



State of Oregon Department of Environmental Quality

Draft Fiscal Impact Statement

Hazardous Waste Generator Improvements Rule

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

Introduction

The federal Hazardous Waste Generator Improvements Rule amends the existing hazardous waste regulatory program in the following ways:

1. Reorganizes the hazardous waste regulations to make those regulations more user-friendly.
2. Provides 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 (SQGs) and Large Quantity Generators (LQGs) must label containers with the hazards of the contents upon generation, as well as waste codes prior to offsite shipment.
 - Clarifies waste counting requirements, especially relating to acute and non-acute waste, and mixing of hazardous and nonhazardous waste.
 - Clarifies difference between independent requirements (Title 40, Code of Federal Regulations 262.10(a)(1)): hazardous waste determination, counting and generator category determination, ID number, manifesting, recordkeeping, and conditional requirements (40 CFR 262.14 - .17: inspections, container management, accumulation, training, emergency preparedness).
 - LQGs must notify DEQ of a facility closure 30 days prior to closing; LQGs must notify within 90 days after closure that performance standards were met or that it cannot clean close, in which case it must close as a landfill.
 - LQGs must prepare a Quick Reference Guide (QRG) for Contingency Plans.
 - Must document attempts to make arrangements with local emergency responders.
 - Clarifies SQGs accumulating hazardous wastes on drip pads and in containment buildings must meet the standards in 40 CFR 265 subparts W and DD, as well as 40 CFR 262.16.
 - Multiple clarifications about Satellite Accumulation Areas, including: defines three days to mean three consecutive calendar days; labeling requirements made consistent with central accumulation areas; 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, including the three optional provisions:
 - a. Waiver of 50-foot property line rule: Allows waiver from the state fire marshal, or other authority having jurisdiction over fire regulations, if generator can't comply with the 50-foot property line rule for storage of ignitable or reactive waste.

- b. LQG Consolidation: Allows a Very Small Quantity Generator (VSQG) to send its hazardous waste to a LQG under the control of the same “person” without the LQG needing a permit:
 - i. VSQG must label containers with the words “hazardous waste” and the hazards of contents.
 - ii. Receiving LQG must notify the state, keep records, and report waste under a new source code.
 - iii. DEQ proposes to not charge the generation and management fees related to VSQG waste to incentivize the use of this rule.
 - c. Episodic Generation:
 - i. Hazardous waste generated during an episodic event is not counted towards generator status; the generator can maintain its usual status and avoid the increased requirements of a higher generator status.
 - ii. Episodic event is a planned or unplanned activity that does not normally occur during generator operations, such as a recall or emergency cleanup, resulting in an increase in waste generation that would “bump up” the generator’s status, for example, from SQG to LQG.
 - iii. Maximum of one unplanned and one planned event per year, with petition to state
 - iv. Hazardous waste generated during episodic events must still be disposed of as hazardous waste, and the generator must notify DEQ and pay generation and management fees on the episodic hazardous waste to DEQ.
4. Makes technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist.

Fee Analysis

This rulemaking does not involve new fees.

Statement of fiscal and economic impact

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.

Fiscal and Economic Impact

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 is expect to result in a net decrease in costs to generators.

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

- Preparing a Quick Reference Guide to the Contingency Plan: applicable to LQGs.

- Closure notification: applicable to LQGs.
- Labeling HW with the hazards and waste codes: applicable to SQGs and LQGs; applicable to VSQG if consolidating.
- Training personnel on the changes in the rules: applicable to all generators.

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

LQG Consolidation

The proposed rule allows VSQGs to send hazardous waste to an LQG under the control of the same operator, 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 (TSDFs) due to the per-ton fee basis when combined with LQGs wastes. Because 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.

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 the RCRA generator requirements for training, inspections, manifests, 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 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 minor 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 the new options, and 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 anticipate taking advantage of this provision.

Consolidation

Revenue: DEQ estimates the overall impact to fee revenue to be minimal. DEQ could receive slightly more disposal fees if VSQG 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 are not required to report to DEQ.

DEQ proposes to exempt the generation fee for the hazardous waste originated at 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, which may result in additional fees to complete the authority's review and documentation.

Public

DEQ identified no 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.

ORS 183.336 Cost of Compliance Effect on Small Businesses

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 will advise DEQ on the cost of compliance for small businesses.

Documents relied on for fiscal and economic impact

Document title	Document location
Federal Register for the final rule	Link EPA Final Rule: https://www.federalregister.gov/documents/2016/11/28/2016-27429/hazardous-waste-generator-improvements-rule
Federal Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule	Link to EPA Fiscal Analysis: https://www.regulations.gov/document/EPA-HQ-RCRA-2012-0121-0313
Oregon Department of Employment 2020 data	Employment Department 875 Union Street 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

DEQ appointed an advisory committee in 2021 for this rulemaking.

As ORS 183.33 requires, DEQ will ask for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee will review the draft fiscal and economic impact statement and document its recommendations in the final approved meeting summary in June 2021. The committee will determine if the proposed rules would or would not have a significant adverse impact on small businesses in Oregon.

If a significant impact is identified by the committee, as ORS 183.333 and 183.540 require, the committee will consider how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or time tables for small business;
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- Utilizing objective criteria for standards;
- Exempting small businesses from any or all requirements of the rule; or
- Otherwise establishing less intrusive or less costly alternatives applicable to small business.

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 rule only affects businesses under the hazardous waste regulations.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.