

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

Before the Hazardous Waste Management Advisory Council 10/8/2015
Before the Environmental Quality Board 11/10/2015

RULE IMPACT STATEMENT

DESCRIPTION: The purpose of the proposed amendments to Chapter 205 is twofold: (1) to incorporate by reference the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2015, including those revisions to 40 CFR published at 80 FR 1694 – 1814 (January 13, 2015), "Definition of Solid Waste: Final Rule" and (2) to revise the regulations in Subchapter 15 for Transfer Station Development and Operations Plans.

With respect to the incorporation by reference of the federal hazardous waste regulations, two federal rule changes will be incorporated into Oklahoma's authorized hazardous waste program. One is removal of the Comparable Fuels Rule and the Gasification Rule as a result of an order by the US Court of Appeals in the DC Circuit on June 27, 2014 vacating those rules. This federal rule change removed 40 CFR 261.4(a)(16) and 261.38, and modified 261.4(a)(12)(i). The other federal rule being incorporated is the revised Definition of Solid Waste (DSW) rule that was promulgated January 13, 2015. Its effective date at the federal level is July 13, 2015, but it will not be effective in Oklahoma until formally incorporated into DEQ's rules.

With respect to transfer stations, rules for these facilities were first promulgated in the early 1990s and were revised once in the early 2000s. Over this period, DEQ and the regulated community have gained a tremendous amount of experience implementing these rules. As a result, many areas for improvement have been identified to address ambiguities and operational questions that have arisen over the years. The proposed rule changes are to update the rules to address these issues.

CLASSES OF PERSONS AFFECTED: DEQ is not aware of any entities in Oklahoma who operated under the exclusions offered by the Comparable Fuels and Gasification Rules; therefore, this incorporation will have no impact to any Oklahoma entities. Consequently, this Rule Impact Statement will not further address this aspect of the federal rule incorporation.

Persons who generate hazardous secondary materials (HSM) for recycling or who operate under any of the exclusions from the definition of solid waste in 40 CFR 261.4(a) will be affected by the incorporation of the federal DSW Rule.

Three entities in Oklahoma currently operate hazardous waste transfer stations and will be affected by the revisions to the transfer station rules.

CLASSES OF PERSONS WHO WILL BEAR COSTS: Persons who generate HSM for recycling or currently operate under any of the exclusions in 40 CFR 261.4(a) will bear the costs associated with the DSW rule. The DSW Rule is intended to promote recycling of HSM rather

than the more expensive alternative, disposal. As such, we anticipate any entity taking advantage of the exclusions in this rule to see an overall reduction in costs.

With respect to the transfer station rules, those entities that currently have hazardous waste transfer stations will see an additional cost associated with development of updated and renewed transfer station operational plans that will be required under these rules. The first new plan for these existing entities will be required to be submitted in approximately one year. After that, plan renewals will be required every ten years.

INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES: As of the date of this Rule Impact Statement, no information has been received regarding cost impacts related to incorporation of the DSW rule.

DEQ has received one comment with respect to the changes to the transfer station rules. The commenter noted that "costs associated with creating an entire copy of an existing [Development and Operations] plan could be exorbitant..." but no information was submitted to assist DEQ with review of these costs.

CLASSES OF PERSONS BENEFITTED: Under the DSW rule, entities taking advantage of the rule will benefit due to the additional recycling options for materials that would otherwise have to be disposed as hazardous waste. This may result in overall reduced costs to these entities.

Under the transfer station rules, both the regulated entities and the public will benefit from the proposed changes. First, the rules will clarify many long-standing areas of ambiguity, making compliance easier for regulated entities. The public will benefit because of the new requirement that operational plan approvals be renewed, within 18 months of the rule's promulgation for existing plans, then every 10 years thereafter. As it stands now, the public has an opportunity to review proposed operations when a facility first seeks authorization from DEQ to operate a transfer station. Once that initial plan is approved, however, there is little to no opportunity for the public to be made aware of changes in facility operations. Current transfer station plans have been in place for up to 25 years and even though operations have changed significantly during that time, few individual changes were significant enough to trigger public notice requirements. In some respects, facility operations and/or ownership are far different than what was initially brought to the public's attention when the plans were first approved. By requiring operational plans to be renewed every 10 years, interested members of the public will have an opportunity to fully review facility operations, enhancing the public's right to know what is happening in their communities.

PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS: Under the DSW rule, entities taking advantage of the rule will benefit due to the additional recycling options for materials that would otherwise have to be disposed as hazardous waste. This may result in overall reduced costs to these entities.

With respect to the transfer station rules, those entities that currently have hazardous waste transfer stations will see an additional cost associated with development of new transfer station

operational plans that will be required under these rules. New plans for existing facilities will be required to be submitted approximately one year after these rules are finally adopted. After that, plan renewals will be required every ten years.

PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: Currently, no political subdivisions are subject to the proposed rules and it is not anticipated any will become subject; therefore, no economic impact on political subdivisions is expected.

POTENTIAL ADVERSE EFFECTS ON SMALL BUSINESSES: Most small businesses will not be significantly impacted. Those who take advantage of the DSW Rule should see reduced costs resulting from the wider range of recycling opportunities offered in the rule. Those businesses with current transfer station plans will see a cost associated with development of new operations plans to be submitted approximately one year after the effective date of the rules.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: No fee changes are proposed.

PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE: No increase in funding is needed.

PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE: None. No other State agencies will be implementing the rules.

SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE: DEQ's costs to implement the rules being proposed will be covered through fees and federal grants.

PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES IF IT CAN BE PROJECTED: Under the DSW rule being incorporated, DEQ may see a reduction in the amount of hazardous waste fees it receives for any HSM that is handled under one of the new exclusions, rather than being disposed as hazardous waste. We do not have enough information at this time to project a dollar amount, but we expect it will be minimal.

COOPERATION OF POLITICAL SUBDIVISION REQUIRED TO IMPLEMENT OR ENFORCE RULE: No cooperation in implementing or enforcing the proposed rule changes will be required from any political subdivision.

EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS: For the DSW Rule, certain aspects of the Rule are mandatory to maintain our authorized program, as such we are required to adopt those provisions. With respect to the optional provisions, implementation should reduce compliance costs for entities due to a wider range of recycling opportunities, resulting in a cost savings over the more expensive option of disposal.

For the transfer station rules, DEQ sought input from those entities who would be affected by the proposed rules and took those comments into consideration; however, no information was received that directly discussed costs. While we acknowledge there will be a cost associated with developing and submitting entirely new plan applications every ten years, we believe that cost will be minimal compared to the overall operational cost for the facility. The public benefit resulting from greater knowledge of what is happening in their communities will be significant.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: Because some provisions of the federal DSW rule are more stringent than current federal rules, DEQ is required to adopt those provisions to maintain our authorized status. For the optional provisions of the federal DSW rule, this rulemaking is the only way to reduce regulatory requirements while still protecting human health and the environment. Without incorporating these optional provisions, entities would have to continue operating under the more rigorous hazardous waste regulations, resulting in a higher cost for compliance.

With respect to the transfer station rules, since these proposed rules are to address ambiguities and operational questions that have arisen over the years, this rulemaking is the best way to achieve that goal.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: Neither of these proposed rules will have a detrimental effect on public health, safety, and the environment.

IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK: The proposed rules are not designed specifically to reduce significant risks to the public health, safety, and the environment.

DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED: Failure to pass the proposed revisions will not directly have a detrimental effect on public health, safety, and the environment. If the mandatory provisions of the federal DSW rule are not passed, DEQ's hazardous waste rules will not be equivalent to the federal regulations. This could jeopardize our authorized program and EPA could directly enforce those provisions in Oklahoma. Failure to pass the optional provisions of the DSW rule would not be expected to have a detrimental effect on public health, safety, or the environment; however, it could result in higher costs to businesses because their hazardous secondary materials would still have to be managed as hazardous waste.

Failure to adopt the revisions to the transfer station rules would not directly have a negative effect on those entities who currently have operations plans, but the ambiguities and operational questions that have come up over the years would continue. Furthermore, the public would not have the additional knowledge that will be afforded by 10-year plan renewals of what hazardous waste activities are being performed in their neighborhoods.

PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES INCLUDING QUANTIFIABLE DATA WHERE POSSIBLE: DEQ does not anticipate any significant qualitative or quantitative impact on Oklahoma businesses.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: September 1, 2015