



Oregon Department of Environmental Quality

Aug. 21, 2013

Environmental Quality Commission meeting Rulemaking Action Item: H

Conversion technology and anaerobic digestion facility performance standards and solid waste permit requirements

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed PERMANENT rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

Overview

Short summary

This rulemaking would establish performance standards and solid waste permit requirements for anaerobic digestion facilities and conversion technology facilities. These new standards and requirements would: assure environmental protection; establish appropriate permitting requirements for anaerobic digesters and conversion technology facilities; establish an appropriate fee schedule for anaerobic digesters and the new conversion technology facility permit category; and, provide regulatory certainty for emerging technology providers and DEQ staff.

This rulemaking also proposes changes to existing Oregon rules that include exempting certain low-risk facilities from solid waste disposal permit requirements, making adjustments to composting and waste tire rules, correcting references to solid waste rules and correcting grammar.

Brief history

Conversion technology facilities use chemical or thermal processes to convert solid waste to chemicals, fuels or other products for use or resale. Examples of conversion technology include pyrolysis and gasification. Anaerobic digestion facilities use biological processes to digest solid waste and create methane that can be used to create electricity or transportation fuels. In many cases, processing solid waste through conversion technology facilities or anaerobic digesters is a more sustainable practice than landfilling or incinerating solid waste.

The development and use of conversion technology facilities and anaerobic digesters is fairly new to Oregon and the U.S. DEQ's existing solid waste rules don't provide performance standards, permit requirements or permit exemption pathways that are appropriate for these types of facilities.

Under existing rules, conversion technology facilities and anaerobic digestion facilities are classified as solid waste treatment facilities. This rulemaking proposes to classify facilities using anaerobic digestion as composting facilities and create a new classification of solid waste disposal site called conversion technology facilities.

Regulated parties

The proposed rules would apply to facilities that receive and process solid waste into chemicals, fuels and other products for use or resale. Those facilities include anaerobic digestion facilities and a proposed new category of solid waste disposal site called a conversion technology facility. At this time these rules will affect five existing facilities in Oregon. Additionally, about a dozen on-farm anaerobic digestion facilities under the oversight of the Oregon Department of Agriculture will need to meet the proposed performance standards.

Outline

This rulemaking proposes:

- Adding new definitions and amending existing definitions for anaerobic digestion and conversion technology facilities
- Creating regulations for a new classification of solid waste disposal sites called conversion technology facilities
- Amending composting facility rules to incorporate anaerobic digestion as another biological process
- Establishing performance standards and permit requirements for anaerobic digestion and conversion technology facilities
- Establishing an appropriate fee schedule for conversion technology facility permits and anaerobic digestion facility permits
- Establishing permit exemptions for certain low-risk solid waste disposal facilities
- Adjusting composting rules to redefine classes of feedstocks and operation plan requirements
- Updating waste tire management rules regarding indoor storage of tires
- Correcting grammar and rule references in the solid waste rules

Statement of need

What problem is DEQ trying to solve?

Oregon's existing solid waste rules don't provide definitions or a regulatory structure specific to permitting of conversion technology or anaerobic digestion facilities. This causes confusion and uncertainty about how to apply the current rules to these types of facilities.

Solid waste treatment facility permits do not provide performance standards and permit requirements specific to anaerobic digestion or conversion technology facilities. These permits were originally intended for treatment of wastes for ultimate disposal, primarily remediation of petroleum-contaminated soil and treatment of medical wastes, not for conversion of solid wastes to chemicals, fuels and other products.

DEQ expects to spend more time on anaerobic digestion and conversion technology facility proposals in the coming years. DEQ has responded to dozens of permitting inquiries over the past five years and has issued

six solid waste treatment facility permits for anaerobic digestion and conversion technology facilities. DEQ expects more facility proposals as this technology continues to evolve.

Permit exemptions for low-risk conversion technology facilities don't exist in the current rules. These facilities often pose no more risk to the environment than facilities handling source-separated material for recycling, which have a regulatory exemption from permitting.

How would the proposed rules solve the problem?

If adopted, these rules would:

- Define anaerobic digestion and conversion technology
- Regulate anaerobic digestion facilities as composting facilities with permit requirements appropriate for anaerobic digesters
- Distinguish conversion technology from incineration facilities
- Establish requirements for a new conversion technology facility permit category using a risk-based regulatory approach based on the level of environmental and public health risk posed by a facility
- Establish performance standards specific to anaerobic digestion and conversion technology facilities
- Exempt from permit requirements lower-risk conversion technology facilities that comply with specified performance standards
- Establish a fee structure appropriate to anaerobic digestion and conversion technology facilities
- Streamline DEQ's permitting process for anaerobic digestion facilities and conversion technology facilities
- Provide regulatory certainty to facility operators and owners as they plan construction, operations and growth

How will DEQ know the problem has been solved?

Indications that the problem has been solved will be:

- Consistent implementation of anaerobic digestion and conversion technology facility permitting regulation statewide
- Permit issuance timeframes being met for anaerobic digestion and conversion technology facilities that are consistent with timeframes for other types of solid waste disposal site permits
- Reduction in number of clarifying conversations about anaerobic digestion and conversion technology facility regulations

What alternatives did DEQ consider?

DEQ considered not adopting conversion technology rules. DEQ determined that rules were necessary to limit confusion about what rules and permits apply to anaerobic digestion and conversion technology facilities and to provide regulatory certainty for technology providers and prospective facility developers.

Federal relationship

"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."

ORS 183.333

Relationship to federal requirements

These rules amend and establish regulatory requirements for two new classes of solid waste disposal sites – anaerobic digestion facilities and conversion technology facilities. The proposed rules apply only to Oregon state law and aren't related to a federal requirement or corresponding federal regulation. Federal law primarily addresses requirements for development, construction and operation of municipal solid waste landfills. Oregon solid waste management laws have adopted federal law regarding municipal solid waste landfills, but also address other types of landfills and other aspects of solid waste management, including regulation of other classes of solid waste facilities that manage solid waste.

What alternatives did DEQ consider, if any?

DEQ considered not adopting rules and instead applying a policy approach to regulating these facilities through an Internal Management Directive. However, DEQ determined this would be an inappropriate approach for implementing solid waste management statutes.

Rules affected, authorities, supporting documents

Lead division Program or activity
 Land Quality Solid waste permitting program

Chapter 340 action▶

Recommendation	Division	Rule	Title	SIP/Land use*
amend	064	0015	Waste Tire Storage Permit Required	Land use
amend	064	0022	Financial Assurance	Land use
amend	064	0035	Standards for Waste Tire Storage Sites	Land use
amend	064	0055	Waste Tire Carrier Permit Required	Land use
amend	093	0030	Definitions	Land use
amend	093	0050	Permit Required	Land use
amend	093	0070	Applications for Permits	Land use
amend	093	0105	Categories for Permit Actions	Land use
amend	093	0110	Issuance or Denial of Permit	Land use
amend	093	0115	Termination or Revocation of a Permit	Land use
amend	095	0090	Financial Assurance Criteria	Land use
amend	095	0095	Form of Financial Assurance	Land use
amend	096	0001	Applicability	Land use
amend	096	0010	Special Rules Pertaining to Incineration	Land use
amend	096	0040	Transfer Stations and Material Recovery Facilities	Land use
Special rules pertaining to composting:				
amend	096	0060	Applicability	Land use
amend	096	0070	Performance Standards	Land use
amend	096	0080	Screening	Land use
amend	096	0090	Operations Plan Approval	Land use
amend	096	0100	Registration	Land use
amend	096	0110	Composting Permit	Land use
amend	096	0120	Groundwater Protection	Land use
amend	096	0130	Biogas/ Leachate Management Requirements	Land use
amend	096	0140	Pathogen Reduction	Land use
amend	096	0150	Unacceptable Odors	Land use
Special rules pertaining to conversion technology:				
adopt	096	0160	Applicability	Land use
adopt	096	0170	Performance Standards	Land use
adopt	096	0180	Operations Plan Approval	Land use
adopt	096	0190	Registration	Land use
adopt	096	0200	Conversion Technology Permit	Land use
amend	097	0001	Applicability	Land use
amend	097	0110	Solid Waste Permit and Disposal Fees	Land use
amend	097	0120	Permit/Registration Categories and Fee Schedule	Land use

* SIP – This rule is part of the State Implementation Plan.

* Land use – DEQ State Agency Coordination Program considers this rule, program or activity is a land use program.

Statutory authority

ORS 459.005-459.418, 459.785, 459A.025, 459A.100, 459A.110, 459A.115, 459A.120, 468.020, 468.065

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title
List of background information

Document location
[DEQ Conversion Technology rulemaking website](#)

Oregon Administrative Rules
Chapter 340 Divisions 64, 93, 95,
96, 97

[DEQ Oregon Administrative Rules website](#)

Statement of Cost of Compliance

1. Impacts on general public

The proposed rules will have little impact on the general public. Very few facilities will be impacted by this proposal, and, as outlined below, these facilities will have some reduced costs in terms of application and compliance fees, and slight increases in costs to meet required performance standards.

2. Cost of compliance on small businesses (those with 50 or fewer employees). [ORS 183.336](#).**a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.**

Facilities most affected by the proposed rules are small businesses, which in some cases will have reduced permitting costs under the proposed rules. DEQ estimates that only one existing facility will be required to obtain a conversion technology solid waste permit and four facilities will be required to obtain anaerobic digestion (composting) permits if the proposed rules are adopted. Four of these five facilities currently have more stringent and expensive solid waste treatment facility permits but will be able to move to new, less-expensive permit categories after rule adoption. One of the five facilities is currently not permitted, but will require a composting permit or registration if these rules are adopted, or a solid waste treatment facility permit if these rules aren't adopted. In addition, one facility that currently requires a solid waste treatment facility permit for tire pyrolysis may be able to claim an exemption from all permit requirements. Two plastics pyrolysis facilities may also be exempt if these proposed rules are adopted, but must still comply with facility performance standards proposed in rule.

In addition to the four anaerobic digestion/composting facilities mentioned above, approximately 12 on-farm anaerobic digestion facilities will be overseen by the Oregon Department of Agriculture with DEQ review but will not require a composting permit or other disposal site permit. There would be no permit fee changes for these facilities with ODA oversight.

b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

DEQ expects that only one facility will see increased costs in administrative services and possibly professional services resulting from complying with these rules. As described above, that facility currently does not have a DEQ solid waste permit. Those facilities choosing to obtain a new conversion technology facility permit or an anaerobic digester permit will likely have some additional administrative costs but no professional services costs related to the one-time re-permitting event. For facilities that currently possess a DEQ solid waste permit, the administrative activity costs should remain the same.

The anaerobic digestion facilities may have slightly higher expenses in order to meet requirements for pathogen testing and for storage of liquid digestate, but otherwise the rules will have little financial impact.

Other proposed changes in the rules are only intended to clarify existing requirements and won't change current practices in the way that Oregon regulates disposal sites.

c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

Facilities that currently hold a DEQ solid waste permit will likely not experience the need for additional equipment, supplies, labor or administration as a result of these proposed rules. The new conversion technology or anaerobic digester permits will have only slight changes in compliance requirements. The one unpermitted anaerobic digester may need to install equipment for digestate storage.

d) Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included representatives from many of the current facilities and their consultants on the advisory committee that oversaw this rule development. Representatives from other facilities attended advisory committee meetings and/or made presentations to the advisory committee. DEQ also provided notice to all persons who've expressed interest in solid waste rulemaking about the proposed rule development for conversion technology and anaerobic digestion facilities and other proposed changes to the solid waste disposal site rules.

3. Impact on large businesses (all businesses that are not small businesses under #2 above)
Facilities that will be regulated under these rules generally have fewer than 50 employees. Some are subsidiaries owned or controlled by larger corporations though, and so large businesses may be indirectly affected.
4. Impact on local government other than DEQ
DEQ doesn't expect any local governments to be affected economically by any of the proposed rules.
5. Impact on DEQ
Impact on DEQ is expected to be minimal due to the small number of facilities expected to be regulated under these rules. Both the permit application fees and the annual compliance fees proposed here are lower than the fees currently required for solid waste treatment facilities, which is the permit category most of these facilities are currently regulated under. Existing facilities, however, have only been operating in startup or pilot mode, and therefore have only been paying the minimum annual compliance fee, so there will be very little change in revenue for DEQ.

DEQ expects that the cost of approving new permits will be greater than the fee charged for permit applications, and that the cost of compliance inspections and other permit-related work will exceed annual compliance fees to be paid by these facilities, but that the impact will be minimal since so few facilities will be regulated under the proposed conversion technology and anaerobic digestion (composting) permits.

Documents relied on for fiscal and economic impact

- DEQ lists of permitted disposal site facilities
- Existing and proposed disposal site and fee rules
- Unpublished analysis of regulatory effort required to process and issue a composting facility permit or registration

- Presentation by Bob Barrows on conversion technology and anaerobic digestion facilities presented to the Conversion Technology Rulemaking Advisory Committee Jan. 27, 2012 (www.deq.state.or.us/lq/pubs/docs/sw/convtechnology/CTRulemaking120127DEQPresentation.pdf)

Advisory committee

DEQ appointed an advisory committee and considered the committee's recommendations regarding this fiscal and economic impact statement. In compliance with [ORS 183.333](#), DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact
- Extent of the impact
- Whether the proposed rules would have a significant impact on small businesses and compliance with [ORS 183.540](#)

Comments provided by committee members, who are current facility operators during advisory committee meetings, generally indicated that the proposed application and compliance fees are low and would not have a significant impact on small businesses. One comment during the public comment period indicated that any permit fee would put conversion technology facilities at a competitive disadvantage to manufacturers that do not use solid waste feedstocks.

Housing cost

To comply with [ORS 183.534](#), DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached single-family dwelling on that parcel. The proposed fee affects only owners and operators of conversion technology facilities and anaerobic digestion facilities in Oregon.

Fees

The Oregon Environmental Quality Commission approval of this rule proposal would maintain or decrease existing fees. EQC has authority to act on the proposed fees under ORS 459.235.

Brief description of proposed fees

DEQ is proposing solid waste permit application and annual compliance fees for a small new class of disposal sites called conversion technology facilities. These sites are currently classified as solid waste treatment facilities, which have higher fees. In addition, conversion technology facilities meeting certain criteria will be exempt from these permits and fees. DEQ also proposes to classify anaerobic digestion facilities as composting facilities instead of solid waste treatment facilities. No change is proposed in compost permit fees, but compost fees are already lower than solid waste treatment fees.

Reasons

Conversion technology facilities do not fit very well into any of the existing categories for disposal site permits, leading to regulatory uncertainty. DEQ is proposing to develop a new category of permit to better fit these facilities and is also proposing to change the rules for composting facilities to better fit anaerobic digestion facilities. DEQ is purposefully setting the fees for these facilities below the costs for disposal facilities such as landfills, incinerators and treatment facilities as an incentive for conversion technology and anaerobic digestion, which, as forms of energy recovery and composting, are generally more environmentally beneficial than landfilling and incineration, as specified in ORS 459.015.

This rulemaking and fee proposal was triggered by recent proposals to construct new pyrolysis, gasification and anaerobic digestion facilities and complaints by the proposers that rules for the existing disposal site categories do not fit well for these types of facilities. Issues related to pyrolysis and the inadequacy of existing rules also came up at the Oregon Legislature in conjunction with proposed legislation on plastics pyrolysis during the 2011 and 2012 sessions.

Fee proposal alternatives considered

DEQ considered the same fee structure proposed here but using different dollar amounts.

Fee payer

DEQ estimates four anaerobic digestion facilities and one conversion technology facility would pay the proposed lower fees. Some other facilities currently or recently paying fees as solid waste treatment facilities may be exempt under the proposed rules and not be required to pay any fees.

Affected party involvement in fee-setting process

Affected parties were members of the advisory committee, attended advisory committee meetings or made presentations to the advisory committee.

Summary of impacts

The proposed fees will have minimal impacts on DEQ revenue or on costs of facilities that are required to pay the fees.

Fee payer agreement with fee change

Advisory committee members who are current facility operators generally indicated that the:

- Proposed application and compliance fees are low.
- Requirements are not excessive.
- Regulatory certainty would help anyone proposing to develop a new Oregon conversion technology or anaerobic digestion facility.

Links to supporting documents for proposed fees

- Chapter 340, [Division 097](#) of the Oregon Administrative Rules
- DEQ database of permitted disposal site facilities
- Unpublished analysis of regulatory effort required to process and issue a composting facility permit or registration
- Presentation by Bob Barrows on conversion technology and anaerobic digestion facilities presented to the Conversion Technology Rulemaking Advisory Committee Jan. 27, 2012 (www.deq.state.or.us/lq/pubs/docs/sw/convtechnology/CTRulemaking120127DEQPresentation.pdf)

How long will the current fee sustain the program?

Oregon adopted the current solid waste treatment facility fees in 1992 and the current composting permit fees in 2009. The conversion technology and anaerobic digestion facilities covered under current fees, and affected by these new fee rules, make up a very small portion of the disposal sites with solid waste permits, six out of about 330 facilities with active solid waste permits, and an even smaller portion of the fees received from permitted solid waste disposal sites, about 0.1 percent. However, the permit compliance fees as a whole paid by solid waste disposal sites have been declining for the past several years. If disposal volume does not increase, DEQ will need to address this shortfall in the future for the entire solid waste permit program.

How long will the proposed fee sustain the program?

Existing conversion technology facilities make up only a tiny fraction of the facilities regulated under solid waste permits and an even smaller fraction of the fee revenue received by the solid waste program each biennium.

The decline in solid waste annual compliance fees under the proposed rules, when compared to fees that would have been received if these rules were not adopted, is expected to be about \$6,000 per biennium. A DEQ analysis from November 2012 compared the estimated 2013-15 revenue to be received from the eight existing facilities under the new rules to what they would owe under existing rules. The estimates assume increases in tonnage compared to 2011-13 handled by facilities that will soon come online. Expected revenue for new facility applications depends on how many facilities apply.

Under the existing rules and fee structure, DEQ expects only one or two new facilities to apply each biennium, which would generate revenue of between \$10,000 to \$20,000. Under the new proposed rules and fee structure, the number of facilities applying may be slightly lower due to proposed exemptions, with an expected revenue of only \$1,500 to \$10,000 per biennium.

Transactions and revenue

	Number of transactions	Number of Fee Payers	Impact on revenue (+/-)	Total revenue (+/-)
2011-2013 biennium	0	0	\$0	\$0
2013-2015 biennium	16	6	-\$6,000	-\$6,000

Fee schedule

OAR 340-097-0120

Permit/Registration Categories and Fee Schedule

The proposed rules add new categories for application fees and operational plan review fees for conversion technology facilities. The proposed rules also add a new annual compliance fee category for conversion technology facilities. These conversion technology facilities would otherwise have been permitted as solid waste treatment facilities.

The proposed rules also reassign anaerobic digestion facilities to the composting facility permit category, instead of the solid waste treatment facility permit category. The effect will be to reduce fees for anaerobic digestion facilities.

Land use

“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”

ORS 197.180, OAR 660-030

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarial Resources
19	Ocean Resources

- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
 - Comply with statewide land-use goals, and
 - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health/safety and the environment.
- Whether DEQ is the primary authority responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the proposed rules identified under the 'Rules affected, authorities, supporting documents' section above affect solid waste disposal site permitting, which is an existing rule, program or activity that is considered a land-use program in the DEQ State Agency Coordination Program.

DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. Under OAR 340-018-0050(2)(a), ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement. Under the proposed rules, a Land Use Compatibility Statement is required to obtain a conversion technology or anaerobic digestion facility or registration permit. The proposed rules also define requirements for mobile disposal facilities

Implementation

Notification

If approved, the proposed rules would become effective on filing, which is expected to be before the end of September 2013. DEQ would then notify affected parties by posting on the conversion technology rulemaking website, direct contact with applicable known affected facilities and by direct e-mail through distribution to the conversion technology rulemaking e-mail list and to approximately 7,000 other interested parties through a GovDelivery notice.

Systems

Upon rule adoption, DEQ would update the Conversion Technology website.

Permits and Procedures

Upon rule adoption, DEQ would develop new permits for conversion technology facilities and anaerobic digester composting facilities. DEQ will also develop policies and procedures to evaluate new conversion technology facility proposals.

Five-year review

Requirement [ORS 183.405](#)

The Administrative Procedures Act requires DEQ to review **new** rules within five years of the date EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based this analysis on the current law.

Exemption

The following APA exemptions from the five-year rule review apply to some of the proposed rules:

- Amendments or repeal of a rule. ORS 183.405 (4)

Five-year rule review required

No later than Aug. 20, 2018, DEQ will review the newly adopted rules required under ORS 183.405

(1) to determine whether:

- The rule has had the intended effect.
- The anticipated fiscal impact of the rule was underestimated or overestimated.
- Subsequent changes in the law require that the rule be repealed or amended.
- There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.450 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.450 (3).

Stakeholder and public involvement

Advisory committee

DEQ convened a Conversion Technology Rulemaking Advisory Committee Jan. 27, 2012. The following is an excerpt from The [Conversion Technology Rulemaking Advisory Committee Charter](#), explaining the group’s mission. The committee “was established for the purpose of making recommendations to assist DEQ in developing new Conversion Technology rules. These rules will establish performance standards and solid waste permit requirements for Conversion Technology facilities which assure environmental protection as well as establish an appropriate fee structure for this new permit category. The Advisory Committee is intended to provide a forum for input and recommendations to DEQ for these Conversion Technology facility rules.”

The 15-member advisory committee included representatives from eight groups: 1) conversion technology facility operators; 2) anaerobic digestion facility operators; 3) technology consultants; 4) solid waste haulers; 5) local governments; 6) renewable energy advocates; 7) environmental groups; and 8) the public. DEQ also consulted with two affected state agencies during this rulemaking development process, the Oregon Department of Agriculture and the Oregon Department of Energy.

The advisory committee met four times over seven months in 2012 and communicated with DEQ staff by e-mail and over the phone. The committee reviewed and commented on draft rules and made vital technical and practical recommendations, many of which DEQ used to refine new rule drafts.

The committee also reviewed the fiscal impact statement, specifically the impact on small businesses.

EQC prior involvement

DEQ shared information about this rulemaking with the Environmental Quality Commission as part of annual rulemaking planning Dec. 10, 2010, and Dec. 16, 2011. DEQ provided an additional rulemaking update to the commission at its June 19, 2013, regular meeting.

Public notice

The Secretary of State published notice of the proposed rulemaking in the *Bulletin* Jan. 1, 2013. DEQ also:

- Posted the notice on DEQ's webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on Dec. 14, 2012.

- Emailed the notice to:
 - 6634 interested parties through GovDelivery Dec.14, 2012.
 - 15 members of the advisory committee Dec.14, 2012.
 - Four key legislators required under ORS 183.335 Dec. 14, 2012. Key legislators included:
 - J. Bailey, Representative, Energy, Environment and Water Committee
 - A. Olsen, Senator, Environment and Natural Resources Committee
 - V. Gilliam, Representative, Energy, Environment and Water Committee (at the time of notice)
 - J. Dingfelder, Senator, Environment and Natural Resources Committee

Public hearings and comment

DEQ held one public hearing in Portland, Oregon, Jan. 16, 2013. DEQ convened the hearing at 2 p.m. and closed the hearing at 3 p.m. Through the iLinc system, the hearing was available to anyone with internet access. Following the hearing, DEQ closed the public comment period on Jan. 22, 2013, at 5 p.m. DEQ received 10 public comments. The commenter section below lists all people who provided comments on this proposal. The summary of comments and DEQ responses section below addresses each public comment.

Presiding Officers' Record

The Portland hearing presiding officer, Tom Roick, summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people in attendance who wanted to present verbal comments to complete and submit a registration form or, if attending electronically through iLinc, to use the "chat" feature and indicate their intent to present comments.

Per [Oregon Administrative Rule 137-001-0030](#), DEQ staff Bob Barrows and Peter Spendelow gave a presentation about the proposed rulemaking that included content of the notice given under [Oregon Revised Statute 183.335](#). These staff responded to questions from people present at the hearing, as well as from people using the iLinc system.

Twelve people attended the hearing, four in person and eight electronically through iLinc. One person testified. DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ's interested parties list for this rule and to the commenter section of this staff report. Oral comments at the hearing have been included in the summary of comments and agency responses section of this staff report.

Summary of comments and DEQ responses

Following is a summary of the public comments received during the public comment period, cross-referenced to the commenter. DEQ's response follows each comment summary. The original comments are on file with DEQ. The names or affiliations of the commenters are listed at the end of this summary and response section.

1. DEQ is regulating materials that are not solid wastes [Commenters 4, 5, 8, 9]

- a) No clear distinction between "useless and discarded material" which are solid wastes vs. "useful and valuable feedstocks" which are not solid wastes (9)
- b) Rules have flawed assumption that all feedstock materials used in conversion technology are solid wastes (5)(9)
- c) DEQ cannot regulate facilities using materials that are valuable commodities, even if they were once solid wastes (5)
- d) When someone is willing to pay for a material, it is no longer solid waste (8)
- e) This rule package creates an unequal playing field between existing recycled material end-users/manufacturing facilities and plastics-to-oil facilities (4)(5)
- f) DEQ should follow EPA's 4-part test for when materials are a legitimate ingredient in a manufacturing process (76 FR 44094) or a legitimate fuel (5)(9)
- g) If this interpretation of solid waste were applied to other types of facilities, numerous businesses including glass manufacturers and pulp mills would be unknowingly swept up in permitting requirements (4)(5)(8)

DEQ Response

Most of these comments question whether waste plastic processed into feedstock for plastics pyrolysis facilities should be considered a solid waste as defined in ORS 459.005. A material that is not a solid waste is not subject to the proposed rules governing the management of solid waste by conversion technology facilities.

The proposed rules do not change the way the EQC and DEQ have interpreted the statutory definition of solid waste. Changing the interpretation of the statutory definition of solid waste would have major implications throughout the entire solid waste program, and would potentially involve many stakeholders not represented in the conversion technology workgroup. For these reasons, DEQ considered changing the interpretation of the definition of solid waste to be outside of the scope of this rulemaking process. DEQ is evaluating this issue for discussion in a different forum.

DEQ's interpretation of the definition of solid waste has long been guided by opinions and advice issued by the Oregon Attorney General. In 42 Op. Atty. Gen. Ore. 132 (1981) the Attorney General stated:

We recommend that in order for a material item to be classified as "useless and discarded," it be established that:

1. The item has lost its value for the purposes for which it was intended by the prior owner; and
2. It is fit only (if for anything) for:
 - a. remanufacture into something else; or
 - b. some other use which differs substantially from its original use.

Consistent with this, in a 2002 letter, the Attorney General's office stated:

In Oregon, when determining whether a material is subject to regulation as a waste, we generally look to see whether it has a nexus at some point in its life to the element of discard, and whether it becomes a part

of the waste stream at any time. Additionally, we consider *whether the material must be reclaimed, processed, altered, transformed, mixed, purified, etc. to be useful. If so, it will generally be considered a waste until actually converted to a bona fide product.* [Emphasis added]

Many valuable feedstock materials fit the definition of "solid waste," such as scrap paper, plastic, and metal sent to mills for recycling. These materials are "useless and discarded" by the original owner (hence why they were set out for recycling), and are useful only in the sense that they can be a feedstock fit for remanufacture into something else. Yet, they can be worth hundreds of dollars per ton to the mills that remanufacture them into bona fide products. Even when delivered to a material recovery facility after being collected and commingled together with other materials and containing various contaminants in a curbside cart, the mixture of recyclables generally has positive economic value.

Although recyclable materials meet the definition of solid waste, they, and the facilities that process them, generally do not provide any significant threat to the environment or to public health. Thus, Oregon's existing solid waste rules generally exempt the facilities recycling these materials from any solid waste permit requirements.

If materials are not solid wastes to begin with, they are not subject to any solid waste rules. For example, crops that are grown to be pyrolysed into fuel (torrefaction) would not be subject to the conversion technology rules, in spite of the fact that pyrolysis is a conversion technology.

Regarding the potential that the rules will create an unequal playing field between existing recycled material end-users/manufacturing facilities and plastics to oil facilities, based on information discussed by the Conversion Technology Rulemaking Advisory Committee in the rulemaking process, it seems likely that plastics-to-oil facilities will also qualify for an exemption from solid waste permitting requirements, the same as plastics recycling facilities. However, if a specific pyrolysis facility does pose more than a minimal risk to the environment or public health, a registration or possibly even a full permit may be required. Facilities that recycle plastics that also pose a potential threat to human health or the environment can also be required to obtain a solid waste permit, but it does not seem likely that source-separated recyclable plastic would pose this sort of risk when recycled.

Two commenters suggested that DEQ adopt and follow the proposed Environmental Protection Agency's 4-factor approach for hazardous waste regulations, for determining whether materials are legitimate feedstocks or sham utilization. The proposed rules use most of these factors in determining whether a facility using solid waste should be exempt from solid waste permitting requirements. EPA's first factor is that the material must be managed as a valuable commodity. Proposed OAR 340-096-0160 (4)(b)(C) limits exemptions just to material that is purchased or obtained for free by the conversion technology facility, and excludes wastes for which a disposal tip fee generally is charged, indicating that the material has negative value. The second EPA factor is that the material makes a useful contribution to the recovery process. This factor is not directly addressed in the proposed rules, but there is no reason why a facility would pay for a feedstock or obtain it for free unless that feedstock could be used to make a product that can be sold. The third EPA factor is that the processing of the material produces a valuable product or intermediate material. By definition in proposed OAR 340-093-0030, conversion technology facilities must produce "fuels, chemicals, or other useful products from solid waste." The fourth EPA factor is "comparison of toxics in products." This factor is directly addressed in the proposed performance standard OAR 340-096-0170 (12) and in the requirement of the proposed OAR 340-096-0160 (4)(b)(G) that exempt facilities must be able to demonstrate that they will be able to comply with the performance standards.

No change was made to the proposed rules as a result of these comments.

2. Consider whether these rules are necessary [Commenters 4, 8]

- a) DEQ has not proved a need for this new type of permit for conversion technology (4)
- b) ORRA requests that DEQ not adopt these rules, and instead, take the time to consider whether they are necessary at all (8)

DEQ Response

If new conversion technology rules are not adopted, then all conversion technology facilities will continue to be required to obtain solid waste treatment permits, even if they pose little or no risk to human health and the environment. None of the conversion technology facilities that mainly produce fuels are eligible for exemptions from permits under current rules. In addition, the existing solid waste treatment permits are not well-suited for new emerging technologies such as conversion technologies. Solid waste treatment facilities permits were designed for facilities that treat petroleum-contaminated soils and other solid wastes for disposal, and were not designed for facilities that recover wastes to produce useful materials.

Under Oregon Revised Statutes 459.205, a facility that manages or uses wastes, and does not qualify for an existing exemption from permit requirements under Oregon's solid waste rules, is required to obtain a solid waste disposal site permit. The proposed rules provide for solid waste permit exemptions for low risk conversion technology facilities and, also for the following low-risk facilities that currently require solid waste facility permits under existing rules:

- Facilities that prepare urban wood waste to produce hogged fuel;
- Facilities that burn the above hogged fuel;
- Processors who send waste plastics or other waste materials to a conversion technology facility to be converted into a fuel; and
- Companies that collect or process used oil that becomes a fuel.

Based on available information, DEQ has determined that many of these facilities pose minimal risk of harm to the environment or human health and should be exempt from permit requirements.

The existing exemption for collectors and processors of source-separated recyclable materials for the purposes of material recovery will continue to exist if these rules are adopted. This recycling exemption applies to paper mills, glass plants, commingled recycling processing facilities, and metal recyclers that handle recyclable materials, as well as many others.

DEQ has determined that if the proposed conversion technology rules in OAR 340-096-0160 through 340-096-0200 and the proposed exemptions in OAR 340-093-0050 are adopted, it is likely that only one or two existing facilities will be required to obtain either a conversion technology registration or permit. These facilities each currently have a more costly solid waste treatment permit. Based on the information DEQ heard from the advisory committee, other existing or recently operating conversion technology facilities will likely be exempt from solid waste permit requirements under the proposed rules as well.

No change was made to the proposed rules as a result of these comments.

3. Need new provisional permit for new experimental or untested facilities [Commenters 1, 7, 10]

- a) DEQ should consider establishing a provisional, experimental, or pilot permit provision. This is important for untried or untested technologies or for processes with uncertain feedstock types or sources. As a way to balance encouragement of new technology and provide sufficient oversight, DEQ should allow a short term permit that could more quickly allow a new technology to come on line for a limited period of time (2-3 years) while examining operating data. (1)(10)
- b) I'm for creating regulatory rules that require initial demonstration projects for such technologies and enhanced collection and recording of operational and emissions data during these demonstration projects. (7)

DEQ Response

Under the proposed conversion technology rules and current solid waste rules, DEQ is authorized to issue permits for up to a ten year period. DEQ also has the ability, under this authorization, to issue solid waste permits for a shorter time period if necessary. DEQ also has the ability under current solid waste rules and the proposed conversion technology rules to place conditions of approval into permits and tailor permit conditions to address identified operational and environmental concerns. The public has the opportunity to provide comments on proposed permits during a public comment period provided for each permit.

If a proposed facility plans to use an untried or untested technology, or process feedstocks that if not managed properly may cause adverse impacts to human health and the environment, DEQ could draft a proposed permit with conditions of approval. The conditions of approval could include such provisions as requiring a facility to operate at reduced tonnage to demonstrate the facility can meet applicable requirements within a certain timeframe, and if the facility could not demonstrate compliance within the given timeframe and at reduced capacity, then DEQ could terminate the permit or amend the permit as necessary to address operational concerns.

After a solid waste disposal site permit is issued, DEQ staff closely monitor new facilities that have unproven track records. Staff conduct site inspections more frequently with new facilities than with existing facilities. DEQ staff will often maintain regular e-mail or phone contact with new facilities in order to check on regulatory issues.

Facilities with permit terms less than ten years are not subject to additional permit fees. Under the current and proposed fee structure in OAR Chapter 340 Division 97, fees are not charged for permit renewals or permit modifications.

Existing rules also provide a permit option called a solid waste letter of authorization for a short term disposal or pilot projects. SWLAs are issued for six months with a one time option to renew for an additional six months for a maximum permit term of one year. There is a \$500 fee for each six month SWLA term. In the past DEQ has issued SWLAs granting a short term approval for facilities to demonstrate the viability of their proposals while providing DEQ an ability to evaluate the potential impacts to public health and the environment. Examples include issuing a SWLA to a composting facility to demonstrate its ability to manage and compost type 3 feedstocks and to a landfill to demonstrate the viability of gasifying wastes to produce electricity. In both instances a long term solid waste disposal permit was issued for the continuance of the demonstrated operations.

No change was made to the proposed rules as a result of these comments.

4) Do not exempt facilities from permit requirements that cannot provide commercial operating data.

[Commenters 7, 10]

- a) DEQ should not allow an exemption from permitting for conversion technology facilities when DEQ "has no actual operating data from commercial facilities in the U.S. using the technology proposed." (10)
- b) I was perplexed with why DEQ was developing and proposing rules for technologies that not only have no demonstrably acceptable commercial operations or emissions record, but which in some cases have been associated with exaggerated and false claims, excessive emissions, operational failures, and a million dollar Oregon pollution cleanup. (7)(10)

DEQ Response

DEQ agrees that facilities using new, unproven technologies to convert waste should be subject to additional regulatory oversight until they can demonstrate that their technology can operate in compliance with established performance standards. As such, facilities should not be exempt from permit or registration requirements until the technology can be demonstrated through operating experience to be able to comply with permit exemption and performance standards set in these rules. DEQ notes that this requirement will not affect existing conversion technology facilities such as the Agilyx and Wastech Plastics to Oil facilities, nor will it affect new facilities using the same technologies, since these existing facilities and technologies have already demonstrated a track record through their operational experience. In response to these comments, below is the change we propose to make in OAR 340-096-0160:

340-096-0160(4)(b)(G) The person who has established or who is proposing to establish the conversion technology facility can demonstrate that the facility operation will be able to comply with the performance standards in OAR 340-096-0170 **based on actual operations data from an existing facility using similar technology**, and continues to comply with those standards.

Facilities that do not have existing operations data can use the permitting options discussed in comment 3 above.

5) Definition of "Conversion Technology Facility" in proposed OAR 340-093-0030(28) [Commenters 4, 5]

- a) The definition of "Conversion Technology Facility" appears arbitrary in that it excludes one kind of thermal process (melting) without providing a rationale. (4),(5)

DEQ Response

While melting is a thermal process, it does not change the chemical structure of the material being melted. Melting changes a solid to a liquid through heating. In contrast, a conversion technology thermal process causes a chemical change in a material such that the resultant material is distinctly different than the original feedstock. For example, most plastic that is recycled through melting and re-molding remains an innocuous, nontoxic substance that can often even be used as food packaging. In contrast, the common products of pyrolyzing plastics includes many toxic chemicals, including benzene and polycyclic aromatic hydrocarbons, and potentially chlorinated hydrocarbons, and thus have a much greater potential to negatively impact human health and the environment if not properly managed. No change was made to the proposed rules.

6. Definition of "Disposal Site" in OAR 340-093-0030 [Commenter 2]

- a) The way the definition of disposal site is constructed, it is unclear whether certain facilities are examples of exclusions from the definition of disposal site, or are examples of disposal sites. This would be more clear if the exclusions were set off in a separate sentence. (2)

DEQ Response

DEQ agrees with this comment and is proposing changes to make two sentences, and also is correcting a rule reference, to read as:

(34) "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (81)(b) of within the definition of solid waste in this rule), transfer stations, energy recovery facilities, conversion technology facilities, incinerators for solid waste delivered by the public or by a collection service, composting facilities and land and facilities previously used for solid waste disposal at a land disposal site, ~~but the~~ The term "disposal site" does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site that is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable clean fill material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

7. Definitions - general comments [Commenter 1]

- a) The terms "products" and "materials" appear throughout the proposal but are not clearly defined in Division 93. DEQ should make sure that the references are consistently used, defined, and applied. (1)

DEQ Response

Throughout the rules DEQ uses the term "product" to mean a substance produced through a natural, chemical, or manufacturing process. This can include waste products. DEQ reviewed all of the uses of "product" and "material" throughout the proposed rules. Based on that review DEQ is now proposing a change in the wording of OAR 340-093-0070 (3)(h)(A) to make the wording more understandable, as follows:

340-093-0070 Permit applications:

(3) (h) For a new conversion technology facility:

(A) A description of the technology to be used at the facility including the types, sources, and amounts of feedstocks to be processed, the processing methods, the ~~products~~ materials produced by the technology, the amounts of each product, the expected uses of the products, the types of ~~products~~ materials that the ~~outputs~~ products of the conversion technology facility are intended to replace, and how feedstocks, products and ~~products~~ other materials will be stored;

8. General exemptions from solid waste permits proposed in OAR 340-093-0050(3) [Commenters 4, 5]

- a) Determining whether a recycling market is "viable" under OAR 340-093-0050(3)(d)(E) is not practicable: The recyclables markets are best suited to identifying the best markets and pricing for plastics, not DEQ. (5)
- b) Limiting the grades of plastic that can be used to "nonrecyclable" plastic introduces a subjective term that will be hard to enforce. (4)

- c) To regulate waste plastic for highest and best use purposes is unrealistic and has flow control implications. DEQ staff point to the advantages to recycling regarding greenhouse gases, but fail to take into consideration the higher greenhouse gas exposure from drilling, transporting, and refining oil.(4)
- d) It is arbitrary to exclude one category of plastics - clean polyolefin film plastics acceptable in commercial recycling programs - from permit exemption.(5)
- e) The exemption in proposed OAR 340-093-0050(3)(d)(B) should include materials that have been sorted at a material recovery facility.(5)

DEQ Response

- a) Other parts of recycling statutes also involve a determination as to whether a material has a viable market. "Viable market" as used in Oregon Revised Statutes 459A is, in fact, determined by the private marketplace as those materials that have a positive (or non-negative) value for recycling. DEQ takes a long-term view on whether a market is viable, and does not flip between "viable" and "not viable" based on short term price fluctuations.
- b) The rule does not use the term "nonrecyclable" but instead lists two specific types of plastic that are clearly recyclable.
- c) & d) The greenhouse gas analysis that DEQ has reviewed does take into account the greenhouse gas associated with drilling, transporting, and refining oil as it pertains to both the production of plastics from petroleum and the production of fuels from petroleum. The analysis was prepared by Good Company for Agilyx, and slides from a presentation of that analysis are available on the web at <http://www.accoonline.org/ccls/Waste2010/ACCO-CCLS-October2010-Session2-Skov.pdf>. The analysis shows that recycling plastic results in significantly less greenhouse gas production than if the plastic is used as feedstock for pyrolysis or burned for energy recovery. Clean polyolefin film is identified in the proposed rule because of its enduring value as a recyclable plastic. Existing language in OAR 340-090-0080(2) requires that source-separated recyclable plastics and most other source-separated recyclable material must go to either reuse or recycling and is excluded from being disposed or burned for energy recovery. "Flow control" refers to a government directing solid waste to be taken to specific facilities. These proposed rules do not direct materials to any specific facility.
- e) The proposed language in OAR 340-093-0050(3)(d)(D) does provide the permit exemption for materials that have been sorted at a material recovery facility, except for hazardous materials (which are not exempt).

9. Permit application requirements for conversion technology facilities (OAR 340-093-0070 (3))

[Commenter 5]

- a) Proposed Section OAR 340-093-0070(3)(h)(E) should be revised to require a description of how detrimental material will be minimized or excluded from the conversion technology process and/or how any detrimental impacts will be mitigated.(5)

DEQ Response

DEQ agrees with this suggestion and added the word "minimized" to the proposed rule.

10. Exemptions proposed for conversion technology facilities under proposed OAR 340-096-0160(4)

[Commenters 5, 9]

- a) DEQ should remove the restricting phrase "such as auto shredder wastes" from OAR 340-096-0160(4)(b)(B) as proposed.(5)
- b) Proposed OAR 340-096-0160(4)(b)(C) needs clarification and should allow for at least 20% process waste, or no limit at all.(5)(9)

- c) Proposed OAR 340-096-0160(4)(b)(C) needs to be clarified as to the time period over which it is measured. Propose to measure it over a year, and exempt facilities for the first 12-18 months.(5)(9)
- d) The exemption criteria in proposed OAR 340-096-0160(4)(b) creates an uneven playing field for CT facilities.(5)
- e) Proposed OAR 340-096-0160(4)(b)(F) is vague in its use of the term "routinely" and should not preclude an exemption even if a tipping fee is charged.(5)

DEQ Response

a) Auto shredder wastes contain a diverse and variable mix of materials that may include hazardous components and that also may include substantial amounts of materials such as polyvinyl chloride plastic that are not suitable for many types of conversion technology and that may pose environmental or health risks. Due to the nature of this material, it should be handled in a facility that has either a conversion technology registration or permit.

b) & c) DEQ considered several clarifying options for OAR 340-096-0160(4)(b)(C), regarding the percent of waste allowed for disposal and the time frame. Since a conversion technology facility cannot regularly accept a fee for waste and qualify for the exemption from a permit requirement, the risk of abandonment of wastes on site would seem to be low. DEQ therefore has removed this paragraph from the proposed rule.

d) Because conversion technology facilities chemically alter their feedstocks and often produce toxic liquids and gasses as end products, they have a greater potential for damaging the environment than do facilities that receive plastics, paper, metals, and other similar materials for recycling. These risk factors should be considered when determining if a solid waste disposal permit should be required. Oregon solid waste rules also allow DEQ to require permits for facilities handling only source-separated recyclable materials if they pose a threat to human health or the environment.

e) Many of the facilities that have created environmental damage and required public or substantial private cleanup are facilities that handle material that they are paid to take such as tires, asphalt roofing shingles, and paper recycling rejects. The risks associated with potential abandonment of these low-valued materials warrants further regulatory oversight than is needed for materials that routinely are marketed at positive value. This permit exemption also aligns with the EPA's first legitimacy criteria: "Does the processor treat the material as a valuable commodity?" as discussed in the first comment.

11. Comments on risk factors for proposed conversion technology facilities under OAR 340- 096-0160(7) [Commenters 5, 10]

- a) The "risk factors" are ambiguous, provide no standards for measurement, and may result in inconsistent and arbitrary determinations. In particular, three aspects were discussed:
 - the term "not likely";
 - the risk factor concerning whether materials produced by the facility will cause a threat to human health or the environment; and
 - The catch-all provision that the facility does not pose other likely risks to human health or the environment.Further clarification is needed. (5)
- b) The requirement that facilities satisfy all seven "risk factors" is unreasonable, unnecessary, and illogical when compared to other kinds of manufacturing facilities. (5)

- c) Object to the additions of the word "significant" in relation to the potential for the releases of hazardous substances. Oregon should not risk the abandonment of facilities that release hazardous substances on site. (10)

DEQ Response

- a) An issue in drafting the conversion technology rules is the future need for the rules to be applied to technologies that have not yet been invented and for which feedstocks may be used in unanticipated ways. Therefore, sections such as those identifying risk factors need to be sufficiently general to be able to be used in the novel applications that are likely to come in the future. The risk factors that are identified in the conversion technology rules are in part based on similar rules for composting. These risk factors are not set standards that facilities have to meet. Rather, they describe the risk factors that DEQ will take into account when determining if a facility will require a conversion technology permit or a registration.

DEQ agrees, though, that the term "likely" is too vague in that it could be interpreted differently by different people. Thus we propose to add the following qualifier to this section: "As used in this section, "likely" means that there is a reasonable potential that the event or condition will occur."

Regarding the risk factor in OAR 340-096-0160 (7)(b)(E) of this rule concerning whether the materials produced by the facility will cause a threat to human health or the environment, this factor is tied to the standards described in OAR 340-096-0170 (12), providing much firmer definition of how this particular risk factor will be considered. OAR 340-096-0170 (12) requires that hazardous substances in the material produced by the conversion technology facility must meet at least one of the two following criteria:

- They do not significantly exceed the concentrations in comparable raw material or commercial product, or
- They will not exceed acceptable risk levels when used in ways the material may reasonably be expected to be used.

The beneficial use rules for solid waste use very similar criteria as is proposed here for conversion technology facilities (OAR 340-093-0270 (1)). Both use a comparison to other comparable raw materials or commercial products, and both also allow the use of acceptable risk levels as laid out in the Hazardous Substance Remedial Action Rules (OAR 340-122-0115). In addition, this criteria is very similar to the fourth EPA factor for recycling legitimacy ("comparison of toxics in products") discussed in Comment 1.

Finally, regarding the catch-all provision in OAR 340-096-0160(7)(b)(G) of the rule, it is very possible that some new technology not yet envisioned at present and considered in these rules, could pose a threat to human health or the environment. If such a risk were to be identified, it would be negligent of DEQ to ignore that risk simply because we did not list it in our rules. To use this provision, DEQ will have to identify the specific risk.

- b) If a facility poses a risk to human health or the environment because of the way it manages solid waste, that risk needs to be addressed and minimized through provisions in a solid waste permit. If, however, a class of facilities poses little risk, then a permit is not necessary, and the Environmental Quality Commission can adopt rules exempting those facilities from permit requirements. EQC has done that for most facilities using and recycling source-separated materials, unless DEQ finds those facilities pose a "potential threat of adverse impact on the environment or public health". Similarly, the rules proposed here allow conversion technology facilities to be exempt from all permit requirements if they meet all the exemption requirements and do not pose a risk. The exemption criteria are more stringent for facilities involved in conversion technology than they are for facilities recycling source-separated materials because conversion technology

facilities often chemically change the materials they are processing, creating greater environmental risk, and also do not generally have long operational histories that can be used to evaluate risk.

- c) Commenter 10 indicates that we should drop the word "significant" in the risk criteria where there is a significant potential for spills or releases of hazardous substances onsite. Removing the word "significant" would make this criterion too stringent in that there is always a risk for hazardous substances spills, although that risk might be negligible for some facilities. If this risk criterion were always triggered, then all facilities would be required to get permits - even those with negligible risks. DEQ believes that only those facilities with a significant (i.e. non-negligible) risk should require permits.

12. Comments on performance standards under proposed OAR 340-096-0170 [Commenter 5]

- a) The performance standards in OAR 340-096-0170(1)-(6), (8), and (11) are duplicative of existing regulations and therefore unnecessary. (5)
- b) Proposed OAR 340-096-0170(12) is unreasonable because DEQ has no authority under its solid waste laws to regulate products produced by a conversion technology facility. (5)
- c) Proposed OAR 340-096-0170 (12) is vague and lacking in any relevant standards or procedures for determining whether a "hazardous substance" exceeds risk standards that are inapplicable to product use scenarios. (5)

DEQ Response

- a) This rule includes in one place all of the main performance standards that conversion technology facilities need to comply with, making it easier for facility operators to know what standards they need to meet. In many cases, the requirements are not duplicative, but instead direct that requirements that are applicable to other types of facilities also apply to conversion technology facilities.
- b) As discussed in Comment 1, DEQ's interpretation of solid waste is that a material that has been discarded remains a solid waste as long as it must be further reclaimed, processed, or purified to become a bona fide product. DEQ is concerned that if a facility is not properly managed, contaminants derived from solid waste may end up in the materials produced by the facility and may threaten human health and the environment. If the materials produced by the facility contain constituents such as heavy metals, dioxins, PCBs or other dangerous chemicals or biological agents related to the waste and require further processing before they become useful products suitable for their intended purpose, then DEQ does not consider these materials to be legitimate products. Note that this standard is very similar to the fourth EPA factor for recycling legitimacy ("comparison of toxics in products") discussed in Comment 1 and Comment 11.
- c) The wording in proposed OAR 340-096-0170 (12) is based on a very similar requirement used in the solid waste beneficial use rules OAR 340-093-0270(1)(c) and is also similar to the fourth EPA factor for recycling legitimacy ("comparison of toxics in products") discussed in Comment 1 and Comment 11. DEQ believes that most conversion technology facilities will meet this standard through the first criteria - that the hazardous substances in their products do not significantly exceed the concentration in comparable raw material or commercial product. For example, if the oil produced in plastics pyrolysis facilities is sold to petroleum refineries, it would be appropriate to compare that oil to crude petroleum, which is loaded with toxic organic substances. The second criteria comes into play only if the facility fails the first criteria. If a facility is operated in such a way that it produces materials that fail to meet the acceptable risk levels, and fail to protect public health and the environment, then that facility should change its practice to minimize or eliminate that risk.

13. Comments on Conversion Technology Facility Operation Plans (proposed OAR 340-096-0180)

[Commenter 5]

- a) The Operation Plan requirements in proposed OAR 340-096-0180(4)(b)-(e) are duplicative of existing regulations. (5)
- b) The requirement to prepare and submit to DEQ an Operations Plan will jeopardize highly confidential and proprietary information about a permittees' facility and business model. (5)

DEQ Response

The Operations Plan requirements in proposed OAR 340-096-0180 identify the elements a Conversion Technology Facility Operations Plan must address in order for DEQ to determine if a facility will meet performance standards. These plan elements for conversion technology facilities, identified in OAR 340-096-0180, are not duplicative and are not required elsewhere in the proposed or existing solid waste rules.

Protecting confidential and proprietary information has not historically been a problem. Currently, DEQ staff oversee permits for approximately 300 solid waste management facilities. Approximately 200 of these permitted facilities have prepared operations plans for DEQ review and approval. Operations plans describe among other things, the procedures employed at a facility which are intended to attain compliance with their DEQ permit and protect public health and the environment. To date, the requirement to prepare an operations plan has not resulted in the disclosure of any facilities' confidential or proprietary information.

In the event an applicant or permittee is concerned that their operations plan may expose confidential or proprietary information, DEQ staff will work closely with the applicant/permittee to address potential concerns. If an applicant or permittee claims a document or other information submitted to DEQ is confidential, upon public request for the document, the applicant or permittee must demonstrate that each piece of information being requested to be kept confidential meets the requirements under Oregon Revised Statute 192.501 (Public records conditionally exempt from disclosure) or ORS 192.502 (Other public records exempt from disclosure). DEQ recognizes this concern and will continue to work with facilities on finding a balance between the level of detail to determine compliance with keeping proprietary information confidential.

14. Definition of Composted Material and Compost (OAR 340-093-0030(21) [Commenter 1]

- a) Change the definition to solid "material" rather than "product." The definition indicates that additional composting may be necessary before the compost can be used, so "material" would be a better term to use. (1)

DEQ Response

DEQ agrees with this suggestion and has replaced the word "product" with the word "material."

15. Composting Specified Risk Material (SRM) that may contain prions that cause transmissible spongiform encephalopathies [Commenters 1, 7]

- a) Because the compost derived from SRM must always be disposed, it should not routinely be classified as a compostable feedstock. Washington already has a type 4 feedstock, which could create confusion. Recommend classifying it as "Type X" instead. (1)
- b) SRM should be prohibited from composting processes and anaerobic digestion facilities. Even if the digestate from a load of processed SRM-containing material is disposed, how can we be certain that a

digester will not be left with some level of BSE prion contamination that will not then spread to future digestate or compost created by the digester? (7)

DEQ Response

- a) DEQ agrees with the argument in a) and has changed “Type 4” feedstock to “Type X” in the proposed rules.
- b) After consulting with the State Veterinarian at the Oregon Department of Agriculture, DEQ determined that the risk of contamination from the BSE prion in the situation described is very minimal and therefore DEQ has not changed the proposed procedures. However, because of the concerns with type X feedstocks, DEQ staff will encourage all anaerobic digester operators to remove all type X feedstock prior to addition of animal mortality (type 3 feedstock) to the digester. If, however, an operator proposes to include type X feedstocks, DEQ will work closely with the Oregon Department of Agriculture and the operator to ensure the process is as sanitary as possible. DEQ will closely monitor any operations that include type X feedstock. DEQ will continue to monitor on-going BSE prion research in Europe and the U.S. and will adjust policies, procedures and rules as new information warrants.

16. Comments on anaerobic digestion permits [Commenters 3, 6]

- a) Exempting anaerobic digestion facilities operated in conjunction with a confined animal feeding operation from most composting requirements potentially puts human health and the environment at risk. (6)
- b) We don't believe in "waste." Items (like crop wastes) that others may consider to be waste, we see as under-utilized resources. It is our belief that such proactive efforts to live out the sustainability practices discussed regularly in Oregon should be celebrated and encouraged, rather than hampered by regulations more appropriate to waste-generating businesses. (3)

DEQ Response

Farm-based anaerobic digestion and composting facilities are subject to all performance standards identified in the composting facility rules. DEQ works closely with Oregon Department of Agriculture staff in reviewing site design and operations plans for composting facilities and anaerobic digesters located on farms that have a Confined Animal Feeding Operation permit. As part of the CAFO permit, farms must submit for review and approval, composting facility design and operations plans that address how composting facilities and anaerobic digesters will be constructed and operated in a manner that protects public health and the environment and in compliance with DEQ composting rules. These farms must also update their CAFO-required Nutrient Management Plans which describe how leachate or digestate will be applied to the soil only in the amounts necessary for the growing of crops.

DEQ agrees that any waste materials or byproducts have value if reused, recycled, composted or used for other productive purposes. DEQ encourages and applauds companies or farms for using their “under-utilized” resources. In developing the conversion technology rules and other rules, DEQ has attempted to impose regulations that discourage disposal, while encouraging sustainable practices in a manner protective of human health and the environment. By deferring primary oversight of facilities with CAFO permits to ODA, DEQ has attempted to minimize and not duplicate regulation.

17. Comments on fees [Commenters 5, 7, 10]

- a) The proposed regulations unfairly impose three layers of fees on conversion technology facilities that are not imposed on similar manufacturing facilities. (5)

- b) Special higher fees should be created for permits for experimental facilities, to provide the funds needed to gather and analyze data to determine risk to human health and the environment. (7) (10)

DEQ Response

- a) There are a number of conversion technology facilities likely to meet permit exemption requirements, and thus operate without being required to obtain a solid waste permit or pay permit fees. Those conversion technology facilities that do not meet exemption requirements have in the past been required to obtain a more expensive solid waste treatment permit, but will be eligible for the less-expensive conversion technology permit under the proposed rules. The table below compares annual compliance fees and one-time application fees for solid waste treatment facilities and proposed conversion technology facilities:

	Solid Waste Treatment	Conversion Technology
Annual Compliance Fee	\$0.21 per ton	\$0.10 per ton
One-time Application: 7,500 tons/year or more		
Application fee	\$10,000	\$2,000
Plan review fee, if required	none	\$2,200 to \$5,000
Total Application and plan review	\$10,000	\$2,000 to \$7,000
One-time Application: less than 7,500 tons/year		
Application fee	\$5,000	\$1,500
Plan review fee, if required	none	\$1,000 to \$1,500
Total Application and plan review	\$5,000	\$1,500 to \$3,000

The proposed fee schedule was reviewed by the Conversion Technology Rulemaking Advisory Committee. During the advisory committee meetings, committee members reviewing the fees thought they were very reasonable and possibly lower than they should be, and no committee member expressed concern that the fees were too high.

- b) DEQ understands the argument that special higher fees should be created for permits for experimental facilities. DEQ's experience has been that these facilities require far more work and review than most other facilities, increasing DEQ costs. However, the number of facilities applying for permits that are experimental facilities is very small - usually less than one per year and can be absorbed by other permit fee revenue. Also, DEQ would like to encourage new technologies that may result in better management of solid waste, and does not want to discourage the establishment of those facilities through high permit fees.

18. Rule Update [Commenter 9]

- a) Rules should include a provision for an update or revision of the rules in two years. (9)

DEQ Response

In accordance with statutory requirements (Oregon Revised Statute 183.405), DEQ will review the conversion technology rules within five years of rule adoption to determine if adjustments are necessary.

Commenters

Below is a listing of the 10 people and organizations that submitted comments on the proposed rules. These comments were submitted by the deadline for submitting public comments. The original comments are on file with DEQ.

- 1 **Commenter:** Roy Brower **Affiliation:** Metro
This commenter submitted comments under Comment 3, 7, 14, and 15 in the *Summary of comments and DEQ responses* section above.
- 2 **Commenter:** Roger Dilts **Affiliation:** Clean Water Services
This commenter submitted comments under Comment 6 in the *Summary of comments and DEQ responses* section above.
- 3 **Commenter:** Tina Galloway **Affiliation:** Stahlbush Island Farms
This commenter submitted comments under Comment 16 in the *Summary of comments and DEQ responses* section above.
- 4 **Commenter:** Mary Sue Gilliland **Affiliation:** Agri-Plas, Inc.
This commenter submitted comments under Comments 1, 4, 5, and 8 in the *Summary of comments and DEQ responses* section above.
- 5 **Commenter:** Andrew M. Kenefick **Affiliation:** Waste Management
This commenter submitted comments under Comments 1,5,8,9,10,11,12,13, and 17 in the *Summary of comments and DEQ responses* section above.
- 6 **Commenter:** Denise Luc & Kathy Hessler **Affiliation:** Friends of Family Farmers and Animal Law Clinic, Lewis and Clark Law School
This commenter submitted comments under Comments 16 in the *Summary of comments and DEQ responses* section above.
- 7 **Commenter:** Joe Miller **Affiliation:** Oregon Physicians for Social Responsibility
This commenter submitted comments under Comments 3, 4, 15, and 17 in the *Summary of comments and DEQ responses* section above.
- 8 **Commenter:** Kristan Mitchell **Affiliation:** Oregon Refuse and Recycling Association
This commenter submitted comments under Comments 1 and 2 in the *Summary of comments and DEQ responses* section above.
- 9 **Commenter:** Ross M. Patten **Affiliation:** Agilyx, Inc.
This commenter submitted comments under Comments 1, 10, and 18 in the *Summary of comments and DEQ responses* section above.
- 10 **Commenter:** Jeanne Roy **Affiliation:** Center for Earth Leadership
This commenter submitted comments under Comments 3, 4, 11, and 17 in the *Summary of comments and DEQ responses* section above.

Comments received after close of public comment period

DEQ did not receive any comments after the close of public comment.

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION 64

WASTE TIRE PROGRAM: WASTE TIRE STORAGE SITE AND WASTE TIRE CARRIER PERMITS

340-064-0015 Waste Tire Storage Permit Required

- (1) Except as provided by section (2) of this rule, no person shall establish, operate, maintain or expand a waste tire storage site until the person owning or controlling the waste tire storage site obtains a permit or permit modification/addendum therefor from the Department.
- (2) Persons owning or controlling the following are exempted from the above requirement to obtain a waste tire storage permit, but shall comply with all other regulations regarding waste tire management and solid waste disposal:
- (a) A person who stores fewer than 100 waste tires;
 - (b) A person who stores fewer than 200 cubic yards of tire-derived products;
 - (c) A tire retailer who stores not more than 1,500 waste tires for each retail business location;
 - (d) A tire retreader who stores not more than 3,000 waste tires for each individual retread operation so long as the waste tires are of the type the retreader is actively retreading;
 - (e) A wrecking business who stores not more than 1,500 waste tires for each retail business location;
 - (f) Storage of tire-derived products packaged in closed plastic bags.

~~(3) The exception allowed to a tire retailer under section (2)(c) of this rule shall not apply unless the tire retailer submits the return required under ORS 459.519 and the return indicates the sale of new tires during the reporting period, so long as such returns are required to be submitted.~~

~~(4)~~(3) Piles of tire-derived products are not subject to regulation as a waste tire storage site if the site actively consumes the following minimum tons of tire-derived products annually:

- (a) For cement kilns: 1,500 tons;
- (b) For pulp and paper mills: 1,500 tons.

~~(5)~~(4) Manufacturers must obtain a waste tire storage permit if they are storing the following levels of tire-derived products:

- (a) For manufacturers actively consuming crumb rubber: 400 tons, or over 50 percent of the manufacturer's annual use of such materials;
- (b) For manufacturers actively consuming other waste tire shreds or pieces: 100 tons or over 50 percent of the manufacturer's annual use of such materials.

~~(6)~~(5) The Department may exempt a site owned by a federal, state or local government unit from the requirement to obtain a waste tire storage permit for tire-derived products if the following conditions are met:

- (a) The government unit wants to store tire-derived products for use in fulfilling an existing contract, and requests an exemption from the Department for the waste tire storage permit requirement;
- (b) The quantity of tire-derived products to be stored does not exceed the estimated quantity specified in the contract plus ten percent to allow for changes or discrepancies;
- (c) The length of time the tire-derived products are to be stored does not exceed six months; and
- (d) The Department determines that such storage will not create an environmental risk.

~~(7)~~(6) A permitted solid waste disposal site which stores more than 100 waste tires, is required to have a permit modification addressing the storage of tires from the Department.

~~(8)~~(7) The Department may issue a waste tire storage permit in two stages to persons required to have such a permit by July 1, 1988. The two stages are a "first-stage" or limited duration permit, and a "second-stage" or regular permit.

~~(9)~~(8) A person who wants to establish a new waste tire storage site shall apply to the Department at least 90 days before the planned date of facility construction. A person applying for a waste tire storage permit on or after September 1, 1988 shall apply for a "second-stage" or regular permit.

~~(10)~~(9) A person who is using or wants to use over 100 waste tires for a beneficial use must request the Department to determine whether that use constitutes "storage" pursuant to OAR 340-064-0010(25), and is thus subject to the waste tire storage site permit requirement. The Department may recommend remedial actions which, if implemented, will eliminate any environmental risk which would otherwise be caused by a beneficial use of waste tires.

~~(11)~~(10) Use of waste tires which is regulated under ORS 468B.070 or 196.800 through 196.905 and for which a permit has been acquired is not subject to additional regulation under OAR Chapter 340, Division 64.

~~(12)~~(11) Failure to conduct storage of waste tires according to the conditions, limitations, or terms of a permit or these rules, or failure to obtain a permit is a violation of these rules and shall be subject to civil penalties as provided in OAR Chapter 340, Division 12 or to any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

~~(13)~~(12) No person shall advertise or represent himself/herself as being in the business of accepting waste tires for storage without first obtaining a waste tire storage permit from the Department.

~~(14)~~(13) Failure to apply for or to obtain a waste tire storage permit, or failure to meet the conditions of such permit constitutes a nuisance.

Stat. Auth.: ORS 459.770 & ORS 459.785

Stats. Implemented: ORS 459.705, ORS 459.708, ORS 459.710, ORS 457.715

Hist.: DEQ 15-1988, f. & cert. ef. 7-12-88; DEQ 7-1989, f. & cert. ef. 4-24-89; DEQ 3-1990, f. & cert. ef. 1-24-90; DEQ 26-1991, f. & cert. ef. 11-14-91; DEQ 27-1998, f. & cert. ef. 11-13-98

340-064-0022 Financial Assurance

(1) The Department shall determine for each applicant the amount of financial assurance required under ORS 459.720(c) and OAR 340-064-0020(1)(b). The Department shall base the amount on the estimated cost of cleanup for the maximum number of waste passenger tire equivalents and/or tire-derived products allowed by the permit to be stored at the storage site or the estimated cost of fire suppression. The amount of financial assurance required for permittees storing waste tires as a beneficial use could be as low as \$0 if the use meets applicable operational and storage standards in OAR 340-064-0035, and the Department determines that there will be no need to remove the tires. If the tire-derived products have a positive economic value and are actively being used or sold by the permittee, the Department may reduce or eliminate financial assurance for the tire-derived products.

(2) The Department will accept as financial assurance only those instruments listed in and complying with requirements in OAR ~~340-094-0145 or 340-071-0600(4)(a) through (e)~~ 340-095-0095.

(3) The financial assurance shall be filed with the Department.

(4) The Department shall make any claim on the financial assurance within one year of any notice of proposed cancellation of the financial assurance.

Stat. Auth.: ORS 459.770 & ORS 459.785

Stats. Implemented: ORS 459.720

Hist.: DEQ 15-1988, f. & cert. ef. 7-12-88; DEQ 7-1989, f. & cert. ef. 4-24-89; DEQ 3-1990, f. & cert. ef. 1-24-90; DEQ 26-1991, f. & cert. ef. 11-14-91; DEQ 9-1996, f. & cert. ef. 7-10-96

340-064-0035 Standards for Waste Tire Storage Sites

(1) All permitted waste tire storage sites must comply with the technical and operational standards in this rule.

(2) The holder of a "first-stage" waste tire storage permit shall comply with the technical and operational standards in this part if the site receives any waste tires after the effective date of these rules.

(3) A waste tire storage site shall not be constructed or operated in a wetland, waterway, floodway, 25-year floodplain, or any area where it may be subjected to submersion in water.

(4) Operation. A waste tire storage site shall be operated in compliance with the following standards:

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(a) An outdoor waste tire pile shall have no greater than the following maximum dimensions:

(A) Width: 50 feet;

(B) Area: 15,000 square feet;

(C) Height: 6 feet.

(b) A 50-foot fire lane shall be placed around the perimeter of each waste fire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times;

(c) Waste tire piles shall be located at least 60 feet from buildings;

(d) Waste tires to be stored for one month or longer shall be ricked, unless the Department waives this requirement;

(e) The permittee shall operate and maintain the site in a manner which controls mosquitoes and rodents if the site is likely to become a public nuisance or health hazard and is close to residential areas;

(f) A sign shall be posted at the entrance of the storage site stating operating hours, cost of disposal and site rules if the site receives tires from persons other than the operator of the site;

(g) No operations involving the use of open flames or blow torches shall be conducted within 25 feet of a waste tire pile;

(h) An approach and access road to the waste tire storage site shall be maintained passable for any vehicle at all times. Access to the site shall be controlled through the use of fences, gates, or other means of controlling access;

(i) If required by the Department, the site shall be screened from public view;

(j) An attendant shall be present at all times the waste tire storage site is open for business, if the site receives tires from persons other than the operator of the site;

(k) The site shall be bermed or given other adequate protection if necessary to keep any liquid runoff from potential tire fires from entering waterways;

(l) If pyrolytic oil is released at the waste tire storage site, the permittee shall remove contaminated soil in accordance with applicable rules governing the removal, transportation and disposal of the material;

(m) In the case of tire fences, the following are also required:

(A) For vector control:

(i) Drilling a two-inch hole into each quadrant of the downside of each tire used in the fence; or

(ii) Filling each individual waste tire with dirt; or

(iii) Another treatment approved in advance by the Department.

(B) A 20-foot fire lane shall be maintained on land under control of the permittee along the entire length of the tire fence. Access to the fire lane for emergency vehicles must be unobstructed and clear of vegetation at all times;

(C) Weeds shall not be allowed to grow on or over the tire fence;

(D) A tire fence shall not be constructed wider than one tire width.

(n) In the case of waste tires stored for seasonal agricultural uses: During the annual period(s) during which the waste tires are not being used for the beneficial use, they shall be stored to meet the standards in this rule.

(5) Operational standards for storage of tire-derived products: the following standards must be met:

(a) The product pile shall have no greater than the following maximum dimensions:

(A) Width: 40 yards;

(B) Volume: 6,400 cubic yards;

(C) Height: 4 yards.

(b) A maximum of four piles of product are allowed on a site;

(c) Compliance with waste tire storage standards under section (3) and subsections (4)(b), (c), and (e) through (l) of this rule.

(6) The Department may impose additional storage requirements for an individual site which are reasonably necessary to protect the public health or the environment.

(7) Waste tires stored indoors shall be stored in compliance with Section 2509.1 of the 2010 Oregon Fire Code, under conditions that meet those in The Standard for Storage of Rubber Tires, NFPA 231D-1986 edition, adopted by the National Fire Protection Association, San Diego, California.

(8) The Department may approve exceptions to the preceding technical and operational standards for a company processing waste tires and/or storing tire-derived products if:

- (a) The average time of storage for a waste tire and/or tire-derived products on that site is one month or less; and
- (b) The Department and the local fire authority are satisfied that the permittee has sufficient fire suppression equipment and/or materials on site to extinguish any potential tire and tire chip fire within an acceptable length of time.

(9) The director may grant a variance to the technical and operational standards in this rule or the requirements of OAR 340-064-0025(3)(a) through (3)(c)(D) for a waste tire storage site in existence on or before January 1, 1988, or for a waste tire storage site using tires for a beneficial use. This may include certain requirements of these technical and operational standards when circumstances of the waste tire storage site location, operating procedures, and fire control protection indicate that the purpose and intent of these rules can be achieved without strict adherence to all of the requirements, or when the site is not receiving additional tires and is under a closure schedule approved by the Department.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 459.770 & ORS 459.785

Stats. Implemented: ORS 459.268, ORS 459.710, ORS 459.715 & ORS 459.720

Hist.: DEQ 15-1988, f. & cert. ef. 7-12-88; DEQ 7-1989, f. & cert. ef. 4-24-89; DEQ 3-1990, f. & cert. ef. 1-24-90; DEQ 26-1991, f. & cert. ef. 11-14-91

340-064-0055 Waste Tire Carrier Permit Required

(1) After January 1, 1989, any person engaged in picking up, collecting or transporting waste tires for the purpose of storage, processing or disposal is required to obtain a waste tire carrier permit from the Department.

(2) After January 1, 1989, no person shall collect or haul waste tires or advertise or represent himself/herself as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit from the Department.

(3) The following persons are exempt from the requirement to obtain a waste tire carrier permit:

- (a) Solid waste collectors operating under a license or franchise from any local government unit;
- (b) A private individual transporting the individual's own waste tires to a processor or for proper disposal;
- (c) A private carrier transporting the carrier's own waste tires to a processor or for proper disposal;
- (d) A person transporting fewer than five tires to a processor or for proper disposal;
- (e) Persons transporting tire-derived products to a market;
- (f) Persons transporting tire chips that meet the chipping standards in OAR 340-064-0052;

(g) The United States, the State of Oregon, any county, city, town or municipality in this state or any agency of the United States, the State of Oregon or a county, city, town or municipality of this state.

(4) A combined tire carrier/storage permit may be applied for by tire carriers:

- (a) Who are subject to the carrier permit requirement; and
- (b) Whose business includes or wants to establish a site which is subject to the waste tire storage permit requirement.

(5) The Department shall supply a combined tire carrier/storage permit application to such persons. Persons applying for the combined tire carrier/storage permit shall comply with all other regulations concerning storage sites and tire carriers established in these rules.

(6) Persons who want to transport waste tires for the purpose of storage, processing or disposal must apply to the Department for a waste tire carrier permit at least 90 days before beginning to transport the tires.

(7) Large trucking companies with 15 or more trucks in their fleet, whether leased or owned, may apply for a common carrier class waste tire carrier permit to haul waste tires.

(a) All waste tire carrier permit rules will apply, except for Sections (8)(a), (17), and (18) of this rule.

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- (b) Large trucking companies who apply for this permit must pay all application and compliance fees required in OAR 340-064-0063(9)(a) and in section (10) of this rule in addition to an annual permit fee of \$375 applicable to companies operating 15 or more trucks.
- (c) Cab decals are not required on trucks covered under this permit, however the common carrier class waste tire carrier permit must remain on file and must be available for review by the Department at the permittee's principal Oregon office.
- (d) Any truck in the company's fleet may be used to haul waste tires as long as the company is in compliance with the common carrier class waste tire carrier permit.
- (8) Applications shall be made on a form provided by the Department. The application shall include such information as required by the Department. It shall include but not be limited to:
- (a) A description, license number and registered vehicle owner for each truck used for transporting waste tires;
 - (b) The PUC authority number under which each truck is registered;
 - (c) Where the waste tires will be stored, processed or disposed of;
 - (d) Any additional information required by the Department.
- (9) A corporation which has more than one separate business location may submit one waste tire carrier permit application which includes all the locations. All the information required in section (8) of this rule shall be supplied by location for each individual location. The corporation shall be responsible for amending the corporate application whenever any of the required information changes at any of the covered locations.
- (10) An application for a tire carrier permit shall include a \$25 nonrefundable application fee and an annual compliance fee as listed in OAR 340-064-0063 or subsection (7)(b) of this rule, as applicable.
- (11) An application for a combined tire carrier/storage permit shall include a \$250 application fee, \$50 of which shall be non-refundable, and an annual compliance fee as listed in OAR 340-064-0063. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:
- (a) The Department determines that no permit will be required;
 - (b) The applicant withdraws the application before the Department has granted or denied the application.
- (12) The application for a waste tire carrier permit shall also include a bond in the sum of \$5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the Department. The Department will accept as financial assurance only those instruments listed in and complying with requirements in OAR ~~340-094-0145 or 340-071-0600(4)(a) through (e)~~ 340-095-0095.
- (13) The bond or other financial assurance shall be filed with the Department and shall provide that:
- (a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 through 459.790 and of this rule; and
 - (b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 through 459.790 or this rule shall have a right of action on the bond or other financial assurance in the name of the person. Such right of action shall be made to the principal or the surety company within two years after the injury.
- (14) Any deposit of cash, certificate of deposit, letter of credit, or negotiable securities submitted under sections (12) and (13) of this rule shall remain in effect for not less than two years following termination of the waste tire carrier permit.
- (15) A waste tire carrier permit or combined tire carrier/ storage permit shall be valid for up to three years.
- (16) Waste tire carrier permits shall expire on March 1. Waste tire carrier permittees who want to renew their permit must apply to the Department for permit renewal by January 1 of the year the permit expires. The application for renewal shall include all information required by the Department, and a permit renewal fee.
- (17) A waste tire carrier permittee may add another vehicle to its permitted waste tire carrier fleet if it does the following before using the vehicle to transport waste tires:
- (a) Submits to the Department:
 - (A) The information required in section (8) of this rule; and
 - (B) A fee of \$25 for each vehicle added.
 - (b) Displays on each additional vehicle decals from the Department pursuant to OAR 340-064-0063(1)(b).

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(18) A waste tire carrier permittee may lease additional vehicles to use under its waste tire carrier permit without adding that vehicle to its fleet pursuant to section (17) of this rule, under the following conditions:

- (a) The vehicle may not transport waste tires when under lease for a period of time exceeding 30 days (short-term leased vehicles). If the lease is for a longer period of time, the vehicle must be added to the permittee's permanent fleet pursuant to section (17) of this rule;
- (b) The permittee must give previous written notice to the Department that it will use short-term leased vehicles;
- (c) The permittee shall pay a \$25 annual compliance fee in advance to allow use of short-term leased vehicles, in addition to any other fees required by sections (10), (11) and (17) of this rule, and OAR 340-064-0063(9) and (10);
- (d) Every permittee shall keep a daily record of all vehicles leased on short term, with beginning and ending dates used, license numbers, PUC authority, PUC temporary pass or PUC plate/marker, and person from whom the vehicles were leased. The daily record must be kept current at all times, subject to verification by the Department. The daily record shall be maintained at the principal Oregon office of the permittee. The daily record shall be submitted to the Department each year as part of the permittee's annual report required by OAR 340-064-0063(8);
- (e) The permittee's bond or other financial assurance required under section (12) of this rule must provide that, in performing services as a waste tire carrier, the operator of a vehicle leased by the permittee shall comply with the provisions of ORS 459.705 through 459.790 and of this rule;
- (f) Each vehicle being used on a short-term lease basis by a permittee must carry a properly filled out cab card provided by the Department in the power vehicle at all times when hauling waste tires. Information on the cab card shall include the starting and ending dates of the short-term lease;
- (g) The permittee is responsible for ensuring that a leased vehicle complies with OAR 340-064-0055 through 340-064-0063, except that the leased vehicle does not have to obtain a separate waste tire carrier permit pursuant to section (1) of this rule while operating under lease to the permittee.

(19) A holder of a combined tire carrier/storage permit may purchase special block passes from the Department. A person located outside of Oregon who is a holder of a waste tire carrier permit issued by the Department may also purchase special block passes from the Department if he or she also holds a valid permit allowing storage of waste tires issued by the responsible state or local agency of that state, and if such permit is deemed acceptable by the Department. The block passes will allow the permittee to use a common carrier which does not have a waste tire carrier permit. Use of a block pass will allow the unpermitted common carrier to haul waste tires under the permittee's waste tire carrier permit:

- (a) Special block passes shall be available in sets of at least five, for a fee of \$5 per block pass. Only a holder of a combined tire carrier/storage permit may purchase block passes. Any unused block passes shall be returned to the Department when the permittee's waste tire permit expires or is revoked;
- (b) The permittee is responsible for ensuring that a common carrier operating under a block pass from the permittee complies with OAR 340-064-0055 through 340-064-0063, except that the common carrier does not have to obtain a separate waste tire carrier permit pursuant to section (1) of this rule while operating under the permittee's block pass;
- (c) A block pass may be valid for a maximum of ten days and may only be used to haul waste tires between the origin(s) and destination(s) listed on the block pass;
- (d) A separate block pass shall be used for each trip hauling waste tires made by the unpermitted common carrier under the permittee's waste tire permit. (A trip begins when waste tires are picked up at an origin, and ends when they are delivered to a proper disposal site(s) pursuant to OAR 340-064-0063(4));
- (e) The permittee shall fill in all information required on the block pass, including name of the common carrier, license number, PUC authority if applicable, PUC temporary pass or PUC plate/marker if applicable, beginning and ending dates of the trip, address(es) of where the waste tires are to be picked up and where they are to be delivered, and approximate numbers of waste tires to be transported;
- (f) Each block pass shall be in triplicate. The permittee shall send the original to the Department within five days of the pass's beginning date, one copy to the common carrier which shall keep it in the cab during the trip, and shall keep one copy;
- (g) The permittee shall be responsible for ensuring that any common carrier hauling waste tires under the permittee's waste tire permit has a properly completed block pass;
- (h) While transporting waste tires, the common carrier shall keep a block pass properly filled out for the current trip in the cab of the vehicle;

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(i) An unpermitted common carrier may operate as a waste tire carrier using a block pass no more than three times in any calendar quarter. Before a common carrier may operate as a waste tire carrier more than three times a quarter, he or she must first apply for and obtain a waste tire carrier permit from the Department.

Stat. Auth.: ORS 468.020, ORS 459.045 & ORS 459.785

Stats. Implemented: ORS 459.708

Hist.: DEQ 15-1988, f. & cert. ef. 7-12-88; DEQ 7-1989, f. & cert. ef. 4-24-89; DEQ 3-1990, f. & cert. ef. 1-24-90; DEQ 41-1990, f. & cert. ef. 11-15-90; DEQ 26-1991, f. & cert. ef. 11-14-91; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 3-1997, f. & cert. ef. 3-7-97

DIVISION 93
SOLID WASTE: GENERAL PROVISIONS

340-093-0030 Definitions

As used in OAR chapter 340, divisions 93, 94, 95, 96 and 97 unless otherwise specified:

- (1) "Acceptable Risk Level" ~~means a risk level~~ has the meaning as defined in OAR 340-122-0115~~(4)~~ of the Hazardous Substance Remedial Action Rules.
- (2) "Access Road" means any road owned or controlled by the disposal site owner that terminates at the disposal site and that provides access for users between the disposal site entrance and a public road.
- (3) "Agricultural Waste" means waste on farms resulting from the raising or growing of plants and animals including but not limited to crop residue, manure, animal bedding, and carcasses of dead animals.
- (4) "Agricultural Composting" means composting conducted by an agricultural operation (as defined in ORS 467.120(2)(a) on lands used for farming (as defined in ORS 215.203).
- (5) "Agronomic Application Rate" means land application of no more than the optimum quantity per acre of compost, sludge or other materials. In no case may such application adversely impact the waters of the state. Such application must be designed to:
 - (a) Provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;
 - (b) Condition and improve the soil comparable to that attained by commonly used soil amendments; or
 - (c) Adjust soil pH to desired levels.
- (6) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.
- (7) "Anaerobic Digestion" means the controlled biological breakdown of biodegradable organic material in the absence of oxygen.
- ~~(7)~~(8) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.
- ~~(8)~~(9) "Asphalt paving" means asphalt which has been applied to the land to form a street, road, path, parking lot, highway, or similar paved surface and that is weathered, consolidated, and does not contain visual evidence of fresh oil.
- ~~(9)~~(10) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.
- ~~(10)~~(11) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.
- ~~(11)~~(12) "Base Flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.
- ~~(12)~~(13) "Beneficial Use" means the productive use of solid waste in a manner that will not create an adverse impact to public health, safety, welfare, or the environment.
- ~~(13)~~(14) "Beneficial Use Determination" means the approval of a beneficial use of a solid waste pursuant to OAR 340-093-0260 through 340-093-0290 either as a standing beneficial use or as a case-specific authorization.
- (15) "Biogas" is a gas produced through anaerobic digestion and is primarily composed of methane and carbon dioxide, but also may contain impurities such as hydrogen sulfide.
- ~~(14)~~(16) "Biological Waste" means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.
- ~~(15)~~(17) "Biosolids" means solids derived from primary, secondary or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemically stabilize solids to the extent that they do not attract vectors.
- ~~(16)~~(18) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.
- ~~(17)~~(19) "Cleanup Materials Contaminated by Hazardous Substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment, and which are not hazardous wastes as defined by ORS 466.005.

~~(18)~~(20) "Closure Permit" means a document issued by the department bearing the signature of the Director or his/her authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the department.

~~(19)~~(21) "Commercial Solid Waste" means solid waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include solid waste from manufacturing activities. Solid waste from business, manufacturing or processing activities in residential dwellings is also not included.

~~(20)~~(22) "Commission" means the Environmental Quality Commission or the Commission's authorized designee.

~~(21)~~(23) "Composted material" or "Compost" is the solid product material resulting from the composting process. It includes both the material produced from aerobic composting and the solid digestate produced by anaerobic digestion, although the solid digestate may require additional composting in order to be suitable for certain applications.

~~(22)~~(24) "Composting" means the managed process of controlled biological decomposition of feedstocks. A managed process includes, but is not limited to, reducing feedstock particle size, adding moisture, mixing feedstocks, manipulating composting piles, and performing procedures to achieve human pathogen reduction. "Composting" includes both aerobic composting and anaerobic digestion. Other examples of composting include bokashi, fermentation, and vermiculture.

~~(23)~~(25) "Composting Facility" means a site or facility composting feedstocks to produce a useful product through a managed process of controlled biological decomposition. Examples of composting facilities include sites used for composting windrows and piles. Sites and facilities that use methods such as anaerobic digestion, vermiculture, vermicomposting and agricultural composting to produce a useful product are also considered composting facilities.

~~(24)~~(26) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities.

~~(25)~~(27) "Construction and Demolition Landfill" means a landfill that receives only construction and demolition waste.

~~(28)~~ "Conversion Technology Facility" means a facility that uses primarily chemical or thermal processes other than melting (changing from solid to liquid through heating without changing chemical composition) to produce fuels, chemicals, or other useful products from solid waste. These chemical or thermal processes include, but are not limited to, distillation, gasification, hydrolysis, pyrolysis, thermal depolymerization, transesterification and animal rendering, but do not include direct combustion, composting, anaerobic digestion, melting, or mechanical recycling. Mills that primarily use mechanical recycling or melting to recycle materials back into similar materials are not considered to be conversion technology facilities, even if they use some chemical or thermal processes in the recycling process.

~~(26)~~(29) "Corrective Action" means action required by the department to remediate a release of constituents above the levels specified in 40 CFR:258.56 or OAR chapter 340 division 40, whichever is more stringent.

~~(27)~~(30) "Cover Material" means soil or other suitable material approved by the department that is placed over the top and side slopes of solid wastes in a landfill.

~~(28)~~(31) "Cultures and Stocks" means etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Culture" does not include throat and urine cultures.

~~(29)~~(32) "Current Assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

~~(30)~~(33) "Current Liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

~~(31)~~(34) "Department" means the Department of Environmental Quality.

~~(35)~~"Digestate" means both solid and liquid substances that remain following anaerobic digestion of organic material in a composting facility. "Solid digestate" means the solids resulting from anaerobic digestion, and "liquid digestate" means the liquids resulting from anaerobic digestion.

~~(32)~~(36) "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

~~(33)~~(37) "Director" means the Director of the Department of Environmental Quality or the Director's authorized designee.

~~(34)~~(38) "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted ~~by subsection (81)(b) of within the definition of solid waste in~~ this rule), transfer stations, conversion technology facilities, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting facilities and land and facilities previously used for solid waste disposal at a land disposal site; ~~but the~~ The term "disposal site" does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site that is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable clean fill material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

~~(35)~~(39) "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes and does not receive other domestic ~~or industrial~~ solid wastes;

(c) Source separated recyclable materials, or material recovered at thea disposal site for recycling;

~~(e)~~(d) Industrial waste going to an industrial waste facility; or

~~(d)~~(e) Waste received at an ash monofill from an energy recovery facility.

~~(36)~~(40) "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

~~(37)~~(41) "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material. Energy recovery includes the direct combustion of solid waste in an energy recovery facility and the production of fuels intended to be burned as an energy source, such as the pyrolysis of plastics to produce fuel oils or the grinding of wood waste to produce combustion fuel.

(42) "Energy Recovery Facility" means a facility that directly combusts solid waste and uses the heat energy generated for some useful purpose such as to produce electricity or to produce steam to be used in an industrial process.

~~(38)~~(43) "Feedstock" means organic and other solid wastes used in a composting process to produce composted material, or used in a conversion technology facility to produce other products. For composting, four types of feedstocks are defined:

(a) Type 1 feedstocks include source-separated yard and garden wastes, wood wastes, agricultural crop residues, wax-coated cardboard, vegetative food wastes including department approved industrially produced vegetative food waste, and other materials the department determines pose a low level of risk from hazardous substances, physical contaminants and human pathogens. Type 1 feedstocks also include digestate derived only from type 1 feedstocks.

(b) Type 2 feedstocks include manure and bedding and other materials the department determines pose a low level of risk from hazardous substances and physical contaminants and a higher level of risk from human pathogens compared to type 1 feedstock. Type 2 feedstocks also include digestate derived from feedstocks that include Type 2 feedstocks but does not include any type 3 or type X feedstock.

(c) Type 3 feedstocks include dead animals, meat and source-separated mixed food waste and industrially produced non-vegetative food waste. They also include other materials the department determines pose a low level of risk from hazardous substances and a higher level of risk from physical contaminants and human pathogens compared to type 1 and 2 feedstocks. Type 3 feedstocks also include digestate derived from feedstocks that include Type 3 feedstocks but does not include any type X feedstock.

(d) Type X feedstocks include specified risk material (SRM) from bovine animal mortality and animal by-products from slaughter that pose a risk to the environment and public health from exposure to prions that can cause Bovine Spongiform Encephalitis (BSE). This includes the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia from cattle 30 months of age and older and the distal ileum of the small intestine and the tonsils from all cattle. It also includes whole cattle from which the SRM has not been removed, cattle that are not able to walk, and cattle with symptoms that might indicate BSE disease. Type X feedstocks also include digestate that was derived from any quantity of type X feedstocks.

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- ~~(39)~~~~(44)~~ "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a disposal site after the site is closed according to the requirements of a permit issued by the department.
- ~~(40)~~~~(45)~~ "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by the base flood.
- ~~(41)~~~~(46)~~ "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.
- ~~(42)~~~~(47)~~ "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.
- ~~(43)~~~~(48)~~ "Hazardous Substance" means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS 465.400.
- ~~(44)~~~~(49)~~ "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes that are defined as hazardous waste pursuant to ORS 466.005.
- ~~(45)~~~~(50)~~ "Heat-Treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.
- ~~(46)~~~~(51)~~ "Home composting" means composting operated and controlled by the owner or person in control of a single or multiple family dwelling unit and used to compost residential food waste produced within the dwelling unit and yard debris produced on the property.
- ~~(47)~~~~(52)~~ "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled airflow and temperature.
- ~~(48)~~~~(53)~~ "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste; or packaging material for products delivered to the generator.
- ~~(49)~~~~(54)~~ "Industrial Waste Landfill" means a landfill that receives only a specific type or combination of industrial waste.
- ~~(50)~~~~(55)~~ "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.
- ~~(51)~~~~(56)~~ "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.
- ~~(52)~~~~(57)~~ "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.
- ~~(53)~~~~(58)~~ "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.
- ~~(54)~~~~(59)~~ "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.
- ~~(55)~~~~(60)~~ "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.
- ~~(56)~~~~(61)~~ "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.
- ~~(57)~~~~(62)~~ "Local Government Unit" means a city, county, Metropolitan Service District formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.
- ~~(58)~~~~(63)~~ "Low-Risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the department determines to be unlikely to adversely impact the waters of the State or public health.

~~(59)~~(64) "Material Recovery" means any process of obtaining from solid waste, by pre-segregation or otherwise, materials which still have useful physical or chemical properties and can be reused, recycled or composted for some purpose.

~~(60)~~(65) "Material Recovery Facility" means a solid waste management facility that separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected.

~~(61)~~(66) "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.

(67) "Mobile Disposal Site" means a disposal site facility that is intended to be moved from place to place in order to process wastes in different locations.

~~(62)~~(68) "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.

~~(63)~~(69) "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 1257.2 of 40 CFR, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction and demolition waste and industrial solid waste.

~~(64)~~(70) "Net Working Capital" means current assets minus current liabilities.

~~(65)~~(71) "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.

~~(66)~~(72) "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

~~(67)~~(73) "Permit" means a document issued by the department which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

~~(68)~~(74) "Permit Action" means the issuance, modification, renewal or revocation of a permit by the department.

~~(69)~~(75) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

~~(70)~~(76) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

~~(71)~~(77) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

~~(72)~~(78) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

~~(73)~~(79) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

~~(74)~~(80) "Regional Disposal Site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this section, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the Metropolitan Service District. For a county within the Metropolitan Service District, "immediate service area" means that Metropolitan Service District boundary.

~~(75)~~(81) "Release" has the meaning given in ORS 465.200(14).

~~(76)~~(82) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

~~(77)~~(83) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

~~(78)~~(84) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

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~~(79)~~(85) "Sensitive Aquifer" means any unconfined or semiconfined aquifer that is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

~~(80)~~(86) "Sensitive Environment" means a sensitive environment defined in OAR 340-122-0115(50) of the Hazardous Substance Remedial Action Rules.

~~(81)~~(87) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

~~(82)~~(88) "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

~~(83)~~(89) "Sludge" means any solid or semi-solid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

~~(84)~~(90) "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

~~(85)~~(91) "Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or

(c) Woody biomass that is combusted as a fuel by a facility that has obtained a permit described in ORS 468A.040.

~~(86)~~(92) "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

~~(87)~~(93) "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

~~(88)~~(94) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

~~(89)~~(95) "Third Party Costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

~~(90)~~(96) "Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

~~(91)~~(97) "Treatment" ~~or "Treatment Facility"~~ means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste except for composting, material recovery, or energy recovery. Treatment includes but is not limited to detoxifying or remediating solid waste prior to disposal or beneficial use. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (18) of this rule, "material recovery" as defined in section (56) of this rule, nor does it apply to a "material recovery facility" as defined in section (57) of this rule.

(98) "Treatment Facility" means a facility intended for treatment of solid waste. It includes but is not limited to soil remediation facilities and rotary kilns used to treat oily sludges. It does not include composting facilities, material recovery facilities, energy recovery facilities, incinerators, or conversion technology facilities as defined in this rule.

~~(92)~~(99) "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

~~(93)~~(100) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

~~(94)~~(101) "Vegetative" means feedstocks used for composting that are derived from plants including but not limited to: fruit and vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products. Vegetative material does not include oil, grease, or dairy products such as milk, mayonnaise or ice cream.

~~(95)~~(102) "Vermicomposting" means the controlled and managed process by which live worms convert solid waste into dark, fertile, granular excrement.

~~(96)~~(103) "Vermiculture" means the raising of earth worms for the purpose of collecting castings for composting or enhancement of a growing medium.

~~(97)~~(104) "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and elevation head equals the total head.

~~(98)~~(105) "Wellhead protection area" means the surface and subsurface area surrounding a water well, spring or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that water well, spring, or wellfield. A public water system is a system supplying water for human consumption that has four or more service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day.

~~(99)~~(106) "Wood waste" means chemically untreated wood pieces or particles generated from processes commonly used in the timber products industry. Such materials include but are not limited to sawdust, chips, shavings, stumps, bark, hog-fuel and log sort yard waste, but do not include wood pieces or particles containing or treated with chemical additives, glue resin, or chemical preservatives.

~~(100)~~(107) "Wood waste Landfill" means a landfill that receives primarily wood waste.

(108) "Woody biomass" means material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban interface environment that is the by-product of forest management, ecosystem restoration or hazardous fuel reduction treatment.

~~(101)~~(109) "Zone of Saturation" means a three-dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

NOTE: Definition updated to be consistent with current Hazardous Waste statute.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 459.045 & 468.020

Stats. Implemented: ORS 459 & 459A

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 18-1988, f. & cert. ef. 7-13-88 (and corrected 2-3-89); DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93, Renumbered from 340-061-0010; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 6-2009, f. & cert. ef. 9-14-09; DEQ 4-2010, f. & cert. ef. 5-14-10

340-093-0050 Permit Required

(1) Except as provided by section (3) of this rule, no person may establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person may change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefore from the department.

(2) Persons owning or controlling the following classes of disposal sites must comply with the requirements in the following rules:

(a) Municipal solid waste landfills must comply with OAR 340, division 94 "Municipal Solid Waste Landfills";

(b) Industrial Solid Waste Landfills, Construction and Demolition Landfills, Wood Waste Landfills and other facilities not listed in OAR 340, division 96 must comply with OAR 340, division 95 "Land Disposal Sites Other Than Municipal Solid Waste Landfills";

(c) Energy recovery facilities and incinerators receiving domestic solid waste must comply with OAR 340, division 96 "Special Rules Pertaining to Incineration";

(d) Composting facilities must comply with OAR 340-096-0060 through 340-096-0150: "Special Rules Pertaining to Composting."

(e) Land used for deposit, spreading, lagooning or disposal of sewage sludge, septage and other sludges must comply with OAR 340-096-0030 "Special Rules Pertaining to Sludge and Land Application Disposal Sites";

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(f) Transfer stations and Material Recovery Facilities must comply with OAR 340-096-0040 "Transfer Stations and Material Recovery Facilities";

(g) Petroleum contaminated soil remediation facilities and all other solid waste treatment facilities must comply with OAR 340-096-0050 "Solid Waste Treatment Facilities-"; and

(h) Conversion technology facilities must comply with OAR 340-096-0160 to 340-096-0200 "Conversion Technology Facilities."

(3) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR chapter 340, divisions 93 through 97, but must comply with all other provisions of OAR chapter 340, divisions 93 through 97 and other applicable laws, rules, and regulations regarding solid waste disposal:

(a) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste;

(b) Disposal sites, facilities or disposal operations operated ~~pursuant to~~ under a permit issued under ORS 468B.050 if all applicable requirements in OAR chapter 340, divisions 93 through 97 have been met;

(c) A land disposal site used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety;

NOTE: Such a landfill may require a permit from the Oregon Division of State Lands. A person wishing to obtain a permit exemption for an inert waste not specifically mentioned in this subsection may submit a request to the department with such information as the department may require to evaluate the request for exemption, ~~pursuant to~~ under OAR 340-093-0080.

(d) A site or facility that conducts solid waste operations or activities that are limited to one or more of the following, excluding a site or facility where the department determines that the nature, amount or location of the materials or operations may constitute a potential threat of adverse impact on the environment or public health:

(A) A Site or facility utilizing Using any amount of sewage sludge or biosolids under a valid water quality permit, ~~pursuant to~~ issued under ORS 468B.050;

(B)(e) Facilities which receive only Receiving source separated materials for purposes of material recovery, ~~except when the department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health;~~

(C) Receiving , storing, processing or grinding wood, including painted wood, from construction and demolition and other activities to make a combustion fuel, when that fuel is to be burned at a facility that is in compliance with air quality rules;

(D) Receiving and processing for recycling metal, cardboard, and other non-hazardous materials that have been separated from solid waste at material recovery facilities;

(E) Receiving or processing plastics to make a feedstock for a conversion technology facility, except the following plastics:

(i) plastics that have viable recycling markets and are acceptable in most Oregon curbside recycling collection programs, or

(ii) clean polyolefin film plastics acceptable in commercial recycling programs;

(F) Receiving and storing used oil for transfer to another facility for processing. The facility must accept and store used oil in compliance with state and federal used oil regulations;

(G) Combusting fuels made in part from tire chips or wood, including painted wood, when burned for energy recovery in compliance with air quality rules;

(H) (f) A site used to transfer Transferring a container, including but not limited to a shipping container, or other vehicle holding solid waste from one mode of transportation to another (such as barge to truck); if:

(i)(A) The container or vehicle is not available for direct use by the general public;

(ii)(B) The waste is not removed from the original container or vehicle; and

(iii)(C) The original container or vehicle does not stay in one location longer than 72 hours, unless otherwise authorized by the department.

(4) The department may, in accordance with a specific permit containing a compliance schedule, grant reasonable time for solid waste disposal sites or facilities to comply with OAR chapter 340, divisions 93 through 97.

(5) If it is determined by the department that a proposed or existing disposal site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, the department may waive any or all requirements of OAR 340-

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093-0070, 340-093-0130, 340-093-0140, 340-093-0150, 340-094-0060(2) and 340-095-0030(2) and issue a letter authorization in accordance with OAR 340-093-0060.

(6) Each person who is required by sections (1) and (5) of this rule to obtain a permit must:

(a) Make prompt application to the department therefore;

(b) Fulfill each and every term and condition of any permit issued by the department to such person;

(c) Comply with OAR chapter 340, divisions 93 through 97;

(d) Comply with the department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required thereby; and

(e) Allow the department or an authorized governmental agency to enter the property under permit at reasonable times to inspect and monitor the site and records as authorized by ORS 459.385 and 459.272.

(7) Failure to conduct solid waste disposal according to the conditions, limitations, or terms of a permit or OAR chapter 340, divisions 93 through 97, or failure to obtain a permit is a violation of OAR chapter 340, divisions 93 through 97 and may be cause for the assessment of civil penalties for each violation as provided in OAR chapter 340, division 12 or for any other enforcement action provided by law. Each and every day that a violation occurs is considered a separate violation and may be the subject of separate penalties.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020

Stats. Implemented: ORS 459.205, 459.215 & 459.225

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 14-1984, f. & ef. 8-8-84; DEQ 5-1993, f. & cert. ef. 3-10-93, Renumbered from 340-061-0020; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 2-1995, f. & cert. ef. 1-10-95; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 6-2009, f. & cert. ef. 9-14-09

340-093-0070 Applications for Permits

(1) Any person wishing to obtain a new, modified, or renewal permit from the department must submit a written application on a form provided by the department. The department must receive renewal applications at least 180 days before a permit is needed. All other applications must be received 60 days before a permit is needed. All application forms must be completed in full, signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facility or the owner's agent or the lessee responsible for the operation and maintenance of the facility.

(2) The department will accept applications for a permit only when complete, as detailed in section (3) of this rule. Within 45 days after receipt of an application, the department will conduct a preliminary review of the application to determine the adequacy of the information submitted. Failure to complete this review within 45 days does not preclude the department from later requesting further information from the applicant as provided in this section.

(a) If the department determines that additional information is needed it will promptly request the needed information from the applicant. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request or such other time as the department establishes in writing.

(b) If additional measures are necessary to gather facts regarding the application, the department will notify the applicant that such measures will be instituted, and the timetable and procedures to be followed. The application will be considered to be withdrawn if the applicant fails to comply with these additional measures.

(3) An application for a new disposal site permit is ~~Applications for a permit will be~~ complete only if it they:

(a) ~~Are-Is~~ submitted ~~in triplicate~~ on forms provided by the department, ~~are-is~~ accompanied by all required exhibits using paper with recycled content with copy printed on both sides of the paper whenever possible, ~~follows~~ the organizational format and ~~includes~~ the level of informational detail required by the department, and ~~are-is~~ signed by the property owner or person in control of the premises;

(b) Except for mobile disposal sites, includes ~~Include~~ written recommendations of the local government unit or units having jurisdiction with respect to a new or existing disposal sites, or alterations, expansions, improvements or changes in method or type of disposal at a new or existing disposal sites. Such recommendations must include, but not be limited to, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(c) ~~Identify~~ Identifies any other known or anticipated permits from the department or other governmental agencies, ~~and if~~ ~~if~~ previously applied for, includes a copy of such permit application and if granted, a copy of such permit;

(d) Includes payment of application fees as required by OAR 340-097-0110 and 340-097-0120;

(e) ~~Except for composting facilities, mobile disposal sites, and facilities exempt under section (4) of this rule, includes~~ Include a site characterization report~~(s)~~ prepared in accordance with OAR 340-093-0130, to establish a new disposal site or to substantially alter, expand or improve a disposal site or to make a change in the method or type of disposal at a disposal site, unless the requirements of said site characterization report~~(s)~~ have been met by other prior submittals;

(f) ~~Except for composting facilities and facilities exempt under section (4) of this rule, includes~~ Include detailed plans and specifications as required by OAR 340-093-0140;

(g) For a new land disposal site:

(A) Includes a written closure plan that describes the steps necessary to close all land disposal units at any point during their active life ~~pursuant to~~ under OAR 340-094-0110 to 340-094-0120 or 340-095-0050 to 340-095-0060; and

(B) Provides evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance, of the land disposal site, ~~pursuant to~~ under OAR 340-094-0140 or 340-095-0090, unless the department exempts a non-municipal land disposal site from this requirement ~~pursuant to~~ under OAR 340-095-0050(3).

(h) For a new conversion technology facility:

(A) A description of the technology to be used at the facility including the types, sources, and amounts of feedstocks to be processed, the processing methods, the materials produced by the technology, the amounts of each product, the expected uses of the products, the types of materials that the products of the conversion technology facility are intended to replace, and how feedstocks, products, and other materials will be stored;

(B) A description of wastes expected to be produced by the facility including amounts, biological, chemical and physical analyses, waste storage and disposition of wastes;

(C) A description of leachate, stormwater, and process water expected to be produced at the facility, including information on the biological, chemical and physical characterization of process water and leachate and the management of leachate, stormwater, and process water;

(D) A description of flammable gases and liquids and also hazardous wastes expected to be produced by the facility, and how those materials will be managed; and

(E) The methods that will be used to minimize or exclude from feedstocks any materials that are detrimental to the conversion technology process or resultant products.

(i) For any type of mobile disposal site, includes an acknowledgement that before the mobile disposal site establishes operation in a new location, the local government unit or units having jurisdiction must provide a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals.

~~(j)(h)~~ Includes any other information the department may deem necessary to determine whether the proposed disposal site and the operation thereof will comply with all applicable rules of the department.

(4) If the department determines that a disposal site is a "low-risk disposal site" or is not likely to adversely impact the waters of the State or public health, the department may waive any of the requirements of subsections (3)(e) and (f) of this rule, OAR 340-093-0150, 340-094-0060(2) and 340-095-0030(2). In making this judgment, the department may consider the size and location of the disposal site, the volume and types of waste received and any other relevant factor. The applicant must submit any information the department deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the department.

(5) If a local public hearing regarding a proposed disposal site has not been held and if, in the judgment of the department, there is sufficient public concern regarding the proposed disposal site, the department may, as a condition of receiving and acting upon an application, require that such a hearing be held by the county board of commissioners or county court or other local government agency responsible for solid waste management, for the purpose of informing and receiving information from the public.

(6) Permit modifications ~~and renewals~~:

(a) ~~Permit Modification~~: An application for a permit modification is required for:

(A) The sale or exchange of the activity or facility; or

(B) Any change in the nature of the activities or operations from those of the last application including modification or expansion of the disposal site or a change in the method or type of disposal. ~~Any application that would substantially change the scope or operations of the disposal site must include written recommendations from the local government unit as required in subsection (3)(b) of this rule.~~

(b) An application for a permit modification is complete only if it:

(A) Is submitted on forms provided by the department, follows the organizational format and includes the level of informational detail required by the department, and is signed by the property owner or person in control of the premises;

(B) Includes information showing the reasons for the permit modification and any information needed to document- or explain the modification requested; and

(C) Includes updated information required to be submitted for new permits in section (3) of this rule, if required by the Department. If the modification involves a substantial change in the scope or operations of the disposal site, the application must also include written recommendations from the local government unit as required for new permits under subsection (3)(b) of this rule.

(7) Permit renewals:

(a)(b) Permit Renewal: An application for a permit renewal is required if a permittee intends to continue operation beyond the permitted period. A complete renewal application must be filed at least 180 days before the existing permit expires. An application for a permit renewal is complete only if it is submitted on forms provided by the department, follows the organizational format and includes the level of informational detail required by the department, and is signed by the property owner or person in control of the premises.

(b) If the application for renewal involves a substantial change in the scope or operations of the disposal site, the application must also include written recommendations from the local government unit as required for new permits under subsection (3)(b) of this rule. The department may also require the submittal of updates of the information required to be submitted for new permits in section (3) of this rule.

~~(A) A complete application for renewal must be made in the form required by the department and include the information required by this Division and any other information required by the department.~~

~~(B) Any application for renewal which would substantially change the scope of operations of the disposal site must include written recommendations from the local government unit as required in subsection (3)(b) of this rule.~~

~~(c)(C)~~ If a completed application for the renewal of a permit is filed with the department in a timely manner before the expiration date of the permit, the permit does not expire until the department takes final action on the renewal application.

~~(d)(D)~~ If a completed application for the renewal of a permit is not filed with the department in a timely manner before the expiration date of the permit, the department may require the permittee to close the site and apply for a closure permit under, pursuant to OAR 340-094-0100 or 340-095-0050.

~~(8)(7)~~ Permits extended under ~~subsection (6)(7)~~ of this rule remain fully effective and enforceable until the effective date of the new permit.

Stat. Auth.: ORS 459

Stats. Implemented: ORS 459.235

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93, Renumbered from 340-061-0025; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 6-2009, f. & cert. ef. 9-14-09

340-093-0105 Categories for Permit Actions

(1) Category 1:

(a) Waste Tire Carrier Permit under 340-064-0055.

(b) Letter Authorization under 340-093-0060.

(c) Modification to a permit that is administrative in nature or does not alter permit conditions.

(2) Category 2:

(a) Renewal of a construction and demolition debris landfill permit under 340-093-0070.

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- (b) Renewal of an industrial waste landfill permit under 340-093-0070.
 - (c) Renewal of a closure permit under 340-094-0100 and 340-095-0500.
 - (d) Renewal of a transfer station permit under 340-096-0040.
 - (e) Renewal of a material recovery facility permit under 340-096-0040.
 - (f) Renewal of a solid waste treatment facility permit under 340-093-0070.
 - (g) Renewal of a waste tire storage site permit under 340-064-0015.
 - (h) Renewal of a solid waste composting permit under 340-093-0070.
 - (i) New composting [facility](#) registration issued under OAR 340-096-0100.
 - (j) Renewal of a composting facility registration under 340-096-0100.
 - [\(k\) New conversion technology facility registration under 340-096-0190.](#)
 - [\(l\) Renewal of a conversion technology facility registration under 340-093-0070.](#)
 - [\(m\) Renewal of a conversion technology facility permit under 340-093-0070.](#)
 - [\(n\)](#)~~(k)~~ All other modifications not listed under category 1.
- (3) Category 3:
- (a) New captive industrial facility permit as defined in 340-097-0120(1)(c).
 - (b) New transfer station or material recovery facility permit under 340-096-0040.
 - (c) New composting permit issued under 340-096-0110.
 - (d) New closure permit under 340-094-0100 and 340-095-0500.
 - (e) New construction and demolition landfill permit under 340-095-0001.
 - (f) New solid waste treatment facility permit under 340-096-0050.
 - (g) New off-site industrial facility permit under 340-097-0120(2)(a).
 - (h) New sludge disposal facility permit under 340-096-0030.
 - (i) New waste tire storage facility permit under 340-064-0015.
 - (j) Renewal of a municipal landfill permit under 340-093-0070.
 - (k) Renewal of an incinerator or energy recovery facility permit under 340-093-0070.
 - [\(l\) New conversion technology facility permit under 340-096-0200.](#)

(4) Category 4:

- (a) New municipal solid waste landfill facility permit under 340-094-0001.
- (b) New incinerator permit under 340-096-0010.
- (c) New energy recovery facility permit under 340-097-0120(2)(a).

Stat.Auth.: ORS 459A.025, 459.045 & 468.020

Stat. Implemented: ORS 459.245

Hist.: DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 6-2009, f. & cert. ef. 9-14-09

340-093-0110 Issuance or Denial of a Permit

(1) The Department must take final action on the permit application within 45 days of the close of the comment period. The scheduling of a hearing and the consideration of comments will automatically constitute good cause for an extension of time under ORS 459.245. The Department will consider all timely received comments and any other information obtained that may be pertinent to the permit action.

(2) Issuance of a permit: The Department may adopt or modify the proposed provisions in the permit application. The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-~~0097-0525~~ and will include a copy of

the permit. If the permit conditions are different from those contained in the permit application, the notification will include the reasons for the changes.

(3) Denial of a permit: The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-~~00970525~~. If the Department denies a permit application, the notification will include the reasons for the denial. The Department will deny the permit if:

- (a) The application contains false information.
- (b) The Department wrongfully accepted the application.
- (c) The proposed disposal site would not comply with OAR chapter 340, divisions 93 through 97 or other applicable rules of the Department.
- (d) The proposal is not part of or not compatible with the adopted local solid waste management plan, or
- (e) There is no clearly demonstrated need for the proposed new, modified or expanded disposal site or for the proposed change in the method or type of disposal.

(4) The Department's decision is effective 20 days from the date of service of the notice unless within that time the Department receives a request for a hearing from the applicant. The request for a hearing must be in writing and state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470, and OAR chapter 340, division 011.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459.245

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93, Renumbered from 340-061-0026; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 15-2000, f. & cert. ef. 10-11-00

340-093-0115 Termination or Revocation of a Permit

(1) Automatic Termination: A permit automatically terminates when:

- (a) The Department issues a new permit for the same activity or operation;
 - (b) The permittee requests in writing that the permit terminate, if the Department determines that a permit is no longer needed; or
 - (c) The permittee fails to timely submit an application for permit renewal.
- (i) Termination is effective on the permit expiration date.
- (ii) A permit may be reinstated only if the permittee applies for a new permit including the associated fees pursuant to division 097.
- (iii) All permit conditions will remain in effect until such time as a new permit is issued by the Department. Failure by a permittee to abide by the terms of any permit conditions will be a violation of this provision.

(2) Revocation with prior notice:

- (a) If the Department determines that a permittee is in noncompliance with the terms of the permit, submitted false information in the application or other required documentation, or is in violation of any applicable law, the Department may revoke the permit.
- (b) The Department will provide notice of the intent to revoke the permit in accordance with OAR 340-011-~~00970525~~. The notice will include the reasons why the permit will be revoked, and include an opportunity for hearing before the revocation. The Department must receive a written request for hearing stating the grounds for the request within 60 days from service of the notice. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 011. The permit will continue in effect until the 60 days expires or until a final order is issued.

(3) Revocation without prior notice:

- (a) If the Department finds that the permittee's activities cause a serious danger to the public health, safety or the environment, the Department may immediately revoke or refuse to renew the permit without prior notice or opportunity for a hearing.
- (b) If no advance notice of the revocation is provided, the Department will notify the permittee as soon as possible as provided in OAR 340-011-~~00970525~~. The notification will set forth the specific reasons for the revocation or refusal to renew.
- (c) The Department must receive a written request for a hearing stating the grounds for the request within 90 days of service of the notice. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR

chapter 340, division 011. If the Department does not receive a request for a hearing within 90 days, the revocation or refusal to renew becomes final without further action by the Department.

Stat. Auth.: ORS 459.045 & ORS 459.785

Stats. Implemented: ORS 459.255 & ORS 459.755

Hist.: DEQ 15-2000, f. & cert. ef. 10-11-00

DIVISION 95

SOLID WASTE: LAND DISPOSAL SITES OTHER THAN MUNICIPAL SOLID WASTE LANDFILLS

340-095-0090 Financial Assurance Criteria

(1) Financial Assurance Required. The owner or operator of a non-municipal land disposal site shall maintain a financial assurance plan with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs of:

(a) Closure of the non-municipal land disposal site;

(b) Post-closure maintenance of the non-municipal land disposal site; and

(c) Any corrective action required by the Department to be taken at the non-municipal land disposal site, pursuant to OAR 340-095-0040(3).

(2) Exemptions. The Department may exempt from the financial assurance requirements any non-municipal land disposal site including but not limited to construction and demolition waste sites, composting facilities and industrial waste sites:

(a) Exemption criteria. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

(A) The non-municipal land disposal site poses no significant threat of adverse impact on groundwater or surface water;

(B) The non-municipal land disposal site poses no significant threat of adverse impact on public health or safety;

(C) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;

(D) The area of the non-municipal land disposal site that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(b) In determining if the applicant has demonstrated that a non-municipal land disposal site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed;

(c) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the non-municipal land disposal site continues to meet the exemption criteria in subsection (2)(a) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the ~~closure~~ permit to require financial assurance.

(3) Schedule for provision of financial assurance:

(a) For costs associated with the conceptual "worst-case" closure plan and the conceptual post-closure plan prepared pursuant to OAR 340-095-0060(1)(a)(A) and OAR 340-095-0065(1)(a), respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the non-municipal land disposal site shall be provided on the following schedule:

(A) For a new non-municipal land disposal site: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste; or

(B) For a non-municipal land disposal site operating under a solid waste permit on November 4, 1993: by April 9, 1997.

(b) For costs associated with the Final Engineered Site Closure Plan and the Final Engineered Post-closure Plan prepared pursuant to OAR 340-095-0060(1)(a)(B) and OAR 340-095-0065(1)(b) respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the land disposal site shall be provided at the same time those two Plans are due to the Department;

(c) Evidence of financial assurance for corrective action shall be provided before beginning corrective action;

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(d) Continuous financial assurance shall be maintained for the facility until the permittee or other person owning or controlling the site is no longer required to demonstrate financial responsibility for closure, post-closure care or corrective action (if required).

(4) Financial assurance plans. The financial assurance plan is a vehicle for determining the amount of financial assurance necessary and demonstrating that financial assurance is being provided. A financial assurance plan shall include but not be limited to the following, as applicable:

(a) Cost Estimates. A detailed written estimate of the third-party costs in current dollars (as calculated using a discount rate equal to the current yield of a 5-year U.S. Treasury Note as published in the Federal Reserve's *H.15 (519) Selected Interest Rates* for the week in which the calculation is done), prepared by a Registered Professional Engineer, of:

(A) Closing the non-municipal land disposal site;

(B) Providing post-closure care, including installing, operating and maintaining any environmental control system required on the non-municipal land disposal site;

(C) Performing required corrective action activities; and

(D) Complying with any other requirement the Department may impose as a condition of issuing a closure permit, closing the site, maintaining a closed facility, or implementing corrective action.

(b) The source of the cost estimates;

(c) A detailed description of the form of the financial assurance and a copy of the financial assurance mechanism;

(d) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;

(e) A proposal with provisions satisfactory to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance, if applicable:

(A) To the extent practicable and to the extent allowed by any franchise agreement, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(i) A reduction of the rates a person within the area served by the non-municipal land disposal site is charged for solid waste collection service as defined by ORS 459.005; or

(ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.

(B) If the non-municipal land disposal site is owned and operated by a private entity not regulated by a unit of local government, excess moneys and interest remaining in any financial assurance reserve shall be released to that business entity after post-closure care has been completed and the permittee is released from permit requirements by the Department.

(f) The financial assurance plan shall contain adequate accounting procedures to insure that the permittee does not collect or set aside funds in excess of the amount specified in the financial assurance plan or any updates thereto or use the funds for any purpose other than required by paragraph (8)(a) of this rule;

(g) The certification required by subsection (6)(c) of this rule; and

(h) The annual updates required by subsection (6)(d) of this rule.

(5) Amount of Financial Assurance Required. The amount of financial assurance required shall be established as follows:

(a) Closure. Detailed cost estimates for closure shall be based on the conceptual "worst-case" closure plan or the final Engineered Site Closure Plan, as applicable. Cost estimates for the Final Engineered Site Closure plan shall take into consideration at least the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) The portion of the site property closed before final closure of the entire site; and

(G) Any other conditions imposed on the permit relating to closure of the site.

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(b) Post-closure care. Detailed cost estimates for post-closure care shall be based on the conceptual post-closure plan or the Final Engineered Post-closure Plan, as applicable. Cost estimates for the Final Engineered Post-closure Plan shall also take into consideration at least the following:

(A) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges; and

(B) Any other conditions imposed on the permit relating to post-closure care of the site.

(c) Corrective action. Estimated total costs of required corrective action activities for the entire corrective action period, as described in a corrective action report pursuant to requirements of OAR 340-095-0040(3);

(d) If a permittee is responsible for providing financial assurance for closure, post-closure care and/or corrective action activities at more than one non-municipal land disposal site, the amount of financial assurance required is equal to the sum of all cost estimates for each activity at each facility.

(6) How Financial Assurance Is to Be Provided and Updated:

(a) The permittee shall submit to the Department a copy of the first financial assurance mechanism prepared in association with a conceptual "worst-case" closure plan, a Final Engineered Site Closure Plan, a conceptual post-closure plan, a Final Engineered Post-closure Plan, and a corrective action report;

(b) The permittee shall also place a copy of the applicable financial assurance plan(s) in the facility operations office or another location approved by the Department on the schedule specified in Section (3) of this rule;

(c) The permittee shall certify to the Director at the time a financial assurance plan is placed in the facility operations office or other approved location that the financial assurance mechanism meets all state requirements. This date becomes the "annual review date" of the provision of financial assurance, unless a corporate guarantee is used, in which case the annual review date is 90 days after the end of the corporation's fiscal year;

(d) Annual update. The permittee shall annually review and update the financial assurance during the operating life and post-closure care period, or until the corrective action is completed, as applicable:

(A) The annual review shall include:

(i) An adjustment to the cost estimate(s) for inflation and in the discount rate as specified in subsection (4)(a) of this rule;

(ii) A review of the closure, post-closure and corrective action (if required) plans and facility conditions to assess whether any changes have occurred which would increase or decrease the estimated maximum costs of closure, post-closure care or corrective action since the previous review;

(iii) If a trust fund or other pay-in financial mechanism is being used, an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance.

(B) The financial assurance mechanism(s) shall be increased or may be reduced to take into consideration any adjustments in cost estimates identified in the annual review;

(C) The annual update shall consist of a certification from the permittee submitted to the Department and placed in the facility operations office or other approved location. The certification shall state that the financial assurance plans(s) and financial assurance mechanism(s) have been reviewed, updated and found adequate, and that the updated documents have been placed at the facility operations office or other approved location. The annual update shall be no later than:

(i) The facility's annual review date; or

(ii) For a facility operating under a closure permit, by the date specified in OAR 340-095-0050(3).

(7) Department Review of Financial Assurance and Third-Party Certification:

(a) The Department may at any time select a permittee to submit financial assurance plan(s) and financial assurance mechanism(s) for Department review. Selection for review will not occur more frequently than once every five years, unless the Department has reasonable cause for more frequent selection. The Department may, however, review such plans and mechanisms in conjunction with a site inspection at any time;

(b) A permittee who wants to provide "alternative financial assurance" pursuant to OAR 340-095-0095(6)(g) shall submit its financial assurance plan and proposed financial assurance mechanism for Department review and approval on the schedule specified in section (3) of this rule. The submittal shall include certification from a qualified third party that the financial assurance mechanism meets all state requirements for financial assurance, and is reasonably designed to provide the required amount of financial assurance. The third-party certification shall be submitted in a format acceptable to the Department;

(c) The Department will review the financial assurance and the third-party certification, if applicable, for compliance with state laws.

(8) Accumulation of any financial assurance funds:

(a) The financial assurance mechanisms for closure, post-closure care and corrective action shall ensure the funds will be available in a timely fashion when needed. The permittee shall pay moneys into a trust fund in the amount and at the frequency specified in the financial assurance plan or obtain other financial assurance mechanisms as specified in the financial assurance plan, on the schedule specified in section (3) of this rule:

(A) Closure. The total amount of financial assurance required for closure shall be available in the form specified in the financial assurance plan or any updates thereto, whenever final closure of a non-municipal land disposal site unit is scheduled to occur in the conceptual "worst case" closure plan or in the Final Engineered Site Closure Plan;

(B) Post-closure care. The total amount of financial assurance required for post-closure care shall be available in the form specified in the financial assurance plan or any updates thereto, whenever post-closure care is scheduled to begin for a non-municipal land disposal site unit in the conceptual post-closure plan or in the Final Engineered Post-closure Plan;

(C) Corrective action. The total amount of financial assurance required for corrective action shall be available in the form specified in the financial assurance plan or any updates thereto on the schedule specified in the corrective action selected pursuant to OAR 340 Division 40.

(b) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule and OAR 340-095-0095;

(c) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the applicable financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in section (1) of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the applicable financial assurance plan along with an additional amount of financial assurance equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use;

(d) If financial assurance is provided under OAR 340-095-0095(6)(a), (b) or (g), upon successful closure and release from permit requirements by the Department, any excess money in the financial assurance account must be used in a manner consistent with subsection (4)(e) of this rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.248, ORS 459.272 & ORS 459.273

Hist.: DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0034; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 2-1995, f. & cert. ef. 1-10-95; DEQ 8-1995(Temp), f. & cert. ef. 4-25-95; DEQ 23-1995(Temp), f. & cert. ef. 10-10-95; DEQ 27-1998, f. & cert. ef. 11-13-98

Financial Assurance Mechanisms

340-095-0095 Form of Financial Assurance

(1) The financial assurance mechanism shall restrict the use of the financial assurance so that the financial resources may be used only to guarantee that closure, post-closure or corrective action activities will be performed, or that the financial resources can be used only to finance closure, post-closure or corrective action activities.

(2) The financial assurance mechanism shall provide that the Department or a party approved by the Department is the beneficiary of the financial assurance.

(3) A permittee may use one financial assurance mechanism for closure, post-closure and corrective action activities, but the amount of funds assured for each activity must be specified.

(4) A permittee may demonstrate financial assurance for closure, post-closure and corrective action by establishing more than one mechanism per facility, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

(5) The financial assurance mechanism shall be worded as specified by the Department, unless a permittee uses an alternative financial assurance mechanism pursuant to subsection (6)(g) of this rule. The Department retains the authority to approve the wording of an alternative financial assurance mechanism.

(6) Allowable Financial Assurance Mechanisms. A permittee shall provide only the following forms of financial assurance for closure and post-closure activities:

(a) A trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The purpose of the trust fund is to receive and manage any funds that may be paid by the permittee and to disburse those funds only for closure, post-closure maintenance or corrective action activities which are authorized by the Department. The permittee shall notify the Department, in writing, before any expenditure of trust fund moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the trustee within 30 days after receiving such notification, the expenditure is deemed authorized and the trustee may make the requested reimbursements;

(b) A surety bond guaranteeing payment into a standby closure or post-closure trust fund issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The standby closure or post-closure trust fund must be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the permittee or surety company. The penal sum of the bond must be in an amount at least equal to the current closure or post-closure care cost estimate, as applicable. The bond must guarantee that the permittee will either fund the standby trust fund in an amount equal to the penal sum of the bond before the site stops receiving waste or within 15 days after an order to begin closure is issued by the Department or by a court of competent jurisdiction; or that the permittee will provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(c) A surety bond guaranteeing performance of closure, post-closure or corrective action activities issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the surety company. The bond must guarantee that the permittee will either perform final closure, post-closure maintenance or corrective action activities, as applicable, or provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(d) An irrevocable letter of credit issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit must be irrevocable and issued for a period of at least one year and shall be automatically extended for at least one year on each successive expiration date unless the issuing institution notifies both the permittee and the Department at least 120 days before the current expiration date. If the permittee fails to perform closure and post-closure activities according to the closure plan and permit requirements, or to perform the selected remedy described in the corrective action report, or if the permittee fails to provide alternate financial assurance acceptable to the Department within 90 days after notification that the letter of credit will not be extended, the Department may draw on the letter of credit;

(e) A closure or post-closure insurance policy issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus lines insurer in one or more states. The insurance policy must guarantee that funds will be available to complete final closure and post-closure maintenance of the site. The policy must also guarantee that the insurer will be responsible for paying out funds for reimbursement of closure and post-closure expenditures that are in accordance with the closure or post-closure plan or otherwise justified. The permittee shall notify the Department, in writing, before any expenditure of insurance policy moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the insurer within 30 days after receiving such notification, the expenditure is deemed authorized and the insurer may make the requested reimbursements. The policy must provide that the insurance is automatically renewable and that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may not terminate the policy until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. Termination of the policy may not occur and the policy must remain in full force and effect if: the Department determines that the land disposal site has been abandoned; or the Department has commenced a proceeding to modify the permit to require immediate closure; or closure has been ordered by the Department, Commission or a court of competent jurisdiction; or the permittee is named as debtor in a voluntary or involuntary proceeding under **Title 11 (Bankruptcy), U.S. Code**; or the premium due is paid. The permittee is required to maintain the policy in full force and effect until the Department consents to termination of the policy when alternative financial assurance is provided or when the permit is terminated;

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(f) Corporate guarantee. A private corporation meeting the financial test may provide a corporate guarantee that funds are available for closure, post-closure or corrective action activities, and that those activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable. A qualifying private corporation may guarantee its own obligations, the obligations of a corporate parent, sibling or subsidiary, and the obligations of a firm with which it has a substantial business relationship. A corporation guaranteeing the obligations of a firm with which it has a substantial business relationship must certify that it possesses such relationship and that it is issuing the guarantee as an act incident to that relationship, and must specify any compensation received for its issuance of such guarantee. To qualify, a private corporation must meet the criteria of either paragraph (A) or (B) of this subsection:

(A) Financial Test. To pass the financial test, the permittee must have:

(i) Two of the following three ratios: A ratio of total liabilities to tangible net worth less than 1.5; a ratio of the [(sum of net income plus depreciation, depletion, and amortization) minus \$10 million] to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(ii) Net working capital equal to at least four times and tangible net worth equal to at least six times the sum of the current cost estimates covered by the test;

(iii) Tangible net worth of at least \$10 million exclusive of the costs being guaranteed; and

(iv) Assets in the United States amounting to at least the sum of the current closure, post-closure and corrective action cost estimates covered by the test, plus any other environmental obligations guaranteed by permittee.

(B) Alternative Financial Test. To pass the alternative financial test, the permittee must have:

(i) Tangible net worth of at least \$10 million exclusive of the costs being guaranteed; and

(ii) Two of the following three ratios:

(I) Times Interest Earned ([earnings before interest and taxes] divided by interest) of 2.0 or higher;

(II) Beaver's Ratio of 0.2 or higher ([internally generated cash] divided by [total liabilities]). Internally generated cash is obtained from taxable income before net operating loss, plus credits for fuel tax and investment in regulated investment companies, plus depreciation plus amortization plus depletion, plus any income on the books not required to be reported for tax ~~purposed~~ purposes if it is likely to be recurring, minus income tax expenses. Total liabilities includes all long- and short-term debt; or

(III) Altman's Z-Score of 2.9 or higher.

(C) The permittee shall demonstrate that it passes the financial test at the time the financial assurance plan is filed and reconfirm that annually 90 days after the end of the corporation's fiscal year by submitting the following items to the Department:

(i) A letter signed by the permittee's chief financial officer that provides the information necessary to document that the permittee passes the financial test; that guarantees that the funds are available to finance closure, post-closure or corrective action activities according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable; that guarantees that the closure, post-closure or corrective action activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable; that guarantees that a substitute financial mechanism acceptable to the Department will be fully funded within 30 days after either service of a Final Order assessing a civil penalty from the Department for failure to adequately perform closure or post-closure activities according to the closure or post-closure plan and permit, or the selected remedy described in the corrective action report, as applicable, or service of a written notice from the Department that the permittee no longer meets the criteria of the financial test; that guarantees that the permittee's chief financial officer will notify the Department within 15 days any time that the permittee no longer meets the criteria of the financial test or is named as debtor in a voluntary or involuntary proceeding under **Title 11 (Bankruptcy), U.S. Code**; and that acknowledges that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(ii) A copy of the independent certified public accountant's (CPA) report on examination of the permittee's financial statements for the latest completed fiscal year;

(iii) An agreed-upon procedures letter prepared in accordance with standards established by the American Institute of Certified Public Accountants from the permittee's independent CPA in which the CPA either specifies that the figures used in determining that the corporation meets the requirements of the corporate financial test are the same as the figures in the corporation's independently audited year end financial statements for the latest fiscal year or explains any deviation therein to the satisfaction of the Department;

(iv) A list of any facilities in Oregon or elsewhere for which the permittee is using a similar financial means test to demonstrate financial assurance.

(D) The Department may, based on a reasonable belief that the permittee no longer meets the criteria of the financial test, require reports of the financial condition at any time from the permittee in addition to the annual report. If the Department finds, on the basis of such reports or other information, that the permittee no longer meets the criteria of the financial test, the permittee shall fully fund a substitute financial assurance mechanism acceptable to the Department within 30 days after notification by the Department.

(g) Alternative Financial Assurance. Alternative forms of financial assurance may be proposed by the permittee, subject to the review and approval of the Director. The applicant must be able to prove to the satisfaction of the Department that the level of security is equivalent to subsections (a) through (f) of this section and that the criteria of OAR 340-095-0090(4)(e) and sections (1) through (4) of this rule are met. Submittal of an alternative financial assurance mechanism to the Department for review and approval shall include third-party certification as specified in OAR 340-095-0090(7).

(7) Allowable Financial Assurance Mechanisms for Corrective Action. A permittee shall provide one of the following forms of financial assurance for corrective action: a trust fund, a surety bond guaranteeing performance of corrective action, an irrevocable letter of credit, a corporate guarantee, or alternative forms of financial assurance, pursuant to subsections (6)(a), (c), (d), (f) or (g) of this rule, respectively. Unless specifically required by a mutual agreement and order pursuant to ORS 465.325, the surcharge provisions of ORS 459.311 shall not be used to meet the financial assurance requirements of this rule for financial assurance for corrective action.

NOTE: Formats containing the standard wording for financial assurance mechanisms as required by OAR 340-095-0095(5) may be obtained from the Department.

[ED. NOTE: The text of an Appendix containing specific wording for a: (I) Trust Fund; (II) Payment Bond; (III) Performance Bond; (IV) Irrevocable Standby Letter of Credit; (V) Insurance Policy; (VI) Corporate Financial Test and (VII) Standby Trust Agreement may be obtained from the Department of Environmental Quality.]

Stat. Auth.: ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459.248, ORS 459.272 & ORS 459.273

Hist.: DEQ 2-1995, f. & cert. ef. 1-10-95; Renumbered from 340-095-0090(5); DEQ 27-1998, f. & cert. ef. 11-13-98

DIVISION 96

SOLID WASTE: SPECIAL RULES FOR SELECTED SOLID WASTE DISPOSAL SITES

340-096-0001 Applicability

OAR chapter 340, division 96 applies to energy recovery facilities and incinerators receiving solid waste delivered by the public or by a solid waste collection service, composting facilities, [conversion technology facilities](#), sludge disposal sites, land application disposal sites, transfer stations, material recovery facilities and solid waste treatment facilities. Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR chapter 340, division 93, financial assurance requirements as set forth in division 95 at OAR 340-095-0090 and 340-095-0095, and division 97. The department may tailor the financial assurance requirements to the nature of the facility and may exempt low risk facilities [from the financial assurance requirements](#). For purposes of these division 96 rules, a low risk facility is one the department determines is not likely to generate significant amounts of residual waste materials or contamination from the operation of the facility that will remain at closure.

Stat. Auth.: ORS 459.005 - 459.418 & 459A.100 - 459A.120

Stats. Implemented: ORS 459.015 & 459.045

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93; DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0010 Special Rules Pertaining to Incineration

(1) Applicability. This rule applies to all energy recovery facilities and incinerators receiving solid waste delivered by the public or by a solid waste collection service.

(2) Detailed Plans and Specifications:

(a) All incineration equipment and air pollution control appurtenances thereto must comply with air pollution control rules and regulations and emission standards of this department or the regional air pollution control authority having jurisdiction;

(b) Detailed plans and specifications for incinerator disposal sites must include, but not be limited to, the location and physical features of the site, such as contours, drainage control, landscaping, fencing, access and on-site roads, solid waste handling facilities, truck washing facilities, ash and residue disposal and design and performance specifications of incineration equipment and provisions for testing emissions there from.

(3) Incinerator Design and Construction:

(a) Ash and Residue Disposal. Incinerator ash and residues must be disposed in an approved landfill unless handled otherwise in accordance with a plan approved in writing by the department;

(b) Waste Water Discharges. There must be no discharge of waste water to public waters except in accordance with a permit from the department, issued under ORS 468B.050;

(c) Access Roads. All weather roads must be provided from the public highways or roads, to and within the disposal site and must be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(d) Drainage. An incinerator site must be designed such that surface drainage will be diverted around or away from the operational area of the site;

(e) Fire Protection. Fire protection must be provided in accordance with plans approved in writing by the department and in compliance with pertinent state and local fire regulations;

(f) Fences. Access to the incinerator site must be controlled by means of a complete perimeter fence and gates which may be locked;

(g) Sewage Disposal. Sanitary waste disposal must be accomplished in a manner approved by the department or state or local health agency having jurisdiction;

(h) Truck Washing Facilities. Truck washing areas, if provided, must be hard surfaced and all wash waters must be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Incinerator Operations:

(a) Storage:

(A) All solid waste deposited at the site must be confined to the designated dumping area;

(B) Accumulation of solid wastes and undisposed ash residues must be kept to minimum practical quantities.

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(b) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the disposal site only when such recovery is conducted in a planned and controlled manner approved by the department in the facility's operations plan;

(B) Salvaging must be controlled so as not to interfere with optimum disposal operation and to not create unsightly conditions or vector harborage;

(C) All salvaged material must be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations plan.

(c) Nuisance Conditions:

(A) Blowing debris must be controlled such that the entire disposal site is maintained free of litter;

(B) Dust, malodors and noise must be controlled to prevent air pollution or excessive noise as defined by ORS Chapters 467 and 468 and rules and regulations adopted pursuant thereto.

(d) Health Hazards. Rodent and insect control measures must be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals must be controlled;

(e) Air Quality. The incinerator must be operated in compliance with applicable air quality rules (OAR 340-025-0850 through 340-025-0905);

(f) Records. The department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR chapter 340, divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous owner and maintained for the required five years.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.015 & 459.205

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93, Renumbered from 340-061-0045; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0040 Transfer Stations and Material Recovery Facilities

(1) Applicability. This rule applies to all transfer stations and material recovery facilities (except composting facilities). Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable.

(2) Plans and Specifications. Plans and specifications for a fixed or permanent transfer station or material recovery facility shall include, but not be limited to, the location and physical features of the facility such as contours, surface drainage control, access and on-site roads, traffic routing, landscaping, weigh stations, fences and specifications for solid waste handling equipment, truck and area washing facilities and wash water disposal, and water supply and sanitary waste disposal.

(3) Design and Construction:

(a) Waste Water Discharges. There shall be no discharge of waste water to public waters except in accordance with a permit from the Department, issued under ORS 468B.050;

(b) Access Roads. All weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(c) Drainage. The site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(d) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department and in compliance with pertinent state and local fire regulations;

(e) Fences. Access to the site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(f) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(g) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Operations:

(a) Storage:

(A) All solid waste deposited at the site shall be confined to the designated dumping area;

(B) Accumulation of solid wastes shall be kept to minimum practical quantities.

(b) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the disposal site only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(B) Salvaging shall be controlled so as to not interfere with optimum disposal operation and to not create unsightly conditions or vector harborage;

(C) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations plan.

(c) Nuisance Conditions:

(A) Blowing debris shall be controlled such that the entire disposal site is maintained free of litter;

(B) Dust, malodors and noise shall be controlled to prevent air pollution or excessive noise as defined by ORS Chapters 467 and 468A and rules and regulations adopted pursuant thereto.

(d) Health Hazards. Rodent and insect control measures shall be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals shall be controlled;

(e) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the number of years required by the Department.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0065; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-096-0060 Special Rules Pertaining to Composting: Applicability

(1) No person may construct or operate a composting facility except as provided in this rule.

(2) All composting facilities must comply with 340-096-0070: Performance Standards.

(3) All composting facilities, except those composting facilities exempt under (3)(a) of this rule, must comply with OAR 340-096-0080: Screening.

(a) ~~A facility with composting activities limited to one or more of the following is. The following composting facilities are~~ exempt from the requirements of OAR 340-096-0080: Screening, 340-096-0090: Operations Plan Approval, 340-096-100: Registration, and 340-096-0110: Composting Permit, unless the department determines the composting facility may adversely affect human health or the environment:

(A) ~~Any~~ composting facility composting less than 100 tons of Type 1 feedstock, Type 2 feedstock, or both during any calendar year;

(B) ~~Any~~ composting facility composting less than 20 tons of Type 3 feedstock during any calendar year;

(C) ~~Any~~ composting facility composting less than 40 tons of Type 3 feedstock in any calendar year when conducting in-vessel composting in containers designed to prohibit vector attraction and prevent nuisance and odor generation;

(D) ~~Any~~ composting facility that produces silage on a farm for animal feed;

(E) ~~Any~~ home composting facility; and

(F) ~~Any~~ A composting facility that is being operated in conjunction with a Confined Animal Feeding Operation permitted by operating under a Confined Animal Feeding Operation permit issued by the Oregon Department of Agriculture and operating a composting facility, in conjunction with the Confined Animal Feeding Operation, that is in compliance with a composting facility management plan approved by the Oregon Department of Agriculture that meets the requirements of OAR 340-096-0090 and for which the Oregon Department of Agriculture is providing oversight under an agreement with the department. The Oregon

Department of Agriculture may require that a facility that qualifies for a department exemption under subject to this section (3)(a)(F)-this paragraph comply with OAR 340-096-0080: Screening.

(4) All composting facilities that are determined by the department to present more than a low risk to human health or the environment under OAR 340-096-0080(3)(b): Screening, except those facilities that are exempt or under (3)(a) of this rule, must comply with OAR 340-096-0090: Operations Plan Approval and OAR 340-096-0110: Composting Permit.

~~(5) All composting facilities that are not exempt under this rule, including but not limited to all facilities operating under a solid waste composting facility individual permit, general permit, or registration issued by the department prior to the effective date of this rule, must submit the materials required by OAR 340-096-0080: Screening within 180 days after the effective date of this rule. Any composting facility in operation before the effective date of these rules September 14, 2009 that submitted materials required by OAR 340-096-0080:Screening, by March 15, 2010 may continue in operation pending a determination by the department under OAR 340-096-0080: Screening and issuance by the department of a Registration under OAR 340-096-0100: Registration or a Composting Permit under OAR 340-096-0110: Composting Permit. Any anaerobic digestion facility possessing a solid waste treatment facility permit on August 22, 2013 may either continue to operate under the solid waste treatment facility permit, or may apply for a composting facility permit or registration under OAR 340-096-0080(3)(b): Screening.~~

(6) Any person proposing to begin operation of a new composting facility or to substantially modify an existing facility, where such a facility is not exempt under section (3) of this rule, must comply with OAR 340-096-0080: Screening and provide to the department the information required by OAR 340-096-0080(1) at least 180 days before the facility is proposed to begin operation.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0070 Special Rules Pertaining to Composting: Performance Standards

(1) All composting facilities must be designed, constructed, and operated in a manner that does not cause a discharge of leachate, liquid digestate, or stormwater from the facility to surface water, except when such discharge is:

~~(a) Leachate from a composting facility may be discharged to surface water only in compliance with a discharge permit issued by the department.~~

~~(b) Stormwater from a composting facility may be discharged to surface water only in compliance with a discharge permit issued by the department.~~

(2) All composting facilities that collect and dispose of leachate, liquid digestate, or stormwater in engineered structures must comply with the applicable requirements of OAR 340-096-0130: Leachate Collection Design and Operating Requirements, Special Rules Pertaining to Composting: Biogas, Liquid Digestate and Leachate Collection Design and Management Requirements.

(3) All composting facilities must be designed, constructed, and operated in a manner that does not cause a likely adverse impact to groundwater under OAR 340 Division 40. All composting facilities proposing to use infiltration in soil as a method for managing leachate, liquid digestate, or stormwater must comply with OAR 340-096-0120: Groundwater Protection.

(4) All composting facilities must be designed, constructed, and operated in a manner that, to the greatest extent practicable, consistent with proper facility design and operation, controls and minimizes odors that are likely to cause adverse impacts outside the boundaries of the facility.

(5) All composting facilities must be designed, constructed, and operated in a manner that achieves human pathogen reduction as required by OAR 340-096-0140: Pathogen Reduction.

(6) All composting facilities must be designed, constructed, and operated in a manner that controls or prevents propagation, harborage, or attraction of vectors, including but not limited to rats, birds, and flies.

(7) All composting facilities that produce, collect or store biogas must be designed, constructed, and operated to meet state and local fire regulations to address the potential for fire and explosions.

(8) All composting facilities that collect, store and manage liquid digestate must demonstrate adequate capacity to store or remove the digestate. For facilities that land apply, storage must be provided for periods when the production of liquid digestate exceeds the capacity of the soil to use the digestate at agronomic rates including during wet winter months.

~~(9)(7)~~ All composting facilities must comply with all other applicable laws and regulations.

340-096-0080 Special Rules Pertaining to Composting: Screening

(1) All composting facilities not exempted by OAR 340-96-0060(3)(a) will be screened by the department under this rule to determine whether the facility poses a risk to human health or the environment. All facilities subject to this rule must provide to the department the information described below. The department may require any additional information the department considers necessary to evaluate the potential environmental risks posed by a facility. All information must be submitted on application forms provided by the department and include the screening fee required by OAR 340-097-0120(3). The application must be accompanied by all required exhibits using paper with recycled content with copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the department, and be signed by the property owner or person in control of the premises.

(a) Physical information, including:

(A) The location and site schematic, including areas for management of leachate and stormwater, of the existing or proposed composting facility by latitude and longitude, identified on a map;

(B) The location of the facility on a tax lot map;

(C) The location of and distance to surface water in the drainage area of the composting facility, and all drainage channels, ditches and any other water conveyances leading from the composting facility to surface water, identified on a map;

(D) Distance to the uppermost groundwater aquifer and other known aquifers at the location of the composting facility and in any areas proposed for infiltration of leachate or stormwater from the composting facility;

(E) Soil type or types, and permeability if known or available, at the location of the composting facility and in any areas proposed for infiltration of leachate or stormwater;

(F) The location and well logs of all wells on the property where the composting facility is located; the location and well logs of any wells within 1/4 mile of the composting facility; and, if known, the location of any proposed wells within 1/4 mile of the composting facility;

(G) The locations of all commercial and residential structures within a one mile radius of the composting facility, identified on a map or photograph;

(H) The prevailing wind direction, by season, identified on a map, and any other climactic information related to wind and air movement;

(b) Operational information, including:

(A) A description of the composting operation including feedstock types, volumes and sources; feedstock storage; any grinding, mixing or other preparation of feedstocks, composting methods; used; and the storage, processing, and uses of composted material, digestate, biogas and other products or materials;

(B) A description of any leachate, liquid digestate and stormwater produced at the facility, including information about the physical, biological and chemical composition of leachate and liquid digestate;

(C) A description of all existing or planned structures and features for managing liquid digestate, leachate and stormwater, including but not limited to information about any detention or infiltration basins, and any infiltration structures such as filter strips and bioswales;

(D) If the facility is subject to the pathogen reduction requirements of OAR 340-096-0070(5), a description of the methods the facility will use to achieve such pathogen reduction;

(E) A description of the methods the facility will use to achieve vector control;

(F) Any seasonal variances in the operation of the facility;

(G) Contact information including the composting-facility operator, composting-facility owner, and property owner; and

(H) Operational and compliance history of the facility.

(c) Information regarding other permits, including any other known or anticipated permits from the department or other governmental agencies. If previously applied for, include a copy of such permit application and, if granted, a copy of such permit.

(d) A Land Use Compatibility Statement ~~pursuant to~~ under OAR 340 Division 18 and a statement that the facility is compatible with the solid waste management plan for the jurisdiction.

(2) To conduct the evaluation under section (3) of this rule, the department may require a composting facility to conduct groundwater sampling or monitoring and provide analytical results to the department.

(3) Based on information provided by the ~~composting~~ operator, and any other information available to the department, the department will evaluate the current and likely future impact of the ~~composting~~ facility to human health and the environment. The department will evaluate the degree to which a composting facility may present a risk of adverse effects to surface water and groundwater, and the likelihood the facility will create unacceptable odor problems.

(a) All composting facilities the department determines present a low environmental risk must comply with OAR 340-096-0100: Registration. Any requirements the department determines are necessary for a facility to operate in compliance with OAR 340-096-0070: Performance Standards will be incorporated into the registration Approval Conditions under OAR 340-096-0100. Approval Conditions may include any of the matters addressed in OAR 340-096-0090: Operations Plan Approval. The department will consider a composting facility a “low risk” facility if, based on the information provided under (1) and (2) of this rule, the specific location of the facility, the feedstocks used, and the operational and compliance history of the facility, owner, or operator, the department determines:

(A) The facility is not likely to cause discharge of leachate, liquid digestate, or leachate or liquid digestate-contaminated stormwater to surface water;

(B) Infiltration of leachate, liquid digestate, or stormwater from the facility will not cause a likely adverse impact to soil, groundwater quality, or indirectly to surface water quality; and

(C) The facility is not likely to cause odor problems beyond the boundaries of the facility.

(b) All composting facilities the department determines present a risk of potential adverse effects to surface water, groundwater, or soil, or may create odor problems beyond the boundaries of the facility, must comply with OAR 340-096-0090: Operations Plan Approval. The department will consider a composting facility to present a “risk of potential adverse effects” if, based on the information provided under (1) and (2) of this rule, including but not limited to the location of the facility; the design, structures, and operational requirements necessary to meet the requirements of OAR 340-096-0070; the feedstocks used, ~~and~~ the operational and compliance history of the facility, and the type of composting process used, the department determines:

(A) The composting facility presents a risk of unpermitted releases of leachate or stormwater to surface water;

(B) The facility presents a risk of causing a likely adverse impact to surface water or groundwater;

(C) The facility presents a risk of causing an unacceptable adverse impact to soil; or

(D) The facility presents a risk of causing odor problems beyond the boundaries of the facility.

(4) The department may at any time reevaluate a composting facility under this rule and may assign a facility to a different category under section (3) of this rule.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0090 Special Rules Relating to Composting: Operations Plan Approval

(1) All composting facilities subject to this rule must prepare a ~~composting~~ facility operations plan for review and approval by the department that describes how the ~~composting~~ facility will be designed and operated to meet the performance standards set out in OAR 340-096-0070. The Operations Plan Approval fee required by OAR 340-097-0120(4) and, if applicable, the Engineering review fee required by OAR 340-097-0120(5), must be submitted to the department with the proposed plan.

(2) Except as provided in OAR 340-096-0060(5), a composting facility subject to this rule may not begin or continue operation until the department approves the facility Operations Plan. All composting facilities subject to this rule must operate in compliance with the Operations Plan approved by the department. Any significant changes in the Operations Plan must be approved by the department.

(3) If the department determines that an approved Operations Plan is incomplete, inadequate, or otherwise fails to provide the necessary information and assurances that the composting facility will comply with OAR 340-096-0070: Performance Measures or with section (6) of this rule, the department may require the composting facility to revise the Operations Plan.

- (4) After receiving a proposed Operations Plan, the department will provide the ~~composting~~ facility operator with an opportunity to meet with the department and discuss the composting facility, the proposed Operations Plan, and any department concerns or issues related to the facility and the plan. Upon final department approval of an Operations Plan, the composting facility must comply with OAR 340-096-0110: Composting Permit.
- (5) All Operations Plans subject to this rule must address the elements set out in ~~this section (5)(a) through (f) of this rule.~~
- (a) Feedstocks and products. The Operations Plan must describe the types and volumes of feedstocks the facility will accept, the methods the facility will use to produce compost, and the proposed uses of the compost, biogas, digestate and other products and materials.
- (b) Protection of Surface Water. The Operations Plan must describe how the facility will be designed and operated to comply with OAR 340-096-0070(1) and (2) by describing the operational procedures and any structures the facility will use to manage any leachate and any stormwater generated at the facility. Any facility that manages leachate or stormwater in an engineered structure must submit detailed plans and specifications for any such structures and comply with OAR 340-096-0130: Leachate and Stormwater Collection Design and Management Requirements.
- (c) Protection of groundwater. The Operations Plan must describe how the facility will be designed and operated to comply with OAR 340-096-0070(3). Any facility that manages leachate or stormwater through infiltration into soil must comply with OAR 340-096-0120: Groundwater.
- (d) Odor control. The Operations Plan must describe the methods and procedures the facility will use to comply with OAR 340-096-0070(4) and with 340-096-0150: Odors.
- (e) Pathogen reduction. Unless the facility is exempt from pathogen reduction under OAR 340-096-0140(1), the Operations Plan must describe methods the facility will use to comply with OAR 340-096-0140: Pathogen Reduction, including:
- (A) Methods the facility will use to comply with OAR 340-096-0070(5) to achieve the pathogen reduction standards set out in OAR 340-096-0140(2);
- (B) Methods the facility will use for sampling and testing of composted material and digestate to assure that the required human pathogen reduction is being achieved; and
- (C) Procedures the facility will use for handling composted material and digestate that does not meet pathogen reduction standards.
- (f) Vector attraction. The Operations Plan must describe methods the composting operation will use to comply with OAR 340-096-0070(6) to minimize the attraction of vectors such as rats, birds, flies.
- (g) Closure. The Operations Plan must include a Closure Plan that must address:
- (A) Removal of equipment and materials used to operate and maintain the facility;
- (B) Disposal of unused feedstocks, partially processed residues and finished compost, biogas, digestate, and other products and materials;
- (C) Disposal of processed compost, biogas, digestate, and other products and materials that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes; and
- (D) Abandonment of treatment facilities, including ponds and lagoons, and removal of residues, including a preliminary evaluation of potential impacts to soil and groundwater below ponds and treatment facilities.
- (h) Post Closure. The Operations Plan must include a Post-Closure Plan to address groundwater and surface water issues after the facility is closed.
- (i) Recordkeeping. The Operations Plan must describe the methods the facility will use for keeping records of:
- (A) Weight and volumes of incoming feedstocks;
- (B) Pathogen testing conducted under 5(e) of this rule;
- (C) Complaints and actions taken to address complaints; and
- (D) Any upsets or violations of the Operations Plan.
- (6) As part of the Operations Plan approval process, the department will review with the composting facility the matters listed in this section (6)(a) through (d) of this rule. The department may require, either in its initial Operations Plan review or under section (3) of this rule, that an Operations Plan include any of the matters listed in this section in sections (6)(a) through (d) of this rule if the department determines that such measures are necessary for the facility to meet the requirements of OAR 340-096-0070:

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Performance Standards, to comply with any other laws or regulations, or when required to correct other unacceptable conditions at a facility.

(a) Process controls. When required by the department, an Operations Plan must:

(A) Describe how the facility will monitor and record ~~compost~~-processing parameters including nutrient balance (C:N ratio), moisture content, aeration, pH, ~~and~~ temperature and ~~compost~~-retention time; ~~and~~

(B) Include a mass balance calculation showing all feedstocks and amendments and all products produced, ~~with the~~ ~~The~~ mass balance calculation ~~being~~ ~~must be~~ detailed and ~~use~~ ~~using~~ a standard unit of measurement throughout; ~~and~~

(C) Include any other information required by the department as necessary to understand process operations.

(b) Material management. When required by the department, an Operations Plan must:

(A) Describe how the facility will limit the receipt of non-compostable materials and screen incoming feedstocks to separate and remove non-compostable materials such as plastic packaging;

(B)(A) Describe how the facility will handle feedstocks, ~~and~~ composted material ~~and~~ digestate to prevent pathogen regrowth and cross contamination of piles; ~~and~~

(C)(B) Describe how the facility will manage and dispose of ~~composted material~~ ~~compost~~, biogas, digestate and other products and materials that ~~due to concentrations of contaminants~~ cannot be marketed or used for beneficial purposes.

(c) Removal of composted, biogas, digestate and other products and materials. When required by the department, an Operations Plan must provide for removal of compost, biogas, digestate and other products and ~~ed~~ materials from the facility as frequently as possible, but not later than: ~~two years after processing is completed.~~

(A) Two years after processing is completed, for finished compost; and

(B) Six months after processing is completed, for all other products and materials, or longer if specified in a permit or by written approval of the department.

(d) Incorporation of feedstocks. When required by the department, the Operations Plan must include a schedule for incorporating feedstocks into active composting piles or the anaerobic digester.

(e) Storage of feedstocks and digestate. When required by the department, the Operations Plan must:

(A) Identify designated areas where all feedstocks deposited, and digestate generated at the site, will be confined;

(B) Provide that accumulation of feedstocks and digestate does not create odor or vector problems, or create other nuisance conditions;

(C) Provide that undisposed residues ~~are~~ ~~must be~~ kept to minimum practical quantities; and

(D) Provide for facilities and procedures for handling, recycling or disposing of materials contained in feedstocks or digestate that are non-biodegradable by composting.

(f) Salvage. When required by the department, the Operations Plan must provide procedures for recovery of materials such as metal, paper and glass so that recovery does not interfere with composting operations, or create unsightly conditions or vector harborage.

(g) Access Roads. When required by the department, the Operations Plan must:

(A) Provide for all-weather roads from the public highway or roads to and within the composting operation that are designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution.

(B) Provide for effective barriers to unauthorized entry and dumping, such as fences, gates and locks.

(h) Fire Protection. When required by the department, the Operations Plan must provide for fire protection in compliance with applicable state and local fire regulations.

(i) ~~Noise, dust~~ Dust and litter. When required by the department, the plan must provide for effective methods to reduce or avoid ~~noise~~, dust, and litter, and to prevent tracking of mud or other materials off the facility;

(j) Containers. When required by the department, the operations plan must describe how the facility will clean and manage all containers at the facility.

(k) Vehicles. When required by the department, the Operations Plan must describe how all vehicles and devices operated by the facility will be maintained and operated to prevent leaking, or spilling of feedstocks or finished compost, biogas, digestate or other products or materials while in transit.

(l) Truck Covers. When required by the department, the Operations Plan must describe how the facility will notify all incoming feedstock haulers that trucks must be covered or suitably cross-tied to prevent any load loss during shipment.

(m) Tanks and piping. When required by the department, the Operations Plan for composting facilities using anaerobic digestion must describe how piping and tanks will be maintained and operated to prevent explosions, fire, leaks and spills.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0100 Special Rules Relating to Composting: Registration

(1) All composting facilities required to register with the department by OAR 340-096-0080(3)(a) must comply with this rule. Except as provided in OAR 340-096-0060(5), all facilities a facility subject to this rule ~~must complete registration before a facility may operate~~ must not begin operation before the registration process is complete and the department issues the registration.

(2) After ~~a facility has completed~~ the requirements of OAR 340-093-0100 with respect to public notice and comment have been completed, if the department determines that the facility has met all of the requirements of OAR Divisions 93, 96, 97, and all other applicable statutes and regulations, the department will issue a registration to register the facility. The registration is a permit for purposes of OAR chapter 340, division 18 and chapter 340 divisions 93, 96, and 97, ~~except the following: OAR 340-093-0070(3); 340-093-0130; and 340-093-0140.~~

(3) All composting facilities with a registration registered under this rule must comply with the following:

(a) Comply with OAR 340-096-0070: Performance Standards:

(b)(a) For facilities with department Conditions of Approval for operation of the facility, comply with all conditions;

(c)(b) If required by the department, submit an annual report of the weight of feedstocks used for composting on a form provided by the department;

(d)(e) If a composting facility discharges leachate, liquid digestate, or stormwater under a permit issued by the department, submit an annual report to the department with the sampling data required by the permit or permits;

(e)(d) Immediately notify the department of any violation of the facility Conditions of Approval or OAR 340-096-0070: Performance Standards;

(f)(e) Immediately notify the department of any significant change of status of the ~~composting~~ facility, including any change in the ownership or operation of the facility, the location of the composting operation, the type or volume of feedstocks used, and the composting process used by the facility;

(g)(f) Keep all required records. If required by the department, maintain records for a minimum of ~~ten-five~~ years. In the case of a change in ownership of the ~~composting~~ facility, the owner is responsible for ensuring that the records are transferred from the previous owner and maintained for the required ~~ten-five~~ years;

(h)(g) At the request of the department, submit any records or reports the department may require to ensure compliance with conditions of OAR chapter 340, Divisions 93, 96, and 97; and

(i)(h) If required by the department, demonstrate financial assurance as provided in OAR 340-096-0001. The department may tailor the financial assurance requirements to the nature of the facility and may exempt a facility if, based on the information submitted under OAR 340-096-~~00700080~~, an Operations Plan approved under OAR 340-0096-0090, and any other information available to the department, the department determines that the facility is not likely to generate significant amounts of residual waste materials or contamination from the operation of the facility that will remain at closure; and

(j)(i) If required, pay the Engineering Review fee under OAR 340-097-0120(5).

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0110 Special Rules Pertaining to Composting: Composting Permit

(1) All composting facilities required by OAR 340-096-0060 to operate under a Composting Permit must comply with this rule. Except as provided in OAR 340-096-0060(5), all facilities subject to this rule must receive a Composting Permit before a facility may operate.

~~(2) After a facility has completed OAR 340-096-0090: Operations Plan Approval and the department has approved the facility Operations Plan, to receive a Composting Permit, the facility must:~~

~~(a) Pay the plan approval fee required by OAR 340-097-0120(4); and~~

~~(b) If required, pay the Engineering Review fee under OAR 340-097-0120(5).~~

~~(2)(3) After paying applicable fees a facility has completed the requirements of section (2) of this rule, and after completing the requirements of OAR 340-093-0100 with respect to public notice and comment, if the department determines that the facility has met all of the requirements of OAR Divisions 93, 96, 97, and all other applicable statutes and regulations, the department will issue a Composting Permit for the facility. The Composting Permit is a permit for purposes of OAR chapter 340, division 18 and chapter 340 divisions 93, 96, and 97, except the following: OAR 340-093-0070(3); 340-093-0130; and 340-093-0140. The requirements for screening under OAR 340-096-0080 replace the permit application requirements under OAR 340-093-0070(3), 340-093-0130, and 340-093-0140.~~

~~(3)(4) All composting facilities permitted under this rule must comply with the following:~~

~~(a) Comply with OAR 340-096-07000070: Performance Standards;~~

~~(b) Comply with all requirements of the facility Operations Plan;~~

~~(c) If required by the department, submit an annual report of the weight of feedstocks used for composting on a form provided by the department;~~

~~(d) If a composting facility discharges leachate or stormwater under a permit issued by the department, submit an annual report to the department with the sampling data required by the permit or permits;~~

~~(e) Immediately notify the department of any violation of the facility Operations Plan, Conditions of Approval, or OAR 340-096-0070: Performance Standards;~~

~~(f) Immediately notify the department of any significant change of status of the composting operation, including any change in the ownership or operation of the facility, the location of the facility, type or volume of feedstocks used, and the composting process used by the facility;~~

~~(g) Keep all required records. If required by the department, maintain records for a minimum of five years. In the case of a change in ownership of the composting facility, the owner is responsible for ensuring that the records are transferred from the previous owner and maintained for the required five years;~~

~~(h) Comply with OAR 340-097-0120(6)(c) with respect to fees;~~

~~(i) At the request of the department, submit any records or reports the department may require to ensure compliance with conditions of OAR chapter 340, divisions 93, 96, and 97; and~~

~~(j) If required by the department, demonstrate financial assurance as provided in OAR 340-096-0001. The department may tailor the financial assurance requirements to the nature of the facility and may exempt a facility if the department determines, based on the information submitted under OAR 340-096-0070, an Operations Plan approved under OAR 340-0096-0090, and any other information available to the department, the facility is not likely to generate significant amounts of residual waste materials or contamination from the operation of the facility that will remain at closure.~~

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0120 Special Rules Pertaining to Composting: Groundwater Protection

(1) All composting facilities using or proposing to use infiltration in soil as a method for managing leachate, liquid digestate, or stormwater must comply with this rule.

(2) Methods of soil infiltration that are subject to this rule include, but are not limited to:

(a) Conducting any composting operations, including grinding, chipping, storing feedstocks, or composting feedstocks on surfaces that do not meet the requirements of OAR 340-096-0130: Leachate Collection Design and Management Requirements;

(b) Discharging any liquids from the composting facility, including leachate, ~~leachate-contaminated stormwater~~liquid digestate, or stormwater, to filter strips, bioswales, or other similar features; and

(c) Discharging any liquids from the composting facility, including leachate, ~~leachate-contaminated stormwater~~liquid digestate, or stormwater, to fields, pastures, cropland, or ditches.

(3) All composting facilities subject to this rule must provide to the department the information described in OAR 340-096-0080(1) and (2), and any other information required by the department to evaluate to proposed use of infiltration in soil.

(4) The department will evaluate the proposed infiltration methods to determine whether the proposed infiltration may cause likely adverse impacts to groundwater under OAR 340 Division 40.

(5) The department may approve, disapprove, restrict, require modifications to, and attach conditions to proposed infiltration methods and procedures. When approved by the department, the proposed infiltration methods and procedures, and any limitations, restrictions, and conditions required by the department as part of its approval, must be incorporated into the facility Operations Plan under OAR 340-096-0090. For “low risk” facilities exempt from OAR 340-096-0090 under OAR 340-096-0080(3)(a), any limitations, restrictions, and conditions required by the department will be incorporated into the facility Conditions of Approval under OAR 340-096-0100.

(6) As part of its approval under this rule, the department may require the facility to conduct groundwater sampling and monitoring, and submit analytical results to the department.

(7) The department may prohibit the use of infiltration to soil as a method for managing leachate, liquid digestate, or stormwater, for some or all actions, in some or all areas of a composting facility, if based on the factors in OAR 340-096-0080 and any other information available to the department, the department determines that infiltration at a facility is likely to cause an adverse impact to groundwater under OAR 340 Division 40. The department may require the facility to conduct operations on protective surfaces to prevent such impacts. Any such protective surface must comply with OAR 340-096-0130(8).

(8) Any infiltration method that is an Underground Injection Control, as defined in OAR chapter 340, division 44, must comply with that Division.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0130 Special Rules Pertaining to Composting: Biogas, Liquid Digestate, and Leachate Collection Design and Management Requirements

(1) All composting facilities that collect biogas, liquid digestate, leachate or stormwater in engineered structures must comply with this rule.

(2) If required by the department, a person proposing to construct a new composting facility that is subject to this rule must prepare and submit to the department a Facility Design and Construction Plan, stamped by a registered professional engineer, as part of the Operations Plan approval under OAR 340-096-0090. The Plan must include site layout, biogas collection and storage system, lining and leachate collection/management system, liquid digestate collection/management system, and stormwater and process water collection and treatment facilities.

(3) If required by the department, any person subject to this rule must submit site design and engineering plans for any new facility construction such as site modifications, ~~compost~~ liners/pads, tanks and piping, closure of existing composting areas/systems, and/or other ancillary facilities.

(4) All construction subject to this rule must be performed in accordance with the approved plans and specifications, including all conditions of approval. Any amendments to those plans and specifications must be approved in writing by the department.

(5) If required by the department, prior to initiating construction, a facility subject to this rule must submit and receive written department approval of complete construction documents for the project to be constructed. The construction documents submitted must:

(a) Define the construction project team;

(b) Include construction contract documents specifying material and workmanship, and requirements to guide how the Constructor is to furnish products and execute work; and

(c) Include a Construction Quality Assurance (CQA) plan describing the measures that will be taken to monitor and ensure that the quality of materials and the work performed by the Constructor complies with project specifications and contract requirements.

(6) If required by the department, within 90 days of completing construction, a facility subject to this rule must submit to the department a Construction Certification Report, prepared by a qualified independent party, to document and certify that all required components and structures have been constructed in compliance with the permit requirements and approved design specifications. This submittal ~~shall~~ must include "as constructed" facility plans which note any changes from the original approved plans.

(7) For a facility subject to section (6) of this rule, the facility must not accept feedstocks for storage, processing or composting in newly constructed facilities or areas until the department has accepted the Construction Certification Report. If the department does not respond in writing to the Construction Certification Report within 30 days of its receipt, the facility may accept feedstock at the facility in the newly constructed facilities or areas.

(8) Protective surface requirements. If a protective surface is required by the department under OAR 340-096-0120 for feedstock storing, mixing, grinding, or active processing areas, the surfaces must be designed to prevent release of leachate to surface water or groundwater from such areas. The surface must:

(a) Consist of at least two (2) feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-6} cm/sec or an equivalent protection of groundwater;

(b) Be capable of resisting damage from movement of mobile operating equipment and weight of stored piles;

(c) Prevent ponding; and

(d) Direct all collected leachate, liquid digestate and stormwater to collection devices.

(9) Leachate and liquid digestate storage design must assure collection of any leachate and liquid digestate generated from areas of feedstock collection and preparation and active composting areas and convey the leachate and liquid digestate to a storage basin, tank or other containment structure that has:

(a) Adequate capacity to collect and ~~contain~~ convey the amount of leachate and liquid digestate generated. Volume calculations must be based on facility design, monthly water balance and precipitation data;

(b) A geomembrane liner or alternative design approved by the department that is equivalent to at least two (2) feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-6} cm/sec;

(c) Secondary containment for tanks used to store leachate and liquid digestate; ~~and~~

(d) A monitoring system to identify releases for uUnderground tanks; ~~and must have a monitoring system to identify releases.~~

(e) If part of the site design, dikes or slopes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion from wave action, overfilling or precipitation.

(10) Any leachate or liquid digestate collection system subject to this rule must describe the methods the facility will use to beneficially reuse or properly dispose of all collected ~~leachate~~ liquids.

(11) The department may approve alternative methods of compliance with this rule if the department determines that the proposed alternative methods will achieve the same level of protection. Proposed design alternatives to subsections (2) and (3) of this rule must be accompanied by engineered specifications for department review and approval.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0140 Special Rules Pertaining to Composting: Pathogen Reduction

(1) All composting facilities must comply with this rule, except that agricultural operations as defined by ORS 467.120(2)(a) producing composted material and digestate only for on-farm use are not subject to the requirements of this rule. The department may require that an agricultural operation comply with this rule if the department determines that such compliance is necessary to protect human health or the environment.

(2) All composted material and digestate, excluding composted material and digestate that is sent as feedstock to a composter with either a composting permit or registration, must meet the following limits:

(a) For composted material produced from Type 1 or Type 3 feedstock, or a mix of Type 1 and 3 feedstocks, analysis must be performed for salmonella or fecal coliform and meet the following limits:

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(A) Salmonella analysis must result in less than 3 Most Probable Number per 4 grams of total solids (dry weight).

(B) Fecal coliform analysis must result in less than 1,000 Most Probable Number per gram of total solids (dry weight).

(b) For composted material and digestate produced from Type 1 or Type 3 feedstock with less than 50% by volume of Type 2 feedstock, analysis must be performed for salmonella or fecal coliform and meet the following limits:

(A) Salmonella analysis must result in less than 3 Most Probable Number per 4 grams of total solids (dry weight).

(B) Fecal coliform analysis must result in less than 1,000 Most Probable Number per gram of total solids (dry weight).

(c) For composted material and digestate produced from feedstock containing more than 50% volume of Type 2 feedstock in the initial pile, analysis must be performed for fecal coliform and meet the following limits:

(A) Analysis must result in less than 1,000 Most Probable Number per gram of total solids (dry weight).

(3) Methods of Pathogen Reduction. All composting facilities subject to this rule must document and implement a pathogen reduction plan that addresses requirements of the Code of Federal Regulations, 40 CFR Part 503. The plan must include a Process to Further Reduce Pathogen (PFRP), ~~pursuant to~~ under 40 CFR Part 503 Appendix B, item (B)(1), dated February 19, 1993, that must include one of the following elements:

(a) Using either the within-vessel aerobic composting method or the static aerated pile composting method, the temperature of the active composting pile must be maintained at 55 degrees Celsius or higher for three days;

(b) Using the windrow composting method, the temperature of the active composting pile must be maintained at 55 degrees Celsius or higher for 15 days or longer. During the period when the composting pile is maintained at 55 degrees Celsius or higher, there must be a minimum of five turnings of the windrow; ~~or~~

(c) Using anaerobic digestion, the following parameters must be met:

(A) All feedstocks are pasteurized at 70 degrees Celsius or higher for five minutes or longer prior to placement in the digester; or

(B) The digestion process (treatment phase) maintains an operating temperature of 53 degrees Celsius or higher for five hours or longer; or

(C) The digestion process (treatment phase) maintains an operating temperature of 35 degrees Celsius or higher for 10 days or longer; or

(D) The digestion process (treatment phase) maintains an operating or liquid digestate storage temperature above 6 degrees Celsius or higher for six months or longer; or

(d) ~~(e)~~ An alternative method that permittee can demonstrate achieves an equivalent reduction of human pathogens.

(4) Testing compost and solid digestate for pathogen reduction. All composting facilities subject to this rule must test composted material and solid digestate, excluding composted material and digestate that is sent as feedstock to a composter with either a composting permit or registration, with the following frequency:

(a) If less than 2,500 tons of composted material from Type 1 and 2 feedstocks are produced per year, testing must be conducted once a year.

(b) If more than 2,500 tons of composted material from Type 1 and 2 feedstock are produced per year, testing must be conducted every 5,000 tons of feedstock used or a maximum of once every three months.

(c) If less than 2,500 tons of composted material from Type 3 feedstocks are produced per year, testing must be conducted once every four months.

(d) If more than 2,500 tons of composted material from Type 3 are produced per year, testing must be conducted every 5,000 tons of feedstock used or monthly.

(5) Testing liquid digestate for pathogen reduction. The frequency with which liquid digestate must be tested for pathogen reduction depends on the average storage time for digestate following the treatment phase, where "average storage time" is defined as the total amount of liquid digestate withdrawn from storage over the course of a month, divided by the average quantity of liquid digestate being stored in that month. All anaerobic digestion facilities subject to this rule and proposing to use liquid digestate as a soil amendment, fertilizer or other productive use must test liquid digestate with the following frequency:

(a) If the average storage time for liquid digestate is less than one month, then testing must be conducted at least monthly.

(b) If the average storage time for liquid digestate is one month or greater, but less than six months, then testing must be conducted at least quarterly.

(c) If the average storage time for liquid digestate is six months or greater, then testing must be at least semi-annually.

(6) All composting facilities subject to this rule must receive written approval from the department regarding any use of liquid digestate other than:

(a) Discharge to an approved wastewater treatment system; or

(b) Discharge under a water quality permit issued under ORS 468B.050.

(7) Composted material and digestate from type X feedstock must be disposed in a landfill permitted to receive domestic solid waste, unless a facility receives written approval from the department for alternative use of the material.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0150 Special Rules Pertaining to Composting: Unacceptable Odors

(1) The department recognizes that the microbial metabolic activity in composting piles and anaerobic digestion operations causes odors, and that composting facilities cannot completely eliminate all odors. All composting facilities must be designed, constructed, and operated in manner that, to the greatest extent practicable consistent with proper facility design and operation, controls and minimizes odors that are likely to cause adverse impacts outside the boundaries of the facility.

(2) The department may require a facility to prepare an Odor Minimization Plan under section (5) of this rule, and may further require the facility to modify operations and otherwise implement all reasonable and practicable measures determined necessary by the department to control and minimize adverse impacts of odors outside the boundaries of the facility. In deciding whether to require an Odor Management Plan, the department will consider the frequency, duration, strength and intensity of odors; the number and frequency of complaints; and the number of people impacted.

(3) When a composting facility receives a complaint about odor, the facility must:

(a) Contact the complainant within 24 hours to discuss the complaint;

(b) Keep a record of the complaint; the name and telephone number of the complainant, when available; the date the complaint was received; ~~and~~

(c) Investigate site conditions and operations to determine the extent of an odor problem; and

~~(d)(e) Immediately initiate procedures at the facility as appropriate to meet the performance standards under OAR 340-096-0070(4) reduce or eliminate the odor identified by the complainant; and~~

~~(d) Initiate procedures as appropriate to prevent the release of odors in the future.~~

(4) A facility must notify the department:

(a) If a facility receives complaints from five or more individuals about a given event, or

(b) If an odor event lasts for more than 24 hours without resolution or mitigation of the problem creating the odor event.

(5) Odor Minimization Plan. If required by the department under OAR 340-096-0090 or this rule, the composting facility must develop an Odor Minimization Plan to minimize odors. The plan must include:

(a) A management plan for malodorous feedstocks~~loads~~;

(b) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and ~~remediating~~ promptly remediating any odor at the facility that does not meet the performance standards under OAR 340-096-0070(4) problems at the facility;

(c) Additional odor-minimizing measures, which may include the following:

(A) Avoidance of anaerobic conditions in the processes that are designed for aerobic ~~composting material~~;

(B) Use of mixing for favorable composting conditions;

(C) Formation of windrow or other composting piles into a size and shape favorable to minimizing odors;

(D) Use of end-product compost as cover to act as a filter during early stages of composting;

(E) Specification of a readily available supply of bulking agents, additives or odor control agents;

(F) Procedures for avoiding delay in processing and managing feedstocks during all weather conditions; and

(G) Methods for taking into consideration the following factors prior to turning or moving composted-composting material:

(i) Time of day;

(ii) Wind direction;

(iii) Percent moisture;

(iv) Estimated odor potential; and

(v) Degree of maturity.

Stat. Auth.: ORS 459.045, 459A.025 & 468.020

Stats. Implemented: ORS 459.005, 459.015 & 459.205

Hist.: DEQ 6-2009, f. & cert. ef. 9-14-09

340-096-0160 Special Rules Pertaining to Conversion Technology: Applicability

(1) These rules, OAR 340-096-0160 to 340-096-0200, apply to all conversion technology facilities.

(2) No person may construct or operate a conversion technology facility except as provided in this rule.

(3) All conversion technology facilities must comply with the performance standards of OAR 340-096-0170 including those facilities not required to obtain a permit or registration.

(4) The following conversion technology facilities are exempt from the application, operations plan, registration, and permit requirements of OAR 340-093-0070, 340-096-0180, 340-096-0190, and 340-096-0200 unless the department determines the conversion technology facility may adversely affect human health or the environment:

(a) Any conversion technology facility receiving less than 20 tons of solid waste for processing during any calendar year;

(b) Any conversion technology facility that satisfies all of the following criteria:

(A) Less than one percent by weight of the waste received by the facility is putrescible;

(B) All feedstocks received are source-separated for recovery or have been separated at a material recovery facility to include only the material or group of materials that are compatible with the conversion technology process used at the facility, and do not include mixed solid waste such as auto and appliance shredder wastes or paper, plastic or other materials that have not been separated from each other;

(C) The facility either has no discharges of liquids to the ground or to the waters of this state, or has a permit issued under ORS 468B.050 and all applicable requirements of OAR Chapter 340 Divisions 93 through 97 have been met;

(D) The facility either has no discharges of contaminants to the air, or has a permit issued under ORS 468A.040 and all applicable requirements of OAR Chapter 340 Divisions 93 through 97 have been met;

(E) The facility does not routinely charge a tip fee for the feedstocks used by the conversion technology; and

(F) The person who has established or who is proposing to establish the conversion technology facility can demonstrate that the facility operation will be able to comply with the performance standards in OAR 340-096-0170 based on actual operations data from an existing facility using similar technology, and continues to comply with those standards.

(c) The owner or operator of a facility claiming an exemption under subsection (b) of this section must notify the department, on a form approved by the department, of the intent to construct a conversion technology facility and the location proposed for the construction, no less than 30 days prior to beginning construction.

(d) Used oil processing facilities that have registered with the department as a used oil processor or refiner under 40 CFR 279.51, where used oil processing is their only conversion technology activity;

(e) Any conversion technology facility that primarily processes crops grown for energy production, where the percentage of solid waste received by the facility as feedstock, excluding sawdust and vegetative crop residue such as corn stover, wheat straw, mint slugs, and onion skins, is less than 5 percent of the total feedstock processed by the facility or less than 1,000 tons per year, whichever is smaller;

(f) Facilities that hold an animal rendering license from the Oregon Department of Agriculture, provided that all the applicable requirements of OAR chapter 340 Divisions 93-97 are met; and

(g) Facilities that accept fats, oils, and greases for the production of biodiesel, provided that:

(A) The facility complies with applicable storage and collection requirements in OAR 340-093-0210, and

(B) The facility complies with the performance standards in OAR 340-096-0170.

(5) The owner or operator of a facility claiming an exemption under this rule must maintain documentation that the facility meets the requirements of the exemption and must provide that documentation to the department upon request.

(6) If a facility that was exempt under section (4) of this rule no longer meets the criteria for exemption, and is unable to promptly resume meeting the criteria, that facility must **within 30 days, either** apply for a conversion technology permit or registration under OAR 340-093-0070 **or notify the department how they plan to resume meeting the criteria.**

(7) A conversion technology facility that is not exempt under section (4) of this rule must obtain either a conversion technology permit under OAR 340-096-0200 or a conversion technology registration under OAR 340-096-0190, except as specified in section (8) of this rule.

(a) If the department determines that a conversion technology facility presents a low risk to human health or the environment under this section, the facility must obtain a conversion technology registration under OAR 340-096-0190 as described in subsection (7)(c) of this rule.

(b) The department will consider a conversion technology facility a "low risk" facility if, based on the feedstocks used, the operational and compliance history of the facility, the owner, or the operator, the information submitted under OAR 340-093-0070, and other information available to the department, the department determines that all of the following apply:

(A) The conversion technology facility is not likely to cause unpermitted releases of process water, leachate, or stormwater to surface water;

(B) The facility is not likely to cause an adverse impact to surface water or groundwater;

(C) The facility is not likely to cause an adverse impact to soil;

(D) The facility is not likely to cause odor problems beyond the boundaries of the facility;

(E) The materials produced by the conversion technology are not likely to cause a threat to human health or the environment when used in ways the material may reasonably be expected to be used as described in OAR 340-096-0170(12);

(F) The facility is not likely to be abandoned and require cleanup by public agencies. Factors that indicate a potential risk of abandonment include, but are not limited to:

(i) The technology is new, with fewer than 5 production-scale facilities using this technology known to be operating in the United States, or no production-scale facilities **having** been successfully operating for longer than five years.

(ii) The technology could produce low-value end-products, where a significant risk exists that the products will not be saleable.

(iii) There is a significant potential for spills or releases of hazardous substances onsite.

(iv) The facility is expected to produce significant amounts of waste products requiring disposal, and

(G) The facility does not pose other likely risks to human health or the environment as determined by the department.

(c) A conversion technology facility that is determined by the department to present a low risk to human health or the environment must obtain a conversion technology registration under OAR 340-096-0190 **prior to commencing operation**. Any requirements the department determines are necessary for a facility to operate in compliance with performance standards under OAR 340-096-0170 will be incorporated into the registration approval conditions under OAR 340-096-0190. Approval conditions may include any of the matters addressed in the Operations Plan approval under OAR 340-096-0180.

(d) All conversion technology facilities the department determines present a risk of potential adverse effects to human health or the environment must comply with OAR 340-096-0180: Operations Plan Approval. The department will consider a conversion technology facility to present a "risk of potential adverse effects" if the facility does not meet the conditions of a low-risk facility identified in this section.

(e) As used in this section, "likely" means that there is a reasonable potential that the event or condition will occur.

(8) The department may at any time reevaluate a conversion technology facility under this rule and may assign a facility to a different category.

(9) All conversion technology facilities that are not exempt under this rule, including facilities that have not previously been required to have a solid waste permit, must submit the permit application materials required by OAR 340-093-0070 within 180 days after the effective date of this rule. Any conversion technology facility in operation before the effective date of these rules may continue in operation pending a determination by the department and issuance by the department of a registration or a conversion technology permit under OAR 340-096-0190 or OAR 340-096-0200. Conversion technology facilities that are permitted on August 22, 2013 under a solid waste treatment facility permit may either operate under the solid waste treatment facility permit, or may apply for a permit modification to convert the permit to a conversion technology facility permit or registration, as appropriate.

(10) Any person proposing to begin operation of a new conversion technology facility or to substantially modify an existing facility that is not exempt under section (4) of this rule must submit application materials under OAR 340-93-0070 at least 180 days before the facility is proposed to begin operation.

340-096-0170 Special Rules Pertaining to Conversion Technology: Performance Standards

(1) Conversion technology facilities must be designed, constructed, and operated in a manner that does not cause a discharge of process water, leachate or stormwater from the facility to surface water, except when discharged in compliance with a discharge permit issued by the department.

(2) Conversion technology facilities that collect and dispose of process water, leachate or stormwater in engineered structures must comply with the same requirements that apply to compost facilities in OAR 340-096-0130, unless the structure is constructed and operated pursuant to a permit issued under ORS 468B.050.

(3) Conversion technology facilities must be designed, constructed, and operated in a manner that is not likely to cause an adverse impact to groundwater under OAR 340 Division 40. All conversion technology facilities proposing to use infiltration in soil as a method for managing leachate or stormwater must comply with the same groundwater protection requirements that apply to compost facilities in OAR 340-096-0120.

(4) Conversion technology facilities must be designed, constructed, and operated in a manner that, to the greatest extent practicable and consistent with proper facility design and operation, controls and minimizes odors and dust that are likely to cause adverse impacts outside the boundaries of the facility.

(5) Conversion technology facilities must be designed, constructed, and operated in a manner that controls or prevents propagation, harborage, or attraction of vectors, including but not limited to, rats, birds, and flies.

(6) Conversion technology facilities that produce, collect and store oil, biogas or syngases must be designed, constructed, and operated in accordance with state and local fire regulations in a manner that prevents fire and explosions.

(7) Conversion technology facilities must implement procedures as necessary to restrict incoming material to prevent receipt of, or to separate out, materials that are incompatible with the conversion technology being used, or that would pose human health or environmental risks when incorporated into the products of the conversion technology.

(8) Conversion technology facilities must provide adequate training to staff to properly operate the technology and to recognize and exclude inappropriate incoming materials.

(9) Conversion technology facilities must use incoming feedstocks in a reasonable length of time, not storing incoming feedstocks longer than six months on site, unless a longer time is approved in advance by the department in writing. Incoming feedstocks must be accepted, stored, managed and processed to avoid causing potential impact to human health or the environment.

(10) Conversion technology facilities must provide for the removal of finished products and wastes from the facility within a reasonable length of time, but not later than six months after processing of incoming feedstock by the facility has begun, unless a longer time is approved in advance by the department in writing. Finished products must be stored and managed on site to prevent impacts to human health or the environment.

(11) Conversion technology facilities must properly characterize, store, label, manage and dispose of wastes. Waste streams must be characterized in accordance with hazardous waste rules to ensure proper disposal.

(12) Hazardous substances in the material produced by a conversion technology facility must meet at least one of the two criteria listed in this section:

(a) They do not significantly exceed the concentration in a comparable raw material or commercial product, or

(b) They will not exceed acceptable risk levels when used in ways the material may reasonably be expected to be used.

(13) Conversion technology facilities must allow the department access to the facility and to facility records in order to determine compliance with these rules.

340-096-0180 Special Rules Relating to Conversion Technology: Operations Plan Approval

(1) Conversion technology facilities subject to this rule must prepare a conversion technology facility Operations Plan for review and approval by the department that describes how the conversion technology facility will be designed and operated to meet the performance standards in OAR 340-096-0170. The Operations Plan Approval fee required by OAR 340-097-0120(4) must be submitted to the department with the proposed plan.

(2) Except as provided in OAR 340-096-0160(9), a conversion technology facility subject to this rule may not begin or continue operation until the department approves the facility Operations Plan. All conversion technology facilities subject to this rule must operate in compliance with the Operations Plan approved by the department. Any significant changes in the Operations Plan must be approved by the department.

(3) If the department determines that an approved Operations Plan is incomplete, inadequate, or otherwise fails to provide the necessary information and assurances that the conversion technology facility will comply with the performance standards of OAR 340-096-0170 or with section (5) of this rule, the department may require the conversion technology facility to revise the Operations Plan.

(4) All Operations Plans subject to this rule must address each element of this section.

(a) Feedstocks and products. The Operations Plan must describe the types and volumes of feedstocks the facility will accept, the manner in which feedstocks will be accepted and stored, the conversion technology process to be used to produce products, the manner in which products will be stored, the proposed uses of products, any wastes that will be produced, how those wastes are, or will be, characterized according to hazardous waste rules and the manner in which those wastes will be disposed.

(b) Protection of surface water. The Operations Plan must describe how the facility will be designed and operated to comply with OAR 340-096-0170(1) and (2) by describing the operational procedures and any structures the facility will use to manage any process water, leachate or stormwater generated at the facility. Any facility that manages process water, leachate or stormwater in an engineered structure must submit detailed plans and specifications for any such structures and comply with the same leachate and stormwater collection requirements that apply to compost facilities under OAR 340-096-0130.

(c) Protection of groundwater. The Operations Plan must describe how the facility will be designed and operated to comply with OAR 340-096-0170(3). Any facility that manages process water, leachate or stormwater through infiltration into soil must comply with the same groundwater protection requirements that apply to compost facilities under OAR 340-096-0120.

(d) Odor control. The Operations Plan must describe the methods and procedures the facility will use to comply with OAR 340-096-0170(4).

(e) Vector attraction. The Operations Plan must describe methods the facility will use to comply with OAR 340-096-0170(5) to minimize the attraction of vectors such as rats, birds and flies.

(f) Closure. The Operations Plan must include a Closure Plan that addresses:

(A) Removal of equipment and materials used to operate and maintain the facility;

(B) Disposal of unused feedstocks, partially processed residues, finished products that cannot be marketed or used for beneficial purposes and wastes; and

(C) Abandonment of the facility, including ponds and lagoons, buildings, emission controls, waste treatment or other pollution control facilities and removal of residues, including a preliminary evaluation of potential impacts to soil and groundwater.

(g) Post Closure. When required by the department, the Operations Plan must include a Post-Closure Plan to address potential or actual contamination to groundwater and surface water or impacts to soil or any corrective action needed to address environmental issues after the facility is closed.

(h) Recordkeeping. The Operations Plan must describe the methods the facility will use for keeping records of:

(A) Weight and volumes of incoming feedstocks;

(B) Testing, if any, of feedstocks received at the facility and materials and wastes produced by the facility;

(C) Complaints and actions taken to address complaints;

(D) Spill response:

(E) Any upsets or violations of the Operations Plan or any department rules;

(F) The quantities of materials and wastes produced by the facilities, and the disposition of those materials and wastes; and

(G) Staff training records related to facility operations.

(i) Screening and Training requirements. If the proper operation of the facility requires the identification and removal of materials that could threaten human health or the environment, or that could interfere with the conversion technology process or increase the toxicity of materials produced by the facility, then the Operations Plan must specify the methods that will be used to exclude potentially harmful material from entering and being processed by the conversion technology, and must also specify the training that will be provided so that facility staff can properly identify and remove prohibited or potentially damaging materials.

(5) As part of the Operations Plan approval process, the department will review with the conversion technology facility the matters listed in this section. The department may require, either in its initial Operations Plan review or under section (3) of this rule, that an Operations Plan include any of the **additional matters listed below** if the department determines that such measures are necessary for the facility to meet the performance standards requirements of OAR 340-096-0170, to comply with any other laws or regulations, or to correct other unacceptable conditions at a facility.

(a) Process controls.

(A) Describe how the facility will monitor and record processing parameters including but not limited to temperature, contamination levels, storage and retention time for products, and product quality.

(B) Include a mass balance calculation showing all feedstocks and all products produced. The mass balance calculation must be detailed and use a standard unit of measurement throughout.

(C) Include any other information the department **may deem necessary to determine whether the proposed facility and the operation thereof will comply with performance standards and all applicable rules of the department.**

(b) Removal of finished products.

(A) Provide for removal of finished products from the facility as frequently as possible, but not later than six months after processing has begun, unless the facility demonstrates a need to store finished product for a longer period of time and the department approves the longer period of time; and

(B) Describe how the facility will manage and dispose of products that due to concentrations of contaminants cannot be marketed or used for beneficial purposes.

(c) Processing and management of feedstocks. **Provide a** feedstock management plan that includes a feedstock acceptance process to prevent acceptance of unauthorized, contaminated, incompatible or otherwise unusable feedstocks and a schedule for processing of feedstocks to prevent accumulation of unprocessed material.

(d) Storage of feedstocks.

(A) Identify designated areas where all feedstocks deposited at the site will be confined;

(B) Provide that accumulation of feedstocks does not create odor or vector problems, or create other nuisance conditions;

(C) Provide that undisposed residues are kept to minimum practical quantities; and

(D) Provide for facilities and procedures for handling, recycling or disposing of feedstocks that are unauthorized, contaminated, not compatible with the conversion technology process or otherwise unusable.

(e) Salvage. **Describe** procedures for recovery of materials such as metal, paper and glass so that recovery does not interfere with conversion technology operations, or create unsightly conditions or vector harborage.

(f) Access Roads.

(A) Provide for all-weather roads from the public highway or roads to, and within, the facility that are designed and maintained to prevent traffic congestion, traffic hazards and dust; **and**

(B) Provide for effective barriers to unauthorized entry and dumping, such as fences, gates and locks.

(g) Fire Protection. **Provide** for fire protection in compliance with applicable state and local fire regulations.

(h) Dust and litter. **Provide** for effective methods to reduce or avoid dust, and litter, and to prevent tracking of mud or other materials off the facility;

(i) Containers. **Describe** how the facility will clean and manage all containers at the facility.

(j) Vehicles. Describe how all vehicles and devices operated by facility will be maintained and operated to prevent leaking or spilling of feedstocks or finished products while in transit.

(k) Truck Covers. Describe how the facility will notify all incoming feedstock haulers that trucks must be covered or suitably cross-tied to prevent any load loss during shipment.

340-096-0190 Special Rules Relating to Conversion Technology: Registration

(1) All conversion technology facilities required to register with the department by OAR 340-096-0160(7) must comply with this rule. Except as provided in OAR 340-096-0160(9), a facility subject to this rule may not begin operation before the department has issued a registration to the facility.

(2) After the requirements of OAR 340-093-0100 with respect to public notice and comment have been completed, if the department determines that the facility has met all of the requirements of OAR Divisions 93, 96, 97, and all other applicable statutes and regulations, the department will issue a registration to the facility. The registration is a permit for purposes of OAR chapter 340, division 18 and chapter 340 divisions 93, 96, and 97.

(3) All conversion technology facilities registered under this rule must:

(a) Comply with OAR 340-096-0170: Performance Standards;

(b) Comply with all Conditions of Approval that are required by the department for operation of the facility;

(c) Submit an annual or more frequent report, as required by the department, on a form provided by or approved by the department, of the weight of feedstocks used for conversion at the facility, and any other information required under OAR 340-097-0110(6), OAR 340-090-0100(3) and (5), or as needed by the department to monitor the flow of solid waste in Oregon.

(d) Immediately notify the department of any violation of the facility Conditions of Approval or performance standards under OAR 340-096-0170;

(e) Immediately notify the department of any significant change of status of the conversion technology facility, including any change in the ownership or operation of the facility, the location of the conversion technology operation, the type or volume of feedstocks used, and the conversion technology process used by the facility;

(f) Keep all required records. If required by the department, maintain records for a minimum of five years. In the case of a change in ownership of the facility, the owner is responsible for ensuring that the records are transferred from the previous owner and maintained for the required five years;

(g) Comply with OAR 340-097-0120(6) with respect to annual registration permit compliance fees;

(h) At the request of the department, submit any records or reports the department may require to ensure compliance with conditions of OAR chapter 340, Divisions 93, 96, and 97; and

(i) If required by the department, demonstrate financial assurance as provided in OAR 340-096-0001. The department may tailor the financial assurance requirements to the nature of the facility and may exempt a facility if, based on the information submitted under OAR 340-093-0070, and any other information available to the department, the department determines that the facility is not likely to generate significant amounts of residual waste materials or contamination from the facility operation that will remain at closure.

(4) Conversion technology facilities that are mobile disposal sites, before establishing operation in a new location, must:

(a) Obtain from the local government unit, or units having jurisdiction, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(b) Notify the department regarding the new location where they will be operating; and

(c) If requested by the department, provide site characterization information for specific elements specified in OAR 340-93-0130.

340-096-0200 Special Rules Pertaining to Conversion Technology: Conversion Technology Permit

(1) All conversion technology facilities required by OAR 340-096-0160 to operate under a conversion technology permit must comply with this rule. Except as provided in OAR 340-096-0160(9), a facility subject to this rule may not begin operation before the permitting process is complete and they have received their conversion technology permit from the department.

(2) After the requirements of OAR 340-093-0100 with respect to public notice and comment have been completed, if the department determines that the facility has met all of the requirements of OAR Divisions 93, 96, 97, and all other applicable statutes and regulations, the department will issue a Conversion Technology Permit for the facility. The Conversion Technology Permit is a permit for purposes of OAR chapter 340, division 18 and chapter 340 divisions 93, 96, and 97.

(3) All conversion technology facilities permitted under this rule must comply with the following:

(a) Comply with OAR 340-096-0170: Performance Standards;

(b) Comply with all requirements of the department approved facility Operations Plan;

(c) Submit an annual or more frequent report, on a form provided by or approved by the department, of the weight of feedstocks used for conversion at the facility and any other information required under OAR 340-097-0110(6), OAR 340-090-0100(3) and (5), or needed by the department to monitor the flow of solid waste in Oregon.

(d) Immediately notify the department of any violation of the facility Operations Plan, Conditions of Approval, or Performance Standards under OAR 340-096-0170;

(e) Immediately notify the department of any significant change of status of the operation, including any change in the ownership or operation of the facility, the location of the facility, type or volume of feedstocks used, and the conversion technology process used by the facility;

(f) Keep all required records. If required by the department, maintain records for a minimum of **five** years. In the case of a change in ownership of the facility, the owner is responsible for ensuring that the records are transferred from the previous owner and maintained for the required five years;

(g) Comply with OAR 340-097-0120(6) with respect to annual permit compliance fees;

(h) At the request of the department, submit any records or reports the department may require to ensure compliance with conditions of OAR chapter 340, divisions 93, 96, and 97; and

(i) If required by the department, demonstrate financial assurance as provided in OAR 340-096-0001. The department may tailor the financial assurance requirements to the nature of the facility and may exempt a facility if the department determines, based on the information submitted under OAR 340-093-0070, an Operations Plan approved under OAR 340-096-0180, and any other information available to the department, the facility is not likely to generate significant amounts of residual waste materials or contamination from the operation of the facility that will remain at closure.

(4) Conversion technology facilities that are mobile disposal sites, before establishing operation in a new location, must:

(a) Obtain from the local government unit, or units having jurisdiction, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(b) Notify the department regarding the new location where they will be operating; and

(c) If requested by the department, provide site characterization information for specific elements specified in OAR 340-093-0130.

DIVISION 97
SOLID WASTE: PERMIT FEES

340-097-0001 Applicability

OAR Chapter 340, Division 97 applies to persons owning or operating, or applying to the Department to own or operate, a municipal solid waste landfill, a non-municipal land disposal site, an energy recovery facility or an incinerator receiving solid waste delivered by the public or by a solid waste collection service, a composting facility, a sludge disposal site, a land application disposal site, a transfer station, a material recovery facility, a solid waste treatment facility, [a solid waste conversion technology facility](#), or any other solid waste disposal site required to obtain a solid waste permit from the Department. It also applies to persons who transport solid waste out of Oregon to a disposal site that receives domestic solid waste.

Stat. Auth.: ORS 459.045, ORS 459A.100 - ORS 459A.120 & ORS 468.020
Stats. Implemented: ORS 459.235
Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93; DEQ 10-1994, f. & cert. ef. 5-4-94

340-097-0110 Solid Waste Permit and Disposal Fees

(1) Each person required to have a Solid Waste Disposal Permit is ~~be~~ subject to the following fees:

- (a) An application processing fee for new facilities which must be submitted with the application for a new permit as specified in OAR 340-097-0120(2);
- (b) A solid waste permit compliance fee as listed in OAR 340-097-0120(6); and
- (c) The 1991 Recycling Act permit fee as listed in OAR 340-097-0120(7).

(2) Each disposal site receiving domestic solid waste will be subject to the per-ton solid waste disposal fees on ~~domestic~~ solid waste as specified in OAR 340-097-0120(8).

(3) Out-of-state solid waste. Each disposal site or regional disposal site receiving solid waste generated out-of-state must pay a per-ton solid waste disposal fee as specified in OAR 340-097-0120(8).

(4) Oregon waste disposed of out-of-state. A person who transports solid waste that is generated in Oregon to a disposal site located outside of Oregon that receives domestic solid waste ~~shall~~must pay the per-ton solid waste disposal fees as specified in OAR 340-097-0120(8):

(a) For purposes of this rule and OAR 340-097-0120(8), a person is the transporter if the person transports or arranges for the transport of solid waste out of Oregon for final disposal at a disposal site that receives domestic solid waste, and is:

- (A) A solid waste collection service or any other person who hauls, under an agreement, solid waste out of Oregon;
- (B) A person who hauls his or her own industrial, commercial or institutional waste or other waste such as cleanup materials contaminated with hazardous substances;
- (C) An operator of a transfer station, when Oregon waste is delivered to a transfer station located in Oregon and from there is transported out of Oregon for disposal;
- (D) A person who authorizes or retains the services of another person for disposal of cleanup materials contaminated with hazardous substances; or
- (E) A person who transports infectious waste.

(b) Notification requirement:

(A) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person must notify the department in writing on a form provided by the department. The persons identified in subsection (4)(a) of this rule are subject to this notification requirement;

(B) The notification must include a statement of whether the person will transport the waste on an on-going basis. If the transport is on-going, the person must re-notify the department by January 1 of each year of his or her intention to continue to transport waste out-of-state for disposal.

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(c) As used in this section, "person" does not include an individual transporting the individual's own residential solid waste to a disposal site located out of the state.

(5) Fees. The solid waste permit compliance fee must be paid for each year a disposal site is in operation or under permit. The 1991 Recycling Act permit fee, if applicable, must be paid for each year the disposal site is in active operation. The fee period shall be prospective and is as follows:

(a) New sites:

(A) Any new disposal site ~~will owe~~ must pay a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, 30 days after the end of the calendar quarter in which solid waste is received at the facility, except as specified in paragraph (5)(a)(B), (C) or (D) of this rule;

(B) For a new disposal site other than a transfer station, material recovery facility, or composting facility that receives receiving less than 1,000 tons of solid waste a year, ~~for~~ ~~For~~ the first year's operation, the entire permit compliance fee ~~will apply~~ must be paid if the facility is placed into operation on or before September 1. Any new facility placed into operation after September 1 will not owe a permit compliance fee until the following January 31. An application for a new disposal site receiving less than 1,000 tons of solid waste a year must include the applicable permit compliance fee for the first year of operation;

(C) For a new industrial solid waste disposal site, sludge or land application disposal site or solid waste treatment facility receiving more than 1,000 but less than 20,000 tons of solid waste a year, ~~these~~ ~~These~~ facilities will owe must pay a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, on January 31 following the calendar year in which the facility is placed into operation;

(D) For a new transfer station, material recovery facility or composting facility, ~~for~~ ~~For~~ the first fiscal year's operation, the entire permit compliance fee ~~will apply~~ must be paid if the facility is placed into operation on or before April 1. Any new facility placed into operation after April 1 will not owe a permit compliance fee until the department's annual billing for the next fiscal year. An application for a new transfer station, material recovery facility or composting facility must include the applicable permit compliance fee for the first year of operation.

(b) Existing permitted sites. Any existing disposal site that is in operation, is permitted to receive or receives solid waste in a calendar year must pay the solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, for that year as specified in OAR 340-097-0120(6)(a), (b), (c) and (7). A facility will be deemed to be an "existing permitted site" from the time of permit issuance;

(c) Closed sites. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the permittee must pay the solid waste permit compliance fee for the "year of closure" as specified in OAR 340-097-0120(6)(d)(A) as well as the permit compliance fee paid quarterly by the permittee based on the waste received in the previous calendar quarters. If a land disposal site has permanently ceased receiving waste and the site is closed, a solid waste permittee must pay the solid waste permit compliance fee for closed sites as specified in OAR 340-097-0120(6)(d);

(d) The Director may alter the due date for the solid waste permit compliance fee and, if applicable, the 1991 Recycling Act permit fee upon receipt of a justifiable request from a permittee.

(6) Tonnage reporting. The permit compliance fee, 1991 Recycling Act permit fee if applicable, and per-ton solid waste disposal fees, if applicable, must be submitted together with a form approved by the department. Information reported must include the amount and type of solid waste and any other information required by the department to substantiate the tonnage or to calculate the state material recovery rate.

(7) Calculation of tonnage. Permittees and registrants are responsible for accurate calculation of solid waste tonnage. For purposes of determining appropriate fees under OAR 340-097-0120(6) through (8), annual tonnage of solid waste received must be calculated as follows:

(a) Municipal solid waste facilities. Annual tonnage of solid waste received at municipal solid waste facilities, including construction and demolition sites and municipal solid waste composting facilities, receiving 50,000 or more tons annually must be based on weight from certified scales. When certified scales are required, all solid waste received at the facility for disposal must be weighed at the facility's scales, except as otherwise approved by the department in writing. If certified scales are required but are temporarily not functioning, all solid waste received at the facility must either use other certified scales in the area or estimate tonnage as specified in this section. If certified scales are not required, estimated annual tonnage for municipal solid waste, including that at municipal solid waste composting facilities will be based upon 300 pounds per cubic yard of uncompacted waste received, and 700 pounds per cubic yard of compacted waste received. If yardage is not known, the solid waste facility may use one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. For other types of wastes received at municipal solid waste sites and where certified scales are not required or not available, the conversions and provisions in subsection (b) of this section must be used;

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(b) Industrial facilities. Annual tonnage of solid waste received at industrial facilities receiving 50,000 or more tons annually must be based on weight from certified scales. When certified scales are required, all solid waste received at the facility must be weighed at the facility's scales, except as otherwise approved by the department in writing. If certified scales are required but are temporarily not functioning, all solid waste received at the facility must either use other certified scales in the area or estimate tonnage as specified in this section. If certified scales are not required, industrial sites must use the following conversion factors to determine tonnage of solid waste disposed. Composting facilities must use the following conversion factors for those materials appropriate for composting:

(A) Asbestos: 500 pounds per cubic yard;

(B) Pulp and paper waste other than sludge: 1,000 pounds per cubic yard;

(C) Construction, demolition and land clearing wastes: 1,100 pounds per cubic yard;

(D) Wood waste:

(i) Wood waste, mixed, including log sort waste (as defined in OAR 340-093-0030(99)): 1,200 pounds per cubic yard;

(ii) Wood waste including scrap lumber, pallets, wood from construction and demolition activities: 250 pounds per cubic yard;

(iii) Wood chips, green: 473 pounds per cubic yard;

(iv) Wood chips, dry: 243 pounds per cubic yard;

(v) Sawdust, wet: 530 pounds per cubic yard;

(vi) Sawdust, bone dry: 275 pounds per cubic yard.

(E) Yard debris:

(i) Grass clippings: 950 pounds per cubic yard;

(ii) Leaves: 375 pounds per cubic yard;

(iii) Compacted yard debris: 640 pounds per cubic yard; and

(iv) Uncompacted yard debris: 250 pounds per cubic yard.

(F) Manure, sludge, septage, grits, screenings and other wet wastes: 1,600 pounds per cubic yard;

(G) Food waste: 700 pounds per cubic yard

(H) Ash and slag: 2,000 pounds per cubic yard;

(I) Contaminated soils: 2,400 pounds per cubic yard;

(J) Asphalt, mining and milling wastes, foundry sand, silica: 2,500 pounds per cubic yard;

(K) For wastes other than the above, the permittee or registrant must determine the density of the wastes subject to approval by the department in writing;

(L) As an alternative to the above conversion factors, the permittee or registrant may determine the density of their own waste, subject to approval by the department in writing.

(8) The application processing fee may be refunded in whole or in part, after taking into consideration any costs the department may have incurred in processing the application, when submitted with an application if either of the following conditions exists:

(a) The department determines that no permit will be required;

(b) The applicant withdraws the application before the department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the department has approved or denied the application.

(9) Exemptions:

(a) Persons treating petroleum contaminated soils will be exempt from the application processing and renewal fees for a Letter Authorization if the following conditions are met:

(A) The soil is being treated as part of a site cleanup authorized under ORS Chapters 465 or 466; and

(B) The department and the applicant for the Letter Authorization have entered into a written agreement under which costs incurred by the department for oversight of the cleanup and for processing of the Letter Authorization must be paid by the applicant.

(b) Persons to whom a Letter Authorization has been issued are not subject to the solid waste permit compliance fee or the 1991 Recycling Act permit fee.

(10) All fees ~~shall~~must be made payable to the Department of Environmental Quality.

(11) Submittal schedule:

(a) The solid waste permit compliance fee will be billed by the department to the holder of the following permits: transfer station, material recovery facility, composting facility and closed solid waste disposal site. The fee period be the state's fiscal year (July 1 through June 30), and the fee is due annually by the date indicated on the invoice. Any "year of closure" pro-rated fee will be billed to the permittee of a closed site together with the site's first regular billing as a closed site;

(b) For holders of solid waste disposal site permits other than those in subsection (11)(a) of this rule, the solid waste permit compliance fee and the 1991 Recycling Act permit fee, if applicable, are not billed to the permittee by the department. These fees must be self-reported by the permittee to the department, pursuant to sections (5) and (6) of this rule. The fee period will be either the calendar quarter or the calendar year, and the fees are due to the department as follows:

(A) For ~~municipal solid waste disposal sites (including incinerators and energy recovery facilities) and construction and demolition landfills~~any disposal site required to pay the per-ton fee on any solid waste as specified in OAR 340-097-0120(8) (generally landfills and municipal waste incinerators that receive domestic solid waste, plus construction and demolition landfills): on the same schedule as specified in subsection (11)(c) of this rule;

(B) For industrial solid waste disposal sites, sludge or land application disposal sites and ~~solid waste treatment facilities other disposal sites not required to pay the per-ton fee on solid waste as specified in OAR 340-097-0120(8) except construction and demolition landfills~~:

(i) For sites receiving over 20,000 tons of waste a year: quarterly, on the 30th day of the month following the end of the calendar quarter; or

(ii) For sites receiving less than 20,000 tons of waste a year: annually, on the 31st day of January ~~beginning on January 31, 1995~~;

(iii) A site which has received less than 20,000 tons of waste in past years but exceeds that amount in a given year, will in general be granted a one-year delay from the department before the site is required to begin submitting permit fees on a quarterly basis. If the site appears likely to continue to exceed the 20,000 annual ton limit, then the department will require the site to report tonnage and submit applicable permit fees on a quarterly basis.

(c) The per-ton solid waste disposal fees on domestic solid waste and the Orphan Site Account fee are not billed by the department. They ~~are due~~must be paid on the following schedule:

(A) Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(B) Annually, on the 31st day of January beginning in 1995, for holders of solid waste disposal site permits for sites receiving less than 1,000 tons of solid waste a year.

(d) The fees on Oregon solid waste disposed of out of state ~~are due~~must be paid to the department quarterly on the 30th day of the month following the end of the calendar quarter, or on the schedule specified in OAR 340-097-0120(5)(e)(C). The fees must be submitted together with a form approved by the department, which must include the amount of solid waste, type, county of origin of the solid waste, and state to which the solid waste is being transported for final disposal.

Stat. Auth.: ORS 459.045, 459.235, 459.236, 459A.025, 459A.110, 459A.115 , 468.065

Stats. Implemented: ORS 459.235, 459.236, 459A.110 & 459A.115

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93, Renumbered from 340-061-0115; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 6-2009, f. & cert. ef. 9-14-09

340-097-0120 Permit/Registration Categories and Fee Schedule

(1) For purposes of OAR chapter 340, division 97:

(a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site;

(b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial facility";

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(c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. Except as provided in sections (3), (4), and (5) of this rule with respect to composting facilities, an application processing fee must be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-093-0090. The amount of the fee will depend on the type of facility and the required action as follows:

(a) A new municipal solid waste landfill facility, construction and demolition landfill, incinerator, energy recovery facility, solid waste treatment facility, off-site industrial facility or sludge disposal facility:

(A) Designed to receive over 7,500 tons of solid waste per year: \$10,000;

(B) Designed to receive less than 7,500 tons of solid waste per year: \$5,000.

(b) A new captive industrial facility (other than a transfer station or material recovery facility): \$1,000;

(c) A new transfer station or material recovery facility:

(A) Receiving over 50,000 tons of solid waste per year: \$500;

(B) Receiving between 10,000 and 50,000 tons of solid waste per year: \$200;

(C) Receiving less than 10,000 tons of solid waste per year: \$100.

(d) Letter Authorization (pursuant to OAR 340-093-0060):

(A) New site: \$500;

(B) Renewal: \$500.

(e) Permit Exemption Determination (pursuant to OAR 340-093-0080(2)): \$500.

(f) Beneficial use of solid waste application and reporting fees (pursuant to OAR 340-093-0260 through 340-093-0290):

(A) The review of an annual or other report required under a beneficial use determination: \$250;

(B) A Tier One beneficial use determination: \$1,000;

(C) A Tier Two beneficial use determination: \$2,000;

(D) A Tier Three beneficial use determination: \$5,000;

(E) Annual extension to a demonstration project authorization: \$1,000.

(g) A new conversion technology facility:

(A) Designed to receive over 7,500 tons of feedstocks per year: \$2,000;

(B) Designed to receive 7,500 tons or less of feedstocks per year: \$1,500.

(3) Composting Facility Screening Fee. Every composting facility that is required to comply with OAR 340-096-0080: Screening must pay a screening fee of \$150. The fee must be submitted with the application for screening, as provided in OAR 340-096-0080(1).

(4) ~~Composting~~ Facility Plan Review and Approval Fee.

(a) Every composting facility that is required to comply with OAR 340-096-0090: Operations Plan Approval must pay a fee as provided below. The fee must be submitted with the proposed Operations Plan, as provided in OAR 340-096-0090(1). Agricultural composting facilities for which the Oregon Department of Agriculture is providing facility plan review and approval are not required to pay this fee.

~~(a)~~(A) For facilities composting over 100 tons and less than or equal to 3,500 tons of feedstocks per year: \$500;

~~(b)~~(B) For facilities composting over 3,500 tons and less than or equal to 7,500 of feedstocks tons per year: \$750;

~~(c)~~(C) For facilities composting over 7,500 tons and less than or equal to 10,000 tons per year: \$1000;

~~(d)~~(D) For facilities composting over 10,000 tons and less than or equal to 50,000 tons per year: \$2,000;

~~(e)~~(E) For facilities composting over 50,000 tons per year: \$5,000.

(b) Every conversion technology facility that is required to comply with OAR 340-096-0180 must pay a fee as provided below. The fee must be submitted with the proposed Operations Plan, as provided in OAR 340-096-0180.

(A) For facilities designed to receive 3,500 tons of feedstock or less per year: \$1,000;

(B) For facilities designed to receive over 3,500 tons but no more than 7,500 tons of feedstock per year: \$1,500;

(C) For facilities designed to receive over 7,500 tons but no more than 20,000 tons of feedstock per year: \$2,200;

(D) For facilities designed to receive over 20,000 tons but no more than 50,000 tons of feedstock per year: \$3,000;

(E) For facilities designed to receive over 50,000 tons of feedstock per year: \$5,000.

(5) Composting Facility Engineering Review Fee. Every composting facility that requires department review of engineering plans and specifications under OAR 340-096-0130 must pay a fee of \$500. This fee is in addition to the fee required by (4) of this rule. Agricultural composting facilities for which the Oregon Department of Agriculture provides review of engineering plans and specifications are not required to pay this fee.

(6) Solid Waste Permit Compliance Fee. The Commission establishes the following fee schedule including base per-ton rates to be used to determine the solid waste permit compliance fee beginning with fiscal year 1993. The per-ton rates are based on the estimated solid waste to be received at all permitted solid waste disposal sites and on the department's Legislatively Approved Budget. The department will review annually the amount of revenue generated by this fee schedule. To determine the solid waste permit compliance fee, the department may use the base per-ton rates or any lower rates if the rates would generate more revenue than provided in the department's Legislatively Approved Budget. Any increase in the base rates must be fixed by rule by the Commission. (In any case where a facility fits into more than one category, the permittee must pay only the highest fee):

(a) All facilities accepting or permitted to accept solid waste except transfer stations, material recovery facilities and composting facilities:

(A) ~~The greater of \$200, if the facility receives less than 1,000 tons of solid waste a year; or~~

(B) A solid waste permit compliance fee based on the total amount of solid waste received at the facility in the previous calendar quarter or year, as applicable, at the following rate:

(i) All municipal landfills, construction and demolition landfills, off-site industrial facilities, sludge disposal facilities, incinerators and solid waste treatment facilities: \$.21 per ton;

(ii) Captive industrial facilities: \$.21 per ton;

(iii) Energy recovery facilities. \$.13 per ton; and

(iv) Conversion technology facilities: \$.10 per ton.

(C) If a disposal site (other than a municipal solid waste facility) is not required by the department to monitor and report volumes of solid waste collected, the solid waste permit compliance fee may be based on the estimated tonnage received in the previous quarter or year.

(b) Transfer stations and material recovery facilities:

(A) Facilities accepting over 50,000 tons of solid waste per year: \$1,000;

(B) Facilities accepting between 10,000 and 50,000 tons of solid waste per year: \$500;

(C) Facilities accepting less than 10,000 tons of solid waste per year: \$50.

(c) Composting facilities with a Composting Permit, except agricultural composting facilities for which the Oregon Department of Agriculture is providing facility oversight:

(A) Utilizing over 50,000 tons of feedstocks for composting per year: \$5,000;

(B) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: \$1,000

(C) Utilizing over 3,500 and less than or equal to 7,500 tons of feedstocks for composting per year: \$500.

(D) Utilizing over 100 tons and less than or equal to 3,500 tons of feedstocks for composting per year: \$100.

(d) Closed Disposal Sites:

(A) Year of closure. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the department will determine a pro-rated permit compliance fee for those quarters of the fiscal year not

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covered by the permit compliance fee paid on solid waste received at the site. The pro-rated fee for the quarters the site was closed shall be based on the calculation in paragraph (B) of this subsection;

(B) Each land disposal site which closes after July 1, 1984: \$150; or the average tonnage of solid waste received in the three most active years of site operation multiplied by \$.025 per ton, whichever is greater; but the maximum permit compliance fee shall not exceed \$2,500.

(7) 1991 Recycling Act permit fee:

(a) A 1991 Recycling Act permit fee must be submitted by each solid waste permittee which received solid waste in the previous calendar quarter or year, as applicable, except transfer stations, material recovery facilities, composting facilities, conversion technology facilities that process only separated solid wastes, and captive industrial facilities. The Commission establishes the 1991 Recycling Act permit fee as \$.09 per ton for each ton of solid waste received in the subject calendar quarter or year;

(b) The \$.09 per-ton rate is based on the estimated solid waste received at all permitted solid waste disposal sites subject to this fee and on the department's Legislatively Approved Budget. The department will review annually the amount of revenue generated by this rate. To determine the 1991 Recycling Act permit fee, the department may use this rate or any lower rate if the rate would generate more revenue than provided in the department's Legislatively Approved Budget. Any increase in the rate must be fixed by rule by the Commission;

(c) This fee is in addition to any other permit fee and per-ton fee which may be assessed by the department.

(8) Per-ton solid waste disposal fees on domestic solid waste. Each solid waste disposal site that receives domestic solid waste for final disposal or destruction(~~except transfer stations, material recovery facilities, solid waste treatment facilities and composting facilities~~), and each person transporting solid waste out of Oregon for disposal at a disposal site that receives domestic solid waste except as excluded under OAR 340-097-0110(4)(c), must submit fees to the department ~~the following fees~~ for each ton of domestic-solid waste received at the disposal site.;

(a) These fees include:

~~(a)(A)~~ A per-ton fee of ~~50~~ \$.81 cents;

~~(b)~~ An additional per ton fee of ~~31~~ cents;

~~(e)(B)~~ ~~Beginning January 1, 1993, an~~ additional per-ton fee of ~~\$.13~~ cents for the Orphan Site Account.;

(b) Tons subject to these fees include:

(A) All solid wastes landfilled, incinerated without energy recovery, or treated for disposal by an Oregon disposal site that receives domestic solid waste, except as excluded in sections (c) and (f) of this section;

(B) All Oregon solid wastes that are transported out-of-state for disposal at a disposal site that receives domestic solid waste, except as excluded under OAR 340-097-0110(4)(c) and subsections (c) and (f) of this section;

(C) Mixed solid wastes that are processed by a conversion technology facility, burned for energy recovery, or composted by an Oregon disposal site that receives domestic waste;

(D) Mixed solid waste that includes at least some domestic solid waste, that has been processed into refuse-derived fuel to be burned for energy recovery by a facility that does not have a solid waste permit or that does not pay per-ton fees as specified in this section.

(c) Tons not subject to these fees include:

(A) All solid wastes received at a facility that does not receive domestic solid waste;

(B) Source-separated recyclables or other materials separated and recycled from mixed solid waste, including separated organics that are composted;

(C) Construction and demolition wastes and industrial wastes that are processed by a material recovery facility or a conversion technology facility to make a fuel to be burned off-site for energy recovery - for example, in a wood fuel boiler;

(D) All solid wastes sent by a disposal site to another disposal site, where the per-ton fees will be paid by a disposal site that subsequently receives that waste;

(E) Solid waste used as daily cover at a landfill as described in subsection (f) of this section;

(F) Ash from an energy recovery facility or incinerator that has paid these fees; and

(G) Sewage sludge or septic tank and cesspool pumpings.

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(d) Submittal schedule:

(A) These per-ton fees must be submitted to the department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter;

(B) Disposal sites receiving less than 1,000 tons of solid waste per year must submit the fees annually on January 31. If the disposal site is not required by the department to monitor and report volumes of solid waste collected, the fees must be accompanied by an estimate of the population served by the disposal site;

(C) For solid waste transported out of state for disposal, the per-ton fees must be paid to the department quarterly. Quarterly remittals are due on the 30th day of the month following the end of the calendar quarter in which the disposal occurred. If the transportation is not on-going, the fee must be paid to the department within 60 days after the disposal occurs.

(e) As used in this rule ~~and in OAR 340-097-0110~~, the term "domestic-mixed solid waste" ~~does not include source-separated recyclable material, or material recovered at the disposal site~~ means solid wastes that include paper, plastic, and other materials at least partly made up of domestic waste, where the materials have not been separated from each other;

(f) Solid waste that is used as daily cover at a landfill in place of virgin soil will not be subject to the per-ton solid waste fees in this section, provided that:

(A) The amount of solid waste used as daily cover does not exceed the amount needed to provide the equivalent of six inches of soil used as daily cover;

(B) If disposed of in Oregon, the solid waste is not being used on a trial basis, but instead has received final-necessary approvals from the department for use as daily cover; and

(C) If disposed of in a landfill outside of Oregon, the solid waste has received final approval from the appropriate state or local regulatory agency that regulates the landfill.

(g) For solid waste delivered to disposal facilities owned or operated by a Metropolitan Service District, the fees established in this section will be levied on the district, not on the disposal site.

Stat. Auth.: ORS 459.045, 459.235 & 468.065

Stats. Implemented: ORS 459.235, 459.236, 459A.110 & 459A.115

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93, Renumbered from 340-061-0120; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 6-2009, f. & cert. ef. 9-14-09; DEQ 4-2010, f. & cert. ef. 5-14-10