



State of Oregon Department of Environmental Quality

## Rule Concept: PFAS 2025

PFOA and PFOS as Hazardous Substances (OAR 340-122-0115)

Rulemaking Advisory Committee Meeting #1

Nov. 5, 2024

### Introduction

Oregon [Hazardous Substance Remedial Action Rules](#) establish the standards and procedures for DEQ to investigate and cleanup hazardous substances releases. This memo provides the background information and proposes an initial draft rule concept to update Oregon's hazardous substance definition to include perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

PFOA and PFOS are two compounds in a large class of fluorinated chemicals, called per- and poly-fluoroalkyl substances (PFAS), that have been widely used in industrial, commercial, and consumer products starting in the 1950s. PFAS are highly toxic, mobile, and persistent in the environment and readily bioaccumulate in biological tissue and food webs. This rulemaking would align Oregon with the U.S. Environmental Protection Agency's (EPA) list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund.

### Background

Oregon statutes and rule provide DEQ the authority to require investigation and removal and remedial actions where hazardous substances have been or may have been released to protect human health and the environment. Currently, the definition of hazardous substances in Oregon Administrative Rule (OAR) 340-122-0115 reads as follows:

(30) "Hazardous substance" means:

- (a) Hazardous waste as defined in ORS 466.005;
- (b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499;
- (c) Oil as defined in ORS 465.200(18); and
- (d) Methane generated at a historic solid waste landfill; and
- (e) Any substance designated by the commission under ORS 465.400

Subsection (b) above references the list of CERCLA, or Superfund, hazardous substances. Similar to Oregon Cleanup law, CERCLA gives federal authority to respond to releases or threatened releases of compounds that may harm human health or the environment and establishes legal and financial liability for persons responsible for these releases. Compounds and chemicals covered by CERCLA are called hazardous substances. Federal CERCLA action is administered by the EPA. Oregon cleanup law is largely modeled after CERCLA.

Oregon's hazardous substances include CERCLA hazardous substances as of the date the rule was last updated in 2006. However, since that time, the list of CERCLA hazardous substances has changed, as described in the section below. In order to include these changes into Oregon's rule, the rule must be updated.

## Updates to CERCLA hazardous substances

The EPA added PFOA and PFOS as CERCLA hazardous substances in May 2024. These compounds were designated as hazardous substances because the EPA concluded that PFOA and PFOS may present substantial danger to public health or welfare or the environment. The EPA also indicated they may propose to designate additional PFAS compounds as hazardous substances in the future.

The EPA has also made other changes to CERCLA's hazardous substance list since Oregon's rules were last updated, mostly based on updates in other compound lists that the EPA maintains. Updates to Oregon's definition of hazardous substances would also incorporate these changes, summarized in Table 1 below. DEQ is unaware of any of these other removed or added compounds being subject to investigation or cleanup at sites in Oregon. As such, there are no anticipated near-term impacts to the Cleanup Program or current plans for inclusion in site investigations.

Table 1. Changes to CERCLA's hazardous substances since 2006

Compound	Action (year)	Rationale
Saccharin and its salts	Removed (2010)	The EPA determined saccharin and its salts do not meet the criteria for remaining on the EPA's list of hazardous substances, as well as other EPA lists. <sup>1</sup>
K064 - Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	Removed (2022)	Removed to align with the updated list of Resource Conservation and Recovery Act (RCRA) hazardous wastes. <sup>2</sup>
K065 - Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.		
K066 - Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.		
K090 - Emission control dust or sludge from ferrochromiumsilicon production.		
K901 - Emission control dust or sludge from ferrochromium production.		
1-Bromopropane (1-BP)	Added (2022)	Added to align with the updated list of Clean Air Act hazardous air pollutants. <sup>2</sup>
PFOA and salts and structural isomers	Added (2024)	The EPA determined may present a substantial danger to public health or welfare or the environment when released. <sup>3</sup>
PFOS and salts and structural isomers <sup>3</sup>		

<sup>1</sup><https://www.federalregister.gov/documents/2010/04/22/2010-9167/hazardous-waste-management-system-identification-and-listing-of-hazardous-waste-removal-of-saccharin>

<sup>2</sup><https://www.federalregister.gov/documents/2022/04/08/2022-07541/addition-of-1-bromopropane-to-the-list-of-cercla-hazardous-substances-list-of-hazardous-substances>

<sup>3</sup><https://www.federalregister.gov/documents/2024/05/08/2024-08547/designation-of-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-as-cercla-hazardous>

## **Rule concept: update Oregon hazardous substances**

DEQ proposes to update OAR 340-122-0115 section (30). No language changes to the rule are proposed; instead, by updating the date of this rule, we will readopt the EPA's list of hazardous substances, including PFOA and PFOS. This will allow DEQ to remain consistent with the EPA. The other compounds that have also been added or removed from the EPA's list of hazardous substances will be included in DEQ rule. However, DEQ anticipates that the most substantive impact of these changes will be from adding PFOA and PFOS. This rulemaking would not by default require action by DEQ or parties responsible or potentially responsible for releases. Rather, this rulemaking would give DEQ the authority to require investigation, assessment of risk at release sites, and remediation where necessary to protect human and ecological health.

### **Translations or other formats**

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