



# Oregon Department of Environmental Quality

**April 15-16, 2015**

**Oregon Environmental Quality Commission meeting  
Rulemaking, Action Item: C**

## **Resource Conservation and Recovery Act Revision Authorization**

### **DEQ recommendation to the EQC**

DEQ recommends the Environmental Quality Commission:

- Adopt the proposed rules in attachment A as part of chapter 340 of the Oregon Administrative Rules
- Approve incorporating these rule amendments into the Oregon Resource Conservation and Recovery Act implementation plan to be effective when DEQ files them with the Secretary of State.

### **Overview**

#### Short summary

DEQ proposes amending its regulations by adopting two new federal hazardous waste regulations and incorporating 10 amended federal hazardous waste rules.

#### Background

The U.S. Environmental Protection Agency delegates authority to DEQ to operate the federal Resource and Conservation Recovery Act hazardous waste program in Oregon. Oregon must periodically review and adopt new or amended federal rules to retain this delegated federal authority. DEQ last updated its rules in February 2009. In that rulemaking, DEQ incorporated by reference most federal rules enacted through June 30, 2007.

#### Summary of Changes

##### Oregon Administrative Rules (OAR) Proposed Changes

The proposed rules would amend OAR 340-100-0002(1) by incorporating the federal requirements by reference. The proposed amendments would also correct a date error in OAR 340-100-0002(2).

The proposed rules amend the following divisions of OAR Chapter 340 to include “40 CFR 267” (RCRA Standardized Permit): 100, 101, 102, 103, 104, 105, 106, 109 and 111.

Additional proposed changes to OAR 340 include plain language and technical corrections for minor spelling errors, citations, bolding and typographical changes.

The proposed rules incorporate the following federal regulations for the first time:

#	Federal Register	Subject	40 CFR
1	<a href="#">70 FR 53420-53478</a> – Sept. 8, 2005, effective Oct. 11, 2005	RCRA Standardized Permit	Parts 124, 260, 261, 267, 270
2	<a href="#">79 FR 7518-7563</a> – Feb. 7, 2014, effective Aug. 6, 2014	Hazardous Waste Electronic Manifest System	Parts 260, 262, 263, 264, 265, 271

The proposed rules incorporate amended versions of the following previously adopted federal regulations:

#	Federal Register	Subject	40 CFR
3	<a href="#">73 FR 18970-18984</a> – April 8, 2008, effective April 8, 2008	NESHAP HW Combustor amendments <sup>1</sup>	Parts 264, 266
4	<a href="#">73 FR 31756-31769</a> – June 4, 2008, effective July 7, 2008	Exempts from hazardous waste list F019 zinc phosphate wastewater sludges from aluminum auto manufacturing	Parts 261.31, 302
5	<a href="#">75 FR 1236-1262</a> – Jan. 8, 2010, effective July 7, 2010	Amend spent lead-acid battery exporting requirements	Parts 262, 263, 264, 265, 266, 271
6	<a href="#">75 FR 12989-13009</a> , <a href="#">75 FR 31716-31717</a> – March 18, 2010 and June 4, 2010, effective June 16, 2010	Hazardous waste technical corrections for minor errors and omissions	Parts 260, 261, 262, 263, 264, 265, 266, 268, 270
7	<a href="#">75 FR 78918-78926</a> – Dec. 17, 2010, effective Jan. 18, 2011	Remove saccharin from hazardous waste list	Parts 261, 268, 302
8	<a href="#">76 FR 34147-34157</a> – June 13, 2011, effective Aug. 12, 2011	Revise treatment standards for carbamate wastes	Parts 268.40 (table), 268.48, 271 tables 1&2
9	<a href="#">76 FR 36363-36366</a> - June 22, 2011, effective Aug. 22, 2011	Modify manifest printing requirements	Parts 262.21(f)(4)
10	<a href="#">77 FR 22229-22232</a> – April 13, 2012, effective May 14, 2012	Correct K107 listing, clarify recyclers record	Parts 261.21(a) & 266.20(b)
11	<a href="#">75 FR 76633-76636</a> – Dec. 9, 2010, effective Feb. 7, 2011	Correct date only in OAR 340-100-0002(2) for these used oil amendments adopted 2009	-
12	<a href="#">79 FR 36220-36231</a> – June 26, 2014, effective Dec. 26, 2014	Revise cathode ray tube export provisions	Parts 260, 261

<sup>1</sup> DEQ AQ Division adopted Subpart EEE amendments March 27, 2013 for 40 CFR 63 subpart EEE.

## Regulated parties

The proposed rules do not add any new hazardous waste-regulated businesses.

## Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on businesses. DEQ received no comments or requests for other options.

## Statement of need

### What need would the proposed rules address?

DEQ last updated the Resource and Conservation Recovery Act program rules in 2009. EPA has enacted new and amended regulations since then. DEQ rules are no longer consistent with the federal ones. Federal law requires states to adopt the current federal rules to retain federal delegated authority to operate the state's hazardous waste program.

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

Adopting the relevant federal regulations will align the state with the current federal regulations and allow Oregon to maintain federal authorization for the state's program.

### How will DEQ know the rules addressed the need?

The rules will have addressed the need when EPA authorizes Oregon to continue operating its state program. The rules will help Oregon to further protect the environment by improving hazardous waste management practices.

## Proposed Rules Description (40 CFR)

### 1. Standardized Permit

New federal regulation: Increases flexibility in Resource Conservation Recovery Act permitting of treatment, storage and disposal facilities (also known as TSDs) by adding a streamlined permit process that makes permits easier to obtain and modify.

- Establishes 40 CFR 124 Subpart G - RCRA Standardized Permit
- Adds option for TSD businesses that store or non-thermally treat their own wastes
- Adds option for TSDs that generate off-site by the same ownership as receiving facility
- Maintains the same level of environmental protection as an individual permit

## 2. Hazardous Waste Electronic Manifest System

New federal regulation: Establishes the initial framework for a future national electronic manifest system that will allow tracking electronically hazardous waste shipments from a generator's site.

- Adds new definitions in §260.10
- Incorporates electronic manifest procedures in §262.20
- Establishes electronic signature in §262.25
- Reporting requirements for generators §264.71 and transporters in §263.20
- Imposes user's fee for system use in §262.24(g)
- Oregon expressly does not adopt §260.2 amendments governing public disclosure and confidentiality

## 3. NESHAP Hazardous Waste Combustor

Minor non-substantive technical corrections to rule previously adopted.

Citation corrections to the following:

- revises §264.340(b)(1)<sup>2</sup> to remove §264.340(b)(5) reference, replaced by (b)(4)
- revises §264.340(b)(3)<sup>3</sup> to include (b)(5) reference to §63.1219(e)
- removes paragraph (b)(5) from §264.340(b)(5)<sup>4</sup>
- corrects second §266.100(b)(3)(ii) to (b)(3)(iii)

## 4. F019 Listing

Amends F019<sup>5</sup> listing in 40 CFR 261.31.

Exempts the wastewater treatment sludges from zinc phosphating processes in aluminum automobile assembly, provided that the manufacturer:

- Applies this exemption only to the manufacture of automobile and light truck vehicles;
- Manufactures complete vehicles or chassis only;
- Maintains records to prove exempted sludges met the required conditions;
- Does not place the wastes outside on land before shipment to a landfill for disposal; and
- Disposes of the waste in a landfill unit subject to specific liner requirements.

<sup>2</sup> "Except as provided by paragraphs (b)(2) through (b)(4) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after Oct. 12, 2006; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter."

<sup>3</sup> "The particulate matter standard of 40 CFR 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under 40 CFR 63.1206(b)(14) and 63.1219(e) of this chapter."

<sup>4</sup> 40 CFR 264.340(b)(5) "The particulate matter standard of 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 63.1206(b)(14) and 63.1219(e) of this chapter."

<sup>5</sup> "F019 - Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium when such phosphating is an exclusive conversion coating process."

## 5. Spent Lead-Acid Battery

Changes requirements concerning the trans-boundary movement of spent lead-acid batteries sent for reclamation in a foreign country to ensure proper environmental controls.

- Updates definitions and terminology in §262.81
- Amends exception reporting address in §262.55, §262.87(b)
- Amends import submission of consent and manifest documents in §264.71(d)(3), §265.71(a)(3)
- Combines waste levels into two with removal of “red list;” establishes mixtures in §262.82(a)(3)
- Amends notice and consent requirements managed under 266 subpart G to now be subject to 262 subpart H requirements in §262.10(d), §262.80(a), and §262.89(a)
- Clarifies wastes subject to §262 subpart E & F, are not subject to §262 subpart H in §262.58(b)

## 6. Hazardous Waste Rule Corrections

Technical corrections for typographical errors, omissions and incorrect citations.

- Amendments to include 267 to list of parts (“262 through 266, 268” to “262 through 268”)
- Revises listing of U239 Benzene, dimethyl- (I, T) to “Benzene, dimethyl- (I)” in §261.33(f)
- Removes entries K064, K065, K066, and K091 in Part 261 Appendix VII
- Adds §262.23(f) paragraph to the manifest regulations for consistency with §271.4(c)
- Adds §262.42(c) paragraph for manifest rejected shipments or container residues
- Revises wastewater concentration for F025 vinyl chloride, K031 arsenic in §268.40 Table
- Restores treatment standards entries for “bis(2-Ethylhexyl) phthalate and “hexachloropropylene”
- Restores §270.4(a)(2) sentence about permit modification, revoking and reissuing

## 7. Removal of Saccharin and its Salts

EPA initially listed saccharin on its potential to be a carcinogenic to humans. Over the past decade, there have been numerous scientific studies for toxicological and carcinogenic effects from the use of saccharin. EPA has determined, based on the latest reviews of available scientific information, saccharin and its salts do not meet the criteria of the hazardous waste regulations.

- Removes saccharin and its salts from Part 261 Appendix VIII, §261.33(f), and CERCLA §302.4

## 8. Carbamate Waste Treatment Standards

Current analytical standards make determinations difficult for carbamate<sup>6</sup> constituents in a characteristic waste. Adding alternative standards allows generators to treat carbamate constituents with combustion, chemical oxidation, biodegradation or carbon adsorption instead of current numerical concentration limits.

- Adds alternative land disposal treatment standards to §268.42
- Removes carbamate constituents from the numerical concentration requirement in the Universal Treatment Standards Table of §268.48

## 9. Hazardous Waste Manifest Printing

Minor amendment to allow color or other methods to distinguish the copy distribution notation.

- Amends marginal notation of hazardous waste manifest printing in §262.21(f)(4)

<sup>6</sup> Carbamate is a common ingredient in human medicine, wood and paint preservatives, insecticides and polyurethanes.

<b>10. Correction of Hazardous Waste Table Listing of K107, and Recyclers Record Keeping</b>	
Amendment to:	<ul style="list-style-type: none"> <li>Correct “carboxylic acid hydrazides” table entry of K107 to add missing “acid” in name to §261.32(a)</li> <li>Alert recyclers to existing certification and notification obligation for recyclable materials used in a manner constituting disposal in §266.20(b)</li> </ul>
<b>11. Corrections to State Rules</b>	
DEQ inadvertently failed to amend a date in OAR 340-100-0002(2) to include the 2009 rulemaking adoption of the federal used oil amendments.	<ul style="list-style-type: none"> <li>Amends date from “July 24, 2002” to “July 30, 2003”</li> </ul>
<b>12. Cathode Ray Tube Exports</b>	
Revision to improve export tracking of recycled cathode ray tubes to ensure safe management.	<ul style="list-style-type: none"> <li>Adds definition of “Cathode Ray Tube exporter” in §260.10</li> <li>Requires annual reporting for exporters of used CRTs sent for recycling in §261.39</li> <li>Revises notification requirements in §261.41</li> <li>Adds normal business records translation into English upon request in §261.41(b)</li> </ul>

## Rules affected, authorities, supporting documents

### Lead division

Hazardous Waste Program

Chapter 340 action

Amend

OAR 340-100-0001, OAR 340-100-0002, OAR 340-100-0003, OAR 340-100-0004, OAR 340-100-0010, OAR 340-101-0001, OAR 340-101-0030, OAR 340-102-0010, OAR 340-102-0011, OAR 340-102-0041, OAR 340-102-0065, OAR 340-102-0070, OAR 340-103-0010, OAR 340-104-0001, OAR 340-104-0145, OAR 340-104-0149, OAR 340-105-0001, OAR 340-105-0140, OAR 340-106-0001, OAR 340-109-0001, OAR 340-111-0010, OAR 340-111-0070

Statutory authority

ORS 183, 183.325 to 183.337, 192, 459, 465, 465.005, 465.009, 465.505, 466, 466.020, 466.075, 466.090, 466.105, 466.165, 466.180, 466.195, 468, 468.020, 646

### Program or activity

State Implementation Plan

Statute implemented

ORS 192.410-192.505, 459A.580, 459A.590, 459A.595, 465.003, 465.006, 465.009, 465.500 Through 466.635, 466.005, 466.010, 466.015, 466.020, 466.025, 466.030, 466.035, 466.075, 466.090, 466.095, 466.105, 466.150, 466.160, 466.165, 466.195, 466.205-466.225, 466.300, 466.320, 466.505, 466.510, 466.515, 468

Documents relied on for this rulemaking include: [ORS 183.335\(2\)\(b\)\(D\)](#), [ORS 183.337](#), and the preambles of each federal rule in this proposal.

## Fees

This rulemaking does not involve fees.

## Statement of fiscal and economic impact

[ORS 183.335 \(2\)\(b\)\(E\)](#)

### Fiscal and Economic Impact

DEQ anticipates adopting the new federal standards will cause no fiscal and economic impacts because the fiscal and economic impacts occurred when EPA adopted the rules. EPA has evaluated the fiscal and economic effects of its rules and lists those effects in the preambles to their regulations.

#### Assumptions

DEQ assumes that less stringent regulations will have no negative impact on regulated facilities. DEQ also assumes that fiscal and economic impacts identified in federal rulemaking are accurate and apply to Oregon facilities in the same way as the federal rulemaking determined.

### Statement of Cost of Compliance

#### **State and federal agencies, local government and the public**

##### *State and federal agencies, local government*

The cost to comply with the proposed rules is identical to costs described under small and large businesses.

##### *Oregon DEQ*

DEQ, as a state agency, anticipates adopting these rules will cause minimal economic impacts on its own revenues or expenses. Any rule change requires agency staff training and outreach to the regulated community; however, DEQ expects this impact to be minimal, as DEQ currently performs outreach through the hazardous waste technical assistance program to regulated facilities.

##### *Public*

DEQ anticipates there will be no fiscal and economic impacts to the public, because the fiscal and economic impacts occurred when EPA adopted the rules.

## Large businesses - businesses with more than 50 employees

The cost to comply with the proposed rules is identical to costs described under small businesses.

## Small businesses – businesses with 50 or fewer employees [ORS 183.336](#)

DEQ anticipates there will be no fiscal and economic impacts as a result of adopting the new federal standards because the fiscal and economic impacts occurred when EPA adopted the regulations. EPA has evaluated the fiscal and economic effects of its rules and lists those effects in the preambles to its regulations.

The Regulatory Flexibility Act requires EPA to conduct economic assessments for small businesses prior to each rule adoption. EPA determined the rules as we propose would have significant economic impacts on small businesses.

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

Of the current 510 hazardous waste generators required to use the uniform hazardous waste manifest, 182 were identified as small businesses. The proposed rules will not add any new small businesses to be regulated.

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

None.

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

None.

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

DEQ did communicate with a limited number of small businesses on the fiscal impact of the proposed rules. The stakeholder general response was the proposed rules would not require significant economic impacts to their current operations (*See Stakeholder section below*).

## Housing cost

To comply with [ORS 183.534](#), DEQ determined the proposed rules would have no 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. The proposed rules only affect regulated businesses under the hazardous waste regulations.



## Federal relationship

"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..." [ORS 183.332](#)

### Relationship to federal requirements

This section meets the requirements of [OAR 340-011-0029](#) and [ORS 468A.327](#) to clearly identify the relationship between the proposed rules and applicable federal requirements.

The proposed rules would adopt federal requirements by reference, and are not “different from or in addition to federal requirements.” The rules are no more stringent than current federal regulations, and are less stringent to regulated entities in some cases.

Adopting these proposed rules will align the state’s rules with the current federal regulations and allow the state to seek continued program authorization from EPA under 40 CFE § 271.8, section 3006 of the Resource Conservation and Recovery Act.

### What alternatives did DEQ consider, if any?

DEQ did not consider alternatives to the decisions it made with regard to rules different from or in addition to federal requirements. The proposed rules are required to maintain Oregon’s delegated authority for the hazardous waste program.

## Land use

“It is the Environmental Quality Commission's policy to coordinate DEQ’s programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.” [OAR 340-018-0010](#)

### Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references; Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goals relating to DEQ's authority:

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

- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how DEQ will:
  - Comply with statewide land-use goals, and
  - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

#### Determination

DEQ determined the proposed rules listed under the Chapter 340 Action section above **do not affect** existing rules, programs or activities considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

## Stakeholder and public involvement

#### Advisory committee

DEQ did not convene an advisory committee.

The federal rules DEQ is proposing to incorporate into its rules have been in effect and were vetted through public comment and public hearings at the federal level. EPA evaluated the fiscal and economic effects and those effects occurred when EPA adopted the rules.

#### Stakeholder involvement

DEQ did seek stakeholder involvement by contacting five small businesses throughout Oregon via email or phone to determine if the proposed rules would have a negative or positive economic impact on their business.

The contacted stakeholders who commented stated the proposed rules would not have an adverse impact to their business, nor for most generators of hazardous wastes. Those comments stated the rules are clarifications, add options and streamlined the regulations.

#### EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director's report. DEQ did not present additional information specific to this proposed rule revision.

#### Public notice

DEQ provided notice of the Notice of Proposed Rulemaking with Hearing for this rulemaking. DEQ submitted notice to Secretary of State for publication in the February 2015 [\*Oregon Bulletin\*](#).

On Thursday, Jan. 15, 2015, DEQ submitted notice by:

- Publishing information on DEQ's Rulemaking Web page - [DEQ Rulemaking](#)
- Emailing to U.S. Environmental Protection Agency, Region 10, Seattle
- Emailing 9,076 interested parties through GovDelivery that included lists for:
  - Agency Rulemaking
  - Hazardous Waste Permits
  - Hazardous Waste Generator Annual Report
  - DEQ Public Notices.
- Emailing the following legislators as required under [ORS 183.335](#)
  - Senator Chris Edwards, Chair, Senate Environment and Natural Resources Committee
  - Representative Jessica Vega Pederson, Chair, House Energy and Environment Committee
  - Representative Brad Witt, Chair, House Agriculture and Natural Resources Committee

#### Public hearing and comment

DEQ held one public hearing for this rulemaking.

Two people attended the hearing. DEQ received no public comments.

#### Presiding Officer's Record

Presiding Officer's report date: Wednesday, Feb. 18, 2015

Hearing date: Tuesday, Feb. 17, 2015

Location: DEQ headquarters Office, 10<sup>th</sup> Floor, Conference Room EQC A  
811 SW Sixth Ave., Portland OR 97204-1390

Presiding officer: Rich Duval, Senior Hazardous Waste Inspector, Hazardous Waste Program

Rich Duval, the presiding officer, convened the hearing at 3 p.m. Duval closed the hearing at 3:35 p.m.

The presiding officer asked people who wanted to present verbal comments to sign and submit a registration form.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the contents of the notice given under [Oregon Revised Statute 183.335](#).

#### Close of public comment period

The comment period closed Monday, Feb. 23, 2015, at 4 p.m. PST.

## Commenters

DEQ complies with Oregon Revised Statute [192.501\(29\)](#) to protect addresses for students who attend a public university or Oregon Health and Science University. DEQ established the Comment-RCRA account for students to comment on this proposal.

DEQ did not receive any student or public comment by the deadline of Feb. 23, 2015, at 4 p.m. DEQ did not receive any comments during the public hearing held Feb. 17, 2015.

## Implementation

### Compliance and enforcement

- Affected parties – This rule does not expand the regulated parties. A limited number of entities will have minor additional requirements.
- DEQ staff – DEQ will submit the rules to EPA as a revision to the Oregon state authorized hazardous waste program.

### Monitoring and reporting

- Affected parties – DEQ will provide technical assistance to potential affected facilities by making them aware of the new federal requirements.
- DEQ staff – Staff will review compliance through annual reporting and regulatory inspections.

### Systems

- Website – DEQ will update its website with the amended regulations.
- Database – No database changes are required in this rulemaking.
- Invoicing – No changes to the current system are required in this rulemaking.

## Five-year review

### Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years after the date the EQC adopts the rules. DEQ determined whether the rules discussed in this report require five-year review based on the law in effect when EQC adopted the rules. DEQ will take any changes in the law into account when the agency conducts the five-year review.

### Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year rule review because the proposed rules would:

- Adopt federal rules by reference; ORS 183.405(5)(b)
- Amend an existing rule; ORS 183.405(4)

► The Oregon Administrative Rules contain OARs filed through ~~January~~ February 15, 2015 ◄

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### 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 ~~which. 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 ~~the safely~~ management of such ~~this~~ waste.

(2) The purpose of the management program ~~contained~~ 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 ~~given~~ preferred ~~enee~~ to 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 ~~d~~, by reference, hazardous waste management regulations of the federal program, included in **40 CFR.F.R. Parts 260 to ~~266~~, 268, 270, 273 and Subpart A and Subpart B of Part 124**, into Oregon Administrative Rules. Therefore, a ~~persons~~ must consult these parts of **40 CFR.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.

Stat. Auth.: ORS 466.020, ORS 466.075, ORS 466.105, ORS 466.195 & 468.020

Stats. Implemented: ORS 466.010, ORS 466.035 & ORS 465.006

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

#### 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 Environmental Quality 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 prescribed by~~ the United States Environmental Protection Agency prescribes in Title 40 Code of Federal Regulations C.F.R. Parts 260 to 266, 268, 270, 273 and Subpart A and Subpart B of Part 124, as promulgated enacted through July 1, 2007-June 30, 2014.

(2) The Commission excludes from the rules adopted in Section (1) of this rule, and does not adopt by reference, 40 C.F.R. § 260.2 and the amendments to 40 C.F.R. Parts 124, 260 to 268, 270 and 273 as enacted at:

(a) 63 Federal Register 56710-56735 (c174), October 22, 1998;

(b) 65 Federal Register 30886-30913 (c186), May 15, 2000;

(c) 69 Federal Register 21737-21754 (c204), April 22, 2004;

(d) 69 Federal Register 62217-62224 (c204.1), October 25, 2004;

(e) 73 Federal Register 57-72 (c216), January 2, 2008;

(f) 73 Federal Register 64668-64788 (c219), October 30, 2008;

(g) 73 Federal Register 72912-72960 (c220), December 1, 2008;

(h) 73 Federal Register 77954-78017 (c221), December 19, 2008;

(i) 75 Federal Register 33712-33724 (c224), June 15, 2010;

(j) 75 Federal Register 79304-79308 (c226), December 20, 2010;

(k) 78 Federal Register 46448-46485 (c229), July 31, 2013; and

(l) 79 Federal Register 350-364 (c230), January 3, 2014.

~~in Title 40 Code of Federal Regulations, **Parts 260 to 268, 270, 273 and Subpart A and Subpart B of Part 124** promulgated through July 1, 2007, and including the rules promulgated July 14, 2006 at 71 Federal Register 40254-40280 and July 28, 2006 at 71 Federal Register 42928-42949, except the amendments to **40 CFR Parts 124, 260, 261, 262, 264, 265, 267, and 270** as promulgated at 63 Federal Register 56710-56735, October 22, 1998, 65 Federal Register 30886-30913, May 15, 2000, 69 Federal Register 21737-21754, April 22, 2004, 69 Federal Register 62217-62224, October 25, 2004, and 70 Federal Register 53420-53478, September 8, 2005, are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.~~

~~(2)(3)~~ Except as otherwise modified or specified by OAR 340, division 111, 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 standards for ~~the management of used oil, prescribed by~~ the United States Environmental Protection Agency prescribes in Title 40 Code of Federal Regulations C.F.R. Part 279, promulgated ~~enacted~~ through July 24~~30~~, 2002~~2003~~, are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

**COMMENT:** The Department uses the federal preamble accompanying the federal regulations and federal guidance as a basis for regulatory decision-making.

Stat. Auth.: ORS 465.009, 466.020 & 465.505

Stat. Implemented: ORS 465.003, 465.009, 466.005, 466.075, 466.105 & 465.505

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 10-1987, f. & ef. 6-11-87; DEQ 23-1987, f. & ef. 12-16-87; DEQ 19-1988, f. & cert. ef. 7-13-88; DEQ 12-1989, f. & cert. ef. 6-12-89; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 11-1993, f. & cert. ef. 7-29-93; DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 31-1994(Temp), f. 12-6-94, cert. ef. 12-19-94; DEQ 11-1995, f. & cert. ef. 5-19-95; DEQ 12-1996, f. & cert. ef. 7-31-96; DEQ 14-1997, f. & cert. ef. 7-23-97; DEQ 11-1998, f. & cert. ef. 6-26-98; DEQ 26-1998(Temp), f. & cert. ef. 11-3-98 thru 3-19-99; DEQ 4-1999, f. & cert. ef. 3-19-99; DEQ 10-2000, f. & cert. ef. 7-21-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 13-2003, f. & cert. ef. 10-24-03; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 2-2009, f. & cert. ef. 6-25-09

### **340-100-0003**

#### **Public Disclosure and Confidentiality**

(1) The provisions of this rule replace the provisions of ~~40~~ CFRC.F.R. § 260.2.

(2) All records, reports, and information submitted pursuant to the hazardous waste statutes, rules, and regulations are open for public inspection and copying except as provided in sections (3) to (7) of this rule. Provided however, that nothing in this rule is intended to alter any exemption from public disclosure or public inspection provided by any provision of ORS Chapter 192 or other Oregon law.

(3)(a) A person may claim the submitted ~~Records, reports, and~~ information submitted pursuant to ~~are a trade secret in accordance with the hazardous waste statutes, rules, and regulations may be claimed as trade secret by the submitted in accordance with~~ ORS 192.410 through 192.505 and 466.090.

(b) The Department ~~shall~~will designate a Document Control Officer for the purpose of receiving, managing, and securing confidential information. The Document Control Officer will secure the following information ~~shall be secured by the Document Control officer:~~

(A) Claimed trade secret information until ~~the~~ the claim is withdrawn by the submitter, determined not to be confidential under section (6) of this rule, or invalidated;

(B) ~~Information~~ Information determined to be trade secret; and

(C) ~~Any~~ Any other information determined by court order or other process to be confidential.

(c) All Uniform Hazardous Waste Manifest information submitted on any required report ~~pursuant to~~ under the hazardous waste statutes, rules, and regulations is publicly available and is not subject to trade secret confidentiality claims.

(d) The Department will deny confidentiality Cclaims ~~of confidentiality~~ for the name and address of any permit applicant or per~~mittee~~ ~~will be denied~~.

(4) The following procedures shall be followed when a claim of trade secret is made:

(a) A person claiming trade secret must clearly mark Eeach individual page of any submission that contains the claimed trade secret information ~~must be clearly marked~~ as "trade secret," "confidential," "confidential business information," or the equivalent~~—~~. If no claim by appropriate marking is made at the time of submission, the submitter may not afterwards make a claim of trade secret.

(b) A late submission of the trade secret substantiation will invalidate the trade secret claim. Written substantiation in accordance with paragraph (4)(d) of this rule:

(A) Must accompany any information submitted pursuant to OAR 340-102-0012, 340-102-0041, 340-104-0075, 340-105-0010, 340-105-0013, 340-105-0014, 340-105-0020, 340-105-0021, **40 C.F.R. §§262.12, 264.11, 265.11 or 270.42**, or

(B) For all other information submitted to the Department, written substantiation must be provided pursuant to subsection 5 of this rule.

(c) Trade secret information must meet the following criteria:

(A) Not the subject of a patent;

(B) Only known to a limited number of individuals within an organization;

(C) Used in a business which the organization conducts;

(D) Of potential or actual commercial value; and



(E) Capable of providing the user with a business advantage over competitors not having the information.

(d) Written substantiation of trade secret claims shall address the following:

(A) Identify which portions of information are claimed trade secret~~;~~

(B) Identify how long confidential treatment is desired for this information~~;~~

(C) Identify any pertinent patent information~~;~~

(D) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others~~;~~

(E) Describe the nature of the use of the information in business~~;~~

(F) Describe why the information is considered to be commercially valuable~~;~~

(G) Describe how the information provides a business advantage over competitors~~;~~

(H) If any of the information has been provided to other government agencies, identify which one(s)~~;~~

(I) Include any other information that supports a claim of trade secret.

(e) The person must submit Aa public version of the document containing the claimed trade secret information ~~must be submitted~~ at the time the trade secret substantiation is required as provided in subsection (4)(c)(B)(b)(A) and subsection (5)(a) of this rule.

(5)(a) Written trade secret substantiation as required under subsection (4)(b)(B) and a public version of the information as required by subsection (4)(e) shall be provided within 15 working days of receipt of any Department request for trade secret substantiation or the public version of the information. The Department may extend the time, either at the Department's initiative or the claimant's request, up to an additional 30 consecutive days in order to provide the substantiation and public version, if the complexity or volume of the claimed trade secret information is such that additional time is required for the claimant to complete the response. The Department shall request the written trade secret substantiation or the public information version if:

(A) A public records request is received which would reasonably include the information, if the information were not declared as trade secret, or

(B) It is likely that the Department eventually will be requested to disclose the information at some future time and thus the Department will have to determine whether the information is entitled to trade secret confidentiality. This includes information that relates to any permit, corrective action, or potential violation information.

(6) When evaluating a trade secret claim, the Department shall review all information in its possession relating to the trade secret claim to determine whether the trade secret claim meets the requirements for trade secret as specified in paragraphs (4)(c) and (4)(d) of this rule. The Department shall provide written notification of any final trade secret decision and the reason for it to the person submitting the trade secret claim within 10 working days of the decision date.

(a) If the Department or the Attorney General determines that the information meets the requirements for trade secret, the information shall be maintained as confidential.

(b) If the Department determines that the information does not meet the requirements for trade secret, the Department shall request a review by the Attorney General. If the Attorney General determines that the information does not meet the requirements for trade secret, the Department may make the information available to the public no sooner than 5 working days after the date ~~of~~ the Department mails the written notification to the person submitting the trade secret claim.

(c) A person claiming information as trade secret may request the Department to make a trade secret determination. The person must submit the written substantiation in accordance with paragraph (4)(d) of this rule and the public version in accordance with paragraph (4)(e) of this rule. The Department shall make the determination within 30 days after receiving the request, written substantiation, and the public version.

(7) Records, reports, and information submitted ~~pursuant~~under to these rules shall be made available to the Environmental Protection Agency (EPA) upon request. If the records, reports, or information has been submitted under a claim of confidentiality, the state shall make that claim of confidentiality to EPA for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.

**NOTE:** The Department ~~It is~~ suggested that claims of trade secret be restricted to that information considered absolutely necessary and that such information be clearly separated from the remainder of the submission.

Stat. Auth.: ORS 466.020, 468.020 & 646

Stats. Implemented: ORS 192.410 - 192.505, 466.015, 466.075 & 466.090

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 12-1996, f. & cert. ef. 7-31-96

**340-100-0004**

### **Table of Contents, Divisions 100 to 120**

The following Divisions including the incorporation of regulations in **40 ~~CFR~~C.F.R., Parts 260 to ~~266~~, 268, 270 and 124**, comprise the Oregon hazardous waste management program:

## **DIVISION - SUBJECT**

100 - Hazardous Waste Management System: General

101 - Identification and Listing of Hazardous Waste

102 - Standards Applicable to Generators of Hazardous Waste

103 - Standards Applicable to Transporters of Hazardous Waste

104 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

105 - Management Facility Permits

106 - Permitting Procedures

109 - Management of Pesticide Wastes

110 - Polychlorinated Biphenyls (PCBs)

120 - Additional Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities

124 - Standards Applicable to Dry Cleaning Facilities and Dry Stores

142 - Oil and Hazardous Materials Emergency Response Requirements

Stat. Auth.: ORS 183, 459, 466.020, 466.075, 466.105, 466.195 & 468

Stats. Implemented: ORS 466.020, 466.075, 466.105 & 466.195

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 13-2003, f. & cert. ef. 10-24-03

## **340-100-0010**

### **Definitions**

(1) The definitions ~~of terms contained~~ in this rule modify, or are in addition to, the definitions contained in **40 ~~CFRC.F.R.~~ § 260.10**.

(2) When used in divisions 100 to 110 and 120 of this chapter, the following terms have the meanings given below:

(a) "Administrator" means:

(A) The "Department", except as specified in paragraph (2)(a)(B) or (C) of this rule;

(B) The "Commission," when used in ~~40~~ **CFRC.F.R. §§ 261.10 and 261.11**; or

(C) The Administrator of the U.S. Environmental Protection Agency, when used in ~~40~~ **CFRC.F.R. § 262.50**.

(b) "Aquatic LC50" (median aquatic lethal concentration) means that concentration of a substance which is expected in a specific time to kill 50 percent of an indigenous aquatic test population (i.e., fish, insects or other aquatic organisms). Aquatic LC50 is expressed in milligrams of the substance per liter of water.

(c) "Beneficiation of Ores and Minerals" means ~~the~~ upgrading ~~of~~ ores and minerals by purely physical processes (e.g., crushing, screening, settling, flotation, dewatering and drying) with the addition of other chemical products only to the extent that they are a non-hazardous aid to the physical process (such as flocculants and deflocculants added to a froth-flotation process).

(d) "Collection." See "Storage."

(e) "Commission" means the Environmental Quality Commission.

(f) "Demilitarization" means all processes and activities at the Umatilla Chemical Depot (OR 6213820917) and Umatilla Chemical Agent Disposal Facility (ORQ 000009431) from February 12, 1997, through Department approval of the closure of all permitted treatment, storage and disposal units and facility-wide corrective action.

(g) "Demilitarization Residue" means any solid waste generated by demilitarization processes and activities as defined in 340-100-0010(2)(f), except for:

(A) ~~W~~Waste streams generated from processes or activities prior to the introduction of nerve or blister agent into the treatment unit; and

(B) ~~W~~Waste streams generated from maintenance or operation of non-agent contaminated process utility systems.

(h) "Department" means the Department of Environmental Quality except it means the Commission when the context relates to a matter solely within the authority of the Commission such as: The adoption of rules and issuance of orders thereon pursuant to ORS 466.020, 466.075, and 466.510; the making of findings to support declassification of hazardous wastes pursuant to ORS 466.015(3); the issuance of exemptions pursuant to ORS 466.095(2); the issuance of disposal site permits pursuant to ORS 466.140(2); and the holding of hearings pursuant to ORS 466.130, 466.140(2), 466.170, 466.185, and 466.190.

(i) "Director" means:

(A) The "Department", except as specified in paragraph (2)(~~ig~~)(B) of this rule; or

(B) The "permitting body", as defined in section (2) of this rule, when used in **40 ~~CFRC.F.R. §§~~ 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17.**

(j) "Disposal" means

~~the~~ discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste or hazardous substance into or on any land or water so that the hazardous waste or hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468.700~~;~~.

(k) "Dry Cleaning Facility" means any facility ~~as~~ defined by **40 ~~CFRC.F.R. §~~ 260.10** and adopted ~~pursuant to~~ under OAR 340-100-0002, located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than:

(~~Aa~~) A facility located on a United States military base;

(~~Bb~~) A uniform service or linen supply facility;

(~~Ce~~) A prison or other penal institution; or

(~~Dd~~) A facility engaged in dry cleaning operations only as a dry store and selling less than \$50,000 per year of dry cleaning services.

(l) "Dry Cleaning Operator" means a person who has, or had, a business license to operate a dry cleaning facility or a business operation that a dry cleaning facility is a part of or any person that owns the dry cleaning business, leases the operation of the dry cleaning business from the owner, or makes any other kind of agreement or arrangement whereby they operated the dry cleaning business.

(m) "Dry Cleaning Wastewater" means water from the solvent/water separation process of the dry cleaning machine.

(n) "EPA" or "Environmental Protection Agency" means the Department of Environmental Quality~~;~~.

(o) "EPA Form 8700-12" means EPA Form 8700-12 as modified by the Department~~;~~.

(p) "Existing Hazardous Waste Management (HWM) Facility" or "Existing Facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, or is in existence on the effective date of statutory or regulatory changes under Oregon law that render the facility subject to the requirement to have a permit. A facility has commenced construction if:

- (A) The owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either
- (B)(i) A continuous on-site, physical construction program has begun; or
- (ii) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the facility to be completed within a reasonable time.
- (q) "Extraction of Ores and Minerals" means the process of mining and removing ores and minerals from the earth.⚠
- (r) "Generator" means the person who, by virtue of owner-ship, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.⚠
- (s) "Hazardous Substance" means any substance intended for use which may also be identified as hazardous ~~pursuant to~~under division 101.⚠
- (t) "Hazardous Waste" means a hazardous waste as defined in **40 CFR C.F.R. § 261.3**, OAR 340-101-0033 and 340-102-0011.⚠
- (u) "Identification Number" means the number assigned by DEQ to each generator, transporter, and treatment, storage and disposal facility.⚠
- (v) "License." See "Permit."⚠
- (w) "Management Facility" means a hazardous waste treatment, storage or disposal facility.⚠
- (x) "Off-site" means any site which is not on-site.⚠
- (y) "Oxidizer" means any substance such as a chlorate, permanganate, peroxide, or nitrate, that yields oxygen readily or otherwise acts to stimulate the combustion of organic matter (see **40 CFR C.F.R. § 173.151**).⚠
- (z) "Permitting Body" means:
- (A) The Department of Environmental Quality, when the activity or action pertains to hazardous waste storage or treatment facility permits; or
- (B) The Environmental Quality Commission, when the activity or action pertains to hazardous waste disposal facility permits.
- (aa) "Permit" or "License" means the control document that contains the requirements of ORS Chapter 466 and OAR 340, divisions 104 to 106 and 120. Permit includes permit-by-rule and emergency permit. Permit does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit.⚠

(bb) "RCRA" or "Resource Conservation and Recovery Act", when used to refer to a federal law, means Oregon law.;

(cc) "RCRA Permit" means Oregon hazardous waste management facility permit.;

(dd) "Regional Administrator" means:

(A) The "Department", except as specified in paragraph (2)(~~y~~)(dd)(B) or (C) of this rule;

(B) The "permitting body", as defined in section (2) of this rule when used in **40 ~~CFR~~C.F.R. §§ 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17;**

(C) The "Commission", when used in **40 ~~CFR~~C.F.R. §§-260.30 through 260.41.**

(ee) "Residue" means solid waste as defined in **40 ~~CFR~~C.F.R. § 261.2;**

(ff) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.;

(gg) "Spill" means unauthorized disposal.;

(hh) "Storage" or "Collection" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.;

(ii) "Waste Management Unit" means a contiguous area of land on or in which waste is placed. A waste management unit is the largest area in which there is a significant likelihood of mixing of waste constituents in the same area. Usually, but not always, this is ~~due to the fact that~~because each waste management unit is subject to a uniform set of management practices (e.g., one liner and leachate collection and removal system). The provisions in the OAR 340, Division 104 regulations (principally the technical standards in Subparts K–N of **40 CFR Part 264**) establish requirements that a person subject to these rules must ~~re-to-be-implemented~~ on a unit-by-unit basis.

(3) When used in divisions 100 to 106, 109, 113 and 142 of this chapter, the following terms have the meanings given below:

(a) "Aeration" means a specific treatment for decontaminating an empty volatile substance container ~~consisting of~~by removing the closure and placing the container in an inverted position for at least 24 hours.

(b) "Beneficial Use" means ~~the returning of~~without processing unused pesticide product (e.g., pesticide equipment rinsings, excess spray mixture) or empty pesticide container(s) ~~without processing~~ to the economic mainstream; as a substitute for raw materials in an industrial process or as a commercial product (e.g., melting a container for scrap metal).

(c) "Department" means the Department of Environmental Quality.

(d) "Empty Container" means a container from which:

(A) All the contents have been removed that can be removed using the practices commonly employed to remove materials from that type of container; and

(B)(i) No more than one inch of residue remains on the bottom of the container; or

(ii) No more than three percent of the total capacity of the container remains in the container if the container is less than or equal to 110 gallons in size; or

(iii) No more than 0.3% of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size; or

(iv) If the material is a compressed gas, the pressure in the container is atmospheric.

(e) "Household Use" means use by the home or dwelling owner in or around households (including single and multiple residences, hotels and motels).

(f) "Jet Rinsing" means a specific treatment for an empty container using the following procedure:

(A) A nozzle is inserted into the container, or the empty container is inverted over a nozzle such that all interior surfaces of the container can be rinsed; and

(B) The container is thoroughly rinsed using an appropriate solvent.

(g) "Multiple Rinsing" means a specific treatment for an empty container repeating the following procedure a minimum of three times:

(A) An appropriate solvent is placed in the container in an amount equal to at least 10% of the container volume; and

(B) The container is agitated to rinse all interior surfaces; and

(C) The container is opened and drained, allowing at least 30 seconds after drips start.

(h) "Pesticide" means any substance or combination of substances intended ~~for the purpose of to~~ defoliateing plants or ~~for the to~~ preventing, destroying, repelling, or mitigating of insects, fungi, weeds, rodents, or predatory animals. ∴ Pesticide includes but is not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006.

(i) "Pesticide Equipment" means any equipment, machinery or device used in pesticide manufacture, repackaging, formulation, bulking and mixing, use, cleaning up spills, or



preparation for use or application of pesticides, including but not limited to aircraft, ground spraying equipment, hoppers, tanks, booms and hoses.

(j) "Pesticide Residue" is a waste that is generated from pesticide operations and pesticide management, such as, from pesticide use (except household use), manufacturing, repackaging, formulation, bulking and mixing, and spills.

(A) Pesticide residue includes, but is not limited to, unused commercial pesticides, tank or container bottoms or sludges, pesticide spray mixture, container rinsings and pesticide equipment washings, and substances generated from pesticide treatment, recycling, disposal, and rinsing spray and pesticide equipment.

(B) Pesticide residue does not include pesticide-containing materials that are used according to label instructions, and substances such as, but not limited to, treated soil, treated wood, foodstuff, water, vegetation, and treated seeds, where pesticides were applied according to label instructions. Pesticide residue does not include wastes that are listed in **40 ~~CFRC.F.R.~~ Part 261 Subpart D** or that exhibit one or more of the characteristics identified in **40 ~~CFRC.F.R.~~ Part 261 Subpart C**.

(k) "Public-Use Airport" means an airport open to the flying public which may or may not be attended or have service available.

(l) "Reuse" means the return of a commodity to the economic mainstream for use in the same kind of application as before without change in its identity (e.g., a container used to repackage a pesticide formulation).

Stat. Auth.: ORS 465.009 & 466.020

Stat. Implemented: ORS 465.003, 465.009, 466.005, 466.075 & 466.105

Hist.: DEQ 7-1984, f. & cert. ef. 4-26-84; DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 12-1996, f. & cert. ef. 7-31-96; Renumbered from 340-109-0002; DEQ 10-2000, f. & cert. ef. 7-21-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 13-2003, f. & cert. ef. 10-24-03

### **340-101-0001**

#### **Purpose and Scope**

(1) ~~The purpose of this division is to identify~~ This division ~~is to identify~~ those residues which are subject to regulation as hazardous wastes under divisions 100 to 106, 109, 111, 113, 124 and 142 of this chapter.

(2) ~~Persons~~ A person must also consult **40 ~~CFRC.F.R.~~ Parts 124, 260 to ~~266, 268, 270, 273,~~** and **279**, which are incorporated by reference in OAR 340-100-0002, to determine all applicable hazardous waste management requirements.

Stat. Auth.: ORS 183.325 - ORS 183.337, 459, 465.009, 466.020 & 468.020

Stats. Implemented: ORS 465.009, 466.075 & 466.105

Hist.: DEQ 7-1984, f. & ef. 4-26-84; Superseded by DEQ 8-1985, f. & ef. 7-25-85; DEQ 8-1985, f. & ef. 7-25-85; DEQ 12-1996, f. & cert. ef. 7-31-96; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 13-2003, f. & cert. ef. 10-24-03

### 340-101-0030

#### Chemical Agent Munitions and Chemical Agent Bulk Items

Notwithstanding any otherwise applicable provisions of **40 ~~CFRC.F.R. Parts 260 to 268, 270,~~** or other provisions of these rules, chemical agent munitions and chemical agent bulk items in storage as of the effective date of this rule are residues, and listed hazardous wastes assigned the appropriate waste codes in OAR 340-102-0011(2)(c)(A)(i) and (ii).

Stat. Auth: ORS 466.005, ORS 466.010 to ORS 466.035, ORS 466.625 & ORS 466.630

Stats. Implemented: ORS 466.205 to ORS 466.225, ORS 466.605 to ORS 466.680, ORS 468.005 to ORS 468.075 & ORS 468.090 to ORS 468.140

Hist.: DEQ 3-2001, f. & cert. ef. 3-27-01

### 340-102-0010

#### Purpose, Scope and Applicability

(1) ~~The purpose of this Division is to establish standards for hazardous waste generators of hazardous waste.~~

(2) ~~Persons~~A person must also consult **40 ~~CFRC.F.R. Parts 124, 260 to 266, 268, 270, 273 and 279,~~** which are incorporated by reference in OAR 340-100-0002, to determine all applicable hazardous waste management requirements.

(3) Any person identified in section (4) of this rule is exempt from compliance with Divisions 100 to 106 provided such person complies with the requirements of Division 109.

(4) ~~A person is exempt under section (3) of this rule if that person~~ Exemptions under section (3) of this rule: Any person who produces an unwanted pesticide residue other than unused commercial chemical product pesticide from:

(a) Pesticide manufacturing, repackaging, formulating, bulking, mixing, application, use, and cleaning up spilled material;

- (b) Agricultural pest control (for example, on crops, livestock, Christmas trees, commercial nursery plants or grassland);
- (c) Industrial pest control (for example, in warehouses, grain elevators, tank farms or rail yards);
- (d) Structural pest control (for example, in human dwellings);
- (e) Ornamental and turf pest control (for example, on ornamental trees, shrubs, flowers or turf);
- (f) Forest pest control;
- (g) Recreational pest control (for example, in parks or golf courses);
- (h) Governmental pest control (for example, for clearing a right-of-way or vector, predator, and aquatic pest control);
- (i) Seed treatment;
- (j) Pesticide demonstration and research; or
- (k) Wood treatment (for example, lumber, poles, ties and other wood products).

(5) A person who generates a hazardous waste as defined by **40 ~~CFRC.F.R.~~ § 261.3** must comply with ~~this division's requirements, the requirements of this Division. A person who fails to comply with these rules is subject to Failure to comply will subject a person to~~ the compliance requirements and penalties prescribed by ORS 466.185 to 466.210, 459.992 and 466.995, 459.995, 466.880, 466.890, 466.895, 466.900 and OAR Chapter 340, Division 12.

Stat. Auth.: ORS 183.325 to ORS 183.337, ORS 459, ORS 465.009, ORS 466.020, ~~ORS 465.009~~ & ORS 468.020

Stats. Implemented: ORS 466.010, ORS 466.015, ORS 466.020, ORS 466.075 & ORS 466.195

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 12-1996, f. & cert. ef. 7-31-96

### **340-102-0011**

#### **Hazardous Waste Determination**

- (1) The provisions of this rule replace the requirements of **40 ~~CFRC.F.R.~~ § 262.11**.
- (2) A person who generates a residue as defined in OAR 340-100-0010 must determine if that residue is a hazardous waste using the following method:

(a) Persons should first determine if the waste is excluded from regulation under **40 ~~CFRC.F.R.~~ § 261.4** or OAR 340-101-0004;

(b) Persons must then determine if the waste is listed as a hazardous waste in **Subpart D** of **40 ~~CFRC.F.R.~~ Part 261**;

(c) Persons must then determine if the waste is listed under the following listings:

(A) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates identified in 340-102-0011(2)(c)(A)(i) and (ii) are added to and made a part of the list in **40 ~~C.F.R.~~ § 261.33(e)**.

(i) P998...Blister agents (such as Mustard agent)

(ii) P999...Nerve agents (such as GB (Sarin) and VX); or

(B) Hazardous waste identified in 340-102-0011(2)(c)(B)(i) and (ii) are added to and made a part of the list in **40 ~~C.F.R.~~ § 261.31**.

(i) F998...Residues from demilitarization, treatment, and testing of blister agents (such as Mustard agent).

(ii) F999...Residues from demilitarization, treatment, and testing of nerve agents (such as GB (Sarin) and VX).

**NOTE:** Even if the waste is listed, the generator-person still has an opportunity under OAR 340-100-0022 to demonstrate to the Commission that the waste from his/her/their particular facility or operation is not a hazardous waste.

(d) Regardless of whether a hazardous waste is listed through application of subsections 2(b) or 2(c) of this rule, persons must also determine whether the waste is hazardous under **Subpart C** of **40 ~~CFRC.F.R.~~ Part 261** by either:

(A) Testing the waste according to the methods set forth in **Subpart C** of **40 ~~CFRC.F.R.~~ Part 261**, or according to an equivalent method the Department approves~~s-by-the Department~~ under OAR 340-100-0021, or-

**NOTE:** In most instances, the Department will not consider approving a test method until the EPA approves it~~-has-been-approved-by EPA~~.

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(e) If the waste is determined to be hazardous, the ~~generator person~~ must refer to Divisions 100-106 and **40 CFRC.F.R. Parts 264, 265, 268 and 273** for possible exclusions or restrictions pertaining to management of ~~the his/her~~ specific waste.

**NOTE: 40 CFRC.F.R. § 268.3** prohibits diluting ~~on of~~ a hazardous waste to meet Land Disposal Restriction treatment standards. Diluting waste without a permit to meet any hazardous waste standard is prohibited.

(f) If the waste is not identified as hazardous by application of subsection (2)(b) or (2)(c), and/or (2)(d) of this rule, persons must determine if the waste is listed under OAR 340-101-0033.

(3) A person who generates a residue, as defined in OAR 340-100-0010(2)(ee), must keep a copy of ~~all the~~ documentation used ~~or created to in~~ determining whether the residue is a hazardous waste, under section (2) of this rule, for a minimum of three years after the waste stream is no longer generated, or as prescribed in **40 CFRC.F.R. § 262.40(c)**. ~~The generator person is not required to create new documentation if no documentation is created in making the waste stream determination, then no new documentation need be created.~~

Stat. Auth.: ORS 466.020 & 466.180

Stats. Implemented: ORS 466.015 & 466.195

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 10-2000, f. & cert. ef. 7-21-00; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 13-2003, f. & cert. ef. 10-24-03; DEQ 6-2013(Temp), f. & cert. ef. 8-14-13 thru 2-10-14; Administrative correction, 2-24-14

## **340-102-0041**

### **Generator Reporting**

(1) The provisions of this rule replace the requirements of **40 CFRC.F.R. § 262.41**.

~~(2) A person producing at any time more than one kilogram of acutely hazardous waste, a total of more than 100 kilograms of hazardous waste in a calendar month, or who accumulates on-site at any time a total of more than 1,000 kilograms of hazardous waste, shall submit Quarterly Reports through the period ending December 31, 1991 to the Department.~~ Effective January 1, 1992, and annually thereafter, a report shall be submitted to the Department, on a form provided by the Department, or by other means agreed to by the Department, by persons defined as small quantity hazardous waste generators, large quantity hazardous waste generators, and/or hazardous waste recyclers. The report shall contain information required by the Department covering activities from the preceding calendar year. Reports shall be submitted by March 1, or within 65 days of mailing by the Department, whichever is later. Upon written request and reasonable justification, the Department may grant an extension to the reporting deadline of up to 30 days. The annual report shall contain:

(a) Information required for purposes of notification of hazardous waste activity and/or annual verification of hazardous waste generator status;

(b) Information required for purposes of describing hazardous waste generator and waste management activity, including information pertaining to hazardous waste storage, treatment, disposal, and recycling efforts and practices;

(c) Information required for the assessment of fees; and

(d) Information required for the Department's preparation and completion of the Biennial Report and Capacity Assurance Plan.

~~(3) Quarterly Reports are due within 45 days after the end of each calendar quarter for 1991 (the final quarterly report will be due February 15, 1992). The quarterly reporting requirement will sunset on December 31, 1991:~~

~~(a) The Quarterly Report shall include, but not be limited to the following information:~~

~~(A) A copy of the completed manifest or a listing of the information from each manifest for each shipment made during the calendar quarter;~~

~~(B) A listing of all additional hazardous waste generated during the quarter that was sent off-site without a manifest or was used, reused or reclaimed on-site, on a form provided by the Department. The listing shall include, but not be limited to:~~

~~(i) The generator's name and address;~~

~~(ii) The generator's U.S. EPA/DEQ Identification Number;~~

~~(iii) Identification of the calendar quarter in which the waste was generated;~~

~~(iv) The type and quantity of each waste generated, by EPA code number; and~~

~~(v) The disposition of each waste, including the identity of the receiving party for wastes shipped off-site and handling method; and~~

~~(C) If no hazardous waste was generated during the quarter, a statement to that effect, on a form provided by the Department.~~

~~(b) Reports submitted to the Department must be accompanied by the following certification signed and dated by the generator or his/her authorized representative:~~

~~**"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that**~~

~~there are significant penalties for submitting false information, including the possibility of fine and imprisonment."~~

(43) Any generator who is receiving hazardous waste from off-site, generating or managing hazardous waste on-site, including recycling, except closed-loop recycling must submit an annual report covering those wastes and activities in accordance with the provisions of OAR 340-104-0075 and of **40 C.F.R., Part 266**.

(54) Dry cleaning operators of dry cleaning facilities must complete an annual dry cleaner hazardous waste and air quality compliance report ~~pursuant to~~under OAR 340-124.

Stat. Auth.: ORS 183, 466.020, 466.075, 466.105, 466.165, 466.195 & 468

Stats. Implemented: ORS 466.075 & 466.090

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 10-1987, f. & ef. 6-11-87; DEQ 19-1988, f. & cert. ef. 7-13-88; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 13-1991, f. & cert. ef. 8-5-91; DEQ 13-2002, f. & cert. ef. 10-9-02

### **340-102-0065**

#### **Hazardous Waste Generator Fees**

(1)(a) A person must pay an annual hazardous waste generation fee if that person:

(A) Each person g~~Generates~~ing more than 100 kilograms (220 pounds) of hazardous waste in any calendar month, or

(B) Generates more than 1 kilogram (2.2 pounds) of acutely hazardous waste; in any calendar month, or

(C) a~~A~~ccumulat~~es~~ing more than 1,000 kilograms (2,200 pounds) of hazardous waste at any time in a calendar year.

(b) The Department will assess fees annually for hazardous waste management activities conducted in the previous year. ~~shall be subject to an annual hazardous waste generation fee. Fees shall be assessed annually for hazardous waste management activities in the previous year.~~

(2)(a) The Department will assess ~~A~~a late charge equal to ten percent of the fee due ~~shall be assessed if the fees are not received by~~ if the Department does not receive the fees by the due date ~~shown on~~on the invoice.

(b) The Department will assess ~~A~~a an additional late charge of ten percent of the unpaid amount ~~shall also be assessed~~for each 30 days that the invoice remains unpaid.

~~(c)~~ After 90 days no further Department late charges shall be assessed; however, such invoices may be referred to the Department of Revenue for collection or collected in Small Claims Court. Accounts referred to the Department of Revenue for collection or collected in Small Claims Court shall be increased by 20 percent of the unpaid amount or \$100, whichever is greater, to recover a portion of the costs for referral or collection.

(3)(a) ORS 466.165 sets ~~The~~ the base hazardous waste generation fee. ~~is set at ORS 466.165.~~

(b) In order to determine annual hazardous waste generation fees, the Department may use generator reports required by OAR 340-102-0041, facility reports required by OAR 340-104-0075, information derived from manifests required by 40 C.F.R. Section 262.20, and any other relevant information. Unless density information is reported, the Department will use the following conversion factors: one metric ton = 1,000 kilograms = 2,205 pounds = 1.10 short tons = 1.31 cubic yards = 264.23 gallons = 4.80 drums (55 gallon).

(c) The Department will calculate ~~Each~~ person's hazardous waste generation fee ~~shall be calculated~~ by multiplying the base fee by the weight of each hazardous waste stream and by the fee factors listed below for the management method the person~~generator~~ reported in the annual generation report (OAR 340-102-0041) as follows:

(A) Management Method -- Fee Factor: ;

(B) Metals Recovery (For Reuse) -- 0.50: ;

(C) Solvents Recovery -- 0.50: ;

(D) Other Recovery -- 0.50: ;

(E) Hazardous wastewater that is not managed immediately upon generation only in on-site elementary neutralization unit(s) (ENU) or wastewater treatment unit(s) (WWTU) -- 0.50: ;

(F) Incineration -- 1.00: ;

(G) Energy Recovery (Reuse as Fuel) -- 0.75: ;

(H) Fuel Blending -- 0.75: ;

(I) Aqueous Inorganic Treatment -- 1.00: ;

(J) Aqueous Organic Treatment -- 1.00: ;

(K) Aqueous Organic and Inorganic Treatment (Combined) -- 1.00: ;

(L) Sludge Treatment -- 1.00: ;

(M) Other Treatment -- 1.00: ;



(N) Stabilization -- 1.00;

(O) Neutralization (offsite) -- 0.75;

(P) Land Disposal -- 1.50;

(Q) Management method unknown or not reported -- 2.00;

(R) RCRA-Exempt Management Elementary Neutralization Unit(s) on-site (Includes only corrosive characteristic hazardous waste that is managed immediately upon generation only in an on-site elementary neutralization unit(s)) -- 0.00;

(S) Permitted Discharge under Clean Water Act Section 402 or 307b (Includes only hazardous wastewater that is managed immediately upon generation only in an on-site wastewater treatment unit(s)) -- 0.00.

~~In order to determine annual hazardous waste generation fees, the Department may use generator reports required by OAR 340-102-0041; facility reports required by OAR 340-104-0075; information derived from manifests required by 40 CFR 262.20; and any other relevant information. Unless density information is reported, the Department will use the following conversion factors: 1 metric ton = 1,000 kilograms 2,205 pounds 1.10 short tons = 1.31 cubic yards = 264.23 gallons = 4.80 drums (55-gallon).~~

(4) Effective January 1, 1997, in addition to the annual hazardous waste generation fee, each hazardous waste generator shall be subject to an annual hazardous waste activity verification fee, upon billing by the Department, as follows:

(a) Large Quantity Generator: \$525;

(b) Small Quantity Generator: \$300;

(c) Conditionally Exempt Small Quantity Generator: No Fee.

Stat. Auth.: ORS 466.165 & 468.020

Stats. Implemented: ORS 466.165

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 14-1987, f. & ef. 7-28-87; DEQ 11-1988, f. & cert. ef. 5-19-88; DEQ 19-1989(Temp), f. & cert. ef. 7-31-89 (and corrected 8-3-89); DEQ 33-1989, f. & cert. ef. 12-14-89; DEQ 13-1991, f. & cert. ef. 8-5-91; DEQ 11-1992, f. & cert. ef. 6-9-92; DEQ 2-1994, f. & cert. ef. 2-2-94; DEQ 14-1997, f. & cert. ef. 7-23-97; DEQ 11-1998, f. & cert. ef. 6-26-98; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 2-2009, f. & cert. ef. 6-25-09

**340-102-0070**

**Farmers**

In addition to the provisions of **40 ~~CFRC.F.R.~~ § 262.70**, a farmer disposing of waste pesticides from ~~his/her~~the farmer's own use which are hazardous wastes ~~shall~~must comply with the requirements of division 109 of these rules.

Stat. Auth.: ORS 183, ORS 459, ORS 466.020, ORS 466.075, ORS 466.105, ORS 466.195 & ORS 468

Stats. Implemented: ORS 466.020 & ORS 466.075

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 19~~9~~8-1988, f. & cert. ef. 7-13-88; Renumbered from 340-102-0051; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91)

### **340-103-0010**

#### **Purpose and Applicability**

(1) ~~This division~~ ~~The purpose of this Division is to~~ establishes standards ~~which~~that apply to a persons transporting hazardous waste by air or water if the transportation requires a manifest under Division 102.

(2) Rail and highway transporters must comply with the regulations of the Public Utility Commissioner.

(3) ~~Persons~~A person must also consult **40 ~~CFRC.F.R.~~, Parts 260 to 266**268, 270 and 124, which are incorporated by reference in rule 340-100-0002, to determine all applicable hazardous waste management requirements.

Stat. Auth.: ORS 183, ORS 466 & ORS 468

Stats. Implemented: ORS 466.020

Hist.: DEQ 8-1985, f. & ef. 7-25-85

### **340-104-0001**

#### **Purpose, Scope and Applicability**

(1) ~~The purpose of t~~This d~~Division is to~~ establishes minimum State standards ~~which~~that define the acceptable management of hazardous waste.

(2) ~~Persons~~A person must also consult **40 ~~CFRC.F.R.~~ Parts 260 to 266**268, 270 and 124, which are incorporated by reference in OAR 340-100-0002, to determine all applicable hazardous waste management requirements.

(3)(a) The provisions of subsection (3)(b) of this rule replace the requirements of **40 ~~CFRC.F.R.~~ §Section 264.1(d)**;

(b) ~~The requirements of this Division~~ This Division's requirements apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the following extent:

(A) 40 ~~CFRC.F.R. §Section~~ 264.11 (identification number);

(B) 40 ~~CFRC.F.R. §Section~~ 264.16 (personnel training);

(C) 40 ~~CFRC.F.R. §Section~~ 264.71 (manifest system);

(D) 40 ~~CFRC.F.R. §Section~~ 264.72 (manifest discrepancies);

(E) 40 ~~CFRC.F.R. §Section~~ 264.73(a), (B)(1) and (B)(2) (operating record);

(F) 40 ~~CFRC.F.R. §Section~~ 264.75 (periodic report); and

(G) 40 ~~CFRC.F.R. §Section~~ 264.76 (unmanifested waste report).

(c) When abandonment is completed, the owner or operator must submit to the Department certification by the owner or operator and by an independent registered professional engineer. The certification must state that the facility has been closed in a manner that will ensure that plugging and abandonment ~~ingment of~~ the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another.

(4) The provisions of 40 ~~CFRC.F.R. §Section~~ 264.1(f) are deleted.

(5) In addition to the requirements of 40 ~~CFRC.F.R. Section~~ 264.1(g)(8)(iii), any person covered by 40 ~~CFRC.F.R. Section~~ 264.1(g)(8)(iii) ~~shall~~must comply with the applicable requirements of OAR 340, divisions 100 to 106 and 142.

(6) Persons receiving from off-site solid waste which becomes hazardous waste by virtue of federal or state statute or regulation and who treat or dispose of such waste ~~shall~~must comply with the applicable requirements of OAR 340, divisions 100 to 106, 120, and 40 ~~CFRC.F.R. Parts~~ 264 and 265 and must receive a final permit before managing the waste.

Stat. Auth.: ORS 183, 459, 466.020, 466.075, 466.105, 466.195 & 468

Stats. Implemented: ORS 466.020 & 466.095

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 13-2003, f. & cert. ef. 10-24-03

340-104-0145

## Financial Assurance for Post-Closure Care

(1) This rule amends the requirements of ~~40~~ CFRC.F.R. § 264.145.

(2)(a) The owner or operator of a disposal facility may choose a cash bond as specified in ~~ORS 466~~ORS 466.150(6) or other equivalent financial assurance as specified in ~~40 C.F.R. § 264.145(a) through (h)~~;

(b) The owner or operator of a treatment or storage facility subject to post-closure monitoring or maintenance requirements must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility and must choose one of the options specified in ~~40 C.F.R. § 264.145(a) through (h)~~.

(3)(a) If an owner or operator uses the trust fund option specified in ~~40~~ CFRC.F.R. § 264.145(a) to establish financial assurance for post-closure care of a facility, the owner or operator must also comply with subsection (3)(b) of this rule;

(b) During the period the current post-closure cost estimate (CE) exceeds the current value of the trust fund (CV), the owner or operator must also establish supplemental financial assurance in the amount CE-CV by choosing one of the options specified in ~~40~~ CFRC.F.R. §§ 264.145(b) to 264.145(f).

(4) The phrase "**Except as may be required by** ~~40~~ CFRC.F.R. § 264.145(f)(11)", is added to the beginning of the first sentence of ~~40~~ CFRC.F.R. § 264.145(f)(1).

(5) The phrase "An owner or operator that has a parent corporation may only meet . . ." replaces the phrase "An owner or operator may meet . . ." in the first sentence of ~~40~~ CFRC.F.R. § 264.145(f)(11).

Stat. Auth.: ~~ORS 183~~ORS 183, ~~ORS 459~~ORS 459, ~~ORS 466~~ORS 466.020(1), ~~ORS 466~~ORS 466.020(2), ~~ORS 466~~ORS 466.020(7) & ~~ORS 468~~ORS 468

Stats. Implemented: ~~ORS 466~~ORS 466.020, ~~ORS 466~~ORS 466.150 & ~~ORS 466~~ORS 466.160

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 11-1993, f. & cert. ef. 7-29-93

**340-104-0149**

## Use of State-Required Mechanisms

The provisions of ~~40~~ CFRC.F.R. § 264.149 are deleted.

Stat. Auth.: ~~ORS 183~~ORS 183, ~~ORS 459~~ORS 459 & ~~ORS 468~~ORS 468

Stats. Implemented: ~~ORS 466~~ORS 466.020

Hist.: DEQ 8-1985, f. & ef. 7-25-85

### 340-105-0001

#### Purpose, Scope and Applicability

(1) ~~The purpose of this division is to establish~~ basic permitting requirements, such as application requirements, standard permit conditions, monitoring and reporting requirements, and management requirements for existing facilities which have not been issued a RCRA permit.

(2) ~~A person~~ must also consult ~~40 CFR C.F.R., Parts 260 to 266,~~ 268, 270 and 124, which are incorporated by reference in OAR 340-100-0002, to determine all applicable hazardous waste management requirements.

(3) The provisions of section (4) of this rule replace the contents of ~~40 CFR C.F.R. §§ 270.1(a), 270.1(b) and 270.1(c)~~ prior to paragraph (c)(1).

(4)(a) Technical regulations. The hazardous waste permit program has separate additional regulations that contain technical requirements. ~~The Department uses these separate regulations are used by the Department to determine what requirements must be placed in permits must include~~ if they are issued. These separate regulations are located in ~~40 CFR C.F.R., Part 264~~ and OAR Chapter 340, Division 104.

**NOTE:** Although the permit applicant or permittee will interface primarily with the Department as is indicated by these rules, hazardous waste disposal facility permits are technically issued by the Environmental Quality Commission while hazardous waste storage and treatment facility permits are issued by the Department.

(b)(A) Applicability. The state hazardous waste program requires a permit for the "treatment," "storage" or "disposal" of any "hazardous waste" as identified or listed in OAR Chapter 340, Division 101. The terms "storage," "disposal" and "hazardous waste" are defined in OAR 340-100-0010. The term "treatment" is defined in ~~40 CFR C.F.R. § 260.010~~.

(B) Owners and operators of hazardous waste management units must have permits:

(i) ~~d~~During the active life (including the closure period) of the unit, and;

(ii) ~~f~~For any unit which closes after the effective date of these rules, during any post-closure care period required under ~~40 CFR C.F.R. § 264.117~~, and

(iii) ~~d~~During any compliance period specified under ~~40 CFR C.F.R. § 264.96~~, including any extension of the compliance period under ~~40 CFR C.F.R. § 264.96(c)~~.

Stat. Auth.: ORS 183, 459, 466.020, 466.075, 466.105, 466.195 & 468

Stats. Implemented: ORS 466.095 & 466.215

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 11-1995, f. & cert. ef. 5-19-95

### **340-105-0140**

#### **General Inspection Provisions**

- (1) The provisions of **40 ~~CFRC.F.R.~~ § 265.15(b)(4) and (5)** that reference Performance Track are deleted.
- (2) The provisions of **40 ~~CFRC.F.R.~~ § 265.174** that reference Performance Track are deleted.
- (3) The provisions of **40 CFRC.F.R. § 265.195(d)** that reference Performance Track are deleted.
- (4) The provisions of **40 CFRC.F.R. § 265.201(e)** that reference Performance Track are deleted.
- (5) The requirements of **40 ~~CFRC.F.R.~~ § 270.42** that reference Performance Track are deleted.

Stat. Auth.: ORS 183, 459, 466 & 468

Stats. Implemented: ORS 466.020, 466.105 & 466.150

Hist.: DEQ 2-2009, f. & cert. ef. 6-25-09

### **340-106-0001**

#### **Purpose and Scope**

- (1) ~~The purpose of this Division is to establish~~ This Division establishes the procedures for issuing, modifying, revoking and reissuing, or terminating, all hazardous waste permits other than hazardous waste emergency permits and hazardous waste permits by rule.

**NOTE:** Although the permit applicant or permittee will interface primarily with the Department as is indicated by these rules, hazardous waste disposal facility permits are issued by the Environmental Quality Commission while hazardous waste storage and treatment facility permits are issued by the Department.

- (2) ~~Persons~~ A person must also consult **40 ~~CFRC.F.R.~~ Parts 260 to 266, 268, 270, and 124**, which are incorporated by reference in OAR 340-100-0002, to determine all applicable hazardous waste management requirements.

**NOTE:** **40 ~~CFRC.F.R.~~ Part 124** includes requirements applicable to several programs, including UIC, NPDES, 404, etc. Only the provisions of **40 ~~CFRC.F.R.~~ Part 124 Subparts**

**A and B** which are applicable to hazardous waste or "RCRA" permits are incorporated by reference in OAR 340-100-0002, as modified by Division 106.

Stat. Auth.: ORS ~~4~~465.009 & 466.020

Stats. Implemented: ORS 465.003, 465.009, 466.075 and 466.105

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 10-2000, f. & cert. ef. 7-21-00

### **340-109-0001**

#### **Purpose and Applicability**

(1) ~~The purpose of this Division is to specify~~ procedures for managing pesticide residues and empty pesticide containers. This ~~Division~~ does not apply to any federally regulated pesticide waste, including waste regulated under **40 ~~CFR~~C.F.R. Part 273**.

**NOTE:** Although the permit applicant or permittee will interface primarily with the Department as is indicated by these rules, hazardous waste disposal facility permits are issued by the Environmental Quality Commission while hazardous waste storage and treatment facility permits are issued by the Department.

(2) ~~A p~~**Persons** must also consult **40 ~~CFR~~C.F.R. Parts 260 to-266, 268, 270, and 124**, which are incorporated by reference in OAR 340-100-0002, to determine all applicable hazardous waste management requirements.

**NOTE:** **40 ~~CFR~~C.F.R. Part 124** includes requirements applicable to several programs, including UIC, NPDES, 404, ~~etc.~~ Only the provisions of **40 ~~CFR~~C.F.R. Part 124 Subparts A and B** ~~which that are applicable~~ to hazardous waste or "RCRA" permits are incorporated by reference in OAR 340-100-0002, as modified by Division 106.

Stat. Auth.: ORS 183.325 - ORS 183.335, 466.020 & 468.020

Stats Implemented: ORS 466.005 & 466.075;

Hist.: DEQ 7-1984, f. & ef. 4-26-84; DEQ 17-1984, f. & ef. 8-22-84; DEQ 12-1996, f. & cert. ef. 7-31-96; DEQ 13-2003, f. & cert. ef. 10-24-03

### **340-111-0010**

#### **Applicability**

(1) In addition to provisions under **40 ~~CFR~~C.F.R. § 279.10**, the following provisions under sections (2) through (5) of this rule shall apply.

(2) Mixtures and residues of used oil and other wastes:

(a) Used oil or materials containing used oil destined for disposal are subject to hazardous waste determination as required ~~by under~~ OAR 340-102-0011;

(b) ~~No person may mix H~~azardous or non-hazardous substances or waste ~~shall not be mixed~~ with used oil ~~to for the purposes of~~ rendering the substances or wastes non-hazardous except as provided in ~~40 CFR C.F.R. § 279.10(b)(2)(iii)~~ and (b)(3). Wastes that will reduce the recyclability of used oil shall not purposely be mixed with used oil;

(c) Wastes containing oils that do not meet the definition of used oil as defined in OAR 340-111-0020 may be subject to ~~40 C.F.R., Part 279~~ provided the waste would not be a hazardous waste if disposed and it contains sufficient oil to allow it to be managed in a manner similar to used oil provided state air quality and solid waste regulations are satisfied.

(3) Burning for Energy Recovery:

~~(A)(a)~~ Any person who burns used oil for energy recovery must comply with applicable air emission requirements of the state or local air pollution authority.;

(b) ~~A person may only burn M~~a mixtures of used oil and non-hazardous solid waste as a fuel for energy recovery if the mixture has ~~shall have~~ a minimum energy value of 5,000 Btus per pound ~~when burned as a fuel for energy recovery.~~;

(c) ~~A person may burn a M~~mixtures of used oil and non-hazardous waste with energy values of less than 5,000 Btus per pound ~~may be burned~~ for treatment or incineration if the mixture is not a hazardous waste under OAR 340-102-0011 and if the person satisfies the requirements of Oregon solid waste and air quality regulations ~~are satisfied.~~;

(d) Residues ~~produced from the that~~ burning ~~of~~ used oil for energy recovery produce are subject to the hazardous waste regulations in OAR Chapter 340, Divisions 100 to 110, 120 and ~~40 CFR C.F.R., Parts 260 through 266, 268, 270 and 124~~ if the materials are listed or identified as hazardous waste.

(4) ~~A person may manage O~~oil removed from a non-halogenated parts cleaning media ~~may be managed~~ as used oil if provided the person:

(a) ~~Cleans P~~parts ~~are cleaned~~ primarily to remove an oil that would meet the definition of a used oil as defined in OAR 340-111-0020; and

(b) ~~Does not mix L~~listed or characteristic hazardous waste ~~has not been mixed~~ with the parts cleaning media.

(5) Any person may petition the Department in writing following the procedures in OAR Chapter 183; OAR Chapter 137, Division 2; and OAR Chapter 340, Division 11, for a declaratory ruling whether a material is a used oil under OAR 340-111-0020.



Stat. Auth.: ~~ORS 192~~ ORS 192, ~~ORS 465~~ ORS 465.009, ~~ORS 466~~ ORS 466.015, ~~ORS 466~~ ORS 466.020, ~~ORS 466~~ ORS 466.075, ORS 466.090, ~~ORS 468~~ ORS 468.020 & ~~ORS 646~~ ORS 646  
Stats. Implemented: ~~ORS 459~~ ORS 459A.590 & ~~ORS 466~~ ORS 466.075  
Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 6-1994, f. & cert. ef. 3-22-94

### **340-111-0070**

#### **Disposal**

(1) In addition to provisions under 40 C.F.R. § 279.81(b), used oils that are not hazardous wastes and cannot be recycled under 40 C.F.R. Part 279 must be managed according to Oregon solid waste regulations in OAR Chapter 340, Divisions 93 - 97.

(2) In addition to provisions under 40 C.F.R. § 279.81, unless permitted ~~pursuant to~~ under ORS 468B.050, no person shall dispose of used oil by discharge into sewers, drainage systems, or waters of the state as defined by ORS 468.005(8).

Stat. Auth.: ORS 192, ~~ORS 465~~ ORS 465.009, ~~ORS 466~~ ORS 466.015, ~~ORS 466~~ ORS 466.020, ~~ORS 466~~ ORS 466.075, ~~ORS 466~~ ORS 466.090, ~~ORS 468~~ ORS 468.020 & ~~ORS 646~~ ORS 646

Stats. Implemented: ~~ORS 459~~ ORS 459A.580

Hist.: DEQ 6-1994, f. & cert. ef. 3-22-94

**Federal Hazardous Waste Rule Amendments to be Adopted**

**Proposed Final 2015**

**1. Proposed Non-HSWA Rule:** Standardized Permit for RCRA Hazardous Waste Management Facilities [70 FR 53420-53478 – Sept. 8, 2005, effective Oct. 11, 2005].

- a) **What the rule does:** Rule allows for a hazardous waste standardized permit that will streamline the permitting process in allowing facilities to obtain and modify permits more easily.
- b) **Oregon impact:** Very likely none. Rule generally only applies to facilities that generate their own hazardous waste and wish to store or non-thermally treat in containers, tanks and containment buildings (beyond generator storage time limits). Does not apply to facilities that accept offsite waste. Oregon does not anticipate use of this rule as very few facilities choose to obtain a new hazardous waste permit or standardized permit.
- c) **Recommendation:** Adopt the rule. Rule may not be used, but will be available to both the state and EPA if needed.

**2. Proposed non-HSWA Rule:** Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifest [79 FR 7518-7563 - May 22, 2001, effective Aug. 6, 2014].

- a) **What the rule does:** Establishes the legal and policy framework for the national e-Manifest system authorized by the e-Manifest Establishment Act.
- b) **Oregon Impact:** Affects all facilities that ship off-site, transporting and receiving RCRA hazardous waste. Adds alternative option to electronically file manifest which businesses currently do manually. No significant impacts.
- c) **Recommendation:** Adopt the rule.

**3. Proposed HSWA/non-HSWA Rule:** NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments [73 FR 18970-18984 – April 8, 2008, effective April 8, 2008].

- a) **What the rule does:** Technical corrections to NESHAPs EQC has already adopted.
- b) **Oregon impact:** No substantive impacts. DEQ's Air Quality Division adopted the applicable rule amendments in 2010.
- c) **Recommendation:** Adopt the rule.

**4. Proposed non-HSWA Rule:** Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019 [73 FR 31756-31769 – June 4, 2008, effective July 7, 2008].

- a) **What the rule does:** Amends the F019 listing to exempt wastewater treatment sludges from zinc phosphating, when such phosphating is used in the manufacturing of motor vehicles in the automobile manufacturing industry and light truck/utility vehicle manufacturing industry (NAICS codes 336111 and 336112, respectively), subject to management conditions.
- b) **Oregon impact:** No current Oregon facilities are affected.
- c) **Recommendation:** Adopt corrections.

**5. Proposed non-HSWA Rule:** Revisions to the Requirements for: Trans-boundary Shipments of Hazardous Wastes Between Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes [75 FR 1236-1262 – Jan. 8, 2010, effective July 7, 2010].

- a) **What the rule does:** Implements export changes to agreements concerning trans-boundary movement of hazardous waste among member countries belonging, establishes notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specifies exception reporting requirements.
- b) **Oregon impact:** Minimally affects a limited number of facilities that export spent lead acid batteries for additional reporting and notification requirements. As a matter of foreign policy, EPA does not authorize states to administer federal import/export functions.
- c) **Recommendation:** Adopt the rule.

**6. Proposed HSWA/non-HSWA Rule:** Hazardous Waste Technical Corrections and Clarifications Rule [75 FR 12989-13009, 75 FR 31716-31717 – March 18, 2010, amended June 4, 2010, effective June 16, 2010].

- a) **What the rule does:** Technical changes that correct or clarify several parts of the hazardous waste regulations occurred over time (that is, typos, incorrect or outdated citations, omissions, etc.).
- b) **Oregon impact:** No significant impact.
- c) **Recommendation:** Adopt the rule.

**7. Proposed non-HSWA Rule:** Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Removal of Saccharin and Its Salts From the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances [75 FR 78918-78926 – Dec. 17, 2010, effective Jan. 18, 2011].

- a) **What the rule does:** Removes saccharin and its salts (U202) from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded.
- b) **Oregon impact:** No significant impact.
- c) **Recommendation:** Adopt the rule.

**8. Proposed HSWA Rule:** Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes [76 FR 34147-34157 – June 13, 2011, effective Aug. 12, 2011].

- a) **What the rule does:** Due to lack of readily available analytical standards for carbamates to meet existing numerical standards in the land disposal restriction program, this rule provides as an alternative standard the use of best demonstrated available technologies for treating these wastes. In addition, this action removes carbamate Regulated Constituents from the table of Universal Treatment Standards.
- b) **Oregon impact:** No significant impact.
- c) **Recommendation:** Adopt the rule.

**9. Proposed non-HSWA Rule:** Hazardous Waste Manifesting Printing Specifications Correction Rule [76 FR 36363-36366 - June 22, 2011, effective Aug. 22, 2011].

- a) **What the rule does:** Makes a minor modification to the national hazardous waste manifest system regarding the use of color in the printing of forms. Requirements already in effect under U.S. Department of Transportation authorities.
- b) **Oregon impact:** None; no manifest printers in Oregon.
- c) **Recommendation:** Adopt the rule.

**10. Proposed non-HSWA Rule:** Hazardous Waste Technical Corrections and Clarifications Rule [77 FR 22229-22232 – April 13, 2012, effective May 14, 2012].

- a) **What the rule does:** Technical corrects and clarification two parts of the hazardous waste regulations including K107.
- b) **Oregon impact:** None; no substantive change to law.
- c) **Recommendation:** Adopt corrections.

**11. Proposed non-HSWA Rule:** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Clarification rule [68 FR 44659-44665 – July 30, 2003, effective Sept. 29, 2003].

- a) **What the rule does:** Clarifies when used oil contaminated with PCBs is regulated under RCRA used oil management standards and when it is not; it explains that used oil mixed with CESQG waste is subject to RCRA used oil management standards irrespective of how this mixture is to be recycled; it explains that the initial marketer of on-specification used oil must keep a record of the shipment of used oil to the facility to which the initial marketer delivers the used oil.
- b) **Oregon Impact:** Oregon adopted this rule in 2009 by reference, but failed to include the rule referenced in OAR 340-100-0002. This will be a technical correction to amend date in state's rule to show adoption of this rule.
- c) **Recommendation:** Adopt technical correction.

**12. Proposed HSWA Rule:** Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule [79 FR 36220-36231 – June 26, 2014, effective Dec. 26, 2014].

- a) **What the rule does:** Revises export provisions of notification and reporting of the cathode ray tubes (CRTs) to better track reclamation shipments.
- b) **Oregon Impact:** Affects limited number of facilities that export CRTs for additional reporting and notification requirements. Does not affect domestic management of CRTs.
- c) **Recommendation:** Adopt the rule.