hazardous under Subpart C of 40 [CFR C.F.R.](#) Part 261 by either:

(A) Testing the waste according to the methods set forth in Subpart C of 40 [CFR C.F.R.](#) Part 261, or according to an equivalent method the Department approves under OAR 340-100-0021, or

**NOTE:** In most instances, the Department will not consider approving a test method until the EPA approves it.

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(e) If the waste is determined to be hazardous, the person must refer to Divisions 100–106 and 40 [CFR C.F.R.](#) Parts 264, 265, 268 and 273 for possible exclusions or restrictions pertaining to management of the specific waste.

**NOTE:** 40 [CFR C.F.R.](#) § 268.3 prohibits diluting a hazardous waste to meet Land Disposal Restriction treatment standards. Diluting waste without a permit to meet any hazardous waste standard is prohibited.

(f) If the waste is not identified as hazardous by application of subsection (2)(b) or (2)(c), and/or (2)(d) of this rule, persons must determine if the waste is listed under OAR 340-101-0033.

~~(3) A person who generates a residue, as defined in OAR 340-100-0010(2)(ee), must keep a copy of all documentation used or created in determining whether the residue is a hazardous waste, under section (2) of this rule, for a minimum of three years after the waste stream is no longer generated, or as prescribed in 40 CFR § 262.40(c). The person is not required to create new documentation if no documentation is created in making the waste stream determination.~~



**Statutory/Other Authority:** ORS 466.020 & 466.180

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

**History:** DEQ 87-2018, minor correction filed 04/10/2018, effective 04/10/2018

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### **340-102-00128**

#### **Identification Number and Verification**

In addition to the provisions of 40 [CFR C.F.R.](#) 262.128, as a matter of policy, the Department will accept EPA identification numbers already assigned and use a modified EPA registration form and identification numbering system (Dun and Bradstreet) for generators who register in the future. Effective January 1, 1991, and annually thereafter, hazardous waste generators and hazardous waste management and recycling facilities shall verify registration information on a form provided by the Department.

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

**Statutes/Other Implemented:** ORS 466.075

**History:** DEQ 13-1991, f. & cert. ef. 8-5-91

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### **340-102-0034**

#### **Accumulation Time, Container and Tank Management Standards**

(1) In addition to the requirements of 40 [CFR C.F.R.](#) 262.3417, a generator may accumulate hazardous waste on-site for 90 days or less without a permit provided that, if storing in excess of 100 containers, the waste is placed in a storage unit that meets the requirements of 40 [CFR C.F.R.](#) 264.175.

(2) A generator shall comply with provisions found in 40 [CFR C.F.R.](#) Part 262 ~~and each applicable requirement of 40 CFR 262.34(a), (b), (c), (d), (e), and (f).~~

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

**Statutes/Other Implemented:** ORS 466.075

**History:** DEQ 6-1994, f. & cert. ef. 3-22-94

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### **340-102-0041**

#### **Generator Reporting**

(1) The provisions of this rule replace the requirements of 40 [CFR C.F.R.](#) 262.41.

(2) A person producing at any time more than one kilogram of acutely hazardous waste, a total of more than 100 kilograms of hazardous waste in a calendar month, or who accumulates on-site at any time a total of more than 1,000 kilograms of hazardous waste, shall submit Quarterly Reports through the period ending December 31, 1991 to the

Department. Effective January 1, 1992, and annually thereafter, a report shall be submitted to the Department, on a form provided by the Department, or by other means agreed to by the Department, by persons defined as small quantity hazardous waste generators, large quantity hazardous waste generators, [reverse distributors, as well as very small quantity generators conducting an episodic event in compliance with OAR 340-102-0230](#), and/or hazardous waste recyclers. The report shall contain information required by the Department covering activities from the preceding calendar year. Reports shall be submitted by March 1, or within 65 days of mailing by the Department, whichever is later. Upon written request and reasonable justification, the Department may grant an extension to the reporting deadline of up to 30 days. The annual report shall contain:

- (a) Information required for purposes of notification of hazardous waste activity and/or annual verification of hazardous waste generator status;
  - (b) Information required for purposes of describing hazardous waste generator and waste management activity, including information pertaining to hazardous waste storage, treatment, disposal, and recycling efforts and practices;
  - (c) Information required for the assessment of fees; and
  - (d) Information required for the Department's preparation and completion of the Biennial Report and Capacity Assurance Plan.
- (3) Quarterly Reports are due within 45 days after the end of each calendar quarter for 1991 (the final quarterly report will be due February 15, 1992). The quarterly reporting requirement will sunset on December 31, 1991:
- (a) The Quarterly Report shall include, but not be limited to the following information:
    - (A) A copy of the completed manifest or a listing of the information from each manifest for each shipment made during the calendar quarter;
    - (B) A listing of all additional hazardous waste generated during the quarter that was sent off-site without a manifest or was used, reused or reclaimed on-site, on a form provided by the Department. The listing shall include, but not be limited to:
      - (i) The generator's name and address;
      - (ii) The generator's U.S. EPA/DEQ Identification Number;
      - (iii) Identification of the calendar quarter in which the waste was generated;
      - (iv) The type and quantity of each waste generated, by EPA code number; and
      - (v) The disposition of each waste, including the identity of the receiving party for wastes shipped off-site and handling method; and

(C) If no hazardous waste was generated during the quarter, a statement to that effect, on a form provided by the Department.

(b) Reports submitted to the Department must be accompanied by the following certification signed and dated by the generator or his/her authorized representative:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

(4) Any generator who is receiving hazardous waste from off-site, generating or managing hazardous waste on-site, including recycling, except closed-loop recycling must submit an annual report covering those wastes and activities in accordance with the provisions of OAR 340-104-0075 and of 40 ~~C.F.R.~~ [C.F.R.](#) Part 266.

(5) Dry cleaning operators of dry cleaning facilities must complete an annual dry cleaner hazardous waste and air quality compliance report pursuant to OAR 340-124.

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

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

**History:** DEQ 5-2015, f. & cert. ef. 4-15-15

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### **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) Planned events require prior written Department approval to qualify as episodic.

(5) 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

History:

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### **340-102-0500**

#### **Healthcare Facilities and Reverse Distributors**

(1) The notification requirements of 40 C.F.R. 266.502(a)(1)(i) and (ii), and 40 C.F.R. 266.510(a)(1)(i) and (ii), are deleted and replaced by DEQ notification requirements for healthcare facilities or reverse distributors to notify within 60 days of being subject to 40 C.F.R. 266 Subpart P as required under OAR 340-100-0010(2)(p).

(2) The reporting provisions of 40 C.F.R. 266.510(c)(9)(i) are deleted and replaced by OAR 340-102-0041(2).

(3) In addition to the provisions of 40 C.F.R. 266.507(c) & (d), empty container(s) and empty container residue(s) definitions are added as specified under OAR 340-100-0010(2)(gg) and 340-100-0010(3)(d).

Statutory/Other Authority: ORS 183, 192, 459, 465.009, 466.015, 466.020, 466.075, 466.090, 466.105, 466.165, 466.195, & 468

Statutes/Other Implemented: ORS 466.075

History:

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## **Chapter 340**

### **Division 120**

#### **ADDITIONAL SITING AND PERMITTING REQUIREMENTS FOR HAZARDOUS WASTE AND PCB TREATMENT AND DISPOSAL FACILITIES**

### **340-120-0001**

#### **Purpose and Applicability**

(1) To protect the public health and safety and the environment, the Commission finds that it is in the state's best interest to more fully regulate and review proposals to treat or dispose of hazardous waste and PCB. The purpose of this division is to establish a supplemental siting and permitting procedure for most types of hazardous waste and PCB treatment and disposal facilities.

COMMENT: Under Federal law hazardous waste incineration and other treatment techniques are considered “treatment” and PCB incineration and other treatment techniques are considered “disposal.” To be consistent, division 120 utilizes the same definitions.

(2) All parts of this division apply to new:

(a) Hazardous waste and PCB treatment and disposal facilities located off the site of waste generation (off-site); and

(b) Hazardous waste and PCB land disposal facilities located on the site of waste generation (on-site).

(3) Facilities described in section (2)(a) of this rule that receive less than 50 percent of waste on a weekly basis from off the site may be located inside urban growth boundaries as defined by ORS 197.295 and therefore do not have to meet OAR 340-120-0010(d)(A)(i) and 340-120-0015(1)(a).

(4) New hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, located on the site of waste generation (on-site), are only subject to these parts of division 120:

(a) OAR 340-120-0010(2)(c) — Technology and Design;

(b) OAR 340-120-0010(2)(e) — Property Line Setback;

(c) OAR 340-120-0010(2)(g) — Owner and Operator Capability;

(d) OAR 340-120-0010(2)(h) — Compliance History;

(e) OAR 340-120-0020 — Community Participation;

(f) OAR 340-120-0030 — Permit Application Fee.

(5) For the purposes of this division, a facility can receive, with the Department approval, as much as ten percent of waste on a weekly basis from off the site and be an on-site facility.

(6) For the purposes of this division, a new facility means:

(a) A facility for which an original permit application was submitted after the effective date of this Division; or

(b) A facility where a different type of treatment or disposal is being proposed (i.e., adding incineration at a facility utilizing disposal, or changing from chemical treatment to biological treatment at a facility).

(7) This division does not apply to:

(a) Portable hazardous waste and PCB treatment and disposal facilities that are located on a single site of generation (on-site) less than 15 days each year;

(b) Hazardous waste and PCB treatment or disposal sites involved in remedial action under ORS Chapter 466 or closing under divisions 100 through 110 of this chapter;

(c) Facilities treating hazardous waste pursuant to the recycling requirements of 40 [CFR C.F.R.](#) 261.6;

(d) Emergency permits issued by the director according to 40 [CFR C.F.R.](#) 270.61; and

(e) Facilities permitted by the Department to manage municipal or industrial solid waste, if the hazardous waste the facilities treat or dispose of is excluded from regulation by 40 C.F.R. §262~~1.5~~[14](#).

(8) The requirements of this division are supplemental to those of divisions 100 through 110 of this chapter. The definitions of OAR 340-100-0010 and 340-110-0003 apply to this Division.

**Statutory/Other Authority:** ORS 466 & 468

**Statutes/Other Implemented:** ORS 466.010, 466.020, 466.025, 466.030, 466.035 & 468.020

**History:** DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019

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## Chapter 340

### Division 135

## TOXIC USE REDUCTION AND HAZARDOUS WASTE REDUCTION REGULATIONS

### 340-135-0030

#### Applicability

(1) OAR 340-135 applies to toxics users as defined in ORS 465.003, which include:

(a) Facilities required to submit a uniform toxic chemical release form under the federal Toxics Release Inventory (TRI) program, defined as large users in ORS 465.003(6);

(b) Large quantity generators of hazardous waste; and

(c) Small quantity generators of hazardous waste.

(2) OAR 340-135 does not apply to:

(a) [Very small quantity](#) ~~Conditionally exempt~~ generators. If you are a [very small quantity](#) ~~conditionally exempt~~ generator and you are not also a large user;

(b) Toxics users. If you are a toxics user solely because you use or generate one or more of the following materials:

(A) Toxic substances used as a pesticide in routine commercial agricultural applications;

(B) A raw material that contains a naturally occurring toxic substance and that is used in a process for which there is no substitute, such as logs that contain naturally-occurring lead;

(C) Toxic substances that the Environmental Quality Commission removes by rule as defined in ORS 465.009.

(D) Hazardous waste generated from remedial or removal actions as defined in ORS 465.200, including, but not limited to, a spill or cleanup activity; and

(E) Hazardous waste generated from a one-time event, including, but not limited to, the cleaning out of a storage closet.

**Statutory/Other Authority:** ORS 465.003 - 465.037 & 466.075

**Statutes/Other Implemented:** ORS 465.003, 465.009 & 465.034

**History:** DEQ 9-2006, f. & cert. ef. 8-15-06

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### **340-135-0105**

#### **Technical Assistance and Restrictions on Enforcement**

(1) According to ORS 465.012, the Department will provide toxics users, including [very small quantity conditionally exempt](#) generators as defined [under 40 C.F.R. 260.10](#) ~~by 465.003(1)~~, with technical assistance.

(2) The Department will coordinate its technical assistance efforts with industry trade associations, local colleges and universities, and local agencies in accordance with ORS 465.012(3) and 465.027.

(3) In accordance with ORS 465.012, technical assistance services provided by the Department will not result in compliance inspections or other enforcement actions, unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment:

(a) For the purpose of initiating enforcement, the term "clear" means plain, evident, free from doubt, and the term "immediate danger" means a situation where there is substantial likelihood that serious harm may be experienced within the time frame necessary for the Department to pursue an enforcement action (e.g., observation of a leaking drum).

(b) In the case of a "clear and immediate danger", the Department may initiate a compliance and enforcement action immediately.

**Statutory/Other Authority:** ORS 183.745 & 465.003 - 465.037  
**Statutes/Other Implemented:** ORS 465.003, 465.012 & 465.027  
**History:** DEQ 9-2006, f. & cert. ef. 8-15-06

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## Chapter 340

### 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 ~~by OAR 340-102-0011~~;

(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 ~~CFR~~[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 ~~CFR~~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 ~~CFR~~C.F.R. 264.147 or 40 ~~CFR~~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 ~~CFR~~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; ~~or~~

(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 withdrawal for healthcare facilities or reversed distributors;

(w) Failing to comply with the prohibition of 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 ~~a-tanks or containers having a capacity of 100 gallons or more, or containers equaling more than 110-gallon capacity~~ 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 credible 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 ~~CFR~~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 ~~CFR~~C.F.R. 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified; ~~or~~

(t) Failing to timely submit an annual report by a hazardous waste generator, TSD facility, reverse distributor, or hazardous waste recycling facility; ~~or~~

(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 label containers equaling 110-gallon capacity or less used for the accumulation or storage of hazardous waste;~~

~~(c) Failing to label a tank having less than 100-gallon capacity used for the accumulation or storage of hazardous waste;~~

~~(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

**History:** DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019

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### **340-012-0140**

#### **Determination of Base Penalty**

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,

(S) Any violation classified under OAR 340-012-0054 (1) (ee), (ff), or (gg).

(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.

(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(L) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as a credit generator, an aggregator, or a registered fuel producer unless the violation is otherwise classified in this rule.

(M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.

[\(N\) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.](#)

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:



(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a [very small quantity](#) ~~conditionally exempt~~ generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a [very small quantity](#) ~~conditionally exempt~~ generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 by a person registered as an importer of finished fuels unless the violation is otherwise classified in this rule.

(R) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

- (i) Major — \$1,000;
  - (ii) Moderate — \$500;
  - (iii) Minor — \$250.
- (B) Class II:
- (i) Major — \$500;
  - (ii) Moderate — \$250;
  - (iii) Minor — \$125.
- (C) Class III: \$100.

**Statutory/Other Authority:** ORS 468.020 & 468.090 - 468.140

**Statutes/Other Implemented:** ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

**History:** DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020

## **Draft Rules – Edits Included (Non-Redlined)**

### **Table of Contents – Oregon Administrative Proposed Rules**

#### **Division 100 – Hazardous Waste Management**

- 340-100-0002 – Adoption of US EPA Hazardous Waste and Used Oil Management Regulations
- 340-100-0003 – Public Disclosure and Confidentiality
- 340-100-0010 – Definitions

#### **Division 101 – Identification and Listing of Hazardous Waste**

- 340-101-0007 – Special Requirements for Hazardous Waste Generated By Very Small Quantity Generators
- 340-101-0033 – Additional Hazardous Wastes

#### **Division 102 - Standards Applicable to Generators of Hazardous Waste**

- 340-102-0011 – Hazardous Waste Determination
- 340-102-0018 (Renumbered) – Identification Number and Verification
- 340-102-0034 – Accumulation Time, Container and Tank Management Standards
- 340-102-0041 – Generator Reporting
- 340-102-0230 (New) – Episodic Generation
- 340-102-0500 (New) – Healthcare Facilities and Reverse Distributors

#### **Division 120 – Additional Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities**

- 340-120-0001 – Purpose and Applicability

#### **Division 135 – Toxic Use Reduction and Hazardous Waste Reduction Regulations**

- 340-135-0030 – Applicability
- 340-135-0105 – Technical Assistance and Restrictions on Enforcement

#### **Division 12 - Enforcement Procedure and Civil Penalties**

- 340-012-0068 - Hazardous Waste Management and Disposal Classification of Violations
- 340-012-0140 - Determination of Base Penalty

**Chapter 340**  
**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. §§ 266.502(f)(2)(ii) and (f)(2)(iii), 40 C.F.R. § 266.504(d), 40 C.F.R. § 260.2 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; and
- (h) 80 Federal Register 1694-1814 (c233), January 13, 2015 and 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 &

**340-100-0003**

**Public Disclosure and Confidentiality**

- (1) The provisions of this rule replace the provisions of 40 C.F.R. § 260.2.
- (2) All records, reports, and information submitted pursuant to the hazardous waste statutes, rules, and regulations are open for public inspection and copying except as provided in sections (3) to (7) of this rule. Provided however, that nothing in this rule is intended to alter any exemption from public disclosure or public inspection provided by any provision of ORS Chapter 192 or other Oregon law.
- (3)(a) A person may claim the submitted records, reports, or information are a trade secret in accordance with ORS 192.410 through 192.505 and 466.090.
- (b) The Department will designate a Document Control Officer for the purpose of receiving, managing, and securing confidential information. The Document Control Officer will secure the following information:
  - (A) Claimed trade secret information until the claim is withdrawn by the submitter, determined not to be confidential under section (6) of this rule, or invalidated;
  - (B) Information determined to be trade secret; and
  - (C) Any other information determined by court order or other process to be confidential.
- (c) All Uniform Hazardous Waste Manifest information submitted on any required report under the hazardous waste statutes, rules, and regulations is publicly available and is not subject to trade secret confidentiality claims.
- (d) The Department will deny confidentiality claims for the name and address of any permit applicant or permittee.
- (4) The following procedures shall be followed when a claim of trade secret is made:
  - (a) A person claiming trade secret must clearly mark each individual page of any submission that contains the claimed trade secret information as "trade secret," "confidential," "confidential business information," or the equivalent. If no claim by appropriate marking is made at the time of submission, the submitter may not afterwards make a claim of trade secret.
  - (b) A late submission of the trade secret substantiation will invalidate the trade secret claim. Written substantiation in accordance with paragraph (4)(d) of this rule:

(A) Must accompany any information submitted pursuant to OAR 340-102-0012, 340-102-0041, 340-104-0075, 340-105-0010, 340-105-0013, 340-105-0014, 340-105-0020, 340-105-0021, 40 C.F.R. §§262.18, 264.11, 265.11 or 270.42, or

(B) For all other information submitted to the Department, written substantiation must be provided pursuant to subsection 5 of this rule.

(c) Trade secret information must meet the following criteria:

(A) Not the subject of a patent;

(B) Only known to a limited number of individuals within an organization;

(C) Used in a business which the organization conducts;

(D) Of potential or actual commercial value; and

(E) Capable of providing the user with a business advantage over competitors not having the information.

(d) Written substantiation of trade secret claims shall address the following:

(A) Identify which portions of information are claimed trade secret;

(B) Identify how long confidential treatment is desired for this information;

(C) Identify any pertinent patent information;

(D) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others;

(E) Describe the nature of the use of the information in business;

(F) Describe why the information is considered to be commercially valuable;

(G) Describe how the information provides a business advantage over competitors;

(H) If any of the information has been provided to other government agencies, identify which one(s);

(I) Include any other information that supports a claim of trade secret.

(e) The person must submit a public version of the document containing the claimed trade secret information at the time the trade secret substantiation is required as provided in subsection (4)(c)(B)(b)(A) and subsection (5)(a) of this rule.

(5) Written trade secret substantiation as required under subsection (4)(b)(B) and a public version of the information as required by subsection (4)(e) shall be provided within 15 working days of receipt of any Department request for trade secret substantiation or the public version of the information. The Department may extend the time, either at the Department's initiative or the claimant's request, up to an additional 30 consecutive days in



order to provide the substantiation and public version, if the complexity or volume of the claimed trade secret information is such that additional time is required for the claimant to complete the response. The Department shall request the written trade secret substantiation or the public information version if:

(a) A public records request is received which would reasonably include the information, if the information were not declared as trade secret, or

(b) It is likely that the Department eventually will be requested to disclose the information at some future time and thus the Department will have to determine whether the information is entitled to trade secret confidentiality. This includes information that relates to any permit, corrective action, or potential violation information.

(6) When evaluating a trade secret claim, the Department shall review all information in its possession relating to the trade secret claim to determine whether the trade secret claim meets the requirements for trade secret as specified in paragraphs (4)(c) and (4)(d) of this rule. The Department shall provide written notification of any final trade secret decision and the reason for it to the person submitting the trade secret claim within 10 working days of the decision date.

(a) If the Department or the Attorney General determines that the information meets the requirements for trade secret, the information shall be maintained as confidential.

(b) If the Department determines that the information does not meet the requirements for trade secret, the Department shall request a review by the Attorney General. If the Attorney General determines that the information does not meet the requirements for trade secret, the Department may make the information available to the public no sooner than 5 working days after the date the Department mails notification to the person submitting the trade secret claim.

(c) A person claiming information as trade secret may request the Department to make a trade secret determination. The person must submit the written substantiation in accordance with paragraph (4)(d) of this rule and the public version in accordance with paragraph (4)(e) of this rule. The Department shall make the determination within 30 days after receiving the request, written substantiation, and the public version.

(7) Records, reports, and information submitted under to these rules shall be made available to the Environmental Protection Agency (EPA) upon request. If the records, reports, or information has been submitted under a claim of confidentiality, the state shall make that claim of confidentiality to EPA for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.

NOTE: It is suggested that claims of trade secret be restricted to that information considered absolutely necessary and that such information be clearly separated from the remainder of the submission.

**Statutory/Other Authority:** ORS 466.020, 468.020 & 646

**Statutes/Other Implemented:** ORS 192.410-505, 466.015, 466.075 & 466.090

**History:** DEQ 5-2015, f. & cert. ef. 4-15-15

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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) "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.

(k) "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.

(l) "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.

(m) "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.

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

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

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

(q) "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.

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

(s) "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.

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

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

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

(w) "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).

(x) "License." See "Permit."

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

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

(aa) "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).

(bb) "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.

(cc) "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.

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

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

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

(hh) "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) "Spill" means unauthorized disposal.

(jj) "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) "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 rinsings, 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

**History:** DEQ 11-2019, minor correction filed 03/06/2019, effective 03/06/2019

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## **Chapter 340**

### **Division 101**

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

##### **340-101-0007**

##### **Special Requirements For Hazardous Waste Generated By Very Small Quantity Generators**

(1) The provision of 40 C.F.R. 262.14(a)(5)(iv) and (v) and 40 C.F.R. 262.13(f)(1)(iii) do not apply to generators of hazardous waste, including dry cleaning wastewater, generated from dry cleaning operations at dry cleaning facilities.

(2) In addition to the requirements of 40 C.F.R. 262.14(a)(3) and 40 C.F.R. 262.14(a)(4), generators of hazardous waste, including dry cleaning wastewater, derived from dry cleaning operations at dry cleaning facilities shall comply with additional management requirements in OAR 340-124.

(3) All healthcare facilities, including very small quantity generators "operating under §262.14 in lieu of 40 C.F.R. 266 subpart P" and reverse distributors, are prohibited from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works.

**Statutory/Other Authority:** ORS 466.015, 466.180 & 465.505

**Statutes/Other Implemented:** ORS 466.075, 466.195 & 465.505

**History:** DEQ 13-2002, f. & cert. ef. 10-9-02

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##### **340-101-0033**

##### **Additional Hazardous Wastes**

(1)(a) This section applies to residues that have been determined not to be hazardous waste under 40 C.F.R. 261, Subparts C and D.

(b) This section does not apply to residues that have been identified as hazardous waste under 40 C.F.R. 261, Subparts C and D.



(2) Except as provided in section (4) of this rule, the residues identified in subsections (2)(a) and (2)(b) of this rule are hazardous wastes and are added to and made a part of the list of hazardous wastes in 40 C.F.R. 261.33.

(a) Any residue, including but not limited to manufacturing process wastes and unused chemicals that has either:

(A) A 3 percent or greater concentration of any substance or mixture of substances listed in 40 C.F.R. 261.33(e);

(B) A 10 percent or greater concentration of any substance or mixture of substances listed in 40 C.F.R. 261.33(f); or

(b) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water, of either:

(A) A residue identified in subsection (2)(a)(A) of this rule; or

(B) A residue identified in subsection (2)(a)(B) of this rule.

(3) A residue identified as a hazardous waste in subsections (2)(a) or (2)(b) of this rule, and not excluded under section (4) of this rule, has the hazardous waste letters "OR" followed by the corresponding hazardous waste number(s) in 40 C.F.R. 261.33(e) and (f).

(4) The following residues are not additional hazardous wastes under section (2) of this rule:

(a) Mixtures of pesticides identified in section (2) of this rule that are listed in 40 C.F.R. 261.33(e) and (f);

(b) Those substances or mixtures of substances with individual constituents only listed in both 40 C.F.R. 261.24, Table 1, and 40 C.F.R. 261.33(e) and (f); and

(c) U075 (Dichlorodifluoro-methane) and U121 (Trichloromonofluoromethane) when they are intended to be recycled.

**NOTE:** Pesticide mixtures excluded in Section (4)(a) of this rule are regulated as pesticide residue in Section (6) of this rule.

(5) The wastes identified in subsections (2)(a)(A) and 2 (b)(A) of this rule are identified as acutely hazardous wastes (H) and are subject to the very small quantity generator exclusion defined in 40 C.F.R. 262.13 and § 262.14.

(6) Any pesticide residue, except residue listed in Table 1 of 40 C.F.R. 261.24 and which passes the evaluation requirement of 40 C.F.R. 261.24(a), is a hazardous waste and is added to and made a part of the list of hazardous waste in 40 C.F.R. 261.31 until it is first managed in accordance with the standards in OAR 340-109-0010(2)(a).

**NOTE:** 340-101-0033(7) and 340-101-0033(8) have been moved to 340-102-0011(c).

(7) Except as otherwise specified in OAR 340-109-0010(4)(b) hazardous waste identified in this rule is not subject to 40 C.F.R. Part 268.

**Statutory/Other Authority:** ORS 466.020 & 466.180

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

**History:** DEQ 10-2000, f. & cert. ef. 7-21-00

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## **Chapter 340**

### **Division 102**

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

##### **340-102-0011**

##### **Hazardous Waste Determination**

- (1) The provisions of this rule are in addition to the requirements of 40 C.F.R. §262.11.
- (2) A person who generates a residue as defined in OAR 340-100-0010 must determine if that residue is a hazardous waste using the following method:
  - (a) Persons should first determine if the waste is excluded from regulation under 40 C.F.R. §261.4 or OAR 340-101-0004;
  - (b) Persons must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261;
  - (c) Persons must then determine if the waste is listed under the following listings:
    - (A) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates identified in 340-102-0011(2)(c)(A)(i) and (ii) are added to and made a part of the list in 40 C.F.R. §261.33(e).
      - (i) P998...Blister agents (such as Mustard agent)
      - (ii) P999...Nerve agents (such as GB (Sarin) and VX); or
    - (B) Hazardous waste identified in 340-102-0011(2)(c)(B)(i) and (ii) are added to and made a part of the list in 40 C.F.R. § 261.31.
      - (i) F998...Residues from demilitarization, treatment, and testing of blister agents (such as Mustard agent).

(ii) F999...Residues from demilitarization, treatment, and testing of nerve agents (such as GB (Sarin) and VX).

**NOTE:** Even if the waste is listed, the person still has an opportunity under OAR 340-100-0022 to demonstrate to the Commission that the waste from their particular facility or operation is not a hazardous waste.

(d) Regardless of whether a hazardous waste is listed through application of subsections (2)(b) or (2)(c) of this rule, persons must also determine whether the waste is hazardous under Subpart C of 40 C.F.R. Part 261 by either:

(A) Testing the waste according to the methods set forth in Subpart C of 40 C.F.R. Part 261, or according to an equivalent method the Department approves under OAR 340-100-0021, or

**NOTE:** In most instances, the Department will not consider approving a test method until the EPA approves it.

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(e) If the waste is determined to be hazardous, the person must refer to Divisions 100–106 and 40 C.F.R. Parts 264, 265, 268 and 273 for possible exclusions or restrictions pertaining to management of the specific waste.

**NOTE:** 40 C.F.R. § 268.3 prohibits diluting a hazardous waste to meet Land Disposal Restriction treatment standards. Diluting waste without a permit to meet any hazardous waste standard is prohibited.

(f) If the waste is not identified as hazardous by application of subsection (2)(b) or (2)(c), and/or (2)(d) of this rule, persons must determine if the waste is listed under OAR 340-101-0033.

**Statutory/Other Authority:** ORS 466.020 & 466.180

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

**History:** DEQ 87-2018, minor correction filed 04/10/2018, effective 04/10/2018

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### **340-102-0018**

#### **Identification Number and Verification**

In addition to the provisions of 40 C.F.R. 262.18, as a matter of policy, the Department will accept EPA identification numbers already assigned and use a modified EPA registration form and identification numbering system (Dun and Bradstreet) for generators who register in the future. Effective January 1, 1991, and annually thereafter, hazardous waste generators

and hazardous waste management and recycling facilities shall verify registration information on a form provided by the Department.

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

**Statutes/Other Implemented:** ORS 466.075

**History:** DEQ 13-1991, f. & cert. ef. 8-5-91

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### **340-102-0034**

#### **Accumulation Time, Container and Tank Management Standards**

(1) In addition to the requirements of 40 C.F.R. 262.17, a generator may accumulate hazardous waste on-site for 90 days or less without a permit provided that, if storing in excess of 100 containers, the waste is placed in a storage unit that meets the requirements of 40 C.F.R. 264.175.

(2) A generator shall comply with provisions found in 40 C.F.R.

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

**Statutes/Other Implemented:** ORS 466.075

**History:** DEQ 6-1994, f. & cert. ef. 3-22-94

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### **340-102-0041**

#### **Generator Reporting**

(1) The provisions of this rule replace the requirements of 40 C.F.R. 262.41.

(2) A person producing at any time more than one kilogram of acutely hazardous waste, a total of more than 100 kilograms of hazardous waste in a calendar month, or who accumulates on-site at any time a total of more than 1,000 kilograms of hazardous waste, shall submit Quarterly Reports through the period ending December 31, 1991 to the Department. Effective January 1, 1992, and annually thereafter, a report shall be submitted to the Department, on a form provided by the Department, or by other means agreed to by the Department, by persons defined as small quantity hazardous waste generators, large quantity hazardous waste generators, reverse distributors, as well as very small quantity generators conducting an episodic event in compliance with OAR 340-102-0230, and/or hazardous waste recyclers. The report shall contain information required by the Department covering activities from the preceding calendar year. Reports shall be submitted by March 1, or within 65 days of mailing by the Department, whichever is later. Upon written request and reasonable justification, the Department may grant an extension to the reporting deadline of up to 30 days. The annual report shall contain:

(a) Information required for purposes of notification of hazardous waste activity and/or annual verification of hazardous waste generator status;

(b) Information required for purposes of describing hazardous waste generator and waste management activity, including information pertaining to hazardous waste storage, treatment, disposal, and recycling efforts and practices;

(c) Information required for the assessment of fees; and

(d) Information required for the Department's preparation and completion of the Biennial Report and Capacity Assurance Plan.

(3) Quarterly Reports are due within 45 days after the end of each calendar quarter for 1991 (the final quarterly report will be due February 15, 1992). The quarterly reporting requirement will sunset on December 31, 1991:

(a) The Quarterly Report shall include, but not be limited to the following information:

(A) A copy of the completed manifest or a listing of the information from each manifest for each shipment made during the calendar quarter;

(B) A listing of all additional hazardous waste generated during the quarter that was sent off-site without a manifest or was used, reused or reclaimed on-site, on a form provided by the Department. The listing shall include, but not be limited to:

(i) The generator's name and address;

(ii) The generator's U.S. EPA/DEQ Identification Number;

(iii) Identification of the calendar quarter in which the waste was generated;

(iv) The type and quantity of each waste generated, by EPA code number; and

(v) The disposition of each waste, including the identity of the receiving party for wastes shipped off-site and handling method; and

(C) If no hazardous waste was generated during the quarter, a statement to that effect, on a form provided by the Department.

(b) Reports submitted to the Department must be accompanied by the following certification signed and dated by the generator or his/her authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(4) Any generator who is receiving hazardous waste from off-site, generating or managing hazardous waste on-site, including recycling, except closed-loop recycling must submit an annual report covering those wastes and activities in accordance with the provisions of OAR 340-104-0075 and of 40 C.F.R., Part 266.

(5) Dry cleaning operators of dry cleaning facilities must complete an annual dry cleaner hazardous waste and air quality compliance report pursuant to OAR 340-124.

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

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

**History:** DEQ 5-2015, f. & cert. ef. 4-15-15

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### **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) Planned events require prior written Department approval to qualify as episodic.

(5) 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

**History:**

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### **340-102-0500**

#### **Healthcare Facilities and Reverse Distributors**

(1) The provisions of this rule are in addition to the requirements of 40 CFR 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) The reporting provisions of 40 C.F.R. 266.510(c)(9)(i) are deleted and replaced by OAR 340-102-0041(2).

(4) In addition to the provisions of 40 C.F.R. 266.507(c) & (d), empty container(s) and empty container residue(s) definitions are added as specified under OAR 340-100-0010(2)(gg) and 340-100-0010(3)(d).

**Statutory/Other Authority:** ORS 183, 192, 459, 465.009, 466.015, 466.020, 466.075, 466.090, 466.105, 466.165, 466.195, 468 & 646

**Statutes/Other Implemented:** ORS 466.075

**History:**

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**Chapter 340**

**Division 120**

**ADDITIONAL SITING AND PERMITTING REQUIREMENTS FOR HAZARDOUS WASTE AND PCB TREATMENT AND DISPOSAL FACILITIES**

**340-120-0001**

**Purpose and Applicability**

(1) To protect the public health and safety and the environment, the Commission finds that it is in the state's best interest to more fully regulate and review proposals to treat or dispose of hazardous waste and PCB. The purpose of this division is to establish a supplemental siting and permitting procedure for most types of hazardous waste and PCB treatment and disposal facilities.

COMMENT: Under Federal law hazardous waste incineration and other treatment techniques are considered "treatment" and PCB incineration and other treatment techniques are considered "disposal." To be consistent, division 120 utilizes the same definitions.

(2) All parts of this division apply to new:

(a) Hazardous waste and PCB treatment and disposal facilities located off the site of waste generation (off-site); and

(b) Hazardous waste and PCB land disposal facilities located on the site of waste generation (on-site).

(3) Facilities described in section (2)(a) of this rule that receive less than 50 percent of waste on a weekly basis from off the site may be located inside urban growth boundaries as

defined by ORS 197.295 and therefore do not have to meet OAR 340-120-0010(d)(A)(i) and 340-120-0015(1)(a).

(4) New hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, located on the site of waste generation (on-site), are only subject to these parts of division 120:

(a) OAR 340-120-0010(2)(c) — Technology and Design;

(b) OAR 340-120-0010(2)(e) — Property Line Setback;

(c) OAR 340-120-0010(2)(g) — Owner and Operator Capability;

(d) OAR 340-120-0010(2)(h) — Compliance History;

(e) OAR 340-120-0020 — Community Participation;

(f) OAR 340-120-0030 — Permit Application Fee.

(5) For the purposes of this division, a facility can receive, with the Department approval, as much as ten percent of waste on a weekly basis from off the site and be an on-site facility.

(6) For the purposes of this division, a new facility means:

(a) A facility for which an original permit application was submitted after the effective date of this Division; or

(b) A facility where a different type of treatment or disposal is being proposed (i.e., adding incineration at a facility utilizing disposal, or changing from chemical treatment to biological treatment at a facility).

(7) This division does not apply to:

(a) Portable hazardous waste and PCB treatment and disposal facilities that are located on a single site of generation (on-site) less than 15 days each year;

(b) Hazardous waste and PCB treatment or disposal sites involved in remedial action under ORS Chapter 466 or closing under divisions 100 through 110 of this chapter;

(c) Facilities treating hazardous waste pursuant to the recycling requirements of 40 C.F.R. 261.6;

(d) Emergency permits issued by the director according to 40 C.F.R. 270.61; and



(e) Facilities permitted by the Department to manage municipal or industrial solid waste, if the hazardous waste the facilities treat or dispose of is excluded from regulation by 40 C.F.R. §262.14.

(8) The requirements of this division are supplemental to those of divisions 100 through 110 of this chapter. The definitions of OAR 340-100-0010 and 340-110-0003 apply to this Division.

**Statutory/Other Authority:** ORS 466 & 468

**Statutes/Other Implemented:** ORS 466.010, 466.020, 466.025, 466.030, 466.035 & 468.020

**History:** DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019

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## **Chapter 340**

### **Division 135**

## **TOXIC USE REDUCTION AND HAZARDOUS WASTE REDUCTION REGULATIONS**

### **340-135-0030**

#### **Applicability**

(1) OAR 340-135 applies to toxics users as defined in ORS 465.003, which include:

(a) Facilities required to submit a uniform toxic chemical release form under the federal Toxics Release Inventory (TRI) program, defined as large users in ORS 465.003(6);

(b) Large quantity generators of hazardous waste; and

(c) Small quantity generators of hazardous waste.

(2) OAR 340-135 does not apply to:

(a) Very small quantity generators. If you are a very small quantity generator and you are not also a large user;

(b) Toxics users. If you are a toxics user solely because you use or generate one or more of the following materials:

(A) Toxic substances used as a pesticide in routine commercial agricultural applications;

(B) A raw material that contains a naturally occurring toxic substance and that is used in a process for which there is no substitute, such as logs that contain naturally-occurring lead;

(C) Toxic substances that the Environmental Quality Commission removes by rule as defined in ORS 465.009.

(D) Hazardous waste generated from remedial or removal actions as defined in ORS 465.200, including, but not limited to, a spill or cleanup activity; and

(E) Hazardous waste generated from a one-time event, including, but not limited to, the cleaning out of a storage closet.

**Statutory/Other Authority:** ORS 465.003 - 465.037 & 466.075

**Statutes/Other Implemented:** ORS 465.003, 465.009 & 465.034

**History:** DEQ 9-2006, f. & cert. ef. 8-15-06

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### **340-135-0105**

#### **Technical Assistance and Restrictions on Enforcement**

(1) According to ORS 465.012, the Department will provide toxics users, including very small quantity generators as defined under 40 C.F.R. 260.10, with technical assistance.

(2) The Department will coordinate its technical assistance efforts with industry trade associations, local colleges and universities, and local agencies in accordance with ORS 465.012(3) and 465.027.

(3) In accordance with ORS 465.012, technical assistance services provided by the Department will not result in compliance inspections or other enforcement actions, unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment:

(a) For the purpose of initiating enforcement, the term "clear" means plain, evident, free from doubt, and the term "immediate danger" means a situation where there is substantial likelihood that serious harm may be experienced within the time frame necessary for the Department to pursue an enforcement action (e.g., observation of a leaking drum).

(b) In the case of a "clear and immediate danger", the Department may initiate a compliance and enforcement action immediately.

**Statutory/Other Authority:** ORS 183.745 & 465.003 - 465.037

**Statutes/Other Implemented:** ORS 465.003, 465.012 & 465.027

**History:** DEQ 9-2006, f. & cert. ef. 8-15-06

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## **Chapter 340**

### **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 withdrawal for healthcare facilities or reversed distributors;
- (w) Failing to comply with the prohibition of 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 credible 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

**History:** DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019

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### **340-012-0140**

#### **Determination of Base Penalty**

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.



(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,

(S) Any violation classified under OAR 340-012-0054 (1) (ee), (ff), or (gg).

(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.

(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(L) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as a credit generator, an aggregator, or a registered fuel producer unless the violation is otherwise classified in this rule.

(M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.

(N) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 by a person registered as an importer of finished fuels unless the violation is otherwise classified in this rule.

(R) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1,000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

**Statutory/Other Authority:** ORS 468.020 & 468.090 - 468.140

**Statutes/Other Implemented:** ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

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