State of Oregon Department of Environmental Quality

Hazardous Waste Federal Rules Alignment 2021

Hazardous Waste Rules Advisory Committee
Meeting Notes and Committee Recommendations
May 18, 2021

Overview and Purpose

The U.S. Environmental Protection Agency authorizes the Oregon Department of Environmental Quality to operate the federal Resource Conservation and Recovery Act, or 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 hazardous waste rules in July 2017. In that rulemaking, DEQ incorporated by reference most federal hazardous waste 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 not previously adopted into Oregon rules. To ensure DEQ issues fair and appropriate civil penalties for non-compliance of the adopted rules, DEQ is also including proposed changes to Division 12 enforcement rules with this rulemaking.

DEQ convened an advisory committee, known as the Hazardous Waste Rules Advisory Committee. DEQ asked the committee to provide comments and recommendations on DEQ's proposed rule recommendations, in addition to fiscal impact questions as required by the Administrative Procedures Act (Oregon Revised Statutes 183.333).

As with the two previous meetings of March 30, 2021, and April 27, 2021, DEQ asked the committee the following for each rule proposed:

- Do you agree with DEQ's proposal to adopt the rule by reference or with state-only amendments?
  - If not, what do you recommend?
- Will the rule have a fiscal impact?
  - If so, what is the extent of the fiscal impact?
- Will the rule have a significant adverse impact on small businesses (businesses with fewer than 50 employees)?
  - If so, how can DEQ reduce the economic impact of the rule on small business?

A summary of the committee's recommendations and responses to the above questions are included in the **March 30** and **April 27** meeting notes. The public notice for this proposed rulemaking will also include those recommendations. A summary of the key decisions and recommendations is at the end of this document.

The third advisory committee meeting convened virtually via Zoom from 9 a.m. to 10 a.m. on Tuesday, May 18, 2021. The meeting consisted of a review of the previous meeting recommendations, follow up on action items, and next steps. DEQ will consider all comments before preparing a final rule proposal to present to the Environmental Quality Commission for adoption consideration in November 2021.

Committee members

All committee members attended the virtual meeting on May 18, 2021:

Name	Affiliation
Ryan Binford	Department of Veterans Affairs
Keri Bishop	Oregon Health & Science University
Jim Denson	Chemical Waste Management
Jennifer Eisele	Beyond Toxics
Kristine Baranski	Intel, designated alternate for Patick Gottsacker
Cynthia Holm	Providence Medford Medical Center
Jennifer Losson	Oregon Military Department
Marjorie MartzEmerson	Coyote & Chirp Biosphere, LLC
Max Yoklic	Stoel Rives LLP for Oregon Business and Industry

Non-committee members

DEQ staff in attendance:

Name	Role, Title
Ellie Brown	Rulemaking Lead/Facilitator, Senior Hazardous Waste Policy Analyst
Audrey O'Brien	Special Advisor to the Committee, Environmental Partnership Manager
Svetlana Lazarev	Project Manager, Air Quality Modeling Specialist
David Livengood	Project Sponsor, Hazardous Waste Program Manager
Jeannette Acomb	Rule Lead and Project Advisor, Senior Hazardous Waste Policy Analyst
Brian Allen	Rule Lead, Eastern Region Hazardous Waste Inspector
Sarah Wheeler	Rule Lead, Environmental Law Specialist
Killian Condon	Rule Lead, Western Region Hazardous Waste Inspector
Ron Doughten	Materials Management and Hazardous Waste Manager
Jay Collins	Rule Lead, Western Region Hazardous Waste Inspector
Bart Collinsworth	Rule Lead, Eastern Region Hazardous Waste Inspector
Mary Fritzmann	Rule Lead, Hazardous Waste Reporting and Invoicing Specialist
Zeb Bates	Rule Support, Northwest Region Hazardous Waste Inspector
Chris Bayham	Rule Support, Northwest Region Hazardous Waste Inspector
Jeremy Fleming	Rule Support, Northwest Region Hazardous Waste Inspector
Diana Foss	Senior Underground Storage Tanks Policy Analyst
Maitri Dirmeyer	Hazardous Waste and Underground Storage Tanks Program Analyst
Alex Bertolucci	Northwest Region Hazardous Waste Technical Assistance Specialist

Stakeholders and interested parties in attendance:

Name	Affiliation
Margaret Olson	EPA State RCRA Coordinator
Interested parties	Various/unknown

There were approximately 12 members of the public in attendance.

Proposed Rules

No new rules were proposed. The proposed rules discussed during the March 30 and the April 27 meetings were:

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

The proposed Division 12 Changes for the Safe Management of Recalled Airbags, Generator Improvements, and Pharmaceutical rules were also presented and discussed in the previous two meetings.

March 30 Summary of Committee's Recommendations

Ignitability

Several committee members supported DEQ's recommendation to adopt the rule with two Oregon-specific amendments. Two committee members identified as neutral or as abstaining.

Aerosol Cans

Most committee members supported DEQ's recommendation to adopt the rule by reference with developed guidance to include a lid on an aerosol collection container. One member was neutral pending more information and will submit a written comment.

E-Manifest

Committee supported DEQ's recommendation to adopt the mandatory rule by reference.

Import/Export Rules

Committee supported DEQ's recommendation to adopt the mandatory rules by reference.

Recalled Airbags

All committee members supported DEQ's recommendation to adopt the optional Recalled Air bags rule by reference.

Summary: April 27 Committee Recommendations

Generator Improvements Rule

All committee members supported DEQ's recommendation to adopt the rule with all mandatory provisions and optional LQG consolidation and 50-foot property line waiver by reference. The committee members supported DEQ's recommendation to adopt the optional Episodic Generation provision with amendments of 60-day

notification for planned events and 72-hour initial notification followed by five-day notification for unplanned events, written approval, reporting and fees. The following comments and requests were made during the committee recommendation discussion:

- DEQ provide specific training for universities for hazardous waste determinations and quick reference guidance, or QRG.
- Will submit additional comments related to the optional 50-foot property line waiver.
- May submit additional comments related to Episodic Generation optional provision.
- Necessary DEQ provide outreach, education, and technical assistance.
- Suggest a delayed timeline for enforcement.

Pharmaceuticals Rule and Nicotine Amendment

All committee members supported DEQ's recommendation to adopt the P075 optional provision by reference and adopt the mandatory rule by reference, with the following modifications:

- Require 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 less than 20-bed long term care facility VSQG presumption.
- Do not adopt the more flexible options for providing one-year accumulation.
- Adopt only the option for labeling each container.
- Require reverse distributors to report annually for DEQ, not biannually to EPA.

Summary: April 27 Committee Discussions

GIR: Q. The committee requested a clarification on how the Quick Reference Guide, or QRG, is going to work with the current National Fire Prevention Association, or NFPA, regulations already in place for master sites, and stated that it would be helpful if there were evacuation plan templates.

A. DEQ reached out to EPA and found the federal agency compiled draft fact sheet specific to the Quick Reference Guide requirements, and is working to finalize these to send along with a memo. Regarding NFPA, a QRG facility map (40 CFR 262.262(b)(4)) must at a minimum show routes of access to hazardous waste locations, while the street map (40 CFR 262.262(b)(5)) must show the site's surroundings to allow responders to access the site and facilitate evacuations, if needed. EPA's direction on this, and in collaboration with the QRG workgroup of EPA and states, is the consensus that the key piece is to work with their local responders to increase knowledge of the site in the event of an emergency.

Regarding universities and other sites with hundreds of satellite accumulation areas, or SAAs: The pinpoint location of SAAs do not need to be specific in the QRG. The regulations require identification of locations where hazardous waste may be present, which allows for flexibility depending on the size and complexity of the facility. For a university with hundreds of SAAs, a campus map marking which buildings may have hazardous waste in them would be sufficient.

With respect to the contingency plan in general and overlapping requirements: A facility that is subject to contingency planning under multiple statutes may use the "One Plan," see EPA's webpage here. If a facility chooses to use a "One Plan," that plan has to meet all the requirements for all the regulations that apply.

DEQ plans to host virtual generator trainings and technical assistance to supplement EPA's plans to resume in-depth and in-person training when safe, focusing on states like Oregon that are close to adopting GIR. For now, there is a recording of the three-part, in-depth training available to view on EPA's GIR website here.

Pharma Rule: Q. Request of EPA guidance on biohazardous waste disposal and how to keep staff from putting things that should be managed as hazardous into the biohazard disposal receptacles. A. EPA has a great website describing the regulation of medical waste here that may be helpful to share with staff**.**

EPA's website does not clearly define bio-hazardous waste or compare it to hazardous waste, and puts management of medical wastes into the hands of State health authorities. Oregon-specific information can be found here.

EPA used to produce sector notebooks to summarize environmental regulations in a holistic way. In 2005, EPA produced a sector notebook on the healthcare industry that seems to be most helpful at distinguishing the different types of waste produced in a healthcare setting and does separately define biohazardous waste, as well as all other types of waste generated. For the purposes of training staff in the different types of waste generated in a health care facility, the sector notebook located here may be a good resource.

Pharma Rule: Q: Consider a scenario in which a pharmaceutical that would meet the definition of potentially creditable hazardous waste pharmaceuticals goes to a reverse distributor, and then gets passed around between several reverse distributors and a lot of time elapses. Would the healthcare facility then be in violation of the Pharma rule?

A: We have not lived with reverse distribution in Oregon. What we know is reverse logistics, where a pharmaceutical that is undispensed, unexpired or less than a year expired, and is in original packaging may have gone back to a manufacturer. There was no hazardous waste determination made at that point. The manufacturer would make the hazardous waste determination at the point where they decided that they could not reclaim or reformulate, and, therefore, it is waste. The manufacturer is the generator in this scenario.

Reverse distribution is different:

- Hazardous waste determination is made at the healthcare facility.
    - It is a solid waste, and if listed or characteristic, then it's a hazardous waste.
- Then sent to reverse distributor if there's a reasonable expectation that the healthcare facility could receive a monetary credit.
- Then becomes an evaluated HW pharmaceutical, and the reverse distributor has a certain amount of time before they need to send it to a permitted TSDF.
    - Reverse distributor has 30 days to inventory and evaluate.
- There's no accumulation time in the rules for healthcare facilities, however, may want to get rid of pharmaceuticals quickly while still less than a year expired.
- Reverse distributors will know that waste was potentially creditable when it was sent to them by healthcare facilities – if they don't meet the time requirements of the rule, that's on them and not the healthcare facility.
- We don't yet have any reverse distributors in Oregon, and don't know if we will have any.

The major benefits for healthcare facilities will be for non-creditable waste:

- Won't have to count things like blood thinner that were counted toward generator status prior to Pharma rule.

More about reverse distribution and logistics can be found on EPA's Pharma Rule FAQ here.

Next Steps

DEQ made a decision to remove the proposed Definition of Solid Waste (rule from the current work agenda for November's Environmental Quality Commission meeting. The DSW rule is complex with far-reaching implications for both DEQ and the regulated community. In the course of reviewing the DSW rule and preparing recommendations, DEQ needs more time to develop the proposal, particularly around the optional portions of the DSW rule. DEQ will continue to develop the recommendations for adoption of the DSW rule, and will invite the RAC to provide feedback and recommendations on adoption of the proposed DSW rule to the EQC at a later time. DEQ plans to bring program development questions and redline proposals to this advisory committee in late August or early September of this year, if RAC members are willing to engage with DEQ at that time. There is no obligation for the RAC members to do so, and DEQ would be grateful for the committee's additional time. After receiving the committee's input, DEQ will continue to develop the recommendations for the adoption of the DSW rule. As this effort may be a separate rulemaking, DEQ must follow a process for appointing another rulemaking advisory committee. In preparation for that committee, we will put forward a list of members to our leadership for consideration and appointment. If current members have an interest in serving on that future rulemaking committee, please let DEQ know and we will add your name to the list of potential advisory committee members considered for the next committee appointment.

All current Rules Advisory Committee members expressed interest during the meeting to continue to serve on the RAC.

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.