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Sent: Thursday, April 25, 2024 3:06 PM
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Subject: S. 254 / H. 569

Chair Sheldon:

Per Mike's e-mail below, please find a summary of what risk based cleanups are, how we currently approach them, and how H. 569 would improve our ability to protect human health while also reducing staff resources that are spent on transactional issues that don't protect health or the environment.

When a site is remediated it is either remediated to an unrestricted use (residential cleanup standards) or a cleanup can be risk based using controls to manage future uses at the property. The following are examples where use controls are used as a part of site cleanup:

- A historic industrial site is being redeveloped for a similar industrial use. The redeveloper wants to remediate to industrial cleanup standards but not residential due to the future planned industrial use. ANR authorizes this cleanup but requires a use restriction prohibiting any future residential use of the property.
- A dense housing project is proposed in urban infill in a Vermont village. The soils at the development have polycyclic aromatic hydrocarbons (PAHs or uncombusted carbon particles). ANR requires that the contaminated soil be left in place and capped with 18 inches of clean soil. ANR also requires a restriction on any digging in that area without an ANR approved workplan.
- A school has PCBs in building materials that are off-gassing PCBs in concentrations that exceed School Action Level values. After conducting an ANR approved cleanup, the school has achieved standards but there is still some residual PCB containing building material in the school that would be difficult to remove. Rather than disposing of it now, ANR allows the material to remain in place, periodic indoor air monitoring to occur, maintenance of any containment to occur (e.g. if a paint was used to encapsulate PCB containing materials, if it is chipping, repaint) and dispose of the materials when there is a planned renovation or capital improvement. For those following PCBs in schools, we believe that this will be a tool that will help EPA be comfortable with a "leave in place risk management" approach until the school can manage as a part of a planned capital investment.

In the absence of H. 569, ANR has been acquiring an environmental easement (a property interest) in these private properties to obtain legally enforceable use restrictions. The first case that I am aware of this happening at is the Pine Street Barge Canal Superfund Site in the 1990s and we have been using the environmental easement approach since I was first hired as a DEC attorney around 2002. The act of transferring a real property interest from a private party to the state takes, on average, over a year and places a significant burden on both ANR legal time and WMPD site cleanup staff time without a corresponding environmental or human health benefit.

The drain on ANR resources and procedural complexity with acquiring a property interest is the primary reason my staff recommended this change. This is coupled with the likelihood that many more use restrictions will be needed to manage PCBs in schools in a thoughtful and cost effective way.

H.569 allows a person who is responding to a release at a contaminated site to ask to have use controls placed on their property as a part of a cleanup. If a person does not want to undertake a risk based cleanup, they always have the option of remediating a property to an unrestricted use. H. 569 would create an administrative set of restrictions (like a permit) that would describe the cleanup that has taken place, a GIS mapped area of where any residual contamination is located, and a narrative description of any restrictions on the use of the property. In order to approve of controls, ANR has to find that they are adequately protective of human health and the environment, consistent with the cleanup plan and any rules on administrative use controls, and that adequate notice will be given to future owners.

Use controls would remain in place until the contamination has naturally attenuated or a subsequent corrective action has remediated the contamination that was the basis of the use controls.

If there are violations of these restrictions they can be enforced through ANR's general enforcement authority in Chapter 201.

I've reflected on who might care about this and I don't see any opponents. This is voluntary and a more efficient method of doing something that we currently do now. I see there being supporters but not people in opposition to this.

I plan on being in committee tomorrow to help with S. 254 and this proposed amendment. Please feel free to reach out with any questions.