



State of Oregon Department of Environmental Quality

Hazardous Waste Program Rulemaking Advisory Committee

Meeting Notes and Committee Recommendations
April 5, 2016

Overview and purpose

The Oregon Department of Environmental Quality convened an advisory committee to review the fiscal and economic impacts of DEQ’s proposed revisions to Oregon’s hazardous waste program rules. The committee is known as the Hazardous Waste Rulemaking Advisory Committee.

DEQ asked the committee to provide comments and recommendations on our proposed rule recommendations which included the fiscal and economic impact. We also asked the committee fiscal impact questions about the proposed rules the Administrative Procedures Act (ORS 183.333) requires.

The questions we asked the committee included:

- 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 (<50 employees)?
- If so, how can DEQ reduce the economic impact of the rule on small business?

The third and final advisory committee meeting took place on April 5, 2016, from 9 a.m. to 2:30 p.m. in DEQ’s Portland Headquarters office.

DEQ staff addressed the outstanding questions from the first two committee meetings (February and March), and then gave presentations to continue the discussion on the proposed Wipes rule and 2015 Definition of Solid Waste rule.

This document includes the committee’s recommendations and responses to the fiscal and economic impact statement questions. The public notice of proposed rulemaking will also include those recommendations. A summary of the key decisions and recommendations is provided at the end of this document.

The proposed rule recommendations provided to the committee were drafts and subject to further development before DEQ opens for public comment later this year.

Committee members

All committee members attended the meeting in person except where noted:

Name	Affiliation
Michael Bernard	The Boeing Company
Myron Burr	Siltronic Corp for Associated Oregon Industries
Heath Foott	Bend Research
Matt Hendrickson	University of Oregon
Jim Houser (<i>not attend</i>)	Hawthorne Auto Clinic, Inc
James Kincaid	Cable Huston LLP for Waste Management Oregon
Koreen Lail (<i>not attend</i>)	Siltronic Corp for Associated Oregon Industries

Marjorie MartzEmerson	Pacific NW Pollution Prevention Resource Center
Audrey O'Brien	DEQ (Non-voting) for Materials Management Program
Geoff Tichenor	Stoel Rives LLP for Oregon businesses

Non-committee members at the meeting

DEQ staff:

Name	Title
Rich Duval	Facilitator, Senior Hazardous Waste Inspector
Jeannette Acomb	Project Coordinator, HW Policy Analyst
Laurey Cook (<i>not attend</i>)	Rule Lead, Hazardous Waste Inspector
Dave LeBrun	Rule Lead, Senior HW Policy Analyst
David Livengood	Sponsor, Hazardous Waste Program Manager
Susan Shewczyk (<i>phone</i>)	Rule Lead, Hazardous Waste Inspector
Sarah Wheeler	Advisor, Office of Compliance & Enforcement

Stakeholders and interested parties:

Name	Affiliation
<i>None attended</i>	

Background of the proposed rules

The Environmental Protection Agency delegates authority to the Department of Environmental Quality to operate the federal Resource and Conservation Recovery Act hazardous waste program in Oregon. Oregon must periodically review and adopt new or amended federal rules to retain this delegated federal authority. DEQ last updated its rules in April 2015. In that rulemaking, we incorporated by reference most federal rules enacted through June 30, 2014.

In this rulemaking, we propose to align DEQ's hazardous waste rules with the federal rules. We will do this by incorporating some previously adopted but subsequently amended federal rules, and incorporating some federal rules that have not been previously adopted into Oregon rules. These changes will enable Oregon to ask EPA to continue authorizing Oregon to operate its RCRA hazardous waste program in-lieu of EPA.

The Hazardous Waste Rulemaking Advisory Committee is convened to inform this rulemaking. Committee meetings were held through April 2016 to review the rules under consideration and provide input. Once advisory committee meetings are complete, we will begin the formal rulemaking process.

We will seek public comment on the list of rules being considered for incorporation when it opens a formal public comment period later this summer. We will consider all comments before preparing a final rule proposed package the Environmental Quality Commission will consider in early 2017.

Discussion summary

At the beginning of the meeting, DEQ staff went over the follow-up questions from the first two committee meetings: Wipes and Definition of Solid Waste rules. (*See Follow-up items under each specific rule.*) We also gave a brief accounting of the committee's rule recommendations to date (*included in the committee's final recommendations at the end*).

The second part of this summary includes the advisory committee's continued discussion on the proposed Definition of Solid Waste rule. That discussion is provided in four parts:

1. A focused discussion by committee members on the rule and its impacts;
2. The committees' answers to the fiscal impact questions OAR 183.333 requires;
3. The committees' recommendation on the proposed rule; and
4. DEQ's responses to comments or questions not addressed at the meeting.

The last part of this summary includes the final advisory committee recommendations for the ten proposed rules under consideration for adoption by the agency.

The following are the main highlights of the committee members' roundtable discussion.

Editor Note: Bracketed items [] have been added for further clarity.

Wipes rule: Conditional exclusions from solid waste and hazardous waste for solvent-contaminated wipes rule

Conditionally exempt generators are currently allowed to comingle their rags with other wastes, this rule does not change that allowance. This rule will affect wipes management for regulated small quantity or large quantity generators. Due to the loss of the State's 1996 *Contaminated Rags Destined for Laundering* policy, which was broader than the new Wipes exclusion, DEQ encourages generators to look for other potential exclusions to use.

Follow-up questions

Questions pending from the first advisory committee meeting February 3, 2016:

1. Can DEQ continue to regulate policy through a rulemaking (e.g., to all other solvents, metals)? *No, EPA responded. If DEQ added hazardous constituents beyond the solvents included in the exclusion, DEQ would be excluding wastes that EPA does not exclude. DEQ's rule would be deemed less stringent and could not be authorized.*
2. Can we label wipes with other words and still meet the federal regulations? *Yes, EPA responded. If DEQ wished to require equivalent labeling it would be allowed. It would be considered more stringent and could be authorized.*

Part 1: Committee discussion

The following are the main highlights of the committee members' continued discussion on the Wipes rule and its fiscal impacts.

Alternate labelling

The committee suggested including alternate and equivalent labeling language. *DEQ is considering modifying the rule to include alternate and equivalent labelling.*

Safe management & unlined landfills

The committee was also interested in feedback from solid waste facilities. We asked advisory committee member Mr. Jim Kincaid of Cable Huston LLP representing Waste Management Oregon, if he was willing to ask Waste Management for their considerations on the wipes rule. The following is what Mr. Kincaid presented to the committee:

Current Waste Management Oregon policies do not allow solvent-contaminated wipes to be transported in compaction vehicles, placed in compactors, or managed through a compaction transfer station. Instead, Waste Management Oregon requires wipes be separately managed from other regular waste streams to minimize the risk of rupture.

Waste Management Oregon policies do not allow wipes to go to unlined landfill cells, or inert construction and demolition landfills, or cells with vertical expansions over unlined cells. Under the proposed federal rule, wipes can also be taken to hazardous waste combustion facilities. Waste Management Oregon policy requires wipes get bagged and sealed as required by the rule, and managed in fiber or plastic drums, or rigid cardboard boxes. Waste Management can occasionally exempt generators from these requirements on a case-by-case basis.

Committee comments

- There is added cost associated with segregating the wipes throughout the packaging, managing, and transporting process. *DEQ: yes, there is segregation cost associated with the generation and management of this waste, like the rag policy or other exclusions in order to take the exclusion you must meet the criteria. However, if the exemption is not taken there is still a cost (possibly higher to manage as a hazardous waste). [Generators would most likely see a cost savings for not having to annually report, manifest, and pay higher disposal fees at subtitle C landfills if eligible to use this exemption.]*
- Want to see we do not over-complicate the rules or make them messy as they are typically on the books for a long time.
- Can we allow disposal and identify landfills they can go to? *DEQ: yes, possibly.*
- Encourage recycling and minimize risks for municipal solid waste disposal.
- Some industries require use of disposable wipes in their processes [lint free, etc.].
- For a long time we have required wipes to go to a hazardous waste Subtitle C facility, and now we are potentially changing that [Subtitle D] without any oversight. *DEQ could ensure protective measures on a case-by-case determination if a mechanism like a solid waste permit were used. Or DEQ could write a special waste into rule like asbestos that would require a separate rulemaking to amend the solid waste rules and could potentially take 2-3 years to do. Currently, DEQ's Materials Management Program is amending the solid waste rules for recycling. Rulemaking usually takes 2 years minimum from start to finish.*

Part 2: Reaffirmed the fiscal questions - Wipe rule

At the end of the rule presentation, the committee discussed DEQ's four fiscal impact questions as OAR 183.333 requires. The committee reaffirmed answers from the March meeting:

a. Will the rule have a fiscal impact?

b. If so, what is the extent of the fiscal impact?

Reuse Adoption: Yes. As the committee identified in the March meeting notes, EPA requires states with existing wipe and rag policies to remove them. Some wipes formally excluded by DEQ's *Contaminated Wipes Destined for Laundering* policy will now have to be managed as hazardous waste. This would result in additional disposal costs if not eligible under another exclusion.

No Adoption: Yes, negative fiscal impact. If this rule is not adopted and DEQ's laundering policy is removed, everything formally excluded by policy becomes a hazardous waste and increases disposal costs.

Disposal Adoption: No negative fiscal impact if the disposal portion of the rule is adopted. Regulated businesses currently generating solvent-contaminated wipes meeting the exclusion would likely see a reduction in disposal costs.

c. Will the rule have a significant adverse impact on small businesses (<50 employees)?

The committee reaffirmed there is no significant adverse impact for small businesses by adopting this rule. Most small businesses are not regulated by DEQ and can already dispose of their wipes at municipal solid waste landfills.

d. If so, how can DEQ reduce the economic impact of the rule on small businesses?

Not applicable to this rule.

Part 3: Committee recommendation for the Wipe rule

The committee discussed the potential adoption options, and recommended amending the rule to increase safe management of wipes.

Adoption options

The rule requires all states to adopt the reuse portion of the rule, with the disposal portion being optional adoption. DEQ staff presented four options:

1. Adopt reuse, postpone disposal until a mechanism is in place to address environmental risks (landfill type, solid waste permit, transportation, etc.);
2. Adopt entirely, but require wipes to go to a treatment, storage; disposal facility as non-hazardous waste [or HW combustor as rule specifies]
3. Adopt reuse only to encourage recycling; and
4. Adopt rule entirely as is.

Committee recommendations

Reuse portion:

The committee reconfirmed their earlier recommendation to adopt the reuse portion of the wipes rule. The committee also recommended amending the rule to include additional EPA-equivalent wording for container labelling.

Disposable portion:

Adopt the disposal portion of the Wipes rule with the following amendments:

- Source separation (at generator facility, during transportation, at transfer stations)
- Not allow compaction (during transportation, at transfer stations, or at landfills)
- Contained in fiber, plastic or rigid cardboard or equivalent (in addition to sealed bag as specified by rule)
- DEQ authorizing receiving facilities (through solid waste permit process)

Generator

Allow alternate labelling, require source separation, and additional containerization to help increase safe management of the wipes. [DEQ regulates these generators.]

Collection

Materials to be segregated throughout the process, including segregation if held over at a transfer facility, and prohibit compaction. [DEQ's RCRA program has no current regulatory authority to require this of solid waste haulers. Developing a program or mechanism would require additional rules, which is outside the scope of this rulemaking.]

Disposal/combustion

Prohibit compaction, and require disposal at a DEQ authorized combustor or landfill: lined cells meeting design standards of 40 CFR 258.40, and not include unlined cells or landfills subject to 40 CFR 257 such as: inert construction and demolition, or vertical expansion over unlined landfill cells. Additional considerations: possibly amending DEQ rules to specify which combustors or landfills wipes could go to and develop a special wipes waste rule or permit with environmental controls to manage the transportation and final destination.

Part 4: Questions or comments not addressed during meeting

Questions the committee posed from the March meeting for DEQ to address.

1. Can DEQ allow businesses to manage laundered wipes under the new DSW rule as exempt from Solid Waste? *No. EPA responded solvent-contaminated wipes would not be excluded from the definition of solid waste because they must be laundered before they are reused. Laundering is a form of reclamation and if a material must be reclaimed before it can be reused, 40 CFR 261.2(e)(1)(iii) states that it is a solid waste subject to designation. If it contains a listed solvent or exhibits a characteristic it is a hazardous waste.*
2. Does Waste Management have any concerns in handling the wipe materials? *DEQ: See Safe management & unlined landfills section above for response.*

Definition of solid waste rule: [2015 Definition of solid waste rule](#)

Follow-up items (March Notes numbering)

DEQ presented responses to the advisory committee's previous questions for discussion:

1. & 2. Can we regulate this reclaimed material under ORS 459? Would it still be a solid waste under Oregon-only Rules? *DEQ: No. The current solid waste rules do not support a differing interpretation of "discarded" from RCRA. ORS 459 would have to be amended in a separate rulemaking.*
4. What recommended adoption changes does DEQ have for the DSW? *DEQ: amend rules to include OAR Div 142 "immediately" definition, OAR Div 120 siting and setback criteria, and require generator standards of 40 CFR 262.34 for all containers.*

The next few questions are administrative, and DEQ will need to follow-up on how to internally implement. These were not addressed during the meeting.

3. Investigate variance structure, administration, general guidelines.
5. How should DEQ address recycling in a RCRA Permit under the DSW rule?
6. Does DEQ need to adopt the Subpart H of the DSW 2008 rule's financial assurance requirements for the verified recycler?

Part 1: Committee discussion

The following are the main highlights of the committee members' continued roundtable discussion on the Definition of Solid Waste rule and its fiscal impacts.

Mandatory parts of definition of solid waste

Speculative accumulation

The rule revises the definition by requiring additional tracking and documentation to refute. Noted changes: mark with date when waste is first placed in, signs or placards, and tracking volumes in and out. DEQ recommended requiring log books as another tool for tracking in addition to those required by rule.

Variance and non-waste determinations

The new rule puts a ten year cap on variances and non-waste determinations for new applications. Active previously issued variances and non-waste determinations are not subject to this time limit, but may be subject to other requirements (like new legitimacy criteria, or other potential subsequent federal and state rule changes). At a committee member's request, DEQ confirmed that previously issued partial reclamation variances issued by DEQ under the preexisting criteria set forth at 40 CFR 260.31(c), as previously adopted into Oregon's rules, would not be subject to or affected by the revised criteria for issuance of such variances set forth in EPA's DSW rule.

DEQ issued many non-waste determinations in the mid-90's and some may not be correct under the current regulations. If an originally-approved process did not change it could possibly still be correct, as it depends on the governing regulations used and if subsequently amended. An example would be the new legitimacy criteria which previously only required two of the factors to be met. With the adoption of this rule, all four factors will be required. As older non-waste determinations are identified, DEQ will work with businesses on a case-by-case basis to address.

New "contained" definition

Committee members continued to have much discussion on the new definition of "contained" and whether or not it should be amended. The rule includes the performance-based "contained," defined to mean a unit (or land based unit [such as a pile]) meeting the following summarized criteria:

- Unit in good condition, with no leaks,
- Labelled or system to immediately identify, and
- Compatible with waste, and addresses risk of fire.

Units that meet hazardous waste tank and container standards are considered contained.

DEQ encourages reclamation and recycling but also wants to ensure environmental protective measures are in place, are enforceable, and not reactionary in nature. Based on review of the rule, advice from its Office of Enforcement and Compliance and the Department of Justice, DEQ recommended to the committee to modify the management of hazardous secondary materials in land-based units be stored in tanks, containers, on drip pads, or in containment buildings meeting the requirements of 40 CFR 262.34(a)(1).

Committee comments:

- Certain committee members strongly objected to DEQ's recommended revisions to EPA's definition of contained on the basis that redefining the definition to refer to Subtitle C tank, container, drip pad and containment building requirements would significantly chill legitimate recycling efforts statewide and transform numerous legitimate recycling efforts into illegal hazardous waste treatment operations.
- Definition in DSW rule would apply to both new exclusion as well as the legitimacy criteria, if changed it might impact other areas of rule use.
- Need to change? Are we chasing the problem and not identifying the problem? *DEQ feels we identified the problem and being proactive by modifying definition.*

- If pile caused releases to waterway, state can identify it is not contained. *DEQ: Rule mentions groundwater as an example but did not address soil under a pile. As DEQ stated in the meeting, the contamination should not be allowed to pass through the soil to the groundwater before it is considered a release or detected.*
- Imposing contained on all materials stored to drip pads, containment buildings as under subtitle C affects scrap metal today? *DEQ: Scrap metal exclusion is unaffected by this rule as it is a separate exclusion. Scrap metal is also RCRA empty, and no longer contains hazardous constituents in order to meet the exclusion. Hazardous secondary materials under this rule will still contain the hazardous constituents.* Certain committee members expressed concern with this analysis. Referring back to EPA's DSW rule and preamble discussion (80 Fed Reg 1753-54), the concern is that the existing exclusions and exemptions in the regulations, including the scrap metal exclusion, remain subject to the legitimate recycling standard. In guidance, EPA has clarified that: "EPA has consistently asserted that hazardous secondary materials excluded from regulation must be legitimately recycled. Hazardous secondary materials that are not recycled in accordance with the legitimate recycling criteria are "sham recycled": this is considered disposal in the guise of recycling. As such, these materials are solid wastes for Subtitle C purposes, regardless of whether an exclusion is being claimed." See EPA's guidance at https://www.epa.gov/sites/production/files/2015-08/documents/expanded_faq_033115.pdf. Thus, the fact that the scrap metal exclusion is a separate exclusion that pre-dated the DSW rule does not mean that it is somehow exempt from the legitimate recycling rule or criteria. Rather, any recycling that occurs under the scrap metal exclusion must, to be valid, be consistent with the legitimacy criteria, as codified in the DSW rule. Those criteria. Specifically, criteria (3) (40 CFR 260.43(a)(3)), incorporate the concept of "contained." Therefore, certain committee members remain concerned that management of scrap metal, as subject to the legitimacy criteria which incorporate the concept of contained, might be affected by redefining contained as DEQ discussed.
- The regulated community had a discussion about the breadth of the existing definition of contained; folks are concerned that the breadth of that definition could impact storage of materials on land-based units (pile) and could -- if any such material is released from the pile -- convert the pile from HSM being recycled into hazardous waste; as such, folks are cautious about piling HSM. *DEQ: A lot of products are typically stored on site in piles like salts.*
- HSM pile examples? *DEQ: various electronic manufacturers generate solder dross piled typically in a building corner waiting for offsite reclamation.*
- Allowed to sit on back forty? *DEQ: Not currently. But under this rule yes, with the potential to leach metals into the ground.* Certain committee members disagreed with DEQ here, again noting that the EPA definition of "contained" requires that the unit (including a pile) be "designed ... to prevent releases of hazardous secondary materials to the environment." This broad definition provides DEQ with discretion to act without need for redefining the EPA definition of "contained."
- Rule takes away some of the issues of the past.
- A windy day could generate fugitive dust and move the pile. *DEQ: Challenge to ensure contained.*
- Comfortable with dust piles of potentially hazardous waste free and loose? *DEQ: Not comfortable.*
- How would regulated community and regulators differentiate and prove release? *DEQ: as rule is written it would be difficult for DEQ to prove, and the reasoning in proposing to amend contained and immediately so everyone knows up front.*
- Exercise discretion of what is contained or immediately and DEQ has sufficient authority without changes to rule to impact generators.
- Kind of agree it gives DEQ quite a bit of breadth to enforce. My concern is not being comfortable at all without program enforcement and inspections.
- If no resources to regulate do not promulgate.

Definition of “Immediately”

There was discussion about EPA not defining ‘immediately’ and how individuals would each define it differently. DEQ suggested adopting into the hazardous waste rules the agency’s spill response “immediately” definition currently defined as: “The actions necessary to protect human health and the environment take priority over all other concerns of the responsible person.” OAR 340-142-0005(10)

Optional parts of definition of solid waste rule

Verified recycler exclusion

Further discussion on the variance included addressing community risk with siting criteria and public notification. *DEQ identified a gap in the variance when compared to the requirements of a hazardous waste permit: siting criteria and property setbacks. DEQ recommends modifying rule to incorporate both criteria to the hazardous waste variance. The rule already requires a public notification with opportunity to comment. In its variance approval process, DEQ may also look at EPA’s environmental justice screening tool.*

Committee comments

- Additional regulations to variance? *DEQ: Yes. A facility can still operate under 40 CFR 261.6 without a variance as long as the material is manifested into the facility and is managed as hazardous waste until actively reclaimed/recycled.*
- Public notice process? *DEQ: Yes, it is built into rule. DEQ uses 45-day default.*
- What does financial assurance mean? *DEQ: money set aside to ensure all wastes left are properly taken care of. Is almost identical to a TSD facility.*
- Good to add the two citing criteria.
- Rule amendment helps flush out [environmental justice] for nearby community with siting that Oregon has considered years ago.
- What does the permit modification look like? *DEQ will need to work with EPA as the rule does not specifically address how to modify the permit.*

Remanufacturing exclusion

Rule establishes a new remanufacturing exclusion for 18 higher-valued spent solvents from four EPA identified manufacturing sectors: 325199 Basic organic chemical, 325211 Plastics and resin, 325412 Pharmaceutical, and 325510 Paints and coatings. DEQ noted if a business was not legitimately one of the approved industries, it would not be hard to prove.

Committee comments

- Can we add other solvents? *DEQ: unfortunately no, EPA was very specific.*
- Why if it is being recycled, does EPA care who it goes back to? *DEQ: Not sure.*
- Target specific, not widespread effect in Oregon. *DEQ: True.*

Rule implementation

Discussion continued from the last meeting with the committee expressing many concerns in adopting the rule without on-going regulatory oversight to ensure exclusion was being met. It is important to note eligible businesses taking the exclusions under this rule will, without other hazardous waste generated, potentially become unregulated as excluded hazardous secondary materials become non-wastes. This could result in some facilities dropping generator category to become unregulated conditionally exempt generators when the exclusion is met.

The advisory committee's recommendation to continue regulating these facilities (by keeping them on the inspection list and periodically reconfirming exclusion is being met) will require DEQ to develop in state rule the regulatory authority beyond the initial verification. DEQ proposed changing the hazardous secondary material to a federal non-hazardous waste (solid waste), which would allow the state to use a tool like a beneficial use determination to make it a non-waste again. This would ensure verification of exclusion upfront and establish regulatory oversight for continued inspections with annual reporting.

The committee expressed their preference to keep hazardous waste program oversight, and develop a legal mechanism by rule. If that included changing the material to a solid waste to regulate that was acceptable.

Committee comments

- Most won't change generator [status category]. *DEQ: Potentially.*
- Funding issue? *DEQ: fees are not the critical part as they are not significant on either side. DEQ would like a mechanism for upfront approval process and on-going regulatory oversight, so we are not reactive but instead proactive. Note: BUD fees: one-time application \$1,000-5,000, and \$250 annually.*
- Do not want more than what the rule provides. Generators know they have to satisfy exemption without oversight. Would be way more regulation than pre-2008 exclusions.
- Is system more than one-time review? *DEQ: Tools like the SW Beneficial Use Determination are pre-approved, and report annually so it has on-going departmental review.*
- Changing the solid waste law is not the most straight forward way. Could change BUD into HW rules. *DEQ: Yes, we could write new rules making it a special waste like the OAR Div 111 Used Oil rules, or develop a new tool to regulate.*
- I agree, but do go beyond. Entities have the best intentions and when funds get tight things change over time. Not comfortable for material that would otherwise be hazardous waste and no longer regulated without continued inspections.
- Set of folks fall out and will not see inspections. One way to address is have folks annually report or certify.
- I am okay with annual certifying without physical inspections as kind of an in between. *DEQ: We can add to the notification, but it does not address regulatory certainty. As DOJ said, create a program. States are concerned with the deregulation of waste piles based on experience – ending up visiting complaints year after year. DEQ wants to reduce the environmental risk.*
- The exclusion takes it out of RCRA, then the HW program continues to verify its meeting criteria. *DEQ: State has firm regulatory authority for initial verification only.*
- Is DOJ's suggestion to make it a federal non-hazardous waste the framework for material management program to go out and inspect regularly? *DEQ: Yes, without changing to a solid waste DEQ has no authority to regulate.*
- Would that be more stringent and would EPA have an issue? *DEQ: Yes, it is more stringent and states can be authorize without issue to be more stringent.*
- Some concern in making it a solid waste will affect land use requirements, and make everyone 'solid waste handlers' with metro and City of Portland.
- Recycle hazardous waste and put back into use: should be able to find tools to send inspectors. Everyone on the committee says send [HW] inspectors.
- Five year inspection cycle, not that concerned but over time [businesses] don't follow plan. *DEQ: True, if facilities know DEQ is not inspecting.*
- We suggest inspect, not convinced can't be addressed in this rulemaking.
- What would otherwise be hazardous waste at volumes, think Department should monitor that.

- Like universal wastes, or come back at some interval and verify. *DEQ: You would like us to treat verified recyclers and those claiming the exclusion like generators?* Committee member response: Like used oil presumptive meets all requirements but when inspection verifies management of it. *DEQ: We have a whole set of rules to manage used oil and that is not what we have here. We are hearing the committee say: create a hazardous secondary material rule.*
- Establish substantive regulatory requirements for generators and verified recyclers to meet, and if not met are not entitled to exclusion. *DEQ: Believes the substantive regulatory requirements are already build into the rule. We just need to identify a tool to regulate on-going oversight as committee recommends.*
- Very good example of a recycler gone badly is Alkali Lake.
- Not have to be a set [inspection] schedule, every year or other year.
- Are BUD criteria same? *DEQ: Very similar, we might need to add in some legitimacy criteria. To use BUD we would need to change the HSM to a solid waste and add in how we require a BUD in rule.*
- Want long term compliance with verification criteria satisfied overtime. *DOJ recommended a framework or rule to regulate. DEQ looked at existing tools available and the SW BUD seemed to fit nicely if HWM were changed to solid waste. To write a HW rule like used oil is more onerous than using a BUD-like tool.*
- Regulate as solid waste with tool in Oregon.
- Making it way too complicated. Be careful of local land use laws – might get into issues. Think annual report verification and generator-controlled with certification approval, with some commitment by Department at some level to verify compliance over time.
- Don't allow for these current type of issues [environmental regulatory gaps], DEQ has visibility and transparency in the type of program to ensure [businesses] do the right thing.
- Honestly struggling with regulatory authority. If I submit initial notification and get variance or onsite, DEQ reviews and makes compliance determination. *DEQ: Only the Generator-Controlled exclusion (onsite) is required to notify. No issue with authority on verified recycler variance, just generator-controlled – DOJ says we need to document in rule.*
- Advisory committee advises adopt with amendments to verify over time, continue notification with certification every year, and inspect.
- Have authority initially and want to make sure we have ongoing regulatory authority. *DEQ: So, if authority exists yes adopt optional and if not, do not adopt optional.*
- Don't see BUD addresses beyond initial 5-10 year problem. *DEQ: Good point.*
- We don't want in 8-10 years say we pushed that law through [now problems].
- How big of universe? *DEQ: Analysis shows 30-80 businesses might take the generator-controlled exclusion. All required to notify, so universe will be known.*
- Not just DEQ losing people but businesses are too.
- Difficult to come to absolute decision and not know types of wastes and types this rule regulates: Okay with EPA definition and not modify if some ability to verify compliance overtime, broad enough for enforcement and releases would be enforceable. Maybe cross inspections could look at hazardous waste issues when out especially when they fall out of the program.
- Okay without changing contained [definition].
- Echo definition, some won't take advantage.
- Propose redefining 'contained' application to new only and not preexisting. *DEQ: In the way we regulate, the impact is as broad unless we limited redefinition to those groups in the exclusion.*
- Support adoption of mandatory. On optional: promote recycling and want DEQ to have ability to verify [exclusion] criteria is being met in the hazardous waste program with simplest means and recognizes Department financial constraints. Contained: Not support revising definition for preexisting or legitimacy factor 3. And not see redefinition [contained] for purpose of new if DEQ

can verify exclusion. Certification verification at time of notification with Department initial approval and open to ongoing inspections.

- And include inspection component, promote recycling and implement this go around.
- Annual reporting, verification to ensure it happens right. *DEQ: if verification was through the solid waste program?* Another member: Don't think so.
- I would have to rethink if DEQ has concerns with this rule and guess if Department can't make commitment to program without verification [inspections], would have to disagree on optional adoption based on DEQ feedback.
- Encourage means to verify if mechanism. Not promoting absence of future demonstration of fulfilling compliance over time. Pushing Department to achieve this.
- Department may have better insight – we recommend some verification in place.
- Certification may allow more flexibility on inspection schedule. *DEQ: Verification with combination of certification and onsite inspections.*
- I could support that.

Other states

California and Washington are adopting only the mandatory portion of the rule. Washington has the same issue of 'contained'. Many of the states not adopting the optional parts of the rule have cited similar concerns.

Part 2: Fiscal questions – Definition of solid waste rule

At the end of the rule presentation, the committee discussed DEQ's four questions derived from OAR 183.333. The committee's answers are summarized below:

a. Will the rule have a fiscal impact?

No.

b. If so, what is the extent of the fiscal impact?

Not applicable as it is optional for a facility to choose to take the exclusions.

c. Will the rule have a significant adverse impact on small businesses (<50 employees)?

No, it actually probably results in savings

d. If so, how can DEQ reduce the economic impact of the rule on small businesses?

Not applicable

Part 3: Committee recommendation for the definition of solid waste rule:

Mandatory portion

The committee supports adopting the mandatory portions of the rule with the following amendments: include Div 120 siting and setbacks to the HW variance, and include DEQ's definition of "immediately" into the hazardous waste rules. Committee did not recommend changing EPA's definition of "contained."

Optional portion – conditional adoption

The committee supports adopting the optional portion of the rule only if regulatory structure to regulate the generator-controlled exclusion. Committee recommended amendments include: establishment of legal mechanism to regulate if a new mechanism is determined by DEQ to be needed (tool or rule), changes to the solid waste rules if required, initial certification of verification at time of notification, annual reporting and on-going combination of recertification/verification and on-site inspections. The committee's preference is to keep oversight under the hazardous waste program and to avoid changes to the solid waste rules if possible.

Part 4: Questions or comments not addressed during meeting

The committee had no additional questions for DEQ to address outside the meeting.

Environmental Quality Commission

DEQ asked the advisory committee if members would be interested in supporting DEQ when it presents these rules to the Environmental Quality Commission late 2016 or early 2017. *Several committee members were interested in participating. The commission date will most likely be January 18-19, 2017 in Portland.*

Committee thanks

DEQ thanked the committee for participating and commenting on the proposed rules and fiscal impacts. Meeting was adjourned, and concluded the advisory committee meetings.

A committee member had the following to say: It has been an honor and pleasure to serve on the committee with you all, and an honor to be asked to do that. We have seen DEQ maligned in the press recently and the suggestion that part of it has tainted processes like these. I think this is by definition a transparent, visible and wonderful process that combines interests from various stakeholders; put in a room and force to think together and identify policy for the state. I want the record to be clear that this is an incredible task that the Department has engaged in to get its rules commented on before it goes to public comment. This is not an opportunity for lobbying, this is in the light of rulemaking which has benefited from participation from various stakeholders. Just really appreciate to be able to do this in a state like Oregon, and I think DEQ is not getting enough pats on the back for things like this. *{Several members agreed.}*

Summary of committee's recommendations and fiscal impacts

The following is the advisory committee's recommendations and fiscal determinations for all of the rules being considered in this rulemaking. *(See Feb and Mar Meeting Notes).*

Lab rule: [Academic laboratories generator standards](#) and [technical corrections rules](#)

Committee recommendation: Adopt rule with amendment to require submitting the laboratory management plan at time of DEQ notification to Opt-in.

Committee supports adopting the Lab rule since it gives eligible academic labs increased flexibility to manage wastes under an alternative and equivalent standard.

Fiscal impact: Committee identified no adverse fiscal impacts in adoption, as it is optional. The possible negative impacts (cost of training, administrative burden) could be outweighed by benefits of accumulation time and operational flexibility. Savings will differ for eligible labs due to size, staffing and complexity of research.

Wipes rule: [Conditional exclusions from solid waste and hazardous waste for solvent-contaminated wipes rule](#)

Committee recommendations: The committee supports adopting the rule as it encourages recycling, requires no free liquids, minimizes pollution, and decreases mismanagement.

Reuse - Adopt and allow alternative equivalent wording for labelling.

Disposal – Adopt with amendments to address environmental risk.

Fiscal impacts:

Reuse - Committee determined some negative impacts for the reuse portion of the rule due to additional training, labelling, time limits, container management and loss of DEQ’s current *Contaminated Wipes Destined for Laundering* policy. Some wipes formally excluded by policy will now have to be managed as hazardous waste, and result in additional disposal costs if not eligible under another exclusion. No adverse impacts for small businesses, since most are unregulated and can already co-mingle wipes with other wastes.

Disposal - Committee determined positive fiscal impacts for the disposal portion of the rule and no adverse impacts for small businesses.

Coal rule: [Disposal of coal combustion residues from electric utilities rule](#)

Committee recommendation: Supports adopting rule with no amendments.

Fiscal impact: Committee identified no adverse fiscal impacts in adoption.

Fuel rules: [Vacatur of the comparable fuels rule and the gasification rule and Withdrawal of emission-comparable fuel exclusion under RCRA rule](#)

Committee recommendation: Supports adopting the federal rule withdrawal.

Fiscal impact: Committee identified no adverse fiscal impacts in adoption.

CO₂ rule: [Conditional exclusion for carbon dioxide streams in geologic sequestration activities](#)

Committee recommendation: Supports not adopting, since Oregon law currently prohibits injection of hazardous materials into the ground. The committee noted it does not preclude a potential future adoption, and does not take a stand on this activity.

Fiscal impact: Committee identified no adverse fiscal impacts in adoption.

Post closure rule: [Post-closure permit requirement and closure process rule](#)

Committee recommendation: Supports adopting permit application requirements only, and not adopting the remainder as it would not be used by DEQ.

Fiscal impact: Committee identified no adverse fiscal impacts in adoption.

NPDES rule: [Amendments to streamline the national pollutant discharge elimination system program regulations: round two](#)

Committee recommendation: Supports adopting rule with no amendments.

Fiscal impact: Committee identified no adverse fiscal impacts in adoption.

Definition of solid waste rule: [2015 Definition of solid waste rule](#)

Committee recommendation:

Mandatory – Adopt with amendments (“immediately”, Div 120 siting & setbacks). Committee did not recommend changing “contained” definition.

Optional – Conditional adoption, only if regulatory structure to regulate. Amendments: legal mechanism to regulate (tool or rule), change to solid waste if required, initial certification of verification at time of notification, annual reporting and on-going combination of recertification/verification and on-site inspections. The committee’s preference is to keep oversight under the hazardous waste program.

Fiscal impact: Committee identified no adverse fiscal impacts in adoption.