

Minnesota Brownfields

Soil Reuse Forum 2.0 – May 15, 2014

Combined Group Discussion Notes

We looked at stronger liability protection for reuse of petroleum-impacted soils. Overall, the group thought this was a move in the right direction and had several suggestions to make this happen and improvements.

- Need more stakeholder involvement, let's reach out to the earthwork contractor that have successfully incorporated recycling and reuse of materials as a way to be more profitable and competitive. We could learn from them.
- The general liability letter (GLL) may not be the correct document for this. A few people commented that the GLL only restates statute and doesn't provide any protection – the protection needs to be stronger, the GLL is generic and does not mean anything.
- As such, we discussed a new liability letter that could be issued to those importing materials.
- There was some concern about statutory changes and how that may strong-arm the MPCA to allow alternate changes that are not intended by this change and may adversely impact the statute as a hold.

Alternatively, we discussed adding language (1-2 sentences) to the existing statute and how that would not require a change (sorry, this doesn't make sense to me as this is still a change to statute).

- Likes the idea of changing statute to allow stockpiling on receiving site.
- Maybe it shouldn't matter what the source of petroleum contamination is to receive liability coverage. When PAHs and metal contaminants are discovered on a site, you don't always define the source.
- Take this directly to Kathy Sather at the MPCA to get this moving. You need to identify someone at the MPCA that would support this in order for it to happen.

Question 1: reaction to the Study recommendation #1 - receiving-site RAP should drive reuse limitations

- new SRVs under development by MPCA may allow more flexibility for site-specific risk-based criteria rather than generic land-use based screening criteria (shared by MPCA PRP staff member).
- multi-site RAPs (where sites that will share soil "share" a RAP and are considered linked or part of one project) or area-wide assessments/RAPs were discussed as a possible avenue to increase soil reuse between sites and achieve agency approval

Question 2: reaction to the Study recommendation #3 – stronger liability protection for reuse of soils containing petroleum impacts should be provided group consensus that stronger petroleum liability assurances would be beneficial for both importers and exporters of soil – the group recognized the difficulty in securing statutory rule changes to make this possible.

Question 3: what would make offsite soil reuse easier to implement?

- liability issues/assurances are still key – there is still a stigma associated with Brownfield sites in general and in soil import/export from Brownfield sites in particular.

Question 4: Next steps needed to encourage greater offsite reuse of marginally contaminated soil? - universal voice from Brownfields community to legislature for statute/rule changes where necessary.

- A clearinghouse/matchmaker to get Brownfield sites that are “long” and “short” on soil together was discussed. Perhaps run by grant agencies, MN Brownfields, and/or simply increased communication/lead finding between Brownfield practitioners (consultants, contractors [earthwork and general], developers, granting agencies) in planning and execution stages of project implementation.
- Including soil reuse scoring/incentives in grant application process
- strong feeling that signature from LGU should be dropped – too difficult/confusing. Group felt that notification was still necessary but not a signature.

Other thoughts/comments:

- several group members were interested in the environmental impact piece of the study. Two of the three “legs” of sustainability were considered (economic and environmental) – it would have been interesting to look at the social component (public safety, perception). An upcoming Health Impact Assessment at Brownfields pilot study being conducted by the City of Duluth was mentioned.

Question 1: Consensus on the value of providing a No Association Determination for importing and exporting marginally impacted soils.

- NAD’s do not run with the land. If ownership changed, new owner should be eligible for a NAD that takes into account impacts associated with the imported (reused) soil.
- Legislative amendment is worth pursuing.

Question 2: Allowable amounts of debris should factor environmental risk. Inert material, such as glass and clean concrete, pose little to no environmental risk.

- How much debris allowed could use a geotechnical standard. If enough debris has been removed to make the fill material geotechnically suitable for constructing a building, the material should be exempt from solid waste rules.

Question 3: Will require regulator control; likely in the form of a permit.

- Liability protection should be available for the entity bringing the marginally impacted soil to the staging site.
- Will the material need to be separated by types and levels of impacts? Will the material be comingled with other material from other sites?
- Is this a temporary storing and possibly screen, sorting, etc. area before the material goes to a predetermined final use area? Or is material mixed with other like material and stored until an end use is found -- in which case the final destination of specific material brought to the intermediate staging site would be impossible to track.
- Soil brokering component may be necessary/helpful.
- Will the facility need to be financial viable or is public subsidy anticipated. There is a societal value to soil reuse -- is it worth a public subsidy?
- Receiving Site RAP: No need to match same types of contaminants; environmental risk should be the deciding factor. It doesn’t matter if imported soil has the same types of contaminants as

the receiving site as long as risk level of the contaminants is appropriate for the receiving site (i.e., SRV's quantify risk level and will tell whether or not the material is appropriate for use at the receiving site.

(1) Reactions to report recommendation #1:

- Skeptical about importer willingness to accept regulated fill; thinks liability concerns will trump incentives to import.
- Buyers will be concerned about potential issues due to future changes in cleanup standards or future redevelopment issues.
- Thinks there will be a limited market for regulated fill, not many opportunities for off-site reuse.
- Importers will be concerned about public reaction. Suggests focusing efforts on calling more things unregulated, such as higher levels of DRO, PAHs (using "urban background" level like Chicago), arsenic/heavy metals, debris. Things with low level of risk + high volume of soils.

(2) Reactions to liability assurance recommendations:

- Wonders if there are other options beside statutory change; concerned with opening statutes to unanticipated changes. Could technical review/opinion serve same purpose?
- Again, question about future landowners. Will assurance protect them as well?
- Concern with reluctant brownfield owners such as large corporations concerned about employee reactions to residual (and imported) contamination on site

(3) Is off-site re-use complicated or is that a misperception? How do we change that?

- It is complicated due to liability issues, scheduling issues, and lack of willing importers. To simplify, change to have more kinds and volumes of soil deemed unregulated. Also use intermediate sites to address time factor of construction projects.

1. Should MPCA pursue changing statute to allow NADS for export/import/placing of fill based on import site RAP?

a. Mixed Response, but weighted toward Yes (all but one of group members)

b. Supporting Yes

i. Metals issue, especially Arsenic and Selenium, both of which are naturally elevated to exceed SRVs. Hennepin County has encountered this frequently and doesn't want to pay to take the material to landfill, but other properties won't take it. Having a NAD for this type of material would assist.

ii. Regulatory agency input – would support this if it helped encourage soil reuse.

iii. Consultant input – if party receiving import has an approved RAP, and a new source area for import is proposed after RAP approval, a RAP addendum is needed, causing a major scheduling problem. NAD could alleviate this.

iv. Duluth Seaway Port Authority supported it, would like flexibility it would allow them in management of soil.

v. Consultant input – an alternative idea previously proposed was to create a class of fill termed “urban fill” to provide more flexible reuse scenarios for fill with less mobile contaminants that are nearly ubiquitous in urban fill (some metals, PAHs). Suggest bringing this to the forum again and working it into MPCA, solid waste and beneficial reuse guidelines.

c. Supporting No

i. One party stated it is not possible and not necessary – NADs are written for real property, not for actions taken by others that affect other properties.

2. Should there be relief from solid waste guidelines and rules for debris-containing fill to allow more flexible and easier reuse scenarios? Concurrence was YES

i. Hennepin County suggested that screening be allowed to reduce the percentage of debris to an acceptable level. Screening at \$3-5/cubic yard (cy) is much less than \$25-30/cy for disposal plus there are the carbon footprint arguments supporting this. Screening should be legitimate line item in grant applications.

ii. MPCA noted that timeline for getting beneficial use determination (BUD) for individual sites is prohibitive.

iii. Consultant input – de minimis percentage and method for determining the percentage needs to be defined.

iv. MN Brownfields input – suggested standing BUD for debris-containing fill.

v. MnDOT noted that per the discussion today, the receiving site RAP should rule, and the de minimis percentage should be set by the receiving site needs.

3. Should Intermediate facilities be created?

a. Mixed Response weighted toward yes

b. Supporting Yes

i. Consultant input – an intermediate staging facility would be valuable and a good business. Prepare QAPP, get insurance and capital, and get it going!

ii. Hennepin County – The County is generally supportive of this concept. One concern from a regulatory standpoint (getting this past MPCA) is that intermediate facilities could be considered landfills and the governing body would thus have to approve a new landfill, which is very doubtful.

4. Suggested Next Steps and Recommendations

a. Create a task force and work with agency to pursue refinement and evolution of what is a great start on the fill reuse issue.

b. Explore history of the Pennsylvania reuse program and what they had to go through to attain what appears to be a very effective tool for soil and fill reuse.

5. Revisit “urban fill” category and creation of formal definition of urban fill to insert in BUD and solid waste rules to increase potential for fill reuse.

Our group decided to discuss several bigger picture topics/issues related to soil reuse that began apparent based on the presentations at the forum. These topics/issues include:

1. Our group agreed that the next separate regarding the Minnesota Brownfields’ Soil Reuse Study was that a formal “action list” of recommendations should be submitted to the MPCA for consideration. It would be beneficial for the action list to be circulated to MN Brownfields members for input prior to formally submitting to the MPCA.

2. The Soil Reuse Study uses the term “marginally contaminated soil” which is intended to include both “unregulated” and “regulated” fill soil as defined by the MPCA. Our group believes that for future studies, it would be beneficial to drop this term and refer to/evaluate reuse of “unregulated” and “regulated” fill soil separately. This is because each of these types of fill soil has unique characteristics and challenges when it comes to reuse.

3. Representative earthwork contractors involved with Brownfields projects (e.g. Bolander, Veit, Frattalone, Ramsey, etc.) should be engaged as part of future soil reuse discussions. These contractors can provide valuable insight to the technical and economic feasibility to overall soil reuse options.

4. The final version of the MPCA BMP for the Off-Site Reuse of Unregulated Fill guidance document has been out and being used by the redevelopment community since April 2012. Now would be a good time to revisit that guidance document to review how it has been working, determine what parts of the document may need refinement, evaluate if any additional criteria need/should be added, and assess if any parts of the existing document need clarification/expanding, etc. A volunteer work group composed of Minnesota Brownfields members (with participation for key MPCA representatives) would be the perfect mechanism to accomplish the review. The findings could be presented at a future MN Brownfields event.

5. The term “debris” is used in both the MPCA guidance documents and the Soil Reuse Study. Our group agreed that moving forward it would be beneficial to define/differentiate between the different types of debris, since it effects disposal and reuse considerations for soil that it may be intermixed with. This could include possibly include such classifications as 1) industrial-type debris such as ash, slag, cinders, etc., 2) demolition-type debris such as concrete, brick, bituminous, wood, etc., and 3) solid-waste type debris such as plastic, cans, bottles, etc.

My group had questions for groups 1-5. We started with the first question and didn’t get any farther, although our conversation did sidetrack into other interesting areas. Some people mostly just listened and a handful contributed. **Here’s a summary of the key points/items that were vocalized:**

- Yes – the receiving site should drive the level of contamination and control the thresholds of contamination allowed.
- Discussion on that their needs to be a buildup of comfort in the contaminated soil reuse/exchange process. Pilot project suggested was to get an individual owner with multiple properties/sites to practice trading soils between their sites to build confidence in the soil reuse process (and show others that it can be done and how). The “individual owner” options could be a pseudo governmental agency, a county, city, or even general contractor/developer who has multiple sites.

- Some discussion without conclusions on if a site could accept a higher level of contamination in import soil than what was already present onsite. Discussion on how that would happen and what kind of assurances would be useful (NAD, comfort letter, RAP approval letter with added paragraph, or...). Also some discussion on finding a way to reuse soil above industrial standards even. · Regarding a soil staging site – it was suggested that this would need to be close to the development areas. Options for staging sites suggested were places like asphalt facilities and gravel pits, since there are a lot of them in the metro areas and they already have the infrastructure necessary for handling/sorting/storing/crushing/screening granular materials. Providing some kind of permit or incentive was also discussed to facilitate this.
- The need to invoice contractors in the soil reuse discussion was underscored. They are the ones actually working with the import/export fill materials. They may have some ideas with how to do this, where to manage the materials, and how to make money off of the process (the aspect of being able to make money might be what's needed to create incentive for soil reuse).
- A key factor discussed was where is the financial incentive with soil reuse? The financials are what often drives redevelopment projects. Can a monetary or other incentive be created to make soil reuse desirable/lucrative? For example, the grantors could not give any or much funding for landfill disposal.

One member of our group seemed to have some good insight on the contractor piece and said he was willing to discuss the staging site idea or contractor involvement more.