

Management of Fill Policy (MOFP) Frequently Asked Questions (FAQ's)

These FAQ's are intended to clarify various aspects related to the Department of Environmental Protection's (DEP)'s MOFP, *Document # 258-2182-773*. The FAQ's, by themselves, are not sufficient instruction for performing a fill determination in accordance with the MOFP. In any instances of discrepancy between the MOFP and the FAQ's, the MOFP shall govern.

- 1. Question:** Does the MOFP apply to fill moved within a project area or right-of-way? How does DEP define a project area?

Answer: The MOFP does not apply to the movement of fill within a project area or right-of-way. A definition of the term "project area" has been added to the MOFP.

- 2. Question:** Does the MOFP apply to mine spoils or reclamation of active or abandoned mine sites?

Answer: Mine spoils may not be managed under the MOFP. The MOFP does not apply to fill being placed in active or abandoned mines, unless the activity is permitted or approved by DEP as part of a facility-specific reclamation project.

- 3. Question:** Are fill materials a waste?

Answer: Some fill materials, such as mined stone and rock intended for use as aggregate, would not be considered a waste. However, some fill, generated by other means and consisting of materials that have fulfilled an original purpose may be considered a waste. Pennsylvania's waste regulations provide definitions of "municipal" and "residual" waste that are based on the manner in which the waste is generated. In general, municipal waste results from the operation of residential, municipal, commercial or institutional establishments and from community activities. Residual waste results from industrial, mining and agricultural operations and sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility. Some materials that can qualify as fill, such as brick, block and concrete from construction and demolition activities, are municipal waste because of the manner in which they were generated. The municipal waste regulations provide an exception to the permitting requirement to use certain municipal waste as clean fill in 25 Pa. Code § 271.101(b)(3). A similar provision exists in the residual waste regulations. Therefore, DEP maintains that while many materials that can qualify as clean fill are "wastes," the use of these wastes does not require a permit provided that the use complies with the permit exceptions in 25 Pa. Code §§ 271.101(b)(3) or 287.101(b)(6), as applicable.

4. Question: Do waste storage and transportation requirements apply to fill?

Answer: Clean fill is not subject to the storage and transportation requirements in 25 Pa. Code, Chapters 285 or 299. Regulated fill is subject to the storage and transportation requirements in 25 Pa. Code, Chapters 285 or 299, whichever is applicable.

5. Question: Is there a hazardous waste determination for fill?

Answer: The criteria set forth in Section B.1. of the MOFP are used to determine whether fill is eligible to be managed as clean or regulated fill. Criterion B.1.d states that the fill "does not exhibit a characteristic of toxicity, as determined by 40 CFR § 261.24 (relating to toxicity characteristic)." Fill exhibits the characteristic of toxicity if, using EPA Method 1311, the Toxic Characteristic Leaching Procedure (TCLP), referenced in EPA's publication titled, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, also known as SW-846, the TCLP extract from a representative sample of the fill contains any of the contaminants listed in Table 1 of 40 CFR § 261.24 at a concentration equal to or greater than the respective value given in that table.

The toxicity characteristic is only to be evaluated when environmental due diligence indicates that the fill may have been affected by a release of a regulated substance, and the released substance is included in Table 1 of 40 CFR § 261.24. In accordance with Method 1311, the solid phase is extracted with an amount of extraction fluid equal to 20 times the weight of the solid phase; based on this fact, the maximum leaching concentration that can be achieved for a contaminant is $\frac{1}{20}$ of the total concentration. Therefore, if the total concentration of the substance exceeds the TCLP limit for that substance in Table 1 of 40 CFR § 261.24 by a factor of 20 or more, the potential toxicity of the fill should be evaluated either by performing the TCLP test, or providing additional description of the fill indicating that the substance is bound in the matrix and will not leach at a characteristically toxic amount. Conversely, if the total concentration of the substance exceeds the TCLP limit for that substance in Table 1 of 40 CFR § 261.24 by a factor less than 20, such that the TCLP limit for the substance could not possibly be exceeded, Method 1311 does not need to be performed for the fill determination.

6. Question: What due diligence is required for fill that have been painted?

Answer: The primary concern with painted brick and block is lead contamination. The due diligence requirements of the MOFP apply to these materials just like any others. If the due diligence shows that the brick or block was painted after 1978 (the date lead was prohibited in paint), then there is no concern for lead in the paint. If painting occurred prior to 1978, then the paint should be tested to determine if it contains lead. This may be done by scraping the brick for a paint sample. If the testing shows that the paint is lead free, then the brick or block may

be used as clean fill as long as it has not been subject to any other spill or release that causes it to exceed the CFCLs. If the testing shows that lead is present in the paint, then the brick or block may be tested by taking representative core samples for analysis. If the results show that the lead concentration meets the CFCLs, and there is no other evidence of a spill or release that would cause it to exceed the CFCLs, then the brick or block may be used as clean fill. Otherwise it must be managed as a waste under the appropriate permits, including the general permit for regulated fill (WMGR096) if it meets the RFCLs.

7. **Question:** How should fill that passes due diligence and meets chemical limits, but contains free liquids or has a strong odor be managed?

Answer: Fill may not contain free liquids based on visual inspection and cannot create a public nuisance (such as an objectionable odor) to users of the receiving site or adjacent properties. Therefore, fill containing free liquids cannot be used as clean fill, and fill that has a strong odor may not be used if it will cause a public nuisance.

8. **Question:** How does the Form FP-001 clean fill submittal system work?

Answer: The link to the electronic Form FP-001 system can be accessed through DEP's webpage found [here](#). Sections 1 and 2 of the FP-001 are completed by the person making the fill determination. That information is submitted to DEP along with contact information for the person receiving the clean fill. Using that contact information, a notification is sent from DEP to the person identified to receive the fill, along with a pin number that allows them to access Section 3 of FP-001. Once that person completes and submits Section 3 of the FP-001, a notice of receipt and a copy of the completed form, along with any attachments will be sent to the person making the clean fill determination and the person receiving or placing the clean fill. Once that notice has been received, movement of the material covered by the clean fill determination may be moved from the generating site to the receiving site.

9. **Question:** What level of oversight will DEP provide related to the management of fill?

Answer: DEP regional offices receiving Form FP-001 submittals may review the submittals for compliance with the MOFP. In doing so, DEP staff may identify deficiencies or request additional information to be supplied, which helps to ensure that fill determinations are made adequately and in accordance with the policy. The level of review conducted by each regional office may vary between DEP regions or between similar projects in the same region, depending upon site-specific circumstances.

10. Question: Is fill subject to fees when used as cover at disposal facilities?

Answer: Clean fill is not subject to landfill fees. Regulated fill is subject to landfill fees, unless the regulated fill is used as alternative daily cover (ADC). Regulated fill that is used as ADC is subject only to the \$1.00 per ton Host Municipality Benefit Fee and the \$.25 per ton Environmental Stewardship Fee. The \$4.00 per ton Disposal Fee and the \$2.00 per ton Recycling Fee are waived for regulated fill materials used as ADC because the use of a material as ADC does not constitute disposal.