

LSPA Comments to MassDEP on the Proposed Definition of Historic Fill

2013 Public Hearing Draft:

Proposed Amendments to the Massachusetts Contingency Plan, 310 CMR 40.0000

“Page No.” refers to the pages in the Public Hearing Draft made available electronically in redline/strikeout format published in MSWord.

“MCP Reference” refers to the new citations in the Public Hearing Draft, unless otherwise noted.

Page No.	MCP Reference	LSPA Comments
80	40.0006(12) and (12) (a)	<p data-bbox="520 618 1003 646">Issue: Proposed Definition of Historic Fill</p> <p data-bbox="520 678 1892 776">LSPA appreciates the approach that the Department has used to introduce the various subcategories of Background and in particular the Department’s attempt to introduce the definition of “historic fill” and how it fits into the overall framework of Background within the MCP.</p> <p data-bbox="520 813 1892 943">Suggestion #1: The phrase “non-indigenous material” is imprecise. Indigenous is defined by Webster as “originating in and characteristic of a particular region” which is overly broad and could apply to almost all solid materials used for fill, derived from anywhere in Massachusetts or from another portion of the property of concern. LSPA suggests that this phrase be eliminated.</p> <p data-bbox="520 980 1892 1068">Suggestion #2: The phrase “deposited to raise the topographic elevation of the site” should be replaced by the simpler, “emplaced on the site.” It may or not be possible to ascertain the purpose for which fill was emplaced on a site decades previously.</p> <p data-bbox="520 1105 1892 1193">Suggestion #3: The resulting introductory phrase would read: “Historic Fill means material emplaced on the site that:” The concept of “fill”, and the various uses proposed to manage site grades and topographic relief are well understood and defined by decades of engineering practice. There is no need to reintroduce a overly confined definition here.</p> <p data-bbox="520 1230 1570 1258">Suggestion #4: Insert “poorly sorted soils and/or reworked soils” before “..construction...”</p> <p data-bbox="520 1295 1892 1401">Suggestion #5: There is no reason to specify or prescribe the chemistry or the chemical constituents contained within the fill materials The universe of anthropogenic chemicals in fill materials is quite broad- there certainly are many hydrocarbons that are outside of the “semi volatile” class in historic fill materials. If DEP specifies a class of compounds, LSPs may imply the need to use a specific test method to determine whether anthropogenic materials</p>

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		<p>are actually within historic fill ranges prescribed by this definition. The LSPA suggests using the term “contain certain chemical constituents including but not limited to metals and/or hydrocarbons...”</p> <p>Suggestion #6: The LSPA agrees that the exclusion of PCBs is appropriate due to their multi-jurisdictional regulatory paradigm.</p> <p>Suggestion #7: There is no reason to specify that the materials have to be “weathered.” This will simply create confusion and add no value, for any material that has been out in the environment for even a very short period of time will have undergone some degree of weathering and be “weathered”. Please delete “weathered.”</p>
80	40.0006(12) (b-e)	<p>Issue: The requirements of sections (b) through (e) will be difficult, if not impossible, to meet at many historic fill sites. For example, the language in (c) will likely be problematic because materials from demolished site buildings that are buried and then built upon, are certainly connected with the operations at the location of emplacement. In LSPA’s experience, the vagueness of a statement such as “was not a result of illegal disposal of waste material at the time of placement” in (e), will lead to a broad range of the standard of practice of how LSPs will interpret the definition. Current owners will have little to no certain knowledge or business interest in the (very far back) past practices of prior owners.</p> <p>Suggestion #1: The LSPA strongly suggests DEP delete this overly broad section and urges DEP to convene a workgroup to assist with guidance as soon as possible to clarify certain aspects of this definition.</p> <p>Suggestion #2: The LSPA proposes the following revision to this definition with the assumption that further clarification will be available in guidance, developed with the assistance of a workgroup:</p> <p>Historic Fill means fill materials emplaced on the site by humans that:</p> <ul style="list-style-type: none"> (a) May contain certain chemical constituents including but not limited to metals and hydrocarbons (excluding PCBs), including poorly sorted soils and soils, construction and demolition debris, dredge spoils, incinerator residue, fly ash, coal ash, wood ash or other non-hazardous solid waste material; (b) Was contaminated prior to emplacement (c) The chemical constituents within such Historic Fill are not connected with the operations at the location of emplacement; and (d) Is not hazardous waste, chemical production waste, or waste from processing of metal or mineral ores, residues, slag or tailings.