

## NJDEP Technical Guidance Document Review Form

Document: *Fill Material Guidance for SRP Sites Version 4.0*

Comment Period: *May 28, 2021, to June 11, 2021*

NJDEP Committee Chairperson: *Greg Neumann*

Comment #	Page	Section	Subsection	COMMENTS	RESPONSE
1	6	2.0	0	NJBA believes the use of alternative fill for remediation should not be discouraged and the DEP should evaluate its position statement in this section. The use of alternative fill in remediation not only decreases the volume of fill in uncontrolled sites but also increases the likelihood of a remediation occurring and succeeding, and thus offers a net environmental, social and economic benefit. Furthermore, remediation projects will need to adapt to changing climates, sea level rise and new flood hazard requirements currently being contemplated as part of DEP's PACT rulemaking. Due to the lack and cost of clean fill, the use of alternative fill will be crucial in resiliency efforts and should be encouraged.	The Department allows for the use of alternative fill; however, this guidance document outlines the conditions for its appropriate use relative to existing regulations and Department policy. The Department acknowledges the need for alternative fill use in addressing changing climates, sea level rise and new flood hazard requirements. As this is a guidance document, when new information related to climate resiliency is finalized and regulation/policies are adopted, this guidance will be updated accordingly.
2	6	2.0	0	"The purpose of this document is to provide guidance on the use of fill materials strictly at Site Remediation Program sites (SRP sites)". Please consider providing clarification of the definition of SRP sites including sites at different stages in the SRP and during construction activities and add language clarifying the use of fill material in uncontaminated areas of SRP sites. This clarification could be added to App. D Glossary.	This document pertains to all SRP sites. This statement is meant to clarify that this document does not apply to non-SRP sites (not under the oversight of the of the SRP pursuant to ARRCs/SRRA). This document applies to all uses of fill, regardless of remedial stage. The use of alternative fill at uncontaminated areas is only allowed with pre-approval as per NJAC 7:26E 5.2 (b, c, and d). Further clarification is not needed and thus a new Appendix D Glossary is not necessary.

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3	7	3.0	2	Although not a change to this guidance document, please consider providing additional language explaining how post-RAO/soil-remedy construction-related filling is approached. For instance, if fill material is brought into a site during construction activities, and after a Soil RAP has been approved, would this require additional actions.	The use of new alternative fill associated with the reopening of a site previously granted an RAO would be subject to this guidance document and all SRP regulations and guidance. The last sentence of the first paragraph of Section 3.3 is revised to clarify this concept.
4	7	3.0	3	"Land Use Regulation" should be "Land Resource Protection".	Text modified to reflect program name change.
5	7	3.0	3	The reference to having to address requirements of Land Resource Protection (LRP) Permits is not needed. This requirement would be applicable through the LRP regulatory process and should not factor into Site Remediation's review of whether to approve the use of alternative fill. Site Remediation should be able to approve the use of alternative fill through the context of a redevelopment project, contingent upon any other necessary approvals for the project.	It is the Department's experience that some projects using alternative fill may require land use permits. In many instances, the Land Use Permit is tied directly to an SRP remedial action. This sentence is provided to help inform the investigator that permits from other programs (LURP) may be needed as it relates to the proposed use of alternative fill. No revision is required.
6	8	3.0	3	Many projects are unable to meet their projected schedules and thus there should be an opportunity to notify the department of schedule changes to avoid penalties for stockpiling.	The timeframe associated with stockpiling fill material is associated with existing solid waste regulations. This guidance will not circumvent solid waste regulations. Solid Waste may be contacted regarding schedule changes to avoid penalties.

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7	8	3.0	4	<p>The basis for this comment will be repeated in other sections that discuss the use and justification of alternative fill. As a general statement we are appreciative of the DEP's acceptance of the use of alternative fill. While we do not believe that pre-approval is necessary because a LSRP should be able to approve its use consistent with applicable guidance, as it does with decisions with much more risk and technical requirements, we can accept pre-approval from the DEP if clear criteria is given. We are concerned that certain statements of intent from the DEP in this guidance document are contradictory or, at best sending mixed signals. It is important to first appreciate that many remediations are driven by redevelopment decisions. While there is a statutory mandate to remediate, often the resources needed for the remediation is derived from development. That is a good thing in that it brings the site back to productive use rather than laying as barren land in areas where development is appropriate. The DEP lists some of the beneficial reasons why alternative fill is useful at a site. We understand that the DEP objects to a business model where bringing in fill is the sole justification for the increased fill volumes. We do not believe this is a legitimate concern. While we understand that the DEP does not want sites to accept fill, essentially as landfills, and for the "developer" to walk away, this is rare. The DEP should not regulate to the one bad actor. It should also be emphasized that that the financial benefits from alternative fill may very well make a remediation economically feasible and thus solving an environmental issue and preventing the State from using its own resources. If the guidance is followed, there is also very little risk from alternative fill.</p>	<p>The need for pre-approval regarding the use of alternative fill is an existing regulation established by N.J.A.C. 7:26E-5.2(b) and (d). This guidance document does discuss criteria related to pre-approval in Section 4.9. Additionally, the investigator has the ability to bring forth site-specific factors as part of the pre-approval process that may support the use of alternative fill. The Department recognizes the benefits of using alternative fill, however, this guidance document outlines the conditions for its appropriate use relative to existing regulations and Department policy.</p>

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8	8	3.0	4	Alternative fill should not be considered excessive when being used to meet elevation requirements of a DEP permit or to reach FEMA base flood elevations, especially in light of the PACT rulemaking and climate change/resiliency policies.	As stated in 3.4 (first bullet), the Department considers use of alternative fill above pre-remediation topography to address impacts of climate change as part of the pre-approval process. The Department acknowledges the need for alternative fill use in addressing changing climates, sea level rise and new flood hazard requirements. As this is a guidance document, when new information related to climate resiliency is finalized and regulation/policies are adopted, this guidance will be updated accordingly.
9	8	3.0	4	DEP should recognize a financial benefit as a legitimate reason to support the use of alternative fill. Having the financial resources to carry out remediation to completion is a clear economic, social and environmental benefit. Absent economically viable remediation, the State may be forced to expend public money for implementation of remediation.	The Department recognizes the benefits of using alternative fill to financially support the remediation of the site, as documented in the second bullet of 3.4. As stated in the first paragraph, financial benefits may not be used as the <i>sole</i> justification for the use of alternative fill above the original elevation grade.
10	8	3.0	4	It should be clarified that the recognized list of uses for alternative fill is not exhaustive in line with the position that the use of alternative fill should be encouraged.	These situations were identified specifically for the Department to consider the use of alternative fill at elevations above pre-remediation topography. The Department recognizes that other conditions may exist, which the investigator may identify to support the pre-approval process.

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11	9	3.0	5	<p>The DEP has had a long-standing policy of only allowing like on like when allowing fill to be brought in. We have no expectations that the DEP will change this policy in this guidance document. However, we want to go on the record as disagreeing with this policy and, instead, favoring a risk-based analysis. Other than a ideological belief against bringing in new contaminants and considering it a new discharge, there is no environmental or health risk based reason for like on like. This policy limits the fill that can be brought in, can drive up the cost of the remediation, and does nothing to protect the public health or safety. This policy should be reconsidered.</p>	<p>The Department acknowledges the position of the commenter on the like-on-like requirement. The reference to the like-on-like requirement in this guidance is consistent with the Technical Rules.</p>
12	9	3.0	8	<p>The Department should include a reference to the potential acceptability of using soil with EPH at concentrations above the EPH default residual saturation point/concentration if an site-specific alternative product limit calculator is properly established per the current Department EPH guidance</p>	<p>This section lists restrictions to free product/free liquid and a revision is not necessary. This section does not prohibit the development of site-specific standards related to EPH or any other contaminant. The development of an AOC/site-specific EPH alternative product limit, is specific to the soil properties at an AOC, and any movement of that soil may require additional evaluation before it can be moved. This would be a deviation from EPH Guidance, and a Technical Consultation is recommended.</p>
13	10	3.0	9; Bullet 1	<p>From the first sentence, delete the phrase "soil in this technical guidance" and replace with "soil and fill recyclable material as defined at P.L.2019, c.397 (C.13:1E-127.1 et al.)</p>	<p>Text modified as requested.</p>

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14	10	3.0	9; Bullet 1	Add the following paragraph: ""An LSRP or case manager responsible for the remediation of the receiving site is authorized to approve alternative fill for "soil and fill recyclable material" which may include both soil and non-soil material, upon determination that the alternative fill material meets applicable regulations at N.J.A.C. 7:26E including, but not limited to, the like-on-like and 75th percentile policies as applicable. A written approval shall be given to the supplier of the soil and fill recyclable material for use by the transporter, indicating the source and total quantity of such material approved to be imported as alternative fill,"	Paragraph has been added with additional input and modifications from Solid Waste.
15	10	3.0	9; Bullet 2	Delete the current text and replace with: "If the material to be used as fill does not meet the definition of "soil and fill recyclable material" and exceeds any direct contact soil remediation standard(s) but is not classified as RCRA-regulated hazardous waste, then the use as fill may only be allowed following issuance of a CAO/BUD by the DSHW for that material. Alternative fill classified as RCRA-regulated hazardous waste is not allowed.	Paragraph has been added with additional input and modifications from Solid Waste.
16	10	3.0	9	In the third bullet, regarding the use of PDM and obtaining an AUD, the Department needs to explicitly state that in addition to the AUD, the Investigator is also required to get the SRP Workplan approval required by 7:26E-5.2(c), which we believe is the case. Perhaps that should be made clear for all uses of Alt Fill in this section.	Text modified to clarify that SRP pre-approval may be required pursuant to N.J.A.C. 7:26E (b) 1, 2, 3.
17	11	3.0	11	Should switch bullets iii and iv so that local and county requirements are grouped together	The order of the list, as presented in the guidance document, is consistent with the order found in the ARRCs.

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18	11	3.0	11	<p>This comment is also applicable to other community and public engagement provisions in the guidance. The use of alternative fill is no different than any other remedial decision being undertaken at the site. In fact, it is likely one of these least risky decisions. We do not object with information being provided to the local officials and communities if required for any other aspect of the remediation currently required, we do not believe that any additional requirements should attach to the use of alternative fill. Its safety or potential for harm is a matter of expertise, that rests with the DEP and the LSRP. While public engagement is warranted for remediations, the local officials and the public have not greater capacity to review and determine the potential impacts of alternative fill any more than they do other aspects of the remediation. The DEP should be careful not to carve alternative fill out as a separate, and potentially more harmful activity.</p>	<p>Although additional engagement with the public or local community is not required, outside of ARRCS, enhanced communication with parties listed in this section and the community are encouraged to promote transparency. Text has been added for clarification.</p>
19	11	3.0	11	<p>The ARRCS rules at N.J.A.C. 7:26C-1.7(k) only require that the person responsible for conducting remediation "Provide notification, which includes the type and concentrations of contaminants in the alternative fill, the proposed use and volume of the alternative fill, and the controls designed to reduce or eliminate exposure...." The rules do not require this information to be included in Site Plan Approval. The requirement to include a RAWP in the Site Plan approval should be removed from the guidance. DEP lacks authority to impose requirements in the context of site plan approval applications, which are governed by the Municipal Land Use Law. Moreover, such a requirement would appear to signal an intent by DEP to delegate authority over remediation sites to municipalities, contrary to DEP's exclusive authority over remediation. Allowing municipalities to impose requirements with respect to remediation sites may lead to inconsistent results, impede cost-effective and timely completion of remediation, and unduly burden and prejudice responsible and/or remediating parties. The regulation of alternative fill should remain the sole purview of DEP and not be subject to local approval.</p>	<p>The intention of this language was to avoid duplicative efforts in instances where a Site Plan approval is sought. Text has been deleted for clarification</p>

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20	11	3.0	11	In paragraph 1 the DEP uses somewhat vague and confusing instructions regarding expectations for public notification. The word used in the guidance is “encouraged” to communicate with local officials early in the process, but then later in the document to complete the FUP this appears to be required. We recommend this paragraph be modified to be clearer on the DEP expectations.	Text has been updated in Section 3.11 for better clarification between regulatory requirements and recommendations.
21	11	3.0	11	In paragraph 3 the DEP lays out the need for a RAWP with an attached FUP to satisfy public notification documentation, but these documents are very technical and will confuse the public and will not achieve the intended purpose of enhancing communication. We recommend the DEP develop a form letter template to help convey this information and put this in an Appendix.	The Department recognizes that the information required in the RAW is highly technical, thus, in the 3rd paragraph, 3rd sentence, the Department specifically encourages the investigator to provide a summary letter more easily understood by the layman. The Department does not believe a template is necessary as its content will vary respective to the complexity of the site.
22	11	3.0	11	Public notification is required to complete the FUP, but the Guidance states to use the FUP to facilitate public notification. These instructions are circular and need to be resolved.	Text has been updated in Section 3.11 for better clarification. The requirements in Appendix B is consistent with this section.
23	11	3.0	11	In paragraph 4 the DEP is stating that Site Plan approval should include a RAWP and summary letter and then your public notification requirement is satisfied. For projects without Site Plan approval the Investigator must follow the ARRCs public notification requirements. Same recommendation as above, the DEP should provide a letter summary template for information to support a Site Plan application. Many municipal officials will not have the background knowledge to review and communicate this complex information to Planning/Zoning Boards or Township Committees.	The Department does not believe that a universal template is necessary. The complexity of sites utilizing alternative fill may vary greatly making the use of a single template problematic. It is the PRCR's responsibility to provide adequate information to the public to ensure their comprehension and concerns regarding the site are addressed. This guidance permits the summary letter to be in a simpler format that is more easily understood by the laypeople.



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24	11	3.0	11	There is no mention of how local Ordinances will be integrated with this Alternative Fill approval process. This process needs to be consistent with the NJ Municipal Land Use Law.	Local ordinances may be township specific, and as such, are beyond the scope of this documents.
25	11	3.0	11	First paragraph: The wording in the Rule at 7:26E-5.2(b) is a confusing since it is phrased as a negative (without prior written approval from the Department provided no alternative fill...) and the reference here is "does not meet the requirements specified at 7:26E 5.2(b). It would be clearer if 7:26E(c) is cited.	Text has been modified in the paragraph to provide better clarification.
26	11	3.0	11	LSRPA certainly understand the intent and importance of community involvement. However, the regulations at 7:26C-1,7(k) are clear in that the first step is to "Obtain the Department's prior written approval through the submission of a proposal and completion of the RAW Form...". Step 2 is to provide "notification". The Guidance encourages the investigator to communicate with local officials "early in the process". Clearly, the Regulations require the Department Approval first. In this section, it appears that the Guidance goes beyond the requirements of the regulation, and in situations where any modifications to the submission is required in response to NJDEP approval, the notification process is listed in the guidance will be confusing/potentially inaccurate. Any necessary communication in response to the public notification after the Department approval can still occur and be effective.	The SRP does not approve RAWs. No revisions needed. The requirements at 1.7(k) are not necessarily sequential
27	12	4.0	2	Our like-on-like comments from above apply here as well.	The Department acknowledges the position of commenter on the like-on-like requirement. The reference to the like-on-like requirement in this guidance is consistent with the Technical Rules.
28	13	4.0	3	Should say "Collect a discrete sample..." or are you trying to say assemble discrete sample results (from multiple samples) that represent max concentrations	Text has been changed in items 1 and 4 for clarification.

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29	15	4.0	5.1	Composite sampling may more accurately reflect conditions on site than discrete sampling as alternative fill will be comingled in its final use.	The Department has documented its preference for discrete sampling in Section 4.5.1 but does allow composite sampling as stated in the section.
30	19	4.0	6	The word "term" should be "terms".	Text modified as requested.
31	19	4.0	6	It might be clearer to change the last sentence to read "Note that migration to ground water (MGW) evaluation applies to alternative fill material obtained from both the saturated and unsaturated zones because saturated fill may be placed above the water table at the receiving AOC."	Text has been updated.
32	23	4.0	7.6	This section notes that sampling of buildings and other structures for recycled concrete should be performed prior to demolition but it does not address buildings and structures which have already been demolished and this situation should be addressed.	Text has been revised for better clarification.
33	23	4.0	7.6	This section notes that sampling of buildings and other structures for recycled concrete should be performed prior to demolition but it does not address buildings and structures which have already been demolished and this situation should be addressed.	
34	26	4.0	7.9.2	In regards to Asphalt Millings, is it the intent that the millings must meet the 75th percentile for EPH in the receiving AOC?	Yes, if the millings are being used as alternative fill as described in paragraph 3 of Section 4.9.7.1.
35	27	4.0	9	This guidance notes that assuming completed applications for pre-approval are submitted, applicants should expect a response in 45 days. NJBA requests that hard deadlines for completeness determination and decisions are instituted.	The Department estimates a turn around time of 45 days, but deadlines may vary. Review times are subject to SRP priorities and resources as determined by SRP Management.

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36	28	4.0	9	<p>Although the 4 Steps generally make sense, the DEP instructions and expectations are confusing. We recommend the following modifications based on experience working with the DEP Fill Material Team: Step 1. Pre-Proposal Call – Investigator should call a technical representative of the DEP’s Fill Material Team or the FMT. The Guidance document should state the information/topics to discuss in preparation for this call – We don’t think you need a conference call at this stage. In this Step the Investigator should request a Technical Meeting and the DEP should confirm what they need to facilitate the requested TM; Step 2. Prepare and Submit Draft Documentation. Prepare and submit DRAFT RAWP and DRAFT FUP, in addition prepare a plan to perform outreach to the local community, to the DEP FMT. This information is submitted to the DEP FMT for preliminary review and feedback prior to a Technical Meeting. The DEP FMT provides the Investigator with a written list of questions/concerns and requests for additional documentation, if necessary, based on review of the DRAFT documentation submitted by the Investigator; Step 3. Technical Meeting – Investigator and DEP review feedback from DEP’s preliminary review. DEP FMT will either deem the DRAFT documents Administratively Complete or require some additional information to support the application. Step 4. Submit Proposal – Once DEP FMT confirms the DRAFT submission of information is administratively complete the Investigator will submit the final proposal.</p>	<p>The 4-step process is created for complex sites that may require additional discussions with the Department. The steps listed are comprehensive and provide ample opportunities for the investigator to reach out to the Department with their concerns. The listed recommended changes are captured within varying aspects of Steps 1-4. Some additional language has been added to Step 2 for further clarification. During the technical meeting (Step 3), the goal is not to approve the draft RAW, but rather discuss technical issues at the site related to the use of alternative fill that requires pre-approval. Final approval of the FUP takes place in Step 4 after online submission of the final RAW.</p>

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37	28	4.0	9	Is the DEP FMT commitment to a 45-day review and final determination from the date of submission of the administratively complete DRAFT documents? What is the commitment to review and respond if the DEP FMT requests additional documents after they determine the documentation is Administratively Complete?	The Department estimates, in good faith, a turnaround time of 45 days on administratively complete pre-approval proposals submitted by the investigator through the E-Portal, but deadlines may vary. Once the pre-approval proposal is deemed administratively complete, the investigator should then submit the proposal as part of Step 4. If it is deemed incomplete, the investigator must revise the proposal to include the components listed for Step 3 and the review time will be extended. Review times are also subject to SRP priorities and resources as determined by SRP Management.
38	28	4.0	4.9	As mentioned in Comment 3, the outline of the steps required does not agree with the Regulation cited. (7:26C-1.7(k)). The Department's approval of the Proposal should occur prior to public notification. This section states that the "...PRCR must conduct public notification..." as a part of Step 3.	The SRP does not approve RAWs. No revisions needed. The requirements at 1.7(k) are not necessarily sequential.
39	30	4.0	9.3	Seems that the DEP is setting up conflicting objectives...the first is to minimize the use of alternative fill and limit it to filling excavations to existing grade and dissuade from the use of alternative fill above the existing topo profile, while on the other hand, they want to facilitate climate resiliency of these vulnerable properties. Our hope is that the DEP FMT will be able to properly evaluate economic factors into the suitability of the proposal.	The Department acknowledges the need for alternative fill use in addressing changing climates, sea level rise and new flood hazard requirements. Since this is a guidance document, as new information related to climate resiliency becomes available, the document will be updated accordingly.

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40	30	4.0	9.3	The Considerations section appears to be statements of Department Policy regarding the evaluation of alternative fill proposals. These should not be stated as questions. It would be clearer for these to be statements with words like should or must (if required by regulation).	These are "considerations" which the DEP will take into account when evaluating proposals to use alternative fill above pre-remediation topography elevations. The conditions listed are based on the DEPs history of reviewing such proposals and an understanding of some of the factors often used to support such a proposal. They do not represent official NDEP policy, and the guidance does not imply that they are policy.
41	30	4.0	9.3	The use of alternative fill above grade will likely be even more critical for redevelopment projects in NJ with the need to adapt to the anticipated regulatory rule changes relating to climate change and future sea level rise. Where alternative fill is proposed at remediation sites to raise site elevations above existing grade to meet applicable FEMA flood mapping and/or Department flood hazard design flood elevations, the guidance should support a presumption of approval subject to the applicant's satisfaction of applicable like-on-like and 75th percentile requirements. Furthermore, the reference to a "bona fide" redevelopment project is unclear and suggests discretion on the part of DEP to determine whether it supports a particular type of development. The guidance should not permit such discretionary review of proposed development type, which is beyond the jurisdiction of DEP in the context of addressing site remediation concerns, and the reference to "bona fide" redevelopment should be removed. The use of alternative fill to generate revenue in support of redevelopment should also not be discouraged if the redevelopment project will have a net positive effect on the community, environment and economy.	The Department does not support a presumption of approval as the requirement for pre-approval is stated in the Technical Rules. The Department acknowledges the need for alternative fill use in addressing changing climates, sea level rise and new flood hazard requirements. Since this is a guidance document, as new information related to climate resiliency becomes available, the document will be updated accordingly. The Department recognizes the benefits of using alternative fill to financially support the remediation of the site, as documented in the second bullet of 3.4.
42	31	4.0	9.3	The paragraph that begins "To ensure full transparency..." is again a requirement that goes beyond the regulatory requirement for notification and should only come after the approval of the RAWP/FUP by the Department.	Per N.J.A.C. 7:26C-1.7(i & k), notification is required with the submission of the RAWP and FUP.

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43	31	4.0	9.3	The perceived negative effects of alternative fill include increased truck traffic but presumably the same amount of truck traffic would still occur with the importation of clean fill.	Comment acknowledged.
44	31	4.0	9.3	As referenced in comments on Section 3, Subsection 11, the ARRCs rules at N.J.A.C. 7:26C-1.7(k) only require that the person responsible for conducting remediation "Provide notification, which includes the type and concentrations of contaminants in the alternative fill, the proposed use and volume of the alternative fill, and the controls designed to reduce or eliminate exposure..." The requirements to detail the reasonably anticipated direct and indirect positive and negative impacts of the project, the volume of alternative fill that exceeds pre-remediation topography elevations and to provide a FUP, are beyond the scope of the ARRCs. This requirement should be removed.	The Department believes it is important that the investigator be transparent and clearly inform the municipality on the proposed use of alternative fill. No revisions required.
45	31	4.0	9.3	Clarification should be provided that the inclusion of language noting that other permits may be required is simply to recognize that other agency approvals may be applicable to a redevelopment project, and that DEP does not intend to require the applicant for the alternative fill approval to also obtain approval of use of alternative fill from other agencies. This would clarify that jurisdiction over remediation sites and the use of alternative fill is with DEP and is not within the jurisdiction of agencies who may have permit authority over the redevelopment project.	The language in this section is simply intended to notify the investigator that approvals from other agencies may be required. This language is consistent with NJAC 7:26E 1.1 (b). No clarification is necessary.
46	31	4.0	9.3	The 3 <sup>rd</sup> Bullet on page 31 regarding increased truck traffic is not particular to contaminated alt fill.	Comment acknowledged.
47	31	4.0	9.3	In the third bullet, increased truck traffic and impacts such as diesel emissions, noise, risks to pedestrians, and damage to roads are clearly issues associated with the importation of fill whether it is clean or alternative fill.	Comment acknowledged.

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48	31	4.0	9.3	<p>The guidance states that “the PRCR will be required to engage the host and affected communities by meeting the notification and reporting requirements set forth at N.J.A.C. 7:26C-1.7(k) and by providing the details of the project”, and further states that “Projects involving the use of alternative fill above the volume required to restore the premeditation topography and elevation of the receiving area of concern may also require formal municipal Planning Board or Zoning Board approval and, where required, approval by the regional planning entity (i.e., Highlands Council, Pinelands Commission, Meadowlands District) following a formal public meeting as specified above.”</p> <p>CCNJ/SRIN request that DEP clarify/confirm that "formal public meeting" refers to a municipal Planning/Zoning meeting and is not related to PRCR engagement with the host/affected communities. PRCRs already adhere to public notice provisions and can meaningfully and effectively engage with the public without holding a formal public meeting.</p>	Text has been revised in Section 4.9.3 to clarify that these meetings are at the discretion of the local entity.
49	31	4.0	9.3	The 4 <sup>th</sup> paragraph on page 31: Is the DEP FMT looking for both a PE and LSRP <u>to certify</u> the FUP?	The LSRP certifies the FUP as noted in the next paragraph. The word "should" is associated with the PE Certification for design plans. Text has been added for clarification.
50	32	4.0	9.4	The use of DEP's sea level rise projections should be considered by DEP for when alternative fill may be needed to reach future base flood elevations.	Comment acknowledged.
51	32	4.0	9.4	The 3rd paragraph on page 32 states: Remediation needs are the primary goal of alt fill evaluation. In the case of flood prone areas, the build-up of a cap above FEMA Flood Hazard design levels should be a priority to protect the remediation site from harmful erosion or other catastrophic failures that expose underlying controls of residual contamination (institutional or engineering control).	This guidance allows the use of alternative fill to achieve this goal as a component of a remedial action.

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52	32	4.0	9.3	<p>The guidance states the following: "For projects that are not subject to RFS requirements, the PRCR will be required to provide semi-annual reports to the Department describing the status and projected completion date of the capping project."</p> <p>Since there is no regulatory requirement requiring the PRCR to submit semi-annual reports to the Department, CCNJ/SRIN request that DEP clarify/confirm whether they would consider this a deviation from guidance or a condition of approval of the use of alternative fill.</p>	<p>The requirement to submit semi -annual reports shall remain. The regulatory authority to require the submission of these reports is provided in N.J.A.C. 1.5(f) and N.J.A.C. 7:26C 1.7(h)1. These citations have been added to this section of the guidance.</p>
53	32	4.0	9.4	<p>The submission of an LOI should not be a mandatory requirement. Wetlands LOI's are not always required in connection with efforts to develop or redevelop a site. The statement noting that any information which may be relevant for why the site is being filled is sufficient and should replace this list of requirements. Alternatively, the guidance should be revised to clarify that the listed items are not mandatory checklist requirements for a complete application, but instead represent categories of potentially relevant information that may be submitted if applicable on a case-by-case basis.</p>	<p>The submission of an LOI is not a mandatory requirement. The sentence before the bullet list includes the word "should." If wetlands are not present on-site, then submission of an LOI is not needed. If they are present, then the LOI should be submitted so the DEP can evaluate the placement of alternative fill relative to the wetland boundaries. Text has been added for clarification.</p>
54	33	4.0	9.5	<p>It is unclear if subsection 9.5 only applies to areas outside flood hazard zones and how upland areas are differentiated from those described in 9.4. Again, this guidance should contemplate potential future flood hazard areas.</p>	<p>Comment acknowledged. Text has been revised.</p>



Comment #	Page	Section	Subsection	COMMENTS	RESPONSE
55	27-33	4.0	9.3-9.5	<p>The DEP seems to be recognizing the legitimate need for alternative fill and the clear benefits in many cases. However, it then also seems to be taking an alternative view by stating that economics or redevelopment cannot drive the need for alternative fill. This sends a mixed message to the business community as the DEP's actions become less predictable. Predictability is essential in development projects where project viability can turn on these types of decisions. The DEP's decision-making process should be simplified. If a site is proposed to be elevated with alternative fill, and all conditions of the fill have been met, then the only questions become was the site elevations approved by the local planning board (where applicable), was it the minimum necessary for the redevelopment activity, and does it meet the minimum elevation requirements of the Flood Hazard Act. The DEP has recently emphasized climate change, flooding, and sea level rise. Yet, these considerations are merely one consideration in the DEP's analysis of the use of alternative fill. They should be determinative. We suggest that if the FHA requires development to be built at a certain level, that the use of alternative fill to that level should be automatically approved, if standards are met. To deny the use of alternative fill to meet the FHA levels would leave a site, in the DEP's land use eyes, as inadequate from a development and safety perspective. The DEP needs to be consistent in this policy application. It is also irrelevant if the site is in the FEMA 100-year flood elevation area. Being in this area does not preclude development, it only sets standards. The SRP approval of alternative fill could condition approvals on obtaining other DEP or construction permits, it should not seek to set new standards for other programs. We also disagree with the DEP's listing of community concerns with the use of alternative fill. Slopes and truck traffic are concerns with any fill material; the use of alternative fill is irrelevant to the community. As to risk, the DEP's standards are protective of public health and the environment. The use of alternative fill does not make the DEP's standards any less protective or give a community any additional authority or concerns.</p>	<p>This guidance document allows for the use of alternative fill to bring the engineering controls above elevations prone to flooding (i.e., 100-year flood elevation), and may allow for the use of alternative fill above the 100-year floodplain elevation, on a site-specific basis, as part of the pre-approval process established at N.J.A.C 7:26E-5.2(b). The factors to consider when evaluating alternative fill use are complex and site-specific which makes the development of "simple" and "predictable" guidance difficult. Given the NJDEP's longstanding policy of allowing the use of alternative fill provided it does not make the site worse, the DEP believes this guidance document strikes a reasonable balance at allowing the use of alternative fill with appropriate conditions as presented in the guidance. This guidance does not prohibit the use of alternative fill to meet FHA levels, or for sites below the 100-year flood elevation. The DEP believes that community concerns are an important consideration as it relates to the use of alternative fill.</p>

Comment #	Page	Section	Subsection	COMMENTS	RESPONSE
56	34	5.0	0	Contiguous lot definition includes lots separated by a road	If a road separates a lot/block on a site, and the lot/blocks on either side are within the boundaries of the site, they would be considered contiguous. No changes to the text are necessary.
57	34	5.0	1	Extra comma following " (see Section 5.2)."	Text modified as requested.
58	44	6.0	7	Missing word. "The SRWMP definition of alternative and clean fill and this technical guidance determines what material can <b>be</b> used at SRP sites as well as how..."	Text modified as requested.
59	43	6.0	4	The Department's statements in the last paragraph of this section is confusing. In the preceding paragraph, the Department references prior / current recommendation regarding acceptable levels of asbestos in soil samples; and then in the third paragraph suggests that this may not be reliable.	The Department believes the text is clear. No changes made.
60	63	Appendix B		The Fill Use Plan Checklist states the following: "A description of the plan for modification of the Remediation Funding Source, if applicable, as outlined in Section 4.9.2". The Remediation Funding Source is referenced in Section 4.9.3, not Section 4.9.2.	Change has been accepted.
61	63	Appendix B		The Fill Use Plan Checklist states the following: "Engineering plans signed and sealed by a professional engineer licensed by the State of New Jersey, as outlined in Section 4.8.1 and 4.9.2." The engineering plans signed and sealed by a professional engineer is referenced in Section 4.9.3, not Section 4.9.2.	Change has been accepted.