



State of Oregon  
Department of  
Environmental  
Quality

# Draft – 9/11/09 Directive

Title:	<b>Form C</b>
Allowance of Alternative Uses for Source Separated Recyclable Materials Collected for Recycling	
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Approval Date:	Pages:
Approval:	

## Scope:

This directive describes the criteria DEQ will use to approve or deny requests to temporarily allow uses of source separated materials collected or received for recycling for purposes other than recycling (composting, energy recovery, other beneficial uses, or disposal) in extraordinary circumstances.

## Purpose/Need:

Oregon law requires that source separated materials collected or received for recycling be reused or recycled. Oregonians rely on these requirements to support our recycling systems and achieve the resource conservation and other environmental benefits of recycling. Nevertheless, in extraordinary circumstances, DEQ may need to use enforcement discretion to allow uses other than recycling. The purpose of this directive is to provide guidelines for DEQ to follow in exercising this discretion while still protecting the integrity of our recycling systems.

## Legal Authority:

ORS 459A.080(3) prohibits a person from mixing source separated recyclable material with solid waste "in any vehicle, box, container or receptacle used in solid waste collection or disposal."

OAR 340-090-0090(2) more specifically provides that "no person shall dispose of source separated recyclable material which has been collected or received from the generator by any method other than reuse or recycling except for used oil and wood waste which may be collected and burned for energy recovery."

As the enforcement agency charged with executing these laws, DEQ has some latitude within the confines of its own rules and policies to decide when enforcement is or is not warranted. In exceptional circumstances DEQ, may use its enforcement discretion to allow alternative uses for source separated recyclable materials collected or received for recycling.

## Discussion:

Oregon adopted laws requiring that source separated recyclables be reused or recycled to help ensure that we gain the resource conservation and other environmental benefits of recycling. These requirements promote and support the necessary infrastructure for the collection, processing, marketing, and end use of recyclables; instill confidence in these recycling systems; and encourage people to recycle. Enforcing these requirements is important for achieving these objectives. Violations are serious and subject to substantial civil penalties.

DEQ recognizes that in rare circumstances, strict enforcement of these recycling requirements may not be possible or reasonable or would not accomplish the objectives of the law. For example, recycling markets may not exist or may become prohibitively costly during a severe, prolonged economic downturn, or extreme weather may ruin materials collected for recycling. In such circumstances, requiring materials to be recycled may harm the recycling infrastructure (e.g., requiring long-term storage until markets return or forcing the marketing of flood-ruined materials may further depress markets or quality).

In such exceptional cases, DEQ will work with affected parties to understand the challenges they face and to develop solutions that maintain the integrity of Oregon's recycling systems. If, after careful review, DEQ determines that options for reuse or recycling are not reasonably available, DEQ may allow source separated recyclables to be used for composting, energy recovery, or other beneficial uses or to be disposed in accordance with this directive.

Because local governments are responsible for providing the opportunity to recycle and for many recycling programs and rate setting in Oregon, DEQ will consult with local government and watershed representatives during the review of proposals for alternative uses of source separated recyclables under this directive.

### Directive:

In extraordinary circumstances, DEQ may approve a request to use a source separated recyclable material collected or received for recycling for purposes other than reuse or recycling (composting, energy recovery, other beneficial uses or disposal) if DEQ determines the applicant demonstrates reuse or recycling markets are not reasonably available. DEQ will consider the following in making this determination.

1. The type, source, and amount of reusable or recyclable material; the proposed use of the material; and the period of time proposed for the alternative use.
2. The extraordinary circumstances that warrant consideration under this directive.
3. Whether the material can be recycled, and if not, why not (e.g., where and how the material is normally marketed for recycling, changes in those markets, efforts to find new markets; and quality of the materials for recycling).
4. Whether the costs of recycling are reasonable under the circumstances considering relevant information (e.g., changes in the costs for collection, storage, recycling and other management options caused by the extraordinary circumstances; reasonableness of addressing cost concerns through rate adjustments, and profit margins related to recycling activities for an entity).
5. Whether suitable storage on or off-site is reasonably available for the material for the time period requested.
6. The good faith efforts made to find legitimate uses for the material in lieu of disposal in accordance with Oregon's waste management hierarchy.
7. Whether the proposed use is a legitimate use of the material (e.g., recovers resources, does not harm the environment).
8. The results of consultation with local governments or watershed representatives, including their recommendations regarding the request.
9. Other factors relevant to this decision.

Under solid waste rules, a source separated recyclable material collected or received for recycling that is sent for disposal does not count toward watershed or statewide recovery rates. DEQ will apply the solid waste rules to determine whether other approved alternative uses will count toward these recovery rates.

### Implementation:

This directive is effective immediately upon signing.

To successfully implement this directive, DEQ will (a) work collaboratively to help find reuse or recycling options for source separated recyclable materials, and (b) ensure that decisions under this directive are limited to exceptional circumstances and that the directive is consistently applied.

A team of DEQ regional technical assistants and headquarters staff will initially review any requests for alternative use of recyclables under this directive. The team will analyze the information provided by the applicant and may request additional information. DEQ will consult with local governments and watershed representatives and other interested parties as appropriate that may inform the decision (e.g. neighboring watersheds, recycling community).

The team will recommend action to the regional solid waste manager where the request originated. Recommendations will describe the specific materials and uses that are approved or denied, timeframes for the approval, and any other conditions to be imposed. Recommendations will also address the need to inform the public about the decision and any further action needed to address the flow of materials that cannot be recycled.

The regional manager will consult with other solid waste managers to ensure statewide consistency in implementation and will inform the requesting party in writing of DEQ's decision.

**Review Schedule:**

Normal review schedule

**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. DEQ may take action at variance with this policy.

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