



State of Oregon Department of Environmental Quality

Background: Agricultural Use Exclusion from the Definition of Solid Waste

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Introduction

Oregon's solid waste statutes and rules define "solid waste"¹ broadly, and give DEQ broad authority to regulate solid waste management activities and decide whether and how to do that. A few materials are specifically excluded from the definition of "solid waste," including materials used for growing crops, raising animals or other productive purposes in agricultural operations – the "agricultural use exclusion."

As defined ORS 459.005(24), "solid waste" does not include:

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

This agricultural use exclusion is further defined in rule, OAR 340-093-0030(91):

(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. [Underlined text is added in rules.]

Examples of materials that have been covered under this agricultural use exclusion include crop residues, boiler ash and waste water sludges applied to land as soil amendments; industrial food processing wastes and spent brewery grains fed to livestock; and wood wastes, straw and yard debris used as livestock bedding. ["A Summary of Known Agricultural Uses of Waste Materials under Oregon's Agricultural Use Exclusion"](#) includes additional materials and uses.

Materials that meet the criteria for the exclusion are not "solid waste," and DEQ and local governments have no authority *under Oregon's solid waste statutes or rules* to regulate them, for example, to issue permits, require reporting, assess solid waste fees or extend franchise authorities. (DEQ, Oregon Department of Agriculture (ODA) and other agencies may have authority to regulate the management of excluded materials under water quality, air quality, hazardous waste or other laws.)

¹ "Solid waste" means all useless or discarded putrescible and nonputrescible 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 semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include: [Exclusions omitted]. ORS 459.005(24) and OAR 340-093-0030(91).

Interpretation of the agricultural use exclusion

DEQ understands the intent of this exclusion, which dates back to the early 70's, was, broadly speaking, to not regulate as solid waste the productive use in an agricultural operation of certain materials that might otherwise meet the definition of solid waste.

DEQ has interpreted this exclusion to apply to any “material” that is used for productive purposes in agricultural operations, or that can be salvaged for and is ultimately used for such purposes in agricultural operations. “Used in agricultural operations” includes use on land in agricultural operations for growing or harvesting crops, conditioning soil, or feeding or raising fowl or other animals. And a use is “for productive purposes” if it provides a net benefit to an agricultural operation and is generally considered an acceptable agricultural use or practice.

The claimed exclusions DEQ is aware of have all involved the actual application of materials on fields or in feeding or raising animals in agricultural operations.

Oversight of agricultural use exclusions

Because DEQ has no authority under solid waste statute and rules to regulate materials not defined as “solid waste,” DEQ cannot require a person to report materials used under the agricultural use exclusion, cannot track those uses, and is likely not aware of many of them. Nevertheless, DEQ does have authority to monitor and investigate potential violations of the law, including the misuse of this exclusion, and to take action as needed.

When DEQ has a reasonable basis for believing that a use of material may not meet the requirements for the exclusion, DEQ can — and does — investigate to determine whether the use is excluded. Investigations may include requesting information about the materials and uses, reviewing records, inspecting operations and taking samples. If the agricultural use does not meet the criteria for exclusion, DEQ can — and does — pursue enforcement action as appropriate (e.g., disposal of solid waste without a solid waste disposal permit). DEQ coordinates with ODA during these investigations and follow up actions. ODA provides expert assistance in evaluating agricultural operations and often has regulatory authority to address problems found.

Also, upon request, DEQ reviews proposed agricultural uses of materials, again in consultation with ODA, to assess whether they meet the criteria for the agricultural use exclusion. Staff have used the “Solid Waste Directive: Determining Agricultural Use Exclusions from the Definition of, and Regulation as, Solid Waste” (2007) for these reviews.

What's changing

In the four decades since the agricultural use exclusion was adopted, the waste materials and their uses in agricultural operations have evolved. Oregonians have also become increasingly aware of the need to increase and improve recovery of waste materials, particularly high value materials such as food wastes – and achieving that is a priority in Oregon's [2050 Vision for Sustainable Materials Management](#).

These changes have raised questions, issues and concerns about the agricultural use exclusion. DEQ and local governments are seeing more requests for advice about this exclusion, and DEQ is being asked to evaluate whether and how the exclusion applies to new types of operations and new scenarios. DEQ and

others also want to better understand agricultural uses of waste materials as we plan strategies and actions for increasing and improving material recovery.

DEQ is initiating a conversation with diverse stakeholders to help all of us better understand the issues surrounding the agricultural use exclusion, identify areas where there might be agreement and where more work is needed, and identify actions to resolve issues moving forward.