

Early Stakeholder Outreach — Beneficial Use Regulatory Program Development

Beneficial Use Rules Development Concepts (Updated May 24, 2013)

Note: Updated May 2013 concepts are shown in grey highlight. A few key new concepts here and in the draft conceptual rules include:

- Use of the term “select waste” to replace industrial byproduct. Select waste is a broader term to be more inclusive.
- An expansion of exclusions.

Ohio EPA’s Division of Materials and Waste Management and Division of Surface Water are developing rules for the beneficial use of select waste and are seeking additional stakeholder input on concepts regarding rules organization, implementation and monitoring. Some updated rule concepts are listed and briefly described below.

I. **Basis for beneficial use rules.** Concepts proposed herein are dependent on how key terms are defined and considered. Below are some key **Definitions** being considered for those terms forming the basis of the proposed beneficial use program:

- **Beneficial Use** means the legitimate use of a select waste as an ingredient or product or contributes to a manufacturing process or product that does not constitute disposal or cause pollution of any waters of the state.
- **Generator** is the person who initially generates a select waste.
- **Distributor** means a person that allocates a select waste to another person.
- **End User** means a person who owns the property on which a select waste is beneficially used.
- **Select Waste** means a solid waste, industrial waste, or other waste specifically identified for properties necessary or preferred for beneficial use.

II. **Applicability and Exclusions.** Ohio EPA is considering the concept that beneficial use of a select waste be regulated under these new rules unless it is excluded by rule. For example, use as an alternative material for composting would not be covered under the beneficial use chapter, as composting is covered under Ohio Administrative Code Chapter 3745-560.

III. **Prohibitions.** Ohio EPA is considering that the following not be authorized as beneficial uses under the new rules:

- Placement of a select waste that results in an unpermitted discharge to waters of the state;
- Beneficial use of a select waste that is harmful to human health or the environment or that creates a public nuisance;

Ohio EPA is considering clarifying that wastes accumulated or stored in lieu of or prior to being recycled, reused or beneficially used remain wastes until they are recycled, reused, or beneficially used.

IV. **General Requirements.** Ohio EPA is considering including language clarifying that beneficial uses of a select waste must:

- Comply with all applicable federal, state and local laws;
- Be authorized by one of the mechanisms authorized by rule, which might include pre-approval by rule, approval via a general permit or approval through an individual permit;
- Conform to best management practices, accepted engineering standards or agronomic practices.

V. **Approvals for Beneficial Use.** Ohio EPA is considering a three-tiered approach for beneficial use approvals. The first tier would consist of pre-approved uses authorized in rule. The second tier would consist of select waste being evaluated and approved under a general permit. The third tier would consist of individual permits for industrial byproducts not qualifying for a general permit or for which one has not yet been developed. How these tiers might be applied is described below.

Tier 1: Pre-Approval

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Ohio EPA is considering preapproving beneficial use of industrial byproducts in the following products:

- Asphalt
- Asphalt Concrete
- Cement
- Cement Concrete
- Chip and Seal Pavement
- Drywall
- Flowable Fill
- Glass
- Grout

The Agency is still open to the concept of pre-approved beneficial use. However, stakeholder discussions have focused on select wastes used as ingredients in certain construction products that are placed on the land.

Out of the materials previously listed in the tier 1 pre-approved list, there evolved a list of construction products that are placed on the land. These construction products use various types of select wastes as ingredients. These construction products are subjected to well-established markets dictated by significant engineering and contractual construction material specifications. The updated concept is to handle this form of beneficial use as exempted from the beneficial use chapter to clarify the intent that use of select wastes as ingredients in these types of construction products have no additional obligation under the beneficial use program.

Tier 2: General Permit

Ohio EPA is considering use of a general permit for the beneficial use of select wastes. General permits would be used for those select wastes and/or uses that are not excluded or need characterization, but for which there is enough information in the scientific literature that select waste characterization and use specifications can be developed specific to the select waste and included in the general permit. Ohio EPA could develop rules governing use of general permits which might include the following:

- To obtain coverage under a general permit, an applicant would need to submit the following to be a permittee:
 - Notice of intent indicating voluntary compliance with the terms and conditions of the general permit;
 - A copy of the materials characterization plan and analytical results as required by rules and the general permit;
 - An application fee.
- The Director could deny coverage under the general permit due to any of the following:
 - The beneficial use is proposed in a drinking water source protection area for a community public water system using ground water, within 500 feet of a well providing potable drinking water for human or livestock consumption, within an emergency management zone, or at a location where beneficial use of the given material may endanger human health or the environment;
 - The beneficial use is to construct facilities used to treat, store, or convey potable water;
 - There are unresolved enforcement actions against the applicant.
- Expiration criteria for general permits would be in the permits, and suspension or revocation of coverage could occur.

Tier 3: Individual Permit

Ohio EPA is considering using individual permits for the beneficial use of select wastes. Individual permits would be used for those select wastes and/or uses that are not excluded or covered under an existing general permit or that no longer qualify for a general permit but might still be appropriate for beneficial use on a case by case basis. For individual permits, Ohio EPA is considering requiring an application that includes the following:

- A description of the select waste and the process through which it is generated.
- A description of the proposed beneficial use, the estimated volume to be used, the location of the use, and the expected chemical characteristics of any discharge;
- A characterization plan and results of initial and subsequent characterization;
- An application fee.

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Ohio EPA is also considering the following concepts related to individual beneficial use permits:

- Notices of deficiency could be sent, requiring completion of the application or submission of additional information;
- The Director could require deed restrictions and setbacks from waters of the state;
- Individual permits would be effective for up to 5 years.
- The Director could deny individual permits for reasons similar to those listed above under general permits and could suspend or revoke individual permits.

VI. **Select Waste Characterization.** Ohio EPA considers proper characterization as essential for evaluating a select waste's potential beneficial use. Any characterization requirement should be flexible to accommodate select wastes not yet considered for beneficial use. Ohio EPA is considering creating a rule specifying how to characterize select wastes, which would require generators to develop and implement a characterization and analysis plan for each select waste. Ohio EPA is also considering specifying that the Director can require characterization of select waste being used under a pre-approved use if there is reasonable cause to believe that there is a threat to human health or and the environment.

The characterization and analysis plan might be based on standard sampling, processing and analytical methodology, such as those found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, also known as SW-846, and allowing for demonstrated generator knowledge.

VII. **Distribution and use of a select waste.** Ohio EPA is considering requiring information be provided by the permittee when distributing a select waste to another person for beneficial use. Such information might include a copy of the materials characterization plan, any approved uses and certification of compliance with the general permit.

Ohio EPA is also considering requiring that the permittee provide additional information to the end-user of the select waste upon the request of the end user.

VIII. **Record keeping and reporting.** The Agency is also considering requiring annual reports by a permittee. In response to stakeholder's concerns about the resources expended to manage and report data, Ohio EPA is carefully considering the need for annual reporting of information such as quantities and types of select wastes beneficially used and how they were used. Ohio EPA is considering including requirements specifying which documents must be kept on file to demonstrate compliance and for how long.