



State of Oregon Department of Environmental Quality

Draft Rules – Division 12

Edits Highlighted

Hazardous Waste Federal Rules Alignment 2021 Rulemaking
Advisory Committee Meeting #2

Key to Identifying Changed Text:

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New/inserted text

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Department of Environmental Quality

Chapter 340

Division 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

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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 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 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 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 264.147 or 40 CFR 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 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 noncreditable hazardous waste pharmaceuticals, or for reverse distributors shipping evaluated hazardous waste pharmaceuticals;

(t) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall;

(u) Failing to accurately determine generator status;

(v) Failing to notify or withdraw for healthcare facilities or reverse distributors;

(w) Failing to comply with the prohibition of sewerage hazardous waste pharmaceuticals;

(x) Transporting, or offering for transport, hazardous waste other than potentially creditable hazardous waste pharmaceuticals to 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 ~~a tank 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 or storage facility;
- (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 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;
- (s) Failing to comply with 40 CFR 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, 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 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

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

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

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 17-1986, f. & ef. 9-18-86

DEQ 9-1986, f. & ef. 5-1-86
DEQ 22-1984, f. & ef. 11-8-84
DEQ 1-1982, f. & ef. 1-28-82

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340-012-0140
Determination of Base Penalty

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(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 or 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 ~~conditionally exempt~~ [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.

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