



State of Oregon  
Department of  
Environmental  
Quality

## Directive

Title:	Determining an Exemption from Financial Assurance Requirements for Low-Risk Solid Waste Disposal Sites	FORM C
Original Author:	Bob Barrows	Pages:
Approval Date:	JANUARY 27, 2010	
Approval:	<i>[Signature]</i>	

### Scope:

This Solid Waste Internal Management Directive (IMD) is intended to help DEQ solid waste staff implement financial assurance (FA) requirements for disposal sites by clarifying when a facility subject to OAR 340, Division 96, is considered low risk and may therefore be exempted from the requirements for financial assurance.

### Purpose/Need:

In August 2009, the EQC amended OAR 340-096-0001 to clarify that disposal facilities subject to Division 96 are also subject to the FA requirements in Division 95 and to allow DEQ to exempt low-risk facilities from FA requirements. This IMD will help DEQ staff apply this exemption consistently statewide. Facilities subject to Division 96 include incinerators and energy recovery facilities that receive solid waste from the public or solid waste collection services, composting facilities, sludge disposal sites, land application disposal sites, transfer stations, material recovery facilities and solid waste treatment facilities.

OAR 340-096-0001 defines a low-risk facility, and OAR 340-095-0090(2) provides the criteria DEQ staff are to use to determine whether a facility qualifies for the low-risk exemption from FA requirements. The exemption determination will be based on review of the site-specific information that is submitted for a facility as part of a solid waste disposal site permit application package, including an operations plan, and any additional information DEQ may request.

### Legal Authority:

OAR 340, Divisions 95 and 96 provide the authority for DEQ to require financial assurance for each of the types of solid waste disposal sites included in Division 96 and to exempt low-risk facilities from those requirements.

OAR 340-096-0001 (Applicability) describes the financial assurance requirements that apply to the solid waste disposal facilities subject to Division 96, including the exemption for low-risk facilities, and defines low risk facilities for purposes of Division 96:

*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, 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 OAR 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. 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.*

OAR 340-093-0030(55) also defines a low-risk disposal site as:

*"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.*

OAR 340-095-0090(2) establishes the criteria for DEQ staff to use in determining whether a facility qualifies for the low-risk exemption from financial assurance requirements:

2) *The Department may exempt from the financial assurance requirements of 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.*

Financial assurance requirements for any facility subject to OAR 340, Division 96 and not exempt under OAR 340-095-0090(2), are found in OAR 340-095-0090 and 0095.

### **Directive:**

This directive applies to DEQ staff reviewing any solid waste disposal site covered by OAR 340, Division 96. These facilities include: incinerators, energy recovery facilities, composting facilities, sludge disposal sites, land application disposal sites, transfer stations, material recovery facilities and solid waste treatment facilities.

### **A. Environmental and Human Health Exemption Criteria**

DEQ may exempt any Division 96 solid waste disposal facility from financial assurance requirements, as described above, if a permit applicant demonstrates that the facility is a low-risk disposal site and meets and continues to meet until approved closure **all of the following exemption criteria.**

Staff will make this determination based on review of the site-specific information that is submitted for a facility as part of a solid waste disposal site permit application package, including an operations plan, and any additional information DEQ may request. Staff will document the basis for the determination in the permit file. Staff will review the determination to exempt a facility from FA requirements when a permit is modified or renewed or when information suggests the criteria for exemption are no longer being met.

**1) The disposal site poses no significant threat of adverse impact on groundwater or surface water.**

***DEQ staff review considerations for all solid waste disposal sites:***

- Does the site have an impervious working surface?
- Is there a surface water impoundment?
- Does waste water discharge to a ditch or stream?
- If, for any reason, the site becomes abandoned and left unattended, will residual solid waste generate leachate that will need management?

- Will beneficial uses of groundwater be protected during site operation or in the event of a sudden site closure?
- Do waste management activities occur inside a building or under a roof? If any waste management activities occur outside a building and activities occur on or off an impervious surface, then address the following:
  - For groundwater - consult with regional solid waste program groundwater hydrogeologist staff for determination of "no significant threat of adverse impact on groundwater;"
  - For surface water - consult with regional solid waste program groundwater hydrogeologist and stormwater permitting staff for determination of "no significant threat of adverse impact on surface water;" and
  - For a land application disposal site - determine if a management plan has been prepared and approved by DEQ that adequately describes the agronomic application rate of wastes and how the project protects the environment and human health. (See also the related IMD titled *Determining Agricultural Use Exclusions from the Definition of, and Regulation as, Solid Waste.*)

**2) The disposal site poses no significant threat of adverse impact on public health or safety.**

***DEQ staff review considerations for all solid waste disposal sites:***

- Is the waste prone to spontaneous combustion if not managed properly?
- Will the waste decompose and create objectionable odors?
- Is the waste putrescible and likely to create odors and leachate?
- If unmanaged, will the waste react with water or other materials?
- In the event of a sudden site closure, if unmanaged, would the waste pose a real threat of vector harborage, including insects and rats; obnoxious odors; significant fire hazard; or, other problems?

**3) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment.**

***DEQ staff review considerations for all solid waste disposal sites:***

- Is there a surface water management system, leachate management system, air filtration system, automated mechanical system or any other type of system that needs active management and that could adversely impact the environment in the event of a sudden site closure?
- Does the site have a water quality discharge permit, such as an NPDES or WPCF permit? If so, discuss with the appropriate program permit manager.

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

This criterion is appropriate for land disposal sites where waste is intended to be disposed in or on the ground and remain for a long period of time and poses a real risk of negative impact to groundwater, surface water, other environmental media or human health. A larger disposal facility will pose a greater risk. Two acres was established by rule as the threshold over which FA should be considered for this criterion.

This criterion does not apply to non-land disposal sites where waste is temporarily deposited, stored, managed and finally removed from the site for other disposition. For purposes of Division 96, these disposal sites include: incinerators, energy recovery facilities, composting facilities, transfer stations, material recovery facilities and most solid waste treatment facilities.

***DEQ staff review considerations for sludge disposal sites:***

Is the waste storage and management area greater than two acres? To calculate the disposal area acreage for sludge disposal sites, include the lagoon and loading areas.

### ***DEQ staff review – Site-Specific Factors***

In evaluating land disposal sites for FA exemptions, DEQ staff should also consider site-specific factors, including:

- Site design and construction;
- Historical or proposed site operation;
- Worst-case closure costs in the event of a sudden, unplanned site closure;
- Proposed method of closure;
- Waste volume (annual and maximum amount that may be stored on site at any one time);
- Proximity to, and uses of, adjacent properties;
- Waste type;
- Previous compliance inspection reports (provides context for how the site has historically been managed and operated);
- Geology;
- Soils;
- Hydrology;
- Existing monitoring data, including any existing well logs in the area; and
- Any other information submitted by the applicant or requested by DEQ staff. (DEQ staff should request any other information deemed necessary to make a determination.)

### **B. Permit Language for Financial Assurance Section**

When writing a disposal site permit for facilities regulated under OAR 340, Division 96, DEQ staff need to include a *Financial Assurance* section, which is an option in the permit templates available for any type of solid waste disposal site permit. The *Financial Assurance* section has two options:

1. If, after reviewing submitted information, DEQ staff designates a site as low risk, they should remove financial assurance language from the *Financial Assurance* section and insert language indicating that financial assurance is not required at this time, but may be required in the event the site loses its low-risk designation.
2. If a site is not designated as low risk, the *Financial Assurance* section should have language inserted requiring: 1) preparation of a financial assurance plan based on a worst-case closure scenario; and 2) provision of financial assurance based on the DEQ approved financial assurance plan and using one of the financial assurance mechanisms described in OAR 340-095-0095.

### **Implementation:**

This directive will take effect immediately upon signing. A copy of the approved IMD will be made available to DEQ staff through direct e-mail and through posting in the Directive Tracker database.

Training for DEQ staff on this IMD will be provided at the next statewide solid waste program meeting following IMD signing.

### **Review Schedule:**

The periodic review schedule will apply.

### **Contact Person:**

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### **Disclaimer:**

This directive is intended solely as guidance for DEQ employees. It does not constitute rulemaking by the Environmental Quality Commission and may not be relied upon to create an enforceable right or benefit, substantive or procedural, enforceable at law or in equity, by any person. DEQ may take action at variance with this policy.