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Proposed CTDEP General Permit and anticipated changes to solid waste regs will impact redevelopment

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The Connecticut Department of Environmental Protection (CTDEP) is working on a new General Permit for the Beneficial Use of Regulated Fill. According to the CTDEP, the stated purpose of the permit is to reduce remediation costs of environmentally impaired sites by allowing for the reuse of certain impacted soils at other development sites within CT in lieu of disposal at a soil treatment facility or landfill. However, upon review of a draft of the proposed permit along with a review of proposed corresponding changes to Connecticut's Solid Waste Regulations (SWRs), the permit will also resolve a regulatory inconsistency regarding the reuse of polluted soils as clean fill. Currently, the burden of characterizing soils is primarily limited to sites undergoing remediation; however, under changes proposed within the permit this burden will be shifted from not only remediation sites, but to all sites in CT in which earthwork is conducted by requiring a level of assessment and impose potential restrictions and regulation on soils that have been designated for export as clean fill.

The current CT SWRs define "clean fill" as 1) natural soil; 2) rock, brick, ceramics, concrete and asphalt paving fragments; and 3) polluted soil as defined by the Remediation Standard Regulations (RSRs). As defined by the SWRs, soil containing low concentrations of pollutants from properties not subject to the RSRs may be reused anywhere in CT, including at residential properties. However, in accordance with the RSRs, polluted soils generated from properties subject to the RSRs (ie; Transfer Act and Brownfield sites) may only be reused at other sites within CT with approval from the CTDEP commissioner. This inconsistency between the RSR and SWR regulations is the reason why the CTDEP is concerned that potentially polluted soils are being sent from non-remediation sites to residential properties for reuse without adequate characterization and/or scrutiny.

To address this inconsistency, the CTDEP is proposing to change the definition of "clean fill" in the SWRs to: soil, sediment, stones and rocks in all cases unaffected by a release of a substance. For the purpose of this definition, "release" and "substance" have the same meaning as in the RSRs. This change not only removes the inclusion of polluted soils from the definition of clean fill but also removes any construction type debris (i.e. bricks and concrete) from being considered as "clean fill". In order to better manage and track polluted soils and soil contained construction debris (urban fill), the proposed SWRs define a new term called "Regulated Fill". Regulated Fill is defined as: 1) excavated environmental media including polluted soil, contaminated sediment, and stone or rock affected by a release of a substance; 2) historical fill, defined as materials previously used to bring an area to grade that is a conglomeration of soil, polluted soil, and/or residuals; 3) brick, block, ceramics, and concrete; and 4) asphalt. This new definition will incorporate a large portion of all soils generated from redevelopment and construction projects.

In order to determine if material is to be classified as clean fill or regulated fill, analytical testing

and/or a certification from a CT licensed Environmental Professional (LEP) or a CT PE will need to be obtained. This requirement for certifications will establish the need for a Materials Management Plan (MMP) for any re-development project that will have a net soil export requirement.

According to the proposed SWRs, "Regulated Fill" shall be disposed of as a solid waste or reused (1) beneficially in accordance with the General Permit for the Beneficial Use of Regulated Fill; or (2) reused in accordance with the soil and sediment reuse provisions of the RSRs, for sites undergoing remediation.

In accordance to the proposed General Permit in order to reuse regulated fill at an off-site location the person offering the soil must have: (1) a MMP; (2) certification of the appropriateness of the materials for reuse from an LEP or CT PE (analytical testing will be required in support of the certification); (3) the owner's written consent from the receiving property; (4) analytical data from the receiving site documenting that similar impacts (i.e. as to those identified within the regulated fill) are already present on the receiving site and (5) meet specific public notice requirements.

Based on the proposed General Permit for Reuse of Regulated Fill in conjunction with the proposed changes to the SWRs, non-remediation redevelopment sites may now face a regulatory requirement for appropriately managing, handling and ultimate disposal of exported soils. These additional requirements might lead to increased costs and extended construction schedules resulting from the management, sampling and certification of existing soil conditions.

In order to better manage these potential costs and reduce any possible delays, property owners should engage an LEP and/or PE during the initial project planning phase. Greater coordination and proper planning can provide significant cost and scheduling benefits.

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