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NEW MASSDEP GUIDANCE ADDRESSES SOIL MANAGEMENT: CLARIFIES “SIMILAR SOILS” FOR MCP COMPLIANCE

As part of its efforts to assist the regulated community with the challenge of managing contaminated soils, the Department of Environmental Protection (MassDEP) recently issued the Similar Soils Provision Guidance, WSC#13-500. The Guidance clarifies the meaning of the so-called “anti-degradation provision” of the Massachusetts Contingency Plan (MCP).

Development, construction, utility, and waste site cleanup projects often generate excess soil that must be reused or disposed of. Soil excavated at a disposal site governed by the MCP must be managed/reused/disposed of in accordance with the provisions of the MCP. Under the MCP soil that meets certain criteria may be moved to and reused (or disposed) at a new location without notice to or approval from MassDEP. As a threshold matter, the concentrations of oil or hazardous material in the soil at its original location (the disposal site) must not exceed the applicable MCP Reportable Concentration.

As described in the Guidance, the similar soils provision of the MCP (formerly referred to as the “anti-degradation provision”) requires that there be no significant difference between the soil being relocated and the soil at the receiving location. Put another way, the soil being brought to the receiving location must be similar to what is already there. The regulations imply that a Licensed Site Professional overseeing an MCP cleanup must have knowledge about the concentrations of oil or hazardous materials in the soil at the receiving location in order to apply the similar soils provision. The Guidance describes three approaches for addressing this knowledge issue: assume the soils at the receiving location are natural background; sample the soils at the receiving location; or provide technical justification for an alternative approach.

The Similar Soils Provision Guidance contains two tables with “limits to the concentration of oil or hazardous material in soil for reuse” to guide a Licensed Site Professional in making a determination whether soil from an MCP disposal site can be reused at another location. Unfortunately, the Guidance does not have levels for PCBs, volatile organic compounds, or petroleum-related constituents, which are the most common contaminants found at sites.

Because the new Guidance only addresses soil from an MCP disposal site with less than reportable concentrations of oil or hazardous material it is merely one piece of a much-needed comprehensive soil management strategy. MassDEP and interested stakeholders continue to work on additional solutions to the challenges of managing regulated soil.

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