

No. 52. An act relating to the transportation and disposal of excavated development soils legally categorized as solid waste.

(H.269)

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, 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.

Date Governor signed bill: June 5, 2015