



Substitute House Bill No. 6496

Public Act No. 21-88

AN ACT CONCERNING CERTAIN SOIL-RELATED INITIATIVES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 22a-209f of the general statutes is amended by adding subsection (c) as follows (*Effective October 1, 2021*):

(NEW) (c) (1) For purposes of this subsection: (A) "Beneficially reclaimed materials" means any of the following materials that may contain de minimis amounts of solid waste that is present incidentally in such materials, including any mixture of the following materials:

(i) Soil or dewatered sediment that does not exceed the criteria established by regulations adopted pursuant to section 22a-133k, including, but not limited to, criteria for any additional polluting substances for which criteria are not specified in such regulations;

(ii) Asphalt, brick, concrete or ceramic material, provided such material is virtually inert and poses no threat to pollute any groundwater or surface waters;

(iii) Casting sand;

(iv) Crushed recycled glass; or

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(v) Street sweepings or catch basin clean-out materials.

"Beneficially reclaimed materials" does not include materials that contain any asbestos, polychlorinated biphenyls, persistent bioaccumulative toxins, hazardous waste or, unless approved by the commissioner in writing, pyrrhotite-containing concrete;

(B) "Soil" means unconsolidated geologic material overlying bedrock;

(C) "Dewatered sediment" means unconsolidated material occurring in a surface water body, with water removed;

(D) "Casting sand" means waste sand from the casting of metals, provided such sand is not hazardous waste;

(E) "Crushed recycled glass" has the same meaning as provided in section 22a-208z;

(F) "Hazardous waste" has the same meaning as provided in section 22a-448;

(G) "Persistent bioaccumulative toxins" means long-lived chemicals that accumulate in the tissues of humans and that are toxic; and

(H) "Aquifer protection area" has the same meaning as provided in section 22a-354h.

(2) (A) The Commissioner of Energy and Environmental Protection may establish a pilot program for the beneficial use of beneficially reclaimed materials. The primary purpose of such program shall be to allow beneficially reclaimed materials to be used as fill when there is an engineering need for fill materials and to facilitate the reclamation or redevelopment of environmentally impaired or underutilized land.

(B) To implement the pilot program established pursuant to this subsection, the commissioner may issue no more than four

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authorizations, provided: (i) Such authorization does not allow an activity for which an individual or general permit has been issued; (ii) such authorization is not inconsistent with the requirements of the federal Resource Conservation and Recovery Act, 42 USC 6901 et seq.; (iii) such authorization is for single locations only and provides for not less than one hundred thousand cubic yards of beneficially reclaimed materials to be used as fill at such location; (iv) that prior to the submission of an application for authorization in accordance with this subsection, each municipality in which beneficially reclaimed materials will be used as fill has issued all the necessary approvals specified in subdivision (4) of this subsection; and (v) the commissioner finds that the beneficial use of beneficially reclaimed materials does not harm or present a threat to human health, safety or the environment.

(3) The commissioner may establish guidelines protective of public health, safety and the environment for such authorizations and for a letter of credit provided in accordance with this subsection and shall give public notice on the Department of Energy and Environmental Protection's Internet web site of such guidelines, or any subsequent revision of such guidelines, with an opportunity for submission of written comments by interested persons for a period of thirty days following the publication of such notice. The commissioner shall post a response to any comments received on the Department of Energy and Environmental Protection's Internet web site. At a minimum, any such guidelines shall contain a preference for use of environmentally impaired or underutilized locations, provided that any location for which an authorization is issued under this subsection shall:

(A) Be in an area (i) where the quality of the groundwaters of the state, as classified in regulations adopted pursuant to section 22a-426, and the classification maps adopted pursuant to said section, is either "GB" or "GC", and (ii) that is served by a public drinking water supply;

(B) Not be in an aquifer protection area; and

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(C) Be operated in compliance with sections 22a-426-1 to 22a-426-9, inclusive, of the regulations of Connecticut state agencies and not adversely affect sensitive receptors or resources, including, but not limited to, public or private water supply wells, wetlands, floodplains, or threatened or endangered species.

(4) Prior to the submission of an application for authorization in accordance with this subsection, an applicant shall: (A) Obtain a valid certificate of zoning approval, special permit, special exception or variance, or other documentation, from each municipality in which beneficially reclaimed materials will be used as fill; (B) obtain a copy of wetlands, aquifer protection, coastal site plan and any other required approval from each municipality; and (C) comply with the process specified in subsection (b) of section 22a-20a, regardless of whether the location where beneficially reclaimed materials will be used as fill is located in an environmental justice community;

(5) An application for authorization pursuant to this subsection shall be submitted on forms prescribed by the commissioner and shall include, at a minimum, the following information: (A) A plan for ensuring that only beneficially reclaimed materials that satisfy the requirements of this subsection are used as fill and a description of acceptability criteria for the beneficially reclaimed materials proposed for beneficial use at the subject location; (B) a plan describing the process for placing and recording the placement of beneficially reclaimed materials; (C) a plan for monitoring the waters of the state during the filling process and for a period of not less than thirty years after filling is complete; (D) a proposed letter of credit that conforms to the guidelines established by the commissioner pursuant to subdivision (3) of this subsection and the basis for the cost estimate used in such proposed letter of credit; (E) the qualifications of the environmental professionals intended to exercise oversight of all aspects of the proposed activities; (F) a redevelopment plan for the location where

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beneficially reclaimed materials will be placed, including engineering plans and drawings in support of such redevelopment; (G) a list of each municipal approval required for the proposed placement of beneficially reclaimed materials and a written copy of each such approval; and (H) any additional information required by the commissioner. Any such application shall be accompanied by a nonrefundable application fee of twenty-five thousand dollars.

(6) Notwithstanding section 22a-208a or any regulations adopted pursuant to section 22a-209, the issuance of an authorization under this subsection, or a modification of an authorization under this subsection when such modification is sought by the holder of an authorization, shall conform to the following procedures: (A) The Commissioner of Energy and Environmental Protection shall publish a notice of intent to issue an authorization on the Department of Energy and Environmental Protection's Internet web site. Such notice shall, at a minimum, include: (i) The name and mailing address of the applicant and the address of the location of the proposed activity; (ii) the application number; (iii) the tentative decision regarding the application; (iv) the type of authorization sought, including a reference to the applicable provision of the general statutes or regulations of Connecticut state agencies; (v) a description of the location of the proposed activity and any natural resources that will be affected by such activity; (vi) the name, address and telephone number of any agent of the applicant from whom interested persons may obtain copies of the application; (vii) the length of time available for submission of public comments to the commissioner; and (viii) any other additional information the commissioner deems necessary. There shall be a comment period of thirty days following the publication of such notice by the commissioner during which interested persons may submit written comments to the commissioner; (B) the commissioner shall post a response to any comments received on the Department of Energy and Environmental Protection's Internet web site; and (C) the commissioner may approve

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or deny such authorization based upon a review of the submitted information. Any authorization issued pursuant to this subsection shall define clearly the activity covered by such authorization and may include such conditions or requirements as the commissioner deems appropriate, including, but not limited to, investigation or remediation of a location prior to placement of beneficially reclaimed materials, operation and maintenance requirements, best management practices, qualifications and requirements for environmental professional exercising oversight, groundwater monitoring, compliance with fill management, closure, redevelopment or other plans, reporting and recordkeeping requirements, auditing by an independent party and a specified term. The commissioner shall require the posting of a letter of credit to assure compliance with any authorization issued under this subsection, including, but not limited to, implementation of a closure plan and post-closure maintenance and monitoring.

(7) The commissioner may suspend or revoke any such authorization and may modify an authorization if such modification is not sought by the holder of an authorization, in accordance with the provisions of section 4-182 and the applicable rules of practice adopted by the department.

(8) Unless required by the federal Clean Water Act, a discharge permit under section 22a-430 shall not be required for a discharge authorized under this subsection. In addition, the soil reuse provisions of the state remediation standards, adopted pursuant to section 22a-133k, shall not apply to an activity authorized under this subsection.

Sec. 2. Section 22a-314 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

The Commissioner of Energy and Environmental Protection may (a) make or cause to be made surveys, investigations and research concerning the problems of soil and water erosion and its control and

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soil health and publish his findings and disseminate information concerning the subject; (b) cooperate with or enter into agreements with any state agency or any owner or occupant of land in this state to carry out the provisions of this section; (c) obtain options upon or acquire, by purchase, exchange, lease, gift, grant, bequest or devise, any property, real or personal, or rights or interests therein, maintain, administer and improve any property so acquired, and receive income from such property and expend such income in carrying out the purposes of this section; and may sell, lease or otherwise dispose of any such property or interest therein for such purposes; (d) accept contributions in money, services, materials or otherwise from the United States or from this state or from any person, firm or corporation for such purposes; (e) cooperate with and enter into agreements with soil and water conservation districts and boards to provide available federal resources to study and improve soil health; and ~~[(e)]~~ (f) as a condition to extending of any material benefits to landowners, under this section, require contributions to any operations upon such land and require landowners who have consented to such work being done on their land to enter into and perform such agreements as to long-term use of such lands as will tend to prevent erosion thereon. Said commissioner, or any assistant or employee of the Department of Energy and Environmental Protection, may, at any reasonable time and upon notice by registered mail sent to the last-known address of the owner of such premises or with the oral permission of such owner or his agent, enter any premises while engaged in the performance of duty under the provisions of this title. Said commissioner shall have power to make necessary regulations to carry out the provisions of this section.

Sec. 3. Section 22a-315 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) In order to assist the Commissioner of Energy and Environmental Protection in identifying and remedying the problems of soil and water

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erosion, the commissioner shall, by regulation, establish soil and water conservation districts and boards. Such boards shall advise [him] the commissioner on matters of soil and water conservation, soil health, erosion and sedimentation control and shall assist [him] the commissioner in implementing programs concerning such matters. Such regulations shall (1) establish geographic boundaries for each district, (2) establish procedures for the selection, by the residents in each district, of a board of supervisors for each district, and (3) provide operating procedures for such boards of such districts. Such regulations shall be adopted pursuant to chapter 54.

(b) The commissioner by regulation pursuant to chapter 54, may authorize such boards to (1) develop soil and water conservation, soil health, erosion and sedimentation control programs, priorities and workplans; (2) provide, by agreement, for technical assistance from cooperating state and federal agencies to municipal and regional agencies and to landowners; (3) receive funds, by transfer, grant or otherwise from the commissioner, including grants pursuant to section 22a-317, or by donation or subscription from private sources, and expend such funds without regard to the provisions of chapter 50; (4) use or provide for the use of state equipment made available pursuant to section 22a-316; (5) enter into contracts and employ consultants and other assistants on a contract basis or other basis for rendering legal, financial, technical or other assistance and duties to carry out the purposes of this chapter; and (6) acquire property by purchase, lease, gift or otherwise and to hold such property in the name of the district.

(c) The commissioner may, by regulation, adopted pursuant to chapter 54, establish a council to coordinate the activities of such boards of such districts with the activities of the Department of Energy and Environmental Protection and other state, regional and local agencies and propose regulations to said department in matters of soil and water erosion conservation and to advise and assist the commissioner in

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conserving and protecting the land, water and other natural resources of the state. The council shall be within the Department of Energy and Environmental Protection for administrative purposes only. Such council shall consist of nine members, five representing the soil and water conservation districts to be selected by each of the five districts' boards, the Commissioner of Energy and Environmental Protection or a designee, the Commissioner of Agriculture, or a designee, a representative of a nongovernmental organization appointed by the Governor and a representative of The University of Connecticut's cooperative extension system. In addition, the council shall include, but not be limited to, the following at-large nonvoting members: The State Conservationist or designee of the Natural Resource Conservation Service, the director of the Connecticut Agricultural Experiment Station or a designee, the director of the Storrs Agricultural Experiment Station or a designee, municipal staff representatives responsible for erosion and sedimentation control, the State Committee Chairman of the Farm Services Agency and a council member of a resource conservation and development area. The commissioner shall have the authority to receive funds from any source on behalf of the council and shall expend such funds with the advice and consent of the council for equipment, supplies, and such full-time and part-time staff and consultants as may be necessary to carry out the council's duties and any other at-large, nonvoting members who have expertise to support the duties of the council.

(d) The council may receive funds from any source and expend such funds for equipment, supplies, staff and consultants as may be necessary to carry out its duties. The council shall distribute funds for program activities after a vote in which the members representing the boards of the soil and water conservation districts shall collectively have one vote. The council may employ an executive director who shall not be subject to the provisions of chapter 67. The council may seek funding and provide financial support to boards of soil and water conservation

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districts and other organizations for activities contributing to soil and water conservation and soil health. The council may adopt and amend by a majority vote such bylaws as it deems necessary to conduct its business.

(e) Prior to the promulgation of any regulations by the commissioner pursuant to subsections (a) and (b) of this section, such proposed regulations shall first be approved by a majority of said council.

(f) For the purposes of this section, soil and water conservation districts or boards shall not be considered state agencies or political or administrative subdivisions of the state.

Sec. 4. Section 22a-328 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

The council shall develop guidelines for soil erosion and sediment control on land being developed and improving and preserving soil health. The guidelines shall outline methods and techniques for minimizing erosion and sedimentation based on the best currently available technology. Such guidelines shall include, but not be limited to, model regulations that may be used by municipalities to comply with the provisions of sections 22a-325 to 22a-329, inclusive. The Commissioner of Energy and Environmental Protection and the soil and water conservation districts shall make the guidelines available to the public.

Sec. 5. (*Effective from passage*) Not later than November 1, 2021, the Commissioner of Energy and Environmental Protection shall submit to the joint standing committee of the General Assembly having cognizance of matters relating to the environment, in accordance with section 11-4a of the general statutes, a report on the approval process for maintenance marine dredging projects for the previous four year period. Such report shall include, but not be limited to, a description of

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each such application during such four year period, an analysis of the timeframe for action on such application by the Department of Energy and Environmental Protection and whether such application was approved or denied by the department.