



**PROPOSED CHANGES TO MANAGEMENT OF FILL POLICY**  
**DRAW COMMENTS FROM THE CONSTRUCTION INDUSTRY**  
**AND THE PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY**

Proposed changes to Pennsylvania's *Management of Fill Policy*, also known as the *Clean Fill Policy* drew significant comments which in essence, call the changes unworkable.

The Policy was originally developed and finalized by 2004 and matched key elements of Pennsylvania's Award Winning Land Recycling Program under Act 2 of 1995 to apply to the materials moving across property lines throughout the Commonwealth. The Policy has seen a few changes since 2004, but is generally considered to be workable and to some degree, an national model.

For reasons which remain unclear, the proposed changes to make clean fill limits consistent with the Act 2 Program numeric limits actually cause inconsistencies between the two sets of numeric limits which in some instances are so low, that the Policy would become unworkable. The construction industry, led by the Pennsylvania Asphalt Paving Association and joined by the Pennsylvania Aggregates and Concrete Association, Associated Pennsylvania Constructors and the National Utility Contractor's Association indicated that it makes no sense for sites which have unrestricted Act 2 Cleanup Liability Protection, for example, for a contaminant such as benzene, to have to retest materials, and further characterize them before moving the materials over properties lines because the lower limits of the Policy would apply to that situation.

A number of improvements to the Management of Fill Policy were forwarded by the industry associations, but on reflection it is clear that the proposed changes were ill-advised and the scope of the proposed changes, to only evaluate numerical limits is out of step with advances made in New Jersey and Ohio. Both New Jersey and Ohio, over the last ten years, have given information to their Licensed Remediation Professionals on how to apply their Remediation Programs to "background" conditions, which include atmospheric fallout containing such constituents as benzo(a)pyrene and arsenic. Pennsylvania has never put out any equivalent documents and with its extensive long-term industrial heritage, and with historic fill along rivers, Pennsylvania appears out of step with what surrounding states are doing.

The links as follows are copies of the comment documents and a copy of the proposed Guidance is found in the last link.

<http://www.pachamber.org/pressroom/PA%20Chamber%20Clean%20Fill%20FINAL%20021715.pdf>

<http://rtenv.com/pdf/paca-management.pdf>

<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-103747/258-2182-773.pdf>

Since the year 2000, there has been extensive training within the construction industry and when the Management of Fill Policy was finalized in 2004, more than 1,000 construction industry officials attended seminars in our major cities, including Pittsburgh, Harrisburg and Philadelphia. As the Fill Policy was considered workable and since it applied to all materials moving across property lines, more than 1,000 earthwork contractors came to understand how important the new Policy was. The two rounds of training seminars held for members of all of the Associations who participated in this

comment process, helped achieve a high level of environmental compliance throughout the state and all participants are quite disappointed that DEP would make the Management of Fill Policy unworkable at the same time that more

Brownfields projects are being undertaken due to the improvement in the economy. With the proposed changes DEP took away important options for management of fill at sites which were put forth in 2004 and this will inevitably drive up the cost of construction. Driving up the cost of construction for new buildings, other redevelopment sites and for transportation projects works against Governor Tom Wolfe's promises to Pennsylvanians to improve jobs and get the state back to work as many projects may become cost prohibitive to implement or continue.

There is no significant environmental benefit which was articulated in the Management of Fill Draft Guidance change. Further the cost impact from the proposed change was not estimated by DEP. Knowledgeable sources believe that the cost of the Policy as proposed to be changed would be in the tens or hundreds of millions of dollars, and the unintended cost consequences were not fully evaluated by DEP. There is concern that the transportation funding which was finalized last year could be found to be inadequate, given the unilateral changes proposed by DEP, who did not complete a reasonable assessment of the impacts of the change in the Policy.

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