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MassDEP Adopts Similar Soils Provision Guidance to support the assessment and re-use of soil moved from M.G.L. Chapter 21E disposal sites

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In a prior post (July 30, 2013) I discussed the management of contaminated soils under Massachusetts policies and noted that MassDEP intended to clarify through guidance its "anti-degradation" regulation for reuse of soil that is below MassDEP residential standards. On October 2, 2013, MassDEP released its "Similar Soils Provision Guidance" (WSC #13–500) which is designed "to support the assessment and re-use of soil in compliance with the related provisions of the MCP." Kudos to DEP for taking on this issue and providing guidance in short order. MassDEP's Similar Soil Guidance fully describes in simple terms the regulatory requirements contained in the MCP implemented through the anti-degradation provisions at 310 CMR 40.0032(3). First, MassDEP correctly recasts its "anti-degradation" requirement as a "similar soil" provision. That wording plainly describes what this policy does; it allows for the movement of soil to be combined with areas where there is similar soil. Second, in setting the benchmark for soil conditions at the receiving location, it allows the LSP to look to natural background conditions. DEP published "natural background" levels that are used in MCP for other purposes, such as recycling and development of cleanup standards. Third, it explains what "significantly lower" means at 310 CMR 40.0032(3); it means that "there is no significant difference between the relocated soil and the soil at the receiving location," or "soils being brought to the receiving location that are similar to what is already there." Very simple. Easy to understand. Finally, MassDEP notes that the question of whether soil poses a risk at the receiving location is not addressed by the guidance or the MCP. The similar soil provision is very limited and is intended to ensure only that managed soil does not increase risk of harm to health, safety, public welfare or the environment at the receiving location solely because it is similar to what is already there. Nothing more. While the Guidance is a helpful tool, as I noted in July, much more still needs to be done to address the commonwealth's soil management needs.

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