



Oregon Department of Environmental Quality

Nov. 14-15, 2019

Oregon Environmental Quality Commission Meeting

Agency Staff Report

Item M: Rulemaking (Action)

Pacific Cast Technologies, Inc., Delisting 2019

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DEQ Recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules, excluding Pacific Cast Technologies, Inc.'s sludge from classification as a F006 hazardous waste

Proposed motion language:

"I move that the commission adopt the proposed rule amendments in Attachment A of this staff report as part of Chapter 340 of the Oregon Administrative Rules."

Overview

Background

If approved, this rulemaking would designate a specific waste substance produced at a specific facility as non-hazardous waste. That would allow the business to manage the waste in a less expensive manner consistent with safety regulations for non-hazardous waste.

EPA authorizes the state of Oregon to manage its hazardous waste program under the Resource Conservation and Recovery Act. EPA also authorizes Oregon to stop categorizing specific substances as hazardous waste in Oregon when specific conditions are met. This process is called delisting.

This rulemaking concerns wastewater treatment sludge from electroplating operations. For ease of reading and understanding, this document will refer to that material as sludge.

In April 2019, Pacific Cast Technologies, Inc., then doing business as ATI Cast Products, submitted a petition for a F006 delisting rulemaking to DEQ. Following DEQ's July 15, 2019, public notice for this proposed rulemaking, ATI completed the sale of its titanium-alloy casting and machine parts unit to Consolidated Precision Products Corps., doing business as Pacific Cast Technologies, Inc. While the facility has changed ownership, the production process and waste described in the April 2019 petition and subsequent public notice remains the same.

Pacific Cast Technologies manufactures titanium-alloy castings and machine parts for the aerospace industry. After parts are cast and milled, they are treated in acid baths in a process known as chemical etching and milling.

Chemical etching and milling uses chemical solutions to dissolve the outer metal layer. The U.S. Environmental Protection Agency defines wastewater treatment sludge from electroplating operations, including chemical etching and milling, as an F006-listed hazardous waste because they often use cadmium, hexavalent chromium, nickel and complexed cyanides. When it is improperly managed, wastewater treatment sludge from

chemical etching and milling processes has the potential to significantly contribute to an increase in mortality, serious injury and/or environmental harm.

Historically, PCT managed and disposed of its sludge as a non-hazardous industrial waste at a permitted landfill. In 1980s, EPA listed this type of sludge as a hazardous waste; however DEQ made the policy decision at that time to not consider this type of sludge a listed waste, because it did not contain the constituents for which it was listed at levels of concern. In late 2016, as part of an overall program review process, DEQ evaluated this practice and determined that the F006 listed hazardous waste code should apply to all wastewater treatment sludges derived from chemical etching and milling wastes. DEQ informed these types of facilities of the policy change and requirement to dispose of these wastes in a hazardous waste landfill, and the opportunity to pursue a delisting through the petition process. Since summer 2017, PCT has managed and disposed of its sludge as F006-listed hazardous waste. DEQ's proposal today follows the regulatory pathway of a delisting petition, based on a strict sampling and testing methodology.

A petitioner that 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 and -0022. The petition must show the waste does not contain the chemicals for which EPA originally listed the waste in concentrations above appropriate risk-based standards. 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 ignitable, reactive, corrosive, or toxic.

In November 2018, the commission adopted the state's first rulemaking to delist a hazardous waste. DEQ concluded F006 chemical etching and milling wastewater treatment sludge produced by Selmet, Inc., in Albany, Oregon is excluded from listing as hazardous waste. To maintain the exclusion, Selmet must meet specified conditions described in OAR 340-101-0004.

In April 2019, PCT petitioned DEQ to exclude its sludge from the F006 listing.

DEQ proposal

DEQ proposes delisting the specific waste that is the subject of PCT's petition. This action is justified based on DEQ's review of the sampling and analysis results and the delisting petition SLR International Corporation prepared for PCT. DEQ proposes amending Oregon's hazardous waste regulations in chapter 340, division 101, of the Oregon Administrative Rules, to delist PCT's F006 hazardous waste, 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 and -0022
- ORS 466.075(3) (authority to exempt substances from hazardous waste requirements)

- OAR 340-100-0020, -0022 (authority to petition for exclusion)

Who does this affect?

This proposal affects only Pacific Cast Technologies and is specific to the waste generated by Pacific Cast Technologies, Inc.'s facility at 150 Queen Avenue SW in Albany, Oregon.

Waste Analysis and Risk Screening

Before testing PCT's chemical etching and milling sludge, DEQ worked with PCT and its contractor, SLR, to review the materials used in all stages of the titanium casting process. DEQ also worked with PCT to identify a sampling and analysis plan for sludge. DEQ staff approved the sampling and analysis plan in February 2019.

Parameters for Analysis

Based on DEQ's review of chemicals used in the titanium casting process, SLR analyzed PCT's sludge for cadmium, hexavalent chromium, cyanide and nickel. These are the chemicals for which EPA lists F006 as a hazardous waste. SLR also analyzed the sludge for additional toxic chemicals that might be present in the waste: total chromium, manganese, molybdenum, silver, vanadium, zirconium and fluoride.

Screening Criteria

PCT is requesting permission to dispose of up to 9,000 cubic yards of sludge per year as non-hazardous waste. This volume accounts for current activities and potential future business growth. Sludge samples are screened against concentrations of hazardous chemicals derived from EPA's Delisting Risk Assessment Software. The software uses knowledge of the volume of waste and final disposition, along with toxicity information, to determine an acceptable concentration for the waste to go to a permitted, non-hazardous landfill.

Calculations are targeted to a carcinogenic risk not to exceed one in a million excess cancer and a non-carcinogenic hazard index of one. This is similar to other DEQ Land Quality programs using risk-based screening levels. The screening process uses the most conservative screening levels the software calculates for both total concentrations and concentrations that may leach into soil and groundwater.

Sampling and Analysis

As the RCRA Waste Sampling Draft Technical Guidance specifies, SLR used random unbiased composite sampling techniques to sample the sludge. SLR collected four composite sampling events from the sludge approximately one week apart on Feb. 14, Feb. 20, March 1, and March 7, 2019, to represent unique periods of sludge generation.

For each sampling event, SLR drew a grid dividing the sludge into a schematic of numbered squares. SLR used random numbers to select five squares from this grid to collect subsamples to composite for one analytical sample. For one of the sampling events, SLR collected two unique composite samples from the same waste bin to verify consistent results.

SLR composited and collected samples in appropriate sample containers for each analysis, placed the samples on ice, and shipped them to analytical laboratories. Pace Analytical did most analytical work and Specialty Analytical did some additional analysis. The Oregon Environmental Laboratory Accreditation Program certifies both labs.

SLR measured sludge composite samples for:

- Metals (cadmium, total chromium, manganese, molybdenum, nickel, silver, vanadium) by EPA test method 6010B
- Zirconium by method 6020D
- Cyanide by method 9012B
- Fluoride by method 9056A
- Hexavalent chromium by method 7196A

Results and Risk Screening

The software provides screening levels for total concentrations of chemicals and concentrations that may leach into soil and water. PCT's sludge is below the allowable concentrations of toxic metals, fluoride and cyanide.

DEQ agrees PCT's sludge is not ignitable, reactive, toxic or corrosive. Therefore, DEQ concludes it does not require handling as hazardous waste. PCT may therefore dispose of sludge in a permitted, non-hazardous Subtitle D landfill.

Recommendation

Based on DEQ's technical review of PCT's petition and the results of the sampling and analysis results, DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules, excluding PCT's sludge from classification as a F006 hazardous waste.

Statement of Need

What need would the proposed rule address?

PCT is currently managing its chemical etching and milling wastewater treatment sludge as F006-listed hazardous waste. The delisting petition demonstrated that the waste could safely go to a permitted, non-hazardous Subtitle D landfill. This would allow PCT to use a nearby landfill rather than trucking the waste approximately 200 miles to a hazardous waste landfill. If approved, the delisting would reduce the costs to PCT for management and disposal of its sludge as hazardous waste and eliminate the emissions associated with trucking the sludge to the farther away, hazardous waste landfill.

How would the proposed rule address the need?

If the Environmental Quality Commission approves the delisting rulemaking, PCT can manage the sludge as non-hazardous industrial waste, significantly reducing management and disposal costs, and reducing emissions from the transportation of the sludge to a hazardous waste landfill.

How will DEQ know the rule addressed the need?

DEQ will know when PCT no longer manages the sludge as hazardous waste because it will no longer list the waste on its annual hazardous waste management report.

Rules Affected, Authorities, Supporting Documents

Lead division

Land Quality

Program or activity

Hazardous Waste Program

Chapter 340 action**Rules Amended – OAR 340**

340-101-0004

Statutory Authority - ORS

466.020 and 466.180

Statutes Implemented - ORS

466.015 and 466.195

Documents relied on for rulemaking

Document title	Document location
Delisting Petition: #DP-2019-001	DEQ-HQ-HW Program 700 NE Multnomah Street, Suite 600 Portland, OR 97232-1400
Delisting Risk Assessment Software	https://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras

Fee Analysis

This rulemaking does not involve fees.

Statement of Fiscal and Economic Impact

Fiscal and Economic Impact

Following delisting, DEQ will no longer require PCT to pay hazardous waste management fees for its F006-listed hazardous waste. However, DEQ will continue to inspect PCT and offer compliance assistance.

PCT will receive positive fiscal benefits. Since June 2017, PCT has managed its chemical-etching and milling sludge as a F006-listed hazardous waste. This has cost approximately \$250,000 annually. If EQC adopts the proposed rule amendments, PCT will pay less to handle and dispose of the materials that are the subject of this rulemaking.

Statement of Cost of Compliance

State agencies

The proposed rule will reduce revenue for DEQ's hazardous waste program. DEQ will no longer require PCT to pay fees for hazardous waste disposal for the affected sludge. 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 impact to local governments, as the rule impacts only one specific facility.

Public

DEQ anticipates there will be no fiscal or economic impact to the 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-listed hazardous waste for disposal. If EQC adopts the proposed rule amendments, PCT 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 is 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-2019-001	DEQ-HQ-HW Program 700 NE Multnomah Street, Suite 600 Portland, OR 97232-1400

Advisory committee fiscal review

DEQ did not convene an advisory committee. The proposed rulemaking affects only one specific facility, does not affect any small businesses, or the public, and has a fiscal impact only on DEQ, the petitioner, and the waste facility described above. There was a public hearing Aug. 19, 2019, and public comment period from July 15 to August 20 to gather public comments on the rulemaking.

Housing cost

As Oregon Revised Statute 183.534 requires, DEQ evaluated whether the proposed rules affect 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

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 a listed hazardous substances in Oregon if a petitioner meets the requirements stated in the state (OAR 340-100-0020 and -0022) and federal (40 C.F.R. §§260.20 and .22) rules. This action is consistent with federal rules.

Land Use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 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 state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 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. The plan describes the 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 affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

EQC Prior Involvement

DEQ did not present additional information specific to this proposed rule revision.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- Filing notice with the Oregon Secretary of State for publication in the Aug. 1, 2019, Oregon Bulletin
- Notifying EPA by mail
- Posting the Notice of Rulemaking and draft rules on the webpage for this rulemaking, located at: [ATI Delisting 2019](#)
- Emailing 11,493 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Hazardous Waste
- Emailing the following key legislators required under ORS 183.335:
 - Senator Michael Dembrow, Chair, Senate Committee on Environment and Natural Resources
 - Senator Alan Olsen, Vice Chair, Senate Committee on Environment and Natural Resources
 - Representative Ken Helm, Chair, House Committee on Energy and Environment
 - Representative E. Werner Reschke, Vice-Chair, House Committee on Energy and Environment
 - Representative Sheri Schouten, Vice-Chair, House Committee on Energy and Environment
- Posting on the DEQ event calendar: [DEQ Calendar](#)
- Publishing notice in *The Albany Democrat Herald*, July 15, 2019.

Public Hearing

DEQ held one public hearing. DEQ received no comments at the hearing. Later sections of this document include a summary of the four comments received during the open public comment period. Original comments are on file with DEQ.

Presiding Officer's Record

Hearing 1

Date: Aug. 19, 2019

Place: Linn-Benton Community College, 6500 Southwest Pacific Blvd., Albany, Oregon

Start Time: 6 p.m.

Ending Time: 7 p.m.

Presiding Officer: Eileen Naples

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.

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

Four people attended the hearing in person. No people attended by teleconference. No person presented any oral or written comments at the hearing.

Summary of Public Comments and DEQ Responses

DEQ received four public comments during the public comment period. All four comments are included below. DEQ's responses follow the comments. DEQ did not change the proposed rules in response to comments.

DEQ received one comment after the close of the public comment period at 4 p.m. on Aug. 20, 2019. DEQ did not accept this comment as part of the public record and did not respond to the comment.

Comment 1 – Joshua Baker

How about more information so the public can make informed comments. Here are some suggestions:

- Who is ATI?
- When their toxic waste was first listed as such?
- What has changed to warrant a de-listing of ATI's toxic sludge?
- Where does ATI's toxic sludge go when ATI has discharged it?
- What public benefit does de-listing ATI's toxic sludge serve?

Comment 2 – Liz

I would like more information about the rulemaking and why this sludge was declassified as toxic.

What testing has been done to deem this non-toxic?

I would like more information on how this conclusion was reached. What made it toxic in the first place and what changed? Other than that the policy has changed, the toxic levels have not.

DEQ Response

The following response addresses both comment 1 and comment 2.

Hazardous waste can be “characteristic,” meaning the waste exhibits one of the four hazardous waste characteristics. These include ignitability, corrosivity, reactivity, and toxicity. Hazardous waste can also be “listed,” meaning the waste is specifically named in the regulations because it is generally known to be hazardous waste. The subject of this rulemaking, F006, is a hazardous waste derived from a variety of industrial operations, including chemical etching and milling.

Before 2017, it was DEQ's practice to consider chemical etching and milling wastewater treatment sludge (sludge) in facilities across the state to be non-hazardous because DEQ understood the sludge did not contain the chemicals F006 is listed for above risk-based concentrations. However, in 2017, DEQ re-examined this practice and aligned the state position with EPA's position that the sludge

must be managed as F006 hazardous waste until facilities demonstrate through a petition and delisting rulemaking that their sludge is not hazardous. Now, facilities in Oregon that produce listed hazardous waste have the opportunity to petition DEQ to exclude, or “delist” their sludge.

Pacific Cast Technologies (formerly dba ATI) manufactures titanium-alloy castings and machine parts for the aerospace industry using an electroplating process known as chemical etching and milling. In April 2019, PCT petitioned DEQ to delist its F006 waste.

PCT consulted with DEQ to review the materials that are currently used in all stages of the facility’s chemical etching and milling process and identify a sampling process for the resulting sludge. Based on this review, independent laboratories certified by the Oregon Environmental Laboratory Accreditation Program analyzed samples of PCT’s sludge. They analyzed for cadmium, chromium, cyanide, fluoride, hexavalent chromium, manganese, molybdenum, silver, nickel, vanadium, and zirconium.

To determine if this sludge is safe to dispose of in a permitted, non-hazardous landfill, DEQ compared sampling data to screening levels established by EPA’s delisting risk assessment software. This tool evaluates potential dangers to human health and the environment the sludge could cause if it is disposed of outside of a hazardous waste landfill. The tool considers the total volume of sludge, toxicity data for each chemical, potential exposure pathways, proposed disposal location, and risk levels chosen by the state.

Results of the results of the sampling, analysis, and screening process showed that PCT’s sludge does not exceed one-in-a-million excess cancer risk or a hazard index of one for human health receptors or ecological risk if it is disposed in a permitted, non-hazardous landfill.

The PCT F006 delisting rulemaking applies only to the specific chemical etching and milling sludge identified in the 2019 delisting petition. This delisting does not apply to other facilities in Oregon.

DEQ encourages all Oregon businesses to responsibly manage hazardous waste by eliminating toxic waste and preventing pollution. Preventing waste and pollution makes sense for the economy and the environment.

Comment 3 – KSS

1. Were samples collected during peak production periods?
2. Five samples collected over such a short period do not provide a representative sample set.
3. What controls exist for the proper maintenance of the pretreatment system? DEQ should understand how pretreatment system failures may impact the quality of the dewatered material and require the facility to create a written

plan for on-going evaluation of the pre-treatment system to ensure proper operation.

4. Was the Albany wastewater authority provided notice of this petition? Their review is imperative.

DEQ Response

1. DEQ does not believe that any variations in product throughput would lead to variations in waste characteristics.
2. This is not an unusual number of samples for a delisting petition. The specifications required for the products at this facility lead to very little variation in the waste. DEQ will also require the facility to conduct annual verification sampling.
3. This delisting only applies to wastewater treatment sludge from the system on site. Hazardous waste rules do not apply to wastewater sent from the facility to the City of Albany, and this rulemaking does not change any responsibilities the facility has to the City of Albany or others. The facility must continue operating the systems on site as the petition describes for this rule to remain in effect.
4. This delisting only applies to management of wastewater treatment sludges from the site. This does not authorize any change in the relationship between the facility and the City of Albany wastewater authority. The proposed action was noticed to DEQ's GovDelivery lists for rule making and for hazardous waste. DEQ also placed an ad in the Albany Democrat Herald.

Comment 4 – AK Davis

Does this pertain to all wastewater treatment sewage sludge, also known as treated sewage sludge, or biosolids?

DEQ Response

No, this delisting only applies to wastewater treatment sludges from the described process at this facility, which are currently listed hazardous waste. This does not add or remove any regulation to any other sludge at any facility.

Implementation

Notification

The proposed rules would become effective upon filing with the Oregon Secretary of State on approximately Nov. 18, 2019. DEQ will notify PCT if the commission approves of this proposed F006 wastewater treatment sludge delisting.

This delisting will remain in effect only as long as PCT maintains the same operating conditions generating the identified waste streams described in the delisting petition. If PCT makes 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 2019 delisting. PCT must also notify DEQ of this change within 30 days. Additionally, DEQ requires PCT to test their wastewater treatment sludge annually to ensure the sludge does not exceed the specified delisting concentrations.

Five-year Review - ORS 183.405

Requirement

Oregon law requires DEQ to review new rules 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

The Administrative Procedures Act exempts the proposed rules from the five-year review because the proposed rule action would amend or repeal an existing rule. ORS 183.405(4).

Accessibility Information

The Oregon Department of Environmental Quality 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.state.or.us.

Division 101
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

340-101-0004
Exclusions

- (1) Residue described in 40 C.F.R. § 261.4(b)(9) is exempted from divisions 100-106 and 109.
- (2) Dry cleaning wastewater subject to the requirements in OAR 340 division 124 is not excluded under 40 C.F.R. §§ 261.4(a)(1)(i) and (ii).
- (3) The phrase “or labeled with equivalent wording describing the contents of the container and recognizing the exclusion” is added to the end of the first sentence in 40 C.F.R. § 261.4(a)(26)(i) and 40 C.F.R. § 261.4(b)(18)(i).
- (4) The phrase “To a municipal solid waste landfill regulated under 40 C.F.R. part 258, including 40 C.F.R. § 258.40, or” is deleted from 40 C.F.R. § 261.4(b)(18)(vi)(A).
- (5) The phrase “To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or” in 40 C.F.R. 261.4(b)(18)(vi)(B) is deleted.
- (6) [Selmet, Inc. or its corporate successor \(Selmet\)](#). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:
 - (a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at [Selmet’s facility in Selmet, Inc.](#), Albany, Oregon, and contained in an on-site surface impoundment, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. This is a one-time exclusion. [\[Note: The petition is attached- as Appendix 1 to this rule.\]](#)
 - (b) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at [Selmet’s facility in](#), Albany, Oregon, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. The exemption is limited to a maximum annual rate of 3120 cubic yards per year. Selmet must have the sludge disposed of in a Subtitle D landfill the department licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [\[Note: The petition is attached as Appendix 1 to this rule.\]](#)
 - (c) The exemption described in [paragraph subsection](#) 6(b) of this rule remains in effect only as long as Selmet meets the following conditions:
 - (A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.2; chromium-4.9; nickel-32.7; cyanide-7.5 and fluoride-94.8.
 - (B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, Selmet, Inc. must collect and analyze one waste sample annually using methods with appropriate detection concentrations and elements of quality control. Selmet may use a total

analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure concentration as provided for in section 1.2 of Method 1311 [as described in EPA SW 846. \[The Toxicity Characteristic Leaching Procedure is attached to this rule as Appendix 3.\]](#)

(d) Changes in Operation Conditions:

(A) If Selmet, ~~Ine.~~, significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, Selmet must notify [DEQ](#)~~the department~~ not more than 30 days after making the change.

(B) Selmet, ~~Ine.~~ must handle the wastes generated after the process change as hazardous until [DEQ](#)~~the department~~ notifies Selmet in writing ~~the department~~[that DEQ](#) has determined the wastes continue to meet the delisting concentrations in subparagraph (6)(c)(A), that Selmet has demonstrated that no new hazardous constituents listed in appendix VIII of 40 C.F.R. part 261 have been introduced, and that the department approves Selmet's not handling the wastes as hazardous.

(e) Data Submittals: Selmet, ~~Ine.~~ must submit the data obtained through verification testing, or as required by other conditions of this rule, to [DEQ](#)~~the department~~. Selmet must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. Selmet, ~~Ine.~~ must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. Selmet, ~~Ine.~~ must make these records available to [DEQ](#)~~the department~~ for inspection. Selmet, ~~Ine.~~ must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(f) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, Selmet, ~~Ine.~~, possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in subparagraph 6(c)(A), then Selmet, ~~Ine.~~, must report such data, in writing, to [DEQ](#)~~the department~~, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (6)(d) and (6)(e), and any other information received from any source, [DEQ](#)~~the department~~ will make a preliminary determination as to whether the reported information requires department action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If [DEQ](#)~~the department~~ determines that the reported information does require ~~department~~ [DEQ](#) action, [DEQ](#)~~the department~~ will notify Selmet, ~~Ine.~~ in writing, of the actions [DEQ](#)~~the department~~ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing Selmet, ~~Ine.~~ with an opportunity to present information as to why the proposed [DEQ](#)~~department~~ action is not necessary or to suggest an alternative action. Selmet, ~~Ine.~~ must provide to [DEQ](#)~~the department~~ in

writing its information in response to the notice within 30 days from the date ~~DEQ~~~~the~~ ~~department~~ mails its notice requesting the information.

(D) ~~DEQ~~~~The department~~ will issue a final written determination. ~~DEQ~~~~The department~~ will issue the written determination no sooner than 30 days after ~~DEQ~~~~the department~~ mailed its notice to Selmet. Before issuing its determination, ~~DEQ~~~~the department~~ will consider any additional information Selmet submitted to DEQ within 30 days after ~~DEQ~~~~the department~~ issued its notice. The written determination will describe ~~DEQ's~~~~the department~~ actions that are necessary to protect human health and the environment. Any required action described in ~~DEQ's~~~~the department's~~ determination is effective immediately, unless ~~DEQ~~~~the department~~ provides otherwise.

(7) Pacific Cast Technologies, Inc., or its corporate successor (PCT). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:

(a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at PCT's, Albany, Oregon facility as described in the delisting petition PCT provided on April 11, 2019. The exemption is limited to a maximum annual rate of 9,000 cubic yards per year. PCT must have the sludge disposed of in a Subtitle D landfill that DEQ licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [Note: The petition is attached to this rule as Appendix 2.]

(b) The exemption described in OAR 340-101-0004(7)(a) remains in effect only as long as PCT meets the following conditions:

(A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.0911; chromium-2.27; nickel-13.5; and cyanide-3.08.

(B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, PCT must collect and analyze one waste sample annually using methods with appropriate detection limits and elements of quality control (similar to those in the delisting petition). PCT may use a total analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure -concentration as provided for in section 1.2 of Method 1311.

(b) Changes in Operation Conditions:

(A) If PCT significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, PCT must notify DEQ not more than 30 days after making the change.

(B) PCT must handle the wastes generated after the process change as hazardous until DEQ notifies PCT in writing DEQ has determined that the waste continues to meet the delisting concentrations in OAR 340-101-0004(7)(b)(A), that PCT has demonstrated that no new hazardous constituents listed in appendix VIII of 40 CFR part 261 have been introduced, and that the department approves PCT's not handling the wastes as hazardous.

(c) Data Submittals: PCT must submit the data obtained through verification testing, or as required by other conditions of this rule, to DEQ. PCT must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. PCT must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. PCT must make these records available to DEQ for inspection. PCT must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(d) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, PCT possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in paragraph 7(b)(A), then PCT must report such data, in writing, to DEQ, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (7)(b) and (7)(c), and any other information received from any source, DEQ will make a preliminary determination as to whether the reported information requires DEQ action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If DEQ determines that the reported information does require DEQ action, DEQ will notify PCT in writing, of the actions DEQ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing PCT with an opportunity to present information as to why the proposed DEQ action is not necessary or to suggest an alternative action. PCT must provide to DEQ in writing its information in response to the notice within 30 days from the date the department mails its notice requesting the information.

(D) DEQ will issue a final written determination. DEQ may issue the determination at the later of either 30 days after it mailed notice to PCT, if PCT presented no additional information during that interval, or after reviewing any information Pacific submitted during the 30-day interval. The written determination will describe DEQ actions that are necessary to protect human health and the environment. Any required action described in DEQ's determination is effective immediately, unless the DEQ provides otherwise.

[NOTE: View a PDF of [Appendices](#) by clicking on "Tables" link below.]

~~[ED. NOTE: Tables referenced are not included in rule text. Click here for PDF copy.]~~

Statutory/Other Authority: ORS 192, 465.009, 466.015, 466.020, 466.075, 466.090, 466.180, 468.020 & 646

Statutes/Other Implemented: ORS 466.015, 466.075 & 466.195

History:

DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019

DEQ 198-2018, amend filed 11/16/2018, effective 11/16/2018

DEQ 5-2017, f. & cert. ef. 7-12-17

DEQ 7-1984, f. & ef. 4-26-84; Superseded by DEQ 8-1985; DEQ 8-1985, f. & ef. 7-25-85; DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 4-1999, f. & cert. ef. 3-19-99; DEQ 10-2000, f. & cert. ef. 7-21-00; DEQ 13-2003, f. & cert. ef. 10-24-03

Division 101
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

340-101-0004
Exclusions

- (1) Residue described in 40 C.F.R. § 261.4(b)(9) is exempted from divisions 100-106 and 109.
- (2) Dry cleaning wastewater subject to the requirements in OAR 340 division 124 is not excluded under 40 C.F.R. §§ 261.4(a)(1)(i) and (ii).
- (3) The phrase “or labeled with equivalent wording describing the contents of the container and recognizing the exclusion” is added to the end of the first sentence in 40 C.F.R. § 261.4(a)(26)(i) and 40 C.F.R. § 261.4(b)(18)(i).
- (4) The phrase “To a municipal solid waste landfill regulated under 40 C.F.R. part 258, including 40 C.F.R. § 258.40, or” is deleted from 40 C.F.R. § 261.4(b)(18)(vi)(A).
- (5) The phrase “To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or” in 40 C.F.R. 261.4(b)(18)(vi)(B) is deleted.
- (6) Selmet, Inc, or its corporate successor (Selmet). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:
 - (a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at Selmet’s facility in, Albany, Oregon, and contained in an on-site surface impoundment, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. This is a one-time exclusion. [Note: The petition is attached as Appendix 1 to this rule.]
 - (b) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at Selmet’s facility in Albany, Oregon, as described in the delisting petition Selmet, Inc. provided on May 22, 2018. The exemption is limited to a maximum annual rate of 3120 cubic yards per year. Selmet must have the sludge disposed of in a Subtitle D landfill the department licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [Note: The petition is attached as Appendix 1 to this rule.]
 - (c) The exemption described in subsection 6(b) of this rule remains in effect only as long as Selmet meets the following conditions:
 - (A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.2; chromium-4.9; nickel-32.7; cyanide-7.5 and fluoride-94.8.
 - (B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, Selmet, Inc. must collect and analyze one waste sample annually using methods with appropriate detection concentrations and elements of quality control. Selmet may use a total

analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure concentration as provided for in section 1.2 of Method 1311 as described in EPA SW 846. The Toxicity Characteristic Leaching Procedure is attached to this rule as Appendix 3.]

(d) Changes in Operation Conditions:

(A) If Selmet significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, Selmet must notify DEQ not more than 30 days after making the change.

(B) Selmet must handle the wastes generated after the process change as hazardous until DEQ notifies Selmet in writing that DEQ has determined the wastes continue to meet the delisting concentrations in subparagraph (6)(c)(A), that Selmet has demonstrated that no new hazardous constituents listed in appendix VIII of 40 C.F.R. part 261 have been introduced, and that the department approves Selmet's not handling the wastes as hazardous.

(e) Data Submittals: Selmet must submit the data obtained through verification testing, or as required by other conditions of this rule, to DEQ. Selmet must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. Selmet must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. Selmet must make these records available to DEQ for inspection. Selmet must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(f) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, Selmet possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in subparagraph 6(c)(A), then Selmet must report such data, in writing, to DEQ, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (6)(d) and (6)(e), and any other information received from any source, DEQ will make a preliminary determination as to whether the reported information requires department action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If DEQ determines that the reported information does require DEQ action, DEQ will notify Selmet in writing, of the actions DEQ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing Selmet with an opportunity to present information as to why the proposed DEQ action is not necessary or to suggest an alternative action. Selmet must provide to DEQ in writing its information in response to the notice within 30 days from the date DEQ mails its notice requesting the information.

(D) DEQ will issue a final written determination. DEQ will issue the written determination no sooner than 30 days after DEQ mailed its notice to Selmet. Before issuing its determination, DEQ will consider any additional information Selmet submitted to DEQ within 30 days after DEQ issued its notice. The written determination will describe DEQ's actions that are necessary to protect human health and the environment. Any required action described in DEQ's determination is effective immediately, unless DEQ provides otherwise.

(7) Pacific Cast Technologies, Inc., or its corporate successor (PCT). The following wastes are excluded under OAR 340-100-0020 and 340-100-0022:

(a) Wastewater treatment sludge, EPA Hazardous Waste No. F006, generated at PCT's, Albany, Oregon facility as described in the delisting petition PCT provided on April 11, 2019. The exemption is limited to a maximum annual rate of 9,000 cubic yards per year. PCT must have the sludge disposed of in a Subtitle D landfill that DEQ licenses, permits, or otherwise authorizes to accept the delisted wastewater treatment sludge. [Note: The petition is attached to this rule as Appendix 2.]

(b) The exemption described in OAR 340-101-0004(7)(a) remains in effect only as long as PCT meets the following conditions:

(A) Delisting Levels: The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/l): cadmium-0.0911; chromium-2.27; nickel-13.5; and cyanide-3.08.

(B) Annual Verification Testing: To verify that the waste does not exceed the specified delisting concentrations, PCT must collect and analyze one waste sample annually using methods with appropriate detection limits and elements of quality control (similar to those in the delisting petition). PCT may use a total analysis of the waste to estimate the Toxicity Characteristic Leaching Procedure concentration as provided for in section 1.2 of Method 1311.

(b) Changes in Operation Conditions:

(A) If PCT significantly changes the manufacturing process or the chemicals used in the manufacturing process, or both, PCT must notify DEQ not more than 30 days after making the change.

(B) PCT must handle the wastes generated after the process change as hazardous until DEQ notifies PCT in writing DEQ has determined that the waste continues to meet the delisting concentrations in OAR 340-101-0004(7)(b)(A), that PCT has demonstrated that no new hazardous constituents listed in appendix VIII of 40 CFR part 261 have been introduced, and that the department approves PCT's not handling the wastes as hazardous.

(c) Data Submittals: PCT must submit the data obtained through verification testing, or as required by other conditions of this rule, to DEQ. PCT must submit the annual verification data and certification of proper disposal on the anniversary of the effective date of this exclusion. PCT must compile, summarize, and maintain on site, for a minimum of five years, records of operating conditions and analytical data. PCT must make these records available to DEQ for

inspection. PCT must submit with all data a signed copy of the certification statement described in 40 C.F.R. § 260.22(i)(12).

(d) Reopener Language:

(A) If, at any time after the delisted waste is disposed of, PCT possesses, or is otherwise made aware of, any data, including but not limited to leachate data, about the delisted waste, indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration in paragraph 7(b)(A), then PCT must report such data, in writing, to DEQ, within 10 days of first possessing or being made aware of that data.

(B) Based on the information described in subsections (7)(b) and (7)(c), and any other information received from any source, DEQ will make a preliminary determination as to whether the reported information requires DEQ action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If DEQ determines that the reported information does require DEQ action, DEQ will notify PCT in writing, of the actions DEQ believes are necessary to protect human health and the environment. The notice will include a statement of the proposed action and a statement providing PCT with an opportunity to present information as to why the proposed DEQ action is not necessary or to suggest an alternative action. PCT must provide to DEQ in writing its information in response to the notice within 30 days from the date the department mails its notice requesting the information.

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