CLEAN FILL VS. CONSTRUCTION AND DEMOLITION DEBRIS
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Presentation Goals

- Present definitions of clean fill and construction and demolition ("C&D") debris
- The differences between clean fill and C&D debris
- Proper management, transport and use of clean fill
- Recycling of C&D debris
- Problems and issues associated with the recycling or disposal of C&D debris
The Issue

- Can sometimes be difficult to distinguish clean fill from C&D debris
- They are distinct materials
  - Clean fill is defined in the New Mexico Solid Waste Rules ("SWR") at 20.9.2.7.C(4) NMAC
  - C&D debris is defined in the Solid Waste Act ("SWA") at Section 74-9-3(D), NMSA 1978
- Failure to distinguish clean fill from C&D debris can trigger citizen complaints, regulatory non-compliance and potential enforcement actions
“Clean fill” means “broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminants, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such as rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste.” [Ref. 20.9.2.7.C(4) NMAC]
“C&D debris” means “materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing materials, pipe, gypsum wallboard and lumber from the construction or destruction of a structure as part of a construction or demolition project, and includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing or land development operations for a construction project, but if construction and demolition debris is mixed with any other types of solid waste, whether or not originating from the construction project, it loses its classification as construction and demolition debris” [Ref. § 74-9-3(D), NMSA 1978]
“Clean fill” means “broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill (1) has not been mixed with any waste other than the foregoing and (2) has not been subjected to any known spill or release of chemical contaminants, including petroleum product, (3) nor treated to remediate such contamination...
...reinforcement materials which are an integral part, such as (4) rebar, may be included as clean fill; clean fill (5) must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste.”
“C&D debris” means “materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing materials, pipe, gypsum wallboard and lumber from the construction or destruction of a structure as part of a construction or demolition project…

- What about manufactured or mobile homes?
- What about furnishings, kitchen appliances, etc.?
- What about pipelines and utilities?
...and (2) includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing or land development operations for a construction project, but if construction and demolition debris is (3)mixed with any other types of solid waste, whether or not originating from the construction project, it loses its classification as construction and demolition debris”

- Mixed with MSW, special waste (regulated asbestos waste or PCS)?
- How much is too much?
Clean Fill Management

- Clean fill management and use is addressed in the SWR at 20.9.2.8.H(1) through (3) NMAC
  - 1) Must not create a public nuisance, potential safety hazard, or adversely impact the environment
  - 2) Must not be placed in a watercourse or wetlands, unless proper permits are obtained
  - 3) Once deposited, must be covered with two feet of clean earth within 30 days, unless it is clean soil, or unless NMED approves an alternate storage period, cover material or depth
Clean Fill Transport

- A hauler of clean fill does not need to register as a commercial hauler with the NMED according to 20.9.3.31.A NMAC, as clean fill is not solid waste, so long as the purpose for its transport is to deposit it for beneficial use in accordance with the SWR.

  - Abandonment of clean fill without a plan to put it to beneficial use in accordance with the SWR constitutes disposal!
Clean Fill Contamination

- It is important for generators and haulers of clean fill to be sure it does not contain land clearing debris or special waste, such as regulated asbestos waste or petroleum contaminated soils (“PCS”)
  - Persons often erroneously believe that trees and vegetation are clean fill (declaring it to be “biodegradable” 😊)
  - Regulated asbestos waste may be found upon broken concrete affixed to floor tile and the associated mastic
  - Regulated asbestos waste (broken asbestos-cement pipe) is often inadvertently mixed with clean fill during municipal utility and water excavation projects
  - Treated PCS will NEVER meet the definition of clean fill
C&D Debris Disposal

- C&D debris is **solid waste**
- May be disposed at a permitted municipal solid waste ("MSW") landfill or C&D debris landfill
- According to the SWA, § 74-9-31(B)(3), NMSA 1978, and the SWR, 20.9.2.11.C NMAC, C&D debris may be disposed upon the same property where it was generated ("on-site disposal"), so long as it does not violate any provision of the SWR
C&D Debris Disposal

- This means that on-site disposal of C&D debris is authorized without a permit, but such disposal
  - 1) Must not result in a nuisance or hazard
  - 2) The C&D debris must be free of other solid waste, including hazardous or special waste (e.g., regulated asbestos waste)
  - 3) Must comply with all other applicable federal, state, county and local statutes, rules, regulations or ordinances
  - 4) Must not represent a threat to surface or ground waters due to disposal in a high water table, wetland or watercourse
  - 5) Should be buried and covered with at least two feet of clean soil, with grading and compaction sufficient to reduce the potential for infiltration, substantial erosion or differential settlement
  - 6) Should be monitored and maintained for cover integrity
Unlike a hauler of clean fill, a commercial hauler of C&D debris must register with the NMED according to 20.9.3.31.A NMAC because C&D debris is solid waste.

***Exception*** If the primary purpose of the transporter’s business is to construct or demolish structures, and that business performs the construction or demolition, then the resulting C&D debris may be transported by that business without being a registered commercial hauler; however, any and all subcontracted haulers must be independently registered.
C&D Debris Contamination

- It is important for generators and haulers of C&D debris to be sure it does not contain hazardous, TSCA or special wastes, such as lead-based paint (“LBP”) debris, polychlorinated biphenyls (“PCBs”) or regulated asbestos waste.

- Non-residential generators of C&D debris need to assure proper testing of suspect LBP debris to determine if disposal as hazardous waste is required.

- Companies with large numbers of florescent tubes, ballasts or transformers need to assure that any PCB containing items are not inadvertently included in the C&D debris.
C&D Debris Contamination

- Regulated asbestos waste may be found in many places, including (but not limited to)
  - Floor tile and mastic
  - Popcorn ceiling or wall textures
  - Water, sewer or conduit pipes (asbestos-cement)
  - Pipe insulation (wrap and paper)
  - Blown-in attic and wall insulation, sound proofing materials
  - Exterior asbestos-cement siding and roofing
  - Asbestos roofing material, including asphalt shingles
C&D Debris Recycling (Permitted)

- C&D debris recycling [non-segregated material]
  - A C&D debris recycling facility must have a solid waste facility permit (instead of a registration), because C&D debris is a solid waste, not a source-separated recyclable material
  - The permit is required by the SWA, Section 74-9-20(A), NMSA 1978, and the SWR, 20.9.3.8.A NMAC
  - The provisions of 20.9.3.11.A NMAC — “Additional Permit Application Requirements for Recycling Facilities that Accept Solid Waste that Accompanies the Recyclable Material” — also apply
  - There are no permitted C&D recycling facilities currently operating in New Mexico
C&D Debris Recycling (Registered)

- C&D debris recycling [source-separated material]
  - C&D debris must be segregated at the point of generation (i.e., “the job site”) prior to transport to the recycling facility
  - For example, job site segregation could involve placement of asphalt roofing shingles, wallboard, lumber, and/or concrete into separate containers
  - A recycling facility receiving source-separated recyclable material is not a solid waste facility requiring a permit, because it does not accept solid waste
  - This type of facility requires registration as a recycling facility per the SWR, 20.9.3.27 and 29 NMAC
Clean Fill vs. C&D Debris

Asbestos-Cement Pipe

Cloth

Plastic
Clean Fill vs. C&D Debris

Tile / Mastic / Broken Tile Pieces
Clean Fill vs. C&D Debris

Asbestos-Cement Siding (Fiber Bundles)
Clean Fill vs. C&D Debris

Clean Fill Pile?
Clean Fill vs. C&D Debris

Clean Fill Pile?
No!
Clean Fill vs. C&D Debris

C&D Debris or Clean Fill?
Clean Fill vs. C&D Debris

Questions?