

Town of Pepperell – Board of Health

Fill Importation Regulations

(Revision Date 10/19/18)

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GENERAL REFERENCES

§ 1-1. Authority.

By virtue of the authority granted to the Town of Pepperell Board of Health under the provisions of M.G.L. c. 111, §31, the following regulations regarding Fill Importation in the Town of Pepperell are hereby promulgated.

§ 1-2. Purpose.

These regulations are intended to protect the public health, safety, welfare and the environment and to ensure that Fill Importation activities in the Town of Pepperell follow appropriate notification and approval procedures through the Board of Health. Furthermore, these regulations are intended to ensure that Fill Importation activities are carried out in a safe and consistent manner and that such activities do not pose a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time. These regulations are implemented pursuant to the Town’s home rule authority and the Board of Health’s statutory authority to promulgate reasonable health regulations to ensure local oversight over activities that may pose an adverse impact to the public’s health.

§ 1-3. Administration.

The Board of Health shall administer, implement and enforce these regulations. Except for the duty and authority to issue approvals hereunder, any powers granted to or duties imposed upon the Board of Health by these regulations may be delegated in writing by said Board to its employees or agents. The Board of Health may also designate any other Board or Department as it may deem necessary or appropriate to administer, implement and enforce specific components of these regulations.

The Board of Health shall be responsible for deciding the meaning or intent of any provision of these regulations that may be unclear or in dispute.

§ 1-4. Definitions.

The following words used in these regulations shall have the following meanings, unless a different meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intention of these regulations:

ACO: An Administrative Consent Order issued by MassDEP pursuant to the Interim Policy on the Re-Use of Soil for Large Reclamation Projects, Policy # COMM-15-01, or any successor policy or regulations promulgated by MassDEP pursuant to Section 277 of Chapter 165 of the Acts of 2014.

AUL: An Activity and Use Limitation as may be required by the BOH, pursuant to §1-9.J. of these regulations.

BOH: Board of Health.

CMR: Code of Massachusetts Regulations.

Contaminated Soil: Soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Cubic Yard: A unit of volume equal to a cube one yard long on each side

Fill: Soil, sediments, rock and/or stone obtained off-Site that is used to fill holes or depressions, create mounts, or otherwise artificially change the grade or elevation of real property.

Importation: The transport of any Fill onto a Site which originates from outside the Site's boundaries.

LSP: Licensed Site Professional. A hazardous site cleanup professional, as defined in M.G.L. c. 21A, §19, holding a current, active and valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals pursuant to M.G.L. c. 21A, §19 through 19J.

MassDEP: Massachusetts Department of Environmental Protection.

MCP: Massachusetts Contingency Plan, 310 CMR 40.0000.

MGL: Massachusetts General Law.

Project: A Fill Importation operation occurring over a period of time, located on a Site.

Site: Singular or adjacent parcels of land.

Soil: Any unconsolidated mineral and organic matter overlying bedrock that has been subjected to and influenced by geologic and other environmental factors.

TPI: A Third-Party Inspector approved by the BOH to conduct third-party inspections pursuant to these regulations.

Utilities: Means of managing water, storm water, wastewater, telephone, electricity, as well as gas, fuel and/or other heating and cooling means.

§ 1-5. Permit Required.

- A. Except as provided in these regulations, Fill Importation in the Town of Pepperell is prohibited unless a written permit is obtained from the BOH. Fill Importation and all Projects shall not be exempt from any other applicable law, regulation, policy or guidance. Any person engaged in Fill Importation upon the effective date of these regulations must comply with § 1-15.

§ 1-6. Exemptions.

The following activities shall be exempt from these regulations:

- A. Construction of a building, facility, or structure having a permit issued by the Building Inspector involving up to 3,000 cubic yards of Fill;
- B. Construction and maintenance of public ways;
- C. Construction and maintenance of private ways, such as, but not limited to: roads, bridges, culverts, paths, driveways, or parking lots requiring up to 3,000 cubic yards of Fill;
- D. Licensed landscape and/or landscape materials facility: Importation of Fill or other materials into said facility for temporary storage, for retail or resale, or for use as a constituent component of a manufactured product;
- E. Construction and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices requiring up to 3,000 cubic yards of Fill;
- F. Property improvement or maintenance: Installation of pools, landscaping, septic systems, and/or other property improvement or maintenance having any requisite approvals involving up to 3,000 cubic yards of Fill;
- G. Construction and maintenance of public and private utilities requiring up to 3,000 cubic yards of Fill; and

- H. Fill up to 3,000 cubic yards which directly supports forestry or agricultural activities as defined in the Massachusetts General Laws.

§ 1-7. Application for Permit.

- A. Any person wishing to obtain a permit for Fill Importation within the Town shall file a written application with the BOH, which through these regulations, shall provide an application form for this purpose. The BOH may prescribe forms for applications, extensions, and renewals, and may require additional information as the Board shall reasonably determine to be necessary. The BOH may, for good cause shown, waive any of these application requirements, with such waiver(s) being stated in the permit issued by the BOH.
 - 1) A written application shall include the following information and documentation:
 - 2) The legal name, address and phone number of the applicant. The name, address and telephone number of the individual overseeing the proposed Project.
 - 3) The location of the proposed Project, including the mailing address and by Assessor's Map and Lot.
 - 4) The legal name, address and phone number of the owner of the Project Site.
 - 5) A certified list of abutters containing the names and addresses of all owners of record of abutting parcels and those within 1,500 feet of the property line of the Project Site.
 - 6) A Site Plan prepared by a Massachusetts registered land surveyor or registered professional engineer showing topography at two (2) foot contours of the entire Project Site and all abutting properties within 100 feet of the proposed Site. Map scales shall be no more than 100 feet to the inch. The Site Plan shall locate monuments (iron rod or equivalent) sufficient to delineate the perimeter of the site at intervals of not more than 300 feet. The Site Plan shall identify and delineate any access road at the Project Site.

Site Plans shall include:

- 1) Site lot lines, easements, rights-of-way, and setbacks thereto from the proposed area of Fill.
- 2) Man-made features.
- 3) Project Site must have one access and egress 20-30 feet in width made of compacted stone only.
- 4) Water bodies and watercourses, wetlands, and buffer zones.
- 5) Security measures such as fencing and gates. Signs and emergency contact information shall be posted as required by BOH.

- 6) Storm water, sediment and erosion controls; groundwater recharge structures and features; methods of stabilization of all material; and cover material and vegetation. Cross-sections shall be provided showing cover, as well as any drainage or other structures which may be necessary.

Site Plans shall act as process diagrams indicating Fill sequence on the Project Site and shall be provided on separate sheets, which represent the Project Site condition at the time of the initial permit application and for each twelve (12) month interval therefrom until the proposed date of project completion, where a final grade map shall be provided.

B. For all Projects involving greater than 30,000 cubic yards of Fill over the duration of the Project, a Soil Management Plan (SMP) shall be submitted. The SMP shall be updated for each permit renewal application. The TPI shall provide the BOH with a review of said SMP. The following items shall be included within the SMP:

- 1) A statement that the proposed Project meets all applicable federal, state and local laws, regulations, and policies pertaining to the transport and use of Fill, signed by the applicant and applicant's LSP.
- 2) Descriptions of environmental conditions, including soil and groundwater quality characterization, which are present at the proposed Site at the time of the permit application. The description of environmental conditions at the Site shall include a Phase I Initial Site Investigation complying with the requirements of 310 CMR 40.0480, as may be amended by MassDEP.
- 3) Procedures for verification and testing of material at the Site of origin and/or at the Project Site. Such testing shall ensure that materials brought to the proposed Site are in compliance with all laws or regulations pertaining to Fill or the use of Fill, and shall comply with the "Testing and Characterization" requirements and protocols of MassDEP Policy # COMM 97-1, Section 5. A Phase I Initial Site Investigation Report complying with the requirements of 310 CMR 40.0480, as may be amended by MassDEP, shall be provided for any proposed Site of origin.
- 4) Record keeping practices.
- 5) Project Site security, Fill operation inspection and site control.
- 6) Transport routes, times and days of operation, locations of equipment parking and storage and duration of Fill Importation activities.
- 7) Qualifications of applicant personnel responsible for adhering to the SMP and these regulations.
- 8) Erosion, dust, and storm water controls and installation, inspection, and maintenance thereof.
- 9) Effects of the Fill Importation on groundwater recharge, or other hydrogeological concerns; raising or lowering of the water table and flooding of other properties.

- 10) Quality assurance/quality control procedures.
- 11) Emergency response and notification procedures, including telephone numbers and any other means of contacting appropriate individuals or businesses.
- 12) Total proposed volume of Fill for the Project, measured in cubic yards.
- 13) Environmental monitoring plan to maintain protection of human health, public safety, welfare and the environment during and following Fill operations.
- 14) Daily personnel procedures and operation management procedures, including types, numbers, locations and hours of operation of any processing equipment on the Project Site.
- 15) Erosion control; cover material and vegetation.
- 16) Pollution controls for surface and ground water; both during and after Fill Importation, and monitoring and maintenance plan after the Project is complete.
- 17) Protected Natural Resource Survey by a Massachusetts certified wetland surveyor identifying jurisdictional wetlands and resource areas (under M.G.L. c. 131, §40, 310 CMR 10.00, and the Pepperell Wetlands Protection Bylaw), annual high water along surface water bodies, 100 and 500 year flood zones, National Wetlands Inventory, Natural Resources Conservation Service soil survey, topographical maps, aerial photographs (historical), and an identification any endangered, threatened or species of concern at the Project Site.
- 18) A signed statement by the applicant that neither the applicant, nor any person who, in whole or in part, owns, manages or operates a Fill Importation Project on behalf of the owner or applicant: (1) has obtained or operated with any substantially similar permit and, within the five years prior to the application date, had a permit revoked for a reason that would be grounds for a denial of an application or revocation of a permit under these regulations, or (2) been cited for more than three violations of the Town of Pepperell regulations or other laws and regulations pertaining to Fill, use of Fill or excavation, or any combination thereof within the five years prior to the application date.

§ 1-8. Issuance and renewal of permit.

- A. Prior to issuance of any permit hereunder, or renewal thereof for Projects over 30,000 cubic yards of Fill over the duration of the Project, the BOH shall hold a public hearing, notice of which shall be given by publication in a newspaper having general circulation within the Town and copies of which are mailed to the abutters shown on the list submitted with the application, at least fourteen days prior to the hearing.
- B. Prior to such public hearing the BOH shall send notice to the Conservation Commission, Planning Board, Board of Selectmen, MassDEP and the Zoning Enforcement Officer. The BOH may provide copies of application materials, in part or in whole, to said Boards,

Commission or Officer, or to Town Counsel at the discretion of the Board of Selectmen, and may request such comment or advice as the said boards may deem appropriate.

- C. If the BOH determines that the permit application and the Project described thereunder conforms to the requirements of the Pepperell regulations, or other laws, policies or guidance pertaining to Fill, use of Fill, and that the permitted Project would conform with the requirements of public health and welfare and be consistent with the sound development of the Town, the BOH may issue such permit upon the terms specified in these regulations and subject to such additional conditions the BOH may determine to be necessary.
- D. For all permit applications and permitted Projects involving Fill Importation greater than 30,000 cubic yards of Fill over the duration of the Project, a Third-Party Inspector (TPI) shall be hired by the Town at the expense of the applicant to advise the BOH in connection with the application, and to oversee the applicant's compliance with these regulations and any permit for the duration of the Project.
- E. The BOH may deny or condition in its approval of an original or renewal application of a permit if it has reasonable cause to believe that any of the following conditions exist:
 - 1) The applicant, or any person who, in whole or in part, owns, manages or operates the Project on behalf of the applicant, has:
 - a. Knowingly made a false statement in the permit application;
 - b. Knowingly omitted information requested to be disclosed in the application;
 - c. Completed the application with reckless regard for the truth or accuracy of the statements made therein; or
 - d. Unjustifiably refused a lawful inspection during regular hours of operation of the Project Site, books, forms or records by the BOH or their designee.
 - 2) The Project has been found to constitute a public nuisance; or
 - 3) Such other grounds exist that the BOH determines to be contrary to the public interest or in violation of the conditions of the permit or any applicable law, regulation, policy or guidance.
- F. Prior to issuance of any permit hereunder for any Project which involves greater than 100,000 cubic yards of Fill over the duration of the Project, an executed and effective ACO shall be required.

§ 1-9. Conditions of permit

Every permit issued pursuant to these regulations shall be subject to the following conditions:

- A. The portions of the Project Site which have been Filled shall be graded and leveled to conform to the approved Site Plans.
- B. Unless the Board finds that it is necessary in order to protect public health, safety and welfare, the final grade elevation shall not exceed historical pre-excavation levels at the Project Site.
- C. Bills of lading or material shipping records shall be required for each load of material transported to the Project Site and provided to the BOH on a monthly basis. Each bill of lading or material shipping record shall state: the address of the originating Site of the Fill; the coordinate location (Latitude and Longitude) where the Fill was deposited at the Project Site; the amount of Fill by weight and volume, and the date of transport. For any Fill from an originating Site at which there has been a release of oil or hazardous materials pursuant to M.G.L. c. 21E and the MCP, the following shall be provided: the Release Tracking Number (RTN), and analytical characterization data as set forth in Section 1-7(F)(3) or as otherwise satisfactory to the BOH and the TPI. For any Fill originated from a Site outside of Massachusetts, analytical characterization data as set forth in Section 1-7(F)(3) or as otherwise satisfactory to the BOH and the TPI shall be provided.
- D. Fill exceeding the MCP Reportable Concentration Soil Category RCS-2 Standards (as set forth in 310 CMR 40.0000, Subpart P, and as may be amended by MassDEP) is prohibited at any Site. Fill exceeding the MCP Reportable Concentration Soil Category RCS-1 Standards (as set forth in 310 CMR 40.0000, Subpart P, and as may be amended by MassDEP) is prohibited at any Site abutting or within 1,500 feet from properties zoned for residential use under the Town of Pepperell Zoning Bylaw (including the Rural Residence, Town Residence, Recreational Residence, Suburban Residence, and Urban Residence zoning districts, and such other residential zoning district as may be created and/or amended in the Zoning Bylaw).
- E. After final grading and leveling, the Project Site shall be covered with not less than four (4) inches of suitable topsoil and seeded and planted with suitable ground cover. All final contour slopes will not be steeper than three (3) (horizontal) to one (1) (vertical) maximum. For any Project Site at which RCS-2 Soil has been deposited, after final grading and leveling, the Project Site shall be covered with not less than three feet of suitable topsoil and seeded and planted with suitable ground cover.
- F. No Fill Importation shall be undertaken within 100 feet of a public or private way or within 150 feet of a building or structure, unless the BOH specifically finds that such Fill will not otherwise be detrimental to the neighborhood and such finding is endorsed on the permit.
- G. No swamp, pond, watercourse, or other wetland will be altered or polluted in any way without all necessary permits and no watercourses, drains, swales, culverts or other water

channeling contours or structures shall be constructed unless shown on the plan submitted and approved.

- H. For any Project, Fill shall include only such materials which are permissible by applicable law, regulation, policy or guidance.
- I. For any Project, the BOH may require such borings and test pits, inspections, monitoring, certifications, reports and tests by a TPI, engineers, laboratories and/or other qualified persons needed to evaluate the application and/or to monitor performance under a permit and/or to establish compliance with the conditions of a permit and applicable law, regulation, policy or guidance.

It shall be a condition of any Fill Importation permit greater than 30,000 cubic yards that the permit holder pay for all such borings and test pits, inspections, monitoring, certifications, reports and tests and that they be conducted by persons selected by and responsible to the BOH. Failure of any applicant or permit holder to make payment in advance for any borings and test pits, inspection, certification, monitoring, report or test or to carry out any step or to submit any information required by the BOH shall be grounds for denial of a permit and/or for issuance of a cease and desist order and/or for revocation of the permit.

- J. AUL: In the event the BOH, in consultation with the TPI, determines that the future activities and uses at the proposed Site should be limited in order to protect public health, safety or welfare, the applicant shall record an AUL in the chain of title for the Site at the Registry of Deeds. To the extent deemed appropriate by the BOH, in consultation with the TPI, the AUL shall comply with the requirements of 310 CMR 40.1070 through 310 CMR 40.1099, as may be amended by MassDEP.
- K. Security: Where deemed necessary by the BOH, a form of security (performance bond, letter of credit, cash deposit, etc.) in the amount determined and on the terms specified by the BOH shall be provided in the name of the Town to ensure satisfactory performance in the fulfillment of the requirements of these regulations and such other conditions as the BOH may impose as conditions to the issuance of the Fill Importation permit or any subsequent changes to such conditions. No such security shall be released, nor shall the applicant be deemed to have complied with the conditions provided for herein, until the applicant has filed with the BOH a written certification from the TPI that the requirements of these regulations, the Fill Importation permit and the SMP have been complied with, and a final, engineered record Site Plan showing that the finished grades are consistent with those in the approved Fill Importation permit. The BOH shall act on a requested release of security within 65 days after the applicant submits a written request for such release that includes the required information.

§ 1-10. Duration of permit.

Every Fill Importation permit granted under these regulations shall be valid for a period not to exceed two years from the date of application submission. An applicant shall be entitled to a presumption of renewal of a Fill Importation permit if the Board finds the applicant has

complied with all conditions and requirements of the permit and these regulations. For any Project involving less than 30,000 cubic yards of Fill over the duration of the Project, any permit issued may be renewed by the BOH, without hearing, if the proposed Fill Importation will be conducted in accordance with a plan previously approved and if all other requirements of these regulations have been met. Any expansion or extension of a permitted Project shall be subject to a public hearing.

§ 1-11. Documentation and Inspection.

- A. The permit holder shall make available to the TPI all analyses, data, information, and records as are required to ensure compliance to these regulations.
- B. All soil, groundwater and other testing data and analysis shall be performed by a Massachusetts Certified Laboratory pursuant to 310 CMR 42.00.
- C. At the end of each calendar month during the permit period, the TPI shall provide to the BOH, a letter including the following:
 - 1) Confirmation that all materials used for Fill included only such materials which were permissible by applicable law, regulation, policy or guidance, and additionally, all analytical data used to confirm the above statement.
 - 2) Confirmation that analytical results are based on sampling techniques and test methodologies which adequately assess the material in relation to applicable criteria and limits.
 - 3) A statement that bills of lading or material shipping records for each load of material have been reviewed by the TPI and that only materials which have been described by said bills or records have been used for Fill at the Site. All bills of lading or material shipping records shall be additionally provided to the BOH.

Any Project shall be open for inspection, including collection of soils and groundwater from any location within the Project Site for analysis as deemed necessary by the BOH or TPI, by the proper local officials, the Town's Engineer, the BOH and the TPI at all reasonable times. Every September the Town Engineer, at the applicant's expense, shall conduct an annual Project Site visit to verify that Fill Importation has been completed according to the approved Site Plan, and submit a report to that effect to the BOH and Board of Selectmen.

§ 1-12. Permit fees

The BOH shall set all application and renewal fees pursuant to M.G.L. c. 40 §22F.

The applicant is responsible for peer review fees for new applications, renewal of applications, inspections, plan review and Site visits by the Town's Engineer, the TPI or other third party inspections as deemed necessary.

No application shall be considered complete unless accompanied by the required fees. Failure of any permit applicant or permit holder to make timely payments for ongoing services shall be grounds for dismissal of a permit application and/or revocation of a permit.

§ 1-13. Enforcement and Violations.

The BOH, or its designee, shall enforce these regulations and may pursue all available remedies for violations, or take any other action relative thereto.

Violations of any provision of these regulations may be addressed administratively; by non-criminal disposition as provided in MGL Chapter 40 §21D with fine of \$300 per violation; or prosecuted through criminal complaint procedure.

Each day a violation occurs shall be considered a separate violation hereunder.

§ 1-14. Validity and Severability

The invalidity of one or more sections, subsections, clauses or provisions of these regulations shall not invalidate or impair these regulations as a whole or any other part thereof

§ 1-15. Transitional rules

Any person engaged in non-exempt Fill Importation upon the effective date of these regulations shall file an application for a permit pursuant to these regulations within fourteen (14) days thereafter.

If the BOH determines in its reasonable discretion that such a person has not timely filed a required application, the BOH may issue an order to suspend or limit such operations. Any such order shall remain in effect until terminated or modified or a permit is granted by the BOH. Any Filling authorized by the BOH and pending the grant of a permit under these regulations shall otherwise be subject to the documentation requirements of these regulations.