

## **Comments on the PA DEP Management of Fill Policy Proposed Revisions 2018**

**Submitted for the consideration of the Senate Majority Policy Committee  
(Public Meeting July 9, 10:00 at Wind Gap Middle School)**

**By Walter H. Hungarter, III – RT Environmental Services, Inc.**

Management of Fill Policy Revisions to Consider:

- Adoption of current risk values from US EPA for the PA DEP Statewide Health Standards in a timely manner.

It is proposed that the "Clean Fill" numeric limits be based on the PA DEP Statewide Health Standards. A three year review cycle is currently used by the Department when evaluating changes to the PA DEP Statewide Health Standards (which are calculated using the US EPA risk values) and ultimately adopt new risk values from US EPA. Using the new risk values from US EPA may cause increases and/or decreases in specific contaminants of concern which are evaluated under the Management of Fill Policy. If the new risk values (and subsequent calculated PA DEP Statewide Health Standards) are not implemented in timely fashion, materials which are excavated may be needlessly remediated as impacted even though they would be considered "Clean Fill" using the most current risk information from US EPA and the newly calculated Statewide Health Standards. New US EPA risk values and the calculated PA DEP Statewide Health Standards (and ultimately the "Clean Fill" numeric limits) need to be incorporated timely into practice such that Contracts can be appropriately bid by Contractors and let by Owners. A three year period to review and adopt is not practical for the construction industry. Other nearby States have the ability to adopt the new risk values and subsequent standards within several weeks of being finalized by the US EPA. This allows a more accurate evaluation of projects and how materials are managed as "Clean Fill" or as impacted materials.

- Background and/or naturally occurring concentrations of constituents of concern at higher concentrations than the "Clean Fill" numeric limits.

Most materials which are planned to be used as "Clean Fill" are tested to determine if they are in fact "Clean Fill" regardless of any due diligence completed. As such, there are instances when certain constituents of concern are detected, that they exceed the applicable "Clean Fill" numeric limits; resulting from a spill or release (which is documented in the Policy) or resulting from a background and/or naturally occurring condition. The Management of Fill Policy must have a mechanism to address exceedances of the "Clean Fill" numeric limits resulting from background conditions and/or are naturally occurring concentrations in the fill. There are many constituents of concern (arsenic, vanadium, benzo(a)pyrene [related to atmospheric deposition in urban settings], etc.) which have Statewide Health Standards set at concentrations which exceed expected background and/or naturally occurring levels. Without a mechanism in the Policy to manage such materials, needless remediation would become necessary which increase project costs and could make certain project no longer feasible. Other surrounding States have already addressed these issues and provided guidance on how to manage.



- Applicability of the Policy to “Clean Fill” placed under the current Policy vs. “Clean Fill” placed after a revision to the numeric limits established by the Statewide Health Standards.

As indicated earlier, the Statewide Health Standards are subject to revision based on current US EPA risk values applicable at a certain time. If a “Clean Fill” numeric limit changes in the middle of an ongoing project, material placed earlier in the project may not be considered “Clean Fill” at the end of the project. This could be very detrimental to a construction project as it could cause delays and/or additional costs. To avoid this situation, a clarification is necessary as to how and when Policy changes in “Clean Fill” numeric limits are applicable. Further, this needs to be clarified such that if material is placed as “Clean Fill” on a property that a period of time later can still rely on the fact that material is “Clean Fill” regardless of “Clean Fill” numeric limit changes.

- Applicability of the Policy to Abandon Mine Projects

The current Policy does not allow for “Clean Fill” to be placed below the water table unless otherwise authorized by the Department. Most abandon mine sites, which are generally considered safety hazards, typically have water present to some extent. The presence of water precludes the use of “Clean Fill” to reclaim an abandon mine site. The Department should address and clarify how “Clean Fill” can be used at this type of site to address the primary safety concern which is well documented.

- Fill placed in Urban setting vs. Rural setting

The Statewide Health Standards have residential numeric limits and non-residential numeric limits. It would be beneficial to the construction industry to incorporate non-residential numeric limits as “Urban Fill” or “Construction Fill” for use on a non-residential urban site. Management of fill material between urban sites is very common in the construction industry. It does not make much sense to place “Clean Fill” on an urban site used for non-residential purposes where the non-residential standards are met throughout other portions of the site. The “Clean Fill” would be best used on a rural site and/or residential use site. Having additional categories of material could help improve how and where materials are managed and reduce the overall construction impact of movement of material.

RT Environmental Services, Inc. will provide subsequent comments on the proposed draft revision of the Management of Fill Policy once the Department has addressed key considerations.

Respectfully Submitted,

**RT ENVIRONMENTAL SERVICES, INC.**

  
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CC: PAPA Environmental Committee, PA Beneficial Use Association