

May 5, 2025

Connecticut Department of Energy and Environmental Protection Response to Public Comments received regarding the Notice of Intent to Issue Guidelines for a Pilot Program for the Use of Beneficially Reclaimed Materials as Fill in Large Scale Projects

December 20, 2023

Comments received from Gregory Gardner, LEP, President; Gardner Environmental Partners, Inc.

- 1. Prior to beginning to fill out an application, it would be useful to have a spreadsheet or bullet points highlighting the types of items which DEEP has approved or denied in the part regarding the characterization of materials to be Beneficially Reused, and the conditions imposed on the approved placement site.***

Approval of the placement of beneficially reclaimed materials is site specific. Historic Material Acceptability Protocols ("MAPs") approved for other projects can be viewed in the Department's file room located at 79 Elm Street in Hartford, Connecticut. Note that each MAP is site specific.

- 2. Is there a way for site-specific criteria to be allowed under certain conditions as part of achieving compliance with RSRs, rather than the default criteria listed? For example, if a site will have an I/C DEC use restriction, it can receive materials exceeding R-DEC. Will it be feasible to make use of other site-specific options available under the RSRs when determining the material acceptability criteria for a placement site under consideration?***

The site characterization completed for each project may be the driver for considering site specific criteria. The existing background criteria at each project location will serve as an important component in the MAP.

- 3. We encourage the Guidelines to allow for the use of alternative fill (that might otherwise be disposed of as solid waste) at placement sites in a way that is protective of public health, safety, and the environment. Alternative fill may include contaminated materials that has been treated, but some contaminants still exceed the applicable RSR criteria. The intent of the alternative fill would not make contamination at the site worse than existing conditions.***

Understanding that no new constituents may be placed in a placement site other than those already determined to be present. In cases where alternative fill has higher constituent concentrations than the placement site, an alternative fill concept may be acceptable provided the maximum contaminant concentrations in the alternative fill are less than a percentile of the constituent concentrations already present at the placement site. In New Jersey (Fill Material Guidance for SRP Sites, Version 4, NJDEP, October 2021), they use a 75th percentile requirement.

Would the Department consider this alternative fill concept or similar statistical approach in the Guidelines?

The pilot program is not considering alternative fill or a 75th percentile requirement as inquired.

4. ***Concerning the Department’s “Antidegradation Policy”, it was indicated that if there is a “constituent” above background already at the “placement site” that constituent would be allowed to be present in the “Beneficially Reclaimed Material.” This raises several questions which can be further clarified prior to beginning the application process:***
- A. ***It would be helpful to know if Beneficially Reused Materials could be placed anywhere on the placement site, or would it be restricted from those areas where the constituents were not detected? If so, how rigorous a characterization would be needed on a placement site covering over 20 acres? (This is important because it changes the amount of information necessary to provide when the application process begins).***
 - B. ***How will the concept of a “constituent above background” be applied? For example, if certain metals, VOCs, ETPH, or PAHs are present in the polluted fill already on a placement site, what standard of care is needed to indicate that no other metals, VOCs, ETPH, or PAHs are present at elevated levels in the Beneficially Reclaimed Material? Would the present above background be considered elevated? (It would be useful to know how this has been applied in the past to other sites, so the review of individual applications is not delayed in this competitive permitting process).***

Characterization of a site would need to be conducted on the entire acreage being proposed for filling. Beneficially reclaimed materials will likely be restricted for placement on “like-to-like” areas as determined via site characterization and the MAP.

The beneficially reclaimed materials will need to meet the MAP that is developed for the site which will be driven by the individual site characterization.

5. ***It would be helpful if the Department could provide the source(s) of what will be used or are being considered to frame the architecture for development of the operating permits of the placement sites, or will they be developed specific for each site?***

The architecture of the authorization is under development.

January 2, 2024

Comments received from UI

1. ***Sec. 22a-209f indicates that substantially similar operations with materials that have the same or similar physical character and chemical composition can be reused? How will CTDEEP determine if substances are the same or similar in physical character/chemical composition, and can the determination methodology please be described?***

The Material Acceptability Protocol (“MAP”) will be driven by the individual site characterization completed at each proposed project location.

2. *What are the implications or the liability for future emerging contaminate regulations that may be introduced, following completion of a project under this Program?*

Projects will be filed on the local land recordings. There will be a restriction on residential usage of the property.

3. *Is there any thought to allowing low levels of materials not included in beneficially reclaimed materials (for example, PFAS), if it is proven a like-for-like?*

PFAS does not meet the definition of “Beneficially reclaimed materials” in Public Act No. 21-88.

4. *Sec. 22a-209f indicates that the applicant for authorization under the program shall not pay a fee of more than \$25,000. The Program Guidelines indicate that fee will be \$25,000 for the initial application fee, and another \$25,000 every 10 years. Under the 30-yr. water quality monitoring requirement, this means that the applicant will pay approx.. \$100k in application fees alone. Can CTDEEP explain the different between Sec. 22a-209f and the Program guidelines application fees, which seem to be in excess of the “no more than \$25,000” application fee?*

Connecticut General Statute Sec. 22a-209f indicates that the initial application fee levied may be no more than \$25,000. This does not prohibit additional fees in the event a renewal of the authorization is required. The Department may also levy annual fees for the authorization.

5. *What are the implications or the liability for projects that do not renew their application following the 10, 20 or 30-yr. renewal dates?*

The authorization would require renewal if proposed filling as described within the submitted application is not completed at the end of the initial ten (10) year authorization.

6. *If a project creates the Meaningful Public Participation Plan and submit to the CSC (of which is then approved), will local approvals still be required of the Project to move forward with this Program?*

The authorization, per statute, does not require citing council approval. A prerequisite to the submission of an application for authorization is obtaining local approvals.

7. *Currently, with regards to electrical facilities, only electric generating facilities with a capacity of more than ten megawatts are required to submit a plan under Section 22a-20a CGS. Is this Program looking to expand the range of the applicable facilities under Section 22a-20a CGS?*

Pursuant to Public Act No. 21-88, the applicant shall comply with the process specified in Connecticut General Statute Section 22a-20a(b), regardless of whether or not the location where

beneficially reclaimed materials will be used as fill is located in an environmental justice community.

8. Does CTDEEP plan to share a Material Acceptability Protocol Plan, Placement Plan, Water Quality Monitor Plan, or Redevelopment Plan templates?

Historic MAPs approved for other projects can be viewed in the Department's file room located at 79 Elm Street in Hartford, Connecticut. Note that each MAP is site specific.

9. In reference to the Material Acceptability Protocol-Can CTDEEP please identify what standard practices should be utilized to characterize the proposed placement site?

Remediation Standard Regulations should be used as a proxy. The published guidance document contained links for site characterization guidance, which are also provided below.

[Site Characterization Essentials](#)

[Site Characterization Guidance Document](#)

[Remediation Standard Regulations](#)

10. What is the expected CTDEEP application review timeframe?

The review timeframe is resource driven and depends on the quality of the application received. A target timeframe is one (1) year.

11. If the applicant is replacing like-for-like of beneficially reclaimed materials, is within GB and GC areas, outside of an APA, and has been proven in the Material Acceptability Protocol Plan that the materials and placement thereof will not adversely affect sensitive receptors or resources, then what is the purpose of an addition 30-ys. of water quality monitoring?

Thirty (30) year water quality monitoring is to ensure protection of human health and the environment.

12. Required approvals in the Guidance Document indicate that other jurisdictions are required (Section C(1)(g)(iv)). Is this Program subject to approval of the ACOE? If so, what will the ACOE involvement/approval process look like?

Approval of the U.S. Army Corps of Engineers is subject to the site location.