Oregon Department of Environmental Quality

November XX, 2018ENTER EQC MEETING DATEEnter EQC Meeting Date mm dd, yyyy

Oregon Environmental Quality Commission Meeting

Agency Staff Report

Rulemaking Action Item No. XX

**Selmet Delisting 2018**

## Table of Contents

[DEQ recommendation to the EQC 3](#_Toc490121542)

[Introduction 4](#_Toc490121543)

[Statement of Need 6](#_Toc490121545)

[Rules affected, authorities, supporting documents 7](#_Toc490121546)

[Fee Analysis 8](#_Toc490121547)

[Statement of fiscal and economic impact 9](#_Toc490121548)

[Federal relationship 10](#_Toc490121549)

[Land Use 11](#_Toc490121550)

[Advisory Committee 12](#_Toc490121551)

[Public Hearings 13](#_Toc490121552)

[Summary of comments and DEQ responses 14](#_Toc490121553)

[Commenters 17](#_Toc490121554)

[Implementation 18](#_Toc490121555)

[Five-year review 20](#_Toc490121556)

[Draft Rules – With Edits Highlighted 22](#_Toc490121557)

[Draft Rules – With Edits Included 23](#_Toc490121558)

[Supporting Documents 24](#_Toc490121559)

|  |
| --- |
| DEQ recommendation to the EQC |

DEQ recommends the Environmental Quality Commission adopt the proposed rule as part of Chapter 340, Division 101 of the Oregon Administrative Rules.

|  |
| --- |
| Introduction |

**Summary of proposed rule changes**

DEQ proposes amending Oregon’s hazardous waste regulations in chapter 340, division 101, of the Oregon Administrative Rules. The change will incorporate the delisting of Selmet’s F006 hazardous waste.

Under this rule, Oregon would no longer consider Selmet’s F006 waste to be a listed hazardous waste in the United States Code of Federal Regulations 261.3 and Oregon Administrative Rules. Following the delisting, Selmet may send the delisted F006 waste to a permitted, non-hazardous landfill.

**REVIEWERS do not edit or modify this section**

Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

## Background

Selmet Inc., located in Albany, Oregon, performs chemical etching and milling in manufacturing titanium alloy castings and machined parts. The U.S. Environmental Protection Agency defines chemical etching and milling as an electroplating process such that waste from the process is within the scope of the F006 hazardous waste listing. Historically, Selmet managed chemical etching and milling sludge as a non-hazardous industrial waste at a non-hazardous waste Subtitle D landfill. However, in 2017, due to an updated review of chemical etching and milling operations at titanium-casting facilities in Oregon, DEQ notified Selmet that it should handle its chemical etching and milling sludge as F006 listed hazardous waste.

EPA authorizes the state of Oregon to manage its hazardous waste, or Resource Conservation and Recovery Act, program. EPA also authorizes Oregon to stop categorizing specific substances as hazardous waste in Oregon when specified conditions are met. This process is called “delisting.” Under Oregon Administrative Rules 340-100-0020 and 340-100-0022, Selmet has petitioned DEQ to exempt the etching and milling sludge from being classified as hazardous waste.

### DEQ proposal

DEQ proposes amending Oregon’s hazardous waste regulations in chapter 340, division 101, of the Oregon Administrative Rules. The change will incorporate the delisting of Selmet’s F006 hazardous waste. DEQ is taking this action under the following authorities:

* 50 Federal Register 52629, Oct. 10, 1995 (EPA authority for Oregon to operate hazardous waste program)
* 40 C.F.R. sections 260.20 and 260.22 (authority for petitions to delist a substance), incorporated by reference in OAR 340-100-0020, -0022
* Oregon Revised Statute 466.075(3) (authority to exempt substances from hazardous waste requirements)
* OAR 340-100-0020, -0022 (authority to petition for exclusion)

A petitioner who wants DEQ to delist a hazardous waste must comply with 40 C.F.R. sections 260.20 and 260.22, incorporated by reference in OAR 340-100-0020, -0022. To summarize, the petition must show the waste does not contain the constituents for which EPA originally listed the waste in concentrations above risk-based standards. This is done using EPA’s Delisting Risk Assessment Software. The risk-based evaluation must also determine that factors, including additional constituents other than those for which the waste was listed, do not warrant retaining the waste as a hazardous waste. In addition, the waste must not be a characteristic hazardous waste (e.g., ignitable, reactive, etc.).

In May 2018, Selmet petitioned DEQ to exclude chemical etching and milling sludge from the F006 listing. This delisting petition includes chemical etching and milling sludge generated by Selmet’s current process, as well as sludge that Selmet historically accumulated in its on-site evaporation pond.

The hazardous waste constituents for which the EPA lists F006 sludge are cadmium, hexavalent chromium, nickel and complexed cyanide. Before submitting the delisting petition, Selmet worked with DEQ to develop a sampling and analysis plan to accurately characterize Selmet’s chemical etching and milling operations and historically accumulated sludge. DEQ provides additional details about Selmet’s sampling and analysis process in the attached Delisting Project Memorandum.

After reviewing Selmet’s sampling and analysis results and taking the above analysis into consideration, DEQ determined it is not necessary for Selmet to manage its chemical etching and milling sludge as hazardous waste.

**Who does this affect?**

This proposal affects only Selmet and is specific to the waste generated by Selmet’s Albany facility.

|  |
| --- |
| Statement of Need |

**REVIEWERS do not edit or modify this section**

Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

#### What need would the proposed rule address?

Selmet is currently managing its chemical etching and milling sludge as F006 listed hazardous waste. It is very costly for Selmet to manage the waste in this way.

#### How would the proposed rule address the need?

Selmet would be able to manage chemical etching and milling sludge as non-hazardous industrial waste, significantly reducing their management and disposal costs. The waste can be safely managed in a Subtitle D landfill.

#### How would the proposed rule address the need?

DEQ will know when Selmet no longer manages the chemical etching and milling sludge as hazardous waste because it will no longer list the waste on its annual hazardous waste management report.

|  |
| --- |
| Rules affected, authorities, supporting documents Rules affected, authorities, supporting documents |

**REVIEWERS do not edit or modify this section**

Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

#### Lead division

Land Quality

#### Program or activity

Hazardous Waste Program

#### Chapter 340 action

**Amend**

|  |
| --- |
| OAR 340-101-0004 |

### Statutory authority

ORS 466.020 and 466.180

### Statute implemented

ORS 466.015 and 466.195

### Documents relied on for rulemaking

|  |  |
| --- | --- |
| Document title | Document location |
| Delisting Petition #DP-2018-001(a) & DP-2018-001(b) | Attached to this report. |
| Delisting Project Memorandum, June 26, 2018 | Attached to this report |

|  |
| --- |
| Fee Analysis |

**REVIEWERS do not edit or modify this section**

Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

This rulemaking does not involve fees.

|  |
| --- |
| **Statement of fiscal and economic impact** |

**REVIEWERS do not edit or modify this section**

Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

## Fiscal and Economic Impact

The only negative fiscal impact from this rulemaking will affect DEQ. Following delisting, Selmet will no longer be required to pay hazardous waste management fees to DEQ in association with the F006 listed hazardous waste. However, DEQ will continue inspecting Selmet’s facility and providing compliance assistance.

Selmet will receive positive fiscal benefits. Since November 2017, Selmet has managed its chemical etching and milling sludge as a F006 hazardous waste at an approximate monthly cost of $25,000. If the EQC adopts the proposed rule amendments, Selmet will reduce its costs in handling and disposal of the materials that are the subject of this rulemaking.

**Statement of Cost of Compliance**

State agencies

The proposed rule will reduce DEQ’s Hazardous Waste program revenue. DEQ will no longer require the specific facility these rules affect to pay fees for hazardous waste disposal. In addition, DEQ will receive less fee revenue from the treatment, storage and disposal facility that is currently receiving the hazardous waste.

### Local governments

DEQ anticipates there will be no fiscal or economic impacts to local governments, as the rule impacts only one, site-specific facility.

### Public

DEQ anticipates there will be no fiscal or economic impacts to the general public.

### Large businesses - businesses with more than 50 employees

DEQ anticipates there will be a fiscal or economic impact to one large business that currently receives the F006 hazardous waste for disposal. DEQ is unable to quantify this impact. If EQC adopts the proposed rule amendments, Selmet will reduce its costs in handling and disposal of the materials that are the subject of this rulemaking.

### Small businesses – businesses with 50 or fewer employees

#### a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

DEQ anticipates there will not be adverse impacts on small businesses.

#### **b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule**.

These rule changes will not require any additional reporting, recordkeeping or other administrative activities.

#### c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

No additional equipment, supplies or labor will be required to comply with these rules.

#### d. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ did not involve small businesses in developing these proposed rules because the rules do not affect small businesses.

## Documents relied on for fiscal and economic impact

|  |  |
| --- | --- |
| Document title | Document location |
| Delisting Petition #DP-2018-001(a) & DP-2018-001(b) | DEQ-HQ-HW Program  700 NE Multnomah Street, Suite 600  Portland, OR 97232-1400 |

Advisory committee

DEQ did not convene an advisory committee. The proposed rulemaking affects only one specific facility, does not affect any small businesses or the general public, and only has a fiscal impact on DEQ and the petitioner. There was a public hearing and public comment period to gather public comments on the rulemaking.

Housing cost

As Oregon Revised Statute 183.534 requires, DEQ evaluated whether the proposed rules 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 rules do not have any bearing on housing.

|  |
| --- |
| Federal relationship |

**REVIEWERS do not edit or modify this section**

Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

### Relationship to federal requirements

ORS 183.332, 468A.327, and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

In this case, there is no comparable federal requirement. The proposed rule amendments are not in addition to or different from federal requirements.

Under the state and federal rules cited above, the EPA authorizes DEQ to operate Oregon’s hazardous waste program. The EPA also authorizes Oregon to exempt substances from being classified as F006 listed hazardous substances in Oregon if a petitioner meets the requirements stated in the state and federal rules listed above. This action is consistent with federal rules.

|  |
| --- |
| Land Use |

**REVIEWERS do not edit or modify this section**

Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

### Land-use considerations

In adopting new or amended rules, Oregon Revised Statute 197.180 and Oregon Administrative Rule 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under Oregon Administrative Rule 660-030-0005 and 340, division 18, DEQ considers that rules affect land use if:

* The statewide land use planning goals specifically refer to the rule or program, or
* The rule or program is reasonably expected to have significant effects on:
* Resources, objectives or areas identified in the statewide planning goals, or
* Present or future land uses identified in acknowledged comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. This plan describes the DEQ programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

|  |  |
| --- | --- |
| Goal | Title |
| 5 | Open Spaces, Scenic and Historic Areas, and Natural Resources |
| 6 | Air, Water and Land Resources Quality |
| 9 | Ocean Resources |
| 11 | Public Facilities and Services |
| 16 | Estuarial Resources |

Statewide goals also specifically reference the following DEQ programs:

* Nonpoint source discharge water quality program – Goal 16
* Water quality and sewage disposal systems – Goal 16
* Water quality permits and oil spill regulations – Goal 19

### Determination

DEQ determined that these proposed rules do not affectland use under Oregon Administrative Rule 340-018-0030 or DEQ’s State Agency Coordination Program.

|  |
| --- |
| Advisory Committee |

### Advisory committee

DEQ did not convene an advisory committee. The proposed rulemaking affects only one specific facility, does not affect any small businesses or the general public, and only has a fiscal impact on DEQ and the petitioner. There will be a public hearing to gather public comments on the rulemaking.

|  |
| --- |
| Public Hearings |

### Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on August 15, 2018 by:

* Filing notice with Oregon Secretary of State for publication in the September 2018 Oregon Bulletin
* Notifying EPA
* Posting the Notice on the web page for this rulemaking, located at: [Delisting Rulemaking Web Page](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rdelisting2018.aspx)
* Emailing 10,633 interested parties on the following DEQ lists through GovDelivery:
  + Rulemaking
  + Hazardous Waste
* Emailing the following key legislators required under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html):
* Senator Michael Dembrow, Chair, Senate Interim Committee on Environment and Natural Resources
* Representative Ken Helm, Chair, House Interim Committee on Energy and Environment
* Senator Sara Gelser
* Representative Andy Olson
* Postings on Twitter and Facebook
* Posting on the DEQ event calendar: [DEQ Calendar](http://oregon.gov/deq/Pages/Events.aspx)
* Publishing notice in the following newspaper:
* *The Albany Democrat Herald*

## Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rules’ substantive goals while reducing the rules’ negative fiscal or economic impact on business. This document includes a summary of comments and DEQ responses.

## Public hearings

DEQ heldone one public hearing. DEQ received no comments at the hearing. Later sections of this document include a summary of the two comments received during the open public comment period, DEQ’s responses, and a list of the commenters. Original comments are on file with DEQ.

## Presiding Officers’ Record

|  |  |
| --- | --- |
| Hearing 1 | |
| Date | September 17, 2018 |
| Place | Linn-Benton Community College, Vineyard Mountain Room CC213,  6500 Southwest Pacific Blvd., Albany, OR |
| Start Time | 6:00 p.m. |
| End Time | 7:00 p.m. |
| Presiding Officer | Eileen Naples |
| Staff Presenters | Dan Lobato, Seth Sadofsky |

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices. The staff presenters gave a brief overview presentation of the proposed rulemaking, followed by a question and answer period.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

No person presented any oral testimony or written comments.

## Public comment period

## DEQ accepted public comment on the proposed rulemaking from August 15, 2018 until 4:00 p.m. on September 21, 2018.

|  |
| --- |
| Summary of comments and DEQ responses |

# 

DEQ received two public comments during the August 15 to September 21 public comment period. Both comments are included below and DEQ’s response follows the comments.

DEQ did not change the proposed rules in response to comments.

**Comment 1**

This delisting proposal is not in the public interest, nor is it justified under RCRA. DEQ was correct in its 2017 determination that Selmet must handle its chemical etching and milling waste (both currently generated and older stockpiled waste) as F006 hazardous waste. Cadmium, hexavalent chromium, nickel and complexed cyanide are highly toxic wastes, and they should be treated as such to protect public health and the environment. This delisting would be a dangerous precedent, likely to be employed by other generators of hazardous waste. The proposed rule change cites the only this single “need”: shielding Selmet from the costs of proper treatment and disposal. Beside the pollution threats, there is the issue of rewarding a company that seems to have no plans for pollution prevention. This slants the playing field to the advantage of polluters and irrationally punishes companies that implement sustainable production processes. Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##.

Enter a summary of this comment category.

**Comment 2**

Selmet’s milling waste containing, among other things, cadmium, hexavalent chromium, nickel and complexed cyanide are all well-known toxics that should remain as DEQ determined, F006 hazardous waste. It is an affront that the company should seek an exemption on the basis of merely being costly. Such a delisting would put the risk to public health as secondary to profit, and encourage others to avoid their responsibility to handle hazardous waste responsibly, a dangerous precedent I appreciate and support the 2017 review decision. Proper protection has its costs; Selmet should be denied an easy out. Thank you for the opportunity to comment.

**Response 1**

The following response addresses both comment 1 and comment 2:Enter DEQ’s response to this category of comments.

The subject of this delisting, F006, is a hazardous waste derived from a variety of industrial operations and, specific to the Selmet, Inc. petition, includes wastewater treatment sludge from current and historic chemical etching and milling operations.

Hazardous waste generators, including Selmet, have the option to petition the Department of Environmental Quality to exclude or “delist” a facility’s waste from being a federally-listed hazardous waste by Oregon administrative rule if they demonstrate the waste can be safely managed in a permitted non-hazardous waste landfill.

Prior to sampling and analysis, Selmet consulted with DEQ to review the materials that are currently used in all stages of the facility’s chemical etching and milling process, as well as any historic processes resulting in wastes that Selmet deposited in its evaporation pond.

Based on DEQ’s review of Selmet’s current process, third party laboratories certified by the Oregon Environmental Laboratory Accreditation Program analyzed samples of the resulting chemical etching and milling sludge for: cadmium, manganese, molybdenum, nickel, silver, vanadium, zirconium, total chromium, hexavalent chromium, cyanide and fluoride. The laboratories also analyzed sludge from Selmet’s evaporation pond for those chemicals and—based on historic variations in Selmet’s chemical etching and milling process as well as past unknown practices—additionally tested the evaporation pond sludge for the following chemicals: fluoride, cyanide, antimony, arsenic, beryllium, cobalt, copper, lead, mercury, selenium, zinc, and polychlorinated biphenyls. The laboratories also performed a scan for volatile organic compounds and semi-volatile organic compounds.

DEQ screened the analytical results from Selmet’s current chemical etching and milling process and evaporation pond against concentrations from the United States Environmental Protection Agency Delisting Risk Assessment Software. The software uses knowledge of the volume of wastes and final management along with toxicity information to determine an acceptable concentration for the waste to be placed in a permitted non-hazardous waste landfill. This screening showed that this sample will not exceed one-in-a-million excess cancer risk or a hazard index of one for human health receptors or ecological risk screening levels.

The Selmet F006 delisting petition applies only to the specific waste streams identified in Selmet’s 2018 delisting petition. This delisting does not apply to other facilities in Oregon. Selmet’s wastewater treatment sludge delisting will remain in effect only as long as Selmet maintains the same operating conditions generating the identified waste streams described in the delisting petition.

DEQ encourages all Oregon businesses to responsibly manage hazardous waste by [eliminating toxic waste and preventing pollution](https://www.oregon.gov/deq/Hazards-and-Cleanup/ToxicReduction/Pages/Eliminate-Toxic-Waste.aspx). Preventing waste and pollution makes sense for the economy and the environment.

|  |
| --- |
| Implementation |

## Notification

The proposed rules would become effective upon filing on approximately November 19, 2018. DEQ will notify Selmet via email if the EQC approves of this proposed F006 wastewater treatment sludge delisting and agrees with DEQ’s recommendation that it is safe to manage the material in a DEQ-approved permitted solid waste landfill.

Selmet’s F006 wastewater treatment sludge delisting will remain in effect only as long as Selmet maintains the same operating conditions generating the identified waste streams described in the delisting petition. If Selmet makes any changes to the process, they must handle the waste generated after the process change as hazardous waste until DEQ is able to confirm in writing that the wastewater treatment sludge continues to meet the conditions described in the 2018 delisting. Selmet must also notify DEQ of this change within 30 days. Additionally, Selmet is required to test their wastewater treatment sludge annually to ensure that the waste does not exceed the specified delisting concentrations.

|  |
| --- |
| Five-year review ORS 183.405 |

**REVIEWERS do not edit or modify this section**

Meyer updates this section on our behalf

Requirement

Oregon law requires DEQ to review newrules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

## Exemption from five-year rule review

DELETE THIS PARAGRAPH IF NO RULES ARE EXEMPT FROM REVIEW:

The Administrative Procedures Act exempts CHOOSE ONE: SOME … ALL of the proposed rules from the five-year review because the proposed rules would:

DELETE ANY THAT DON’T APPLY:

* Amend or repeal an existing rule. ORS 183.405(4).

DELETE THIS PARAGRAPH IF ANY OF THE RULES ARE EXEMPT FROM REVIEW:

None of these proposed rules are exempt from the five-year review under ORS 183.405(4) and 183.405 (5) of the Administrative Procedures Act. DELETE THIS PARAGRAPH IF NO RULES ARE SUBJECT TO FIVE YEAR REVIEW:

## Five-year rule review required

No later than DATE FIVE YEARS FROM ADOPTION. DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

* The rule has had the intended effect
* The anticipated fiscal impact of the rule was underestimated or overestimated
* Subsequent changes in the law require that the rule be repealed or amended
* There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3)

|  |
| --- |
| Draft Rules – With Edits Highlighted |

**REVIEWERS do not edit or modify this section**

Meyer will update this section on our behalf

|  |
| --- |
| Draft Rules – With Edits Included |

**REVIEWERS do not edit or modify this section**

Meyer will update this section on our behalf

|  |
| --- |
| Supporting Documents |

**REVIEWERS do not edit or modify this section**

Meyer will update this section on our behalf