

To: David Paylor, Director, Department of Environmental Quality  
Rob Farrell, State Forester, Department of Forestry  
Jewel Bronaugh, Commissioner, Department of Agriculture and Consumer Services  
Stephen Brich, Commissioner, Department of Transportation

From: Stephanie Bellotti, DEQ-NRO Enforcement Specialist, Sr. II  
Thomas Faha, DEQ-NRO Regional Director

Date: December 1, 2020

Subject: HB1639 Report to Agencies

cc: Dean Lynch, Executive Director, Virginia Association of Counties  
Michelle Gowdy, Executive Director, Virginia Municipal League  
HB1639 Work Group Members and Agency Participants

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This memo and attachments serve as the report to the Director of the Department of Environmental Quality (DEQ), State Forester, Commissioner of the Department of Agriculture and Consumer Services (VDACS) and the Commissioner of the Department of Transportation (VDOT) pursuant to House Bill 1639 (2020, Guzman) (HB 1639).

## **Introduction**

The 2020 General Assembly passed HB1639 regarding the placement of construction fill and debris on rural lands. Specifically, the legislation directs DEQ to convene a work group to develop recommendations by December 1, 2020, to the Director of DEQ, the State Forester, the Commissioner of the Department of Agriculture and Consumer Services, and the Commissioner of the Department of Transportation. A copy of HB1639 is attached. (Attachment A)

The legislation calls for a work group to discuss various aspects of, and concerns regarding, the practice of placing soils and debris from construction projects on agricultural lands, and to report any recommendation to the four agencies by December 1, 2020.

It is important to note that due to the timeframe for completing this work, the work group discussed the process for completing the report but did not have an opportunity to review the report before its submission and work group members may choose to communicate separately and directly with the agencies regarding matters in this report.

## **Work Group Membership**

HB1639 specified the type of organizations to comprise the work group. DEQ identified organizations consistent with the direction provided by HB 1639 and invited representatives from each to participate in the work group. Additionally, the work group includes individuals and organizations who contacted DEQ early in the process to volunteer to be part of the work group.

## The Work Group:

American Planning Association,  
Virginia Chapter

Eldon James  
Eldon James Associates

Home Builders Association of Virginia

Andrew Clark  
Vice President of Government Relations

Fauquier County

Amy Rogers,  
Chief, Zoning and Development Services

Solid Waste Association of North America  
Old Dominion Chapter

Ben Loveday  
President

Virginia Trucking Association

P. Dale Bennett  
President

Thomas Jefferson Planning District Commission

David C. Blount  
Director of Legislative Service

Albemarle County

Bart Svoboda  
Director of Zoning

Piedmont Environmental Council

Julie Bolthouse  
Fauquier County Land Use Representative  
Dan Holmes  
Director of State Policy

Virginia Transportation Construction Alliance

Gordon Dixon  
Executive Vice President  
Rob Lanham  
Aggregates Program Manager  
James Higginbotham  
English Construction

Virginia Association of Counties

Joe Lerch  
Director of Local Government Policy

Virginia Agribusiness Council

Kyle Shreve  
Executive Director

Virginia Assoc of Soil and Water Conservation Districts

Kendall Tyree  
Executive Director  
Deirdre Clark  
Director, John Marshall SWCD

Virginia Waste Industries Association

Lisa Kardell  
Vice Chair  
Ernie Houk

Virginia Farm Bureau Federation

Martha Moore  
Vice President Governmental Relations  
Andrew Smith  
Associate Director Governmental Relations

Staff from each of the four agencies participated in the November 6 meeting by providing short regulatory overviews and answering questions; see the meeting agenda (Appendix B) for list of staff.

## **Task**

HB 1639 directed the work group to discuss five particular aspects regarding placement of construction debris and soils on rural lands and consider making recommendations to the four state agencies regarding these practices. The five discussion topics identified in HB 1639 are:

- (i) The need of road construction and development projects to dispose of dirt in a cost-effective manner;
- (ii) The practice of rural landowners charging a fee to allow the use of their lands as disposal sites;
- (iii) The extent of monitoring for possible contaminants or effects on groundwater when dirt and rubble is deposited on agricultural fields;
- (iv) The adequacy of existing state and local enforcement remedies against responsible land disturbers disposing of dirt in unauthorized or unapproved locations; and
- (v) The use of rural roads by dump trucks traveling to disposal sites and any effects of such travel, including road damage, traffic congestion, noise, and the loss of a portion of the dirt during transit in the form of dust or mud.

The recommendations the work group was to consider:

- (a) changes to guidance or regulations for agencies having the authority to regulate activities associated with the work group's work, including recommendations regarding a model ordinance for adoption by localities; and
- (b) statutory changes, including changes related to agricultural engineering operations and construction of terraces as those terms are used in the State Water Control Law §62.1-44.2 et seq. of the Code of Virginia.

## **Process**

To accomplish the task in the timeframe allotted and within existing resources, and in consideration of COVID-19 restrictions, DEQ requested that each of the work group members provide written insights and experiences regarding the five discussion items and submit recommendations as requested by the legislation. These contributions were then shared with the work group members in advance of a day long virtual meeting, held on November 6, 2020, where they were further reviewed, discussed, and augmented.

A copy of the agenda for the November 6 meeting is provided as Attachment B. During the meeting, Fauquier County and Piedmont Environmental Council gave presentations providing background on the issue; their Power Point slides are included with this report. (Attachments C and D).

Sixty-two individuals were registered for the electronic meeting and 57 individuals attended. Of the 57 individuals in attendance, approximately 15 individuals attended that were not associated with named

work group organizations. Staff from the four agencies attended the meeting and offered background information on their respective roles and authorities with respect to the placement of fill on rural land. DEQ staff organized and facilitated the meeting.

Because of the complexity of the issue, the size and diversity of the work group, and the timeframe for submitting the report, the group did not attempt to reach consensus on any of the discussion items or recommendations. The goal of the November 6 meeting was for each member to learn the viewpoints of other members, and having heard the various viewpoints, to then make, add, or refine their individual recommendations to the four state agencies. It was understood that the information and recommendations shared by each of the group members would be provided to the four agencies for their consideration.

## **Summary**

Attachment E is a summary of the comments and recommendations each work group member submitted in writing and expressed during the work session (Attachment E). The Attachment E summary includes comments received from individuals who are not work group members. Attachment F contains the original submittals from each work group member and any associated attachments.

There were many suggestions and recommendations offered by work group members and the summary attempts to capture them. The original submittals are included so each agency can more fully understand the information and comments offered by each work group member and not rely entirely on the summary of comments and recommendations.

During the November 6<sup>th</sup> meeting, the work group discussed the information and recommendations provided by the members. The discussions were robust and included both general and specific viewpoints; a review of the presentations and Attachments E (the summary of comments and recommendations) and F (written submission from work group members) is needed to capture various viewpoints in full.

As an overview of the insights and recommendations provided by the work group members, DEQ notes the following observations from the November 6 work group meeting:

- Work group members discussed the case example presented by Fauquier County and Piedmont Environmental Council and whether such a project was a bona fide agricultural operation; some work group members expressed that it was not an agricultural operation. A representative of Fauquier County noted the county is appealing a court ruling that the case example did qualify as an agricultural exemption.
- Work group members discussed that farms should be able to receive clean fill material for bona fide agricultural operations; concerns about large volumes outside what might be considered an agricultural operation were frequently expressed.
- Some work group members indicated an understanding that most farms receiving fill are doing so with smaller quantities than the case example and are not receiving payment to receive the fill material; other members suggested it is not uncommon for landowners to charge a fee.



- Some members expressed an interest in changing or adding to regulations. There were other members, however, who believed existing regulations were sufficient with no changes necessary.
- Some work group members expressed a need/preference for more guidance and/or clear definitions with respect to what activities may fall within an exemption for agriculture. For example, a numeric/ton threshold for placement of fill on rural lands that may cross the line from being agricultural to becoming an ‘open dump;’ a change to the definition of ‘clean fill’ or clarifications/restrictions with respect to asphalt in clean fill. Other work group members expressed concern with overly defining such terms and a concern that to do so would risk potentially excluding or limiting or overly regulating legitimate agricultural operations.
- The work group discussed terracing as an exempt agricultural engineering operation with some work group members suggesting that terracing should be removed from the exempt agricultural engineering operations definition and others expressing concern with potential, unintended implications of eliminating the exemption outright.
- Some work group members expressed an interest in monitoring for contamination at the source (construction site), prior to transport and placement of fill and noted that that such monitoring after placement/disposal was too late. Other work group members expressed concerns that such testing may be expensive and unproductive.
- With respect to model ordinances, work group members discussed that some localities like Albemarle County, have adopted ordinances to regulate the placement of fill within the locality. At least one work group member noted that rather than working on a model ordinance it would be helpful for localities to review ordinances adopted by other localities and then use those as a starting place for development of ordinances to fit the particular needs of the locality. A copy of the ordinance adopted by Albemarle County is included with their written comments in Attachment F.
- During the meeting, work group members had mixed views with respect to the adequacy of existing regulatory enforcement tools, with some members expressing the view that localities have sufficient tools to enforce and other members expressing the view that localities have no or limited authority if the fill operation has an agricultural exemption under erosion and sediment control regulations.
- Work group members generally discussed potential rural road damage/effects from high volume truck traffic and localities ability to address such issues by ordinance.

## Conclusion

As noted above, this report (including attachments) reflects the information and recommendations shared and discussed by the work group formed pursuant to HB 1639 and is submitted to you for your consideration.

Thank you for your attention to this report. Please contact us if you or your staff have any questions.

Stephanie Bellotti, [Stephanie.bellotti@deq.virginia.gov](mailto:Stephanie.bellotti@deq.virginia.gov)  
 Thomas Faha, [Thomas.faha@deq.virginia.gov](mailto:Thomas.faha@deq.virginia.gov)

703-583-3857  
 703-583-3810

**HB1639**

**TEXT**

**ATTACHMENT A**

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 624

*An Act to direct the Department of Environmental Quality to convene a work group to develop recommendations on the issue of the disposal of construction fill and debris on rural lands.*

[H 1639]

Approved April 2, 2020

**Be it enacted by the General Assembly of Virginia:**

**1.** § 1. *That the Department of Environmental Quality (DEQ) shall convene a work group to discuss the issue of the disposal of construction fill and debris on rural lands. The work group shall include representatives of DEQ, the Department of Forestry, the Department of Agriculture and Consumer Services, the Virginia Department of Transportation, nonprofit environmental organizations, the waste disposal industry, the trucking industry, the Virginia Chapter of the American Planning Association, the Virginia Farm Bureau Federation, the Virginia Agribusiness Council, the Virginia Association of Counties, the Home Builders Association of Virginia, the road construction industry, and the Virginia Association of Soil and Water Conservation Districts. The work group shall discuss (i) the need of road construction and development projects to dispose of dirt in a cost-effective manner; (ii) the practice of rural landowners charging a fee to allow the use of their lands as disposal sites; (iii) the extent of monitoring for possible contaminants or effects on groundwater when dirt and rubble is deposited on agricultural fields; (iv) the adequacy of existing state and local enforcement remedies against responsible land disturbers disposing of dirt in unauthorized or unapproved locations; and (v) the use of rural roads by dump trucks traveling to disposal sites and any effects of such travel, including road damage, traffic congestion, noise, and the loss of a portion of the dirt during transit in the form of dust or mud. The work group shall consider recommending (a) changes to guidance or regulations for agencies having the authority to regulate activities associated with the work group's work, including recommendations regarding a model ordinance for adoption by localities, and (b) statutory changes, including changes related to agricultural engineering operations and construction of terraces as those terms are used in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). The work group shall report its recommendations to the Director of DEQ, the State Forester, the Commissioner of the Department of Agriculture and Consumer Services, and the Commissioner of the Department of Transportation by December 1, 2020. The work group also may provide any recommendations to the Virginia Municipal League and the Virginia Association of Counties.*

**HB1639**

**11-6-2020 WORK GROUP MEETING AGENDA**

**ATTACHMENT B**

## HB 1639 Work Group

November 6, 2020

### Meeting Agenda (Virtual Meeting)

**Link:** <https://register.gotowebinar.com/register/1413645807440268303>

9:00 am	Welcome Logistics Purpose / Goal	Tom Faha Marilee Tretina / Luisa Sandoval
9:10	Roll Call / Introductions Work Group Members	Tom Faha
9:25	Overview of Issue Fauquier County Experience Piedmont Environmental Council	Amy Rogers Julie Bolthouse
9:50	Statements from State Agencies DEQ Waste Regulations Virginia Water Protection Regulations E&S and Stormwater Regulations  DOF VDACS VDOT	Rich Doucette Trisha Beasley Erin Belt  Ed Zimmer Darrell Marshall Chris Swanson
10:20	Questions	Work Group
10:30	Break	
10:40	Discussion Topics / Review of Comments Received	Work Group
	(i). The need of road construction and development projects to dispose of dirt in a cost-effective manner; (ii). The practice of rural landowners charging a fee to allow the use of their lands as disposal sites; (iii). The extent of monitoring for possible contaminants or effects on groundwater when dirt and rubble is deposited on agricultural fields; (iv). The adequacy of existing state and local enforcement remedies against responsible land disturbers disposing of dirt in unauthorized or unapproved locations; and (v). The use of rural roads by dump trucks traveling to disposal sites and any effects of such travel, including road damage, traffic congestion, noise, and the loss of a portion of the dirt during transit in the form of dust or mud.	
12:15	Lunch Break	

12:45	Development of Recommendations (1) Changes to Guidance (2) Changes to Regulations (3) Changes to Statutes <ul style="list-style-type: none"> <li>- State Water Control Law <ul style="list-style-type: none"> <li>- Agricultural engineering operations</li> <li>- Construction of terraces</li> </ul> </li> <li>- Other Statutes</li> </ul> (4) Model Ordinance	Work Group
2:15	Recap <ul style="list-style-type: none"> <li>- Review recommendations</li> </ul>	Stephanie Bellotti
2:30	Final Product <ul style="list-style-type: none"> <li>- Report to State Agencies</li> <li>- Copy to VML and VACO</li> <li>- Copy to all</li> </ul>	Tom Faha

**HB1639**

**11-6-2020 WORK GROUP SLIDE SHOW  
PRESENTATIONS**

**ATTACHMENTS C AND D**

# Non-Agricultural Fill in Fauquier County

**Amy Rogers**  
**Fauquier County**

**House Bill 1639 Work Group**  
**November 6, 2020**





# Location



# Non-Agricultural Fill

- Issue as far back as 2010
- Increase in activity in 2017
- Complaints
  - Truck Traffic/Speeding/Dirt on Road
  - Clearing/Sedimentation
  - Dust
  - Noise
- Identify sources
  - Transportation Projects
  - Large Developments
- “Sod Farm”









































# Non-Agricultural Fill

- Sept 2018 – Adopted Ordinance
  - Special Exception
    - $\leq 10$  acres if exceed 100 CY / calendar year
    - $> 10$  acres if exceed 200 CY/day or 4,200 CY /calendar year
- No applications to date
  - Claim under threshold
  - “Ag Exempt”
  - Contractor of the Commonwealth

# Non-Agricultural Fill

- Process of reworking ordinance
  - Working with Ag representatives
  - Waiting for outcome of HB workgroup
- Locality Needs
  - Recognize construction fill is not agricultural
  - Update Agricultural Exemptions to remove loopholes
  - Enabling Legislation to support Localities

# Fill Dirt and Debris Disposal In Rural Areas

Julie Bolthouse  
Piedmont Environmental Council



Why get involved in fill dirt  
disposal in rural areas?



## Threat to public health, safety, and welfare...

- Groundwater and soil contamination
- Runoff of sediment and contamination of surface waters
- Filling and contamination of wetlands
- Dust impact on local air quality
- Excessive damage to local roads
- Damage to bridges from overweight vehicles
- Safety of drivers
- Noise impacts
- Quality of life impact



# This issue is not new...



## 47222 Record No. 901390 Supreme Court of Virginia **Ticonderoga Farms v. County of Loudoun**

242 Va. 170 (Va. 1991) 409 S.E.2d 446  
Decided Sep 20, 1991

JUSTICE RUSSELL delivered the opinion of the Court.

This is a dispute between a county, which asserts the power to regulate the disposal of solid waste, and a landowner, which contends that its activities are exempt from regulation because they constitute recycling. We conclude that the activities in question are subject to regulation by the county.

The windrows of organic material average twelve feet in height. They are periodically turned over and are watered and covered with vines to facilitate decomposition. The materials are never buried or burned, and it is undisputed that they will eventually be converted into agriculturally valuable compost, although it is a matter of conjecture how long it will take the stumps to decompose. All the compost is to be used on-site,

The Washington Post

IS IT A PARK OR A HEAP OF TROUBLE? The Mountain Deal

## IS IT A PARK OR A HEAP OF TROUBLE?

By Peter Pae  
July 25, 1993

There is a mountain growing in Loudoun County.

It's only 70 feet tall, but when completed it could rise as high as 190 feet above the surrounding fields and forests, making it the highest point between the Blue Ridge Mountains and the hills of Northwest Washington.

And all of it is to be built of landfill.

In an ode of sorts to environmental consciousness, an unconventional millionaire is building the mountain on his 1,200-acre property near Dulles International Airport as part of a bigger attraction: an ecological theme park, to feature lakes and streams filled with indigenous fish, forests and wildlife, as well as nurseries planted with rare plants and herbs.

Paying visitors would come to tour the property and its ecological exhibits, plant trees, romp in an old barn and, of course, hike up the mountain, with its panoramic views of surrounding Northern Virginia.

"What I want to do is get people out here," said Peter Knop, the brains behind the project, as he stood atop his mountain-in-the-making. The mountain "makes them want to come. Now you've got an attraction."

Knop, who is listed as one of the 100 wealthiest people in Virginia, said he will develop the park with \$6 million to \$8 million of his own money, which he hopes to recover from admission fees and research grants once the mountain is completed.

But what Knop may see as a tourist attraction others view as a mere pile of dirt, if not an outright nuisance.

"I have to do a lot of explaining and give people a tour of the place," said Knop, 52, "before they comprehend what I'm trying to do."

And some still don't. County officials and some environmentalists who question his methods say that Knop's ecological park project is nothing more than an attempt to legitimize what is just another landfill operation.

Indeed, there are some similarities. One day last week, a line of dump trucks waited to unload excavated dirt from area construction sites onto the base of Knop's mountain. The owners had paid Knop \$10 to dump the dirt, a steep discount from the \$50 to \$80 they would have paid to unload it at the county-run landfill.

"A lot of what he's done is in the name of ecology," said a county official who wanted to remain anonymous because of the county's ongoing battle with Knop to stop some of his operations, such as a newspaper



# Other states struggle with it too...

## San Francisco Bay Chapter



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## Unregulated landfills are a problem in rural Alameda County

August 22, 2018

By William Yragui

In a rural areas of Alameda County like Palomares Canyon (south of Castro Valley), residents have seen as many as 40 truckloads of construction debris or dirt dumped each day. There are 28 dumping sites known to the County. Residents have been impacted by noise, damage to the roads from the heavy trucks, and dust that



British Columbia

## Trash crop: How illegal dumping is ruining B.C. farmland



'It's more financially feasible to farm fill than to farm vegetables,' says Agriculture minister Lana Popham



Liam Britten · CBC News · Posted: May 12, 2018 7:00 AM PT | Last Updated: May 12, 2018

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DEP

Incident Resources

DEP > Businesses > Land > Land Recycling > Standards, Guidance and Procedures > Management of Fill Q&A

## Management of Fill Questions and Answers

Question: I have a building where the block and brick foundation has been painted. I am going to demolish the building and want to use the foundation material as fill. What must I do to determine if the brick and block meet the clean fill criteria?

Answer: Prior to and during the demolition process, Best Management Practices must be used to segregate the brick, block, and concrete in the foundation from the remaining demolition debris, since only brick, block, and concrete, and not construction/demolition debris, may qualify as either clean fill or regulated fill. The primary concern with the painted brick and block is lead contamination. The

- Guidance and Technical Tools
- Statewide Health Standards
- Policies and Procedures
- Management of Fill Q&A

NYC Office of Environmental Remediation

## Clean Soil Bank

**Clean Soil Bank**

**PURPOSE** NYC

**Green Property**

The NYC Clean Soil Bank recycles clean native soil from deep excavations at construction sites to other NYC construction sites, both public and private. The need is: The soil is free except for the cost of moving it between sites. In five years, the Clean Soil Bank has exchanged 475,000 tons of clean native soil.

Returning clean soil in the city rather than disposing it beyond the city limits greatly reduces the environmental and economic impacts of:

- reduced number of truck miles driven
- reduced fuel consumed
- reduced greenhouse gases emitted from truck transportation
- an abundant source of natural, clean native soil to raise land elevation, build embankments and berms, and fortify shorelines to protect against flooding from coastal storms.

Visit [CleanSoilBank.nyc.gov](#) to learn more about how the NYC Clean Soil Bank works.

**Eligible Sites**

A potential generating site must show that its soil meets the lower of NYC Department of Environmental Conservation's Part 201-6.6(b) Residential and Protection of Groundwater soil standards.

Receiving sites include public construction projects, projects that address environmental equity goals, and projects that remediate contaminated land and reduce exposure to pollutants in surface soil.

**How to Apply**

Parties interested in participating in the NYC Clean Soil Bank should fill out a soil availability report or soil request (import form below) and provide [background information](#).

**Clean Soil Bank Export Form**

**Clean Soil Bank Import Form**

475,000 tons of soil recycled

1.6 million truck miles reduction from soil recycling

1.6 M

2,300 tons of soil recycled

Maryland Department of the Environment

## Fill Material and Soil Management

What You Need to Know

The purpose of this fact sheet is to describe how fill material and excess soil can be reused properly during the cleanup and redevelopment of properties throughout Maryland. In many cases, excess soil is generated and fill material is necessary during the cleanup and development phases of a project. To assure that all projects are addressed consistently, the Land and Materials Administration (LMA) has prepared this guidance document for assisting parties that generate or need soil or fill material at sites under the purview of LMA's regulatory programs. This document does not, however, substitute for Maryland Department of the Environment (MDE) regulations, nor is it a regulation itself and does not impose legally binding requirements, and may not apply to a particular situation based upon the circumstances. MDE retains the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions regarding a particular site will be made based on the applicable statutes and regulations.

There are several potential sources of fill dirt...



Road Projects



Development Sites



Stream Restorations




# Disposal options...

- Not create it in the first place
- Use at another development site
- Bring to landfill for use as cover
- Make arrangements to fill old quarries
- Bring to waste management company



Luck Stone Quarry from W&OD Trail: Wikimedia Commons

For HomeFor BusinessRecycle RightInside WMSupport





Contact Us

shipped to tire processors.

- **Construction and Demolition Materials**  
The Construction and Demolition Recycling Facility at the Simi Valley Landfill accepts co-mingled C&D waste. Items accepted include non-hazardous materials such as cardboard, drywall, flooring, roofing materials, tile and windows. WM will continue to offer reduced rates for source-separated materials such as dirt, concrete, asphalt and wood/green waste.
- **Clean Dirt**  
Granular soil such as clay, sand, or silt that breaks apart when handled by light duty construction equipment such as a small backhoe or skip loader. No trash, metal, or wood. Less than 10% root and/or grass contamination. Loads with these contaminants will be charged as trash. Loads with excessive rock, concrete, or asphalt will be charged as Mixed Inert as described below.
- **Clean Asphalt/Concrete**  
Any combination of rock, concrete, gravel, brick, asphalt, or asphalt grindings which is less than 24 inches in any 2 dimensions. Loads containing debris exceeding this size limitation will be charged as trash. Loads with debris greater than 6 feet in any dimension may be assessed an additional handling fee (hard-to-handle fee). Concrete debris should have minimal re-bar protruding from the individual pieces of concrete. No trash, excessive metal, wood, roots, or grass contaminants. Loads with these contaminants will be charged as trash. Loads

[WM GI Industries](#)  
**Customer Service**  
Email: [msmith@wm.com](mailto:msmith@wm.com)  
Phone: (800) 675-1171  
Phone: (805) 522-9400  
  
Hours of Operation:  
Mon-Fri 8:00 am - 5:00 pm

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# The problem is...

- There might be more development sites looking to get rid of excess fill dirt than there are ones looking for fill...
- Many local landfills won't take commercial fill and inert material
- Arrangements to utilize many quarries for additional water supply is taking away that option
- Bringing fill and inert material to a waste management company may require hauling a significant distance raising costs

# That's when you start to get unregulated fill dirt landfills in rural areas...

Photo from site in Loudoun County, near Hamilton: [www.loudounrurallandfills.com](http://www.loudounrurallandfills.com)



Loudoun

Photo from Albemarle Citizen Petition: [https://www.change.org/p/albemarle-county-board-of-supervisors-save-albemarle-county-s-rural-landscape?utm\\_source=share\\_petition](https://www.change.org/p/albemarle-county-board-of-supervisors-save-albemarle-county-s-rural-landscape?utm_source=share_petition)



Albemarle



Prince William

Source: Julie Bolthouse



Fauquier

Photo courtesy of Fauquier Times

Who has the authority to regulate?



# Construction General Permit

Although the source projects are usually regulated and permitted under a Construction General Permit, these offsite disposal sites are not.



Example of posted permitting at local construction site. Source: Julie Bolthouse

# Solid Waste Regulations



- Using rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement as “clean fill” is exempted
- “Clean fill” is undefined
- DEQ has not considered a fill dirt landfill an “open dump”, “hazard”, or “public nuisance” regardless of the amount and scale of the operation to our knowledge



# Protection of Wetlands and Surface Waters

- Virginia law requires that a Virginia Water Protection Permit be obtained before disturbing a wetland or stream by clearing, filling, excavating, draining, or ditching.

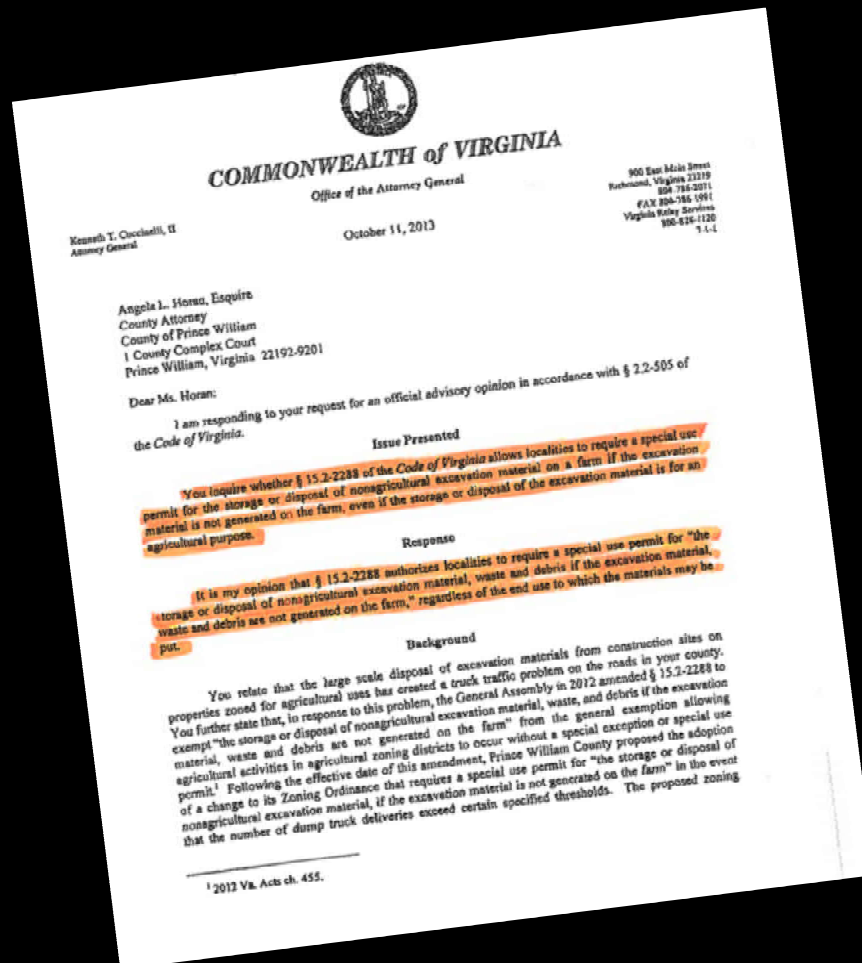


# Stormwater Regulations

- E & S regulations may be enforced by DEQ or the locality unless the landowner claims an agricultural exemption
- Agricultural exemption includes any “agricultural engineering operation” which DEQ has been hesitant to limit and may include years of accumulating tons of fill dirt, used asphalt, and rubble and raising the height of the property significantly.



# Local Zoning



According to Attorney General opinion dated October 11, 2013, VA Code section 15.2-2288 authorizes localities to require a special use permit for the storage and disposal of nonagricultural excavation material, waste, and debris brought to a farm regardless of the end use to which the material may be put.

# Possible areas for discussion...

- Should Construction General Permit requirements extend to off-site disposal sites even if they include mixed waste? How can we do this?
- Is a definition of “clean fill” needed? Soil is dumped in rural areas where surface water, groundwater, and soil contamination poses a serious public health threat. Should soil being dump in rural areas in mass be sampled, at the source, for possible contaminants? How can this be done in a cost effective manner?
- Should used asphalt, which is studies show to potentially leach petroleum contaminants, be exempted from solid waste regulations?
- When should a fill dirt landfill be considered an “open dump”, “hazard”, or “public nuisance”?
- How can the agricultural exemption from stormwater controls and erosion and sedimentation regulations be more clearly defined and applied more narrowly?
- Its been very difficult for localities to develop an enforceable and defensible ordinance. What background information could be provide to help localities manage this issue?
- What clarity and authorizing language is needed to help DEQ and localities enforce?

**HB1639**

**WORK GROUP COMMENT SUMMARIES**

**ATTACHMENT E**

**HB1639**

**WORK GROUP COMMENT SUMMARIES**

**TOPIC (i)**



Organization Name	(i) The need of road construction and development projects to dispose of dirt in a cost-effective manner
Virginia Chapter of the American Planning Association	<ul style="list-style-type: none"> <li>• Statement is a given</li> <li>• Impacts to third parties should be considered, minimized and or mitigated as part of project planning and management</li> </ul>
Virginia Farm Bureau Federation	<ul style="list-style-type: none"> <li>• Need for disposal of excess fill</li> <li>• Often have to level terrain</li> <li>• Most fill received seems to be excess from grading projects in road construction</li> </ul>
Virginia Agribusiness Council	
Virginia Association of Counties	
Home Builders Association of Virginia	<ul style="list-style-type: none"> <li>• In more developed areas, contractors may work together to balance/move dirt</li> </ul>
Culpeper Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Land disturbing activities produce excess cut or spoils material. Attempts are made to minimize cut, but those efforts are difficult to achieve since developments must also avoid impacts to streams and wetlands</li> <li>• Landfills and transfer stations are becoming fewer and farther away</li> <li>• Landfills and transfer stations charge high disposal fees</li> </ul>
John Marshall Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• What does "disposal site" mean</li> </ul>
Piedmont Environmental Council	<ul style="list-style-type: none"> <li>• Cost savings and efficiency comes at the cost of the environment, agricultural resources, rural road safety, and quality of life of adjacent property owners</li> <li>• Practice should be regulated by both the State and localities</li> <li>• Localities should discourage offsite disposal and encourage developers to work with existing topography</li> <li>• Offsite disposal should be considered/addressed under a project's construction general permit and include a requirement to implement stormwater controls and develop a SWPPP</li> </ul>

Organization Name	(i) The need of road construction and development projects to dispose of dirt in a cost-effective manner
Virginia Waste Industries Association SWANA	<ul style="list-style-type: none"> <li>•Days of free dirt disposal has gone away</li> <li>•Increased compliance on off-site discharges and use of ADC's leading to landfills not taking as much dirt as they use to</li> <li>•Potentially need more inert fill sites in VA based on how landfills are currently managed; Landfills still looking for block, brick, etc. for roadway use, but not dirt because of E&amp;S controls</li> </ul>
Virginia Trucking Association Virginia Transportation Construction Alliance	<ul style="list-style-type: none"> <li>• Critical for construction firms to manage all aspects of projects in a cost effective manner since projects are tax-payer funded</li> <li>• Common practice, contractors will source the most cost-effective method available</li> <li>•From contractor perspective when a project is bid, the low bidder is read out that day, but it's 45 days before contract is awarded. There are tight time constraints (window of time between project bid and construction) on any public entity project; any regulation or additional regulation should take this into consideration</li> <li>• Ideal situation is fill is deposited on an adjoining piece of property</li> <li>•Farther you go, the more expensive it becomes; closer sites make your bid more competitive</li> </ul>

Organization Name	(i) The need of road construction and development projects to dispose of dirt in a cost-effective manner
Fauquier County	<ul style="list-style-type: none"> <li>• Understand road construction and development projects may have to remove and dispose of excess dirt/construction debris associated with site work</li> <li>• Source of non-agricultural fill in the County appears to be coming from Federal, State and Data Center projects (inside and outside of County)</li> <li>• Expect excess dirt from solar projects to ramp up</li> <li>• Currently hauling and disposal largely unregulated and untracked by source projects</li> <li>• Off-site disposal locations should be approved prior to start of construction</li> <li>• Locality should be notified if disposal locations are within their jurisdiction and should be allowed to comment on whether disposal would comply with local ordinance</li> <li>• Seems that contractors being paid twice (both by construction site and by dump site)</li> </ul>
Albemarle County	<ul style="list-style-type: none"> <li>• Most cost-effective manner is to not generate it in the first place</li> <li>• Alternatively consider balancing (cut/fill) on the development site, apply reductions/modifications in street standards to reduce generation of/need for dirt, reduce travel distance</li> </ul>
Other Organizations (Non Work Group Members)	<ul style="list-style-type: none"> <li>• Loudoun County's E&amp;SC Ordinance has a section that does not exempt "fill" as Ag Exempt. Have ongoing problems and have served numerous Stop Work Orders for the same. (Loudoun County)</li> </ul>



**HB1639**

**WORK GROUP COMMENT SUMMARIES**

**TOPIC (ii)**

Organization Name	(ii) The practice of rural landowners charging a fee to allow the use of their lands as disposal sites
Virginia Chapter of the American Planning Association Virginia Farm Bureau Federation	<ul style="list-style-type: none"> <li>• No direct concern</li> <li>• Have not seen large number of landowners charging to use their property</li> <li>• Recent survey noted only 1 landowner charged for receiving fill 1-2 times</li> <li>• Stockpiling isn't agriculture; receiving to fill a low point and receiving payment not the same as stockpiling</li> <li>• Expect to pay something to dispose of dirt; some don't want dirt, but they come to an agreement to pay and provide topsoil stripping, placement, and replacement of topsoil or place in a specific location</li> </ul>
Virginia Agribusiness Council	<ul style="list-style-type: none"> <li>• Landowners should continue to have option of charging a fee to use construction dirt and rubble to spread, mitigate damage, and replenish areas on their property</li> </ul>
Virginia Association of Counties	
Home Builders Association of Virginia	<ul style="list-style-type: none"> <li>• Should allow land owners to receive/accept fees- Lack of written agreements problematic</li> </ul>
Culpeper Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Not aware of landowners that would charge a fee. Most are looking for fill and will gladly accept it for free</li> </ul>
John Marshall Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Item (ii) references "rural landowners .....to use their land as disposal sites," while item (iii) refers to "effects ..... on agricultural fields." Such terms, by definition, are not interchangeable. Clarification is needed.</li> </ul>
Piedmont Environmental Council	<ul style="list-style-type: none"> <li>• Winds up being more cost effective or simpler to pay a single landowner to take large quantities of fill dirt from several projects rather than trying to find enough farmers to take small quantities for free</li> </ul>
Virginia Waste Industries Association	

Organization Name	(ii) The practice of rural landowners charging a fee to allow the use of their lands as disposal sites
SWANA	<ul style="list-style-type: none"> <li>• See North Carolina Code 15A 13B.0563-Applicability Req. for Land Clearing/Inert Debris (LCID) Landfills</li> <li>• Don't have a stance; if moves toward inert debris facility, equalize annual facility fees like landfills. Still comes down to Facility size. NC sets the dividing line at 2 acres and a time line for how long it is open</li> </ul>
Virginia Trucking Association Virginia Transportation Construction Alliance	<ul style="list-style-type: none"> <li>• In NC waste surplus material placed on adjoining land, NC DOT pays for seeding/fertilizer to re-seed disturbed area</li> </ul>
Fauquier County	<ul style="list-style-type: none"> <li>• County supports the need of farmers and other rural landowners to find other sources to supplement income</li> <li>• Do not support using rural lands as disposal sites for unsuitable construction material or construction debris</li> <li>• Do not consider the importation of non-agricultural fill from construction sites for storage or disposal to be agricultural activity</li> <li>• County has been working with local agricultural representatives to define when fill is acceptable as agricultural use</li> <li>• County has requested that non-agricultural fill be tied to a farm plan through an Agricultural Agency to justify the non-agricultural fill as an agricultural activity</li> <li>• Believe landowners are getting paid but land owners aren't admitting to anything</li> </ul>
Albemarle County	<ul style="list-style-type: none"> <li>• If commercial use is permitted in rural areas then landowner may charge what they feel is appropriate</li> <li>• Disposal of dirt/rubble should not be considered an agricultural operation and property should no longer be eligible for tax reductions based on agricultural activity</li> <li>• If activity is permitted, shouldn't matter if the land owner charges. Concern is with the landfill style operation sites</li> </ul>



Organization Name	(ii) The practice of rural landowners charging a fee to allow the use of their lands as disposal sites
Other Organizations (Non Work Group Members)	<ul style="list-style-type: none"> <li>• Gable Farm created another challenge in Loudoun County. That project actually went through the land development process. The got an approved plan and went to work. Eventually they got greedy and overfilled beyond the approved plan. We are still in process through Zoning to get them to correct the issue. (Loudoun County)</li> <li>• Usually with Dirt for Money schemes in Loudoun, the land owner was receiving money for the fill based on a per truckload calculation.(Loudoun County)</li> <li>• Generally the landowner volunteers to receive fill and does not go through a lengthy planning process. It is usually an immediate opportunity situation. (Loudoun County)</li> </ul>

**HB1639**

**WORK GROUP COMMENT SUMMARIES**

**TOPIC (iii)**

Organization Name	(iii) The extent of monitoring for possible contaminants or effects on groundwater when dirt and rubble is deposited on agricultural fields
Virginia Chapter of the American Planning Association	<ul style="list-style-type: none"> <li>• Oversight important. Extent of oversight should vary based on scale of project</li> <li>• Potential impacts from contaminated soil/rubble on groundwater, future agricultural productivity, and neighboring properties should be considered</li> <li>• Scale is a big deal. If we can deal with the large, the small ones have minimal impact. Need to work together to solve problems up front</li> </ul>
Virginia Farm Bureau Federation	<ul style="list-style-type: none"> <li>• If testing done, should be done prior to any decisions on where fill is to be deposited</li> <li>• Landowners should be made aware of any contaminants by the contractor prior to disposal</li> </ul>
Virginia Agribusiness Council	<ul style="list-style-type: none"> <li>• Any testing should be completed prior to leaving the site of origin</li> <li>• Producer should be notified of the results prior to delivery</li> </ul>
Virginia Association of Counties	
Home Builders Association of Virginia	<ul style="list-style-type: none"> <li>• Zoning and subdivision ordinances require Phase I environmental assessments as part of the development process. If Phase I indicates areas of concern, then do Phase II assessments to collect and analyze water and soil samples</li> <li>• Site evaluation prior to construction is extensive and is a best practice to ensure there won't be issues during construction</li> </ul>
Culpeper Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• No monitoring done for projects in Culpeper's jurisdiction</li> </ul>
John Marshall Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• While groundwater is referenced, there is no mention of surface water</li> <li>• Item (ii) references "rural landowners .....to use their land as disposal sites," while item (iii) refers to "effects ..... on agricultural fields." Such terms, by definition, are not interchangeable. Clarification is needed</li> </ul>



Organization Name	(iii) The extent of monitoring for possible contaminants or effects on groundwater when dirt and rubble is deposited on agricultural fields
Piedmont Environmental Council	<ul style="list-style-type: none"> <li>• Potential for contamination of surface waters, groundwater, and soil (lead, arsenic, petroleum products, asbestos, naturally occurring contaminants already present in dumped soil)</li> <li>• Mitigate risks by requiring any road development or road construction project allowed under a construction general permit to include stormwater controls on disposal sites.</li> <li>• Any soil being excavated from the development or road construction project should be sampled for potential contaminants in the most cost effective manner possible.</li> <li>• Contaminated soil should be disposed of in a regulated landfill or other appropriate manner based on level and type of contamination</li> <li>• Materials known to leach toxic chemicals should not be mixed with fill dirt</li> <li>• Helpful to know that sampling is occurring</li> <li>• Want monitoring at the source, not at the farm otherwise you are chasing the contaminant once it is in the groundwater</li> <li>• Concern if there aren't good records from sources. Would like better tracking</li> </ul>
Virginia Waste Industries Association	
SWANA	<ul style="list-style-type: none"> <li>• Landfills ask for environmental analysis before acceptance</li> </ul>
Virginia Trucking Association	
Virginia Transportation Construction Alliance	
Fauquier County	<ul style="list-style-type: none"> <li>• County supports requirement for testing of soils prior to depositing the material on agricultural properties</li> </ul>

Organization Name	(iii) The extent of monitoring for possible contaminants or effects on groundwater when dirt and rubble is deposited on agricultural fields
Albemarle County	<ul style="list-style-type: none"> <li>• Ground water monitoring not the appropriate action. Once groundwater is found to be contaminated it is expensive and impossible to correct the impact</li> <li>• Focus should be on the prevention of impacts on groundwater and surface water by limiting disposal to dirt, rock, and inert materials</li> <li>• Construction debris should only be disposed of in regulated construction debris landfills</li> <li>• Third party certification confirming the dirt/rubble/inert material is “clean” would be needed and possibly a chain of custody for materials may be required</li> <li>• Best not to chase contamination but dispose of contaminated materials at an appropriate facility</li> </ul>
Other Organizations (Non Work Group Members)	<ul style="list-style-type: none"> <li>• Subsequently and because of the Gable Farm issue Loudoun has taken a more aggressive approach between E&amp;SC and Zoning to carefully examine proposed "fill" projects that stand alone from more typical residential or commercial sites. We still have issues with fill being placed illegally. Neighbors are usually the reporting parties and we actively go after violators, however usually after it is reported it has at least partially occurred.(Loudoun County)</li> <li>• Whatever comes of the discussion regarding monitoring it needs to be a funded mandate as opposed to one that is not and subsequently dumped on the locality. (Loudoun County)</li> </ul>

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**WORK GROUP COMMENT SUMMARIES**

**TOPIC (iv)**



Organization Name	(iv)The adequacy of existing state and local enforcement remedies against responsible land disturbers disposing of dirt in unauthorized or unapproved locations
Virginia Chapter of the American Planning Association	<ul style="list-style-type: none"> <li>• Of great concern</li> <li>• Authorities/roles/responsibilities of state and local entities unclear</li> <li>• Most significant contribution from this workgroup should be to clearly articulate who should have the responsibility for most cost effective oversight and what authority exists or is needed</li> </ul>
Virginia Farm Bureau Federation	<ul style="list-style-type: none"> <li>• Current law allows for state and local control of frequency and amount of dirt disposed of</li> </ul>
Virginia Agribusiness Council	
Virginia Association of Counties	
Home Builders Association of Virginia	
Culpeper Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Existing E&amp;S laws and regulations are clear that grading and shaping land is not an agricultural exemption. Only tilling, planting and harvesting qualify as an agricultural exemption</li> <li>• Agricultural engineering operations which could be exempt from VESCP could be required to include temporary E&amp;S controls and or permanent conservation efforts</li> <li>• Exemption intended for activities associated with conservation programs that satisfy state and federal design standards. Activities that don't satisfy these standards should not qualify for exemption</li> <li>• Local jurisdictions have authority to declare certain activities as an Erosion Impact Area (62.1-44.15:51). Gives local E&amp;S program the authority to regulate areas greater than 10,000 square feet that have an erosion impact downstream</li> <li>• Agricultural Stewardship Act also viable means to address problem sites. The compliant driven process has been successful in Culpeper</li> <li>• Current language in 9 VAC 25-880-70 does require all support activities to be covered by the General Permit. Support activities defined as excavated material disposal areas and borrow areas. Requires a SWPPP which includes and Erosion Control Plan and Stormwater Management Plan for all support activities.</li> </ul>

Organization Name	(iv)The adequacy of existing state and local enforcement remedies against responsible land disturbers disposing of dirt in unauthorized or unapproved locations
John Marshall Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Need for common sense solutions that will bring oversight to activity</li> <li>• Problem operations are not farms but unpermitted landfills</li> <li>• Disposing of subsoil on top of good top soil counterproductive to production agriculture. Dumping unregulated materials of unknown quality can change hydraulics of the groundwater/surface water and can lead to unknown problems</li> <li>• Appropriate to allow deposition of fill dirt in some circumstances (construction of farm buildings, roads etc.)</li> </ul>
Piedmont Environmental Council	<ul style="list-style-type: none"> <li>• Regulations/Definitions unclear</li> <li>• Authority and method for enforcement uncertain</li> <li>• Localities in difficult position</li> <li>• DEQ has taken broad interpretation of exemptions</li> <li>• Corrective action, appropriate fines, and, requirement to monitor and or clean up a site are needed</li> <li>• Both the State and Localities need to have a clear understanding of exemptions and be willing to enforce regulations and require monitoring/clean up of sites</li> <li>• Localities need zoning authority to regulate the dumping of non-agricultural fill on agricultural land and the construction general permit for road construction and development projects needs to include the off-site disposal of dirt/rubble</li> <li>• Enforcement would be better if there wasn't the game of hot potato</li> <li>• Localities feel like they are in a difficult position because of the Dylan Rule and delegation of authority. DEQ interpretations tend to be broad in nature, makes it difficult for localities to take a stricter interpretation</li> <li>• Need definition for clean fill and when something becomes an open dump</li> <li>• When are fines and corrective action appropriate? If land owners are making as much money as claimed in lawsuits then fines aren't going to mean anything unless there is a requirement to clean up the site</li> </ul>
Virginia Waste Industries Association	
SWANA	
Virginia Trucking Association	
Virginia Transportation Construction Alliance	<ul style="list-style-type: none"> <li>• Uniformity across localities important</li> </ul>

Organization Name	(iv)The adequacy of existing state and local enforcement remedies against responsible land disturbers disposing of dirt in unauthorized or unapproved locations
Fauquier County	<ul style="list-style-type: none"> <li>• County finds enforcement against unauthorized disposal to be inadequate</li> <li>• County adopted text amendment on September 13, 2018, to regulate non-agricultural fill which attempts to regulate the amount of non-agricultural fill that can be imported to an agricultural property within 1 year. Non-agricultural fill in excess of the permitted amount would require a Special Exception (No applications received to date)</li> <li>• Reported violators claim fill is exempt because it is for an agricultural engineering activity and amount of fill below Special Exemption threshold</li> <li>• Va.Code §15.2-2288 restricts ability to require a Special Exception for certain agricultural activities, same provision exempts agencies of the Commonwealth or its contractors from obtaining a Special Exception. Contractors of the Commonwealth feel they are not subject to local requirements and use Code exemption to haul and dispose of non-agricultural fill even if they don't have a contract with the Commonwealth for hauling</li> <li>• Virginia Waste Management Act regulates "open dumps" but not non-agricultural fill which is a by-product of industrial and commercial activities</li> <li>• Definition of clean fill would be helpful to determine when fill should be regulated to a landfill</li> <li>• Just because property is zoned agricultural does not mean that the activity is agricultural activity</li> <li>•Difficult to make the determination that the activity isn't Agricultural because not getting the ability to make the determination up front ; process is driven by complaints</li> <li>•Ordinance has not been successful</li> <li>• County is very pro agriculture. An open dump is an open dump; not agricultural activity</li> <li>•Need definition for clean fill</li> </ul>
Albemarle County	<ul style="list-style-type: none"> <li>• State regulation is minimal and reactive</li> <li>• Those combatting improper disposal must focus on remediation (chasing the contamination) more often than on prevention (proper disposal)</li> </ul>

Organization Name	(iv)The adequacy of existing state and local enforcement remedies against responsible land disturbers disposing of dirt in unauthorized or unapproved locations
Other Organizations (Non Work Group Members)	<ul style="list-style-type: none"> <li>• Usually, in Loudoun, someone taking fill to any property without a land disturbance permit does not necessarily happen through the "responsible land disturber" of record on a permitted project. A lot of times it is a subcontractor operating without the knowledge of the RLD.(Loudoun County)</li> <li>• The Gable Farm project was not claimed as agriculture...their use was as a "personal recreation field" (Loudoun County)</li> <li>•Debris and fill has come from almost 50 miles away!!! I am an impacted neighbor, builder, farm owner, and real estate broker(Citizen)</li> </ul>



**HB1639**

**WORK GROUP COMMENT SUMMARIES**

**TOPIC (v)**

Organization Name	<b>(v) The use of rural roads by dump trucks traveling to disposal sites and any effects of such travel, including road damage, traffic congestion, noise, and the loss of a portion of the dirt during transit in the form of dust or mud.</b>
Virginia Chapter of the American Planning Association	<ul style="list-style-type: none"> <li>• Obvious impact on public, the environment, and infrastructure</li> <li>• Should be considered in project planning, permitting, and approval</li> <li>• The larger the number of trucks, the more the nuisance. Need scale threshold to deal with issue</li> </ul>
Virginia Farm Bureau Federation	<ul style="list-style-type: none"> <li>• Recognize increased traffic and use of trucks. Current laws and permits already regulate such activity</li> <li>• VAFB's observation that distances from construction sites to disposal sites relatively close</li> <li>• Current law limits amount trucks may weigh, and regarding debris/mud on VA roads</li> <li>• There is a permitting process for trucks to carry a certain weight; uneconomical for long-haul from construction/development sites</li> </ul>
Virginia Agribusiness Council	
Virginia Association of Counties	
Home Builders Association of Virginia	
Culpeper Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Projects within Culpeper jurisdiction usually have VDOT review and did not have too many complaints on noise or traffic.</li> </ul>
John Marshall Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• There is no mention of consideration for impacts to immediately adjacent, and nearby, properties.</li> </ul>

Organization Name	<b>(v) The use of rural roads by dump trucks traveling to disposal sites and any effects of such travel, including road damage, traffic congestion, noise, and the loss of a portion of the dirt during transit in the form of dust or mud.</b>
Piedmont Environmental Council	<ul style="list-style-type: none"> <li>• Sites that start up without local oversight or permits are not evaluated for access and road safety</li> <li>• Access may not provide good line of site or adequate room for queuing</li> <li>• Road may not be wide enough or of an appropriate construction to handle high numbers of large overweight vehicles resulting in vehicles getting stuck, damage to roads, bridges and collisions</li> <li>• Large scale sights need to be evaluated by localities and VDOT for access and road safety</li> <li>• Localities need to have an ordinance in place to regulate these uses and state regulations need to clarify agricultural exemptions</li> <li>• Issue should be integrated into model ordinance</li> <li>• If we tackle scale, it would help. Truck traffic is harming rural roads that weren't built for their use; bridges collapsing; trucks queuing to get to a dump site leading to back-ups on roads</li> </ul>
Virginia Waste Industries Association SWANA	
Virginia Trucking Association	<ul style="list-style-type: none"> <li>• Don't condone illegal activity by truck drivers/operators. All trucks should be operating legally. Instead of overweight trucks should be called illegal trucks</li> </ul>
Virginia Transportation Construction Alliance	
Fauquier County	<ul style="list-style-type: none"> <li>• County has received numerous complaints regarding dump trucks on rural roads operating in an unsafe manner to and from disposal sites</li> <li>• County has requested that transportation routes be planned in advance during pre-construction meetings from permitted projects to lessen impact on rural roadways</li> </ul>

Organization Name	(v) The use of rural roads by dump trucks traveling to disposal sites and any effects of such travel, including road damage, traffic congestion, noise, and the loss of a portion of the dirt during transit in the form of dust or mud.
Albemarle County	<ul style="list-style-type: none"> <li>• Most rural roads not designed for continuous truck traffic</li> <li>• Rural area roads are poorly lit, built to rural classification (often gravel), and are more narrow than development area roads</li> <li>• Measures to reduce impact on rural roads include <ul style="list-style-type: none"> <li>o Limitations on hours of operation so that truck traffic only occurs during daylight hours (seasonally adjusted)</li> <li>o Dust control</li> <li>o Repair of damaged road surface</li> </ul> </li> </ul>
Other Organizations (Non Work Group Members)	<ul style="list-style-type: none"> <li>• If Loudoun E&amp;SC Inspectors observe what they think are issues we contact the County sheriff, Transit Inspectors, or VDOT. Response has been limited. In terms of road damage, the response we have gotten in the past was, "it's a public road".</li> <li>• Fill brought to Loudoun County landfill costs more money whether they will take it or not. (Loudoun County)</li> </ul>



**HB1639**

**WORK GROUP COMMENT SUMMARIES**

**RECOMMENDATIONS**

Organization Name	(a) Changes to guidance or regulations for agencies having the authority to regulate activities associated with the work group's work, including recommendations regarding a model ordinance for adoption by localities
Virginia Chapter of the American Planning Association	<ul style="list-style-type: none"> <li>• Model ordinance would be helpful especially for smaller counties within proximity to higher growth activity</li> <li>• May be difficult to achieve within deadline</li> </ul>
Virginia Farm Bureau Federation	<ul style="list-style-type: none"> <li>• Currently don't see a need for additional regulations or authority</li> <li>• Improved guidance documents would be helpful to add clarity to current laws and regulations</li> <li>• Appreciate Albemarle Ordinance as potential model</li> <li>• Testing should be at source and land owner should be aware</li> <li>• Scale important. At what point does something become an "open dump"</li> </ul>
Virginia Agribusiness Council	<ul style="list-style-type: none"> <li>• Any model ordinance should allow for enough tonnage for producers and nurseries to properly supply the producer or agribusiness</li> </ul>
Virginia Association of Counties	<ul style="list-style-type: none"> <li>• Ordinances good idea but one size may not fit all. May be better to just share what other localities have done</li> </ul>
Home Builders Association of Virginia	
Virginia Association of Soil and Water Conservation Districts	<ul style="list-style-type: none"> <li>• Key element is clear definition of terms. Albemarle is a good example.</li> </ul>
John Marshal Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Within the text of HB 1639, the terms "construction fill and debris," "dirt," and "dirt and rubble" are used in a manner that seems to suggest that they are interchangeable when describing fill material. Such is not the case. DEQ's comments include the terms "construction fill and debris," and "soil" again in a manner that indicate equivalency. Basic to the task at hand is a clear and precise definition of the material in question.</li> <li>• Among those issues not listed, which may be addressed in a draft ordinance, are potential impacts to: <ul style="list-style-type: none"> <li>- existing topography;</li> <li>- unique natural features and ecological systems;</li> <li>- valued prime agricultural soils;</li> <li>- rural character. chemical and physical degradation of surface and groundwater;</li> </ul> </li> <li>• irreparable alteration of the chemical and biological character of agricultural soils;</li> <li>• alteration of topography and associated hydrology; and</li> <li>• impacts to air quality.</li> <li>• In addition, impacts to the collective experience and basic quality of life of nearby landowners must also be considered.</li> </ul> <p>(Following comments specific to Albemarle Ordinance)</p> <ul style="list-style-type: none"> <li>• use of the phrase "...may include, but are not limited to..." (5-1816 #8) is ambiguous and certainly creates opportunity for interpretation, as do the terms "waste and debris" as stated in the Resolution.</li> <li>• As for quality of life considerations, beyond those listed above, is the issue of deliveries. It should be noted that 200 cubic yards of fill is roughly equivalent of 15 to 20 truck trips. There is no indication of when within any 24 hour period such activity might occur. Nor is there any consideration for associated monitoring.</li> </ul>

Organization Name	(a) Changes to guidance or regulations for agencies having the authority to regulate activities associated with the work group's work, including recommendations regarding a model ordinance for adoption by localities
Piedmont Environmental Council	<ul style="list-style-type: none"> <li>• Model ordinance from the State would be useful , help from Virginia American Planning Association and Virginia Association of Zoning Officials in drafting model ordinance</li> <li>• Consult localities with existing ordinances</li> <li>• Review relevant litigation</li> <li>• Recommendations for inclusion in model ordinance include:               <ul style="list-style-type: none"> <li>o Definition of regulated use consistent with 10/11/13 OAG opinion</li> <li>o Consider only requiring a site plan and E&amp;S controls (when applicable) for small scale agricultural uses rather than a Special Use Permit</li> <li>o Avoidance of wetlands and setbacks from streams</li> <li>o Consider establishing a minimum site acreage</li> <li>o Consider establishing a maximum increase in height above existing grade that the site can be raised to</li> <li>o Consideration of access and safe space for queuing</li> <li>o Consideration of impact of heavy weight vehicles on surrounding roads and bridges</li> <li>o Setbacks from adjacent properties and screening</li> <li>o Allowed materials should be composed of uncontaminated dirt and clean aggregate material including brick, gravel, rubble, sand, cement, and concrete. Used asphalt should not be allowed outside of farm road projects</li> <li>o Require documentation of soil origin and sample results from the source location</li> <li>o Exterior lighting should be limited and consideration should be given to surrounding uses</li> <li>o Noise should be limited to daylight hours and consideration should be given to surrounding uses</li> </ul> </li> </ul>
Virginia Waste Industries Association SWANA	<ul style="list-style-type: none"> <li>•See North Carolina Code 15A 13B.0563-Applicability Req. for Land Clearing/Inert Debris (LCID) Landfills</li> <li>•Sounds more like an E&amp;S/zoning enforcement issues than a solid waste issue unless DEQ decides to regulate activity as a solid waste facility</li> <li>•Don't like the term "dump" better description is unregulated site</li> <li>•Unfunded mandate on localities and DEQ regarding enforcement of these issues</li> <li>•Ordinances provide localities an avenue to address the issue (if needed) but not all localities may be interested or need the ordinance</li> </ul>
Virginia Trucking Association	<ul style="list-style-type: none"> <li>•Ordinance is good idea. Trucking sector caught in the middle. Should be adhering to rules in performance of service of moving goods</li> </ul>

Organization Name	(a) Changes to guidance or regulations for agencies having the authority to regulate activities associated with the work group's work, including recommendations regarding a model ordinance for adoption by localities
Virginia Transportation Construction Alliance	<ul style="list-style-type: none"> <li>• Projects should strive to not produce excess materials. As you make the process for disposal sites harder, they are going to move further from the project, just increase cost of project and number of trucks on the road</li> <li>• Consistency is needed with respect to scale</li> <li>• Industry in favor of regulatory component to deal with sites that aren't complying with ordinances</li> <li>• Transportation and construction firms believe there should be adequate but not overly burdensome regulations when designing and completing projects</li> <li>• It is critical that construction firms manage all aspects of project in most cost effective manner since projects funded by taxpayers</li> <li>• By sourcing local options for dirt disposal, contractors can reduce costs, reduce wear and tear on roads, and better mitigate noise complaints</li> <li>• Uniformity across Virginia is important (For example if approached under SW and E&amp;S regs, inconsistencies will exist because process differs from locality to locality)</li> </ul>
Fauquier County	<ul style="list-style-type: none"> <li>• E&amp;S Regulations provide criteria for determining when land disturbing activity at a separate location are to be considered part of the land-disturbing activity. E&amp;S Handbook requires submission of supplementary E&amp;S plan for areas not indicated on the plan (including off-site borrow and waste areas) for review and approval by the plan reviewing authority prior to commencement of land disturbing activities. These regulations need to be enforced by the plan approving authority</li> <li>• Land disturbers and contractors and using agricultural exemptions in the E&amp;S regulations to circumvent the regulations</li> <li>• Suggest following recommendations <ul style="list-style-type: none"> <li>o Recognize that disposal of construction fill on agricultural properties is not an agricultural activity exempt under the E&amp;S regulations</li> <li>o Require disposal site for all development projects (Federal, State, Local, Private) to adhere to off-site plan requirements and track disposal of materials on off-site properties</li> <li>o Require notification of local officials when disposal of materials crosses jurisdictional boundaries</li> <li>o Consider hauling routes when approving disposal sites and require contractors to avoid rural roads to a practical extent</li> </ul> </li> </ul>
Albemarle County	<ul style="list-style-type: none"> <li>• See Albemarle County's fill and waste regulations adopted in September 2020 Includes: <ul style="list-style-type: none"> <li>• Agricultural activity, clean earth fill, and inert waste fill are defined ; need zoning clearance; has time limit built in- area must be reclaimed within 7 days of completion; 2 acre limit, need special exception if a property wants more. Special exception process allows Albemarle to track and determine if ordinance adjustments are needed</li> </ul> </li> <li>• Need to be diligent on contamination before fill is moved</li> </ul>



Organization Name	(a) Changes to guidance or regulations for agencies having the authority to regulate activities associated with the work group’s work, including recommendations regarding a model ordinance for adoption by localities
Other Organizations (Non Work Group Members)	<ul style="list-style-type: none"><li>• Loudoun requires that fill should only go from a permitted site to a permitted site. That covers the legit sites. We serve stop work orders on both ends if fill goes from a permitted site to an unpermitted site. The problem is with fill from out of the jurisdiction imported to an unpermitted site in the County. (Loudoun County)</li><li>• Loudoun comes in at 5000 square ft. of disturbance as the threshold for requirement of a land disturbance permit. (Loudoun County)</li></ul>

Organization Name	(b) Statutory changes, including changes related to agricultural engineering operations and construction of terraces as those terms are used in the State Water Control Law §62.1-44.2 et seq. of the Code of Virginia
Virginia Chapter of the American Planning Association Virginia Farm Bureau Federation	<ul style="list-style-type: none"> <li>• Currently don't see a need for statutory changes</li> <li>• Small number of individuals receiving large amounts of construction fill can be addressed under current law</li> </ul>
Virginia Agribusiness Council	<ul style="list-style-type: none"> <li>• Currently don't see a need for statutory changes, Code already has provisions for E&amp;S, overweight truck permits, and modification provisions for localities</li> </ul>
Virginia Association of Counties	
Home Builders Association of Virginia	
Virginia Association of Soil and Water Conservation Districts	
John Marshal Soil and Water Conservation District	<ul style="list-style-type: none"> <li>• Consideration for any setbacks from wells, streams, wetlands, woodlands, significant habitat and other environmentally sensitive areas;</li> <li>• Requirements verifying the source of the fill material, as well as its chemical and physical characteristics;</li> <li>• Through the application of existing County ordinances and rights designated by the Code of Virginia, it appears as if the County has the full ability to regulate the dumping of fill material. It does not seem prudent to allow such dumping by right or by special exception, minus clear need, precisely defined terms, regulated limits and associated enforcement.</li> <li>• It appears that the proposed Resolution was generated to address an ongoing non-permitted activity. It is unclear why such illegal activity should be accommodated in such a manner rather than managed as a zoning violation. I welcome an explanation.</li> </ul>
Piedmont Environmental Council	<ul style="list-style-type: none"> <li>• Construction GP requirements for stormwater controls should include off-site disposal sites</li> <li>• Agricultural exemption from stormwater controls and E&amp;S regulations needs to be clearly defined and applied more narrowly</li> <li>• Solid Waste regulations should require that excavated soil from road construction and development projects be sampled to ensure the soil is free of contaminants prior to being considered clean fill under 9 VAC 20-81-95. Determination must be made prior to dumping of soil to prevent impacts to surface water, ground water and soil, and public health. Used asphalt pavement should not be considered clean fill - At what point is it considered a "open dump"</li> </ul>
Virginia Waste Industries Association	
SWANA	•See North Carolina Code 15A 13B.0563-Applicability Req. for Land Clearing/Inert Debris (LCID) Landfills
Virginia Trucking Association	
Virginia Transportation Construction Alliance	

Organization Name	(b) Statutory changes, including changes related to agricultural engineering operations and construction of terraces as those terms are used in the State Water Control Law §62.1-44.2 et seq. of the Code of Virginia
Fauquier County	<ul style="list-style-type: none"> <li>• Localities require support from the statutory code to enforce unpermitted disposal of material</li> <li>• Suggest consideration of the following changes               <ul style="list-style-type: none"> <li>o Define agricultural activities regulated by E&amp;S and Stormwater Management Regulations, as well as agricultural exemptions</li> <li>o Remove terracing as an agricultural engineering operations from exempted agricultural activities in the E&amp;S regulations</li> <li>o Amend the Stormwater Management regulations to address disturbances that do not involve development or change in land cover</li> <li>o Recognize agricultural BMPs in the Stormwater Management Regulations</li> <li>o Remove the exemption for “contractors of the Commonwealth” in Va. Code §15.2-2288</li> <li>o Provide a definition of “clean fill”</li> <li>o Require soil testing for contaminants prior to disposal on rural properties</li> </ul> </li> </ul>
Albemarle County	<ul style="list-style-type: none"> <li>• No meaningful way to qualify fill operation as an agricultural engineering operation</li> <li>• Placement of dirt may be claimed as a terrace activity although rarely used for agriculture. Definitions of terracing should include design criteria</li> <li>• Failure to use terraced areas for agriculture within a set period of time should result in permanent loss of agricultural tax exemption for the property</li> </ul>
Other Organizations (Non Work Group Members)	<ul style="list-style-type: none"> <li>• The statutes come from the state driven by the Fed Clean Water Act, it only makes sense that the authority is delegated to DEQ first and further to the localities so it only makes sense that DEQ as the supervisory body provide the necessary guidance to the underlings. (Loudoun County)</li> </ul>

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