



State of Oregon Department of Environmental Quality **Response to Comments**

Northwest Region
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Summary and Response to Comments to Public Notice for the Proposed Beneficial Use Determination for Statewide Highway Shoulder Soil – Updated June 12, 2019

DEQ issued a public notice on March 12, 2019 requesting public comment on the draft DEQ beneficial use determination for reusing highway shoulder soil. DEQ provided public notice through email and placing the public notice document on DEQ's Public Notices website. The comment period closed at 5 p.m. on April 12, 2019.

DEQ received five comments from two individuals during the public notice period. DEQ inadvertently did not respond to one of the individuals. This updated Response to Comments includes the comments of this individual. All of the comments received from the two individuals are provided below, followed by DEQ's response. DEQ did not modify the beneficial use determination in response to the comments received. Because DEQ did not respond to one of the commenters, DEQ has re-issued the beneficial uses.

Comment 1, From: Resident, Portland, Oregon

Caltrans has identified a similar condition with shoulder material on California highways and has been working with the State Department of Toxic Substances Control for over 20 years on a solution. In 2016, Caltrans and DTSC signed a soil management agreement for aerially deposited lead-contaminated soils. Are there parts of their agreement that would be useful in this BUD?

DEQ response to comment 1:

Thank you for your comment. DEQ reviewed the agreement between Caltrans and California EPA DTSC and did not identify information in that agreement that would provide additional protection or benefits so has not modified the ODOT BUD.

Comment 2, From: Resident, Portland, Oregon

Oregon risk-based concentrations (RBCs) for lead are 400 and 800 mg/kg, respectively, for residential and occupational receptors. These are based on the previous acceptable blood lead level (bll) of 10 ug/dl announced in 1990. The current acceptable bll is 5 ug/dl. Should Oregon lower its RBCs for lead? California uses 80 mg/kg for residential and 320 mg/kg for occupational.

DEQ response to comment 2:

Any modifications to Oregon's RBCs would be made from DEQ's Cleanup Program and would not be a part of this BUD process. DEQ uses EPA recommended models to calculate the residential and occupational soil ingestion, dermal contact, and inhalation RBC. The current RBCs match EPA's Regional Screening Levels. Please refer to section B.3.4 of DEQ's *Guidance for Risk Based Decision Making for the Remediation of Contaminated Sites*.

Comment 3 from Brian Marcum, P.E., City of Portland Bureau of Environmental Services

Portland's City Code for Hazardous Substances (PCC 17.24.067) has specific requirements for what constitutes acceptable fill material within City-owned rights-of-way. One of the requirements is that "Utility Corridor Fill" placed within the right-of-way is required to meet the DEQ's definition of clean fill according to OAR 340-093 and the City's definition according to PCC 17.24.067. Highway shoulder soil that contains lead, benzo(a)pyrene, and other compounds at concentrations exceeding DEQ residential RBC criteria is not likely to meet the DEQ's clean fill criteria or the City's definition of Utility Corridor Fill. Unless soil testing can demonstrate that highway shoulder soil meets clean fill criteria, it cannot be used as Utility Corridor Fill in City of Portland rights-of-way.

DEQ response to comment 3:

The beneficial use determination only allows highway shoulder soil generated in the Portland Basin physiographic province to be used as mine reclamation fill. Additionally, local governments are encouraged to establish their own, more stringent, specifications for fill in certain areas, such as the City of Portland Utility Corridor Fill requirements.

Comment 4 from Brian Marcum, P.E., City of Portland Bureau of Environmental Services

The City of Portland and other cities in the State of Oregon are currently experiencing a houselessness crisis. Evidence of this crisis is clearly visible throughout the State in the form of urban tent camps which occupy a multitude of property types, including non-residential uses such as commercially-zoned properties, parks, undeveloped natural areas, and unoccupied land adjacent to both state and local transportation corridors. Under the direction of DEQ, the City of Portland, through its Bureau of Environmental Services (BES), has been asked to use Urban Residential RBCs as a benchmark to evaluate human health risk to the vulnerable populations that live in these areas. The beneficial use determination should demonstrate that all non-traditional receptor scenarios, including those camping in transportation corridors and non-residential zones, were taken into account as part of the beneficial use evaluation.

DEQ response to comment 4:

DEQ used occupational risk based screening levels in this analysis. The "occupational risk screening level" refers to screening criteria that would apply to industrial and commercial work settings. This screening level assumes a person is exposed to the chemical for 250 days per year for 25 years. This screening level is often used when evaluating potential exposure for people who recreate or trespass on sites. These screening levels are considered protective for the situation described in the comment due to the limited duration of exposure that is anticipated.

Comment 5 from Brian Marcum, P.E., City of Portland Bureau of Environmental Services

Local jurisdictions should continue to be involved to confirm that current non-residential land uses are consistent with long-term comprehensive land use plans. ODOT should continue to use the Land Use Compatibility Statement process to notify local permitting authorities of activities that may affect land use.

DEQ response to comment 5:

The beneficial use determination does not supersede any land use requirements by local governments.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.