



Oregon

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Guide to Composting Facility Notification under Senate Bill 462 (2013)

January 6, 2014

In 2013, the Oregon Legislature passed Senate Bill 462, which became effective on June 26, 2013. This bill requires cities and counties to hold a pre-application conference for certain composting facilities before an applicant may submit an application for land use approval. The bill is in response to negative public reaction to odors generated by a large composting facility receiving type 3 feedstocks and legislative concern that public input should be accommodated before the approval of such facilities.

This guide was prepared by DLCDC in coordination with the Oregon Department of Environmental Quality (DEQ), and summarizes the provisions of SB 462 in a question and answer format. Refer to Senate Bill 462 for additional detail. The guide is not intended to provide legal advice or to be a substitute for rulemaking.

Q and A:

Q: What types of composting facilities are subject to SB 462?

A: *SB 462 applies to all composting operations that require a DEQ permit and involve either: 1) a new operation that sells its product or 2) an existing operation that sells its product and either expands significantly or accepts certain non-vegetative materials (type 3 feedstock).*

Q: What zones does SB 462 apply to?

A: *SB 462 applies to all zones in cities and counties in which composting facilities, or uses that include composting facilities, are allowed.*

Q: What does SB 462 require of cities and counties?

A: *SB 462 requires cities and counties to hold a pre-application conference before an applicant may submit an application for land use approval for a composting facility.*

Q: What does SB 462 require of applicants?

A: SB 462 requires applicants to hold a community meeting following a pre-application conference and before the submittal of an application for land use approval.

Q: Does SB 462 impose any new or changed plan review criteria for composting facilities?

A: No

Q: Does SB 462 involve any other requirements?

A: Yes. For proposed composting sites that require metropolitan service district (Metro) approval, DEQ and Metro are prohibited from permitting a composting facility within 1,500 feet of a school that is within an exception area for rural residential uses.

If you have further questions about implementation of these new provisions, please contact Katherine Daniels, DLCD Farm and Forest Lands Specialist, at 503-934-0069 or katherine.daniels@state.or.us or Bob Barrows, DEQ Solid Waste Policy Analyst, at 541-687-7354 or barrows.bob@deq.state.or.us.

Enrolled
Senate Bill 462

Sponsored by Senators STARR, OLSEN, ROBLAN, DEVLIN; Representatives PARRISH, UNGER

CHAPTER

AN ACT

Relating to composting; creating new provisions; amending ORS 268.318; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

- (a) "Compost" has the meaning given that term in ORS 459.005.
- (b) "Disposal site" has the meaning given that term in ORS 459.005.
- (c) "Local government" has the meaning given that term in ORS 174.116.

(2) Before an applicant may submit an application under ORS 215.402 to 215.438 for land use approval to establish or modify a disposal site for composting that requires a permit issued by the Department of Environmental Quality, as provided in subsection (3) of this section, the applicant shall:

(a) Request and attend a preapplication conference described in subsections (4) to (6) of this section; and

(b) Hold a preapplication community meeting described in subsections (7) to (9) of this section.

(3) Subsection (2) of this section applies to an application to:

(a) Establish a disposal site for composting that sells, or offers for sale, resulting product; or

(b) Allow an existing disposal site for composting that sells, or offers for sale, resulting product to:

(A) Accept as feedstock nonvegetative materials, including dead animals, meat, dairy products and mixed food waste; or

(B) Increase the permitted annual tonnage of feedstock used by the disposal site by an amount that requires a new land use approval.

(4) During the preapplication conference:

(a) The applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(b) The county with land use jurisdiction over the proposed disposal site for composting and the other representatives described in subsection (5) of this section shall inform the applicant of permitting requirements to establish and operate the proposed disposal site for composting and provide all application materials to the applicant.

(5) The applicant shall submit a written request to the county with land use jurisdiction to request a preapplication conference. A representative of the planning department of the

county and a representative of the Department of Environmental Quality shall attend the conference along with representatives, as determined necessary by the county, of the following entities:

(a) Any other state agency or local government that has authority to approve or deny a permit, license or other certification required to establish or operate the proposed disposal site for composting.

(b) A state agency, a local government or a private entity that provides or would provide to the proposed disposal site for composting one or more of the following:

(A) Water systems.

(B) Wastewater collection and treatment systems, including storm drainage systems.

(C) Transportation systems or transit services.

(c) A city or county with territory within its boundaries that may be affected by the proposed disposal site for composting.

(d) The Department of Land Conservation and Development.

(e) The State Department of Agriculture.

(6) The county with land use jurisdiction may use preapplication procedures, if any, in the acknowledged land use regulations of the county, consistent with the requirements that the county shall:

(a) Provide notice of the preapplication conference to the entities described in subsection (5) of this section by mail and, as appropriate, in any other manner that ensures adequate notice and opportunity to participate;

(b) Hold the preapplication conference at least 20 days and not more than 40 days after receipt of the applicant's written request; and

(c) Provide preapplication notes to each attendee of the conference and the other entities described in subsection (5) of this section for which a representative does not attend the preapplication conference.

(7) After the preapplication conference and before submitting the application for land use approval, the applicant shall:

(a) Hold a community meeting within 60 days after the preapplication conference:

(A) In a public location in the county with land use jurisdiction; and

(B) On a business day, or Saturday, that is not a holiday, with a start time between the hours of 6 p.m. and 8 p.m.

(b) Provide notice of the community meeting to:

(A) The owners of record, on the most recent property tax assessment roll, of real property located within one-half mile of the real property on which the proposed disposal site for composting would be located;

(B) The resident or occupant that receives mail at the mailing address of the real property described in subparagraph (A) of this paragraph if the mailing address of the owner of record is not the mailing address of the real property;

(C) Neighborhood and community organizations recognized by the governing body of the county if a boundary of the organization is within one-half mile of the proposed disposal site for composting;

(D) A newspaper that meets the requirements of ORS 193.020 for publication;

(E) Local media in a press release; and

(F) The entities described in subsection (5) of this section.

(8) During the community meeting, the applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(9) The applicant's notice provided under subsection (7)(b) of this section must include:

(a) A brief description of the proposed disposal site for composting;

(b) The address of the location of the community meeting; and

(c) The date and time of the community meeting.

SECTION 2. (1) As used in this section:

(a) "Compost" has the meaning given that term in ORS 459.005.

(b) "Disposal site" has the meaning given that term in ORS 459.005.

(c) "Local government" has the meaning given that term in ORS 174.116.

(2) Before an applicant may submit an application under ORS 227.160 to 227.186 for land use approval to establish or modify a disposal site for composting that requires a permit issued by the Department of Environmental Quality, as provided in subsection (3) of this section, the applicant shall:

(a) Request and attend a preapplication conference described in subsections (4) to (6) of this section; and

(b) Hold a preapplication community meeting described in subsections (7) to (9) of this section.

(3) Subsection (2) of this section applies to an application to:

(a) Establish a disposal site for composting that sells, or offers for sale, resulting product; or

(b) Allow an existing disposal site for composting that sells, or offers for sale, resulting product to:

(A) Accept as feedstock nonvegetative materials, including dead animals, meat, dairy products and mixed food waste; or

(B) Increase the permitted annual tonnage of feedstock used by the disposal site by an amount that requires a new land use approval.

(4) During the preapplication conference:

(a) The applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(b) The city with land use jurisdiction over the proposed disposal site for composting and the other representatives described in subsection (5) of this section shall inform the applicant of permitting requirements to establish and operate the proposed disposal site for composting and provide all application materials to the applicant.

(5) The applicant shall submit a written request to the city with land use jurisdiction to request a preapplication conference. A representative of the planning department of the city and a representative of the Department of Environmental Quality shall attend the conference along with representatives, as determined necessary by the city, of the following entities:

(a) Any other state agency or local government that has authority to approve or deny a permit, license or other certification required to establish or operate the proposed disposal site for composting.

(b) A state agency, a local government or a private entity that provides or would provide to the proposed disposal site for composting one or more of the following:

(A) Water systems.

(B) Wastewater collection and treatment systems, including storm drainage systems.

(C) Transportation systems or transit services.

(c) A city or county with territory within its boundaries that may be affected by the proposed disposal site for composting.

(d) The Department of Land Conservation and Development.

(e) The State Department of Agriculture.

(6) The city with land use jurisdiction may use preapplication procedures, if any, in the acknowledged land use regulations of the city, consistent with the requirements that the city shall:

(a) Provide notice of the preapplication conference to the entities described in subsection (5) of this section by mail and, as appropriate, in any other manner that ensures adequate notice and opportunity to participate;

(b) Hold the preapplication conference at least 20 days and not more than 40 days after receipt of the applicant's written request; and

(c) Provide preapplication notes to each attendee of the conference and the other entities described in subsection (5) of this section for which a representative does not attend the preapplication conference.

(7) After the preapplication conference and before submitting the application for land use approval, the applicant shall:

(a) Hold a community meeting within 60 days after the preapplication conference:

(A) In a public location in the city with land use jurisdiction; and

(B) On a business day, or Saturday, that is not a holiday, with a start time between the hours of 6 p.m. and 8 p.m.

(b) Provide notice of the community meeting to:

(A) The owners of record, on the most recent property tax assessment roll, of real property located within one-half mile of the real property on which the proposed disposal site for composting would be located;

(B) The resident or occupant that receives mail at the mailing address of the real property described in subparagraph (A) of this paragraph if the mailing address of the owner of record is not the mailing address of the real property;

(C) Neighborhood and community organizations recognized by the governing body of the city if a boundary of the organization is within one-half mile of the proposed disposal site for composting;

(D) A newspaper that meets the requirements of ORS 193.020 for publication;

(E) Local media in a press release; and

(F) The entities described in subsection (5) of this section.

(8) During the community meeting, the applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(9) The applicant's notice provided under subsection (7)(b) of this section must include:

(a) A brief description of the proposed disposal site for composting;

(b) The address of the location of the community meeting; and

(c) The date and time of the community meeting.

SECTION 3. Sections 1 and 2 of this 2013 Act apply to applications for permits that are submitted on or after the effective date of this 2013 Act.

SECTION 4. Section 5 of this 2013 Act is added to and made a part of ORS 459.205 to 459.385.

SECTION 5. (1) As used in this section:

(a) "Property line" has the meaning given that term in ORS 92.010.

(b) "School" means:

(A) A public or private institution of learning providing instruction in kindergarten through grade 12, or any combination of those grade levels; and

(B) The surrounding buildings, other structures, playgrounds, athletic fields, parking lots and any other areas of the institution that are accessed by students of the institution on a regular basis.

(2) The Department of Environmental Quality may not issue a disposal site permit under ORS 459.245 to establish a commercial disposal site for composting if:

(a) The property line of the proposed disposal site for composting is located within 1,500 feet of a property line of a school that is within an exception area for rural residential uses; and

(b) The proposed disposal site for composting requires approval from a metropolitan service district under ORS 268.318.

SECTION 6. ORS 268.318 is amended to read:

268.318. (1) No public or private disposal, transfer or resource recovery site or facility in the **metropolitan service** district shall be established, modified or extended without the prior approval of the district. The district may deny an application for the establishment, modification or extension of a site or facility if pursuant to its solid waste management plan the district has either:

(a) Entered into contracts obligating the district to supply or direct minimum quantities of solid wastes to sites or facilities designated in the contract in order that those sites or facilities will operate economically and generate sufficient revenues to liquidate any bonded or other indebtedness incurred by reason of those sites or facilities; or

(b) Adopted a franchise system for the disposal of solid or liquid wastes.

(2) In considering an application for the establishment, modification or extension of a site or facility, the **metropolitan service** district may take into account the location and number of existing sites or facilities and their remaining capacities, whether the proposed establishment, modification or extension complies with the district's solid waste management plan and whether the applicant has complied with all other applicable regulatory requirements.

(3)(a) **As used in this subsection:**

(A) "Compost" has the meaning given that term in ORS 459.005.

(B) "Disposal site" has the meaning given that term in ORS 459.005.

(C) "Property line" has the meaning given that term in ORS 92.010.

(D) "School" has the meaning given that term in section 5 of this 2013 Act.

(b) The metropolitan service district may not approve the establishment of a commercial disposal site for composting if the property line of the proposed disposal site for composting is located within 1,500 feet of a property line of a school that is within an exception area for rural residential uses.

SECTION 7. Section 5 of this 2013 Act and the amendments to ORS 268.318 by section 6 of this 2013 Act apply to applications pending on or filed on or after January 1, 2013.

SECTION 8. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate April 29, 2013

Received by Governor:

Repassed by Senate June 18, 2013

.....M.,....., 2013

Approved:

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Robert Taylor, Secretary of Senate

.....M.,....., 2013

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House June 13, 2013

Filed in Office of Secretary of State:

.....M.,....., 2013

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Tina Kotek, Speaker of House

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Kate Brown, Secretary of State