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ROHM AND HAAS

April 2, 2002

David E. Hess, Chairperson
Environmental Quality Board
Rachel Carson State Office Building, 15th Floor
400 Market Street
Harrisburg, PA 17105-8477

Re: Proposed Rulemaking, Environmental Quality Board [25 PA Code Chs. 271 and 287], Safe Fill

Dear Secretary Hess,

Please find herewith comments on the Safe Fill proposed rule. Because the proposed rule effects the maintenance and future improvement activities at all of our facilities, I participated with a small group of my peers in reviewing the rule in detail. While I am pleased to acknowledge that the currently proposed rule is a significant improvement over those previously offered, there remains opportunity to make the rule more useful for safe reuse of these materials and to simplify and clarify the rule.

It should be kept in mind that hazardous waste, listed or characteristic per §261a, is already ineligible for consideration as Safe Fill.

In summary, the key changes that are developed in the accompany comment package include:

- Switching from "event" to "risk" driven decisions for protection of Human Health, groundwater and eco system.
- A more robust application of the standards provisions of Chapter 250, including the use of non-residential standards in the §271.103 (i) and §287.102 Permit-by-Rules(PBR) which by definition limits placement to commercial and industrial property.
- Add necessary definitions for "along", "residential" and "non-residential" for regulation clarity. Make adjustments to *Historic, Sediment* and *Safe Fill* to align with the above principles.
- Simplify by consolidating the §287.102 PBRs into a single PBR.
- Create under §287.101 a new section providing an appropriate exclusion from the PBR for remediation sites as authorized by Act 2.

While the changes herein proposed seem to be extensive in a red-lined version, in actuality the framework of the proposed rulemaking is very much in place.

An additional provision for "in-situ" sampling and analyses for *Safe Fill* characterization is needed to avoid double handling of fill materials. Additional flexibility for case by case determinations could be given to the Department, e.g., the application of non-use groundwater standards where a Municipal area wide non-use determination has been made. However, these changes are not specifically incorporated into the attached document.

Sincerely,

A L Holmstrom

A.L. Holmstrom
Corporate Remediation Manager

Enclosure

Comments on "Safe Fill" Proposed Regulation
[25 PA Code Chapters 271 and 287]
Adopted by Environmental Quality Board, November 20, 2001

General Comments:

The proposed rulemaking package which deals with the important issue of management of "soil and soil-like media" effects all of our Pennsylvania facilities in the conduct of maintenance, site modifications and new development. Because of the importance to the conduct of our economic activity, and due to the remaining complexity of the rule, an in-depth review of the proposed rulemaking was conducted in collaboration with other regulated parties.

Admittedly, the currently proposed rule is a significant improvement over the previously proposed rules and the Department's Guidance. However, the currently proposed rule is more cumbersome and restrictive than is believed necessary and prudent. In particular, much can be yet done to:

- Safely reuse more of these materials for beneficial purposes. Among other reasons to do this is to reduce the unnecessary consumption of existing landfill space with the resultant creation of needs for new landfills.
- More robustly align the regulation with the existing protection and flexibility provided by the Act 2 standards. Among the benefits to the regulated community is having a more uniform set of standards to understand.
- Simplify and technically clarify the proposed regulation.

Through the process of reviewing the proposed rule, the comments and recommendations generated yielded a revised draft of the proposed rulemaking. The revisions still accomplish the protection of human health and the environment, still follow the structural framework of the proposed regulation, but, provide clarification, simplification and better reuse of the subject materials.

Attached is a version of the proposed rulemaking after incorporation of recommendations. It is not considered to be a final version, but it is a good representation of what could be similar to a final rule.

In the following paragraphs, the rationale for the key recommendations are provided. The comments do not cover every minor change as there are simply insufficient resources to do that. However, additional dialog is available on request.

Specific Comments:

§ 271.1 Definitions:

Historic Fill-- The definition of "*Historic Fill*" is proposed to be changed. The changes parallel those described for § 287.1 and the comments are not duplicated here.

§271.2 (c) Scope

Under this scope section, it is proposed to align the management philosophy with that established for the federal waste program. Specifically, soil or ground is not a waste while in place, it only becomes a waste when "generated" where generated means excavation or movement of the ground. This section has therefore been prefaced by the phrase "On generation, ..."

§271.101 (b) (3) Exemptions

In the proposed rulemaking, the exemption from waste for land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material was deleted. Under the condition that these materials are segregated, it is proposed that this exemption be reinstated for these low hazard materials.

§ 271.103 Permit by Rule

(g) Mechanical Processing Facility:

Very minor changes are proposed to clarify the length of time a facility has to process material and to dispose of residue. Other edits are self explanatory.

(i) Brick, Block and Concrete.

It is observed that Brick, Block and Concrete, are and should be materials that are used for *safe fill* provided the materials meet the criteria for *safe fill*. It does not make much sense to have a Permit by Rule (PBR) for Brick, Block and Concrete unless the materials are other than safe fill. Therefore, the attachment clarifies in the first paragraph that the material referred to is not *Safe Fill* or it would be used in accordance with Safe Fill protocols.

It was also felt beneficial for users to have clearly identified in this preamble paragraph that this permit by rule is not available for material that is otherwise hazardous waste as defined in § 261a of the hazardous waste regulations.

Wording changes were also made to avoid a possible misinterpretation that brick, block and concrete, or mixtures thereof, need to be segregated into separate components. The segregation required is separation from other waste material that would not be suitable for use in fill applications. Additionally, the changes are intended to make clear that separate sampling and analysis of the brick or block or concrete is not intended or required. This clarification is made throughout the PBR section.

(i)(1) through (i)(14).

The recommended changes made to these sections follow the recommended changes described for similar §287.103 sections. In summary, if the brick, block or concrete were

to meet *Safe Fill* requirements there would be no need for a PBR under §271.103. Therefore, the recommendations herein allow for the application of other features of Chapter 250 for the safe reuse of these materials. These features include the use of non-residential standards under prescribed circumstances and the introduction of the option to utilize the Synthetic Precipitation Leaching Procedure (SPLP) as an alternate means of demonstrating the soil to groundwater standard attainment. The SPLP should be the best evaluation means for the use of these matrixes as fill.

§287.1 Definitions:

Along – The proposed rulemaking discusses the placing of fill "in or along waters of the Commonwealth". While the meaning of "in" is clear, the meaning of "along" needs definition. The proposed definition was excerpted from Chapter 105.

Historic Fill— It is agreed that the Commonwealth has great quantities of *historic fill.* From a technical perspective, there does not appear to be justification to consider it as also being in a special category if it meets the definition of *Safe Fill. Historic Fill* is included as a material eligible of *Safe Fill* use in the revised definition of the term.

It is also recommended that the effective cut off date for *historic fill* be reset as the effective date of the final regulation to eliminate the difficulty in making the determination. The concept that waste materials (landfills, waste piles, impoundments) which were regulated are excluded from the definition is supported.

The definition in the proposed rulemaking would eliminate from consideration *historic fill* having odor or other sensory nuisances. While it can be agreed that materials creating a nuisance should be excluded, it needs to be recognized that freshly excavated soils or fill materials often have initial odors. To accommodate this fact, the qualifying words "recurring or persistent" have been introduced and the nuisance related to "regulated chemicals". This modification was made throughout the document.

The prohibition of materials related to a release was also eliminated for reasons discussed in the *safe fill* definition discussion below.

Non-residential –
Residential – To be clear about where *Safe Fill* or non-qualifying fill subject to a PBR may be placed, it is necessary to specifically define these terms in relation to the standards specified in the rule. To be consistent with the bases on which the standards were developed under Act 2, the Act 2 definitions for these terms are recommended for insertion.

Safe Fill-- The rationale for the proposed changes is rooted in underlying goal of the Solid Waste Statutes, namely the protection of Human Health and the Environment. It is therefore logical that the goal of the *Safe Fill* definition should be aligned with the protection of Human Health and the Environment goal.

Pennsylvania is fortunate to have had established through Act 2, and implemented via Chapter 250, a set of standards for soils which define safe contaminant levels in media. The proposed rulemaking stated an intent to align the *Safe Fill* definition to the Act 2 standards. From the users prospective, it is important to have clear and concise guidance on how to make the *Safe Fill* determination as well as having enough flexibility to deal with the variety of matrixes and contaminants likely to be encountered. To this end, the recommendations being submitted make more use of the Act 2 framework in defining how Act 2 standards are applied in this instance.

Fundamentally, it is difficult to understand how media (fill materials) become contaminated with most regulated substances unless there has been a "release". Note that the regulatory term "release" has a very broad meaning running the spectrum from incidental air deposition to the classic spill. The proposed rulemaking treats the media differently based on time, use or release mechanisms. These differentiations are frequently difficult to document, somewhat subjective, and most importantly do not address specifically the risk to Human Health and the Environment. On the other hand, the due diligence and testing protocols proscribed in the proposed rulemaking are capable of definitively evaluating the "risk" posed by the media. Therefore, where the specific subject material is not a hazardous waste, either listed or characteristic as defined by §261a, it is proposed that the risk to Human Health and Environment, as determined by the Act 2 standards, be the principal criterion to qualify the material for being *Safe Fill.* In the attached proposal, the criteria of "un-contaminated" and "release free" have been removed from the definitions and the document.

It is recognized that the proposed rulemaking include in the term *Safe Fill* a number of fill materials which may not be commonly considered "soil". Therefore, one must ask the question of whether Act 2 standards applied to these other material would still be protective of Human Health and the Environment. After a review of the physical principles applicable, it was concluded that the standards should be conservative for the materials cited in the proposed rulemaking.

Note as described earlier that *historic fill* has been to the materials which may be in those eligible to be *Safe Fill.*

These changes result in a simplification of the language which is believed beneficial.

In addition, these specific comments regarding the *safe fill* definition:

§ 287.1 Definitions: *Safe Fill*—(i)(A) The recommended changes more clearly represent that a determination that the fill material meets the numeric standards may be determined by knowledge other than the sampling and testing protocol (parallel to the regulatory waste determination framework). This is an important subject for operating facilities who have already performed waste characterization on waste soils or who may have completed comprehensive baseline assessments of their sites and for which additional testing would be an unnecessary additional cost. In

certain instances, the site history alone may provide sufficient basis for a determination.

§ 287.1 Definitions: *Safe Fill*—(ii)(D) Review of the proposed rulemaking did not appear to provide a di minimis quantity for material from utility excavations to be moved, for example, from a right of way to another location. The addition of (D) permits up to 50 cubic yards of excess fill material to be moved to a non-residential site.

§ 287.1 Definitions: *Safe Fill*—(ii)(E) With the adjustments proposed to *historic fill* it was no longer necessary to keep the 125 yd exemption as paragraph (ii) in the definition. Instead, the di minimis exemption quantity is relocated to this new paragraph (ii) (E).

§ 287.1 Definitions: *Safe Fill*—(vi)(B) Section (vi) of the proposed rulemaking addresses the protection of water quality standards by requiring that the fill material in direct contact with the groundwater or surface water does not exceed 10% of the numeric standards of §287.11 (a)(1) and (2), and the water quality standards of Chapters 16 and 93. Here the Chapter 250 alternative of using the Synthetic Precipitation Leaching Procedure (SPLP) is introduced for all analytes (and is carried through the remainder of the suggested modifications to the proposed rulemaking). The SPLP option is important as it is the best indicator of the true leaching potential of contaminants from the specific fill matrix. The §287.11 numeric standards are based a on single set of conservative assumptions and in many instances will be more conservative than necessary. Because certain substances occur naturally or have strong affinities for the solids matrix, the SPLP is the preferred technical means to assess the limit for fill use in contact with ground and surface waters. In view of the fact that §287.11(b), the procedures for determining whether the fill meets the standards, proscribes a sampling and analytical intensive methodology, the cost of doing the SPLP is minor as the samples will already be in the Laboratory. In the attached document, the 10% factor is deleted as a determination of meeting the Chapter 16 and 93 standards can be demonstrated with the SPLP.

The use of the SPLP is inserted into the rest of the proposed *Safe Fill* attachment consistent with Chapter 250 use as appropriate.

§ 287.1 Definitions, *Sediment*—Changes are proposed to clarify the definition which focus on the materials overlain by water and which can be either somewhat segregated materials or heterogeneous mixtures of these materials.

§287.11 Safe fill numeric standards.

§ 287.11 (a)(1) As the Chapter 93 numeric standards have already been inserted in the Appendix A Tables, the redundancy of making a special case for copper and zinc was un-necessary and is proposed to be deleted.

§ 287.11 (a)(1)(i) The wording of this section was adjusted to reflect the optional use of the SPLP consistent with Chapter 250 as previously described.

§ 287.11 (a)(1)(iii) Literally all fill media samples will have copper and zinc as constituents. Therefore, the wording of the revised language is proposed to simply reflect the referenced plant toxicity standard source.

§ 287.11 (c) This section describes the methods of interpreting the analytical results for composite and for grab or discrete samples. Without changing the intent, the proposed language changes are believed to add clarity to the methodology. Three distinct cases are contained in the protocol: composites samples, biased discrete grab samples for VOCs, and randomized discrete sampling.

§ 287.11 (e) It is proposed that this section be deleted. Sediments do not require any procedure not already described in §287.11. Sediments are simply another fill matrix.

§ 287 Subchapter C. General Requirements for Permits and Permit Applications

§ 287.101 General Requirements for Permit.

In the proposed rulemaking, § 287.103 (m) proposed certain conditions for sites undergoing remediation. In keeping with the provisions of Act 2, Section 902 (a), a permit would not be required for operations carried out on-site under an Act 2 remediation. Therefore, the proposal submitted herewith makes a more general exclusion, with certain conditions, as laid out in new § 287.101 (f) of the attachment.

§ 287.102 Permit by Rule

The subparagraph numbers(letters) appear to be out of order for this rulemaking.

This section of the proposed *Safe Fill* rulemaking sets out a series of four permit by rule (PBR) options relative to certain agricultural soils, certain soil, dredged material or used asphalt, certain historic fill, and materials placed at Chapter 250 remediation sites. As noted above, a more general exclusion is recommended for Chapter 250 remediations at § 287.101 (f), and therefore, section (m) was eliminated. For the remaining media categories cited, it is believed that the rule can be substantially shortened by combining all materials into a single PBR and that appears as section (l) in this attachment. As the reader of the proposed rulemaking would note, there is significant redundancy among the various PBRs as proposed.

Given the premise that *Safe Fill* must meet residential direct contact and currently used soil to groundwater pathway standards, if the PBR defined cases must also meet the same standards there is almost no purpose of having the PBR options. However, given the fact

use under a PBR is limited to commercial and industrial properties (non-residential), or where the Department provides specific approval in the case of mine reclamation, the PBRs should employ the appropriate non-residential standards set out in Chapter 250. Building on the changes described for the Safe fill definition, and the application of appropriate non-residential standards, the PRB revised language proposed in the attachment provides a useful set of safe PBR reuse options.

§ 287.102 (l) *Soil, dredged material or used asphalt that exceeds safe fill numeric standards or historic fill material*

In this preamble section the various matrixes in subsections (j), (l) and the second (l) of the proposed rulemaking are combined into the single PBR. While agricultural land use is not mentioned in the title, the agricultural soils are included in this combined PBR in a new subsection (see § 287.102 (l) (4)of the attached rule recommendations).

It was also felt that the exclusion of hazardous waste (§ 261a) should be addressed at the beginning of the PBR language for upfront notice to the user.

§ 287.102 (l) (1)

This section addresses the direct contact standards applicable to the fill. The flexibility to use material for which the direct contact pathway is eliminated is inserted into the PBR recommendation.

Paragraph (1)(i) in the proposed rulemaking, related to groundwater standards was eliminated as it is redundant to the water standards of paragraph (2).

§ 287.102 (l) (2)

This section addressed the soil to groundwater pathway. The proposed revision states the three options available for making a determination of suitability; 1) the TCLP, 2) the SPLP, and 3) the non-residential soil to groundwater numeric values obtained based on § 250.308 or § 250.305(b).

§ 287.102 (l) (4)

This paragraph in the attached revision is new and addresses the soil subjected to agricultural uses consistent with the proposed rulemaking.

§ 287.102 (l) subparagraphs (3), (5)and (6)

These paragraphs make minor edits to incorporate the combination of PBRs.

§ 287.102 (l) (7)

This paragraph clarifies that the prohibited placement is related to sinkholes in *karst* terrain.

§ 287.102 (l) (8)

Clarification was added to identify the prohibited placement is related to potable water sources.

§ 287.102 (l) (9)

In the attached revisions, paragraph 10 is altered to assure that for un-zoned properties, the property must be used exclusively for commercial and industrial purposes in addition to meeting background restrictions.

Paragraph (9) of the proposed rulemaking was eliminated as it was incorporated into the first paragraph of this section (relating to not being a hazardous waste).

§ 287.102 (l) (10)

The only substantive recommended change to this paragraph was to recognize that the sensory nuisance parameters must be "persistent or recurring" and related to a regulated substance. Most excavated material has some odor when initially excavated so without some qualification, excavated material would not qualify for reuse.

§ 287.102 (l) (11)

The proposed revisions provide for the combination of the PBRs. Also, the language was altered to reflect the past tense as some of the requested information would not be available until after completion of such placement.

§ 287.102 (l) (12)

Other than accommodation of the multiple PBRs being combined, the only substantive change is to focus the responsibility for records on the user of the fill material.

§ 287.102 (l) (13) and (14)

The proposed revisions only provide for the combination of the PBRs previously described.

RECOMMENDED REVISION OF PROPOSED RULEMAKING

for

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VIII. MUNICIPAL WASTE

CHAPTER 271. MUNICIPAL WASTE MANAGEMENT--GENERAL PROVISIONS

Subchapter A. GENERAL

§ 271.1. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[*Clean fill***--Uncontaminated, nonwater-soluble, nondecomposable inert solid material used to level an area or bring the area to grade. The term does not include material placed into or on waters of this Commonwealth.]**

* * * * *

Construction/demolition waste--Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to**[, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete.]**:

(i) Wood.

(ii) Plaster.

(iii) Metals.

(iv) Asphaltic substances.

(v) Bricks, block and concrete.

The term does not include the following if they are separate from other waste and are used as fill:

(i) Soil, rock, stone, gravel, brick and block, concrete, historic fill and used asphalt meeting the definition of safe fill.

(ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

* * * * *

Historic fill--

Historically contaminated material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to ____ [effective date of safe fill regulations] that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction and demolition debris that was not subject to waste permitting requirements at the time it was placed.

* * * * *

Safe fill--**Safe fill as defined in § 287.1 (relating to definitions).**

* * * * *

§ 271.2. Scope.

* * * * *

(c) **Upon generation, m**anagement of the following types of waste is subject to Article IX instead of this article, and shall be regulated as if the waste is residual waste, regardless of whether the waste is municipal waste or residual waste:

* * * * *

(7) Historic fill.

* * * * *

Subchapter B. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

REQUIREMENT

§ 271.101. Permit requirement.

* * * * *

(b) A person or municipality is not required to obtain a permit:

* * * * *

(3) For the use as fill of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material, provided such materials are separate from other waste.

(4) * * *

(5) * * *

* * * * *

§ 271.103. Permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements.

* * * * *

(g) *Mechanical processing facility.* A facility for the processing of **[uncontaminated]** rock, stone, gravel, brick, block and concrete from construction/demolition activities, individually or in combination, by mechanical or manual sizing or by mechanical or manual separation for prompt reuse shall be deemed to have a municipal waste processing permit-by-rule if it meets the requirements of subsections (a)--(c), **the rock, stone, gravel, brick, block and concrete are separate from other waste** and **the operator** submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the waste and the facility. The facility **[shall be onsite or process less than 50 tons or 45 metric tons per day, and]** may not operate in violation of any State, county or municipal waste management plan. **If the facility is offsite and processes more than 50 tons or 45 metric tons per day, the following additional requirements shall be met:**

(1) The facility may not receive more than 350 tons or 315 metric tons per day.

(2) The facility shall maintain a 300-foot isolation distance from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the facility being closer than 300 feet.

(3) The facility shall process the incoming waste within 30 days.

(4) Processed waste shall be removed from the facility within 60 days after processing for reuse.

(5) The operator shall maintain records that indicate compliance with the waste processing and removal limits identified in paragraphs (3) and (4).

(6) Residue from the operation shall be removed and disposed within 30 days after being generated. For purposes of this paragraph, the term "residue" includes material that is unable to be processed and processed material that is unusable.

* * * * *

(i) *Brick, block or concrete.* The placement of brick, block or concrete, or mixtures thereof, that does not qualify as safe fill shall be deemed to have a municipal waste permit when the brick, block or concrete is used to bring an area to grade, as construction material or in the reclamation of an active or

abandoned mine or an abandoned quarry, provided that the brick, block or concrete is not a hazardous waste under Chapter 261a (relating to identification and listing of hazardous waste) and, if in addition to subsections (a)--(c), the following conditions are met:

(1) The concentrations of regulated substances in the brick, block or concrete, or mixtures thereof, shall not exceed the lowest nonresidential direct contact numeric values calculated in accordance with the methodologies in §§ 250.306 and 250.307 (relating to ingestion numeric values; and inhalation numeric values). The numeric standards to be met are listed in Appendix A, Tables 5 and 6. [TABLES WILL NEED TO BE REVISED.] This condition does not apply if at the locations where the brick, block or concrete (or mixtures thereof) is placed, direct contact pathways are promptly and permanently eliminated by the placement of uncontaminated soil, safe fill or other materials or through other engineering controls.

(2) The concentrations of regulated substances in the brick, block or concrete, or mixtures thereof, shall satisfy groundwater protection standards based on either of the following:

(i) Analysis using the Synthetic Precipitation Leaching Procedure (SPLP) (*Method 1312 of SW-846, Test Methods for Evaluating Solid* Waste, promulgated by the EPA) that demonstrates that the brick, block or concrete does not produce a leachate in excess of the nonresidential medium specific concentrations (MSCs) for groundwater, in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter, contained in Chapter 250, Appendix A, Tables 1 and 2. The numeric standards are listed in Appendix A, Tables 5 and 6 [TABLES WILL NEED TO BE REVISED].

(ii) The higher of the nonresidential generic value of the soil-to-groundwater pathway numeric value calculated in accordance with the methodology in § 250.308 (a)(2)(i), (3), (4)(i) and (5) (relating to soil to groundwater pathway numeric values) and a value which is 100 times the nonresidential medium-specific concentration (MSC) for groundwater, as calculated in § 250.308 (relating to soil to groundwater pathway numeric values) and listed in Chapter 250, Appendix A, Table 4. The numeric standards to be met are listed in Appendix A, Tables 5 and 6 [TABLES WILL NEED TO BE REVISED].

(3) When calculating numeric standards under paragraphs (1) and (2), the following additional requirements apply:

(i) Formulae identified in § 250.305(b) (relating to MSCs in soil) shall apply as limits to the physical capacity of the soil to contain a substance.

(ii) When calculating the nonresidential soil-to-groundwater pathway numeric values, the calculation shall be based on groundwater in aquifers

used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter.

(4) To determine whether the brick, block or concrete (or mixtures thereof) meets the standards in paragraphs (1) and (2), the material shall be sampled and analyzed in accordance with §§ 287.11(b) and (c) (relating to safe fill numeric standards), as applicable.

(5) Brick, block or concrete (or mixtures thereof) may not be placed pursuant to this permit-by-rule into or along surface waters of this Commonwealth unless prior Department approval has been obtained associated with active or abandoned mine or abandoned quarry reclamation activities or under Chapter 105 (relating to dam safety and waterway management)

(6) Brick, block or concrete (or mixtures thereof) may only be placed under this permit-by-rule on properties that are zoned and exclusively used for commercial and industrial uses. For unzoned properties, brick, block or concrete (or mixtures thereof) shall be reused in an area where the background concentrations of regulated substances are equal to or greater than the concentrations of regulated substances exceeding the safe fill numeric standards in the brick, block or concrete (or mixtures thereof) being brought to the site and the property is used exclusively for commercial or industrial purposes.

(7) At locations where brick, block or concrete (or mixtures thereof) is placed pursuant to this permit-by-rule, an erosion and sedimentation control plan shall be implemented that is consistent with the applicable requirements of Chapter 102 (relating to erosion and sediment control).

(8) At locations where brick, block or concrete (or mixtures thereof) is placed pursuant to this permit-by-rule, the materials may not be placed in karst terrain within 100 feet of the edge of a sinkhole.

(9) At locations where brick, block or concrete (or mixtures thereof) is placed pursuant to this permit-by-rule, the materials may not be placed within 300 feet of a potable water supply well or potable surface water intake unless the owner has provided a written waiver consenting to the placement of the material closer than 300 feet.

(10) Brick, block or concrete (or mixtures thereof) when placed pursuant to this permit-by-rule may not contain free liquids, based on visual inspection, and may not create recurring or persistent odor or other public nuisance resulting from chemical contaminants associated with the material.

(11) A person who has received and used brick, block or concrete (or mixtures thereof) pursuant to this permit-by-rule shall submit a written notice to the Department that includes the following:

(i) The name, address and phone number of the person receiving and using the waste material.

(ii) The quantity of waste material used at the receiving location.

(iii) The locations where waste material was removed for use and locations where the waste material is placed for use.

(iv) An identification of whether the area from which the waste material is removed is the subject of a corrective action or remediation activity.

(v) A description of engineering practices and construction activities used to assure that site excavation and placement of waste material does not cause onsite or offsite contamination.

(12) Records of analytical evaluations conducted on the brick, block or concrete (or mixtures thereof) used pursuant to this permit-by-rule shall be maintained by the person using and distributing the material and shall be made available to the Department for inspection. The records shall include the following:

(i) The dates of testing.

(ii) Each parameter tested.

(iii) The test results.

(iv) The laboratory where testing was conducted.

(v) The sampling procedures and analytical methodologies used.

(vi) The name of the person who collected the sample.

(13) This permit-by-rule does not authorize and may not be construed as an approval to discharge waste, wastewater or runoff from the site where the brick, block or concrete (or mixtures thereof) originated, or the site where the brick, block or concrete (or mixtures thereof) is beneficially used, to the land or waters of this Commonwealth.

(14) Brick, block or concrete (or mixtures thereof) placed in accordance with this permit-by-rule shall cease to be waste once the material is placed. Such material that is excavated or moved subsequent to placement pursuant to this permit-by-rule shall be evaluated at that time to determine whether the material qualifies as safe fill or is subject to regulation as a waste.

ARTICLE IX. RESIDUAL WASTE MANAGEMENT

CHAPTER 287. RESIDUAL WASTE MANAGEMENT--GENERAL PROVISIONS

Subchapter A. General

§ 287.1. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Along – **Touching or contiguous, to be in contact with; to abut upon the normal wetted perimeter of surface waters.**

* * * * *

[*Clean fill*--Uncontaminated, nonwater-soluble, inert solid material used to level an area or bring the area to grade. The term does not include materials placed in or on the waters of this Commonwealth.]

* * * * *

Historic fill--

Historically contaminated material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to _____[effective date of safe fill regulations] that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction/demolition debris that was not subject to waste permitting requirements at the time it was placed.

* * * * *

Nonresidential property – **Any real property on which commercial, industrial, manufacturing or any other activity is undertaken to further either the development, manufacturing or distribution of goods and services, intermediate and final products, including, but not limited to, administration of business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment, and solid waste management. This term shall not include schools, nursing homes or other residential-style facilities or recreational areas.**

* * * * *

Residential property – **Any property or portion of the property which does not meet the definition of "nonresidential property."**

* * * * *

Safe fill--

(i) Material that is soil, including rock and stone, dredged material, used asphalt, historic fill or brick, block or concrete (or mixtures thereof) resulting from construction or demolition activities; provided that there is no visible staining, recurring or persistent odor or other sensory nuisance resulting from chemical contaminants associated with the material, and that, based on an appropriate level of due diligence and knowledge of the material, meets one of the following requirements:

(A) The material meets the safe fill numeric standards referenced in § 287.11 (relating to safe fill numeric standards) and listed in Appendix A, Tables 1 and 2 of this Chapter without sampling and analysis.

(B) Based on sampling and analysis as described in § 287.11 (relating to safe fill numeric standards), the material meets the safe fill numeric standards listed in Appendix A, Tables 1 and 3 of this Chapter, and for those organic regulated substances that were known to have been released (or potentially released) into the material, the corresponding safe fill numeric standards listed in Appendix A, Table 2 not otherwise listed in Table 3.

(ii) The term includes the material in subparagraph (i) that exceeds the numeric limits in Appendix A, Table 1 or either Table 2 or 3, based on knowledge of the material or sampling, if there is no visible staining, recurring or persistent odor, or other sensory nuisance resulting from chemical contaminants associated with the material and the material meets one of the following requirements:

(A) The material is moved within a right-of-way.

(B) The material is moved offsite from a residential property currently developed as a residential property or zoned residential and never used for nonresidential purposes.

(C) The material is moved within a property, except for soil moved in accordance with subparagraph (iii).

(D) The quantity of material moved is less than 50 cubic yards and is moved to a nonresidential property.

(E) The material is historic fill in quantities of less than or equal to 125 cubic yards per excavation location.

(iii) The term includes soil impacted by normal agricultural use of pesticides including pesticides containing lead and arsenic. If the soil exceeds the numeric limits in Appendix A, Table 1 or either Table 2 or 3, and meets one of the following requirements, it is considered "safe fill":

(A) The soil is used for commercial or industrial purposes.

(B) The soil is blended with other soil to meet the limits in Appendix A, Table 1 and either Tables 2 or 3, and used for residential purposes.

(iv) The term includes dredged material provided that the dredged material is drained prior to placement. Dredged material and sediments from tidal streams shall meet the numeric criteria for chlorides as listed in Appendix A, Table 1 in order to qualify as safe fill. If dredged material exceeds the numeric limits in Appendix A, Table 1 and either Table 2 or 3, based on knowledge of the material or sampling, it is considered to be "safe fill" if the following requirements are met: (1) there is no visible staining, recurring or persistent odor or other sensory nuisance resulting from chemical contaminants associated with the dredged material; (2) the dredged material is placed directly on land adjacent to the dredging operation for beach nourishment or as a soil additive or soil substitute; and (3) one of the following conditions is met:

(A) The dredged material is placed on land at a location used for commercial or industrial purposes.

(B) The dredged material is blended with other soil or other dredged material to meet the numeric limits in Appendix A, Tables 1 and 2, and used for residential purposes.

(v) The term does not include material placed into or along surface waters of this Commonwealth unless prior Department approval has been obtained associated with active or abandoned mine or abandoned quarry reclamation activities or under Chapter 105 (relating to dam safety and waterway management), and the material meets the following conditions:

(A) Placement of the material does not cause an exceedance of the water quality standards in Chapters 16 and 93 (relating to water quality toxics management strategy--statement of policy; and water quality standards).

(B) For purposes of determining whether an exceedence of the water quality standards in Chapters 16 and 93 may occur, the Synthetic Precipitation Leaching Procedure (SPLP) *(Method 1312 of SW-846, Test Methods for Evaluating Solid Waste,* promulgated by the EPA) may be used, sampling and analysis showing that the material does not contain regulated substances at concentrations greater than the generic values in Table 7 [TO BE PREPARED] may be performed, or such other methods as the Department may approve may be used.

(vi) The person using the material has the burden of proof to demonstrate that the material is safe fill.

(vii) If, based on a determination made under subparagraph (i), the material exceeds the numeric standards referenced in subparagraph (i) and is covered under subparagraphs (ii)(A), (ii)(B), (ii)(C), (iii) or (iv), the concentrations of regulated substances that exceed the safe fill numeric

standards may be no greater than the lower of the nonresidential direct contact numeric values (using §§ 250.306 and 250.307 (relating to ingestion numeric values; and inhalation numeric values)) or nonresidential soil-to-groundwater pathway numeric values (using § 250.308(a)(2)(i), (3), (4)(i) and (5) (relating to soil to groundwater pathway numeric values)) established for aquifers used or currently planned for use containing less than 2,500 mg/l total dissolved solids. Formulae identified in § 250.305(b) (relating to MSCs in soil) apply as a limit to the physical capacity of the soil to contain a substance.

(viii) Notwithstanding any other provisions of Chapters 271 and 287, materials that meet the requirements under this definition of safe fill are not regulated as waste when used as fill or for other beneficial purposes.

* * * * *

***Sediment*--Materials deposited and directly overlain by water in rivers, lakes, ponds or tidal streams that consist of well sorted fractions or heterogeneous mixtures of sand, silt, clay, gravel and organic material deposited through erosion or by lake or river currents.**

* * * * *

***Site undergoing remediation activities*--The extent of contamination originating within the property boundaries and all areas in close proximity to the contamination necessary for the implementation of remediation activities to be conducted under the Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P. S. §§ 6026.101--6026.909) or other environmental protection acts.**

* * * * *

§ 287.2. Scope.

* * * * *

(c) **Upon generation,** management of the following types of waste is subject to this article instead of Article VIII (relating to municipal waste), and shall be regulated as if the waste is residual waste, regardless of whether the waste is municipal waste or residual waste:

* * * * *

(7) Historic fill.

* * * * *

§ 287.11. Safe fill numeric standards and sampling, analysis and attainment procedures.

(a) Safe fill numeric standards listed in Appendix A, Tables 1, 2 and 3 shall be calculated as follows:

(1) The lower of the following:

(i) The residential soil-to-groundwater pathway numeric value calculated either in accordance with the methodology in § 250.308 (a)(2)(i), (3), (4)(i) and (5) (relating to soil-to-groundwater pathway generic numeric values) or based on a concentration in the material that does not produce a leachate in excess of the residential medium specific concentrations for groundwater, in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter, contained in Chapter 250, Appendix A, Tables 1 and 2, when subjected to the Synthetic Precipitation Leaching Procedure (Method 1312 of SW-846, Test Methods for Evaluating Solid Waste).

(ii) The lowest residential direct contact numeric values calculated in accordance with the methodologies in §§ 250.306 and 250.307 (relating to ingestion numeric values; and relating to inhalation numeric values).

(iii) For copper and zinc, numeric limits which take plant toxicity into consideration and that do not exceed concentrations in § 271.914(b)(3) (relating to pollutant limits).

(2) When calculating numeric standards under paragraph (1), the following additional requirements apply:

(i) Formulae identified in § 250.305(b) (relating to MSCs in soil) shall apply as limits to the physical capacity of the safe fill to contain a substance.

(ii) When calculating the residential soil-to-groundwater pathway numeric value, the calculation shall be based on groundwater in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter.

(b) To determine whether a material meets the permit-by-rule numeric standards in §§ 271.103(i) and 287.102(l), one of the sampling and analysis procedures identified in paragraphs (1) or (2), below, shall apply. These sampling and analysis procedures are also recommended for use in determining whether a material meets the safe fill numeric standards when this determination is made based on sampling and analysis of the material.

(1) Determinations based on composite sampling procedures shall include the following:

(i) For volumes of material equal to or less than 125 cubic yards, a total of eight samples shall be collected and analyzed as follows:

(A) For analysis of all substances other than volatile organic compounds (VOCs), the samples shall be analyzed in two composites of four samples each, in accordance with the most current version of the USEPA Manual, SW-846 *(Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. Office of Solid Waste and Emergency Response).*

(B) Two sampling locations shall be selected from the 8 sampling locations for analysis of VOCs. The selection of these sampling locations shall be based on field screening of the eight samples to select those locations that are most likely to contain the highest concentrations of VOCs.

(C) One grab sample shall be taken from each of the two sampling locations selected in accordance with § 287.11(b)(1)(i)(B). Collection and analysis of these samples for VOCs shall be in accordance with Method 5035 from the most current version of the USEPA Manual, SW-846 *(Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. Office of Solid Waste and Emergency Response).*

(ii) For volumes of material greater than 125 cubic yards and less than or equal to 3,000 cubic yards, a total of 12 samples shall be collected and analyzed as follows:

(A) For analysis of all substances other than VOCs, the samples shall be analyzed in three composites of four samples each.

(B) Three sampling locations shall be selected from the 12 sampling locations for analysis of VOCs. The selection of these sampling locations shall be based on field screening of the 12 samples to select those locations that are most likely to contain the highest concentrations of VOCs.

(C) One grab sample shall be taken from each of the three sampling locations selected in accordance with § 287.11(b)(1)(ii)(B). Collection and analysis of these samples for VOCs shall be in accordance with EPA, Method 5035, referenced in subparagraph (i)(C).

(iii) For each additional 3,000 cubic yards of material or part thereof over the initial 3,000 cubic yards, 12 additional samples shall be collected and analyzed as follows:

(A) For analysis of all substances other than VOCs, the samples shall be analyzed in composites of four samples each.

(B) One quarter of the total number of sampling locations shall be selected for analysis of VOCs. The selection of these sampling locations shall be based on field screening of all samples to select those locations that are most likely to contain the highest concentrations of VOCs.

(C) One grab sample shall be taken from each of the sampling locations selected in accordance with § 287.11(b)(1)(iii)(B). Collection and analysis of these samples for VOCs shall be in accordance with EPA Method 5035, referenced in subparagraph (i)(C).

(iv) Nothing herein shall preclude the use of discrete sampling procedures for VOCs as set forth in § 287.11(b)(2) and the associated attainment criteria in § 287.11(c)(2).

(2) Determinations based on discrete sampling procedures shall include the following:

(i) Sampling shall be in accordance with the most current version of the EPA RCRA Manual, SW-846 *(Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. Office of Solid Waste and Emergency Response).* Sampling for VOCs shall be in accordance with Method 5035 from the most current version of the EPA RCRA Manual, SW-846.

(ii) For volumes of material equal to or less than 125 cubic yards, a minimum of eight samples shall be collected and analyzed. For volumes of material greater than 125 cubic yards and less than or equal to 3,000 cubic yards, a minimum of 12 samples shall be collected and analyzed. For each additional 3,000 cubic yards of material or part thereof over the initial 3,000 cubic yards, a minimum of 12 additional samples shall be collected and analyzed.

(c) The measured numeric values for regulated substances shall meet the following:

(1) For a composite sample, the measured numeric value for a substance shall be equal to or less than half the safe fill numeric standard in § 287.11 (relating to numeric standards) for that substance and as listed in Appendix A, Tables 1, 2 and 3 or as specified in § 271.103(i) or § 287.102(l), as applicable; or

(2) For discrete samples, the measured numeric values for a substance in 75% of the discrete samples shall be equal to or less than the applicable numeric standard for that substance with no single measured numeric value exceeding more than twice the applicable numeric standard for a substance.

(3) For a grab sample, taken for analysis for VOCs in accordance with subsections (b)(1)(i)(C), (ii)(C) and (iii)(C), the measured numeric value for a substance must be less than or equal to the safe fill numeric standard in § 287.11 for that substance and as listed in Appendix A, Tables 1, 2 and 3, or as specified in § 271.103(i) or § 287.102(l), as applicable.

Subchapter C. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

§ 287.101. General requirements for permit.

* * * * *

(b) A person or municipality is not required to obtain a permit under this article, comply with the bonding or insurance requirements of Subchapter E (relating to bonding and insurance requirements) or comply with Subchapter B (relating to duties of generators) for one or more of the following:

* * * * *

(6) The use as fill of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material, provided that they are separate from other waste.

* * * * *

(f) The Department will not require a permit under this article for the use of soil, dredged material, used asphalt, or historic fill material to bring an area to grade, to limit infiltration of rainfall, to facilitate runoff, or as construction material at a site undergoing remediation activities under Chapter 250 (relating to administration of land recycling program) and the Land Recycling and Environmental Remediation Standards Act (Act 2), (35 P.S. §§ 6026.101—6026.909) provided that the following conditions are met:

(1) The notice of intent to remediate the soils at the receiving site undergoing remediation activities (required by section 303(h) of Act 2 (35 P.S. § 6026.303(h)) identifies the Statewide health standard or the site specific standard as the remediation standard to be attained.

(2) The soil, dredged material, used asphalt, or historic fill material being used at the site will not cause the site undergoing remediation to exceed the remediation standard (or standards) selected for the site.

(3) The soil, dredged material, used asphalt, or historic fill material meets the standards set forth in Sections 287.102(l)(1) – (4).

(4) For soil, dredged material, used asphalt, or historic fill material placed at a site undergoing remediation activities prior to submission of the final report, the final report shall describe the sampling and analysis performed to characterize the material and the manner and location in which the material is used, and relief from liability shall include such materials upon approval of the final report.

* * * * *

§ 287.102. Permit-by-rule.

* * * * *

(l) *Soil, dredged material,used asphalt or historic fill material that exceeds safe fill numeric standards.* The placement of soil, dredged material, used asphalt, or historic fill material that exceeds safe fill numeric standards shall be deemed to have a residual waste permit when the soil, dredged material, used asphalt, or historic fill material is used to bring an area to grade, as construction material, for control of fire and subsidence events or in reclamation of active or abandoned mines if the reclamation work is approved by the Department or is performed under contract with the Department, provided that the soil, dredged material, used asphalt, or

historic fill material is not a hazardous waste under Chapter 261a (relating to identification and listing of hazardous waste), and, if in addition to subsection (a), the following conditions are met:

(1) The concentrations of regulated substances in the soil, dredged material, used asphalt, or historic fill material used pursuant to this permit-by-rule shall not exceed the lowest nonresidential direct contact numeric values calculated in accordance with the methodologies in §§ 250.306 and 250.307 (relating to ingestion numeric values; and inhalation numeric values). The numeric standards are listed in Appendix A, Tables 5 and 6 [TABLES WILL NEED TO BE REVISED] . This condition does not apply if at the locations where the soil, dredged material, used asphalt or historic fill material is placed, direct contact pathways are promptly and permanently eliminated by the placement of uncontaminated soil, safe fill or other materials or through other engineering controls. Formulae identified in § 250.305(b) shall apply as limits to the physical capacity of the soil to contain a substance.

(2) Concentrations of regulated substances in soil, dredged material, used asphalt or historic fill material used pursuant to this permit-by-rule shall satisfy groundwater protection standards based on any of the following:

(i) Analysis using the Toxicity Characteristic Leaching Procedure (TCLP) that demonstrates that the soil, dredged material, used asphalt or historic fill material meets the requirements in § 288.623(a) (relating to minimum requirements for acceptable waste).

(ii) Analysis using the Synthetic Precipitation Leaching Procedure (SPLP) (*Method 1312 of SW-846, Test Methods for Evaluating Solid Waste*, promulgated by the EPA) that demonstrates that the soil, dredged material, used asphalt or historic fill material does not produce a leachate in excess of the nonresidential MSCs for groundwater, in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter. The numeric standards are listed in Appendix A, Tables 5 and 6 [TABLES WILL NEED TO BE REVISED

(iii) Analysis using the applicable analytical methods set forth in § 287.11 that demonstrates that the soil, dredged material, used asphalt or historic fill material does not contain regulated substances at concentrations exceeding the nonresidential soil-to groundwater pathway numeric values based on the highest value between the nonresidential generic value and a value which is 100 times the nonresidential medium-specific concentration (MSC) for groundwater, as calculated in § 250.308 (relating to soil to groundwater pathway numeric values) and listed in Chapter 250, Appendix A, Table 4.

(A) When calculating the nonresidential soil-to-groundwater pathway numeric value, the calculation shall be based on groundwater in aquifers

used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter.

(B) Formulae identified in § 250.305(b) (relating to MSCs in soil) shall apply as limits to the physical capacity of the soil to contain a substance.

(3) To determine whether soil, dredged material, used asphalt or historic fill material meets the standards in paragraphs (1) and (2), the soil, dredged material, used asphalt or historic fill material shall be sampled and analyzed in accordance with §§ 287.11(b) and (c), as applicable.

(4) Soils from areas impacted by normal agricultural practices resulting in lead, arsenic or pesticide contamination (such as orchards) shall be analyzed for lead, arsenic, and organic pesticides used in those areas such as aldrin, dieldrin, DDD, DDE and DDT.

(5) At locations where soil, dredged material, used asphalt or historic fill material is placed pursuant to this permit-by-rule, an erosion and sedimentation control plan shall be implemented that is consistent with the applicable requirements of Chapter 102.

(6) At locations where soil, dredged material, used asphalt or historic fill material is placed pursuant to this permit-by-rule, the soil, dredged material, used asphalt or historic fill material may not be placed in or along waters of this Commonwealth unless prior approval has been obtained from the Department.

(7) At locations where soil, dredged material, used asphalt, or historic fill material is placed pursuant to this permit-by-rule, the soil, dredged material,used asphalt or historic fill material may not be placed in karst terrain within 100 feet of the edge of a sinkhole.

(89) At locations where soil, dredged material, used asphalt or historic fill material is placed pursuant to this permit-by-rule, the soil, dredged material, used asphalt or historic fill material may not be placed within 300 feet of a potable water supply well or a potable surface water intake unless the owner has provided a written waiver consenting to the placement of the soil, dredged material, used asphalt, or historic fill material closer than 300 feet.

(9) At locations where soil, dredged material, used asphalt or historic fill material is placed pursuant to this permit-by-rule, the soil, dredged material, used asphalt or historic fill material shall only be used under this permit on properties that are zoned and exclusively used for commercial and industrial uses. For unzoned properties, soil, dredged material, used asphalt or historic fill material shall only be used under this permit in an area where the background concentrations of regulated substances are equal to or greater than the concentrations of regulated substances exceeding the safe fill numeric standards in the soil, dredged material, used asphalt, or historic fill

material being brought to the site, and the property is used exclusively for commercial or industrial purposes.

(10) Soil, dredged material or used asphalt, or historic fill material when placed pursuant to this permit-by-rule may not contain free liquids, based on visual inspection, and may not create recurring or persistent odor or other public nuisance resulting from chemical contaminants in the soil, dredged material, used asphalt or historic fill material.

(11) A person who has received and used soil, dredged material, used asphalt or historic fill material pursuant to this permit-by-rule shall submit a written notice to the Department that includes the following:

(i) The names, addresses and phone numbers of the persons receiving and using the soil, dredged material, used asphalt or historic fill material.

(ii) The quantity of soil, dredged material, used asphalt or historic fill material used at the receiving location.

(iii) The locations where the soil, dredged material, used asphalt, or historic fill material were removed for use and where the soil, dredged material, used asphalt or historic fill material are placed for use.

(iv) An identification of whether the area where the soil, dredged material, used asphalt, or historic fill material originated is the subject of a corrective action or remediation activity.

(v) A description of engineering practices and construction activities used to assure that site excavation and placement of the soil, dredged material, used asphalt or historic fill material does not cause onsite or offsite contamination.

(vi) If soil, dredged material, used asphalt, or historic fill material is used for control of fire and subsidence events or in reclamation at abandoned mines, identification of the Department's separate authorization of the use in those projects.

(12) Records of analytical evaluations conducted on the soil, dredged material, used asphalt or historic fill material shall be maintained by the person using the soil, dredged material, used asphalt or historic fill material pursuant to this permit-by-rule and shall be made available to the Department for inspection. The records shall include the following:

(i) The dates of testing.

(ii) Each parameter tested.

(iii) The test results.

(iv) The laboratory where testing was conducted.

(v) The sampling procedures and analytical methodologies used.

(vi) The name of the person who collected the sample(s).

(13) This permit-by-rule does not authorize and may not be construed as an approval to discharge waste, wastewater or runoff from the site where the soil, dredged material, used asphalt or historic fill material originated or the site where the soil, dredged material, used asphalt or historic fill material is beneficially used, to the land or waters of this Commonwealth.

(14) Soil, dredged material, used asphalt or historic fill material placed in accordance with this permit-by-rule shall cease to be waste once the soil, dredged material, used asphalt or historic fill material is placed. Such soil, dredged material, used asphalt or historic fill material that is excavated or moved subsequent to placement pursuant to this permit-by-rule shall be evaluated at that time to determine whether the material qualifies as safe fill or is subject to regulation as a waste.

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An
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ORIGINAL: 2245

April 2, 2002

Via Overnight Delivery
Ms. Sharon Trostle
Regulatory Coordinator
Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17101-2301

Re: Proposed Safe Fill Regulations

Dear Ms. Trostle:

On February 2, 2002, the Pennsylvania Environmental Quality Board (the "EQB") published for public comment proposed amendments to Pennsylvania's municipal and residual waste regulations. These proposed regulations, commonly referred to as the safe fill regulations, are designed to replace the Clean Fill Policy which the Pennsylvania Department of Environmental Protection issued in 1996. The proposed safe fill regulations potentially sweep within their scope every construction, excavation, development and remediation project in Pennsylvania, ranging from construction of sewer lines and roads to the redevelopment of industrial sites and "brownfields." As such, they are critically important to a wide spectrum of persons and entities.

Norfolk Southern Railway Company ("NSRC") operates an extensive web of rail facilities in Pennsylvania. These rail facilities are vital to the transportation infrastructure of the Commonwealth and provide one of the key linchpins to Pennsylvania's economy. Certain of the rail facilities and lines that NSRC operates were originally constructed in the second half of the nineteenth century. Many more were constructed during the first half of the twentieth century. In many areas, extensive amounts of fill materials were used to provide structural support for rail lines and rail yards and to bring areas to grade.

NSRC has reviewed comments prepared by the Pennsylvania Chamber of Business and Industry regarding the proposed safe fill

regulations. NSRC supports and joins in those comments. On behalf of NSRC, we are submitting additional comments regarding the proposed safe fill regulations primarily to highlight NSRC's concerns with the manner in which historic fill material is treated under the proposed safe fill regulations.

The proposed safe fill regulations define historic fill as "historically contaminated material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to 1988 that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction/demolition waste." This definition would appear to cover certain of the materials that NSRC routinely encounters during maintenance and repair activities, as well as projects designed to improve and upgrade the rail system.

The proposed definition of safe fill does not include historic fill as a type of material that can potentially qualify as safe fill. The implication is that historic fill is categorically classified as a waste and must be managed as a residual waste according to proposed changes to 25 Pa. Code §§ 271.2 and 287.2. NSRC believes that such a blanket rule is unwarranted and unnecessary. Historic fill material should be treated in the same fashion as any other type of fill material. If historic fill meets the standards to qualify as safe fill, then there should not be any bar on its use as safe fill. The safe fill standards are designed to be protective of human health and the environment. The proposed regulations should not disqualify historic fill material if the material otherwise meets those standards.

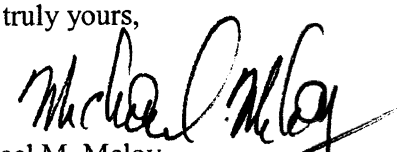
Moreover, the fact that the proposed definition of safe fill does not encompass historic fill as a type of material that can constitute safe fill has additional ramifications. Clause (ii) of the proposed safe fill definition includes critically important provisions that allow materials that are moved within a right-of-way or within a property to be treated as safe fill even if such materials do not satisfy the safe fill numeric standards. However, these provisions only cover the types of materials that otherwise potentially can qualify as safe fill. Because historic fill is not part of this universe of materials, the movement of historic fill within a right-of-way or a property will not be covered by the more relaxed provisions of clause (ii) of the definition of safe fill. Construction and maintenance activities along rail beds and in rail yards may trigger waste management requirements simply because those activities will involve the movement of historic fill material, not because the historic fill material poses any significant risks to human health or the environment. For example, soils and historic fill material possessing identical characteristics which are moved within a right-of-way or within a property may be subject to radically different requirements under the Solid Waste Management Act. Such a framework makes little sense and does not result in any additional protection of human health and the environment. If the proposed safe fill regulations are finalized in their current form, the regulations will impose substantial additional regulatory burdens on entities such as NSRC that regularly encounter historic fill material without any corresponding environmental benefits.

Under the proposed safe fill regulations, historic fill material that is not covered by the exclusion for small amounts of such material (quantities of 125 cubic yards or less per excavation location) will need to be managed as a waste under the Solid Waste Management Act. The proposed safe fill regulations include a permit-by-rule for historic fill material meeting certain standards. The standards in the permit-by-rule are so restrictive, however, that the permit-by-rule may have little practical utility. Specifically, the numeric standards referenced in the permit-by-rule are based on residential medium specific concentrations ("MSCs") developed to implement the statewide health standard under the Pennsylvania Land Recycling and Environmental Remediation Standards Act ("Act 2"). These MSCs are generally the same as the MSCs on which the safe fill numeric standards are based. While the permit-by-rule relies on residential MSCs, the permit-by-rule also includes a requirement that restricts the use of historic fill under the permit-by-rule only at commercial and industrial properties. Given this limitation, the nonresidential MSCs under Act 2 provide a more appropriate basis for the numeric standards under the permit-by-rule.

Finally, as part of the general structure of proposed safe fill regulations, soils and other materials that have been subject to a release are categorically defined as wastes. The proposed regulations do not define what constitutes a release. Moreover, given the fact that the proposed safe fill regulations rely on conservative numeric standards developed under Act 2 which are deemed to be protective of human health and the environment, the key issue is whether a material meets the safe fill numeric standards and not what may have happened to the material in the past. If the safe fill numeric standards are considered to be safe, then the current condition of the material and not its history should be determinative.

We appreciate the opportunity to submit these comments on behalf of NSRC. We request that the EQB give careful consideration to these comments so that the final version of the safe fill regulations can be readily implemented and administered while remaining protective and cost-effective.

Very truly yours,



Michael M. Meloy
For MANKO, GOLD & KATCHER, LLP

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April 2, 2002

Express Mail

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Re: Comments to Proposed Regulations - Safe Fill
(25 PA Code, Chapters 271 & 287)

Dear Sir or Madam:

J&L Specialty Steel, Inc. (J&L) appreciates the opportunity to comment on the Proposed Regulations for Safe Fill (modifications to 25 PA Code, Chapters 271 and 287). J&L realizes the Pennsylvania Department of Environmental Protection (Department, or PADEP) has spent a significant amount of time and resources to provide guidance to Pennsylvania residents regarding the safe management of fill materials. J&L also understands the difficulties that arise with this issue. However, J&L believes that the draft regulations currently proposed by the PADEP are unnecessary, unwarranted, too cumbersome and confusing, too costly to implement, and do not serve the overall interests of the Commonwealth. If implemented in their current form these regulations show little if any promise of increased protection of the environment. Instead the proposed regulations will result in unnecessary disposal of tons of usable fill material as residual waste and further exacerbate the current waste disposal crisis currently afflicting Pennsylvania.

J&L is also concerned that this draft proposal is unfairly biased against industry. The Department has singled out industrial fill material (segregated and uncontaminated brick, block, and concrete from demolition debris, and backfill of utility right of ways) and unfairly determined this material to be waste. The same materials generated by residential or commercial facilities are designated by this draft proposal as "Safe Fill". The Department provides no scientific evidence that materials generated at industrial sites should be handled differently than material generated at residential or commercial facilities and without basis is unfairly discriminating against industry.

The Agency's discrimination against industry is also illustrated by allowing certain commercial sectors (agricultural orchards, dredging, etc.) to dilute removed materials to acceptable levels for use as "Safe Fill". No allowance for dilution of fill materials to meet "Safe Fill" levels is granted for industry. J&L believes that without scientific evidence that materials generated at residential or commercial areas are substantially different than materials generated at industrial facilities, the PADEP not only should, but is required to regulate the management of these materials equally. Any change in this practice constitutes unwarranted discrimination.

J&L's general and specific comments to this regulation are provided in the following paragraphs.

General Comments:

Draft Proposal is Unnecessary:
The Department has not provided in the proposal sufficient reason for regulating fill materials in the Commonwealth. J&L is not aware (and the Department has not provided examples) of specific instances where current or past management of fill materials has proved detrimental to the environment. Nor are there any indications that management of fill materials in accordance with these proposed regulations will reduce the impact of pollutants on the environment.

The Department has not provided any specific reasons that current practices of managing fill materials in the State are not effective. J&L believes that the current Clean Fill Policy and the previously proposed Safe Fill Policy are/were both too stringent and onerous. However, issuing cumbersome and confusing regulations to replace the existing Clean Fill Policy does not solve this problem.

Prior to imparting additional regulations the PADEP should first assess the true need for these regulations (or Policies). If there is concern for specific contaminants generated from the use of clean fill entering the environment then the PADEP should determine what impact implementing these regulations will have on these pollutants and at what costs. J&L does not believe the Department's cost benefit analysis for this regulation provides an accurate account of the lbs./year of pollutants that will be abated by the regulations and true costs (program management, sampling, analyses, transportation and disposal, and the costs and impacts associated with the increased use of fill from green-field sites) for addressing these pollutants.

J&L believes that these regulations serve only to increase the bureaucracy of the PADEP and increase costs to industry while doing little if anything to protect the environment. The programs outlined in this regulation are not only difficult and costly for facilities to implement but will prove difficult and costly for the Department to regulate. J&L submits that once the Department completes a detailed review of the true costs versus benefits for this regulation that it will be obvious that these regulations are not justified or necessary.

Regulation is Contrary to Goals of the Department:
In the preamble to this draft regulation the Department indicates the authority for implementation of this regulation as the Solid Waste Management Act (SWMA), the Clean Streams Law (CSL), the Municipal Waste Planning, Recycling and Waste Reduction Act (Act), and the Administrative Code of 1929 (Code). Under the SWMA the Department is authorized to regulate the handling, storage, and disposal of waste. By definition a waste is "Discarded material which is recycled or abandoned" (PA Code Section 287.1(i). Fill material is not discarded or abandoned material. The terms discarded and abandoned infer disposal in a haphazard or random manner and indicate a lack of value to the material. Fill constitutes materials that are used to serve a specific valuable use. In addition fill materials are placed (not disposed) at specific locations to bring these areas to grade. In many instances if materials were not used for fill then suitable "green field" materials would need to be purchased to bring the area to grade. J&L submits that uncontaminated demolition debris (brick, block, concrete, soil and asphalt) and soils (historic fill materials, gravel, soil, etc.) from within utility right of ways, when used as fill, are not wastes and therefore are not subject to regulation as wastes. This is especially true when these materials are used at the site of generation.

The Department sites the Clean Streams Law (CSL) (section 402 (35 P.S. Section 691.402) as granting the PADEP the authority to regulate activities that create a danger of pollution of the waters in the Commonwealth. However, as stated previously, the Department has not shown that current management of fill materials constitutes a concern for the waters of the State. The Department also sites the 1929 Code (section 1917-A (71 P.S. section 510-17) as the regulatory authority for implementing permit programs to protect the people of the Commonwealth from unsanitary conditions and other nuisances. However, once again the Department fails to provide conclusive evidence that there exists a concern that needs to be regulated or permitted.

J&L agrees that under the Municipal Waste Planning, Recycling and Waste Reduction Act (Act) the Department has the power and the duty to adopt regulations that accomplish the purposes of the Act. The Department should be promoting regulations and policies that reduce waste and increase recycling. Furthermore, the Department should also be working to preserve valuable landfill space. Landfill space in the Commonwealth is especially crucial due to the recent actions of the legislature to limit expansions of existing landfills and the current moratorium against installation of new landfills. However, implementation of the regulations as written will accomplish the opposite of these goals. Due to the onerous and costly sampling and analysis, permitting, and recordkeeping requirements of these draft regulations (as written) industries will be forced to dispose of otherwise clean and safe fill materials instead of using these materials on site as "Safe Fill".

These regulations are also not in accordance with the regulatory basics initiative that the Department had previously prescribed to. Instead of simplifying and streamlining the regulations to match (whenever possible) the Federal statutes these regulations serve only to add more onerous restrictions and permitting programs. The end result of implementing the regulations as written will be innumerable "Permit by Rule" landfills

throughout the Commonwealth, increased disposal of otherwise usable fill materials, and increased regulatory burdens on both industry and the Department with no net decrease in pollutants in the environment.

Specific Comments to Proposed Regulation:

Municipal Waste Management – (Chapter 271)

Historic Fill:
The proposed regulations define all Historic Fill as [271.1 (i)] "Historically contaminated material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to 1988 that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction and demolition waste." Under this proposal Historic Fill (other than projects of < 125 yd^3) is regulated under section 217.2 (c)(7) as residual waste.

J&L questions the arbitrary designation as "contaminated" for all Historic Fill. The Department has not provided any evidence indicating that any of the components described above as historic fill contain pollutants that are detrimental to the environment. In fact the Department (under this current proposal) allows uncontaminated soil, construction and demolition debris and dredged materials to be used as "Safe Fill".

J&L is especially concerned with the designation of slag as one component of Historic Fill that is assumed to be contaminated. The use of slag as a fill material has been and continues to be standard practice in industrial, residential, and commercial properties. It is important that the Department recognize that slag is not only a historic fill material but that slag continues to be a large component of "Safe Fill". Furthermore, Slag from steel-making operations has been officially determined by the Department to be a co-product and not a waste. Based on the co-product determinations, J&L objects to any application of the "Safe Fill" regulations to steel-making slag and request the department specifically indicate that steel slag either is not regulated by these regulations or that steel slag is "Safe Fill".

Instead of regulating all Historic Fill as contaminated material the Department should provide a separate definition for Historic Fill, Contaminated Historic Fill and Safe Historic Fill. Historic Fill should then be defined as historical fill material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to (*issue date of final regulations*) that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction and demolition waste."

Contaminated Historic Fill should be defined as Historic Fill that has (A) indication that the material has been subject to a release of regulated substances, or (B) visible signs of staining, odor, or other sensory nuisance associated with the material. Contaminated

Historic Fill then should be regulated as residual waste when removed from an excavation. There should be no requirement to remove Historical Fill from facilities unless there is evidence that the Historic Fill is actually contaminated and the level of contamination poses a concern for surface or groundwater at the site.

Safe Historic Fill should be defined as Historic Fill that has (A) no indication that the material has been subject to a release of regulated substances, and (B) no visible signs of staining, objectionable odor, or other sensory nuisance associated with the material. Safe Historic Fill should then be regulated as "Safe Fill".

Subchapter B. General Requirements for Permits and Permit Applications

Section 271.101 Permit Requirement

Removal of clean fill exclusion from Permitting Requirements:
The current Draft regulation eliminates the exclusion from the Municipal Waste regulations permitting requirements for clean fill. By eliminating these exclusions the Department does not effectively allow the exclusion of Safe Fill from these permit requirements. To remedy this situation J&L respectfully requests that the excluded citations [271.101 (b)(3)(i)(ii)] be re-written as follows:

(b) A person or municipality is not required to obtain a permit:

(3) For the use of Safe Fill consisting of (but not limited to)

(i) Uncontaminated soil, rock, stone, gravel, brick, block, concrete, or asphalt
(ii) Waste from land clearing grubbing and excavation, including trees, brush, stumps and vegetative material.

Regulation of Industrial Safe Fill under Municipal Waste Regulations
Under Section 271.103 (i) (Permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements) the PADEP has added additional regulatory restrictions for industry that not only do not make sense but that are blatantly unwarranted and discriminatory. This section as written assumes that segregated brick, block or concrete from demolition activities at industrial properties is the same as **contaminated** materials generated at commercial or residential properties. J&L takes exception to this assumption. Construction and demolition debris generated at industrial sites is not necessarily more contaminated (and in some instances may be less contaminated) than construction and demolition debris generated at commercial or residential properties. The Department provides no credible justification for assuming that industrial facilities (old brick buildings, foundations, etc.) are more contaminated than non-industrial locations.

The Department regulates uncontaminated construction and demolition debris from commercial and residential facilities in this proposed regulation as "Safe Fill". The Department provides for specific procedures for determining the condition of the construction and demolition debris (contaminated or uncontaminated). There is no reason that the same procedures applied to commercial and residential properties should not be applied to industrial facilities. Therefore, J&L submits that uncontaminated construction and demolition debris from industrial properties should also be regulated as "Safe Fill". For this reason J&L requests that the Department revise this section to read as follows:

"(i) *Brick, block or concrete.* The placement of contaminated and segregated brick, block, concrete, **or asphalt** resulting from construction or demolition activities at **industrial,** commercial or residential properties shall be deemed to have a municipal waste permit when used to bring an area to grade, as construction material or in reclamation of an active or abandoned mine or abandoned quarry, if in addition to subsections (a)—(c) the following conditions are met:"

Regulatory requirements for Permit by Rule are too Restrictive, Costly, and Cumbersome:

Under sections 271.103(i)(1)(i) and (ii) the Department sets forth lists of chemical parameters that must be met prior to obtaining a permit-by-rule for disposal of contaminated construction and demolition debris. J&L agrees with the Department that instead of unnecessarily filling landfill space that construction and demolition debris (C&DD) containing only limited contaminants should be allowed to be used as fill material. As indicated above in the previous comment, J&L also believes that minimally contaminated C&DD from industrial facilities (uncontaminated industrial C&DD should be considered "Safe Fill") should also be allowed to be used as fill under the permit-by-rule program.

J&L also understands that there needs to be restrictions on the levels of contaminants acceptable for C&DD to be used as fill. However J&L is concerned that the program as proposed by this regulation is too cumbersome, expensive and is overly restrictive. Based on the definition of "Safe Fill" [(287.1(i)(C)] a generator most likely will initially determine that C&DD is either "contaminated" or "uncontaminated" based on due diligence and knowledge of the site. Currently the next step in the process (if the C&DD is suspected of being contaminated) is to analyze for the 321 organic and 25 metal compounds listed in Tables 5 and 6 (Appendix A). For each of these parameters both total and synthetic leachate analyses need to be performed in order to determine if the levels are exceeded. It is estimated that to conduct only one complete analysis of these parameters it will cost approximately $ 4,500. Based on the sampling criteria set forth in 287.11(b) 8 samples are required for 125 yd^3 or less of material. In addition 12 samples are required for up to 3,000 yd^3 of fill material tested and for each additional 3,000 yd^3. Using a conservative 12 samples per 3,000 yd^3 the cost of analytical alone is approximately $18.00 per yd^3.

In addition to sampling and analyses, the proposed regulations require facilities to prepare an erosion and sedimentation control plan (ESCP), provide detailed notification to the Department (including information on the location(s) where the material is used) and maintain records of all evaluations conducted for each placement of C&DD. When the administration costs of this program are added to the sampling and analytical costs the total costs of administrating this program can easily exceed the current C&DD disposal costs (approximately \$22.25 yd^3) and likely will also exceed the existing residual waste disposal costs (approximately \$ 26.00 per yd^3). In effect, the costs associated with sampling and analyses, when added to the costs and effort required to manage this program, nullifies any benefits that may be achieved by the on-site use of minimally contaminated C&DD.

An alternative procedure that would both protect the environment and provide a cost effective approach is for facilities, based on their knowledge of the site, to sample and analyze only for parameters suspected of being present in the C&DD. The criteria in Tables 5 and 6 (Appendix A) could then be used as the determining factor in whether the C&DD meets the fill standards or if the material must be disposed as residual waste.

As an alternative, or in conjunction with the site specific sampling and analyses procedure proposed above, the Department could set forth a much more simplistic sampling and analyses program aimed at addressing the major contaminants of concern in the Commonwealth. As indicated previously, the Department has not provided a detailed list of concerns regarding contaminants in fill material. However, the list of contaminants could include PCBs, Total Petroleum Hydrocarbons, and some selected metals of concern.

The Department could also structure this shortened list according to the type of facility. Those facilities not generating or utilizing organics or metals would not be required to sample for organics or metals. A simplistic screening evaluation (State short list of parameters) along with the site specific sampling and analyses conducted based on the generators knowledge of the site would be achievable and cost effective. Such a program (unlike the program being proposed) would in turn reduce the burden on landfills, reduce costs to generators, would also provide protection for the environment of the Commonwealth.

Agency Needs to Provide Record Retention Period

In section 271.103(i)(13) the Department indicates that records of analytical evaluations conducted on the C&DD material are to be kept. The Department needs to clarify the record retention requirements for these and all records required to be maintained under this proposed regulation. J&L recommends that the Department adopt three years (at most) as the retention period for all records generated under this program.

Article IX. Residual Waste Management (Chapter 287)

Exclusion of Industry from Safe Fill Definition

In Section 287.1(i) the Department excludes uncontaminated materials generated from industry from the "Safe Fill" definition. By doing this the Department has singled out industrial fill material and unfairly determined this material to be waste. The same materials generated by residential or commercial facilities are designated by this draft proposal as "Safe Fill". The Department provides no scientific evidence that materials generated at industrial sites should be handled differently than material generated at residential or commercial facilities and without basis is unfairly and blatantly discriminating against industrial facilities in the State.

This section, as written, assumes that all materials at industrial sites are "contaminated". J&L takes **strong** exception to this assumption. Soil, dredged material, asphalt and construction and demolition debris (C&DD) generated at industrial sites should not be automatically assumed to be more contaminated than the same materials generated at residential or commercial facilities. Pennsylvania's industrial sites contain numerous buildings, foundations, roads, etc. that are not "contaminated". In fact many of the buildings in question may never have even been used for industrial purposes (office buildings, warehouses, equipment storage, etc.). As another example, dredged materials from water intakes to industrial facilities have no reason to be more or less contaminated than any other dredged materials removed from the waters of the Commonwealth.

The Department assumes that since the current site use is commercial or residential that the impact to the environment is minimal. This is not a fair or reasonable assumption. Many of Pennsylvania's commercial and some residential facilities are located at previous industrial sites. Many more residential and commercial sites contain fill material from industrial sources (or unknown sources). In addition, due to the potential impact of environmental regulations on industry, industrial facilities are much more aware of the environmental regulations than commercial or residential communities. Applying a carte blank denial of industry to the option of using "Safe Fill" at their own sites or for that matter the option of shipping "Safe Fill" to other facilities not only is unfair and unjust but will result in the generation of tons of additional materials being disposed at residual waste and/or C&DD landfills.

As a further example, of the unfair nature of this action, the Department is aware that numerous residential and commercial facilities throughout the Commonwealth are afflicted with the concerns of persistent organic pollutants such as pesticides and herbicides from agricultural and horticultural operations. In fact this concern is so large that in section 287.1 (iii)(A) of this proposed regulation the Department has developed specific regulations that allow for pesticide laden material to be used as "Safe Fill" at industrial or commercial sites. In section 287.1(iii)(B) the Department also allows pesticide laden soils to be commingled with clean soil to meet the "Safe Fill" requirements. And in section 287.102 (j) the Department has set forth specific permit-by-rule procedures for addressing contaminants from agricultural practices.

Most industrial sites do not exhibit major pesticide or herbicide contamination concerns. Instead of penalizing facilities that are polluted with pesticides (facilities known to exhibit historic contamination) the Department makes special compensation to these facilities in the Draft Proposal. In contrast, the Department has chosen to unfairly penalize industry without good cause and haphazardly exclude industry from the definition of "Safe Fill". All sites (industrial, commercial, and residential) should be regulated by the same set of rules. To do so any other way not only violates common sense and fair business practice but amounts to unwarranted discrimination against industry.

Therefore, J&L submits that uncontaminated materials from industrial properties should also be regulated as "Safe Fill". For this reason J&L requests that the Department revise Section 287.1(i) of these regulations to read as follows:

"(i) Material that is uncontaminated soil, including rock and stone, uncontaminated dredged material, uncontaminated used asphalt or uncontaminated and segregated brick, block, or concrete resulting from construction or demolition activities from **industrial**, residential, and commercial properties and that meets one of the following requirements:"

Requirements for "Safe Fill" Sampling and Analyses are too Restrictive, Costly, and Cumbersome:

If the changes requested above are implemented (allow industry to generate "Safe Fill") then J&L concurs with most of the remaining criteria defining "Safe Fill". However, as with the requirements for sampling and analyses of contaminated C&DD, J&L is concerned with the complex and costly system of sampling and analyses proposed in this regulation. Under sections 287.1(A) and (B) the Department sets forth lists of chemical parameters that must be met prior to meeting the "Safe Fill" limits. These lists are extensive to absurd. Table 1 contains 21 metals, Table 2 contains **319 organic** parameters, and Table 3 contains 25 organic parameters.

For each of these parameters both total and synthetic leachate analyses need to be performed in order to determine if the levels are exceeded. It is estimated that to conduct only one run of these analyses it will cost approximately $2,500 to $4,500. Based on the sampling criteria set forth in 287.11(b) and using a conservative 12 samples per 3,000 yd^3 the cost of analytical alone will range from approximately $ 10.00 to $18.00 per yd^3.

J&L understands that under section 287.1(i)(C) with appropriate due diligence sampling is not specifically required by the regulation. However, based on the language of this section facilities that wish to move fill material off-site will almost certainly need to conduct sampling to ensure the material will not exhibit levels of contaminants greater than the pollutants listed in Tables 1 and 2 or 3 of Appendix A. In addition, it is likely that once this regulation is finalized sites receiving fill will also require sample data to ensure that all of the standards in the regulation are met.

In addition to sampling and analyses, the proposed regulations will require facilities to maintain records of all evaluations conducted for the "Safe Fill". When the administration costs of this program are added to the sampling and analytical costs the total costs of administrating this program will likely exceed the current C&DD disposal costs (approximately \$22.25 yd^3) and may even exceed residual waste disposal costs (approximately \$ 26.00 per yd^3). In effect, (as with the C&DD program) the costs associated with sampling and analyses when added to the costs and effort required to manage this program nullifies any benefits that may be achieved by the on-site use of "Safe Fill".

An alternative procedure that would both protect the environment and provide a cost effective approach is for facilities, based on their knowledge of the site, to sample and analyze only for parameters suspected of being present in the Fill materials. The criteria in Tables 1 and 2 or 3 (Appendix A) could then be used as the determining factor in whether the fill materials meets the "Safe Fill" standards or if the material must be disposed as C&DD or residual waste.

As an alternative, or in conjunction with the site specific sampling and analyses procedure proposed above, the Department could set forth a much more simplistic sampling and analyses program aimed at addressing the major contaminants of concern in the Commonwealth. As indicated previously, the Department has not provided a detailed list of concerns regarding contaminants in fill material. However, the list of contaminants could include PCBs, Total Petroleum Hydrocarbons, and some selected metals of concern.

A simplistic screening evaluation (State short list of parameters) along with the site specific sampling and analyses conducted based on the generators knowledge of the site would be achievable and cost effective. Such a program (unlike the program being proposed) would in turn reduce the burden on landfills, reduce costs to generators, would also provide protection for the environment of the Commonwealth.

Commingling of Fill Material to meet "Clean Fill" Criteria – Option Should be Open to Industry.

In section 287.1(iii)(B) the Department allows pesticide laden soils contaminated through historical authorized use to be blended with other soil to meet the "Safe Fill" limits. J&L concurs with the department that the blending of soil to produce a "Safe Fill" material is better than potentially generating millions of tons of un-usable material that will need to be disposed at tremendous cost. J&L also believes that there is no reason that this concept should not be extended to fill materials generated from industrial sites. As is the case with pesticide contamination in fruit orchards, industrial facilities may also exhibit minor levels of pollutant contamination that were generated through the long term legal operation of their facilities. J&L believes that the blending of industrial fill (material not associated with past releases at the site) that contain low concentrations of contaminants with other "clean" soils will (as with soil from fruit orchards) result in fill material that can serve a useful function at the facility, reduce the burden on landfills, and that will not pose a concern to the environment.

Management of Dredged Materials

J&L has several concerns with the Department's management of dredged materials in these proposed regulations. As indicated previously, the definition of "Safe Fill" should include uncontaminated dredged material from industrial facilities. Dredged materials from intakes to industries is no more or less contaminated than any other dredged material removed from the State's waterways. Therefore, uncontaminated dredged materials from industrial properties should also be considered as "Safe Fill".

J&L also believes that requiring sampling and analyses of dredged materials and requiring these materials to meet all of the "Safe Fill" standards in Tables 1 and 2 or Tables 1 and 3 is unwarranted and unnecessary. Removed sediments are not wastes and are currently not being managed as waste. Instead they are being used as beneficial fill. J&L, like many industrial facilities, contracts with dredging firms to periodically dredge river water intakes. Upon removal and de-watering of the dredged sediments, the dredging contractor deposits the dredged material at a U.S. Army Corps of Engineers approved site. J&L is not aware of any contamination problems at the sites currently being used that would require a change in this current practice.

The Department has not provided any technical reasons for requiring the proposed sampling and analyses. J&L also believes that the costs / benefit analyses provided by the Department does not contain sufficient detail and contains many erroneous assumptions. The Department needs to compare the true costs (and difficulty) of sampling, analyses, and program management to the benefits (if any) from pollutant abatement for this regulation. The costs and effort required to sample and analyze sediments for all of the parameters in Tables 1 and 2, or Tables 1 and 3 (as with other "Clean Fill") will be near or will exceed the cost of disposal. As such, as written the proposed regulations will only serve to halt current beneficial practices of sediment re-use and increase the burden on the State's landfills.

As sediments are naturally occurring and develop from numerous upstream sources neither J&L, the dredging contractor, nor the U.S. Army Corps of Engineers have any control over the potential presence of minute quantities of contaminants in the removed sediments. It is apparent that the Department understands this lack of control over potential contaminants since they have added procedures in the regulation that allow for depositing dredged materials that exceed the permitted contaminant levels in Tables 1, 2/ 3 [287.1(iv)] adjacent to the dredging operation.

J&L agrees with the Department that the option to place removed sediment on the banks of rivers and streams (without sampling and analyses) should be allowed. However, the characteristics of J&L's dredge site (steep banks, lack of land access, etc.), as with many dredge sites, may preclude the use of this option. As such, J&L believes that the Department should expand the proposed allowance to the placement of sediments at approved Army Corps of Engineer sites. J&L fails to understand the logic of allowing the placement of potentially contaminated sediments on the banks of rivers and streams (where they may erode or leach back into the waterway) and not allowing the placement of the same sediments at designated fill sites in the Commonwealth. J&L believes that

placement of removed sediments in designated fill sites not only results in a cost effective solution to the disposition of dredged material but also will result in the same (or better) protection of the environment.

If the Department must require analytical analyses of dredged material prior to off site use as "Safe Fill", at most the Department should select a more reasonable list of parameters to be met. J&L believes that the parameters set forth in the Department's Draft Dredging Guidelines (1/15/98) are more realistic and achievable. Specifically the requirements for TCLP metals and Organics, Total Petroleum Hydrocarbons (100 ppm), Total Lead (45 ppm), Total PCB ($\leq$1ppm) Total Organic Halides (TOX - $\leq$25 ppm) and Chlordane ($\leq$ 20 ppb) in the Draft Dredging Guidelines are more than sufficient to provide the environmental protection sought by the Department.

Due to the difficulties in obtaining samples prior to disposition of dredged material, J&L also requests that the Department allow facilities to at most conduct only periodic sampling of dredged materials (sampling for each dredge event should not be required). If the facility has at least one set of sampling data (Draft Dredging Guidelines) and is not aware of any releases to the waterway that would adversely affect the sediments it is reasonable to assume that future sediments will contain approximately the same levels of contaminants. Allowing facilities to conduct reduced sampling and analyzing for specific targeted substances of concern will not only result in protection of the environment but will allow the continued practice of using dredged materials as "Safe Fill" rather than needlessly filling valuable landfill space.

Calculation of Numerical Standards for Safe Fill are to Complicated and Difficult to Achieve:

In Section 287.11 the Department has provided extremely cumbersome and complicated procedures for determining if materials are "Safe Fill". The amount of effort required to decipher the myriad of sampling and analytical techniques seems to only serve to further ensure that no fill material is deemed "Safe Fill". Facilities will be forced to hire teams of consultants to oversee actions at the facilities that were previously addressed in a simple and reasonable manner. The costs associated with consultants, sampling, analysis, project delays, and long term liabilities inferred by these regulations will result in no material from industrial facilities being used as "Safe Fill". This is contrary to the precepts and intentions of this regulation. J&L believes that the Department needs to review the existing criteria and if sampling and analyses are deemed necessary then realistic achievable criteria need to be proposed. Sampling procedures should be simple (collect grab or composite samples) and the analytical requirements should be reasonable and concise (one simple table of total or lechate analysis limits).

Sampling Procedures are Overly Stringent and at Most Should be Guidance not Regulation:

The Department has provided detailed sampling procedures for "Safe Fill" in these proposed regulations [Sections287.11(b)]. These sampling procedures are overly stringent, even more stringent than hazardous waste sampling requirements. The Department does not provide sufficient scientific evidence for why 8 samples for 125 yd^3 or 12 samples for every 3,000 yd^3 should be required. If materials are homogeneous and from the same location there is no reason that one composite from the entire site should not be sufficient to determine the presence of contaminants. The Department may argue that taking a representative composite sample from a large area may result in missing some potential pockets of impacted material. This is not a concern during fill operations as all the material will be co-mingled during re-location to the fill site. Therefore a composite sample or samples based on the location of fill material to be excavated and the visual characteristics of the fill material should be more than adequate to characterize the site.

In addition to being overly stringent, in many instances it is simply not feasible to implement the proposed sampling requirements in the field. Due to fill location and type (i.e. foundations under existing buildings) or the need to expedite projects in active facilities it may not only be difficult but impossible to sample materials prior to excavation. The Department needs to allow facilities to match the sampling protocol to the specific project and not require one set of sample protocols.

Also, as with the requirements for determining hazardous vs. residual waste, under the proposed regulations facilities are ultimately responsible for determining if materials generated are "Safe Fill". As such, if the Department insists on providing sampling protocols these protocols should only be in the form of guidance and not as regulation.

Regulatory requirements for Permit by Rule for Contaminated Fill Material are too Restrictive, Costly, and Cumbersome:

Under sections 287.102 the Department sets forth lists of chemical parameters that must be met prior to obtaining a permit-by-rule for disposal of contaminated construction and demolition debris. J&L agrees with the Department that instead of unnecessarily filling landfill space that minimally impacted materials should be allowed to be used as fill material. J&L also understands that there needs to be restrictions on the levels of contaminants acceptable for these materials to be used as fill. However as stated previously J&L is concerned that the program as proposed by this regulation is too cumbersome, expensive and is overly restrictive (see previous comments for specific cost concerns).

An alternative procedure that would both protect the environment and provide a cost effective approach is for facilities, based on their knowledge of the site, to sample and analyze only for parameters suspected of being present in the Fill materials. The criteria in Tables 1 and 2 or 3 (Appendix A) could then be used as the determining factor in whether the fill materials meets the permit-by-rule fill standards or if the material must be disposed as C&DD or residual waste.

In conjunction with the site specific sampling and analyses procedure proposed above, the Department could set forth a much more simplistic sampling and analyses program aimed at addressing the major contaminants of concern in the Commonwealth. This list of contaminants could include PCBs, Total Petroleum Hydrocarbons, and some selected metals of concern.

A simplistic screening evaluation (State short list of parameters) along with the site specific sampling and analyses conducted based on the generators knowledge of the site would be achievable and cost effective. Such a program (unlike the program being proposed) would in turn reduce the burden on landfills, reduce costs to generators, would also provide protection for the environment of the Commonwealth.

Requirement for Erosion and Sedimentation Plan for Permit-by-Rule for Contaminated Fill Material is Unnecessary:
The Department indicates that facilities operating under a permit-by-rule for contaminated fill material (and for C&DD) need to prepare an erosion and sedimentation control plan (ESCP). J&L believes that preparation of a separate ESCP for each disposal location is not necessary for industrial facilities that operate under NPDES permits that contain Stormwater requirements. Under existing permit programs, facilities are required to minimize discharge of pollutants and to minimize erosion. Facilities are also regulated as to the pollutants allowed in stormwater discharges. As such, J&L believes preparation of additional ESCP plans for the "Safe Fill" program are not necessary and duplicate existing requirements and therefore should be removed from the draft proposal.

Notification requirements for Permit by Rule for Contaminated Fill Material Should be Clarified and/or Minimized:
Under section 287.102 (l)(12) facilities receiving contaminated fill material under the permit-by rule program are required to provide the Department with details regarding the placement of the fill material. This section is un-clear as to whether facilities need to notify the department for each fill project or if a one-time notification is sufficient. In many instances a facility may receive fill material from numerous small projects. J&L believes that in the interest of clarity and reduced paperwork that facilities be allowed to provide the department with a single notice indicating the expected receipt of fill from numerous projects.

One alternative to the proposed cumbersome reporting requirements would be for the Department to require facilities that are planning on operating under a Permit-by-Rule to submit only one notice of intent (NOI) to the PADEP. This NOI would indicate to the Department that a facility is planning on operating under the Permit-by-Rule program and would specify which Permit-by-Rule the facility will be operating under. The recordkeeping required under the Permit-by-Rule would then be maintained on site (available for Agency review) for the required record retention period. This option would reduce the effort of both the Department and facilities and would still result in maintenance of the required records.

Limits Below Analytical Detection and Lack of Approved Analytical Procedures:
Parameters in tables 1-6 of Appendix A contain at least one example of a parameter (hexavalent chromium) where the detection level is too low to meet. In addition, J&L understands that there are some parameters that do not have EPA approved methods for analysis. J&L requests that the Department re-evaluate the parameters and limits provided in Tables 1-6. Only limits that are achievable analytically and have approved methods for analysis should be incorporated into these tables.

Out of State Shipment of Fill Material Not Addressed:
J&L requests that the Department clarify the applicability of this policy to shipment of "fill" from a Pennsylvania facility to facilities located out of the State. J&L is concerned that regulating "fill" as "Safe", or under a "permit-by-rule" in Pennsylvania may preclude the shipment of this material to a neighboring state. J&L requests that the Department specifically indicate that this policy does not regulate the transfer of fill from Pennsylvania to other states. The regulations in effect at the receiving state should apply.

Summary:
In summary, J&L is extremely concerned with the contents of this proposed regulation. The goal of the Department through this effort appears to be to reduce the amount of material currently being landfilled and to provide guidance to landowners on the appropriate management of "Safe Fill". This proposed regulation as written does not accomplish either of these goals. Instead of resulting in decreased disposal, the strict limits, costly sampling and analysis, confusing language (requiring consultant assistance) and perceived long term liabilities associated with this regulation will result in a major increase in landfill disposal. Not only is this a cost concern but it is also extremely problematic given the current refusal of the Department to allow additional landfills to be installed in the State or even for the expansion of existing landfills.

The cost of implementing these regulations to industry and all Pennsylvania residents will be enormous. The Department has incorrectly estimated in their cost/benefit analysis that this regulation will result in a savings of approximately $500 million per year. This savings is based upon the assumption that the regulation will result in a decrease in disposal of "Safe Fill" material. The Department believes that approximately ½ of the current fill material generated in the state (approximately 20 million yd^3) will no longer be disposed. However, this assumption is in error. Facilities are not currently disposing this material. In fact, based on these regulations (using the department's own estimates for fill material) it is likely that much of the fill material generated at sites (and likely all of the fill material generated at industrial sites) will now be disposed instead of being used as fill. J&L believes that instead of saving $ 500 million there will be a cost of at least $ 500 million to the citizens of the Commonwealth.

In addition to the direct financial costs, this regulation as written will result in innumerable permit-by-rule landfills throughout the state. By and large these "landfills" will be filled with material that is safe for the environment and not material that should be classed as landfills. The Department has not provided any accounting for how these

landfills are to be regulated over the long term. Due to the presence of these landfills facility property values in the State will plummet, tax revenues the State receives for these properties will be decreased, and unnecessary long term liability for the sites will increase.

The Department has also not taken into account the impact of these regulations upon green-field sites in the State. Due to the extremely strict and overly complex requirements of this regulation, instead of using existing fill materials to bring areas to grade, facilities will likely end up purchasing tons of "Safe Fill" materials from green-field sites. This fill material will be substantially more expensive to purchase and use than current fill materials. In addition, the removal of this material from undisturbed sites in the State will result in increased erosion, loss of habitat, and represents a significant negative impact on the environment of the Commonwealth.

J&L does not believe that the impact of this regulation on Pennsylvania business, residents, government or the environment has been adequately analyzed. J&L believes that the Department should conduct a thorough review of the social, economic and environmental impacts of the policy prior to issuance. All of these less intangible costs need to be included in the Department's cost/benefit analysis and need to be addressed prior to passage of any "Safe Fill" regulation.

The complexity of the entire "Safe Fill" program, and the permit-by-rule program in particular (sampling and analysis, and recordkeeping, notification requirements, etc.) serve not to reduce environmental contamination but only to increase burden on industries. The procedures set forth in this proposed regulation provide numerous opportunities for non-compliance by industry while providing no benefit to the environment.

As stated previously these proposed regulations also appear to directly discriminate against industry by not allowing on-site use of uncontaminated fill material as "Safe Fill. J&L is **extremely** concerned with this position and that the Department has come to this decision without sound basis or scientific evidence. J&L believes that, at a minimum, industrial sites should be given the same opportunity to utilize uncontaminated fill material on-site as "Safe Fill" as residential and commercial facilities

Due to current economic conditions, industry is not in the position to be able to absorb the increased costs and management requirements of this regulation. J&L believes that the Department needs to re-assess the real impact of this regulation upon the industrial community and incorporate the results of this assessment into any regulations issued. One impact of these regulations that should also be considered is the very real possibility of increased exodus from Pennsylvania by industries to more industrial friendly states.

J&L submits that there is not an overriding environmental concern for the use of uncontaminated fill in the commonwealth. In short, due to the enormous costs and the lack of demonstrated environmental benefit J&L believes this regulation should be either rescinded in it's entirety or substantially revised prior to issuance.

J&L appreciates the opportunity to provide comments to this regulation and is available to provide further clarifications. If you have any questions regarding these comments or if you require additional information please feel free to contact me at (724) 773-2777.

Sincerely,

Scott R. Kingston
Manager – Environmental Programs

ORIGINAL: 2245

Lynn F. Ratzell
Manager – Environmental Management Division

2002 APR -4 PM 4:52

REVIEW COMMISSION

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April 2, 2002

OVERNIGHT MAIL

RECEIVED
APR - 3 2002
ENVIRONMENTAL QUALITY BOARD

Environmental Quality Board
15th Floor Rachel Carson Building
400 Market Street
Harrisburg, PA 17101-2301

RE: Comments to Proposed Rulemaking for Safe Fill Regulations

Dear Sir or Madam:

PPL is grateful for this opportunity to comment on the Department's proposed rulemaking for the Safe Fill regulation, which was published in the February 2, 2002 edition of the Pennsylvania Bulletin (Volume 32, NO 5). These proposed modifications to the municipal and residual waste regulations would replace the original Clean Fill Policy that the Pennsylvania Department of Environmental Protection "Department" issued in February of 1996.

The Departments effort to update the Clean Fill Policy and attempt to merge this proposed regulation with the successful and well established Act 2 Land Recycling Program is a positive step towards unifying the environmental regulations while improving the overall program to be protective of human health and the environment. While PPL applauds this effort, we are greatly concerned that the current draft of the Safe Fill regulations are overly complex, somewhat inconsistent with Act 2, and would likely result in a significant financial impact on PA companies without any appreciable improvement to the environment. Furthermore, in the absence of further changes to the proposed safe fill regulations, Pennsylvania's landfill capacity will quickly be depleted, as materials that can safely be used for beneficial purposes will instead be disposed of as wastes. To address these concerns, PPL has drafted several comments that we feel will greatly simplify the proposed rulemaking without negatively impacting the environment. PPL offers these comments, which are attached for your review, with the intent to assure the continued success of the Departments' programs.

PPL appreciates this opportunity to comment on these proposed regulations and urges the Department to consider these points as it continues it deliberations on the final version of the Safe Fill regulations.

Sincerely,

Lynn Ratzell
Manager - Environmental Management.

Attachment

CC:
Michael Hasel (with attachment)
Craig Shamory (with attachment)
Christine Wells (with attachment)

COMMENTS ON PROPOSED SAFE FILL REGULATIONS

GENERAL COMMENTS ON PROPOSED REGULATIONS

PPL applauds the Department's effort to develop regulations governing the use of clean fill (called "Safe Fill" in the proposed regulations). Clear regulations that are tailored to the low risks posed by such material would benefit the regulated community. However, PPL is very concerned that the currently proposed Safe Fill regulations will cause an undue burden on the businesses and landfills of PA without any appreciable increase in protection of human health or the environment.

As proposed, the Safe Fill regulations could cost PA companies hundreds of millions of dollars annually and could result in hundreds of thousands of cubic yards of essentially clean soil being sent to PA landfills, which are already at capacity in many parts of the state.

The PA DEP states in the Compliance Costs section of its proposal that "the projected savings of $500 million [will be realized by PA companies] by avoiding landfill disposal". The assumptions used to generate this savings statement are wrong. In fact, the average PA utility may likely spend an additional $2 to $6 million dollars annually under the proposed regulations.

PA DEP's assumed savings are based on the belief that the majority of all excavated excess materials (fill material) generated is currently sent to landfills for disposal. This assumption is false. Most companies use best management practices - selective sampling, generator knowledge, field screening, and contractor education - to determine if soil is "clean" or if it should be landfilled or otherwise treated. Based on these practices, significantly less than 50% *(probably less than 10%)* of all excavated excess material being generated is currently landfilled.

Under the proposed regulations, much of the material that is currently being treated as Safe Fill (e.g., some C&D waste from industrial properties and excavated material along roadbeds) will no longer be considered Safe Fill and will have to be managed under the permit-by-rule ("PBR") provisions or landfilled. In light of the extremely onerous sampling, analysis and record-keeping requirements under the PBR provisions, any material not qualifying as Safe Fill will be landfilled, significantly adding to project costs and using up valuable landfill space. In addition, the proposed regulations are unclear as to the amount of due diligence, sampling and analysis required to determine whether material qualifies as Safe Fill. Significant costs will be incurred to meet these requirements unless the regulations are appropriately modified and clarified.

PPL and other gas and electric utilities will be particularly hard-hit by the proposed Safe Fill regulations, as we need to excavate many miles of right-of-way across properties owned by others. Under the proposed regulations, PPL would need to conduct ill-defined due diligence to determine whether such material qualifies as Safe Fill. Depending on the level of due diligence required, this could be quite onerous. If, in order to demonstrate that the standards under section 287.11 are met, sampling were required in

each instance (which is the current implication in the definition of Safe Fill), this would add significant further costs. Furthermore, the sampling of excavated material generated on others' properties or along roadways may, in fact, not be possible since the material can't be easily or safely staged while waiting for the analytical results. In addition, any material that is Historic Fill (e.g., more than 125 cubic yards of fill material excavated along roadbeds) will need to be treated as waste even if it isn't contaminated. In general, it will be cheaper, easier, and safer to simply send all excavated material to landfills, even though most of it is not even contaminated.

PPL is not aware of any evidence of environmental issues posed by the current utility soil management practices conducted at rights-of-way as discussed above. However, the regulations as proposed will increase the costs associated with these excavations and will increase the amount of material landfilled without producing any environmental benefit for the State. This will use up valuable landfill space and create the need to mine additional natural materials for use as fill.

Though the preamble and the information discussed at the public meetings on Safe Fill have pointed to Section 287.1 (i)(C) as allowing for material to qualify as Safe Fill without necessarily sampling the material, the additional reference in paragraph (C) to meet the requirements of paragraph (A) of the same section would seem to contradict this. The Department's true intent should be clarified as to avoid confusion. PPL agrees that sampling should not always be necessary and strongly recommends that materials generated from excavations in utility rights-of-way should qualify as Safe Fill unless the material is visibly contaminated, has a persistent odor, or the generator otherwise has actual knowledge of contamination.

PPL's more specific comments are discussed below.

SPECIFIC COMMENTS ON PROPOSED REGULATIONS:

Scope and Definitions

1. Subparagraph (i) of the Safe Fill definition requires material to meet the specified numeric standards AND requires the generator to have no knowledge that the material was subject to a release. There is no reason to impose a generator knowledge requirement if the material is tested and found to satisfy the specified numeric standards.

2. Under the generator knowledge provision in the definition of Safe Fill in Section 287.1, the phrase "subject to a release" is confusing. For example, if the material is in an area that has been remediated to the residential statewide health standards ("SHS") under Act 2, is it still considered to be "subject to a release?" Furthermore, if a site is "subject to a release", but the particular area from which the excavated materials or demolition materials are being generated is or was not directly impacted by the release, is it still considered to be "subject to a release?" Such material should qualify as "Safe Fill" provided there is no visible contamination or persistent odor. PPL recommends replacing the phrase "has been subject to a release" with the phrase "is contaminated."

3. Under the definition of Safe Fill in Section 287.1, paragraphs (i)(B) and (i)(C) state that the requirements of (i)(A) should be met. However, these paragraphs are variations to the circumstances covered by (i)(A)(I). Therefore, only the requirements of (i)(A)(II) should be referenced in paragraphs (i)(B) and (i)(C). In addition, we understand that (i)(C) is meant to allow for material to qualify as Safe Fill based on appropriate due diligence and sensory observations alone without the need to sample and test. However, because this section states generally that the requirements of clause (A) must be met, it is unclear whether testing is required after all to demonstrate that the standards in the introductory sentence of clause (A) have been met. Again, this confusion can be avoided if clause (i)(C) references only clause (i)(A)(II).

4. Under the definition of Safe Fill in Section 287.1, paragraph (B) requires that the material meet the standards listed in Appendix A, Tables 1 and 3 to show that the material is Safe Fill. However, these tables include many analytes that would not typically be present in the material. This section should clarify that the generator only needs to test for analytes expected to be present based on appropriate due diligence.

5. Under the definition of Safe Fill in Section 287.1, section (v), we assume that the term "historic fill" is not intended to be used as the defined term "Historic Fill", but rather to refer generally to historical fill material. Otherwise, this section would make no sense as it covers material excluded from the definition of Historic Fill. We suggest that DEP use the term "historical fill" in Section 287.1 to avoid confusion.

6. Under the definition of Historic Fill, historical fill less than 125 cubic yards per excavation is excluded from the definition of Historic Fill. The EQB should clarify that any excavations that are not connected or contiguous to one another are separate excavation locations. The EQB also should clarify that the 125 cu. yd. limitation refers only to the part of the excavation that is comprised of historical fill.

7. There is no reason to treat all historical fill material greater than 125 cubic yards as a waste, as currently proposed in Section 271.2 and in the definition of Safe Fill. When such material is found to be clean, there is no reason to impose all the burdensome PBR requirements. PPL recommends that historical fill material be treated as any other material and be treated as Safe Fill based on due diligence and appropriate sampling and analysis when contamination may reasonably be expected to be present.

8. In (i) (A) (II) of the Safe Fill definition and (ii) of the Historic Fill definition, the generator of fill material is to determine if sensory nuisances exist within the fill material including odor. However, PPL recommends that these definitions be further clarified to state that the material must exhibit "recurring or persistent" odors so that transient odors associated with initial excavations should not bar a material from qualifying as Safe Fill.

Sampling and Safe Fill Standards

1. The EQB should adopt the 75%/10X rule for statistical analysis of discrete sample results instead of the 75%/2X rule that is currently proposed. The 75%/10X rule developed under Act 2 was determined to be a statistically valid model that was developed to be used under the strictest Act 2 standards (Statewide Health Standard). Unless there is a valid statistical reason to utilize a 75%/2X standard, the 75%/10X standard should be used, which is consistent with the attainment requirements of Act 2.

2. The EQB has provided no justification for requiring that composite samples meet 50% of the numeric standards in order for the material to qualify as Safe Fill. Analytical results from composites samples taken to demonstrate compliance with standards in other environmental regulatory programs are not compared to reduced limitations because of the sampling method. The only pertinent issue is whether the sample is representative. Moreover, the numeric standards for Safe Fill are based on the Act 2 statewide health standards, which the DEP acknowledges are based on conservative assumptions to account for uncertainty. The ability to properly composite a sample from a large pile would actually produce results which are more representative of the material then trying to classify the soil with only a few grab samples. Given this, composite sampling should be encouraged (where proper sampling techniques allow) and the generator should be allowed to compare the results to the standards without any adjustment.

3. The list of analytes is too large for practical use. Even the short list, which can only be applied at known spill sites, would prove fairly expensive to analyze for. Generators should be allowed to use their knowledge and experience to determine what analysis should be performed. For example, if the soil being generated is from a major highway right-of-way, the generator should only need to scan for select organics found in petroleum and certain metals, such as lead.

4. Several of the standards identified in the Safe Fill standards are more stringent than the Act 2 SHS residential standards. The Safe Fill preamble indicates that this was done because Act 2 sites have a known site hydrology and geology, which takes the final location of impacted materials into account. To the contrary, the standards developed under the Act 2 SHS [Act 2 Chapter 3, Section 301 (a)(2)] were developed to "achieve a uniform Statewide health-based level so that any substantial present or probable future risk to human health and the environment is eliminated...". The Statewide Health Standards, therefore, already address risks to human health and the environment under all probable scenarios (except placement of soils into the waters of the Commonwealth) and more stringent standards are not needed. Therefore, under a SHS standard, the site hydrology and geology are irrelevant. It is only under the SSS standard that the site conditions would affect the standards utilized. PPL recommends that the standards should be directly referenced from the Act 2 tables and the Safe Fill regulation only need identify which chemicals to analyze for.

5. The selection of the applicable standards identified in Tables 1-4 in appendixA are inconsistent and confusing. One example is that in Table 4, the standard is compared to the higher of the two values for the Residential Generic Value "RGV" and 100xGWMSC. This is consistent with Act 2, which is a well-established and accepted method of determining the applicable standard. Yet in Table 1, 2 and 3, only the Residential Generic Value "RGV" is allowed. In Act 2, the soil to ground water MSC is the higher of the RGV or 100xGWMSC. By dictating the use of the RGV value instead of allowing the higher of the RGV or 100xGWMSC, the regulations are being inconsistent both within the Safe Fill regulations and with the well known and established process identified in Act 2.

6. The standards reflected in the Tables 1-4, in Appendix A, are supposed to reflect those standards given in Act 2. Once again, this allows for inconsistencies within the program as the tables in Act 2 are updated as new toxicological and risk data are gathered and new standards are set. Already there are inconstancies between the Safe Fill tables and the Act 2 tables due to revisions (i.e., Naphthalene). The Safe Fill regulations should either refer directly to the Act 2 tables, or there should be language within the regulations to allow any updates in the Act 2 tables to be immediately applied to the Safe Fill tables.

Permit By Rule (PBR)

1. The requirements of the contaminated soil permit-by-rule ("PBR"), including the level of sampling, the erosion and sedimentation control plans, site restrictions, notification, and record keeping requirements, are so complex and expensive that landfilling will be considered a practical, cost effective, and less risky alternative, thus defeating the underlying purpose of the proposed Safe Fill regulations. The DEP has not adequately considered all the costs (tangible and intangible) of the PBR section of this program in relation to the costs of just landfilling the material. If the PBR section is not significantly simplified, the use of the PBR's will be infrequent at best and the amount of clean materials needlessly sent to landfills will substantially increase.

2. The PBRs state that materials placed pursuant to the PBRs are no longer a waste as long as they remain in place. PPL believes this provision unnecessarily complicates an already confusing set of regulations. If the provision must remain, it would be helpful to make clear here that if the material is moved in the future, it only becomes a waste generated by the person who moves it. Such a provision would be especially helpful for utilities, as any material placed pursuant to the PBRs would generally be on properties owned by others.

3. The language of the Historic Fill PBR, specifically Section 287.102 (n)(1)(ii), needs further clarification as it applies to clauses (C) and (D) which requires the calculation of a residential direct contact standard for Historic Fill being utilized under this PBR. For Historic Fill, trying to calculate the appropriate residential direct contact numeric value would be overly complex. These calculations were originally designed for a site undergoing an Act 2 assessment/closure and the data necessary to calculate the direct contact MSC numeric value would be collected as part of the normal investigation. To apply the same level of knowledge and investigation to soils generated from historical fill (especially for utility work on public or private right-of-way) is unrealistic. Though these numbers are not "calculated values" based on the conditions of the historical fill, the use of residential direct contact numeric values from Tables 3 and 4 of Chapter 250 would be the best approach to determine if the conditions of this PBR are met. Without a more simplified approach, Historic Fill will always be landfilled as a cheaper and easier alternative than beneficially reusing them. As a result, this would also encourage the use of virgin soil when the use of Historic Fill would be a better choice for industrial, commercial, or brownfield development.

4. The provisions related to "uncontaminated" used asphalt should be clarified to provide that: (1) constituents in concentrations inherent to the asphalt mix (e.g., PAHs) will not be considered an exceedance of the numeric criteria; and (2) *de minimis* quantities of oil that leak on to asphalt (e.g., from automobile engines) will not preclude compliance with the Safe Fill definition. (mix of asphalt and soils to from linear projects)

5. The standard PBR provisions require "the person using and distributing" the fill to keep records of sampling results and other documentation. The DEP should clarify whether it is the generator or the person receiving the fill who should retain these records and for how long they should be retained. It is suggested that the person receiving the fill be required to retain the records for a period of 3 years.

6. The common conditions of the PBRs provide that the person who receives and uses the fill submit written notification to the DEP. The Board should clarify which regional office of the DEP should receive the notification – the region covering the generating location or the regional office covering the location where the fill is placed.

7. Persons should be able to rely on best engineering judgment in ascertaining whether soil is contaminated. The need to sample for all the contaminants listed in the referenced tables would be cost prohibitive and would encourage the use of landfills as a cheaper alternative. Without the ability to use "best engineering judgement", most companies will end up landfilling the soils as a cheaper and easier alternative that will essentially end their future potential liability if all analyses were not completed.

8. Certain compounds in Table 2 are marked with an "*", which according to the footnotes for Table 2, indicates that they are "for screening petroleum hydrocarbons from airborne pollution at a site, if only those contaminants are of concern." The Board should explain this reference and its application in the text of the regulations.

9. Proposed Section 287.102(m)(1) limits the use of contaminated soil at Act 2 sites to those undergoing remediation to the statewide health standard. The regulations should permit contaminated soil to be used at sites undergoing remediation to a background and site-specific standards as long as placement of the fill allows the site to meet the selected standard.

10. The DEP should clarify the definition of "urbanization" and it should include the emissions from vehicular traffic.

11. Under proposed Section 271.103, mechanical processing facilities are required to process incoming waste within 30 days. This time period is unrealistic given the need for seasonal storage at these facilities. Crushed brick or stone could stay at the receiving facility for up to 6 months before the next construction season prior to being utilized.

ORIGINAL: 2245

Electric Power Generation Association

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Fax (717) 909-1941
www.epga.org

April 2, 2002

Environmental Quality Board
Rachel Carson State Office Building, 15th Floor
400 Market Street, P.O. Box 8477
Harrisburg, PA 17101-2301

RE: Comments on Proposed Safe Fill Regulations

Dear Sir/Madam:

Enclosed please find the Electric Power Generation Association's comments on the proposed safe fill regulations published in the Pennsylvania Bulletin on February 2, 2002. A one-page summary of the comments is included for distribution to members of the Board. If the Board has any questions regarding this submission, please contact me at (717) 909-3742. Thank you for your consideration.

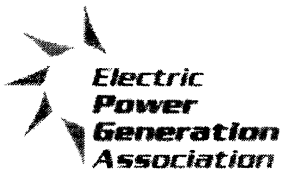
Sincerely,

Douglas L. Biden
President

Enclosures

SUMMARY OF THE EPGA'S COMMENTS FOR THE ENVIRONMENTAL QUALITY BOARD

1) The definition of "safe fill" should be revised to include construction and demolition material from industrial properties.
2) The regulations should provide that fill material from areas that have been remediated to meet background or residential SHS are no longer "subject to a release" and therefore may qualify as safe fill.
3) The regulations should provide that under the limited testing option, a material qualifies as safe fill if it meets the numeric criteria in Table 3, there is no knowledge that it has been subject to a release, and there is no sensory evidence of chemical contamination.
4) The regulations should define "excavation location" such that unconnected and noncontiguous excavations are considered to be separate locations. The regulations also should clarify that the 125 cu. yd. limitation in the definition of "historic fill" refers only to the portion of the excavation that is comprised of historic fill.
5) Historic fill material should qualify as "safe fill" if it meets the safe fill numeric criteria and there is no sensory nuisance associated with the material.
6) The exclusion in the proposed definition of "safe fill" that exempts material satisfying the definition of safe fill from regulation as a waste when it is "used as fill" should be expanded to include the storage, handling, and transportation of qualifying material.
7) The regulations should provide that "used asphalt" and incidental soil excavated with the used asphalt may qualify as safe fill even though it contains concentrations of constituents inherent in the asphalt mix and *de minimis* quantities of oil.
8) The regulations should clarify that Section 287.11(b) does not apply to safe fill determinations made under paragraph C in the proposed definition of "safe fill."
9) The regulated community should be allowed to apply the 75%/10X statistical test to discrete sampling results under the safe fill regulations.
10) The analytical results of composite sampling should be compared directly to the values given in Appendix A, Tables 1 and 2 or 3 for the purpose of determining whether a material qualifies as safe fill.
11) The safe fill numeric criteria should be adjusted to account for PQLs that are higher than these criteria, in a manner consistent with Act 2.
12) The PBR provisions should be consolidated into one, easily useable PBR, and it should provide that material placed pursuant to the PBR is exempted from the definition of "waste." If the material is managed again at some future date, those management activities should comply with the requirements that are applicable at that time.
13) The paragraph designation for the contaminated soil, dredged material, or used asphalt PBR provision should be changed to "k."
14) Under the historic fill permit-by-rule, the regulations should allow a potential permittee to address the soil to groundwater pathway using the options and standards outlined under Section 250.308 and the direct contact pathway by elimination or compliance with the residential (or nonresidential, as applicable) direct contact values.
15) The regulations should specify that the person receiving the fill is required to retain the records for a period of 3 years.
16) The regulations should expressly state that PBR notifications should be sent to the Waste Management Program Manager for the Regional Office of the DEP covering the area where the fill is placed.
17) The regulations should allow persons to rely on "best engineering judgment" to determine which constituents to analyze for when using the second testing option. In addition, persons should be able to rely on existing sampling and analysis data in making safe fill determinations.
18) The regulations should explain the applicability of the Table 2 endnote that refers to screening petroleum hydrocarbons from airborne pollutions.
19) The regulations should permit contaminated soil to be used at sites undergoing remediation under Act 2 as long as placement of the fill allows the site to attain the selected remediation standard.
20) The Board should define "water source" as referring to an existing source of drinking water.
21) Compliance with the safe fill regulations should allow the parties to be released from liability for the fill material. If the material is managed again at some future date, those management activities should comply with the requirements that are applicable at that time.
22) The regulations should define "urbanization" to include ambient airborne depositions from industrial activity and vehicular traffic.
23) The regulations should address the return of certain contaminated soil excavated during routine maintenance activities at industrial properties to the excavation from whence it came.
24) The regulations should provide that materials may be seasonally staged at a mechanical processing PBR facility.



Comments of the Electric Power Generation Association

to the Proposed Safe Fill Regulations

(published in the Pennsylvania Bulletin on February 2, 2002)

Submitted April 2, 2002

Mr. Douglas L. Biden
President
Electric Power Generation Association
800 North Third St. Suite 303
Harrisburg, PA 17102

Comments of Electric Power Generation Association to the Proposed Safe Fill Regulations

The Electric Power Generation Association ("EPGA") is a regional trade association of major electric generating companies that supply wholesale power in Pennsylvania and surrounding states. Collectively, our companies own and operate over 108,000 megawatts of generating capacity, half of which is located in the mid-Atlantic region, and approximately one-third of which is located in the Commonwealth. Our members include:

1. Allegheny Energy Supply, LLC
2. Exelon Generation
3. FirstEnergy Generation Corp.
4. Midwest Generation
5. PPL Generation, LLC
6. Reliant Energy

Issues related to the management of environmentally impacted soil and other media affect the day-to-day business of our members, and the EPGA is pleased to submit the following comments on the Pennsylvania Environmental Quality Board's ("EQB" or "Board") proposed Safe Fill regulations, which were published in the Pennsylvania Bulletin on February 2, 2002 [32 Pa. Bull. 564]. Suggestions for revising the language of the safe fill regulations to address many of the issues raised in our comments are attached hereto as Exhibit A.

Although we generally are supportive of the Board's proposal, some modifications to the proposed regulations are necessary to ensure that the safe fill program achieves its intended purpose. As written, the regulations will significantly increase the costs associated with the management of excavated materials because either the requirements will be unattainable, or it

will be too expensive to demonstrate compliance with them, such that many facilities will choose to landfill these materials. The regulations should be modified to encourage the use of all fill materials that present little or no risk to the environment, instead of encouraging facilities to landfill them.

I. The proposed definition of "safe fill" excludes material resulting from construction and demolition activities at industrial properties.

The definition of "safe fill" in proposed Section 287.1 includes only "[m]aterial ...resulting from construction or demolition activities from residential and commercial properties." The EPGA suggests that construction and demolition material from industrial properties also should be included in this definition, if it otherwise meets the definition. The categorical exclusion of all industrial properties is unnecessarily broad and discourages the reuse of material that satisfies the proposed safe fill numeric and qualitative standards, and therefore presents no more risk to the environment than similar materials from commercial and residential facilities. The regulations should allow construction and demolition material from industrial properties to qualify as safe fill for offsite movement subject to the same due diligence, generator knowledge, sensory detection, and testing requirements as materials from commercial or residential properties.

EPGA's Recommendation: The definition of "safe fill" should be revised to include construction and demolition material from industrial properties.

II. The phrase "subject to a release" in the proposed definition of safe fill excludes materials from remediated areas from qualifying as safe fill.

Under the definition of "safe fill" in proposed Section 287.1, the regulations should clarify that the phrase "subject to a release" refers to current, or unremediated releases. For

example, if the fill material is generated from an area that has been remediated to the residential statewide health standards ("SHS") under the Land Recycling and Environmental Remediation Standards Act ("Act 2"), it should not be considered to be subject to a release. Such material should qualify as "safe fill" provided there is no visible contamination, odor or other sensory nuisances from chemical contaminants present, and it meets the safe fill numeric criteria.

EPGA's Recommendation: The regulations should provide that fill material from areas that have been remediated to meet background or residential SHS are no longer "subject to a release" and therefore may qualify as safe fill.

III. The paragraph in the proposed definition of "safe fill" relating to the limited testing option refers to numeric criteria in both Table 2 and Table 3 of Appendix A.

Under the definition of "safe fill" in Section 287.1, the limited testing option in paragraph B indicates that a material may qualify as safe fill if it "meets the numeric standards referenced in § 287.11 and listed in Appendix A, Tables 1 and 3, and meets the requirements of clause (A)." Clause A, in turn, references the numeric standards listed in Appendix A, Tables 1 and 2. The EPGA requests a clarification that under the limited testing option, a person may demonstrate that a material qualifies as safe fill if it meets the numeric criteria in Tables 1 and 3, there is no knowledge that the material has been affected by a release, and the material exhibits no staining or other sensory nuisance resulting from chemical contaminants. The reference back to clause (A) in the proposed language is contradictory and confusing because clause A refers to numeric standards in Tables 1 and 2.

EPGA's Recommendation: The regulations should provide that under the limited testing option, a material qualifies as safe fill if it meets the numeric criteria in Table 3, there is no

knowledge that it has been subject to a release, and there is no sensory evidence of chemical contamination.

IV. In the proposed definition of "historic fill", the phrase "excavation location" and the scope of the 125 cu. yd. limitation requires further clarification.

In the proposed definition of "historic fill" in Section 287.1, the Board specifies that "the term does not include historically contaminated material in quantities of less than or equal to 125 cu. yds. per excavation location" if the listed conditions are met. Certain projects, such as the construction of footers, may require excavating separate areas in the same geographic location. The proposed regulations also should address the applicability of the 125 cu. yd. limitations to excavation activities involving more that 125 cu. yds, where only a portion of the material meets the description of "historic fill."

EPGA Recommendation: The regulations should define "excavation location" such that unconnected and noncontiguous excavations are considered to be separate locations. The regulations also should clarify that the 125 cu. yd. limitation in the definition of "historic fill" refers only to the portion of the excavation that is comprised of historic fill.

V. Historic fill that meets the safe fill numeric criteria should not be regulated as a "waste."

Except for the 125 cu. yds. exclusion per excavation location provided in the definition of "historic fill" in proposed Section 287.1, the residual waste regulations provide that historic fill must be managed as a residual waste. There is no rational basis to regulate this media differently from the other media that may qualify as safe fill. If there is no indication that the historic fill material has been subject to a release of a regulated substance and there is no sensory nuisance

associated with the material, historic fill materials that satisfy the safe fill numeric standards should not be regulated as a "waste."

EPGA Recommendation: Historic fill material should qualify as "safe fill" if it meets the safe fill numeric criteria and there is no sensory nuisance associated with the material.

VI. Safe fill material should be excluded from regulation as a waste when the determination is made that it qualifies as safe fill, not when is it "used as fill."

The proposed definition of "safe fill" in Section 287.1 provides that materials that meet the requirements under this term are not regulated as "waste" when used as fill. This definition seems to suggest that the materials would continue to be regulated as waste up until the time they are actually placed at a site. As such, "pre-placement" management of the materials arguably are subject to the Residual Waste and/or Municipal Waste storage, processing, and transportation requirements. This result does not further or promote the use of the material as fill, and is inconsistent with how other "use exempted" materials are addressed under the regulations (e.g., beneficial use materials). The safe fill material should be exempted as soon as it is deemed to be used as fill and otherwise satisfies the definition.

EPGA Recommendation: The exclusion in the proposed definition of "safe fill" that exempts material satisfying the definition of safe fill from regulation as a waste when it is "used as fill" should be expanded to include the storage, handling, and transportation of qualifying material.

VII. " Used asphalt" may inherently contain concentrations of constituents exceeding the safe fill numeric criteria and de minimis quantities of oil.

The proposed definition of "safe fill" includes a reference to "used asphalt." All used asphalt is likely to contain polyaromatic hydrocarbons and a small amount of oil from vehicular traffic, and as such it is unlikely that any used asphalt will satisfy the definition. Furthermore, it is customary that small quantities of soil are also excavated and/or removed with used asphalt. The EPGA suggests that the regulations specify that for used asphalt and incidental soil excavated with the used asphalt: (1) the concentrations of constituents inherent to the asphalt mix (e.g., polyaromatic hydrocarbons) need not be considered in determining whether the material meets the safe fill numeric criteria; and (2) *de minimis* quantities of oil that leak on to asphalt during its normal usage (e.g., from automobile engines) does not preclude compliance with the safe fill definition. Soil intermixed with used asphalt is considered "incidental" if the soil component of the mixture is less than 50% of the total volume.

EPGA Recommendation: The regulations should provide that "used asphalt" and incidental soil excavated with the used asphalt may qualify as safe fill even though it contains concentrations of constituents inherent in the asphalt mix and *de minimis* quantities of oil.

VIII. The proposed language of Section 287.11(b) seems to require sampling in order to demonstrate that a material qualifies as safe fill, which is inconsistent with other provisions of the proposed regulations.

Paragraph C in the proposed definition of "safe fill" indicates that a person may demonstrate that a material "meets the safe fill numeric standards without sampling and analysis." However, proposed Section 287.11(b) states that in order "to determine whether a

material meets the safe fill numeric standards, one of the sampling and analysis procedures identified in paragraph (1) and (2) shall apply." As such, the language of Section 287.11(b) conflicts with paragraph C in the proposed definition of "safe fill."

EPGA Recommendation: The regulations should clarify that Section 287.11(b) does not apply to safe fill determinations made under paragraph C in the proposed definition of "safe fill."

IX. The proposed regulations use a 75%/2X statistical test for discrete samples rather than the 75%/10X test generally used in the Land Recycling Program.

With regard to testing material to demonstrate compliance with the safe fill standards, proposed Section 287.11(d) specifies that 75% of the discrete samples of the material shall be equal to or less than the safe fill numeric standard for each substance with no single sample exceeding more than twice the safe fill standard for a substance ("75%/2X test"). Under the Act 2 regulations in Section 250.707, attainment of the statewide health standards may be demonstrated if 75% of discrete samples are equal to or less than the statewide health standard for each substance with no single sample exceeding ten times the statewide health standard ("75%/10X test").

As detailed in the preamble to the proposed Act 2 regulations at 26 Pa. Bull. 3995, the Cleanup Standards Scientific Advisory Board ("CCSAB") developed and recommended the 75%/10X statistical test after comparing it to five other statistical tests with a series of computer simulations. Additional statistical data was submitted on this test in comments to the proposed Act 2 regulations, and based on this data, the Board promulgated the 75%/10X test in the final Act 2 regulations. Responsible parties may utilize this test to certify that properties have been

remediated to the residential statewide health standards, which are based on conservative assumptions to protect human health and the environment.

In contrast, under the proposed safe fill regulations, the Board is specifying a 75%/2X test for demonstrating that a material is "safe" for use on residential, commercial, or industrial properties. The EPGA suggests that the Board eliminate this inconsistency by adopting the 75%/10X test for demonstrating that material meets the safe fill numeric criteria.

EPGA Recommendation: The regulated community should be allowed to apply the 75%/10X statistical test to discrete sampling results under the safe fill regulations.

X. There is no justification for the requirement that composite samples meet 50% of the safe fill numeric standards.

To demonstrate compliance with the safe fill numeric criteria, proposed Section 287.11(a)(2)(c)(1) requires that for composite samples, the measured numeric value for a substance must be equal to or less than one-half the safe fill numeric standard for that substance. If the EQB is basing this requirement on the alternative safe fill policy submitted by the Cleanup Standards Scientific Advisory Board (CCSAB), then it appears that the Board has not fully applied the CSSAB's recommendations. Under the CCSAB's alternative policy, if a sampling result exceeded the relevant numeric standard but was still below the applicable residential direct contact value ("RDC"), the CCSAB suggested that an alternative safe fill limit could be used based on either leachate testing, the areawide background concentration at the receiving site, or the RDC. If the material met a limit based on one of these alternatives, it could still be used as safe fill. The EQB adopted the stringent 50% limit and allowed for the CCSAB's alternative limits only in the context of a permit-by-rule ("PBR"), with all of its associated requirements.

In addition, neither the CCSAB nor the EQB has provided any statistical justification for requiring that composite samples meet 50% of the numeric standards in order for the material to qualify as safe fill. The only pertinent issue is whether the sample is "representative." If the sample is "representative," the sample result should be compared directly to the numeric criteria. Moreover, the numeric standards for safe fill are based on the Act 2 statewide health standards, which the DEP acknowledges are based on conservative assumptions to account for uncertainties, so there is no legitimate basis to incorporate additional conservative assumptions.

EPGA Recommendation: The analytical results of composite sampling should be compared directly to the values given in Appendix A, Tables 1 and 2 or 3 for the purpose of determining whether a material qualifies as safe fill.

XI. The numeric standards in the proposed safe fill regulations do not account for practical quantitation limits.

As defined under Act 2, the practical quantitation limit ("PQL") for a substance is the lowest concentration that reliably can be measured within specified limits of precision and accuracy under routine laboratory conditions for a specified matrix See 35 P.S. § 6026.10. Unlike the Act 2 program, the requirements to demonstrate compliance with the safe fill numeric criteria do not account for the practical quantitation limits for the regulated substances listed in the Appendix A tables.

EPGA Recommendation: The safe fill numeric criteria should be adjusted to account for PQLs that are higher than these criteria, in a manner consistent with Act 2.

XII. The permit-by-rule provisions in the proposed regulations impose too much of a regulatory burden on entities proposing to use contaminated fill material in an environmentally sound manner.

The permit-by-rule ("PBR") provisions, including the level of sampling, the different sets of applicable numeric criteria, the site restrictions, the notification, and the recordkeeping requirements are so complex, confusing, and potentially expensive that landfilling often will be considered a practical, cost effective, and less risky alternative, thus defeating the underlying purpose of the proposed safe fill regulations. The Department of Environmental Protection ("DEP") has not adequately considered the costs of the program in relation to the costs of landfilling the material. Moreover, the PBR provisions create a potential legal minefield by suggesting that material is exempted from the definition of "waste" if it is placed pursuant to a PBR, but later loses its exemption if it is removed by a subsequent owner.

EPGA Recommendation: The PBR provisions should be consolidated into one, easily useable PBR, and it should provide that material placed pursuant to the PBR is exempted from the definition of "waste." If the material is managed again at some future date, those management activities should comply with the requirements that are applicable at that time.

XIII. There is a typographic error in one of the paragraph citations.

The PBR provision for contaminated soil, dredged material or used asphalt and the PBR provision for historic fill are both designated as Section 287.102, paragraph "l".

EPGA Recommendation: The paragraph designation for the contaminated soil, dredged material, or used asphalt PBR provision should be changed to "k."

XIV. The language of the historic fill permit-by-rule should be clarified.

The language of the historic fill PBR, specifically the requirements to satisfy proposed Section 287.102 (l)(1)(i) and (3) or (1)(ii), needs clarification. Based on the language of these provisions, the regulations appear to focus on the soil to groundwater pathway and the direct contact pathway. To address these two options, the EPGA suggests that the historic fill PBR follow the standards set out in the Act 2 regulations.

Specifically, the PBR should provide that historic fill not exceed the soil-to-groundwater pathway numeric values based on either the generic value, 100 times the residential medium specific concentration ("MSC") for groundwater, or the concentration in soil that does not produce a leachate in excess of the MSC, when subject to the Synthetic Precipitation Leaching Procedure ("SPLP"). As for the direct contact pathway, coverage under the historic fill PBR could be conditioned upon demonstrating that the historic fill does not exceed the residential direct contact numeric values or that all direct contact pathways have been promptly and permanently eliminated.

EPGA Recommendation: Under the historic fill permit-by-rule, the regulations should allow a potential permittee to address the soil to groundwater pathway using the options and standards outlined under Section 250.308 and the direct contact pathway by elimination or compliance with the residential (or nonresidential, as applicable) direct contact values.

XV. **The recordkeeping provisions of the proposed rules do not clearly specify who is responsible for maintaining the required documentation and do not provide a retention period.**

The standard PBR provisions in proposed Section 271.103(i)(13) and Section 287.102, paragraphs (j)(13), ("l")(13), (l)(13), and (m)(18), require "the person using and distributing" the fill to keep records of sampling results and other documentation. The regulations should clarify whether it is the generator or the person receiving the fill who should retain these records and for how long they should be retained.

EPGA Recommendation: The regulations should specify that the person receiving the fill is required to retain the records for a period of 3 years.

XVI. **The notification requirements in the permit-by-rule provisions require clarification.**

The common conditions of the PBRs, such as those found in proposed Section 271.103(i)(12) and Section 287.102, paragraphs (j)(12), ("l")(12), (l)(12), and (m)(16), provide that the person who receives and uses the fill must submit written notification to the DEP. The EPGA suggests that the regulations expressly provide which regional office of the DEP should receive the notification – the region covering the generating location or the regional office covering the location where the fill is placed pursuant to the relevant PBR. The regulations also should provide to what position the notice should be directed (e.g., the Waste Management Program Manager).

EPGA Recommendation: The regulations should expressly state that PBR notifications should be sent to the Waste Management Program Manager for the Regional Office of the DEP covering the area where the fill is placed.

XVII. Persons making safe fill determinations should be able to rely on best engineering judgment in selecting sampling methods and testing for relevant constituents.

According to the explanatory material in the preamble, the proposed definition of "safe fill" presents the regulated community with three options for determining whether a material qualifies as "safe fill." Assuming that there is no knowledge of the material being subject to a release and no sensory evidence of chemical contamination, persons wishing to demonstrate compliance with the numeric criteria may: (1) conduct comprehensive sampling and analysis; (2) rely on due diligence and limited testing; or (3) use knowledge and due diligence without sampling and analysis. However, the second, limited testing option still requires sampling for a significant number of parameters – many of which may be irrelevant for a particular site and all of which cost money. The regulations should allow persons to apply "best engineering judgment" to determine which constituents to analyze for when using the second option.

EPGA Recommendation: The regulations should allow persons to rely on "best engineering judgment" to determine which constituents to analyze for when using the second testing option. In addition, persons should be able to rely on existing sampling and analysis data in making safe fill determinations.

XVIII. An explanation of the screening requirements for petroleum hydrocarbons from airborne pollution is needed.

Certain compounds in Appendix A, Table 2 are marked with a "*", which according to the endnotes for Table 2, indicates that they are "for screening petroleum hydrocarbons from airborne pollution at a site, if only those contaminants are of concern." The regulations should explain this reference and its application to the text of the regulations.

EPGA Recommendation: The regulations should explain the applicability of the Table 2 endnote that refers to screening petroleum hydrocarbons from airborne pollutions.

XIX. **The permit-by-rule for placement of contaminated soil at sites undergoing remediation is limited to those sites undergoing remediation to the statewide health standards.**

The PBR for placement of contaminated soil at a receiving site undergoing remediation in proposed Section 287.102(m)(1) limits the use of contaminated soil to sites undergoing remediation to the statewide health standards. There is no legitimate reason for this arbitrary restriction, as materials also can be safely placed at sites undergoing remediation to the site-specific standard, background standards, or at sites located in Special Industrial Areas.

EPGA Recommendation: The regulations should permit contaminated soil to be used at sites undergoing remediation under Act 2 as long as placement of the fill allows the site to attain the selected remediation standard.

XX. **The definition of "water source" needs clarification.**

The standard PBR conditions, such as proposed Section 271.103(i)(9) and Section 287.102, paragraphs (j)(8), ("l")(8), (l)(8), and (m)(10), specify that "soil may not be placed within 300 feet of a water source" unless the owner provides written consent. The EPGA suggests that the Board clarify that the term "water source" refers to an existing source of drinking water.

EPGA Recommendation: The Board should define "water source" as referring to an existing source of drinking water.

XXI. **The proposed regulations specify that safe fill is not a waste as long as it remains in place but does not address regulatory and liability issues that arise if a subsequent property owner excavates and moves the fill material.**

The standard PBR provisions, such as proposed Section 271.103(i)(15) and Section 287.102, paragraphs (j)(15), ("l")(15), (l)(15), and (m)(19) specify that "[material] placed in a accordance with this permit shall cease to be waste as long as [the material] remains in place." Once fill material is placed on a property pursuant to a PBR, there is no good mechanism to ensure that a subsequent owner of the property is notified of the presence and extent of any fill material on the property. Moreover, it is not reasonable to believe that such notices, even if given, will be provided to future owners.

EPGA Recommendation: Compliance with the safe fill regulations should allow the parties to be released from liability for the fill material. If the material is managed again at some future date, those management activities should comply with the requirements that are applicable at that time.

XXII. **The Board does not define the term "urbanization."**

In proposed Section 287.102(l), the regulations refer to "contaminated soil, dredged material or used asphalt that exceeds safe fill numeric standards as a result of urbanization." "Urbanization" is not defined in the regulations.

EPGA Recommendation: The regulations should define "urbanization" to include ambient airborne depositions from industrial activity and vehicular traffic.

XXIII. **The safe fill regulations should address excavations of potentially contaminated soil during routine maintenance operations at industrial properties.**

The regulations should expressly include a provision for maintenance operations (e.g., repair of water lines, cable, sewer lines, utilities, etc.) conducted at industrial properties. If soil is excavated for maintenance activities; it is not visibly contaminated; and it exhibits no nuisance characteristics; maintenance workers should be able to return it to the excavation area without implicating residual waste regulations and requiring that the soil be tested to demonstrate that it meets the safe fill numeric standards. For example, soils at an industrial property that has been remediated to a site-specific standard may not comply with the safe fill standards, but the return of the soil to the excavation from whence it came does not create any additional environmental risks.

EPGA Recommendation: The regulations should address the return of certain contaminated soil excavated during routine maintenance activities at industrial properties to the excavation from whence it came.

XXIV. **It is unrealistic to expect mechanical processing facilities to process material within 30 days in all cases.**

Under proposed Section 271.103, mechanical processing facilities are required to process incoming waste within 30 days. This time period is unrealistic given the need for seasonal storage at these facilities (i.e., the facilities typically close in the fall and do not open again until late spring, but material is stockpiled in the interim).

EPGA Recommendation: The regulations should provide that materials may be seasonally staged at a mechanical processing PBR facility.

EXHIBIT A

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENTS I, II, III, VI, VII, VIII, XVII, and XXIII.

Section 271.103(i) should be revised as follows:

(i) Brick, block or concrete. The placement of segregated brick, block or concrete that does not qualify as safe fill ~~resulting from construction or demolition activities at industrial properties or placement of contaminated and segregated brick, block or concrete resulting from construction or demolition activities at commercial or residential properties~~ shall be deemed to have a municipal waste permit when used to bring an area to grade, as construction material or in reclamation of an active or abandoned mine or abandoned quarry, if in addition to subsections (a)--(c), the following conditions are met:

Section 287.1 should be revised as follows:

Safe fill--

(i) Material that is ~~uncontaminated~~ soil, including rock and stone, ~~uncontaminated~~ dredged material, ~~uncontaminated~~ used asphalt or ~~uncontaminated and segregated~~ brick, block or concrete resulting from construction or demolition activities; provided that there is no visible staining, recurring or persistent odor or other sensory nuisance resulting from chemical contaminants associated with the material, and that, based on an appropriate level of due diligence and knowledge of the site, ~~from residential and commercial properties and that~~ meets one of the following requirements:

(A) The material meets the safe fill numeric standards referenced in § 287.11 (relating to safe fill numeric standards) and listed in Appendix A, Tables 1 and 2 of this Chapter without sampling and analysis, ~~and meets the following requirements:~~

~~(I) Based on an appropriate level of due diligence, there is no knowledge or past activity that indicates the material has been subject to a release.~~

~~(II) There is no visible staining, odor or other sensory nuisance resulting from chemical contaminants associated with the material.~~

(B) Based on sampling and analysis as described in § 287.11 (relating to safe fill numeric standards), ~~an appropriate level of due diligence, the historical data on the excavation site indicates that past activity had the potential to result in a release, but there is no knowledge of a release and~~ the material meets the safe fill numeric standards ~~referenced in § 287.11 and~~ listed in Appendix A, Tables 1 and 3 of this

Chapter for those constituents reasonably expected to be present in the material, and for those organic regulated substances that were known to have been released (or potentially released) into the material, the corresponding safe fill numeric standards listed in Appendix A, Table 2 not otherwise listed in Table 3, ~~and meets the requirements of clause (A).~~

~~(C) Based on an appropriate level of due diligence and knowledge of the site, the material meets the safe fill numeric standards without sampling and analysis and meets the requirements of clause (A).~~

(ii) The term includes the material in subparagraph (i) that exceed the numeric limits in Appendix A, Table 1 or either Table 2 or 3, if there is no visible staining, recurring or persistent odor, or other sensory nuisance resulting from chemical contaminants associated with the material and the material ~~it meets the criteria in subparagraph (i)(A)(I) and (II) and~~ meets one of the following requirements:

(A) The material is moved within a right-of-way.

(B) The material is moved offsite from a residential property currently developed as a residential property or zoned residential and never used for nonresidential purposes.

(C) The material is moved within a property, except for soil moved in accordance with subparagraph (iii).

(iii) The term includes soil moved from a fruit orchard under development where pesticides containing lead and arsenic. If the soil exceeds the numeric limits in Appendix A, Table 1 or either Table 2 or 3, and meets one of the following requirements, it is considered "safe fill":

(A) The soil is used for commercial or industrial purposes.

(B) The soil is blended with other soil to meet the limits in Appendix A, Table 1 and either Tables 2 or 3, and used for residential purposes.

(iv) The term includes dredged material provided that the dredged material is drained prior to placement. Dredged material and sediments from tidal streams shall meet the numeric criteria for chlorides as listed in Appendix A, Table 1 in order to qualify as safe fill. ~~placed directly on land adjacent to the dredging operation for beach nourishment or as a soil additive or soil substitute.~~ If dredged material exceeds the numeric limits in Appendix A, Table 1 and either Table 2 or 3, it is considered to be "safe fill" if the following requirements are met: (1) there is no visible staining, recurring or persistent odor or other sensory nuisance resulting from chemical contaminants associated with the dredged material; (2) the dredged material is placed directly on land adjacent to the dredging operation for beach nourishment or as a soil additive or soil substitute; and (3) ~~it shall meet the criteria in subparagraph (i)(A)(I) and (II) and meet~~ one of the following conditions is met~~, it is considered "safe fill"~~:

(A) The dredged material is placed on land at a location used for commercial or industrial purposes.

(B) The dredged material is blended with other soil or other dredged material to meet the numeric limits in Appendix A, Tables 1 and 2, and used for residential purposes.

(v) The term includes historic fill in quantities of less than or equal to 125 cubic yards per excavation location provided that there is no visible staining, recurring or persistent odor or other sensory nuisance resulting from chemical contaminants associated with the historic fill material. ~~if the conditions of subparagraph (i)(A)(I) and (II) are met.~~

(vi) The term does not include material placed into or along surface waters of this Commonwealth unless prior Department approval has been obtained associated with active or abandoned mine or abandoned quarry reclamation activities or under Chapter 105 (relating to dam safety and waterway management), and the material meets the following conditions:

(A) Material placed into or along surface waters as approved by the Department under Chapter 105 and does not exceed 10% of the numeric standards calculated in § 287.11(a)(1) and (2) and placement of the material does not cause an exceedance of the water quality standards in Chapters 16 and 93 (relating to water quality toxics management strategy--statement of policy; and water quality standards).

(B) Material placed into or along waters as part of an active or abandoned mine or abandoned quarry reclamation does not cause an exceedance of the water quality standards in Chapters 16 and 93 and, based on an approved sampling and analysis plan, meets the following:

(I) The material received meets 10% of the numeric standards calculated in § 287.11(a)(1) and (2).

(II) For metals only, in lieu of subclause (I), the material does not produce a leachate in excess of the residential medium-specific concentration for groundwater in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter, when subject to the Synthetic Precipitation Leaching Procedure (SPLP) *(Method 1312 of SW-846, Test Methods for Evaluating Solid Waste,* promulgated by the EPA). The numeric standards to be met for metals by SPLP are listed in Appendix A, Table 1. The SPLP may only be used when groundwater monitoring is being conducted at the location where waste is placed.

(vii) The person using the material has the burden of proof to demonstrate that the material is safe fill.

(viii) If, based on a determination made under subparagraph (i), the material exceeds the numeric standards referenced in subparagraph (i) and is covered under subparagraphs (ii)(A), (ii)(B), (ii)(C), (iii) or (iv), the exceedance may be no greater

than the lower of the nonresidential direct contact numeric value (using §§ 250.306 and 250.307 (relating to ingestion numeric values; and inhalation numeric values)) or nonresidential soil-to-groundwater pathway numeric value (using § 250.308(a)(2)(i), (3), (4)(i) and (5) (relating to soil to groundwater pathway numeric values)) established for aquifers used or currently planned for use containing less than 2,500 mg/l total dissolved solids. Formulae identified in § 250.305(b) (relating to MSCs in soil) apply as a limit to the physical capacity of the soil to contain a substance.

(ix) Materials that meet the requirements under this term are not regulated as waste when designated to be used and are used as fill and, as such, they are not subject to waste storage, processing or disposal requirements.~~used as fill.~~

(x) For purposes of this term, "used asphalt" includes de minimis quantities of soils excavated with used asphalt, provided that the excavated soils are less than 50% by volume of the total excavated material. For purposes of sampling and analysis, concentrations of constituents inherent in the asphalt mix shall not be considered for purposes of determining whether the material meets the safe fill numeric standards.

(xi) Materials excavated during routine maintenance activities at industrial properties are safe fill if they are promptly returned to the excavation from whence they came, provided that there is no visible staining, recurring or persistent odor, or other sensory nuisance resulting from chemical contaminants associated with the materials.

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENT IV.

Section 271.1 and Section 287.1 should be revised as follows:

Historic fill —

(i) Historically contaminated material (excluding landfills, waste piles and impoundments) used to bring an area to grade prior to 1988 that is a conglomeration of soil and residuals, such as ashes from the residential burning of wood and coal, incinerator ash, coal ash, slag, dredged material and construction and demolition waste.

(ii) The term does not include historically contaminated material in quantities of less than or equal to 125 cubic yards per excavation location if the following conditions are met:

(A) There is no indication that the material has been subject to a release of regulated substances.

(B) There is no visible staining, odor or other sensory nuisance associated with the material.

(iii) For purposes of this term, an "excavation location" is any unconnected, noncontiguous excavation at a site. There may be multiple excavation locations at any given site, and the 125 cu. yds. limitation refers only to the portion of the excavation that contains the historically contaminated material (e.g., it does not include uncontaminated soil).

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENTS IX, X, and XI.

Section 287.11 should be revised as follows:

(a) . . . .

(5) For purposes of determining whether the material meets the numeric safe fill standards, the concentration of a regulated substance is not required to be less than the limits relating to the PQLs for a regulated substance in accordance with 25 Pa. Code § 250.4.

(c) The analysis of composite samples required in subsection (b)(1) shall meet the following:

(1) For a composite sample, the measured numeric value for a substance is equal to or less than ~~half~~ the safe fill numeric standard in 287.11 (relating to numeric standards) for that substance and as listed in Appendix A, Tables 1, 2 and 3.

(d) For discrete samples required in subsection (b)(2), the measured numeric values for a substance in 75% of the discrete samples shall be equal to or less than the safe fill numeric standard in this section for that substance with no single sample exceeding more than ten times ~~twice~~ the safe fill numeric standard for a substance.

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENT XIV.

Section 287.102(l) should be revised as follows:

(l) *Historic fill.* The placement of historic fill shall be deemed to have a residual waste permit when used as construction material if, in addition to subsection (a), the following conditions are met:

(1) The historic fill shall be analyzed and shall meet one of the following:

(i) Historic fill may not exceed the residential soil-to-groundwater pathway numeric values based on the following parameters:

(A) The highest value between the residential generic value; ~~and~~ a value which is 100 times the residential MSC for groundwater, as calculated in § 250.308; and a concentration value in the historic fill that does not produce a leachate in excess of the residential MSC for groundwater when subject to the Synthetic Precipitation Leaching Procedure (SPLP) *(Method 1312 of SW-846, Test Methods for Evaluating Solid Waste,* promulgated by the EPA). The numeric standards are listed in Appendix A, Tables 5 and 6.

(B) When calculating the residential soil-to-groundwater pathway numeric value, the calculation shall be based on groundwater in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter.

(C) Formulae identified in § 250.305(b) apply as limits to the physical capacity of the soil to contain a substance.

(ii) Historic fill may not exceed the lowest residential direct contact numeric values calculated in accordance with the methodologies in §§ 250.306 and 250.307, if the requirements ~~in clause (A) or (B) are met for groundwater protection and the requirements~~ of clauses (A~~C~~) and (B~~D~~) are met when calculating the numeric value unless, direct contact pathways are promptly and permanently eliminated by the placement of uncontaminated soil and uncontaminated dredged material or through other engineering controls at the locations where historic fill is placed.

~~(A) A TCLP that demonstrates that the historic fill meets the requirements in § 288.623(a).~~

~~(B) The historic fill does not produce a leachate in excess of the residential MSC for groundwater, in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter, when subject to the Synthetic Precipitation Leaching Procedure (SPLP) *(Method 1312 of SW-846, Test Methods for Evaluating Solid Waste,* promulgated by the EPA). The numeric standards are listed in Appendix A, Tables 5 and 6.~~

(AC) When calculating the residential direct contact numeric value, the calculation shall be based on groundwater in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter.

(BD) Formulae identified in § 250.305(b) shall apply as limits to the physical capacity of the soil to contain a substance.

(2) To determine whether historic fill meets the standards in paragraph (1), the historic fill shall be sampled and analyzed in accordance with § 287.11(b) and either (c) or (d).

~~**(3) At locations where historic fill is placed and the numeric value under paragraph (1)(i) for a regulated substance does not provide protection from direct contact exposure, direct contact pathways are promptly and permanently eliminated by the placement of uncontaminated soil and uncontaminated dredged material or through other engineering controls.**~~

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENT XV.

The provisions of Section 271.103(i)(13) and Section 287.102, paragraphs (j)(13), ("l")(13), (l)(13), and (m)(18) should revised as follows:

Records of analytical evaluations conducted on the ... shall be maintained by the person using ~~and distributing~~ the ... <u>for a period of 3 years</u> and shall be made available to the Department for inspection.

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENT XVI.

The provisions of Section 271.103(i)(12) and Section 287.102, paragraphs (j)(12), ("l")(12), (l)(12), and (m)(16) should read as follows:

A person who receives and uses ... shall submit a written notice to the Waste Management Program Manager for the Regional Office of the Department covering the area where the material is placed that includes the following:

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENT XIX.

Section 287.102(m) should be revised as follows:

(m) Contaminated soil placed at a receiving site undergoing remediation activities. Contaminated soil generated offsite and placed at a site undergoing remediation activities under Chapter 250 (relating to administration of land recycling program) and the Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P. S. 6026.101--6026.909) shall be deemed to have a residual waste permit when used to bring an area to grade, to limit infiltration of rainfall and to facilitate runoff if, in addition to subsection (a), the following conditions are met:

(1) [Intentionally left blank] ~~The notice of intent to remediate the soils at the receiving site undergoing remediation activities (required by section 303(h) of Act 2 (35 P. S. 6026.303(h)) identifies the Statewide health standards as the remediation standards that shall be attained. The addition of contaminated soil at the site undergoing remediation activities shall meet the Statewide health standards as follows:~~

~~(i) Prior to the placement at a residential site undergoing remediation activities, the contaminated soil brought to the residential site undergoing remediation activities shall meet the residential Statewide health standards in accordance with 250.306--250.308 and as listed in Chapter 250, Appendix A, Tables 3A, 3B, 4A and 4B.~~

~~(ii) Prior to the placement at a nonresidential site undergoing remediation activities, the contaminated soil brought to the nonresidential site undergoing remediation activities shall meet the nonresidential Statewide health standards in accordance with 250.306--250.308 and as listed in Chapter 250, Appendix A, Tables 3A, 3B, 4A and 4B.~~

~~(iii) When calculating the direct contact numeric value or the soil-to-groundwater pathway numeric value for the Statewide health standards, the calculation shall be based on groundwater in aquifers used or currently planned for use with naturally occurring background total dissolved solids concentrations less than or equal to 2,500 milligrams per liter.~~

~~(iv) Formulae identified in 250.305(b) shall apply as limits to the physical capacity of the soil to contain a substance.~~

(2) The quantity, quality and destination of the contaminated soil shall be identified in the final report (under section 303(h) of Act 2) submitted for the receiving site undergoing remediation activities.

(3) Placement of the contaminated soil may not cause the receiving site undergoing remediation activities to exceed the remedial ~~Statewide health~~ standard selected and identified in the notice of intent to remediate.

. . . .

(12) To determine whether contaminated soil placed at a site undergoing remediation activities meets the remedial standard selected ~~standards in paragraph (1),~~ the contaminated soil shall be sampled and analyzed in accordance with 287.11~~(b) and either (c) or (d).~~

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENTS XX and XXII.

The following definitions should be added to Section 287.1:

For the purposes of Section 287.102, "water source" means an existing potable water supply well or an existing potable surface water intake.

For the purposes of Section 287.102, "as a result of urbanization" means any and all impacts above naturally occurring background that are caused by ambient activities, including, but not limited to, airborne deposition from vehicular traffic and other offsite air emission sources.

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENT XXI.

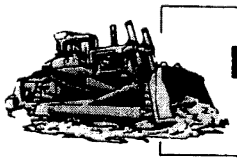
Section 271.103(i)(15) and Section 287.102, paragraphs (j)(15), ("l")(15), (l)(15), and (m)(19) should be revised as follows:

(15) . . . **If the material is subsequently excavated or otherwise managed, it shall be managed in accordance with then applicable law at that time.** ~~**as long as the material remains in place.**~~

SUGGESTED REVISED LANGUAGE ADDRESSING COMMENT XXIV.

Section 271.103(g) should be revised as follows:

(3) The facility shall process the incoming waste within 30 days <u>during the months May through October</u>.



R.E. PIERSON CONSTRUCTION CO.

ORIGINAL: 2245

April 1, 2002

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

To Whom It May Concern:

R.E. Pierson Construction Co Inc is in favor of the proposal by the Pennsylvania Department of Environmental Protection to amend Chapters 271 and 287, relating to Municipal waste and residual waste management provisions. Including uncontaminated dredge material in the "safe fill" definition will make this source of aggregate more accessible to site contractors such as ourselves.

When the need for soil arises with a contractor, time is of the essence. As the aggregate buyer for our company, I usually have 30 to 60 days to locate the material before it is needed on site. Some larger projects may have a little more time depending on the construction sequence. In order to use more dredge material, the approval process needs to be streamlined.

The other factor to consider is cost. The frequency of testing alone can rule dredge material out on many projects. I would propose a tiered testing approach. The first 10,000 cubic yards would be tested at the proposed frequency. If the results indicate the soil meets numeric standards, less frequent testing would be required. If a sample failed to meet numeric standards, increased sampling would be needed in the vicinity of the bad sample.

I would also suggest consistent test requirements from PADEP and NJDEP. The time and cost for separate testing would deter most contractors.

R.E. Pierson Construction Co Inc supports the inclusion of dredge material in the safe fill regulations and the easing of the regulatory process. I hope my comments are considered to help make this soil source more accessible.

Sincerely,

Curt Mitchell
Aggregates Manager

Richard E. Pierson
Construction Co., Inc.
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ORIGINAL: 2245

April 2, 2002

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market St.
Harrisburg, PA 17101-2301

Dear Sir or Madam:

This letter is written in opposition to your proposed regulations pertaining to the management of safe fill. It is truly difficult for me to believe that the DEP would consider the use of contaminated soil for purposes of "safe" fill without recognizing the enormous amount of contamination already threatening the health and safety of Pennsylvania citizens. Consider the following:

1. There are about one million private water supplies in Pennsylvania, mostly springs and wells fed by groundwater, and about 20,000 new wells are drilled in the state every year. According to your own data, between 60 and 70 percent of these private sources do not meet all drinking water safety standards. Common problems in private water supplies include bacterial, lead, radon, nitrate and iron contamination, and acidity and corrosivity. Millions of Pennsylvanians who rely on a private well are drinking water that contains some form of contamination. Public water users need to be concerned as well. Reports of health concerns are now surfacing with regard to certain chemicals that need to be added to public water supplies to make them safe and potable.

2. Pennsylvania is the largest importer of municipal waste (garbage). This in itself raises concerns about landfills and the leaching of harmful by-products into groundwater. DEP Secretary Hess is quoted as saying, "We face an ever-increasing flood of waste from outside our borders, almost doubling the millions of tons of garbage disposed in our state every year."

3. Pennsylvania has 83,261 miles of flowing water--second only to Alaska--but as many as one-third of those rivers, creeks and streams have been polluted by acid mine drainage, sewage, agricultural run-off or urban storm water runoff. About 2,400 to 3,000 miles of them are contaminated by acid mine drainage.

4. Again, according to a DEP update of 6/20/97, Pennsylvania ranked #1 in water pollution ("NPDES") permits. In the last several years, DEP issued 2,026 individual discharge permits, nearly 700 more than the second-ranked state.

5. Pennsylvania has one of the largest number of Superfund toxic waste dumps. It has approximately 112 sites on the Superfund National Priorities List (NPL).

6. According to the US PIRG report using data from 1992-1996 titled "Troubled Waters: A Report on Toxic Releases into America's Waterways," Pennsylvania was at that time the third most polluted state in terms of direct discharges and estimated sewer

discharges of toxic chemicals and one of the highest in terms of states with waters receiving the most persistent toxic metals and waters receiving the most carcinogens.

7. Since 1996, many counties in Pennsylvania have been under a drought watch, warning, or emergency. When water levels drop, the potential for water contamination increases. Moreover, Pennsylvania is the only state in the region without statewide allocation safeguards to protect all users. It appears we refuse to face the facts about increasingly scarce water supplies and engage instead in lots or rhetoric and little action.

8. Methyl tertiary butyl ether (MTBE), a gasoline additive used in southeast Pennsylvania has polluted and continues to pollute groundwater supplies, not only in Pennsylvania, but all across this nation. It has forced the closure of drinking water wells in many parts of the country and resulted in millions of dollars in water treatment, clean-up and replacement water costs and has diminished the public's confidence in the safety of water supplies. One needs only to read our local papers to understand the devastating effect it is having in parts of Pennsylvania.

9. My own township has a Superfund site. Millions of public tax dollars and years of work continue to be expended in remediation of contaminated groundwater. A plume of contamination has moved off the site and needs to be monitored continuously. It is incomprehensible and frightening to learn that soils containing the same contaminants as the soil at the site undergoing remediation can be brought in under your proposed changes. Do we spend taxpayer dollars for nothing?

I can go on but I think you understand that you are proposing "beneficial contamination" against a backdrop of extremely widespread, pervasive contamination that already exists. Contamination is not beneficial. To even use the term "beneficial contamination," in the same breath, implies just how far we have gone to make the abnormal seem perfectly normal.

Back in 1971, the voters of this state overwhelmingly approved an environmental amendment to the Pennsylvania Constitution. Article I, Section 27 provides that: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment." Do you honestly believe that your proposed regulations would be consistent with this amendment, given the already polluted and poisoned environment we have today? It is about time we take this amendment seriously. According to an article about this, written by John Dernbach, Widener University Law School, and again appearing in a March 17 DEP Update: "Whatever else clean air and pure water might mean, the terms surely create a presumption against the state allowing the air to become less clean and water less pure than they are at present."

Sincerely,

Elaine Hughes

Elaine Hughes, Resident
Horsham Township (Montgomery County, PA)