



April 19, 2017

Commissioner Emily Boedecker
Department of Environmental Conservation
Main Building - 2nd Floor
One National Life Dr.
Montpelier VT 05620-3520

Re: Rule Number 17P006, Investigation and Remediation of Contaminated Properties

Dear Commissioner Boedecker:

I am writing on behalf of the 246 member cities and towns of the Vermont League of Cities and Towns (VLCT) to comment on the proposed rule, Investigation and Remediation of Contaminated Properties, adopted pursuant to authority granted in 10 V.S.A. §6603(1) and circumscribed pursuant to authority in 10 V.S.A. § 6604c. I note that the rule does not indicate language that is new versus language or language expected to be deleted from the rule and in that respect the draft is difficult to follow.

Our substantive concerns regard proposed management of development soils and the deleterious effect that will have on a municipality's capacity to promote Vermont's traditional settlement patterns in compact village or city centers with little benefit to the urban environment. Vermont's legislature and Governor Scott are singularly focused on growing the economy and providing tools that will make it more attractive to develop in traditional centers rather than in greenfields outside of downtowns, growth centers and villages. This rule heads in the opposite direction, raising development costs significantly in Vermont's historic urbanized areas and thereby encouraging sprawl.

We are likewise concerned that the option of disposing of soils that the department determines are non-hazardous and slightly contaminated at Vermont's one remaining landfill uses that valuable space very ineffectively and requires trucking dirt long distances in fossil fuel burning trucks through historic downtowns all the way to Coventry, depositing air borne residues and degrading quality of life in those communities all along the truck routes.

Sponsor of:

VLCT Employment
Resource and Benefits
Trust, Inc.

VLCT Municipal
Assistance Center

VLCT Property and
Casualty Intermunicipal
Fund, Inc.

We disagree with the assessment of the economic impact of the rule stated on the Secretary of State's website, "Since this Rule will replace an existing procedure there is not likely to be an added burden to entities affected by the Rule. ... This rule also provides more cost effective options for addressing soils that contain lead, arsenic and PAHs, as these contaminants can be found widely throughout the state and past options have been limited". The economic impact assessment does not

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include the cost of engineering, test borings, analysis, paperwork and staff to comply with the requirements of the rule.

The expense of handling development soils determined to be slightly contaminated is high enough to put construction of some projects in downtown areas in jeopardy. The City of St. Albans provides one example of the excessive – it spent \$597,868 to remove, transport, and dispose of soil on its downtown core site redevelopment (including sites for a parking garage, office building, and hotel). Then it had to pay to bring in new soil.

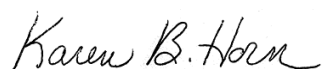
Our understanding of the new rule is that development soils that exceed an environmental media standard will need to comply with the entire hazardous waste rule because the definition of “suspected release” states, “an exceedance of an environmental media standard shall be presumed to be a suspected release and shall be reported pursuant to 35-102(b)”. Inasmuch as development soils have been in place historically, receiving depositions of polycyclic aromatic hydrocarbons (PAHs), arsenic or lead over time, and generally construction projects don’t generate releases of contaminants as much as providing temporary disturbances of soil, it seems unreasonable that the entire site investigation work plan; conceptual work plan; site investigation report itemizing each “release”, response and report; and corrective action plan, would be completely necessary. The expense of complying with the requirements of all the proposed requirements in Subchapters 3 and 5 will be high.

Much of the best practice in managing slightly contaminated soils in urban environments depends upon the current and future use of the site and the handling of development soils in that context. While the proposed rule requires that a corrective action plan include the redevelopment and reuse plan for the property following implementation of the corrective action, it gives no indication of how that information will be weighed in the Secretary’s decision about the plan.

We urge you to reconsider this rule. We understand that once again, Vermont’s standards would exceed environmental media standards in neighboring states and we recommend that the department consider environmental media standards in neighboring states in New England and methods they have put in place to manage soils on site in light of future property uses or to handle disposal of soils. We urge you to consider how this rule interacts with the state’s long time goal of encouraging growth in our downtowns, villages and growth centers, and how the agency might facilitate reasonable administration of a development soils management program.

Thank you for your consideration of these comments.

Sincerely,



Karen B. Horn,
Director Public Policy & Advocacy

Cc: Governor Phil Scott
Secretary Julie Moore
Matt Chapman

