

Coplay Quarry, LLC

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Mr. Chris Solloway
Group Manager, Permits Section
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Bureau of Waste Management
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RE: WMGR096 Draft Permit Renewal

Dear Mr. Solloway;

Please accept these comments on the draft WMGR096 General Permit. The beneficial use of Regulated Fill is an important permit for the management of soils in Pennsylvania. These changes will impact a significant portion of the Pennsylvania businesses and economy by increasing the cost for excess soil removal for developing sites. The included draft changes have extensively changed the permit without any practical considerations or feasibility.

- 1) The manner in which this draft general permit was published was misleading in that the changes were minor. The November 27, 2017 DEP letter to permittees stated the changes to WMGR096 would be minor modifications for streamlining the process. Then the October 6, 2018 draft publication in the Pennsylvania Bulletin stated the only change is reorganizing for ease of use, updating the limits based on MSCs, and clarifying definitions. The reality is that a substantial change was made with almost a 50 percent increase in condition language. The Management of Fill Policy that dictates the regulated fill determination is also going through extensive rewrite. Due to the extent of revisions, thorough consideration should be given to the comments to both the permit and policy before any changes are implemented.

- 2) The Draft revision to the WMGR096 permit changes the requirements of a receiving site in Section A.1 that requires a site to be a “real property where regulated substances have been released and remain present”. We take this to mean a site must be contaminated in order to be permitted to accept Regulated Fill. Conditions 1 & 27 of the current permit, and previous versions, did not require a site to be contaminated. These versions specifically allowed for the site to be a “non-residential greenfield”. The elimination of this siting would severely reduce the beneficial use of regulated fill and cause unnecessary hardship of current permittees. We believe this was an oversight by the Department and suggest “non-residential greenfield” be added to the draft permit.
- 3) Background reference area definition item 2 only refers to atmospheric deposition as a reason for background levels in soils limits Lead and Benzo(a)pyrene being present due to atmospheric deposition in urban or industrial areas. This is a very limited definition. Firstly, atmospheric deposition has resulted in the accumulation of many more parameters than the two listed such as Arsenic. Secondly, there are materials that have been used ubiquitously in our environment and are now commonly found in soils such as the use of asphalt and resulting Benzo(a)pyrene. We feel there should be an expanded definition to account for these situations or removal of the limitation to atmospheric deposition.
- 4) The definition of “donor site” states that multiple donor sites may be identified on a single property. The Department needs to provide guidance on how this is to be determined.
- 5) Public perception and understanding of Dredged Material are very poor and leads to a belief that all dredged material is “bad” and should be handled as a waste. In some instances, dredged material is highly contaminated and requires proper disposal, but not all dredged material is the same. The term dredged material covers material from many sources of waterways, many of which are uncontaminated and an exceptional material for reuse.
- 6) The definition of “Regulated Fill” references the definition of dredged material in 271.1 & 287.1. The definition in these two regulations are the same. There is nothing in the

definition of these regulations that require dredged material to be used strictly as a waste or as regulated fill. Regulation 271.2.c.6 & 287.2.c.6 require that dredged material, when deemed a waste, must be managed as residual waste instead of municipal.

- 7) Draft WMGR096 Section C requires anyone proposing to use Regulated Fill to apply for a Determination of Applicability. As part of this application, Section C.10 requires the submission of “Names, addresses, and locations of known or potential donor sites of regulated fill and estimates or volumes of regulated fill at the donor sites”. This information is important for new source submission approvals, but the review period of a DOA application would make any new sources submitted under C.10 unlikely to be available once permitted. We would suggest this requirement be removed as it is an exercise in futility.
- 8) Every construction project is different and will have varied engineering properties. The Management of Fill Question and Answer document states that regulated fill can be used for landscaping in conjunction with an approved construction project. Landscaping is an example of a construction project where there would be limited to no engineering specifications. Grading a project for development into an industrial park and installing utilities would have limited engineering properties.
- 9) Currently some permittees have been required to implement Waste Transportation Safety Plans but not all. This condition will help correct inconsistency by the Department.
- 10) Section C.16 requires a traffic study be conducted. Municipal traffic studies are conducted as part of the Land Development process and are conducted based on the future USE of the property. The construction phase is not considered in these municipal evaluations. The beneficial use of regulated fill is as a construction material used to substitute other fill material or products. Construction materials are not regulated by municipalities.
- 11) According to the Pennsylvania Municipalities Planning Code, municipal traffic studies are conducted for the subdivision and use of property and not for construction purposes. PennDOT only requires traffic studies on Highway Occupancy Permits for future use. The included language in the draft permit is that of a “traffic study” and not an

assessment or evaluation. As this term is not defined it would be assumed to be the full in-depth PennDOT traffic study. This leaves no comparison values or limits of which to make any determination. We suggest condition C.16 be removed.

- 12) Condition D.1.b requires the permittee shall document the “final engineering design”. What is meant by “final engineering design”? Condition C.12.b requires engineering properties be documented and that would be the required design specifications to be met. Condition D.1.b requires a “minimum” amount of information to be documented that may vary from the engineering properties of the construction project. This will conflict or require additional testing than the engineering design for the project as “bearing capacity”
- 13) The draft permit references the Management of Fill Policy multiple times for language that is only found in the draft MOF Policy and not current version. As the draft permit and policy were not issued simultaneously there is a conflict that must be resolved. The department cannot require permittees to adhere to language in a draft policy or permit until such time that it issued as final.
- 14) The draft permit requires that fill exceeding the regulated fill limits due to background must be placed to eliminate direct contact exposure. It is assumed this references the Act 2 non-residential direct contact depths of 0-2 feet. Is the permit application indicating depths of fill enough to prove the placement of this material or is there further information required?
- 15) Condition D.7 & 8 could be incorporated into a single condition. The draft permit should define the permitted area as the volume of space between the horizontal permit boundaries, the starting grades, and the proposed final grades of the construction project. This is a defined volume of “air space” for the permit. For inbound material, the use of volume as a material accepted or placed capacity is an incredibly inaccurate estimate. This is due to the fact that the new source acceptance is based on volume estimates for sampling purposes and not based on compacted material. This estimation is then converted to a Department approved conversion factor of 1.5 tons per yard. The material is then excavated into a looser material and accepted at the permitted facility scales by

tonnage. These loads are then placed within the permit and compacted. The final placed compacted material is considerably different in density and therefore significantly different than volume estimates. This will lead to conflicts on comparing received volume to permitted volume. Requiring permit modifications due to this variability is unnecessary. The final grades are what should be used to determine if a project is complete.

- 16) Condition D.15 contains the standard language of preemption of the Solid Waste Management Act. The draft permit application section indicates that notification is required for local municipality. Only Operations section D.12 conflicts that disclosure of regulated fill use is required for any approvals or permits sought from municipalities. The language of this condition would require regulated fill approval by the municipality prior to issuance of any construction approvals or permits. This continues the “Cart and Horse” argument that has been occurring. The Department is the agency to determine what beneficial use is and where it is applicable based on sound environmental science. The municipality does not have the expertise or understanding to implement these beneficial uses. The DEP preempts the local municipality on environmental matters as long as not conflicting with established local zoning or planning. The construction project approval by the municipality is not the place for determining where regulated fill can be used as that is established in the general permit.
- 17) Condition D.25 requires daily inspections of each storage area and surrounding areas. Is it the departments intent for the inspections to be of the storage areas only or the entire permitted area? This condition requires it to be conducted but not recorded.
- 18) The draft WMGR096 includes tables GP-1a and GP-1b that contain the limits for regulated fill. The department indicated it was to match the limits for fill to the Statewide Health Standards, why are the tables included instead of a reference to the “decision tree”. This is different than the MOF policy.
- 19) The inclusion of tables GP-1a & GP-1b inside the permit as pages 20-18 seems out of place. It would seem more appropriate to be at the end of the permit.

- 20) Including Chlorides as a general parameter will cause significant impact to Pennsylvania's economy due to widespread roadway use of salt. The current permit WMGR096 lists chlorides as a parameter for tidal dredged material only.
- 21) The draft permit has removed the requirement for the department to respond to new sources of regulated fill within 10 days. Is the department indicating that the permittees are able to accept the material without department concurrence?
- 22) Condition F.2 repeats the requirement to retain records for physical and analytical evaluations. Physical samples have no limits as per the permit but may be required based on the approved construction plan. Physical samples do not match this list of condition F.2. The condition states "must include, at a minimum" so the list needs to be applicable to all samples.
- 23) Condition F.4 requires the permittee to maintain records of spills. The wording of the first sentence is incorrect as it should say "all spills and releases of".
- 24) The draft permit's increased deed notice requirement would require voluminous annual deed notices. In order to comply with each source analytical and records, it would require hundreds of thousands of pages be attached in a deed notice per year. A deed restriction is not meant to serve as a document repository.
- 25) Condition G.2.d requires updates provided to the department within 30 days for changes in compliance status of any permit. Is this a new requirement where the department is requiring ongoing compliance history be provided? We have not seen this requirement for active facilities. Historically compliance histories were provided during an application and not ongoing.
- 26) The expanded requirement for an annual report as part of the fourth quarter report lists an administrative fee of \$500 must be paid to the Commonwealth of Pennsylvania. Where is the regulatory justification for charging an administrative fee to review a report the department is requesting? There are only references to application fees in 287.601-666. No other General Permit requires such a fee.
- 27) The annual report requires a survey be conducted even in areas not filled during the calendar year. This is again unnecessary and will provide no information. The permit

requires the permittee track the placement of fill and if no material was placed in that area there is little value in conducting a survey. The permittee should be allowed to certify that no fill was placed in lieu of the survey.

- 28) The draft permit and MOF policy have taken extensive time to dictate the methods to making decisions under the permit and policy. These extensive requirements have removed the ability for an average property owner to make these decisions. Following these requirements will increase the cost to a homeowner.
- 29) The level of approval required in the draft permit will result in very limited beneficial use of regulated fill as a construction material. Construction projects requiring clean fill do not require this level of oversight for the traffic of imported clean fill or construction materials or any additional engineering properties. The draft permit requires local approval for the construction project with regulated fill as well as traffic approvals. No other construction material general permit requires this level of regulation.
- 30) A permittee spends extensive time reviewing all information and analytical data from a source prior to determining if it is acceptable as Regulated Fill. This immense amount of information is summarized for the department in a new source submission. The department often comments on projects for further clarification, However the frequency of project denials is extremely low. This demonstrates that the permittee's environmental professionals have been more than capable of ensuring compliance. This draft mandates extensive additional requirements. The Management of Fill Policy is what dictates the due diligence, sampling and analytical requirements of Regulated Fill. This policy is still in draft after the expiration date of this permit. These comments do not include the impact those proposed changes.

There are many variables to evaluate for site soils in conducting the due diligence and sampling. The implementation of overly specific conditions does not remove the variability that must be evaluated. A permittee utilizes environmental professionals to conduct this work and has been successful for the last 15 years. The draft language written into this

permit has led to extensive comments. The department should consider the difficulty in applying this language in a practical application.

Sincerely;

A handwritten signature in black ink that reads "Ashley Austin". The signature is written in a cursive style with a large initial "A" and a stylized "A" at the end.

Ashley Austin