



New
Jersey
Department of
Environmental
Protection

COMPLIANCE ADVISORY

Enforcement Alert

Making You Aware of Anticipated Enforcement Activities

Compliance and Enforcement

Issued: August 1, 2019

#2019-05

Soil and Fill Materials must meet NJDEP Requirements

Who is affected by this initiative?

All entities providing soil or fill material for use in New Jersey, truckers hauling soil and fill into or out of New Jersey and New Jersey property owners and development sites accepting and depositing soil or fill material.

Why is DEP concerned with fill material?

'Fill' refers to material placed on land for the purpose of filling low areas, changing the contours of an area, stabilizing existing grades and/or raising the grade of an area. Fill usually consists of soils, sands and clays, but may also include non-water-soluble, non-decomposable, inert solids, such as rock, gravel, brick, block, concrete, glass, and/or clay or ceramic products or any combination thereof, that do not meet the definition of solid waste pursuant to N.J.A.C. 7:26-1.6(a)6.

The New Jersey Department of Environmental Protection (NJDEP) is aware of a disturbing trend, wherein unacceptable and/or contaminated soil or fill is sold or provided for free as "clean fill" and being deposited at construction, development and residential sites throughout the State. Placement of unacceptable/contaminated soil or fill could pose a threat to the safety, public health, and general welfare of the community and the environment.

Unacceptable fill includes any materials containing debris (wood, metals, plastics, wire, wall board, roofing materials, insulation, carpets or padding, trash, etc.) mixed in with soils and non-decomposable, inert solids. Debris-laden fill is regulated as solid waste, cannot be used as fill, and must be disposed at an approved solid waste disposal facility. In addition, soil and fill materials determined to have concentrations of one or more hazardous contaminants that exceed the Residential Direct Contact Soil Remediation Standards (NJRDCSRS) or Non-Residential Direct Contact Soil Remediation Standards (NJNRDCSRS), whichever is more stringent as set forth in N.J.A.C. 7:26D, Remediation Standards, are also considered solid waste; but with the appropriate NJDEP approvals, may be used at certain remediation sites, to close terminated landfills, as alternative daily cover material at operating landfills, or other uses as determined by NJDEP.

What is DEP doing?

As NJDEP has observed increasing instances of non-compliance regarding solid waste being transported and offered as clean fill, NJDEP has developed an informational sheet

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'Understanding NJDEP's Requirements for Soil and Fill Materials' which describes the general requirements and allowances regarding the use of soil and fill materials. NJDEP is also encouraging municipalities to consider adopting an ordinance to manage the importation and deposition of soil and fill in order to help prevent improper placement of unacceptable/contaminated material. The Department has developed a model ordinance, based on ordinances currently in effect in some municipalities throughout the State and has forwarded this to the various municipalities for consideration.

In the event NJDEP determines solid waste or contaminated soil or fill material has been used in a manner that violates the State's rules, the responsible party(ies) will be cited, ordered to remove and properly dispose of the unacceptable material and assessed penalties through administrative action or other means as authorized by the implementing statutes.

What should I do?

To assure regulatory compliance and avoid potential liability (including fill removal and remediation costs) and penalty exposure for violations under the Solid Waste rules and the Discharges of Petroleum and Other Hazardous Substances rules, generators, brokers and transporters of fill, and property owners receiving fill, should ensure the fill does not contain debris and that the fill is not contaminated above the NJRDCSRS or NJNRDCSRS, as applicable. These determinations should be made at the point of generation (i.e., before transport and placement).

Where can I get more information?

The following web sites can be accessed for additional information:

NJDEP's Information sheet:

<https://www.nj.gov/dep/enforcement/docs/infosheet-soilandfillmaterials.pdf>

Bureau of Solid Waste Compliance & Enforcement

<https://www.nj.gov/dep/enforcement/sw.html>

Site Remediation and Waste Management, Division of Solid & Hazardous Waste

<https://www.nj.gov/dep/dshw/>

Who should I contact with questions?

Bureau of Solid Waste Compliance and Enforcement

609-292-6305

Regarding beneficial use and/or other approvals of restricted use fill

Site Remediation and Waste Management –

Division of Solid and Hazardous Waste

609-633-1418

Please note this advisory is intended to be a summary explanation of a department initiative. It does not include all potentially applicable requirements. If you have any questions related to compliance with this initiative, please contact the Enforcement number listed above.