

Directive



State of Oregon
Department of
Environmental
Quality

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| Title: | | Form C |
| DEQ ROLE IN "VERY SMALL FACILITY EXEMPTION DETERMINATION" | | |
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Purpose

The purpose of this policy guidance is to clarify the Department's role in the "demonstration" by municipal solid waste landfill owners or operators that their facility meets the "very small landfill" criteria in 40 CFR §258.1(f)(1).

Definitions:

Terms used in this guidance have the meaning given in OAR Chapter 340 Division 93 and 40 CFR 258.2 and OAR 340 Division 93.

Background:

The U.S. Environmental Protection Agency (EPA) adopted criteria for municipal solid waste disposal facilities ("Subtitle D") on October 9, 1991. The criteria address siting, operation, design, groundwater monitoring, closure and post-closure care, and financial assurance for these facilities. EPA recognized that the Subtitle D criteria requiring protective, modern disposal practices may be difficult for small facilities to meet, and thus would tend to promote regionalization of facilities. EPA also recognized that regionalization may not be feasible for some small communities, and thus provided some relief for owners and operators of very small landfills that meet certain exemption criteria.

A. Exemptions

The EPA regulations exempt very small landfills from meeting **landfill design criteria** for as long as they meet the exemption criteria below. Also under current federal rules, sites that meet the criteria are not subject to full Subtitle D regulations until October 9, 1995. After that date they are fully subject to Subtitle D, with the exception of liner design requirements.

B. Exemption Criteria

To be eligible for the exemption, owners and operators of municipal solid waste landfill units must place information in the facility operating record demonstrating that they meet the following criteria (stated at 40 CFR §258.1(f)(1)):

1. The landfill unit disposes of less than 20 tons of municipal solid waste daily ("TONNAGE");
2. The landfill unit is located in an area that receives less than 25 inches of precipitation annually ("RAINFALL");
3. There is no evidence of groundwater contamination from the unit ("GW"); and
4. The unit serves a community that has no practicable waste management alternative ("NPA").

The owner or operator is required to notify the Director of DEQ when the required documents are placed in the operating record. They are also required to furnish information in the record to the Director on request, or make the operating record available at reasonable times for inspection by the Director.

All of the "very small landfill" exemption criteria can be quantified, except #4, "NPA." Conformity with the first two criteria may be easily verified. The Department has established guidelines for meeting the third criterion ("GW"), which is clearly of DEQ regulatory concern. Criterion #4 cannot be demonstrated quantitatively, although EPA guidance exists on which to base this demonstration.

C. Federal Guidance, Demonstration of "No Practicable Alternative" (NPA)

Although Subtitle D rules do not define "no practicable alternative," EPA does discuss this in the Solid Waste Disposal Facility Criteria Technical Manual and in the preamble to Subtitle D rule adoption.

EPA's Solid Waste Disposal Facility Criteria Technical Manual provides some guidance on this determination. It states that the determination of a "practicable waste management alternative" includes consideration of technical, economic, and social factors. For example, some small rural communities are located great distances from alternative waste management facilities (other landfills, incinerators, transfer stations, etc.) making regionalization of waste management difficult.

The Subtitle D preamble, "Regulatory Approach to Today's Final Rule," notes that regionalization is not a feasible alternative for some small communities. EPA defined the "significant impact threshold" (in its Regulatory Flexibility Analysis for the rule) as compliance costs exceeding one percent of a community's total budget (which corresponds to a doubling of solid waste disposal costs in the typical community). EPA was particularly focused on granting relief where:

1. Compliance with the criteria is beyond the practicable capability of the community; and
2. Circumstances make regional waste management impracticable.

The preamble further states that EPA considers the term "practicable waste management alternative" to mean another landfill, transfer station, materials or resource recovery facility that may serve as a reasonable substitute for the facility currently employed for disposal. EPA encourages owners and operators to employ their knowledge of the universe of solid waste management options currently and potentially available when evaluating the merits of available practicable alternatives. EPA also states that the determination of what haul distances would be considered unreasonable for a community must be made considering local or regional geographical and climatic constraints. Owners and operators may want to consider what percentage of a community's total budget would have to be spent on solid waste disposal to cover costs for hauling waste to a regional facility.

D. Department's Role/Responsibility

The Department adopted Subtitle D by reference as DEQ rule, so the Subtitle D requirements have the force of DEQ rule. DEQ, as an EPA-"approved" state for the implementation of Subtitle D, has the latitude to approve or disapprove the demonstration that a site is eligible for exemption. However, Subtitle D regulations are self-implementing and do not require the Department to make such approval or disapproval.

To date, the Department has told facility owners and operators to maintain the demonstration on site (in the facility operating record). A regular DEQ site inspection would include a perusal of the site operating record simply to check that the Subtitle D-required "demonstration" was present. If a facility claimed the very small landfill exemption but its "demonstration" did not show that the exemption criteria were met, it would be a violation of Department rule. The result could be that the facility may no longer claim exemption from the design criteria or other Subtitle D requirements.

Discussion:

Based on the guidance provided by EPA discussed above, the Department would expect an exemption determination to include relevant information in these areas:

1. Technical/economic discussion (preferably in a solid waste plan prepared by the applicable unit of local government) of possible "practicable alternatives" for solid waste management:
 - a. Analysis of the advantages and disadvantages of each option (other landfills, transfer stations, etc.)
 - b. Cost analysis of each option considered. Do the options meet the "significant impact threshold" as defined by EPA? (A simple statement that an option would result in raising the costs of solid waste management is not sufficient in itself to demonstrate that it is not "practicable.") As economic considerations change over time, the Department believes that the cost analysis should be updated at least once every five years in conjunction with renewal of the solid waste permit.
 - c. Length of haul to a Subtitle D facility.
 - d. Technical considerations that would impede implementation of any of the options considered (e.g. climatic conditions).
2. Social/economic considerations.
 - a. Comparison of costs of the options considered to costs (i.e. solid waste disposal rates) experienced in comparable communities in the DEQ Region in which the very small landfill is located.
 - b. Any other special factors making regionalization of solid waste management impracticable.

If a unit of local government has concluded that there is no "practicable alternative" to continued operation of a very small landfill, DEQ would encourage them to include an official statement by that body to that effect as part of the "demonstration" information.

The Department believes that a defensible "demonstration" determination should include a discussion of the information outlined above.

Under state law, it is local government's responsibility to assure sufficient, safe, and accessible disposal capacity for its constituents. Since local governments and local landfill permittees would have the best knowledge of local conditions, and be in the best position to gather information on and evaluate the factors discussed above, the Department will not approve or disapprove the actual determination that a community has no practicable waste management alternative, as long as a good faith analysis considering the above factors has been made.

Directive:

1. The Department will not "approve" or "disapprove" demonstrations of the Subtitle D very small landfill exemption criteria.
2. The Department will review the information supporting the demonstration in the course of its regular site investigations, and may at other times inspect or request information from the facility operating record.
3. The review will consist of a factual review of the "TONNAGE," "RAINFALL" and "GW" criteria.
4. The review of the "NPA" criterion will consist of determining whether the owner or operator has in good faith addressed each of the areas outlined in Section IV of this Policy. The Department will not challenge the owner or operator's conclusion as long as the "NPA" demonstration information covers those areas.

5. If the Department finds that the "TONNAGE," "RAINFALL" or "GW" demonstrations are not available for Department review or do not meet the standards in 40 CFR 258.1(f)(1), or if the "NPA" demonstration is not available for Department review or does not address the information recommended in Section V above, the Department may initiate appropriate enforcement action.

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Disclaimer:

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