



BOARD OF COMMISSIONERS
Agenda Item Summary

Agenda Category: Public Hearing

Item No:

Date: November 24, 2020

Time Certain: 8:45 a.m.

Originating Department: Board of County Commissioners

Issue: Second and final hearing on proposed Ordinance # 93.00

Background: ORS Chapter 203 and 40 CFR Part 503 recognizes the authority of local government to impose more stringent requirements on the use or disposal of reclaimed water and biosolids in order to protect public health and the environment. It is the Board of County Commissioners' intent to be able to regulate the agricultural land application of reclaimed water and biosolids in the unincorporated territory of Klamath County in a manner that protects public health, ground and surface waters, agricultural markets, and sensitive wetlands and habitat areas. In order to ensure adequate protection of irreplaceable resources, including critical groundwater basins and agricultural land devoted to food production, this ordinance will provide local control and requires that the highest levels of safety be observed in the land application of reclaimed water and biosolids. The final Ordinance is attached.

Fiscal Impact: No fiscal impact

Recommended Motion: Hold the second and final hearing for discussion and the taking of public testimony (if any) on the final Ordinance. Fiscal impact: No fiscal impact.

DONE AND DATED this 24th Day of November, 2020.

Chair

Approved

Denied

Vice-Chair

Approved

Denied

Commissioner

Approved

Denied

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF ORDINANCE NO. 93.00,) ORDINANCE NO. 93.00
KLAMATH COUNTY CODE CHAPTER 413, LAND)
APPLICATION OF RECLAIMED WATER AND)
BIOSOLIDS)

WHEREAS, ORS Chapter 203 and 40 CFR Part 503 recognizes the authority of local government to impose more stringent requirements on the use or disposal of reclaimed water and biosolids in order to protect public health and the environment; and

WHEREAS, it is the Board of County Commissioners' intent to be able to regulate the agricultural land application of reclaimed water and biosolids in the unincorporated territory of Klamath County in a manner that protects public health, ground and surface waters, agricultural markets, and sensitive wetlands and habitat areas; and

WHEREAS, in order to ensure adequate protection of irreplaceable resources, including critical groundwater basins and agricultural land devoted to food production, this ordinance will provide local control and requires that the highest levels of safety be observed in the land application of reclaimed water and biosolids.

NOW, THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS ORDAINS:

Chapter 413, *Land Application of Reclaimed Water and Biosolids*, is hereby adopted to read as follows:

CHAPTER 413 CONTENTS

**CHAPTER 413
LAND APPLICATION OF
RECLAIMED WATER AND BIOSOLIDS**

- 413.010 Purpose.**
- 413.020 Authority.**
- 413.030 Definitions.**
- 413.040 Reclaimed Water and Biosolids Land Application Prohibitions**

- 413.050 Reclaimed Water and Biosolids Land Application Authorizations**
- 413.060 Penalties**
- 413.070 Severability**

DRAFT

CHAPTER 413
LAND APPLICATION OF
RECLAIMED WATER AND BIOSOLIDS

413.010 Purpose. It is the purpose and intent of this chapter to regulate the agricultural land application of reclaimed water and biosolids in the unincorporated territory of Klamath County in a manner that protects public health, ground and surface waters, agricultural markets, and sensitive wetlands and habitat areas. In order to ensure adequate protection of irreplaceable resources, including critical groundwater basins and agricultural land devoted to food production, this chapter provides local control and requires that the highest levels of safety be observed in the land application of reclaimed water and biosolids. This chapter is intended to supplement and to operate in conjunction with standards imposed on the land application of reclaimed water and biosolids by state and federal law and by the applicable rules, regulations, orders and requirements of the Oregon Department of Environmental Quality. Applicable state and federal statutes and regulations include, but are not limited to, ORS 454.695, 459.205, 468B.050, 468B.053, 468B.055, 468B.095, 215.246, 215.247, 215.249, 215.251, OAR Chapter 340 and 40 CFR Part 503, as currently enacted and subsequently amended.

413.020 Authority. This chapter is adopted pursuant to ORS Chapter 203. In addition, 40 CFR Part 503 recognizes the authority of local government to impose more stringent requirements on the use or disposal of reclaimed water and biosolids in order to protect public health and the environment.

413.030 Definitions. For purposes of this chapter, the following terms shall be defined as follows:

(1) "Active compost" means compost feedstock that is in the process of being rapidly decomposed and is unstable. Active compost is generating temperatures of at least fifty degrees Celsius (one hundred twenty degrees Fahrenheit) during decomposition and is releasing carbon dioxide at a rate of at least fifteen milligrams per-gram of compost per-day, or the equivalent of oxygen uptake.

(2) "Agricultural Land" means any land zoned exclusive farm use, or land used in the production of agriculture or livestock forage.

(3) "Applicator" means any person engaged in the land application of reclaimed water or biosolids.

(4) "Beneficial Purpose" means a purpose where recycled water is utilized for a resource value, such as nutrient content or moisture, to increase productivity or to conserve other sources of water.

(5) "Biosolids" means solids derived from primary, secondary, or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemically stabilize solids to the extent that they do not attract vectors. This term refers to domestic wastewater treatment facility solids that have undergone adequate treatment to permit their land application. This term has the same meaning as the term "sludge" in ORS 468B.095, and the term "sewage sludge" found elsewhere in OAR 340. Biosolids, as used in this chapter, includes composted material that contains material derived from sewage sludge and which fails to meet the standards specified for "biosolids derived products," as defined herein. Notwithstanding any other provision hereof, biosolids, as used in this chapter, specifically excludes those biosolids products that are packaged in a bag or container for routine retail sales through regular retail outlets, which products are primarily used for residential landscaping.

(6) "County" means the county of Klamath, State of Oregon.

(7) "Exceptional Quality Reclaimed Water or Biosolids" means domestic wastewater treatment facility effluent or solids containing trace pollutant concentrations which are below federal alternative pollutant limits recognized under 40 CFR §503.13(b)(3) that have been treated by a Class A pathogen reduction process recognized under 40 CFR §503.32(a) and one of the vector attraction reduction procedures established under 40 CFR §503.33(b)(1)–(8). Reclaimed water must be treated to a standard that allows for the application of the reclaimed water to food crops intended for human consumption. Solids are recognized as soil amendments which are acceptable for distribution and marketing to the public. If a conflict ever exists between the definition of "Exceptional Quality Reclaimed Water or Biosolids" as currently found in 40 CFR §503 or as defined by the Oregon Department of Environmental Quality as currently found in OAR Chapter 340, the more restrictive definition shall apply, so that the use is acceptable on lands producing crops for human consumption.

(8) "Biosolids Derived Products" means materials derived from composting domestic wastewater treatment facility solids or other processes, such as thermal drying, which result in a material which meets pollutant concentrations in 40 CFR §503.13(b)(3), the Class A pathogen requirements in 40 CFR §503.33(b)(1) to §503.33(b)(8). Biosolids derived products also include any soil amendments which, in part, contain biosolids meeting these criteria. Biosolids derived products are acceptable for distribution to the general public for immediate use.

(9) "Existing operator" means a person who on the effective date of this chapter is operating pursuant to current waste discharge requirements for the land application of reclaimed water or biosolids as issued by the Oregon Department of Environmental Quality.

(10) "New operator" means any person who on the effective date of this chapter is not yet operating pursuant to current waste discharge requirements for the land application of reclaimed water or biosolids as issued by the Oregon Department of Environmental Quality.

(11) "Land application" means the spraying or spreading of reclaimed water and biosolids onto the land surface, the injection of reclaimed water and biosolids below the surface of the land, or the incorporation of reclaimed water and biosolids into the soil so that it can either condition the soil or fertilize crops or vegetation grown in the soil.

(12) "Land Owner" means the owner or owners of land upon which the reclaimed water or biosolids are proposed to be applied or are being applied.

(13) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, city, county or other political subdivision, or any other group or combination acting as a unit.

(14) "Reclaimed water" means water that has been used for municipal purposes and after such use has been treated in a treatment works as defined in ORS 454.010 (Definitions for ORS 454.010 to 454.040), and that, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur. For purposes of this ordinance, reclaimed water also includes agricultural and industrial process water as those terms are used in ORS 215.246.

(15) "Recycled Water" means treated effluent from a wastewater treatment system which as a result of treatment is suitable for a direct beneficial purpose. Recycled water is reclaimed water for purposes of this ordinance.

(16) "Wastewater" under this ordinance means the wastewater or sewage carried human or animal waste from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "wastewater" within the meaning of this ordinance.

(17) "Wastewater treatment facility" means a facility that has been permitted by the State of Oregon and/or the County, or a city within the county, to conduct wastewater treatment operations, resulting in generation of reclaimed water or biosolids as a by-product thereof.

413.040 Reclaimed Water and Biosolids Land Application Prohibitions.

(1) The land application of reclaimed water or biosolids to agricultural land located in the unincorporated area of Klamath County, is hereby prohibited, except as expressly authorized under the provisions of Section 413.050 herein.

(2) The discharge of reclaimed water or biosolids to surface waters or surface water drainage courses located within the unincorporated area of the county, including wetlands and waterways, is hereby prohibited.

413.050 Reclaimed Water and Biosolids Land Application Authorizations.

(1) The prohibitions set forth in Subsection (1) of the preceding Section 413.040 do not apply to exceptional quality reclaimed water or biosolids, as defined herein, provided that land application of exceptional quality reclaimed water or biosolids:

- (a) Shall be subject to waste discharge requirements and any other applicable regulatory provisions of the State of Oregon or Klamath County.

(2) The prohibitions set forth in Subsection (1) of the preceding Section 413.040 do not apply to biosolids derived products, as defined herein, provided that any land application of exceptional quality compost after the effective date of this chapter:

- (a) Shall be subject to waste discharge requirements and any other applicable regulatory provisions of the State of Oregon and Klamath County.

(3) From the effective date of this chapter, no person may apply any reclaimed water or biosolids to the agricultural lands of the unincorporated areas of Klamath County unless that person meets the following requirements:

- (a) Existing operators may continue to land apply reclaimed water or biosolids if the existing operator's operations are limited to the specific site(s) for which waste discharge requirements have been previously approved, and for which a permit has been previously issued by the State of Oregon, or the county, as the case may be (except as to land that is exempt from county zoning and land use requirements), prior to the effective date of this chapter, or;
- (b) New operators may land apply reclaimed water or biosolids for an operation with 1500 or fewer subscribers, customers, patrons, etc., at a quality lower than required herein, if the new operator obtains the proper permits and approval by the State of Oregon, or the county, as the case may be (except as to land that is exempt from county zoning and land use requirements).

413.060 Penalties. Failure to comply with the provisions of this Chapter shall be subject to fines of up to \$720.00 for a one-time occurrence, and fines of not more than \$1,000.00 for a continuing, or repeated offense. Every violation of this chapter shall be construed as a separate offense for each day during which such violation continues and shall be punishable as provided in this section. This provision will be enforced in accordance with Chapter 800, Uniform Civil Violation Procedure of the Klamath County Code.

413.070 Severability. If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and shall not affect the validity of the remaining portion thereof.

This ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

DONE and DATED this ____ day of November, 2020.

KLAMATH COUNTY BOARD OF COMMISSIONERS

CHAIR

VICE CHAIR

COMMISSIONER

APPROVED FOR LEGAL SUFFICIENCY:

ATTEST:

Marcus Henderson
Klamath County Counsel

Recording Secretary

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