

# **Hazardous Waste 2022 Rulemaking**

## Hazardous Waste Program

May 9, 2022

Virtual Meeting via Zoom

# Overview

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Agenda & Schedule

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Logistics

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Expectations

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Questions

# Common Terms

○ Resource Conservation and Recovery Act - RCRA

○ Hazardous and Solid Waste Amendments - HSWA

○ Code of Federal Regulations - CFR

○ Treatment, Storage, Disposal Facility - TSDF

○ Adopt by reference

○ Program authorization

○ Less and more stringent

# Technical Corrections



Clarification to episodic generation requirements:  
Shorten notification period



Amend Division 12 enforcement rules: Remove “or hazardous waste pharmaceuticals”

# Technical Corrections

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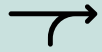
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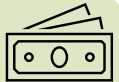
# Follow-up Rulemaking to Senate Bill 57: Hazardous Waste Disposal Fees

Ellie Brown, Policy Analyst, Headquarters

# SB57: What and Why



Modernize and streamline one statute, ORS 465.376: Special hazardous waste management fees.



Fees had not increased since establishment.



Included outdated waste streams with complex tiered system.



DEQ needed flexibility to set fees in rule, rather than in statute.



**New fee rates were effective Jan. 1, 2022.**

# Rulemaking Proposal

- Establish in Oregon Administrative Rules Chapter 340:

- Definitions
- Rates

Oregon Secretary of State

Home Business Voting Elections State Archives Audits

Department of Environmental Quality

Chapter 340

DIVISION 100  
HAZARDOUS WASTE MANAGEMENT

340-100-0001  
Purpose and Scope

(1) The Department of Environmental Quality finds that increasing quantities of hazardous waste are being generated in Oregon. That waste, without adequate safeguards, can create conditions that threaten public health and the environment. It is therefore in the public interest to establish a comprehensive program to provide for safely managing this waste.

(2) The purpose of the management program in OAR chapter 340 divisions 100 to 110, 120, 124 and 142 is to control hazardous waste from the time of generation through transportation, storage, treatment and disposal. Toxics use reduction, hazardous waste reduction, hazardous waste minimization, beneficial use, recycling and treatment are preferred over land disposal. To this end, the Department intends to minimize the number of disposal sites and to tightly control their operation.

(3) OAR chapter 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142 incorporate by reference hazardous waste management regulations of the federal program, included in 40 C.F.R. Parts 260 to 268, 270, 273 and Subpart A and Subpart B of Part 124, into Oregon Administrative Rules. Therefore, a person must consult these parts of 40 C.F.R. in addition to OAR chapter 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142, to determine all applicable hazardous waste management requirements.

(4) A secondary purpose of this program is to obtain EPA Final Authorization to manage hazardous waste in Oregon in lieu of the federal program.

Statutory/Other Authority: ORS 466.020, 466.075, 466.105, 466.195 & 468.020  
Statutes/Other Implemented: ORS 466.010, 466.015 & 465.009

History:  
DEQ 5-2015, f. & cert. ef. 4-15-15  
DEQ 13-2002, f. & cert. ef. 10-9-02  
DEQ 9-2001, f. 6-18-01, cert. ef. 7-1-01  
DEQ 11-1998, f. & cert. ef. 6-26-98  
DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91)  
DEQ 8-1985, f. & ef. 7-25-85

340-100-0002  
Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations

(1) Except as otherwise modified or specified by OAR 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142, the Commission adopts by reference, and requires every person subject to ORS 466.005 to 466.080 and 466.090 to 466.215, to comply with the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, as the United States Environmental Protection Agency prescribes in 40 C.F.R. Parts 260 to 268, 270, 273 and Subpart A and Subpart B of Part 124, as enacted through July 20, 2000, except as modified below in sections (3) to (7) of this rule.

(3)(a) A person may claim the submitted records, reports, or information are a trade secret in accordance with ORS 192.410 through 192.505 and 466.090.

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# Fiscal Impact

State of Origin	Pounds of waste	Tons of waste	Percentage of all waste
Washington	745,059,179	372,530	49%
Nevada	23,352	12	<1%
Idaho	9,041,032	4,521	<1%
Utah	3,177,498	1,589	<1%
Oregon	292,509,104	14,6255	19%
<b>TOTAL</b>	<b>1,527,751,215</b>	<b>76,3876</b>	<b>100%</b>

# Follow-up Rulemaking to Senate Bill 57

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  - If so, what can DEQ do to mitigate that impact?

# Definition of Solid Waste Amendments

- Jay Collins, Hazardous Waste Inspector, Northwest Region
- Rich Duval, Environmental Engineer, Eastern Region
- Zeb Bates, Hazardous Waste Inspector, Northwest Region
- Killian Condon, Hazardous Waste Inspector, Western Region
- Chris Bayham, Hazardous Waste Inspector, Western Region

# Definition of Solid Waste Rule: History

- 2008: EPA Revision to the DSW rule - Oregon declines adoption
- 2015: EPA revises the 2008 final rule
  - Oregon takes adoption proposal to advisory committee, does not proceed due to lawsuit against EPA and RAC advice on additional regulatory structure for Oregon
- 2017: US Court of Appeals issues a decision on the 2015 rule
- 2018: US Court of Appeals issues amended decisions on 2015 rule
  - EPA issues 2018 DSW Response to Court Vacatur
- 2021: Oregon begins rule analysis; determines more time is needed and removes rule from 2021 adoption package
- 2022: Oregon pursues adoption of mandatory DSW provisions aligned with Oregon rules

# State Adoption and Authorization



EPA establishes  
federal rules



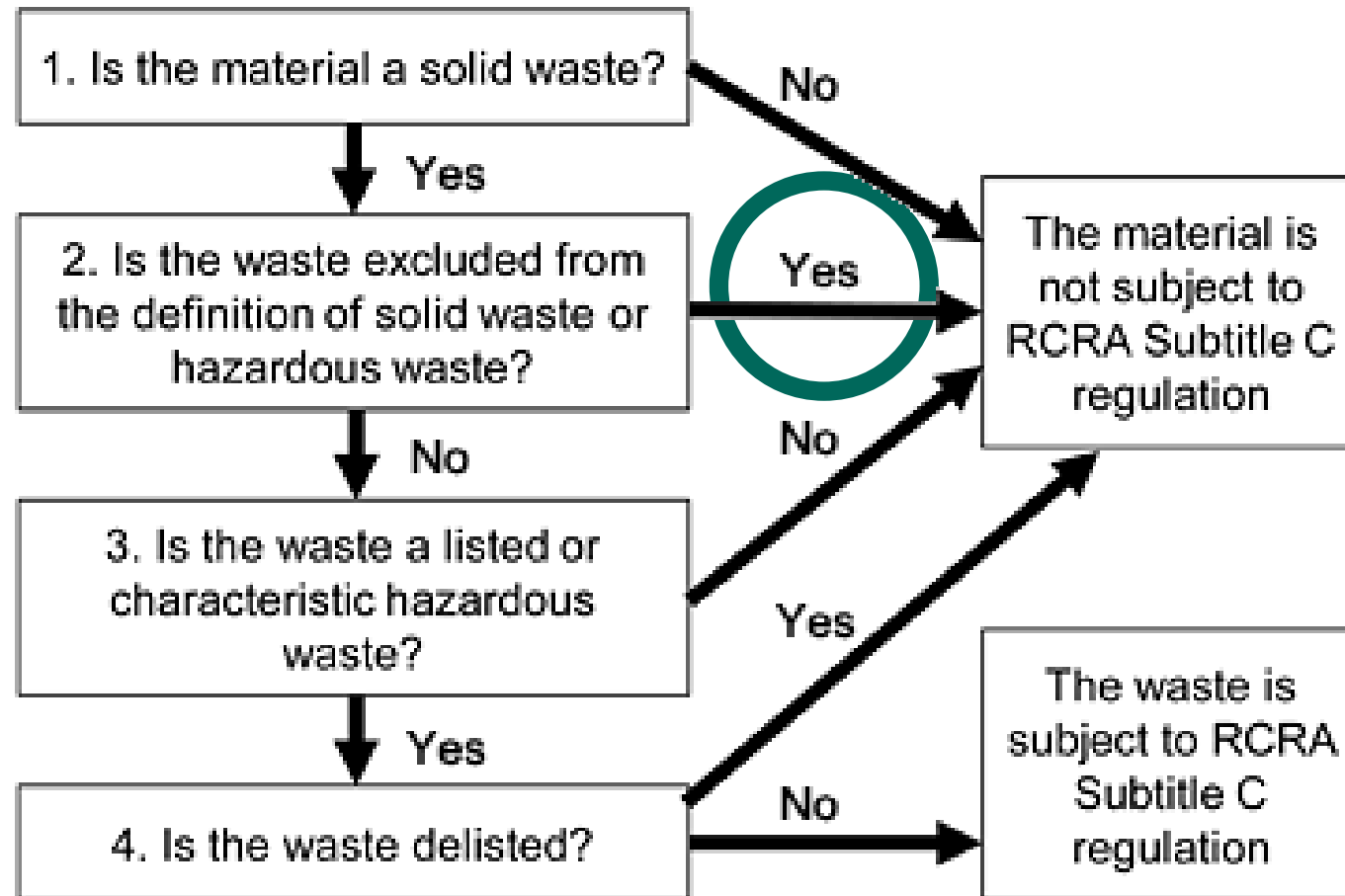
States can seek EPA  
Authorization



Authorized states are  
required to periodically  
adopt federal rules

# EPA's Definition of Solid Waste

## The Hazardous Waste Identification Process



Source: EPA

# EPA's Definition of Solid Waste Rule

- Establishes:
  - Hazardous secondary material
  - Legitimacy criteria for recycling
  - Speculative accumulation rules
  - Sham recycling definition
- Updates:
  - “Contained” definition applies to hazardous secondary materials and hazardous waste
  - Variance rules include non-waste determination



# Hazardous Secondary Material Definition

Oregon to adopt the definition of Hazardous Secondary Material, or HSM

- Distinct from the DSW exclusion.
- Necessary to create a class of materials subject to new protective HSM provisions.

**Hazardous Secondary Material:** A secondary material, such as spent material, by-product, or sludge that, when discarded, would be identified as hazardous waste under Part 261 of this chapter.



# Reasons for Adopting HSM Definition



Defining this class of materials is mandatory for adoption.

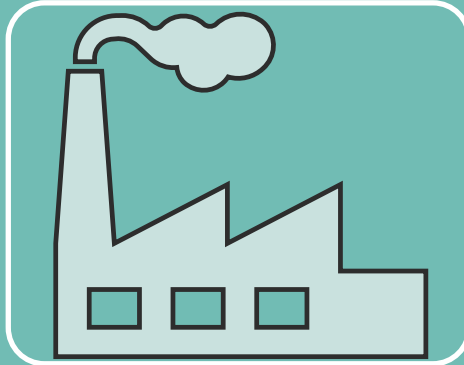


Adopting HSM definition aligns Oregon with federal rules.



Should clarify when materials managed under preexisting exclusions cross state lines.

# Variance Option



New variance option for generators:

- Limited to set material categories
- Plan to evaluate and process applications under existing variance review mechanism



Non-waste rule is less stringent, not mandatory

DEQ has pathway for processing variances, but rarely used

# Discussion of 40 CFR 260 Changes

- Definitions to adopt: Facility, HSM, HSM generator, transfer facility and contained, excluding land-based units

- Definitions not to adopt: Intermediate facility, remanufacturing

- Variance modifications and additions: Stricter requirements for partial variances; adds HSM non-waste variance; adds standards for non-waste determinations

- Broad process changes: Requirement to notify relevant changes; limits variances that DEQ issues after this adoption to ten years

# HSM Notification Requirements

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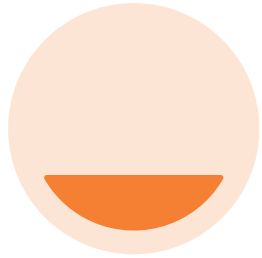
260.42 provides a notification requirement for hazardous secondary materials (2008, 2015, 2018)

Notification and reporting would be required only for material managed under new HSM variance regulations.

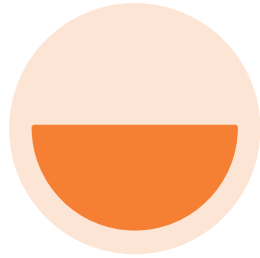
Mandatory adoption of 260.30 notification requirement

# HSM Legitimacy Criteria: Four Factors

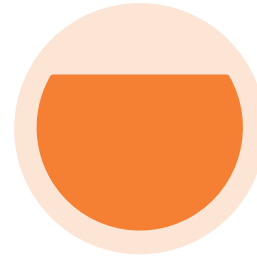
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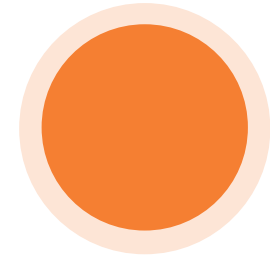
Must involve HSM that provides useful contribution.



Produce a valuable product or intermediate.



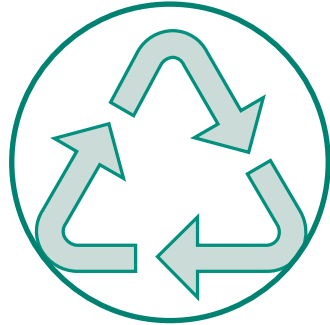
Manage HSM as a valuable commodity.



Product must be comparable to a legitimate product or intermediate.

Records documenting compliance with these provisions must be kept available for review for three years past conclusion of recycling activity.

# HSM Material Management



HSM is not speculatively accumulated if generator can show:

- Material is recyclable under the legitimacy criteria, and
- $\geq 75\%$  of the material is recycled each calendar year.



Stored material must be:

- Placed in a storage unit meeting the definition of contained.
- Storage unit must have a label, and an accumulation start date. If impractical, accumulation can be tracked using an inventory system.

**These management standards apply to all HSM!**

# Sham Recycling

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Failure to demonstrate compliance with legitimacy criteria or to manage HSM to standards

HSM that is sham recycled loses its RCRA exclusion and is instead hazardous waste, subject to all hazardous waste requirements.

# Definition of HSM Generator

Aligns Oregon with federal rule

Secures Oregon authority for:

- Speculative accumulation
- HSM container management
- Sham recycling
- Legitimate recycling

**Hazardous secondary material generator:** Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of §261.2(a)(2)(ii) a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.



# Revised Definitions

## Facility

- Definition changes to add all land and structures where HSM is managed

All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, **or for managing hazardous secondary materials prior to reclamation**. A facility may consist of several treatment, storage, or disposal operational units, such as one or more landfills, surface impoundments, or combinations of them.

# Revised Definitions

## Contained

- Definition applicable to HSM and hazardous waste
- EPA's definition includes "land-based units"
- EPA's definition is less stringent, thus not required

## Oregon's Approach

- Prohibit management on land in land-based units
- Do not adopt term "land-based unit" in Part 260.10
- Require management in tanks, containers, containment buildings, and permitted units at treatment, storage and disposal facilities

# Fiscal Considerations

## Regulated Community

- Conducting legitimacy criteria reviews
- Maintaining documentation onsite available for review
- Meeting speculative accumulation and storage provisions
- Revisions to written compliance programs
- Staff training

## DEQ

- Development of public guidance materials
- Web and document updates
- Technical assistance outreach
- Rule implementation during compliance inspections

# Positive Environmental Impacts

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## **Legitimacy criteria**

requirements seek to eliminate potential exposure to hazardous constituents along for the ride.

**Variance rule  
changes**  
provide for continued oversight.

**Speculative  
accumulation**  
provisions provide a regulatory template that reduce risk of environmental liability for Oregon generators.

# Washington Ecology's Approach

Adopted  
mandatory  
portions of 2015  
DSW Rule

Postponed for  
later  
determination the  
optional DSW  
exclusion

Did not adopt

Insufficient  
information to  
assess lessons  
learned

2018 rule  
changes

Variance  
provisions

Land-based  
unit in  
"contained"  
definition



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# Summary of Adoption Proposal

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## Adopt

- Modified definition of contained – no land-based units
- Definition of HSM
- Definition of HSM generator
- Legitimacy criteria
- Definition of sham recycling
- New speculative accumulation requirements
- Variance rules (notification reporting, and renewal)

## Do not adopt

- DSW exclusion

Mandatory Rule Adoption	Optional	Proposed Oregon Modification	Notes
<b>Non-waste determinations and variances CFR 260.31 &amp; CFR 260.33</b>			Changes affecting all non-waste determinations and variances. More stringent for all state programs that did not adopt January 13, 2015, DSW Rule.
<b>Legitimacy related provisions CFR 260.43</b>  <b>Prohibition of Sham Recycling CFR 261.2(b)(4)</b>  <b>Definition of Contained CFR 260.10</b>	*Defining Sham Recycling CFR 261.2(g)  * Definition of Hazardous Secondary Material CFR 260.10	Definition of contained: Remove land-based units from the definition of contained.	Legitimacy-related provisions, including the prohibition of sham recycling, definition of legitimacy, definition of contained. More stringent for all state programs that did not adopt the 2015 DSW rule.
<b>Speculative Accumulation CFR 261.1(c)(8)</b>			Speculative accumulation
	*Definition of Hazardous Secondary Material Generator CFR 260.10		2008 DSW exclusions and non-waste determinations, including revisions from the 2015 DSW final rule and 2018 DSW final rule. Less stringent for states not operating under 2008 DSW rule.

**\*Denotes non-mandatory portions of rule adoption. DEQ recommends adopting these rules for clarity.**



# Definition of Solid Waste

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- Timeline and next steps.
- Questions?

