

WAC 173-350-200 Beneficial use permit exemptions. (1) Beneficial use permit exemptions - Applicability.

(a) This section applies to the beneficial use of solid waste in a manner approved by the department when the department has approved a beneficial use permit application.

(b) This section does not apply to:

(i) Solid waste handling facilities requiring permits or facilities operating under a conditional exemption authorized by RCW 70.95.305;

(ii) Materials used as alternative daily cover at landfills, which requires approval as part of the solid waste permitting process or subsequent allowance by the jurisdictional health department; and

(iii) Use of a solid waste as a component of fill unless a demonstration shows that the material meets specific engineering needs and specifications other than occupying space. Any proposal made under this section to use solid waste as a component of fill must be certified by a professional engineer registered in the state of Washington, in an engineering discipline appropriate for the proposed activity.

(2) Beneficial use permit exemptions - Application procedures.

(a) Applications for permit exemptions must be prepared and submitted on forms prescribed by the department and in accordance with the requirements of this subsection. Any person(s) applying for a beneficial use permit exemption must demonstrate to the satisfaction of the department that the proposed use of the specific solid waste does not present a threat to human health or the environment. The application must at a minimum contain the following:

(i) The name(s), address(es), and phone number(s) of the waste generator(s);

(ii) The name(s), address(es), and phone number(s) of the applicant;

(iii) The uniform business identifier number for the waste generator and any third-party handler of the waste material;

(iv) A detailed description of the solid waste, including ingredients used in making the original product from which the solid waste is derived, and the proposed beneficial use;

(v) Evidence that the material will perform as claimed;

(vi) A description of how the waste will be transported or distributed for the proposed beneficial use;

(vii) A description of the materials that contribute or potentially contribute contaminants/pollutants to the waste to be beneficially used;

(viii) A schematic and text summary of the waste generator(s) operations, including all points where wastes are generated, treated or stored;

(ix) A description of how terms and conditions of subsection (3)(a) of this section will be met;

(x) A State Environmental Policy Act checklist under chapter 197-11 WAC, SEPA rules;

(xi) Appropriate signatures as described in WAC 173-350-715(3);

(xii) If the beneficial use is proposed as a soil amendment, or for other solid wastes beneficially applied to the land, a description of how the terms and conditions of subsection (3)(b) of this section will be met; and

(xiii) Any additional information deemed necessary by the department.

(b) Once the department determines that the application is complete, the department will notify the applicant and initiate the public review process outlined in subsection (5) of this section.

(c) Once the public review process outlined in subsection (5) of this section has begun, any changes to the application or submittal of additional information by the applicant will result in a withdrawal of the completeness determination by the department and termination of the public review process. The department will resume review of the amended application in accordance with the procedures of subsection (5) of this section.

(d) After completion of the comment period, the department will review comments, technical information from agency and other publications, standards published in regulations, and other information deemed relevant by the department to render a decision.

(e) Every complete application will be approved or disapproved by the department in writing within ninety days after receipt. Exemptions will be granted by the department only to those beneficial uses of solid waste that the department determines do not present a threat to human health or the environment.

(f) Upon approval of the application by the department, the beneficial use of the solid waste by the original applicant is exempt from solid waste permitting for use anywhere in the state consistent with the terms and conditions of the approval.

(3) Beneficial use permit exemptions - General terms and conditions.

(a) The following general terms and conditions apply to all permit exempt beneficial uses of solid waste approved by the department. All persons beneficially using solid waste approved for permit exemption in accordance with this section must:

(i) Conduct the beneficial use in a manner that does not present a threat to human health or the environment;

(ii) Ensure that the material is not a dangerous waste regulated under chapter 173-303 WAC, Dangerous waste regulations;

(iii) Not dilute a waste, or the residual from treatment of a waste in order to lessen contaminant concentrations inherent in the waste as a substitute for treatment or disposal;

(iv) Meet the performance standards of WAC 173-350-040;

(v) Immediately notify the department and the jurisdictional health department of any accidental release(s) of contaminants to the environment;

(vi) Separate wastes intended for beneficial use from other wastes that are intended for disposal or other destination, prior to entering the location where the beneficial use will occur;

(vii) Manage the waste in a manner that controls vector attraction;

(viii) Ensure that solid waste being stored prior to being beneficially used is managed in accordance with the requirements of all applicable sections of this chapter unless alternative intermediate storage is approved by the department during the beneficial use exemption application review process;

(ix) Allow the department or the jurisdictional health department, at any reasonable time, to inspect the location where a permit exempt solid waste is stored or used to ensure compliance with applicable terms and conditions of this section; and

(x) Prepare and submit an annual report to the department by April 1st on forms supplied by the department. The annual report must

detail the activities of the exemption holder during the previous calendar year and must include the following information:

(A) The permit exemption number applicable to the beneficial use activity;

(B) The name, address, and telephone number of the exemption holder;

(C) The amount of solid waste beneficially used;

(D) A certification that the nature of the waste and the operating practices have been in compliance with the terms and conditions of this section and the approved beneficial use permit exemption during the previous calendar year; and

(E) Any additional information required by the department as a condition of the beneficial use determination.

(b) In addition to the general terms and conditions established in (a) of this subsection, solid wastes applied to the land for agronomic value or soil amending capability under a beneficial use permit exemption must:

(i) Provide an analysis of nutrients at a minimum to include organic nitrogen, nitrate-nitrogen, ammonium-nitrogen, total phosphorus, and total potassium, reported on a dry weight basis;

(ii) Provide an analysis of physical/chemical parameters to include at a minimum: Total solids, total volatile solids, pH, electrical conductivity, and total organic carbon;

(iii) Provide a discussion of any pathogens known or suspected to be associated with this material, including those that can cause disease in plants, animals or humans;

(iv) Provide additional analysis required by the department. The department may reduce the analytical requirements of this section;

(v) Meet the standards for metals established by the Washington state department of agriculture for registered commercial fertilizers regulated under WAC 16-200-7061 through 16-200-7064, Fertilizers;

(vi) Apply at an application rate and in a manner that ensures protection of groundwater and surface water and does not exceed an application rate that would violate the Washington state department of agriculture standards for metals in fertilizers; and

(vii) Not be stored at an application site during periods when precipitation, wind, or other factors will cause migration from the storage area, unless the site is specifically designed to accommodate storage during these periods and storage is approved by the department during the permit exemption application process. The quantity stored at an application site must not exceed the amount needed to meet the annual needs of the site based on the approved application rate. When a soil amendment is stored at an application site it must not contain free liquid waste unless the requirements of WAC 173-350-330 are met or an alternative storage method is approved by the department during the permit exemption application process.

(c) The department may require a person operating under any exemption issued under this section to meet additional or more stringent requirements for protection of human health and the environment, or to ensure compliance with other applicable regulations:

(i) At the time the department approves an application for a beneficial use permit exemption; or

(ii) When new information becomes available that warrants additional protections, but in the opinion of the department does not necessitate revocation of the beneficial use permit exemption.

(d) The department will notify the exempted party and all jurisdictional health departments of any additional or more stringent requirements.

(4) Beneficial use permit exemptions - Secondary application procedure. Beneficial use permit exemptions, approved by the department in accordance with the procedures of subsection (5) of this section, are granted solely to the original applicant(s). Any person, other than the original applicant(s), interested in beneficially using solid waste pursuant to the terms and conditions of an existing permit exemption must apply to the department by following the procedures described in subsection (2) of this section.

(5) Beneficial use permit exemptions - Public review process.

(a) Once an application is determined to be complete, the department will:

(i) Notify the applicant that the application has been determined to be complete;

(ii) Notify all jurisdictional health departments, interested parties, representatives of the solid waste industry, and the Washington department of agriculture that a proposal is under consideration and provide access to the complete application and supporting documentation via the department's website for review and comment. Access to the proposal and supporting documentation will be available in hard copy or other format upon request;

(iii) Post the complete proposal and supporting documentation on the agency's website for not less than forty-five calendar days along with instructions for commenting on the proposal;

(iv) Within forty-five calendar days, any person or jurisdictional health department may comment on the application by forwarding comments and any other information deemed relevant, to the department; and

(v) The Washington state department of agriculture's comments must be limited to addressing whether approving the application will result in the risk of spreading disease, plant pathogens, or pests to areas that are not under a quarantine, as defined in RCW 17.24.007.

(b) The department will develop and maintain a register of all complete applications it receives for beneficial use exemptions, and all approvals and denials. The register will include information regarding the proposed beneficial use and the waste being beneficially used.

(c) The department will maintain a list of interested parties and solid waste industry contacts.

(6) Beneficial use permit exemptions - Revocations, enforcement, and appeals.

(a) The department may require a person operating under any exemption covered by this section to apply to the jurisdictional health department for a solid waste handling permit under the applicable section of this chapter if:

(i) The exemption holder fails to comply with the terms and conditions of this section and the approval; or

(ii) The department determines that the exemption was obtained by misrepresenting or omitting any information that potentially could have affected the issuance or terms and conditions of an exemption; or

(iii) New information not previously considered or available as part of the application demonstrates to the department that management of the waste under a beneficial use permit exemption may present a threat to human health or the environment.

(b) The department will provide written notification to the exempted party and all jurisdictional health departments of any requirement to apply for a permit under this chapter. A person that is required by the department to apply for permit coverage must immediately cease beneficial use activities until all necessary solid waste handling permits are issued.

(c) The terms and conditions of subsection (3)(a)(viii) of this section remain in effect until the solid waste handling permit process has been completed unless an administrative order issued under the authority of RCW 70.95.315 directs that use activities cease.

(d) Any person that violates the terms and conditions of a beneficial use permit exemption issued under this section may be subject to the enforcement provisions of RCW 70.95.315.

(e) Appeals of the department's decision to issue or deny or revoke a beneficial use permit exemption must be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The board's review of the decision will be made in accordance with chapter 43.21B RCW, Environmental and land use hearings office—Pollution control hearings board, and any subsequent appeal of a decision of the board must be made in accordance with RCW 43.21B.180. Persons that may appeal are:

(i) For waste derived soil amendments any aggrieved party may appeal; and

(ii) For all other beneficial uses of solid waste any jurisdictional health department or the applicant may appeal.

(7) Beneficial use permit exemptions - Solid waste exempt from permitting by rule. Reserved.

Note: RCW 70.95.300 contains provisions that **allow** the department to exempt from permitting certain beneficial uses of solid waste by rule. The statute also requires the department to develop an application and approval process by which a person could apply for a beneficial use permit exemption. At this time the department has chosen to limit rule making to development of the required application and approval process, and hold a section in reserve for future development of a list of approved beneficial uses.

[Statutory Authority: Chapter 70.95 RCW, and RCW 70.95.060, 70.95.215, 70.95.218, 70.95.260(6), 70.95.300, 70.95.305, 70.95.310, 70.95.440. WSR 18-17-008 (Order 13-08), § 173-350-200, filed 8/1/18, effective 9/1/18. Statutory Authority: Chapter 70.95 RCW. WSR 03-03-043 (Order 99-24), § 173-350-200, filed 1/10/03, effective 2/10/03.]