



PA 21-88—sHB 6496

Environment Committee

Appropriations Committee

AN ACT CONCERNING CERTAIN SOIL-RELATED INITIATIVES

SUMMARY: This act allows the Department of Energy and Environmental Protection (DEEP) commissioner to establish a pilot program to beneficially use as fill certain reclaimed materials that may have very minor amounts of solid waste. Under the act, the commissioner may authorize four projects using these materials, subject to certain conditions, including that there is no harm or threat to human health, safety, or the environment (§ 1).

The act expands the commissioner’s authority to include, among other things, establishing regulatory standards for soil health; conducting investigations, surveys, and research on soil health; and working with soil and conservation districts and boards on these issues. It also requires the Council on Soil and Water Conservation to develop guidelines on improving and preserving soil health (§§ 2-4).

Lastly, the act requires the DEEP commissioner, by November 1, 2021, to submit a report to the Environment Committee on the approval process for maintenance marine dredging projects for the last four years. The report must (1) describe each dredging project application and (2) analyze how long it took DEEP to act on each application and specify whether DEEP approved or denied it (§ 5).

EFFECTIVE DATE: October 1, 2021, except the provision for DEEP reporting on marine dredging projects is effective upon passage.

§ 1 — BENEFICIAL USE PILOT PROGRAM

Program Purpose

Under the act, the pilot program’s primary purposes are to (1) allow the use of “beneficially reclaimed materials” as fill if there is an engineering need for fill materials and (2) help reclaim or redevelop environmentally impaired or underused land.

Acceptable Materials

The act allows the following “beneficially reclaimed materials,” which may have de minimis amounts of incidentally present solid waste, to be used for projects accepted as part of the pilot program:

1. soil or dewatered sediment that does not exceed criteria set out in state regulations for remediating pollution at hazardous waste disposal sites and properties that had a spill, and criteria for other polluting substances not

OLR PUBLIC ACT SUMMARY

- provided in the regulations;
2. virtually inert asphalt, brick, concrete (including concrete with pyrrhotite if the DEEP commissioner gives written approval for its use), or ceramic materials that do not threaten to pollute ground or surface water;
 3. waste sand from metal casting that is not hazardous waste;
 4. crushed recycled glass; and
 5. street sweepings or catch basin clean-out materials.

These materials may not include those with asbestos; polychlorinated biphenyls (PCBs); persistent bioaccumulative toxins, which are long-lived toxic chemicals that accumulate in human tissue; and hazardous waste.

Project Restrictions

The act allows for up to four projects to use these materials, but provides several restrictions on them. For example, an applicant must have the necessary municipal approvals for using the materials before submitting its application to DEEP (see “Municipal Approval,” below).

Under the act, DEEP may not authorize an activity for which it already issued an individual or general permit. The authorization must also be for (1) a single location and (2) use of at least 100,000 cubic yards of the materials.

The act requires that the DEEP commissioner find that the use of the materials does not harm or threaten human health, safety, or the environment. The use must also be consistent with federal law on proper solid waste management.

The act specifies that (1) someone operating under the pilot program does not need to obtain a discharge permit, unless the federal Clean Water Act requires it and (2) the state remediation standards’ soil reuse provisions do not apply to pilot program projects.

DEEP Protective Guidelines

The act allows the DEEP commissioner to establish authorization guidelines (1) to protect public health, safety, and the environment and (2) for a letter of credit (LOC).

Under the act, the guidelines must at least prefer using environmentally impaired or underused locations, but not in an aquifer protection area. The locations must be where groundwater quality is (1) suitable for specific industrial purposes but not human consumption (classified as GB) or subject to municipal and industrial discharge and unsuitable for human consumption (classified as GC) and (2) served by a public drinking water supply. The locations must also (1) operate in compliance with state water quality standards and (2) not adversely affect sensitive receptors or resources such as water supply wells, wetlands, floodplains, or threatened or endangered species.

The act requires the commissioner to give public notice of the guidelines, or revisions to them, on the department’s website. The public must have an opportunity to submit written comments for at least 30 days after DEEP publishes the notice. DEEP must then publish any response it has to the comments on the

OLR PUBLIC ACT SUMMARY

website.

Municipal Approval

Before applying to DEEP for authorization, a project applicant must obtain local approvals from each municipality where the materials will be used, including a (1) valid certificate of zoning approval, special permit, special exception, variance, or other documentation and (2) copy of wetlands, aquifer protection, coastal site plan, or other required municipal approvals.

The act also requires applicants to comply with the state environmental justice law's public participation and community benefit agreement process, whether or not the location is in an environmental justice community (i.e., a distressed municipality or a census block group with at least 30% of the noninstitutionalized population having an income below a certain amount). The state's environmental justice law generally requires applicants for certain projects in these areas to, before applying to DEEP for the project, (1) obtain approval of, and implement, a meaningful participation plan (e.g., give certain notices and hold an informal public meeting) so the public can learn about the proposed project and (2) discuss with municipal officials the need for a community environmental benefit agreement to mitigate the project's impacts (CGS § 22a-20a).

Application Process

The act requires an authorization application to be submitted on DEEP commissioner-prescribed forms, include a non-refundable \$25,000 application fee, and provide the following information:

1. plan to ensure that only materials meeting the act's definition of "beneficially reclaimed materials" be used as fill, including a description of acceptability criteria for materials proposed for use at the location;
2. plan describing the process for placing and recording the materials' placement;
3. plan for monitoring water during the filling process and for at least 30 years afterward;
4. proposed LOC conforming to the commissioner's guidelines, with the basis for the cost estimate used for it;
5. qualifications of the environmental professional intended to oversee the project;
6. redevelopment plan for the location, including engineering plans and drawings;
7. list of municipal approvals required for the project, with a written copy of each; and
8. any additional information the commissioner requires.

DEEP Authorization Process

Under the act, the process for obtaining an authorization, or a change to one,

OLR PUBLIC ACT SUMMARY

involves a public notice and comment period.

Notice. The act requires the DEEP commissioner to publish a notice of intent to issue an authorization on the department's website. The notice must include the following information:

1. applicant's name and mailing address;
2. project location address;
3. application number and tentative decision on the application;
4. name, address, and telephone number of any applicant agent that interested people may contact for copies of the application;
5. requested authorization type, with applicable statutory or regulatory references;
6. description of (a) the project location and (2) any affected natural resources;
7. available amount of time to submit written comments to the commissioner; and
8. any other information the commissioner deems necessary.

Comment Period and Review. The act requires a 30-day comment period beginning after the commissioner publishes the notice. The commissioner must post a response to any comment she receives on the DEEP website.

Final Decision. Under the act, the commissioner may approve or deny an authorization based on her review of the submitted information. The act requires the authorization to clearly define the activity it covers and may include conditions or requirements as the commissioner deems appropriate. These conditions or requirements may pertain to investigating or remediating a location before placing the materials; operation and maintenance; best management practices; requiring environmental professionals to oversee the projects, including their qualifications; groundwater monitoring; fill management; closure; redevelopment or other plans; reporting and recordkeeping; independent auditing; and term specifications.

The commissioner must require posting a LOC to assure compliance with the authorization, including implementing a closure plan and performing maintenance and monitoring after closure. The act allows her to modify, suspend, or revoke an authorization, under the procedures of the Uniform Administrative Procedure Act and applicable DEEP rules of practice.

§§ 2-4 — SOIL HEALTH

Commissioner Duties (§ 2)

As she may already do for problems related to soil and water erosion, the act allows the DEEP commissioner to (1) have surveys, investigations, and research conducted on soil health and (2) publish and disseminate related information. The act extends to the soil health activities the commissioner's existing authorizations for carrying out soil and water erosion activity, such as entering into agreements with landowners, acquiring property, or accepting monetary contributions. It also allows her to cooperate, and enter into agreements, with soil and water

OLR PUBLIC ACT SUMMARY

conservation districts and boards to provide federal resources to study and improve soil health (see below).

Soil and Water Conservation District Boards and Council (§§ 3 & 4)

Existing law requires the commissioner to establish, by regulation, soil and water conservation districts and boards whose purpose is to help identify and fix soil and water erosion problems. The act requires the district boards to also advise her on soil health matters and help implement related programs.

The act allows the commissioner to amend district board regulations to permit them to develop soil health programs, priorities, and workplans, as they already may do for soil and water conservation, erosion, and sedimentation control (Conn. Agencies Regs. § 22a-315-1 et seq.).

As authorized by law, the commissioner established the Council on Soil and Water Conservation to (1) coordinate the boards' activities with those of DEEP and other agencies; (2) propose regulations on soil and water erosion conservation; and (3) advise and help the commissioner conserve and protect the state's natural resources.

The act requires the council to develop guidelines for improving and preserving soil health and make them publicly available. The council must already do this for soil erosion and sediment control on land being developed. As it may already do for soil and water conservation activities, the act allows the council to seek funding and provide financial support to district boards for soil health activities.