

**2001 Land Application Laws &
DEQ's Procedure for Proposals to Land Apply Reclaimed Water,
Industrial Process Water, and Biosolids
on Exclusive Farm Use (EFU) Lands**



Purpose: This document is intended to provide information on the 2001 Legislative Act relating to land application practices and land use regulations (Senate Bill 212), and also describes the steps that the Department of Environmental Quality (DEQ) uses to process land application proposals in compliance with this Act.

History and Benefits of Land Application: The land application of organic residuals and reuse of wastewater (reclaimed water) has been practiced in Oregon and nationally for decades. When done in accordance with appropriate environmental regulations and guidance, land application is beneficial for a number of reasons. Biosolids contain soil amendment properties as well as important nutrients that can improve crop production. Reclaimed water and industrial process water can provide nutrient benefits and reduce the demand for irrigation water from ground or surface water sources. The use of reclaimed water can also reduce the demand for potable water supplies, which can be used instead for drinking water and instream flow protection. Water quality and water availability continue to be serious issues confronting growing communities in Oregon. Finding appropriate uses for reclaimed water, industrial process water, and biosolids are necessary options for many communities in their efforts to comply with federal and state water quality laws. The practice of land application presents important conservation potential and helps extend existing water supplies. Organic residuals and wastewater that were once considered waste products to be disposed, are now valuable resources.

Until the passage of the 2001 legislation, there was considerable uncertainty regarding the land use requirements for land application on EFU zoned lands. Questions existed about whether particular land application activities were farm uses, utility facilities or something else. In 1999, Jackson County approved the City of Ashland's land application proposal as a farm use without making a formal land use decision, and signed-off accordingly on DEQ's Land Use Compatibility Statement (LUCS). This decision was appealed by a citizen group to the Land Use Board of Appeals (LUBA). LUBA concluded that the County's decision constituted a "land use decision" under ORS 197.015 (10)(b)(A) and that the County failed to provide public notice and an opportunity for hearing. LUBA also determined that under current law in this case, and using the appropriate decision-making process, land application may be determined a farm use or a utility facility use. The City appealed the decision to the Court of Appeals. The Department of Land Conservation and Development (DLCD), Department of Agriculture (ODA) and DEQ submitted an amicus brief, which supported the position that county notice and opportunity for hearing should be required for land application activities. The Court of Appeals upheld LUBA's decision on this point. In another case, *Cox v. Polk County*, the Court of Appeals reversed LUBA's decision that the proposed land application was a utility facility, however let stand the county and LUBA's determination that the proposed use was a farm use.

Water Quality Division
811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
(800) 452-4011
Fax: (503) 229-5850
Contact: Mark Cullington
or Roberta Young
www.deq.state.or.us

The Ashland court case triggered a mediation that involved the affected agencies and interested parties. Key issues identified in the mediation process included:

- The lack of direct reference to land application as an allowable use in the EFU statutes (ORS 215); and, uncertainty over whether such activities were a “farm use” or a “utility facility”.
- Land application practices and regulations and related public health and safety issues.
- The implications of city ownership of EFU land and land application practices on available EFU land in the State, particularly on lands adjacent to Urban Growth Boundaries.

Legislative Remedy: In 2001, the Legislature approved Senate Bill 212, amending ORS 215.213 and 215.283. Highlights of the Act include:

- Subject to issuance of a permit or approval by DEQ, land application of industrial process water, reclaimed water and biosolids is an allowed use on EFU zoned land. Because land application is listed as an allowed use in ORS 215.213(1), counties may not impose additional land use restrictions or conditions on land application practices, beyond those specified in the statute.
- Other facilities or uses on the same EFU tract are included in the allowed use if they are accessory to and reasonably needed for land application to occur on the proposed site. The Act also disallows certain uses, e.g. utility facility service lines.
- Before a county land use decision is made on a land application proposal, the applicant responds in writing to public comments received by the county that identify alternative sites or methods for managing the industrial process water, reclaimed water or biosolids. The applicant’s response describes how the alternative sites or methods were considered and why they were not selected. The land use decision can not be remanded or reversed, unless the applicant fails to provide a written response when required.
- DEQ is required to determine, through its review and approval process, that the practice of land application will not reduce the productivity of the subject land.
- Land application of biosolids is exempt under the Act when transported by vehicle to EFU land (a DEQ LUCS is not required).
- Land application of materials that are not described in the Act are not subject to the Act’s provisions, e.g. confined animal feeding operation wastes.
- Land division, for purposes of land application, is not allowed in EFU zones.
- Restrictions apply in changing the use of land where land application practices has occurred.

Process for Land Application Proposals: As the State Agency that issues environmental approval for land application practices, DEQ has consulted with the DLCDC, ODA, and Department of Human Services (DHS) to ensure that its process meets the intent of the new Act. The following steps described below apply to:

- New land application proposals (except those involving vehicle transport of biosolids).
 - Significant modifications to permits, approvals and permit renewals, e.g. use of additional lands.
1. The applicant obtains the required DEQ application and LUCS forms, and submits the LUCS to the county planning office for its review and approval.
 2. The county conducts its land use review process in accordance with the requirements under the Act.

3. The county completes the LUCS form and returns it to the applicant with the attached findings:
 - The proposed activity constitutes land application for purposes of agricultural, horticultural, silviculture production, or for irrigation in connection with a use allowable in EFU zoned land under ORS 215.
 - Any proposed facilities necessary for the land application practice to occur on the subject site are accessory to and reasonably necessary as allowed by the Act.
 - Approval of the LUCS is subject to DEQ's issuance of the necessary environmental approvals or permits.
4. The applicant submits the DEQ application and approved LUCS to DEQ for processing. DEQ processes the application and conducts a technical review in accordance with its rules. The review, depending on what material is applied to the land, may include the following:
 - Pollutant and nutrient testing
 - Determination of agronomic rate
 - Determination of agronomic or pollutant loading
 - Determination of water assimilation capacity
 - Site assessment and evaluation
 - Crop type and cropping system
 - Application methods and equipment requirements
 - Site access and harvest restrictions
 - Monitoring requirements
 - A written determination that the land application activity will not reduce the productivity of the land in question.
5. DEQ submits all Reclaimed Water Reuse Plans to the DHS for comment (OAR 340-055-0015(2)), and consults with DHS on any effluent quality limitations (OAR 340-055-0015(4)).
6. Applicants intending to land apply reclaimed water are required to submit a "Registration of Reclaimed Water Use" form (<http://www1.wrd.state.or.us/pdfs/reclaimform96.pdf>) to the Water Resources Department (ORS 537.131, 537.132 and 537.610(h)). Either agency can supply applicants with this form, however it requires a DEQ signature.
7. DEQ issues an approval or denial to the applicant, and provides a copy to the county planning office.

In situations where a LUCS is denied or appealed:

1. When DEQ receives a county-denied LUCS, the applicant is informed that DEQ can not process the application until county approval is provided.
2. If a county land use decision is appealed after DEQ receives an approved LUCS, DEQ's policy is to process the application unless ordered otherwise by a court stay or invalidation of the county decision. A county may withdraw or modify its LUCS decision before the permit is issued.
3. If a county-approved LUCS is successfully appealed after DEQ issues a permit, DEQ may revoke or suspend the permit, or delay its decision until the appeals process is exhausted. In making its decision, DEQ consults closely with the applicant and county government.