

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Beneficial Use of Solid Waste Rulemaking

Rules for DEQ approval of proposals to beneficially
use solid wastes rather than dispose of them

1. Explain the purpose of the proposed rules.

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 as fill material on construction projects. 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.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes No

a. If yes, identify existing program/rule/activity:

The DEQ Solid Waste Program, through Oregon Administrative Rules (OAR) 340-093-0060 and 340-093-0070, requires that solid waste disposal permit applications include a statement of compatibility with the local comprehensive plan and zoning - a Land Use Compatibility Statement (LUCS).

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes No (if no, explain):

The existing land use compliance procedures address issuance of solid waste disposal facility permits and require a LUCS before DEQ issues those permits. The proposed beneficial use rules authorize DEQ to approve the use of solid waste in instances where a solid waste disposal facility permit is not appropriate. Beneficial Use Determinations (BUDs) are a new, alternative

approach to disposal permits, and the LUCS would be unnecessary or inappropriate for many BUDs.

For example, DEQ may issue BUDs for using ground-up asphalt paving as a component of new asphalt paving and for using wood waste for hog fuel. A LUCS would not be relevant for such uses.

In other instances, DEQ may approve BUDs for the use of solid wastes as a replacement for virgin materials for fill in building construction, road projects, or similar land applications. In these cases, DEQ will require a risk screening for hazardous substances to ensure an approved use adequately protects public health and the environment. For example, DEQ may evaluate whether spent foundry sand can be safely used as fill material on industrial versus residential zoned property. The risk screening will consider potential exposure pathways for present and future land uses where the material may be applied. As noted below, DEQ will require documentation of land uses for this screening, but a LUCS documenting that the proposed construction fill, road base material, or other proposed use is compatible with local comprehensive plan and zoning would not be appropriate or adequate for this purpose.

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination

- 3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Before issuing a BUD, DEQ must determine that the proposed beneficial use of materials is protective of human health and the environment and include conditions for such use as needed.

BUDs that involve land application of materials will be evaluated against risk-based screening criteria to ensure that air, land, and water resources and public health are adequately protected. Those screening criteria consider potential exposure pathways for present and future land uses. For BUDs involving land applications that may need to be restricted to certain land uses (e.g., fill for commercial vs. residential areas), DEQ will require the applicant to document the current and reasonably likely future land uses to complete the screening. This documentation may include, but is not limited to, checking in with the local land use jurisdiction and acknowledged comprehensive plans. For example, materials used on road projects may not require a description of actual land use, whereas, materials used as construction fill for commercial or industrial property may require land use information including proximity to any sensitive ecological environments.