



**Department of Energy & Environmental Protection
Remediation Division
Remediation Roundtable
Q&A Newsletter
Vol. 27, April 5, 2018**

Presented below are the Department's responses to verbal comments made at the Remediation Roundtable held on October 17, 2017. The comments and responses may have been edited for clarification purposes.

SELECTED VERBAL COMMENTS FROM THE OCTOBER 17, 2017 ROUNDTABLE:

Roundtable Tip on Asphalt Millings

Comment: Does the incidental release exemption for a sub-base fit if the material is not ground-up asphalt (such as ground-up concrete)?

Response: *Assuming the concrete was not generated at a release area, there would be no concerns about the concrete being contaminated and so that would not be an issue.*

Sediment Dredging Case Study – Exide on the Mill River, Fairfield

Comment: Was the dredge spoil disposed of as hazardous waste?

Response: *Mostly, it was disposed as non-hazardous waste. Only a few truckloads were classified as hazardous waste.*

Comment: Where was the non-hazardous sediment disposed?

Response: *It went to landfills in New Hampshire, Pennsylvania, and New York.*

Comment: It was mentioned that polymers were used as wastewater treatment; was that done on the incoming water stream from the river or outgoing?

Response: *It was on the incoming water stream.*

Characterization of Remediation Waste - Overview of Key Concepts

Comment: When shipping hazardous waste out of the country, are there any special rules or compounds that cannot be shipped?

Response: *There are specific requirements in the federal hazardous waste regulations that pertain to the export of hazardous waste (i.e., 40 CFR 262 Subpart H). These requirements include, among other things, a requirement for exporters to notify EPA regarding their export activities, and a requirement for exporters to apply for and obtain permission from the receiving country to ship hazardous waste into their country. This permission is referred to as an “Acknowledgement of Consent” or “AOC,” and is specific to the waste being shipped and the foreign facility that will receive it. Getting through the AOC approval process involves working with EPA, who in turn works with the appropriate authorities in the receiving country. This process is rather complicated, so persons seeking to export waste are advised to work with a transporter or a permitted facility (TSDf) that is familiar with these requirements. For further information on hazardous waste export requirements, do an internet search for the EPA web page “Information about Transboundary Shipments of Hazardous Wastes.”*

Comment: Does the definition of clean fill include coal and does it vary according to the size of the material?

Response: *This is a difficult question to answer in a general way, since there are many site-specific factors that can affect the answer to this question. There is a definition of “clean fill” in the solid waste regulations at RCRA Section 228-209-1, and materials meeting this definition are not subject to regulation as solid waste, meaning that they can be used as fill without triggering solid waste permitting requirements. The definition of clean fill includes materials such as “natural soil” and “rock,” but does not specifically include coal. In addition, the definition of clean fill requires that clean fill be “virtually inert and pose neither a pollution threat to ground or surface waters nor a fire hazard.” Coal can present problems with these criteria due to its leachability of contaminants, such as PAHs, and due to the fact that it is readily combustible. The constituents of coal, however, are not exempted from other criteria in the RSRs such as DEC. When people have asked the Department if they could use coal as a fill material, we have typically said “no.” However, there have been cases in which small amounts of coal have inadvertently become interspersed with natural soil at a particular site (e.g., the site of an old coal storage pile). In cases like this, we have not said that this small amount of coal is a solid waste that must be removed from the site. Anyone that has questions about the use of coal as fill at a particular site is advised to contact the DEEP’s Waste Engineering & Enforcement Division.*

Portion Verifications: Applicability & Requirements

Comment: Can multiple verifications be submitted within the same package?

Response: *Because of the wording of the statute, you cannot have two different portions in a single verification. You can file multiple portion verifications on a single day.*

Comment: With BRRP, can you do a portion verification when you are not required to do the off-site remediation?

Response: *Yes, you can do a portion verification. If there is a plume migrating off that portion, the eligible party is not required to remediate off-site, but we expect you to take all measures to mitigate the migration of that plume. For the plume coming off the portion, we have to stop the plume coming off the portion. So the onsite plume has to be addressed.*

SELECT WRITTEN QUESTIONS SUBMITTED TO THE ROUNDTABLE:

Comment: If asphalt millings used as sub-base for pavement are not considered to be polluted fill, then why are you even using the term “polluted fill” in relation to the asphalt millings?

Response: *The reason we are using the term “polluted fill” is because the provision added to the definition of “inaccessible soil” in 2013 uses that term; specifically in 1(a)(32)(C), “polluted fill beneath a bituminous concrete or concrete surface comprised of The [Guidance Document for Rendering Soil Inaccessible Using Pavement](#) that was generated after that regulatory change states that “Polluted fill in this context includes the material installed as sub-base for the pavement” to clarify that sub-base material, which may be asphalt millings, is considered to be polluted fill for the purposes of this RSR provision.*

The point of this Roundtable Tip was to clarify that although asphalt millings used as sub-base are considered to be polluted fill for the purpose of the “inaccessible soil” provision, they are not polluted fill when not using this provision. When not being used to render soil inaccessible, they are actually included under the “normal paving” of the incidental sources provisions (DEC, PMC & Groundwater) as stated in the [Guidance Document for Exemptions for Incidental Sources](#).