

Clean Fill Questions and Answers
June-July-August 2004

Land Recycling - Questions and Responses
July 2004

Question: Is an engineer's seal required on the application for the general permit? Is there anything in the regulations that requires a seal?

Answer: The general permit application package consists of several forms. The new Form 20RF requires certification and notary seal only. Form B, Professional Certification, submitted as part of the application for the general permit requires the seal of a Professional Engineer and/or a Licensed Professional Geologist.

Question: If there is no spill or release on rock but testing indicates exceedance of Table FP-1. Is material clean fill, regulated fill or waste?

Answer: Such a situation would generally apply only to inorganics and not to organic regulated substances. If due diligence shows that there are no spills or releases, and testing reveals higher concentrations for one or more inorganics on Table FP-1, then this should be assumed to be due to natural conditions in the rock. Such rock can be used as clean fill as long as it complies with other regulations such as Chapter 102 and 105.

Question: Will new application forms be developed for the general permit?

Answer: A new general permit form has been created and has been given the number 20RF. This draft form is currently being reviewed in the regions for comments and edits.

Question: Under the policy, clean fill can not contain free liquid based on a visual observation. Does this include water also?

Answer: Yes. Water is a consideration when using dredge material as fill. The intent is to not use material that is a slurry or otherwise contains free liquid, including water. If the material is allowed to drain so that no free liquid is present it may be used as clean fill as long as it meets all clean fill criteria.

Question: How can the Department bypass the statutory requirement for permitting the transportation of waste from one Act 2 site to another?

Answer: If the material meets the clean fill definition it meets the definition of uncontaminated, and it is not a waste. No placard is required on vehicles transporting clean fill. If material meets the regulated fill definition, placards are needed, and all transportation requirements of Chapter 299 apply. A licensed hauler is only needed when the material is being transported to a permitted facility, such as a processing facility or a landfill.

Question: Under the general permit, the municipality must be notified of the placement of regulated fill 30 days in advance of the placement. Can the municipality object to the placement of fill?

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Answer: Yes. The municipality will be noticed before the application is submitted to the Department since the applicant must include proof of this notice with an application sent to the Department. Since the municipality already knows about the proposed activity, any objection they have, they can bring it to the Department's attention as soon as the registration is received. This will safeguard their objections as the Department will inform the applicant not to start placement within the 15 day or 60 day timeframes in the permit.

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Question: In the deed notice required by the general permit, must the quantity of fill be included?

Answer: The deed notice provisions do not specifically require that the quantity of the fill be included; however the person using the fill should maintain records of the quantities placed since this information is required elsewhere in the application for the general permit.

Question: Can a brownfield be an operating facility? The definition of brownfield leaves open this possibility.

Answer: No. An operating facility cannot be a brownfield property.

Question: Who is the applicant...the receiving site or the source?

Answer: The permitting program is set up to allow either the receiving site, the property developer, or the fill generating property to register for the general permit.

Question: Under the commencement of activities there is either a 15 day or 60 day waiting period. Are these calendar days or business days?

Answer: Under the money-back guarantee it is calendar days.
Here also, it is calendar days.

Question: If everything in the general permit is acceptable, should we acknowledge that in a letter?

Answer: Yes.

Question: Is rejection of a registration for the general permit or a denial of a request to waive siting limitations an appealable event?

Answer: Such a rejection or denial is an action of the Department and is appealable.

Question: Regarding the exemption from waste permit given to movement within ROW or property, can a contaminated material or historic fill be moved to clean areas of the property or ROW.

Answer: The utility, PADOT or any other entity involved in excavating at a property or along a ROW must use industry-established BMPs that will be used to identify clean materials from contaminated materials. Material that meets the clean fill definition may be used without restriction. If material is regulated fill, then that material may be placed along the ROW or within that property without the need for the general permit, but if it is

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moved offsite or taken to another non-contiguous ROW, they would need to register under this GP or get another GP or dispose the waste in a landfill.

Question: Is there hazardous waste determination for clean fill?

Answer: The Fill Policy is silent on this determination but Condition 4 of the general permit states that hazardous waste is prohibited from being used as regulated fill. For materials determined to be clean fill by due diligence that shows there is no spill or release, the issue of hazardous waste does not arise. For materials considered clean fill because the concentrations of regulated substances are below Table FP-1 and due diligence has identified a spill or release into that material, there is no SPLP or TCLP analysis requirement.

Question: How do we handle soil that meets the clean fill limits, but has high TPH levels and a strong odor?

Answer: This material cannot be used as clean fill because of the prohibition on causing a public nuisance through objectionable odors.

Question: How can we allow the movement of regulated fill to another property that does not have the same contaminants on it? Aren't we allowing contamination of a previously uncontaminated property?

Answer: The management of fill policy presents a risk-based approach to fill management. The requirements for use of regulated fill match the concentrations of regulated substances to the use of the property where it is being placed. Since regulated fill must meet nonresidential standards and must be placed on a nonresidential property, its placement is protective of the use of the receiving property.

Question: Are registrations tracked in eFacts?

Answer: Yes.

Question: The re-use language in the storage tank regulations is very similar to the fill policy language. Will the tank regs be amended to reflect the fill policy?

Answer: At this time the Department is not anticipating any regulatory changes.

Question: If construction does not start within one year of fill placement, who do we go after for enforcement? The permittee?

Answer: The Department could take enforcement action against the permittee or the landowner, if different from the permittee. The degree of enforcement will depend on the reason the requirement was not met.

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Question: What if the person placing fill does not give Form FP-001 to the property owner?

Answer: We have no enforcement authority on a policy.

If the Department receives a complaint on the placement of this fill, it can request a copy of Form FP-001, and it may test the fill to see if it meets the clean fill standards.

Question: The general permit has a requirement that dredge material from tidal areas be tested by the SPLP for chlorides. Is the ASTM leach test also acceptable?

Answer: Act 2 establishes the SPLP as the test for leachability for calculating the soil-to-groundwater numeric value under the Statewide health standard. The policy follows the Act 2 process.

Question: Someone could buy a large property that has high "background" then bring regulated fill under this GP above nonresidential SHS allegedly as construction fill at a cost to the fill sources. Essentially this person would be operating a "landfill" without a permit for a year and then put in a parking lot on that property they said they were to construct.

Answer: The general permit requires that fill be placed as part of an approved construction project. This means that plans must be in place and approved before fill material may be placed. Simply placing a parking lot over fill without an associated building or other facility would not meet this requirement.

Question: The exemption from waste permit provided in the policy to movement of contaminated soil from one Act 2 to another Act 2 site, does this exemption extend to storage tank sites undergoing remediation?

Answer: Regulated storage tank remediations meet the Act 2 standards but not the Act 2 procedural requirements. In order for regulated fill to be moved from a storage tank site to another Act 2 site without the need for the general permit the storage tank site must fully enter the Act 2 process by submitting an NIR to the Department and complying with all public notice requirements of Act 2. The movement of fill must be included in the NIR and the final report for both the source property and the receiving property.

Question: Does the Fill Policy apply to mine spoils?

Answer: No.

Question: What is considered as "evidence of release"?

Answer: Due diligence will indicate if there has been a spill or release based on review of the history and written records of the site, interviews with people who have knowledge of the site, screenings to confirm or reject the findings, etc.

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Question: Can soil contaminated with fuel - for which we require Form FC-1 for disposal be considered clean fill? If the TPH is >10,000 ppm?

Answer: No. Material for which form FC-1 is required is already a waste and therefore cannot qualify as clean fill. Material with TPH > 10,000 ppm will have an odor because of the high TPH levels, and therefore cannot be used as clean fill.

Question: It was mentioned that "objectionable odor" is a highly subjective criteria in this policy for clean fill.

Answer: While the perception of odors as objectionable is subjective, a permittee should not place material as clean fill that could present a nuisance to occupants of the property or to adjacent property owners.

Question: In determining the numeric standard for clean fill or regulated fill, why wasn't the 100xGWMSC option under the soil-to-groundwater pathway used and only the generic value considered?

Answer: The CSSAB had recommended using the lower of the residential direct contact and residential generic value from the soil to groundwater pathway options in 2000 when the Department was drafting the proposed safe fill regulations. The generic value is the result of modeling the movement of a regulated substance through the vadose zone and is based on default soil characteristics. The 100 XGWMSC option does not make use of such default assumptions and the CSSAB felt that the generic value is more representative of generic site conditions.

Question: Does the GP have a me-too option?

Answer: The me-too option was deleted from the residual waste regulations when they were amended in January 2001.

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Question: What is the definition of a release? Does it include agricultural chemicals and pesticides applied according to regulations?

Answer: The definition of a release contained in the policy includes pesticides and agricultural chemicals that have been applied according to EPA or Department of Agriculture regulations. Under due diligence, such applications constitute a release that would trigger the testing of the fill material to determine if it is clean fill or regulated fill.

Question: What level of oversight will the Department provide in the management of clean fill? Will it only get involved in cases where complaints have been received over the use of fill?

Answer: The Department's involvement in the management of clean fill will be minimal, and limited to cases where complaints have been received regarding the placement of fill material. The Department will not issue letters certifying material to be clean fill nor will it be notified when clean fill that contains regulated substances from a spill or release is placed on a property.

Question:

For sites with former UST pits that are now backfilled with gravel - do they automatically fail the "soil-like" material requirement?

Answer:

No, one would not automatically fail. The 5 foot criteria applies to the vertical distance directly underneath the receptor, so a site with a tank pit that has been backfilled with gravel would only fail the criteria if a building was constructed over the pit area. Gravel would not meet the definition of "soil-like material" as defined in the guidance.

1. The policy says regulated fill may be moved from one Act 2 site to another without a permit. Does this mean an Act 2 site or a property?
Fill may be moved within the area undergoing remediation under Act 2 without a permit. Material may be moved outside the area of construction if it is part of the construction project and that area is covered by the required deed notice. An example is of a brownfield property encompassing an entire city block, but where only pockets of contamination exist and therefore it has several small "sites". As long as the entire property is part of the construction project and will be entirely nonresidential then there is no problem moving fill to any portion of the property. However, on a property that is, say, 100 acres, with a relatively small nonresidential Act 2 site covering only 5 acres, then movement of material from that Act 2 site area to other parts of the property would require the general permit.
2. Can regulated fill be used for landscaping?
Yes. Regulated fill may be used for landscaping in conjunction with an approved construction project.

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3. Do the siting limitations apply when using regulated fill onsite at an Act 2 property? The general permit is not required, but do the requirements of the permit need to be met?

Section 902 of Act 2 allows the Department to waive state and local permit requirements as long as the substantive requirements of that permit are met. The policy as written says that placement of fill must be in compliance with Section 902, so the siting limitations are not required to be met as long as the Act 2 requirements, such as the submittal of an NIR, are met.

4. Several people commented that the brownfield definition in Condition 27 does not include the requirement that a site be remediated. Does this mean that regulated fill can be used under this general permit for construction at a contaminated site that will not be remediated?

Yes, as long as the requirements of the general permit are met.

5. Can regulated fill be used within a project or right-of-way (ROW) without a permit? What happens when the ROW is owned by someone else?

Yes, provided the fill is tested and concentration limits are below Table GP-1. If the levels are above the Table GP-1 levels, then material is treated as waste. There may also be limitations as part of right-of-way agreements that would not allow the placement of contaminated material. These requirements are separate from those of the general permit.

6. Can contaminated soil be moved from one site remediated to site-specific standard to another site that is also remediated to site-specific standards but the contaminants are not the same at the two sites?

Yes. Material that meets the regulated fill criteria can only be placed on a nonresidential property under the permit exclusion provided in the policy for such movement and is protective of that use.

7. Does contaminated material reused along a right-of-way have to meet the regulated fill requirements although the permit is not required?

Yes. The material must meet the definition of regulated fill, or the material may not exceed the background level of the project area of the right-of-way for inorganics.

8. Regulated fill may only be used in conjunction with an approved construction project. Does this mean that a developer must construct something over regulated fill in order for it to be used according to the policy?

No. Regulated fill may be used for any purposes that are connected with a construction project. It may be used for property improvements such as to construct berms or embankments, for landscaping, or for building foundations or sub-bases for roads and parking facilities.