



Directive

Solid Waste Complaint Response Guidance

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Purpose/Need:

The following discussion deals with civil statutes and DEQ administrative rules which both apply to solid waste complaints and violations. The discussion attempts to define a dilemma faced by solid waste program staff in responding to and dealing with solid waste related complaints. While the Department is specifically charged by the legislature to regulate solid waste disposal sites, we do not have specific authority to cite violations of Oregon's criminal offensive littering statutes. The problem arises when a literal application is made of our "disposal site" definition, because every location that falls under the offensive littering statute, can also be a "disposal site" as defined by DEQ administrative rules.

Legal Authority:

Administrative Rule vs. Civil Statute:

Oregon addresses solid waste issues in both civil statutes, and DEQ administrative rules that are drafted to implement specific legislative authority found in statute. The solid waste program enabling legislation is found in Oregon Revised Statutes Chapters 459 and 459A.

Chapter 459 in general authorizes the Department to promote and coordinate research, apply and receive federal funds, and to enter into agreements with federal, state and local government units and private persons to carry out ORS 459.005 through 459.105 and other statutes. Chapter 459 goes on to authorize and outline the solid waste program operated by the Department, including the waste tire program.

Chapter 459A provides authority for the Department's reuse and recycling programs in Oregon.

Chapter 459 requires a person owning or controlling a disposal site to obtain a permit from the Department for the site. "Disposal site" is very broadly defined (in part) as land and facilities used for the disposal, handling or transfer of solid wastes. The definition also provides definition of exclusions from the meaning of the term disposal site (i.e., a site used by a wrecker issued a certificate under ORS 822.110 is not a disposal site).

The Department's enabling solid waste legislation does not specifically address the issue of littering or promiscuous dumping of waste. ORAS 164.775 defines and addresses littering as a Class B misdemeanor. Ors 164.785 makes it a Class A misdemeanor to place polluting, putrid, or offensive substances in waters, on highways or other property.

ORS 164.805 establishes the crime of offensive littering if a person discards or deposits rubbish, trash, garbage, etc. upon the land of another without permission of the owner, or on any public way or in or on any public transportation facility. Offensive littering is a Class C misdemeanor. These statutes are found under the heading "Theft Against Property" and are civil violations punishable in a court of law through action taken by the local district attorney.

Many of the solid waste complaints received by the Department are actually offensive littering kinds of complaints. Where a local county or city code compliance officer exists, these kinds of complaints can be referred to that person who can investigate and issue a citation to court for documented violations. DEQ employees do not have that kind of citation authority.

If there is no designated local code compliance officer, to continue down this path, DEQ would need to investigate and convince the local Sheriff or DA that a citation for offensive littering needs to be issued, citing the suspect into the appropriate court. Sheriff's Departments and District Attorney offices are by and large busy places and are often pretty reluctant to get involved in these kinds of issues, although there can be exceptions.

The next alternative for DEQ is to call the property where the litter is dumped a disposal site, and pursue the property owner for operating a disposal site without a permit (an administrative rather than civil action). This can be an effective option where the property is privately owned. If the property is public land, the managing agency may be reluctant to agree that they are operating a disposal site. They also have limited resources to pursue offensive littering violations. They may proactively move to clean up a site, or seek volunteer help to assist in the clean up process.

Directive:

Complaint Response Guidelines:

1. The Department should always pursue complaints involving disposal¹ of waste as a violation of administrative rules requiring a permit to establish or operate a disposal site.
2. The Department should carefully review complaints that are actually offensive littering complaints and refer to local code enforcement offices if these offices exist. If local code enforcement offices exist but are not able to respond, complaint should be prioritized and addressed by Department staff as appropriate. If local code enforcement offices do not exist complaints should be prioritized and addressed as appropriate.
3. Waste dumping on public land should be coordinated with the appropriate land management agency who may be able to facilitate clean up.
4. Wrecking yard kinds of complaints should be referred to local government for appropriate action through local ordinance or zoning violation processes.
5. Complaints concerning permitted facilities should result in a facility site visit focused on the complaint issue.
6. Complaints involving the agricultural land application of solid waste or agricultural waste disposal will be coordinated with the Oregon Dept. of Agriculture. Documented environmental violations will be pursued by the Department of Environmental Quality.
7. Other complaints should be dealt with on a case by case basis depending on the information received, and the ability of the Department to actually resolve or correct the problem.

¹ Disposal includes burial and burning.

GENERAL COMPLAINT PROCEDURES

1. Use the Solid Waste Complaint Priority Matrix to prioritize complaints and determine appropriate response.
2. Complaints are regulatory activities and not strictly technical assistance. There is no enforcement immunity from violations found at a complaint site visit.
3. If a complaint generates a site visit the complainant should be re-contacted with an update on the status.
4. When a complaint is responded to, staff should make a case by case decision about informing the local jurisdiction of the issue and situation.
5. Staff is expected to maintain and keep current the Agency Complaints Database. It is especially important to enter the follow-up information after the complaint has been entered into the data base. This should be done in a timely manner.
6. Complaint response and enforcement follow-up should be included in appropriate staff workplans. This work is considered part of the compliance work in the Solid Waste Strategic Plan. It is generally expected that approximately 10% of technical assistance staff time overall is devoted to enforcement/compliance activities.

COMPLAINT PRIORITIZATION GUIDELINE

Priority Rank	Examples	Response
High Current activity is significant violation(s) and environmental or human impacts are likely to be rapid. Intervention would likely have a significant benefit.	<ul style="list-style-type: none"> • Solid waste in or near waters of the state. • Large illegal disposal site (waste buried or burned) • Illegal disposal where money is accepted for disposal 	<ul style="list-style-type: none"> • Perform site inspection as soon as possible (5 days). • NON follow-up within 10 days.
Medium Current, intermittent or continuing long-term activity with moderate violation/environmental impact.	<ul style="list-style-type: none"> • Large pile of waste tires (100 or more) • Dumping of used oil that does not impact waters of the state. 	<ul style="list-style-type: none"> • If site inspection is necessary, conduct within 5 days. • If site inspections not needed, phone follow-up or send generic letter within 10 days. • Burning complaints, coordinate with AQ
Low Current activity is not a significant violation or environmental concern. Could be referred to local SW authority.	<ul style="list-style-type: none"> • Offensive littering • Junk yards • Nuisance situations 	<ul style="list-style-type: none"> • Phone or send generic letter within 10 days • Refer to local SW authority within 10 days

Procedures for Handling Complaints

Permitted Site/facility Complaints: These complaints go to the staff person responsible for oversight of that facility and its permit. They should prioritize the complaint by significance of the violation

and respond appropriately (e.g., site visit, NON, NPV, letter, phone call) within 5 days.

Non-permitted Site Complaints – High Priority: Complaints that would be considered high priority based on credible information will be responded to with a site inspection (within 5 days) and followed up with an NON (within 10 days). Copies of NONs to be sent to local solid waste authority, law enforcement and/or code enforcement officer. Blind copies of NONs may be sent to complainant.

Non-permitted Site Complaints – Medium and Low Priority: These will be handled with a site inspection, phone call, and/or letter as appropriate, or referred to the local law enforcement or solid waste authority (within 10 days). Follow-up with complainant if necessary for additional information and to inform them of actions taken by the Department. Copies of letters to be sent to local solid waste authority, law enforcement, and/or code enforcement officer. Blind copies of letters may be sent to complainant.

Opportunity to Recycle Complaints: These types of complaints, such as illegal disposal of recyclable material) go to the TA responsible for that Wasteshed. TA will investigate and issue letter or NON within 10 days.

Anonymous Complaints: Complaints that would be considered high priority based on credible information will be responded to per high priority response time. Medium and low priority, no response.

Open Burning of Solid Waste: Except when conducted at a permitted disposal site (NON), these should be referred to the AQ staff.

Follow-up with complainant:

- To obtain additional information
- After initial action
- At completion of actions if specifically requested.

Review Schedule:

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