

SENATE No. 609

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the re-use of soil for large reclamation projects.

PETITION OF:

NAME:

Michael F. Rush

DISTRICT/ADDRESS:

Norfolk and Suffolk

SENATE No. 609

By Mr. Rush, a petition (accompanied by bill, Senate, No. 609) of Michael F. Rush for legislation relative to the re-use of soil for large reclamation projects. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 529 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the re-use of soil for large reclamation projects.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to ensure the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety, health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21E of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting, after Section 22, the following new section:-

3 Section 23. (a) As used in this chapter the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Approved Re-use”, the use of soil for the reclamation of a quarry, sand pit or gravel pit
6 under the conditions of this policy;

7 “Covered project”, any quarry, gravel pit, or sand pit reclamation project that receives, or
8 plans to receive, greater than 100,000 cubic yards of soil for the reclamation or filling of said
9 quarry, gravel pit, or sand pit.

10 “Filling operation”, the filling of sand pits, gravel pits, and quarries.

11 "Department", the department of environmental protection.

12 "Hazardous material", material including but not limited to, any material, in whatever
13 form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive,
14 toxic, infectious or radioactive characteristics, either separately or in combination with any
15 substance or substances, constitutes a present or potential threat to human health, safety, welfare,
16 or to the environment, when improperly stored, treated, transported, disposed of, used, or
17 otherwise managed. The term shall not include oil. The term shall also include all those
18 substances which are included under 42 USC Sec. 9601(14), but it is not limited to those
19 substances.

20 “Reportable release”, the release of oil or hazardous material into the environment which
21 requires notice pursuant to 310 CMR 40.000.

22 “Notification Requirements”, means the requirements for providing notification to the
23 Department:

24 (i) of releases, and threats of release, of oil and/or hazardous material and Imminent
25 Hazards

26 set forth in 310 CMR 40.0300; and/or

27 (ii) of changes in activities, uses and/or exposures set forth in 310 CMR 40.0020.

28 "Oil", insoluble or partially soluble oils of any kind or origin or in any form, including,
29 without limitation, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble
30 derivatives of mineral, animal or vegetable oils. The term shall not include waste oil, and shall
31 not include those substances which are included in 42 USC Sec. 9601(14).

32 "Release", the placement, dumping, disposing or reuse of soil containing oil or hazardous
33 material into the environment, as the term is defined in section 2 of chapter 21E and pursuant to
34 310 CMR 40.000.

35 "Solid waste" or "waste", means useless, unwanted or discarded solid, liquid or contained
36 gaseous material resulting from industrial, commercial, mining, agricultural, municipal or
37 household activities that is disposed or is stored, treated, processed or transferred pending such
38 disposal, but does not include:

39 (i) hazardous wastes as defined and regulated pursuant to 310 CMR 30.000;

40 (ii) sludge or septage which is land applied in compliance with 310 CMR 32.00;

41 (iii) waste-water treatment facility residuals and sludge ash from either publicly or
42 privately

43 owned waste-water treatment facilities that treat only sewage and which is treated or

44 disposed at a site regulated pursuant to sections 6 and 7 of chapter 83 or pursuant to
45 sections 26 through 53 of chapter 21, unless the waste-water treatment residuals and/or sludge
46 ash are co-disposed with solid waste;

47 (iv) septage and sewage as defined and regulated pursuant to sections 26 through 53 of
48 chapter 21

49 (v) ash produced from the combustion of coal when reused as prescribed pursuant to
50 Section 150A of chapter 111;

51 (vi) solid or dissolved materials in irrigation return flows;

52 (vii) source, special nuclear or by-product material as defined by the Atomic Energy Act
53 of
54 1954;

55 (viii) materials and by-products generated from and reused within an original
56 manufacturing
57 process;

58 (ix) materials which are recycled, composted, or converted in compliance with 310 CMR
59 16.03, 16.04 or 16.05; and

60 (x) organic material when handled at a Publicly Owned Treatment Works as defined in
61 314 CMR 12.00 and as approved by the Department pursuant to 314 CMR 12.00.

62 (b) This act shall apply to any quarry, gravel pit, or sand pit reclamation project that
63 receives, or plans to receive, greater than 100,000 cubic yards of soil for the reclamation or
64 filling of said quarry, gravel pit, or sand pit.

65 (c) The department shall issue a site-specific approval, in the form of an administrative
66 consent order, to any filling operation that is a covered project.

67 The administrative consent order shall include the following: (1) implementation of a
68 detailed soil and fill management plan that specifies how material will be sampled, documented,
69 tracked, transported and managed as well as what materials are permitted and not permitted; (2)
70 detailed plans that specify how material will be managed at the reclamation project to prevent
71 nuisance conditions, such as noise, odor, litter, and dust; (3) a detailed stormwater management
72 plan to prevent impacts to sensitive receptors; (4) detailed wetlands impact provisions, including,
73 as applicable, a requirement to obtain an order of conditions, determination of applicability or
74 other approval or permit to proceed with the project as designed; (5) a plan for communicating
75 with the public and involving interested parties at key points in the implementation of the
76 reclamation project; (6) oversight by a qualified environmental professional and third party
77 inspection program; (7) knowledge of and intention to comply with all applicable laws and
78 regulations; and (8) stipulated penalties for noncompliance with the administrative consent order;
79 (9) certification, signed by an agent of the covered project, that the reuse of large volumes of soil
80 pose no significant risk of harm to health, safety, public welfare, or the environment and would
81 not create new releases or threats of releases of oil or hazardous materials.

82 (d) To be eligible for department approval, soil accepted by a covered project for use in a
83 filling operation shall not contain more than de minimus quantities of solid waste. The
84 placement, dumping, disposing or reuse of soil containing oil or hazardous material into the
85 environment shall constitute a release. Such dumping, disposing, or unapproved re-use of soil is
86 a reportable release requiring assessment and remediation.

87 (e) Filling operations conducted without the approval of the department shall be subject
88 to department enforcement for violations of rules governing solid waste management and oil or
89 hazardous material release pursuant to department regulations.

90 (f) A covered project that is not managed in compliance with the requirements of this act
91 shall be found to have caused, contributed to, or exacerbated a release of oil or hazardous
92 material and shall be subject to enforcement pursuant to section 277 of chapter 165 of the acts of
93 2014 and chapter 21E of the general laws. Any fill project that accepts any amount of soil,
94 whether pursuant to this act or otherwise, must ensure that the filling does not create new,
95 reportable releases of oil or hazardous materials to the environment pursuant to chapter 21E or
96 will not violate section 150A of chapter 111.

97 (d) Nothing in this act shall eliminate any local, state, or federal requirements that apply
98 to the management of soil, including any local, state, or federal permits or approvals necessary
99 before placing the soil at the receiving location, including, but not limited to, those related to
100 placement of fill, noise, traffic, dust control, stormwater management, wetlands, groundwater or
101 drinking source protection.