

Editor's Note: Text added at proposed rulemaking is bolded and underlined. Language deleted at proposed rulemaking is bolded and enclosed in bolded brackets. Language added at final rulemaking is capitalized, bolded, and underlined. Language added at proposed rulemaking, but deleted at final rulemaking, is bolded, enclosed in bolded brackets, and contains strikethroughs.

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:

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[*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) Brick[s], block and concrete.

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

(i) Uncontaminated soil, rock, stone, gravel, brick and block, concrete and used asphalt.

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

* * * * *

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.]~~

* * * * *

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

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§ 271.2. Scope.

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(c) Management 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.

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**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 clean fill of the following materials if they are separate from other waste:

(i) Uncontaminated soil, rock, stone, gravel, unused brick and block and concrete.

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

(4) (3) * * *

[(5) (4) * * *

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

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(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 contaminants 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 ~~[and]~~ 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 of 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 1 week of 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 [segregated] brick, block or concrete, OR MIXTURES OF THESE MATERIALS, WHEN THEY ARE SEPARATE FROM OTHER WASTE AND ARE RECOGNIZABLE, AND ARE GENERATED [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 LEVEL AN AREA OR bring an area to grade~~[r]~~ OR 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:

(1) The ~~[waste]~~ material, REGARDLESS OF WHETHER IT IS AFFECTED BY A SPILL OR RELEASE, EXCEEDS THE SAFE FILL NUMERIC STANDARDS BUT does not exceed the lower of the following:

(i) 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). The numeric standards to be met are listed in Appendix A, Tables 53 and 64.

(ii) 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 53 and 64.

(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 soil to contain a substance.

(ii) 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.

(3) To determine whether ~~waste~~ material meets the standards in paragraphs (1) and (2), the ~~waste~~ material shall be sampled and analyzed in accordance with § 287.11~~b and (e) or (d)~~ (c - f) (relating to DUE DILIGENCE AND safe fill numeric standards). IF THE NUMERIC STANDARD FOR A SUBSTANCE IS LOWER THAN THE PRACTICAL QUANTITATION LIMITATION (PQL), THE PQL, DETERMINED IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN SECTION 250.4 (RELATING TO LIMITS RELATED TO PQLS), SHALL BE USED TO DEMONSTRATE COMPLIANCE WITH THE NUMERIC STANDARD IN PARAGRAPHS (1) AND (2) FOR THAT SUBSTANCE.

(4) AT LOCATIONS WHERE A MATERIAL IS PLACED, DIRECT CONTACT PATHWAYS SHALL BE PROMPTLY AND PERMANENTLY ELIMINATED BY USING ENGINEERING CONTROLS.

~~{(4) Waste material may not be 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 following conditions are met:~~

~~(i) Waste material placed into or along surface waters as approved by the Department under Chapter 105 may not exceed 10% of the numeric standards calculated in paragraphs (1) and (2), and placement of the waste may not cause 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).~~

~~(ii) Waste material placed into or along waters as part of an active or abandoned mine or abandoned quarry reclamation may not cause an exceedance of the water quality standards in Chapters 16 and 93 and, based on an approved sampling and analysis plan, shall meet the following:~~

~~(A) The waste material received shall meet 10% of the numeric standards calculated in paragraphs (1) and (2).~~

~~(B) For metals only, in lieu of clause (A), the material may 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 [6] 5. The SPLP may only be used when groundwater monitoring is being conducted at the location where waste is placed.~~

(5) THE MATERIAL IS NOT PLACED INTO OR ON WATERS OF THIS COMMONWEALTH.

~~{(5)}~~**(6) The {waste} material may only be placed under this permit on properties that are zoned and exclusively used for commercial and industrial uses. For unzoned properties, {waste} material shall be [re]used in an area where the background is equal to or greater than the concentration of contamination in waste material being brought to the site and the property shall be used for commercial or industrial [purposes] USES only.**

~~{(6)}~~**(7) At locations where {waste} material is placed, an erosion and sedimentation control plan is implemented that is consistent with the applicable requirements of Chapter 102 (relating to erosion and sediment control).**

~~{(7)}~~**(8) At locations where {waste} material is placed, the materials may not be placed within 100 feet of surface waters of this Commonwealth {except as provided in paragraph (4)}.**

~~{(8)}~~**(9) At locations where {waste} material is placed, the materials may not be placed within 100 feet of the edge of a sinkhole.**

~~{(9)}~~**(10) At locations where {waste} material is placed, the materials may not be placed within 300 feet of a water source unless the owner has provided a written waiver consenting to the placement of the material closer than 300 feet.**

~~{(10)}~~**(11) {Waste m}Material that is hazardous waste under Chapter 261a (relating to identification and listing of hazardous waste) may not be used under this permit.**

~~{(11)}~~(12) ~~{Waste-m}~~Material when placed may not contain free liquids, based on visual inspection, and may not create an odor or other public nuisance.

~~{(12)}~~(13) A person who receives and uses ~~{waste}~~ THE material 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. THE LOCATION OF THE PLACEMENT SHALL INCLUDE LATITUDE AND LONGITUDE DESCRIPTIONS.

(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.

~~{(13)}~~(vi) COPIES OF ~~{R}~~Records of analytical evaluations conducted on the ~~{waste}~~ material. ~~{shall be maintained by the person using and distributing the waste material and shall be made available to the Department for inspection.}~~ The records shall include the following:

~~{(i)}~~(A) The dates of testing.

~~{(ii)}~~(B) Each parameter tested.

~~{(iii)}~~(C) The test results.

~~{(iv)}~~(D) The laboratory where testing was conducted.

~~{(v)}~~(E) The sampling procedures and analytical methodologies used.

~~{(iv)}~~(F) The name of the person who collected the sample.

(vii) A COPY OF A RECORDED DEED NOTICE THAT INCLUDES THE EXACT LOCATION OF THE MATERIAL PLACED ON THE PROPERTY AND A DESCRIPTION OF THE TYPES OF CONTAMINATION IDENTIFIED IN THE FILL THROUGH SAMPLING AND ANALYSIS. THE LOCATION AND DESCRIPTION SHALL BE MADE A PART OF THE DEED FOR ALL FUTURE CONVEYANCES OR TRANSFERS OF THE SUBJECT PROPERTY.

(14) This permit does not authorize and may not be construed as an approval to discharge waste, wastewater or runoff from the site where ~~{waste}~~ THE material originated, or the site where ~~{waste}~~ THE material is beneficially used, to the land or waters of this Commonwealth.

(15) WHEN USED TO BRING AN AREA TO GRADE, IN A MANNER UNRELATED TO MINE OR QUARY RECLAMATION, MATERIALS MAY NOT BE USED TO CREATE A LANDFILL OR A VALLEY FILL.

~~{(15)}~~ (16) ~~{Waste}~~ MATERIAL placed in accordance with this permit shall cease to be waste as long as the material remains in place.

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:

* * * * *

[*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--

~~{(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/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.}~~

* * * * *

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 from residential and commercial properties and that meets one of the following requirements:]~~

(i) MATERIALS THAT MEET (A) AND (B) OR (C) AS FOLLOWS:

(A) MATERIALS LIMITED TO THE FOLLOWING:

(I) UNCONTAMINATED SOIL, INCLUDING ROCK AND STONE.

(II) UNCONTAMINATED DRAINED DREDGED MATERIAL.

(III) UNCONTAMINATED USED ASPHALT.

(IV) UNCONTAMINATED BRICK, BLOCK OR CONCRETE OR MIXTURES OF THESE MATERIALS, WHEN THEY ARE SEPARATE FROM OTHER WASTE AND ARE RECOGNIZABLE, AND ARE GENERATED FROM CONSTRUCTION OR DEMOLITION ACTIVITIES.

(B) MATERIALS IN (A) ARE UNCONTAMINATED SAFE FILL IF THEY MEET THE FOLLOWING REQUIREMENTS:

(I) THE MATERIAL HAS NOT BEEN AFFECTED BY A SPILL OR RELEASE.

(II) THERE IS NO VISIBLE STAINING (VISIBLE STAINING DOES NOT INCLUDE STAINING RESULTING FROM NORMAL VEHICULAR USE AND DRIPPING OF VEHICLE LUBRICANT), ODOR OR OTHER SENSORY NUISANCE RESULTING FROM CHEMICAL CONTAMINANTS ASSOCIATED WITH THE MATERIAL.

(III) SAFE FILL EVALUATION OF THE MATERIAL IS IN ACCORDANCE WITH THE DUE DILIGENCE PROCEDURES OF §287.11(a) (RELATING TO DUE DILIGENCE AND SAFE FILL NUMERIC STANDARDS).

(IV) THE MATERIAL MEETS THE SAFE FILL NUMERIC STANDARDS IN ACCORDANCE WITH §287.11(b) AND LISTED IN APPENDIX A, TABLES 1 AND 2.

(V) THE MATERIAL MEETS THE SAMPLING AND ANALYSES REQUIREMENTS OF §287.11(c) - (f).

(C) MATERIAL DETERMINED TO BE SAFE FILL IN ACCORDANCE WITH §287.12 (RELATING TO DETERMINATION THAT A MATERIAL IS SAFE FILL).

~~{(A) The material meets the numeric standards referenced in § 287.11 (relating to safe fill numeric standards) and listed in Appendix A, Tables 1 and 2, 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 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 numeric standards referenced in § 287.11 and listed in Appendix A, Tables 1 and 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 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 were used in an authorized manner in conjunction with standard horticultural practices. 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 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 shall meet the criteria in subparagraph (i)(A)(I) and (II) and meet one of the following conditions, 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 if the conditions of subparagraph (i)(A)(I) and (H) are met.~~

~~{(vi)}(ii) 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:} IN §287.13 (RELATING TO RELATIONSHIP OF SAFE FILL TO SURFACE WATERS).~~

~~{(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)(iii) 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 under subparagraphs (ii), (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)(iv) EXCEPT FOR MATERIALS DETERMINED TO BE SAFE FILL IN ACCORDANCE WITH §287.12 (RELATING TO DETERMINATION THAT A MATERIAL IS SAFE FILL), Materials that meet the requirements under this term are not regulated as waste when used as fill.~~

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~~Sediment--Materials deposited for AND DIRECTLY overlain by waterS in rivers, lakes, ponds or tidal streams that consist of heterogeneous mixtures of sand, silt, clay, gravel and organic material deposited through erosion or by lake or river currents.~~

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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).

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§ 287.2. Scope.

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(c) 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:

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(6) **CONTAMINATED** dredged material.

(7) Historic fill.

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(e) The following activities shall be regulated under Chapter 77 (relating to noncoal mining), instead of this article:

* * * * *

(3) NONCOAL MINERALS FROM NONCOAL SURFACE MINING ACTIVITIES, AS DEFINED IN §77.1 (RELATING TO DEFINITIONS) AND IN ACCORDANCE WITH NONCOAL SURFACE MINING CONSERVATION AND RECLAMATION ACT (52 P.S. §§3301-3326).

* * * * *

(I) THE MANAGEMENT OF COMMERCIAL DREDGING OPERATIONS WHERE MAINLY SAND AND GRAVEL ARE DREDGED WILL NOT BE REGULATED UNDER THIS ARTICLE WHEN ALL OF THE FOLLOWING PERMITS OR APPROVALS ARE OBTAINED IF APPLICABLE:

(1) A WATER OBSTRUCTION AND ENCROACHMENT PERMIT UNDER THE DAM SAFETY AND ENCROACHMENTS ACT, SECTION 514 OF THE ADMINISTRATIVE CODE OF 1929 (71 P.S. SECTION 194) AND 25 PA CODE CHAPTER 105.

(2) A STATE WATER QUALITY CERTIFICATION UNDER SECTION 401 OF THE FEDERAL CLEAN WATER ACT OF 1972 (33 U.S.C.A. SECTION 1341).

(3) A FEDERAL CONSISTENCY DETERMINATION BY THE STATE'S COASTAL ZONE MANAGEMENT PROGRAM UNDER THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972, (16 U.S.C.A. SECTION 1456).

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§ 287.11. DUE DILIGENCE AND ~~{S}~~Safe fill numeric standards.

(a) DUE DILIGENCE.

(1) A PERSON SHALL USE AN APPROPRIATE LEVEL OF DUE DILIGENCE TO VERIFY THAT THE MATERIAL IS SAFE FILL. TWO OPTIONS MAY BE USED FOR VERIFICATION UNDER THE DUE DILIGENCE REQUIREMENTS, AS FOLLOWS:

(i) BASED ON DUE DILIGENCE, THERE IS NO KNOWLEDGE OR RECORD OF PAST ACTIVITY AT THE SITE THAT WOULD INDICATE THE MATERIAL HAS BEEN SUBJECT TO A SPILL OR RELEASE, AND SAMPLING AND ANALYSIS INDICATE THAT THE MATERIAL MEETS THE NUMERIC STANDARDS REFERENCED IN SUBSECTION (b) AND LISTED IN APPENDIX A, TABLES 1 AND 2.

(ii) BASED ON DUE DILIGENCE, THERE IS KNOWLEDGE OF THE SITE OR RECORD OF PAST ACTIVITY THAT WOULD INDICATE THAT THE MATERIAL HAS NOT BEEN SUBJECT TO A SPILL OR RELEASE AND THE MATERIAL MEETS THE SAFE FILL NUMERIC STANDARDS REFERENCED IN SUBSECTION (b) AND LISTED IN APPENDIX A, TABLES 1 AND 2 WITHOUT SAMPLING AND ANALYSIS.

(2) AS PART OF DUE DILIGENCE, SCREENING MAY BE CONDUCTED USING FIELD OR LABORATORY TESTING PROCEDURES. FIELD OR LABORATORY TESTING PROCEDURES MAY BE USED TO IDENTIFY AREAS IN THE PILE OR LOCATION OF THE MATERIAL THAT MAY HAVE BEEN SUBJECT TO A SPILL OR RELEASE, OR TO CONFIRM DUE DILIGENCE FINDINGS.

(b) SAFE FILL NUMERIC STANDARDS. When conducting sampling and analysis, safe fill numeric standards listed in Appendix A, Tables 1~~{,}~~ AND 2 ~~{and 3}~~ shall be calculated as follows:

(1) For safe fill containing substances other than copper and zinc, the lower of the following:

(i) The residential 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).

(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) IF THE NUMERIC STANDARD FOR A SUBSTANCE IS LOWER THAN THE PRACTICAL QUANTITATION LIMITATION (PQL), THE PQL, DETERMINED IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN SECTION 250.4 (RELATING TO LIMITS RELATED TO PQLS), SHALL BE USED TO DEMONSTRATE COMPLIANCE WITH THE NUMERIC STANDARD IN PARAGRAPHS (1) AND (2) FOR THAT SUBSTANCE.

(2) In addition to paragraph (1), for safe fill containing 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).

(3) 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.

(4) ~~Dredged material shall be drained prior to placement on land as safe fill.~~ In addition TO MEETING PARAGRAPHS (1) AND (2), dredged material shall meet the requirements of subparagraphs (i) and (iii) or the requirements of subparagraphs (ii) and (iii).

(i) A Toxicity Characteristic Leaching Procedure (TCLP) that demonstrates that the dredged material meets the requirements in § 288.623(a) (relating to minimum requirements for acceptable waste).

(ii) The dredged material may 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 by SPLP are listed in Appendix A, Tables 1 and 2.

(iii) Dredged material and sediments from tidal streams shall meet the numeric criteria for chlorides as listed in Appendix A, Table 1.

~~(b)~~(c) To determine whether material meets the safe fill numeric standards OR NUMERIC STANDARDS IN §271.103(i) OR IN §287.102(j) OR (k) (RELATING TO PERMIT-BY-RULE FOR MUNICIPAL WASTE PROCESSING FACILITIES OTHER THAN FOR INFECTIOUS OR CHEMOTHERAPEUTIC WASTE; QUALIFYING FACILITIES; GENERAL REQUIREMENTS. AND PERMIT-BY-RULE), one of the sampling and analysis procedures identified in paragraph (1) or (2) shall apply:

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

(i) FOR ANALYSIS OF SUBSTANCES, SAMPLING SHALL BE RANDOM AND REPRESENTATIVE OF THE MATERIAL BEING SAMPLED.

(ii) 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*).

~~(i)~~(iii) 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 samples shall be selected from the 8 samples for analysis of VOCs. The samples shall be based on field screening of the eight samples to select those samples that are most likely to contain the highest concentrations of VOCs.

(C) Two grab samples shall be taken from the same areas in the material from which the two samples used for field screening of VOCs were taken, 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)~~(iv) 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 samples shall be selected from the 12 samples for analysis of VOCs. The samples shall be based on field screening of the 12 samples to select those samples that are most likely to contain the highest concentrations of VOCs.

(C) Three grab samples shall be taken from the same areas in the material from which the three samples used for field screening of VOCs were taken, in accordance with EPA, Method 5035, referenced in subparagraph (i)(C).

{(iii)}(v) 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 three composites of four samples each.

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

(C) Three grab samples shall be taken from the same areas in material from which the three samples used for field screening of VOCs were taken, in accordance with EPA Method 5035, referenced in subparagraph (i)(C).

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

(i) For analysis of substances, sampling shall be random and representative of the safe fill being sampled.

(ii) 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*).

(iii) 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.

(iv) For VOCs analysis, grab sampling procedures shall be the procedures described in paragraph (1), for the equivalent volumes of material sampled.

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

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

(2) For a grab sample, taken in accordance with subsection ~~(b)(1)(i)(C), (b)(1)(ii)(C) and (b)~~(c)(1)(iii)(C), (iv)(C) AND (v)(C), the measured numeric value for a substance is less than or equal to the safe fill numeric standard in ~~§ 287.11~~ THIS SECTION for that substance and as listed in Appendix A, Tables 1, AND 2 ~~and 3~~.

~~(d)~~(e) For discrete samples required in subsection ~~(b)~~(c)(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 twice the safe fill numeric standard for a substance.

(f) IN LIEU OF SUBSECTIONS (c), (d), and (e), A PERSON MAY USE 95% UPPER CONFIDENCE LIMIT (UCL) OF THE ARITHMETIC MEAN TO DETERMINE WHETHER A MATERIAL MEETS SAFE FILL NUMERIC STANDARDS. THE CALCULATED 95%UCL OF THE ARITHMETIC MEAN MUST BE BELOW THE SAFE FILL NUMERIC STANDARDS. SAMPLING SHALL BE RANDOM AND REPRESENTATIVE OF THE MATERIAL BEING SAMPLED. THE MINIMUM NUMBER OF SAMPLES SHALL BE DETERMINED IN ACCORDANCE WITH EPA APPROVED METHODS ON STATISTICAL ANALYSIS OF ENVIRONMENTAL DATA, AS IDENTIFIED IN 25 PA. CODE, §250.707(e)(RELATING TO STATISTICAL TESTS). THE APPLICATION OF THE 95%UCL OF THE ARITHMETIC MEAN SHALL COMPLY WITH THE FOLLOWING PERFORMANCE STANDARDS:

(1) THE NULL HYPOTHESES (H₀) SHALL BE THAT THE TRUE MATERIAL ARITHMETIC AVERAGE CONCENTRATION IS AT OR ABOVE THE SAFE FILL NUMERIC STANDARD, AND THE ALTERNATIVE HYPOTHESIS (H_a) SHALL BE THAT THE TRUE MATERIAL ARITHMETIC AVERAGE CONCENTRATION IS BELOW THE SAFE FILL NUMERIC STANDARD.

(2) THE UNDERLYING ASSUMPTIONS OF THE STATISTICAL METHOD SHALL BE MET, SUCH AS DATA DISTRIBUTION.

(3) COMPOSITING CANNOT BE USED FOR VOLATILE ORGANIC COMPOUNDS.

(4) THE CENSORING LEVEL FOR EACH NONDETECT SHALL BE THE ASSIGNED VALUE RANDOMLY GENERATED THAT IS BETWEEN ZERO AND THE LIMIT RELATED TO THE PQL.

(5) TESTS SHALL ACCOUNT FOR SPATIAL VARIABILITY, UNLESS OTHERWISE APPROVED BY THE DEPARTMENT.

(6) STATISTICAL TESTING SHALL BE DONE INDIVIDUALLY FOR EACH SUBSTANCE PRESENT IN THE MATERIAL.

(7) WHERE MATERIALS HAVE DISTINCT PHYSICAL, CHEMICAL OR BIOLOGICAL CHARACTERISTICS, OR ORIGINATED FROM DIFFERENT AREAS, THE STATISTICAL TESTING SHALL BE DONE SEPARATELY.

(8) THE FOLLOWING INFORMATION SHALL BE DOCUMENTED:

(i) A DESCRIPTION OF THE ORIGINAL AREAS OF THE MATERIAL, AND PHYSICAL, CHEMICAL AND BIOLOGICAL CHARACTERISTICS OF THE MATERIAL.

(ii) A DESCRIPTION OF THE UNDERLYING ASSUMPTIONS OF THE STATISTICAL METHOD.

(iii) DOCUMENTATION SHOWING THAT THE SAMPLE DATA SET MEETS THE UNDERLYING ASSUMPTIONS OF THE STATISTICAL METHOD.

(iv) DOCUMENTATION OF INPUT AND OUTPUT DATA FOR THE STATISTICAL TEST, PRESENTED IN TABLES OR FIGURES, OR BOTH, AS APPROPRIATE.

(v) AN INTERPRETATION AND CONCLUSION OF THE STATISTICAL TEST.

~~(e)~~(g) To determine whether sediments meet the safe fill numeric standards, sampling and analyses shall be conducted in accordance with ~~[guidance developed by]~~ the~~[Department]~~ U. S. E. P. A. GUIDANCE DOCUMENT, "METHODS FOR COLLECTION, STORAGE AND MANIPULATION OF SEDIMENTS FOR CHEMICAL AND TOXICOLOGICAL ANALYSES: TECHNICAL MANUAL" EPA DOCUMENT NO: 823-B-01-002, OCTOBER 2001, PUBLISHED BY THE E. P. A.'S OFFICE OF WATER (4305).

(h) ANY TESTING AND ANALYSIS OF ENVIRONMENTAL SAMPLES SHALL BE CONDUCTED BY AN ENVIRONMENTAL LABORATORY THAT IS IN COMPLIANCE WITH 27 PA. C. S. §§ 4101 ET SEQ. AND CHAPTER 252.

§287.12. DETERMINATION THAT A MATERIAL IS SAFE FILL.

(a) IN ADDITION TO THE REQUIREMENTS IN THE DEFINITION OF “SAFE FILL” IN §287.1 (RELATING TO DEFINITIONS), A PERSON MAY DETERMINE THAT THE MATERIAL IS SAFE FILL IF IT MEETS THE REQUIREMENTS OF SUBSECTION (b) AND ONE OF THE FOLLOWING CRITERIA:

(1) THE MATERIAL IS SOIL OR DRAINED DREDGED MATERIAL AND IS UNAFFECTED BY A SPILL OR RELEASE, HAS NO VISIBLE STAINING (VISIBLE STAINING DOES NOT INCLUDE STAINING RESULTING FROM NORMAL VEHICULAR USE AND DRIPPING OF VEHICLE LUBRICANT), ODOR OR OTHER SENSORY NUISANCE RESULTING FROM CHEMICAL CONTAMINANTS ASSOCIATED WITH THE MATERIAL AND MEETS ONE OF THE FOLLOWING:

(i) THE MATERIAL IS MOVED WITHIN A RIGHT-OF-WAY.

(ii) THE MATERIAL IS MOVED OFFSITE FROM A RESIDENTIAL PROPERTY CURRENTLY DEVELOPED AS A RESIDENTIAL PROPERTY OR ZONED RESIDENTIAL AND NEVER USED FOR NONRESIDENTIAL PURPOSES.

(iii) DRAINED DREDGED MATERIAL CONSISTING MAINLY OF SAND AND GRAVEL-SIZED PARTICLES IS PLACED DIRECTLY ON LAND ADJACENT TO THE DREDGING OPERATION FOR BEACH NOURISHMENT AND THE ACTIVITY IS CONDUCTED UNDER AN APPROVAL ISSUED UNDER THE FEDERAL CONSISTENCY DETERMINATION UNDER THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972, (16 USC §1456), AS AMENDED, BY THE DEPARTMENT’S COASTAL ZONE MANAGEMENT PROGRAM.

(iv) DRAINED DREDGED MATERIAL IS USED AS A SOIL ADDITIVE OR A SOIL SUBSTITUTE AT LOCATIONS USED FOR COMMERCIAL OR INDUSTRIAL PURPOSES.

(v) DRAINED DREDGED MATERIAL IS BLENDED WITH SOIL OR OTHER DRAINED DREDGED MATERIAL FOR USE AS FILL AT RESIDENTIAL LOCATIONS IF THE SAFE FILL NUMERIC STANDARDS IN APPENDIX A, TABLES 1 AND 2 ARE MET.

(vi) THE MATERIAL IS MOVED WITHIN A PROPERTY.

(2) THE MATERIAL IS SOIL, DRAINED DREDGED MATERIAL, HISTORIC FILL, USED ASPHALT, OR BRICK, BLOCK OR CONCRETE, OR MIXTURE OF BRICK, BLOCK OR CONCRETE, THAT IS SEPARATE FROM OTHER WASTE AND IS RECOGNIZABLE AS SUCH, AND IS GENERATED FROM CONSTRUCTION OR DEMOLITION ACTIVITIES, AND IS AFFECTED BY A SPILL OR RELEASE OR HAS VISIBLE STAINING (OTHER THAN STAINING RESULTING FROM NORMAL

VEHICULAR USE AND DRIPPING OF VEHICLE LUBRICANT) BUT HAS NO ODOR OR OTHER SENSORY NUISANCE, AND MEETS ONE OF THE FOLLOWING:

(i) THE MATERIAL IS MOVED WITHIN A PROPERTY.

(ii) THE MATERIAL IS HISTORIC FILL AND IS MOVED OFFSITE IN QUANTITIES OF LESS THAN OR EQUAL TO 500 CUBIC YARDS PER EXCAVATION LOCATION FOR USE AS FILL OR AS CONSTRUCTION MATERIAL.

(iii) THE MATERIAL IS MOVED WITHIN A RIGHT-OF-WAY.

(b) A MATERIAL MAY QUALIFY AS SAFE FILL IF IT MEETS SUBSECTIONS (a) (1) OR (2) AND THE FOLLOWING:

(1) THE MATERIAL DOES NOT EXCEED THE LOWER OF THE FOLLOWING:

(i) 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.).

(ii) THE NONRESIDENTIAL GENERIC VALUE FROM THE SOIL-TO-GROUNDWATER PATHWAY NUMERIC VALUES CALCULATED IN ACCORDANCE WITH THE METHODOLOGIES IN §250.308(a)(2)(i), (3), (4)(i) AND (5) (RELATING TO SOIL TO GROUNDWATER PATHWAY NUMERIC VALUES).

(2) 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. THE NUMERIC VALUES ARE LISTED IN APPENDIX A, TABLES 1 AND 2.

(3) 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.

(c) A DETERMINATION MADE PURSUANT TO THIS SECTION MUST MEET THE FOLLOWING REQUIREMENTS:

(1) IF THE DETERMINATION IS MADE PURSUANT TO SUBSECTION (a)(1), AN APPROPRIATE LEVEL OF DUE DILIGENCE UNDER §287.11(a) MUST BE USED TO DEMONSTRATE THAT THE MATERIAL DOES NOT EXCEED THE REQUIREMENTS IN SUBSECTION (b).

(2) IF THE DETERMINATION IS MADE PURSUANT TO SUBSECTION (a)(2), SAMPLING AND ANALYSIS MUST BE PERFORMED THAT DEMONSTRATES THAT THE MATERIAL DOES NOT EXCEED THE REQUIREMENTS IN SUBSECTION (b).

(3) SAMPLING AND ANALYSIS PROCEDURES PERFORMED TO DEMONSTRATE MATERIAL MEETS THE REQUIREMENTS IN SUBSECTION (b) SHALL BE CONDUCTED IN ACCORDANCE WITH §287.11 (c) – (f) (RELATING TO DUE DILIGENCE AND SAFE FILL NUMERIC STANDARDS). IF THE NUMERIC STANDARD FOR A SUBSTANCE IS LOWER THAN THE PRACTICAL QUANTITATION LIMITATION (PQL), THE PQL, DETERMINED IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN SECTION 250.4 (RELATING TO LIMITS RELATED TO PQLS), SHALL BE USED TO DEMONSTRATE COMPLIANCE WITH THE NUMERIC STANDARD IN PARAGRAPHS (1) AND (2) FOR THAT SUBSTANCE.

(4) FOR DREDGED MATERIAL, SAMPLING AND ANALYSIS PROCEDURES PERFORMED TO DEMONSTRATE MATERIAL MEETS THE REQUIREMENTS IN SUBSECTION (b) SHALL BE CONDUCTED IN ACCORDANCE WITH §287.11 (b)(4) AND (c) – (f) (RELATING TO DUE DILIGENCE AND SAFE FILL NUMERIC STANDARDS).

(5) A PERSON WHO COMPLETES A SAFE FILL DETERMINATION SHALL BE THE USER OF THE FILL AND SHALL PROVIDE THE DEPARTMENT WITH NOTICE OF A DETERMINATION ON A FORM PROVIDED BY THE DEPARTMENT.

(6) A PERSON WHO COMPLETES A SAFE FILL DETERMINATION SHALL MAINTAIN DOCUMENTATION SUPPORTING THE DETERMINATION.

(7) EXCEPT AS PROVIDED IN PARAGRAPH (8), A PERSON WHO COMPLETES A SAFE FILL DETERMINATION SHALL PROVIDE THE DEPARTMENT WITH PROOF OF A RECORDED DEED NOTICE THAT INCLUDES THE EXACT LOCATION OF THE FILL PLACED ON THE PROPERTY, INCLUDING LONGITUDE AND LATITUDE DESCRIPTIONS, AND A DESCRIPTION OF THE TYPES OF FILL IDENTIFIED BY SAMPLING AND ANALYSIS. THE LOCATION AND DESCRIPTION SHALL BE MADE A PART OF THE DEED FOR ALL FUTURE CONVEYANCES OR TRANSFERS OF THE SUBJECT PROPERTY.

(8) A PERSON SHALL NOT BE SUBJECT TO THE DEED NOTICE REQUIREMENTS UNDER EITHER OF THE FOLLOWING CONDITIONS:

(i) SAMPLING AND ANALYSIS SHOW THAT THE MATERIAL IS ABOVE THE SAFE FILL NUMERIC STANDARDS AND BELOW THE REQUIREMENTS IN

SUBSECTION (b), BUT THE MATERIAL IS UNAFFECTED BY A SPILL OR RELEASE, HAS NO VISIBLE STAINING, ODOR OR OTHER SENSORY NUISANCE RESULTING FROM CHEMICAL CONTAMINANTS ASSOCIATED WITH THE MATERIAL.

(ii) SAMPLING AND ANALYSIS SHOW THAT THE FILL IS ABOVE THE SAFE FILL NUMERIC STANDARDS AND BELOW THE REQUIREMENTS OF SUBSECTION (b), BUT THE MATERIAL IS AFFECTED BY A SPILL OR RELEASE, AND IT IS DEMONSTRATED THAT THE MATERIAL IS EQUAL TO OR BELOW THE BACKGROUND LEVEL AT THE PROPERTY.

(d) MATERIALS THAT MEET THE REQUIREMENTS UNDER THIS SECTION ARE NOT REGULATED AS WASTE WHEN USED AS FILL.

(e) STORAGE OF MATERIAL PRIOR TO ITS USE AS SAFE FILL SHALL BE IN ACCORDANCE WITH CHAPTER 299 (RELATING TO STORAGE AND TRANSPORTATION OF RESIDUAL WASTE).

(f) MATERIALS THAT MEET THE REQUIREMENTS OF THIS SECTION SHALL NOT BE PLACED INTO OR ON WATERS OF THE COMMONWEALTH.

(g) WHERE MATERIAL THAT MEETS (a)(1) OR (2) IS MOVED OFFSITE AND EXCEEDS SAFE FILL STANDARDS, THE MATERIAL MAY ONLY BE USED ON PROPERTIES THAT ARE ZONED AND USED EXCLUSIVELY FOR COMMERCIAL AND INDUSTRIAL USES. FOR UNZONED PROPERTIES, THE MATERIAL MAY ONLY BE USED IN AN AREA WHERE THE BACKGROUND IS EQUAL TO OR GREATER THAN THE CONCENTRATION OF THE CHEMICAL CONSTITUENTS IN THE MATERIAL BEING BROUGHT TO THE SITE AND THE PROPERTY SHALL BE EXCLUSIVELY USED FOR COMMERCIAL OR INDUSTRIAL USES ONLY.

(h) THE PERSON USING THE MATERIAL AS SAFE FILL HAS THE BURDEN OF PROOF TO DEMONSTRATE THAT THE MATERIAL IS SAFE FILL.

§ 287.13. RELATIONSHIP OF SAFE FILL TO SURFACE WATERS.

(a) MATERIAL THAT MEETS THE DEFINITION OF SAFE FILL IN §287.1 (RELATING TO DEFINITIONS) AND THE SAFE FILL NUMERIC STANDARDS IN §287.11(b) (RELATING TO DUE DILIGENCE AND SAFE FILL NUMERIC STANDARDS) MAY BE PLACED INTO OR ALONG SURFACE WATERS OF THIS COMMONWEALTH IF 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 ONE OF THE FOLLOWING CONDITIONS:

(1) MATERIAL PLACED INTO OR ALONG SURFACE WATERS AS APPROVED BY THE DEPARTMENT UNDER CHAPTER 105 MAY NOT PRODUCE A LEACHATE IN EXCESS OF THE RESIDENTIAL MEDIUM-SPECIFIC CONCENTRATION (MSC) FOR GROUNDWATER IN AQUIFERS USED OR CURRENTLY PLANNED FOR USE WITH NATURALLY OCCURRING BACKGROUND TOTAL DISSOLVED SOLIDS CONCENTRATION 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 RESIDENTIAL GROUNDWATER MSC TO BE MET BY SPLP ANALYSIS FOR SUBSTANCES IS LISTED IN APPENDIX A, TABLES 1 AND 2. IN ADDITION, THE PLACEMENT OF THE MATERIAL SHALL BE IN COMPLIANCE WITH THE WATER QUALITY STANDARDS IN CHAPTERS 16 AND 93 (RELATING TO WATER QUALITY TOXICS MANAGEMENT STRATEGY--STATEMENT OF POLICY; AND WATER QUALITY STANDARDS).

(2) MATERIAL PLACED INTO WATERS AS PART OF AN ACTIVE OR ABANDONED MINE OR ABANDONED QUARRY RECLAMATION COMPLIES WITH 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(b)(1).

(ii) FOR METALS ONLY, IN LIEU OF SUBPARAGRAPH(i), THE MATERIAL 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 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 MATERIAL IS PLACED.

(b) MATERIAL THAT IS DETERMINED TO BE SAFE FILL UNDER §287.12 (RELATING TO DETERMINATION THAT A MATERIAL IS SAFE FILL) MAY NOT BE PLACED INTO OR ALONG WATERS OF THIS COMMONWEALTH.

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 clean fill of the materials in subparagraphs (i) and (ii) if they are separate from other waste. The person using the material as clean fill has the burden of proof to demonstrate that the material is clean fill.

(i) The following materials, if they are uncontaminated: soil, rock, stone, gravel, brick and block, concrete and used asphalt.

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

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§ 287.102. Permit-by-rule.

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~~[(j) Contaminated soil resulting from agricultural practices. The placement of soil from known areas of contamination shall be deemed to have a residual waste permit when 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, and if in addition to subsection (a), the following conditions are met:~~

~~—(1) The soil from known areas of contamination is analyzed for lead and arsenic. If the soil comes from a location where an orchard once existed, the soil may be analyzed for pesticides including aldrin, dieldrin, DDD, DDE and DDT. Contamination in soil may not exceed the nonresidential soil-to-groundwater pathway numeric values based on the following:~~

~~—(i) 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 Appendix A, Table 4.~~

~~—(ii) 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.~~

~~—(iii) 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.~~

~~—(2) To determine whether soil meets the standards in paragraph (1), the soil shall be sampled and analyzed in accordance with § 287.11(b) and either (c) or (d) (relating to safe fill numeric standards).~~

~~—(3) At locations where soil from known areas of contamination is placed, direct contact pathways are promptly and permanently eliminated by the placement of uncontaminated soil or through other engineering controls.~~

~~—(4) At locations where soil from known areas of contamination is placed, an erosion and sedimentation control plan is implemented that is consistent with the applicable requirements of Chapter 102 (relating to erosion and sediment control).~~

~~—(5) Soil is not placed into or on waters of this Commonwealth.~~

~~—(6) At locations where soil from known areas of contamination is placed, soil may not be placed within 100 feet of surface waters of this Commonwealth.~~

~~—(7) At locations where soil from known areas of contamination is placed, soil may not be placed within 100 feet of the edge of a sinkhole.~~

~~—(8) At locations where soil from known areas of contamination is placed, soil may not be placed within 300 feet of a water source unless the owner has provided a written waiver consenting to the placement of the soil closer than 300 feet.~~

~~—(9) At locations where soil from known areas of contamination is placed, soil shall only be used under this permit on properties that are zoned and exclusively used for commercial and industrial uses. For unzoned properties, soil from known areas of contamination shall be used in an area where the background is equal to or greater than the concentration of contamination in soil being brought to the site and the property shall be used for commercial or industrial purposes only.~~

~~—(10) Soil from known areas of contamination that is hazardous waste under Chapter 261a (relating to identification and listing of hazardous waste) may not be used under this permit.~~

~~—(11) Soil from known areas of contamination when placed may not contain free liquids, based on visual inspection, and may not create odor or other public nuisance resulting from chemical contaminants in the soil.~~

~~—(12) A person who receives and uses soil from known areas of contamination 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 from known areas of contamination.~~

~~—(ii) The quantity of soil used from known areas of contamination at the receiving location.~~

~~—(iii) The locations of the known areas of contamination where soil was removed for use and where the soil is placed for use.~~

~~—(iv) An identification of whether the known areas of contamination is the subject of a corrective action or remediation activity.~~

~~—(v) A description of engineering practices and construction activities used to eliminate direct contact pathways and to assure that site excavation and placement of soil does not cause onsite or offsite contamination.~~

~~—(vi) If soil is used for control of fire and subsidence events or in reclamation at abandoned mines, include a reference to the Department's separate authorization of the use in those projects.~~

~~—(13) Records of analytical evaluations conducted on the soil from known areas of contamination shall be maintained by the person using and distributing the soil 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.~~

~~—(14) This permit does not authorize and may not be construed as an approval to discharge waste, wastewater or runoff from the site where contaminated soil originated, or the site where contaminated soil is beneficially used, to the land or waters of this Commonwealth.~~

~~—(15) Soil from known areas of contamination placed in accordance with this permit shall cease to be waste as long as the soil remains in place.~~

~~—(16) For purposes of this subsection, the term "known areas of contamination" means known areas of soil impacted by authorized agricultural practices resulting in lead, arsenic and pesticide contamination.~~

~~—(1) Contaminated soil, dredged material or used asphalt impacted by a release or contaminated soil, dredged material or used asphalt that exceeds safe fill numeric standards as a result of urbanization. The placement of contaminated soil, dredged material or used asphalt impacted by a release or contaminated soil, dredged material or used asphalt that exceeds safe fill numeric standards as a result of urbanization shall be deemed to have a residual waste permit when 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 and, if in addition to subsection (a), the following conditions are met:~~

~~—(1) The contaminated soil, dredged material or used asphalt impacted by a release or contaminated soil, dredged material or used asphalt that exceeds safe fill numeric standards may not exceed 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 inhalation numeric values). The numeric standards are listed in Appendix A, Tables 5 and 6.~~

~~—(i) 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.~~

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

~~—(2) Contamination in soil, dredged material or used asphalt may not exceed groundwater protection standards based on either of the following:~~

~~—(i) A Toxicity Characteristic Leaching Procedure (TCLP) that demonstrates that the contaminated soil, dredged material or used asphalt meets the requirements in § 288.623(a) (relating to minimum requirements for acceptable waste).~~

~~—(ii) Contaminated soil, dredged material or used asphalt do 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.~~

~~—(3) To determine whether contaminated soil, dredged material or used asphalt meets the standards in paragraph (1), the soil, dredged material or used asphalt shall be sampled and analyzed in accordance with § 287.11(b) and either (c) or (d).~~

~~—(4) At locations where contaminated soil, dredged material or used asphalt is placed, an erosion and sedimentation control plan is implemented that is consistent with the applicable requirements of Chapter 102.~~

~~—(5) Contaminated soil, dredged material or used asphalt is not placed into or on waters of this Commonwealth.~~

~~—(6) At locations where contaminated soil, dredged material or used asphalt is placed, soil, dredged material or used asphalt may not be placed within 100 feet of surface waters of this Commonwealth.~~

~~—(7) At locations where contaminated soil, dredged material or used asphalt is placed, the soil, dredged material or used asphalt may not be placed within 100 feet of the edge of a sinkhole.~~

~~—(8) At locations where contaminated soil, dredged material or used asphalt is placed, the soil, dredged material or used asphalt may not be placed within 300 feet of a water source unless the owner has provided a written waiver consenting to the placement of the contaminated soil, dredged material or used asphalt closer than 300 feet.~~

~~—(9) At locations where contaminated soil, dredged material or used asphalt is placed, the soil, dredged material or used asphalt shall only be used under this permit on properties that are zoned and exclusively used for commercial and industrial uses. For unzoned properties, contaminated soil, dredged material or used asphalt shall be reused in an area where the background is equal to or greater than the concentration of contamination in the soil, dredged material or used asphalt being brought to the site, and the property shall be used for commercial or industrial purposes only.~~

~~—(10) Contaminated soil, dredged material or used asphalt that is hazardous waste under Chapter 261a may not be used under this permit.~~

~~—(11) Contaminated soil, dredged material or used asphalt when placed may not contain free liquids, based on visual inspection, and may not create odor or other public nuisance resulting from chemical contaminants in the soil, dredged material or used asphalt.~~

~~—(12) A person who receives and uses contaminated soil, dredged material or used asphalt 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 contaminated soil, dredged material or used asphalt.~~

~~—(ii) The quantity of contaminated soil, dredged material or used asphalt used at the receiving location.~~

~~—(iii) The locations of contaminated soil, dredged material or used asphalt where the contaminated soil, dredged material or used asphalt were removed for use and where the contaminated soil, dredged material or used asphalt are placed for use.~~

~~—(iv) An identification of whether the area of contamination where the contaminated soil, dredged material or used asphalt 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 contaminated soil, dredged material or used asphalt does not cause onsite or offsite contamination.~~

~~—(vi) If contaminated soil, dredged material or used asphalt is used for control of fire and subsidence events or in reclamation at abandoned mines, include a reference to the Department's separate authorization of the use in those projects.~~

~~(13) Records of analytical evaluations conducted on the contaminated soil, dredged material or used asphalt shall be maintained by the person using and distributing the soil, dredged material or used asphalt 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.~~

~~—(14) This permit does not authorize and may not be construed as an approval to discharge waste, wastewater or runoff from the site where contaminated soil, dredged material or used asphalt originated or the site where contaminated soil, dredged material or used asphalt is beneficially used, to the land or waters of this Commonwealth.~~

~~—(15) Contaminated soil, dredged material or used asphalt placed in accordance with this permit shall cease to be waste as long as the contaminated soil, dredged material or used asphalt remains in place.~~

~~—(16) Contaminated soil may not be used at a site undergoing a remediation or corrective action that will cause the receiving site to exceed the remediation standard selected.~~

~~—(17) Placement of contaminated soil at a site undergoing a remediation or corrective action shall meet the requirements of subsection (m).~~

~~—(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. 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 (C) and (D) are met when calculating the numeric value.~~

~~—(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.~~

~~—(C) 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.~~

~~—(D) 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.~~

~~—(4) At locations where historic fill is placed, an erosion and sedimentation control plan is implemented that is consistent with the applicable requirements of Chapter 102.~~

~~—(5) Historic fill is not placed into or on waters of this Commonwealth.~~

~~—(6) At locations where historic fill is placed, material may not be placed within 100 feet of surface waters of this Commonwealth.~~

~~—(7) At locations where historic fill is placed, material may not be placed within 100 feet of the edge of a sinkhole.~~

~~—(8) At locations where historic fill is placed, material may not be placed within 300 feet of a water source unless the owner has provided a written waiver consenting to the placement of the material closer than 300 feet.~~

~~—(9) At locations where historic fill is placed, material shall only be used under this permit on properties that are zoned and exclusively used for commercial and industrial uses. For unzoned properties, historic fill shall be reused in an area where the background is equal to or greater than the concentration of contamination in historic fill being brought to the site and the property shall be used for commercial or industrial purposes only.~~

~~—(10) Historic fill that is hazardous waste under Chapter 261a may not be used under this permit.~~

~~—(11) Historic fill when placed may not contain free liquids, based on visual inspection, and may not create odor or other public nuisance associated with the historic fill.~~

~~—(12) A person that receives and uses historic fill 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 historic fill.~~

~~—(ii) The quantity of historic fill used at the receiving location.~~

~~—(iii) The locations of historic fill where material was removed for use and where the historic fill is placed for use.~~

~~—(iv) An identification of whether the location where the historic fill originated is the subject of a corrective action or remediation activity.~~

~~—(v) A description of engineering practices and construction activities used to eliminate direct contact pathways and to assure that site excavation and placement of historic fill does not cause onsite or offsite contamination.~~

~~—(13) Records of analytical evaluations conducted on the historic fill shall be maintained by the person using and distributing the soil 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.~~

~~—(14) This permit does not authorize and may not be construed as an approval to discharge waste, wastewater or runoff from the site where historic fill originated or the site where historic fill is beneficially used, to the land or waters of this Commonwealth.~~

~~—(15) Historic fill placed in accordance with this permit shall cease to be waste as long as the material remains in place.}~~

(i) SOILS, DREDGED MATERIAL, USED ASPHALT AND HISTORIC FILL. THE BENEFICIAL USE OF CONTAMINATED SOILS, DRAINED DREDGED MATERIAL, USED ASPHALT, OR HISTORIC FILL SHALL BE DEEMED TO HAVE A RESIDUAL WASTE PERMIT WHEN THE FILL IS USED TO LEVEL AN AREA OR BRING AN AREA TO GRADE, IS USED AS CONSTRUCTION MATERIAL, IS USED FOR CONTROL OF FIRE AND SUBSIDENCE EVENTS OR IS USED IN RECLAMATION OF ACTIVE OR ABANDONED MINES IF THE RECLAMATION WORK IS APPROVED BY THE DEPARTMENT OR IS PERFORMED UNDER A CONTRACT WITH THE DEPARTMENT AND IF, IN ADDITION TO SUBSECTION (a), THE FOLLOWING CONDITIONS ARE MET:

(1) THE MATERIALS DO NOT QUALIFY AS SAFE FILL AND, REGARDLESS OF WHETHER THEY ARE AFFECTED BY A SPILL OR RELEASE, EXCEED THE SAFE FILL NUMERIC STANDARDS BUT DO NOT EXCEED THE LOWER OF THE NUMERIC VALUES IN SUBSECTIONS (i) AND (ii), WHICH ARE LISTED IN APPENDIX A, TABLES 3 AND 4:

(i) 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).

(ii) THE NONRESIDENTIAL GENERIC VALUE FROM THE SOIL-TO-GROUNDWATER PATHWAY NUMERIC VALUES 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).

(iii) 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.

(iv) 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.

(2) IN ADDITION TO MEETING PARAGRAPH (1), DRAINED DREDGED MATERIAL SHALL MEET THE REQUIREMENTS OF SUBPARAGRAPHS (i) AND (iii) OR THE REQUIREMENTS OF SUBPARAGRAPHS (ii) AND (iii).

(i) A TOXICITY CHARACTERISTIC LEACHING PROCEDURE (TCLP) THAT DEMONSTRATES THAT THE DREDGED MATERIAL MEETS THE REQUIREMENTS IN § 288.623(a) (RELATING TO MINIMUM REQUIREMENTS FOR ACCEPTABLE WASTE).

(ii) THE DREDGED MATERIAL MAY 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 BY SPLP ARE LISTED IN APPENDIX A, TABLES 3 AND 4.

(iii) DREDGED MATERIAL FROM TIDAL STREAMS SHALL MEET THE NUMERIC CRITERIA FOR CHLORIDES AS LISTED IN APPENDIX A, TABLE 4.

(3) TO DETERMINE WHETHER A MATERIAL MEETS THE STANDARDS IN PARAGRAPHS (1) AND (2), THE MATERIAL SHALL BE SAMPLED AND ANALYZED IN ACCORDANCE WITH §287.11 (c) – (f) (RELATING TO DUE DILIGENCE AND SAFE FILL NUMERIC STANDARDS). IF THE NUMERIC STANDARD FOR A SUBSTANCE IS LOWER THAN THE PRACTICAL QUANTITATION LIMITATION (POL), THE POL, DETERMINED IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN SECTION 250.4 (RELATING TO LIMITS RELATED TO POLS), SHALL BE USED TO DEMONSTRATE COMPLIANCE WITH THE NUMERIC STANDARD IN PARAGRAPHS (1) AND (2) FOR THAT SUBSTANCE.

(4) AT LOCATIONS WHERE MATERIAL IS PLACED, DIRECT CONTACT PATHWAYS SHALL BE PROMPTLY AND PERMANENTLY ELIMINATED BY USING ENGINEERING CONTROLS.

(5) AT LOCATIONS WHERE MATERIAL IS PLACED, AN EROSION AND SEDIMENTATION CONTROL PLAN SHALL BE IMPLEMENTED THAT IS

CONSISTENT WITH THE APPLICABLE REQUIREMENTS OF CHAPTER 102 (RELATING TO EROSION AND SEDIMENTATION CONTROL).

(6) MATERIAL MAY NOT BE PLACED INTO OR ON WATERS OF THIS COMMONWEALTH.

(7) A MATERIAL MAY NOT BE PLACED WITHIN 100 FEET OF SURFACE WATERS OF THIS COMMONWEALTH.

(8) A MATERIAL MAY NOT BE PLACED WITHIN 100 FEET OF THE EDGE OF A SINKHOLE.

(9) A MATERIAL MAY NOT BE PLACED WITHIN 300 FEET OF A WATER SOURCE UNLESS THE WATER SOURCE OWNER HAS PROVIDED A WRITTEN WAIVER CONSENTING TO THE PLACEMENT OF THE MATERIAL CLOSER THAN 300 FEET.

(10) MATERIAL MAY NOT BE PLACED IN A 100-YEAR FLOODPLAIN OF WATERS OF THIS COMMONWEALTH.

(11) THE MATERIAL MAY ONLY BE USED UNDER THIS PERMIT ON PROPERTIES THAT ARE ZONED AND USED EXCLUSIVELY FOR COMMERCIAL AND INDUSTRIAL USES. FOR UNZONED PROPERTIES, THE MATERIAL SHALL BE USED IN AN AREA WHERE THE BACKGROUND IS EQUAL TO OR GREATER THAN THE CONCENTRATION OF CONTAMINATION IN THE MATERIAL BEING BROUGHT TO THE SITE, AND THE PROPERTY SHALL BE EXCLUSIVELY USED FOR COMMERCIAL OR INDUSTRIAL USES ONLY.

(12) A MATERIAL THAT IS HAZARDOUS WASTE UNDER CHAPTER 261a (RELATING TO IDENTIFICATION AND LISTING OF HAZARDOUS WASTE) OR THAT EXCEEDS THE REQUIREMENTS OF 25 PA. CODE §288.623(a)(1) AND (2) (RELATING TO MINIMUM REQUIREMENTS FOR ACCEPTABLE WASTE) MAY NOT BE USED UNDER THIS PERMIT.

(13) A MATERIAL WHEN PLACED MAY NOT CONTAIN FREE LIQUIDS, BASED ON VISUAL INSPECTION, AND MAY NOT CREATE AN ODOR OR OTHER PUBLIC NUISANCE.

(14) A PERSON WHO RECEIVES AND USES THE MATERIAL 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 MATERIAL.

(ii) THE QUANTITY OF MATERIAL USED AT THE RECEIVING LOCATION.

(iii) THE LOCATIONS WHERE THE MATERIAL WAS REMOVED FOR USE AND WHERE THE MATERIAL IS PLACED FOR USE. THE LOCATION OF THE PLACEMENT SHALL INCLUDE LATITUDE AND LONGITUDE DESCRIPTIONS.

(iv) AN IDENTIFICATION OF WHETHER THE AREA OF CONTAMINATION WHERE THE 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 MATERIAL DOES NOT CAUSE ONSITE OR OFFSITE CONTAMINATION.

(vi) IF MATERIALS ARE USED FOR CONTROL OF FIRE AND SUBSIDENCE EVENTS OR IN RECLAMATION AT ABANDONED MINES, INCLUDE A REFERENCE TO THE DEPARTMENT'S SEPARATE AUTHORIZATION OF THE USE IN THOSE PROJECTS.

(vii) COPIES OF RECORDS OF ANALYTICAL EVALUATIONS CONDUCTED ON THE MATERIALS. SUCH RECORDS SHALL INCLUDE THE FOLLOWING:

(A) THE DATES OF TESTING.

(B) EACH PARAMETER TESTED.

(C) THE TEST RESULTS.

(D) THE LABORATORY WHERE TESTING WAS CONDUCTED.

(E) THE SAMPLING PROCEDURES AND ANALYTICAL METHODOLOGIES USED.

(F) THE NAME OF THE PERSON WHO COLLECTED THE SAMPLE.

(viii) A COPY OF A RECORDED DEED NOTICE THAT INCLUDES THE EXACT LOCATION OF THE MATERIAL PLACED ON THE PROPERTY AND A DESCRIPTION OF THE TYPES OF CONTAMINATION IDENTIFIED IN THE FILL THROUGH SAMPLING AND ANALYSIS. THE LOCATION AND DESCRIPTION SHALL BE MADE A PART OF THE DEED FOR ALL FUTURE CONVEYANCES OR TRANSFERS OF THE SUBJECT PROPERTY.

(15) THIS PERMIT DOES NOT AUTHORIZE AND MAY NOT BE CONSTRUED AS AN APPROVAL TO DISCHARGE WASTE, WASTEWATER OR RUNOFF FROM THE SITE WHERE CONTAMINATED SOIL, USED ASPHALT OR HISTORIC FILL ORIGINATED OR THE SITE WHERE CONTAMINATED SOIL, USED ASPHALT OR HISTORIC FILL IS BENEFICIALLY USED, TO THE LAND OR WATERS OF THIS COMMONWEALTH.

(16) MATERIALS PLACED IN ACCORDANCE WITH THIS PERMIT SHALL CEASE TO BE WASTE AS LONG AS THE MATERIALS REMAIN IN PLACE.

(17) MATERIALS MAY NOT BE USED AT A SITE UNDERGOING A REMEDIATION OR CORRECTIVE ACTION THAT WILL CAUSE THE RECEIVING SITE TO EXCEED THE REMEDIATION STANDARD SELECTED.

(18) PLACEMENT OF MATERIALS AT A SITE UNDERGOING A REMEDIATION OR CORRECTIVE ACTION SHALL MEET THE REQUIREMENTS OF SUBSECTION (k).

(19) WHEN USED TO BRING AN AREA TO GRADE IN A MANNER UNRELATED TO MINE OR QUARRY RECLAMATION, MATERIALS MAY NOT BE USED TO CREATE A LANDFILL OR VALLEY FILL.

~~{(m)}~~ (k) 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) 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 Statewide health standard selected and identified in the notice of intent to remediate.

(4) Contaminated soil containing a contaminant other than those identified in the notice of intent to remediate ~~for subsequently identified during site characterization submitted for the receiving site undergoing remediation activities~~ may not be placed at the receiving site undergoing remediation activities.

(5) For contaminated soil placed at a site undergoing remediation activities prior to the approval of the final report, relief from liability may include the material brought to the receiving site undergoing remediation activities and the material shall be included in the final report.

(6) At a site undergoing remediation activities where contaminated soil is placed, an erosion and sedimentation control plan is implemented that is consistent with the applicable requirements of Chapter 102.

(7) At a site undergoing remediation activities where contaminated soil is placed, soil may not be placed into or on waters of this Commonwealth.

(8) At a site undergoing remediation activities where contaminated soil is placed, soil may not be placed within 100 feet of surface waters of this Commonwealth.

(9) At a site undergoing remediation activities where contaminated soil is placed, soil may not be placed within 100 feet of the edge of a sinkhole.

(10) At a site undergoing remediation activities where contaminated soil is placed, soil may not be placed within 300 feet of a water source unless the owner has provided a written waiver consenting to the placement of the soil closer than 300 feet.

(11) At a site undergoing remediation activities where contaminated soil is placed, soil may not be placed in a 100-year flood plain of waters of this Commonwealth.

(12) To determine whether contaminated soil placed at a site undergoing remediation activities meets the standards in paragraph (1), the contaminated soil shall be sampled and analyzed in accordance with § 287.11~~(b)~~ and either ~~(e)~~ or ~~(d)~~~~(c – f)~~ (RELATING TO DUE DILIGENCE AND SAFE FILL NUMERIC STANDARDS). IF THE NUMERIC STANDARD FOR A SUBSTANCE IS LOWER THAN THE PRACTICAL QUANTITATION LIMITATION (POL), THE POL, DETERMINED IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN SECTION 250.4 (RELATING TO LIMITS RELATED TO POLS), SHALL BE USED TO DEMONSTRATE COMPLIANCE WITH THE NUMERIC STANDARD IN PARAGRAPHS (1) AND (2) FOR THAT SUBSTANCE.

(13) Contaminated soil placed at a site undergoing remediation activities may not contain free liquids left in the soil, based on visual inspection, and the soil may not create odor or other public nuisance resulting from chemical contaminants in the soil.

(14) Upon completion of areas where contaminated soil is placed, the areas shall be promptly vegetated to minimize and control erosion or capped to minimize infiltration.

(15) This permit does not authorize and may not be construed as an approval to discharge waste, wastewater or runoff from the site where contaminated soil originated or the site undergoing remediation activities where contaminated soil is beneficially used, to the land or waters of this Commonwealth.

(16) A person who receives and uses contaminated soil at a site undergoing remediation activities shall submit a written notice to the Department. The notice shall include the following:

(i) The names, addresses and phone numbers of the persons receiving and using the contaminated soil.

(ii) The quantity of contaminated soil from a site used at the receiving site undergoing remediation activities.

(iii) The locations of areas where contaminated soil is generated and locations of areas where the contaminated soil will be placed.

(iv) ~~Copies~~ A COPY of A recorded deed notice[s] that identify[es] IES where on a receiving property contaminated soil is placed if nonresidential Statewide health standards are used at the sites undergoing remediation activities as the remediation standards.

(v) An identification of whether the location where the contaminated soil originated is the subject of a corrective action or remediation activity.

(vi) A description of engineering practices and construction activities used to assure that excavation and placement of contaminated soil at the site undergoing remediation activities does not cause onsite or offsite contamination.

~~(17) Contaminated soils that are hazardous waste under Chapter 261a may not be used under this permit.~~

~~(18)~~ (vii) Records of analytical evaluations conducted on the contaminated soil shall be maintained by the person using and distributing the soil and shall be made available to the Department for inspection. The records shall include the following:

~~(i)~~ (A) The dates of testing.

~~(ii)~~ (B) Each parameter tested.

~~(iii)~~ (C) The test results.

~~(iv)~~ (D) The laboratory where testing was conducted.

~~(v)~~ (E) The sampling procedures and analytical methodologies used.

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

(17) CONTAMINATED SOILS THAT ARE HAZARDOUS WASTE UNDER CHAPTER 261(a) (RELATING TO IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.) MAY NOT BE USED UNDER THIS PERMIT.

~~(19)~~ (18) Contaminated soil placed in accordance with this permit shall cease to be waste as long as the contaminated soil remains in place at the site undergoing remediation activities.

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SUBCHAPTER H. BENEFICIAL USE

SCOPE

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**GENERAL PERMITS FOR PROCESSING OR BENEFICIAL USE, OR BOTH, OF
RESIDUAL WASTE OTHER THAN CERTAIN USES OF COAL ASH
AUTHORIZATION AND LIMITATIONS**

§ 287.611. Authorization for a general permit.

* * * * *

(g) The Department may issue a general permit on a regional or Statewide basis for the use, as construction material, of soil and other materials that do not meet the ~~clean~~ **SAFE** fill criteria.