



State of Oregon Department of Environmental Quality

Proposed Federal and State RCRA Hazardous Waste Rule Considerations

Hazardous Waste 2022 Rulemaking

The following are the rules that the Oregon Department of Environmental Quality Hazardous Waste Program is considering bringing forward for adoption, and will be discussed at the May 9, 2022 meeting.

Proposed HSWA Rule

The 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](#) – Jan. 13, 2015, effective Jul 13, 2015 & [83 FR 24664-24671](#) – May 30, 2018, effective May 30, 2018]

(CL 233 [A, B, C](#), optional [D2](#) & [E](#)) ([Summary](#)) (Q Reviews: [Overview, A, B, C, D2, E](#)) ([Fiscal Impact Statement](#)) ([DSW White Paper Nov 2021](#)) ([2016 Advisory Committee Notes](#))

Rule Lead: Jay Collins

Team: Zeb Bates, Killian Condon, Chris Bayham, Rich Duval (Advisor)

- a) **What the rule does:** Defines the terms [Hazardous Secondary Material](#) or HSM; HSM generator; [sham recycling](#) and contained. It also includes the U.S. Environmental Protection Agency's Definition of Solid Waste, or DSW, HSM exclusion provision. Adopts new legitimacy criteria requirements to ensure all hazardous waste recycling is legitimate, properly managed and documented.
1. Provides a definition for hazardous secondary material, which is material that would characterize as hazardous waste except when managed as a non-waste when legitimately recycled or reused. This new class of materials includes material currently managed under exclusions preexisting this rule. DEQ is not proposing adoption of the HSM exclusion in this rulemaking. The HSM classification also applies to all used materials that would characterize as hazardous waste, except reuse and or recycling is allowed as management of nonhazardous waste under preexisting Resource Conservation and Recovery Act, or RCRA, exclusions or exemptions. DEQ is proposing the adoption of new and more stringent speculative accumulation provisions, including labeling and accumulation start dates. DEQ is also proposing adoption of the term HSM generator to align with federal rule and secure authority for implementing HSM standards.
 2. Establishes recycling legitimacy criteria under 40 Code of Federal Regulation (CFR) Section [260.43](#), which apply to all recycling and reuse of HSM. Reuse or recycling of what would otherwise be hazardous waste that does not meet these criteria is now defined as sham recycling. Material that is sham recycled is not excluded, is solid waste, and full hazardous waste regulations apply. HSM generators must document that HSM meets legitimacy criteria and complies with records retention requirements.

HSM must be evaluated against the following legitimacy criteria:

- a. Provides a useful contribution such as 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;

- b. The process must produce a valuable product or intermediate;
 - c. The generator and recycler must manage the HSM as a valuable commodity;
 - d. The product must be comparable to a legitimate product or intermediate, and concentrations of hazardous constituents must be comparable to similar legitimate products; and
 - e. Records documenting compliance with these provisions must be kept available for review for three years past the conclusion of the recycling activity.
3. Establishes additional variances for non-waste determinations.
 4. Establishes a functional definition of sham recycling supported by the legitimacy criteria to include documenting the legitimacy criteria and management of legitimate HSM. If legitimacy criteria evaluation is not performed or the materials is mis-managed, this means sham recycling is occurring. This benefits the regulated community by providing greater clarity on what is legitimate recycling, thereby avoiding compliance issues from sham recycling and reducing the risk of environmental liability,
 5. Establishes a new definition for contained under 40 CFR Section 260.10. This definition applies to all hazardous wastes and HSM. Pre-existing EPA rules allow management of hazardous waste in specific types of land-based units. EPA carries this through in their definition of contained for HSM. Oregon has never allowed regulated hazardous waste to be managed in land-based units except for hazardous waste-permitted transfer, storage, and disposal facilities (TSDF). DEQ plans to carry through this prohibition by maintaining that HSM and hazardous waste are contained only when stored in tanks, containers, containment buildings, and at permitted TSDFs in compliance with permit conditions.
- b) **Oregon impact:** DEQ's proposed adoption of only the mandatory parts of the rule will create minimal additional regulatory burden. The legitimacy criteria requirements will apply widely to facilities reusing and recycling hazardous waste under existing exclusions and provide increased regulatory certainty regarding legitimate recycling and reduce the likelihood of compliance costs from sham recycling. This change will require additional work by the regulated community and DEQ's Hazardous Waste Program through education and oversight.
 - c) **Fiscal impact:** DEQ is not proposing to adopt the optional hazardous secondary material exclusion, and fiscal impacts to generators are likely to be minimal. It is difficult to assess fiscal impacts for DEQ. However, DEQ will need to develop new guidance, training, and other outreach to educate Oregon generators, helping them in meeting new legitimacy criteria and speculation accumulation requirements.
 - d) **Other states:** As of November 2021, 22 states have adopted the entire 2018 rule; nine states have adopted the entire 2015 rule; and one state, Washington, has adopted the mandatory sections of the 2015 rule. Washington State's adoption of only the mandatory portions of the 2015 rule is consistent with early DEQ recommendations, including not allowing management of hazardous waste and hazardous secondary materials in land-based units. EPA state adoption map and table is [here](#).
 - e) **Recommendation:** Adopt only the mandatory portions of the federal rule with changes.

Note: The following numbering corresponds to 2-4 in section a, above.

1. DEQ has delayed proposing adoption of legitimacy criteria and definition of sham recycling to properly evaluate the rule and the actual and potential impacts in Oregon. These proposed rule changes apply to many materials currently recycled under existing hazardous waste exemptions and exclusions. We see a major role for technical assistance in communicating these new and broadly applicable requirements, assisting facilities with the development of plans demonstrating compliance with the new recycling legitimacy criteria.
2. The 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, especially as it is specific to hazardous secondary materials, or HSM, rather than hazardous waste. EPA's DSW rule includes additional variance process requirements, including a 10-year review and approval cycle for all variances issued subsequent to adoption. DEQ proposes to adopt these required rule changes.
3. Rules currently in effect in Oregon do not allow management of hazardous wastes in land-based units. The DSW federal rule proposes a definition of "contained" to include land-based units for both hazardous waste and HSM. Here EPA preemptively provides like requirements for management of HSM to those for comparable products, some of which are managed by industry on the land. The 2016 DEQ 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 is not mandated to adopt this rule provision. DEQ is proposing to remain more stringent than the federal rule by proposing modification to EPA's language for the definition of contained to remove land-based units in Oregon's adoption consistent with protective rules currently in place in Oregon.

f) Additional Resources:

- [EPA Rule Summary and History](#)
- [McCoy & Associates Whitepaper](#)

Proposed State-only Rule

Follow-up to [Senate Bill 57](#) (SB57) changes to Hazardous Waste disposal fees

Rule Lead: Ellie Brown

- a) **What the rule does:** Oregon Revised Statute (ORS) 465.376 was amended by SB57A on June 25, 2021. Oregon Legislature granted authority to Environmental Quality Commission (EQC) to raise or lower fee rates defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees. Oregon Administrative Rules Chapter 340 does not have a definition for these fees. The purpose of this rulemaking is to align OAR 340 with ORS 465.375 & 376.
- b) **Oregon impact:** Due to the uncertainty surrounding disposal of hazardous waste, such as unknown rates of disposal and potential regulatory changes, DEQ needs to respond relatively quickly if under or overcharging for disposal of hazardous waste. To accomplish this, DEQ now has the flexibility of having fees set in rule rather than in statute.
- c) **Fiscal impact:** Prior to SB57 passage, legislative staff determined and summarized the impacts from the then legislation, and those reports are [here](#). DEQ does not anticipate any additional fiscal impacts as a result of this rulemaking because these fees are already in place.

- d) **Other states:** Per ORS 465.378, DEQ contacted neighboring states with hazardous waste landfills to notify of our intent to raise hazardous waste disposal fees. The active statutory fee rates are comparable to those in neighboring states.
- e) **Recommendation:** Establish the fees and fee rates defined in ORS 465.375: Monthly fee of operators and ORS 465.376: Special hazardous waste management fees. No increase or decrease in these fee rates is recommended or proposed at this time.

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.oregon.gov.