

Summary Notes for the December 14, 2010 NEWMOA Conference Call

Topic: Management of Contaminated Soils

NEWMOA States participating: CT, MA, NH, NJ, NY, and VT

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NJ proposed this topic for the call. Specifically, NJ sought input from the other NEWMOA State on finding economical outlets for soils contaminated with low levels of hazardous constituents such as asphaltic compounds or pesticides, but which are not RCRA hazardous wastes. Such soils often originate from locations that are not official contaminated sites managed under the state site cleanup programs, such as from construction sites where urban fill is excavated. NJ has observed such soils being extensively generated in the New York City area and imported into NJ by brokers who stockpile the soils which may then be accumulated for long periods of time. This practice has generated several enforcement cases. NJ has traditionally allowed such soils to go to Subtitle D landfills as cover material, but this is expensive, particularly when there is no viable responsible party.

NY indicated that they have the same management problem as NJ particularly with New York City- area excavated soils; that is, finding suitable locations to reuse/dispose of them. The characterization of such soils is often not properly represented to the receiver by the generator particularly when the contamination is not obvious and the material looks like clean-fill. Soils containing lead at levels greater than residential acceptance standards are a particular problem. Soils that are reused onsite are not regulated. Soils that are historical fills are Subtitle D wastes when sent off the site of generation. However, NY has no way of knowing when or where such soils are generated. NY is looking to promulgate new regulations to cover this type of soil. Even though NY prefers that these soils remain on-site, it does issue Beneficial Use Determinations (BUDs) for mildly-contaminated soils to be reused off the site of generation, including a generic BUD applicable state-wide. Soils allowed for reuse off-site must meet residential cleanup standards. Soils exceeding residential standards that are shipped off-site must be sent to landfills for disposal or use as alternative daily cover.

NY also discussed providing notices to municipal building officials on the issues surrounding proper management of these soils as a tool to obtain greater compliance and suggesting adding it to the local permitting system. CT responded by saying they had made such an effort but had gotten a mixed reception to the idea.

CT is in the process of proposing new regulations to define what is “clean” fill – their proposal is available on the CT DEP website. The regulations look to open up alternative opportunities for reuse of these soils as fill material and for reuse of treated soils produced by soil recycling facilities beyond reuse as landfill cover material. Does it make sense for all the states in the region to have similar requirements? CT only has one operating landfill in the state and current landfill closure projects will soon be completed severely limiting in-state management options for this soil. A goal of the regulations is to set a bright line between soils that are reusable and soils that are not and leveling the playing field between different types of sites. For example, in an urban area, under a Brownfields project soil is considered dirty unless proven clean, whereas other types of development projects, the soil is considered clean unless proven dirty. The draft regulations propose a “certification of clean fill” requirement attesting to soil being clean fill as defined by the regulations. That way, a receiver of the soils can ask for the certification before accepting them. Clean fill would have to meet the most stringent cleanup

standards. Key issues for consideration in CT have been: defining whose obligation it is to characterize the material, the generator or the receiver? And the procedures for characterization of the material: representative sampling and/or use of generator knowledge of the source of the material? Homeowner projects such as pool installations would be exempted. CT is also discussing permitting soil recycling facilities – which is currently done mainly at aggregate producers/recyclers – however, the businesses do not want to be official solid waste facilities due to all the regulatory procedures such as public input. CT also discussed its general permit for stockpiling and transfer of excavated soils with mild contamination. CT currently has more than (100) registrations filed under the general permit, primarily by CT DOT facilities and utilities.

VT – the site cleanup program is working on a guidance document for mildly contaminated soils and for screening levels for reuse of such soils. VT landfills have restrictions on soils received for reuse as daily cover. Disposition of RCRA non-hazardous soils is not a significant issue in VT.

MA - non-hazardous soils contaminated with hazardous constituents are remediation wastes regulated by the Massachusetts Contingency Plan (MCP) regulations at 310 CMR 40.0030. Soils containing concentrations greater than reportable concentration thresholds as a result of releases of hazardous material must be reported to MassDEP. MassDEP Policy # COMM-97-001 allows such soils to be sent to active landfills as intermediate or final cover or as shaping material (policy distributed to the States by NEWMOA) provided they meet the standards in the policy. Contaminated soils can also be used as grading, shaping and capping materials at landfills undergoing closure. Preference is to reuse contaminated soils onsite after treatment as necessary to meet risk-based cleanup standards. Excavated urban soils with no identifiable release of hazardous material that are reused onsite are not regulated; but when shipped off-site, as with contaminated soils generally, cannot be land disposed at a less contaminated site (anti-degradation policy).

NH - non-hazardous, mildly-contaminated soils are regulated as solid waste and as such, have to obtain permits issued by the agency. NH hopes to remove the permit requirement in the future because it does not work well for soils. Contaminated soils meeting cleanup standards can be managed onsite without an activity and use limitation (AUL). Soil left onsite with concentrations exceeding cleanup standards must obtain an AUL. Contaminated soils regardless of concentration that are sent off the site of generation are solid wastes. The soils can be sent to a landfill for disposal or use as daily cover, or sent to a treatment facility (NH has one such facility). The treated soils can be used as fill except at residences. Urban fills that are not contaminated by a regulated release of hazardous material are not regulated when managed onsite. These urban fills when shipped off-site are not clean fill and must be managed as a solid waste as discussed above. NH uses BUDs to certify soil-derived products such as soils used in asphalt emulsions.

Group comments - NEWMOA States should try to find regional solutions for options to deal with disposition of contaminated soils in a consistent manner. At a minimum CT, NY and NJ should address together the handling of the large volumes of contaminated soils being generated in the New York City area from construction-related activities. Participants emphasized that this is a cross-program issue and that solid waste, hazardous waste and waste site cleanup programs all need to be involved.

States will send NEWMOA pdfs or website links to their “contained-in” policies, and other information relevant to managing mildly contaminated soils for NEWMOA to compile and forward to the group.