



RBCR Focus Session 11

Soils under RBCRs: Presented May 6th

1. Isn't asphalt included in the definition of "clean fill" and therefore exempt from being discovered as a release?

Asphalt fragments that are inert are ok as "clean fill". Asphalt as bulk is not clean fill. "Regulatory Clarification: Asphalt Millings are Not Clean Fill (Oct 2006) on Guidance webpage."

2. The observation of anthropogenic material in soil is discovery of a release?

The observation of anthropogenic material in soil could be one line of evidence. Depending on the materials observed the condition could be a release, or an incidental release, or completely benign. Additional lines of evidence are necessary to determine if a release has occurred.

3. What about all the soils that are moving around the state between construction sites? If polluted, does that now require CTDEEP approval before moving for all sites (which previously approval was only sought if the sites were regulated under a remediation program)?

Approval has always been required to reuse soil, whether the sites are in a remediation program or not in a program. We understand this is not well understood and have been considering programmatic responses to address this.

4. A developer is developing a single-family residence, and also is the owner of the single-family residence. The developer (who operates under an LLC) brings on overtly polluted soil observed by a professional engineer. Is this exempt from the RBCRs because it is a single-family residence, and the developer is the owner?

No, not exempt.

5. So, parking lots are viewed as roadways?

Parking lots and roadways are both environments in which incidental releases from vehicles can occur.

- 6. What if arsenic is present in soil >DEC (but <SER value) at apparent naturally occurring background for that location (no evidence of a release, no industry, not historic arsenic pesticide use, etc.)?**

Details about naturally occurring metals at the time of discovery can be found in 22a-134tt-2(f).

- 7. If waste characterization sampling from a stockpile (excess soil from a construction project) identifies contamination, but the stockpile is properly transported and disposed offsite within 120/365 days, is reporting of a release required? Are there site characterization requirements at the construction site from which the soils were generated?**

You need to be sure you removed all contaminated soil completely. To do this you need to characterize the site/location where soil came from to define the release area & determine if they removed all the contaminated soil.

- 8. What defines prudent under the HIM Permit by Rule?**

Prudent is defined in the RBCRs - "Prudent" means reasonable, taking into consideration cost in proportion to social and environmental benefits.

- 9. For Historically Impacted Material Permit by Rule, it says "I/C activity only". Does this mean the property must be ZONED as I/C? Or that the activity on the site must be I/C? There are properties that are residentially or mixed-use zoned but are only occupied by a business with no residential.**

The regulations make no mention of zoning. Should the activity on the parcel change from I/C then the parcel would no longer be in compliance with the permit by rule.

- 10. Is there a form for the Affidavit of Facts in support of managing soil under the permit by rule options?**

This is being worked on and will be announced when it is publicly available. Should you need guidance before that, please contact the Department and we will assist.

- 11. Can HIM have polluted fill in it?**

Yes.

12. Under the RBCRs, if construction (not remediation) uncovers soil with contaminant concentrations above criteria (<2x), the impacted soil is excavated and removed off-site within 365 days, does CTDEEP consider the release closed without requiring characterization or action for remaining undisturbed soils?

You need to be sure you removed all contaminated soil completely. To do this you need to characterize the site/location where soil came from to define the release area & determine if they removed all the contaminated soil.

13. RBCRs indicate that you have to notify DEEP of intent to use HIM exemption, has a form been prepared for this notification?

One must submit a report to REACT demonstrating the parcel meets all the requirements to use HIM permit by rule.

14. Understanding sediment is not subject to the cleanup requirements in the RBCRs, is the detection of substances above laboratory reporting limits in samples collected from stockpiled sediment for disposal purposes considered "discovery"?

Additional investigation would be needed to identify the release that impacted the sediment. Manage the release not the media.

15. When is release considered discovered when detected in groundwater? Any detection above background?

Details for the discovery of a release are found in 22a-124tt-2(a).

16. Is HIM exempt from the DEC and PMC?

Yes, as long as it meets the requirements of 134tt-9(j) and 134tt-(c)(5)(B).

17. If waste characterization sampling for disposal of excess soils during redevelopment at a commercial auto dealer finds ETPH. Must they investigate beyond the redevelopment area to define the extent of ETPH?

The full extent of the release/release area needs to be delineated and/or have assessed if ETPH detections are the result of an incidental release.

18. If a construction site has "filing cabinet exempt" data that indicates contamination >2x "Cleanup Standards" is limited to a specific area/depth, and now construction excavates and disposes of this soil within 120 days, does this mean no reporting?

Contamination would only have to be reported if soil testing finds concentrations greater than reporting limits and/or identify other lines of evidence indicating a release.

19. Can the Permit by Rule mechanism, when appropriate, be used to permanently release recorded EURs that restrict residential use and render soil inaccessible?

This depends on the end use of the parcel. If you want to use HIM then it can't be used for residential activity. If you want to use inaccessible soil, then soil must be under a parking lot or building foundation and has concentration limitations.