

Memorandum

To: Whom it May Concern
From: Cheryl Grabham, Manager, Materials Management Program
Date: July 9, 2021
Subject: State laws related to collection of source-separated materials that may be recycled



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Local governments inquired with DEQ about how they may assess state law when considering proposals for collecting source-separated materials that may be recycled. Following is some information that may be useful as jurisdictions begin evaluating proposals. Please note that each local government will be in the best position to interpret its own code or ordinance.

Solid Waste

The definition of “solid waste” at ORS 459.005(24) means, in part, “all useless or discarded ... materials...” DEQ has consistently interpreted discarded to mean discarded by someone. The act of discard is what makes the material solid waste.

The definition of solid waste in Oregon law does not create exceptions for materials that have value, are sent for recycling, upcycling or other alternatives to a landfill, or otherwise support regional sustainability goals. The element of discard in the definition of solid waste is consistent with the definition of “disposal site” at ORS 459.005(8), which includes facilities used for material recovery and recycling.

Fees

The statute limits what a collection service or disposal site may charge a person for the collection of source-separated recyclable material. “Recyclable material” is defined in statute to mean any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.” ORS 459.005(19). That definition is further refined in rule at OAR 340-090-0130(2): “If, as part of the opportunity to recycle, a city or county requires by franchise that residential collection service of recyclable material be provided and identifies a group of two or more materials as the recyclable material for which the residential collection service must be provided, then... (b) ‘Recyclable material’ means the group identified by the city or county.” A “fair market value” exemption for source-separated recyclable material is found at ORS 459A.075 and OAR 340-090-0130.

Local governments reported they are considering proposals for collecting source-separated material such as batteries, film plastic, and other items that are not collected for recycling by franchise haulers as part of standard on-route service. As a general matter, the materials described above, on their own, are unlikely to fall within the definition of recyclable material. Therefore ORS 459A.070 would not be applicable.

If a city or county were to group materials and require residential recycling collection service of those materials, as described at OAR 340-090-0130(2), the group of materials identified by the city or county may then be “recyclable material” and subject to ORS 459A.070.

DEQ recommends each jurisdiction consult with its own legal counsel regarding applicability of state law for local policy and regulatory decisions. Please note that Senate Bill 582, the Plastic Pollution and Recycling Modernization Act, was recently passed by the Oregon Legislature and is awaiting signature by Governor Brown. When implemented, this legislation may impact the law referenced in this memo.