



The Beneficial Use Exemption to the Solid Waste Rules - A Little Known but Flexible Exemption

The use of a flexible but lesser-known exemption to the Solid Waste Rules, known as the beneficial use exemption, has been on the rise in recent years as awareness of its existence and utility has increased. The beneficial use exemption provides an opportunity for waste generators to reduce economic burdens associated with waste disposal, while complying with the Solid Waste Rules and avoiding harm to the environment.

The NJDEP (or the "Department") promulgated the Solid Waste Rules pursuant to New Jersey's Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. ("SWMA"), to regulate the registration, operation, maintenance and closure of sanitary landfills and other solid and hazardous waste facilities, as well as the registration, operation and maintenance of solid waste transporting operations and facilities in New Jersey. The Solid Waste Rules are set forth at N.J.A.C. 7:26-1.1 et seq. While these rules impose extensive, strict requirements for all aspects of solid waste handling and disposal activities, they also provide a number of exemptions to regulation. One of the best-known exemptions is for recycled materials and recycling activities. See N.J.A.C. 7:26-1.1(a)8 and -1.6(a)2. Generally, waste materials that are separated at their point of generation into components which can be processed and reintroduced into the economic mainstream, either as products or raw materials, are considered recyclable materials. Recyclable materials are exempt from the definition of "solid waste" and are regulated instead under the Recycling Rules, N.J.A.C. 7:26A-1 et seq.

One of the lesser-known exemptions provided by the Solid Waste Rules is the beneficial use exemption, promulgated at N.J.A.C. 7:26-1.1(a)1ii and -1.6(a)3. Under the beneficial use exemption, waste materials of almost any sort, even if contaminated to a certain extent, may be approved for "beneficial use" instead of the normally-required disposal at a permitted Solid Waste Facility. "Beneficial use" is defined by the Solid Waste Rules as "the use or reuse of a material, which would otherwise become solid waste under this chapter, as landfill cover, aggregate substitute, fuel substitute or fill material or the use or reuse in a manufacturing process." N.J.A.C. 7:26-1.4. By

definition, the beneficial use of waste materials does not constitute recycling or disposal of that material - it is a special category of activities exempted from the Solid Waste Rules. See N.J.A.C. 7:26-1.4.

NJDEP currently receives approximately five to six applications for beneficial use determinations each month. These numbers represent a slow, but steady, increase in the number of such applications in the past five to ten years, as awareness of the program has increased within the regulated community. According to NJDEP, beneficial use determinations are made on a case-by-case basis, and a pre-application conference between an NJDEP representative and the beneficial use applicant is encouraged so that the applicability of the exemption to the particular project proposed can be thoroughly explored. As a result of the pre-application process, the vast majority of beneficial use exemption applications are approved.

To obtain NJDEP approval, a waste generator must show that (1) the proposed beneficial use project at which its waste materials will be used is designed and managed in a manner consistent with the environmental statutes, permits and approvals applicable to the project and (2) the proposed beneficial use project will not pose a threat to public health or the environment. See N.J.A.C. 7:26-1.7(c) and (g)1. If the beneficial use exemption is granted, the generator receives a "certificate of authority" to operate the beneficial use project. Since the materials and projects are reviewed on a case-by-case basis, the certificate of authority that is granted may be limited in time or by type of materials that are acceptable for the project, or both.

Although no category or type of waste materials is explicitly prohibited from consideration under the beneficial use exemption, NJDEP will not, as a matter of policy, consider for beneficial use materials that constitute hazardous waste under the Resource Conservation and Recovery Act, 42 U.S.C. Â§ 6901 et seq. ("RCRA"). In fact, the beneficial use exemption provides a list of materials and specified uses that are categorically approved for beneficial use, such as tire chips used as aggregate for road base materials, coal combustion bottom ash used or reused as a component to manufacture roofing shingles or bituminous asphalt products, and non-hazardous solid waste approved in advance by the Department for use as cover material, landfill liner or cap material. See N.J.A.C. 7:26-1.7(g)4. Also, while there are no numeric or narrative criteria beyond those listed above, the Department applies the Soil Cleanup Criteria and evaluates the particular project proposed to determine whether there is a potential risk of harm to public health or the environment.

Last, it is interesting to note that there are no prohibitions on the types of uses or projects that can be considered under the beneficial use exemption. NJDEP will consider any type of project as a beneficial use project, including landfill closures, roadway construction, real estate development and manufacturing processes. Specific examples of materials and projects that have been granted a beneficial use exemption include the use of steel slag waste material as road sub-base in a roadway construction project, and the use of construction and demolition materials as structural fill for a redevelopment project. Thus, the beneficial use exemption is extremely flexible.

NJDEP reviews beneficial use exemption applications on a case-by-case basis and, according to an NJDEP representative, the Department seeks to work with applicants to try and find a way to make the beneficial use exemption work, while at the same time protecting the public health and the environment. Thus, each material and project proposed for beneficial use receives thorough and careful consideration by NJDEP with an eye toward making the project fit the exemption. The beneficial use exemption is extremely flexible, both as written under the Solid Waste Rules and as applied by NJDEP, and provides a worthwhile opportunity for waste generators to avoid the necessity of compliance with the Solid Waste Rules, while eliminating waste materials from New Jersey's already over-burdened and onerous solid waste disposal system.

Attorney:

Dennis J. Krumholz

Practice:

Environmental Law