


INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	STATUS: Archived	POLICY NUMBER: WASTE-0064-NPD	
AGENCY NONRULE POLICY DOCUMENT SUBJECT: Uncontaminated Soil Policy	AUTHORIZED: Thomas Easterly, Commissioner		
	SUPERSEDES: New	ISSUING OFFICE(S): Office of Land Quality	
	ORIGINALLY EFFECTIVE: April 10, 2015	RENEWED/REVISED:	

Disclaimer: This non-rule policy document (NPD) is being established by the Indiana Department of Environmental Management (IDEM), consistent with its authority in state law under the Indiana Code at IC 13-14-1-11.5. It is intended solely to provide guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and if it conflicts with these rules or laws, the rules or laws shall control. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate State Environmental Board, and may be put into effect by IDEM 30 days afterward. If the non-rule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM also will submit the policy to the Indiana Register for publication.

1.0 PURPOSE

The solid waste rules in the Indiana Administrative Code at 329 IAC 10-3-1(1) and 329 IAC 11-3-1(1) exclude from regulation the disposal of uncontaminated dirt (soil) and, alternatively, would consider contaminated soil to be a solid waste that is subject to solid waste regulations. Neither the rules nor the laws define 'uncontaminated,' so the policy of IDEM's solid waste program has been to interpret the presence of any non-natural constituent in a soil as being a contaminant, making the soil subject to the solid waste regulations.

IDEM has developed risk-based non-rule policy documents (NPDs) to address and drive the cleanup of contaminated soil. These NPDs include IDEM's Remediation Closure Guide (RCG) and the Remediation Program Guide (RPG). Screening levels found in the RCG are used for determining if soil contains chemicals at concentrations that may present a threat to human health.

This NPD applies to soils, which do not include waste streams that are specifically regulated by 329 IAC 10 and which contain human introduced constituents (or chemicals) below RCG residential screening levels, and designates how those soils may be managed when excavated. Soils with concentrations of a human introduced chemical not exceeding RCG residential screening levels are considered uncontaminated if they are handled in accordance with this NPD. Soils with concentrations of human introduced chemicals or contaminants exceeding the RCG residential screening levels are considered contaminated soil and are not exempt from the solid waste rules under this NPD.

As defined in the RCG, a screening level is a chemical-specific concentration level that IDEM has determined to be sufficiently protective at any site, provided it is applied under appropriate land use scenarios. The RCG does not assess all environmental risk factors so its consideration is limited to surface and subsurface soils and ground water that may be used as drinking water.

This NPD is to provide consistent standards for excavated soil remaining on-site, reused on-site, or taken offsite for reuse or disposal.

2.0 SCOPE

The scope of this NPD applies to how excavated soil may be managed when found to contain human introduced chemicals below RCG residential screening levels.

The scope of this NPD does not include soils impacted by spilled materials subject to the IDEM Spill Rule at 327 IAC 2-6.

This NPD is not intended to address naturally occurring chemical constituents in soil.

This NPD does not exempt from regulation historical fill material made up of specifically regulated wastes and waste streams, which include, but are not limited to, coal ash, foundry sand, or other waste streams. Such materials are considered solid waste and must either be disposed in a permitted landfill or be approved for a legitimate use project.

This NPD also does not address situations when soil is intermingled with regulated solid waste. Examples include, but are not limited to, ash and debris mixed with soil after a fire, municipal wastewater treatment sludge mingled with soil from a lagoon liner, or similar situations where soil has become part of a waste. If soil can be physically separated from the wastes and is found to be uncontaminated, as specified in this NPD, it would no longer need to be handled as a waste.

In general, this NPD is not intended to address soils containing identifiable industrial wastes, solid wastes, or hazardous wastes that are inseparable from the soil.

3.0 DEFINITIONS

- 3.1. "Agency" – The Indiana Department of Environmental Management (IDEM).
- 3.2. "Chemical" – A substance with unique properties consisting of a combination of one or more elements.
- 3.3. "Contaminant" – "Contaminant" for purposes of environmental management laws, means any solid, semi-solid, liquid, or gaseous matter, or any odor, radioactive material, pollutant (as defined by the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect on January 1, 1989), hazardous waste (as defined in the federal Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], as in effect on January 1, 1989), any constituent of a hazardous waste, or any combination of the items described in this section, from whatever source, that:
 - (1) is injurious to human health, plant or animal life, or property;
 - (2) interferes unreasonably with the enjoyment of life or property, or otherwise violates:
 - (A) environmental management laws; or
 - (B) rules adopted under environmental management laws (329 IAC 10-2-41, IC 13-11-2-42)
- 3.4. "Contaminants of concern" – Chemicals that are the focus of screening, investigation or closure in Office of Land Quality remediation programs. For petroleum sites, potentially harmful chemicals within a mixture that are present in sufficient quantity to serve as indicator compounds for that particular mixture.
- 3.5. "Dirt" – The term "dirt" is used in state rules at 329 IAC 10-3-1(1)(1), but is not defined in statute or rule. For the purpose of this policy, 'dirt' and 'soil' are considered synonymous terms. See 'Soil'.
- 3.6. "Endangered species" – Any species listed as endangered or threatened under rules of the Indiana Natural Resources Commission at 312 IAC 9-3-19, 312 IAC 9-4-14, 312 IAC 9-5-4, 312 IAC 9-6-9, 312 IAC 9-9-4. (329 IAC 10-2-64)
- 3.7. "Flood plain" – The areas adjoining a river, stream, or lake that are inundated by the base flood. (329 IAC 10-2-75 and 329 IAC 10-2-22)
- 3.8. "Hazardous waste" – Hazardous waste as defined in the Code of Federal Regulations at 40 CFR 261 subpart B and Indiana Code at IC13-11-2-99.

- 3.9. "Karst physiographic feature" – Characteristic physiographic features present in karst terrains including any of the following: sinkholes, sinking streams, caves, large springs, blind valleys, grikes, karren, solution widened joints or bedding planes, loss of drilling fluid during core drilling, anastomosis and conduits of less than one meter but more than two and five-tenths (2.5) millimeters, and karst aquifers.
- 3.10. "Non-rule policy" - The term IDEM assigns to those policies identified in IC 13-14-1-11.5 as any policy that: A. Interprets, supplements, or implements a statute or rule; B. Has not been adopted in compliance with IC 4-22-2; C. Is not intended by IDEM to have the effect of law; and D. Does not apply solely to the internal IDEM organization (is not an administrative policy).
- 3.11. "Remediation Closure Guide" – IDEM's Remediation Closure Guide (RCG) is an NPD describing selected approaches to investigation and risk-based closure of contaminated or potentially contaminated sites. Its purpose is to provide for consistent application of Indiana Code (IC) 13-12-3-2 and IC 13-25-5-8.5, which form the statutory basis for risk-based cleanup in Indiana.
- 3.12. "Screening levels" – Screening levels and, more specifically, the residential screening levels, can be found in Table A-6 in Appendix A: Screening Levels (also referred to as Screening Levels Table) of the IDEM Remediation Closure Guide (RCG).
- 3.13. "Soil" – Unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand or gravel as classified by the U.S. Natural Resources Conservation Service. For the purpose of this NPD, 'dirt' and 'soil' are considered to be synonymous terms. (40 CFR 268.2(k) [not inclusive])
- 3.14. "Solid waste" - As defined in 329 IAC 10-2-174:
 - (a) Has the meaning as set forth in IC 13-11-2-205(a).
 - (b) The following are examples of other discarded material:
 - (1) Ash residue.
 - (2) Contaminated sediments.
 - (3) Commercial solid waste.
 - (4) Construction/demolition waste.
 - (5) Hazardous waste.
 - (6) Household waste.
 - (7) Infectious waste.
 - (8) Liquid waste.
 - (9) Pollution control waste.
 - (10) Municipal solid waste.
 - (11) Regulated hazardous waste.
 - (12) Residential waste.
 - (13) Industrial process waste.
- 3.15. "Wetlands" – Areas classified as jurisdictional wetlands or jurisdictional waters of the United States by the United States Army Corps of Engineers under the authority from the federal Clean Water Act, 33 U.S.C. 1344, and areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include (1) swamps, (2) marshes (3) bogs, and (4) similar areas. (329 IAC10-2-207 and IC 13-11-2-265.7)

4.0 ROLES

- 4.1 The Site Owner/Consultant/Operator or other person responsible for the soil shall: Be responsible for conducting an investigation of the soils and the site or area where the soil will be removed to determine if the soil contains contaminants. This can include but is not limited to:
 - Reviewing site records to determine previous uses of the property, including uses that may have adversely impacted the site. This could include, but is not limited to, records of ownership and taxation, property transfer disclosures, or descriptions of property use (i.e., Sanborn Maps.)

- Reviewing or inspecting the site to determine the presence of stained soil(s) or other indications of contaminated soil, if deemed necessary. During the record review or site inspection, conducting a characterization of the soil(s).
 - Determining if the soil contains human introduced chemicals. This will likely require collecting and analyzing representative samples of the soil in accordance with SW846 or other accepted methods and standards.
 - Inspecting for stained soils or other wastes and/or other indications of contamination during excavation.
 - If present, determining if the concentration of the human introduced chemicals or contaminant in the soil are at levels greater than the RCG residential screening levels.
 - Maintaining records/documentation used as a basis for determining the concentration of the human introduced chemicals in the soil.
 - If human introduced chemicals are present, maintaining records of where and how much soil was placed on-site or where and how much soil was sent off-site.
 - Ensuring that the soils containing any level of human introduced chemicals are not placed in an environmentally sensitive area.
- 4.2 Excavator/Transporter responsible for the relocation of soils shall:
- Ensure that the soils containing any level of human introduced chemicals are not placed in an environmentally sensitive area.
- 4.3 IDEM Compliance and Response Branch
- IDEM has been tasked with protecting the environment and shall be responsible for:
 - a. Answering questions related to this NPD, and
 - b. Investigating improper application of this NPD.

5.0 POLICY

This NPD is meant to aid in determining and explaining when, through the use of the RCG residential screening levels, soil containing detectable levels of human introduced chemicals is considered 'uncontaminated'. As 'uncontaminated' soil, the exclusion in 329 IAC 10-3-1(1) will apply according to the qualifications listed below.

Use of Residential Screening Levels

For excavated soils containing detectable amounts of human introduced chemicals, the residential screening levels provided in Table A-6 in Appendix A: Screening Levels (also referred to as Screening Levels Table) of the IDEM Remediation Closure Guide (RCG) should be used when the soils are:

- Not subject to RCRA hazardous waste regulatory requirements, and
- Going to be deposited on-site, or
- Used as fill on-site or off-site, or
- Managed in a way other than disposal at a municipal solid waste landfill

There are two residential screening levels in Table A-6; the "Migration to Groundwater" and the "Direct Contact" screening levels. The lower of the two screening levels must be used as the residential screening level when comparing the concentrations of the human introduced chemicals in the soil with the residential screening level.

Placement in Environmentally Sensitive Areas

In order to protect the environment, soils with any detectable levels of human introduced chemicals cannot be placed in environmentally sensitive areas.

Environmentally sensitive areas include the following locations:

- Areas of karst physiographic features.
- A wetland, floodway, or standing water, where the standing water reflects the water table.

Additionally, any placement of soil, on-site or off-site, could be subject to other regulations that include, but may not be limited to, the following regulations:

- 327 IAC 15-5 - Storm Water Run-Off Associated with Construction Activity.
- 327 IAC 15-6 - Storm Water Discharges Exposed to Industrial Activity.
- IC 14-28 - Flood Control Act (i.e., IC 14-28-1-22 Construction permits).
- 312 IAC 10 - Flood Plain Management (i.e., 312 IAC 10-4-1 License requirements for construction in a floodway).
- 312 IAC 10-2-39 - Unreasonable detrimental effects upon fish, wildlife, or botanical resources, and IC 14-28-1-22.
- Section 401 of the federal Clean Water Act - State Certification of Water Quality.
- 326 IAC 6-4 - Fugitive Dust Emissions.
- 326 IAC 6-5 - Fugitive Particulate Matter Emission Limitations
- IC 14-21 - Historic Preservation and Archeology.
- Section 404 of the federal Clean Water Act – Wetlands.
- The critical habitat of an endangered species as defined by the Code of Federal Regulations, 50 CFR 17.

Determination/Approval

At any given time, there are large numbers of excavations and large volumes of soil being excavated and moved throughout the state. Putting in place a formal process to require the review and assessment of every excavation by IDEM is not practical or an efficient use of IDEM's time. Therefore, this NPD is meant to be self-implementing.

The owner/operator will still be responsible for adhering to the statutory requirements, rules, and for following this NPD, but will not be required to obtain approval from IDEM.

Case-by-Case Site-Specific Levels

When an RCG screening level does not exist, facilities may develop a site-specific risk analysis to establish a site specific 'screening level'. If a case-by-case site-specific risk analysis is necessary, the owner/operator must submit a written proposal to the IDEM Solid Waste Compliance Section. A written approval from IDEM will be required before excavation may begin. The written proposal will be routed by the IDEM Solid Waste Compliance Section to the IDEM Office of Land Quality Science Services Branch, Risk Services Section.

More Information and/or Questions

If there are questions regarding the application of this NPD, please contact staff of the Solid Waste Compliance Section of IDEM's Office of Land Quality, at (317) 234-6923 or, toll free in Indiana, at (800) 451-6027, ext. 4-6923.

6.0 REFERENCES

6.1. Indiana Administrative Codes:

- A. [329 IAC 3.1, Hazardous Waste Management Permit Program and Related Hazardous Waste Management](#)
- B. [329 IAC 10, Solid Waste Land Disposal Facilities](#)
- C. [329 IAC 11-3-1\(1\), Solid Waste Processing Facilities; Exclusions; general](#)

6.2. Indiana Statutes:

A. [IC 13-13, Department of Environmental Management](#)

6.3 Agency Policies:

A. [Remediation Closure Guide NPD \(Waste-0046-R1\)](#)

B. [Contained-In Determination NPD \(Waste-0061\)](#)

Archived 04/10/2024

7.0 Signatures


Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

12/24/14
Date


Bruce Palin, Assistant Commissioner
Office of Land Quality

3/13/14
Date


Carol Comer, Assistant Commissioner
Office of Legal Counsel and Criminal Investigations

4/8/2014
Date

This policy is consistent with agency requirements.


Quality Improvement Program
Office of Planning and Assessment
Indiana Department of Environmental Management

12-29-2014
Date

Archived