

H.269

An act relating to the transportation and disposal of excavated development soils legally categorized as solid waste

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE FINDINGS

The General Assembly finds and declares that:

(1) polycyclic aromatic hydrocarbons (PAHs), arsenic, lead, and certain other heavy metals may be considered hazardous materials under State law;

(2) PAHs, arsenic, lead, and other heavy metals frequently are present in the environment as a result of atmospheric deposition of exhaust products from incomplete combustion of hydrocarbons, including oil, gasoline, coal, wood, and solid waste;

(3) arsenic, lead, and other heavy metals can be present as naturally occurring elements in soils;

(4) soils on properties within downtowns or village centers often contain PAHs, arsenic, lead, and other heavy metal at levels that exceed the Vermont soil screening standards even though there is no identifiable, site-specific source of the PAHs, arsenic, lead, or other heavy metals contamination on the property;

(5) presence of PAHs, arsenic, lead, or other heavy metals due to atmospheric deposition or natural occurrence can complicate the development of properties in downtowns and village centers; and

(6) to facilitate development in downtowns and village centers, while also arranging for the proper disposition of contaminated soil, a process should be established to allow the transfer of soil containing PAHs, arsenic, lead, or other heavy metals to receiving sites that meet criteria.

Sec. 2. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

As used in this chapter:

* * *

(37) “Background concentration level” means the concentration level of PAHs, arsenic, and lead in soils, expressed in units of mass per volume, that is attributable to site contamination caused by atmospheric deposition or is naturally occurring and determined to be representative of statewide or regional concentrations through a scientifically valid means as determined by the Secretary.

(38) “Commencement of construction” means the construction of the first improvement on the land or to any structure or facility located on the land. “Commencement of construction” shall not mean soil testing or other work

necessary for assessment of the environmental conditions of the land and subsurface of the land.

(39) “Development soils” means unconsolidated mineral and organic matter, otherwise legally categorized as solid waste, that contains PAHs, arsenic, or lead concentration levels that qualify for categorization as solid waste.

(40) “Development soils concentration level” means those levels of PAHs, arsenic, or lead expressed in units of mass per volume, contained in the development soils.

(41) “Downtown development district” shall have the meaning stated in 24 V.S.A. § 2791(4).

(42) “Existing settlement” shall have the same meaning stated in subdivision 6001(16) of this title.

(43) “Growth center” shall have the meaning stated in 24 V.S.A. § 2793c.

(44) “Neighborhood development area” shall have the meaning stated in 24 V.S.A. § 2793e.

(45) “Origin site” means a location where development soils originate.

(46) “PAHs” means polycyclic aromatic hydrocarbons.

(47) “Receiving site” means a location where development soils are deposited.

(48) “Receiving site concentration level” means those levels of PAHs, arsenic, or lead, expressed in units of mass per volume, that exist in soils at a receiving site.

(49) “TIF district” means a tax increment financing district created by a municipality pursuant to 24 V.S.A. § 1892.

(50) “Village center” shall have the meaning stated in 24 V.S.A. § 2791(10).

Sec. 3. 10 V.S.A. § 6604c is added to read:

§ 6604c. MANAGEMENT OF DEVELOPMENT SOILS

(a)(1) The Secretary shall not require a person that manages development soils in a manner that meets the requirements of this section to take corrective action procedures pursuant to section 6615b or 6648 of this title or to obtain a solid waste certification under this chapter for the management, transport, or receipt of development soils, provided that:

(A) the soils are removed from an origin site located in a designated downtown development district, growth center, neighborhood development area, existing settlement, TIF district, or village center;

(B) the origin site or the receiving site of the development soils is not:

(i) the subject of a planned or ongoing removal action under the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.; or

(ii) listed or proposed for listing as a CERCLA site under 42 U.S.C. § 9605; and

(C) the investigation and management of development soils occur under subsection (b) of this section.

(2) This section shall apply to the management of development soils only until the Secretary adopts rules under this chapter for the management of development soils, provided that those rules satisfy all of the requirements of subsection (d) of this section.

(b) Development soils cleanup requirements.

(1) The development of plans and work performed pursuant to plans under this section shall be supervised and certified by an environmental professional, as that term is defined in 40 C.F.R. § 312.10.

(2) Prior to the commencement of construction activities, a person applying to manage development soils under this subsection shall provide the Secretary with:

(A) investigation workplans for the origin site and the proposed receiving site that shall be deemed complete so long as it includes:

(i) for the origin site, representative sampling and analysis of the development soil proposed for management under this section for PAHs, arsenic, and lead;

(ii) for the receiving site, representative in site surface soil sampling and analysis for PAHs, arsenic, and lead;

(iii) at least one synthetic precipitation leachate procedure analysis representative of the development soil to determine likelihood of adverse impacts to groundwater; and

(iv) establishment of approximate seasonal depth to groundwater and underlying soil stratigraphy at the receiving site.

(B) a report of the results of any approved investigation workplan;

(C) the management plans for the origin site and proposed receiving site;

(i) the management plans shall demonstrate that the management of the development soils will not present an unreasonable threat to groundwater, surface water, human health, or the environment; and

(ii) the management plan for a receiving site shall include a description of the siting, construction, operation, and closure of the receiving site; and

(D) documentation that the development soils concentration levels are approximately equivalent to or less than the receiving site concentration levels for the same potential contaminants.

(3) The Secretary shall make a final determination as to whether any complete investigation workplan or management plan submitted under this subsection satisfies the applicable requirements within 30 days of receipt of the respective plan. If the Secretary does not make a final determination within 30 days of receipt of the respective plan, the plan shall be deemed approved.

(4) The Secretary shall make a final determination as to whether the developer has satisfied all requirements of the management plan within 30 days of receipt of the developer's request for such a determination. If the Secretary fails to make a final determination within 30 days of receipt of the request for such a determination, the request shall be deemed approved.

(c) Notwithstanding the requirement under subdivision (b)(2) of this section for submission of required materials prior to the commencement of construction, development soils stockpiled on municipal properties as of the effective date of this section shall be eligible for management under the provisions of this section, unless the Secretary determines that the stockpiled soils present an unreasonable threat to groundwater, surface water, human health, or the environment.

(d) On or before July 1, 2016, the Secretary shall:

(1) adopt by rule statewide or regional background concentration levels for PAHs, arsenic, and lead;

(2) adopt or amend rules to specify that development soils with concentration levels equal to or lower than the background concentration levels established by the Secretary shall not be defined or required to be treated as solid waste;

(3) adopt by rule criteria for determining site-specific maximum development soil concentration levels for PAHs, arsenic, and lead;

(4) adopt by rule procedures, in addition to disposal at a certified waste facility, for the management or disposal of development soils which have concentration levels that are otherwise categorized as solid waste but are below the site-specific maximum development soils concentration levels; and

(5) adopt by rule a process to preapprove sites to receive development soils from multiple developments.

(e) At any time, the Secretary may adopt by rule background and maximum concentration levels of other potentially hazardous material in soils such that the development soils containing these other materials would be categorized and treated according to the rules established by the Secretary pursuant to subsection (d) of this section.

(f) A tract of land shall not be considered development under subdivision 6001(3)(A) of this title solely due to its use as a receiving site under this section.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.