

567—102.305(455B) Requirements for beneficial use determinations.

102.305(1) *Solid by-products applied to land.* Unless otherwise approved by the department, all beneficial uses, including those listed in 567—102.303(455B) other than uncontaminated rubble and soil, shall meet the following requirements if the beneficial use entails the solid by-product being used as a fill material, structural fill, or subbase for hard-surface pavement construction or for soil stabilization purposes:

a. Leachate characteristics of the solid by-product to be measured by the toxicity characteristics leaching procedure (TCLP, Environmental Protection Agency (EPA) Method 1311) and be consistent with federal regulations (Reference: Table 1, Subpart C, 40 CFR 261, Maximum Concentration of Contaminants for the Toxicity Characteristic).

b. Leachate characteristics of the solid by-product to be measured by the synthetic precipitation leaching procedure (SPLP, EPA Method 1312) and shall be less than or equal to ten times the maximum contaminant levels (MCL) for drinking water (Reference: Subpart G, 40 CFR 141, National Primary Drinking Water Regulations). Applicants may limit the SPLP analytes to total metals for drinking water.

c. Total metals testing of the solid by-product (Total Metals, EPA Method 6010) shall comply with the department's current statewide standards for soil (reported on dry weight basis) pursuant to 567—Chapter 105, Division III. Levels shall be consistent with the statewide standards for soil or the naturally occurring (i.e., background) levels of the soil, whichever are greater.

d. The department may establish additional constituent standards from those outlined in this rule for a solid by-product. The department will review regulatory limits on a quarterly basis and post updates to the department website. It is the responsibility of each generator, applicant and end user to ensure solid by-products comply with the most current regulatory limits.

e. The solid by-product shall produce a material that has a pH:

(1) Greater than or equal to 5 and less than or equal to 8 if the solid by-product may be used as growing media either now or in the future.

(2) Greater than or equal to 5 and less than 12 if the solid by-product is specifically intended not to be used as growing media either now or in the future. In this category, solid by-products with a pH equal to or greater than 10 but less than 12 shall be used only in areas where direct physical contact by humans for long periods of time is not expected to occur.

(3) For applications where only the surface may serve as growing media either now or in the future, then at a minimum the top three feet shall have a pH greater than or equal to 5 and less than or equal to 8. Solid by-products below the top three feet shall have a pH greater than or equal to 5 and less than or equal to 12.

f. The solid by-product shall not be placed in a waterway or wetland or any waters of the state or extend below or within five feet of the high water table.

g. The solid by-product shall not be placed within a 100-year floodplain unless in accordance with all local and department regulations, including 567—Chapter 71.

h. The solid by-product shall not be placed closer than 200 feet to a sinkhole or to a well that is being used or could be used for human or livestock water consumption.

i. The solid by-product shall not be placed closer than 100 feet of any property line unless written consent is obtained from the adjacent landowner(s).

j. The solid by-product shall not be putrescible.

k. Any project utilizing a solid by-product being applied to land, not including uncontaminated rubble and soil, that has not received a beneficial use determination shall be presumed to constitute the illegal disposal of solid waste.

102.305(2) *Determination.* The department may make a determination that a solid by-product that has received approval to be used beneficially ceases to be a solid waste if it is used in accordance with the terms and conditions of the beneficial use determination. Unless otherwise determined for the particular solid by-product under review, the point at which a solid by-product ceases to be a solid waste occurs when it is used in a manufacturing process to make a product, used as an effective substitute for a commercial product, or used as a fuel for energy recovery.

102.305(3) *Solid by-product management plans.* Recipients of beneficial use determinations granted pursuant to 567—102.304(455B) and those beneficial uses listed in 102.305(1) shall develop and maintain a solid by-product management plan (SBMP) that satisfies the following:

- a.* Lists the source(s) of the solid by-product.
- b.* Outlines procedures for periodic testing (not less than semiannually) of the solid by-product to confirm the proposed use continues to be adequately protective of human health and the environment and that the solid by-product continues to possess the physical characteristics and chemical properties that make it suitable for the approved beneficial use. Testing results from a certified laboratory pursuant to 567—Chapter 83 are to be submitted as part of the SBMP on a form prescribed by the department.
- c.* Provides a description of storage procedures including:
 - (1) Storage location(s).
 - (2) Maximum anticipated inventory, including dimensions of any stockpiles.
 - (3) Run-on and runoff controls, which may include a storm water National Pollutant Discharge Elimination System (NPDES) permit.
 - (4) Management practices to minimize uncontrolled dispersion of the solid by-product.
 - (5) Maximum storage time, not to exceed six months unless authorized in writing by the department.

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