



General Assembly

Amendment

January Session, 2021

LCO No. 8796



Offered by:

REP. GRESKO, 121st Dist.

SEN. COHEN, 12th Dist.

To: Subst. House Bill No. 6496

File No. 230

Cal. No. 191

"AN ACT CONCERNING CERTAIN SOIL-RELATED INITIATIVES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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

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

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

13 (ii) Asphalt, brick, concrete or ceramic material, provided such

14 material is virtually inert and poses no threat to pollute any
15 groundwater or surface waters;

16 (iii) Casting sand;

17 (iv) Crushed recycled glass; or

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

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

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

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

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

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

30 (F) "Hazardous waste" has the same meaning as provided in section
31 22a-448;

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

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

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

41 redevelopment of environmentally impaired or underutilized land.

42 (B) To implement the pilot program established pursuant to this
43 subsection, the commissioner may issue no more than four
44 authorizations, provided: (i) Such authorization does not allow an
45 activity for which an individual or general permit has been issued; (ii)
46 such authorization is not inconsistent with the requirements of the
47 federal Resource Conservation and Recovery Act, 42 USC 6901 et seq.;

48 (iii) such authorization is for single locations only and provides for not
49 less than one hundred thousand cubic yards of beneficially reclaimed
50 materials to be used as fill at such location; (iv) that prior to the
51 submission of an application for authorization in accordance with this
52 subsection, each municipality in which beneficially reclaimed materials
53 will be used as fill has issued all the necessary approvals specified in
54 subdivision (4) of this subsection; and (v) the commissioner finds that
55 the beneficial use of beneficially reclaimed materials does not harm or
56 present a threat to human health, safety or the environment.

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

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

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

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

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

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

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

113 (6) Notwithstanding section 22a-208a or any regulations adopted
114 pursuant to section 22a-209, the issuance of an authorization under this
115 subsection, or a modification of an authorization under this subsection
116 when such modification is sought by the holder of an authorization,
117 shall conform to the following procedures: (A) The Commissioner of
118 Energy and Environmental Protection shall publish a notice of intent to
119 issue an authorization on the Department of Energy and Environmental
120 Protection's Internet web site. Such notice shall, at a minimum, include:
121 (i) The name and mailing address of the applicant and the address of the
122 location of the proposed activity; (ii) the application number; (iii) the
123 tentative decision regarding the application; (iv) the type of
124 authorization sought, including a reference to the applicable provision
125 of the general statutes or regulations of Connecticut state agencies; (v) a
126 description of the location of the proposed activity and any natural
127 resources that will be affected by such activity; (vi) the name, address
128 and telephone number of any agent of the applicant from whom
129 interested persons may obtain copies of the application; (vii) the length
130 of time available for submission of public comments to the
131 commissioner; and (viii) any other additional information the
132 commissioner deems necessary. There shall be a comment period of
133 thirty days following the publication of such notice by the commissioner
134 during which interested persons may submit written comments to the
135 commissioner; (B) the commissioner shall post a response to any
136 comments received on the Department of Energy and Environmental
137 Protection's Internet web site; and (C) the commissioner may approve
138 or deny such authorization based upon a review of the submitted
139 information. Any authorization issued pursuant to this subsection shall
140 define clearly the activity covered by such authorization and may

141 include such conditions or requirements as the commissioner deems
142 appropriate, including, but not limited to, investigation or remediation
143 of a location prior to placement of beneficially reclaimed materials,
144 operation and maintenance requirements, best management practices,
145 qualifications and requirements for environmental professional
146 exercising oversight, groundwater monitoring, compliance with fill
147 management, closure, redevelopment or other plans, reporting and
148 recordkeeping requirements, auditing by an independent party and a
149 specified term. The commissioner shall require the posting of a letter of
150 credit to assure compliance with any authorization issued under this
151 subsection, including, but not limited to, implementation of a closure
152 plan and post-closure maintenance and monitoring.

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

158 (8) Unless required by the federal Clean Water Act, a discharge
159 permit under section 22a-430 shall not be required for a discharge
160 authorized under this subsection. In addition, the soil reuse provisions
161 of the state remediation standards, adopted pursuant to section 22a-
162 133k, shall not apply to an activity authorized under this subsection.

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

165 The Commissioner of Energy and Environmental Protection may (a)
166 make or cause to be made surveys, investigations and research
167 concerning the problems of soil and water erosion and its control and
168 soil health and publish his findings and disseminate information
169 concerning the subject; (b) cooperate with or enter into agreements with
170 any state agency or any owner or occupant of land in this state to carry
171 out the provisions of this section; (c) obtain options upon or acquire, by
172 purchase, exchange, lease, gift, grant, bequest or devise, any property,

173 real or personal, or rights or interests therein, maintain, administer and
174 improve any property so acquired, and receive income from such
175 property and expend such income in carrying out the purposes of this
176 section; and may sell, lease or otherwise dispose of any such property
177 or interest therein for such purposes; (d) accept contributions in money,
178 services, materials or otherwise from the United States or from this state
179 or from any person, firm or corporation for such purposes; (e) cooperate
180 with and enter into agreements with soil and water conservation
181 districts and boards to provide available federal resources to study and
182 improve soil health; and [(e)] (f) as a condition to extending of any
183 material benefits to landowners, under this section, require
184 contributions to any operations upon such land and require landowners
185 who have consented to such work being done on their land to enter into
186 and perform such agreements as to long-term use of such lands as will
187 tend to prevent erosion thereon. Said commissioner, or any assistant or
188 employee of the Department of Energy and Environmental Protection,
189 may, at any reasonable time and upon notice by registered mail sent to
190 the last-known address of the owner of such premises or with the oral
191 permission of such owner or his agent, enter any premises while
192 engaged in the performance of duty under the provisions of this title.
193 Said commissioner shall have power to make necessary regulations to
194 carry out the provisions of this section.

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

197 (a) In order to assist the Commissioner of Energy and Environmental
198 Protection in identifying and remedying the problems of soil and water
199 erosion, the commissioner shall, by regulation, establish soil and water
200 conservation districts and boards. Such boards shall advise [him] the
201 commissioner on matters of soil and water conservation, soil health,
202 erosion and sedimentation control and shall assist [him] the
203 commissioner in implementing programs concerning such matters.
204 Such regulations shall (1) establish geographic boundaries for each
205 district, (2) establish procedures for the selection, by the residents in
206 each district, of a board of supervisors for each district, and (3) provide

207 operating procedures for such boards of such districts. Such regulations
208 shall be adopted pursuant to chapter 54.

209 (b) The commissioner by regulation pursuant to chapter 54, may
210 authorize such boards to (1) develop soil and water conservation, soil
211 health, erosion and sedimentation control programs, priorities and
212 workplans; (2) provide, by agreement, for technical assistance from
213 cooperating state and federal agencies to municipal and regional
214 agencies and to landowners; (3) receive funds, by transfer, grant or
215 otherwise from the commissioner, including grants pursuant to section
216 22a-317, or by donation or subscription from private sources, and
217 expend such funds without regard to the provisions of chapter 50; (4)
218 use or provide for the use of state equipment made available pursuant
219 to section 22a-316; (5) enter into contracts and employ consultants and
220 other assistants on a contract basis or other basis for rendering legal,
221 financial, technical or other assistance and duties to carry out the
222 purposes of this chapter; and (6) acquire property by purchase, lease,
223 gift or otherwise and to hold such property in the name of the district.

224 (c) The commissioner may, by regulation, adopted pursuant to
225 chapter 54, establish a council to coordinate the activities of such boards
226 of such districts with the activities of the Department of Energy and
227 Environmental Protection and other state, regional and local agencies
228 and propose regulations to said department in matters of soil and water
229 erosion conservation and to advise and assist the commissioner in
230 conserving and protecting the land, water and other natural resources
231 of the state. The council shall be within the Department of Energy and
232 Environmental Protection for administrative purposes only. Such
233 council shall consist of nine members, five representing the soil and
234 water conservation districts to be selected by each of the five districts'
235 boards, the Commissioner of Energy and Environmental Protection or a
236 designee, the Commissioner of Agriculture, or a designee, a
237 representative of a nongovernmental organization appointed by the
238 Governor and a representative of The University of Connecticut's
239 cooperative extension system. In addition, the council shall include, but
240 not be limited to, the following at-large nonvoting members: The State

241 Conservationist or designee of the Natural Resource Conservation
242 Service, the director of the Connecticut Agricultural Experiment Station
243 or a designee, the director of the Storrs Agricultural Experiment Station
244 or a designee, municipal staff representatives responsible for erosion
245 and sedimentation control, the State Committee Chairman of the Farm
246 Services Agency and a council member of a resource conservation and
247 development area. The commissioner shall have the authority to receive
248 funds from any source on behalf of the council and shall expend such
249 funds with the advice and consent of the council for equipment,
250 supplies, and such full-time and part-time staff and consultants as may
251 be necessary to carry out the council's duties and any other at-large,
252 nonvoting members who have expertise to support the duties of the
253 council.

254 (d) The council may receive funds from any source and expend such
255 funds for equipment, supplies, staff and consultants as may be
256 necessary to carry out its duties. The council shall distribute funds for
257 program activities after a vote in which the members representing the
258 boards of the soil and water conservation districts shall collectively have
259 one vote. The council may employ an executive director who shall not
260 be subject to the provisions of chapter 67. The council may seek funding
261 and provide financial support to boards of soil and water conservation
262 districts and other organizations for activities contributing to soil and
263 water conservation and soil health. The council may adopt and amend
264 by a majority vote such bylaws as it deems necessary to conduct its
265 business.

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

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

272 Sec. 4. Section 22a-328 of the general statutes is repealed and the

273 following is substituted in lieu thereof (*Effective October 1, 2021*):

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

284 Sec. 5. (*Effective from passage*) Not later than November 1, 2021, the
285 Commissioner of Energy and Environmental Protection shall submit to
286 the joint standing committee of the General Assembly having
287 cognizance of matters relating to the environment, in accordance with
288 section 11-4a of the general statutes, a report on the approval process for
289 maintenance marine dredging projects for the previous four year
290 period. Such report shall include, but not be limited to, a description of
291 each such application during such four year period, an analysis of the
292 timeframe for action on such application by the Department of Energy
293 and Environmental Protection and whether such application was
294 approved or denied by the department."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2021</i>	22a-209f
Sec. 2	<i>October 1, 2021</i>	22a-314
Sec. 3	<i>October 1, 2021</i>	22a-315
Sec. 4	<i>October 1, 2021</i>	22a-328
Sec. 5	<i>from passage</i>	New section