



Pennsylvania Asphalt Pavement Association

3544 North Progress Avenue • Suite 100 • Harrisburg, PA 17110-9637

Phone: 717-657-1881 • Fax: 717-657-0687

Email: cgoodhart@pa-asphalt.org • www.pa-asphalt.org

Charles C. Goodhart
Executive Director

December 5, 2018

Mr. Chris Solloway
Group Manager
Permits Section, Division of Municipal and Residual Waste
Bureau of Waste Management
P.O. Box 69170
Harrisburg, PA 17106-9170
Ra-epbenuseall@pa.gov

RE: COMMENTS ON REGULATED FILL GENERAL PERMIT REVISIONS

Dear Mr. Solloway:

The Pennsylvania Asphalt Pavement Association is herewith submitting comments on the proposed revisions to the Regulated Fill General Permit. The Association has been involved with clean fill and related regulated fill issues since 2002, and we worked closely with former Secretary Kathleen McGinty to develop an effective and workable clean fill and beneficial use program for management of soil materials, asphalt and concrete throughout the Commonwealth. We are concerned that revisions that DEP proposes will result in an unworkable program. The proposals by DEP to revise the Permit do not reasonably reflect an understanding of what the program is and how it works.

Our comments include the following:

1. The definition of "Background" as a reference area, is something new which should be commonly used if technically credible, in a number of permits, programs and statewide health standards, and as part of the Management of Regulated Fill Policy. However, we believe that Pennsylvania does not have reasonable benzo(a)pyrene concentration limits, which take into account appropriate EPA toxicity work used to set cleanup limits in neighboring states. Until the Department proposes a reasonable limit for benzo(a)pyrene in statewide health standards, it would be inappropriate, costly, and burdensome for the Department to adopt the current limits as part of a background determination.
2. The Department has developed its own Co-product Determination for Reclaimed Asphalt Pavement (RAP) and there are a significant number of General Permits already issued which cover RAP. No changes to the Co-product Determination nor other General Permit Limits should be made until there is consistency with permits already issued. Modification to RAP in the Regulated Fill Permit is inappropriate, and changes will make it harder to beneficially use materials such as RAP found commonly throughout the state.
3. Dredge material should not be simply defined as "Regulated Fill". Dredge material is a widely generated material, some of which is clearly clean fill, and some of which is not. Materials dredged in western areas such as the Allegheny River would suddenly become "Regulated Fill", and the Department has presented no credible information that regulation of this material is necessary. In the past when the Department did not adequately address this issue, which is important in a wide area of the state, regulations which were unnecessary caused withdrawal of the entire Clean Fill Policy for a number of years.

Dredge material should not be unilaterally “defined” as just being regulated fill as such a regulatory approach lacks technical credibility. Dredge material should be defined by the level of contamination that may or may not be present in it. The approach DEP proposes has proven to not work.

4. The requirement to submit a donor site package, along with information on engineering properties, and copies of subdivision and land use and development plans negates the original concept of using a streamlined General Permit approach. By the time these items are submitted and reviewed by DEP, too much time will have passed making it unlikely that the regulated fill can be used under the General Permit. This will reduce the beneficial use of regulated fill. The Association requests that unnecessary regulatory additions moving the beneficial materials general permit concept away from what is reasonable be removed and the package for revising the proposed Regulated Fill General Permit be withdrawn and later resubmitted for comment. The consistent addition of other items being added to General Permit requirements which are inappropriate include waste transportation safety plans, a new requirement of a traffic study, and consulting neighboring municipalities about the protrude, means that it is unlikely that there will be significant use of the Regulated Fill General Permit. It should be noted that some additions including inappropriate overregulation of General Permit Beneficial Use materials are also appearing in the proposed changes to the Management of Fill Policy. The Department is making the Beneficial Use Program and Clean Fill Program unusable and unworkable, and we think this is a mistake because Pennsylvania will need many new landfills throughout the state. It is apparent that use of General Permits is being so overregulated that General Permits will not be likely used significantly in the future.
5. The testing protocols being added in the proposed revisions to the General Permit are likely to raise a typical initial testing cost of \$2,000 for screening materials to see if they are regulated fill or clean fill to \$10,000 or more. The new high initial “screening cost” revision will increase by a cost factor of 5. This is neither appropriate nor environmentally needed.
6. The Department also plans to require “general liability insurance,” but the Department does not quote any required limits. General liability insurance alone for coverage has little or no meaning in the environmental field, and this provision should be removed.
7. The Department is also proposing that “Regulated Fill” cannot be used to reclaim mines. It should be noted that many areas which are historic surface mines were never regulated and do not have any significant environmental concern, but they need to be filled to prevent injury and death where there are high walls. There is no reason for the Department to not allow placemen to regulated fill on properties where regulated fill can eliminate high walls and steep slopes, and the area can then capped as appropriate, to avoid situations where steep high walls are an obvious hazard in areas where residential development is encroaching nearby.
8. DEP proposes to interface with EPA with respect to PCBs. There apparently is no written program with EPA that they will process paperwork from anyone related to PCBs unless there is a PCB release covered under TSCA. Materials with PCBs >2 mg/kg may have to be kept at sites and projects will likely be disrupted as DEP has no realistic program to integrate TSCA with the Management of Fill Policy or any other Beneficial Use General Permits or other parts of the Waste Program.

Conclusions

For a number of years, Pennsylvania has been cited by regulatory officials in other states for the implementation of an effective and well-managed Beneficial Use Program to appropriately handle a broad range of materials. With the current proposed revisions, General Permits which have been a key part of the Beneficial Use Program, are unlikely to be useful in the future as many detailed provisions which are not appropriate in a General Beneficial Use Permit are proposed to be added. Although the Department is clearly in favor of General Permits and the Beneficial Use Program, we have stated since 2002 that adding unneeded provisions to guidance or general permits is counterproductive to environmental protection and will cause there to be a need for more landfills.

As the General Permit Program for regulated fill is clearly proposed to be modified so as to be unusable in the future, we are requesting that the Department withdraw the proposed rulemaking as the rulemaking changes as proposed are neither appropriate nor reasonable for inclusion in General Permits. The proposed rulemaking would make the Regulated Fill General Permit different from other related General Permits and make it very unlikely that potential regulated fill or management of fill testing could be completed, and a permit issued in time for the material to be used on a typical construction project in Greenfields areas or Brownfields areas.

Critical to the implementation of successful beneficial use of materials is having the materials be able to be tested and approved in a reasonable timeframe, and the proposed rulemaking has indicated in the Pennsylvania Bulletin dated October 6, 2018, makes it very unlikely that beneficial use materials, which have a long history of environmental success in the Commonwealth, will be greatly reduced in the future. In other words, the regulatory approval process that was simple in previous General Permits is being removed and we expect major reductions in the use and approval of beneficial use materials in Pennsylvania going forward. Withdrawal of the proposed rulemaking is hereby requested.

Sincerely,



Charles G. Goodhart
Executive Director

CCG:tmh

cc: PAPA Environmental Committee