



Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

DRAFT

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

Policy # COMM-15-01

- ***It would be helpful to include some of the Similar Soils Policy guidelines into this Interim Policy, because it has more information in providing these guidelines that is useful in planning these projects. Adding some of the Similar Soils details here would also add substance to the framework of this Interim Policy.***
- ***Is there additional information about how MassDEP and/or an LSP can assess whether a site's proposed Acceptability Levels of constituents in soil will adequately manage Site conditions to maintain No Significant Risk?***
- ***At what point can it be said that natural layers of soil which have been assessed and demonstrate consistency in analytical composition will not require the same frequency of testing or range of analyses; e.g. MCP14 vs. RCRA8? It has been reported by several experienced LSPs that there is range of soils for which MCP14 gives the appearance of overkill to owner/developers or bidding site management companies, especially when documented as natural soils.***
- ***It may be helpful for all to include a mechanism and procedure(s) for communications among the proponent, town officials and MassDEP, which is not clear at this time. Perhaps a statement be included in this policy indicating that MassDEP will communicate or meet with the Town to discuss and review a proposed restoration project?***

- ***It may be helpful to include a statement or key elements for incorporation into Site management and required interactions/reporting to Town and MassDEP, which are not included in this Draft.***
- ***This Interim Policy contains frequent discussions of OHM (which is not allowed for these projects) vs. that of constituents that may appear in soils. This gives the stigma of ‘bringing in and reusing contaminated soil.’ Clarity should be incorporated to show that soils that meet acceptable guidelines are not considered ‘contaminated or mildly contaminated.’ Experience tells me that this is still not completed among DEP divisions and personnel.***

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 ***in excess of 100,000 yards*** for the reclamation of properties such as 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.

Effective Date

- This Interim Policy is effective immediately. ***(...Not this DRAFT version...)***
- 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*** regulation will likely differ in scope and detail from this Interim Policy, it is anticipated that ***regulations promulgated for*** the final approach will specifically recognize and accommodate projects commenced under an Administrative Consent Order issued pursuant to this Interim Policy. ***What does this mean? Will those projects seeking an ACO gain preference (“recognize and accommodate”) in some ways?***

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 **that** 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.*” ***Can this be clarified, since no OHM can be used for filling sites? See Applicability, paragraph 3.***

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. 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:

- 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.

¹ <https://malegislature.gov/Budget/CurrentBudget>

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>

Applicability

This Interim Policy is applicable to any project commenced or expanded after May 1, 2015 and which is anticipated to accept 100,000 cubic yards or more of soil for the reclamation/filling of a **property e.g.** quarry, gravel pit, or sand pit.

To be eligible for MassDEP approval pursuant to this Interim Policy, the soil accepted by the **Reclamation Property** ~~quarry, gravel pit or sand pit can~~ **may** 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.

Reclamation projects by ~~Soil filling~~ **projects** to which this policy applies **What does this mean? Is applicability of this policy being left up to interpretation by a Site owner/manager, LSP, etc.?** and that are not managed in compliance with this policy 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.

Soil filling reclamation projects ~~Fill projects that accept~~ **and import** (any amount of) soil (whether pursuant to this Interim Policy or otherwise) must ensure that the filling does not create new **concentration levels of constituents that constitute** reportable releases of oil or hazardous materials **This is an example of how the Similar Soils Policy information is useful in being incorporated into this policy** 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, 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

MassDEP Approval

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 levels of constituents 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.

Local Approval

In addition, **MassDEP will review documentation submitted by proponents to demonstrate that the relevant applicable 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) ***Zoning or Planning Commissions should also be included for projects of this nature, because of the magnitude of construction*** 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 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 on project impacts related to noise, dust, odor and/or trucks have been appropriately addressed by the proponent.

Administrative Consent Orders will include, at a minimum, requirements for:

- Implementation of a detailed Soil and Fill Management Plan that specifies how material will be sampled, documented, tracked, transported and managed as well as what materials are permitted and not permitted;
- 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; ***this is a very broad range of requirement in the policy, and should be reworded to be more narrow or specific***
- Oversight by an LSP or other qualified environmental professional and/or Third Party Inspection program;
- Plans to comply with all applicable laws and regulations and to prevent nuisance conditions; and
- Stipulated penalties for noncompliance with the Administrative Consent Order.

DRAFT

Date

Gary Moran
MassDEP Deputy Commissioner