

Association of State and Territorial

ASTSWMO

Solid Waste Management Officials

CERCLA and Brownfields
Research Center

State Superfund Focus Group

State Management and Potential Reuse of Marginally Contaminated Soils

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444 North Capitol Street, NW
Suite 315
Washington, DC 20001
www.astswmo.org

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The following Focus Group members and EPA personnel participated in the development of this report:

Wesley Turner, Kentucky Department for Environmental Protection (Focus Group Chair)
Jay Naparstek, Massachusetts Department of Environmental Protection (Past Chair)
Louis Maccarone, Rhode Island Department of Environmental Management
Fred Mumford, New Jersey Department of Environmental Protection
Kevin Greene, Virginia Department of Environmental Quality
Todd Keyser, Delaware Department of Natural Resources and Environmental Control
Stephanie Andrews, Indiana Department of Environmental Management (Vice Chair)
Dana Bahar, New Mexico Environment Department
Mike Felix, Nebraska Department of Environmental Quality
Tom Buell, Nebraska Department of Environmental Quality
Molly Stark, New Hampshire Department of Environmental Services
Brent Everett, Utah Department of Environmental Quality
Roland Gutierrez, Guam Environmental Protection Agency
Tom Gainer, Oregon Department of Environmental Quality
Jennifer Wilbur, U.S. EPA/Office of Superfund Remediation and Technology Innovation

Introduction

During site remediation, marginally contaminated soil is often found and often times reused on site. In many States, the soil may, for example, be used for grading or other construction purposes. To create a better understanding of how States manage marginally contaminated soils, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) State Superfund Focus Group (Focus Group) of the CERCLA and Brownfields Research Center reviewed State methods of management and potential reuse of marginally contaminated soils in the remediation process. This report will also serve to assist States and the federal government in evaluating and selecting appropriate cleanup technologies and approaches that may minimize the overall impact of remedial activities, while remaining protective of human health and the environment.

Thirty-Eight States supported this review: Alaska, Arkansas, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, and Wyoming.

In Rhode Island, for example, there is no official marginally contaminated soil policy in place. However, minimally contaminated material is routinely reused on the same site, where it will be addressed as part of the final remedy. In this respect, while Rhode Island does not have a specific policy, there is some consideration for reuse of marginally contaminated soil. The Focus Group developed this review to ascertain whether reuse is allowed by other States and, if so, what must be considered prior to reuse.

The final product from this effort is a compendium of State soil management approaches and applicable State policies regarding the management of marginally contaminated soils. The resulting document will be posted on the ASTSWMO website and distributed electronically to all 50 States, Territories, the U.S. Environmental Protection Agency, and other organizations, as appropriate.

Definition of Marginally Contaminated Soils

For purposes of this research, “marginally contaminated soils” shall be considered soil and/or eligible fill material (*e.g.*, recycled concrete, construction debris, etc.) that do not meet a State’s unrestricted use criteria or standards for organic or inorganic contaminants. This material shall not contain free product, not be considered hazardous waste, nor exceed upper concentration limits or leachability criteria or standards, if applicable.

Respondents were asked to keep in mind the following thoughts when conducting their review:

How are marginally contaminated soils handled at cleanup sites and at what point do they become regulated, if at all, as solid wastes? For instance, if marginally contaminated soil is removed from an area of a site as part of a cleanup remedy, can it be placed in another part of the site where it is beneficially used for other construction activities without that placement being considered “waste disposal”? What types of beneficial uses of marginally contaminated soil would be allowed without invoking waste designation? What happens if the placement occurs off-site? Once it moves off-site is the soil always a waste, regardless of use or level of contamination?

Do States have a definition for marginally contaminated soil (historic fills, etc.) and, if yes, how is it defined?

Twenty-four of the 38 States reviewed do not have a definition for marginally contaminated soils. Of the States that do have a definition, most do not specifically define “marginally contaminated soil,” but have language that is in line with this document’s definition of marginally contaminated soils. A brief summary of the responses is listed below.

New Hampshire has a definition of “background” that includes fill unrelated to a release that may contain coal or wood ash, and asphalt pavement that may contain petroleum products. While impacted soil of that nature is not addressed by the regulations governing releases to the environment, guidance is provided to explain that it shall not be treated as clean fill.

Maine has a definition for “special waste”, which is any solid waste generated by sources other than household and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten public health, human safety or the environment and requires special handling, transportation and disposal procedures. These can include: ash, industrial and process waste, sludge and dewatered septage, debris from non-hazardous chemical spills and cleanup of those spills, contaminated soil and dredge material, asbestos and asbestos-containing waste, sand blast grit and non-liquid paint waste, high and low pH waste, and shedder residue.

Pennsylvania has three definitions for various types of fill. However, historic fill is the most similar to the characterization of marginally contaminated soil. It is designated as material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to 1988 that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction and demolition waste. There is additional guidance in the State’s Environmental Cleanup Program Technical Manual that states, “The Department will not require a permit for the onsite movement of residual waste encountered when performing a remediation within a site for use in the remedy (*e.g.*, grading of the site, placement back into exploratory holes) so long as the site attains [a] site-specific standard.”

Oregon uses a “fill” description, but the material may not be contaminated. Clean fill is defined as material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants that could adversely impact the waters of the State or public health.

Indiana uses the definition of “solid waste” to meet the intent of marginally contaminated soil. The definition in Indiana Code 13-11-2-205 applies to all non-hazardous contaminated soil without regard to the level of contamination besides the hazardous waste threshold. It is also noted that a performing party has to generate the waste to enter into regulation. If they have historic fill that is undisturbed, it does not enter into regulation unless the fill is excavated, and it cannot be placed as backfill in the same location.

Texas does not explicitly define marginally contaminated soil. Implicitly, the soil is evaluated as environmental media containing releases of chemicals of concern at concentrations below critical protective concentration levels and results in the conclusion that no response action is required for protection of human health and the environment. Likewise, Texas does not consider environmental media (including soil), which contain contaminants at concentrations below the protective concentration levels, to be contaminated.

Missouri has an approach that pertains to petroleum contaminated soil only. Marginally or minimally contaminated soils are considered to be soils with contaminant concentrations below Missouri Risk-Based Corrective Action Default Target Levels for petroleum constituents.

Delaware does not have a definition of marginally contaminated soil but does have a Soil/Material Reuse Policy providing a mechanism for the reuse of suitable materials from applicable sites. The intent of this policy is to provide a mechanism for the safe and efficient reuse of suitable soils/materials that does not create an unacceptable risk to human health or the environment. Material being used at the site from which it was generated as part of an approved remedial action is specifically excluded by this policy.

Do States have guidance/policy/regulations related to marginally contaminated soils?

There is nearly an even split between the States that have a specific method to address marginally contaminated soils and those that do not – 20 do and 18 do not.

Those States that do not have guidance/policy/regulations generally did not have qualifying explanations, with only a few exceptions. Maryland, Oregon and Ohio stated that a document was in draft form and, therefore, could not be released to the public. Indiana, Ohio and New Mexico provided web links to State Codes that contained soil clean-up provisions. Nebraska and Nevada each provided a statement of explanation that includes reuse of material of various origins that may not be found in a specific documented form. In Wyoming, which does not have a marginally contaminated soils option, a site is either cleaned up to residential levels or institutional controls are required for an alternative cleanup.

Of the 20 affirmative responses, 17 States provided web links to State-specific regulations and policies. Several of these web links refer to a State’s remediation program and may or may not contain specific links addressing marginally contaminated soil. Many of these web links are for documents that address petroleum-only contamination and/or hazardous waste exclusion as part

of a Beneficial Use Determination (BUD). Washington has a guidance that describes appropriate end uses for petroleum contaminated soil that is in the process of being updated, however, local testing in other health districts currently have the final call on uses.

Several States provided their specific State policy document as an attachment. Delaware and Rhode Island provided policies that are based on risk-based promulgated standards in regulation. While Rhode Island requires the toxicity characteristic leaching procedure (TCLP) and the synthetic precipitation leaching procedure (SPLP) to meet policy guidelines, Delaware provides a tiered approach to sampling for re-use based upon availability of historic data. As previously mentioned, Maryland provided a draft policy for soil excess management as well as their final Clean Imported Fill Policy. Both policies are designed specifically for the State's Voluntary Cleanup Program.

Web links and statements are included in the compiled State responses are found in Appendix A. Information provided by States is found in Appendix B.

How are the standards developed? (e.g., promulgated standards, regulations, statutes, screening numbers, etc.)

Eleven States address marginally contaminated soils through more than one method. Eight States have promulgated standards, 13 have regulations, 4 have statutes, 10 have screening numbers, and 14 have other mechanisms that apply to management of marginally contaminated soils.

While Nevada, New Mexico and Virginia address marginally contaminated soils through regulations only, nine States use current policy and/or guidance as their mechanism for addressing marginally contaminated soils.

If a State does not have guidance/policy/regulations related to marginally contaminated soils, are they considering the development of guidance/policy?

Fourteen of the 38 States reviewed are considering the development of guidance/policy/regulation or modifying their current guidance or policy. Currently, six States are in the process of drafting or developing such policies. Maryland, Connecticut and Ohio have draft policies that have not been finalized. Virginia, Georgia and New Hampshire are developing or researching either practices or the use of recovered materials at sites. Massachusetts currently has several program elements that address the management of soils but is considering guidance or policy to make the process of managing these materials simpler. Missouri has a guidance aimed at petroleum contaminated sites, but efforts are ongoing to develop a "blanket technical guidance" to cover the beneficial reuse or clean fill status.

Do State programs differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...)?

All but eight of the 38 States reviewed differentiate between soil and non-soil materials. Those States that do not differentiate typically consider all of the materials as fill. For some of the

States that do differentiate between soil and non-soil materials, there are policies/regulations that define soils and what is considered “uncontaminated” or “contaminated.” For example, Illinois’ regulations define “uncontaminated soil” as soil that does not contain contaminants in concentrations that pose a threat to human health and the environment. The maximum concentrations of contaminants that may be present in uncontaminated soil and still be allowed for disposal as clean fill, however, still need to be determined. Delaware’s policy applies to soil that contains no hazardous or solid wastes. Some States, such as Indiana and Rhode Island, exempt uncontaminated concrete, bricks, soil, rocks, etc., from their solid waste rules. Indiana also has statutory exemptions that allow for beneficial use of coal ash, foundry sand, and steel slag. Massachusetts has separate policies/regulations that deal with specific materials, *i.e.*, asphalt, brick and concrete are regulated under what is called the “ABC Policy.” Non-soil materials that are not contaminated are recognized as clean fill by many States and are generally regulated as solid waste.

For what can marginally contaminated soil be used (*e.g.*, on-site fill, off-site fill, road base, landfill cover, etc.)?

Twenty four of the 38 States reviewed allow the use of marginally contaminated soil for on-site fill, 20 for off-site fill, 20 for road base, 20 for landfill cover, and 19 States allow for other uses. Eighteen of the States allow for all of the options. Most States require, or have provisions that allow for, case-by-case review. They consider various criteria in their evaluation, such as: constituents and concentrations; potential for contaminants to leach into the receiving environment; future land use; and potential exposure, such that reuse does not pose a threat to human health or the environment.

The following States also allow or require the following provisions:

- Alaska requires that a case-by-case evaluation be conducted for specific uses or if there is a potential for the contaminants to leach into the receiving environment;
- Idaho also has a provision that allows the use of petroleum-contaminated soils in asphalt batch plants;
- Louisiana may consider any kind of use that is beneficial, meets the regulations, and is approved by the Department in advance of the soil re-use;
- Maine also allows any other beneficial use that will not cause environmental or health risk;
- North Carolina also allows for use of marginally contaminated soil for various uses such as in bricks;
- Oregon, in May 2010, adopted a rule for beneficial use of solid waste under which soil from cleanup sites may be used for “non-residential construction fill, utility trench fill or roadbase” under certain conditions and other uses may be approved on a case-specific basis; and
- Texas allows petroleum substance contaminated soil to be used for cold-mix emulsion bituminous paving, hot mix asphalt, and parking lot base, in addition to other applications.

Although the following States do not designate a specific use, they do have provisions that allow them to consider requests, as described below:

- Arkansas allows uses depending on constituent(s) and respective concentrations. This includes reviews with respect to risk-based screening numbers and site-specific risk assessments for applicable constituents;
- Indiana may approve use of marginally contaminated soil on a case-by-case basis under 329 IAC 10-3-1 (16), which includes an exemption that allows the commissioner to approve the use of solid waste provided it is a legitimate use that does not pose a threat to public health or the environment;
- Montana requires that each use be evaluated as proposed in the context of future land use and potential exposure; and
- Nevada considers reuse options on a case-by-case basis when they are submitted in a site corrective action plan.

Other provisions that govern the use of marginally contaminated soil were also identified. With regard to use for on-site fill, Delaware excludes reuse of material limitations when soil is to be used at the *same* Hazardous Substance Cleanup Act (HSCA) site when part of an approved remedial action plan. The term “off-site fill” applies to material from a non-regulated property or regulated site to a HSCA site. In addition to allowing reuse of marginally contaminated soils for on-site fill and landfill cover, New Hampshire uses solid waste rules to address marginally contaminated soil that falls outside the jurisdiction of contaminated site regulations. These rules control reuse of soil at off-site locations by requiring the soil to be certified for distribution and use. Certification is usually conditional depending on the characteristics of the soil. In situations where neither contaminated site regulations nor solid waste rules explicitly apply, New Hampshire has provided guidance or recommendations on a case-by-case basis. While Massachusetts’ rules are somewhat complex, there is flexibility to allow contaminated soil to be reused both on- and off-site for various purposes. The process would depend upon the specific levels and the regulatory framework it would fall under.

Do States require permission for reuse and, if they do, what is required?

Twenty-eight States responded that approval for reuse is not required. However, these States may use one or more of the following mechanisms related to reuse of soils or fill: policies, guidance, regulations, soil cleanup standards, or site management plans. Two States (Kansas and Wyoming) do not require permission for reuse, but responded they have a clean fill definition that allows soil to be reused if below their respective residential soil cleanup standards. Washington does not require a permit or approval from the State, however, the local health department may require a permit or other approvals depending on where the material is used (*e.g.*, grade and fill permit; shoreline permit). In Georgia, soil and non-soil are differentiated by a definition of soil in State superfund rules. In South Dakota, both soil and non-soil are considered fill.

The approval process or mechanism used by each State for reuse of marginally contaminated soils is as follows: 7 States use a permit process; 16 States require a corrective action plan; 15

States use institutional control; 16 States require a site management plan; 1 State does not require any process to be followed; and 24 States use some other process. Many States may require more than one of the above processes or mechanisms.

Do States provide a preference between on-site reuse and off-site disposal of marginally contaminated soils?

Twelve of the 38 States do have a preference and 23 do not. Three States have qualified explanations.

In Virginia, the “Virginia Solid Waste Management regulations include a waste management hierarchy that encourages reuse (on-site preferable to moving materials to save resources) and reclamation prior to disposal.” Acceptance to do so is tied to land-use and requires a risk assessment. In New Hampshire there is a preference, but they have no stated preference. However, the State finds it is generally much easier and more practical to manage soils on-site or within a specific area such as road right of way.” North Dakota encourages reuse over disposal.

For some States that indicated they did not provide for a preference, they further explained the situation. In Missouri, if the risk posed by the individual constituents of concern is unacceptable, or if the benefit of the proposed use is questionable, off-site disposal may be deemed preferable to on-site reuse as fill material. In Texas, TCEQ regulatory programs and rules provide soil reuse alternatives to off-site disposal, but the decision to use them is left to the person. In Oregon, while there is no defined preference for marginally contaminated soil, they are in the process of developing a “green remediation” policy and guidance, which may suggest a preference for on-site treatment or reuse. In Louisiana, soils proposed for use off-site must meet additional requirements; soils must meet non-industrial standards.

Our review indicates that the majority of States do not have a clear preference for on-site reuse versus off-site disposal. For those States that do not formally prefer on-site reuse versus off-site disposal, by either statute or policy, the decision to leave marginally contaminated soils on-site is often tied to current and future land use, acceptable risk, and the use of institutional controls to ensure protectiveness over time. As stated by Kentucky, “in many cases from (a) technical/logistical/cost standpoint, it makes more sense to keep waste on site.”

Do States apply guidance/policies by media (e.g., soil, surface water, ground water, sediment, or sensitive environments)?

The table below summarizes whether States apply guidance/policies by media and how:

MEDIA	States with applicable guidance/policy
Soil	22
Surface Water	11

Ground Water	11
Sediment	12
Sensitive Environments	6

Do States apply guidance/policies by regulatory authority (e.g., RCRA, UST, State Superfund, Voluntary Cleanup Program, Solid Waste, etc.)?

The table below summarizes whether States apply guidance/policies by media and how:

REGULATION	States with applicable authority
RCRA	13
UST	14
State Superfund	15
State Cleanup	19
Solid Waste	25
Other	9

Summary

The Focus Group conducted research on how States manage marginally contaminated soil at cleanup sites. The objective of the research was to understand differences and similarities in how States approach this issue with the intent of providing information to assist States on developing such programs. Review of 38 States showed a wide variety of approaches, but generally indicated that States do not have:

- official policies for managing marginally contaminated soil;
- common definitions of such materials (instead using terms such as background concentrations, historic fill, and special waste); and
- an explicit preference for on-site reuse of marginally contaminated soil.

However, most States have policies or guidance that address some aspects of managing marginally contaminated soil and many are currently developing or adjusting existing policies and/or guidance. It is not clear if greater uniformity among State programs would be beneficial.

The intent of any existing regulations/policies is typically to provide a mechanism for the safe and efficient reuse of suitable soils/materials that does not create an unacceptable risk to human health or the environment. The variety of approaches generally offers flexibility to cleanup managers and property owners, but State permission is usually required for reuse of marginally contaminated soil. A potential benefit of soil management flexibility, which perhaps could be magnified through a more explicit preference for on-site reuse of marginally contaminated soil, is to conduct more sustainable cleanups by reducing material and energy use during site cleanup and redevelopment.

Appendix A: Compilation of State Responses

Introduction

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) State Superfund Focus Group (Focus Group) is beginning research into State methods of management and potential reuse of marginally contaminated soils in the remediation process. The Focus Group is hoping to identify different State approaches to managing these types of soils, and at a later stage examine the strengths and weaknesses as reported by the States.

The final research product from this effort will be a compendium of State soil management approaches and applicable State policies regarding the management of these marginally contaminated soils. The resulting document will be posted on the ASTSWMO website and distributed electronically to all 50 States, Territories, EPA, and other agencies as appropriate. The anticipated outcome of this project will be a better understanding of State experiences in dealing with the remediation of marginally contaminated soils. This understanding will assist States and the federal government in evaluating and selecting appropriate remedial technologies and approaches to minimize the overall impact of remedial activities while remaining protective of human health and the environment

Definition of Marginally Contaminated Soils

For the purposes of this research, “marginally contaminated soils” shall be considered soil and/or eligible fill material (e.g. recycled concrete, construction debris, etc.) that do not meet a State’s unrestricted use criteria or standards for organic or inorganic contaminants. This material shall not contain free product, not be considered hazardous waste, nor exceed upper concentration limits or leachability criteria or standards, if applicable.

When completing the attached request please keep in mind these thoughts :

How are marginally contaminated soils handled at cleanup sites and at what point do they become regulated, if at all, as solid wastes. For instance, if marginally contaminated soil is removed from an area of a site as part of a cleanup remedy, can it be re-placed in another part of the site where it is beneficially used for other construction activities without that re-placement being considered “waste disposal”? What types of beneficial uses of marginally contaminated soil would be allowed without invoking waste designation? What happens if the re-placement occurs offsite? Once it moves off site is the soil always a waste, regardless of use or level of contamination?

Alaska

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Soil is defined in 18 AAC 75 to mean an unconsolidated geologic material, including clay, loam, loess, silt, sand, gravel, tills or a combination of these materials.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list. Specific uses, and the potential for contaminants to leach into the receiving environment, must be evaluated on a case-by-case basis

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none

other, please list. Beneficial re-use of marginally contaminated material may need a solid waste disposal permit if the proposed disposal location is outside the boundaries of the contaminated site.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. There is no preference, but off-site disposal (eg outside the boundaries of the contaminated property) would be scrutinized more closely and may require a solid waste disposal permit (18 AAC 60).

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Arkansas

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

on-site fill

off-site fill

road base

landfill cover

other, please list Depends on the constituent(s) and concentration level.

Does your State require permission for reuse? yes no

If so, what does the process entail?

permit

approved corrective action plan

institutional control

site management plan

none

other, please list Sometimes approval is required; Site Specific circumstances.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

Solid Waste

other (please explain)

Colorado

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Connecticut

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. XXyes no

if yes , <http://www.ct.gov/dep/lib/dep/regulations/22a/22a-133k-1through3.pdf>

“Polluted fill” means soil or sediment which contained polluting substances at the time such soil or sediment was deposited as fill material. In Remediation Standard Regulations definition section:

Does your State have guidance/policy/regulations related to marginally contaminated soils? Xes
 no

If yes, please provide internet link or copy Fact sheet on managing contaminated environmental media: http://www.ct.gov/dep/cwp/view.asp?a=2718&q=325456&depNav_GID=1646

RCRA Contained-In Policy for soil and water:

http://www.ct.gov/dep/cwp/view.asp?a=2718&q=325454&depNav_GID=1646

Rationale and reference documentation for RCRA Contained-In Policy:

http://www.ct.gov/dep/lib/dep/waste_management_and_disposal/remediation_waste/contamenvmediarationale2002.pdf

Presentation on DRAFT proposed revisions to solid waste management regulations:

http://www.ct.gov/dep/lib/dep/waste_management_and_disposal/solid_waste_management_plan/revisingcleanfilldefinition.pdf

DRAFT proposed revisions to solid waste management regulations related to reuse and recycling of asphalt, brick, concrete, and polluted soil [not yet to public notice; still under review, but being shared with stakeholders to gather feedback]:

http://www.ct.gov/dep/lib/dep/waste_management_and_disposal/regulations/draft_soil_sediment_fill_regs_and_summary_october_30_2008.pdf

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

X yes no , Comments considering revising definition of clean fill [which currently references reuse of polluted soil.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) X yes no comments but not clearly

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- X landfill cover
- other, please list

Does your State require permission for reuse? X yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none

X other, please list depends on how and where it is reused

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes X no. comments

Does guidance \policies apply by media: (check all that apply)

Xsoil

Xsurface water

X groundwater

Xsediment

Xsensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

XSolid Waste

X other (please explain) clean up standard regulations that are used as common endpoints in all remedial programs [RCRA, UST, Superfund, Voluntary]

Delaware

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. X yes no

if yes , Delaware does not have a “definition” of marginally contaminated soil but does have a Soil/Material Reuse Policy providing a mechanism for the reuse of suitable materials from applicable sites.

Does your State have guidance/policy/regulations related to marginally contaminated soils? X yes no

If yes, please provide internet link or copy – See Attached Soil/Material Reuse Policy, dated May19, 2010

Are they : (check all that apply)

promulgated standards or screening numbers

regulation

statute

screening numbers

X other, please explain - Policy for use by this Department and outside consultants - used in conjunction with Remediation Standards Guidance and Uniform Risked-based Concentrations and other State guidance documents.

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments N/A

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) X yes no comments Policy applies to soil, must contain NO hazardous waste, NO solid waste, must result in NO groundwater risk. Other materials may be permitted based on a Beneficial Use Determination from Solid and Hazardous Waste Management Branch, or evaluated on a case by case basis.

What can marginally contaminated soil be used for?

on-site fill – Policy excludes reuse of material from a HSCA site for use at the same site as part of an approved Remedial Action Plan

X off-site fill – Applies to material from a regulated or non-regulated site for use at a HSCA regulated site.

road base

landfill cover

other, please list

Does your State require permission for reuse? X yes no

If so, what does the process entail?

permit

X approved corrective action plan

X institutional control

X site management plan

none

X other, please list - reused material must meet the requirements of the policy, including sampling and analysis to determine suitability for reuse without creating an unacceptable risk to human health or the environment.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes X no. comments

Does guidance \policies apply by media: (check all that apply)

X soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

X RCRA

UST

XState Superfund
X Voluntary Cleanup Program
XSolid Waste
 other (please explain)

Georgia

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments We have a group that is looking at policy concerning recovered materials as defined under the Rules for Solid Waste Management in Georgia.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit

- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list Modification to their landfill permit.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Idaho

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments if the question is asking about ‘marginally contaminated soil’ v. ‘marginally contaminated non-soil materials, then NO – we treat them the same. We regulate coal as a solid waste, we do not regulate soils as a solid waste.

What can marginally contaminated soil be used for?

on-site fill

off-site fill

road base

landfill cover

other, please list petro-contaminated soils can be used in an asphalt batch plant.

Does your State require permission for reuse? yes no

If so, what does the process entail?

permit

approved corrective action plan

institutional control

site management plan

none

other, please list Not all 3 at a given site; depending on site, one of the three will be the approval mechanism.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

Solid Waste

other (please explain)

Illinois

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy Tiered Approach to Corrective Action Objectives (TACO) 35 Ill.Adm.Code 742

<http://www.ipcb.state.il.us/SLR/IPCBandIEPAEnvironmentalRegulations-Title35.asp>

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Public Act 96-1416, effective July 30, 2010, defines “uncontaminated soil” as soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment. This law requires Illinois EPA to propose rules by July 30, 2011 specifying the maximum concentrations of contaminants that may be present in uncontaminated soil generated from construction and demolition activities and intended for disposal at clean construction and demolition debris facilities and soil-only fill operations.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Beneficial use determinations are allowed under 415 ILCS 5/22.54.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Indiana

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes , It's included in the definition of solid waste at IC 13-11-2-205. That definition applies to all non-hazardous contaminated soil. We don't differentiate with the level of contamination besides the hazardous waste threshold. I would also note that they have to generate the waste to enter into regulation. So if they have a historic fill that is undisturbed, it does not enter into regulation unless the fill is excavated and it cannot be placed as backfill in the same location.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy Other than the definition of solid waste and

corresponding applicability under our rules 329 IAC 10 and 329 IAC 11
(http://www.in.gov/legislative/iac/iac_title?iact=329)

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

- yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments There are statutory exemptions for use of coal ash, foundry sand, and steel slag. Uncontaminated concrete, bricks, dirt, rocks and road demolition debris are exempt from regulation under our rule [329 IAC 10-3-1 (1)]

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list Can be approved on a case-by-case basis under 329 IAC 10-3-1 (16) – that exemption allows the commissioner to approve use of solid waste provided it is a legitimate use that does not pose a threat to public health or the environment.

Does your State require permission for reuse? yes no depends, some uses are exempt by statute and do not require approval. Any other use not included in those statutes does require approval.

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list If the rules are applicable (ie, not statutorily exempt), IDEM issues an approval (or denial) based on a determination there is a use and it does not pose a threat to public health and the environment. That approval would contain conditions tailored to the use/project. It does not qualify as an institutional control or site management plan. It does require

compliance with other rules/laws, sometimes a deadline for completion, and ongoing maintenance if the structure fails.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments
- none

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Iowa

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments (See rules 567- 103, 108, 112, 114, 115, and 120 (link below) <http://www.legis.state.ia.us/aspx/ACODocs/chapterList.aspx?pubDate=07-28-2010&agency=567>

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Kansas

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list. Specific uses, and the potential for contaminants to leach into the receiving environment, must be evaluated on a case-by-case basis

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list..

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no.

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

The KDHE has soil cleanup standards for residential and non-residential land use settings (applicable to all clean up programs). If contamination is below the residential standard then there are no further requirements. KDHE does have a “clean soil” definition pertaining to C & D landfills only.

Kentucky

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain : Not Applicable

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments : from a technical standpoint, practitioners see value in the approach; however no policy change has been initiated.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments : yes, with regard to disposal (CD&D landfill vs. solid waste, etc.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list : Not Applicable

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list : while not entirely applicable, Kentucky does differentiate between soils that are below our residential standards (unrestricted off-site use allowed) and industrial standards (can be manipulated within the property if protective).

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments : policy does not offer a preference, though in many cases from technical/logistical/cost standpoint, it makes more sense to keep waste on site.

Does guidance \policies apply by media: (check all that apply): Not Applicable

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply): Not Applicable

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program

- Solid Waste
 other (please explain)

Louisiana

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils?
yes no

If yes, please provide internet link or copy

LAC 33:I.Chapter 13 (RECAP Section 8.0 Soil Re-use Under The LDEQ RECAP)

LAC 33:VII.Chapter 11 (Chapter 11 of Solid Waste Regulations titled Solid Waste Beneficial Use and Soil Reuse

<http://www.deq.louisiana.gov/portal/DIVISIONS/LegalAffairs/RulesandRegulations/Title33.aspx#ERC>

Are they : (check all that apply)

- promulgated standards or screening numbers
 regulation
 statute
 screening numbers
 other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments N/A

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
 off-site fill
 road base
 landfill cover

other, please list Can be any kind of use that is beneficial, meets the regulations, and is approved by the Department in advance of the soil re-use.

Does your State require permission for reuse? yes no

If so, what does the process entail?

permit

approved corrective action plan

institutional control

site management plan

none

other, please list See regulations: There are several detailed requirements

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. Soils proposed for use off-site must meet additional requirements; soils must meet non-industrial standards

Does guidance \policies apply by media: (check all that apply)

soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

Solid Waste

other (please explain)

Maine

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes , From 06-096 Code of Maine Regulations Chapter 400, section 1. Nnn. Special waste. "Special waste," means any solid waste generated by sources other than household and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste

management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

- (1) Ash;
- (2) Industrial and industrial process waste;
- (3) Sludge and dewatered septage;
- (4) Debris from nonhazardous chemical spills and cleanup of those spills;
- (5) Contaminated soils and dredge materials;
- (6) Asbestos and asbestos-containing waste;
- (7) Sand blast grit and non-liquid paint waste;
- (8) High and low pH waste;
- (9) Spent filter media residue; and
- (10) Shredder residue.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy:

General Provisions & General Exemptions for Special Waste (Rule):

<http://www.maine.gov/sos/cec/rules/06/096/096c400.doc>

Beneficial use as topsoil, fertilizer, etc & associated storage (Rule):

<http://www.maine.gov/sos/cec/rules/06/096/096c419.doc>

All other beneficial uses (including as fill) & associated storage (Rule):

<http://www.maine.gov/sos/cec/rules/06/096/096c418.doc>

Remedial Action Guidelines for Hazardous Substances (Guideline):

Narrative & Basis: http://www.maine.gov/dep/rwm/publications/guidance/rags/Final%201-13-2010/1-ME-RAGS_Jan-13-2010-V9-rhd.pdf

Tables: http://www.maine.gov/dep/rwm/publications/guidance/rags/Final%201-13-2010/2-RAGs_Appendix_1-2-3_Jan_13_2010.xls

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain Some are promulgated rules, some guidelines, as noted above

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments This factors into exposure factors, and beneficial use potential

What can marginally contaminated soil be used for?

- on-site fill – (no permit required if state supervised clean-up)
- off-site fill – (Permit required)
- road base – (Permit required)
- landfill cover – (Permit required)
- other, please list - any other beneficial use that will not cause environmental of health risk

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit – off-site
- approved corrective action plan - onsite
- institutional control – maybe required if appropriate
- site management plan – maybe required if appropriate
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. No permit required for onsite use at a DEP supervised clean-up comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Maryland

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils?
yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list.

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no.

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Massachusetts

1. Does your State have a definition for marginally contaminated soil (historic fills, etc.)

NO. Massachusetts does not have a soil category or specific definition that would roughly approximate “marginally contaminated soil”.

2. Does your State have guidance/policy/regulations related to marginally contaminated soils?

Yes. Massachusetts does have several program elements that address the management of soils in general, including soils containing (relatively) low levels of contamination – even though these soils are not carved out as a distinct regulated category. It is complicated.

3. They are: regulations, guidance (policies), promulgated standards, screening numbers, risk-based methodologies

4. If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

Yes. Because we have a complex process that includes the management of these materials, additional guidance/policy is being considered to simplify it.

5. Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...)

Yes. MassDEP has separate policies/regulations that deal with some specific materials, such as asphalt, brick & concrete (called the "ABC Policy")

6. What can marginally contaminated soil be used for?

While the rules are somewhat complex, there is flexibility to allow contaminated soil to re-used, on- and off-site, for various purposes. The process would depend upon the specific levels and the regulatory framework it would fall under.

on-site fill
off-site fill
road base
landfill cover
other, please list

7. Does your State require permission for reuse? yes no – Again, it depends upon the regulatory framework and the concentrations. Sometimes permission is required, other times not.

If so, what does the process entail?

permit
approved corrective action plan
institutional control
site management plan
none
other, please list "Beneficial Use Determination"

8. Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. The state is agnostic. comments

9. Does guidance \policies apply by media: (check all that apply)

soil
surface water
groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

Solid Waste

other (please explain) Management of Dredge Spoils (sediment)

Available References include:

- The Massachusetts Contingency Plan (310 CMR 40), particularly the section on the Management of Remediation Waste (310 CMR 40.0030):
<http://www.mass.gov/dep/service/regulations/310cmr40.pdf>
- Background Levels of Polycyclic Aromatic Hydrocarbons and Metals in Soil:
<http://www.mass.gov/dep/cleanup/laws/backtu.pdf>
- Policy #COMM-97-001: Reuse & Disposal of Contaminated Soil at Massachusetts Landfills: <http://www.mass.gov/dep/recycle/laws/97-001.htm>
- Beneficial use Determinations:
 - o “How Is Solid Waste Regulated in Massachusetts” (Fact Sheet), and specifically Beneficial Use Determinations: <http://www.mass.gov/dep/recycle/swreg.htm#bud>
 - o Regulations: 310 CMR 19.061: <http://www.mass.gov/dep/recycle/laws/regulati.htm#sw>
 - o Form & Instructions: http://www.mass.gov/dep/recycle/approvals/sw14_31.pdf
- Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters Within the Commonwealth:
<http://www.mass.gov/dep/water/laws/regulati.htm#wqual>

Michigan

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy Using the concept that marginally contaminated soils are any soils or waste materials that do not meet residential cleanup criteria, contaminated soil/waste relocation is generally regulated by the solid waste management-inert rules and Michigan's environmental remediation programs. The solid waste management-inert rules are available at

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=29904101&Dpt=NE&RngHigh=. Note Rule 110 "other wastes regulated by statute" includes "Contaminated soil that is generated from the remediation of environmental contamination and that is allowed to be disposed of at the site of environmental contamination or at other property that is owned by the responsible party under a remedial action plan that is approved under Part 201 or Part 213." Copies of the relevant sections for soil relocation provisions of Part 201, Environmental Remediation and Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act are attached. Also included is the Part 201 rule regarding soil relocation that provides a further definition of when wastes may qualify for the soil relocation provisions.

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments See information in attached Rule 542.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list See information in attached inert rules

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list approved remedial action plan

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain) Environmental remediation

Minnesota

Questions to Complete

1. Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes

- 1) Clean Fill- soil that is unaffected by a spill or release.
- 2) Unregulated Fill- excess soil in which a release of contaminants has been identified at concentrations less than the MPCA's most conservative risk-based values. Thus, the identified contaminants in the fill are present at concentrations that are not of regulatory concern to the MPCA. Excess soil is unregulated fill if it meets the following criteria:
 - a. free from solid waste, debris, asbestos-containing material, visual staining, and chemical odor;

- b. no organic vapors above background, as measured by a photoionization detector (PID);
- c. for petroleum-impacted soil, 10 mg/kg or less of diesel range organics (DRO)/gasoline range organics (GRO); and
- d. for other contaminants detected in soil, the contaminants must be at or less than the MPCA's Residential Soil Reference Values (SRVs) and Tier 1 Soil Leaching Values (SLVs).

3) Regulated Fill- excess soil in which a release of contaminants has been identified at concentrations that exceed MPCA's most conservative risk-based values. Excess soil is regulated fill if it meets the following criteria:

a. is free from solid waste, debris, asbestos-containing material, visual staining, and chemical odor;

b. for petroleum-impacted soil:

- concentrations of DRO/GRO are greater than 10 mg/kg from a known or likely petroleum source;
- organic vapors are above background, as measured by a PID; and

c. for non-petroleum contaminants detected in soil:

- concentrations of metals and SVOCs are between the MPCA's Residential and Industrial SRVs;
- concentrations of VOCs are less than default Tier 1 SLVs or MPCA-approved site specific Tier 2 SLVs.

1. Does your State have guidance/policy/regulations related to marginally contaminated soils?
yes no

For onsite use-yes we allow reuse on the same site. Mn Solid Waste Rules 7001.3050 exempt this activity from a solid waste permit. E.

Mn Rules 7001.3050 PERMIT REQUIREMENTS Subpart 2 Exclusions For disposal of solid waste on the same property on which it was discovered, when a person has made a request to the commissioner for review, investigation, and oversight under Minnesota Statutes, section 115B.17<<https://www.revisor.mn.gov/statutes?id=115B.17#stat.115B.17>>, subdivision 14, and is conducting response actions in accordance with a plan approved by the commissioner under Minnesota Statutes, section 115B.175<<https://www.revisor.mn.gov/statutes?id=115B.175#stat.115B.175>>;

For off site- Not yet we are in the beginning of the process to develop guidance for reuse of this soil off site.

We do have a Best Management Practice document for what we define above as unregulated fill. This document is at this webpage <http://www.pca.state.mn.us/index.php/waste/waste-and-cleanup/cleanup-programs-and-topics/cleanup-programs/voluntary-investigation-and-cleanup-vic/vic-guidance-documents-and-fact-sheets.html> at the bottom of the page under Fact Sheets If yes, please provide internet link or copy

2. Are they : (check all that apply)

promulgated standards or screening numbers regulation statute screening numbers other, please explain

3. If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

4. Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Reuse of the materials above that are not soil have been handled by our solid waste program using a beneficial reuse determination.

5. What can marginally contaminated soil be used for?

on-site fill

off-site fill

road base

landfill cover

other, please list

6. Does your State require permission for reuse? yes no

If so, what does the process entail?

permit

approved corrective action plan

institutional control

site management plan

none

other, please list

7. Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments prefer on-site reuse

8. Does guidance \policies apply by media: (check all that apply)

soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply) RCRA UST State Superfund Voluntary Cleanup Program Solid Waste other (please explain)

Missouri

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

For petroleum contaminated soil only; marginally or minimally contaminated is considered to be soils with contaminant concentrations that are “below Missouri Risk-Based Corrective Action (MRBCA) Default Target Levels for petroleum constituents” (the Default Target Levels are protective of all exposure pathways regardless of land use)

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

Yes, but for petroleum contaminated oil only.

If yes, please provide internet link or copy

<http://dnr.mo.gov/pubs/pub2177.pdf>

Are they : (check all that apply)

promulgated standards or screening numbers

regulation

statute

screening numbers

other, please explain

The standards are derived from MRBCA guidance for underground storage tanks and are embodied in a policy/guidance document.

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments: As above, Missouri has guidance pertaining to soil affected by petroleum constituents. Efforts are currently ongoing to develop blanket technical guidance (which will be similar to the referenced petroleum guidance) to determine eligibility for beneficial use or clean fill status. Currently, requests are considered on a case-by-case basis.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Yes; inert, non-soil earthen materials such as concrete, asphalt, bricks, rock, etc. that are “uncontaminated” are considered to be clean fill. If such materials are minimally contaminated and suitable for beneficial use (for instance, as fill), they are generally treated the same as soil.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Under the stipulations provided in the petroleum beneficial use guidance listed above, and based on case-by-case evaluation pursuant to rule 10 CSR 80-2.020(9)A&B. Use as landfill cover is allowed via a permit modification granted by the Solid Waste Management Program.

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Beneficial use approvals in Missouri are considered a permit exemption. Exemptions may be provided with or without individual material approval for each instance or usage. Levels of constituents – as in the case of petroleum impacted soil – are frequently the determining factor. The requirement for institutional controls/management plans, etc. is dependent on the material in question, levels of constituents of concern, and current and proposed land use.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no.

Comments: Generally, no. However, if the risk posed by the individual constituents of concern is unacceptable, or if the benefit of the proposed use is questionable, off-site disposal may be deemed preferable to on-site reuse as fill material. Both the Solid Waste Management Program and the Hazardous Waste Management Program prefer on-site reuse to off-site relocation for reuse. How the material is ultimately reused and the protectiveness of that use is better controlled when conducted on the site of generation and under the full oversight of the Department. In addition, the Department must have assurance that reuse of the material will not result in excessive risk in the future; mechanisms such as deed notices and restrictive covenants can be used as such assurance; when the use of such instruments is not practical or unacceptable to the property owner, the Department prefers off-site disposal of the material.

Does guidance\policy apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

Again, the answer is dependent on the regulatory method/structure under which we regulate contaminated media; management of marginally contaminated soil may be related to a specific RCRA, Brownfield, Voluntary Cleanup Program, Superfund, UST, Federal Facility, or other cleanup. Where management of contaminated soil is under direct Hazardous Waste Program oversight, the Solid Waste Management Program defers to cleanup levels established under the respective Hazardous Waste Management Program regulatory authority. These programs manage contaminated materials in accordance with the provisions of the applicable laws and rules; in practice, reuse of marginally contaminated materials is dependent on concentrations of contaminants, how the materials will be used, and whether the long-term protectiveness of that use can be assured. Materials or sites that do not fall under Hazardous Waste Management Program authority and oversight, or where materials are to be relocated off-site for reuse, fall under the authority and rules of the Solid Waste Management Program.

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

See comments at #9 above.

Montana

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments See reuse comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments This hasn't been an issue at the sites we have worked on.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list Each use would be evaluated as proposed – in the context of future land use and potential exposure

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list : The future use of the facility cannot be guaranteed, even if the current and

past uses of the facility were industrial. Therefore, DEQ/SRS requires that soil concentrations be screened against residential. U.S. Environmental Protection Agency (EPA) regional screening levels (RSLs), as well as industrial. If the concentrations exceed residential RSLs, but not industrial RSLs, then DEQ may require that institutional controls (i.e., deed restrictions, etc.) be placed on the property to ensure that it will not be used for residential uses in the future.

When an abandoned mine is reclaimed, it must be permitted for any future mining activity (aka remining).

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain) Surface Mining Control & Reclamation Act

Nebraska

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

NDEQ does not have a specific statutory or regulatory definition for marginally contaminated soil. However, our solid waste regulations define fill as solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

NDEQ solid waste regulations require a permit for the disposal of solid waste. Non-hazardous contaminated soils excavated as part of a remediation project are considered a solid waste. However, an exception is provided in the regulations for obtaining a solid waste disposal area permit for the use of fill (see response to question #1 for definition of fill) for the purpose of erosion control, erosion repair, channel stabilization, landscaping, roadbed preparation or other land improvement, provided the wastes used in the proposed activity are not mixed with other solid wastes and do not, as a result of handling or disposal, have the potential to cause contamination that may threaten human health or the environment.

The use of contaminated soils as fill in a beneficial use project would need to be protective of human health and the environment. While NDEQ does not have specific guidance/policy/regulations related to marginally contaminated soils, we would use the evaluation process/criteria within the "Beneficial Use of Coal Combustion By-Products, Steel Manufacturing By-Products, and Other Similar Materials" guidance document in order to assess the acceptability of beneficial use of contaminated soils. Specifically, these criteria are as follows: 1) Does the material exhibit regulated hazardous waste characteristics?, 2) Is the material contaminated with other wastes?, 3) Does the material pose a potential threat to human health and the environment?, 4) What are the site-specific conditions?, and 5) Does the end use of the material constitute disposal?

In addition to addressing the evaluation process/criteria in the above referenced beneficial use guidance, information would also be needed on the site location, site owner, description of the proposed land improvement activities and the future use of the site. NDEQ would need to coordinate with the local government where the site is located to determine their position on the project as well as any local approval process that may be necessary. When the source of the contaminated soils is from a CERCLA site, coordination with EPA would need to be performed and the CERCLA Off-Site Rule would need to be addressed. A public participation process may also be performed prior to a final determination on the acceptability of the beneficial use project.

NDEQ may also want the beneficial use site to be capped following placement of the contaminated soils to prevent future exposures and an institutional control used pursuant to the Nebraska Uniform Environmental Covenants Act to prevent disturbance of the cap and contaminated soils.

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Fill is defined as solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

While regulatory approval is not specifically required by our solid waste regulations, when a determination is necessary on whether a beneficial use project is protective of human health and the environment, a plan would need to be submitted addressing the above information outlined in response to question #3.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST

- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Nevada

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy Section 5 Nevada Regulation R189-08 “Any soil or groundwater which is contaminated with any amount of a hazardous substances, hazardous waste or a regulated substance and which is removed through a corrective action or an assessment of conditions at a site pursuant to NAC 445A.2269 or section 3 of this regulation must be managed in a manner approved by the Division”

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments A broader investigation derived waste policy is in development.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list Generally, reuse options are identified on a case-specific basis in the site corrective action plan.

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list Reuse options can also be determined in consultation with the case officer.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

New Hampshire

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

Comments: While our contaminated site regulations do not explicitly define the term “marginally contaminated soil”, for contaminated sites impacted by a release of oil or hazardous substances, the definition for “background” includes fill mixed with coal or wood ash as well as asphalt pavement and petroleum products contained in sub-base materials. Therefore, those categories of impacted soil are not addressed by the regulations dealing with the release of oil and hazardous substances, but we provide guidance that it should not be treated as clean fill.

Does your State have guidance/policy/regulations related to marginally contaminated soils?
yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no

Comments: We are considering developing guidance or best management practices to address certain categories of marginally contaminated soil.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list (See Question #7 comments)

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list (see comments below)

Comments: Marginally contaminated soil that falls outside the jurisdiction of the contaminated site regulations are addressed to some extent by the solid waste rules. Those rules control reuse of the soil at off-site locations by requiring the soil to be certified for distribution and use. Certification is usually conditional depending on the characteristics of the soil. In

situations where neither the contaminated site regulations nor the solid waste rules explicitly apply, we have on a case by case basis provided guidance or recommendations.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no.

Comments: We have no stated preference, but it is generally much easier and practical to manage soils on site or within a specific area such as road right of way.

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

New Jersey

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

If yes: www.nj.gov/dep/srp/regs/rs/rs_rule.pdf; and,

www.nj.gov/dep/srp/regs/techrule/techrule.pdf.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy: www.nj.gov/dep/srp/guidance/srra/fill_protocol.pdf

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute

- screening numbers
- other, please explain: Guidance

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments: A Beneficial Use Determination is required from the Department for non-soil material.

What can marginally contaminated soil be used for?

- on-site fill – (Fill Use/Reuse Plan required in a Remedial Action Workplan)
- off-site fill – (Fill Use/Reuse Plan required in a Remedial Action Workplan)
- road base – (Fill Use/Reuse Plan required in a Remedial Action Workplan)
- landfill cover – (Fill Use/Reuse Plan required in a Remedial Action Workplan)
- other, please list - any other beneficial use that will not cause environmental or health risk

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan: Fill Use/Reuse Plan required in a Remedial Action Workplan
- institutional control: Deed Notice
- site management plan: Biennial Certifications with Deed Notice
- none
- other, please list: Beneficial Use Determination for non-soil material.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no.

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST

- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

New Mexico

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

There is no regulatory definition for “marginally contaminated soils” but New Mexico Solid Waste Rules do define “petroleum contaminated soils” which are soils that have a BTEX sum of greater than 500 mg/kg or benzene total individually greater than 10 mg/kg or a total hydrocarbon concentration of > 100 mg/kg. They are considered “special waste” under NM Solid Waste Rules. There is also a definition of “ spill of a chemical or commercial product” also a special waste which unless specially handled or disposed, may harm the environment or endanger public health. The Petroleum Storage Tank Program considers <100 whole instrument units PID/FID or <100 ppm TPH by laboratory analysis as marginally contaminated soils.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no Not Specifically but the New Mexico Solid Waste Rules (20.9.2. -20.9.10 NMAC) for the above mentioned soils maybe found at

http://www.nmenv.state.nm.us/swb/documents/Solid_Waste_Rules_Regulations.pdf.

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Yes, “clean fill” under 20.9.2.7.C(4) NMAC is defined as “means broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is

uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminants, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste.”

The definition of "Solid waste" under 20.9.2.7 means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, construction, demolition and agricultural operations and from community activities, but does not include:

(a) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, except for waste that has been authorized for disposal at a solid waste facility under provisions of 19.15.9.712 NMAC and has been delivered to a solid waste facility permitted to receive such waste;

(b) fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

(c) waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan

- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils?

- yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

North Carolina

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils?
yes no

If yes, please provide internet link or copy <http://portal.ncdenr.org/web/wm/sf/ihshome>

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain Guidance

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list Various uses, Bricks

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply) soil

- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

North Dakota

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain: On a case-by-case, site-by-site basis.

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments: It does for proposed reuse purposes.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments: The Department encourages reuse over disposal.

Does guidance/policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain): The state does not have a formal voluntary cleanup program but does encourage and does oversight or review cleanup plans for voluntary cleanups or corrective actions.

Ohio

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no We have one in draft, not yet finalized.

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation The rules exclude these soils from the definition of solid wastes

OAC 3745-27-01(S) (23) <http://codes.ohio.gov/oac/3745-27>

X statute Excludes these soils from definition of solid waste

ORC 3734.01(E) <http://codes.ohio.gov/orc/3734>

X screening numbers Voluntary Action Program Generic Numerical Standards

OAC 3745-300-08

<http://www.epa.state.oh.us/portals/30/SABR/docs/Rules/3745-300-08.pdf>

other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments We are developing a policy, not yet finalized

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments The proposed guidance will address soils only. Our program recognizes "clean hard fill" which includes concrete rubble and brickwork that is not contaminated. Clean hard fill is generally not treated as an environmental problem.

What can marginally contaminated soil be used for? All of these

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? X yes no

If so, what does the process entail?

May involve all of these, depending on the program.

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes X no. comments

Does guidance \policies apply by media: (check all that apply)

- X soil (In draft)
- surface water
- groundwater

- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

In general Ohio will allow reuse of these soils so long as all potential risk/receptor routes are properly addressed. Those routes would include direct contact at the surface and leaching to ground water. Ohio recently approved use of Lake Erie dredge sediments for backfill at an industrial site. The concentrations of some contaminants exceeded residential but not industrial direct contact standards. Thus, the filling operation was approved with a covenant that restricted the sediments to use at the industrial site only. At other sites we have approved reuse of contaminated soils as fill with the requirement of several feet of clean fill on top to prevent direct contact with the contaminants. We would not allow use of these soils at locations where leaching to ground water would be a problem.

Oklahoma

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy Limited – TPH and Diesel/gas spill cleanups (<http://www.deq.state.ok.us/factsheets/land/Dieselspill.pdf>) and Land Reclamation Projects (<http://www.deq.state.ok.us/factsheets/land/landreclam.pdf>)

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain Policy / Guidance

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

on-site fill

off-site fill

road base

landfill cover

other, please list No specific guidance or rules, could potentially be used for all of above.

Does your State require permission for reuse? yes no

If so, what does the process entail?

permit

approved corrective action plan

institutional control

site management plan

none

other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

Solid Waste

other (please explain) Land Restoration Program

Oregon

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Oregon does not have a definition specific to contaminated soil, but does have a solid waste definition for “clean fill.” Clean fill means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. Contaminated soil becomes solid waste once it is excavated or “generated” regardless of whether it is used on-site or off-site. On-site use would be managed by Oregon Department of Environmental Quality’s Cleanup Program as part of a remedial action. Off-site use must be approved through the rules and oversight of the Solid Waste Program. The material remains a solid waste until it is effectively used, at which point it is no longer a “waste” and would only be subject to solid waste regulation if excavated again in the future.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no.

Oregon is currently working on guidance to define what contaminant levels are below “clean fill” criteria. To date, the draft guidance has not been made available to the public.

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

As noted above Oregon’s draft guidance is in the form of a screening table.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

on-site fill

- off-site fill
- road base
- landfill cover
- other, please list

In May 2010, Oregon adopted rules for the beneficial use of solid waste under which soil from cleanup sites may be used for "non-residential construction fill, utility trench fill, or roadbase" under certain conditions. Other uses may be approved on a case-specific basis.

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

The requirement for permission to reuse varies depending on the circumstances. Approval for the on-site use of contaminated soil as part of a remedial action may include a corrective action plan, institutional control or site management plan. Off-site use may be approved through a solid waste disposal permit or a "beneficial use determination" (BUD)

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

There is no defined preference for marginally contaminated soil. Soil management is typically assessed as part of an interim action or feasibility study for remedial action. Oregon is in the process of developing "green remediation" policy and guidance which may suggest a preference for on-site treatment or reuse.

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund

- Voluntary Cleanup Program
 Solid Waste
 other (please explain)

Pennsylvania

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

Pennsylvania has three definitions for fill:

Clean fill - Uncontaminated, nonwater-soluble, nondecomposable inert solid material. The term includes soil, rock, stone, dredged material, used asphalt, and brick, block or concrete from construction and demolition activities that is separate from other waste and recognizable as such. (25 Pa. Code §§ 271.101 and 287.101) The term does not include materials placed in or on the waters of the Commonwealth unless otherwise authorized. PA

Historic fill - Material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to 1988 that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction and demolition waste. The term does not include iron or steel slag that is separate from residuals if it meets the coproduct definition and the requirements of 25 Pa. Code § 287.8. The term does not include coal ash that is separate from residuals if it is beneficially used in accordance with 25 Pa. Code § 287.661 - 287.666.

Regulated fill - Soil, rock, stone, dredged material, used asphalt, historic fill, and brick, block or concrete from construction and demolition activities that is separate from other waste and recognizable as such that has been affected by a spill or release of a regulated substance and the concentrations of regulated substances exceed the values in Table FP-1a and b.

Additionally, the following language regarding onsite remediation and fill is found in the Environmental Cleanup Program Technical Manual.

Movement of Excavated Contaminated Media and Other Solids

Under Section 287.101(e) the Department will not require a permit for the onsite movement of residual waste encountered when performing a remediation within a site for use in the remedy (e.g., grading of the site, placement back into exploratory holes) so long as the site attains the site-specific standard of Act 2. Excavated hazardous waste should be removed for proper disposal under the hazardous waste generator requirements of Chapter 262(a). Movement of any contaminated media or solids offsite is the generation of waste under Section 250.3. Under these

circumstances, the remediator is subject to the generator requirements of the Solid Waste Management Act.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

<http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-8343>

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments N/A

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments: Off-site disposal will require a permit.

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Rhode Island

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils?
yes no Comment: Marginal Risk Sites Policy

If yes, please provide internet link or copy

www.dem.ri.gov/programs/ombuds/pstream/waste/pdfs/simpstrw.pdf

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain Department Policy-Decisions based on promulgated standards in our regulations and TCLP/SPLP

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Asphalt, concrete (no-rebar) and clean bricks are exempt under Solid Waste Regulations

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list Soil Management Plan (SMP)

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

South Dakota

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments All considered as fill.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Texas

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes , Such soils are not defined explicitly as “marginally contaminated soil” in the Texas Risk Reduction Program (TRRP) rule of Title 30 Texas Administrative Code Chapter 350, which is used for most remediation programs at TCEQ except for USTs (termed Petroleum Storage Tank (PST) Program). Implicitly, the process in the TRRP rule evaluates these soils as environmental media containing releases of chemicals of concern (COCs) at concentrations below critical protective concentration levels (PCLs) and results in the conclusion that no response action is required for protection of human health and the environment. In the TRRP rule terminology, these soils do not constitute "affected property" or "PCL exceedance zone." The TRRP rule does not distinguish a separate class of contaminated media with COC concentrations that only marginally exceed PCL values. Likewise, the TRRP rule does not consider environmental media (including soils) which contain COCs at concentrations below the PCLs to be contaminated. A similar approach to the definition applies to the PST program rules of 30 TAC Chapter 334 Underground and Aboveground Storage Tanks.

Two provisions of the TRRP rule merit comment here. First, §350.2 regarding Applicability defines the sites that are subject to the TRRP rule. The TCEQ doesn't attempt to regulate all soils that are moved from one location to another in the course of general commerce in the State. Once a site becomes subject to the TRRP rule via §350.2, then all environmental media, including soils, with COC concentrations above protective concentration levels (PCLs), must be

managed in an acceptable fashion which may involve removal, decontamination, and/or control measures. Control measures include both physical and institutional controls that are designed to prevent the exposure of human and ecological receptors to environmental media (including soils) with COC concentrations above the PCLs. Second, §350.36 in TRRP, regarding Relocation of Soils Containing Chemicals of Concern for Reuse Purposes, deals with those circumstances where a person wishes to relocate soils for reuse purposes as a part of a response action. This section addresses all the various situations where the soils: exceed background but not the PCLs; exceed the PCLs; will be managed with or without control measures; and will be used on properties with residential or commercial/industrial future land use. This provision allows the soils resulting from response actions to be considered a resource in order to facilitate the reuse of such soil in a protective fashion.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy:

The TRRP regulations of 30 TAC Chapter 350 and associated guidance can be accessed with links from this URL: <http://www.tceq.state.tx.us/remediation/trrp/trrp.html>

The PST program regulations of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks, Subchapter K, Storage, Treatment, and Reuse Procedures for Petroleum-substance Contaminated Soil, can be accessed from this URL:

<http://www.tceq.state.tx.us/rules/indxpdf.html> and associated guidance from this URL: http://www.tceq.state.tx.us/remediation/pst_rp/downloads.html

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments N/A

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no Comments

The TCEQ typically regards the examples of non-soil materials as solid waste. In general, the management of solid waste is regulated by other TCEQ rules such as 30 TAC Chapters 335 and

330 for industrial solid waste and municipal solid waste, respectively. The TRRP rule primarily regulates the remediation of contaminated media and soil re-use, with limited provisions for waste management when associated with releases and closures. Additional or more stringent requirements can apply such as RCRA requirements for hazardous waste facilities. For example, TRRP Remedy Standard A requires the removal of listed hazardous waste which is contained within waste management units or which is separable from environmental media using simple mechanical removal processes, whereas characteristic hazardous and other wastes can be removed or decontaminated to protective levels.

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list for petroleum-substance contaminated soil regulated by 30 TAC Ch. 334, Subch. K: Cold-mix-emulsion bitumenous paving, hot-mix asphalt, parking lot base, in addition to the other examples.

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit *
- approved corrective action plan *
- institutional control *
- site management plan *
- none *
- other, please list Comment: * = It depends. In all cases under the TRRP rule and PST rule, at a minimum, the person must have the written consent of the landowner if soils with contaminants above background levels are to be placed on land not owned by the person. Then the level of additional permission varies with the TRRP remedy standard and regulatory program. The simplest case under the TRRP rule at §350.36 (Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) is for Remedy Standard A, residential land use criteria. So long as the soils are protective for the new on-site location, the person can self-implement and submit a follow-up report later. Institutional controls are required for relocated soils meeting commercial/industrial land use criteria. Use of physical controls (backed up with institutional control) under Remedy Standard B requires prior approval from the TCEQ. Prior approval can also be required for relocating soils subject to hazardous waste regulations (e.g., contained-in policy, LDRs, etc.) or permit provisions. For petroleum-substance contaminated soil, only an administrative review letter is required for approval of a soil reuse proposal under the requirements of Chapter 334, Subchapter K.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. The TCEQ regulatory programs and rules provide soil reuse alternatives to off-site disposal but the decision to use them is left to the person.

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain)

Utah

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments

What can marginally contaminated soil be used for?

on-site fill

off-site fill

road base

landfill cover

other, please list (The Solid Waste Program allows all these uses. The Voluntary Cleanup Program has allowed on-site fill and road base uses. The Superfund program allows on-site use, as appropriate; but materials must meet the requirements of the NCP's Off-Site Rule to be removed from the site.)

Does your State require permission for reuse? yes no

If so, what does the process entail?

permit

approved corrective action plan

institutional control

site management plan

none

other, please list (The Solid Waste Program does not require permission. The Voluntary Cleanup Program allows reuse through an approved corrective action plan and site management plan. The Superfund Program allows reuse through records of decisions, approved site management plans and institutional controls.)

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments

Does guidance \policies apply by media: (check all that apply)

soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

Solid Waste

other (please explain)

Virginia

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Virginia has “clean fill criteria” for petroleum contaminated soil only as outlined in the solid waste regulations 9 VAC 20-80-60.D.5

Are they : (check all that apply)

- promulgated standards or screening numbers
- regulation (petroleum contaminated soil only)
- statute
- screening numbers
- other, please explain

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments Yes, we now have an internal task group which has started evaluation of the development of criteria.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Solid waste regulations differentiate between soils and inerts such as concrete, brick, etc

What can marginally contaminated soil be used for?

- on-site fill
- off-site fill
- road base
- landfill cover
- other, please list

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan

none

other, please list Reuse for soils other than petroleum contaminated soil is handled on a case by case basis.

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments On site reuse of soils in situations such as a site which is enrolled into Virginia's Voluntary Remediation Program based on type of use and the risk assessment may be acceptable on a case by case basis.

Does guidance \policies apply by media: (check all that apply)

soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

State Superfund

Voluntary Cleanup Program

Solid Waste

other (please explain) Handled currently on a case by case basis at this time

Washington

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. X yes no

if yes , We've had guidance for some time describing appropriate end uses for petroleum contaminated soil. That guidance is in the process of being updated.

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no See above.

If yes, please provide internet link or copy. Attached. Please note this is DRAFT, subject to revision.

Are they : (check all that apply)

promulgated standards or screening numbers

regulation

statute

screening numbers

X other, please explain. This is guidance. Local health districts currently have the final call on uses.

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

X yes no , Comments Ecology's Waste 2 Resources Program is currently looking at updating it's rules to address a variety of situations.

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) X yes no comments: To some degree. Concrete and bricks are considered inert wastes under our Solid Waste rules.

What can marginally contaminated soil be used for?

on-site fill

off-site fill

road base

landfill cover

X other, please list See attached DRAFT TPH reuse guidance.

Does your State require permission for reuse? yes no

If so, what does the process entail?

permit

approved corrective action plan

institutional control

site management plan

none

X other, please list The intent of the TPH reuse guidance is to not require a permit or approval from Ecology. However, the local Health Dept. may require a permit or other permits/approvals may be required depending on where the material is used. (e.g. grade and fill permit; shoreline permit)

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. comments: Concentration dependent. See the attached guidance.

Does guidance \policies apply by media: (check all that apply)

X soil

surface water

groundwater

sediment

sensitive environments

or regulatory authority: (check all that apply)

RCRA

UST

X State Superfund

X Voluntary Cleanup Program

Solid Waste

other (please explain)

Wyoming

Does your State have a definition for marginally contaminated soil (historic fills, etc.) If yes, please provide your States definition. yes no

if yes ,

Does your State have guidance/policy/regulations related to marginally contaminated soils? yes no

If yes, please provide internet link or copy

Are they : (check all that apply)

promulgated standards or screening numbers

regulation

statute

screening numbers

other, please explain Wyo does not have marginally contaminated soil option; cleanup to residential is required unless have an institutional control for alternative cleanup

If your State does not have guidance/policy/regulations related to marginally contaminated soils, is your State considering the development of guidance/policy?

yes no , Comments VRP statute requires cleanup to residential or risk based alternative cleanup standard with institutional control

Does your program differentiate between soil and non-soil materials (coal ash, asphalt, concrete, bricks, etc...) yes no comments Within the solid waste rules clean fill is defined (e.g., uncontaminated concrete)

What can marginally contaminated soil be used for?

on-site fill

off-site fill

road base

- landfill cover
- other, please list NA, see above

Does your State require permission for reuse? yes no

If so, what does the process entail?

- permit
- approved corrective action plan
- institutional control
- site management plan
- none
- other, please list N/A, however, soils remediated to residential, migration to groundwater and ecological standards could be re-used (i.e., clean fill); soil that does not meet standards must be appropriately managed

Does your State provide a preference between on site reuse and offsite disposal of marginally contaminated soils? yes no. See #7 above comments

Does guidance \policies apply by media: (check all that apply)

- soil
- surface water
- groundwater
- sediment
- sensitive environments

or regulatory authority: (check all that apply)

- RCRA
- UST
- State Superfund
- Voluntary Cleanup Program
- Solid Waste
- other (please explain) Per VRP statute, all sites (including RCRA) must meet residential standards unless they are in the VRP and they can obtain an alternative standard with institutional control (local government land use restriction)

Appendix B: Additional Information Provided By States

Delaware:

[Soils Project/responses/received as of 10 22 10/Delaware/SoilReusePolicy.pdf](#)

Maryland:

[Soils Project/responses/received as of 10 22 10/Maryland/Clean Imported Fill Material.PDF](#)

Michigan:

324.20120c Relocation of soil.

Sec. 20120c. (1) An owner or operator shall not remove soil, or allow soil to be removed, from a facility to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation pursuant to part 111.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of hazardous substances in the soil exceed the cleanup criterion determined pursuant to section 20120a(1) or (2) that apply to the location to which the soil will be moved or relocated, except that if the soil is to be removed from the facility for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restrictions that would be required for the application of a criterion pursuant to section 20120a(1) or (2) shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of hazardous substances present at the location to which contaminated soil will be moved. Contaminated soil shall not be moved to a location that is not a facility unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) An owner or operator shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a remedial action plan has been approved unless that person assures that the same degree of control required for application of the criteria of section 20120a(1) or (2) is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing response activity or utility construction if the response activity or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being moved off-site from, moved to, or relocated on-site at a facility where a remedial action plan has been approved by the department based on a categorical cleanup criterion in section 20120a(1)(f) to (j) or (2), the soil shall not be moved without prior department approval.

(6) If soil is being relocated in a manner not addressed by subsection (5), the owner or operator of the facility from which soil is being moved must provide notice to the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be moved.

(d) A summary of information or data on which the owner or operator is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 20120a(1) to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(7) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving of the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(8) This section does not apply to soil that is designated as an inert material pursuant to section 11507(3) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.11507 of the Michigan Compiled Laws.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

324.21304b Removal or relocation of soil.

Sec. 21304b. (1) An owner or operator shall not remove soil, or allow soil to be removed, from a site to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The

determination shall consider whether the soil is subject to regulation pursuant to parts 111 and 115.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of regulated substances in the soil exceed the cleanup criteria established pursuant to section 21304a that apply to the location to which the soil will be moved or relocated, except if the soil is to be removed from the site for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restriction that would be required for the application of a criterion pursuant to section 21304a shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of regulated substances present at the location to which the contaminated soil will be removed. Contaminated soil shall not be moved to a location that is not a site unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) An owner or operator shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a corrective action plan was approved unless that person provides assurances that the same degree of control required for application of the criteria of section 21304a is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing corrective actions or utility construction if the corrective actions or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being moved off-site from, moved to, or relocated on-site at a site where corrective actions will occur, the soil shall not be removed without the prior approval of the department.

(6) If soil is being relocated in a manner not addressed by subsection (5), the owner or operator of the site from which soil is being moved shall notify the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be removed.

(d) A summary of information or data on which the owner or operator is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 21310a, to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(7) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(8) This section does not apply to soil that is designated as an inert material pursuant to section 11507.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

R 299.5542 Relocation of soil; notification of department under section 20120c of the act.

Rule 542. (1) Section 20120c of the act applies only to soil, excluding sediments generated by nonremedial, maintenance dredging activities, and except as further described in the following provisions:

(a) Section 20120c of the act applies to solid waste, as that term is defined in part 115 of the act, if either of the following conditions is satisfied:

(i) That waste is present as contaminant in soil, but the mixture of soil and solid waste is predominantly natural soil and no other applicable law or regulation requires more restrictive handling of the mixed material. Such a mixture of soil and solid waste is “other wastes regulated by statute” as that term is used in section 11506(1)(l) of the act.

(ii) The solid waste was disposed of before 1978 outside of a landfill or other authorized disposal area. For the purpose of this rule, solid waste may be considered disposed of before 1978 after appropriate inquiry. Appropriate inquiry shall include a review of reasonably available information including aerial photos, interviews with property owners, and a review of government records, after which it cannot be reasonably determined or inferred that the disposal occurred after 1978.

(b) Section 20120c of the act is not applicable to contaminated soil that is hazardous waste under part 111 of the act. Relocation of soil that is hazardous waste shall be done in accordance with part 111 of the act and the rules promulgated under that part.

(c) Except as provided in subdivision (a) of this subrule, section 20120c of the act is not applicable to soil mixed with significant amounts of garbage or rubbish as those terms are defined in part 115 of the act.

(d) Section 20120c of the act is not applicable to any of the following:

- (i) Human body wastes.
- (ii) Septage.
- (iii) Sewage sludge.
- (iv) Organic waste generated in the production of livestock or poultry.
- (v) Liquid wastes.

(e) Except as provided in subrule (1)(a)(ii) of this rule, section 20120c of the act is not applicable to any of the following:

- (i) Stamp sand.
- (ii) Foundry sand.
- (iii) Cement kiln dust.
- (iv) Coal and wood ashes.
- (v) Paper mill sludge.
- (vi) Slag.

(f) For the purposes of evaluating compliance with part 115 of the act, soil that is lawfully relocated under section 20120c of the act and this rule is “other wastes regulated by statute” as that term is used in section 11506(1)(l) of the act.

(2) The requirements of section 20120c of the act apply to soil at a facility if hazardous substance concentrations in that soil exceed 1 or more residential cleanup criteria established by the department under section 20120a(1)(a) of the act, including those criteria that protect an aquifer from the impact of a hazardous substance leaching from soil into the aquifer, regardless of whether an aquifer is present at the facility. The person who is arranging for relocation of soil is responsible for determining that there will be no adverse impact on the public health, safety, or welfare or the environment as a result of the soil being relocated.

(3) Soil covered by section 20120c of the act may be relocated from a facility to an off-site location if 1 or more of the following conditions are satisfied:

(a) The soil is removed from a facility and taken to an off-site location for disposal, treatment, or recycling in compliance with all applicable laws and regulations. Prior department permission is not required under section 20120c(5) of the act for disposal off-site in accordance with parts 111 and 115 of the act and the rules promulgated under those parts.

(b) The facility or the off-site location is subject to a remedial action plan or an interim response activity plan that was intended to meet specific cleanup criteria and that plan was previously approved by the department as being consistent with the categorical cleanup criteria

developed under section 20120a(1)(f) to (j) or (2) of the act and prior written department approval is obtained. The department shall use cleanup criteria developed under section 20120a(1) or (2) of the act, and that are applicable at the off-site location, to determine whether the soil will pose an unacceptable risk at the off-site location.

(c) The off-site location is a facility, subdivision (b) of this subrule is not applicable, and all of the following additional conditions are satisfied:

(i) The soil removed from the facility does not contain concentrations of hazardous substances that exceed the generic cleanup criteria developed under section 20120a(1)(a) to (e) of the act which are applicable to the off-site location.

(ii) The off-site location is similarly contaminated, considering the general nature, concentration, and mobility of hazardous substances at the location to which the soil will be moved.

(iii) Notice has been given to the department as required by section 20120c(6) of the act.

(iv) Except as provided in subrule (6) of this rule, the off-site location is owned by the person who owns the facility from which the soil is removed.

(4) Soil covered by section 20120c of the act may be relocated within a facility that is subject to a remedial action plan or a plan for interim response activity that is designed to meet specific cleanup criteria if either of those plans was approved by the department and all of the following conditions are satisfied:

(a) If the facility is subject to a remedial action plan approved by the department based on the categorical cleanup criteria developed under section 20120a(1)(f) to (j) or (2) of the act, and prior written approval is obtained from the department for relocation of soils. The department, in issuing an approval, shall determine that relocation of the soil will not interfere with the integrity and effectiveness of the remedial action addressed by the remedial action plan, and that unacceptable exposures will not occur as a result of the relocation of soil at the facility.

(b) If subdivision (a) of this subrule does not apply, and if the facility is subject to a remedial action plan based on cleanup criteria developed under section 20120a(1)(a) to (e) of the act, if the person proposing to relocate the soil assures that the same degree of control required for application of the criteria under the remedial action plan is provided for the relocated contaminated soil, and if notice has been given to the department as required by section 20120c(6) of the act.

(c) Notwithstanding this subrule, an owner or operator of a facility may temporarily relocate soil within the facility that is subject to a remedial action plan for the purposes of implementing response activity or utility construction or repair or similar activity, if the response activity, utility construction or repair or similar activity is completed in a timely fashion and if the short-term hazards associated with the contaminated soil are appropriately controlled.

(5) For facilities not subject to a remedial action plan approved by the department, soil may be relocated within similarly contaminated areas of the facility if the relocation is consistent with the requirements of section 20107a(1) of the act. For purposes of this subrule, the exceptions to section 20107a of the act that are set forth in section 20107a(4) and (5) of the act are not applicable.

(6) Soil may be relocated under section 20120c of the act to a location that is not owned by the person arranging for the relocation of soil if the relocation is explicitly authorized by department approval of a remedial action plan or interim response activity plan, if that plan is designed to meet criteria, for the property where the soil is being moved. A remedial action plan or interim response plan being reviewed by the department under this rule can be denied if the soil relocation is inconsistent with the reasonably foreseeable future use of the property.

(7) Relocation of soil within a facility or to an off-site location shall not result in the creation of nuisance conditions, including, but not limited to, fugitive dust.

(8) Except as explicitly provided in this rule, section 20120c of the act shall not be used to circumvent the requirements of part 115 of the act for the licensing and regulation of solid waste disposal areas.

(9) Section 20120c of the act shall not be used as the basis for or considered an authorization for open water disposal of soil or sediments.