



# Program management decision on regulated fill

## Voluntary Investigation and Cleanup Program

## Petroleum Brownfields Program

## Solid Waste Program

### Issue

Regulating the off-site reuse of certain contaminated soils generated during redevelopment activities at a Minnesota Pollution Control Agency (MPCA) brownfield site.

### Decision

This Program Management Decision (PMD) allows the Voluntary Investigation and Cleanup (VIC) and Petroleum Brownfields (PB) programs to take the lead in providing regulatory oversight for the off-site reuse of “regulated fill,” as defined below, and subject to the criteria established in this PMD.

### Background

The MPCA has risk-based Soil Reference Values (SRVs) which provide a framework for evaluating risk to human health based on contaminant levels and type of property use. The MPCA’s most conservative risk-based values, Residential SRVs, are applied at residential and recreational properties. At industrial and commercial properties, where human contact with soil is more limited, application of Industrial SRVs allows higher concentrations of soil contaminants to safely remain at the site. A developer may need to excavate large quantities of soil for geotechnical soil correction, changes in grade, or for the construction of basements, underground parking, or utility corridors. Often, this soil consists of fill that has concentrations of contaminants greater than Residential SRVs but less than Industrial SRVs. Such soil can be safely reused on other industrial/commercial properties that are enrolled in VIC or PB and require soil import to backfill an excavation or to achieve the necessary design grade.

Typically, for properties enrolled in an MPCA brownfield program, the VIC/PB programs have regulatory authority over the on-site management of contaminated soils. VIC/PB staff review historical information; existing site conditions; proposed land use; the type, concentration and distribution of contaminants; and proposed or in-place safeguards to ensure protection of human health and the environment. Through various approvals and assurances, VIC/PB staff has the ability to impose conditions, restrictions or affirmative obligations on property owners/developers. This combination of environmental review, familiarity with the planned property use, and ability to issue directives and positive incentives, makes VIC/PB staff well-positioned to provide regulatory oversight of off-site reuse of soil at VIC/PB sites.

Under this PMD, the VIC/PB programs will take the regulatory lead for regulated fill moving from one VIC/PB site to another VIC/PB site.

## Rationale and benefits

- Soils with contamination remain under MPCA oversight to assure placement and conditions that protect public health and the environment.
- Regulatory oversight is streamlined by having one MPCA division rather than two involved in off-site soil-reuse decisions.
- Landfill space is conserved by avoiding disposal of soils that can be safely reused.
- Green space that would otherwise be mined for clean fill is preserved.
- Less fuel is consumed and fewer greenhouse gases are generated from transporting soils.
- Public and private money formerly spent on soil disposal or purchase of clean fill can be saved or used to jump-start other brownfield redevelopment projects.

## Terms and conditions

The VIC/PB programs will create a category of “regulated fill” with input from the Solid Waste program. Regulated fill will have soil contaminants at concentrations greater than Residential SRVs, but less than or equal to, Industrial SRVs. The VIC/PB programs will provide regulatory oversight for the off-site reuse of regulated fill moving from one VIC/PB site to another VIC/PB site under a specific set of criteria including:

1. Both the generating and receiving site must be enrolled in the VIC and/or PB program and have an MPCA-approved Response Action Plan or Soil Management Plan which describes the terms and conditions of the export/import of regulated fill. Technical fill-placement decisions on the receiving site should be consistent with Minn. R. 7035.2825 subp. 2, “Location standards for permit-by-rule facilities”. This part specifies that demolition debris land disposal facilities permitted by rule must not be located on a site with karst features, within wetland areas, within floodplain areas, within shoreland areas; or in locations with less than five feet of separation from the water table.
2. Case-by-case evaluation of regulated fill by VIC/PB staff will be done to ensure that risk to human health and the environment is acceptable and is not increased by the placement of regulated fill.
3. The receiving site must have a restricted commercial or industrial land use.
4. The soil contaminants at the receiving site must be similar to the contaminants of the regulated fill to be imported.
5. Appropriate institutional controls must be placed in accordance with standard VIC/PB policies.
6. A limited timeframe for final placement of the regulated fill must be imposed, and no temporary staging of regulated fill at a third location will be allowed.
7. Before submittal of the regulated fill application to MPCA, the property owner of the importing site will furnish a copy of the application to the local unit(s) of government. The local unit(s) of government will sign the notification confirming receipt of the information.
8. The receiving site must have a legitimate need for fill material, as documented by engineering plan sheets for the redevelopment project.
9. Violations of any of the conditions of approval will result in revocation of assurances and/or approvals. Removal of placed regulated fill may be required and/or formal enforcement action may be taken against the parties associated with the generating or receiving site.

## Approval

I have reviewed this management decision and concur.

Signed:

Kathryn Sather

Date:

2/17/12

Kathryn Sather  
Director, Remediation Division

Signed:

David Benke

Date:

2/21/12

David Benke  
Director, Resource Management and  
Assistance Division

Signed:

John Linc Stine

Date:

2/22/12

John Linc Stine  
Deputy Commissioner