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The Bowditch & Dewey Real Estate Blog

“Reclamation Soil:” A New Category of Regulated Materials?

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Robert D. Cox., Jr. – In prior posts, I discussed the [pressing need for soil disposal options](#) and, under MassDEP “Similar Soils” Guidance, the [reuse of soil moved from M.G. L. c. 21E sites](#). The Massachusetts Legislature decided it was time weigh in on this topic and, over Governor Patrick’s veto, directed MassDEP to take action.

Adopted as part of the [FY 2015 budget](#), Section 277 requires MassDEP to “establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for reclamation of quarries, sand pits and gravel pits.” Per Section 277, MassDEP is tasked to “ensure” that the reuse of soil “poses no significant risk of harm to health, safety, public welfare, or the environment considering the transport, filling operations and foreseeable future use of the filled land.” MassDEP is further instructed that it may adopt regulations establishing classes or categories of fill or reclamation activities that require a permit from MassDEP, classes or categories of fill or reclamation activities that may be carried out without a MassDEP permit, and classes or categories of fill that require local approval based upon size, scope and location of the project, but with no local approval for projects involving less than 100,000 cubic yards of soil. All of this must be done no later than June 30, 2015.

As a result, MassDEP has been busy. Since October, it has been soliciting information from the regulated community, local officials and environmental professionals who manage soil. To help it set appropriate standards, MassDEP seeks to identify the exposures that must be considered to ensure no significant risk, the procedures needed for reclamation soil to meet the new standard, what a reclamation project permit would look like, and what type of projects require local approval and how local approval should be provided. A website and blog has been set up at <http://www.reclamationsoil.org/>

What is “Reclamation Soil?” Let’s start with what it is not. It is not “Hazardous Waste” (regulated by 310 CMR 30.000), “Remediation Waste” or “Contaminated Soil” (both regulated by 310 CMR 40.0000), “COMM-97 soils” (soils used under MassDEP policy for grading/shaping at landfills or as daily cover), or “Solid Waste.” See definitions [here](#). Existing laws and regulations prohibit the use of these materials for filling quarries, sand pits or gravel pits.

So, what type of material is MassDEP seeking to regulate as “Reclamation Soil” for use in quarries, sand pits and gravel pits? Natural soil or soil containing only low levels of oil or hazardous material not subject to any current regulation, but that nonetheless may pose some type of risk to human health, safety, public welfare, or the environment when moved and reused, deposited or left at another location. MassDEP’s current, working definition for “Reclamation Soil” is soil, used as part of Reclamation Soil Project, “containing only levels of oil and/or hazardous material that are suitable for reuse as fill material in quarries, sand pits and gravel pits [or other development projects] as specified in [TBD]. Reclamation Soil does not include soil containing [TBD].”

Stay tuned. MassDEP has much to do and defining and setting standards for “Reclamation Soil” is not a simple task. At the same time, the existing laws and regulations will determine the degree of flexibility that parties have in managing soils that, while not pristine, should not be managed as Hazardous Waste, Remediation Waste, Contaminated Soil, COMM-97 soils, or Solid Waste. MassDEP expects to have guidance out for this new category of regulated material by early spring next year.