



<b>SUBJECT</b> Designating Construction Staging and Disposal Sites	<b>FINAL NUMBER</b> GE08-04(B)	<b>EFFECTIVE DATE</b> 12/09/2008	<b>VALIDATION DATE</b> 05/14/2020	<b>SUPERSEDES or RESCINDS</b>
<b>TOPIC/PROGRAM</b> Geo-Environmental	<b>WEB LINK(S)</b> <a href="http://www.oregon.gov/ODOT/Engineering/Pages/Technical-Guidance.aspx">http://www.oregon.gov/ODOT/Engineering/Pages/Technical-Guidance.aspx</a>  <b>APPROVED SIGNATURE</b>  Original Signed by: Susan Haupt Environmental and Hydraulic Engineering Manager			

**PURPOSE**

The purpose of this document is to inform project development teams of their responsibility and to assist the team to determine when it is appropriate to designate prospective or mandatory disposal sites and/or construction staging sites (defined below), in the construction contract documents. This document is intended to provide the project development team (PDT) guidance in making those determinations. The intent is not to increase the use of prospective and mandatory disposal sites and/or construction staging sites, but to clarify Agency and Contractor responsibilities associated with those decisions.

This guidance also strives to create a distinction between Contractor-designated versus Agency-designated staging and disposal sites. While it may not be economical to identify Agency-designated staging and/or disposal sites on all projects, it is an element of the project development process that should be considered on each project. Designating prospective or mandatory staging and/or disposal sites may be appropriate to minimize risk of environmental regulatory violations in areas of high environmental sensitivity. Designating Agency-provided sites may also help keep contract costs down regardless of the environmental sensitivity of the area. This guidance does not avoid all possible exposure or negate the Agency's responsibility, but it does strive to minimize risk of violations on Agency-designated sites and reduce our fiscal liability, if a violation occurs on Contractor-designated sites.

The materials covered by this guidance are restricted to natural soil and rock materials and certain construction materials that meet the criteria for "Clean Fill" that are produced in significant excess quantity during the course of a construction project. Disposition of materials that cannot meet the Clean Fill criteria are covered elsewhere in the Oregon Standard Specifications for Construction, Boilerplate Special Provisions, and other guidance.

## *GUIDANCE*

This guidance supports PD-10 by providing clarification on procedures for designating disposal sites, for placement or temporary storage of clean fill, and construction staging sites. The PDT will evaluate whether the project will generate waste material or may have a need for construction staging sites. The PDT will evaluate and compare the costs of identifying and developing Agency-designated sites against the environmental and contracting risks of allowing for Contractor-designated sites. Based on this evaluation, the PDT will determine whether or not the Agency will identify disposal and/or staging sites in the contract documents. The PDT will also need to determine if the Agency-designated sites will be offered as prospective or mandatory. (The mandatory designation is generally only used in areas determined to be of high environmental sensitivity, or when ODOT has specific and justifiable reasons to retain possession of the Waste Materials such as permit requirements, ownership issues, and planned beneficial reuse of the material.)

## *DEFINITIONS*

**Clean Fill** – As per OAR 340-093-0030, material consisting of soil, rock, concrete with or without rebar (provided the rebar is not exposed), brick, building block, tile or asphalt paving (weathered and consolidated with no free oil), which do not contain contaminants which could adversely impact the waters of the State or public health. This does not include wood, putrescible wastes, construction and demolition wastes and industrial solid wastes.

**Disposal Site** – A location where waste/excess material from a construction project is placed for some beneficial use or stockpiled and stored for planned future beneficial use.

**Environmental Clearances** – Permits (defined below) or assurances for regulated activities in environmentally sensitive areas. Clearance work consists of background research and/or field surveys to determine if environmentally sensitive areas (defined below) are present, and whether such resources could be impacted by a particular project activity, and work to secure related permits when necessary.

**Environmentally Sensitive Area** – As per PD-10, a location that has the potential to contain resources that should not be disturbed unless the proper regulatory and resource authorities have been conferred with. “Resources” in this context refers to threatened, endangered, or sensitive species of plants, animals, or their habitats; wetlands; waterways; cultural resources (archaeological or historic sites); floodplains or floodways; and visual features.

**Mandatory Site** – A site provided by the Agency, at which the Contractor is required to place waste/excess material or stage construction equipment and materials.

**Permits** – Documentation provided by other Agencies for regulated and permitted activities.

**Prospective Site** – A site provided by the Agency, at which the Contractor has the option to place waste/excess material or stage construction equipment and materials.

**Specifications** – All standard and special provision specifications referenced herein that correspond to, or modify, the Oregon Standard Specifications for Construction.

**Construction Staging Sites** – Locations where project-specific construction equipment, office trailers, and materials are assembled and stored prior to and during use on the project.

**Waste Material** – Excess material generated during project construction that qualifies as clean fill but are unsuitable for use on the project or are suitable for use, but in excess of the needed project quantities, and can be used beneficially elsewhere. The term "waste" in this context is defined as extra or unused material and is not intended to infer that the material is a solid or hazardous waste subject to DEQ regulation.

### *BACKGROUND/REFERENCE*

Unless modified by special provision, ODOT standard specifications make waste material (defined above) the property of the Contractor at the point of origin, and allow the Contractor to use disposal and/or staging areas that are outside of the project limits. There have been instances in the past where the Contractor has disposed of waste material or stored equipment in off-site environmentally sensitive locations. Regardless of ODOT specifications making waste material the property of the Contractor or limiting ODOT control over off-site staging areas, some environmental agencies may interpret the regulations to consider all actions associated with a project the responsibility of the owner of the project. This means that if a Contractor inappropriately disposes of material or uses a staging area in a way that results in an environmental violation, regulatory agencies may attempt to hold ODOT responsible. Even though ODOT specifications state the Contractor is responsible for reimbursing ODOT any penalty that is assessed against ODOT, the violations may remain in ODOT's name. In addition, Contractors may not be held responsible for paying fine multipliers that some agencies attach for repeat offenses, because the same Contractor may not be responsible for offenses on other ODOT projects. ODOT can also incur significant unrecoverable costs associated with getting the violation remedied and negotiating with the regulatory agencies.

### *EXPLANATION*

To limit the liability of ODOT when material may be placed, or a staging area is used or constructed upon inappropriate land, a PDT should do the following during the project development process:

1. During project development, the PDT will be responsible for determining if it is appropriate to identify Agency-designated disposal and/or staging sites.
2. For projects where the PDT determines that excess material will be generated during construction then the PDT should determine the volume, type, and sizes of material anticipated. The PDT should also evaluate project specifics and determine whether or not off-site equipment and materials storage areas will be needed.

3. The PDT's decisions on whether or not to identify Agency-designated disposal and/or staging areas should be based on potential permit requirements (Fill/Removal Permits), ownership of the waste material (waste from federal land may need to be retained), the environmental sensitivity and associated potential risk, or the potential for contract savings realized by retaining the waste material for use on other projects or by offering a disposal site in closer proximity to the project limits.
4. In evaluating potential beneficial uses for the waste material, the PDT should evaluate use of waste material from one project on other projects (STIP, OTIA, Local Agency and Maintenance projects) within a reasonable distance. As an example waste material can be used for reclamation of material sources or as fill on other ODOT projects.
5. The Region Environmental Coordinator will discuss the preliminary environmental risk at the first PDT meeting and describe environmentally sensitive areas within the project vicinity based on the environmental scoping report findings. The "vicinity" depends on the type of project, as well as land-use and resource constraints near the project. Risk shall continue to be assessed during development of the environmental baseline report and during project development when additional environmental resource and project details are typically obtained.
6. The PDT shall decide if the contract would benefit from the use of Agency-designated prospective and/or mandatory disposal or staging sites (**OPTION A**), or if the contract will allow for Contractor-designated disposal and staging sites (**OPTION B**).
7. If the PDT determines that **OPTION A** is warranted, then they would need to determine if these sites should be identified as mandatory or prospective. The mandatory designation is generally limited to use in areas determined to be of high environmental sensitivity, or when ODOT has specific and justifiable reasons to retain possession of the waste materials such as permit requirements, ownership issues, and planned beneficial reuse of the material.
8. The PDT will be responsible for ensuring that the bidding documents (plans and special provisions) clearly identify any Agency-designated disposal and/or staging sites and whether prospective or mandatory.
9. The Construction Project Manager will discuss any Agency-designated disposal and/or staging sites at the pre-construction meeting and the on-site pre-work meeting.

#### **OPTION A. Agency-Designated Sites**

Agency-designated disposal and/or staging sites may be on public or private lands. Regardless of the ownership of Agency-designated sites, applicable PDT members should conduct the following:

1. Provide topographic and boundary survey, as necessary.
2. Provide environmental clearances (No Effect or No Impact Statements).
3. Provide proof of ownership, ODOT control or appropriate R/W documentation (construction easements, leases, permits, etc.) allowing for proposed use.
4. Identify and provide all necessary permits associated with the proposed use.

5. Include relevant permit and/or land use conditions in special provisions and other contract documents, if applicable.
6. Provide plan sheets (GM) and special provisions [Sections 00235 or 00290.10, and 00330.41 (a-4 & a-5)] appropriate for the proposed activity.

### **OPTION B. Contractor-Designated Sites**

When the PDT does not designate disposal and/or staging sites, the Contractor is responsible for locating their own sites and is also responsible for environmental regulatory compliance at off-site locations. Contractor responsibility for environmental compliance related to Contractor-designated disposal and staging sites is supported several places in the standard specifications.

For Contractor-designated disposal and/or staging sites, the Agency shall adhere to the following conditions:

1. Do **not** perform surveys, research, or field investigations, or provide environmental clearances of Contractor-designated staging and/or disposal sites.
2. Do **not** provide construction easements or environmental permits for Contractor-designated staging and/or disposal sites.
3. Do **not** require the Contractor to provide proof of compliance (except for Erosion and Sediment Control permits, as per Section 00280.05 of Oregon Standard Specifications for Construction) related to Contractor-designated staging and/or disposal sites.
4. Do **not** provide payment to the Contractor for any activity related to Contractor-designated staging and/or disposal sites.
5. Do **not** allow for contract delays, or relaxation of liquidated damages resulting from Contractor-designated disposal and/or staging areas.

### *RESPONSIBILITIES*

This guidance applies to all state and federal aid projects, regardless of delivery by in-house or outsourced forces. This includes projects delivered via the STIP process, local agency projects with federal funding oversight, and Maintenance projects with state funding oversight. Environmental employees are responsible for identifying environmentally sensitive areas and providing environmental clearance work under Option A. Geology employees are responsible for permitting and developing the plans and special provisions for the disposal site or staging area covered in Option A. Project development teams are responsible for complying with this entire guidance, and Construction Project Managers are responsible for following through with this guidance during construction.

If ODOT has designated mandatory disposal and/or staging sites in the contract, Construction Project Managers shall discuss the justification for any changes that allow use of non-designated sites with the Region Environmental Coordinator and others as appropriate, and reference that discussion and concurrence on the Contract Change Order Supporting Data Sheet.

### *ACTION REQUIRED*

This guidance applies to all projects where development has not begun as of the date of this bulletin.

If the Agency elects to designate mandatory disposal and/or staging areas on federally funded projects, a Letter of Public Interest Finding is required.

### *SPECIAL INSTRUCTIONS*

This guidance has been developed in coordination with the Oregon Standard Specifications for Construction. The Project Delivery Unit shall ensure that revisions to PD-10 are consistent with this bulletin.

### *CONTACT INFORMATION*

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