



Years of Excellence
1954-2015

Utility Contractors' Association of New England, Inc.

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June 16, 2015

Mr. Martin Suuberg, Commissioner

Massachusetts Department of Environmental Protection

One Winter Street, 2nd Floor

Boston, Massachusetts 02108

Dear Commissioner Suuberg:

On behalf of the members of the Utility Contractors' Association of New England ("UCANE"), a trade association comprised of over 250 major contractors and associated business men and women who design, build, finance, insure, bond, and supply materials and equipment to the underground water and sewer construction industry, I am writing relative to the Massachusetts Department of Environmental Protection's Draft Interim Policy on the Re-Use of Soil for Large Reclamation Projects. This proposed policy, created in response to Section 277 of the fiscal year 2014 budget, may have unintended consequences on water infrastructure projects and the construction industry in the Commonwealth.

As you know, the Massachusetts construction industry has struggled in recent years to find suitable locations for the disposal of surplus materials. The more difficult the already demanding task of disposing of soil is made means that future projects will have to incorporate additional trucking and disposal costs. These additional costs not only include monetary considerations, but additional environmental (i.e. emissions) and public safety concerns (i.e. increased road mileage) as well. As the Commonwealth faces a \$21 billion funding gap in addressing its water and sewer infrastructure needs, the implementation of regulatory policy such as this may impact the ability to address this critical need in a timely and cost effective manner. While the Draft Interim Policy is general in its application to projects of 100,000 cubic yards or more of soil for the reclamation/filling of a quarry, gravel pit, or sand pit, UCANE simply worries that a strict application of its tenets may have the unintended consequence of limiting the opportunity for projects that either directly or indirectly address our water infrastructure needs.

For your review, we have included UCANE's previous correspondence on this matter. Please note that UCANE appreciates the DEP's thoughtful response to the earlier correspondence. We are simply concerned that this additional regulation may have the unintended consequence of increasing the cost of construction or simply preventing the start of necessary projects in the

Commonwealth without significantly improving upon the protections offered under existing laws, policies and regulations.

Again, I appreciate your consideration of UCANE's comments. If you have any questions or concerns, please do not hesitate to contact me.

**Sincerely,
UTILITY CONTRACTORS' ASSOCIATION
OF NEW ENGLAND, INC.**


**Anne Klayman
Executive Director**

**Cc: Mr. Paul Locke, Director
Massachusetts Department of Environmental Protection
Division of Response & Remediation**

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September 22, 2014

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ANNE KLAYMAN
Executive Director

Mr. David Cash, Commissioner
Massachusetts Department of Environmental Protection
1 Winter Street
Boston, Massachusetts 02108

Dear Commissioner Cash:

On behalf of the Utility Contractors' Association of New England ("UCANE"), a trade association comprised of over 250 contractors and associated business men and women who design, build, finance, insure, bond, and supply materials and equipment to the underground water and sewer construction industry, I am writing relative to Section 277 of the fiscal year 2015 budget concerning soil management standards. As the language governing the reuse of soils is an area where protections afforded by the Massachusetts Environmental Policy Act (Mass. Gen. Laws ch. 30, §§61-62I) and governing regulations (see, 301 CMR 11.00 and 310 CMR 40.0000) exist, UCANE urges the Massachusetts Department of Environmental Protection ("the Department") to take a pragmatic and thorough review of this issue before implementing potentially duplicative regulations.

As you may know, Section 277, which would require the Department to establish regulations, standards or procedures for determining suitability of soil used as fill material for reclamation of quarries, sand pits and gravel pits, contains areas of overlap with existing law, regulations and formal Department policy guidance. Given that Section 277 could expand the permitting approval process to localities – even in the cases where soil is determined to be "clean" by the Department, UCANE urges the Department to thoroughly consider the implications such regulations may have on economic development, generally, and the construction industry, specifically.

While UCANE understands the intention of this legislation, there exist many safeguards today. In particular, awarding authorities and the Department, through its various programs, work to ensure environmental and public safety on a daily basis. At a time when the Commonwealth is slowly rebounding from recent economic hardship, Section 277's requirements will likely add to the length of time needed to complete a project (on an already short New England construction cycle) and will add significantly to the total project cost. As the Commonwealth faces a water infrastructure financing crisis, and in light of the Department's current oversight of soil safety measures, the concern is that Section 277 has the potential to cause significant delays and cost increases without a demonstrated public health or safety aspect currently addressed.

Already, the Massachusetts Environmental Policy Act ("MEPA") requires state agencies to study the environmental consequences of their actions and take all feasible measures to avoid, minimize, and mitigate damage to the environment. Further, the Department's Massachusetts Contingency Plan (310 CMR 40.0000) ("MCP") contains extensive rules and regulations governing identification, classification, tracking, transporting, recycling, use and disposal of soils. Finally, comprehensive soil testing protocols and procedures – even broader than established regulatory requirements – are already outlined and required through the Department's numerous published policies.

Mr. David Cash, Commissioner

September 22, 2014

UCANE recognizes the need to ensure the public health and safety of any jobsite or project. However, we are concerned that in an effort to stop or delay one type of project, there exists the potential to adversely impact – whether directly or indirectly – other types of projects. Accordingly, UCANE urges

the Department to thoroughly review this language in light of the myriad of federal and state laws, regulations and policies that already govern this subject matter. The Department and municipalities currently have existing tools at their disposal to deny project permits or impose additional project safeguards if there is truly a public health or safety risk.

On behalf of the 250 member companies of UCANE and the thousands of individuals they employ, I appreciate your consideration of this important matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,
UTILITY CONTRACTORS' ASSOCIATION
OF NEW ENGLAND, INC.


Anne Klayman
Executive Director

ALK/lbg

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ANNE KLAYMAN

Executive Director

October 30, 2014

Mr. David Cash, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

RE: Soil Management (Budget Section 277)

Dear Commissioner Cash:

On behalf of the Utility Contractors Association of New England (UCANE), I am writing to supplement our earlier letter, dated September 22, 2014 (attached), relative to potential Massachusetts Department of Environmental Protection (DEP) regulatory action on soil management.

As you know, Mr. Paul Locke and Ms. Sarah Weinstein held an informational session on October 17th relative to Section 277 of the fiscal year 2015 budget. In attending this first session, it was apparent that many stakeholders will be impacted by any potential action by DEP. Further, it appears that many professionals in the soils management industry share UCANE's position that DEP has sufficient existing regulations and authority to deal with reclamation projects. Existing law and existing regulations, contained in 301 CMR 11.00 and 310 CMR 40.00, are quite thorough. The consulting engineers and licensed site professionals (LSP's) have a clear understanding of these regulations, having implemented them during numerous projects throughout the Commonwealth. It is fair to say that most parties agree that costly additional or duplicative regulations are not needed.

To this point, UCANE has expressed to DEP over recent years the need for sites in Eastern Massachusetts to dispose of contaminated soils and surplus soils in general. The lack of sites, especially now that the capping of available landfill sites is almost complete, will raise the cost of construction projects, generally, and DEP funded projects, specifically. All municipal water and sewer projects develop surplus soils. If DEP funds an environmental project like a sewer pipeline, your agency rightfully intends to get as many feet of new sewer into the project as the budget will allow. Unfortunately, if a contractor is forced to transport surplus material an additional 100 miles due to the lack of an available site in general proximity to the project, this will result in significant additional cost to complete the project. Notwithstanding the increased potential to public safety and the environment from longer truck trips, the extra financial costs are ultimately borne by the DEP.

In large scale reclamation projects, it will be impossible for DEP to satisfy every interested party. There will ultimately be a need to weigh the pros and cons at each proposed location in order to arrive at decisions. UCANE believes that the economic impacts to the Commonwealth and its municipalities need to be considered by DEP throughout the process.

Mr. David Cash, Commissioner

October 30, 2014

Moreover, a new issue that became apparent at the first meeting was the fact that a growing number of municipalities are developing bylaws to circumvent or, in some cases, supersede DEP regulatory authority in regards to soil management. UCANE urges the DEP to monitor these new bylaws and communicate with municipalities and the Attorney General's Office about the potential impact these bylaws will have on the Commonwealth. Recognizing our position that there are existing safeguards already in place, any new policy or regulation developed by the DEP on this matter should underscore the DEP's authority over the issue of soil management.

UCANE, whose membership employs thousands of men and women throughout the Commonwealth, looks forward to the additional meetings sponsored by the DEP. Common sense regulation by the DEP will enable safe reclamation projects to proceed, without unnecessary regulation and undue delay, while continuing the Commonwealth's economic growth.

Thank you for your consideration of this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,
UTILITY CONTRACTORS' ASSOCIATION
OF NEW ENGLAND, INC.


Anne Klayman
Executive Director

ALK/lbg

Cc: Ms. Sarah Weinstein, Deputy Assistant Commissioner,
DEP Bureau of Waste Prevention
Mr. Paul Locke, Director, DEP Bureau of Solid Waste,
Division of Response and Remediation