



June 17, 2015

Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street; 6th Floor
Boston, MA 02108

Attention: Mr. Paul Locke

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

Ladies and Gentlemen:

McPhail Associates, LLC (McPhail) appreciates the opportunity to submit comments and suggested revisions to the Draft Interim Policy on the Re-Use of Soil for Large Reclamation Projects; Policy #COMM-15-01, referred to herein as "the Draft Policy". McPhail recognizes the complications associated with developing a policy regarding this topic and we commend the Department's efforts. McPhail is currently providing LSP oversight for the re-use of soil at St. Mary Cemetery in Tewksbury (a similar soil re-use project) and we are directly involved with the proposed Waterville Farms similar soil re-use project in Middleboro.

Our specific comments are detailed below:

1. Applicability

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.

McPhail concurs that filling of large reclamation projects that are identified in the Draft Policy must not "create new, reportable releases of oil or hazardous materials to the environment". However, we recommend that the Draft Policy further clarify the applicability of Section 40.0032(3) of the MCP.

While McPhail recognizes the importance and applicability of Section of 40.0032(3) of the MCP, adherence to this Section of the MCP, particularly Article (b), may significantly limit soils that would qualify for re-use at the large reclamation projects to which the Draft Policy applies. As a result, the Draft Policy may not provide a financial incentive to permit these large reclamation projects which is counter to the objective of the Draft Policy.

It is our experience that excess soil generated during development projects, in particular large urban-area commercial, institutional, residential, and infrastructure developments, rarely exhibit concentrations of oil or hazardous material that are significantly lower than the RCS-1 standard and existing background concentrations at sand and gravel pits and rock quarries. Therefore, the significant quantities of soil that are necessary to fill the large



reclamation projects to which the Draft Policy applies may not be available to comply with Section 40.0032(3)(b) of the MCP.

McPhail also recommends that the Draft Policy address naturally deposited soils which exhibit elevated concentrations of naturally occurring constituents that exceed the RCS-1 and RCS-2 reporting thresholds (e.g. arsenic in Worcester County).

In addition, it is recommended that the Draft Policy address reclamation projects which may contain existing site soils that exhibit elevated concentrations of naturally occurring constituents such as metals and anthropogenic polynuclear aromatic hydrocarbons.

In summary, we recommend that the draft Policy provide more specific guidance, namely to clarify the soil acceptance criteria that can be established at proposed reclamation sites - RCS-1/RCS-2, or background. We further recommend that the soil acceptance criteria reflect those that were discussed during the previous workgroup sessions and advisory committee meetings pertaining to this subject as well as DEP's presentation to the Environmental Business Council entitled "MassDEP's Soil Management Approaches".

2. Implementation

Based upon our experience, demonstrating awareness of a planned reclamation project to the general public can be cumbersome and exhausting. During the attendance at public meetings, we find that the general public's knowledge of environmental regulations, effects of contaminant risk exposure and contamination migration pathways can be limited. As a result, the general public often develop misconceptions of the reclamation project's potential effect on the environment during the initial stages of the local review process which are difficult to reverse. Alternatively, local officials (such as the Conservation Commission and Board of Health) have a broader knowledge of contamination and its effects on human health and the environment. However, the general public and local officials typically defer to the DEP as "experts" regarding the potential impacts that these reclamation projects may have on the environment and human health. Without any prior DEP involvement or established acceptance standards, the general public and local officials are unlikely to render an opinion or approval of a large reclamation project.

It is therefore recommended that DEP involvement occur prior to or concurrently with the local approval or awareness process. While we understand that an Administrative Consent Order cannot be issued prior to achieving local approval or awareness, we recommend that the DEP provide a preliminary evaluation letter that can be used to advance the local approval and/or awareness process. Furthermore, since local officials are considered more qualified to demonstrate awareness of a proposed reclamation project, we recommend that the Draft Policy be revised to require a demonstration of public awareness through municipal or local process rather directly by a proponent of the proposed Reclamation project.



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Conclusion

We believe that having published standards applicable to large reclamation facilities would allow proponents of such facilities to approach towns and municipalities with some certainty that the facility would meet DEP acceptance criteria. Likewise, it would allow towns and municipalities to reasonably review such applications for large reclamation facilities with the same knowledge that the criteria being proposed would meet DEP acceptance criteria. This would allow the town, municipalities, and DEP to issue their approvals of such facilities in a timely manner with a level of certainty that each has reviewed the application.

Again, we appreciate the opportunity to comment on this important issue. We look forward to continuing to participate in the development of his important draft policy. Please contact us if you have any questions.

Sincerely,

McPHAIL ASSOCIATES, LLC

A handwritten signature in blue ink, appearing to read "William J. Burns".

William J. Burns

A handwritten signature in blue ink, appearing to read "Ambrose J. Donovan".

Ambrose J. Donovan, L.S.P., P.E.

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