

Legislative History for Connecticut Act

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The next matter is a go, which is Calendar No. 359, Substitute for SJR55. It's a go.

Last item is a PR, that's Calendar No. 363, Substitute for SB818.

Page 25, first matter is a go, which is Calendar No. 369, Substitute for SB1063, that's a go.

The next matter, Calendar No. 372, Substitute for SB1189, An Act Concerning Revision to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation, referred to GAE, Government Administrations and Elections Committee.

THE CHAIR:

Motion is to refer this to the Committee on Government Administrations and Elections.

Without objection, so ordered.

SEN. UPSON:

The next item is a PR, which is Calendar No. 373, Substitute for SB1.

Under Disagreeing Actions, which is also on page 25, Calendar No. 70, Substitute for SB916, An Act Concerning the Sale of Certain Items in Package Stores, Liquor Permits for Constables and Rebates of Liquor Permit Fees. I move to Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent

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training, one. Two, if they're hired to prosecute, this would be for infractions, then that attorney or any member of his firm could not represent anyone in superior court in a criminal matter.

If there's no objection, I'd place this on the Consent Calendar.

THE CHAIR:

Without objection, this item will be placed on the Consent Calendar.

THE CLERK:

Have you withdrawn LCO7899?

SEN. UPSON:

Yes. I would withdraw any other amendments.

Thank you.

THE CLERK:

Page 19, Calendar 372, Substitute for SB1189, An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation. Committee Report on Environment, Judiciary, Finance, Government Administrations and Elections, File 623.

THE CHAIR:

Senator Cook.

SEN. COOK:

Thank you, Madam President. I would urge

acceptance of the many Joint Committee's Favorable Reports on this bill and adoption of the bill.

THE CHAIR:

The question is on passage of the bill. Will you remark?

SEN. COOK:

Thank you. I first have an amendment to offer, LCO7169.

THE CLERK:

Senate Amendment Schedule "A", LCO7169 introduced by Senator Cook.

THE CHAIR:

Senator Cook.

SEN. COOK:

Thank you. It might be a little bit out of order to take this amendment before we discuss what it amends on the bill, but let me just describe the amendment. It makes several technical corrections to the bill.

The most important of these corrections addresses the LCO comment about line 664 of the bill concerning the inconsistency in the authority to issue licenses to environmental professionals.

The amendment limits the ability of a responsible party to force a redeveloper under the urban sites program to contribute to the cost of cleaning up a site

and the amendment only protects the redevelopers with whom the Commissioner of Environmental Protection has entered into a covenant not to sue, and only provides protection with the Commissioner has brought a cost recovery action against the responsible party.

And I would urge acceptance of the amendment.

THE CHAIR:

The question is on adoption of Senate "A". Will you remark? Will you remark? If not, those in favor indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay". Ayes have it. Senate "A" is adopted. Senator Cook.

SEN. COOK:

Thank you. This bill as amended that we have before us now represents the major piece of legislation from the Environment Committee and I believe also from the Department of Environmental Protection this year.

I think it will go a long way toward revitalizing economic development in the state as we address the over 300 property transfer sites that are currently in the Department's backlog. Because of this large backlog, the bill is the result of a committee of work

representing the banking industry as well as real estate and the municipalities and environmental lawyers who have all addressed the problems that we have had in the past with the Transfer Act.

It narrows the scope of sites that fall under the Property Transfer Act, streamlines certain procedures and establishes a new schedule of fees. It is estimated that because of the increased volume of transactions that will occur once we've streamlined this process, that there will be a net gain in revenue to the DEP or at least a very minimal reduction in their ability to go forward with their needs in the Department.

The bill also authorizes the DEP to enter into covenants not to sue with parties that have remediated certain properties. This will have a tremendous advantage to getting those properties moved and I believe of great help to the municipalities in our state that could incur savings due to the changes in the procedures and fees which they will also be able to participate if it's a foreclosed piece of property that a municipality has and of course, the ultimate advantage of moving formerly unproductive economic development sites into production into the economy.

If you'd like me to go through the bill in

somewhat more detail, it establishes a license for certain environmental professionals herein called LEPS, which is a privatization to some extent, of some of the work that would be required for people with this skill to be able to review contaminated sites and to propose a clean up plan.

It narrows the application of the Property Transfer Act by excluding certain operations that had been contaminated before November 19, 1980 instead of May 1, 1967.

It will establish a new process to certify the clean up of a piece of property and it will essentially have four elements. A piece of property can certify, I mean a licensed environmental professional could certify that a piece of property has not been contaminated by hazardous waste and therefore it can go forward in transfer.

Or, it has been contaminated but the contamination has been cleaned up to the satisfaction of the Department or a licensed environmental professional and therefore the property can be moved into production, or it has been contaminated and not cleaned up but there has been an acceptance of liability for the clean up operation, or it has been contaminated and partially remediated and there has been acceptance of liability

for further remediation and an ongoing monitoring program.

It is hopeful that this will establish a procedure for towns or owners of certain establishments to voluntarily remediate their parcels and in that way we will be able to get more property investigated, remediated and verified by licensed environmental professionals to move that land into production.

The covenant not to sue is one which, a proposal of the bill which authorizes the Commissioner of DEP to enter into such a covenant with the owners of certain property for claims resulting from pollution or contamination if it has been remediated in accordance with the bill or the pollution is not the result of the owner's conduct, or the covenant is in the public's best interest.

The bill explicitly states that it does not expand the innocent land owner defense as it exists in the Transfer Act.

There are provisions that cite the criteria for becoming eligible for the license for environmental professionals and those are some of the details in the bill.

To recap, I think it clarifies the ambiguous definitions in the Property Transfer Law. It creates a

streamlined process for the Commissioner's review of property transfer filings. It creates a voluntary process for expediting the review of clean ups of property transfer sites and it creates the licensed environmental professional program and a covenant not to sue.

I think this is an excellent piece of legislation that really demonstrates the administration's will to move property and to increase the economic revitalization of our state to look at environmental issues and properties that should be economically productive for us.

I'm very excited about the bill and I would urge its passage.

THE CHAIR:

Thank you, Senator Cook. Will you remark further on the bill? Senator McDermott.

SEN. MCDERMOTT:

Thank you, Madam President. I rise in support of this legislation. I want to applaud the efforts of the Environment Committee, that of the Commissioner, that of the Department.

This is one of the better pieces of legislation I believe that we're passing this year. It's going to enable the State of Connecticut to move forward in a

business friendly environment, showing that we are trying to make efforts to be able to speed up the process of environment clean up.

Everybody realizes that we have to be able to clean up some of the environmental problems that have happened in the past. But we should do our best to make that a speedy process and to have the backlog that we've had in the past recent history has been a shame on the State of Connecticut and I am delighted to see that this legislation moves forward and it's one of the best pieces of legislation I've seen come through this year and I urge my colleagues to support it.

THE CHAIR:

Thank you, Senator. Senator Gaffey.

SEN. GAFFEY:

Thank you, Madam President. I'd like to echo Senator McDermott's remarks and also commend Senator Cook for a truly human effort throughout this session writing this legislation. This is a landmark piece of legislation.

I was at the DEP; actually, when we first passed the Transfer Act. It has had a number of problems over the years. This bill corrects, I would say 99% of the problems that we have with the Transfer Act.

I'd also like to comment Sid Holbrook, because Sid

Holbrook, before he was even confirmed as DEP Commissioner, and I think the second or third day he was over at DEP, organized a task force to work out the problems of the Transfer Act and he did an excellent job. It was chaired by Peter Gilles, former insurance commissioner.

Also, this bill very importantly establishes a licensed environmental professionals so that we can expedite the remediation and clean ups of this site.

As Senator McDermott has said, and Senator Cook, this is an excellent piece of legislation, probably the best environmental legislation we'll see this year and it is directly linked to the economic development of our state and will help our cities immensely and I also join in urging passage of the legislation. Thank you.

THE CHAIR:

Thank you, Senator. Senator Prague.

SEN. PRAGUE:

Thank you, Madam President. As I listened to the discussion, I just have one question before I can vote for this proposal.

Have the environmental groups endorsed this legislation, Senator Cook?

SEN. COOK:

Yes, they have.

SEN. PRAGUE:

Okay, that answers my question and on that basis I can support this. Thank you.

THE CHAIR:

Thank you. Will you remark further on the bill as amended? Senator Cook.

SEN. COOK:

First, I would just like to add that this is, it may be the privilege of the chairman of the committee to bring this bill out and describe it, but this is an effort of the entire Environment Committee, also the Commerce Committee where we had joint hearings on this proposal and certainly Peter Gilles and the Commissioner.

This is not a singular piece by any single legislator. This is a cooperative effort by all of us and it, probably the best piece of environmental legislation we'll have for the state this year and one that will truly help our economic development.

I would ask for a roll call vote so that we can transmit this to the House immediately.

THE CHAIR:

Thank you. Will you remark further? Will you remark? If not, would the Clerk please announce a roll call vote. The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. The Clerk please take a tally.

THE CLERK:

Total number voting, 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0.

THE CHAIR:

The bill as amended is passed. Senator Cook.

SEN. COOK:

Thank you, Madam President. I would move suspension of the rules so that this item might be transferred to the House.

THE CHAIR:

Without objection, so ordered.

SEN. COOK:

Thank you.

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the Clerk please take a tally.

Will the Clerk please announce the tally.

CLERK:

House Bill 5846.

Total Number Voting 140

Necessary for Passage 71

Those voting Aye 138

Those voting Nay 2

Absent and Not Voting 11

DEPUTY SPEAKER HARTLEY:

The bill is passed.

Will the Clerk please return to the Call of the Calendar, Calendar 543.

CLERK:

On Page 18, Calendar No. 543, Substitute for Senate Bill 1189, AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND HAZARDOUS WASTE SITE REMEDIATION, as amended by Senate Amendment Schedule "A".

Favorable Report of the Committee on Government Administration and Elections.

DEPUTY SPEAKER HARTLEY:

Representative Stratton.

REP. STRATTON: (17th)

Thank you, Madam Speaker.

I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER HARTLEY:

The motion is on acceptance and passage in concurrence with the Senate. Will you remark, madam?

REP. STRATTON: (17th)

Yes, Madam Speaker.

The Clerk has an amendment, LCO7169, previously designated Senate "A". Will she call and I be allowed to summarize.

DEPUTY SPEAKER HARTLEY:

The Clerk has LCO7169, previously designated Senate "A". Will the Clerk please call.

CLERK:

LCO No. 7169, designated as Senate "A", offered by Senator Cook.

DEPUTY SPEAKER HARTLEY:

Representative Stratton has asked leave to summarize. Without objection, please proceed, madam.

REP. STRATTON: (17th)

Thank you, Madam Speaker.

This amendment makes several technical corrections in the underlying file copy. It also allows the covenants not to sue, which we will speak about with

regard to the file copy itself to become effective before monitoring is complete on a site. It provides some protection against certain kinds of third-party suits, those that are involved in the property in some way. It also reduces the fee for filing a form 2 or 4 within three years of the Commissioner's approval to address the LCO comment and the bill, and as I said, many other minor technical changes. And I would urge adoption of the amendment.

DEPUTY SPEAKER HARTLEY:

The motion is adoption. Will you remark further? Will you remark further on Senate "A"? If not, I will try your minds. All those in favor, please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HARTLEY:

Those opposed nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER HARTLEY:

The ayes have it.

The amendment is adopted and ruled technical.

Will you remark further on the bill as amended?

Representative Stratton.

REP. STRATTON: (17th)

Thank you, Madam Speaker.

This bill is the outgrowth of a task force that the Commissioner of DEP convened shortly after he was appointed to try to address what had become an enormous backlog of properties tied up in our Property Transfer Act.

The task force met for a very short period of time and accomplished a great deal and this bill is the outgrowth of that. It is a companion bill to House Bill 6681, which this Chamber has already passed, and through it we establish a licensed environmental professional program. That program will be run by a board. That board will establish an examine that individuals who meet certain criteria spelled out in the act may sit for and then those individuals once licensed may carry out certain responsibilities both under House Bill 6681 and this bill, 1189.

1189 then tries to address some of the ambiguities of the Transfer Act which have been part of the difficulty in trying to deal with properties that are subject to it and clearly defines what is and is not a transfer under the act and therefore what is subject to it. It also tries to clarify what is indeed an establishment and is therefore subject to the act. It

also changes the date at which the activity would have to occur; the spill of hazardous chemicals and moves that forward. It also authorizes the Commissioner to sign covenants not to sue with these properties and allows the Commissioner after submission of a remedial investigation and a plan by a licensed environmental professional to determine whether the property in question -- (Gavel) --

DEPUTY SPEAKER HARTLEY:

It has gotten to the point where the noise is now louder than the Representative's explanation. Should you want to ask questions, but indeed know what you're voting on, we need to pay attention and take the conversations outside. Thank you for your cooperation.

Representative Stratton, please continue.

REP. STRATTON: (17th)

Thank you, Madam Speaker.

As I was saying, the Commissioner may then grant a licensed environmental professional. Essentially his authority is to conduct the investigation on the site go through the remediation process and file the final remedial action plan and sign the forms that are required under the Transfer Act.

The bill would allow that same process to occur in some voluntary remediations that are not subject to the

Transfer Act if those particular properties are not the type that are subject to House Bill 6681.

The bill certainly specifies the kinds of time frames and the checks along the way to enable the Commissioner to make decisions to determine whether this -- the property in question is the kind of contamination that we feel comfortable having completely overseen by a licensed environmental professional and I would urge adoption of the bill.

DEPUTY SPEAKER HARTLEY:

Thank you, madam.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

REP. PRELLI: (63rd)

Madam Speaker.

DEPUTY SPEAKER HARTLEY:

If not --

REP. PRELLI: (63rd)

Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Representative Prelli.

REP. PRELLI: (63rd)

Madam Speaker, I rise in support of this bill as amended.

As we look at many of our cities and small towns

around the State of Connecticut, we see a lot of problems with sites that have to be cleaned up for environmental reasons which for many towns would cause severe hardships on the communities or the owners of that property. We have to start moving forward on ways of cleaning this property and using the land for the best possible use. I think this is a step in that direction. I think we have to be ready to be able to develop our properties in our towns and bring industry back. I think this is a step in that direction. And for that reason I plan on supporting the bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further? Will you remark further? If not, staff and guests please come to the well. Members take your seat. The machine will be open.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber please. The House is voting by roll call. Members to the Chamber please.

DEPUTY SPEAKER HARTLEY:

Have all members voted? Is your vote properly recorded? If so, the machine will be locked. The Clerk will please take the tally.

The Clerk will please announce the tally.

CLERK:

DEPT Senate Bill 1189, as amended by Senate "A"
in concurrence with the Senate.

Total Number Voting	145
Necessary for Passage	73
Those voting Aye	144
Those voting Nay	1
Absent and Not Voting	6

DEPUTY SPEAKER HARTLEY:

The bill as amended is passed. The Chamber will
stand at ease.

STAND AT EASE

Will the Clerk please return to the Call of the
Calendar, Calendar 542 please. Calendar 542 please.

CLERK:

On Page 18, Calendar No: 542, Substitute for
Senate Bill No. 1046, AN ACT CONCERNING MINOR REVISIONS
TO THE EDUCATION STATUTES, as amended by Senate
Amendment Schedule "A".

Favorable Report of the Committee on Finance.

DEPUTY SPEAKER HARTLEY:

Representative Staples.

REP. STAPLES: (96th)

Thank you, Madam Speaker.

JOINT
STANDING
COMMITTEE
HEARINGS

ENVIRONMENT
PART 8
2333-2697

1995

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ENVIRONMENT

April 3, 1995
11:00 a.m.

002495

PRESIDING CHAIRMEN: Senator Cook
Representative Stratton

COMMITTEE MEMBERS PRESENT:

REPRESENTATIVES: McGrattan, Maddox, Backer,
Caruso, Davis, Collins,
Graziani, Metz, Mordasky,
Mushinsky, Norton, Nystrom,
Prelli, Roraback, Roy,
SantaMaria, Widlitz

REPRESENTATIVE STRATTON: Good evening, folks. If members of the public and others could take their seats we will begin this public hearing. The first hour is reserved for legislators, department heads and chief municipal officers and we will then move into the public portion an hour from now.

The first person to testify, actually before I get to that, two quick announcements for members of the Committee. Following the adjournment of this public hearing there will be caucuses. The Democrats will remain in this room for a caucus. The Senate Conference Room on the third floor is where both the Republican Representatives and Senators will meet.

So, with that, as others come in, our first speaker this morning is Commissioner Sid Holbrook, and it is a pleasure to have you with us.

COMM. SIDNEY HOLBROOK: Good morning, Representative Stratton. It's so good to be here. The bill that I wanted to testify on today, I believe is the most important piece of legislation that comes before the Environment Committee this year because it addresses so many problems and it's not only an environment bill but it's an economic development bill.

And I have some written testimony on it, I'll read it. I'm here this morning to speak on Senate

Raised SB1189, AN ACT CONCERNING REVISIONS TO THE
HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND
HAZARDOUS WASTE SITE REMEDIATION.

Connecticut's Property Transfer Program law was one of the first of its kind in the country. As adopted in 1985, the law had two purposes. First, the law required the disclosure of the environmental condition of properties identified in the law as establishments, at the time of transfer, and the allocation of responsibility for clean up between the parties to the transfer.

Second, the law created a largely self-implementing program for discovering and cleaning up polluted sites. The law has successfully achieved these objectives but has not reached its full potential due in part to ambiguous language in the law, and the lack of sufficient resources within the Department to fully implement the program. As a result of a provision in the law requiring the Commissioner's approval of all clean ups conducted under the law, 300 property transfer sites await the Department's review.

One of the first serious problems I undertook when I became Commissioner was the Property Transfer Program backlog. Because of the importance of this issue to the economic revitalization of this state, I convened an Advisory Committee to formulate a plan for improving and streamlining the Property Transfer Program. I asked Peter Gillies, to chair this advisory committee which was composed of representatives from the banking, business, consulting, legal and environmental communities. The advisory committee convened in early February and under Mr. Gillies' leadership has produced, in a very short time, the comprehensive proposal embodied in SB1189.

The advisory committee supported the original goals of the law while identifying significant shortcomings in it which adversely affect property transactions in the State of Connecticut. The advisory committee concluded that significant changes to the process of reviewing and approving clean ups were necessary to preserve the original

goals of the law and overcome the problems faced by the business community in complying with the law.

The proposal contains four major initiatives which, when fully implemented, will streamline the Property Transfer Program for future transactions and efficiently address the backlog. Central to successful implementation of this proposal will be the adoption of the clean up standards regulations which I expect to be published for notice and comment in June of this year.

First, the proposal clarifies the ambiguous definitions in the Property Transfer Law so that the regulated community can readily tell whether a particular transaction is covered by the act.

Second, the proposal creates a streamlined process for the Commissioner's review of Property Transfer filings, by allowing the Commissioner to determine that certain Property Transfer filings clean ups may be reviewed and verified by licensed environmental professionals.

Third, the proposal creates a voluntary process for expediting the review of clean ups at Property Transfer sites prior to any transfer, and at a limited universe of additional sites. The Commissioner may determine that certain of these clean ups may be reviewed and verified by either the Commissioner or a licensed environmental professional.

Finally, the proposal creates a licensed environmental professional program. Since many clean ups formerly approved by the Commissioner will now be overseen by private parties, the licensing program is necessary to insure that those persons have the sufficient expertise to assure that clean ups adequately protect public health and the environment.

The proposal contained in SB1189 will remove substantial obstacles to economic development in the state while being protective of human health and the environment.

At this time, Madam Chairman, I would like to publicly thank Peter Gillies and those that took the time and they took a very brief amount of time to come up with the proposals as outlined in SB1189. I think that the whole State of Connecticut should be proud of these individuals for what they have done.

And I'd like to also thank Thane Joel from the DEP for helping in the drafting of the legislation.

REP. STRATTON: Thank you very much. The work that has been done by this task force is really incredibly impressive and as you said, particularly given the short time frame that they have been working on it. I know that we as a Committee appreciate the interaction between the two efforts that have been going on at somewhat the same time in trying to make them stay in sync with each other.

Is Peter going to testify also, or do you want. Why don't you do that and then maybe the Committee can ask questions after we've had a more thorough presentation.

ATTY. PETER GILLIES: First, thank you, Commissioner Holbrook for those kind words. We appreciate it, myself and my committee. Senator Cook, Representative Stratton and members of the Environment Committee, I'm Peter Gillies, chairman of the task force which was appointed by Commissioner Holbrook to propose amendments to the Transfer Act.

I'm here to speak in favor of SB1189 which incorporates those recommendations. While maintaining the requirement that notice be provided to all parties to a transaction covered by the act, our task force sought to clarify the provisions which had been subject to some degree of controversy.

By providing the clarification and establishing additional means to regulate, to establish certification appropriate to remedial action, this will afford certainty to the regulated community and the lending institutions which are so dependent

upon it.

It is our considered opinion, that as a result, the transfer and redevelopment of contaminated properties can be more readily achieved. The amendments to the Transfer Act recommended by our committee and incorporated in this bill include a clarification of the term establishment, clarification of the meaning of the term transfer of establishment, the introduction of an environmental condition assessment form, specific time frames for the submission of the written declarations forms 1, 2, 3 and 4 and a response by the Department of Environmental Protection are all established.

And additionally, a provision for voluntary submission of a voluntary condition assessment form is provided. A significant part of the committee's recommendation incorporates the use of a licensed environment professional, authorized to verify to the Commissioner of Environmental Protection that a clean up has been performed in accordance with the clean up standards.

The qualifications of such environmental professional shall be determined by a board of examiners within the Department of Environmental Protection. The following is a brief summary of the provisions of the bill.

The term establishment is more particularly defined as any business or operation on or after November 19, 1980 which generated more than 100 kilograms of hazardous waste in any one month, by clarifying the time period in which the generation occurs. We believe we have given additional clarification to the act.

Additionally, in order to encourage voluntary clean ups, generation of hazardous waste as the result of remediation is not included. Because there was some ambiguity in the use of the words dry cleaning establishment and furniture stripping establishment, the language was modified to make it clear that it is the actual conduct of cleaning and furniture stripping business which is subject to

the act.

The term transfer of an establishment has been defined as any transaction or proceeding through which an establishment undergoes a change of ownership, except those that are specifically excluded. By eliminating the controversial sections from the act, transfers or transactions rather, transfers will be encouraged between parties who heretofore had either been unwilling or unable through lack of appropriate funding, to complete.

The use of an environmental condition assessment form which describes the environmental condition of the subject property will enable the Commissioner to identify the particular hazards present at the site. Additionally, this form will provide guidance to the Commissioner as to whether a licensed environmental professional may be engaged to verify that remedial action has been completed in accordance with the clean up standards.

Lines 240 to 262 of the bill set forth specific time schedules for the submission of various forms to the Department, and their response time. The inclusion in the proposal is designed not only to provide guidance, but also to insure finality, which is lacking in the current act.

In addition, the parties will be advised at the outset, whether the remediation program can proceed under the auspices of a licensed environmental professional or will require the direct oversight of the Department. By this means, many of the properties which do not represent major environmental concerns may be acted upon and the resources of the Department apply to those which are of a more severe nature.

The bill provides specific criteria to be used by the Commissioner in making the determination to approve the use of a licensed environmental professional.

Provision is also included for the owner of a property to submit on a voluntary basis, an

environmental condition assessment form and obtain an initial review. The Commissioner will notify the submitting party whether a formal review is required by the Department, or that a licensed environmental professional may verify remediation, again, in accordance with the clean up standards. This provision is designed to encourage early assessment and clean up of sites which may not be subject to an immediate transfer.

As previously noted, the bill includes provision for the licensing of an environmental professional by a board within the Department of Environmental Protection. Qualifications for licensure will be based upon education, work experience and passage of an examination designed to appropriately test the individual in the specialized areas of site evaluation and remediation.

The report of the task force has incorporated into SB1189, has been designed to provide a mechanism by which property transfers may take place, without jeopardizing the environmental oversight deemed necessary for the protection of the parties and the public.

The amendments which we have approved, or proposed, will assist in providing the needed clarity and reliability which the lending institutions have been seeking, and it is hoped will enable them to once again take a leading role in the orderly transfer of properties subject to the act.

It is respectfully suggested that the bill before your Committee will achieve these goals and we urge its adoption. Madam Chairman, I have a technical amendment to the bill which I have provided to the clerk. What it does is, there are a number of, the first amendment, there are a number of applications which are already pending before the Department of Environmental Protection.

We wanted to be sure that those were picked up in this process and so if there is a form 3 already on file with the Department, it can be activated by the submission of this environmental form, clean up form and get it on track and hopefully provide in

many instances for the use of the professional environmental specialist.

In addition, there are two minor amendments which simply add the word post remediation monitoring, or natural tenuration monitoring which merely tracks the natural tenuration remediation for natural tenuration which is already in the bill.

I have George, Greg Sharp, rather, with me. He has been most helpful and very, very involved in the more technical language of the amendments so if there are questions from the Committee, I would invite him to also participate if that's acceptable. And I'd be happy to respond to any questions.

REP. STRATTON: Thank you very much, Peter and I do again thank you for all your efforts in this. I know you put a lot of time into it along with several other members of the Committee.

I guess one of the sort of overriding just concerns with all this, and I don't know to what extent the task force got involved in this, or to what extent this is something the Commissioner really should answer, but what are the expectations of the staffing components of dealing with this whole new process within the Department and the number of sites that hopefully will be moved through more efficiently than has currently been the situation?

ATTY. PETER GILLIES: Well, the Commissioner can certainly respond, but I think that using, having the availability of the out sites - Commissioner.

COMM. SIDNEY HOLBROOK: Because of the expedited process, we feel that we're going to be able to, it will be a wash for the agency and there will be no additional need, there won't be any need for additional staff or funding. We can produce a better product more efficiently.

REP. STRATTON: Even with the degree of sort of review and oversight of initial forms and through the process.

COMM. SIDNEY HOLBROOK: Yes.

REP. STRATTON: Thank you very much, Bob. This is a hefty bill, but it's my understanding, correct, that there is no embracing of new authority, what we are dealing with is taking authority that currently resides with an individual municipality system and just allowing them to bring those together.

BOB SMITH: Yes. I believe that's correct. They would have the same powers and duties of existing WPCAs but do it in a regional fashion.

REP. STRATTON: any other questions? Thank you very much.

BOB SMITH: That was very easy. Thank you.

REP. STRATTON: Not many people have read that whole bill. Thank you. Helen Rosenberg, followed by Mark Mininberg. Or, with Mark Mininberg.

HELEN ROSENBERG: Good morning, I'm Helen Rosenberg from the City of New Haven. I'm speaking for the City and we would like to stress the importance to New Haven and the state of passage of the proposed bills concerning industrial site remediation. That is HB6681 and SB1189.

Although the City doesn't have the same amount of industrial activity it did decades ago, it's still an attractive place for manufacturers and distributors to locate. This year alone, the City has had to turn away probably about 15 or 16 businesses because lack of modern buildings or clean sites on which to construct modern facilities.

The City has identified 20 sites, 20 properties, totalling about 82 acres, many containing obsolete factory buildings as good candidates for redevelopment if the site remediation issues can be expeditiously addressed.

New Haven has a limited capacity to expand its tax base, although expansion is needed to compensate for the existence of non tax paying institutions in the City and high service costs. We've estimated

that if the derelict sites were redeveloped, at least 1,300 jobs could be created and about \$6 million in annual new property taxes generated.

The major issues which need to be addressed in order to realize development of these sites are the extensive time which is often involved in DEP review and certification of site remediation, buyer and lender reluctance to invest in contaminated sites, and the costs involved in site testing, clean up and demolition and disposal of obsolete buildings.

Their redevelopment is important to New Haven and communities statewide to achieve: increased taxes and job creation, protection of Connecticut's rural landscape, elimination of blight, reduction of crime and improvement of the environment, particularly in inner city neighborhoods, environmental improvements statewide through increased clean up of industrial sites.

We feel that these two bills contain the essential elements of a successful program to achieve these goals. The most important aspects of the bills is the creation of licensed environment professional system to oversee and certify remediation of certain sites. This will reduce the time lags currently hindering clean up. It is also essential that the issue of financing the costs involved with site remediation and redevelopment be addressed.

Therefore, instituting lender liability protections and creating the Contaminated Property Remediation and Insurance Fund are also crucial. Thank you. Mark Mininberg will continue to speak for the City.

REP. STRATTON: Thank you, Helen. You both go ahead, and then after, questions.

MARK MININBERG: Okay, thanks. Mark Mininberg and I'm speaking for the City of New Haven. I just have to speak about three or four technical points to HB6681 that we wanted to emphasize.

First is the bonding component and the revenue bonds which we think are really critical to making

I mean, why shouldn't Carey just build the facility back in Michigan, which is what the alternative was. So in offering a package of incentives, I think that, I just would ask that the Committee look seriously at this and really read Carey's letter because he will explain this much more eloquently than I can.

The final issue, and then I'll relinquish the chair here, the seat, is a DEP approval process. I'm very concerned by just something in SB1189, the bill that the state just testified on, DEP testified on, and that's if you have a transfer act site, the state is still going to maintain a tremendous amount of control and oversight over the property, even if you have a licensed environmental professional involved in it.

In our view, the reason you get a licensed environmental professional involved is because you want to quick turn around, you want to move the site quickly. You want to have some level of confidentiality in the process and the state simply doesn't have the resources to handle all the sites.

If you compare SB1189 to HB6681, there's a big difference. In HB6681 it says, a licensed environmental professional can design the job and do it and then you submit the final plan to DEP and they have 30 days to approve it. And if they don't like what they've seen, then there's a six month audit process to make sure the public is protected. That makes a lot of sense.

I'm just concerned that we're going to exempt transfer act sites from what I think is the better process in HB6681 and somehow I think we need to put these two processes together. We strongly support the one in HB6681. I'm still concerned that the one in SB1189 doesn't go far enough in letting the licensed environmental professional really function as an independent professional in the way all other professionals due from engineers, architects, what have you.

I still am a little bit incredulous that we treat hazardous waste sites, that if engineers who build

I would like to state that the City of Bristol, as with most cities, is not quick nor happy to foreclose, but the House Bill would allow municipalities the flexibility to foreclose without concern for being held responsible for environmental problems that it did not create.

Realistically, it is too expensive for the City to undertake environmental due diligence in order to foreclose on a property. Furthermore, there would be extreme difficulties to gain access to records and to the property itself in order to test and then foreclose on the property.

For this reason, we oppose the language in SB1189, lines 357 through 360 that would not hold a municipality as an innocent landowner.

We do support HB6681 for the reason that it holds the municipalities harmless.

We support the effort to speed site remediation. The licensing and professional environmental clean up personnel is very important. In economic development, we frequently hear the problems of potential buyers and current landowners of backlogs at DEP to oversee clean up.

The advent of licensed professionals would allow both public and private entities to expedite the clean up. While we support the need for environmental regulations, we can also speed the clean up of the contaminated sites.

With the shortage of suitable industrial sites in Bristol, and indeed around Connecticut, the return of ground sites to use should be a priority. The City also anticipates the availability of funds to help pay for site remediation and this is a critical element of this bill.

While the bill is promising in its other aspects, the availability of funds assures that clean up will indeed be undertaken. Thank you.

REP. STRATTON: Thank you very much for your testimony. Are there questions? Thank you. James Banks,

the clean up and reuse of valuable industrial sites. It will help cities and their residents to become more self-sufficient. It will also help to preserve our rural areas from unnecessary industrial development.

And finally, I believe that it is vital that we move in this direction as Connecticut strives to rebuild its economy and compete effectively in attracting and retaining business in the state. Thank you very much.

REP. STRATTON: Thank you very much for your testimony. Are there questions? I'd just comment on the six month time frame that you focused on and I think that's something that really relates to, how do we strike a balance between the assumption that a licensed environmental professional's plan will be accepted and that time frame is really the 30 days and I think the assumption is that in most cases, that review period of time will be sufficient to determine that what was done is adequate and it's really saying that when the Department in the interest of protecting public health feels that it is important to conduct a more extensive review, that the kinds of documents we're talking about are not things that one can review real quickly.

But I understand where that concern comes from in being able to make properties available. Thank you very much for your testimony. Kip Bergstrom, followed by George Gurney.

KIP BERGSTROM: My name is Kip Bergstrom. I'm the economic development director in Stamford. I'm also the chairman of the Legislative Policy Committee of the Connecticut Economic Development Association which is a group of 100 front line economic development professionals in Connecticut representing my town of course at both the state and regional level, small town and big city.

The CEDA's board has discussed these bills extensively and is strongly in support of both, and I wanted to give you perspective of the City of Stamford which maybe you don't think of as a manufacturing center, but in fact, I think we're

the third or fourth largest manufacturing center in the state. We have some 10 million square feet of industrial space of which about a million square feet is vacant and we have another 50 acres of vacant land that's zoned industrial.

One of the key problems in the redevelopment of this land is the turn around time on DEP approval of environmental remediation plans. You heard Jim talk about a four year time frame on one of their pieces. I think that's the exception. But it's oftentimes much too long.

In Stamford, the majority of our properties are exactly the type of moderately contaminated properties that would be eligible for review by a licensed environmental professional and in our case the redevelopment of this land and this space would create 2,400 manufacturing jobs.

We also are interested in the opportunity that it afford to redevelop industrial sites in other parts of the state as we are in many ways the vestibule of companies entering Connecticut and the nursery bed for companies that start and grow elsewhere in the state.

For example, you might have a company who has its front office in Stamford, but has its factory in Bridgeport and a call center in New Haven and a data center in New Britain, and that gives us a competitive advantage to do that so that the CEO drives 30 minutes to see these other operations rather than going as many do now on a plane to the midwest or the southeast. We have a potential, I think, to keep a lot of the growth of our home based, Connecticut based companies here but it requires the redevelopment of the cheaper land in the state, or the potentially cheaper land in the state and our urban centers.

I sell the State of Connecticut every day. I'm on the front line of the tri-state border wars and I know that our major competitive advantage of the state is the quality of our lives, including a magnificent New England countryside unspoiled by industrial development and by redeveloping brown

fields rather than developing green fields, we have the opportunity to have our jobs in our environment, too.

One last point. These bills are an important part of the solution, but they're not a panacea. By passing this legislation, it's not going to magically clean up and redevelop the contaminated sites in Connecticut. There's a lot more to it than just the turn around time on environmental remediation plan approval, or even the funding of Phase II environmental analysis.

Equally a problem is the fact that banks, even if you got this obstacle out of the way, by and large are not financing speculative industrial development and more so even than in the office sector, the only way you get industrial development is to speculate on it. You have to have an empty cup quality building available for somebody while they're looking for it. They don't, the build to suit is the hardest sell we have. It happens occasionally, but generally if we're going to get this area redeveloped, there has to be speculative industrial development, certainly in Stamford but I would say it's true in other places.

The market right now at this point in time is not likely to do that on its own without some public sector role on that as well which has historically been a major program of the Department of Economic Development. So I think while we are strongly supportive of this legislation, you can't look at in isolation and one has to be concerned as well about the severe reduction in bonding and the Department of Economic Development. That's another piece of the whole, anyway. Thank you for the time.

REP. STRATTON: Thank you very much. Are there questions? Thank you for your testimony. George Gurney, followed by Helen Sahi.

GEORGE GURNEY: Hi. Thank you for this opportunity to speak. My name is George Gurney. I work for ERI. I manage their investigation group. I have nine years experience in investigating hazardous

releases in to the environment and roughly 13 years experience in geology. I am a certified professional geologist.

I strongly agree with this bill. I think it's a great thing. I think it's a long time coming and will expedite the process of cleaning up hazardous waste sites in Connecticut.

There is one point that I'd like to make in terms of requirements for LEP, or the Licensed Environmental Professional experience requirements in SB1189. The requirements are that eight years are required with the exam and ten years initially before the exam is offered. I think in essence, this is a good idea. It's important to have qualified people, qualified LEPs conducting the work.

However, just in general, I think ten years may be a little too much. It's a fairly young industry, in the mid eighties. This industry is essentially just starting up so there's a lot of people out there that have say, eight to ten years experience that would be initially excluded from the LEP qualification but would subsequently be included, but would miss out initially just because they fall in that time range, because the industry is so young and a lot of people got into the business in the mid-eighties.

Just by comparison, I think that the LEP licensing requirements should be somewhat consistent with other states and other agencies. For example, Massachusetts has their own LSP or Licensed Site Professional program. That one requires eight years of experience, eight years before the exam and eight years after. They don't even have an exam. They're developing an exam and I believe it will be offered this June and they've had it in place for three years now or two years now and the same experience requirements apply before and after the exam.

Other organizations, for example, a PE, if you're a professional engineer, the requirement is that you have four years experience. Certified ground water

professional, that's seven years experience. A CPG, what I am, a certified professional geologist, that's five years experience. So just by comparison, those are the other requirements for other agencies, other states.

In summary, I strongly support the bill. I do, however, recommend that the experience be slightly revised or at least be consistent between before and after the examination and be somewhat consistent with other states and certifying organizations. Thank you.

REP. STRATTON: Thank you. Are there any questions? Thank you for your testimony. Helen Sahi, followed by Clay Bassett.

HELEN SAHI: Good afternoon, Representative Stratton and members of the Environment Committee. My name is Helen Sahi and I am the manager of the environmental department at Shawmut Bank. I also had the opportunity to work in the advisory committee that came up with the new language for the raised SB1189 which deals with the Transfer Act.

Shawmut Bank supports, with comment, both bills SB1189 and HB6681, having to do with the transfer of hazardous waste establishments and the remediation of contaminated real property.

With respect to SB1189, I think the privatization of certain Department of Environmental's functions such as the LEP, or the licensed environmental professional will definitely help the verification process that a site has been cleaned up. It will have the effect of enabling loan transactions to go forward. Currently, because of the uncertainty of whether you'll receive a sign off on the DEP say, if you have a form 3 property which is a contaminated property that is cleaned up without a sign off or will be cleaned up. There is a real barrier to giving loans to those sites.

On the foreclosure side, the bill does offer some relief to lenders by clarifying that a Transfer Act filing is not required upon foreclosure. However,

it offers you no relief on the other end. You've now foreclosed on this property and you need to sell it. Yet when you go to sell it as the owner of the property and the bank, you need to fill out a form 3 again, which we would feel is a real hinderance.

We have never knowingly foreclosed on a form 3 property, although we do have form 3 properties in our real estate owned portfolio through foreclosure or through acquisition of other banks and have found it very difficult to sell if it we actually have to fill out that form 3. We either don't sell it, or we sell it at a greatly discounted rate.

We feel that all foreclosed properties should be exempt from any filings, not just judicial foreclosures. We do have two options. We have strict foreclosure and we have foreclosure by sale and yes, it's true, it's usually the bank that ends up bidding the highest price, but we always do the same amount of due diligence whether we feel we're going to bid the highest price or not.

Therefore, those potential buyers that come in, have every opportunity to take a look at the site assessments that have been performed and make their own judgment.

The new form 4 filing, I think will definitely help out also because there are those sites where you need to continue monitoring and as Greg and Peter had said, there is an amendment, I think that addresses Shawmut's issue about long-term monitoring and remediation.

With respect to HB6681, again, the privatization I think is very good. However, I have some concerns over the insurance requirements. I think that the insurance requirements may prohibitively increase the cost of doing business, of doing those site assessments, and more importantly, if that insurance suddenly becomes unavailable, we'll all be operating, or not operating in compliance with the law.

As was mentioned earlier, there is some

discrepancies between SB1189 and HB6681. For example, in SB1189, you can work on Transfer Act sites that are located in GA, GB or GC areas, yet in HB6681 it only allows you to work in the GB, GC areas and excludes the GA areas, which is the potable drinking water supply areas.

And one last comment is, we should all keep in mind that HB6681 and SB1189 can go forward if the clean up standards are actually finalized and we have those in place. Thank you.

REP. STRATTON: Thank you very much, Helen. If you could shed some light on the impact of really putting either of these systems into place and the availability of credit and the kind of comfort level that that starts to put into the banking community.

And I guess in particular, I would focus on two components. One is HB6681, the potential for a municipality to actually quantify the contamination on a site and come up with a figure on what it's going to cost to clean it up. That bill does not then provide remediation funds, but is it far easier than for a municipality to walk into some other scenario and in the private sector is what I'm trying to say, find the funds to do that.

And then secondly, also your read on the importance or non-importance of a covenant not to sue from the state.

HELEN SAHI: Well, the way a bank operates, or at least Shawmut bank operates is that we will quantify the risk at the site, be it a Transfer Act site or not a Transfer Act site.

If there's contamination on the site, we want to know how much it would cost to clean that site up, so yes, by quantifying the risk and coming in is one piece of the puzzle and does help out. The second piece of the puzzle is whether you have that form 3 filing or not that you don't know whether you'll ever get the sign off to a form 2 and now to a form 4 which offers a lot of comfort.

Because currently we consider form 3 sites to have no collateral value because you don't know what's going to happen in the future. By having an end point, you then have a property that you quantify the risk and your collateral value in essence, then, because you know you're going to get a sign off, or hope you get a sign off, is the appraised value minus that remediation cost. So yes, that would help.

And the covenant not to sue, also, we find that it is working. We do a lot of work in Massachusetts. Obviously we have headquarters in Hartford and we have a large institution in Massachusetts also and we are finding that the licensed site professionals in Massachusetts and the covenants not to sue are definitely aiding in the loan side.

REP. STRATTON: On that subject, with regard to Massachusetts, has your bank had any hesitancy in dealing with the LSP sites both up front and secondly with regard to the fact that Massachusetts DEP is required to do a certain number of audits and has a fairly lengthy period of time to do that?

HELEN SAHI: Currently Massachusetts just has requirements for length of service and your degree requirements. There is not a test in place at which, it will come out in June, so yes, there is some uncertainty and I do feel slightly uncomfortable when those LSP reports come through my door.

Shawmut is fortunate that we have a staff of geologists and environmental professionals that we can actually review that and do a third party review. There are times where we don't agree and then we have to go back and forth, so in essence it is an audit, or a site overview from the bank's part. Once a test is in place and in conjunction with the oversight, I feel much more comfortable.

Now, the proposed SB1189 does not have that 20% such as Massachusetts does for the oversight, but it tries to compensate for that by having that initial check list that the Department would go through to determine whether your site actually had

to go through, so I think that is a good solution.

REP. STRATTON: From a bank's perspective you would see the process that's really set up in both of those bills as bringing the kind of closure that a lending institution would be looking for.

HELEN SAHI: That's right.

REP. STRATTON: Thank you. Are there other questions? Thank you very much. Clay Bassett, followed by Roger Boucher.

CLAY BASSETT: It says good morning here. I'd like to say good afternoon. Good afternoon. My name is Clay Bassett and I'm a resident of Simsbury. I'm the president of Capitol Fuel Incorporated, which is a heating company that markets from Rocky Hill to Windsor and from Vernon to New Hartford. I also serve on the board of directors and am a committee chairman of the Independent Connecticut Petroleum Association, an organization of about 350 independent, family owned heating oil retailers here in Connecticut.

We would like to voice our support for the majority of this bill. However, we are opposed to the residential home heating oil tax proposed to HB6681, which extends the petroleum products gross earnings tax to homeowners using heating oil.

Our industry feels it is grossly unfair to tax consumers on a necessity of life. Groceries are not subject to tax, and it's wrong to tax the people of Connecticut for the fuel they must have to heat their homes. It is not a luxury to stay warm.

We strongly oppose any tax on heating oil that would directly affect the consumers of Connecticut, even if it is being earmarked for a worthy purpose, the remediation of contaminated property.

I'd like to now digress from my written, submitted testimony which addressed the tax itself and I'd like to talk about whether there is really a need for that tax.

ELIZABETH BARTON: Good afternoon, Senator Cook, Representative Stratton and other members of the Environment Committee. I would like to thank you for the opportunity to testify before you today in connection with SB1189 and HB6681. My name is Beth Barton and I head the Environmental Practice Group at Updike, Kelly & Spellacy of Hartford and New Haven and I have been practicing in the field of environmental law for approximately 15 years.

While I support both of these bills in concept, primarily because I agree that there is a very real need for amendments to the Connecticut Transfer Act and also a very real need for an unambiguous procedure that will facilitate, not frustrate, environmental remediation of contaminated properties, I also believe that there are a number of technical difficulties with both of these bills.

In several respects, these bill do not, as presently drafted, adequately address significant concerns of many of those who are routinely involved in property transfers or in efforts to reuse contaminated properties and I would just like to give a couple of comments with respect to each of the bills to sort of illustrate the concerns that I have.

With respect to SB1189, my comments include the following. First of all, in an apparent effort to better define the types of transactions that are covered by the Transfer Act and specifically to clarify, I believe, I was not on the task force, but from reading the bill, to clarify what is meant by the phrase corporate reorganization not substantially affecting the ownership of the establishment. In Section 11 of this bill, the scope of the transactions that escape the Transfer Act requirements has been significantly and inappropriately narrowed.

For example, while historically those of us who have worked with the Act have believed and interpreted the language I quoted previously to not apply to stock dividend distributions or stock distributions in connection with a merger for a purchase or with the efforts on the part of the

corporation to create a subsidiary, principally something like a wholly owned subsidiary. With the sort of turn in the bill, getting away from generic language and specifying examples of where the bill, excuse me, not even examples, specifying where the bill does not apply, I think a question arises as to whether or not the intent is now to have the bill, have the Transfer Act provisions apply to these types of activities and I would suggest that this is not appropriate and will drastically broaden the scope of the application of the requirements.

With respect to lease transactions, it's not clear whether the exclusion in Section 11 for certain lease transactions is limited to leases of 25 years and whether that 25 years includes the extensions. The bill as drafted allows for extension of the lease, but it's not clear whether or not that extension can only go up to the 25 years.

And then I would also ask a question, if a tenant is operating an establishment for more than 25 years, is it the intent of the legislation to have that tenant then be, for purposes of the balance of the provisions, the equivalent of an owner if they're not covered, if they're less than 25 years, are we to assume the converse which is that if they're there for more than 25 years, as I say, their equivalent of an owner.

There is an effort, I think, to clarify the definition of hazardous waste which I certainly agree needed some help, but I'm not so sure that the clarification that's given really makes it any clearer.

While there has been confusion and disagreement over the years concerning who is a party to a transaction and therefore eligible to file the form 3 under the Transfer Act, it appears that all we've done is substituted for the phrase a party to a transaction, the phrase a person associated with the transfer of an establishment and that's not defined now. So I'm not really clear how much farther along that gets us in terms of understanding who is subject to and who may play a

role in terms of the various filings in connection with this transaction.

For example, is the lender, is that a person associated with the transfer of an establishment. Is that someone who can file the different forms that are now required under this legislation?

Unless the standards applicable, pending the adoption of regulations pursuant to Section 22a-133k are identified, the defined term remediation standards obviously has no practical meaning and it's not clear whether the legislation would have any impact in the interim. And we obviously don't have a set time frame for the promulgation of those regulations. I think all of us are hoping, though, for something that for all intents and purposes will have immediate effect

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upon passage of the act and I would just suggest that if it's contingent upon the remediation standards, this goal is not going to be realized.

The phrase subject to remedial action is also used throughout the bill but it's not defined and I think there's a real question whether that means a site where remedial action has been completed, or is it a site where remedial action merely has to have been initiated. What if the conclusion after an investigation is that no remedial action is required. Does that mean that the owner of the property, transferor of the property cannot then avail themselves of the subsequent provisions of the bill. I think there's a presumption that remediation is going to be required under the act.

While Section 113 refers to post remediation monitoring, there's no provision for approvals after the conclusion of that post remediation monitoring, in my experience, something that has been very, very important to the parties to a transaction to the lenders, to tenants, to have some sort of final closure on the whole process.

I am also very troubled by the fact that throughout

the process, it would appear the Commissioner reserves the right to step into what would otherwise be an LSP review. I certainly understand that there has to be adequate discretion afforded, but it seems to never disappear and I would be fearful of a situation where someone would get very far down the path using the LSP process. At a minimum it seems the criteria should be set forth as to when at which step the Commissioner might then exercise the option to come into the process and require formal approvals.

But it's very broad, it's totally open-ended and presumably that ability again, without criteria attached to it, exists throughout the whole process.

A couple of very technical things which I'm just going to skip over for purposes, but they're in my written comments. We talk about notice to an abutting landowner. I think we have seen adequate evidence in other statutory provisions that absent some real clear direction as to what's meant by an abutting landowner, we're going to potentially create a real problem which is a reference to that section, so I think that's something that needs to be defined.

The, I next wanted to just provide a couple of comments with respect to HB6681. These comments include, first of all as to the definition of the eligible properties, I appreciate the apparent intent to be very narrow in terms of how eligible properties are defined, but it seems to me that there needs to be, if things are going to hinge upon the GBGC classification, there needs to be a defined clear process whereby for example, inappropriately classified properties can be reclassified, and that does not presently exist.

I think it's important to keep in mind that the original classification scheme was implemented, not for purposes of use with cleanup of properties, but rather for purposes of providing some guidance relative to future use of properties, a very major distinction. And therefore, I think we need to create some sort of mechanism whereby we can get

otherwise innocent, if you will, property owner and the LSP. I think that's a valid point. I think you could address that.

REP. METZ: That would parallel (inaudible-not speaking into mike)

ELIZABETH BARTON: Sure.

REP. METZ: (Inaudible-not speaking into mike)

ELIZABETH BARTON: I think that's a valid point.

REP. METZ: Thank you.

REP. STRATTON: Further questions? If not, thank you, Beth.

ELIZABETH BARTON: Thank you.

REP. STRATTON: Christina Pollock, followed by Kathie Cyr.

CHRISTINA POLLOCK: Good afternoon. I appreciate this opportunity to speak with you. I had handed out written commentary, but rather than read that commentary, I'd like to just address some of the issues I have with both bills.

My name is Tina Pollock and I'm principal geologist and owner of Geo-Environmental Management Services. I have over seven years of direct experience with assessment and remediation and two years ago I started my own consulting company.

By and large, I think both personally and in terms of our industry, we all understand the need and quite frankly, look forward to registration of environmental professionals in the state and feel it's necessary and the concept of examination for professionals is very, very desirable.

Overall, the concept of both bills. HB6681 and SB1189, I'm in favor of, but there are portions of both bills that I feel can have some very significant impacts to both business and industry in the state as well as consultants. And although

well intentioned, I think that these particular issues, contrary to what they're thought to do, are going to do the opposite which is increase costs, put a number of consultants in the state out of business, virtually immediately, and in the process not necessarily keep incompetent practitioners from operating in the state.

And I'd like to address the three areas where I feel that this is applicable. The first is in the qualifications for licensed environmental professionals. The experience and educational requirements in HB6681 I think very accurately meet what the standard is for those people in the industry making significant decisions, is throughout the country with the exception of Massachusetts.

There is not to the best of my knowledge, any other state that licenses environmental professionals that requires more than seven years of experience with similar educational requirements of HB6681. Therefore, I think those experience and educational requirements are reasonable and within line.

The problem with the requirements in SB1186 is that in requiring ten years experience until the exam comes into play and then allowing people at the time the exam comes into play to take the exam that have the same level of experience that somebody would have had in the intervening period between conception, or inception of this bill and the exam, I think is very discriminatory. And to be very honest in a very personal way, basically what this would do for me is say, well, I would have to go out of business.

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Let's be optimistic and say that a test is ready in two years. I would have to go out of business so that I could take the test in two years, along with people who would have a level of experience that I would have met during the two years that I was out of business. And I feel that this is relatively unfair burden to place on people who are already in business and conducting business in a responsible way in the state.

The next issue is the professional liability insurance and this is a very, very touchy issue. And this is one of the things that's going to put virtually all the small to moderately sized consultants out of business in this state.

ENO insurance is incredibly expensive. It is outside of the ability of most small to moderate consulting firms to obtain. And contrary to, I think, the reason for putting it in place, it does not guarantee competency in any way, shape or form.

Basically, according to a minimum of four companies that I have spoken to that provide ENO insurance, the way that they determine your premium is by what your previous year's gross income was and that's in a category for instance from zero to \$5 million the previous year, the minimum amount of coverage you can get is one million dollars. You can't get \$250,000. The minimum is a million, and then if you make \$10 million the premiums is higher for the same or more coverage.

But basically, if you can afford the premium, you can get ENO insurance. So it's feasible that someone who has a company who is making money or has a fairly large budget can get insurance and that does not assure their competency. The company sends you a very comprehensive form that you fill out and you attest to the fact that you are competent and that is the basis on which the contract is made out.

They don't come and evaluate your company's individual practices to determine whether or not you're competent and it ends up kind of being a non-issue because most consulting companies in their terms and conditions, limit the amount of their liability to the cost of the project or the amount of work that's been done up until the point of whatever the problem was.

The only way the client can recover more than what the terms and conditions limit, is if you are found to be grossly negligent. And according to the companies that I have spoken to who provide ENO insurance, since your agreement with them is you

certify that you were competent in the first place, if you are found grossly negligence, they're not going to pay off on the policy.

So this appears to me to be a situation that's going to put many consultants in a bind. They're not going to be able to afford ENO insurance and there's some question about what you're paying for to start with and whether or not that is going to serve either you, the client, or the state.

My recommendation is that this is also really a marketplace rather than a legislative issue. If a client wants you to have ENO insurance, you either have it or you don't. If you don't, they will not accept your proposal. They'll use someone who has ENO insurance. But I have many clients who are smaller businesses and industries and it's not important to them.

If I were to be able to afford it, I would have to pass the expense of that on to the clients who don't necessarily need or care whether I have ENO insurance, and I think that's an unfair situation also.

So one of the biggest problems I have with HB6681 is the requirement for the ENO insurance because I think it's sort of a red herring in terms of what anyone is actually getting out of it. And two, whether or not it indicates a decree of competency.

I think the educational and experiential requirements in conjunction with an exam are going to be much more critical in determining who's competent and who's not competent without putting anyone out of business.

The other thing that was spoken about previous to me is the issue of the covenant not to sue. And this is ultimately, if the covenant is included and the professional environmental person is on the hook for being liable in the long run, this is as a professional untenable for the entire weight of the responsibility and liability of the site to come back on to me because what we do is not an exact science.

There's no way we can do an investigation, no matter how well we do it, and say that we know absolutely, we've covered everything and everything attests that the site is absolutely perfect, or meets even certain standards. There's always the potential for non-negligent error in what we do. It's science and science is not perfect.

If the covenant not to sue is conveyed over to the licensed environmental professional, the effect that this is going to have is to turn every site that we work on into a little super fund site because what the environmental professional is going to have to do is so much work that may not be actually necessary but is simply cover your liability work that the expense of doing these investigations is going to be unbelievably expensive.

The concept of doing a minimum amount of defensible work is going to be right out the window and we're going to have to go in and instead of running 80/10, 80/20 analysis on a gasoline station, we're going to be running samples for the complete appendix 9 list just in case somebody brings it up or it's an issue or we're worried we're going to miss something and I think the increased cost is just, I don't think anybody even understands how much more expensive this work is going to turn into and there is, in many cases, not a good reason for this, other than it is simply like with doctors now having to do tests that aren't necessary just so you can say, well I did it, so I can't be held responsible.

In summary, I would just like to say I'm a lifelong resident of Connecticut. Two years ago I stuck my neck out professionally, personally and financially to try to start a business in this state. I think I've profited, I think I'm pretty good at what I do, but both of these bills as they stand, are going to have the effect of the minute they go into effect, putting me out of business.

And I'm not the only one. I'm not sure that's the intention. I'm not sure that's good for the state. I think leaving a small group of very large

consultants in place is also going to significantly increase the cost of doing environmental work in the state because there's going to be absolutely no competition on pricing.

I'm qualified to be certified in a number of other states by a number of other organizations and I would hate to have to leave the state and take my business elsewhere and try to develop it some place else, but that is basically going to be my only option if this goes through.

I have a significant problem having to go to my current clients and telling them as of October 1, or as of January 1st, I'm no longer competent to do your work and here's the address of XYZ Giganto Company and go to them. I think that for myself and other companies, this is really an unfair situation.

REP. STRATTON: Thank you. Representative Metz.

REP. METZ: Thank you, Madam Chairman. Can you give me an idea of the annual premium of a liability policy for someone in your profession that does, say under \$5 million a year.

CHRISTINA POLLOCK: Well, I can tell you for me, the best quote that I got was \$15,000 a year would be \$2,000 up front and \$888 a month, and that was the absolute best. And it was substantially less than many of the other quotes that I got.

REP. METZ: I would agree with you that that's fairly stiff, but frankly, I find your testimony remarkable because it seems to me that in this day and age, someone who's in the profession of evaluating information, making tests and rendering an opinion on that, almost of necessity would have to have insurance.

But what you're saying to me is, you believe you are competent, you're competent to do this work but in fact as of today, no one is competent to do this work. This is work that the state is responsible for.

CHRISTINA POLLOCK: Right.

REP. METZ: We are seeking to delegate that responsibility and to have people who we deem to be competent --

CHRISTINA POLLOCK: Right.

REP. METZ: -- and if they make an error, clearly not even an intentional error, but simply an error, which as you say, anyone, no matter how competent can make, we want the state to be protected and in that instance, we would almost certainly require insurance.

CHRISTINA POLLOCK: Well, the ENO insurance is not going to protect the state.

REP. METZ: It certainly would if we had an action against you.

CHRISTINA POLLOCK: Not if, according to the companies that I spoke to, if I am found to be grossly negligent, the ENO insurance will not pay off because my agreement, their agreement with you is that you're attesting when you get the insurance that you're competent, that you are competent.

In other words, they don't come and spend a week with you and audit your operation.

REP. METZ: I understand that. I think most professional liability insurances would be sold in the same manner, without coming and watching you for a year to make sure that you do what's supposed to be done.

But in the case of an innocent omission or error, if your policy covered you, that would be a protection to the state. If your policy says that it won't cover you if you perform your work while you're under the influence of alcohol then perhaps you are assuming a risk yourself that you wouldn't otherwise have, but that doesn't necessarily preclude the interest of having you insured.

It just strikes me as odd that you want to sit

...ere an say I am competent, I can't do it's work, but you don't, but if you're not, or if you make an error, then tough, there's no protection. Unless you happen to be independently wealthy.

CHRISTINA POLLOCK: What I'm saying is that the requirements of the bill, by taking into account your educational background, your experience and requiring you to pass a test that is generated by the state is what is far more useful in determining the competency of a consultant than the fact that they've been able to come up with enough money to get ENO insurance, which may or may not protect or be available if there's a judgment against the consultant.

REP. METZ: Well, I respectfully disagree and if the policies are deficient or defective in the way that you state, perhaps what we should do is just not entertain the notion of this program. That if there's no way to protect the state against incompetence, in which we are putting the trust of what has in the past been a state function, then maybe we ought to just forget the whole damned thing.

CHRISTINA POLLOCK: Well, I can't speak for the insurance companies or why they format their coverage. I don't know if it's different for other professionals, but this is strictly companies that are handling professional liability insurance for environmental professionals and it's been an ongoing, very touchy issue from the very beginning as to how insurance was going to be provided for people in our field.

But that, I mean, that's strictly up to the insurance companies as to what they, how they are, or are not going to cover you.

REP. STRATTON: Thank you very much for your testimony. Kathie Cyr, followed by Nick Shufio.

KATHIE CYR: Good afternoon. I'm Kathie Cyr, president of Connecticut Engineers in Private Practice, representing over 120 engineering firms in the state. I'd like to speak about substitute HB6681,

AN ACT CONCERNING REMEDIATION OF AND LIABILITY FOR CONTAMINATED REAL PROPERTY and Raised SB1189, AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE TRANSFER ACT AND HAZARDOUS WASTE SITE REMEDIATION.

I think at this point, I'm probably going to restate a lot of issues that other people have, but for what it's worth, reinforcing that opinion is always of value.

I do want to address in particular, the sections of each bill that establish requirements for and duties of licensed environmental professionals, particularly since many of the members of Connecticut Engineers in Private Practice would become the LEP community.

We understand and endorse the Committee and DEP's efforts regarding the clean up process and licensing environmental professionals. A number of revisions have been incorporated which address our earlier concerns. However, we remain concerned that the licensing requirements vary between the two bills and would recommend that the bills be made identical in that respect, or the requirements be defined in one and referred to by reference in the other.

Regarding Substitute HB6681, we're very concerned with unprecedented risk allocation and professional liability provisions which are in the bill. We recommend that Section 1c-3a regarding insurance requirements be deleted in its entirety and we do have a number of reasons for that.

The responsibility and the risk for an owner's property should not be shifted to the LEP. Insurance is not required by statutes for other professionals entrusted by the public such as professional engineers, architects or lawyers. This would put a new requirement on many small businesses.

Insurance coverage for professional acts are based on negligence. If the professional is not negligent, coverage will not apply, thus insurance will not go to accidental contamination of

property. Insurance is not and should not be used as a substitute for professional competence, or as a mechanism to transfer the risk properly belonging to a property owner to the LEP.

Further the insurance market is highly volatile. The insurance for environmental contamination was completely unavailable as little as five years ago, and there's no guarantee that it will exist in the future. Moreover, the risks that are presented by this new requirement are not readily measurable. Insurance rates could increase and availability of the insurance decrease as a result.

Representative Metz commented on another clause that's of concern to us and that's Section 3 of Substitute HB6681 regarding the covenant not to sue, and more importantly to us, that the state could bring an action against the LEP for any violation of Chapters 445 or 445k of the General Statutes.

Now, these clauses transfer all of the risks associated with hazardous waste and water pollution control to the LEP regardless of the LEP's ability to control those risks. We firmly believe that the best way to manage professional risks for the owner is to select a qualified consultant, a qualified professional, who will develop an adequate scope of work to do the job right.

While not specifically related to the LEPs, I'm going to digress for a second and just note that in Section 2d and 11a-3 of HB6681, an environmental use restriction would be required to be placed on a property unless specifically exempted by the Commissioner.

We'd simply like to note that this requirement is more stringent than the current version of DEP's draft proposed cleanup standards and could result in the very delays the bill is seeking to avoid.

Regarding Raised SB1189 in several sections of the act, language refers to verification of remedial action. Another section, language refers to verification that a property has been subject to

remedial action. We recommend that the language clearly state that the LEP could verify that remedial action has been taken for a defined problem. An LEP should not and could not verify that a parcel has been completely remediated since sub-surface conditions cannot be examined in the detail that surface features can.

Alternately, an LEP could render an opinion that in his professional or her professional judgment, no other remedial action was required based on public cleanup standards. That opinion would, of course, require adequate investigation of the parcel to have been completed.

Thank you and I'd be happy to answer any questions.

REP. STRATTON: Thank you very much, Kathie. Just a comment on the environmental use restriction part. That really was for seeing another category within the clean up standards that would be a lesser than residential standard for GB and GC areas, and hence the assumption that the properties that were being sort of carved out in HB6681 that limited number of properties would most likely be those properties if one was indeed achieving the standards that were residential standards within those areas, that's when the Commissioner would make the determination that you didn't need to file the use restriction.

KATHIE CYR: Right. I recognize that that would be applicable in some circumstances, but it would not necessarily apply to all circumstances. There are properties in GB areas that could be remediated to meet the residential direct contact criteria even though they may not meet other criteria for GA nor would they need to.

REP. STRATTON: Right.

KATHIE CYR: And by the (undiscernible-both speaking at once)

KATHIE CYR: But the assumption is there would be two standards within those GB and GC areas, both those that automatically require the use restriction and those that did not. And that if you were dealing

with the on s... automatically required the use restriction and that was the level that one had remediated to, then it would be required that that use restriction be recorded. I think we're probably talking around in circles, though.

KATHIE CYR: In practicality we find that it's often the decision of the owner. Some owners, or potential buyers, are more liability conscious than others and would, just simply don't want a use restriction on the property and would rather clean the property up to residential criteria than have the use restriction. The option is very beneficial and I think would be tremendously helpful.

But to require the use restriction, even if they could meet a higher standard may be a problem.

REP. STRATTON: In that situation it wouldn't be, because that would be the situation where the Commissioner would say you met the other standards so you don't need it.

KATHIE CYR: But the Commissioner would be required to render a written thing and that's the slow up in the process.

REP. STRATTON: Okay. I understand. Are there other questions?

SEN. COOK: Could I just ask if there's a difference between malpractice insurance and the errors and omissions insurance that you're discussing?

KATHIE CYR: Errors and omission insurance cover us for professional activities errors and omissions. It does not cover us if we are engaged in fraudulent activity or misrepresentation or you know, other similar acts of gross negligence of the type that we're not honest.

The insurance does not cover us if we are not negligent. For example, we can do our jobs in accordance with the standard of care of the industry and problems may still result, but our insurance won't cover it because we haven't been negligent.

It is not a fund to solve the problems of the world or address contamination that we really had nothing to do with putting there, and our job is simply to investigate it and to, within our standard of care, clean it up.

SEN. COOK: Do engineers and other professionals carry malpractice insurance?

KATHIE CYR: Our errors and omissions insurance and then pollution liability in terms for those who also do clean up work, but again, that is based on negligence. Malpractice insurance in the form that you're referring to perhaps as a doctor may have?

SEN. COOK: Other professionals, lawyers, whatever?

KATHIE CYR: I'm not familiar with exactly what a malpractice insurance would say, but errors and omissions is designed for professional liability.

SEN. COOK: I'm just trying to get at, if the state is asking you to, or putting over on you the ability to bring closure to a site because we're going to accept a licensed site professional, a licensed environmental professional's work at this point, then what is the appropriate safeguard that the taxpayers should have that that work is more than just you saying I'm good at it?

KATHIE CYR: The way the two bills are structured, it's more than my saying I'm good at it. There are certain requirements for licensing and we do endorse the requirements for experience and education in, although we could quibble about the amount of experience, but the experience in the education and testing procedure.

One of the two bills, and I believe it's SB1189, has a provision in there to develop a code of ethics for the licensed environmental professionals and I think that's heading in the right direction.

I'm a professional engineer and I'm licensed in Connecticut and several other states. Licensed professional engineers do not have, by statute requirement for insurance, and yet we it sounds

very pompous to say you can't find a more upstanding group of individuals, but I happen to believe that's true. But we act under a code of ethics and professional standards that dictate how we behave and I think that same type of approach is one that would be very appropriate for a licensed environmental professional.

REP. STRATTON: Out of curiosity, I know that the statutes do not require professional engineers to carry insurance. Do you have any guesses to how many, what percentage of engineering firms actually do, or individual engineers?

KATHIE CYR: I would guess over 50% do, but I could not quote any particular statistics at you, or to you.

REP. STRATTON: Thank you. Representative Metz.

REP. METZ: Madam Chairman, I think we may be getting into some confusion here. While the statutes might not require every licensed professional engineer to have errors and omissions insurance, the entire function of a licensed environmental professional would be to render opinions to the state of Connecticut and if a professional engineer were working for the state or doing work on contract for the state, I assume that the state would require them to have insurance.

So if you want to take the test and spend the time in the field necessary to be a licensed environmental professional but you don't intend to ever submit your opinion to the State of Connecticut with respect to the clean up of a site, then you don't need the insurance.

But if you want to do the job that you take a license to do, then you need the insurance. That's what the bill says.

KATHIE CYR: The implication there is that our insurance would go to the state. In fact it wouldn't. Our insurance would be my contract, or our limit of liability, would be by contract between us and our client, so that if there were a claim of negligence against us by our client, the insurance would be

there to defend us.

REP. METZ: I think you are incorrect about that. Particularly since your client would have no responsibility to the state in the event they obtained a covenant not to sue.

KATHIE CYR: Our contract would be with our client.

REP. METZ: But you also would be submitting, if your document is to be acceptable to the State of Connecticut, you must have a license, that's not in your contract with your client. You must have a certain minimum amount of experience. That's not in your contract with your client. And you must have errors and omissions insurance, according to this bill.

Now if errors and omissions insurance does not exist, of the type that's contemplated by the bill, then perhaps someone's going to have to come up with it or there won't be any LEP. But the fact that you are asking for the special privilege of giving opinions to the state on which the state is going to ask, gives the state the right to say what the requirements for your qualifications will be and the insurance is one of them.

And to just sit there and say well, if I make an error, I'm not covered. If you make an error, you probably would be covered. But if you have a site evaluation and there are 10 steps that would be normal in the industry and if you perform those, then you have not been negligent. But on the basis of the 10 steps, or 10 tests, whatever, you come up with an opinion that is wrong, you've made an error. In that case, your insurance would presumably cover you. Otherwise, who holds the bag for this? The state.

So the state is saying, we don't want to worry about whether you have the money to reimburse us for your error, although made in good faith, therefore you need insurance to protect you and to protect us.

KATHIE CYR: Such insurance for environmental

contamination is currently available. Our concern is that, or one of our concerns is, with the volatility of the market, it may not be in the future. And you put us all out of work.

REP. METZ: If that happens, then the program will go down the drain, based on the statute (inaudible).

KATHIE CYR: It would, but the program would also go down the drain in the requirements on a licensed environmental professional increased our risk so dramatically, and our liability so dramatically that prudent business practice would say we shouldn't do this.

REP. METZ: That's also a possibility. That is a legitimate comment. The fact that you shouldn't be required to stand behind your work is not. And if you are standing behind your work and the work is of a magnitude contemplated by this bill, then perhaps we should have insurance.

KATHIE CYR: I would stand with my comments but certainly recognize your concern. Questions?

REP. STRATTON: No. Thank you Kathie, very much. Nick Shufro, followed by and I'm afraid I can't read the name, but Kip Bergator, or someone of that sort? Good afternoon.

NICK SHUFRO: Good afternoon, Representative Stratton, Senator Cook and members of the Environment Committee. My name is Nick Shufro. I'm the manager of regulatory affairs and policy planning for United Technologies Environment Health and Safety.

I'm here today to represent my colleague Mr. Fred Johnson who is the director of environmental programs for United Technologies. Mr. Johnson was invited to participate on the task force that developed Raised SB1189. Mr. Johnson is on a business trip this morning, today, and could not make it and asked me to give the following testimony. I'll read directly from it. It's regarding SB1189, AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND

HAZARDOUS WASTE SITE REMEDIATION.

Dear Representative Stratton, Senator Cook and members of the Environment Committee. I have had the opportunity to be a member of the task force that has recommended the changes to the subject bill before the Committee today. The task group was made up of a diverse experience and talented mix of stakeholders that included industry, banking, environmental groups, the DEP, environmental consultants, lawyers and municipal officials.

In just two short months, this group remained focused and dedicated to produce what I believe are well reasoned changes and additions to Connecticut's Transfer Act that are mindful to the views of all stakeholders.

The utilization of this type of task group with representation from various stakeholders is consistent with the United Technologies' philosophies and should be a model for future regulatory initiatives.

Commissioner Holbrook and Chairman Gillies are to be commended for their leadership in making this task group a very efficient and constructive process. The revisions and additions to the Transfer Act proposed in SB1189 provide a better defined framework to conduct remediation at both sites being transferred and at contaminated sites where no imminent transfer is contemplated.

The bill also addresses the licensing of environmental professionals. Such licensing defines a relatively rigorous minimum standard for private professionals to be empowered with the oversight and certification of site clean ups. This provision will raise the standard of care within the environmental profession, and more importantly, free up valuable DEP staff resources that would be better directed at the more complex environmental issues.

We have one technical comment regarding the SB1189. Under the definition of transfer of establishment,

UTC feels strongly that the following exclusion should be reinserted at subsection 1 to make it clear that intracompany transfers are not intended to be covered and that should be corporate reorganization not substantially affecting the ownership of the establishment.

In consideration of the above, and the fact that the bill's implementation will not require additional taxes or funding, United Technologies fully supports this bill as a benefit to Connecticut's economy and environment. I thank you for the opportunity to address this Committee and to Commissioner Holbrook and Chairman Gillies for the opportunity to participate in the task group. And signed, Fred Johnson.

REP. STRATTON: Thank you very much. Are there any questions? Yes. Representative Maddox.

REP. MADDOX: I don't know if you can answer, but maybe there's someone out there from UTC that can. Does UTC presently have some environmentally challenged properties out there?

NICK SHUFRO: Yes, we do.

REP. STRATTON: Thank you, Representative.

REP. MADDOX: Okay. I must admit, where my concern comes from and it's not directed toward you, but the corporate management has not changed in the last three years at UTC, right? The president and all those. You know, your organization, and as I said, it's not directed toward you and I know you were just sent over here and you're kind of like the messenger so I don't mean to kill the messenger.

But, you know, two years ago the corporation took millions and millions of dollars of tax fare dollars, turned around, gave senior management a huge raise and then laid off thousands of people. So now UTC is here testifying saying, well, we'd like this little bill to help us transfer around some of our bad properties and all this kind of stuff. I have a big question mark in my mind,

then, if that, you know, what UTC is up to.

I mean, clearly they seem to be shrinking in the state. Is it five years, senior management's on a plane to another facility and we have another bunch of contaminated properties all over the state that now we're cleaning up and you may not be able to answer this, if anything, I view your role as a messenger. You can take that back to senior management and say, you know, I must admit, thanks to your testimony, I'll be reading this bill real close now and being concerned with that.

And I think if anything, you could bring a valuable message back to UTC that if they think that the Legislature forgets one of their actions something else like taking millions of state payer dollars and then laying off a bunch of folks and giving themselves a raise, when you come back on something else, we're not going to question the corporate motives, we're going to. And clearly, no offense to you. You're strictly a messenger to the echelon and I hope that they hear that message.

NICK SHUFRO: We've heard your comments. Thank you.

REP. STRATTON: Thank you, Representative Maddox. Any further questions? Thank you.

NICK SHUFRO: Thank you.

REP. STRATTON: Sorry you came? Kip Brengston, is that the correct way? Kip? No? John Adams, followed by Robert Stewart.

JOHN ADAMS: Thank you, Senator Cook and Representative Stratton and members of the Environment Committee for the opportunity to speak here. My name is John Adams. I'm vice-president and regional manager for Rizzo Associates. We're an environmental engineering and consulting firm and have offices here in Connecticut and Massachusetts.

I started in this business in 1981 with the New York State Department of Environmental Conservation who was in the depths of Love Canal at that point in time and that really is the birth of this

industry. I'm an LSP in Massachusetts and have been active in that program since October 1993.

Bill Rizzo, the president and CEO of our company has been deeply involved in the development of the LSP legislation in Massachusetts. He was appointed by Governor Weld to be on the advisory committee which developed the regulations. He was also appointed by the Governor to serve on the board of licensed site professionals and has done so until his resignation last month.

I'm here to speak on three basic points. One is my support of SB1189 and its provisions to establish the LEP program. My support of SB1189 and its provision to develop the ranking process which will ultimately focus DEP's personnel on those sites which represent real problems and the need to revise HB6681 to eliminate the requirement for LEPs to maintain professional liability insurance.

Establishment of the LEP program with respect to this program, I'm here to tell you that the LSP program in Massachusetts is working and it's working very well. And I think that in this time of limited state resources, that the state needs to recognize that privatization of a portion of the clean up program, that portion for those sites which do not represent significant threats to human health or the environment would be very prudent and would result in significantly more clean ups in this state.

The provisions to develop a form in SB1189 which would create the ability for the Commissioner to determine whether a particular site would go into a DEP lead clean up or an LEP lead clean up is critical to the success of this program.

Also critical to the success of this program are the development of achievable clean up standards by the Department. I would suggest to you that the Massachusetts standards, or the Massachusetts program has worked and worked very well because a number of the standards, or the majority of the standards are very achievable in that they do protect human health and the environment.

Some of these standards, particularly the pollutant mobility criteria as currently under consideration by the DEP do not appear to be very achievable and may have substantial detriments to this program.

With respect to the professional liability insurance, I will echo the concerns of Kathie Cyr. No other professions are required by statute to maintain insurance. This may have significant and unintended consequences, namely the increasing the frequency of claims, increasing the cost of the insurance, decreasing the availability of the insurance and perhaps a full pull out of insurance companies who provide this insurance to firms in the State of Connecticut.

The Massachusetts program has been working for approximately 18 months and has functioned very well and does not have a provision which requires the professionals to maintain liability insurance.

In summary, I strongly urge your passage of SB1189 and also urge that you revise HB6681 to eliminate the insurance requirement. Thank you.

REP. STRATTON: Thank you, John. Are there questions? We don't need to go through all the same territory. Thank you very much for your testimony. Robert Stewart followed by Mark Peel.

ROBERT STEWART: Ladies and gentlemen of the Environment Committee, thank you for the opportunity to speak this afternoon. I'm here representing HRP Associates, an environmental consulting company based in Plainville, Connecticut, with offices in South Carolina and Albany, New York.

I'd like to speak in support of SB1189 which seems to closely parallel the recent revisions to Massachusetts general law, Chapter 21e of the Massachusetts Contingency Plan in requiring licensure of environmental professionals. I'm an LSP and also a registered professional geologist in several states.

Although I support the bill, I would also like to see revisions to the amount of professional

experience proposed for SB1189 in that the parallels with the Massachusetts plan should be incorporated into the Connecticut plan for licensed environmental profession in that a total of eight years of total professional experience would be more appropriate and of those five years in the form of relevant professional experience, or the investigation and remediation of waste site clean up.

Secondly, this digresses from my written comments somewhat, but the parallel House Bill also includes a provision for reciprocity or a comity with other states with comparable programs and I would like to add our support for those and that if somebody has already demonstrated to a state such as Massachusetts that they are capable of conducting and supervising waste site clean up that they ought to be able to obtain licensure in Connecticut without the undue burden of a parallel stream of paperwork as well. Thank you.

REP. STRATTON: Thank you very much for your testimony. Are there any questions? Thank you. Mark Peel, followed by Winthrop Hayes. I'm sorry, I skipped Robert Stewart.

MARK PEEL: I'm Mark Peel.

REP. STRATTON: Okay, Mark.

MARK PEEL: Representative Stratton, members of the Committee, good afternoon. Thank you for the opportunity to address the Committee in Proposed HB6681. My name is Mark Peel. I am vice-president of corporate operations at American Environmental Technologies, an environmental service contractor incorporated in the State of Connecticut.

Since 1988, AET has provided environmental contract services to Connecticut, New York, and in more recent years, Rhode Island and Massachusetts. The company employs 42 people and has offices in Bethel, Norwich, and Hamden, Connecticut and other facilities in Norwalk.

Today the company is a qualified environmental

best vehicle for raising that money is.

SEN. COOK: It seems to be the thorniest part of this otherwise good idea.

AL SMITH: Absolutely.

SEN. COOK: And it may be something that causes difficulty here. I hope not. At least somewhere in the building someone's going to say what else can we think of, how else can we do it?

AL SMITH: Well, I guess I would only repeat that I think it crucial to find some vehicle for raising the monies so that this becomes something more than a good idea, something that has some meat on the bones that will allow the process to go forward.

SEN. COOK: Do you have any comments about SB1189, the other bill?

AL SMITH: No, I do not. Except to say that I think Greg Sharpe did a great job.

SEN. COOK: Thank you.

REP. STRATTON: Paid commercial. (Laughter) Tom Turick, followed by Lisa Santacroce.

TOM TURICK: Representative Stratton, Senator Cook, members of the Committee, my name is Tom Turick. I'm environmental manager of Connecticut Business and Industry Association. Good afternoon. I'm here to offer brief comments in general support of both SB1189 and HB6681.

When I came before the Committee a month ago, there was one bill on the table, HB6681 and if you remember, CBIA voiced great enthusiasm for this bill. We saw it as a far reaching one, one that contained many, many elements that would be new to Connecticut and would definitely, in our opinion, spur voluntary clean ups which was the basis of the proposal.

Our enthusiasm hasn't dampened. HB6681 has changed somewhat in the ensuing month, but it's still a

very excellent bill.

As to SB1189, there are many things in SB1189 that are very good, but obviously this bill coming forward at this time complicates the entire clean up picture, if you will, in that there are some overlaps in the bill and there's some treatments in SB1189 and HB6681 that use a slightly different approach.

As far as SB1189, i especially think some very solid work has been done as far as the definition section and getting rid of the ambiguities and also it appears the licensed environmental professional approach in SB1189 is similar and will be identical, eventually to HB6681.

Although SB1189 does, I know SB1189 is trying to streamline the property transfer program and indeed, I think it does with its process for LEP review and eventual remediation of sites. I think HB6681 in its treatment of voluntary clean ups even has a more streamlined approach. Maybe I'm getting a little ahead of myself.

I'm not saying SB1189 has problems, but SB1189 for property transfer properties will work very well but it does, it is a system, for instance in Section 2 where you will go to the Commissioner. The Commissioner will first determine which sites the state will have jurisdiction over and then there's a notification back to the property owner or person responsible for the site. That approach works very well.

But I like in HB6681 for the, again, the thousands, literally thousands of voluntary clean up sites that may be coming under HB6681, I like the even more streamlined approach that I see, I believe it's Section 2 whereby the criteria is laid out right up front as to what sites an LEP will have jurisdiction over.

Again, there's many things in HB6681 that are good and innovative. The covenant not to sue, the environmental use restrictions and especially Section 11. In my written comments, which I hope

you have before you, we are making suggestions in Section 11. As I said in testimony a month ago, no matter what you do here this session, it will all be contingent upon having good clean up standards in place.

Now we're working very closely with DEP. DEP's working very hard on clean up standards and we hope that that package comes along with this legislation. But we do feel that in Section 11 you can help the regulatory process of writing clean up standards by adding guidance that would be guidance to the Department as to the issues in Section 11.

First, what circumstances permanent clean ups, under what circumstances permanent clean ups will be expected to be achieved, realizing that permanent solutions to all clean ups, in all clean up cases may not be achievable. And also, under what ground water conditions a clean up may occur to a standard less than required for residential land use. There is language pointing to GB and GC areas. We think further definition talking about ground water not suitable for drinking without treatment or where it cannot reasonably be expected to be used as a drinking water supply should also be added to that section.

And also a third issue in Section 11, under what DEP administrative actions voluntary clean ups will be allowed to proceed as far as meeting this less stringent standard and we do not think language needs to address the issue of orders issued by the DEP in that orders are the mechanism, the standard mechanism the Department uses now to do a clean up. So irregardless, if you're under an order or not, of the Department, we feel you should be allowed to proceed with a voluntary clean up to a lesser standard provided you're in the areas enumerated earlier in Section 11.

Those are my comments. I'd be happy to answer any questions.

REP. STRATTON: Just very quickly on the last point, Tom. You were making that distinction not that the site would not be under DEP oversight if they were

under order, but rather that the lesser standard could apply to them.

TOM TURICK: That is correct.

REP. STRATTON: Okay. Are there other questions? Yes, Representative Mushinsky.

REP. MUSHINSKY: Tom, in the general category of remediation, do you have any advice for us on how to keep a new fund from being raided? Because we had years ago set up a spill response fund to do similar work, which was gradually raided over time to the point where it really no longer exists for clean up duties. Is there a way to keep this new fund from suffering the same fate?

TOM TURICK: I don't know. But I do share with you your concern that whatever fund or insurance mechanism is set up to do a lot of things, besides protect the covenant not to sue mechanism and also for funding for things listed in the bill. I agree with you. Unless it's fully protected, there's no sense trying to set it up and do the things you're trying to do here.

These are very ambitious kinds of things called for here that a fund is needed for and if it went the route of an emergency spill fund, for instance, this would be a disaster. But I don't know how you, I'm not familiar enough with how you can protect, I thought that there were protection mechanisms in HB6681. We didn't look very closely at the language, but I thought that this was set up in a way that those protections are there, but you know more about that than I do.

REP. MUSHINSKY: I'm just thinking. Maybe what we should do is just check with some of the folks who advise the Finance Committee and make it, I'm not sure how to do this, tie it in some way to a long-term plan such that you can't invade it. I know in the road monies, the reason we can't touch those is the bond covenant protect against a raid. I'm trying to think of something we could set up similar to a bond covenant that would protect this thing.

- REP. STRATTON: For the record, that's why that is a revenue bond account. It is a contract.
- REP. MUSHINSKY: Will that protect it?
- REP. STRATTON: That's why the tax is there as a source of revenue so it creates a contract with the bond holders, exactly for that reason.
- REP. MUSHINSKY: So this bill will have a contract?
- REP. STRATTON: If a revenue source other than straight bonds stays in it, yes.
- REP. MUSHINSKY: Yes.
- REP. STRATTON: (Inaudible) here one year and gone the next.
- SEN. COOK: I'm going to have to put you on record, Tom, and I hate to do this, because this is a good idea and the program has been well thought out and honed and so forth, but is this the year that we should be putting a new tax on homeowners?
- TOM TURICK: I can't answer that. But as an environmental professional, I would say that it makes sense that the benefits should go to the people you tax and one thing I haven't heard anyone talk about today that's in HB6681 is that the fund would support the remediation, or correction of problems dealing with underground storage tanks owned by residences.

Connecticut has nothing like that. Maybe some municipal programs, I note that there are municipal programs but I'm not aware of anything helping the homeowner to correct underground tank problems and in my view, we as a state, have potentially very serious underground residential tank problems. And if this was a way to get some of those tanks investigated, and in cases where they are failing, to help homeowners to put an above ground tank in or something like that, I think you could justify a tax of this nature. That's just an opinion as far as the use of the tax in that regard.

SEN. COOK: CBIA hasn't taken a position on the revenue source?

TOM TURICK: No, not formally.

SEN. COOK: Thanks.

REP. STRATTON: Questions? If not, thank you very much, Tom. Lisa Santacroce, followed by Bert Sacco.

LISA SANTACROCE: Good afternoon, Senator Cook, Representative Stratton and members of the Committee. My name is Lisa Santacroce and I am director of environmental affairs for the Connecticut Audubon Society.

The Connecticut Audubon Society strongly supports efforts to improve the effectiveness of the contaminated sites remediation program. Currently, there are more than 300 contaminated sites awaiting remediation, mostly in urban areas. These sites need to be cleaned up as quickly as possible to prevent further contamination and to allow these properties to be sold and developed.

Our cities desperately need the revenue and jobs developed properties will generate and from a land use perspective, it is more efficient to develop in areas within existing infrastructure than to continue a pattern of sprawled development that consumes pristine open space and farm land and furthers our dependence on the automobile.

In light of the backlog of sites and the current reality of the DEP's limited resources, Connecticut Audubon supports many of the measures introduced in these two bills, including the establishment of licensed environmental professionals and voluntary clean ups.

These measures alone will increase the number of sites remediated and reduce the DEP's backlog. We also vigorously support the public notice provisions. It is essential to notify the people who live near these sites, as they are the ones most directly affected by the remediation.

However, we would like to offer the following comments and concerns regarding the two bills introduced. Regarding HB6681, under this proposal, the DEP is not involved until the LEP submits the final remedial action plan. At this point, the DEP[<] within 30 days can request an audit. We would like to see this changed to have the DEP involved right at the beginning of the process. They should review their earlier site assessment reports so they can make an informed decision as to whether or not to take control of the site.

The DEP must retain the right to clean up the most dangerous sites and they need information from the beginning to make that determination.

This proposal sets up a covenant not to sue arrangement between the state and the owner of the property. We have serious reservations about the state relinquishing liability of the property from the owners. However, we understand that this liability is of major concern to any parties undertaking site remediation.

But we must point out that SB1189, the proposed revision of the Transfer Act, does not make any changes in the liability status of the property. We do realize that one of the goals of HB6681 is to foster clean up of sites not covered under the Transfer Act, particularly for closure properties.

At the very least, we would like to see the language regarding the power of the state to bring action against an LEP expanded to include the owner of the property as well. Both parties should be liable for an improper clean up.

Regarding SB1189, we support the language regarding public notice, but it is not clear as to when that notice must be given. We feel strongly that notice needs to be given at the very start of the clean up process and would like to see the language reflect that. Also, we feel strongly that language needs to be provided for public notice of voluntary clean ups as well.

Regarding both bills, the Connecticut Fund for the

Environment is going to testify after me, but we support their recommendation of establishing a technical assistant grant program modeled after the federal super fund program to provide assistance to affected communities regarding technical clarification and the remediation process.

Connecticut Audubon supports the new ideas and proposed changes to the Transfer Act, included in these two bills. They are steps in the right direction to solving the problem of contaminated sites and their impediment to economic growth, particularly in urban areas.

While we support most of the content of both these bills, we strongly recommend adoption of our suggested changes to insure that public health and safety is never compromised in the remediation process.

I'd also just like to say I appreciate the willingness of authors of both these bills in their willingness to take input from the environmental community.

REP. STRATTON: Thank you very much, lisa. It's more a matter of just wanting you to be aware of one of the components of HB6681 that prior tax remediation in that, even though there isn't a DEP approval of that, there is a requirement that that plan for that remediation activity be filed with the Department and under existing statute, if the Department determined that there was a reason that was the site they wanted to be involved in, that they would have authority to go do that anyway.

LISA SANTACROCE: Are you referring to the site assessment, or the --

REP. STRATTON: No, before the, the purpose of HB6681 is to allow a volunteer to find out about the site without involving the DEP or anyone else. If, however, on the basis of that assessment the decision is made to proceed with remedial action prior to the initiation of any activity, there is a requirement that a plan be filed with the Department and hence if one was dealing with a site

that was for some reason something the Department would say, this is really a much more serious site and we would like to interject ourselves into that process, they certainly have authority under existing law to do that without requiring that they do it in every situation, which was the reason we went that way.

Any other specific questions? Thank you very much. Bert Sacco, followed by Curt Johnson.

BERT SACCO: Good afternoon and thank you for the opportunity to appear before you. My name is Bert Sacco. I am voluntary vice-chairman of the Greater New Haven Chamber and I also come before you as an engineer who has had the responsibility of developing remediated sites in five communities in Connecticut: Bridgeport, Bristol, Waterbury, New Haven and New Britain.

You've heard much of my testimony. The issue is not one of environment alone, it's an issue of economic development. You've heard about grand list situations. You've heard about communities full of dirty buildings and dirty sites. You haven't heard that trying to get zone changes in suburban communities for industrial development is nigh impossible and therefore the need for urban industrial sites is critical.

The added plus to this whole equation is the fact that a lot of these remediated sites or sites which could be remediated are located right in the middle of poverty areas and would have the added advantage of providing jobs in those areas, rather than just sitting there and continue to be contaminated.

From a business standpoint, our clients are concerned about two issues, the time of process, which brings a site from the beginning of its remediation plan to the time in which a person can start construction on the site, which tends to be a maximum of about seven months.

And secondly, the closure, or somehow cleaning up of the whole reliability issue. This is impeding many of the potential projects that we could begin

in Connecticut, and yet can't because the whole liability issue is still unclear.

The issue of Connecticut and its competitiveness has been brought up and I would say that we are still not competitive. We are not competitive in terms of companies looking to expand or to locate here. We are also not competitive in the fact that some of our surrounding states are getting ahead of us in terms of clean up of sites. There are a lot of things going on. There are a lot of bills being introduced and a lot of legislatures, in fact, even the City of Worcester, Mass. is coming up with its own program whereby it begins to insure over the liability problem with the remediated sites.

We are certainly in favor of both bills, hopefully as polished by some of the detailed comments you've heard earlier and are available for any questions you may have.

REP. STRATTON: Thank you. Thank you for your testimony, and are there questions? We've covered a lot of the waterfront by this point. Thank you very much for coming up. Curt Johnson, followed by Beverly Dawes.

CURT JOHNSON: Good afternoon. Thank you for this opportunity to speak before you. My name is Curt Johnson. I'm a staff attorney with the Connecticut Fund for the Environment.

I want to just first start out by saying that Bert Sacco, I think, more eloquently than I, pointed out all the reasons why we need to be moving forward with a well thought out system allows clean ups to occur at a faster rate and economic development to occur within our inner cities at a faster rate.

Having said that, I'm going to talk, give some specific comments about each bill, first Substitute HB6681. We at Connecticut Fund for the Environment give qualified support to that bill. When I say qualified, the main area of concern that remains is around the area of the covenant not to sue.

I think several people today have accurately

pointed out that there's two policy issues before you about a covenant not to sue. One is the question of whether, when a clean up is done and it is done improperly and the clean up standards that are in effect at that time are not met, whether liability for the owner of the property should somehow evaporate into thin air.

The second issue is the issue of whether owners can be held to some future standard that has not yet been adopted. I'll start out with the second one first, which is that while CFE is uncomfortable with the concept of letting people off the hook, so to speak, for future standards, we are not going to fight that one because we understand the needs of the regulated community to move forward with developing and having some certainty.

I want to return to the first one though, which I think is of primary importance and I think this Committee is in agreement, that in fact, if a site is not cleaned up properly through an LEP process, then in fact liability should remain with the owner.

Now, if that's the case, I don't believe that the bill now accurately reflects that. I may be mistaken and there's just one small amendment which I, in other words, right now, I believe that if you look at the area surrounding line 218, you'll see that the LEP remains liable. However, there's no mention of liability of the owner, or the paper holder in that situation.

And I just have one small amendment that I think could help clarify that, adding after the word property, the following: and the responsible owner, lessor or lending institution shall retain liability for any costs required to clean the site to the clean up standards for such property in existence at the time the remedial action plan was prepared as adopted by the Commissioner under Section 22a-133k of the General Statutes. With that clarification, CFE would support Substitute HB6681.

I just want to mention a few other friendly

amendments, and when I say friendly, it means that we'd like to see them but they're not ones that are do or die issues. One is that currently, you already heard this from Connecticut Audubon, currently under HB6681 there's an audit process. I think that that has some disadvantages over the system which is proposed in SB1189, and let me clarify.

Right now, under the current bill in HB6681 there would be the opportunity for an audit to occur way down the road at the time that the remedial action plan is submitted. In other words, far, far down the road in terms of a clean up, after tens of thousands of dollars were invested and hundreds of hours were invested by the LEP, I think that the concept in SB1189 is superior in the sense that DEP has a very early decision to make. They either will be the ones that will honcho this clean up or they will not and given the staff limitations at DEP, there will not be many sites that DEP stays involved with.

But I think it's important that DEP make that decision early on and that the process be directed so that DEP is forced to make that decision and that's the point at which they get involved.

A second comment about public notice, very much appreciate the author's inclusion of the public notice provision. After reflecting on it over the weekend, just a suggestion to consider the possibility in this statute of expanding public notice to all environmental remediations in the state that would include clean ups undertaken pursuant to an administrative order, consent order or as a result of a superior court enforcement action as well as changes or transfer of property under the Transfer Act. We already have included that notice for the most part in the Transfer Act bill that's before you now.

But just to include public notice for the entire universe of remediation site clean ups. The reason is sort of obvious. People who live close to sites should be informed and have the opportunity, if they should so choose, to give input and make some

comments and find out about the clean up that's occurring nearby. I think the danger of not doing that was well shown by the experience at the Hartford landfill where community groups were not informed and there's been a tremendous backlash due to feeling excluded from that process in terms of the expansion of the landfill.

The last comment related to Substitute HB6681 is the technical assistance grants to communities. Unfortunately, we live in a day, in an era when clean ups require a stack of technical documents, usually about a yard high. It's very, very difficult for a community group who is impacted by that site and by the potential clean up, to have any idea of what's going on technically at the site without the assistance of an expert.

Obviously, in urban areas, when you're talking, as Bert pointed out, that these are often sites surrounded by poverty, the ability of that community organization or those residents to come up with money to hire their own technical assistance is near impossible.

This is really a scaled back version of the tag program under super fund. The proposal would be that out of the funds incorporated within HB6681 you would add the possibility of grants of \$20,000 per site, up to a total of \$100,000 per year being expended for that purpose.

I want to move on just briefly to SB1189. I want to thank the, particularly Peter Gillies for his generosity in including environmental viewpoints at the task force. We support SB1189. We do offer one technical friendly amendment regarding public notice that is just purely timing, that it be clear that the person who has to give notice, has to give that notice prior to a final remedial action plan being submitted because to submit it after, excuse me, prior to remedial action occurring on the site. For there to be public notice after that point is counter-productive. In other words, everything set, all the decisions have been made, the bulldozer's on site for people to make comments about how the bulldozer moves around the site is

not helpful at this point.

So with that, I conclude my testimony. Thank you very much.

REP. STRATTON: Thank you very much, Curt. You know, I think the two bills are trying to deal with this whole issue of trying to both expedite a process, but still retain enough oversight and qualifications in the field to try to have a high level of public confidence in what's going on.

When you make the comment about HB6681 and DEP not having an expressed directive to review the actual plan prior to remediation, given the staffing things that you just talked about and the obvious desire there to enable as many sites as possible to proceed under the LEP program, I'm curious as to whether you have any thought about, are we better off giving the impression that there has been an oversight that realistically with the number of sites we hope may be able to be cleaned up, relatively small sites cleaned up under this, have we really accomplished the kind of extra security that I know is your goal in that process by mandating a review that we really don't have the staff and the time to do as opposed to allowing the opportunity for a department to interject itself because something about the site flags that.

CURT JOHNSON: Well, I think that there's a suggestion in the current bill, that an audit process, if it's going to occur, should occur further down the road. At least there's the opportunity for that. I believe that that could well be a more labor intensive journey than looking at a Phase II report, a single report, and making a determination of whether this is really a foul site where there's serious health concerns.

And I think that that is the attempt that's incorporated within SB1189 is to set up a process, like I said, at the front end. Whether it should be mandated, I am not sure whether it should be absolutely mandated. I think it should be recommended, or it should be directory to the Department to take such an early stage.

I mean, the difficulty with the concept in HB6681 I think is that you have the possibility by suggesting that audits should be done at the tail end of ending up with double management. In other words, the private entity has invested a lot of dollars in the LEP to bring them to that stage and then at that point, DEP jumps in. And I think that's sort of the worst of both worlds, frankly.

I think it's probably wiser to encourage DEP to take a look at the front end and make a determination of there's really serious health hazards here and that DEP should be requiring submissions and approvals all the way down the road, which is exactly what we have in place today.

REP. STRATTON: The function is to, whether, and I think both bills are trying to set up a process whereby, with standards in place and with guidance documents as to how you go about achieving those standards and what's required to do it that we're talking about the vast majority of cases, that's what's going to happen and obviously if one looked at that potential audit as something the Department would be consistently feeling it needed to do, we wouldn't have accomplished much. There's no question about that, but I take the comments to heart on the front part. Are there other questions?

SEN. COOK: Curt. I wanted to ask a couple things. First of all, I want to make sure I understood the end of your testimony where you were talking about wanting to have from this bond fund grants available of \$20,000 to \$100,000 to --

CURT JOHNSON: No.

SEN. COOK: Well, help me with that, than.

CURT JOHNSON: A total cap of \$100,000 per year would be put on this classification of expenditures, and each individual grant would be no more than \$20,000 to a community organization, or municipality that felt the residents around that area needed clarification and needed assistance in understanding what was going on at that clean up.

SEN. COOK: Would it be funds to allow community groups to sue?

CURT JOHNSON: That isn't, that's not the purpose that I brought to it. I think, though, technical assistance, people who provide that technical assistance generally also have a working knowledge of the administrative process at DEP and I think that they could be helpful in accessing that administrative system. But I did not intend for it to be used for bringing a suit in superior court.

SEN. COOK: I'll have to explore that further, I guess. Both bills talk about clean standards, sort of how clean is clean is the tricky question these days. Does the Connecticut Fund for the Environment concur that there ought to be standards of clean for industrial use are different than standards for residential use?

CURT JOHNSON: Let me first start out by saying that we strongly support the effort to develop clean up standards and believe the Department's done a lot of good work to date in establishing its draft regulations in general. In terms of the different standards for industrial v. residential use, I've already shared some of my concerns about that with Jessie Stratton and I think the concern is, is that when you say industrial use, there's the possibility for instance, that a day care could be located at that commercial property, as is the case, for instance, the Colt's site, there's a day care there and if that site had to be cleaned up, you'd have to question whether it's a true industrial use to allow a day care to exist there.

I'm just saying that our current economy calls for a much broader array of uses of what was traditionally industrial uses, and that has to be looked at carefully and I think that Jessie has incorporated some language now, which would, that those industrial uses will require some more clarification by the Department and through a process.

So, we have reservations about it, but we also understand that if, in fact, there was an

enforceable land use restriction that really occurred, if the definition of industrial use was very carefully thought out, that it could be a workable process and I'm now speaking as one attorney at CFE. I'm not sure you know, my board of directors would agree with that. The previous testimony though is something that CFE supports.

SEN. COOK: Okay. And I will ask you as I've asked others, the most difficult part of HB6681 is the funding mechanism and putting a tax on a necessity of life, home heating oil. I live in a house with 15 foot ceilings. Believe me, it's a necessity of life in my house. Does the Connecticut Fund for the Environment have a position regard the funding mechanism for this bill. SB1189 doesn't need a funding mechanism, but HB6681 does.

CURT JOHNSON: I would say that we certainly support the concept of a funding mechanism. This, I think the difficulty with funding mechanisms is that whatever one gets floated out there is going to be attacked by somebody because nobody likes to be taxed. And if it's really a question of a tax being involved, there probably will be some unpopularity with whatever scheme comes forward.

And having said that, I do think that we do believe that for the purposes of HB6681 to be accomplished, there needs to be an ongoing regular source of funds and that this is a mechanism which provides that and it does spread the cost over a wide number of people in the state, which I think is the design of any taxation scheme.

SEN. COOK: SB1189 doesn't, it only affects a certain number of properties in the state whereas HB6681 is designed to hit a bigger number of properties. Do you think that Connecticut should move forward with the licensed environmental professional program to a large group or should we start smaller and get bigger. Is there a learning curve that you've observed in other states on this concept that we should be joining?

CURT JOHNSON: That's a good question. I am not familiar enough with the experience of other

states. One thing I do know, that all the experience is quite recent, so I just question whether we can learn a tremendous amount about any program that's less than five years old. I mean, I think the general thing in any governmental scheme, it takes several years to sort of shake out and figure out whether it's been a success or not.

I don't have, I don't think CFE has a problem supporting both bills, if that's your question, as long as the changes we suggested to the covenant not to sue is clarified within Substitute HB6681.

REP. STRATTON: Thank you. Further questions? Thank you very much, Curt. Beverly Dawes, followed by Tom Armstrong.

THOMAS ARMSTRONG: Representative Stratton, Senator Cook and the rest of the Committee, my name is Thomas Armstrong. I'm here speaking as an individual today. I am also an environmental attorney but I have been working with a number of municipal governments primarily to reindustrialize our urban centers and to create job opportunities.

I want to speak in support of both bills, generally, but I do believe both would be improved by some corrections, and I'll try and address both of those bills together.

First, with regard to the Transfer Act exemptions. I think that the proposed bill by the DEP has overlooked a number of items that should be included in the exemption and some of these items might include the following.

I'm uncertain as to whether that bill addresses any kind of change in business organization, such as would be the case of a sole proprietor changing to a corporation, or the creation of a holding company. The bill clearly does not address the issue of a change in trustee. This situation under Connecticut law is a trustee is an owner of property and therefore, if the trustee resigns or is replaced, this creates a form of transfer under the act which probably should not, and was not intended to be included in the Transfer Act.

I would add, however, that the sale of property in trust would still be included under the current provisions.

Another area of concern, and I'd like to point it out is that many of our urban cities have very large manufacturing facilities that are abandoned and vacant and these facilities are really not conducive to bringing a manufacturer in of the same size. Here in Hartford you can look at the Veeder-Root building or the Colt building and it's unrealistic to expect that manufacturers would come in of the same size.

And what this means is that many of these buildings are going to be converted through subdivision and the like and that some of these subdivisions which will either convert them into industrial, commercial or residential purposes are likely to go into condominium ownership and that separate sales of condominium owners out of this, under the current proposals, would be subject to the Transfer Act bill.

I think this is probably not conducive to reindustrializing or converting some of these large factories and I might suggest that the Committee consider as to any subsequent sale of a condominium unit, the filing of the fact that the facility is an establishment on the land records and exempting them from further Transfer Act filings.

Under one of the bills there is a definition of spill or release that is quite a broad definition, but I would suggest that the Committee also give consideration to limiting the definition of a spill or release to a release to the environment and that would include, in my view, a release to soil, to ground water, or to surface water.

Under the lender liability provisions, I would ask that the Committee consider looking at those provisions which will enable and make it easier for the lenders to lend into an environmentally impaired asset. The protections offered lenders under 22a-452b have been potentially eroded under the recent Supreme Court decision in Connecticut of

Star. That decision uses the same language as it applied to innocent landowners as it does to the lender liability provision under 22a-452b. So I would suggest that consideration be given to protecting lenders so as to encourage their ability and willingness to loan to these environmentally challenged properties.

I do support the covenant not to sue which is offered to protect lenders, but that's only available when it's obtained.

With regard to clean up standards and the like, I'm very optimistic that DEP will continue to move forward. I am hopeful that they will be able to do so by the time that this bill becomes law, but I would ask that the Committee also consider a default provision and a default provision might include clean up standards pending DEP's finalization of the bill and I offer for consideration a federal clean up standard which can be found in the federal law, known as Sub part S.

Finally, while I would like to say that no aspect of funding is pleasurable in all cases, it's usually the difficult part of the bill. I think it is important that the bill's bonding mechanisms and the heating oil assessment, it does offer, in my view, minimal impact with maximum benefits to the recipients and particularly the Connecticut residents. I am confident that this Committee, while there has been some discussion to the contrary, but I'm confident this Committee can balance the needs of the heating oil industry with the needs of the homeowners.

REP. STRATTON: Thank you very much, Tom. Are there questions? Coming down the home stretch here, people are quieter. Dennis Waslenchuk followed by Greg Sharpe.

DENNIS WASLENCHUK: Ladies and gentlemen of the Environment Committee, thank you for this opportunity to address you today. My name is Dennis Waslenchuk. I am the president of the Connecticut Ground Water Association which has about 350 members from the environmental professions.

I'll limit my presentation here to the things that you may not have already heard today. My written testimony is more complete.

With regards to environmental professional qualifications, many members that I've talked to have expressed concern that there is special treatment afforded to licensed professional engineers, that that special treatment is unfair and unwarranted and the concern is that licensed professional engineers would not be required to have enough formal education in an environmentally related discipline, whereas all others seeking licensing would.

With regards to the treatment of standard of care to which environmental professionals would be held, there is general agreement within my membership that bills definitions of standard of care. However, there's grave concern over a contradictory provision in HB6681. Here the bill unfairly makes the LEP responsible for any violation of hazardous waste and water pollution regulations, whereas in observance in the standard of care, the LEP should be responsible only to the extent that he or she performs substandard work.

I have given you recommended substitute language in my written testimony that could be inserted at line 214 to limit the ability of the commissioners to take action against the licensed environmental professional to those circumstances stemming directly from the failure of the licensed environmental professional to perform up to the standard of care.

With regards to insurance, I cannot speak for the members to say that we do or do not support including them, but one comment is nearly unanimous. An informal poll of CGA members has confirmed that the personal insurance coverage specified in HB6681 is unavailable and it has confirmed that the accidental contamination coverage in HB6681 is unavailable to the most part. No insurance company now offers to underwrite the individuals within a firm and that is specified in the bill.

Only the largest firms are able to obtain environmental impairment insurance. As I read it, what you're asking for is general liability insurance without a pollution exclusion. All general liability insurance policies carry a so-called pollution exclusion. Only the largest firms can have those waived.

Even if these coverages were to become available, the bill would raise the cost of doing business in Connecticut. By my reckoning, insurance costs to a firm alone would approximately double.

Because the insurance requirements as written in HB6681 are problematic, the CGA members do recommend that those requirements be dropped from the bill.

There is a loophole in SB1189 in its intent to insure the site clean ups are done properly when not under the jurisdiction of the DEP. The loophole is due to the fact that a site clean up is only as good as the site investigation upon which it's based, yet the bill does not explicitly hold LEPs responsible for adequate investigations. Unless the bill specifically requires that site investigations meet the prevailing standards and guidelines, whether or not any clean up is performed, then many polluted sites will go unremediated.

The loophole can be minimized by explicitly incorporating the word investigation into the verification procedure followed by licensed environmental professionals. I have given you suggested language to add to two definitions in the bill; the definition of remediation standards which would reference applicable investigation standard practices and guidelines and the definition of remedial action which would mean the investigation and containment removal or abatement of pollution.

If the recommended language is incorporated in the bill, then it will be implicit in each use of verification by a licensed environmental professional that the site-wide investigation is also verified as meeting DEP's guidance and

standards.

Finally, the term verification in SB1189 is not defined, but I think it must be defined to avoid a predictable problem. Environmental professionals cannot provide certainty that a site is not polluted since pollution is most often hidden from view beneath the ground and since it is impossible, or at least impractical to turn over every stone. The limitations in our ability to detect pollution must be recognized.

Hence, I offer the following definition: verification or verify means the rendering of an opinion by a licensed environmental professional that an adequate site investigation has been performed in accordance with prevailing standards and guidelines, or that a clean up of a defined occurrence of pollution has been completed in accordance with the remediation standards. Thank you.

REP. STRATTON: Thank you very much, Dennis. I appreciate your comments along the process of all of this. Representative Norton.

REP. NORTON: Has anyone ever tried, would there be anything like enough money raised if in some way every environmental professional in the state were to try to form a mutual insurance set up. Like, I don't know, I think some docs do that and things like that?

REP. STRATTON: A lot of firms are self-insured, for the record.

REP. NORTON: And I would imagine that it would be plausible for at least most environmental firms to counter self-insurance in some ways. I would imagine there's significant dollar amounts involved. But if every licensed professional in the state, well, what will become every licensed professional in the state were to associated themselves, mutually, for the purpose of insuring themselves as class, do you think that it would be possible plausible for enough money to be raised to anticipate and take care of the dollar amounts that

might be involved is just too big a number for this community to take on?

DENNIS WASLENCHUK: I believe that's a reasonable solution worth looking into. One of the major insurance underwriters now called TERA began as a risk retention pool, I think nine firms began that. It's now national but with only nine firms and they were granted, relatively large engineering firms. They were able to set up what has become a very successful insurer. I think it could probably happen again.

REP. NORTON: Do you have any sense, I don't, and I'm sorry, this may have come up earlier, and I've been running around. I had a group of fourth graders come up and they trump everything. But they, one of them said the bass, but how many people in the state are in this, are men and women likely to become such a thing. Does anyone know that?

DENNIS WASLENCHUK: Based on my knowledge of my membership and the CGA is the major organization of professional, environmental professionals, I would say perhaps 60 people could qualify, notwithstanding the insurance requirements which they may not be able to meet now. They could qualify with respect to the education experience requirements and be able to pass the test.

REP. NORTON: Six zero.

DENNIS WASLENCHUK: Sixty people, yes, six zero.

REP. NORTON: In the state? Thank you.

REP. STRATTON: Are there other questions? If not, thank you very much. Greg Sharpe.

GREG SHARPE: Thank you. I'll keep this short. I know you've been here a long time. I did want to start by I guess I should introduce myself. I'm Greg Sharpe. I'm an environmental lawyer with Murtha Cullina Richter and Pinney and I've been working with the clean up, both the clean up standards task force and Commissioner Holbrook's Transfer Act task force.

to GB areas. Now it would not have any limits on who could pursue a clean up in a GB area using a site professional. The Committee took a slightly different approach. DEP felt that if it could make an initial determination of the conditions at the site through the filing of this environmental condition assessment form, that they would be willing to let site professionals look at sites in GA, GB, or GC areas. In other words, you theoretically have a much greater coverage of sites under the Committee's proposal by not artificially limiting it to GB, something the Committee might want to take into account.

Our voluntary program, I'm quick to add, our voluntary program, however, is somewhat limited. We have both a voluntary program and the regular Transfer Act program. The Transfer Act program applies to establishments, which is the defined term in the statute. The voluntary program would apply to establishments to sites on DEP's inventory which is about 750 sites where there are known releases of hazardous waste as well as any site proposed by a municipality. So that would be our coverage on the voluntary site, and I think the Committee will have to decide which vehicle is the best way to go.

With respect to DEP oversight of the process, there were some criticisms this morning to SB1189's approach. We were persuaded that there should be an effort to involve as much public participation as possible in these transfer act clean ups, and so what we did provide was that a party would have to submit a schedule to DEP for his clean up and would have certain time lines whereby he must proceed.

In other words, DEP didn't want to see a situation in the Transfer Act where you submit your form and the Commissioner says okay, you can go ahead and voluntarily clean it up and then nothing happens. And what I think the consensus view was that the limited follow up involvement of DEP was essentially a protection to the public.

For example, what happens when the Commissioner makes a determination that a site can go private

and then based on the work that is done, it becomes obvious that there's a major issue at that site. We didn't want to have the Commissioner be prevented from taking that site back and I think that was the rationale that drove us in the direction that we went.

With respect to the public participation element, Curt Johnson has spoken about that. We added that specifically to provide that people who lived in the area could find out what's going on. Now, and I know it's a long bill, but if you look in the voluntary part of the bill, you will see that public participation component is not there.

In other words, the public participation component in terms of notice and so on, is only in the Transfer Act part, not the voluntary part and frankly, the reason for that was, the people said look, if we're trying to get people voluntarily to clean up their sites, how are they going to feel if they have to post a sign that six feet by four feet by whatever, telling everybody they've got a contaminated piece of property.

And the sense in the Committee was, if we can get people to voluntarily clean up their sites, maybe we could forego that public participation element, if you will, or the public notice provision.

CFE has, however, indicated that the legislation should be clarified to give notice under the Transfer Act part prior to the actual undertaking of the remedial action and that can easily be drafted in. That's a technical change.

With respect to the insurance issues, you heard from the people in the business, and I won't belabor that, but I did want to indicate that we did not put in an insurance provision in the licensed environmental professional, specifically because we were concerned that if the insurance market changed as it has in the environmental area, a number of times in the last 15 years, and suddenly that insurance became unavailable, all of our efforts to privatize and streamline the program would be down the drain with no ability of anyone

in the State of Connecticut to do anything about it. In fact, Chairman Gillies was the one who pointed out that when he was Insurance Commissioner he came on a statute that required for any carnival or similar kind of activity, there was a legislative requirement that you have \$10 million in coverage. The only problem was that no carrier offered \$10 million in coverage, so you had a law that either went completely violated or nobody ever had a carnival.

So we're a little nervous about imposing an insurance requirement in a fairly volatile situation and we felt that there was sufficient protection in our bill by having the Commissioner be able to pull back some of these private clean ups if necessary, that the public would be protected should a site become a lot more complicated than was originally thought.

I should add, also, in the area of emerging markets, this licensed environmental professional clearly will create a market for some savvy insurance company to come up with a product. There is already a product for insuring site assessments and obviously, if a bill like either one of these bills became law, you will create a market where some underwriter is going to be willing to insure the clean up.

In other words, if a licensed environmental professional can satisfy the quality control objectives of the underwriter, the underwriter will offer insurance much like we have title insurance in Connecticut for title searches. So, my suggestion to the Committee would be, rather than dictate specific insurance requirements, let's let the market decide and let the buyers of these services ask the provider of the service, well, what is your insurance, how much do you have, what kind do you have, just as you would if you had a tree man come over. The first thing you ask him is, before you go up the tree is, are you insured? If so, how much, etc. etc.

Finally, with respect to covenants not to sue, at least I hope that's what you all do, with respect

to covenants not to sue, oh, a new question, sorry about that, I'm not here to talk on any tree bills, with respect to covenants not to sue, again, the Committee debated that issue and it was pretty, I would say, fair to say, controversial topic and the bottom line was, we did not include a covenant not to sue in our bill, even though there are many good reasons for it and certainly wearing an environmental lawyers hat who represents companies that would like to have one would be great in a number of circumstances.

But the Department had some significant concerns about just how it would work, what the scope would be, what happens for example, some of the issues. If the standards change after the Department's given the covenant, what happens? What happens if the, you have a situation where there's been contamination and the site professional was never investigated that part of the site. I think Dennis' comments address some of those concerns.

But it got to be an issue where it didn't seem to be absolutely essential for our bill and if it were to be done as Chairman Gillies indicated, it ought to be done very carefully so that everyone's interests are protected.

Finally, I would note for the Committee's benefit, a number of the technical concerns as opposed to the big policy ones, that is the scope of some of these exclusions and some of the fine tuning, will be the subject. Peter has convened another meeting of our group for tomorrow at 1:00 to see if we can't tweak some of these things and provide the Committee with some follow up input. I don't know what your voting, I know that you're ultimate deadline is April 7th, I don't know when you'll take it up but we will try to get to you as many of these minor, they're not minor, but as many of these detailed suggestions as has been made.

Because, frankly, listening to them, I don't think there are any policy issues involved. I think it's a matter of just putting the words in the right places. So with that, I'll let you have your lunch or do whatever, or I'd be happy to answer any

questions if anybody has any left.

SEN. COOK: Thank you, Greg. If you could get us some information after Tuesday's meeting, Wednesday morning would be a very good time for us to have it.

GREG SHARPE: We'll do it ASAP.

SEN. COOK: Thank you very much. Representative Norton.

REP. NORTON: I just wanted to say I took a course in which you were a guest professor for the day and I felt very good today not feeling obliged to take any notes. (Laughter) But it was a very good crash course in RCVA.

What I wanted to ask is, between the two bills, you're obviously involved with SB1189. Are there things in the HB6681 that we really ought to move forward with, are there things in that bill which aren't in yours, not because you didn't achieve consensus in that area, but you just didn't seek to tackle, and I'm wondering. And I'm not trying to pit one bill against the other, but I know that's sort of the effect.

What I'm just interested in knowing is, what in HB6681 is present that we should move forward with that you didn't in SB1189?

GREG SHARPE: Well, let me just turn it around for a second. What we did on SB1189 was, as I indicated, tried to come up with a Transfer Act reform bill that it would address the concerns that had clearly been expressed by the lending community by buyers and by sellers and by lawyers and consultants about what's technically, and to some degree, substantively wrong with the act.

We did not look at the overall issue of, for example, municipal brown fields properties and how to get those back in. Those things, we knew that Jessie's bill was addressing those. It was a whole parallel track and we just didn't focus on them. So, you know, for example, the stuff about the bonding and the heating oil tax and the fund and

all those things, you know, we had about eight weeks by the time we were convened to come up with what we came up with and you know, a lot of these other issues that I would say are much more far reaching and in many cases ambitious, we just couldn't get involved in.

What we tried to do is limit ourselves to, here we have this bill, here we have the Transfer Act as it exists now, how do we fix it?

REP. NORTON: May I ask another question? You were talking about how consensus wasn't reached or, and maybe it wasn't the goal to force a consensus in any case on contract not to sue, or covenant not to sue and you gave a couple examples. One being, what if standards changed about, I guess, cleanliness, subsequent to a covenant and what if, I don't know, one part of the site, were you giving a couple examples of problems with covenant not to sue or are those a pretty good part of, is there a long list. I mean, could these covenants be written pretty discreetly and take care of a lot of those problems and at the same time offer real liability protection?

GREG SHARPE: Could they be? Sure. I think that the difficulty the Committee had again, with our charge was, we could have spent especially, we didn't have that many lawyers on the Committee, but all it takes is two, you know, to create a real long process.

And one of the things that you want to be mindful of, for example, there are covenants not to sue that EPA uses. But when you look at those covenants not to sue in individual cases, these aren't legislative, when you look at these individual covenants not to sue, they've got all kinds of reopeners and but if, and you're not covered if, and what we were concerned about was trying to write legislative language that everyone, and when I mean everyone, I mean the DEP would be comfortable with, the environmental groups would be comfortable with, industry would be comfortable with, it was just a big job.

But could you do it? I'm just suggesting some of the things that you'd want to be mindful of before you gave the covenant. And the other thing, the other comment I heard that I really didn't understand was that it would cut off private rights of action and I think at least the way I heard the discussion today, it wouldn't, Beth's comments were that it ought to be extended to provide contribution protection. That's what EPA does in a super fund site, but that is a specific document that is tailored for the site with lots of reopeners and so on.

REP. NORTON: I've got to ask you a couple more question, if I may. There have been some comments, I think from the Connecticut Fund for the Environment and maybe others, about, concerns about the DEP not being, you seemed to say in your testimony that you wanted the DEP to be involved toward some later parts of the process to guard against a situation which developed maybe differently than you might anticipate or whatever.

One of my gut instincts when I was hearing the recommendation that DEP should be involved in the early part of the process is, and I don't mean to put this rudely, but it might defeat the whole purpose of the legislation to acquire action and what have you and reviewed by the DEP early on. That's just a concern.

And I was wondering, I think you were in the room and you heard some of the discussion about making sure DEP was there, and I forget some of the terms of art about the various to review plans to be part of remediation assessments, maybe it was some of the, could you comment on whether or not you see it as problematic to have the DEP involved in another earlier stage in this whole deal?

GREG SHARPE: Yeah, I can comment. And that was something that I think everyone in the Committee felt was a real strength of the proposal as it was advanced. That is, that DEP would be under a time deadline to review this initial environmental condition assessment form and make an early determination so that all the decision makers, the

banks, the buyer, the seller, whoever, would know, all right, this is going to be a DEP supervised clean up, or it can go the private route. And DEP indicated they were very confident that with this form, this will be similar but not the same as, the federal super fund form. EPA uses a similar form. It just takes them about 10 years to do it.

DEP felt that they could use that form and make an early determination and send people on their way if they were going to go the private route very quickly. Then the concern became, what if conditions change down the road. Don't we want some sort of protection for the public and so on, and that's why, I don't want to overstate the amount of DEP involvement.

What happens is, there's a requirement that as the studies go forward, they be submitted to the Department. There's no review requirement. On the other hand, let's take a for instance, a legislator is notified by his constituents about a clean up that's occurring on the voluntary track and the legislator asked the Commissioner, you know, from what I've heard, this seems to raise some concerns. Maybe things are more serious than we thought. Would you look into it?

Well, the Commissioner looks at the plans and the documents that have been submitted, he might say, oh, yeah, there's really, you know, we thought there were 10 parts per billion. It turns out the interim studies that have been done since the original filing indicate there's 10,000 parts per billion and we didn't think there were any wells in the area and it turns out there's a well next door, okay?

Now, do you want to have, the Committee felt, in a situation like that, you want the Commissioner to be able to say, I made my initial cut based on the information you provided, but for very good reasons, I now want to pull this back into the non-voluntary, into a DEP supervised clean up. So that all it is, is a safety net for those sites that turn out to be a little worse than everybody anticipated up front.

And we don't think that's going to have that chilling an effect on people because what will happen is, people are going to try to make their, for market reasons, they're going to want to make as detailed an assessment as they can up front, before they submit the forms to DEP> So the number of sites like that should be fairly small, but we did want to have that safety net.

REP. NORTON: You're talking about insurance for the people who would be the licensed environmental professionals. I mean, we get caught up, we had a bill a while back to make sure chiropractors got insurance because someone was, their child was in essence quite badly damaged by a chiropractor and this guy didn't have any insurance. This person won a \$5 million case against him. And you're in the business. Do you really think that that's enough, sort of the market force of having, I guess, the person who's buying the site and going to be fixing it up or whatever, to just sort of caveat emptor is just sufficient for looking into whether or not there should be insurance. Do you think that is?

GREG SHARPE: I really do. Let me clarify that. Fortunately, the lawyers aren't allowed to sign these environmental verification forms, so we're not going to be on the hook for that.

The reason I say that is, there's already so much pushing the players into full disclosure. I mean, you have the banks, most of these deals, at least the major deals are going to involve a lending institution. The lending institutions will police, to some degree, the consultants that are used in the first place. Many of the larger banks have consultants on staff. Helen Sahi testified today about Shawmut and how they have people who look at these.

So you have many of the market forces, are pushing people in the direction of let's make sure this is a legit analysis and I think what will happen is, as I say, number one, you'll open up an insurance market that will be available to protect the consumer ultimately and in the short term, I think

people will clearly, if they're going to rely on an environmental professional to do the sign off, and the buyer, for example, knows that that's all the review that there is, that he's not going to be covered, a buyer's not going to be necessarily protected by a DEP reviewer, I think in most, well, certainly any client that comes to me, I will say, what kind of insurance does this guy have?

REP. NORTON: Well, that's what I'm wondering. But even if it doesn't, even if it's a remediation that is not that big of a project where you're not consulting Murtha, Cullina & Richter and Shawmut isn't involved, and you're not going to one of the bigger outfits in the state, but it's, I mean, maybe I'm missing the boat. Maybe none of these projects, maybe all of them involve pretty sophisticated counsel and bankers. But are there some at the lower end?

GREG SHARPE: No. Yeah, you're right. I mean, there are definitely some at the low end with the smaller deals. You may have some deals that, for example, don't involve a lending institution. You may have a cash deal with a small business person who takes a mortgage back. That could happen. But those things are happening now.

REP. NORTON: Okay.

GREG SHARPE: And all I'm concerned about is, to invoke an insurance requirement to apply to what I honestly believe to be a very small percentage of the sites, that runs the risk of killing the whole, you know, the whole reform. I just don't know that it's warranted.

REP. NORTON: Thank you, Madam Chairman.

REP. STRATTON: Very definitely. I have two quick things. You're going to have to indulge a minute more or walk out on me, too. One's a comment and the other is sort of a question, but the first is, I'm sure you're probably aware and while it doesn't relate to all the sites, that when the Department has gotten involved in the urban sites initiative, they have required insurance, I think, actually on

the performing arts center up here they required \$15 million insurance of the people doing that investigation so that, you know, those are things that are clearly out there and that somebody has felt was important to come up with.

GREG SHARPE: But state money was involved there, I think, wasn't it?

REP. STRATTON: Yes. But we felt again, when state credibility and public health are involved in these issues.

GREG SHARPE: But I guess what I'm saying, the state at that point was the sophisticated investor in the project and wants to --

REP. STRATTON: Right. And that was the contract. The other really comes back to my misreading of SB1189, and I would like to delve into something here.

GREG SHARPE: Sure.

REP. STRATTON: Because as I went back after you said a municipality could undertake this voluntary process. If, however, a municipality under SB1189 were to decide they wanted to investigate or clean up a contaminated property that was not on the state's list, I had assumed that the whole process in SB1189 was dealing with sites the Department was already aware of because they were on that list.

Your reading is on Page 11 of the bill, on the bottom, lines 373?

GREG SHARPE: Right.

REP. STRATTON: If you have a situation where a municipality may undertake a voluntary clean up of a site that is not on that list, what is the legal status of their responsibility for that site in the Department's eyes if they have filed an environmental condition assessment form with the Department. Are they then potentially orderable to clean it up?

GREG SHARPE: Well, the legislation doesn't really attempt to change anybody's liability. That was one of the other things we tried to stay away from. All we were trying to do was make the voluntary process available to municipalities.

In other words, the way this evolved, we started off saying, anyone with a Transfer Act site could go through the voluntary process. Anybody who was on the list, the dynamic inventory, and then we realized one of the major players in this whole game are the municipalities. So we said, let's add municipalities as a potential applicant, if you will, for the voluntary process, but their liability would exist under the other statutes.

In other words, if the municipality were the owner of the property under 433, they'd be liable.

REP. STRATTON: And I guess the point and this really is a policy kind of issue, the point under HB6681 was to provide a mechanism where the municipality could determine whether to get involved in the process. They can conduct that site assessment, there's money available for them to conduct the site assessment prior to foreclosing or anything else. Or even if they are already the owner, they can go through the whole site assessment process without being any more on notice, or any more, what do I want to say, making the Department any more aware of that process.

And I think one of the rationales behind that was to say, if we're serious about wanting people to come forward and volunteer to clean up sites, we've got to give them the opportunity to find out what they're into and we dealt with this with the dry cleaners last year, that people don't investigate, because they don't want to find out.

GREG SHARPE: Right.

REP. STRATTON: And it seems to me that if we lump that category of sites into this process, you remove that sort of incentive that okay, you can go this far without making yourself worse off than you currently are and have the very good potential that

you'll be in a position to really undertake a voluntary clean up.

GREG SHARPE: I think that's a fair comment and our bill does not carve out, this bill does not carve out a safe harbor for the municipalities. In other words, they would take their changes. If they filed the environmental condition assessment form and it turned out the Commissioner said, whoa, this is a mess, then clearly he knows about site X,Y,Z that's a mess. And to that extent, the municipality would be subject to whatever enforcement action the Commissioner might otherwise want to pursue.

Although, frankly, my experience with the Department, municipalities are in sort of a favorite status when it comes to that. Usually those things get worked out voluntarily.

REP. STRATTON: Do you and I have wondered all along, and you have actually answered the question, which I should have asked a long time ago more specifically, what the site, the environmental condition assessment form would involve. Do you have any, I mean how in depth and how expensive a process is that? Or how does it compare with Phase II, I guess is what --

GREG SHARPE: There was a fair amount of debate on that, and what we tried to do with the Department's help was basically not require more information than would be available in a Phase II. That is, in most of these sites, you're going to have a Phase II done and that's the information you plug in.

We also had a default, excuse me, we also are not requiring that you answer every question on the form. In other words, if a party does not want to invest, you know, \$300,000 to do a complete study, and fills out the form and says, unknown, unknown, he runs the risk, the Department says well gee, if you know that little, we're going to take the site.

But if it's clear from the context of the site, or the Department has other experience with the site, that there's really no harm in the site, then the

Commissioner can make that judgment and we put in some standards that would guide the Commissioner for making that determination. But the goal was not to make it, the goal was not to make it more extensive an investigation than a Phase II>

REP. STRATTON: But essentially could be the same Phase II that we were trying to make the funds available to carry out because of the cost of it. Are there other questions? Representative Maddox.

REP. MADDOX: Just one basic one, because it's been a while since I reviewed SB1189, I just skimmed it. My concern, I just want someone to put my mind at ease on this because I'm a very, let's say a very large corporation. We had one in earlier testifying in favor of this, who have several properties scattered about.

If we make these changes in SB1189, does this make it easier for them to take all their environmentally damaged properties, bundle them together under a separate holding company, separate corporation, they just sit it over there. It's my understanding then that they could just transfer all these assets to that separate corporation and then basically what they're attempting to do is sort of dump this property. Maybe they get that heavily mortgaged, they bankrupt it and they say, you know, because I believe you could turn it over to the bank, say here it is, your problem now and then if you will, protect all the other assets of their corporation. Do you see what my concern is with this bill?

GREG SHARPE: I do, and --

REP. MADDOX: Under existing law you can't do that, because if you go to transfer it, we'd say, nope, wait a minute, you've got to clear this up, you know what's going on.

GREG SHARPE: I'm not sure whether under existing law you can't do what you've just suggested anyway. But I think what we tried very hard to do was cover, the way the language is written, we cover all transactions involving changes in ownership

unless they're specifically excluded. So that what a lawyer has to do is find a specific exclusion that matches his transaction. Otherwise, he's subject to the act, okay? Number one.

REP. MADDOX: But we are adding the exclusions in.

GREG SHARPE: Yes, you're specifying the exclusions.

REP. MADDOX: The picture I painted for you is what my concern is with this?

GREG SHARPE: Yes.

REP. MADDOX: You know, I must admit that I have a certain amount of, no offense to you, but a certain amount of distrust with some fancy attorneys, not like yourself, you're training great ones like Representative Norton here who could think this up and

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million dollar liability out there, or a big corporation, will simply now, we've got this neat little thing through, we'll structure another corporation, we'll transfer all these assets into it, they're only worth \$100 million but it will cost us a billion to fix them up to protect the rest of the assets of the corporation, if you will, and then we just basically walk away from it.

I'm interested in doing something for those people who really want to take care and clean up.

GREG SHARPE: To the extent that the ownership changes hands, you're caught in the Transfer Act. To the extent that the ownership of the establishment changes hands, any, we even got into intra and inter-corporated transfers. If you have a majority ownership of the stock changes hands, you're caught in the Transfer Act.

REP. MADDOX: All right. Let's make it personal. I, Bob Maddox, let's say have three properties. And you have it there. I have them all as sole proprietorships. I think one of the things you

have in here is, that if you transfer to a corporation.

GREG SHARPE: You don't.

REP. MADDOX: I incorporate. I form three corporations. Or we'll make it simple. I form two corporations. One corporation gets the parcel that I transferred to of the environmentally damaged property. The other corporation gets the rest of my assets.

: Your elephant farm?

REP. MADDOX: My elephant farm, yes. And then I basically, you know, the idea is to protect the rest of my assets from this environmentally challenged piece here and I just walk away from it.

GREG SHARPE: but you won't, what I'm saying is, at the point where you individually sell, transfer, however you want to express it, to the corporation, that's a change in ownership that is covered by the general statement and you will not find an exclusion for when an individual conveys to a corporation.

REP. MADDOX; I'm sorry, I guess I misread it then. I thought that was an exclusion if you changed class, maybe I'm confusing the two bills. But if you change classes of, I'm still 100% owner of two things, it's just that I changed it to a corporation.

GREG SHARPE: But the point is, the point is, that you have changed from your individual ownership to X,Y,Z Corp. That's still a transfer of ownership and there's no exclusion that would enable you to get out of that.

REP. MADDOX: I'm sorry, I may have misunderstood when I read it in there. I thought that somewhere along the way we had that ability to change status from sole proprietorship to a corporation or to partnership or whatever. I know you can change minority partnerships around without being kicked in.

GREG SHARPE: Right. The minority ownership would be excluded, but any majority ownership transfer would be --

REP. MADDOX: Well, I guess I could stick it to my brother or so, I could say, here, you --

GREG SHARPE: You could definitely sell it to your favorite sibling.

REP. MADDOX: -- can take care of that. But, okay, I'm sorry. UTC wanted it or something.

GREG SHARPE: Yeah, and all UTC was saying, what UTC was saying was that the Committee goofed by excluding, by listing as an exclusion, one of the exclusions that's already in the statute. Okay?

REP. MADDOX: Okay.

GREG SHARPE: The statute already excludes corporate reorganizations not substantially affecting the ownership and we goofed in not including that. We got so carried away with drafting our own stuff that we didn't look at that particular one.

REP. MADDOX: You understand what my concern is. Do you believe there are any exclusions there that are going to allow that to occur? That's a bottom line.

GREG SHARPE: Well, I mean, I'm not prepared to sit here and say that, you know, in a year or two, some highly intelligent corporate lawyer couldn't figure out a way to do what you've said, but we have really tried in this bill to prevent that from happening because by narrowly, by covering everything, unless it's excluded, and then drafting the exclusions very narrowly.

And I think the testimony here today was, we drafted the exclusions too narrowly because there are clearly some transfers that shouldn't be covered that aren't excluded in our version.

REP. MADDOX: Or even a developer. I buy 100 acre parcel knowing it's environmentally challenged but

I've been able to identify that's the 10 acres at one end of it. I get it for higher prices, and then subdivide it off.

GREG SHARPE: A division will be allowed, but it's got to be with notice to the Commissioner and so on. If you look in the definition of transfer of an establishment on Page 2 of the bill, line 49, any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred discharge, blah, blah, blah. You could carve out the clean piece.

REP. MADDOX: Okay. But my thing is then, I can then, I can carve out the clean piece, sell that to my new corporation for \$1, that is from there and then bankrupt the other one. I mean, that's my concern with this stuff.

GREG SHARPE: But see, you could do that anyway.

REP. MADDOX: How can I do it? I can't do it now in existing law.

GREG SHARPE: Sure.

REP. MADDOX: Why? Oh yeah, I can, but --

REP. STRATTON: At least here you have a notice of it and it's regulated to 50 --

SEN. COOK: That's why there's foreclosures in the municipalities in trying to decide whether to take them and clean them up or not.

GREG SHARPE: Okay, but if I attempt to do that, I can still touch my other assets, though. Because I'm 100% liable under the super lien, they're going to come after me.

REP. STRATTON: But you still would be here.

SEN. COOK: You still would be.

REP. MADDOX: You're still going to be?

GREG SHARPE: We haven't changed the liability.

REP. STRATTON: You'd have the assets if you sold it off. You could go play lawyerese outside the door.

GREG SHARPE: Yeah. I mean I can't say that we thought of every single permutation, but I can tell you the Committee spent a lot of time on this section trying to make it a very general applicability provision with very finely drawn exclusions.

REP. STRATTON: Are there other questions?

SEN. COOK: The last thing I'd like to just point out is, when you have your meeting tomorrow, would you bring up the concept of the covenant not to sue.

GREG SHARPE: Sure.

SEN. COOK: And perhaps there would be an incentive at this point to, since you have the new form, that would essentially let the licensed environmental professional do certain kinds of sites, but DEP could decide that there's a site that's too complex and that they don't want to spin it out but indeed want to keep it in, that may be a place where we could put the covenant not to sue in order to provide an incentive to get that site cleaned up.

If it's cleaned up to today's standards and the plan is approved and the ongoing monitoring and so forth is all in place, then the state may decide that that's where the narrow circumstances would exist that they could come in with a covenant not to sue.

GREG SHARPE: And that's what Chairman Gillies I think was indicating to the Committee and he and I talked about that outside, so I'm sure that will be definitely probably the first item of discussion tomorrow.

SEN. COOK: Okay. Thank you.

REP. STRATTON: Are there any other further questions?

SEN. COOK: Beware of being the last speaker, Greg.

REP. STRATTON: You've been very helpful. Thank you all

very much. And at this point I would adjourn the public hearing.

And the Democrats will remain in this room for a caucus if we can find them and Republicans are caucusing in the Senate conference room.

(Whereupon, the hearing was adjourned.)

ERI

Comprehensive Environmental Services

April 3, 1995

Testimony on behalf of
ENVIRONMENTAL REMEDIATION, INC.
By George Gurney

with respect to Proposed Bills 1189 and 6681

Thank you for this opportunity to provide testimony regarding the above bills. By way of background information, I am a Certified Professional Geologist (CPG). I have worked as a hydrogeologist, investigating and cleaning up releases of hazardous waste for the past seven years in Connecticut and for almost nine years in the Northeast. I also have thirteen years work experience in the field (or sub fields) of geology. At present, I manage an environmental investigation group for Environmental Remediation, Inc., located in East Hartford.

I strongly support revisions to the current Connecticut Transfer Act and the associated proposed Licensed Environmental Professional (LEP) program. Under the current system, there are too many sites ("Establishments") and not enough Department of Environmental Protection people to handle the backlog of sites. The LEP program should help to solve this backlog problem.

There is one point regarding the proposed Transfer Act Revisions, however, with which I disagree. This is the proposed experience requirements of the LEP. Under the proposed regulations, ten years experience of investigating releases is required until an exam is developed. After the exam, the experience requirements are reduced to eight years. The investigation of hazardous waste sites did not take off until the middle 1980s, coincident with the re-enactment of Superfund. As a result, there are many people, such as myself, who conduct professional and thorough investigations, but because of the youth of the industry, do not have the requisite ten years of specific experience. The proposed LEP requirements appear to be selective and favor a small group of individuals, who have the requisite experience. The rest of us are excluded, in part, from making a living, at least until the exam is developed.

My recommendation is to make the experience requirements consistent before and after the LEP exam is developed. The experience requirements should also be consistent with other licensing institutions. For example, my CPG certification required that I have five years working as a geologist. The Massachusetts Licensed Site Professional (LSP) program mandates at least eight total years of experience. A professional engineer (P.E.) license, in comparison, requires only four years of work experience.

In closing, I believe that the revisions to the proposed Transfer Act are good. However, the interim LEP experience requirements of ten years would initially exclude many capable, experienced people from the licensing process.

Sincerely,

George G. Gurney, CPG

Testimony on behalf of
Shawmut Bank Connecticut, National Association

with respect to Raised Bills 1189 and 6681.

Shawmut Bank Connecticut, National Association supports, with comment the above referenced bills having to do with the transfer of hazardous waste establishments and the remediation of contaminated real property.

With respect to Raised Bill 1189, the privatization of certain Department of Environmental Protection activities, and enabling mechanisms such as the creation of "Licensed Environmental Professionals" (LEPs), adds certainty and speed to the remediation and verification process. These mechanisms should have the effect of enabling loan transactions to move forward quickly with the certainty that the remediation has been performed in accordance with applicable regulations.

Although the bill allows some relief to lenders by clarifying that a Transfer Act filing is not required upon foreclosure, this filing exclusion does not eliminate the filing requirement upon the bank's transfer of that property to a buyer. We would prefer to see the exclusion extended to transfers by institutional lenders. Such an exclusion would facilitate the sale of foreclosed properties and generally assist in returning properties to productive use.

The new "Form IV" allows for a verification process of sites that have been remediated but are subject to long term monitoring. It does not, however, take into account those sites where sources of contamination have been eliminated, a remediation plan has been approved, but remediation as well as monitoring is long term. If the remediation and monitoring plans have been approved, a Form IV filing should be appropriate.

With respect to Raised Bill 6681, the privatization of certain Department of Environmental Protection activities and enabling mechanisms such as the use of LEPs and covenants not to sue, adds certainty and speed to the remediation and verification process. By legislatively mandating LEPs to maintain liability insurance, however, provisions of the Bill may prohibitively increase the cost of performing site assessments. The insurance may also not be available in the future thus making it impossible to comply with the law.

There are also discrepancies between Raised Bill 1189 and Raise Bill 6681. For example, LEPs may perform work at any Transfer Act site as per raised Bill 1189 should the Commissioner deem it appropriate. however. in Raised Bill 6681 precludes work in certain areas which overlap in Raised Bill 1189.



United Technologies Building
Hartford, Connecticut 06101
203/728-7000

002624

**Testimony of Fred Johnson
Director, Environmental Remediation
United Technologies Corporation
to the Environment Committee
Monday April 3, 1995**

**Re: Raised Bill 1189: "An Act Concerning Revisions to the Hazardous
Waste Establishment Transfer Act and Hazardous Waste Site
Remediation."**

**Dear Representative Stratton, Senator Cook and Members of the
Environment Committee:**

**I have had the opportunity to be a member of the task group that has
recommended the changes to the subject bill before the Committee today.**

**The task group was made up of a diverse, experienced and talented mix of
stakeholders that included industry, banking, environmental groups, the
DEP, environmental consultants, lawyers and municipal officials. In just
two short months this group remained focused and dedicated to produce
what I believe are well reasoned changes and additions to Connecticut's
Transfer Act that are mindful to the views of all stakeholders.**

The utilization of this type of task group with representation from various stakeholders is consistent with United Technologies' philosophies and should be a model for future regulatory initiatives. Commissioner Holbrook and Chairman Gillies are to be commended for their leadership in making this task group a very efficient and constructive process.

The revisions and additions to the Transfer Act proposed in Bill 1189 provide a better defined framework to conduct remediation at both sites being transferred, and at contaminated sites where no imminent transfer is contemplated. The bill also addresses the licensing of environmental professionals. Such licensing defines a relatively rigorous minimum standard for private professionals to be empowered with the oversight and certification of site clean-ups. This provision will raise the standard of care within the environmental profession, and, more importantly, free up valuable DEP staff resources that would be better directed at the more complex environmental issues.

Under the definition of "transfer of establishment", UTC feels strongly that the following exclusion should be reinserted (as subsection "L") to make it clear that intercompany transfers are not intended to be covered:

**"CORPORATE REORGANIZATION NOT SUBSTANTIALLY AFFECTING
THE OWNERSHIP OF THE ESTABLISHMENT".**

In consideration of the above, and the fact that the bill's implementation will not require additional taxes or funding, United Technologies fully supports this bill as a benefit to Connecticut's economy and environment.

002626

I thank you for this opportunity to address this committee, and to
Commissioner Holbrook and Chairman Gillies for the opportunity to
participate in the Task Group.

Sincerely,

Fred W. Johnson (WJ)

Frederick W. Johnson
Director of Environmental Programs

cc: **Commissioner Holbrook**
P. Gillies, Esq.
L. Carothers

HRP

ASSOCIATES, INC.

April 3, 1995

Senate Environment Committee
Legislative Office Building
Capitol Avenue
Hartford, Connecticut 06106

RE: HRP COMMENTS ON SENATE BILL #1189 - "AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND HAZARDOUS WASTE SITE REMEDIATION"

To Whom It May Concern:

On behalf of HRP Associates, Inc., I wish to provide the following comments concerning proposed Senate Bill 1189.

LICENSED ENVIRONMENTAL PROFESSIONAL QUALIFICATIONS

Refer to SB1189, lines 513 through 533.

SB1189 is modelled closely after the revised Massachusetts Contingency Plan (MCP) of 1993, which introduced the "licensed site professional" (LSP) as the private sector party empowered to render opinions concerning waste site cleanup in Massachusetts. The "licensed environmental professional" (LEP) proposed by SB1189 continues this philosophy of "privatizing" waste site cleanup, only in Connecticut. SB1189 has adopted generally comparable qualifications for LEP's as LSP's in terms of academic credentials and professional experience, with several significant differences.

1. Professional Experience

SB1189 requires "...a minimum of eight years engaged in the investigation and remediation of releases of hazardous waste...including a minimum of four years in responsible charge of investigation and remediation of the release of hazardous waste or petroleum products into soil or groundwater..." (lines 515 to 520).

SB1189 also requires an examination for licensure, as does Massachusetts for the LSP. Prior to the first examination and publication of the first roster of licensees in Connecticut, interim licensure will be possible for those professionals who, in addition to possessing the necessary academic credentials and payment of a fee, have "...for a minimum of ten years engaged in the investigation and remediation of releases of hazardous waste or petroleum products into soil or groundwater, including a minimum of five years in responsible charge of investigation and remediation of the release of hazardous waste or petroleum products into soil or groundwater..." (lines 572 to 579).

Licensure as an LSP in Massachusetts requires eight years "total professional experience," of which five years must be "relevant professional experience." The licensure process involves a thorough review of a detailed narrative description of the applicant's professional experience, in total and as

Senate Environment Committee
April 3, 1995
Page 2

it relates to waste site cleanup. The revised MCP and the LSP program have been in effect for about 18 months, and the program is generally viewed as a success at this early stage. Notwithstanding the rigorous requirements for professional experience, as of November 15, 1994, there was a pool of 415 LSP's available to the regulated community. Nine Connecticut environmental consulting firms are presently represented by LSP's.

The more stringent licensure requirements proposed by SB1189 appear to place an unnecessary burden on practicing environmental professionals in Connecticut who wish to obtain licensure, in view of a parallel regulatory program in Massachusetts that is a demonstrated success. The proposed regulation could deny licensure to Connecticut professionals who, as LSP's, are clearly qualified to conduct and manage waste site cleanup activities.

For these reasons, the requirements for professional experience should be made consistent with those of the Massachusetts program which was used as a model: eight years of total professional experience, and five years of "relevant" professional experience "engaged in the investigation and remediation of releases of hazardous waste or petroleum products into soil or groundwater." These requirements should apply equally before administration of the first examination. The ten year requirement for interim licensure may result in an insufficient pool of qualified professionals to make the regulation effective in streamlining the waste site cleanup process, and may jeopardize the livelihoods of many otherwise qualified environmental professionals.

2. Reciprocity or Comity with Massachusetts

As mentioned above, the Massachusetts program is widely viewed as effective in providing a qualified pool of applicants to conduct work under the MCP. Although the first examination has not yet been administered, its stated purpose is to test the interim LSP's technical and regulatory knowledge. The examination proposed by SB1189 relates only to technical knowledge. In view of this similarity between the Connecticut and Massachusetts program, as well as the comparable level and type of experience and education required, a provision for comity or reciprocity should be made available for LSP's to obtain LEP status without the additional paperwork burden of a parallel licensure program in Connecticut to demonstrate the same level of expertise and experience.

Sincerely,

HRP ASSOCIATES, INC.

Robert A. Stewart

Robert A. Stewart
Project Manager

RIZZO ASSOCIATES, INC.

ENGINEERS AND ENVIRONMENTAL SCIENTISTS

9 Cranbrook Boulevard, Enfield, CT 06082 (203) 745-3235 FAX (203) 741-0311

Testimony by
John E. Adams, Vice President
Rizzo Associates, Inc.

With Respect to Raised Bills 1189 and 6689
April 3, 1995

Rizzo Associates, Inc. is an environmental sciences and engineering consulting firm with offices in Enfield, Connecticut and Natick, Massachusetts. As manger of the Connecticut office since 1989, I have worked in both Massachusetts and Connecticut and have witnessed the benefits and the drawbacks of both states hazardous waste clean-up regulations. I am an active Licensed Site Professional in Massachusetts. I strongly support the steps which Raised Bill 1189 would take to expedite the Transfer Act clean up program and create a Licensed Environmental Professional (LEP) program.

Raised Bill 1189 clarifies the definition of "Establishment" (Section 1(1)) and "Transfer" (Section 1(3)) thereby eliminating much confusion. It modifies the date after which generation of hazardous waste would qualify a property as an Establishment to a time which coincides with records maintained under the Resource Conservation and Recovery Act (RCRA) program resulting in greater certainty when determining the Establishment status of a property. These revisions to the Transfer Act will make the technical determination of "Establishment" and "Transfer" much more distinct and are strongly supported.

Raised Bill 1189 provides for the creation of an "Environmental Conditions Assessment Form" (Section 1(17)) which will contain information for the Commissioner to consider (Section 1(18)(e)) when determining whether the Establishment will be subjected to a DEP or LEP directed clean-up. I encourage the careful development of this form by the DEP and its usage to eliminate the vast majority of sites from direct oversight by the DEP. This provision, if properly implemented, will result in greater DEP oversight of clean ups for those sites which present real threats to human health or the environment. This approach will provide great benefit to the DEP and to the people of this state and is strongly supported.

LEP lead clean ups must be permitted in GA classified groundwater areas for sites of limited or no significant threat to human health or the environment. This is contrary to the position presented in Raised Bill 6681. Many Establishment sites in GA areas resent limited or no significant threat to human health or the environment, while some Establishments in GB area may pose a significantly greater threat. The provisions presented in Raised Bill 1189 must be adopted to promote the most efficient and effective clean up of Establishment sites.

RIZZO ASSOCIATES, INC.

The LEP program (Section 4) is a bold step which is necessary in these times of limited state resources to facilitate the clean up of hazardous waste sites. The program is similar to that adopted in Massachusetts in October 1993. The Massachusetts program has resulted in numerous high quality site remediation projects which have had little or no DEP oversight. Timely real estate transfers have occurred on contaminated properties as a result of this program. I believe this initial step to allow LEP lead clean ups is well considered and necessary to promote commerce in Connecticut.

Raised Bill 1189 creates a state board of examiners to oversee the LEP program. This is a proven effective means to monitor the performance of LEPs and will elevate the quality of work and submittals. I would, however, request the revision of the make up of the board to more accurately reflect the make up of the community of professionals performing hazardous waste site clean ups. Specifically, the requirement to set two of the LEP seats aside for professional engineers is not reflective of the professional community performing the work. The proportion of engineers in the assessment and remediation professional community would be better reflected by setting one seat aside on the board for the professional engineering community.

I do not believe either Raised Bill 1189 or 6681 will effectively promote real estate financing in Connecticut. Raised Bill 1189 exempts certain foreclosures from DEP filing requirements, however, still requires the filing upon subsequent sale or transfer of the Establishments. This will continue to create a significant burden on lenders and will most certainly limit the availability of financing for Establishment properties. Other states, such as Massachusetts, isolate lenders from the liability as long as they adhere to a set of requirements which are similar to FDIC requirements. I strongly recommend the revision of Raised Bill 1189 to exempt lenders from filing pursuant to the Transfer Act as a result of foreclosures and subsequent property transfers.

Raise Bill 6681 requires licensed environmental professionals to maintain professional liability insurance without regard for the availability and cost of the insurance. I am unaware of another profession which is required by statute to maintain professional liability insurance. This provision may have many unintended results including increasing the frequency of claims, increasing the premiums paid for this type of insurance and/or driving the insurance companies out of the Connecticut market. In the event of the latter situation, the highest quality regional and national firms will cease to do business in Connecticut. The residents of Connecticut would be the biggest loser under this scenario. The provision to require maintenance of professional liability insurance must not be included in any final bill.

I strongly support the efforts of the DEP Commissioner and the legislature to revise the Transfer Act and effectuate the clean up contaminated properties throughout the State. I urge the passage of Raised Bill 1189 with the revisions noted above.

TESTIMONY OF
ELIZABETH C. BARTON

S.B. 1189 ACC Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation

H.B. 6681 ACC Remediation of, and Liability for, Contaminated Real Property

Good morning Senator Cook, Representative Stratton and other Members of the Environment Committee. I would like to thank you for the opportunity to testify before you in connection with Senate Bill 1189 and House Bill 6681.

My name is Beth Barton. I head the Environment Practice Group at Updike, Kelly & Spellacy, P.C. of Hartford and New Haven. I have been practicing in the field of environmental law for approximately 15 years.

While I support these bills in concept, primarily because I agree that there is a very real need for amendments to the Connecticut Transfer Act and an unambiguous procedure that will facilitate, not frustrate, environmental remediation of contaminated properties, I believe there are a number of technical difficulties with both of these bills. In several respects, these bills do not, as presently drafted, adequately address significant concerns of those involved in such transfers.

Comments on Senate Bill 1189 include:

In an apparent effort to better define the types of transactions to which the Transfer Act requirements apply, and specifically clarify what is meant by the phrase "corporate reorganization not substantially affecting the ownership of the establishment", in Section 1.(1), the scope of the transactions not subject to these requirements has been significantly and inappropriately narrowed. For example, while historically the act was believed to not apply to stock dividend distributions, stock distributions in connection with a merger or purchase and subsidiarization, a question arises under the bill as drafted, since these activities are not expressly excluded.

With respect to lease transactions, it is not clear whether the exclusion in Section 1.(1) for certain lease transactions is limited to leases, which when, as allowed by the language, they are extended, are still, in total, for less than 25 years. Also, if a tenant operates an establishment for more than 25 years, is the tenant then the equivalent of the owner for the balance of the process?

The definition of "hazardous waste", while admittedly previously unclear, has not been clarified with the definition proposed in Section 1.(4).

While there has been confusion and disagreement concerning who is "a party to a transaction" and, therefore, eligible to sign a Form III under the present law, since "a person associated with the transfer of an establishment" in Section 1.(7) has not been defined, this confusion has not been eliminated. Is the lender such a person, for example?

Unless standards applicable pending the adoption of regulations pursuant to Section 22a-133k are identified, "remediation standards" has no practical meaning and it is not clear whether the legislation would have any impact in the interim.

The phrase "subject to remedial action" is used throughout the bill, but it is not defined. Is the intent that remedial action have been completed? initiated? What if the conclusion after investigation is that no remedial action is required? The provisions describing the process assume remedial action will be required, even though there are circumstances where it is anticipated by the language of the bill that "the environmental conditions at the parcel are unknown."

While Section 1.(13) refers to "post-remediation monitoring", there is no provision for further approvals after the conclusion of such monitoring. Also how does "post-remediation monitoring" differ from "monitoring of the effectiveness of remediation" referenced in Section 8.(a)?

In Section 2, at several points, it is required that a schedule for "taking remedial action" be submitted simultaneous with the schedule for investigating. At best, this is premature, since remedial action is dependent on the outcome of the investigation.

The fact that the Commissioner reserves the right throughout the process to put the transferred property into the formal approval process creates significant uncertainty.

The public notice provisions require further clarification. For example, there is no definition of an abutting landowner.

Should "progress reports" referenced in Section 2.(g) require the Commissioner's written approval?

Is there any need to refer to "removal" as opposed to "remediation" costs in Section 5, since remediation is earlier defined to include removal activities?

Comments on House Bill 6681 include:

If, as indicated in Section 2.(a), the ability to utilize the voluntary remediation process is going to be limited to GB and GC properties, there needs to be a defined and clear process, whereby inappropriately classified properties can be reclassified.

Section 2.(a) should include those properties where the groundwater is not suitable for drinking.

“Historically industrial or commercial property” in Section 2. should be clearly defined.

As with Senate Bill 1189, there is need to identify remediation standards, pending the adoption of regulations.

Section 3 does not address the issue of potential liability attributable to activities engaged in by someone otherwise unrelated to the property prior to the completion of remedial actions. What is the liability profile of a property owner where post-remediation monitoring is on-going?

To facilitate reuse of contaminated properties, either this bill or Senate Bill 1189 should further expand the concept of a covenant not to sue that would, subject to compliance with certain conditions, be effective upon taking ownership of the property, rather than after remedial action has been implemented. In addition, it would be viewed as essential by many parties to transactions, including financing institutions, to have such covenants afford protection from third party contribution suits.

While I endorse the efforts evidenced by these bills to address problems with the current arrangements, I believe the goals would be further advanced by revisions to the present language of both bills.

Senator Cook, Representative Stratton and members of the Environmental Committee, I am Peter Gillies, Chairman of the task force appointed by Department of Environmental Protection Commissioner, Sid Holbrook, to propose amendments to the Transfer Act. I am here to speak in favor of Senate Bill 1189, which incorporates those recommendations.

While maintaining the requirement that notice be provided to all parties to a transaction covered by this Act, our task force sought to clarify those provisions which had been subject of some controversy. By providing that clarification, and establishing additional means of certification that appropriate remedial action has been taken, certainty to the regulated community and lending institutions is provided. It is our considered opinion that as a result the transfer and redevelopment of contaminated properties can be more readily achieved.

The amendments to the transfer act recommended by our committee, and incorporated into this bill include:

1. Clarification of the term "establishment".
2. Clarification of the meaning of the term "transfer of establishment"
3. The introduction of the use of an "Environmental Condition Assessment Form"
4. Specific time frames for the submission of the the written declarations, Forms I,II,III and IV and response by the Department of Environmental Protection are established.
5. Provision for a voluntary submission of an environmental condition assessment form.

A significant part of the committees recommendations incorporates the use of a Licensed Environment Professional, authorized to verify to the Commissioner of Environmental Protection that a cleanup has been performed in accordance with the cleanup standards. The qualifications of such environmental professional shall be determined by a Board of Examiners within the Department of Environmental Protection.

The following is a brief summary of the provisions of the bill outlined above.

1. The term "establishment" is more particularly defined as any business or operation which, on or after November 19, 1980,

generated more than 100 kilograms of hazardous waste in any one month, clarifying the time period in which the generation occurs. Additionally, in order to encourage voluntary cleanups, generation of hazardous waste as the result of remediation is not included. Because there was some ambiguity in the use of the words "dry cleaning establishment" and "furniture stripping establishment", the language was modified to make it clear that it is the actual conduct of a cleaning and furniture stripping business which is subject to the Act.

2. The term "transfer of establishment" has been defined as any transaction or proceeding through which an establishment undergoes a change of ownership, except those that are specifically excluded. By eliminating those controversial transactions from the Act, transfers will be encouraged between parties who, heretofore, have been either unwilling, or unable, thru lack of appropriate financing, to complete.

3. The use of an Environmental Condition Assessment Form which describes the environmental condition of the subject property will enable the Commissioner to identify the particular hazards present at a site. Additionally, this form will provide guidance to the Commissioner as to whether a Licensed Environmental Professional may be engaged to verify that remedial action has been taken in accordance with remediation standards.

4. Lines 240-262 of Senate Bill 1189 set forth specific time schedules for submission of the various forms to the Department, and their response time. The inclusion of these submission times in the proposal is designed not only to provide guidance but also to insure finality which is lacking in the current Act. In addition, the parties will be advised at the outset whether the remediation program can proceed under the auspices of a Licensed Environmental Professional, or will require the direct oversight of the Department. By this means many of the properties which do not represent major environmental concerns may be acted upon, and the resources of the Department applied to those which are of a more severe nature. The bill provides specific criteria to be used by the Commissioner in making his determination to approve the use of a licensed environmental professional.

Provision is also included in the bill for a municipality, owner of an establishment, or owner of property to submit, on a voluntary basis, an Environmental Condition Assessment Form and obtain an initial review. The Commissioner will notify the submitting party whether a formal review is required by the department, or that a licensed environmental professional may verify remediation in accordance with clean-up standards. This

provision is designed to encourage early assessment and cleanup of sites which may not be subject to immediate transfer.

As previously noted, the bill includes provision for the licensing of the environmental professionals by a board within the Department of Environmental Protection. Qualifications for licensure will be based upon education, work experience and passage of an examination designed to appropriately test the individual in the specialized area of site evaluation and remediation.

The report of the task force, as incorporated in Senate Bill 1189, has been designed to provide a mechanism by which property transfers may take place, without jeopardizing the environmental oversight deemed necessary for the protection of the parties, and the public. The amendments which we have proposed will assist in providing the needed clarity and reliability which the lending institutions have been seeking, and, it is hoped, will enable them to once again take a leading role in the orderly transfer of properties subject to the Act. It is respectfully suggested that the bill before your committee will help achieve these goals, and we urge its adoption.



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing -- April 2, 1995
Committee on the Environment

Testimony submitted by Commissioner Sidney J. Holbrook
Department of Environmental Protection

Raised SB No. 1189

AAC Revisions to the Hazardous Waste Establishment Transfer Act and
Hazardous Waste Site Remediation

Connecticut's Property Transfer Program law was one of the first of its kind in the country. As adopted in 1985, the law had two purposes. First, the law required the disclosure of the environmental condition of properties identified in the law as establishments, at the time of transfer, and the allocation of responsibility for clean up between the parties to the transfer. Second, the law created a largely self implementing program for discovering and cleaning up polluted sites. The law has successfully achieved these objectives but has not reached its full potential due in part to ambiguous language in the law, and the lack of sufficient resources within the Department to fully implement the program. As a result of a provision in the law requiring the Commissioner's approval of all clean ups conducted under the law, 300 property transfer sites await the Department's review.

One of the first serious problems I undertook when I became Commissioner was the Property Transfer Program backlog. Because of the importance of this issue to the economic revitalization to the state, I convened an Advisory Committee to formulate a plan for improving and streamlining the Property Transfer Program. I asked Peter Gilies, Esq., to chair this Advisory Committee which was composed of representatives from the banking, business, consulting, legal and environmental communities. The Advisory Committee convened in early February and under Mr. Gilies' leadership has produced, in a very short time, the comprehensive proposal embodied in S.B.1189.

The Advisory Committee supported the original goals of the law, while identifying significant short-comings in it which adversely affect property transactions in Connecticut. The Advisory Committee concluded that significant changes to the process of reviewing and approving clean ups were necessary to preserve the original goals of the law and overcome the problems faced by the business community in complying with the law.

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The proposal contains four major initiatives, which, when fully implemented, will streamline the Property Transfer Program for future transactions and efficiently address the backlog. Central to successful implementation of this proposal will be the adoption of the clean up standard regulations, which I expect to be published for notice and comment in June of this year.

First, the proposal *clarifies the ambiguous definitions* in the Property Transfer Law, so that the regulated community can readily tell whether a particular transaction is covered by the act

Second, the proposal *creates a streamlined process* for the Commissioner's review of Property Transfer filings, by allowing the Commissioner to determine that certain Property Transfer filings clean ups may be reviewed and verified by licensed environmental professionals.

Third, the proposal *creates a voluntary process* for expediting the review of clean ups at Property Transfer sites prior to any transfer, and at a limited universe of additional sites. The Commissioner may determine that certain of these clean ups may be reviewed and verified by either the Commissioner or a licensed environmental professional.

Finally, the proposal *creates a licensed environmental professional program*. Since many clean ups formerly approved by the Commissioner will now be overseen by private parties, the licensing program is necessary to ensure that those persons have sufficient expertise to assure that clean ups adequately protect public health and the environment.

The proposal contained in S.B. 1189 will remove substantial obstacles to economic development in the State while being protective of human health and the environment.

The Department has several comments concerning the drafting of this bill, which are attached.

Attachment

Testimony submitted by Commissioner Sidney J. Holbrook
Department of Environmental Protection

Raised SB No. 1189

AAC Revisions to the Hazardous Waste Establishment Transfer Act and
Hazardous Waste Site Remediation

- Line 38: After the words "PROBATE COURT" change ";" to ","
- Line 39: Change the word "TRUST" to "TRUSTEE". This change is necessary to ensure that the legislation does create a loophole allowing persons to avoid the provisions of the transfer act by merely conveying an establishment to a trust.
-
- Line 49: After the word "TRANSFEREE" insert ","
-
- Line 69: Change "(D)" to "(D)"
-
- Line 70: Delete the word AUTO
- Line 74: After the words "IDENTIFIED IN" insert "ACCORDANCE WITH". This change is necessary to ensure that this definition, like the definition in CGS section 22a-115 which it mirrors, encompasses hazardous wastes as defined in regulations established pursuant to section 3001 of RCRA.
- Line 121: Delete the words "AN ESTABLISHMENT" and insert "A SERVICE STATION"
- Line 137: Replace the words "TAKE REMEDIAL ACTION REGARDING" with "CLEAN UP". In several places in this bill, the words "remediation" or "remedial action" have been used. Section 22a-133k, which requires the Commissioner to adopt standards for the abatement of pollution at polluted sites, uses the term "clean up". To minimize confusion, the Department recommends that this legislation be revised to use the term "clean up", as used in 22a-133k and as the Property Transfer Advisory Committee recommended. The change is not merely one of semantics; as indicated below the need for additional verbs to modify the terms "REMEDIAL ACTION" and "REMEDICATION" often seriously changes the meaning of the proposal from the concepts agreed to by the Advisory Committee. The Department will work with the Committee

as necessary to clarify the language. To shorten these comments, the Department has identified below only those uses of the terms which cause the most serious changes in meaning.

- Line 139: See comment on line 137. The Department has prepared a draft of "Clean-up standard regulations" under section 22a-133k of the General Statutes using the term "clean up", as directed by that section. The Department has been working with a broad-based advisory committee for more than two years, and the term clean-up standards has become a term of art in the State. To change the terminology at this point in time would cause undue confusion.
- Line 155-6: See comment on line 137. Cleaning up a site does not always involve "action", it often involves allowing natural attenuation to proceed, and monitoring that process.
- Lines 165-6: As above.
- Line 172-4: Replace the words "REMEDIAL ACTIONS HAVE BEEN TAKEN REGARDING" with the words "ACTIONS TO CLEAN UP", and replace the words "REMEDICATION STANDARDS" WITH "CLEAN-UP STANDARDS HAVE BEEN PERFORMED", so that the phrase reads: "all actions to clean up the parcel in accordance with the clean up standards have been performed except post-remediation monitoring". The clean up standards are likely to propose measures for monitoring the progress and results of a clean up. The change is necessary because the bill as drafted suggests that a Form IV may be filed when this monitoring has been conducted, but does not require that the monitoring be performed in accordance with those standards. The intent of the Advisory Committee, rather, was that a Form IV could be filed prior to completion of post-remediation monitoring as required by the clean-up standards.
- Lines 178-81: See comments on lines 137 and 139.
- Line 184: See comments on lines 137, 139 and 155-6.
- Line 220-39: Subsections (d) and (e) are still necessary and should not be deleted.
- Lines 302-3: Delete the words "SUBJECT TO REMEDIAL ACTION" and replace with the words "CLEANED UP". The Clean up

standard regulations will specify an endpoint for the process of cleaning up a site, and will not specify a mechanism for achieving that objective. Accordingly, it will not be enough for a licensed environmental professional to verify that actions were taken in accordance with the standards, rather, the LEP must verify that the result of those actions was to achieve the standard.

- Line 307: Replace "R" with "OR"
- Line 348: Replace the word "CERTIFIED" with the word "AGREED"
- Line 364: After the words "FOR WHICH A FORM I HAS BEEN FILED" insert "AND AT WHICH NO ACTIVITIES DESCRIBED IN SUBDIVISION (3) OF SECTION 22a-134 HAVE BEEN CONDUCTED SINCE (A) THE DATE OF SUCH APPROVAL OR VERIFICATION OR (B) THE DATE ON WHICH THE FORM I WAS FILED;"
-
- Line 373: Delete the words "Except as provided in section 2 of house bill 6681 of the current session". This language would expand the component of the bill which provides for the voluntary remediation of certain sites to encompass sites for which clean ups would be verified by registered environmental professionals rather than licensed environmental professionals. The advisory committee considered and rejected the idea of simply registering environmental professionals, because a registration program does not provide adequate assurance that sites would be properly cleaned up.
- Line 381: Delete the words "section 22a-134e of the general statutes" and insert "subsection (e) of this section"
- Lines 406-7: See comments on lines 302-3.
- Line 413: Delete the word "receiving" and insert "receipt"
- Line 421: After the word "submit" insert the words "to the Commissioner"
- Lines 456-8: Delete. See comments on line 373.
- Line 524: After the words "written or" insert "written and".
- Line 529: Delete the word "of"
- Line 564: Replace "section 2" with "sections 2 and 3"

- Line 579: Replace the word "of" with "or"
- Line 760: After the words "WITH THE" insert "FILING OF"
- Line 771: before the words "IS EQUAL TO OR" insert "IS EQUAL TO OR
GREATER THAN ONE MILLION DOLLARS; (2) EIGHTEEN THOUSAND
DOLLARS IF THE COST OF CLEAN UP "
- Line 780: After (6) insert "NO"

Connecticut Ground-Water Association
P.O. Box 67
Amston, Connecticut 06231-0067

002643

3 April 1995

Representative Jessie Stratton
House Chair - Environment Committee
Legislative Office Building, Rm. 3200
Capitol Avenue
Hartford, CT 06106

Subject: Raised Bill No. 1189 - "An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation"

Substitute Bill No. 6681 - "An Act Concerning Remediation of, and Liability for, Contaminated Real Property"

Dear Representative Stratton:

Thank you for this opportunity to provide testimony regarding the referenced bills. My testimony is based upon my understanding of the interests and viewpoints of the membership of the Connecticut Ground-Water Association (CGA), of which I am President. My comments follow.

General

The scientists and engineers of the CGA have mainly expressed interest in the concepts of the bills regarding the privatization of certain Department of Environmental Protection activities, through the establishment of "Licensed Environmental Professionals" (LEPs) and a state Board of Examiners of Environmental Professionals.

Environmental Professional Qualifications

There is **wide confusion** over the conflicting overlap in environmental professional qualifications specified in the two bills. Members have recommended that you consider consolidating language concerning environmental professional licensing into just one bill.

There is agreement as to the general elements of qualifications for individuals seeking licensing under SB 1189, however some CGA members feel that requiring eight and ten years of experience is too burdensome (SB 1189, Lines 515 and 574), noting that the seven years specified in HB 6681 is more in line with national precedents. Also, some members feel that the special treatment afforded licensed professional engineers (Lines 522-523) is unfair and unwarranted, in that licensed professional engineers would not be required to have an environmentally-related degree while all other scientists and engineers would.



Dennis Wainchuk, President
(203) 295-1377/FAX -1380

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Standard of Care

There is agreement on the bills' definitions of LEP "standard of care". However, there is **grave concern** over the contradictory provision in HB6681, Section 3, Lines 213-214. Here the bill unfairly makes the LEP responsible for *any* violation of hazardous waste and water pollution regulations, whereas in observance of the standard of care, the LEP should be responsible only to the extent that he/she performed sub-standard work. The following substitute language, *in italics*, should be inserted at Line 214 to provide for a fair allocation of responsibility:

"...action against the licensed environmental professional for any violation of chapter 445 or 446k of the general statutes to the extent that the violation resulted from the licensed environmental professional having performed duties not consistent with the standard of care specified in Section 1(g) of this act."

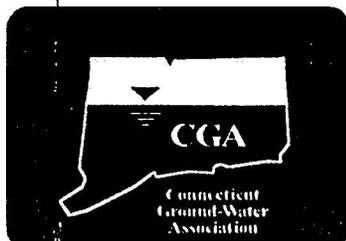
Insurance

An informal poll of CGA members has confirmed that the personal insurance coverage, and the "accidental contamination" coverage, specified in HB6681 essentially are **unavailable**. No insurance company now offers to underwrite the individuals within a firm. Only the largest firms are able to obtain environmental impairment insurance, i.e., coverage over accidental contamination (which is traditionally the coverage held by contractors, not professionals). Even if these coverages were to become available, the bill would **raise the cost of doing business in Connecticut**. Consider a firm with five senior Project Managers; whereas it now carries a single policy for one million dollars of professional liability insurance for \$35,000, the five individual policies required for those individuals to become licensed would cost \$60,000. The cost of waiving the "pollution exclusion" clause present in most general liability policies could more than double the cost of coverage.

Since other professionals are not required to carry specified insurances, and since the coverages specified in HB6681 are problematic, CGA members **recommend that the insurance requirement be dropped** from the qualifications for Licensed Environmental Professionals.

Investigation Loophole

There appears to be a potentially **large loophole** in SB 1189's intent to ensure that site cleanups not done under DEP review and approval are proper. The loophole is due to the fact that a site cleanup is only as good as the *site investigation* which precedes it, yet the bill does not explicitly hold LEPs responsible for adequate investigations. Unless the bill specifically



Representative Jessie Stratton
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requires that **site investigations must meet the prevailing standards and guidelines**, whether or not any cleanup is performed, then many polluted sites will go un-remediated.

The loophole can be minimized by explicitly incorporating *investigation* into the verification procedure by Licensed Environmental Professionals, as follows:

Lines 139 - 140. Add the *italicized* words:

(8) "Remediation standards" means regulations adopted by the commissioner pursuant to Section 22a-133k , *and all other applicable investigation standard practices and guidelines prevailing in the state at the time the investigation and cleanup is conducted;*

[Note: applicable guidelines now in effect include the DEP's Transfer Act Site Assessment (TASA) Guidance Document, which describes the process of completing thorough investigations to support remediation decisions]

Lines 184 - 187. Add the *italicized* words:

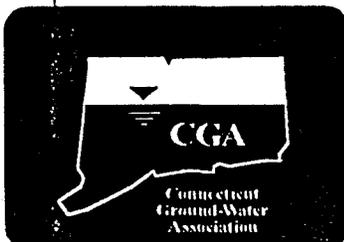
(15) "Remediation" or "remedial action" means the *investigation, and* containment, removal or abatement of pollution, potential sources of pollution and substances in soil or sediment which *may* pose [s] an unacceptable risk to human health or the environment,...

If the recommended language is incorporated in the bill as above, then it will be implicit in each "verification by a Licensed Environmental Professional" that the site-wide investigation is also verified as meeting DEP's TASA Guidance.

Verification

SB 1189 does not define "verification", but should do so to avoid a predictable problem. Environmental professionals cannot provide certainty that a site is not polluted. Since pollution is most often hidden from view beneath the ground, and since it is impossible to turn over every stone, the limitations in our ability to detect pollution must be recognized. Hence, the following definition is recommended:

Section 1 (19) "Verification" or "Verify" means the rendering of an opinion by a Licensed Environmental Professional that an adequate site investigation has been performed in accordance with prevailing standards and guidelines, or that a cleanup of a defined occurrence of pollution has been completed in accordance with the remediation standards.



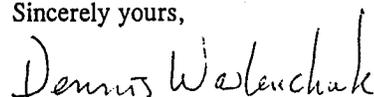
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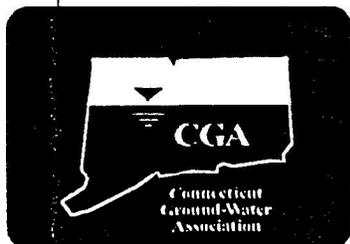
DEP Ruling

Referring to SB 1189, some CGA members feel that the DEP backlog will not go away if the DEP Commissioner must rule on each case whether to allow oversight by Licensed Environmental Professionals; they recommend that sites in GB and GC areas automatically come under LEP oversight, unless the Commissioner can show a compelling need for DEP oversight, as provided in HB 6681.

Sincerely yours,



Dennis Waslenchuk
President



Senator Cook, Representative Stratton and members of the Environmental Committee, I am Peter Gillies, Chairman of the task force appointed by Department of Environmental Protection Commissioner, Sid Holbrook, to propose amendments to the Transfer Act. I am here to speak in favor of Senate Bill 1189, which incorporates those recommendations.

While maintaining the requirement that notice be provided to all parties to a transaction covered by this Act, our task force sought to clarify those provisions which had been subject of some controversy. By providing that clarification, and establishing additional means of certification that appropriate remedial action has been taken, certainty to the regulated community and lending institutions is provided. It is our considered opinion that as a result the transfer and redevelopment of contaminated properties can be more readily achieved.

The amendments to the transfer act recommended by our committee, and incorporated into this bill include:

1. Clarification of the term "establishment".
2. Clarification of the meaning of the term "transfer of establishment"
3. The introduction of the use of an "Environmental Condition Assessment Form"
4. Specific time frames for the submission of the the written declarations, Forms I,II,III and IV and response by the Department of Environmental Protection are established.
5. Provision for a voluntary submission of an environmental condition assessment form.

A significant part of the committees recommendations incorporates the use of a Licensed Environment Professional, authorized to verify to the Commissioner of Environmental Protection that a cleanup has been performed in accordance with the cleanup standards. The qualifications of such environmental professional shall be determined by a Board of Examiners within the Department of Environmental Protection.

The following is a brief summary of the provisions of the bill outlined above.

1. The term "establishment" is more particularly defined as any business or operation which, on or after November 19, 1980,

generated more than 100 kilograms of hazardous waste in any one month, clarifying the time period in which the generation occurs. Additionally, in order to encourage voluntary cleanups, generation of hazardous waste as the result of remediation is not included. Because there was some ambiguity in the use of the words "dry cleaning establishment" and "furniture stripping establishment", the language was modified to make it clear that it is the actual conduct of a cleaning and furniture stripping business which is subject to the Act.

2. The term "transfer of establishment" has been defined as any transaction or proceeding through which an establishment undergoes a change of ownership, except those that are specifically excluded. By eliminating those controversial transactions from the Act, transfers will be encouraged between parties who, heretofore, have been either unwilling, or unable, thru lack of appropriate financing, to complete.

3. The use of an Environmental Condition Assessment Form which describes the environmental condition of the subject property will enable the Commissioner to identify the particular hazards present at a site. Additionally, this form will provide guidance to the Commissioner as to whether a Licensed Environmental Professional may be engaged to verify that remedial action has been taken in accordance with remediation standards.

4. Lines 240-262 of Senate Bill 1189 set forth specific time schedules for submission of the various forms to the Department, and their response time. The inclusion of these submission times in the proposal is designed not only to provide guidance but also to insure finality which is lacking in the current Act. In addition, the parties will be advised at the outset whether the remediation program can proceed under the auspices of a Licensed Environmental Professional, or will require the direct oversight of the Department. By this means many of the properties which do not represent major environmental concerns may be acted upon, and the resources of the Department applied to those which are of a more severe nature. The bill provides specific criteria to be used by the Commissioner in making his determination to approve the use of a licensed environmental professional.

Provision is also included in the bill for a municipality, owner of an establishment, or owner of property to submit, on a voluntary basis, an Environmental Condition Assessment Form and obtain an initial review. The Commissioner will notify the submitting party whether a formal review is required by the department, or that a licensed environmental professional may verify remediation in accordance with clean-up standards. This

provision is designed to encourage early assessment and cleanup of sites which may not be subject to immediate transfer.

As previously noted, the bill includes provision for the licensing of the environmental professionals by a board within the Department of Environmental Protection. Qualifications for licensure will be based upon education, work experience and passage of an examination designed to appropriately test the individual in the specialized area of site evaluation and remediation.

The report of the task force, as incorporated in Senate Bill 1189, has been designed to provide a mechanism by which property transfers may take place, without jeopardizing the environmental oversight deemed necessary for the protection of the parties, and the public. The amendments which we have proposed will assist in providing the needed clarity and reliability which the lending institutions have been seeking, and, it is hoped, will enable them to once again take a leading role in the orderly transfer of properties subject to the Act. It is respectfully suggested that the bill before your committee will help achieves these goals, and we urge its adoption.

MAR 31 '95 06:34PM WALBRO

P.2

**Walbro Corporation**8242 GARFIELD STREET
CASS CITY, MICHIGAN 48726-1328
TELEPHONE: (517) 872-2131
FAX: (517) 872-2301

Hon. Representative Jessie G. Stratton
Chair, Environment Committee
State of Connecticut
House of Representatives
State Capitol
Hartford, CT 06106-1591

March 31, 1995

Dear Representative Stratton:

Recently Walbro Corporation ("Walbro"), the City of Meriden, the Connecticut Departments of Environmental Protection ("DEP") and Economic Development ("DED"), and the Attorney General's office were successful in formulating an agreement for the redevelopment of the contaminated Meriden Rolling Mills ("MRM") site. Demolition and environmental remediation tasks are already underway at the site. Walbro will shortly begin construction of a state-of-the-art automotive fuel systems manufacturing facility at the site. The company expects this expansion will create over 350 new good-paying jobs with benefits within the next few years.

As negotiations ensued to allow such a plan to reach fruition, it was clear to all concerned that issues of environmental liability needed to be addressed in the agreement. Thus, my specific task was to ensure that the terms of the agreement would be acceptable to Walbro, insofar as they would recognize that Walbro had no part in causing the environmental contamination at the MRM site, and therefore, should not in any way be liable for said historical contamination and its necessary remediation. One might expect this to be an easy task, as intuitively one would wonder how Walbro could somehow be seen as either liable, or potentially liable, when the company is a third party to the site, willing to invest in a long-term commitment to the community. However, there were certain impediments which did arise concerning environmental liability that had to be overcome before I was able to provide my recommendation to senior management that the company should, in fact, proceed with this agreement.

Before I describe these difficulties we encountered in Connecticut, I would like to point out that Walbro currently has a large manufacturing facility in Meriden- just on the other side of the railroad tracks from the MRM site. The company decided that instead of expanding the Meriden operation elsewhere (either in Connecticut or another state, most likely at a "greenfield" site), we would rather embark upon a course to redevelop the contaminated MRM "brownfield" site in the heart of Meriden, where we had always conducted business. From Walbro's perspective, funding from DED program sources

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proved to be a good business incentive for such a decision. Also, not to be downplayed, key company management truly felt that utilizing this previously developed industrial site made good sense for the community.

As you are aware, all too often, environmental regulations, and specifically their liability provisions, steer companies away from "brownfield" sites, such as MRM. Instead, companies seek out "greenfield" locations to avoid such liability and risk. The unfortunate result is poor land-use planning and utilization, and all the associated environmental impacts that accompany such development. However, with the MRM site, we felt we had a unique opportunity to buck this trend. Yet for Walbro, it was still paramount to ensure that proper environmental protections were in place so as to minimize, if not avoid unnecessary risk and liability to the company. This was particularly important, as regardless of funding and "hometown" sympathy, we still had to recognize that whatever agreement was reached would need to be compared against the ever-present option of selecting a "greenfield" site devoid of the environmental liabilities the MRM site afforded.

Upon learning that Connecticut DEP site clean-up standards were still in draft form (ie. not yet promulgated into law), I became all the more concerned with Walbro's involvement at the MRM site. Even though the DEP would oversee cleanup at MRM, the standards weren't yet in place to ensure the site would meet agency guidelines by the time Walbro took title to the property. Written assurances from DEP, coupled with more formalized "draft" numbers and the fact that the City of Meriden would be subject to a Consent Order for the responsibility of cleanup did ease my concerns, as once cleanup was complete, the DEP would furnish the City with a "clean closure" letter before the City transferred title to Walbro.

Nonetheless, being a Michigan-based corporation, I wanted yet a further legal protection already afforded to companies in a similar position in Michigan - a Covenant not to Sue (CNTS). The Michigan Dept. of Natural Resources, in conjunction with the Attorney General's office, has already issued nearly thirty such covenants in Michigan to businesses willing to redevelop contaminated sites which they had no responsibility in causing.

To assist in my pursuit of proper legal protections for Walbro in structuring this agreement, I retained the environmental law practice of Mininberg & Goodbody, located in New Haven. It became apparent to us in subsequent discussions with DEP and the AG's office, that there was no statutory ability for the DEP/AG's office to offer a CNTS. At this point in negotiations, without the prospect of a CNTS being made available to

Rep. Stratton
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Page 3

Walbro, I was unable to recommend the agreement to Walbro senior management. Thus, at this juncture in the negotiations, I made it clear to representatives from the DEP, DED and the AG's office that Walbro could not proceed until some legal protection could be offered to address the liability, and potential liability, Walbro would inherit in becoming the owner of a formerly contaminated, albeit remediated, site. Further negotiation with the DEP/AG's office lead to the creation of a "Compromise of Claim" signed by the Attorney General and Governor of Connecticut. This "Compromise of Claim" provides that any future claim brought by the State against Walbro in regard to historical contamination at the MRM site is to already be waived in the present time.

The protection provided by this Compromise of Claim was sufficient such that our hurdle to reaching an agreement was overcome, as we recognized that at this time, there was no way to obtain a CNTS in Connecticut. In anticipation that a CNTS would be available in Connecticut in the future as a valuable tool for enticing companies to redevelop "brownfield" sites, we added a provision to our agreement whereby at such time that the State of Connecticut was able to offer a CNTS, Walbro would be given the opportunity to apply to receive such a CNTS for the MRM site.

Thus, I applaud your efforts to pass legislation allowing for the issuance of CNTSs in Connecticut. I truly believe such an incentive in your state will dramatically aid in the efforts to redevelop "brownfield" sites. Such has been the experience with CNTSs in Michigan. However, one detail in the proposed legislation greatly concerns me. To charge what I view as a punitive fee of 3% of a property's assessed value to a company wishing to obtain a CNTS so they may proceed with redevelopment of such a "brownfield" site is contrary to the goal of putting such parcels of land back into productivity, and therefore, is poor public policy. In the case of the MRM site, assessed at \$500,000 in value (once remediated), a 3% fee to obtain a CNTS will mean Walbro would need to pay an additional \$15,000 for a CNTS, once available. I find such an idea of charging this fee to issue a CNTS to Walbro to be irresponsible. Having to pay a fee for a CNTS had never been contemplated by Walbro. It is my experience that neither in Michigan, nor any other state offering CNTSs, is a fee assessed for such a decisive tool in aiding urban site redevelopment.

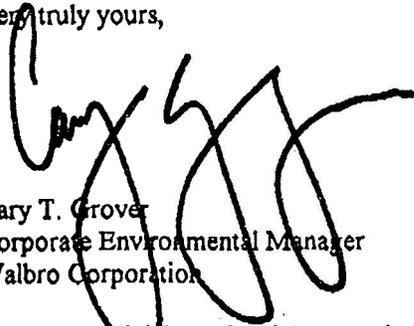
Walbro has already committed to redeveloping the MRM "brownfield" site. As such, I made sure that every possible legal protection was made available to the company before an agreement was reached. In this respect, we relied upon those legal tools available to us at the time to offer the necessary protections in lieu of a CNTS. Were we to negotiate on

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a similar project in a "post-CNTS" Connecticut, and were a fee charged for the issuance of a CNTS, I would have serious reservations in recommending that the company pursue redeveloping a "brownfield" site that had yet another cost associated with it. In sum, to ensure the successes that CNTSs can offer to Connecticut, I would eliminate any fee provision from your legislation that would access a charge for the issuance of a CNTS.

I make myself available to you for any subsequent discussions, comments or questions you may have regarding Walbro's experience with the MRM site, and CNTSs in general. Please feel free to contact me at your convenience at (517) 872-2131. I wish you all the best with your important work in the Connecticut legislature.

Very truly yours,



Cary T. Grover
Corporate Environmental Manager
Walbro Corporation

cc: M. Mininberg, Mininberg & Goodbody
K. Goodbody, Mininberg & Goodbody

ps. I have spoken to Ms. Nanette Leemon with the Michigan Dept. of Natural Resources. She is the Site Redevelopment/CNTS Specialist with the Compliance & Enforcement Section of the Environmental Response Division of the agency. She indicated she would be more than willing to provide any details you may want concerning the Michigan program and its successes. Ms. Leemon can be reached at (517) 334-6949.

Highlights of Testimony

Christopher L. Bergstrom
Stamford Economic Development Director

RE: House Bill No. 6681

"An Act Concerning the Remediation and Liability for
Contaminated Real Property"

RE: Senate Bill No. 1189

"An Act Concerning Revisions to the Hazardous Waste
Establishment Transfer Act and Hazardous Waste Site
Remediation"

Before the Environment Committee
April 3, 1995

- Turnaround time on DEP approval of environmental remediation plans is one of the key obstacles to the redevelopment of industrial sites.
- Stamford has 1 million square feet of vacant industrial space and 50 acres of vacant industrial land. Most of this is the type of moderately contaminated site which will be eligible under the proposed bills for review by Licensed Site Professionals. Redevelopment of this space will create 2,400 manufacturing jobs.
- Stamford also benefits from redevelopment of industrial sites in the State's other urban centers, because it helps us to recruit and retain companies who, for example, might locate their front office in Stamford, their factory in Bridgeport and their data processing center in New Haven or New Britain.
- One of our major competitive advantages as a state is the quality of our lives, including a magnificent New England countryside unspoiled by industrial development. By redeveloping brown fields rather than developing green fields, we can have our jobs and our environment too.
- These bills are an important part of the solution, but they are not a panacea. Contaminated urban industrial sites will not be magically cleaned-up and redeveloped by the passage of this legislation. In many cases, industrial redevelopment will require a joint venture between the public and private sectors.

Highlights of Testimony

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**TESTIMONY OF HELEN ROSENBERG
NEW HAVEN OFFICE OF BUSINESS DEVELOPMENT**

**AN ACT CONCERNING THE REMEDIATION OF
AND LIABILITY FOR CONTAMINATED REAL PROPERTY
HOUSE BILL NUMBER 6681**

**AN ACT CONCERNING REVISIONS TO THE
HAZARDOUS WASTE ESTABLISHMENT TRANSFER
ACT AND HAZARDOUS WASTE SITE REMEDIATION
SENATE BILL NUMBER 1189**

BEFORE THE ENVIRONMENT COMMITTEE

To the Honorable Jessie Stratton, the Honorable Cathy Cook, and
Members of the Environment Committee:

The City of New Haven would like to stress the importance to the City and the State of passage of the proposed bills concerning industrial site remediation, particularly HB 6681 and SB 1189. New Haven, once a vibrant manufacturing center, retains many vestiges of that history in 19th century factories scattered throughout the City. Many of these are multi-storied brick buildings, primarily on one to five acres, and most are vacant and in disrepair.

Although the City does not have the same amount of industrial activity it did decades ago, it is still an attractive place for manufacturers and distributors to locate. This year alone, however, the City has had to turn away at least half a dozen of them because of a lack of modern buildings or clean sites on which to construct modern facilities. The City has identified 20 properties, totalling about 82 acres, as good candidates for redevelopment if the site remediation issues can be expeditiously addressed.

New Haven has a limited capacity to expand its tax base, although expansion is needed to compensate for the existence of non-taxpaying institutions in the City and high service costs. We've estimated that if the derelict sites were redeveloped, at least 1,300 jobs could be created and about \$6,000,000 in annual new property taxes generated.

The major issues which need to be addressed in order to realize development of these sites are the extensive time which is often involved in DEP review and certification of site remediation, buyer and lender reluctance to invest in contaminated sites, and the costs involved in site testing, cleanup, and demolition and disposal of obsolete buildings. Their redevelopment is important to New Haven and communities statewide to achieve:

- Increased taxes and job creation, especially in older cities where they are needed most.
- Protection of Connecticut's rural landscape from overdevelopment
- Elimination of blight, reduction of crime, and improvement of the environment, particularly in inner city neighborhoods.
- Environmental improvement statewide through increased clean-up of industrial sites.

We feel that HB 6681 and SB 1189 contain the essential elements of a successful program to achieve those goals. The most important aspect of the bills is the creation of a system of Licensed Environment Professionals to oversee and certify remediation of certain sites. This will reduce the time lags currently hindering cleanup. It is also essential that the issue of financing the costs involved with site remediation and redevelopment be addressed. Therefore, instituting lender liability protections and creating the Contaminated Property Remediation and Insurance Fund are also crucial.

DEP - [Handwritten initials]
File DEP
Re 1187

002672

TECHNICAL AMENDMENT TO SB1189

Line 263 Add: ANY PERSON WHO SUBMITTED A FORM III TO THE COMMISSIONER PRIOR TO THE EFFECTIVE DATE OF THIS ACT FOR A PARCEL WHICH IS NOT THE SUBJECT OF AN ORDER, CONSENT ORDER OR STIPULATED JUDGMENT ISSUED OR ENTERED PURSUANT TO SECTION 22A-134 THROUGH SECTION 22A-134E OF THE GENERAL STATUTES MAY SUBMIT AN ENVIRONMENTAL CONDITION ASSESSMENT FORM TO THE COMMISSIONER. THE COMMISSIONER SHALL WITHIN FORTY-FIVE DAYS OF RECEIPT THE ENVIRONMENTAL CONDITION ASSESSMENT FROM NOTIFY THE CERTIFYING PARTY WHETHER APPROVAL OF REMEDIAL ACTION BY THE COMMISSIONER WILL BE REQUIRED OR WHETHER A LICENSED ENVIRONMENTAL PROFESSIONAL MAY VERIFY THAT REMEDIAL ACTION HAS BEEN PERFORMED IN ACCORDANCE WITH THE REMEDIATION STANDARDS.

Line 174: Add after "POST REMEDIATION MONITORING," the following phrase, "OR NATURAL ATTENUATION MONITORING,"

Line 177: Add after "POST REMEDIATION MONITORING," the following phrase, "OR NATURAL ATTENUATION MONITORING,"



002673

Connecticut Fund for the Environment

**TESTIMONY BEFORE THE ENVIRONMENT COMMITTEE
REGARDING SUBSTITUTE BILL 6681 AND SENATE BILL 1189**

April 3, 1995

Substitute Bill 6681

The Connecticut Fund for the Environment ("CFE") offers qualified support for Substitute Bill 6681 ("Bill 6681"). CFE believes that a carefully constructed system which utilizes licensed environmental professionals ("LEP") could greatly speed up site cleanups in Connecticut - which will be a benefit to the environment and economy. Bill 6681 calls for the establishment of such a system - which is positive.

However, Bill 6681 also allows the DEP in consultation with the AG to enter into a covenant not to sue the responsible owner or holder of financing. CFE strongly urges the incorporation of additional language included in endnote¹. This will clarify that in accordance with our existing law, the owner, lessor or lending institution retains liability in the event that their consulting LEP fails to clean up the site to the level prescribed by the cleanup standards in effect at the time of the cleanup. CFE cannot support this bill unless this clarification is made.

In addition, CFE makes the following friendly recommendations:

1. Front-end DEP review. CFE suggests that Section 2(c), beginning on line 176 be deleted. This section allows for DEP to complete an audit after a final remedial action report is submitted to DEP. This would allow DEP to second guess a cleanup after tens of thousands of dollars are invested by the responsible party, and hundreds of hours are invested by the

LEP. CFE suggests instead that DEP be given 45 days to review the Phase II assessment and determine, based on certain criteria, whether DEP will review and approve the cleanup or whether the cleanup may be completed by the LEP. This is similar to the provision included in Bill 1189, subsection (d) beginning at line 255. This will allow DEP to review the cleanup at the front end, giving the responsible party more certainty, preventing the potential of "double management" by the LEP and DEP, and give the public the knowledge that the State will be supervising cleanups of the truly dangerous sites.

2. Public Notice. CFE strongly supports the public notice provision has been incorporated within Section 2(b). CFE suggests that this public notice provision be required for any hazardous remediation cleanup pursuant to our hazardous waste laws, including cleanups undertaken pursuant to Administrative Order, Consent Order, or as a result of a Superior Court enforcement action. To this end, CFE recommends the adoption of language incorporated at endnote². The reason for wide public notice is obvious. People who live near hazardous waste sites will be most directly affected by cleanup decisions. They deserve the right to know about the cleanup process and comment if they are concerned.

3. Technical Assistance Grants to Communities. CFE recommends establishment of grants of up to \$20,000 per site, not to exceed a total of \$100,000 per year, be made available from the contaminated property and remediation fund. This will allow municipalities or community organizations to hire professional assistance in interpreting technical information and accessing the decision-makers involved with the cleanup. This program is modeled after the

successful federal Superfund program. Without this technical assistance, community groups and residents will not be able to penetrate the meaning or process which can produce yards of technical reports for a single site. Grant applications would be made to DEP, Office of Environmental Equity. Criteria for selection would include: (a) The level of health risk the contaminated site may pose to neighbors; and (b) the degree of public controversy involved.

Senate Bill 1189

CFE support Senate Bill 1189. We believe the bill will result in more sites being cleaned up faster pursuant to the Transfer Act. We strongly support the concept of Licensed Environmental Professionals; DEP having a first cut at whether to supervise the cleanups; liability arrangements remaining the same under existing law; and the notion of public notice for cleanups.

CFE offers one technical friendly amendment regarding public notice. Please clarify that the public notice must be provided sometime prior to commencement of remedial work at the site. The current draft is ambiguous. It might allow public notice to be provided after the cleanup commences on site. Public comment must be timed so that it could influence the way the cleanup proceeds. Public notice becomes much less useful after the cleanup commences. To this end, CFE suggests the following language change at endnote³

1. Add after the word "property" on line 218, the following, "AND THE RESPONSIBLE OWNER, LESSOR OR LENDING INSTITUTION SHALL RETAIN LIABILITY FOR ANY COSTS REQUIRED TO CLEAN THE SITE TO THE CLEANUP STANDARDS FOR SUCH PROPERTY IN EXISTENCE AT THE TIME THE REMEDIAL ACTION PLAN WAS PREPARED AS ADOPTED BY THE COMMISSIONER UNDER SECTION 22a-133k OF THE GENERAL STATUTES."
2. Insert after the word "action" on line 148, the following, "IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (e) OF THIS SECTION." Within the new section (2)(e), include the following language, "PUBLIC NOTICE OF ANY ENVIRONMENTAL CLEANUP ENTERED INTO PURSUANT TO CHAPTER 445 OR 446k OF THE GENERAL STATUTES SHALL BY PROVIDED BY THE RESPONSIBLE PARTY OR PARTY COMPLETING THE CLEANUP PRIOR TO COMMENCEMENT OF REMEDIAL ACTION BY AT LEAST TWO OF THE FOLLOWING METHODS:"... Follow this phrase with the public notice provisions as incorporated within Bill 6681 from lines 149 through 161.
3. Insert the following language after the phrase "public notice of the remedial action" on lines 288 and 314, "PRIOR TO COMMENCEMENT OF REMEDIAL ACTION".



Testimony of the
Connecticut Conference of Municipalities

to the

Environment Committee
April 3, 1995

The Connecticut Conference of Municipalities is testifying on three bills before the Committee today.

Site Remediation

A CCM survey completed in January showed the need for comprehensive site remediation efforts throughout the state. Of the 73 municipalities that responded, 57% (41) indicated that they either (i) *have sites in their communities that "are vacant or abandoned and that are not being developed" due to a pollution problem* or potential pollution problem, or (ii) *have abandoned or polluted properties for which taxes are delinquent* and owed.

These problems affect municipalities of all types, including municipalities considered to be urban areas (Hartford, Norwich, New London, West Haven), mid-size communities (East Hartford, Enfield, Plainville, Madison), and smaller towns (Simsbury, Stonington, East Hampton, Willington).

Cities and towns are losing property tax dollars as polluted property sits idle. This means all other business and residential property taxpayers must make up the difference. Estimates of the amount of back taxes include \$1,000,000 owed to Seymour, \$500,000 owed to Stratford, \$300,000 to Derby, \$280,000 to Manchester, \$250,000 to Berlin and \$45,000 to Pomfret.

There are two bills before you today that deal with site remediation efforts and the transfer act. One, as drafted, is more sensitive to the specific needs of cities and towns for assistance with their site remediation and economic development efforts.

RB 6681, "AAC Remediation of, and Liability for, Contaminated Real Property." CCM appreciates the opportunity to reiterate our support for this important bill.

This bill would, among other things (a) create a "contaminated property remediation and insurance fund" to pay for a variety of site evaluation and remediation costs, (b) provide \$30 million in revenue bonds for site remediation efforts, paid off by the new fund, (c) allow municipalities and others to use certified environmental professionals to conduct site evaluations,

prepare remediation plans and prepare final remedial action reports to indicate that sites have been cleaned up to state standards, (d) provide that DEP enter into a "covenant not to sue" when remediation has been complete and approved by the department.

This bill would represent a giant step forward for site remediation efforts. The provision for environmental professionals to work with municipalities, developers and DEP holds out the possibility that sites will be evaluated and cleaned more quickly. As many as 300 sites identified as contaminated are awaiting DEP approval under the Property Transfer program.

The proposed contaminated property remediation and insurance fund would be an important new approach. It is an important component of this bill. The fund would help pay for the much-needed revenue bond appropriation. It would enable cities and towns to get funds to evaluate sites that may have pollution problems and would also enable them to demolish structures on such sites. (This provision should be clarified to provide that a municipality would only have to repay such a loan (a) to the degree that it has received revenue from the sale of such a property, and (b) that the revenue exceeds the amount of property taxes owed to the municipality.)

Another important component of this bill would allow licensed site professionals employed by municipalities to go onto property to conduct evaluations without incurring liability. This would give municipalities considering tax foreclosures on such properties (or trying to entice developers to purchase such properties) the opportunity to know what is on the site without incurring liability inappropriately.

The provisions concerning (1) the bond fund, (2) the covenant not to sue, and (3) the ability of municipalities to evaluate properties without incurring liability are all extremely important to cities and towns.

We urge you to favorably report HB 6681.

SB 1189, "AAC Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation."

This bill would make a number of revisions to the transfer act. However, it does not address the need to also revise site remediation processes as they affect municipalities and their attempts to turn abandoned properties into productive ones. It does not contain protection from liability for municipal evaluations of sites and it does not contain the bond fund provisions that are important to municipalities.

CCM is concerned with lines 357 to 360. This section would specifically provide that persons who become owners of establishments through foreclosure not be considered to be "innocent landowners" as defined by state statute. This would seem to include municipalities which foreclose on "establishments" as defined in the bill. If this is the case, it would create an unnecessary "chilling effect" on cities and towns whose most important tax collection power is foreclosure.

Also, almost half (47%) of the responding municipalities to a CCM survey conducted in January indicated that they had decided against foreclosing on polluted property for which back taxes are owed due to fear of the potential liability for pollution clean-up on the site. An additional "chilling effect" would hurt local governments.

This provision should instead provide for immunity from liability for cities and towns which foreclose on properties, as would be provided under SB 192 pending before this committee.

Regional WPCAs

CCM supports CB 6317, "AA Authorizing the Creation of Regional Water Pollution Control Authorities".

This bill would allow municipalities, at local option, to form regional water pollution control authorities.

One provision of this bill is particularly important. It would provide that grants paid under the clean water fund to such regional entities would be five percent more than those presently paid to individual cities and towns. This "bonus" would be a positive incentive to bring about regional cooperation that, in the long run, would save the State (and municipalities) money.

We ask that in moving forward with this proposal that the Committee provide that the five percent "bonus" not come at the expense of other projects which are already waiting for funding (and which may have to wait longer -- and become more expensive -- due to proposals which would not provide adequate amounts of new bonding for the clean water fund this session).

We urge you to favorably report this bill.

Thank you for your consideration.

#

For more information, please call Gian-Carl Casa, Manager of Legislative Services, CCM.



**Connecticut Engineers
in Private Practice**

**Testimony Before the Environmental Committee
Concerning Proposed Substitute Bill No. 6681 and Raised Bill No. 1189**

I am Kathie Cyr, President of the Connecticut Engineers in Private Practice, representing over 120 engineering firms in Connecticut. I would like to speak about Substitute Bill No. 6681, An Act Concerning Remediation of, and Liability for, Contaminated Real Property and Raised Bill No. 1189, An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation. In particular, I would like to address those sections in each bill establishing requirements for and duties of Licensed Environmental Professionals (LEPs), since many of the members of CEPP would become the LEP community.

We understand and endorse the Committee and DEP efforts regarding improving the clean-up process and licensing environmental professionals. A number of revisions have been incorporated addressing our earlier concerns. However, we remain concerned that the licensing requirements vary between the two bills. We recommend that language in both bills be made identical, or requirements be defined in one and incorporated by reference in the other.

Regarding Substitute Bill 6681, we are very concerned with the unprecedented risk allocation / professional liability provisions.

We recommend that Section 1(c)(3)(A) regarding insurance requirements, be deleted in its entirety (lines 63-75). Our reasons are as follows:

Responsibility and risk for the owner's property should not be shifted to the LEP. Insurance is not required by statute for other professionals entrusted by the public such as Professional Engineers, Architects, or Lawyers. This would put a new requirement on many small businesses.

Member Organization:
American Consulting Engineers Council
National Society of Professional Engineers/Professional Engineers in Private Practice

Insurance coverage for professional acts are based on negligence. If the professional is not negligent, coverage will not apply, thus insurance would not go to accidental contamination of property. Insurance is not, and should not be used as a substitute for professional competence or as a mechanism to transfer the risk properly belonging to a property owner to an LEP.

The insurance market is highly volatile. Insurance for environmental contamination was completely unavailable as little as five years ago, and there is no guarantee that it will exist in the future. Moreover, the risks presented by this new requirement may not be readily insurable. Insurance rates could increase and availability decrease.

We are also very concerned that Section 3 of Substitute Bill 6681, indicates the Commissioner may enter into a covenant not to sue the owner or lessor of a remediated property, however, the State may bring an action against the LEP for any violation by Chapters 445 or 446K of the General Statutes. This clause transfers all of the risks associated with hazardous waste and water pollution control to the LEP regardless of the LEP's ability to control those risks. The best way to manage the professional risks is for the owner to select a qualified professional who will develop an adequate scope of work to do the job right.

While not specifically related to LEPs, we also note that Sections 2(d) and 11(a)(3) of Substitute Bill 6681, require an environmental use restriction be placed on property unless specifically exempted by the Commissioner. This requirement is more stringent than the current version of DEP's Draft Proposed Clean-Up Standards and would often result in the very delays this bill seeks to avoid for voluntary remediation.

Regarding Raised Bill 1189, in several sections of the act, language refers to verification of remediation action: in other sections, language refers to verification that the parcel has been subject to remedial action. We recommend that the language clearly state that the LEP could verify remedial action of a defined problem. An LEP could not verify that the parcel had been remediated since subsurface conditions cannot be examined in the detail that surface features can.

Alternatively, an LEP could render an opinion that, in his professional judgement, no other remedial action was required based on published clean-up standards. That opinion would require that adequate investigation of the parcel had also been completed.



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April 2, 1995

Representative Jessie G. Stratton
State of Connecticut
House of Representatives
State Capitol
Hartford, CT 06106-1591

RE: House Bills 6681/1189

Dear Representative Stratton:

As a geologist with seven years of management experience in site assessment and remediation, and as the owner of an environmental consulting firm for two years, I have several concerns with the two above referenced house bills. While I feel that registration of environmental professionals is very important, I also feel that these two bills are well intentioned but seriously flawed. The final affect of these bills will be to put an overwhelming number of small and moderately sized, competent consulting companies out of business as well as significantly increase the cost of environmental work. Numerous perfectly competent individuals will be prevented from performing environmental investigations. However, the bills will in no way preventing incompetent practitioners from conducting such investigations. The three portions of the proposed legislation which will precipitate such an outcome are itemized and explained below.

1.0 QUALIFICATIONS

Revised H.B. 6681 has made a reasonable adjustment in the educational and multi-disciplinary nature of practicing environmental professionals and requires seven years of professional experience. The proposed legislation now better reflects the level of experience and background of most environmental professionals currently in decision-making positions. In addition, since the bill provides for reciprocity of certification from professionals in other states, and to the best of my knowledge no states (or other certifying organizations such as American Institute of Professional Geologists or National Registry of Environmental Professionals) require more than seven years of experience for environmental certification, H.B. 6681 appears to be reasonable in this regard.

However, H.B. 1186 is unreasonable for several reasons. It will require ten years of experience for certification until an examination is developed. At that time persons with eight years of experience may take the exam. There are very, very few people in the State of Connecticut who can honestly say they have ten years of experience as outlined in the proposed legislation. Most of the regulations covering environmental site work have only been in place since 1985. Few people came directly into this field at that time. Many engineers, for instance, may have environmental experience over this length of time but several years may have been spent working on waste water treatment systems. This clearly has nothing to do with sub-surface contaminant investigations or remediation. In fact, very few, if any, Department of Environmental Protection (DEP) personnel have ten years of direct experience, as defined. Few have even seven years of direct experience. It seems unreasonable to expect consultants to have more experience than the state regulators. In

SB1189

addition, this will negate the reciprocity portion of the legislation because, as previously mentioned, no other states require more than seven years of experience. My personal problem with this legislation is simple. If we are charitable and expect that the state will have an examination ready in say, two years, **I will have to go out of business for two years and then take a test that someone else can take with the same amount of experience that I would have had during the two years I was out of business.** I have a problem with this!

At the very least, consultants who will meet the minimum qualifications by the time the test is administered, and who are currently engaged in site assessment and remediation work in a senior management position should be grandfathered into the certification until the test is available.

2.0 LIABILITY/IMPAIRMENT INSURANCE

Professional Liability Insurance is prohibitively expensive for all but the largest environmental consulting firms. Therefore, requiring one-million dollars of coverage per individual or five-million per firm is far beyond the financial ability of most small to moderately sized firms. The majority of consulting firms in Connecticut will probably not be able to qualify for certification due to H.B. 6681's insurance requirement. In addition, it is not possible, based upon investigations into availability of professional liability insurance (E&O) from four companies, to obtain less than one-million dollars worth of insurance. The insurance is provided based upon what category your gross income fell into the previous year. The first category is based on a gross income of \$0.00-\$5,000,000.00. The starting coverage is one-million dollars.

With respect to environmental impairment insurance, most E&O insurance specifically prohibits the consultant from engaging in this type of activity. This is why sub-contractors are generally hired to actually *undertake* a clean-up that the consultant is *supervising*. The sub-contractors carry the liability insurance for acts which might result in contamination being released accidentally due to site clean-up activities.

There also appears to be some misunderstanding that professional liability is somehow an indication of competency. This is in fact not so. If you can afford the premiums, you can get E&O insurance the same way a bad driver can still get car insurance. The insurance companies require a long intensive investigation form to be filled out but do not review the actual practices of each individual firm. You are required to certify that you are competent and that is the basis on which the coverage is granted. This is why the issue of insurance is somewhat of a sham. Every consulting firm has a set of terms and conditions which clients must agree to, which limit the firm's exposure to the amount of the proposal cost or the portion of the project completed to date, no more, no less. The only way a client can obtain a larger judgment is if the firm is found to have been grossly negligent. However, as explained to me by several insurance companies, if you are found to be grossly negligent you have abrogated the E&O insurance contract which was based upon your certification that you are competent, and, the insurance company will not pay off. This is very good for the insurance companies but hardly assures the competency of companies with professional liability insurance. We all know of environmental companies currently operating in-state who have E&O insurance and do not do competent work.

Whether or not a consulting firm needs E&O insurance to work for a particular client is a market place not a legislative issue. If a client requires the consulting firm they use to have E&O insurance they are probably aware they are going to pay more for the environmental

work. However, if it is not an issue to a particular client, they should not be forced to pay for something that provides no benefit to them or to the state.

There is an additional problem in that the investigation and remediation of environmentally impacted sites is not an exact science. Non-negligent error is always a possibility in this process. A potentially better way to assure competency would be to have a board for **Peer Review** of projects falling under the jurisdiction of the proposed legislation. This could be a volunteer board of qualified environmental professional from consulting firms in-state. The members would serve on a rotating basis to assure impartiality and so members would not be reviewing work from their own companies. Instead of expensive insurance of questionable efficacy in assuring competency, I feel this would allow consulting companies to remain in business while providing a much better (and local) check on who is working within standard protocols. If necessary, fees could be assessed to the property owner for such a review. The cost to the client would still be less than what potentially must be added onto the cost of a project to cover E&O insurance.

If the requirement for E&O insurance is left in place, only two or three large consulting firms are going to be practicing in-state. To say that a monopoly of environmental work will occur is an understatement. These large consultants now have to compete with companies such as mine which keeps environmental costs in check. The only thing keeping some larger companies from charging \$3,500.00 for a simple Phase I investigation is the fact that I do the same thing for \$1,500.00. Without companies such as mine the cost for environmental work will be astronomical and the concept of a minimum amount of defensible work will be unheard of. While this might not adversely effect a Pratt & Whitney, much of the small business and industry in the state will have a harder time financially addressing their environmental problems than they do now.

3.0 SITE LIABILITY

I am not quite sure what to say with respect to the complete transfer of liability for a contaminated site from the owner and lender onto the consultant other than I feel it is unprecedented and unbelievably ridiculous. I am sure the state, lenders and property owners find this appealing. However, as mentioned above, there is always the possibility in site investigations and remediation of non-negligent error. The legislation of H.B. 6681 does not appear to take this into account. I know of no consultants who would be willing to agree to be solely responsible for the liability of a contaminated site they neither owned nor contaminated. I would be amazed if anyone in their right mind would agree to this. A resolution of this conflict might be found in the **Peer Review** proposed above. If final remedial action reports were screened through **Peer Review** prior to acceptance by DEP, reports found to be deficient could be sent back to the consultant with recommendations for further work. However, should the remediation be found complete the consultant would be released from further responsibility. Ultimate liability for the property must reside with the owner or responsible party.

Should this portion of legislation stay in the bill the result will be a significant increase in non-essential environmental work as well as a significant increase in cost simply so the consultant can cover their...liability. For instance, instead of placing three shallow monitor wells on a small gas station site and analyzing for gasoline components and petroleum hydrocarbons (approximately \$200.00/sample), the inclination will be to place many shallow wells, deep wells, bedrock wells and doing a full appendix IX laboratory analysis (approximately \$1800.00/sample) on every sample. Instead of sampling soils every five feet where called for, samples will be taken every two (2) feet. This will create a significant financial hardship for all but the largest business and industry in the state.

4.0 SUMMARY

As a life long resident of Connecticut I am intimately aware of the declining in business and industry in the state as well as the loss of population. None the less, two years ago I decided to take a personal, financial and professional chance and start my own business in this state. It has been quite an experience but I am just now beginning to find myself at a point where I can expand my business. I am proud of what I have accomplished, especially given the economic climate in Connecticut, and I am very good at what I do. However, if these two pieces of legislation are passed without addressing the issues I have raised I will be forced out of business for no good reason. If that happens, the chances I will stay in state and try again are nil. The only thing that keeps me in state is my business. Especially when I am "**qualified**" to obtain certification in other states such as; Massachusetts, Main, Pennsylvania, Delaware, South Carolina, Tennessee, Kentucky, Wyoming and California to name a few. In addition, I am afraid that the potential for me going to my current clients and telling them I am no longer "**competent**" to conduct their environmental work and they should go to the XYZ Consulting company falls into the very cold day in hell category! This is especially true as many of my clients are small "Mom & Pop" businesses and industries. By the time the larger consultants are done taking their fees from these companies there is frequently nothing left for clean-up, the clients are bankrupt and the property becomes a state problem.

As the bills stand I can see several ways I could get around the requirements and stay in business. However, I do not want to do business this way even though it is exactly what many consulting companies will do. I am not sure how well this will serve the state or the clients.

As I stated in my opening, I am sure the bills have been introduced with the best of intentions and no one disagrees with certification of environmental professionals. I hope that the legislation will meet its goals in a reasonable way without creating undue hardship to consultants, business or industry.

Sincerely,



Christina G. Pollock
Principal Geologist/Owner

cc: Senator Thomas P. Gaffey
Senate
State Capitol
Hartford, CT 06106-1591

Representative James Abrahms
House
State Capitol
Hartford, CT 06106

CBIA

Connecticut Business & Industry Association

TESTIMONY OF
THOMAS J. TURICK
ENVIRONMENTAL MANAGER
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION
BEFORE THE ENVIRONMENT COMMITTEE
MONDAY, APRIL 3, 1995

Good morning. My name is Thomas J. Turick. I am environmental manager with the Connecticut Business and Industry Association (CBIA). CBIA represents approximately 7300 member companies, large and small businesses that employ several hundred thousand men and women in Connecticut.

I am here on behalf of CBIA to SUPPORT and offer recommendations on the two following bills:

H.B. 6681- An Act Concerning Remediation Of, And Liability For Contaminated Real Property.

S.B. 1189- An Act Concerning Revisions To The Hazardous Waste Establishment Transfer Act And Hazardous Site Remediation.

As CBIA testified in February before this Committee, H.B. 6681 is arguably one of the most significant and important environmental proposals to come before the Connecticut legislature in the past ten years. The proposal is truly monumental in scope as it seeks to develop a more comprehensive approach to the remediation of contaminated sites throughout the state. It offers new approaches to issues such as the privatization of cleanup management, the extent of landowner and lender liability, municipal responsibility for urban cleanup and development, the use of a covenant not to sue

mechanism to protect good faith cleanup efforts, and a host of other issues to numerous
370 Asylum Street • Hartford, CT 06103-2022 • Phone: 203/ 244-1900 • FAX: 203/ 278-8562

to list that have been roadblocks to the voluntary cleanup of contaminated sites since the state began its cleanup program in about 1980.

However, one critical issue has not been addressed in either H.B. 6681 or S.B. 1189.

Most importantly, the ultimate success of these two proposals in affecting the cleanup of contaminated sites in Connecticut largely depends on the existence of workable state cleanup standards. CBIA has long been a member of DEP's advisory group charged with developing cleanup standard regulations. While the DEP effort has been underway for more than two years now, we believe significant work remains to be accomplished before a workable set of standards can be finalized and adopted to answer once and for all the question, "How clean is clean?"

Because of the critical need to have workable standards in place as soon as possible to fully implement the comprehensive cleanup program embodied in these two proposals, CBIA recommends that the following attached language be added into Sec. 11 of H.B. 6681. This language will clearly establish state policy and give the necessary DEP guidance on how to further proceed in drafting its proposed cleanup standard as to:

- a.) under what circumstances permanent cleanup will be expected to be achieved;
- b.) under what groundwater conditions, a cleanup may occur to a standard less than required for residential land use, and;
- c.) under what DEP administrative actions such voluntary cleanups will be allowed to proceed.

Thank you.

(a) The commissioner of environmental protection shall adopt regulations, in accordance with THE PROVISIONS OF chapter 54, setting forth standards for the [clean-up of hazardous waste disposal sites to] REMEDIATION OF ENVIRONMENTAL POLLUTION AT HAZARDOUS WASTE DISPOSAL SITES AND OTHER PROPERTIES WHICH HAVE BEEN SUBJECT TO A SPILL, AS DEFINED IN SECTION 22a-452c, WHICH REGULATIONS SHALL fully protect health, public welfare and the environment. In establishing such standards the commissioner shall (1) give preference to clean-up methods that are permanent, if feasible, ~~and~~ AND ECONOMICALLY PRACTICABLE, [and] (2) consider ~~any factor he deems~~ appropriate FACTORS, including, but not limited to, groundwater classification of the site, FEASIBILITY, RELIABILITY, COST EFFECTIVENESS, NATURAL ATTENUATION, AND CLEANUP DURATION, [and] (3) [may] provide for standards which differ according to the present and future use of the property } ~~(3)~~ AND (4) PROVIDE FOR STANDARDS OF REMEDIATION, LESS STRINGENT THAN THOSE REQUIRED FOR AT RESIDENTIAL LAND-USE PROPERTIES, FOR POLLUTED PROPERTIES WHICH (A) ARE LOCATED IN AREAS WITH AN EXISTING GROUND WATER QUALITY CLASSIFIED AS GB OR GC UNDER THE WATER QUALITY STANDARDS ADOPTED BY THE COMMISSIONER FOR ~~CLASSIFICATION OF GROUNDWATER CONTAMINATION,~~ OR WHERE GROUND WATER IS NOT SUITABLE FOR DRINKING WITHOUT TREATMENT OR CANNOT REASONABLY BE EXPECTED TO BE USED AS A DRINKING WATER SUPPLY, AND (B) WERE HISTORICALLY INDUSTRIAL OR COMMERCIAL PROPERTY AND WHICH SHALL BE LIMITED TO INDUSTRIAL OR COMMERCIAL USE BY A LAND USE RESTRICTION CONSISTENT WITH THESE LESS STRINGENT STANDARDS ~~(C) ARE NOT SUBJECT TO AN ORDER ISSUED BY THE COMMISSIONER, CONSENT ORDER OR STIPULATED JUDGMENT.~~



002693

Connecticut Audubon Society

115 Oak Street • Hartford, CT 06106-1514 • (203)527-5737

TESTIMONY BEFORE THE ENVIRONMENT COMMITTEE RE:

RHB 6681 - AAC REMEDIATION OF, AND LIABILITY FOR, CONTAMINATED REAL PROPERTY

RSB 1189 - AAC REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND HAZARDOUS SITE REMEDIATION

The Connecticut Audubon Society strongly supports efforts to improve the effectiveness of the contaminated sites remediation program. Currently, there are more than 300 contaminated sites awaiting remediation, mostly in urban areas. These sites need to be cleaned up as quickly as possible to prevent further contamination and to allow these properties to be sold and developed. Our cities desperately need the revenue and jobs developed properties will generate. And from a land use perspective, it is more efficient to develop in areas with an existing infrastructure (e.g. urban areas) than to continue a pattern of sprawl development that consumes pristine open space and farmland and furthers our dependence on the automobile.

In light of the backlog of sites and the current reality of the DEP's limited resources, Connecticut Audubon supports many of the measures introduced in these two bills including the establishment of Licensed Environmental Professionals (LEP'S) and voluntary cleanups. These measures alone will increase the number of sites remediated and reduce the DEP's backlog. We also vigorously support the public notice provisions. It is essential to notify the people who live near these sites as they are the ones most directly affected by the remediation. However, we would like to offer the following comments/concerns regarding the two bills introduced.

HB 6681

- Under this proposal, the DEP is not involved until the LEP submits the final remedial action plan. At this point the DEP, within 30 days, can request an audit. We would like to see this changed to have the DEP involved right at the beginning of the process. They should review the earlier site assessment report so they can make an informed decision as to whether or not to take control of the site. The DEP must retain the right to clean up the most dangerous sites and they need information from

Connecticut Audubon
Birdcraft Museum
314 Unquowa Road
Fairfield, CT 06430-5018
203-259-0416

Connecticut Audubon
Center At Fairfield
2325 Burr Street
Fairfield, CT 06430-7106
203-259-6305

Connecticut Audubon
Center At Glastonbury
1361 Main Street
Glastonbury, CT 06033-3105
203-633-8402

Connecticut Audubon
Ragged Hill Woods Program
139 Wolf Den Road
Brooklyn, CT 06234
203-774-9600

Sanctuaries

Birdcraft Sanctuary
Fairfield

Edward Steichen Memorial
Wildlife Preserve
Redding

Elsa Feiler Denburg
Woodland Conservation Area
Fairfield

Grace Robinson
Nature Sanctuary
Weston

H. Smith Richardson
Wildlife Preserve and
Christmas Tree Farm
Westport

Haddam Wildflower Gorge
Haddam

Hayes Meadow Tidal Marsh
Fairfield

Jane and George Pratt
Valley Preserve
Bridgewater

John W. Field Sanctuary
Fairfield

Milford Point
Milford

Morgan R. Chaney Sanctuary
Montville

Pomfret Farms
Pomfret Center

Richard C. Croft
Memorial Preserve
Goshen

Roy & Margaret Larsen
Sanctuary
Fairfield

Trail Wood:
The Edwin Way Teale
Memorial Sanctuary
Hampton

ing the DEP's limited resources, we would like to see this scenario minimized and we feel that having the DEP review the very initial site assessment plan accomplishes that goal.

- This proposal sets up a "covenant not to sue" arrangement between the state and the owner of the property. We have serious reservations about the state relinquishing liability of the property from the owner(s). We understand that this liability is of major concern to any parties undertaking site remediation but we must point out that SB 1189, the proposed revision of the Transfer Act, does not make any changes in the liability status of the property. We do realize that one of the goals of HB 6681 is to foster clean up of sites not covered under the Transfer Act, particularly foreclosure properties. At the very least, we would like to see the language regarding the power of the state to bring action against an LEP expanded to include the owner of the property as well. Both parties should be liable for an improper cleanup.

SB 1189

- We support the language regarding public notice but it is not clear as to when that notice must be given. We feel strongly that notice needs to be given at the very start of the cleanup process and would like to see the language reflect that. Also, we feel strongly that language needs to be provided for public notice of voluntary cleanups as well.

Regarding both bills, we support the Connecticut Fund for the Environment's recommendation of establishing a technical assistance grant program, modeled after the federal Superfund program, to provide assistance to affected communities regarding technical clarification and the remediation process.

Connecticut Audubon supports the new ideas and proposed changes to the Transfer Act included in these two bills. They are steps in the right direction to solving the problem of contaminated sites and their impediment to economic growth, particularly in urban areas. While we support most of the content of both these bills, we strongly recommend adoption of our suggested changes to ensure that public health and safety is never compromised in the remediation process.