

June 17, 2015

Paul Locke, Director, Division of Response and Remediation, BWSC
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108

Subject: Draft Interim Policy on the Re-Use of Soil for Large Reclamation Projects, Policy # COMM-15-01

Dear Paul:

The LSP Association (LSPA) appreciates MassDEP's efforts and opportunities for stakeholder participation in developing the Draft Interim Policy on the Re-Use of Soil for Large Reclamation Projects. Delineating a pathway for re-use of large quantities of soil benefits the Commonwealth and the region by preserving limited landfill space, improving potentially under-utilized properties, establishing environmentally protective criteria and a public process, and providing cost-effective soil management alternatives for development.

Representatives from the LSPA attended each of MassDEP's stakeholder meetings during the development of this interim policy. While we understand the legislatively imposed deadline, we also very much look forward to participating in a stakeholder process for the development of comprehensive soil management regulations for the Commonwealth. The draft interim policy is reasonable in the requirements and approvals put forth to regulate these very specific activities, but our hope is that ultimately, MassDEP will develop regulations to address a wider range of situations. The regulated community will greatly benefit from more certainty in selecting a variety of receiving locations, and understanding the effects of location on the approval requirements and types of soil that can be considered for reuse. Overall, the LSPA urges the Department to move forward with articulating a comprehensive framework for approval and monitoring of locations for the management of soils.

Provided below are the LSPA's comments and questions related to the subject policy.

1. It is appropriate that this draft interim policy requires location-specific and case-by-case evaluations and sets minimum requirements for receiving an Administrative Consent Order.

2. First paragraph, page 3 regarding “Construction and Demolition Waste”: Will MassDEP be making site-specific decisions as part of each Administrative Consent Order (ACO) regarding how much construction and demolition debris may be contained in historic fill for it to qualify as ‘soil’ for the purpose of this policy?
3. Under the heading “Implementation”, replace “OHM” with “levels of OHM” in this sentence: “In determining whether to issue an Administrative Consent Order for a specific quarry, gravel pit or sand pit reclamation project, MassDEP will review data describing the OHM contained in the excavated soil....”
4. While final regulations are being developed, we encourage MassDEP to host work-group or advisory committee meetings to discuss and provide further details, and perhaps written guidance, regarding some of the language in the interim policy. Some examples:
 - Under the heading “Implementation”, first sentence: What is “any other information”? and what is “proper handling”?
 - Under the heading “Implementation”, second sentence: Who are “relevant local officials”?
 - Also under “Implementation”, second sentence, a more specific requirement is needed than that local officials “are aware “. We suggest “...that the relevant local officials have been sent written notice of the project...”
5. The use of the term “appropriately” begs the question as to what criteria is appropriate. We suggest that the following sentence be revised to read: “MassDEP will not finalize an Administrative Consent Order on the proposed quarry, gravel pit or sand pit reclamation project unless and until all comments on project impacts related to the mitigation of noise, dust, odor and/or truck traffic have been addressed by the proponent.”
6. The LSPA wishes to emphasize that the contents of a “Soil and Fill Management Plan” should be left to the professional judgment of an LSP, because LSPs are the only professionals specifically qualified to prevent such a facility from becoming a new MCP site.
7. More specific information would be helpful on MassDEP’s expectations for a “plan for communicating with the public...”
8. “Oversight by an LSP or other qualified environmental professional and/or Third Party Inspection program”: As noted in our January 21, 2015 letter to MassDEP on this draft interim policy, the LSPA feels strongly that LSPs are the only licensed environmental professionals specifically qualified to perform this soil sampling, sign-off, and oversight role. A key objective of this draft policy is to prevent the creation of new MCP sites by the importation of materials containing concentrations of OHM that would result in concentrations exceeding applicable Reportable Concentrations at the receiving facility. LSPs are required to have demonstrated expertise in hazardous waste site cleanup decision making, which includes a depth of understanding of soil characterization and management of soils. Including “other qualified environmental professionals” in this draft policy and, presumably, the future regulation, leaves the door wide open for a variety of other professionals to participate in soil movement and management activities. We urge the Department to limit this work to LSPs.
9. Related to #8 above: Again, the LSPA believes that LSPs are the only licensed environmental professionals qualified to perform this work. If references are to be made to a “qualified

environmental professional” and “Third Party Inspection program” then definitions and citations should be included.

10. Dredge spoils which meet the requirements of the “Soil and Fill Management Plan” should be considered ‘soil’ for the purposes of this policy. The cost of obtaining appropriate dredge spoils disposal is a large impediment to a number of navigational projects and, more increasingly, ecological restoration work.

As always, the LSPA is pleased to participate as a stakeholder in MassDEP efforts. Please do not hesitate to contact us if further clarification is needed on any of these comments. We look forward to working with you to develop comprehensive regulations in the near future.

Sincerely,

A handwritten signature in blue ink that reads "Paul McKinlay". The signature is fluid and cursive, with the first and last names clearly legible.

Paul A. McKinlay, LSP
President

A handwritten signature in black ink that reads "Wendy Rundle". The signature is cursive and somewhat stylized, with the first and last names clearly legible.

Wendy Rundle
Executive Director