

Massachusetts Department of Environmental Protection

Bureau of Air & Waste – Solid Waste Management

Beneficial Use Determination

SW 39 Beneficial Use Determination – Commercial Products

SW 40 Beneficial Use Determination – Regulated Systems

SW 41 Beneficial Use Determination – Restricted Applications

SW 42 Beneficial Use Determination – Unrestricted Applications

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Introduction

This permit is intended to protect public health, safety and the environment by comprehensively regulating the reuse of waste materials as effective substitutes for a commercial product or commodity. This is termed "beneficial use" of a solid waste. MassDEP must determine that this use of solid waste is beneficial and will not harm public health or the environment. The material is then classified as a secondary material and not as a solid waste. The approval may limit use of the material to a specific location or to a specific application of the material, or both.

Legal authority is found in MGL c. 21A, ss. 2 and 8, c. 111, ss. 150A. Regulatory authority is found in 310 CMR 19.000: Solid Waste Management Regulations, specifically 310 CMR 19.060: Beneficial Use of Solid Waste.

Who must apply?

Any individual, business, or organization wanting to beneficially use solid waste materials or modify existing beneficial use determination approvals need to apply. The intended use of the material (as defined below) determines which form should be completed.

SW 39: Use of Secondary Materials in Commercial Products (Category1)

Products manufactured from secondary materials, or secondary materials that are directly used as products are considered commercial products under the following conditions:

- When the product is used in a manner that is consistent with industry accepted product specifications or performance standards.
- When the product is controlled and managed throughout its lifecycle in a manner that effectively limits potential for illegal or inadvertent disposal or releases of hazardous material to the environment and exposure to people.

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- When any adverse impacts or significant risks to public health, safety and the environment, including, but not limited to, nuisance conditions, can be evaluated and controlled. Products applied to the land cannot be considered commercial products.

SW 40: Use of Secondary Materials in Regulated Systems (Category 2)

Beneficial use of secondary materials at facilities permitted, approved or otherwise regulated by the Department.

SW 41: Use of Secondary Materials in Restricted Applications (Category 3)

Secondary materials that are beneficially used in applications that utilize risk management techniques in order to prevent adverse impact or significant risks to public health, safety and the environment, including, but not limited to, nuisances.

SW 42: Use of Secondary Material in Unrestricted Applications (Category 4)

Secondary materials that are beneficially used in applications that do not limit exposure to potential human or environmental receptors from secondary material constituents that have the potential to adversely impact or create a risk to public health, safety, or the environment, including, but not limited to, nuisance conditions. Unrestricted beneficial use proposals are subject to the most comprehensive risk evaluations.

Important Note on SW 44: Modification of a Beneficial Use Determination

There is no longer a stand-alone form for modifying an existing BUD approval. Once a BUD has been approved, an amendment link will appear next to the record in ePLACE. Click on “Amend” to apply for a modification to the BUD approval. If you hold a BUD permit that was issued outside of the ePLACE system and wish to modify it, you will need to apply on a paper form available from MassDEP.

Pre-Application Consultation

You are required to contact the appropriate MassDEP Regional Office early in the process of preparing to apply for a BUD. A pre-application conference can save you time, spare you frustration, and often results in faster processing by the agency. If you submit an application without scheduling such a meeting, MassDEP may require one before it can determine whether your application is administratively complete. Find Your Region: <https://www.mass.gov/service-details/massdep-regional-offices-by-community>

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Instructions for Completing an Application for Beneficial Use of a Waste Material

All applications must be made through the online form that can be found at:

<https://permitting.state.ma.us/CitizenAccess>

You will need to create an account to access the form. Screen by screen instructions to assist you in completing the form are available at: <https://www.mass.gov/media/1981>

Please note that when completing the form online, every field with a red asterisk is required data. You will not be able to advance to the next page in the form or submit the form without entering something in each field of the form marked with a red asterisk.

The new form allows the person preparing it (who may be someone other than the responsible official for the company) to “Save and Resume Later” on any form. It is recommended that the first person to open a form in the online system enter the first page of data and then click “Save and Resume.” This action will create a PIN that can be shared with another person (consultant, staff, or signatory). Once another person activates the PIN in their account, they will be able to open the form and add information or approve it as the signatory. See <https://www.mass.gov/media/1981> to learn more about activating a PIN and sharing a form.

The following provides general instruction on the forms by section. Additionally, the MassDEP website provides a screen-by-screen walk through of the application.

Step 1. Application Information

Once logged in, select the appropriate application form type from the menu. The following are the items that need to be provided in the online form:

Pre-Application Consultation Date

Enter the date of the meeting or call help with MassDEP. If you have not consulted with MassDEP, please click “Save and resume later”. The system will not let you move to the next page until this consultation has been held.

Scope of Applicability (statewide or site-specific)

In applying to use the materials at a single location or within a single community, select the appropriate MassDEP Regional Office. Find your region:

<https://www.mass.gov/service-details/massdep-regional-offices-by-community>

If the materials will be used statewide or outside of the jurisdiction of one regional office, select “Statewide.”

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Waste Material Description

The next page asks to identify the type of material for which a BUD is requested. Typical BUD materials are listed. There is an option to select “Other” to identify a material that is not on the list. Only one material type or one material plus an “Other” material may be selected per application.

At the bottom of the page, indicate the TOTAL amount of waste material to be handled through this application. If selecting one material plus an “other” please provide the sum of the two materials as the total.

Generators of Material

This is the first of two tables. To enter data into a table, click “Add a Row”. A box will pop up with spaces to enter the required material. This first table is asking you to identify all of the entities from which you will be receiving BUD materials.

Where and How Material will be Used

This second table is used to describe how the BUD Materials will be used and where they will be used.

Step 2. Documents

Step 2 is where documents are attached to support the application. The documents include such things as copies of the current site assignment and site plans for the proposed project. Each required document must be uploaded separately; the application will not accept one scanned document containing the four or five required documents. Typically, the following are required:

- Analytical Analysis of the BUD materials
- Best Management Practices for the collection, transport and use of the BUD Materials
- The Permit Application Form, signed and certified by the PE
- The Report/ Narrative

The document attachment process is very similar to attaching a document to an email. Start by clicking on the “Browse” button. This will bring up a pop-up box. Click on “Browse” again and you can search your computer for the document you want to attach.

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Once you have attached the document, you click “Continue,” which brings you back to the main screen.

On the main screen you will be asked to identify the attachment type (pick from a drop down list) and provide a brief description of the attachment. The description can be no more than 50 characters including spaces.

Step 3. Special Fees

310 CMR 4.00 identifies certain circumstances where special fees are applied. If the applicant is eligible for a special fee, the applicant should pick the applicable fee exemption type and provide supporting information.

Step 4. Applicants and Contributors

This step is where the “Responsible Official” (hereafter called the signatory) for the application is identified. First, you will be asked to fill in the company name, pick the appropriate organization type (LLC, Corporation, or Sole Proprietorship). This is called “Source of Signatory Authority.” Then pick the appropriate title or position of the person who will be the signatory.

At this point, the Signatory or Responsible Official must create an account in ePLACE and access the application to submit it. No other person can submit the application. When the signatory logs into the application, their name as provided in their account information will show up in the box labelled “Applicant Information.”

Steps 5-7. Application Review and Submittal

The entire application is presented for final review in this step. You can reopen the application to edit it by clicking on the “Edit Application” button at the top or, if the information provided is complete and accurate you can submit the application.

At the bottom of the review page is the applicant certification statement. The applicant (signatory) should read the certification statement and click the box below the statement indicating acceptance with the terms of certification. The system will insert the date of the application and the content of the application will be “locked” once applicant accepts the certification.

The permit fee can be paid either online or by check through the mail. The Applicant is asked to select the preferred method. If the applicant chooses to pay the fee online, an electronic check or credit card payment is allowed. Both carry a nominal handling fee. The applicant will be sent to a payment page and asked to complete information specific to the credit card or electronic check.

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If paying by mail, the applicant sends a check to the Massachusetts Department of Environmental Protection, PO Box 4062, Boston, MA 02211. An email with this address information will be sent to the applicant as well.

Once the applicant certifies, pays the application fee (or indicates that the fee will be paid by mail) and clicks the “Continue” button, the application is submitted. The applicant will receive an email notice of a successful submittal and within five minutes the applicant will receive a printable copy of the application as submitted (minus attachments).

After Submittal

If you log into ePLACE and click on the “My Records” button, you will be able to view the status of your application through the review and approval process. The timeline for the Department to review the application will not start until the fee has been paid or a fee exemption (if requested) has been verified.

You can also see your application and all of its attachment on the public viewer at <https://eeaonline.eea.state.ma.us/EEA/PublicApp/>

Frequently Asked Questions

1. What other requirements should be considered when applying for these determinations?

The proponent must gather the appropriate data on the physical, chemical and biological nature of the material for which a beneficial use determination is requested. The generator of the waste material may be able to provide most or all of the required information. All relevant analytical data must be documented and provided by a certified laboratory. All risk assessments, evaluations and other analysis must be performed by qualified and appropriate professionals experienced in that field of expertise.

Note: These additional requirements are intended to serve as a guide to the applicant. It does not necessarily include all requirements.

2. What is the application fee?

SW 39: Commercial Products - \$2,375

SW 40: Regulated Systems - \$2,375

SW 41: Restricted Applications - \$4,455

SW 42: Unrestricted Applications - Individual Rule Project

SW 44: Modification (now called amendment) - \$1,065

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3. What are the requirements for notification of local authorities?

A copy of the application must be sent to the board of health for the community in jurisdiction of which the material is to beneficially used unless MassDEP determines that the proposed use is not limited to a specific location and therefore it is not practical to identify the board of health. The applicant should consult the appropriate MassDEP regional office by phone or letter before the application is made.

4. Where can I get a copy of the timelines?

The timelines are available on the MassDEP Website:

<https://www.mass.gov/media/1078346>

5. What is the annual compliance fee?

There is no annual compliance fee for these determinations.

6. How long are these determinations in effect?

There is no specific time limit to a determination of beneficial use unless stipulated for one time use of the material or as otherwise limited by the approval.

7. How can I avoid the most common mistakes made in applying for these determinations?

Submit all the data on the chemical, physical and biological properties of the waste required for MassDEP to make a determination and submit a signed copy of the certification form.

8. What are the regulations that apply to these determinations? Where can I get copies?

These regulations include, but are not limited to:

- a. Solid Waste Management Regulations, 310 CMR 19.000.
- b. Timely Action Schedule and Fee Provisions, 310 CMR 4.00.

These may be purchased at:

State Bookstore (in State House)
Room 116
Boston, MA 02133
617-727-2834

State Bookstore
436 Dwight Street, Room 102
Springfield, MA 01103
413-784-1376

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Unofficial copies of the above regulations are available on MassDEP's website at:

<http://www.mass.gov/dep/>

Important Contacts

- For technical assistance regarding on-line filing, contact the ePlace Help Desk Team at (844) 733-7522 or ePLACE_helpdesk@state.ma.us
- For other questions, contact your regional office. You can look up your regional office and their contact information at:
<https://www.mass.gov/service-details/massdep-regional-offices-by-community>
- To see a copy of your application after submittal, also see:
<https://eeaonline.eea.state.ma.us/EEA/PublicApp/>