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H.269

Introduced by Representatives Sullivan of Burlington, Donovan of Burlington,
Forguites of Springfield, Keenan of St. Albans City, Macaig of
Williston, McCormack of Burlington, O’Sullivan of Burlington,
Pearson of Burlington, Rachelson of Burlington, Ram of
Burlington, Ryerson of Randolph, Stevens of Waterbury, Van
Wyck of Ferrisburgh, and Wright of Burlington

Referred to Committee on

Date:

Subject: Conservation and development; land use; waste management;
contaminated properties; contaminated soils

Statement of purpose of bill as introduced: This bill proposes to allow soils
that are otherwise legally categorized as solid waste that contain low levels of
polycyclic aromatic hydrocarbons (PAHs), select metals, or other potentially
hazardous materials that have been excavated during development or
redevelopment projects located in downtowns or village centers to be
transported to another location with similar levels of PAHs and metals as
opposed to being transported and disposed of at a certified waste management
facility.

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

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

4 Sec. 1. LEGISLATIVE FINDINGS

5 Polycyclic aromatic hydrocarbons (PAHs) and certain metals that are
6 considered to be hazardous materials are consistently present in the
7 environment due to atmospheric deposition of exhaust products from the
8 incomplete combustion of hydrocarbons including wood, oil, coal, gasoline,
9 and garbage. As a result, PAHs and select metals are often found in soils
10 associated with downtowns or village centers at concentrations that exceed the
11 existing Vermont screening standards throughout the property, without an
12 identifiable site specific source of the contamination.

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

14 § 6602. DEFINITIONS

15 As used in this chapter:

16 * * *

17 (37) “PAHs” means polycyclic aromatic hydrocarbons.

18 (38) “Excavated development soils” means any unconsolidated mineral
19 and organic matter overlying bedrock that has been subjected to and influenced
20 by geologic and other environmental factors caused by atmospheric deposition
21 located in a designated downtown development district, growth center,
22 neighborhood development area, or village center, excluding sediment.

1 ~~(39) "Downtown development district" shall have the meaning stated in~~

2 ~~24 V.S.A. § 2791(4).~~

3 ~~(40) "Growth center" shall have the meaning stated in~~

4 ~~24 V.S.A. § 2793c.~~

5 ~~(41) "Neighborhood development area" shall have the meaning stated in~~

6 ~~24 V.S.A. § 2793c.~~

7 ~~(42) "Village center" shall have the meaning stated in~~

8 ~~24 V.S.A. § 2791(10).~~

9 ~~(43) "Origin site" means a location where excavated development soils~~
10 ~~originate.~~

11 ~~(44) "Receiving site" means a location where excavated development~~
12 ~~soils are deposited.~~

13 ~~(45) "Excavated soils concentration level" means those levels of PAHs,~~
14 ~~metals, and hazardous material, expressed in units of mass per volume,~~
15 ~~contained in the excavated development soils.~~

16 ~~(46) "Receiving site concentration level" means those levels of PAHs,~~
17 ~~metals, and hazardous material that exist at the receiving site.~~

18 ~~(47) "Background concentration level" means the concentration level of~~
19 ~~PAHs, polychlorinated biphenyls, arsenic, and other metal contamination that~~
20 ~~is attributable to site contamination caused by atmospheric deposition and~~

1 ~~determined to be representative of statewide or regional concentrations through~~
2 a scientifically valid means as determined by the Secretary.

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

4 (c) On or before July 1, 2016, the Secretary shall adopt rules regarding the
5 excavation of development soils containing PAHs and select metals and their
6 storage, transport, management, and disposal. In adopting these rules, the
7 Secretary shall:

8 (1) Allow the transportation and disposal, without treatment, of
9 excavated development soils, otherwise legally categorized as solid waste,
10 from a site of origin to a receiving site if the excavated soils concentration
11 level is approximately the same or less than the receiving site concentration
12 level.

13 (2) Require a qualified environmental professional to certify that the soil
14 located at the receiving site conforms with the Secretary's rules.

15 (3) Require notification by the owner of the origin site to the Secretary
16 10 days prior to transport of the excavated development soils to the receiving
17 site. The notice shall include information related to the quantity of excavated
18 development soil to be deposited, the location of the origin site, the location of
19 the receiving site, the excavated soils concentration level, the receiving site
20 concentration level, and written consent by the receiving site owner for the
21 proposed deposit of excavated development soils. Upon notice, the Secretary

1 ~~has five days to contest either the nature of the soil or its method of~~
2 ~~transportation or disposal if the Secretary has a significant concern that the~~
3 ~~development soils or disposal methods present a threat to the public health,~~
4 ~~public safety, environment, or create a nuisance.~~

5 ~~(4) The Secretary shall permit any excavated development soils~~
6 ~~stockpiled on land owned by a municipality to remain at the current stockpiled~~
7 ~~location for up to two years after adoption of the final rules.~~

8 ~~(d) Within one year of the adoption of rules provided for in subsection (c),~~
9 ~~the Secretary shall set statewide or regional background concentration levels,~~
10 ~~and shall adopt rules that shall define solid waste to exclude excavated~~
11 ~~development soils with a concentration level equal to or lower than~~
12 ~~background concentration levels.~~

13 Sec. 4. EFFECTIVE DATE

14 ~~This act shall take effect on passage.~~

~~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).~~

~~(12) "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.

Sec. 1. LEGISLATIVE FINDINGS

The General Assembly finds and declares that:

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

(2) PAHs, arsenic, and lead 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 and lead can be present as naturally occurring elements in soils;

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

(5) presence of PAHs, arsenic, or lead 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, or lead to receiving sites that meet criteria established by the Secretary of Natural Resources.

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, or lead in soils, expressed in units of mass per mass, 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 overlying bedrock that contains PAHs, arsenic, or lead in concentrations that:

(A) exceed the relevant soil screening level for residential soil;

(B) when managed in compliance with section 6604c, 6605, or 6605c of this title:

(i) pose no greater risk than the Agency-established soil screening value for the intended reuse of the property; and

(ii) pose no unreasonable risk to human health through a dermal, inhalation, or ingestion exposure pathway;

(C) does not leach compounds at concentrations that exceed groundwater enforcement standards; and

(D) does not result in an exceedance of Vermont groundwater enforcement standards.

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

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

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

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

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

(45) “PAHs” means polycyclic aromatic hydrocarbons.

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

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

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

(49) "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, 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 plans submitted and approved pursuant to 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 and implementation 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) complete investigation workplans for the origin site and the proposed receiving site that include:

(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 situ 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, which:

(i) shall demonstrate that the management of the development soils will meet all applicable Vermont Water Quality Standards and will not present an unreasonable threat to groundwater, surface water, human health, or the environment; and

(ii) 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 contaminants.

(3) Upon receipt of a complete work plan submitted under subdivision (b)(2)(A) of this section or a complete management plan submitted under subdivision (b)(2)(C) of this section, the Secretary shall make a final determination as to whether the investigation workplan or management plan submitted under this subsection satisfies the requirements of subdivision (b)(2)(A) of this section for investigation work plans or subdivision (b)(2)(C) of this section for management plans. Prior to making a final determination

on a management plan under this section, the Secretary shall allow for a public comment period on the plan for no less than 14 days. The Secretary shall hold a public informational meeting on a management plan upon request from any person. The Secretary shall issue a final decision regarding the investigation work plan or management plan within 45 days of receipt of the respective plan.

(4) Upon the submission of a final report documenting implementation of the management plan, the Secretary shall make a final determination as to whether the developer has satisfied all requirements of the management plan within 45 days of receipt of the developer's request for such a determination.

(c) Notwithstanding the requirements 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, provided that the requirements of subdivision (a)(1) and subsection (b) of this section are otherwise met.

(d) On or before July 1, 2016, the Secretary shall adopt rules that allow for the management of excavated soils requiring disposal that contain PAHs, arsenic, or lead in a manner that ensures protection of human health and the environment and promotes Vermont's traditional settlement patterns in compact village or city centers. At a minimum, the rules shall:

(1) include statewide or regional background concentration levels for PAHs, arsenic, and lead that are representative of typical soil concentrations and found throughout existing development areas;

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

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

(4) in addition to disposal at a certified waste facility, adopt procedures for the management or disposal of development soils that have concentration levels that exceed residential soil screening levels, but are below the site-specific maximum development soils concentration levels;

(5) adopt a process to preapprove sites to receive development soils from multiple developments; and

(6) be designed to provide that the criteria established under subdivision (3) of this subsection and the process developed under subdivision (4) of this subsection shall be no less protective of human health and the environment than the standard for development soils and the process established under subsection (b) of this section.

(e) At any time, the Secretary may adopt by rule background and maximum concentration levels for other potentially hazardous material in soils such that

the development soils containing these other materials would be categorized and treated according to the rules adopted by the Secretary under subsection (d) of this section.

Sec. 4. 10 V.S.A. § 6001(3)(D)(vi) is amended to read:

(vi) *The construction of improvements for any one of the actions or abatements authorized in subdivision (I) of this subdivision (vi):*

* * *

(ff) The management of “development soils,” as that term is defined in 10 V.S.A. § 6602(39), under a plan approved by the Secretary of Natural Resources under section 6604c of this title.

Sec. 5. CATEGORICAL SOLID WASTE CERTIFICATION

Development soils as defined in 10 V.S.A. § 6602(39) shall be eligible for disposal at a categorical disposal facility certified by the Secretary of Natural Resources for the disposal of development soils pursuant to 10 V.S.A. § 6605c.

Sec. 6. MANAGEMENT OF DEVELOPMENT SOILS AS ALTERNATIVE

DAILY COVER

Development soils as defined in 10 V.S.A. § 6602(39) shall be eligible to be used as alternative daily cover at a solid waste facility certified pursuant to 10 V.S.A. § 6605.

Sec. 7. REPEAL

On July 1, 2016, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.