

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Title of Proposed Rulemaking	Beneficial Use of Solid Waste, OAR 340-093-0260, 340-093-0270, 340-093-0280, 340-093-0290
Statutory Authority or other Legal Authority	ORS 459.045, 459.215, 459.235, 459.A025, 468.065
Statutes Implemented	ORS 459.045, 459.215, 459.235
Need for the Rule(s)	Oregon does not have an appropriate process for responding to or authorizing requests for the beneficial use of solid wastes. Adopting beneficial use rules will clarify the Department of Environmental Quality's (DEQ) authority and provide criteria for reviewing proposed beneficial uses of solid waste. The proposed rules will also authorize certain beneficial uses by rule.
Documents Relied Upon for Rulemaking	<ul style="list-style-type: none"> • ASTSWMO 2006 Beneficial Use Survey Report (Association of State and Territorial Solid Waste Management Officials, November 2007) http://www.astswmo.org/publications_solidwaste.htm. • State Models for Beneficial Use (DEQ 8/4/08) http://www.deq.state.or.us/lq/sw/disposal/beneficialusemeetings.htm • Solid Waste Reviews (DEQ 9/9/08) http://www.deq.state.or.us/lq/sw/disposal/beneficialusemeetings.htm
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	<p><i>Proposed Rules</i></p> <p>DEQ is proposing rules to encourage and regulate beneficial uses of solid waste as an alternative to disposal. Beneficial use typically involves using an industrial waste in a manufacturing process to make a product, as a substitute for fill materials, or to amend soils. Examples include using spent foundry sand from steel manufacturing to replace virgin sand in concrete, using scrap asphalt roofing shingles as a component of asphalt pavement, and using dredged sediments for construction fill. Using solid waste beneficially conserves energy, reduces the need to extract resources, reduces demand for disposal facilities, and promotes sustainability.</p> <p>The proposed rules will establish a process and criteria for DEQ review and approval of proposals to use solid wastes beneficially. Currently, DEQ does not have an appropriate process for evaluating these requests. Under existing rules, waste generators generally either request DEQ to issue a specific solid waste disposal permit to cover a proposed use or dispose of the wastes in permitted solid waste landfills. The proposed rules will allow DEQ to issue beneficial use determinations (BUDs) that will operate in lieu of disposal permits for approved uses.</p> <p>The proposed rules will also authorize by rule certain well established beneficial uses of solid waste that have low potential for environmental impact and in some cases have been endorsed by U.S. EPA or other states. These standing beneficial uses identified in the rule will not require DEQ review or approval.</p>

The proposed rules include fees to cover DEQ's costs of reviewing proposed beneficial uses that are not standing beneficial uses. Proposed fees are tiered based on the estimated staff time required to review different types of beneficial use applications and reports. The proposed fees range from \$500 to \$5,000 as follows:

- A Tier One beneficial use determination: \$1,000;
- A Tier Two beneficial use determination: \$2,000;
- A Tier Three beneficial use determination: \$5,000;
- Annual extension to a demonstration project authorization: \$1,000;
- The review of an annual or other report: \$500.

These fees are comparable to fees charged by other states for beneficial use applications.

Fiscal and Economic Impacts

If adopted, the proposed rules will cover any person or entity who generates solid waste that may currently require disposal under a solid waste disposal permit and who proposes to use those wastes beneficially. Waste generators may include individuals, large and small businesses, organizations, local and regional governments, state and federal agencies, and any other entities.

DEQ expects the proposed beneficial use rules to reduce costs for DEQ as well as most generators of solid waste covered by the proposed rules. The proposed rules are designed specifically for beneficial use determinations and will make the process for approving the beneficial use of wastes more predictable, reliable, and efficient for everyone involved.

Waste generators that use waste beneficially will avoid the costs of disposal at a permitted landfill or of obtaining a separate disposal permit for a proposed use and managing wastes under that permit. They will incur costs for a BUD, but DEQ expects those costs to be lower than costs for disposal in most cases. For standing beneficial uses authorized in the proposed rules, waste generators will simply document that they meet the criteria for the standing use and maintain records of that use. For uses that are not standing beneficial uses, the waste generator will need to apply for a BUD and pay the proposed fees. In most cases, DEQ expects the costs of preparing the application for a BUD to be lower than the application costs for a disposal permit because the application process for BUDs will require less effort. Waste generators may also incur costs for ongoing management of wastes under a BUD, including record keeping and for some uses, monitoring and annual reporting to DEQ. To offset costs, some generators may derive revenue from the sale of materials for beneficial use. Finally, although the rules are designed to promote the beneficial use of materials, generators may continue to dispose of wastes under existing rules. They are not required to obtain a BUD. Most businesses that choose to beneficially use a solid waste under the proposed rules will likely see economic savings as a result.

The proposed rules may provide economic benefits to the public as well. The beneficial use of wastes as substitutes for more costly materials in manufactured products or construction fill or for other purposes may lower the costs of producing those products or projects. For example, using waste asphalt roofing shingles as a substitute for aggregate in asphalt reduces costs for new asphalt pavement. In some cases, those costs savings may be passed along to subsequent purchasers and the public.

The proposed rules may result in fewer tons of waste being disposed at permitted municipal and industrial solid waste landfills. These landfills will lose the disposal fees that would have been paid on any tons diverted, along with any associated profits. DEQ will also lose the solid waste tipping fee revenue that would have been generated from disposal at these landfills, and Metro may lose fee revenue from wastes diverted from Metro area transfer stations. Potential losses in disposal fee revenue to landfills, DEQ, or Metro depend on the waste streams diverted and are difficult to estimate. Although some wastes, such as asphalt shingles or construction and demolition waste, will likely be diverted, many of these and other wastes that will be used beneficially under the proposed rules are not currently being disposed in permitted landfills.

Impacts on the General Public	Impacts on individuals that generate waste and want to use those wastes beneficially in lieu of disposal are described in the <i>Overview – Fiscal and Economic Impacts</i> above. Otherwise, impacts on the general public are expected to be minimal, as described in the <i>Overview - Fiscal and Economic Impacts</i> above.	
Impacts to Small Business (50 or fewer employees – ORS183.310(10))	<p>Small businesses most likely to be affected by these rules are small industrial operations, such as wood waste or construction/demolition operations, that generate solid waste and want to use those wastes beneficially in lieu of disposal. The potential impacts on these small businesses are described in the <i>Overview – Fiscal and Economic Impacts</i> above. As noted, businesses are not required to use wastes beneficially, so those that choose do to so under the proposed rules will likely realize economic savings.</p> <p>Impacts on other small businesses are expected to be minimal, as described for the general public in <i>Overview - Fiscal and Economic Impacts</i> above.</p>	
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	Unknown.
	b) Types of businesses and industries with small businesses subject to the proposed rule	Small industrial operations, such as wood waste or construction/demolition operations, that generate solid waste and want to use that waste for beneficial uses versus disposal.
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	Businesses choosing to beneficially use wastes under the proposed rule must keep records of the solid wastes and associated beneficial uses. In some cases, record keeping may be no more than a business would already maintain. In other cases, the proposed rules may require additional laboratory testing to characterize wastes or demonstrate no adverse impacts to human health or the environment from the beneficial use. Certain beneficial uses may also require ongoing monitoring and reporting to DEQ.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	Applying for and managing wastes under a BUD may require additional administration beyond that required for disposal. Whether any additional equipment or labor may be involved will depend on the type of waste and how it will be used beneficially.
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	DEQ did not seek out small businesses in developing this rulemaking because they are not likely to be significantly impacted. Industry representatives, including a representative of Associated Oregon Industries, participated in stakeholder meetings and provided comments on the draft rules.
Impacts on Large Business (all businesses that are not “small businesses” under ORS183.310(10))	<p>Requests DEQ receives for approval to use wastes beneficially most often come from large businesses that generate large volumes of industrial solid wastes and seek significant cost savings by reducing the need for disposal and associated fees. Such industries may include steel foundries, wood products manufacturers, and construction/demolition contractors. The potential impacts on these large businesses that generate waste and want to use those wastes beneficially in lieu of disposal are described in the <i>Overview – Fiscal and Economic Impacts</i> above.</p> <p>As noted in <i>Overview – Fiscal and Economic Impacts</i> above, landfills that currently receive wastes that are diverted from disposal under the proposed rules will lose disposal fee revenue from those wastes.</p>	
Impacts on Local Government	The potential impacts on local governments that generate wastes and want to use those wastes beneficially in lieu of disposal are described in the <i>Overview – Fiscal and Economic Impacts</i> above. In addition, local governments may see modest cost savings from the use of waste materials or products derived from waste materials for road construction or other	

	development projects.
Impacts on State Agencies other than DEQ	The potential impacts on state agencies that generate wastes and want to use those wastes beneficially in lieu of disposal are described in the <i>Overview – Fiscal and Economic Impacts</i> above. Other state agencies most likely to be impacted are the Oregon Department of Transportation (ODOT) and Division of State Lands (DSL). The impacts would be positive for both. ODOT may be able to use waste materials or products derived from waste materials for road construction projects, resulting in a net cost savings. DSL may apply royalties to management of sediments dredged from waters of the state and used beneficially in upland areas as fill material or for other purposes, resulting in fees paid to the agency for dredging projects.
Impacts on DEQ	The proposed rules provide a much more efficient process for DEQ’s review of requests to use wastes beneficially and establish fees designed to cover DEQ’s costs. Currently, DEQ reviews such requests as applications for short-term disposal with a \$500 fee, which does not cover DEQ’s costs, or in some cases without charging fees. The solid waste program has absorbed the uncovered review costs using the tipping fee on disposal at solid wastes landfills. To the extent the proposed rules divert wastes streams from disposal at permitted solid waste landfills, the solid waste program will see a reduction in revenue from the tipping fee charged for such disposal.
Assumptions	The key assumptions are that (1) the beneficial use of solid wastes is preferable to disposal, and (2) for most generators, applying for and managing a solid waste for a beneficial use under the proposed rules will cost less than disposal and provide an economic incentive to use waste beneficially.
Housing Costs	DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
Administrative Rule Advisory Committee	In developing the proposed rules DEQ held four public meetings with stakeholders, maintained a mailing list and web site updating interested parties on the rule development process, provided draft rules to stakeholders for review and comment, and consulted with individual industries (e.g., wood products, steel foundries).

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Date _____

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Date _____