

May 2, 2017

The Honorable Anne M. Gobi, Senate Chair
The Honorable Gailanne M. Cariddi, House Chair
Joint Committee on Environment, Natural Resources, and Agriculture
State House
Boston, MA 02133

Re: **Opposition to S. 482,**
An Act relative to the re-use of soil for large reclamation projects

Dear Chairwoman Gobi, Chairwoman Cariddi, and Members of the Committee:

The LSP Association (LSPA) is the non-profit association for Licensed Site Professionals (LSPs) and related practitioners. LSPs are the scientists, engineers, and public health specialists licensed by the Commonwealth to work on behalf of property owners, operators, and other involved parties to oversee the assessment and cleanup of oil and hazardous materials released to the environment. Through education and information, we work to help our nearly 800 members achieve and maintain high standards of practice in overseeing the assessment and remediation of hazardous waste disposal sites. Our members work with their institutional, non-profit, government, and private clients to remediate contaminated sites, often in economically distressed areas, so these properties can be placed back into active and productive use.

The Massachusetts Contingency Plan (referred to as “the MCP”), is the detailed set of regulations at 310 CMR 40.0000 to which all LSPs must adhere as they do their work. Given that our members’ work often involves the remediation of sites slated for development or redevelopment, soil management is an important and complex component of their work. LSPs are required to have demonstrated expertise in hazardous waste site cleanup decision making, which includes a depth of understanding of soil characterization and management of soils. It is our opinion that given the proper circumstances, quarries, sand pits, and gravel pits can be appropriate for the re-use of certain types of soils. **However, the LSPA is writing to express its opposition to S. 482, *An Act relative to the re-use of soil for large reclamation projects***

The LSPA works closely with the Massachusetts Department of Environmental Protection (MassDEP); we share our real time field experiences and discuss scientific and technical advances with MassDEP through participation in technical and scientific workgroups, commenting on draft documents, and formal and informal interactions.

The LSPA was an active participant in MassDEP's 2014 - 2015 stakeholder meetings as they worked to develop their *Interim Policy on the Re-Use of Soil for Large Reclamation Projects (Policy #COMM-15-01, August 28, 2015)*. We provided recommendations and edits throughout the development of the policy. The stated purpose of this interim policy is also the same as the stated purpose of S. 482: "...to ensure the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment...."

Several aspects of this bill are problematic.

There is no need for an emergency law; MassDEP is currently regulating these situations.

After a long stakeholder process, MassDEP developed the abovementioned policy that allows large soil reuse projects to enter into an Administrative Consent Order (ACO) with MassDEP, such as proposed within S. 482, to demonstrate that the project meets MassDEP's required criteria for the protection of health, safety, public welfare, and the environment. While this is voluntary, projects that do not enter into an ACO with MassDEP risk potential noncompliance should the activities involve a release of hazardous materials or disposal of solid waste. This policy has been in place and has been effectively managing soil reclamation projects for nearly two years. Seven projects have received ACOs under the policy and others are in the works. MassDEP's system is working as is, without legislation. As such, the reuse of soils for large reclamation projects is already adequately regulated by the agency whose mission is environmental protection. There is no emergency.

Some of the language is inconsistent with M.G. L. 21E and the regulations at 310 CMR 40.0000 (the MCP), with the result that a different standard would apply to these projects than all other sites in Massachusetts.

First, S. 482 contains definitions for terms that are also defined in c. 21E, Section 2, in a manner that is different from the definition in Section 2. It is not clear to the LSPA why special definitions should be in place for soil reuse projects, or why these differences from the c. 21E definitions are appropriate for soil reuse projects. Changing the fundamental terms that are used by the regulators and the regulated community only for soil reuse projects will sow confusion and uncertainty. [For example, the phrase "either separately or in combination with any substance or substances" has been added to the definition of "hazardous material." (lines 14-15). Please also see the definition of "release." (lines 32-34). Yet other terms are included unchanged from c. 21E, Section 2 (e.g., "Department" (line 11) and "oil" (lines 28-31).]

Second, the term “Reportable Release” is defined in S. 482, (lines 20-21) in a manner that is inconsistent with the MCP and then re-defined later in the bill (lines 83-86) in another manner that is also inconsistent with the MCP. If this language stands, the regulated community will be left to guess as to when reporting to MassDEP is required for large soil re-use projects. Lines 83-86 re-define “Reportable Release” as follows: *“The placement, dumping, disposing or reuse of soil containing oil or hazardous material into the environment shall constitute a release. Such dumping, disposing, or unapproved re-use of soil is a reportable release requiring assessment and remediation.”* This language bears no relationship to the reportable conditions specified in the MCP that involve a very specific set of circumstances involving exposure risk, concentrations of contaminants, and other factors. The language in S. 482 is inconsistent with the MCP as it would consider any soil placed, dumped, disposed, or reused to be a reportable release requiring its assessment and remediation; for example, not all releases require remediation under the MCP.


S. 482 discourages large soil re-use projects by requiring a certification that “...the reuse of large volumes of soil pose no significant risk of harm to health, safety, public welfare, or the environment and would not create new releases or threats of releases of oil or hazardous materials.” The intention of the ACO that would be required by this bill is to ensure that project proponents implement various plans to ensure that material is properly handled to avoid harm to the public health, safety, public welfare or the environment. The project proponent is agreeing to implement such plans in the ACO. If these plans are not properly implemented, MassDEP may take enforcement actions. However, to ask the project proponent to certify in advance that nothing will occur to cause harm, whether or not within his or her control, will only serve to discourage such projects.

In addition to being largely redundant with current MassDEP policy, it is the opinion of the LSPA that this bill has serious flaws. We urge the Committee to give S.482 an adverse report.

Respectfully,
The LSP Association



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President



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