

Early Stakeholder Outreach Beneficial Use Regulatory Program Development

Why is the Agency seeking early stakeholder outreach?

Ohio EPA's Division of Materials and Waste Management (DMWM) and Division of Surface Water (DSW) are seeking additional early stakeholder input on an approach to promote responsible and beneficial use of industrial byproducts. The approach described here was developed in consideration of earlier comments received through outreach from 2006 related to developing a regulatory program for beneficial use of industrial byproducts in Ohio.

This early stakeholder outreach effort is an additional step added by Ohio EPA in response to Executive Order 2011-01K, to ensure stakeholders are brought into the review process as early as possible. This additional request for stakeholder input allows for early feedback and information sharing before rule language has been developed by the Agency.

Why develop a regulatory program for beneficial use?

There is increasing interest in beneficially using industrial byproducts currently being disposed in landfills. DMWM and DSW are suggesting the creation of a regulatory program to manage these industrial byproducts more sustainably. A beneficial use program may offer the following benefits:

- Provide byproduct generators with a science-based protocol for evaluating their byproducts.
- Assure potential users of the safety of these materials.
- Reduce disposal costs for generators.
- Provide sources of raw materials for end users.
- Extend the capacity of landfills and conserve resources.
- Make byproducts resources instead of waste.

What is beneficial use and what are industrial byproducts?

In general terms, beneficial use is considered the use of industrial byproducts to replace or supplement a raw material or competing product. Industrial byproducts generally refer to residual materials that could meet the regulatory definition of solid waste or industrial waste or the definition of waste in different regulatory programs. The beneficial use program would not change or replace existing beneficial use programs established in waste-specific reuse rules such as hazardous waste, scrap tires, compost, sewage sludge and clean hard fill.

What is being suggested?

DMWM is suggesting that beneficial use rules be created and organized into their own new program chapter.

The attached document, titled *Beneficial Use Rules Development Concepts*, contains a conceptual framework for the program being proposed by DMWM and DSW. The concepts include: who is required to obtain authorizations and permits; the authorization (permitting) structure; and characterization of industrial byproducts, among others. Please refer to the attachment for a brief overview of the concepts for which input is requested.

Who would be regulated by this new program?

The new regulatory program would only apply to those wishing to beneficially use industrial byproducts.

What is the rulemaking schedule?

DMWM and DSW will evaluate feedback and facilitate additional stakeholder engagement to further develop concepts. DMWM and DSW will then prepare a draft version of rules for interested party review.

Early Stakeholder Outreach for the Beneficial Use Rules

After incorporating input received from interested parties, Ohio EPA will start the rules filing process required by the Joint Committee on Agency Rule Review (JCARR). Visit JCARR's website for meeting dates and agenda items at <https://www.jcarr.state.oh.us/>.

What stakeholder input is the Agency seeking?

The Agency is seeking stakeholder input on the proposed concepts included in the attachment. General comments and specific factual information are welcome. When reviewing the concepts please consider the following:

- Is the general regulatory framework proposed the most appropriate framework? Is there any alternative framework that the Agency should consider?
- Are there options for improving a concept?
- Are there any considerations that should be taken when developing a specific concept?
- Is there any information or data the Agency should be aware of when developing concepts or rule language for a concept?

In addition, the Agency wants to hear from stakeholders who may be impacted by the new program. Ohio EPA is specifically asking for stakeholders to identify the following:

- Would this regulatory program have a *positive* impact on your business? Please explain how.
- Would this regulatory program have an *adverse* impact on your business? If so, please identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance).

What should I consider as I prepare my comments?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burdens, benefits or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your views.
6. Offer alternatives.
7. Submit your comments by the comment period deadline.

How can I provide input on the beneficial use rules proposal?

If you have questions about the suggested concepts or desire more information, please contact DMWM's John Schierberl at john.schierberl@epa.ohio.gov.

DMWM and DSW request early stakeholder input on developing a beneficial use of industrial byproducts program in Ohio by the close of business on July 31, 2012.

Please submit input to:

Michelle Braun
P.O. Box 1049
Columbus, OH 43216-1049
michelle.braun@epa.ohio.gov

Beneficial Use Rules Development Concepts

Ohio EPA's Division of Materials and Waste Management and Division of Surface Water are developing rules for the beneficial use of industrial byproducts and are seeking early stakeholder input on concepts regarding rules organization, implementation and monitoring. Some early 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 end use of an industrial byproduct in lieu of a competing raw material.
 - **Industrial Byproduct** means a residual material that can meet the definition of solid waste, industrial waste or other waste.
 - **Generator** is the person who initially generates an industrial byproduct.
 - **Generating Facility** is the facility where the industrial byproduct is generated.
 - **Distributor** is a person other than the generator who distributes industrial byproducts to another person for beneficial use.
 - **End User** is the person who owns the property on which an industrial byproduct is beneficially used.

- II. **Applicability and Exclusions.** Ohio EPA is considering the concept that beneficial use of an industrial byproduct 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 an industrial byproduct that results in an unpermitted discharge to waters of the state;
 - Beneficial use of an industrial byproduct 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 an industrial byproduct 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. **Industrial Byproduct Characterization.** Ohio EPA considers proper characterization as essential for evaluating a byproduct's potential beneficial use. Any characterization requirement should be flexible to accommodate byproducts not yet considered for beneficial use. Ohio EPA is considering creating a rule specifying how to characterize industrial byproducts, which would require generators to develop and implement a materials characterization plan for each industrial byproduct.

The characterization 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. Ohio EPA would need to approve the plan as discussed in the following paragraphs.

- VI. **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 industrial byproducts 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

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

To facilitate measuring beneficial use versus landfill disposal, Ohio EPA is also considering the need for annual reporting of information such as quantities and types of industrial byproducts beneficially used and how they were used under the preapproval category. Ohio EPA is also considering specifying that the Director can require characterization of an industrial byproduct 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.

Tier 2: General Permit

Ohio EPA is considering use of a general permit for beneficial use of industrial byproducts. General permits would be used for those industrial byproducts not qualifying for preapproved use and needing characterization, but for which there is enough information in the scientific literature that byproduct characterization and use specifications can be developed specific to the byproduct 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, the generator and distributor would need to submit the following:
 - 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 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 ft 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 generator or the co-permittee.
- 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 industrial byproducts not qualifying for pre-approved use or for an existing general permit, are new byproducts for which a general permit is not in place, 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 the generator and distributor to submit the following:

- A description of the industrial byproduct and the process through which it is generated, a description of the proposed beneficial use, 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 characterization;

- An application fee.

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, suspend or revoke individual permits for reasons similar to those listed above under general permits.

VII. Distribution and use of an industrial byproduct. Ohio EPA is considering requiring information be provided by the generator and any distributor when distributing an industrial byproduct 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 generator provide this information to the end-user of the industrial byproduct upon the request of the end user.

VIII. Record keeping and reporting. Ohio EPA is considering including requirements specifying which documents must be kept on file to demonstrate compliance and for how long. The Agency is also considering requiring annual reports by generator and distributors.