

1 H.113

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation; waste management; brownfields

6 Statement of purpose: This bill proposes to make technical changes to the
7 requirements for brownfields.

8 An act relating to brownfields

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

10 Sec. 1. 10 V.S.A. § 1283(h) is amended to read:

11 (h) ~~Receipts from the “redevelopment of contaminated properties~~
12 ~~program,” established under section 6615a of this title, shall be deposited into~~
13 ~~a separate account of the fund, named the “redevelopment of contaminated~~
14 ~~properties account.”~~

15 Sec. 2. 10 V.S.A. § 6617 is amended to read:

16 § 6617. PERSON RESPONSIBLE FOR RELEASE; NOTICE TO AGENCY

17 Any person who has knowledge of a release or a suspected release and who
18 may be subject to liability for a release, as detailed in section 6615 of this
19 chapter, shall immediately notify the agency. In addition, any ~~eligible person~~
20 ~~or successor under section 6615a of this title~~ applicant in the brownfields

1 program established under subchapter 3 of this chapter or any secured lender
2 or fiduciary who has knowledge of a release or a suspected release shall
3 immediately notify the agency. Failure to notify shall make those persons
4 liable to the penalty provisions of section 6612 of this title.

5 Sec. 3. 10 V.S.A. § 6641(a) is amended to read:

6 (a) There is created the brownfield property cleanup program to enable
7 certain interested parties to request the assistance of the secretary to review and
8 oversee work plans for investigating, abating, removing, remediating, and
9 monitoring a property in exchange for protection from certain liabilities under
10 section 6615 of this title. The program shall be administered by the secretary
11 who ~~shall~~ may:

12 * * *

13 (2) Contract with private engineers, hydrologists, and site professionals
14 to provide the investigation and review required by this subchapter. The
15 contract may be financed from the oversight fees established in subdivision
16 6644(5) of this title, or may bill an applicant who is not liable under
17 subdivision 6615(a)(1) of this title for the services.

18 * * *

19 Sec. 4. 10 V.S.A. § 6642(3) and (5) are amended to read:

20 (3) "CERCLA" means the Comprehensive Environmental Response
21 Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

1 information and investigate to determine compliance with this subsection. Any
2 determination of innocence or liability under this subdivision is solely for the
3 purpose of the initial eligibility determination for this program and shall have
4 no collateral effect in other proceedings.

5 Sec. 7. 10 V.S.A. § 6648(f) and (g) are amended to read:

6 (f) After approval of a corrective action plan and any amendments to the
7 plan, the secretary shall notify the ~~claimant~~ applicant of all the following
8 information:

9 * * *

10 (g) The ~~person receiving the approval~~ applicant shall file the notice of
11 approval of the corrective action in the land records of the municipality in
12 which the property is located within 15 days of receipt of the approval.

13 Sec. 8. 10 V.S.A. § 6650(b) is amended to read:

14 (b) An applicant may withdraw from the program and obtain personal
15 liability protection pursuant to subsection 6653(b) of this title after the
16 approval of a corrective action plan ~~and the secretary has granted personal~~
17 ~~liability protection as authorized in subsection 6653(b) of this title,~~ provided
18 the applicant does all the following:

19 * * *

1 Sec. 9. 10 V.S.A. § 6652(d) is amended to read:

2 (d) ~~The secretary may determine that a corrective action plan and any~~
3 ~~amendments of an applicant who participated in the program prior to acquiring~~
4 ~~an ownership interest in the property and is not otherwise liable pursuant to~~
5 ~~section 6615 of this title have been substantially completed and that all fees~~
6 ~~and costs due under this subchapter have been paid and issue a certificate of~~
7 ~~completion. The certificate of completion shall certify that the work is~~
8 ~~completed and may include conditions for operation and monitoring in~~
9 ~~addition to the requirements pursuant to section 6653 of this title~~ With respect
10 to applicants who entered the program established under this subchapter prior
11 to obtaining an ownership interest in the property and who are not otherwise
12 liable under section 6615 of this title, the secretary may determine that the
13 corrective action plan and all amendments to that plan have been substantially
14 completed and that all fees and costs due under this section have been paid, the
15 secretary shall issue a certificate of completion. The certificate of completion
16 shall certify that the work is completed and, in addition to the requirements
17 under section 6653 of this title, may include conditions for operations and
18 monitoring.

19 Sec. 10. 10 V.S.A. § 6653(d) is amended to read:

20 (d) There shall be no protection from liability under this section or
21 forbearance under section 6646 of this title for a successor if that successor or

1 any of its principals, owners, directors, affiliates, or subsidiaries were any of
2 the following:

3 * * *

4 Sec. 11. 10 V.S.A. § 6654 is amended to read:

5 § 6654. BROWNFIELD REVITALIZATION FUND; CREATION;
6 ASSISTANCE

7 (a) There is created a brownfield revitalization fund that shall be a special
8 fund created pursuant to subchapter 5 of chapter 7 of Title 32 to be
9 administered by the secretary of commerce and community development to aid
10 applicants in the ~~redevelopment of brownfield cleanup~~ program by assessing
11 and remediating sites. Moneys received by the secretary of natural resources
12 for application and ~~participation in~~ assistance rendered from the program shall
13 be deposited in the redevelopment of contaminated properties account of the
14 environmental contingency fund established in section 1283 of this title.

15 * * *

16 (c) ~~A person~~ An applicant may apply to the secretary of commerce and
17 community development for financial assistance in the form of a grant or loan
18 from the brownfield revitalization fund for the purpose of completing
19 characterization, assessment, or remediation of a site only after ~~receipt~~
20 approval of a work plan ~~approved~~ by the secretary ~~submitted pursuant to the~~
21 ~~brownfield property cleanup program unless the application is for a project that~~

1 ~~has been determined to be ineligible for the program and is otherwise~~
2 ~~appropriate for funding pursuant to subsection (d) of this section of natural~~
3 ~~resources. Approval of work plans shall be contingent upon participation in~~
4 ~~the program, unless the project under consideration is considered ineligible for~~
5 ~~the program, but is determined otherwise appropriate for funding when taking~~
6 ~~into consideration the criteria contained within subsection (d) of this section.~~

7 (d) ~~In order to determine~~ making a determination upon an award of
8 financial assistance, the secretary of commerce and community development in
9 consultation with the secretary of natural resources shall consider all the
10 following:

11 * * *

12 (e) A grant may be awarded by the secretary of commerce and community
13 development with the approval of the secretary of natural resources, provided:

14 * * *

15 (4) Financial assistance may be ~~provided to applicants by developing~~
16 utilized to develop a risk sharing pool, an indemnity pool, or other insurance
17 mechanism designed to help applicants.

18 * * *

19 Sec. 12. 24 V.S.A. § 2794(a)(5) is amended to read:

20 (5) Assistance from the secretary of the agency of natural resources ~~for~~
21 ~~current owners and prospective purchasers who otherwise qualify under the~~

1 ~~redevelopment of contaminated sites program under subsection 6615a(f) of~~
2 ~~Title 10, or in the case of current owners, who are innocent owners. For the~~
3 ~~purposes of this subsection, an “innocent owner” is an owner who did not do~~
4 ~~any of the following:~~

5 ~~(A) Hold an ownership interest in the property or in any related~~
6 ~~fixtures or appurtenances, excluding a secured lender’s holding indicia of~~
7 ~~ownership in the property primarily to assure the repayment of a financial~~
8 ~~obligation at the time of any disposal of hazardous materials on the property.~~

9 ~~(B) Directly or indirectly cause or contribute to any releases or~~
10 ~~threatened releases of hazardous materials at the property.~~

11 ~~(C) Operate, or control the operation, at the property of a facility for~~
12 ~~the storage, treatment, or disposal of hazardous materials at the time of the~~
13 ~~disposal of hazardous materials at the property.~~

14 ~~(D) Dispose of, or arrange for the disposal of hazardous materials at~~
15 ~~the property.~~

16 ~~(E) Generate the hazardous materials that were disposed of at the~~
17 ~~property for applicants in the brownfields reuse program established in~~
18 ~~subchapter 3 of chapter 159 of Title 10.~~

19 Sec. 13. 32 V.S.A. § 5401(10)(I) is amended to read:

20 (I) Real property consisting of the value of remediation expenditures
21 incurred by a business that has obtained the approval of the Vermont economic

1 progress council under section 5930a of this title for the construction of new,
2 expanded, or renovated facilities on contaminated property eligible under the
3 ~~redevelopment of contaminated properties program pursuant to subsection~~
4 ~~6615a(f) brownfields reuse program pursuant to subchapter 3 of chapter 159 of~~
5 Title 10, including supporting infrastructure, on sites eligible for the United
6 States Environmental Protection Agency “Brownfield Program,” for a period
7 of ten years.

8 Sec. 14. 32 V.S.A. § 5930aa(3)(C) is amended to read:

9 (C) To redevelop a contaminated property in a designated downtown
10 or village center under a plan approved by the secretary of natural resources
11 pursuant to ~~10 V.S.A. § 6615a~~ subchapter 3 of chapter 159 of Title 10.

12 Sec. 15. 32 V.S.A. § 10103(b)(7) is amended to read

13 (7) hazardous waste shipped in implementing a corrective action plan
14 approved by the secretary of natural resources under ~~10 V.S.A. § 6615a, the~~
15 ~~redevelopment of contaminated properties program, provided that the secretary~~
16 ~~issues a certificate of completion, as provided under that section~~ subchapter 3
17 of chapter 159 of Title 10.