

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

Beneficial Use of Solid Waste Rulemaking

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

Yes, the proposed rulemaking is different from federal requirements. The federal Resource Conservation and Recovery Act, Subtitle D, only applies to the management of municipal solid waste landfills. There are no federal requirements that address other solid waste management activities, except for federally designated hazardous waste under the Resource Conservation and Recovery Act, Subtitle C. Hazardous waste is excluded from the state definition of solid waste, and therefore is excluded from this rulemaking.

The proposed rules will amend existing state solid waste rules to include provisions for establishing beneficial use of solid waste criteria, reviewing applications, and issuing beneficial use determinations. State authority for this rulemaking derives from Oregon Revised Statutes 459, Solid Waste Management.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

The purpose of these rules is to establish a process for Oregon Department of Environmental Quality (DEQ) review of proposals to use solid wastes beneficially as an alternative to disposal. Two examples are using scrap asphalt roofing shingles as a component of asphalt pavement for roads and using dredged sediments for fill materials on construction projects. Currently, DEQ does not have an appropriate process or funding mechanism for responding to and authorizing requests by generators to use wastes beneficially. The rules will allow DEQ to issue beneficial use determinations (BUDs) rather than disposal permits for appropriate uses. Beneficial use of solid waste conserves energy, reduces the need to extract resources, reduces demand for disposal facilities, and promotes sustainability.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did the Department consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

One alternative is to continue using short term disposal permits or staff letter approvals or rejections to respond to beneficial use proposals. However, these mechanisms do not provide a sound regulatory basis for decisions under Oregon law, and stakeholders have expressed concerns that the current review process is cumbersome and time-consuming. The beneficial use rulemaking will provide a more streamlined alternative, save resources, and make it easier for businesses and other persons to understand and obtain the necessary approvals to use wastes beneficially.

DEQ has reviewed how other states regulate the beneficial use of solid waste. There is no standardized approach that is used consistently among the states. While other state approaches have helped inform this rulemaking, the rules have been formatted to complement existing Oregon rules, based on the types of industries and wastes produced in Oregon, and local industry waste management practices.

Stakeholders have commented that the beneficial use of solid waste rules should be no more stringent than the federal requirements for recycling of hazardous waste, and the U.S. Environmental Protection Agency recently posted revisions to hazardous waste recycling regulations in the Federal Register (73 FR 64668). However, DEQ has not adopted these new federal requirements, nor does DEQ consider following the federal recycling requirements for hazardous waste to be an acceptable approach for the beneficial use of solid waste in Oregon. Beneficial use regulations should be tailored to the types of wastes and waste management practices experienced and encouraged under state law in Oregon.