

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resource and Energy to which was referred
3 House Bill No. 269 entitled “An act relating to transportation and disposal of
4 excavated development soils legally categorized as solid waste” respectfully
5 reports that it has considered the same and recommends that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 Sec. 1. LEGISLATIVE FINDINGS

9 The General Assembly finds and declares that:

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

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

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

18 (4) soils on properties within downtowns or village centers often contain
19 PAHs, arsenic, lead, and other heavy metal at levels that exceed the Vermont
20 soil screening standards even though there is no identifiable, site specific

1 source of the PAHs, arsenic, lead, or other heavy metals contamination on the
2 property;

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

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

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

11 § 6602. DEFINITIONS

12 As used in this chapter:

13 * * *

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

20 (38) “Commencement of construction” means the construction of the
21 first improvement on the land or to any structure or facility located on the land.

1 “Commencement of construction” shall not mean soil testing or other work
2 necessary for assessment of the environmental conditions of the land and
3 subsurface of the land.

4 (39) “Development soils” means unconsolidated mineral and organic
5 matter overlying bedrock that contains PAHs, arsenic, or lead in concentration
6 levels that are otherwise legally categorized as solid waste.

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

10 (41) “Downtown development district” shall have the meaning stated in
11 24 V.S.A. § 2791(4).

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

14 (43) “Growth center” shall have the meaning stated in 4 V.S.A. § 2793c.

15 (44) “Neighborhood development area” shall have the meaning stated in
16 24 V.S.A. § 2793e.

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

18 (46) “PAHs” means polycyclic aromatic hydrocarbons.

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

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

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

6 (50) “Village center” shall have the meaning stated in 24 V.S.A.
7 § 2791(10).

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

9 § 6604c. MANAGEMENT OF DEVELOPMENT SOILS

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

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

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

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

4 (ii) listed or proposed for listing as a CERCLA site under
5 42 U.S.C. § 9605; and

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

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

12 (b) Development soils cleanup requirements.

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

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

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

- 1 (i) for the origin site, representative sampling and analysis of the
2 development soil proposed for management under this section for PAHs,
3 arsenic, and lead;
- 4 (ii) for the receiving site, representative in situ surface soil
5 sampling and analysis for PAHs, arsenic, and lead;
- 6 (iii) at least one synthetic precipitation leachate procedure analysis
7 of representative the development soil to determine likelihood of adverse
8 impacts to groundwater; and
- 9 (iv) establishment of approximate seasonal depth to groundwater
10 and underlying soil stratigraphy at the receiving site.
- 11 (B) a report of the results of any approved investigation workplan;
12 (C) the management plans for the origin site and proposed
13 receiving site;
- 14 (i) the management plans shall demonstrate that the management
15 of the development soils will not present an unreasonable threat to
16 groundwater, surface water, human health, or the environment; and
- 17 (ii) the management plan for a receiving site shall include a
18 description of the siting, construction, operation, and closure of the receiving
19 site; and

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

4 (3) The Secretary shall make a final determination as to whether any
5 complete investigation workplan or management plan submitted under this
6 subsection satisfies the applicable requirements within 30 days of receipt of the
7 respective plan. If the Secretary does not make a final determination within
8 30 days of receipt of the respective plan, the plan shall be deemed approved.

9 (4) The Secretary shall make a final determination that the developer has
10 satisfied all requirements of the development soils cleanup requirements within
11 30 days of receipt of the developer's request for such a determination. If the
12 Secretary fails to make a final determination within 30 days of receipt of the
13 request for such a determination, the request shall be deemed approved.

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

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

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

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

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

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

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

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

1 (f) A tract of land shall not be considered development under subdivision
2 6001(3)(A) of this title solely due to its use as a receiving site under this
3 section.

4 Sec. 4. EFFECTIVE DATE

5 This act shall take effect on passage.

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10 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE