



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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Interim Policy on the Re-Use of Soil for Large Reclamation Projects

Policy # COMM-15-01

August 28, 2015

Policy Statement

This Interim Policy provides notice of MassDEP's intent to issue site-specific approvals, in the form of an Administrative Consent Order, to ensure the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of releases of oil or hazardous materials.

During the effective period of this policy, MassDEP approval for the filling of sand pits, gravel pits and quarries to which this policy applies will be provided only through Administrative Consent Orders completed by the terms of this policy. Filling operations conducted without MassDEP approval operate at risk of Department enforcement for violations of rules governing solid waste management and oil and/or hazardous material releases.

The use of soil for the reclamation of a quarry, sand pit or gravel pit under the conditions of this policy is considered approved re-use for the purposes of the notification exemption described at 310 CMR 40.0317(13).

Effective Date

This Interim Policy is effective on August 28, 2015. This Interim Policy will remain in effect until it is specifically rescinded or superseded by MassDEP regulations governing soil fill projects promulgated pursuant to Section 277 of Chapter 165 of the Acts of 2014, M.G.L. c. 21E, Section 6, and M.G.L. c. 111, Section 150A. While such future regulations will likely differ in scope and detail from this Interim Policy, the Department anticipates that regulations and policies developed to implement the final approach will specifically accommodate projects commenced under an Administrative Consent Order issued pursuant to this Interim Policy through the incorporation of transition provisions.

Authority

This Interim Policy is implemented pursuant to Section 277 of Chapter 165 of the Acts of 2014¹, M.G.L. c. 21E, § 6² and 310 CMR 40.0000, and M.G.L. c. 111, § 150A³ and 310 CMR 16.00 and 19.000.

Section 277 of Chapter 165 of the Acts of 2014 directs the Department to “*establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for the reclamation of quarries, sand pits and gravel pits. The regulations, standards or procedures shall ensure the reuse of soil poses no significant risk of harm to health, safety, public welfare or the environment considering the transport, filling operations and the foreseeable future use of the filled land.*”

M.G.L. c. 21E, § 6 establishes the Department’s authority to “*specify reasonable requirements, applicable to sites and vessels where releases of hazardous material or oil might occur and to activities which might cause, contribute to, or exacerbate a release of hazardous material or oil, to prevent and control, and to counter the effects of, such releases. Such requirements may be prescribed... by order under section nine⁴ for specific sites and vessels which the department has determined to... be conducting an activity which poses a threat of release of hazardous material or oil.*”

The placement, dumping, disposing or reuse of soil containing oil and/or hazardous material (OHM) into the environment is a “release” as that term is defined in M.G.L. c. 21E § 2⁵. Such dumping, disposing or unapproved re-use of soil is potentially a notifiable release (310 CMR 40.0300) requiring assessment and, where indicated, remediation. Depending upon site-specific conditions and the nature of the OHM present in the soil, such releases may have significant adverse human health and environmental effects. Examples of such effects include:

¹ <https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter165>

² <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section6>

³ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section150A>

⁴ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section9>

⁵ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section2>

- contamination of the underlying aquifer through leaching of the OHM;
- human exposure through direct contact with the soil or inhalation of vapors or particulates emanating from the soil;
- degradation of wildlife habitats;
- degradation of neighboring properties, wetlands, and waterways through stormwater runoff; and
- exacerbation of localized flooding.

Applicability

This Interim Policy is applicable to any quarry, gravel pit, or sand pit reclamation project that receives, or plans to receive greater than 100,000 cubic yards of soil for the reclamation/filling of said quarry, gravel pit, or sand pit after August 28, 2015 including:

- Reclamation projects that will begin to receive on site more than 100,000 cubic yards of soil after August 28, 2015;
- Reclamation projects that have commenced physically receiving soil on site on an “at risk” basis prior to August 28, 2015 subject to the regulations, policies and procedures in place prior to August 28, 2015 and which will receive more than 100,000 cubic yards after October 31, 2015;

To be eligible for MassDEP approval pursuant to this Interim Policy, the soil accepted by the quarry, gravel pit or sand pit can contain no more than de minimis quantities of Solid Waste (e.g. Municipal Solid Waste and/or Construction and Demolition Waste) as defined in 310 CMR 16.00 and 310 CMR 19.000.

Soil fill projects to which this policy applies and that are not managed in compliance with this policy may be found to have caused, contributed to, or exacerbated a release of OHM and may be subject to enforcement pursuant to Section 277 of Chapter 165 of the Acts of 2014⁶, M.G.L. c. 21E, § 6⁷ and 310 CMR 40.0000, and/or M.G.L. c. 111, § 150A⁸ and 310 CMR 16.00 and 19.000.

Fill projects that accept any amount of soil (whether pursuant to this Interim Policy or otherwise) must ensure that the filling does not create new, reportable releases of oil or hazardous materials to the environment pursuant to M.G.L. c. 21E and 310 CMR 40.0000, or will not violate M.G.L. c. 111, section 150A, 310 CMR 16.00, or 310 CMR 19.000.

Nothing in this Interim Policy eliminates, supersedes or otherwise modifies any local, state or federal requirements that apply to the management of soil, including any local, state or federal permits or approvals necessary before placing the soil at the receiving location, including, but not limited to, those related to placement of fill, noise, traffic, dust control, stormwater management, wetlands, groundwater or drinking water source protection.

⁶ <https://malegislature.gov/Budget/CurrentBudget>

⁷ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section6>

⁸ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section150A>

Implementation

A reclamation project proponent should contact the Regional Director in the MassDEP Regional Office for the region in which the reclamation project is located to initiate the approval process.

In determining whether to issue an Administrative Consent Order to a project proponent for a specific quarry, gravel pit or sand pit reclamation project, MassDEP will review data describing the types and concentrations of OHM contained in the excavated soil proposed to be used for reclamation, data describing the relevant characteristics of the location proposed to receive this soil and the surrounding area, proposed soil management plans, and any other information necessary to ensure the proper handling of the fill material.

As a case-specific approval, the development of an ACO for a reclamation project will necessitate discussions between the Department and the project proponent to identify all the information necessary as a basis for approval. These discussions will likely occur concurrent with the project proponent's discussions with local officials and the development of final soil management plans.

MassDEP will review documentation submitted by project proponents to demonstrate that the appropriate local officials are aware of the project and have been afforded the opportunity for meaningful input. Examples of such documentation may include:

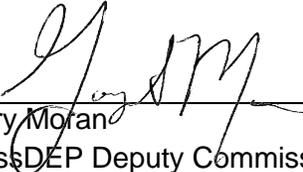
- a copy of any local permit or other approval specific to the use of large volumes of fill material that may be required (municipal approval of an up-to-date reclamation plan for the receiving location, and/or or a municipal permit under an "earth filling" ordinance, and/or any other approval required by a municipality for activities that involve the transportation of soil onto the receiving site); or
- where such local approvals are not required:
 - a copy of any notification to the public in the area surrounding the fill project and the Chief Municipal Official (CMO) and the Chair of the Board of Health (BOH) of the city or town in which the fill project is located of the proposal to use the excavated soil (including a description of the oil and/or hazardous materials that it contains) and
 - a summary of the steps taken to solicit meaningful input from those local officials, copies of comments received, and a description of the ways in which these comments have been (or will be) addressed.

MassDEP will not finalize an Administrative Consent Order on the proposed quarry, gravel pit or sand pit reclamation project unless and until all comments from such local officials on project impacts related to noise, dust, odor and/or trucks have been appropriately addressed by the project proponent.

Administrative Consent Orders will include, as appropriate, requirements for:

- Implementation of a detailed Soil and Fill Management Plan that specifies how material will be sampled⁹, documented, tracked, transported and managed as well as what materials are permitted and not permitted;
- Detailed plans that specify how material will be managed at the reclamation project to prevent nuisance conditions, such as noise, odor, litter and dust;
- Detailed Stormwater Management Plan to prevent impacts to sensitive receptors;
- Detailed Wetlands Impact provisions, including, as applicable, a requirement to obtain an Order of Conditions, Determination of Applicability or other approval or permit to proceed with the project as designed;
- A plan for communicating with the public and involving interested parties at key points in the implementation of the reclamation project;
- Oversight by an LSP or other qualified environmental professional and/or Third Party Inspection program;
- Knowledge of and intention to comply with all applicable laws and regulations; and
- Stipulated penalties for noncompliance with the Administrative Consent Order.

August 28, 2015
Date


Gary Moran
MassDEP Deputy Commissioner

⁹ Soil that has been pre-characterized *in situ* prior to August 28, 2015 using standard practices, procedures and methodologies in place at the time of sampling (for example, characterized for RCRA-8 metals) may be evaluated for use as reclamation soil on the basis of that pre-characterization through August 28, 2016.