

Memo

To: Waste Engineering and Enforcement Division Staff
Patrick Bowe, Director, Remediation Division

From: Robert C. Isner, Director, Waste Engineering and Enforcement Division

Date: October 2, 2006 ***Addendum added October 26, 2006***

Subject: **Regulatory Clarification:**
Asphalt Millings are not Clean Fill

Recent citizen and municipal inquiries about the regulatory status of asphalt millings suggest that it is important to distinguish asphalt fragments that must be managed as solid waste from asphalt fragments that may be managed as clean fill. Even if this is simply a refresher for you, please review this information. Also, I encourage you to share this information with staff in other divisions and hope it helps you when speaking with municipalities and other helpline callers.

"Clean fill" is defined within the DEP's Solid Waste Management Regulations (see Regulations of Connecticut State Agencies Section 22a-209-1) to include several materials including asphalt paving fragments. Specifically, the definition includes asphalt paving fragments which are "virtually inert and pose neither a pollution threat to ground or surface waters nor a fire hazard..."

To help evaluate how to manage asphalt fragments it is important to consider the size of the fragments.

- The general rule of thumb used by the DEP solid waste program and remediation program are "bigger fragments are better," that is, typically fist-size or greater than 4-inch chunks ARE fragments and may be exempt from regulation as a solid waste.
- Asphalt pieces that are smaller than 4 inches [millings, shavings, dust and the like], are typically NOT considered to meet the definition of clean fill. The reason for focusing on the size is that as the surface area of the asphalt increases (smaller pieces will have greater collective surface area), the likelihood for contaminated leachate and mobilization of pollutants also increases.

I hope this helps. Anyone may contact the Solid Waste Program at DEP (860)-424-3366 for further clarification. We do have someone assigned each day to help provide this type of technical assistance.

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We intended for this memo to clarify for DEP staff when asphalt fragments should be considered solid waste. The current definition of clean fill includes asphalt fragments, which has led to the general interpretation to this point that all asphalt fragments are clean fill and exempt from any regulation as solid waste.

Therefore the Department's goal in writing this memo was to assist staff, especially when receiving complaints of abandoned piles of asphalt, in distinguishing between material that meets the definition of "clean fill" and material that, when abandoned or discarded, may not meet the definition of clean fill and therefore is regulated as solid waste.

The dilemma for asphalt paving fragments is that the current definition of "clean fill" includes asphalt paving fragments that are "virtually inert and pose neither a pollution threat to ground or surface waters nor a fire hazard..." We believe small fragments ("asphalt millings" or as used in the memo, fragments smaller than 4") which are abandoned should be considered solid waste and not clean fill. The memo referenced a common rule of thumb [fragment size] to help staff members prioritize situations in which asphalt paving fragments may not qualify as clean fill because of the potential pollution threat.

Solid waste management regulations do not regulate how asphalt is used, but how asphalt [or any other material] is managed once it is discarded or abandoned. Abandonment is a concept not well-emphasized in the memo, but crucial to staff when determining whether something is considered a waste. Asphalt fragments used for their intended purpose are not considered solid waste.

In the future we will need to consider developing further guidance on this and related topics, to provide better information to the public.