

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred House  
3 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 Senate  
6 propose to the House that the bill be amended by striking out all after the  
7 enacting clause and inserting in lieu thereof the following:

8 Sec. 1. LEGISLATIVE FINDINGS

9 The General Assembly finds and declares that:

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

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

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

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

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

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

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

10          § 6602. DEFINITIONS

11          As used in this chapter:

12                                   \* \* \*

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

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

21           “Commencement of construction” shall not mean soil testing or other work

1 necessary for assessment of the environmental conditions of the land and  
2 subsurface of the land.

3 (39) “Development soils” means unconsolidated mineral and organic  
4 matter overlying bedrock that contains PAHs, arsenic, or lead in concentrations  
5 that:

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

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

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

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

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

15 (D) result in an exceedance of Vermont groundwater enforcement  
16 standards.

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

20 (41) “Downtown development district” shall have the meaning stated in  
21 24 V.S.A. § 2791(4).

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

2           § 2793c.

3           (43) “Neighborhood development area” shall have the meaning stated in

4           24 V.S.A. § 2793e.

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

6           (45) “PAHs” means polycyclic aromatic hydrocarbons.

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

8           deposited.

9           (47) “Receiving site concentration level” means those levels of PAHs,

10          arsenic, or lead, expressed in units of mass per mass, that exist in soils at a

11          receiving site.

12          (48) “TIF district” means a tax increment financing district created by a

13          municipality pursuant to 24 V.S.A. § 1892.

14          (49) “Village center” shall have the meaning stated in 24 V.S.A.

15          § 2791(10).

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

17          § 6604c. MANAGEMENT OF DEVELOPMENT SOILS

18          (a)(1) The Secretary shall not require a person that manages development

19          soils in a manner that meets the requirements of this section to take corrective

20          action procedures pursuant to section 6615b or 6648 of this title or to obtain a

1 solid waste certification under this chapter for the management, transport, or  
2 receipt of development soils, provided that:

3 (A) the soils are removed from an origin site located in a designated  
4 downtown development district, growth center, neighborhood development  
5 area, TIF district, or village center;

6 (B) the origin site or the receiving site of the development soils  
7 is not:

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

11 (ii) listed or proposed for listing as a CERCLA site under  
12 42 U.S.C. § 9605; and

13 (C) the investigation and management of development soils occur  
14 under plans submitted and approved pursuant to subsection (b) of this section.

15 (2) This section shall apply to the management of development soils  
16 only until the Secretary adopts rules under this chapter for the management of  
17 development soils, provided that those rules satisfy all of the requirements of  
18 subsection (d) of this section.

1           (b) Development soils cleanup requirements.

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

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

8                           (A) complete investigation workplans for the origin site and the  
9           proposed receiving site that include:

10                                   (i) for the origin site, representative sampling and analysis of the  
11           development soil proposed for management under this section for PAHs,  
12           arsenic, and lead;

13                                   (ii) for the receiving site, representative in situ surface soil  
14           sampling and analysis for PAHs, arsenic, and lead;

15                                   (iii) at least one synthetic precipitation leachate procedure analysis  
16           representative of the development soil to determine likelihood of adverse  
17           impacts to groundwater; and

18                                   (iv) establishment of approximate seasonal depth to groundwater  
19           and underlying soil stratigraphy at the receiving site;

20                                   (B) a report of the results of any approved investigation workplan;

1           (C) the management plans for the origin site and proposed  
2 receiving site, which;

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

7           (ii) for a receiving site, shall include a description of the siting,  
8 construction, operation, and closure of the receiving site; and

9           (D) documentation that the development soils concentration levels  
10 are approximately equivalent to or less than the receiving site concentration  
11 levels for the same contaminants.

12           (3) Upon receipt of a complete work plan submitted under subdivision  
13 (b)(2)(A) of this section or a complete management plan submitted under  
14 subdivision (b)(2)(C) of this section, the Secretary shall make a final  
15 determination as to whether the investigation workplan or management plan  
16 submitted under this subsection satisfies the requirements of subdivision  
17 (b)(2)(A) of this section for investigation work plans or subdivision (b)(2)(C)  
18 of this section for management plans. Prior to making a final determination on  
19 a management plan under this section, the Secretary shall allow for a public  
20 comment period on the plan for no less than 14 days. The Secretary shall hold  
21 a public informational meeting on a management plan upon request from any

1 person. The Secretary shall issue a final decision regarding the investigation  
2 work plan or management plan within 45 days of receipt of the respective plan.

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

7 (c) Notwithstanding the requirements under subdivision (b)(2) of this  
8 section for submission of required materials prior to the commencement of  
9 construction, development soils stockpiled on municipal properties as of the  
10 effective date of this section shall be eligible for management under the  
11 provisions of this section, provided that the requirements of subsection (a)(1)  
12 and (b) of this section are otherwise met.

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

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



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

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

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

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

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

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

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

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

4 \* \* \*

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

8 Sec. 5. CATEGORICAL SOLID WASTE CERTIFICATION

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

12 Sec. 6. MANAGEMENT OF DEVELOPMENT SOILS AS ALTERNATIVE  
13 DAILY COVER

14 Development soils as defined in 10 V.S.A. § 6602(39) shall be eligible to be  
15 used as alternative daily cover at a solid waste facility certified pursuant to  
16 10 V.S.A. § 6605.

17 Sec. 7. REPEAL

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

19 Sec. 8. EFFECTIVE DATE

20 This act shall take effect on passage.

1 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE