S.47

Introduced by Senators Lyons, Snelling and Hartwell

Referred to Committee on

Date:

Subject: Conservation; transportation; salvage yards

Statement of purpose: This bill proposes to amend the statutes regulating motor vehicle salvage yards in the state. Under the bill, a permit from the agency of natural resources would be required to construct, substantially alter, or operate any salvage yard. Salvage yard permits would specify the location of the facility; would require proper operation and development; would contain provisions for air, groundwater, and surface water monitoring; and would contain additional conditions, requirements, and restrictions necessary to preserve and protect the public health and the environment. The bill would also require a person who stores more than six salvage motor vehicles for noncommercial purposes to register with the agency of natural resources. In addition, the bill would amend requirements for the siting, environmental conditions, and operation of salvage yards.

An act relating to salvage yards

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

Sec. 1. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

* * *

(25) "Scrap metal recycling facility" means a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, steel, or nonferrous metallic scrap for sale or a facility that stores scrap iron, steel, or nonferrous metallic scrap for future refabrication.

(26) "Salvage motor vehicle" means a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or one other than an on-premises utility vehicle that is allowed to remain unregistered for a period of 90 days from the date of discovery.

(27) "Salvage yard" means a scrap metal recycling facility or any place of outdoor storage or deposit which is maintained, operated, or used for storing, keeping, processing, buying, or selling six or more unregistered salvage motor vehicles. The term does not include the following:

(A) A solid waste management facility certified pursuant to section 6605 or 6605c of this title.

(B) A vehicle or equipment repair garage where wrecked or disabled motor vehicles and equipment are stored for less than 90 days for inspection or repairs.

(C) A collection of unregistered farm vehicles, equipment, or parts utilized by an owner in the pursuit of farming.

Sec. 2. 10 V.S.A § 6605h is added to read:

§ 6605h. SALVAGE YARD PERMIT

(a) No person shall construct, substantially alter, or operate any salvage yard without first obtaining a permit from the secretary for such facility, site, or activity. A person who operates a salvage yard for noncommercial purposes where the salvage yard poses no undue risk to public health, the environment, and does not create a nuisance condition shall be subject to the notification requirements of section 6605i of this title. A permit shall be valid for a period not to exceed five years.

(b) Salvage yard permits, where appropriate, shall:

(1) Specify the location of the facility, including limits on its development;

(2) Require proper operation and development of the facility in accordance with plans approved under the permit;

(3) Contain provisions for air, groundwater, and surface water monitoring throughout the life of the facility and for a reasonable time after closure of the facility;

(4) Contain provisions for erosion control, landscaping, drainage systems, and monitoring systems; and

(5) Contain such additional conditions, requirements, and restrictions as the secretary may deem necessary to preserve and protect the public health and air, groundwater, and surface water quality. Conditions may include, but are not limited to, requirements concerning reporting, recording, and inspection of the operation of the site.

(c) On or before the date of filing any permit application for a facility, the applicant shall send a notice and a copy of the application to the municipality in which the facility is located or proposed to be located and to any adjacent Vermont municipality if the land is located on a boundary. The applicant shall furnish to the secretary the names of those notified of the application. The secretary shall not issue a permit for a new facility or permit renewal for an existing facility unless the town, city, or village in which the facility is located has been notified.

(d) The secretary shall not issue a permit under this section without being provided a certificate of approved location as required by section 2255 of Title 24.

Sec. 3. 10 V.S.A. § 6605i is added to read:

§ 6605i. SALVAGE YARD REGISTRATION

(a) Applicability. A person who stores more than six salvage motor vehicles for noncommercial purposes shall register its salvage yard with the secretary.

(b) Registration. Registrations under this section shall be in the form and manner prescribed by the secretary. All registrations shall include at least the following information, to the extent known by the person reporting:

(1) the number of salvage motor vehicles stored at the salvageyard, the address of the property, and the location of the vehicles; and

(2) a certification that the registrant is not operating a commercial salvage yard.

(c) Permit required. If the secretary finds that the applicant is operating a salvage yard for commercial purposes, that the storage of salvage motor vehicles poses a threat to public health or the environment, or that the storage practices constitute disposal of solid waste, the secretary may require the registrant to obtain a permit under section 6605, 6605c, or 6605h of this title.

Sec. 4. 10 V.S.A. § 6607a(b) is amended to read:

(b) For purposes of this section:

(1) "Commercial hauler" means:

(A) any person that transports regulated quantities of hazardous waste; ~~and~~

(B) any person that transports solid waste for compensation in a vehicle having a rated capacity of more than one ton; and

(C) any person that operates a vehicle used for the crushing of salvage motor vehicles.

(2) The commercial hauler required to obtain a permit under this section is the legal or commercial entity that is transporting the waste, rather than the individual employees and subcontractors of the legal or commercial entity. In the case of a sole proprietorship, the sole proprietor is the commercial entity.

Sec. 5. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; and

(19) 24 V.S.A. chapter 61, relating to salvage recycling facilities and certificates of approved location.

Sec. 6. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

* * *

(5) ~~"Junk~~ "Salvage" means old or scrap copper, brass, iron, steel, and other old or scrap or nonferrous material~~, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof~~.

(6) ~~"Junk~~ "Salvage motor vehicle" means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety days from the date of discovery.

(7) ~~"Junkyard~~ "Salvage yard" means any place of outdoor storage or deposit which is maintained, operated or used ~~in connection with a business~~ for storing, keeping, processing, buying or selling ~~junk~~ six or more salvage motor vehicles or as a scrap metal processing facility. ~~"Junkyard" also means any place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway. However, the term does not include a private garbage dump or a sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services. It does not mean~~ The term does not include:

(A) a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs;

(B) a solid waste facility certified under section 6605 or 6605c of Title 10;

(C) a collection of unregistered farm vehicles, equipment, or parts used by their owner in the pursuit of farming.

(8) "Legislative body" means the city council of a city, the ~~board of selectmen~~ selectboard of a town, or the board of trustees of a village.

* * *

(12) "Scrap metal ~~processing~~ recycling facility" means ~~a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process~~ a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, steel, or nonferrous metallic scrap for sale or a facility that stores scrap iron, steel, or nonferrous metallic scrap for future refabrication.

Sec. 7. 24 V.S.A. § 2242 is amended to read:

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

A person shall not operate, establish, or maintain a ~~junkyard~~ salvage yard unless ~~he~~ that person:

(1) Holds a certificate of approval for the location of the ~~junkyard~~ salvage yard and holds a permit to operate, establish, or maintain a salvage yard, pursuant to section 6605h of Title 10; or

(2) ~~Holds a license to operate, establish or maintain a junkyard~~ Has registered with the secretary of natural resources pursuant to section 6605i of Title 10.

Sec. 8. 24 V.S.A. § 2243 is amended to read:

§ 2243. AGENCY OF TRANSPORTATION; RESPONSIBILITIES; DUTIES

The agency of transportation ~~is designated as the state agency for the purpose of carrying out the provisions of this subchapter and shall have the following additional responsibilities and powers:~~

~~(1) It may make such reasonable rules and regulations as it deems necessary, provided such rules and regulations do not conflict with any federal laws, rules and regulations, or the provisions of this subchapter.~~

~~(2) It shall~~ may enter into agreements with the United States Secretary of Transportation or ~~his~~ representatives in order to designate those areas of the state which are properly zoned or used for industrial activities, and to arrange for federal cost participation.

~~(3) It shall determine the effectiveness of the screening of any junkyard affected by this subchapter.~~

~~(4) It shall determine whether any junkyard must be screened or removed and may order such screening or any removal.~~

~~(5) It shall approve and pay from funds appropriated for this purpose costs incurred under section 2264 of this title, and may refuse payment of all or part of such costs when it finds they are unreasonable or unnecessary.~~

~~(6) It may seek an injunction against the establishment, operation or maintenance of a junkyard which is or will be in violation of this subchapter and may obtain compliance with its orders for screening or removal by a petition to the superior court for the county in which the junkyard is located.~~

~~(7) It shall conduct a continuing survey of all highways for the purpose of determining the status of junkyards affected and that the provisions of this subchapter are properly observed.~~

~~(8) It may issue necessary orders, findings, and directives, and do all other things reasonably necessary and proper to carry out the purpose of this subchapter.~~

Sec. 9. 24 V.S.A. § 2245 is amended to read:

§ 2245. ~~INCINERATORS, SANITARY LANDFILLS, ETC.,~~ SOLID WASTE MANAGEMENT FACILITIES, EXCEPTED

The provisions of this subchapter shall not be construed to apply to ~~incinerators, sanitary landfills, or open dumps wholly owned or leased and operated by a municipality for the benefit of its citizens, or to any private garbage dump or any sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services~~ solid

waste facilities certified by the secretary of natural resources pursuant to section 6605 or 6605c of Title 10 or salvage yards registered with the secretary of natural resources pursuant to 6605i of Title 10.

Sec. 10. 24 V.S.A. § 2251 is amended to read:

§ 2251. APPLICATION FOR CERTIFICATE OF APPROVED LOCATION

Application for a certificate of approved location shall be made in writing to the legislative body of the municipality where it is located or where it is proposed to locate the ~~junkyard~~ salvage yard, and, in municipalities having a zoning ~~ordinance and a zoning board of adjustment~~ bylaw, subdivision regulations established under sections ~~4301-4492~~ 4301–4498 of this title or a municipal ordinance or rule established under sections 1971–1984 of this title, the application shall be accompanied by a certificate from the ~~board of adjustment~~ legislative body or a public body designated by the legislative body. The legislative body or its designee shall find the proposed salvage yard location is not within an established district restricted against such uses or otherwise contrary to the requirements or prohibitions of such zoning ~~ordinance~~ bylaw or other municipal ordinance. The application shall contain a description of the land to be included within the ~~junkyard~~ salvage yard, which description shall be by reference to so-called permanent boundary markers.

Sec. 11. 24 V.S.A. § 2253 is amended to read:

§ 2253. LOCATION REQUIREMENTS

(a) At the time and place set for hearing, the legislative body shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the ~~junkyard~~ salvage yard. ~~In passing upon the same, it shall take into account, after~~ The legislative body shall consider the following in determining whether to grant or deny the certificate:

(1) proof of legal ownership or the right to such use of the property by the applicant~~,~~;

(2) the nature and development of surrounding property, such as the proximity of highways and the feasibility of screening the proposed junkyard from such highways, the proximity of ~~churches~~ places of worship, schools, hospitals, public buildings, or other places of public gathering; and

(3) whether or not the proposed location can be reasonably protected from affecting the public health, safety, environment, or ~~morals by reason of offensive or unhealthy odors or smoke, or of other causes~~ other nuisance conditions.

(b) A person shall not establish, operate, or maintain a ~~junkyard~~ salvage yard which is within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way of the interstate or primary highway systems and visible from the main traveled way thereof at any season of the year.

(c) Notwithstanding ~~any provision of this subchapter~~ subsection (b) of this section, junkyards and scrap metal processing facilities, may be operated within areas adjacent to the interstate and primary highway systems, which are within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way, provided they are zoned industrial under authority of state law, or if not zoned industrial under authority of state law, are used for industrial activities as determined by the board with the approval of the United States Secretary of Transportation.

Sec. 12. 24 V.S.A. § 2254 is amended to read:

§ 2254. AESTHETIC, ENVIRONMENTAL, AND COMMUNITY WELFARE CONSIDERATIONS

At the hearing regarding location of the ~~junkyard~~ salvage yard, the legislative body may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the legislative body may consider collectively the type of road servicing the ~~junkyard~~ salvage yard or from which the ~~junkyard~~ salvage yard may be seen, the natural or artificial barriers protecting the ~~junkyard~~ salvage yard from view, the proximity of the proposed

~~junkyard~~ salvage yard to established tourist and recreational areas or main access routes, thereto, proximity to neighboring residences, drinking water supplies, consistency with an adopted town plan, as well as the reasonable availability of other suitable sites for the ~~junkyard~~ salvage yard.

Sec. 13. 24 V.S.A. § 2255 is amended to read:

§ 2255. GRANT OR DENIAL OF APPLICATION; APPEAL

(a) After the hearing the legislative body shall~~, within two weeks,~~ make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application.

(b) If approved, the certificate of approved location shall be ~~forthwith issued to remain in effect for not less than three nor more than~~ issued for a period not to exceed five years ~~from the following July 1.~~ and shall contain at a minimum the following conditions:

(1) Conditions to ensure that the screening requirements of section 2257 of this title are met;

(2) Approval shall be personal to the applicant and not assignable;

(3) Conditions that the legislative body deems appropriate to ensure that considerations of section 2254 of this title have been met; and

(4) Any other condition that the legislative body deems appropriate to ensure the protection of public health, the environment, safety, or other nuisance conditions.

(c) Certificates of approval shall be renewed thereafter for successive periods of not ~~less than three nor~~ more than five years upon payment of the renewal fee without hearing, provided all provisions of this subchapter are complied with during the preceding period, and the ~~junkyard~~ salvage yard does not become a public nuisance under the common law.

(d) Any person ~~dissatisfied with the granting or denial of an application~~ may appeal the issuance or denial of a certificate of approved location to the ~~superior court for the county in which the proposed junkyard is located~~ environmental court within 30 days of the decision. The court by its order may affirm the action of the legislative body ~~or~~, direct the legislative body to grant or deny the application, or remand to the legislative body for further consideration. No costs shall be taxed against either party upon such appeal.

Sec. 14. 24 V.S.A § 2257 is amended to read:

§ 2257. SCREENING REQUIREMENTS; FENCING

(a) ~~Junkyards~~ Salvage yards shall be screened by a fence or vegetation which effectively screens it from view from the highway, and have a gate which shall be closed, except when entering or departing the yard.

(b) Fences and artificial means used for screening purposes as hereafter provided shall be maintained neatly and in good repair. They shall not be used for advertising signs or other displays which are visible from the main traveled way of a highway.

(c) All ~~junk~~ salvage and salvage motor vehicles stored or deposited in a ~~junkyard~~ salvage yard shall be kept within the enclosure, except while being transported to or from the ~~junkyard~~ salvage yard. All wrecking or other work on the ~~junk~~ salvage and salvage motor vehicles shall be accomplished within the enclosure.

(d) Where the topography, natural growth of timber or other natural barrier screen the ~~junkyard~~ salvage yard from view in part, the ~~agency~~ legislative body shall upon granting the ~~license~~ certificate of approved location, require the applicant to screen only those parts of the ~~junkyard~~ salvage yard not ~~so~~ screened.

~~(e) A junkyard prohibited by section 2253(b) of this title which is lawfully established after July 1, 1969 shall be screened or removed at the time it becomes nonconforming.~~

Sec. 15. 24 V.S.A. § 2274 is amended to read:

§ 2274. CONSTRUCTION WITH OTHER STATUTES

In the event the provisions of this subchapter conflict with any other law relating to abandoned or unclaimed property, this subchapter controls, and its

provisions shall not be construed to repeal or abrogate any other provisions of law relating to ~~junkyards~~ salvage yards but to be in aid thereof or as an alternative.

Sec. 16. 24 V.S.A. § 2281 is amended to read:

§ 2281. INJUNCTIVE RELIEF; OTHER REMEDIES

In addition to the penalty in section 2282 of this title, ~~the agency or~~ the legislative body may seek a temporary restraining order, preliminary injunction or permanent injunction against the establishment, operation, or maintenance of a ~~junkyard~~ salvage yard which is or will be in violation of this act and may obtain compliance with its orders for screening and protection of the public health, safety, environment, or nuisance conditions by complaint to the superior court for the county in which the junkyard is located.

Sec. 17. REPEAL

24 V.S.A. §§ 2247 (junkyard licenses); 2261 (application); 2262 (eligibility); 2263 (fee); 2264 (compensation); 2272 (taking title to junk motor vehicles); 2273 (general contract authority for removal of junk vehicles); and 2283 (appeals) are repealed.

Sec. 18. TRANSITION

For facilities permitted prior to the effective date of this act, the permit shall remain in effect until the expiration of the permit. No rule adopted by the secretary of natural resources shall impose new siting criteria on existing

permitted and operating facilities unless the location of the facility creates a threat to public health, the environment, or a nuisance.

Sec. 19. IMPLEMENTATION AND EFFECTIVE DATES

(a) The secretary of natural resources shall adopt a rule for the management of scrap, salvage, and salvage yard permits on or before January 15, 2010.

(b) This act shall take effect on January 16, 2010.

(c) A new facility or an existing facility without a permit shall submit complete applications under 24 V.S.A. § 2251 (certificate of approved location) and 10 V.S.A. § 6605h (salvage yard permit) under this act on or before July 1, 2010.