



Hazardous Waste Phase 2 – Comparable Fuel Rules Fiscal Impact Statement

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Fiscal and Economic Impact

On June 27, 2014, The United States Court of Appeals for the District of Columbia¹ vacated the 1998 Comparable Fuels Rule. The Environmental Protection Agency sought and received an 18-month extension from the Court of Appeals, making the vacatur of the 1998 Comparable Fuels Rule effective April 8, 2015.² As a result of this litigation, EPA determined fuels produced from hazardous wastes must remain classified as hazardous wastes. All hazardous secondary materials from which the comparable fuels were made were identified as hazardous wastes.

DEQ previously adopted the 1998 Comparable Fuel Exclusion (state authorized in 2002). Because of the court's action and EPA's response to the court's action, DEQ is now required to adopt the *Withdrawal of Emission-Comparable Fuel Exclusion under Resource Conservation and Recovery Act* and the *Vacatur of the Comparable Fuels Rule and Gasification Rule*.

If the two above italicized rules are adopted, DEQ anticipates no fiscal or economic impacts to affected facilities in Oregon. As DEQ did not adopt the two subsequent 2008 federal amendments (*Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas* or *Expansion of RCRA Comparable Fuel Exclusion*), the only 1998 identified affected entities are petroleum refineries. EPA and DEQ have not identified any Oregon facilities currently operating under the previously-excluded comparable fuels rule. Therefore these rules will have no fiscal or economic impacts for the state of Oregon.

Comparable Fuels Rule

The 1998 rule formerly excluded fuels made from materials identified as hazardous wastes from the definition of solid waste if, as generated or after treatment and blending, they were sufficiently comparable to commercial fossil fuels with respect to levels of hazardous constituents and fuel burning efficiency. The excluded fuels were, or included fuels such as, petroleum refinery-generated sludges, byproducts or spent materials. Because the fuels, as burned, would contain contaminants no greater than commercial fossil fuels and were otherwise indistinguishable, EPA found the comparable fuels would pose no greater risk than commercial fuels when burned and could be legitimately classified as non-waste fuels rather than as solid and hazardous waste fuels.

¹ *Natural Resources Defense Council and Sierra Club vs EPA* (6/27/2014), 98-1379 D. Columbia APP

² *Natural Resources Defense Council and Sierra Club vs EPA* (11/03/2014) Stay, 98-1379 D. Columbia APP

Gasification Rule

DEQ did not adopt the 2008 *Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas* federal rule. Therefore no facilities in Oregon are affected from the vacatur of this rule. As EPA has combined the Comparable Fuels vacatur with the Gasification vacatur, DEQ will need to adopt both vacaturs even though the gasification rule was not adopted.

Withdraw of the Emission Comparable Fuel Rule

The withdrawal of this rule does not affect any Oregon because DEQ did not adopt the 2008 *Expansion of RCRA Comparable Fuel Exclusion or “emission”* federal rule.

Assumptions

DEQ assumes the fiscal, economic impacts and entities identified in the 1998 Comparable Fuels federal rulemaking are accurate and remain the same today.

Statement of Cost of Compliance

State and federal agencies

The cost to comply with the proposed rules is identical to costs described under small and large businesses.

Oregon DEQ

DEQ anticipates adopting these two rule repeals will cause no additional economic impacts on its own revenues or expenses.

Local governments

DEQ anticipates there will be no fiscal and economic impacts to local governments as the rule applies only to a very specific group of petroleum refineries.

Public

DEQ anticipates there will be no fiscal and economic impacts to the public based on the fiscal and economic impact assessment EPA performed in adopting the 1998 rule (*See below*).

Large businesses - businesses with more than 50 employees

The cost to comply with the proposed rules is identical to costs described under small businesses.

Small businesses – businesses with 50 or fewer employees

The Regulatory Flexibility Act requires EPA to conduct economic assessments for small businesses prior to each rule adoption. As DEQ did not adopt any

subsequent amendments to the 1998 comparable fuel rule, DEQ is relying on the 1998 estimates to determine the fiscal and economic impacts. In its analysis of the 1998 rule for Comparable Fuels, EPA concluded an overall savings of approximately \$11 million to \$36 million for generators, a cost of approximately \$3 million to \$13 million for combustors, and no cost or savings for states.

Exhibit ES-1 ³ Summary of Economic Impacts (in millions)			
Category	Generators	Combustors	States
Comparable Fuels ^a	Savings of \$11 to \$36 ^b	Cost of \$3 to \$13	N/A
^a Savings and costs of the comparable fuel exclusion are annual estimates. ^b Generator savings from the comparable fuel exclusion include saving from the diversion of recycled wastes.			

Direct Impact on Oregon affected entities

The 1998 federal comparable fuel rule identified one Standard Industrial Classification code affected by the rule: 2911 – Petroleum Refineries. As Oregon currently does not have an operating petroleum refinery, and has never been notified of a facility’s intent to use the comparable fuel exclusion, DEQ determined the rule would not have a significant economic impact on small businesses.⁴

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.	Using recent employment data, DEQ found no eligible North American Industry Classification System coded facilities in Oregon. The 1998 Comparable Fuels rule listed the Standard Industry Classification code 2911 – Petroleum Refining, which translates to NAICs code 32411. DEQ did not find either number in the Oregon Employment data. ⁵
b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.	No additional administrative or activities are required to comply with the proposed rules.
c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.	No additional resources are required to comply with the proposed rules.
d. Describe how DEQ involved small businesses in developing this proposed rule.	DEQ included small business representatives on the Hazardous Waste Rulemaking Advisory Committee. That committee will advise DEQ on the cost of compliance for small businesses.

³ EPA 1998 Economic Analysis Report, p.ES-2

⁴ Source: EPA Federal Register 1998 Comparable Fuels, B. Regulatory Flexibility Act p.33819

⁵ Oregon Department of Employment, 3rd Quarter 2015

Documents relied on for fiscal and economic impact

Document title	Document location
Federal Register entries for the incorporated rule and amendments	Comparable Fuels Court Decision Court Order on Comparable Fuel Stay Federal Register Vacatur Comparable Fuels/Gasification Federal Register Withdrawal Emission Comparable Fuel Federal Register 1998 Comparable Fuels
<i>EPA Economic Analysis & EPA List of Facilities Potentially Managing Previously Excluded Comparable Fuels</i>	EPA 1998 Economic Analysis EPA 2015 Facilities List
Oregon Department of Employment 3 rd quarter 2015 data	Employment Department 875 Union Street NE Salem OR 97311

Advisory committee

DEQ appointed an advisory committee.

As ORS 183.333 requires, DEQ will ask for the committee's recommendations on:

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

The committee will review the draft fiscal and economic impact statement and its findings will be included in the record of this rulemaking.

If the committee determines there would be a significant impact to small businesses, as ORS 183.333 and 183.540 require, the committee will consider how DEQ could reduce the rule's 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 rules for small business;
- Utilizing objective criteria for standards; 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 rule 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 affect regulated laboratories under the hazardous waste regulations.

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