Legal Issues
(or, It's Time to Update Your Plan!)

Best Practices for Biosolids Management

Oregon Association of Clean Water Agencies

March 9, 2017

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Overview

- State and federal case law on biosolids
- DEQ Enforcement
- Biosolids Management Plans – Need for Updates

Introduction – Biosolids Policy

OAR 340-050-0006

Policy

The Environmental Quality Commission (EQC) encourages the land application of treated domestic wastewater biosolids, biosolids derived products, and domestic septage which are managed in a manner which protects the public health and maintains or improves environmental quality. These *beneficial recyclable materials* improve soil tilth, fertility, and stability and their use enhances the growth of agricultural, silvicultural, and horticultural crops.

(emphasis added)

State and Federal Cases

- Ordinances prohibiting biosolids application
  - *City of Los Angeles et al. v. County of Kern* (Nov. 2016)
  - *Washington Dept. of Ecology v. Wahkiukum County* (Nov. 2014)
    - NACWA involvement in both

- Nuisance and other state claims
  - *Gilbert v. Synagro Central, LLC et al.* (Dec. 2015)

Case Law Con't

- Ordinance cases
  - Los Angeles prevailed at trial court in November 2016 – county ordinance violates state waste management act
  - Wahkiakum County's ordinance unconstitutional b/c it conflicts with state law
- Nuisance case
  - Farmer vs. farmer
  - Right to Farm Act ("normal agricultural operation")
    - Oregon's RTF found at ORS 30.930

DEQ Enforcement

- Ten enforcement actions since 1992
  - Four specifically for biosolids, others for septage
  - None since 2011
- Mainly third party contractors
- Types of violations:
  - Illegal disposal (septage)
  - Unable to meet permit conditions or plan requirements for pollutants/pathogens (biosolids)

Biosolids Management Plans - Urgency to Update?

- Plans and disposal sites are incorporated in permits by reference
  - "Provisions established in Department approved biosolids or domestic septage management plans shall be considered NPDES, WPCF, or Solid Waste Disposal permit conditions." OAR 340-050-0031(2)
  - "Land application site authorization letters are considered an integral part of the biosolids or domestic septage management plan. Provisions specified by the Department in site authorization letters, in accordance with a Department approved biosolids or domestic septage management plan, shall be considered *enforceable conditions* under the permitted source's NPDES, WPCF, or Solid Waste Disposal permit." OAR 340-050-0030(3) (emphasis added)

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Biosolids Management Plans - Urgency to Update?

- Changes to Plan or Site Authorization = Major Modification
  - Plan changes and new site authorizations not included in list of minor modifications
- Administratively extended permits
  - "If a completed application for renewal of a permit is filed with the Department pursuant to OAR 340-045-0030, the permit will not expire until final action has been taken on the renewal application." OAR 340-045-0040(2)
  - No modifications for administratively extended permits (per DEQ/EPA Memorandum of Agreement)

Biosolids Management Plans - Urgency to Update?

Administratively Extended Permit

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Loss of Biosolids Application Site

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Sending Biosolids to the Landfill

(e.g., not the EQC policy for biosolids…)

Questions?

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Hallstatt Malamutes, 2017

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