

State of Oregon
Department of Environmental Quality

Date: April 6, 2011

To: Solid Waste Program Staff & Managers

From: Beneficial Use Rules Implementation Team

RE: BENEFICIAL USE DETERMINATIONS – GUIDANCE ON PUBLIC NOTICE & PARTICIPATION

Background

The new Beneficial Use of Solid Waste Rules (Oregon Administrative Rules (OAR) 340-093-0260 through 0290 and OAR 340-097-0120(2)(f)), that were adopted by the Oregon EQC on April 30, 2010, do not *require* public notice or participation for beneficial use determinations. The rulemaking team anticipated a range of beneficial use proposals that, in most cases, would not warrant public notice or participation prior to approval. In addition, OAR 340-093-0290 (8) of the adopted rules does require DEQ to “. . . *publish a list of all case-specific beneficial use determinations.*” This list is already published on DEQ’s Website and the first approvals are in place there.

Nonetheless, the rulemaking team recognized that there will undoubtedly be times when a beneficial use proposal will generate strong public interest and that DEQ may want to involve the public before making a final decision on a beneficial use determination application. Discerning when that public interest will occur, and then providing the opportunity for an appropriate level of public notice and participation in the approval process, will require a proactive effort on the part of DEQ Staff and Management. The following discussion raises some of the issues staff and management may want to consider in assessing whether it is appropriate to involve the public before making a final decision on a beneficial use determination application, and makes some recommendations for when public participation may be warranted. This discussion is not intended to limit agency discretion in any way, or to provide mandatory procedures or decision making criteria.

Beneficial Use Determinations – Guidance on Public Notice & Participation

Standing Beneficial Uses are listed in OAR 340-093-0270(5).

A person may manage solid waste in accordance with a standing beneficial use without contacting DEQ’s Solid Waste Program for approval if the person complies with the requirements of OAR 340-093-0270. No public notice or participation is generally recommended for these standing uses since public involvement was already provided by the Beneficial Use External Stakeholder Group in the development and review of these Standing Beneficial Uses and by the public during the beneficial use rulemaking public comment period.

Beneficial Use Authorizations classified as Tier I through Tier III are listed in OAR 340-093-0290.

During rulemaking, DEQ categorized beneficial use authorizations in ascending tiers in order to distinguish between increasing levels of environmental and public health significance. These ascending tiers also reflect the increasing complexity of beneficial use proposals, that is, the amount of information needed in an application and the level of DEQ Staff effort and time required to review an application.

BENEFICIAL USE DETERMINATIONS – GUIDANCE ON PUBLIC NOTICE & PARTICIPATION
Page 2 of 3

Tier I represents beneficial use authorization actions that are straight forward and have low environmental and public health significance and therefore should present little need, in most cases, for public notice and participation in their review and authorization process.

Tier II represents beneficial use authorization actions that involve hazardous substances or land application, with higher environmental and public health significance, and there could be a greater public interest in these proposals.

Tier III may involve a new or untested process, and therefore, may also be of interest to the public.

The following describes the public notice and participation recommendations for DEQ Solid Waste Program Staff and Managers:

Standing Beneficial Uses – No additional public notice or involvement is recommended since DEQ obtained public input on the development of the table of standing beneficial uses as part of the rulemaking process and the table was part of the rule package that went out to the general public for comment.

Tier I – No recommended public notice prior to reviewing or approving a Tier I Beneficial Use Determination. DEQ Staff, however, should be prepared to propose, and the Manager to consider, a public notice and participation process on a proposed approval, if there are case specific reasons to do so.

Tier II – Once a Tier II application is considered to be complete under OAR 340-093-0290(2) and (4), and DEQ Staff have prepared a Beneficial Use Determination Evaluation Report, it is recommended that DEQ Staff evaluate what, if any, public involvement may be appropriate by examining the following considerations:

- (A) Determine whether the proposed beneficial use determination will be location specific or generic (multiple locations or customers);
- (B) If the proposed beneficial use determination is location specific, assess the extent and depth of public interest by using information already available or known (e.g. a historic level of interest in a particular industry's waste management practices, a new beneficial use being proposed for a previously landfilled material, a proposed beneficial use that is in close proximity to residents, or a proposed use that is located in an environmental justice community, etc.). Other actions may include talking with: neighbors of the proposed use area; representatives of environmental groups; DEQ's environmental justice citizen advocate; the State Environmental Justice Task Force; local governments; and, other contacts recommended by these groups.
 - a) If public interest is found to be low, public notice prior to approving the Tier II application is not recommended (Manager Final Decision).
 - b) If DEQ Staff are unable to determine the level of public interest, but believe there is potential for some public interest, Staff may propose the beneficial use determination application and evaluation report go out for a 14 - 30 day public comment period. If DEQ learns that there is public interest through that public comment process, or if DEQ has

BENEFICIAL USE DETERMINATIONS – GUIDANCE ON PUBLIC NOTICE & PARTICIPATION
Page 3 of 3

already determined that public interest in the proposed project is moderate, or likely to be moderate, DEQ may want to hold an informational meeting to describe and discuss the proposal with the interested public. No further public notice is recommended unless it is determined from the informational meeting that there are case specific reasons to do more (Manager Final Decision).

- c) If public interest is found to be high, DEQ may want to consider developing a specific public notice and participation plan in consultation with: neighbors of the proposed use area; interested groups; DEQ's environmental justice citizen advocate (when appropriate); and, DEQ's Regional Communications and Outreach Public Affairs Specialist. This plan may recommend an initial informational meeting or meetings, a public comment period, and, in rare cases, a public hearing. If there is public participation, it is recommended that DEQ consider all information gathered in that process before making a final decision on a proposed beneficial use determination and that all comments be included in the record of information DEQ considers when acting on a proposal.

- (C) If the proposed beneficial use determination is generic (multiple locations or customers), it is recommended that DEQ assess the extent and depth of public interest. This could be done, for example, by talking with: representatives of environmental groups; the State Environmental Justice Task Force; local governments; and, other contacts recommended by these groups.

Once the level of public interest is assessed, the suggestions outlined for low, moderate or high levels of public interest recommended under Tier II (B) apply equally here.

Note: Except in rare cases, if DEQ denies a location specific or generic Beneficial Use Determination Application, there should be no need for public notice and participation (Manager Final Decision).

Tier III – Once a Tier III application is considered to be complete under OAR 340-093-0290(2) and (4), and DEQ is ready to begin the process of evaluating the proposed demonstration, conducting the additional research or setting up the pilot project for the requested Tier III beneficial use, DEQ may want to assess the extent and depth of public interest in the proposed project. This could be done by talking with: neighbors of the proposed use area (if applicable); representatives of environmental groups; DEQ's environmental justice citizen advocate; the State Environmental Justice Task Force, local governments (if applicable), and other contacts recommended by these groups.

Once the level of public interest is assessed, the suggestions outlined for low, moderate or high levels of public interest recommended under Tier II (B) apply equally here.

After the demonstration, research, or pilot project is completed, DEQ should consider providing public notice of the proposed approval or denial, if there was moderate or high public interest in the application (Manager Final Decision).