



State of Oregon Department of Environmental Quality

Proposed Federal RCRA Hazardous Waste Rule Considerations

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The following is the federal rule that the Oregon Department of Environmental Quality Hazardous Waste Program is considering for adoption and will be discussed at the May 18 and 19, 2021, Hazardous Waste Rules Advisory Committee meetings.

2015 Revision to the Definition of Solid Waste and 2018 Response to Vacatur of Certain Provisions of the Definition of Solid Waste

[[80 FR 1694-1814](#) – Federal Rulemaking Jan. 13, 2015, effective July 13, 2015]

[[83 FR 24664-24671](#) – Federal Rulemaking May 30, 2018, effective May 30, 2018]

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- a) **What the rule does:** Offers new exclusions to encourage recycling of what is currently defined, managed, and regulated as hazardous waste (HW); adds new requirements to ensure that all HW recycling is legitimate, properly managed, and documented.
 1. **Establishes a new exclusion from the definition of solid waste for a new class of hazardous secondary material (HSM)** - material which would characterize as hazardous waste, but instead may be managed as a nonwaste when legitimately recycled or reused.
 - Under 260.42, requires notification listing all such materials managed as HSM by generators, intermediate storage facilities, and reclamation facilities. Also requires notification when terminating a recycling activity.
 - Establishes requirements for generators, generator-controlled reclamation facilities, intermediate storage facilities, and reclamation facilities.
 - Establishes new and more stringent speculative accumulation provisions, including labeling and accumulation start dates.
 2. **Establishes legitimacy criteria** under 260.43 which applies to all hazardous waste and hazardous secondary material recycling and reuse. Materials managed as HSM not meeting these criteria are now defined as sham recycling. Material that is sham recycled is not excluded, is solid waste, and faces full regulation as hazardous waste. HSM must be evaluated against the following legitimacy criteria and abide by records retention:

- Provides a useful contribution: valuable ingredients; replaces a catalyst or carrier; source of a valuable constituent recovered in the process; is recovered or regenerated; is used as an effective substitute for a commercial product;
 - The process must produce a valuable product or intermediate;
 - The generator and recycler must manage the hazardous secondary material as a valuable commodity;
 - The product must be comparable to a legitimate product or intermediate, and concentrations of hazardous constituents must be comparable to similar legitimate products; and
 - Records documenting compliance with these provisions must be kept available for review for three years past the conclusion of the recycling activity.
3. **Establishes standalone hazardous secondary material requirements for a specific set of spent solvents** generated at facilities operating in one of four North American Industry Classification System ([NAICS](#)) codes. These “remanufacturing” requirements reiterate most of the HSM requirements. This regulation provides some regulatory relief for classes of solvents considered valuable and more readily amenable to legitimate recycling.
4. **Establishes additional variances for non-waste determinations.**
5. **Establishes a new definition for “contained” under 260.10.**
- This definition applies to all hazardous wastes and HSM. The major change is allowing management in land-based units.
6. **Establishes new criteria for a functional definition of “sham recycling.”** This benefits the regulated community, increases environmental protection and is easier to regulate. The sham recycling definition states, “A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling...”
- b) **Oregon impacts:** This rule will bring substantial changes. The U.S. Environmental Protection Agency’s, and additional proposed Oregon-only requirements, create regulatory burdens. The hurdles in the hazardous secondary material provision pose challenges that may limit use of the new definition of solid waste HSM exclusion to large HSM generators. If this is the case, we might see only a limited number of HSM notifications. The legitimacy criteria requirements will apply widely to facilities managing hazardous waste under existing exclusions. This will require additional work by the regulated community and DEQ’s Hazardous Waste program.
- c) **Fiscal impacts:** Large HSM generators will benefit from more ready reclamation of materials currently managed as hazardous waste. Legitimate reclamation may provide a boon to industry, the economy, and the environment.

It is difficult to assess fiscal impacts for DEQ. Many of the large generators may remain capped in terms of fees. If the hazardous secondary material exclusion is widely adopted, it may result in increased staffing needs to conduct HSM reviews, process notifications and permits, oversee facilities, and conduct regular compliance inspections.

- d) **Other states:** Currently, 14 states have adopted the entire 2018 rule; 14 states have adopted the entire 2015 rule; two states have adopted the mandatory sections of the 2015 rule. Washington State is one of the two states that adopted the mandatory sections of the 2015 rule and is consistent with DEQ recommendations, including not allowing management of hazardous waste and HSM in land-based units.
- e) **Recommendations:** Adopt with changes.
1. Add an approval process for all hazardous secondary material notifications, including review of legitimacy criteria documentation.
 - HSM generators: Annual reporting and formal inspections within one year of notification.
 - HSM intermediate storage facilities and reclamation/reuse facilities: HSM is not hazardous waste. Both on-site and off-site recycling activity will fall under the purview of DEQ's new HSM program. We recommend Land Use Compatibility Statement (LUCS) approval be required for these facilities before review of applications, and public notice be required during the review process. We recommend clarification of the environmental justice (EJ) criterion, and that meeting this criterion be mandatory. As with generators, we anticipate annual rather than biennial reports. We see these inspections likely best conducted by hazardous waste or HSM inspectors specifically trained in applicable HSM and HW requirements.
 2. The legitimacy criteria have been long in coming and are a welcome addition to the rule. They apply to many materials recycled under other exemptions and exclusions. We see a major role for technical assistance in communicating these new and sweeping requirements, and in assisting facilities with the development of plans demonstrating that they meet the new legitimacy criteria.
 3. DEQ recommends that facilities participating under the HSM specialty solvent remanufacturing exclusion be regulated under additional Oregon requirements similar to those for other HSM facilities.
 4. The new Definition of Solid Waste variance process is similar to those Oregon observes for some existing exclusions. It is unclear whether this non-waste variance will find use by the regulated community in Oregon. We anticipate most would use the existing, and less onerous, 261.2 exclusions instead of pursuing this variance.
 5. Oregon does not allow management of hazardous wastes in land-based units. The DSW federal rule changes the definition of "contained" to include land-based units. This is an attempt to provide like requirements for management of HSM to those for comparable products, some of which are managed by industry on the land. The 2016 DSW Advisory Committee had voices on both sides of this issue. Like much of this regulation, this is a question of risk and reward. Oregon need not adopt this provision in the rule, remaining more stringent.

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

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.