

Solid Waste Directive:

Determining Agricultural Use Exclusions from the Definition of, and Regulation as, Solid Waste

Approved: Alan D. Gehret Date: 8/29/07
Land Quality Administrator

Scope:

This Solid Waste Directive:

- Clarifies for Department staff when materials used in agricultural operations are excluded from the definition of "solid waste" in ORS 459.005(24) and OAR 340-093-0030(82); and
- Identifies the process the Department will use to make such determinations.

Purpose/Need:

Materials used in certain agricultural operations are excluded from the definition of solid waste and therefore from regulation as solid wastes. In response to requests and to assure compliance, the Department occasionally must determine whether proposed or existing uses of wastes are covered by this agricultural exclusion. This directive describes the process the Department will follow to make these determinations.

Legal Authority:

Oregon Revised Statute, ORS 459.005 (24), defines "solid waste" as:

"Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid Waste" does not include:

(a) Hazardous waste as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

Department rules further clarify this definition in OAR 340-093-0030 (82):

"Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates.

Waste materials that are excluded from the definition of "solid waste" are not regulated under solid waste authorities.

Directive:

- (1) **Criteria for the exclusion:** To qualify for the agricultural exclusion from the definition of "solid waste," a material must be used for a productive purpose on land in an agricultural operation for growing or harvesting crops or for raising fowl or other animals. To be considered a productive purpose, the waste must provide a net benefit in the agricultural operation and cannot create an adverse impact to human health or the environment. For growing crops, the material must be used at or below agronomic rates.
- (2) **Factors considered:** The Department will determine whether a material meets the criteria for exclusion in (1) based on the following factors:
 - (a) The type, source, and amount of waste material to be used;
 - (b) The proposed use of the waste material;
 - (c) Information about the physical, chemical, and, where appropriate, biological characteristics of the waste material;
 - (d) Information describing and confirming the beneficial component or beneficial characteristic of the waste material;
 - (e) Documentation from the Extension Service, or other qualified source, that the proposed use is beneficial for the application proposed and that the proposed application rate is at or below agronomic rates for the intended use/benefit;
 - (f) Where the Department deems necessary, results of analytical testing showing that the waste is not hazardous and will not result in adverse impact to human health or the environment; and
 - (g) Other relevant information.
- (3) **Requests for determinations:** Persons requesting a determination whether a particular use of waste material satisfies this agricultural exclusion must submit the information described in (2) to the Department. The Department will review the information submitted, request or obtain additional information as appropriate, and determine whether the waste meets the criteria for exclusion in (1). The Department may determine that the use meets the criteria for exclusion as proposed, may require modifications or conditions in the proposed use to meet the criteria, or may determine the use does not meet the criteria for exclusion. The Department will provide a letter describing its determination to the person requesting the determination, including any conditions for approval.
- (4) **Enforcement for unauthorized disposal of solid wastes:** If the Department has a reasonable basis to believe that a waste material used in an agricultural operation does not meet the criteria for exclusion from the definition of "solid waste" and is being disposed of without a required permit, it may pursue enforcement action as appropriate. The Department may require access to premises and records pursuant to solid waste authorities, including ORS 459.385, to determine compliance and to enforce applicable solid waste laws and rules.

Implementation: This Directive is effective immediately. Judy Henderson will send the Directive to Department Solid Waste staff.

Disclaimer: This directive is not rulemaking by the Environmental Quality Commission and may not be relied upon to create an enforceable right or benefit.

Contact Person: Judy Henderson, Solid Waste Policy and Program Development, 503-229-5521.

Review Schedule: Periodic review schedule will apply.