

ADDENDUM

TO: City and County of Denver Department Managers

FROM: Zachery Clayton, DDPHE Manager – Environmental Land Use and Planning

DATE: May 8, 2019

SUBJECT: Clarification on Guidance for Reuse of Soil on City Projects

This Addendum clarifies aspects of and shall be attached to and become part of the Guidance for Reuse of Soil on City Project, dated October 5, 2017.

The Guidance applies to excess soil generated from a City project that is intended to be exported to another City site or to a third-party site.

The Guidance does not apply when soil remains on a City project site. In this case, project-specific protocols will be implemented.

The City will not export or import soil that looks bad, smells bad, or that contains debris regardless of analytical results.

The Guidance may be implemented to import soil to a City project from a third-party site. In this instance, in addition to complying with the Guidance, the third party will supply environmental information, such as a Phase I Environmental Assessment and sampling protocol, for the source area of the soil to be imported.

We look forward to continued success of soil reuse options, cost savings and sustainable approaches to environmental issues on your projects.

Please feel free to reach out to Diane DeLillio or myself with any questions, comments or concerns.

CC: Lee Zarzecki, CAO
Gregg Thomas, DDPHE
Diane DeLillio, DDPHE



DENVER
THE MILE HIGH CITY

Department of Environmental Health

Division of Environmental Quality
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INTEROFFICE MEMORANDUM

TO: City and County of Denver Department Executive Directors

FROM: Bob McDonald, Executive Director

DATE: October 05, 2017

SUBJECT: Guidance for Reuse of Soil on City Projects

There is increasing demand in and around the City and County of Denver (City) for soil available for reuse. Such reuse offers several benefits to the City including reduced waste, hauling costs, disposal fees, and vehicle emissions.

As the local public health authority, the City's Department of Environmental Health (DEH) has determined that all reusable soil must be adequately characterized based on the intended reuse to ensure the protection of public health and the environment. If the soil is not suitable for reuse per these guidelines, it must be disposed at the City-owned Denver Arapahoe Disposal Site (DADS) in accordance with the City's Executive Order No. 115.

This guidance provides criteria by which City employees and/or third parties may, or may not, reuse soil from City projects at both City-owned properties and properties owned by others. DEH sign off will be required for any reuse options. As such, to promote safe and sustainable reuse, it is within DEH's purview to implement the following requirements for City soils to be reused:

1. For onsite reuse, City personnel are responsible for contacting DEH¹ when they want to reuse soil or receive a request to reuse soil. DEH is responsible for promptly informing the requestor of City sampling frequency and analysis requirements based on contaminants of concern from recognized environmental conditions, which are designed to promote safe and sustainable reuse.
2. For off-site reuse and/or material to be imported to a site, the person or entity requesting to reuse the soil must adequately characterize the soil by sampling at least every 500 cubic

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yards to be excavated (or alternative frequency as determined by DEH) and analyze those soil samples for, at a minimum:

- a. Volatile organic constituents;
 - b. Semi-volatile organic constituents;
 - c. Total petroleum hydrocarbons;
 - d. Pesticides;
 - e. Herbicides;
 - f. Polychlorinated biphenyls (PCBs);
 - g. Arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver; and
 - h. Asbestos – if debris is found and if suspect asbestos-containing material is found in the debris (e.g., transite, ash, brick mortar, asphalt shingles, etc.)
3. In general, the person or entity requesting to reuse the soil shall pay all costs associated with the sampling and analysis of the soil.
 4. Before the City will release the soil for reuse, the party requesting the excess soil must indicate the land use of the accepting site and demonstrate to DEH's satisfaction that the soil meets the criteria based on the designated land use of the receiving site. See Exhibit 1 for additional guidance.
 5. Maintain the documentation for sample collection, analytical results, and the environmental consultant's field notes and evaluation.
 6. Any third party will be required to sign a release to accept the soil from the City and to release the City from liability.

Attachments: Exhibit 1 – Soil Reuse Acceptance Criteria Guidance Table

Exhibit 2 - Draft Release for Third Party Acceptance

CC: Jessica Brody, CAO
Lee Zarzecki, CAO
Zachery Clayton, DEH
Gregg Thomas, DEH



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Exhibit 1 - Soil Reuse Acceptance Criteria Guidance Table

Land Use	Examples	Applicable Soil Reuse Acceptance Criteria*
Recreational	Parks, Open Space	All Contaminants except Arsenic (Residential) Arsenic Standard
Residential	Single Family, Multi-family, Mixed-use with residential component	All Contaminants except Arsenic (Residential) Arsenic Standard
Right of Ways (not inclusive of utilities)	Roads, sidewalks, bike paths	All Contaminants except Arsenic (Composite Worker) Arsenic Standard
Utility corridors (underground)	Storm water, Waste water,	All Contaminants except Arsenic (Composite Worker) Arsenic Standard
City-owned facilities	Maintenance garages, office buildings, safety buildings	All Contaminants except Arsenic (Composite Worker) Arsenic Standard

* Screening values presented in the Regional Screening Levels table are based on human health risk from the combined exposure of direct soil ingestion, dermal contact with soil and inhalation of vapors or particulates associated with soil. Other pathways, such as indoor air or groundwater protection, may need to be considered on a site-specific basis. Some sites in sensitive ecological settings may need to be evaluated for potential ecological risk. These screening levels may not be applicable to sites within and/or subject to other regulatory programs (i.e., RCRA Corrective Action, Leaking Underground Storage Tanks, Superfund Operable Unit, etc.)

In addition, the reuse of any regulated asbestos-containing soil (“RACS”) or suspect-RACS must be conducted in accordance with state regulations governing the management of RACS, 6 CCR 1007-2, § 5.5.

DEH is committed to assisting all agencies and projects to perform soil disturbing activities in a cost-effective and sustainable manner while ensuring protection of public health and the environment.



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AGREEMENT AND RELEASE FOR EXCESS SOIL REUSE

This Agreement and Release (“Agreement”) is made by and between _____ (the “Accepting Party”) and the City and County of Denver (the “City”) (collectively, the “Parties”).

RECITALS

WHEREAS, the City has determined that it has excess soil available; and

WHEREAS, the Accepting Party has requested excess soil from the City for reuse at ___[address of reuse location]___; and

WHEREAS, the Accepting Party has sampled and analyzed the excess soil and determined it to be suitable for the intended reuse; and

NOW, THEREFORE, in consideration of the premises and agreements contained herein, the Parties agree as follows:

1. Recitals Binding. The Parties agree that the Recitals stated above are an integral part of the Agreement and are binding.

2. Conveyance of Ownership. The City agrees to convey to the Accepting Party ownership of up to ___[maximum volume]___ cubic yards of excess soil.

3. Acceptance “AS-IS”. The Accepting Party acknowledges that the City has made no representations or warranties regarding the environmental or geotechnical suitability of the excess soil. The Accepting Party acknowledges that it is assuming ownership of the excess soil based solely on its analysis of the soil. The Accepting Party accepts the excess soil “AS IS.”

4. Payment. The Accepting Party shall pay to the City good and valuable consideration in the amount of TEN DOLLARS (\$10.00), the sufficiency of which is hereby acknowledged.

5. Transportation to Receiving Site. The Accepting Party will transport, or arrange to transport, the excess soil from ___[address]___ to the reuse location at a time, place, and manner acceptable to the City.

6. Defense and Indemnification

a. The Accepting Party agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the reuse of the excess soil, unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City.

b. Accepting Party’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit

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on the Claim. Accepting Party's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Accepting Party shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

7. City Execution of Agreement. The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

8. Authority.

a. The Parties to this Agreement agree that each Party has authority to execute this Agreement.

b. The Parties to this Agreement have carefully read, and know and understand, the full contents of this Agreement and are voluntarily entering into this Agreement.

c. The Parties to this Agreement are competent to enter into this Agreement.

9. Governing Law and Venue. The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

10. Entire Agreement: The Parties to this Agreement have not relied on any statement, representation, omission, inducement or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement. The Agreement contains the entire understanding of the Parties relating to the subject matter of the Agreement. No promise, inducement or agreement which is not specifically provided in this Agreement has been made by any party to this Agreement, and no warranties, representations, or undertakings are made by the Parties hereto except as are expressly provided herein.

11. Electronic Signatures and Electronic Records. The Accepting Party consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The

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Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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