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## MASSDEP TACKLES SOIL MANAGEMENT “CRISIS”

Construction in Boston is booming. As a former Menino Administration official put it, the mayor’s favorite bird – the crane – is a familiar sight in the city. What will become of the dirt excavated from development sites? That question has been weighing on the minds of developers, contractors, and regulators, and has prompted discussions among these constituencies for changes in the way excavated material is managed.

Development, construction, utility, and waste site cleanup projects often generate excess soil that cannot be re-used at the project sites. These soils may contain detectable levels of contaminants. The management and disposition of the soil depend on the type and concentration of contaminants. Competing policy positions at MassDEP also come into play.

In 1994 and 1997 MassDEP adopted policies that allow contaminated soil with certain characteristics to be reused or recycled at Massachusetts permitted facilities (landfills and asphalt batching plants). Active landfills can use certain contaminated soil as daily cover material. Inactive, unlined landfills undergoing a closure process may use such soil as grading and shaping material, with approval from MassDEP. There has been a decline in landfills available to receive soil, however. In addition, some soil is regulated under the Massachusetts Contingency Plan (MCP), the regulations governing sites where there has been a release of oil or hazardous material, and some is regulated as solid waste.

The National Association of Industrial and Office Properties (NAIOP) and the Licensed Site Professional Association (LSPA) have been urging MassDEP to clarify and change its policies regarding the management of soil. Some have suggested that legislation is needed to address the “crisis.” One issue raised is that some soil is “contaminated” under a solid waste policy but “uncontaminated”

by MCP definition, even though the soil contains detectable levels of contaminants.

New landfill closure projects have been proposed, which would create capacity for a certain quantity of soil to be used as grading and shaping material, but some projects have run into local opposition. MassDEP may allow quarries to receive soil, although the regulatory authority for that is unclear. Significant quantities of Big Dig soil were used to fill the Quincy quarries. In March MassDEP issued a Draft Technical Update (*Identifying When Soil Concentrations at a Receiving Location Are "Not Significantly Lower" than Managed Soil*) in an effort to clarify the so-called "anti-degradation provisions" of the MCP. MassDEP has also proposed changing the definition of "background" in the MCP and creating definitions of "historic fill" and "anthropogenic background" in the regulations.

The need for consistent MassDEP policy and positions on the management of soil from development and clean-up projects could not be more apparent. Our firm is continuing to monitor discussions on the topic.

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