

Purpose

In 2019, the Oregon Department of Energy discovered, based on a citizen tip, that the Chemical Waste Management of the Northwest landfill near Arlington, OR had accepted two and a half million pounds of Technologically Enhanced Naturally Occurring Radioactive Materials, or TENORM, over a three-year period. ODOE determined that this disposal violated the state’s prohibition against the disposal of radioactive waste within the state and issued a Notice of Violation to the landfill operator, Waste Management, on February 20, 2020. While investigating this event, the agency identified the need to update and clarify the state’s laws around radioactive waste and enhance ODOE’s existing enforcement program, corrective action authority, and civil penalty rules. While some of these changes can be accomplished via agency rulemaking, others require legislative action.

Background and Need for Legislation

“Radioactive waste” is defined in ORS 469.300(23)(a) and OAR 345, Division 050. The waste disposed of at CWM mostly consisted of TENORM produced by the oil and gas industry in North Dakota, South Dakota, and Montana.

ORS 469.300 defines “radioactive waste” and includes exemptions via citation of OAR 345-050-020, 025, and 035. The statute specifies that these rules may be revised periodically, but only “to add isotopes not previously considered.” Much has changed since the rules were originally promulgated in 1981, and it is important to ensure that the definition of “radioactive waste” is fitting to the present waste landscape, based on the best available science, and keeping pace with the standards being established in other states.

ORS 469.525 prohibits the establishment of a *radioactive waste disposal facility* in the State of Oregon. It is necessary to clarify that the *disposal of radioactive waste*, not just the establishment of a facility, is also prohibited within the state. Additionally, it is important to update the statute to clarify that transporting or arranging for transport of radioactive waste for disposal in Oregon is also unlawful.

Under the current statute and rule structure, ODOE has clear authority to make determinations about whether a specific waste meets the definition of “radioactive waste” subject to the disposal ban in ORS 469.525, and to levy civil penalties in certain circumstances when radioactive waste is disposed contrary to law. However, ODOE’s statutory authority would benefit from expansion and clarification in three areas: 1) investigative powers to pursue potential violations; 2) authority to require corrective action in the event of unlawful disposal; and 3) authority to require certain preventative measures such as reporting processes, monitoring equipment, or other such systems.

SB 246 and HB 2831 would:

- clarify that the disposal of radioactive waste is prohibited anywhere in Oregon, and that such prohibition applies not only to a disposer but to anyone who arranges for or transports such waste for disposal
- enable the Energy Facility Siting Council, with support from ODOE, to update and clarify via rulemaking the definition of “radioactive waste” subject to the in-state disposal prohibition
- better define the Oregon Department of Energy’s investigative powers to pursue potential violations
- clarify ODOE’s authority to require corrective action in the event of unlawful disposal, especially in cases where there is not imminent danger but where there may be future threat if wastes are not addressed
- clarify authority to require certain preventative measures
- add authority to recoup some costs to the agency when a Notice of Violation occurs

To address lessons learned from the recent events, the department has also undertaken a rulemaking process to bolster the agency’s enforcement powers after a violation has taken place, such as increasing civil penalties and clarifying when penalties can be levied. This rulemaking does *not* require legislative action.

Expected Fiscal Impact

The fiscal impact to ODOE is indeterminate. Rulemaking will result in additional workload for the agency’s Nuclear Safety and Emergency Preparedness Division, which can be absorbed within existing resources in the current biennium. However, depending on the rules adopted and the effects of those rules on the agency’s level of oversight and enforcement to the waste disposal program, ODOE may need to request additional resources to implement those rules in the future.

Contact

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