

Legislative History for Connecticut Act

PA 11-141

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HB6526

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structure prior to it being moved to you, then can you answer the question why was it moved in the first place?

PETER LONGO: I believe it was moved to us because at the time it was moved to us the thought was to centralize these economic development activities between the state's economic development entities. So it was pulled back into the fold of existing state entities.

REP. BERGER: Okay. Would you say that CCAT's mission statement and CI's mission statement are similar?

PETER LONGO: No.

REP. BERGER: I'm just trying to, you know, find out why we're moving and going back and forth and back and forth here with this, but okay. So thank you. Not clarified but maybe enlightened a little bit as to where we're going with this so -

SENATOR LEBEAU: Thank you.

REP. BERGER: Thank you, Senator.

SENATOR LEBEAU: Thank you, Mr. Chairman. Further questions from the members of the committee? If not, Peter, thank you very much.

PETER LONGO: Thank you.

SENATOR LEBEAU: Yes, next up is Nancy Mendel, city of New Haven.

NANCY MENDEL: Thank you, Senator LeBeau, Representative Berger, committee members. My name is Nancy Medel, I'm an environmental attorney down in New Haven, Connecticut. And

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I'm outside environmental counsel to the city of New Haven for many of their Brownfield developments and I was asked to present testimony on behalf of Raised Bill 6526, and that concerning Brownfield remediation and development as an economic driver. The testimony I'm presenting was prepared by the Office of Economic Development of the city of New Haven.

The city of New Haven is here today to express support for Raised Bill 6526, which it feels will help expedite Brownfield's redevelopment in the city and throughout the state. The city has been working successfully since the mid-'90s to address the need to clean up and redevelop Brownfields of all sizes throughout New Haven.

These efforts included pursuing legislative changes through coordination of the Coalition of Clean Sites, resulting in bills passed in '96 and '98, which created the LEP Program covenant not to sue environmental land use restriction and subsequently expanded in municipal site access.

Despite the contributions these measures have made toward the redevelopment of contaminated sites, Brownfields have become a growing problem in the city, as globalization and economic change have taken their toll.

A few years ago over 400 people in the city were employed in about 500,00 square feet of active industrial space on 26 acres. That has since been vacated as plants and have shut down, properties of which remain idle.

As public funding has all but disappeared, the city must rely on private investors to take on

environmental challenges these properties pose. Prospective developers continue to be intimidated by the additional bureaucratic requirements and delays associated with the Transfer Act, which most of the city's Brownfields fall under, as well as uncertainties regarding liabilities for conditions at these sites, especially for those prospective developers who did not cause the contamination at these sites.

Provision in Section 17, and that's what I'm here to testify in support of that bill, would expedite Brownfield cleanup in the state and be of particular benefit to the old industrial cities such as New Haven. It would provide assurances to the developer regarding liability through DEP issuance of a notice of completion of remedy and no further action letter, and provide developers with a clear and expedited process, avoiding costly and unreasonable delays which can frustrate site redevelopment, re-use and job creation.

The city supports Section 17 but strongly recommends eliminating the conditions that are inserted in Subsection B as irrelevant and potentially detrimental to the goal of timely Brownfields redevelopment. These conditions are the limitation of participation of the program to 20 properties at any one time and the addition of social and economic criteria to eligibility determination, which would undoubtedly result in a delay of remediation, increased redeveloper cost for professional services, and would add a level of political activity to what should ideally be a straightforward real estate and environmental cleanup effort.

I also have come today and submitted testimony

on behalf on some of New Haven's neighboring cities, the city of West Haven, the town of Hamden and Seetus (ph), who all similarly support Section 17 of Raised Bill 6526 with the same two requests to eliminate the language in Subsection B.

And if I may, with the time allowed, I would like to share a few comments on my own behalf, if the Chairs would allow? I've been an environmental attorney in the trenches with the Transfer Act with all of these DEP Brownfields programs for close to 20 years.

I've assisted both private clients and public clients, and it's very clear, especially at this moment in time when we have such an economic challenge and budgetary challenge, that we need to find creative ways to attract private investment to come into Connecticut to actually take on the cleanup of these idle contaminated sites.

And the way to do that, and incite and incentivize private moneys to come in, which are really the only realistic source available, is to provide a clear, streamlined, certain pathway, a one-stop comprehensive program. And I think that's embodied in Section 17 of this bill.

Increasingly, and this -- the committee should be aware -- this program is being addressed to those developers who didn't cause the contamination, they're not responsible for the contamination, they're in no way connected to the contamination. But yet if they come into the state to clean up, they have to take on an enormous obligation to clean up the property beyond the property boundaries, and the onerous liability provisions that exist when

the come and touch these sites.

And what I'm finding increasingly from my out-of-state clients is they're telling me they no longer want to come into Connecticut, that they find the regulatory scheme to be onerous, they find it to be detrimental and they're taking their investment dollars elsewhere.

So I strongly personally in submitted testimony support this Section 17 of the bill, with the same two eliminations, same two language eliminations in Subsection B. Thank you very much. I don't know if you have any questions.

REP. BERGER: Thank you for your testimony. Questions from committee members? Thank you. Will Warren, please?

WILL WARREN: Good afternoon. Mr. Chairman, Committee, I'm Will Warren with Rex Development, an economic development project manager with Rex Development. Thank you for this opportunity to testify before the Commerce Committee in support of Section 17 of House Bill number 6526, AN ACT CONCERNING BROWNFIELD MEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER.

As the primary goal of Section 17 of the bill, Rex Development recognizes the need to expedite the process of Brownfield redevelopment for the state of Connecticut. However, it also recommends eliminating the conditions in Section 17 Subsection B of the House Bill as a potential obstacle to the goal of a more efficient remediation process.

The two conditions referenced are limitation of participation the program to 20 properties

at any one time and the addition of social and economic criteria to applicant eligibility determination. Rex Development is the economic development organization of the South Central (inaudible) Council of Governments, serving 15 towns on the South Central Connecticut region, identifying the extreme need for Brownfield redevelopment in this industries region.

Soon after the inception of Rex in 1996, the organization created a Brownfield assessment and a mediation program with the initial infusion of funding from the Connecticut Department of Economic and Community Development.

Since the creation and the addition of state and federal funding, Rex has assisted with the assessment, cleanup and remediation of over 80 properties throughout the region. Rex has worked with municipalities, nonprofits and for-profit developers to help them leverage their assessment and cleanup activities, in turn creating jobs, economic viability and overall sustainability in the region.

Coincidentally, Rex has consistently seen additional bureaucratic requirements employed associated with the Transfer Act, as well as uncertainties regarding liabilities for conditions on these sites have become a major hindrance for the redevelopment process.

Section 17 of House Bill 6526 would significantly reduce any concerns associated with liability issues in accordance with their remediation of a property.

REP. BERGER: Mr. Warren, could you just excuse me for just a moment?

WILL WARREN: Sure.

REP. BERGER: You were signed up under municipal officials, legislators and agents. I believe that you're supposed to be under the public portion, so you incorrectly signed up. So could I ask you to summarize, please?

WILL WARREN: Sure. As -- to summarize the rest of my testimony?

REP. BERGER: Yes, yes, if you could. The public is granted three minutes of testimony, so you've -- you're close to exceeding that, so if you could summarize I would appreciate that, for those that would be waiting in the public portion to speak.

WILL WARREN: Sure. We just strongly recommend Section 17 of Section B and eliminating language referring to the limit of 20 properties, and language referring to additional criteria for eligibility. Both of these parts we strongly recommend removing.

REP. BERGER: Thank you for your support of the bill and thank you for your testimony.

WILL WARREN: Thanks.

REP. BERGER: Representative Roland LeMar, please.

REP. LEMAR: Senator LeBeau, Representative Berger, members of the Commerce Committee, thank you very much for raising these two important House bills, House Bill 6526, House Bill 6528. I'm here to testify in favor of both of these bills today, with some slight modifications.

First, before coming here and joining you in the last two months, I served for four years in the city of New Haven on the legislative council on the Board of Alderman. I carried the Legislation Committee and served on both the Community Development and Finance Committees there and dealt often with developers who were looking to relocate to New Haven, looking to expand in New Haven, looking to buy, develop, build, create jobs in our city, and I dealt with developers who were looking to leave.

Unfortunately, the ability for us to attract, maintain great growing companies with opportunities for our diversified workforce were limited by the fact that we had very little space to offer, very little clean, open space, that is.

Within a few blocks of my home there are close to 20 Brownfields, representing over 100 acres of prime developable, strategically located space in the heart of our city and in the heart of Hamden, the other community I represent.

Ms. Mendel spoke earlier about support that these bills have both in the city of New Haven and the town of Hamden, and I'm here to rearticulate that support to let you know that here are significant opportunities available to develop in our communities, within our first string suburbs that are being missed right now because of the regulatory burdens that we currently have.

House Bill 6526 seeks to readdress some of the liability concerns, and I think it's a wonderful, wonderful act that will help drive development into our core quarters. I think

that there are some problems, though, and it's been articulated by Ms. Mendel and others that the limitation, the artificial limitation of 20 private developers into this program is unnecessary.

As there's no public funds contained within these proposals, there is no need for us to limit or in any way restrict the type of developers and private capital that would come in and seek to improve our communities by adding jobs, by putting in place things back on the tax rolls.

Again, the two communities represent nearly 100 acres. They're not -- they're environment is contaminated, they're not put up to good use. They're a significant drain on public resources, they deplete our property tax base. They're eyesores in our communities.

They pose serious threats to the public health, the local environment, and compromise an increasing liability to the state. I know they exist in all of your communities as well, and so the idea that we would limit to 20 projects, I think, is unfortunate.

And the criteria that we would use to limit those 20 is unnecessary in this portion, because again there is no public dollars associated with these projects. And the criteria that we are using and limitations might be better placed in House Bill 6528, which is the act concerning bonding for Brownfields.

It is in those instances where we want to ensure that there are numerous criteria and articulated public references for what we do, and I think those will be the more responsible

-- that would be the more responsible placement for those criteria would be in 6528 where we are utilizing public funds to finance reconstruction of these areas.

Again I'm in strong support of work that you've done today, strong support of the overall goals of both House Bill 6526 and House Bill 6528. I think those two minor modifications would make a great bill even better, and I thank you for your time and your

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REP. BERGER: Thank you, Representative, for your testimony. Any questions from committee members? Thank you.

REP. LEMAR: Thank you.

REP. BERGER: We'll now move to the public sign-up portion of the meeting. For the purposes of this portion of the meeting, there will be a limit of three minutes testimony. It could be up to the discretion of the Chair to extend that under certain circumstances.

The task force co-chairs of the Brownfield's Remediation Development Committee are going to now speak. Gary O'Conner and Ann Catino could please come forward. Thank you. And as you come forward, Gary and Annie -- Ann, it's certainly -- the committee is very thankful of your volunteer efforts in the organization of this -- of this monumental task, basically that we -- that we -- that we face, and the work that you have done over the course of several years, obviously including this year.

And -- and the Chair, the Chair doesn't have three minutes. And the work that you've done over the last several years and certainly this

year in moving forward a lot of ideas here that this committee will put forward and get into legislation. So with that said, please proceed.

GARY O'CONNOR: Thank you, Mr. Chairman. For the record, my name is Gary O'Conner, and as you indicated, I served as one of the co-chairs of the Brownfield's Working Group. With me is Ann Catino, our other co-chair.

I'd like to thank you for the opportunity to speak on the working group's first report, and to talk specifically on Raised Bill 6526. In addition, I would like to thank the Commerce Committee, and especially you and Senator LeBeau, both of whom understood early that Brownfield's remediation revitalization not only enhances the environment but can serve as a catalyst for economic development, the creation of jobs, and the revitalization of urban areas.

The working group got off to a late start. We were empanelled in December, but despite that fact we made considerable progress. Our first priority was to evaluate the effectiveness of recent Brownfield programs and some of the general remediation programs administered by DET.

And as a result, we proposed a number of refinements to certain of these programs. In addition the working group also reviewed a more sweeping change in the form of a Brownfield's remediation and revitalization program. And we proposed that for your consideration.

Finally, the working group recommends that a comprehensive evaluation of all regulatory and

remediation programs be conducted by DEP. And I'd like to just echo the remarks of Senator - - Representative Roland. Having represented a number of municipalities and developers all along the (inaudible) Valley, there is a certain irony that there is really no ready developable space, but yet we have these hundreds and hundreds of Brownfields.

And I think that the bill that we're proposing certainly moves the ball forward in allowing developers to reclaim those properties. So what I'd like to explain is we initially looked at the proposals raised by the working group and then tried to craft a proposed legislation.

And let me be frank. The legislation's a work in progress. There are some sections of the bill that deal with really incremental definements and those received strong consensus from the working group members. There were other, more sweeping changes that were introduced by outside groups, and they received mixed support among members of the working group.

But all believe that it was important to include them in the proposed bill. In the spirit of transparency, in the spirit of allowing further debate on what we think are important issues that need to be raised before the Commerce Committee.

We expect and encourage debate on some of these sections, and we believe that the bill will be made better as a result of this debate and dialogue among all shareholders. I'd like to just address a couple points. One is organizational reform.

In 2006 the Office of Brownfield Remediation and Development was created, and at that time OBRD was intended to be a one-stop shop for all Brownfields issues. It was to be led by a high-level director and staffed by people dedicated solely to Brownfield issues. It was also to be well funded.

And unfortunately none of these things materialized. We have a great staff over there of highly dedicated people, but there's simply not enough of them. And despite the lack of follow-through by the state, OBRD has had a number of significant successes. I've listed those in appendices to this -- to my written testimony.

However, there have been too few of these successes OBRD does not have the resources to undertake number of significant Brownfields projects to advocate more municipalities as to the programs and to market aggressively throughout the region.

Accordingly the working group recommends that OBRD be managed by a high-level director or even a deputy-level -- deputy commissioner level person who deals exclusively with Brownfield issues. More staff should be allocated to the OBRD to work solely on Brownfield issues, and it should be funded properly.

These recommendations are consistent with the environment working group transition team established by Governor Malloy. Next financing and funding. We realized early that in addition to regulatory and organizational reform there needed to be funding and financing incentives to level the playing field between Greenfield development and

Brownfield development.

We have a number of programs between DECD, CDA and DEP, which I've included as an appendix to my written testimony. Beginning in 2006, we created a number of programs targeted to Brownfields. These included the Municipal Pilot Grant Program, the Remediation Action and Redevelopment Grant Program and the targeted Brownfield Development Loan Program.

These programs were conceived, as you know, to fund dedicated accounts at DECD to be administered by the Commissioner of Economic and Community Development, who would administer these programs on their -- on a merits basis, accept applications and provide for an expedited (inaudible) process for funding small and mid-size projects.

We felt that it was important to take this type of financing out of the bonding commission, where there was, you know, a constant delay and it gets very costly. Unfortunately this really didn't pan out.

The funding and financing programs were totally underfunded. And just to give you a perspective of the 2008 Brownfield's task force had recommended an initial infusion of \$75 million in Brownfield funding with additional contributions of 25 million in each of the next five years.

You know, what -- what we've gotten is a fraction of that. Even the money that was authorized by the legislature, only a fraction of that was actually approved by the bonding commission. So what we're suggesting, even the recommendations that we made were conservative relative to our neighbors in the

other industrial states.

And unfortunately even in the good economic times, the state didn't exercise the commission -- commitment that we believe was necessary to a strong, solid Brownfields initiative.

So I know it's very difficult in these tough economic times, and it almost seems inappropriate to suggest that there should be funding for this program, but when you drill into it you understand that Brownfields programs are very important and provide a very significant stimulus to the economy.

I'll conclude with the literature in my report, so I won't take the time right now, but we think that a good, solid Brownfields initiative incorporates a solid commitment from the state of Connecticut in funding programs, and we believe that it makes good sense, even in tough economic times. It creates jobs and stimulates economic development.

The final issue that I'd like to address is one of the programs that we looked at, and that was the Abandoned Brownfield Cleanup Program, or the ABC Program, as it's called. This program was really designed to remove eligible Brownfield properties, abandoned Brownfields, from the state's general remediation scheme and to create incentives for an eligible applicant.

In particular, the ABC Program provided that an eligible applicant was not responsible for investigating -- investigating or remediating any pollution or source of pollution that emanated from the applicant's property which

was created prior to his taking of the property.

We believe that this was an enormous incentive to potential developers. Unfortunately today no one has enrolled in this program. It's not clear whether it's because of the dismal economy or due to certain limitations in the program. So the working group went to work and we made a number of proposals that are included in our report that revise the ABC Program.

First, it clarified the definition of what is an eligible Brownfield. Also we've allowed municipalities to specifically be included in this program, as well as their economic development agencies.

We also indicated that the municipalities are not subject to certain limitations that are in the program. The working group also proposes exempting persons or municipalities that are within the program from the requirements of the Transfer Act.

And we also suggested in the proposed legislation that Sections 10 through 12 that an eligible participant in the ABC Program would also qualify for the covenant not to sue at no cost.

So these are some of the changes. At this point I would like to thank you for your time and turn the podium over to my co-chair, Ann Catino. Thank you.

REP. BERGER: I'll also remind members that within The copy of the report that you receive there's also a summary of all the recommendations over several pages for your

review, and thought on any changes or comments that you might want to make either to the Chair, Ranking Members, or to -- directly to Ann or Gary O'Conner. How long do you feel your testimony will be?

ANN CATINO: Three to five minutes.

REP. BERGER: Okay.

ANN CATINO: I'll try to make it shorter than what I submitted to you in writing.

REP. BERGER: Yes.

ANN CATINO: Because I recognize --

REP. BERGER: We do have some summaries, and we appreciate your efforts.

ANN CATINO: Yes.

REP. BERGER: So please proceed.

ANN CATINO: Thank you. Again, my name is Ann Catino, and I am serving as co-chair of the Brownfield working group, and together with Gary we served as co-chairs of the previous Brownfield task force.

I do want to thank the co-chairs, Senator LeBeau and Representative Berger, for your leadership on these issues. I've practiced environmental law for approximately 25 years in the state. In the past four years we've seen a tidal wave of change in Brownfield initiatives, and it's to your leadership and to the congratulations to all the committee members for putting these initiatives forward.

Our report, which Representative Berger

indicated, was submitted to the committee today, provides the context for the testimony and our recommendations which are set forth largely in House Bill 6526.

My testimony really is going to step the dialogue up a notch further into the regulatory and programmatic challenges that exist. Many challenges exist when Brownfield development meets the statutory and regulatory cleanup programs administered by the DEP.

It is at the juncture of Brownfields and contaminated property programs that improvement is needed, so that more properties do not become Brownfields. In our report we identify five areas that need fixing in order to make the process move forward more efficiently and effectively, and many of these programs do represent a new frontier for Brownfield redevelopment.

Initially, modifications to the Transfer Act are needed as a point of fundamental fairness. Part of 6526 tries to define when a property would be cleaned up such that it could be removed from the Transfer Act. It's an important modification that representatives from the environmental professional organizations have submitted a white paper.

It's included in our report. I believe I'll testify about it further. This is an important step forward for moving properties through the Transfer Act. Second, we believe that DEP should be required to periodically review and revise their mediation standard regulations.

They have not been revised in approximately 15 years. A section of this bill requires that

DEP evaluate the remediation standard regulations such that changes may be proposed, protective of human health and the environment, but also those that are economically feasible and are technologically achievable.

Third, we believe that flexibility needs to be built into the surface and ground water reclassification mapping. A modification to this program was made last year, but an unintended consequence occurred regarding ground water and surface water mapping.

That makes Brownfield redevelopment or could portend to make Brownfield redevelopment a little bit more challenging as it will add an additional delay to the process. Therefore as part of our recommendations we request that it be scaled back a bit to the form in which it had originally existed prior to last year's public act.

Fourth, and significantly, and Gary had mentioned this as a work in progress, and this section I'm going to talk about right now truly is a work in progress. An alternative to the environmental land use restriction is necessary. Attached to the bill, or as part of the bill and in our report we identified the proposed notice of activity and use limitation as an alternative to the environmental land use restriction.

There are issues with the ELUR in the environmental community, the practitioners we've wrestled with, DEP has wrestled with and that's the requirement to get a subordination agreement from prior encumbrances on the property.

The notice of activity and use limitation would be an attempt to relieve a property owner from obtaining subordination agreements in order to move forward and close out of site. The NAUL has been vetted by members of the environmental legal community as well as the real property community, and there will be comments further on the issues.

But again, the working group looks forward and wants very much to try to accomplish something for an alternative to the ELUR. Fifth and finally, Section 17 represents a brand new program. It's a paradigm shift to move Brownfields and contaminated properties more quickly and efficiently through the process.

It identifies those properties and property owners that are eligible, established as important criteria for consideration by OBRD when a property is presented for entry into the program, and quite significantly establishes some pretty quick timeframes for action or approval is automatic.

This would be drastically different in this state. Relief from investigating and remediating contamination as migrated offsite is provided, exemptions from the Transfer Act is allowed, reliability relief is a significant component.

This entry into this program, the task force or the working group recommended for 20 properties. This program represents a -- a different type of program in the state and we felt that in order to move forward and not knowing what kind of demand there would be, limiting it to 20 properties made some sense.

I think it's written it's just limited to 20

properties, at the very least it should read 20 properties per year. Additionally some eligibility criteria was written into the bill, and we believe that that may -- and members of our working group believe that adding criteria may make some sense because there's some benefits to be gained by entry into this program.

I have to do admit that in fairness to some of our working group members the details of this program were not unanimously embraced. It does present certain issues and is a departure, as I had indicated.

There is an example, too, that I want to point out, which is Subsection G that overlays a layer of analysis on the variety of criteria previously established for the funding programs that grew out of this committee and it does create some inconsistencies and ambiguity. So we would like to work further on that.

There should be a larger dialogue on this program. We agree to move it forward, the program will have supporters and detractors, each with their own didactic, which you will likely hear today. As in the past, we're supportive of furthering the discussion and taking the direction from the committee to see if we can arrive at a solution.

Finally I'd like to say that we also are quite enthusiastic about DEP's proposed comprehensive evaluation of its remediation programs. A comprehensive analysis is over due, including taking a very hard look at the much maligned and also controversial Transfer Act.

As a result of the -- of our work and we believe that we need to put some parameters on what DEP evaluates and mandates that we -- that the department complete its evaluation by February 1st, 2012, prior to the next legislative session, so that any necessary statutory modifications can be proposed and acted upon.

We do hope that you find the working group has served as a catalyst for innovative thought to take place, and we welcome the opportunity to be part of that discussion. We really commend this committee, Representative Berger, for your leadership in taking this challenge on.

REP. BERGER: And thank you for your testimony again, and for your work in providing this very comprehensive report in a short span of time for committee members to digest. And I'm sure as they digest it there will be further questions and comments that will be subject to review as we move this to the floor and to the Senate for passage.

Senator LeBeau wanted to extend his thanks also to you on behalf of himself and the committee. He had to go up to higher education; he has some votes there. So again, comments or questions from committee members? Again, thank you again for your work and your testimony. Gregg Sharp? And I just would like to again remind those that are testifying moving forward that you will be timed for three minutes and we'll be very strict on the three minutes. Thank you.

GREGG SHARP: Thank you. All right, Chairman Berger, members of the Commerce Committee, my name is Gregg Sharp, I'm a practicing environmental lawyer at (inaudible) in

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Hartford. I'm also a member of the Brownfields working group.

I'd like to testify first this morning -- this afternoon on the Section 6 of House Bill 6526. Section 6 is a reprise of what this committee did last year with respect to water quality standards. If you remember the committee put forward a bill which ultimately passed that would require DEP to adopt the water quality standards as regulations of the Uniform Administrative Procedures Act.

The one problem, as Ann mentioned, is that the procedure for classification of the water bodies also got wrapped into that rulemaking process, which is extremely lengthy. Historically DEP has misclassified, not intentionally -- has misclassified areas, particularly of ground water, based on the information they had available at the time.

We are trying to restore a fast track process, a streamlined process with a Notice in Hearing that we changed those classifications. So Section 6 addresses just the mapping part of the water quality standards.

We feel that the steps taken last year to make the standard setting a regulatory process is actually -- is absolutely correct, but with respect to the reclassification of these maps we need a streamlined process, because when a Brownfield site comes up for development, if it's classified GA, the standards applicable to GA groundwater are way too extensive and expensive. And if GD is the appropriate category we need a way to fix that.

I've also provided written testimony on two other sections, just as a member of the

working group. Section 5, as Ann mentioned, would require the commissioner to adopt a remediation standard or a remanded remediation standard regulations within three years.

I was a member of the working group that was convened in 2006 to revise those regulations. They haven't been updated since 1996. We're trying to clean up sites now with 15 year-old regulations. The committee was convened in 2006 and disbanded in 2009, and the regulations never saw the light of day, even though most of the revisions that had come forward through that process were agreed upon by all the stakeholders, the department elected to scrap them.

So we propose that the department be required to remand those regulations within three years, which certainly shouldn't be a problem for the new commissioner, given the start that he has, and then periodically update or bring those back up for review every five years thereafter.

Finally, in Section 4 -- and there will be others testifying on this, the relative date for Transfer Act cleanups should be the date of the transfer. The department has interpreted the relevant date for verifying that a site is clean as the date of the verification.

Well, if you've done a deal in 2000 and you don't get to verify it until 2012 and you're the seller and you've agreed to clean up pre-closing the leases, you're now stuck with not being able to get a verification unless you can show that you've cleaned up everything between 2000 and 2012, and that's a problem. That's a huge problem. Thank you.

REP. BERGER: Again -- and thank you for your testimony. You provided written testimony?

GREGG SHARP: Yes, I have.

REP. BERGER: Okay. Thank you. Jessie Stratton?

JESSIE STRATTON: Good afternoon, Representative Berger and members of the committee. My name is Jessie Stratton, and I am here today in my capacity as co-chair of Governor Malloy's with Gary O'Conner of the Environmental Policy Transition Team, as well as a result of that a recent member of the Brownfield task force.

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While the Transition Policy Group did not attempt to write specific legislation regarding Brownfield redevelopment, we did highlight why finding a new way to promote redevelopment is so important, and also made some specific policy recommendations.

As we all know, every acre of Brownfield that is remediated and redeveloped reduces the pressure to develop our valuable Greenfields, and thereby (inaudible) and the environmental impact that accompanies it.

Further, Brownfield projects are most often found in transit hubs or along established transit corridors that are also often proximate to large population centers. Restructuring the transit-friendly sites for productive use can by itself contribute to the goals of transit-oriented development.

The Environment Transition Group specifically suggested that the new administration establish a targeted Brownfield program with specific criteria that prioritized sites from

the basis of the kind of factors outlined in House Bill 6526, and which further defined the class of parties eligible to access the resources, an incentive now included in ADA -- in the ABC program but included in the kind of bill you have before you.

Rather than getting into the specifics of the proposed bill, because there are many attorneys here to do that, and some of them I do not support, I wanted to express my strong support for the pilot concept in this bill.

I recognize that such an approach falls far short of what some would propose and it's too broad for others, but fundamentally I believe there is good reason to expand the universe of eligible parties, which on a limited basis would be provided broader liability protection and the other incentives.

The transition team recognized the need for comprehensive and strategic review of all the existing teams which Ann Catino just outlined very well, and that effort should be conformed and could be informed by this pilot program.

I do not want to minimize the concerns raised by many about (inaudible) onsite and offsite cleanup responsibility, but I do think that any rifts in providing such a small universe of sites such as included in this bill are also characterized by the benefits of their redevelopment, could provide valuable experience to inform that broader reassessment of the state's approach.

We need to undertake that, I think, actually in even a broader process than this bill would call for, by making sure that that is a stakeholder-informed process in terms of

reviewing all of those.

I also would really like to stress, given the different testimonies, how important I think the risk balance that this bill incorporates in limiting the number of sites is to providing comfort to both sides of this equation in going forward.

And hopefully as a result of the successful cleanup of some sites under that program will provide increased comfort both within the host communities, the environmental justice community, and others for expanding that approach in a fundamental rewrite of all of our laws pertaining to the this.

So therefore I really do hope that this bill will go forward with revisions. I think there are many parts of it that ought to be put into that wider review of the statutes that relate to all of the properties, but it is my real hope that we can come together, both from the development community and the advocacy and smart growth communities, to find a way to proceed with some of these in the near-term. Thank you.

REP. BERGER: Thank you, Jessie. Any -- thank you for working on the task force, and adding your expertise in the environmental area, which is very, very important for us to continue that dialogue and work together for all the reasons that you stated in your testimony. Comments or questions from committee members? Thank you for your testimony. Doug Pellem?

DOUG PELLEM: Good afternoon, Representative Berger and members of the Commerce Committee. My name is Doug Pellem. I'm testifying on behalf of the Environmental Professionals

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Organization of Connecticut in favor of Raised
Bill 6526.

The Environmental Professionals Organization of Connecticut, also known as EPOC, was formed in 1996 to represent the interests of Connecticut's licensed environmental professionals. LEPs are the people who are authorized by DEP to perform investigation or remediation of property in Connecticut, and certified through what is called a verification that the property meets the Connecticut remediation standards regulations.

The LEPs are therefore directly affected by the policies and procedures established under the Connecticut general statutes and their associated regulations for investigation and remediation of contaminated sites in Connecticut, including Brownfields.

We would like to applaud the efforts of the Brownfields Work Group in putting together this bill, because it will improve the return of Brownfields in Connecticut's productive use.

EPOC supports passage of HP 6526. In particular, we support Section 4 of the bill, because it clarifies that a seller of a property, subject to the trans right, who has agreed to clean up the property, is not responsible for contamination that happens after the sale.

This eliminates the DEP policy, the result of which required a seller to investigate and remediate contamination caused by the buyer of the property because the DEP would not allow the seller's LEP to issue a verification unless any post-sale releases were addressed.

EPOC supports Section 5 of the bill, which would suggest in substitute language, which I have attached to the testimony, which will require periodic review of and revision and presumably improvement to the remediation standard regulations.

EPOC supports Section 14 of the bill because it provides for a more streamlined method for imposing activity and use restrictions, therefore decreasing the time needed to close out Brownfields.

For all of the foregoing reasons, EPOC urges the committee to favorably report HB 6526. Thank you very much for your time, and I'd be happy to answer any questions.

REP. BERGER: Well, thank you for your testimony, and again for your work on the task force and working group. And we appreciate as a committee the work that you've added to this and the expertise that you added. Any questions or comments from the committee members? I'm seeing none, thank you.

DOUG PELLEM: Thank you.

REP. BERGER: Chris McCormack?

CHRIS MCCORMACK: Mr. Chairman, members of the committee, good afternoon. I'm an environmental attorney from Pullman & Comley in Bridgeport, Connecticut. I'm also a member of the Connecticut Bar association in the environmental section and the legislative liaison.

And from that perspective I'm here to comment on two aspects of Raised Bill 6526,

specifically the Notice of Activity and use limitation provisions.

The environment committees -- the environmental section's review suggested that here might be some property law issues and technical property law issues that bear further consideration, and I was tasked with compiling comments from the environmental section and also reaching out to the real property section.

And in the Brownfield Working Group package that Ann Catino has already submitted, Tab 5 of that package contains the written compilation of some of that feedback. I want to highlight two specific items in my testimony.

The first has to do with Proposed Section 22A-1330(c)(1)(a). This has to do with the eligibility criteria that a property -- that it would be eligible for a Notice of Activity and use limitation would have to be zoned to exclude residential uses.

The feedback was that there are many areas where industrial and commercial zoning does not exclude residential uses, and the thought was that it ought to be sufficient if the zoning and the current use are industrial and commercial.

And then the notice would -- would basically take care of downstream transfers and assure the continuation of that use. It would unduly limit the utility and the effectiveness of this Notice of Activity and use limitation if we restrict it to only the areas where residential uses are excluded by zoning.

The second point that I wanted to highlight is there are two provisions in the proposed legislation that seem to conflict with the title recording system, and with settled expectations among mortgage lenders and the real estate community concerning the priority of recorded interest in property.

And those are Proposed Sections 22A 1330(c)(3), which -- which asserts that a Notice of Activity, of use limitation shall be adhered to by all holders of interest in a property.

And Section 22A 1330(c)(6), the last sentence of which says that a Notice of Activity of use limitation shall survive foreclosure, both of those for reasons we explain in the comments, both of those are inconsistent with the expectations that arise from the recording, the system for recording of interest.

Ordinarily the first interest recorded takes priority over junior interests, and the reaction was that having these provisions in the bill would needlessly complicate any acceptance of this notice of activity use limitation mechanism, which for reasons other people have stated is a very useful one.

Some details and some suggested corrections and alternatives are in the written comments we provided.

REP. BERGER: Okay. so I was just going to ask you. so you do have testimony that provides those changes for our attorneys?

CHRIS MCCORMACK: Yes, sir. The -- the written report is Tab 5 in the Brownfield Working Group submission.

REP. BERGER: Okay, great, all right.

CHRIS MCCORMACK: Thank you.

REP. BERGER: Thank you very much for your testimony and for your work on the committee. Roger Reynolds.

ROGER REYNOLDS: Good afternoon, Chairman Berger, members of the committee. My name is Roger Reynolds. I'm a senior attorney for Connecticut Fund for the Environment. We are Connecticut's environmental advocate and have been fighting to protect Connecticut's environment for 30 years.

I'm here to testify supporting in part and then opposing in part 6526, a C Brownfield remediation, and in support of S.B. 1001, the First Five Program, and strongly opposing 1135, the Waiver of Fines, Penalties for Certain Business Regulation Violations.

I have submitted written testimony in which some of the details are there, so I'm going to use my less than three minutes now to concentrate on the big picture aspects of the Brownfield bill.

We strongly support the aspects of 6526 that would simplify the program and focus resources on a few prioritized sites to jumpstart the stalled Connecticut process.

Brownfield sites in Connecticut are not being cleaned up, the process is stalled and it's harming the environment and the economy. We believe this is because government has often failed to prioritize, failed to talk to each other, failed to have a cohesive plan to clean

these up.

So we support the aspects of the bill that would chose the most significant sites, based on smart growth, transit-oriented development and other economic growth principles, and move those forward. Let's move a few forward. Let's put some resources and momentum behind this. We have a governor who really understands and believes in this, and I know and understand that that's going to be the charge to the agencies.

We also support the idea of stepping back and doing a large-scale study of the Transfer Act to see if we need something entirely different perhaps and looking at the big picture.

I think the Transfer Act does have its problematic parts. It's almost unique in Connecticut. We do oppose parts of the bill that dilute the definition of Brownfields and instead of making it more focused make it less focused to cover things like asbestos and lead paint. We also oppose the parts of the bill that tinker with the Transfer Act.

We've had for a number of years now we've had various exemptions to the Transfer Act each year, and we've kind of got a patchwork that doesn't relate to each other. We think doing more exceptions, and more one-sided exemptions that don't really look at the whole picture.

Some of these exempt properties without really explaining how they're ultimately going to get cleaned up, we think that's wrong. We think that's why we are where we are now. We think we've got to step back, take a big picture look at it and revisit that next year.

I think many of the exemptions that are contained in Section 17 will actually create more confusion, more litigation. It's a revamping of a program that was revamped 1.5 years ago or so, and we think that's not the way we should be going.

In particular, you know, I mentioned the First Five Program. You know, I think that's a good approach. Let's pick some models, some individual sites and make them successes. That's what we'd like to do. And the rest of my testimony is in writing.

REP. BERGER: Thank you, thank you for your testimony today. Any questions from committee members? I'm seeing none, thanks.

ROGER REYNOLDS: Thank you.

REP. BERGER: Barry Trilling. Mr. Trilling, as you make your way up, did you provide written testimony for the committee? Okay. Because I didn't find it in my pack, but we'll get to that. Please proceed.

BARRY TRILLING: I'm Barry Trilling. In my professional life I'm a lawyer with Wiggin & Dana in the Stanford office, and I head my (inaudible) set sustainable development and climate change practice, and about 90 percent of what I do has something to do with contaminated properties.

HB6526

Let me cut to the chase. I only have three minutes and my written testimony, and that of my fellow members of my trade association, NAIOP, and on his behalf I speak here today, the National -- formerly National Association of Investoral and Office Properties, now just an real estate development association.

It's the largest grass roots association of developers, investors and creators of commercial real estate in the United States. We're a traditional support of Brownfields properties and Brownfield redevelopment. Two of my colleagues from the (inaudible) have also submitted statements.

I'm cutting to the chase. Let me address directly the statements we heard from Roger Reynolds and Jessie Stratton about limiting Section 17. If there's anything about the Raised Bill that deserves support it's Section 17 without limitation.

Pilot programs already exist. They exist in New York, they exist in Pennsylvania, they exist in Georgia, they exist in Wisconsin, they exist in Texas and several other states which have passed us by.

Those states which have adopted regulatory systems similar to those that are in Section 17 are moving forward on their Brownfields development while we lag far behind.

It's said that Brownfields redevelopment is like turning the proverbial sow's ear into a silk purse. Let's not stand out as the sore toe. That's what we've been doing with pilot programs, with programs like ABC, which since enacted has not had a single, single applicant.

We need to open this program and realize that we have to address the issues of blight and hopelessness that exist in Brownfields communities.

I'd like to before I go any further to thank

Lee Hoffman, our friend and colleague at Hartford's Fullman & Connelly (ph), who has helped guide me through this legislative process and myself quite reluctantly through most of it.

Lee has suffered a minor heart attack this weekend and is not doing well recovering in Hartford Hospital. And if anyone disagrees with what I have to say either substantively or in the tenor of my remarks, please blame me and not Lee.

And I'd also like to give a lot of credit to Ann Catino and Gary O'Conner for their unbelievable efforts over the last two years to try to make sense out of this process and to try to reconcile conflicting interests such as the one I'm presenting now from what you've heard from -- from Jessie and Roger.

I'd just ask you to picture an urban neighborhood whose centerpiece is a closed industrial facility that once employed hundreds of workers. It is not the subject of any environmental enforcement action, but it is nonetheless burdened with historical environmental contamination.

The current owner has no desire to redevelopment the site because it no longer does business, and he can't sell the property because of the current liability stain Connecticut has imposed on potential purchasers.

Now it lies shuttered and the surrounding neighborhood is suffering.

REP. BERGER: Please summarize.

BARRY TRILLING: Let me summarize by saying the private sector is willing and able to come into these neighborhoods, clean them up. We don't want state or federal money. We just want a basic real estate deal, and in order to that there should be liability release and Section 17 provides it. Thank you very much for your attention.

REP. BERGER: Thank you. Questions from committee members. I'm seeing none, thank you. David Hurley.

DAVID HURLEY: Thank you, Mr. Chairman. My name is David Hurley and I'm a resident of Ellington. I'm a Connecticut licensed environmental professional and the vice president and director of Brownfield services at the consulting engineering firm of Huffs & O'Neill (ph) of Manchester & Trumble.

I have over 20 years experience assessing cleaning up Brownfield sites in Connecticut. I'm a member of the general assembly's Brownfield Remediation Work Group, and I'm here to speak in favor of House Bill 6526.

There are many challenges to redevelopment of Brownfield sites. These include developing and understand of the contamination of the site, the cost of assessment and remediation, the potential third party liability and the regulatory complexities.

But I have found in my experience that the challenges that affect potential redevelopers and municipalities the most are the difficulty in quantifying the upper limits of the environmental costs, the long-term potential liability associated with our laws and regulations and the ultimate length of time

that it takes to redevelopment a site and bring the remediation to finale.

Over the past five years these challenges have progressively been addressed by legislation introduced by this committee. I would like to thank the Chairman for your commitment and effort to move these issues forward. House Bill 6526 continues to address these challenges by providing some clarification of responsibilities under the Transfer Act and providing a mechanism for reclassification of waters in the state where it makes sense.

I do add that I agree with the comments from the speaker before regarding the continuing tinkering of the Transfer Act and that it is important to take a broader look at how the law is actually written and applied.

Section 17 of this bill offers a clear, streamlined and predictable program for cleaning up these sites while using our current cleanup standards. This program will provide the clarity and certainty that it will attract private investment necessary to redevelop these sites without additional public funding.

Other states with successful Brownfield programs such as New York and Pennsylvania acknowledge that a party that has no connection with the historic ownership and activities of that site is willing to take on the -- and is willing to take on the burdensome and expensive cleanup of the site should be provided some limits to their responsibilities and liabilities associated with the environmental conditions.

Just to sum up, I would say that Brownfield

sites are located throughout the state of Connecticut in our cities towns and historic villages, and that any -- that our Brownfield program should encourage private investment and remove barriers in the small neighborhood sites as well as the larger, regional impacted sites. Thank you for the opportunity to speak and address these issues.

REP. BERGER: Thank you, Mr. Hurley. Any questions from committee members? I'm seeing none, thank you. Beth Barton?

BETH BARTON: Representative Berger, members of the committee, good afternoon. Thank you for the opportunity to speak in connection with Raised Bill 6526. My name is Beth Barton and I'm a partner at Baye Pitton's (ph) Hartford Office, practicing environmental law for more than 25 years working with various stakeholders as well as on behalf of particular clients.

I have participated in a number of efforts to make the climate in Connecticut more hospitable to the return of economically underutilized properties to productive use while also assuring adequate protection of public health and the environment.

I'm a long-time member of the National Brownfield Association, including the Connecticut chapter, whose first chair was Governor Malloy, during his time as Stanford's mayor, and I'm currently a member of the National Brownfields Association's National Brownfields Advocacy Network.

I'm here to voice my support for Raised Bill number 6526, and in particular Section 17 for the very reasons stated in the title of the bill. The reality is that Connecticut has

many, many underutilized properties, large and small, particularly in our urban areas, which present significant impediments to economic revitalization and economic recovery efforts, as well as the investigation and remediation of environmental conditions at these properties.

An additional reality, whether actual or perceive, which can be debated, is that Connecticut is seriously behind the curve in removing or even mitigating these circumstances.

In voicing my support, however, I must join others in also expressing my disappointment in Subsection B of Section 17, which is submit unnecessarily limits its prospects for success.

As was stated earlier, Section 17 is not about public funding. That's the province of other statutes. Rather the framework presented in Section 17, if it's not limited in terms of persons and properties is an opportunity for Connecticut to tell that it is a state for and welcoming of Brownfield redevelopment business.

Before I close I'd just like -- would like to briefly reference several other sections of the bill which I believe deserve attention as well, Sections 4, 5, 7 and 13.

Section 4, in defining the extent of remediation required under the Transfer Act as drafted, this provision appears to reach back potentially having significant and undesirable or at least unintended impacts and consequences for perhaps thousands of property transfers pursuant to deals struck by private

parties.

As drafted it creates ambiguity for these task transfers and the implementation of the plans, not a good thing. I've given examples of amendments that would be required to address these issues.

Section 5, while I recognize --

REP. BERGER: You have -- Ms. Barton, you have written testimony that identified your -- your amendments? Okay.

BETH BARTON: Yes, I do.

REP. BERGER: Is there any other questions from committee members? I'm seeing none, thank you.

BETH BARTON: Thank you very much.

REP. BERGER: Carter Winn-Stanley. Carter's not here? Charles Hunter.

CHARLES HUNTER: Good afternoon, thanks very much. I'm with the Connecticut Southern Railroad. We operate the freight service over the Connecticut River Bridge between Hartford and East Hartford and we're here for Senate Bill 1137.

Connecticut River Bridge provides the freight link for 12 businesses on the East Hartford side of the river. These businesses provide about 500 jobs currently. Major businesses include Hudson Baler (inaudible), Central Connecticut Coop and Berlin Oil. Some of those customers are here today as well.

Commodities handled along the line include

SENATOR LEBEAU: Exactly, using the hydro power from the dams that are there on the Hockanum River, which you're right on too. Probably at one point you were hydro powered also.

CHRISTOPHER FIEDLER: Yes.

SENATOR LEBEAU: That's going back some time. You've done a good job. The other thing you've done, that Cellu Tissue has done, is you've kept up with the times, you've stayed lean and mean. You've been able to employ people and I congratulate you on your success and we of course want to keep you in Connecticut and keep you working and keep you making money and keep you employed.

CHRISTOPHER FIEDLER: If I could just add, recently we did a \$6.5 million investment to install a combined heat and power system. This is highly energy efficient, it lowered our carbon footprint. So really making an investment in the community to keep going, keep the jobs in the state.

REP. BERGER: Thank you very much. Thank you, Senator. No further questions, thank you for your testimony. Dennis Waslenchuk. I think that's right.

DENNIS WASLENCHUK: Good afternoon. I'm Dennis Waslenchuk. I'm a grey beard environmental consultant. I've lived and practiced in Connecticut all my professional life. I support smart legislation to promote Brownfield development.

Raised Bill 6526 has merit, but it is fatally flawed due to one technical provision. Brownfield developmental projects begin with

an environmental assessment. No one benefits from an inaccurate environmental assessment.

Unfortunately this bill does not specify the tried and true standard for conducting environmental assessments that we've been following in Connecticut for two decades. Instead, Section 17A(2)(b) requires use of EPA's All appropriate Inquiry Standard, known as the AAI Standard, which is equivalent to the commercial ASTM Phase 1 Standard.

These set out a weak recipe for a superficial assessment, a one-size-fits-all standard that did not contemplate the challenges of investigating a Connecticut Brownfield property with a 100-year legacy of industrial use.

It's more suited to an old office building with an obvious old fuel tank than for a manufacturer facility that had 50 pollution prone activities going on down through the years.

Our DEP correctly rejects the AAI and ASTM standards. Our Connecticut Standard tells us environmental professionals to make good use of great information resources that aren't available in most other states, and it requires us to use our brains and scientific reasoning to figure out what and where to look for contamination.

The AAI Standard misses that good stuff. The AAI and ASTM Standards should be struck from the bill. Connecticut says one protocol should be inserted in their place. It doesn't cost more to follow Connecticut's protocol, it just makes much better use of scientists' brain power and knowledge of Connecticut's

industry legacy.

Why doesn't the bill require the Connecticut Standard for Connecticut Brownfield projects? The (inaudible) says that some parties are not really interested in finding contamination at the beginning of the project, they'd rather get some financing in place, get some commitments and get some momentum going before contamination rears its ugly head.

Their unrealistic hope is that momentum will overcome any surprise contamination that shows up later. I can almost guarantee that failing to conduct an accurate environmental assessment at the beginning of a project will result in sudden discovery down the road.

I ask you to read my submitted comments, where I lay out the fatal flaw, and provide alternative language. Thank you.

REP. BERGER: Thank you for your testimony. Questions from the committee? Okay. Donald Domina?

DONALD DOMINA: Thank you for giving me a chance to talk. I'm with Central Connecticut Coop in Manchester, Connecticut. We've been in business since 1938. We're the only feed mill left in Connecticut of any size. There's a couple little ones, but that's it.

And I'm here on the railroad bridge that we really, really need that. I've submitted some written testimony but I'd like to take a couple minutes to tell what we do for agriculture.

Right now we're servicing about 1,000 customers, a lot of small, medium-sized people

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and CDA, and they have submitted written testimony to that effect as well. Thank you.

REP. BERGER: Thank you for your testimony. Mark Summers.

MARK SUMMERS: Good afternoon. Thank you. My name is Mark Summers. I'm the project coordinator for Bridgeport Landing Development, the selected master developer for Steel Point Harbor in Bridgeport.

I'm testifying today in support of HB 6526, the Brownfield Remediation Act. Steel Point Harbor redevelopment will a mixed-use project consisting of commercial retail office, marina hotel and residential uses.

The ultimately build out of the project is anticipated to be about 2.7 million square feet, and it will create approximately 1,500 permanent direct jobs and up to 2,000 indirect jobs.

One of the difficult issues in getting this project started has been getting major tenants and co-developers comfortable with the remediation plan, and particularly the liability that they might incur for someone else's past practices under Connecticut law.

These concerns have been raised in preliminary negotiations with interested tenants and retailers and will continue to affect our ability to scare up partners in this project.

Currently we are in final negotiations with the major anchor tenant, and their representatives have already warned us that the most difficult part of this final agreement will be the environmental concerns

and protecting them from liability of past practices.

Of course, it also goes without saying that the more protection from liability that we can demonstrate to investors and financial institutions the easier it is to secure financing to build Steel Point.

As I'm sure you are aware, only the best deals are being financed today and no one is taking unnecessary risks. The additional assurances this bill will afford by exemption from the Transfer Act and providing a clean end to the liability with successful completion of (inaudible) will significantly aide our ability to finance vertical construction.

Expedited permitting and reliable approval timeframes are also extremely important, both master developer and co-tenants -- co-developers. Permitting and approval delays are often unacceptable excuses to a major retailer expecting to open for a specific season.

I believe this bill will help assure everyone that permit and approval delays won't be the norm. All that said, I would like to take a moment to express my thanks to all the DP staff who have been working with us on the remediation requirements for Steel Point on our initial permitting efforts.

They have been timely and more than cooperative. I strongly believe they understand the vital importance of this project to the city of Bridgeport and the state of Connecticut.

Notwithstanding, the DP's primary

responsibility is to protect their resources, they are all helping to expedite our request and approvals.

The latest hurdle that we've been trying to address is chasing the contamination. Currently we're trying to determine -- I'll summarize quickly -- the -- the characterization to the extent that contamination from Steel Point has spread offsite.

This is a concern because if we are forced to chase contamination across the entire Bridgeport Harbor it could potentially stop this project dead in the water.

While DEP staff has been understanding and realistic in their approach with us, they believe they are compelled to address this issue through our development proposal. I feel this legislation should give the DEP staff the ability to be reasonable in this matter without causing any further harm. Thank you.

REP. BERGER: Thank you for your testimony. And that will conclude the public hearing, which we are -- oh, who wanted to -- okay, thank you, Representative Santiago. We are going to recess.

We're going to recess. We had made a previous statement that we were going to close the vote. We have some -- some members of the committee that are in traffic and commuting back to the Capitol, so we will keep the vote open until 5:00 p.m. in the Commerce Committee Room 110 at the Capitol.

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Statement of Connecticut Innovations regarding Raised S.B. 1136 An Act Lowering the Threshold for Angel Investors and Raised H.B. 6525 An Act Concerning the Continuance of the Majority Leaders' Job Growth Roundtable.

Good Morning, Senator LeBeau, Representative Berger and members of the Commerce Committee. Thank you for the opportunity to comment today on Raised S.B. 1136 An Act Lowering the Threshold for Angel Investors and Raised H.B. 6525 An Act Concerning the Continuance of the Majority Leaders' Job Growth Roundtable. These bills both address important aspects of economic development.

In July 2010, Connecticut Innovations launched the Angel Investor Tax Credit Program that was created in last year's jobs bill. To date, there has been a lot of interest in the program. 10 Angel Investors have invested \$ 2,145,000 in 7 Connecticut business' that have qualified under the program. These investors have received \$536,250 in tax credits for making these investments. Currently 21 Connecticut businesses have qualified under the program and are posted on the website. The biggest problem angel investors have to overcome in order to participate in the program relates to the fact that the minimum investment specified in statute is \$100,000. This amount is too high. Most angel investments are in the \$20,000 -\$25,000 range. Under current law, in order for angel investors to benefit from the tax credit program 4 or 5 of them would have to form a limited liability company and pool the investments to reach the \$100,000 minimum. This is cumbersome and burdensome for angel investors. By lowering the minimum investment amount to \$25,000, as is done in S.B. 1136 and section 4 of H.B. 6525, more angel investors will be able to participate in the program thereby making more investment capital available to start-up ventures.

Section 4 of the H.B. 6525 makes a second modification to the angel investor tax credit program. It removes the requirement that a business have a "proprietary" technology, product or service. This revision will allow more businesses in Connecticut to qualify for angel investments under the program.

Section 2(b) of H.B. 6526 adds clarifying language relating to what qualifies as "private investment dollars" under the pre-seed program created by last year's jobs bill. Under current law, companies can qualify for a pre-seed investment from Connecticut Innovations if certain conditions are met. One condition is that a company must demonstrate that they have raised private capital in an amount not less than fifty cents for every dollar sought under the program. There was some concern that certain funding from the University of Connecticut would not qualify as "private investment dollars" and UCONN is seeking the clarifying language found in section 2. CI supports this language.

H.B. 6525

Regarding sections 9 through 11 of H.B. 6525, in 2008 the legislature moved the Connecticut SBIR office from the Connecticut Center for Advanced Technology to CI. The SBIR office runs several very effective programs helping small businesses, mostly manufacturing businesses, apply for, and win, federal grants. Since it was moved over, CI has underwritten the expenses of maintaining the SBIR office and has sought to create synergies between the work done by them and CI's core mission. CI opposes this proposal because it does not support the governor's goal of streamlining the state's economic development efforts.



Ronald F. Angelo Jr.
Acting Commissioner



State of Connecticut
Department of Economic and
Community Development

TESTIMONY SUBMITTED TO THE COMMERCE COMMITTEE
March 8, 2011

Ronald Angelo, Acting Commissioner
Department of Economic and Community Development

HB 6526 AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER

HB 6528 AN ACT CONCERNING BONDING FOR BROWNFIELDS

The Department of Economic and Community Development offers the following comments regarding **HB 6526 AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER** and **6528 AN ACT CONCERNING BONDING FOR BROWNFIELDS**

Brownfield redevelopment is a critical component in revitalizing Connecticut's economic and community centers and commercial areas. DECD's Office of Brownfield Remediation and Development (OBRD) is the lead state agency in managing financial and technical assistance for this important economic development issue. Since 1993, DECD has invested over \$255 million in brownfield assessments and redevelopments, leveraging \$817 million in other funding. Some notable projects include the Brass Mill Center in Waterbury, the former Bryant Electric site redevelopment in Bridgeport and Goodwin College in East Hartford. Attached please find a summary of the activities of the OBRD.

Governor Malloy has continued this commitment to investing in brownfield revitalization by including \$25 million in each year of the biennium to finance loans for redevelopment of brownfields which will assist in the revitalization of our urban and rural communities around the state.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's Legislative Program Manager, Joseph Oros at (860) 270-8186 or Joseph.Oros@ct.gov.

Office of Brownfield Remediation and Development (OBRD)
Department of Economic & Community Development
Summary of activities 3/8/11

DECD's Office of Brownfields Remediation and Development (OBRD) is the lead agency providing technical and financial assistance to investigate and remediate brownfield sites.

Brownfield activity status – OBRD's project pipeline tracks project at each stages of the approval process. Activities funded are primarily environmental assessment and remediation. OBRD pipeline includes 40 projects:

Awaiting Contract: 8 projects;

Awaiting Bond Commission approval: 2 projects;

Drafting Financial Assistance Proposal stage: 10 projects; and

Projects under discussion: 20 projects

Brownfield Municipal Pilot Program - Grant program for municipalities with projects that have been complicated by brownfields but will on completion make a significant economic impact.

1st round (\$2.25M) awards (all project under contract):

Norwalk – South Norwalk Train Station (\$300,000), Shelton – Axton Cross (\$425,000), Stamford – Harbor Point (\$450,000), Waterbury - Cherry Street (\$650,000), Redding – Georgetown (\$425,000)

2nd round (\$2.25M) awards (projects at various stages of contract closing):

Hartford - Swift Factory(\$600,000), Waterbury - Waterbury Industrial Commons (\$600,000), Meriden - Factory H (\$300,000), Madison - Griswold Airport (\$200,000), Naugatuck - Train Station (\$50,000), Putnam - Cargill Falls Mill (\$500,000)

State and Federal brownfield programs managed by OBRD

Federal (EPA funding)

EPA Assessment Program – Grant of services to municipalities and nonprofits for environmental assessment of brownfield sites.

EPA Revolving Loan Fund - Statewide – Grants and loans for remediation of brownfield sites located State-wide

EPA Revolving Loan Fund – Hartford – Grants and loans for remediation of brownfield site located in Hartford.

State funded

Targeted Brownfield Development Loan Program - Loans to applicants who seek to develop property for purposes of retaining or expanding jobs or for developing housing to serve the needs of first-time home buyers.

Urban Sites Remedial Action Program – Seed capital to facilitate the transfer, reuse and redevelopment of property. Jointly managed by OBRD and DEP for projects in a distressed municipality that are significant to the Connecticut's economy and quality of life.

Special Contaminated Properties Remediation and Insurance Fund - Loans to municipalities, developers or owners for assessment and remediation.

Non-financial state assistance

Abandoned Brownfield Cleanup Program - Liability protection from the responsibility to investigate and remediate off-site contamination.

FIRST REPORT
OF THE
**STATE OF CONNECTICUT
BROWNFIELD WORKING GROUP**
ESTABLISHED PURSUANT TO PUBLIC ACT NO. 10-135



Submitted to the
Commerce Committee
of the
Connecticut General Assembly

March 8, 2011

PURPOSE OF THE REPORT

The purpose of this report is to respond to Public Act 10-135 "An Act Concerning Brownfield Remediation Liability." Pursuant to section 2, an eleven member working group was created "to examine the remediation and development of brownfields in this state, including, but not limited to, the remediation scheme for such properties, permitting issues and liability issues, including those set forth by sections 22a-14 to 22a-20, inclusive, of the general statutes."

The Working Group members are grateful to the staff of the Departments of Economic and Community Development and Environmental Protection, and the Connecticut Development Authority, which spent the time with us and assisted us in our meetings, researched issues, invited various interested persons to our discussions, and responded to our various questions and in engaged in lively debate and discussion. We believe we have been successful collaborating and working together on a number of issues. Through the process, we do believe that we have made progress but more has yet to be accomplished.

The Working Group members also thank the General Assembly and the appointing authorities for the opportunity to serve on this Working Group and make recommendations for what we believe is the continuation of a very important initiative for determining the future of Connecticut Brownfield properties.

Finally, the Task Force specifically recognizes the Co-Chairs of the Commerce Committee, Representative Jeffrey Berger from Waterbury and Senator Gary LeBeau from East Hartford, who recognized early on the importance of Brownfields revitalization to municipal economic and community development and public health and safety. We thank them for their leadership, support and tenacity as they have embraced Brownfield redevelopment as the key for turning around our communities, restoring a property to a beneficial reuse, and restoring a municipality's tax base.

A strong Brownfields program will provide a needed economic stimulus to our state, is smart growth, and will restore our communities.

MEMBERS OF THE BROWNFIELDS WORKING GROUP

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Marie O'Brien	President of the Connecticut Development Authority
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*Both Commissioners participated in the Working Group. However, at the time this report was issued, a new Commissioner was appointed at DECD and a new Commissioner was appointed at DEP. Staff from both DECD and DEP participated extensively in the Working Group: Peter Simmons and Susan Decina from DECD and Graham Stevens and Robert Bell from DEP. In addition, Cynthia Petruzzello, Vice President, Connecticut Development Authority/Connecticut Brownfield Redevelopment Authority also participated extensively in the meetings and discussions of the Working Group. The Working Group extends many thanks to the staff for their support and responsiveness to our information requests.

FIRST BROWNFIELD WORKING GROUP REPORT

March 8, 2011

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**On March 7, 2011, the Brownfield Working Group members adopted this report. In keeping with the separation of power between the Executive Branch and Legislative Branch of Government, and the transition between the prior administration and the new one, the public officials who are members of the Agencies that serve on the Working Group, either did not vote on or abstained from the Working Group's Report.*

I. INTRODUCTION

This Report and the work of the Brownfield Working Group created pursuant to Public Act 10-135 essentially continues the work of the Task Force on Brownfield Strategies that was created through Public Act 06-184, "An Act Concerning Brownfields", which was continued through Public Act 07-233, "An Act Implementing the Recommendations of the Brownfields Task Force" and Public Act 09-235, "An Act Concerning Brownfields Development Projects." The Task Force was created to develop long-term solutions for cleaning up Brownfields and to propose new incentives to stimulate investment and rehabilitation of Brownfields. The Task Force issued its first Report to the Environment and Commerce Committees in February 2007, its second Report to the Environment and Commerce Committees in February 2008, and its third Report in February 2009. The Working Group reaffirms the prior reports, the recommendations and analyses of the Task Force.

The Working Group urges the Connecticut General Assembly to continue to recognize that brownfield redevelopment is an important economic driver in the State as it creates jobs, enhances our State and municipal tax base, and restores idle and blighted properties to productive use. These changes and the recommendations the Working Group proposes are significant economically to our State as new jobs would be created and new revenue streams are anticipated, which is needed in these uncertain times. On the environmental side, brownfield redevelopment is "green" as it saves land, reduces the effect of contamination on our soil and water resources, and provides redevelopment where existing infrastructure exists. It remains important to the quality of our municipalities and is consistent with principles of smart growth and transit oriented development.

The Working Group has evaluated the success of the programs created from 2005-2010 in Public Acts 06-184, 07-233, 08-174, 09-235 and 10-135 and has evaluated many of the remediation programs administered by the Connecticut Department of Environmental Protection. Further, it has recognized the need to develop new programs to provide solutions to the State's brownfields. In prior years, the Task Force balanced proposing incremental changes with sweeping changes. The Working Group similarly builds upon this approach, however, it also believes that it is time that a comprehensive evaluation of all regulatory remediation programs (including those not limited to brownfields exclusively) take place with the Connecticut Department of Environmental Protection and it has also included an exceptionally progressive program that applies to all contaminated sites to foster a larger discussion on the appropriate approach to all our state's contaminated properties.

Unlike the Task Force reports, the Working Group spent time not only deliberating these issues, but crafting proposed legislation to address these topics (Attachment 1), which is largely reflected in Proposed Bill 6526. Admittedly, some of the sections of the Working Group's recommendations and this proposed bill are "works in progress." Because some of the proposals considered and debated by the Working Group will undoubtedly require accepting significant and, in some cases, controversial changes to existing programs, structures and philosophies, the Working Group is trying to be as open as possible to new ideas and balancing the various

interests. Additionally, we elected to move forward with a number of proposals received from outside the Working Group and, in the interest of transparency and to foster further discussion, these sections were included in this report and, ultimately, the proposed bill. Therefore, some of the proposals are not in final form and are not embraced by all the private sector members of the Working Group, but are in furtherance of a dialogue with the many and varied interests that are important to a successful brownfield program.

Although not in the bill, the Working Group also encourages the Departments of Economic and Community Development and Environmental Protection to educate municipalities and stakeholders as to the various programs that are available. Many resources and programs are available, but such resources are often untapped. Marketing the State programs within and outside of the State are important to change the direction of the State and let potential developers and businesses know that the State is open for business.

Municipalities also should work collaboratively to seek brownfield funding. Public Act 10-168 "An Act Concerning Regional Economic Development" was a milestone for regional economic development collaboration. As part of that legislation, a goal was clearly stated to use the regional Comprehensive Economic Development Strategy (CEDS) process to establish strategies for brownfield redevelopment as well as economic development, housing development and open space preservation. To the extent the CEDS regions can leverage federal funding for brownfield redevelopment, they should. In partnership with the Department of Economic and Community Development, funds can be leveraged from federal sources to address priority brownfield projects in the region. Currently the northeast CEDS, comprising 21 communities, in partnership with DECD, have submitted such an application to USEPA to fund a \$1,000,000 coalition assessment grant program to address ten priority brownfield projects in the region.

Finally, while it may not be appropriate for a legislative proposal, the Working Group believes very strongly that the Executive Branch should *embrace brownfield redevelopment for all State development*. All State agencies and quasi-public agencies, universities and colleges, should consider and select brownfield sites when the State is looking to develop new properties for new State buildings. While years ago a decision was made, for example, to select an open space property for the new State laboratories, the Working Group believes and urges all public officials to first consider brownfield sites when making decisions relating to siting new State buildings or facilities proposed to be developed for a public purpose or with public funding. In addition, the next five year State Plan of Conservation and Development should emphasize and target brownfield sites as a redevelopment goal for all projects that are to be consistent with the State Plan. To the extent the State truly embraces principles of smart growth, the State should therefore plan and engage in brownfield redevelopment for State facilities.

II. SUMMARY OF RECOMMENDATIONS

In this Report, the Working Group continues to follow the overall themes and prioritize changes to address: organizational reform, funding and financing initiatives, regulatory programs, liability relief. In addition, the Working Group also addressed issues common to contaminated sites in general as well as brownfield sites as many of those programs may tend to create new brownfields or serve as impediments to determining when a site is finally cleaned up.

The Working Group's recommendations are highlighted as follows:

- that brownfield development and redevelopment be one of the highest priorities for DECD, CDA and DEP. *See Section II.B., infra.*
- that a director of OBRD be hired and the director and OBRD report directly to the Commissioner of DECD. *See Section II.A., infra.*
- the Executive Branch should require all agencies, quasi public agencies, and colleges and universities to look at and redevelop brownfield sites for all new State development.
- to emphasize brownfield redevelopment in the State Plan of Conservation and Development.
- \$1.5 million be allocated to DECD to staff and run the office, that DEP be similarly funded, and that \$500,000 be allocated to marketing, education and outreach programs. *See Section II.A, infra.*
- that the grant program established pursuant to CGS § 32-9cc and the grants and loan program established pursuant to CGS § 32-9kk and administered by DECD be funded annually and/or that DECD be provided with a capital budget to administer these programs. In 2006, the Task Force recommended that the programs be capitalized with \$75 million of initial funding, with an additional \$25 million allocated every year for five years to provide a consistent revenue stream to the programs. This amount would have put us on equal footing with other states. The funding that did occur fell far short of this goal. *See Section II.B., infra.*
- the pilot program be open to all municipalities *See Section II.B., infra.*
- the abandoned brownfield program be expanded to include more properties and further protections from liability be provided. *See Section II.B., infra.*
- that participants in the brownfield programs be excluded from certain fees and from the rigors of other state programs. *See Section II.C.1., infra.*
- that the Transfer Act be modified to provide clarity as to what releases a certifying party is responsible to address and to exempt the creation of an "establishment" if the only wastes generated are those from the demolition of a building. *See Section II.D.1., infra.*

- that the state's remediation standards be reviewed on a regular basis to insure that the standards are protective of human health and the environment, feasibly achieved and consistent with best scientifically available standards. *See Section II. D.2., infra.*
- that the process by which the DEP maps and classifies properties under the state's water quality program be streamlined. *See Section II.D.3., infra.*
- that certain existing programs be provided with additional clarity such that Licensed Environmental Professionals be better equipped to verify a site and new tools be made available under the programs administered by the Connecticut Department of Environmental Protection, such as a Notice of Activity Use Limitation. *See Section II.D.4., infra.*
- that consideration be given to a new program designed to stimulate redevelopment of contaminated sites that are not abandoned brownfield properties but where redevelopment is limited due to uncertainties relating to schedule and offsite contamination issues. *See Section II.D.5., infra.*
- that, by February 1, 2012, DEP perform a comprehensive evaluation of all the property remediation programs and make recommendations to streamline and improve those programs such that the process for brownfield and contaminated property redevelopment be streamlined, more efficient and improved. *See Section II.D.6., infra.*

III. PROPOSALS AND RECOMMENDATIONS

A. Organizational

In 2006, with the enactment of Public Act 06-184, the Office of Brownfield Remediation and Development (OBRD) was created. The OBRD was to be a "one stop shop" for all brownfield programs in the State. It was to have a highly positioned director, be well staffed and funded. In 2006, the Task Force recommended that the OBRD be funded at \$1.5 million to appropriately staff and run the office, that DEP be similarly funded, and that \$500,000 be allocated to marketing, education and outreach programs. No such dedicated funding has occurred and the DECD never filled the position of a high level director although it was advertised. The staff, while well intentioned, is lean and they serve other programs as well as OBRD.

With each new Public Act, more programs and responsibilities were placed upon the OBRD without adding the necessary director, staff or resources. (A list of all the programs administered by OBRD is included in Attachment 2 as well as a list of representative brownfield programs administered by the DEP and CDA). The existing staff is lean and they serve other programs as well as OBRD. Nonetheless, they do serve to assist municipalities with the grant and loan programs and assist them in seeking federal funds. And, the OBRD has implemented many of the programs established between 2006-2010. *See Attachment 2* for a full outline of the work and projects that have been accomplished. With more dedicated staff, additional projects

could be undertaken. And, more municipalities could be educated and participate in these programs either individually or in CEDS, with the goal of one day being self sufficient.

Consistent with the recommendation of the Environment Working Group Transition Team established by Governor Malloy, the OBRD should be directed by a "deputy commissioner reporting to the Commissioner of DECD and/or the Governor, with sufficient staff focused on the mission of coordinating Brownfield redevelopment, permitting transit oriented development and responsible growth.... It needs to be accessible to the development community and vested with the appropriate authority to oversee and manage large and small projects, implement the funding (grant and loan programs) and market/educate the business and development community and the municipalities as to the programs and assistance the state provides. Brownfield programs and responsible growth initiatives should run through this office and it should be the 'one stop shop' for such development."

The Brownfield Working Group concurs with the recommendation of the Environment Working Group Transition Team.

B. Funding Programs

In Attachment 2, a chart identifies the funding programs administered by DECD, CDA and DEP that would allow monies to be used for brownfield and/or contaminated property remediation and redevelopment. Beginning in 2006, several new funding programs were created specifically targeted to brownfields. These programs are a municipal pilot grant program (codified at § 32-9cc of the Connecticut General Statutes), a remedial action and redevelopment municipal grant program (codified at § 32-9kk(f)) and a targeted brownfield development loan program (codified at § 32-9kk(g)). Two accounts were created: one for the § 32-9cc program (called the Connecticut brownfields remediation account) and one for both funding programs created under § 32-9kk (called the "brownfield remediation and development account").

Funding has only been provided in increments and not in the amounts recommended by the Task Force.

Municipal Pilot Program CGS § 32-9cc. This is a competitive program for grants to five municipalities per round of funding. \$7.5 million was authorized, however, only \$4.5 million was actually approved through two \$2.25 million increments. Through two rounds of competitive bidding eleven municipal pilot projects received funding. See Attachment 2. DECD reported robust competition for these funds. Between 15-19 applications were received each round and some very good projects were not funded. The success of this program means that there is a demand. Additional funds should be provided and, in sections 1-3 of the proposed bill, the Working Group recommends that its pilot status be eliminated and that for each round of funding, at least six municipalities be selected.

Remedial action and redevelopment municipal grant program CGS § 32-9 kk(f). This program provides a broader reach than the Municipal "Pilot" Program and creates additional opportunities for municipalities and other related organizations. And, it established regular

deadlines for grants to be provided. This program is to be administered by the DECD, but no funds have been authorized and made available in the brownfield remediation and development account for this program. Given the demand for the municipal pilot program, this program should be funded.

Targeted brownfield development loan program CGS § 32-9kk(g). This program was set up as a revolving loan fund available to provide financial assistance in the form of low-interest loans to eligible applicants who are potential brownfield purchasers who have no direct or related liability for the site conditions and eligible applicants who are existing property owners who (A) are currently in good standing and otherwise compliant with the Department of Environmental Protection's regulatory programs, (B) demonstrate an inability to fund the investigation and cleanup themselves, and (C) cannot retain or expand jobs due to the costs associated with the investigating and remediating of the contamination. A wide variety of projects can be administered including manufacturing, retail, residential and mixed use. \$10.0 million was authorized by the legislature for the brownfield remediation and development account for this program in two five million dollar tranches over two years. However, only half of the first year's tranche has been approved. In other words, the Bond Commission has approved only 25% of the authorized amount (i.e., \$2.5 million) to date. Funds should be made available to this program as demand for this program is real and exists.

The Working Group noted that the "brownfield" definition was slightly different between the various programs and, therefore, recommends that all definitions be made parallel and to include properties where, among other things, "redevelopment, reuse or expansion may be complicated by the presence of pollution." These definitional changes are made in sections 1 and 8 of the proposed bill.

Other programs also exist and have been used in the past to provide financial assistance to a variety of developments. However, these programs are typically provided through bonding, as and when needed. The lack of certainty of funding often remains an impediment to the small and medium size project development. Therefore, a capital budget for the programs identified above is critical to the smaller and medium sized projects moving forward. Finally, two programs also were created several years ago to provide assistance to underground storage tank clean ups and dry cleaners. These two programs were funded by essentially a tax on these entities; however, both programs are woefully under funded and really have not been funded for years. The SCPRIF program has funds available, however, its utility is limited to "construction loans".

DECD staff does look to the federal government for funding as well as the State and they do seek to leverage the funds they receive and try to expand them to brownfield sites. For example, the DECD does successfully obtain federal brownfield monies for the State from EPA (generally, revolving loan fund monies) and HUD. Among other programs, staff does work on obtaining the HUD Section 108 Loan guarantees that are an extension of the Small Cities/Community Development Block Grant Program (SC/CDBG). This program was expanded under the federal Omnibus Appropriations Act allowing states to be principal borrowers on behalf of its entitlement communities. The program is designed to assist non-entitlement local governments with eligible large scale projects that address public needs and

that could not otherwise advance without the loan guarantee. The loans can be used to eliminate or prevent slums or blight and meet urgent needs of a community, with 10% minimum equity participation. DECD does repay the loan through various projects it funds. And, where shortfalls may exist, the State uses its future annual allocations as the ultimate repayment source in case of a repayment default by the loan recipients.

However, federal programs are also not as robust as they once were and the Brownfield Economic Development Initiative (BEDI) grant program that was designed to assist cities with the redevelopment of abandoned, idled and underused industrial and commercial facilities where contamination exists or potentially exists was not reauthorized by Congress. Therefore, the State must step in.

Connecticut Development Authority has three programs – a tax increment financing, direct loan and loan guarantees. The TIF, while a good program, has limited utility for residential and mixed use development that includes a residential component. Because of this, other programs must fill the gap. For the direct loan and loan guarantees, a lead lending institution is needed and the developer must have a solid banking relationship. While these are good programs, the smaller and medium-size developer may not qualify as readily. Nonetheless, the Working Group believes that the CDA programs are of very high quality, are quite expansive, and are an important part of the mix and should continue. Section 18 of the proposed bill eliminates the sunset date for the brownfields TIF.

While the Working Group acknowledges that funding is difficult in these economic times, the Working Group also urges the General Assembly and the Governor to consider that brownfield redevelopment is a stimulus to the economy. As was referenced in the Third Task Force Report, a 2008 report by the Northeast-Midwest Institute found that:

- \$10,000 to \$13,000 in public investments in brownfields creates/retains one job
- \$1 of public money leverages \$8 total
- public investments in Brownfields are recouped from local taxes in five years
- on average, each brownfield site has the potential to create 91 jobs.

Therefore, brownfield redevelopment should be a very high priority.

C. Regulatory & Liability Reform for Brownfields

Connecticut, not unlike other states, struggles with the appropriate scope of programs to stimulate brownfield development. The Working Group looked closely at the brownfield programs referenced above as well as programs where state funding may not be sought in the context of brownfields and made a number of recommendations in the proposed bill as follows.

1. The Abandoned Brownfield Clean-up (ABC) Program. In previous legislative initiatives, efforts have been made to untie abandoned brownfields from the vast array of programs that burden contaminated sites where a responsible party exists and, instead, create a more streamlined approach that provides such incentives as liability relief. In particular, the

ABC program was created by the General Assembly to efficiently streamline the redevelopment of those properties and to limit persons who have no responsibility for the condition of the property from investigating or remediating any pollution or source of pollution that has emanated from such property prior to such person taking title to such property. To date, no one has enrolled in this program, potentially due to the economy or potentially due to limitations in the program itself. Therefore, in sections 10-12 of the proposed bill, the Working Group recommends to change the definition of what is an "abandoned brownfield" to a property that has been a brownfield at least five years before application, versus the statutorily required date of "since October 1, 1999". A "municipality" is also specifically proposed to be included in the program and is defined, consistent with the other DECD administered programs, to include economic development agencies/entities, or nonprofit economic development corporations funded, controlled or established by a municipality. And, a municipality can request determination of eligibility regardless of who owns a property.

In addition, the Working Group believes that further exclusions for abandoned brownfields are necessary and that some existing statutory requirements may serve as an impediment to redeveloping such a property. Therefore, the Working Group proposes exempting the person or municipality that is within the ABC program from the Transfer Act. Section 11 amends the Transfer Act, CGS § 22a-134 by adding a new subparagraph (x) to the exempt transaction list. Acquisition of the property and subsequent transfer are exempt, if remediation is ongoing or complete in accordance with 32-91l. In addition, the Working Group believes that a prospective purchaser or municipality remediating property under ABC program should qualify for a covenant not to sue at no cost. And, the covenant not to sue should be transferable to subsequent owners if the property is undergoing remediation or remediation is complete per 32-91l. (See Section 12).

Whether these changes will provide sufficient incentive to redeveloping abandoned brownfields remains uncertain. Other recommendations worthy of discussion include the timing of a covenant not to sue and whether additional liability relief should be provided. For example, it may make sense to specify that the person who acquires title of the property pursuant to the ABC program shall not be held liable under section 22a-432, 22a-433, 22a-451 or 22a-452, provided that such person does not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste and such person is not a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452.

2. Fees. Given the challenges associated with the brownfield sites that seek and qualify for funding under the state programs, the Working Group believes that those projects should not pay certain transfer act and voluntary remediation program fees waived for recipients of funding under the newly expanded brownfields program. Therefore, Section 9 of the bill exempts persons who have received financial assistance for a brownfield site from any department, institution, agency or authority of the state for the purpose of investigation or remediation, or both from paying fees that may required pursuant to sections 22a-133x, 22a-133aa, 22a-134a or 22a-134e of the general statutes.

D. Regulatory & Liability Reform for Other Contaminated Properties to Prevent Creation of Brownfields

Brownfield redevelopment are often entangled with programs designed for contaminated properties where responsible parties exist and those programs may unnecessarily stifle brownfield redevelopment or may actually promote the creation of brownfields. The Working Group looked closely at these programs and offers some proposals that address all contaminated properties. In brief, the intent is to make it easier to redevelop, transfer and cleanup existing brownfield and contaminated sites such that a brownfield will not be created.

1. Amendment to the Transfer Act to provide clarity as to what releases have to be investigated and remediated by a certifying party. Section 4 of the proposed bill amends CGS § 22a-134a by adding new subsection (n) providing that a Form III or Form IV certifying party does not need to investigate or remediate a release or potential release that occurs after the date of "transfer." The Working Group believes that this is a necessary clarification to the Transfer Act that should apply to all properties within the program. The Working Group believes that, particularly for sellers, it is inequitable to require them to investigate and remediate releases that occur after they relinquish title and essentially lose control of the property. Because of the backlog of Transfer Act filings, this clarification is necessary so that prior owners can close out their responsibility and liability for a property. On February 3, 2010, the Environmental Professionals Organization of Connecticut submitted a "white paper" to DEP on this issue, which correspondence is included here as Attachment 3, and the Working Group believes that Section 4 of HB 6526 is important such that properties can move through the Transfer Act. Such a change will provide clarity as well when determining whether a brownfield exists or is being created because of inaction on the part of a person in the chain of title.

2. Require the Commissioner of DEP to review the State's Remediation Standard Regulations (RSRs). Section 5 of the proposed bill amends CGS § 22a-133k by adding a new subsection (c) that requires the Commissioner to review and recommend revisions to the RSRs three years after this amendment goes into effect, and to hold a public hearing every five years thereafter on the adequacy of the standards and revise as needed to insure that the regulations insure environmental protection and are consistent with best available scientific information. The RSRs were adopted in 1996 and have not been modified. DEP attempted to propose modifications approximately two years ago, but those proposed changes were fraught with controversy. To some degree, there was concern about whether the standards were feasible and achievable and whether such proposed limits were economically or technically achievable. There was a very real concern that the proposed standards were not based upon the best available scientific information. Many changes to the RSRs are needed and could be accomplished. The Working Group believes that DEP should make those changes, periodically review the RSRs and to modify them as needed. Caution, however, should be exercised to make sure that the limits are consistent with federal standards and are capable of being achieved. In addition, sites currently being remediated or those that are closed should not be reopened with the adoption of new standards.

3. Groundwater Reclassification. Section 9 of Public Act 10-158 required the Commissioner to modify the State's groundwater classifications and standards through a rulemaking process set forth under the Uniform Administrative Procedures Act (UAPA). The purpose section 9 is to provide a streamlined method to classify and re-classify surface and ground waters of the state outside of the regulation adoption process under the UAPA. As set forth in the attached memo from a Working Group member (Attachment 4), this modification "is necessary to further Brownfields redevelopment because many of the state's ground water resources have historically been assigned a GA classification (ground water presumed potable without treatment) to areas which should have been classified GB (groundwater impacted by historic contamination) due to mapping errors and incomplete information. The Water Quality Standards provide more stringent requirements for GA areas than GB areas. In addition, the Remediation Standard Regulations require more stringent soil and ground water clean-up targets for GA ground water areas than those classified GB.

An inappropriate GA classification translates into overly conservative clean-up standards for brownfield properties. And, under Public Act 10-158, the only way to correct it is to change the classification, which would entail a lengthy UAPA proceeding that could slow down a brownfield redevelopment and likely add a significant cost to a project in terms of time and money. A process allowing the Department to classify or re-classify surface and ground waters with a notice of a public hearing in the Law Journal and a newspaper of general circulation, and individual notice to the municipal officials in the community involved, should be adopted to allow these changes to be made efficiently and as they had been under the prior statutory scheme

Therefore, section 6 amends 22a-426 by adding new sections (d) to (g) by essentially restoring the prior streamlined procedure of providing an opportunity for notice and comment, but the process does not give rise to a full rulemaking procedure under the UAPA. And, it makes it clear that unless modified in accordance with these procedures or those already in effect for the water quality standards, CGS § 22a-426(a), the surface and ground water classifications and water quality standards in effect as of February 28, 2011 remain in force.

4. Notice of Activity and Use Limitations. Due to difficulties experienced by property owners and DEP with the Environmental Land Use Restriction (ELUR), representatives of DEP introduced an alternative to the ELUR. The Notice of Activity and Use Limitations (NAUL) is intended for less contaminated properties (generally within the order of magnitude of the RSR criteria). It is less cumbersome than an ELUR in that the subordination of current property interests is not required.

An ELUR and a NAUL are similar in that they both document the nature and extent of pollution on a property and they both are intended to minimize the risk of human exposure to pollutants and hazards to the environment by preventing specific uses and activities at a property. However, an ELUR and a NAUL are dissimilar in many ways.

An ELUR is an enforceable contract that conveys a property interest to the Commissioner of DEP. It requires the subordination of current holders of property interests before it can be recorded. Current and future property owners, current interest holders (who have subordinated)

and future interest holders are legally bound to comply with terms and restrictions of the ELUR. The Commissioner, as the grantee, may enforce the terms of the ELUR if its terms are violated.

A NAUL is not a legally enforceable contract nor does it convey a property interest to the Commissioner. A NAUL does provide notice of important information related to a property's activity and use restrictions. Although it cannot bind prior or current property interest holders, such as mortgagees and easement holders, it can be enforced against the owner, who filed the NAUL while the owner continues to own the property, and any transferee of a property interest from such owner for violating the remedial action plan when the terms of the NAUL have not been met.

The Working Group believes that a NAUL is an important, less cumbersome option to an ELUR and deserves consideration. The Working Group has been discussing the proposed NAUL with the DEP for many weeks and agreed that the NAUL section should move forward for additional comment and feedback. In addition, the Working Group reached out to other interest holders for feedback and comment as we believed that real property interests could be affected by this NAUL. Informal comments were received from environmental lawyers and real property lawyers and those comments are attached in Attachment 5. Therefore, the NAUL should be revised to take into consideration due process and real property law concerns. In addition, the Working Group understands that the NAUL is modeled on the Massachusetts program, although some differences exist that can have meaningful consequences in Connecticut. Therefore, no consensus on this language exists among the voting members of the Working Group and we look forward to working with the Commerce Committee and DEP further on this issue, with the hopes of creating a meaningful tool for property owners to use.

5. "Brownfield" remediation and revitalization program (BRRP). In brief, section 17 establishes a comprehensive brownfield remediation and revitalization program within the OBRD, to be administered by its Director. An interested party, including a municipality, economic development agency, a property owner or prospective property owner who is not responsible for a property's contamination, or a neighboring property owner may apply to include a contaminated property in this program. Provided they otherwise meet the Program criteria, properties that are already under investigation under the State Voluntary Remediation programs, or the Covenant Not to Sue programs are eligible for inclusion in the Program. Properties that are currently the subject of an enforcement action by the DEP or the United States Environmental Protection Agency are not eligible for inclusion in the Program.

The mechanics are as follows: Not more than twenty properties at a time shall be accepted into the program and a new property shall be added upon the withdrawal of a property from the program or completion of the remedy and a no further action letter is issued. Participation in the program shall be by accepted upon at least one of the following criteria: (1) the likely creation of jobs, including, but not limited to, those related to remediation, design, development and construction; (2) the projected increase to the municipal grand list; (3) the consistency of the property as remediated and developed with municipal or regional planning objectives; and (4) the development plan's support for and furtherance of principles of smart growth or transit oriented development.

An application for inclusion in the Program shall include an Environmental Condition Assessment Form as well as documentation demonstrating satisfaction of eligibility criteria – that is, that the owner and property are “eligible.” An application fee of \$3000 is due at the time the application is submitted. The Director must approve or deny the application within 60 days after receipt or the application will be deemed approved.

If a property is accepted or deemed to be accepted into the Program, the Applicant shall investigate and remediate the release or threatened release of regulated substances on the property in accordance with a Brownfield Investigation Plan and Remediation Schedule (the “Schedule”) approved by the DEP following a public comment period. Persons whose applications have been accepted or which have been deemed accepted into the Program shall not be required to characterize, abate, and remediate any releases of regulated substances beyond the boundaries of the eligible property that exceed limits set in the RSRs.

The Commissioner shall have 60 days after the receipt of the Schedule to notify the Applicant of his or her approval or disapproval, with the schedule deemed to be approved if the Commissioner does not reply within those 60 days. If the Commissioner disapproves a proposed Schedule, the Applicant shall have an opportunity to revise the Schedule to address the Commissioner’s comments. The Commissioner’s disapproval shall also be subject to judicial review.

Permits required to implement the Schedule shall be submitted to and expedited by the permit ombudsman within DECD.

Before beginning remediation, the Applicant shall provide public notice of the remediation. All activities shall be supervised by a Licensed Environmental Professional.

Following completion of the remediation, a Licensed Environmental Professional shall submit a final remedial action report to both the Commissioner of DEP and the Director of OBRD. The report shall include a verification by the Licensed Environmental Professional that the remediation took place in accordance with the RSRs. The report will be subject to approval by the Commissioner, but will be deemed approved if within 60 days the Commissioner does not approve, disapprove, or request an audit of the report. As noted, the Commissioner may, within 60 days after receipt of the report, choose to audit the completed remediation to determine whether further remedial action is required to protect human health or the environment. Following an audit, which the Commissioner shall complete with six months after notifying the applicant that he or she will undertake the audit, the Commissioner may disapprove the report and require further remediation to be undertaken by the Applicant. The Commissioner’s decision to reject a report shall be subject to judicial review. The Applicant shall maintain all records related to its participation in the Program for at least ten years.

Upon the approval or deemed approval of the report the Commissioner will issue to the applicant a Notice of Completion and No Further Action Letter which provides that the applicant shall not be liable to the state or any third party for the for damages, costs, or equitable relief pertaining to the release of any regulated substance at or from the eligible property. This liability

relief would also extend to liability to the state or any third party for historic off-site impacts including air deposition, waste disposal, impacts to sediments, and Natural Resource Damages. This liability protection shall extend to any eligible person who thereafter acquires title to the property following approval of a final remedial action report and pays an extension fee of \$3000. In addition, the property shall no longer be subject to the requirements of the Transfer Act provided that no activities occur at the property following approval of the final remedial action report that would subject the property to the Transfer Act.

Liability relief is a significant component of this new program. Initially, the applicant is not held liable for the existing conditions, provided it did not create them. Then, to the extent that a Licensed Environmental Professional verifies that a site which has been accepted into the Program has been investigated and remediated in compliance with the standards set forth in the Act, and the final remedial action report for the site has either been approved by the Commissioner or deemed approved, the person that undertook that remediation, regardless of its own eligibility to participate in the program, shall receive the same protections from liability as the applicant, except that any obligation such person may have to characterize and remediate regulated substances that have migrated from the subject property shall continue.

Such relief from liability, however, will not preclude the Commissioner from taking any appropriate action to require additional remediation of the subject property where the Commissioner has determined that (a) the Applicant knew or should have known that it provided false or misleading information to the Director or the Commissioner demonstrates that the Applicant's successor was aware of such misinformation; (b) new information confirms previously unknown contamination; (c) the Applicant fails to complete the remediation described in the Schedule or fails to comply with monitoring, maintenance, operating or environmental land use restriction requirements; or (d) there are changes in exposure conditions, for example, a change from nonresidential to residential use of the property.

No consensus on this language exists among the voting members of the Working Group on the proposal attached to this report or HB 6526. However, the Working Group notes that HB 6526 is different than the proposal attached to this report in a significant way. That is, the inclusion of subsection (g) in HB 6526. The Working Group does not believe this section is needed at all. First, DECD has several programs that could be affected by this language and it may unintentionally thwart the purpose of some of those programs and the flexibility DECD has in developing the appropriate menu of funding options for an applicant. Second, it also affects the analysis performed by undefined quasi-public agencies and criteria for their various programs. The Brownfield Task Force carefully proposed the criteria for the new DECD brownfield programs enacted from 2006-2009 and it purposefully crafted the criteria broadly to meet the needs of the municipalities and various applicants and it did so in a manner that was acceptable to the funding agencies. Ultimately, these changes were acceptable to the legislature and there is no compelling reason to modify the criteria in this section, which is not even narrowly tailored to the affected programs.

Having distinguished HB 6526 from the proposal attached to this report, the remaining parts of this section 17 clearly represent revolutionary change as opposed to the evolutionary change that has been occurring. It was recommended by members of the Working Group and

other environmental practitioners. Essentially, this section does go well beyond the traditional brownfield programs previously proposed; it establishes a new program that may address *any* contaminated property efficiently, upon acceptance into the program by OBRD. This proposed section 17 provides a springboard for further discussion and the Working Group welcomes the opportunity to hear comments and continue the dialogue.

6. Comprehensive evaluation of the property remediation programs. The Working Group (and previously the Task Force) discussed the need for a comprehensive evaluation of all DEP's remediation programs, including but not limited to the Transfer Act. The DEP agreed and this year announced that it was going to undertake such an evaluation. (Attachment 6) The Working Group welcomed DEP's initiative, however, it believed that certain parameters and time frames should be placed upon the DEP (Section 7 of the proposed bill). In particular, the Working Group believes that the DEP should complete its evaluation by February 1, 2012, prior to the next legislative session so that any necessary statutory modifications can be proposed. In addition, the Working Group believed that DEP should be directed to conduct a study that considers a number of factors including: (1) those that influence the length of time to complete investigation and remediation under existing programs; (2) the number of properties that have entered into each property remediation program, the rate by which properties enter and the number of properties that have completed the requirements of each property remediation program; (3) the use of licensed environmental professionals in expediting property remediation; (4) audits of verifications rendered by licensed environmental professionals; (5) the programs provided for in chapters 445 and 446k of the general statutes that provide liability relief for potential and existing property owners; (6) a comparison of existing programs to states with a single remediation program; (7) the use by the commissioner of resources when adopting regulations such as studies published by other federal and state agencies, the Connecticut Academy of Science and Engineering or other such research organization and university studies; and (8) recommendations that will address issues identified in the report or improvements that may be necessary for a more streamlined or efficient remediation process.

The Working Group recognizes that this is an ambitious undertaking for DEP during the next year, but it is a vitally important one. The Working Group is available to assist DEP in any way so that it can achieve its deadline and it looks forward to working with the agency on this initiative.

IV. CONCLUSION

The Working Group welcomes the opportunity for further dialogue and discussion on its recommendations and the proposed bill. While consensus has been reached on several sections, as set forth above, others are still a work in progress and we look forward to working with all stakeholders and members of the Commerce Committee as the bill moves forward. As we all know, redeveloping brownfields is an important goal for our State's future, our communities and our neighbors. It preserves open space, creates jobs, adds to the state and local tax base, removes blight and cleans up contaminants from our environment. It is truly a win-win-win.

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Section 1: Section 32-9cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) There is established, within the Department of Economic and Community Development, an Office of Brownfield Remediation and Development.

(b) The office shall:

(1) Develop procedures and policies for streamlining the process for brownfield remediation and development;

(2) Identify existing and potential sources of funding for brownfield remediation and develop procedures for expediting the application for and release of such funds;

(3) Establish an office and maintain an informational webpage to provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs;

(4) Provide a single point of contact for financial and technical assistance from the state and quasi-public agencies;

(5) Develop a common application to be used by all state and quasi-public entities providing financial assistance for brownfield assessment, remediation and development;

(6) Identify and prioritize state-wide brownfield development opportunities; and

(7) Develop and execute a communication and outreach program to educate municipalities, economic development agencies, property owners and potential property owners and other organizations and individuals with regard to state policies and procedures for brownfield remediation.

(c) Subject to the availability of funds, there shall be a state-funded [pilot] Municipal Brownfield Grant Program [program] to identify brownfield remediation economic opportunities in [five] Connecticut municipalities. For each round of funding the Commissioner may identify at least six municipalities, one of which shall have a population of less than fifty thousand, one of which shall have a population of more than fifty thousand but less than one hundred thousand, two of which shall have populations of more than one hundred thousand and [one] two of which shall be selected without regard to population. The Commissioner of Economic and Community Development shall designate [five] [pilot] municipalities in which untreated brownfields hinder economic development and shall make grants under such [pilot] program to these municipalities or economic development agencies associated with each of the [five] selected municipalities that are likely to produce significant economic development benefit for the designated municipality.

(d) The Department of Environmental Protection, the Connecticut Development Authority and the Department of Public Health shall each designate one or more staff members to act as a

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liaison between their offices and the Office of Brownfield Remediation and Development. The Commissioners of Economic and Community Development, Environmental Protection and Public Health and the executive director of the Connecticut Development Authority shall enter into a memorandum of understanding concerning each entity's responsibilities with respect to the Office of Brownfield Remediation and Development. The Office of Brownfield Remediation and Development may [develop and] recruit two volunteers from the private sector, including a person from the Connecticut chapter of the National Brownfield Association, with experience in different aspects of brownfield remediation and development. Said volunteers may assist the Office of Brownfield Remediation and Development in [achieving the goals of this section] marketing the brownfields programs and activities of the state.

(e) The Office of Brownfield Remediation and Development may call upon any other department, board, commission or other agency of the state to supply such reports, information and assistance as said office determines is appropriate to carry out its duties and responsibilities. Each officer or employee of such office, department, board, commission or other agency of the state is authorized and directed to cooperate with the Office of Brownfield Remediation and Development and to furnish such reports, information and assistance.

(f) Brownfield sites identified for funding under the [pilot] grant program established in subsection (c) of this section shall receive priority review status from the Department of Environmental Protection. Each property funded under this program shall be investigated in accordance with prevailing standards and guidelines and remediated in accordance with the regulations established for the remediation of such sites adopted by the Commissioner of Environmental Protection or pursuant to section 22a-133k and under the supervision of the department or a licensed environmental professional in accordance with the voluntary remediation program established in section 22a-133x. In either event, the department shall determine that remediation of the property has been fully implemented, or whether an audit will not be conducted, upon submission of a report indicating that remediation has been verified by an environmental professional licensed in accordance with section 22a-133v. Not later than ninety days after submission of the verification report, the Commissioner of Environmental Protection shall notify the municipality or economic development agency as to whether the remediation has been performed and completed in accordance with the remediation standards, whether an audit will not be conducted, or whether any additional remediation is warranted. For purposes of acknowledging that the remediation is complete, the commissioner or a licensed environmental professional, may indicate that all actions to remediate any pollution caused by any release have been taken in accordance with the remediation standards and that no further remediation is necessary to achieve compliance except postremediation monitoring[,] or natural attenuation monitoring [or the recording of an environmental land use restriction].

(g) All relevant terms in this subsection, subsection (h) of this section, and sections 32-9dd to 32-9ff, inclusive, [and section 11 of public act 06-184*] shall be defined in accordance with the definitions in chapter 445. For purposes of subdivision (12) of subsection (a) of section 32-9t, this subsection, subsection (h) of this section, and sections 32-9dd to 32-9gg, inclusive, [and section 11 of public act 06-184* ,] "brownfields" means any abandoned or underutilized site where redevelopment, [and] reuse, or expansion may be complicated by [has not occurred due to] the presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before [prior to] or in conjunction with the restoration, redevelopment or [and] reuse

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of the property.

(h) The Departments of Economic and Community Development and Environmental Protection shall administer the provisions of subdivision (1) of section 22a-134, section 32-1m, subdivision (12) of subsection (a) of section 32-9t, and sections 32-9cc to 32-9gg, inclusive, [and section 11 of public act 06-184*] within available appropriations and any funds allocated pursuant to sections 4-66c, 22a-133t and 32-9t.

Section 2: Section 32-9ee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

Sec. 32-9ee. Brownfield [remediation pilot] Municipal Grant Program [program] and grants. (a) The municipality or economic development agency that receives grants through the Office of Brownfield Remediation and Development's [pilot] grant program established in subsection (c) of section 32-9cc shall be considered an innocent party and shall not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452 as long as the municipality or economic development agency did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution that is subject to remediation under this [pilot] program; does not exacerbate the conditions; and complies with reporting of significant environmental hazard requirements in section 22a-6u.

(b) In determining what funds shall be made available for an eligible brownfield remediation, the Commissioner of Economic and Community Development shall consider (1) the economic development opportunities such reuse and redevelopment may provide, (2) the feasibility of the project, (3) the environmental and public health benefits of the project, and (4) the contribution of the reuse and redevelopment to the municipality's tax base.

(c) No person shall acquire title to or hold, possess or maintain any interest in a property that has been remediated in accordance with the [pilot] grant program established in subsection (c) of section 32-9cc if such person (1) is liable under section 22a-432, 22a-433, 22a-451 or 22a-452; (2) is otherwise responsible, directly or indirectly, for the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste; (3) is a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable to under section 22a-432, 22a-433, 22a-451 or 22a-452; or (4) is or was an owner, operator or tenant. If such person elects to acquire title to or hold, possess or maintain any interest in the property, that person shall reimburse the state of Connecticut, the municipality and the economic development agency for any and all costs expended to perform the investigation and remediation of the property, plus interest at a rate of eighteen per cent.

Section 3: Section 32-9ff of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) There is established an account to be known as the "Connecticut brownfields remediation account" which shall be a separate, nonlapsing account within the General Fund. The account

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shall contain any moneys required by law to be deposited in the account and shall be held separate and apart from other moneys, funds and accounts. Investment earnings credited to the account shall become part of the assets of the account. Any balance remaining in the account at the end of any fiscal year shall be carried forward in the account for the next fiscal year.

(b) The Office of Brownfield Remediation and Development, established in subsections (a) to (f), inclusive, of section 32-9cc may use amounts in the account established pursuant to subsection (a) of this section to fund remediation and restoration of brownfield sites as part of the [pilot] grant program established in subsection (c) of section 32-9cc.

Section 4: (NEW) (Effective from passage) Section 22a-134a of the general statutes is amended by adding new subdivision (n) as follows:

Notwithstanding any other provisions of this section, the execution of a Form III or a Form IV shall not require a certifying party to investigate or remediate any release or potential release of pollution at the parcel that occurs from and after the date of the transfer of establishment for which such Form III or Form IV was signed.

Section 5: (NEW) Section 22a-133k of the general statutes is amended by adding subdivision (c) as follows:

(c) In accordance with the provisions of chapter 54, the Commissioner shall review and recommend revisions to the standards for the 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, as have been adopted pursuant to subsection (a) within three years from the date of passage of this Section 5 and, every five years thereafter, the Commissioner shall hold a public hearing on the adequacy of such standards and revise such standards as may be deemed necessary to insure that the regulations shall fully protect health, public welfare and the environment, are feasible, and are consistent with the best scientifically available information, including consideration of the standards adopted by the federal government.

Section 6: (NEW) (Effective from passage): Section 22a-426 of the general statutes, as amended by section 9 of P.A. 10-158, is amended by adding new subsections (d), (e), (f) and (g) as follows:

(d) On or after March 1, 2011, the commissioner may reclassify surface or ground water within the state. Notwithstanding the provisions of subsection (a) of this section, the following procedures shall apply to any surface or ground water re-classification proposed by the Commissioner: (1) the Commissioner shall hold a public hearing in accordance with subsection (e)(4) of this section. Such public hearing shall not be considered a contested case pursuant to chapter 54; (2) notice of such hearing specifying the surface or ground waters for which re-classification is proposed, and the time, date, and place of such hearing shall be published once in a newspaper having a substantial circulation in the affected area and shall provide the information set forth in subsection (e)(2)(D); (3) such notice shall also be provided to municipal officials in accordance with subparagraph (e)(2)(E). Following the public hearing, the Commissioner shall provide notice of the reclassification decision in accordance with subsection (e)(5).

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(e) On or after March 1, 2011, at the request of any person, the commissioner may reclassify any surface or ground water within the state. Notwithstanding the provisions of subsection (a), the following procedures shall apply to any such reclassification: (1) any person seeking a reclassification shall apply to the Commissioner on forms prescribed by the Commissioner and shall provide the information required by such forms; (2) the commissioner shall publish or cause to be published, at the expense of the person seeking a reclassification, once in a newspaper having a substantial circulation in the affected area (a) the name of the person seeking a reclassification, (b) an identification of the surface or ground waters affected by such reclassification, (c) notice of the commissioner's tentative determination regarding such reclassification, (d) how members of the public may obtain additional information regarding such reclassification, and (e) the time, date and place of a public hearing regarding such reclassification. Any such notice shall also be given by certified mail to the chief executive officer of each municipality in which the water affected by such reclassification is located, with a copy to the director of health of each municipality, at least thirty days prior to the hearing; (3) the commissioner shall conduct a public hearing regarding any tentative determination to reclassify surface or ground waters; (4) the public hearing shall be conducted in a manner which affords all interested persons reasonable opportunity to provide oral or written comments. Any such hearing shall be conducted in accordance with the procedures set forth in section 4-168(a)(6), provided that no such hearing shall be considered a contested case, and the commissioner shall maintain a recording of the hearing; and (5) following the public hearing, the commissioner shall provide notice of the decision in the Connecticut Law Journal and to the chief elected official and the director of health of each municipality in which the water affected by such reclassification is located.

(f) Any decision by the commissioner to reclassify surface or ground water shall be consistent with the state's water quality standards and shall comply with all applicable federal requirements regarding reclassification of surface water.

(g) Unless modified in accordance with subsections (a), (d), (e) and (f), the state's surface and ground water classifications and water quality standards, effective as of February 28, 2011, shall remain in full force and effect.

Section 7: NEW (*Effective from passage*)

Not later than seven days from the effective date of this section, within available resources, the commissioner of environmental protection shall commence a comprehensive evaluation of the property remediation programs, and the provisions of the general statutes that affect property remediation. Not later than February 1, 2012, the commissioner shall issue a comprehensive report, in accordance with section 11-4a, to the Governor and to the joint standing committees of the general assembly having cognizance of matters relating to the environment and commerce. The evaluation shall include (1) factors that influence the length of time to complete investigation and remediation under existing programs; (2) the number of properties that have entered into each property remediation program, the rate by which properties enter and the number of properties that have completed the requirements of each property remediation

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program; (3) the use of licensed environmental professionals in expediting property remediation; (4) audits of verifications rendered by licensed environmental professionals; (5) the programs provided for in chapters 445 and 446k that provide liability relief for potential and existing property owners; (6) a comparison of existing programs to states with a single remediation program; (7) the use by the commissioner of resources when adopting regulations such as studies published by other federal and state agencies, the Connecticut Academy of Science and Engineering or other such research organization, and university studies and (8) recommendations that will address issues identified in the report or improvements that may be necessary to for a more streamlined or efficient remediation process.

Section 8: Subsection (1) of section 32-9kk of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*).

(1) "Brownfield" means any abandoned or underutilized site where redevelopment, [and] reuse, or expansion may be complicated by [has not occurred due to] the presence or potential presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the restoration, redevelopment and reuse of the property;

Section 9: (New) (*Effective from passage.*) Sec. 22a-6 is amended by adding new subsections (i) and (j) as follows:

(i) Notwithstanding the provisions of subsection (a) of this section, no person shall be required to pay any fee established by the commissioner pursuant to section 22a-133x, 22a-133aa, 22a-134a, 22a-134e provided such person has received financial assistance from a State of Connecticut department, institution, agency or authority for the purpose of investigation or remediation, or both, of a Brownfield site, as defined in section 32-9kk, and such activity would otherwise require a fee to be paid to the commissioner for the activity conducted with such financial assistance.

(j) Notwithstanding the provisions of subsection (a) of this section, no department, institution, agency or authority of the state or the state system of higher education shall be required to pay any fee established by the commissioner pursuant to section 22a-133x, 22a-133aa, 22a-134a, 22a-134e provided such division of the state is conducting investigation or remediation, or both of a Brownfield site, as defined in section 32-9kk, and siting a state facility on such Brownfield site.

Section 10: Section 32-9ll of the general statutes is statutes is repealed and the following is substituted in lieu thereof:

(a) There is established an abandoned brownfield cleanup program. The Commissioner of Economic and Community Development shall determine, in consultation with the Commissioner of Environmental Protection, properties and persons eligible for said program.

(b) For a person, municipality and a property to be eligible, the Commissioner of Economic and

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Community Development shall determine if (1) the property is a brownfield, as defined in section 32-9kk of the general statutes and such property has been unused or significantly underused for at least five years prior to an application filed with the Commissioner pursuant to subsection (g) [since October 1, 1999]; (2) such person intends to acquire title to such property for the purpose of redeveloping such property; (3) the redevelopment of such property has a regional or municipal economic development benefit; (4) such person did not establish or create a facility or condition at or on such property that can reasonably be expected to create a source of pollution to the waters of the state for the purposes of section 22a-432 of the general statutes and is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than a relationship by which such owner's interest in such property is to be conveyed or financed; (5) such person is not otherwise required by law, an order or consent order issued by the Commissioner of Environmental Protection or a stipulated judgment to remediate pollution on or emanating from such property; (6) the person responsible for pollution on or emanating from the property is indeterminable, is no longer in existence or is either required by law to remediate releases on and emanating from the property or otherwise unable to perform necessary remediation of such property; and (7) the property and the person meet any other criteria said commissioner deems necessary.

(c) For the purposes of this section, municipality shall be defined as a municipality, economic development agency, or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

(d) Notwithstanding subsection (b) of this section, a municipally-owned property shall not be subject to section 32-9ll(b)(6).

(e) Notwithstanding subsection (b) of this section, a municipality can request the Commissioner of Economic and Community Development to determine if a property is eligible regardless of the person who currently owns such property.

(f) [(b)] Upon designation by the Commissioner of Economic and Community Development of an eligible person or municipality who holds title to such property, such eligible person or municipality shall (1) enter and remain in the voluntary remediation program established in section 22a-133x of the general statutes, [provided such person will not be a certifying party for the property pursuant to section 22a-134 of the general statutes, as amended by this act, when acquiring such property;](2) investigate pollution on such property in accordance with prevailing standards and guidelines and remediate pollution on such property in accordance with regulations established for remediation adopted by the Commissioner of Environmental Protection and in accordance with applicable schedules; and (3) eliminate further emanation or migration of any pollution from such property. An eligible person or municipality who holds title to an eligible property designated to be in the abandoned brownfields cleanup program shall not be responsible for investigating or remediating any pollution or source of pollution that has

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emanated from such property prior to such person or municipality taking title to such property.

(g) [(c)] Any applicant seeking a designation of eligibility for a person, municipality or a property under the abandoned brownfields cleanup program shall apply to the Commissioner of Economic and Community Development at such times and on such forms as the commissioner may prescribe.

(h) [(d)] Not later than sixty days after receipt of the application, the Commissioner of Economic and Community Development shall determine if the application is complete and shall notify the applicant of such determination.

(i) [(e)] Not later than ninety days after determining that the application is complete, the Commissioner of Economic and Community Development shall determine whether to include the property and applicant in the abandoned brownfields cleanup program.

(j) [(f)] Designation of a property in the abandoned brownfields cleanup program by the Commissioner of Economic and Community Development shall not limit the applicant's or any other person's ability to seek funding for such property under any other brownfield grant or loan program administered by the Department of Economic and Community Development, the Connecticut Development Authority or the Department of Environmental Protection.

(k) Designation of a property in the abandoned brownfields cleanup program by the Commissioner of Economic and Community Development shall exempt such eligible person or eligible municipality for filing as an establishment pursuant to section 22a-134a to 22a-134d, if such real property or prior business operations constitute an establishment.

(l) Upon completion of the requirements of subsection (e) of this section to the satisfaction of the Commissioner of Environmental Protection, such person or municipality shall qualify for a Covenant Not To Sue from the Commissioner of Environmental Protection without fee, pursuant to section 22a-133aa.

Section 11. (New) (Effective from passage.) Sec. 22a-134(1) is amended by adding new subsection (x) as follows:

(NEW) (x) Acquisition of an establishment that is in the abandoned brownfield cleanup program set forth in section 32-91l and all subsequent transfers of the establishment, provided the establishment is undergoing remediation or is remediated in accordance with subsection (f) of 32-91l.

Section 12. (New) (Effective from passage.) Sec. 22a-133aa is amended by adding new subsection (g) as follows:

(NEW). Any prospective purchaser or municipality remediating property pursuant to the abandoned brownfield cleanup program set forth in section 32-91l shall qualify for a covenant not to sue from the Commissioner of Environmental Protection without fee. Such covenant not to

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sue shall be transferable to subsequent owners provided the establishment is undergoing remediation or is remediated in accordance with subsection (f) of 32-911.

Section 13. Section 22a-133o is repealed and the following is substituted in lieu thereof:

(a) An owner of land may execute and record an environmental use restriction under sections 22a-133n to 22a-133r, inclusive, on the land records of the municipality in which such land is located if (1) the commissioner has adopted standards for the remediation of contaminated land pursuant to section 22a-133k and adopted regulations pursuant to section 22a-133q, (2) the commissioner[, or in the case of land for which remedial action was supervised under section 22a-133y, a licensed environmental professional,] determines, as evidenced by his signature on such restriction, that it is consistent with the purposes and requirements of sections 22a-133n to 22a-133r, inclusive, and of such standards and regulations, and (3) such restriction will effectively protect public health and the environment from the hazards of pollution. An environmental use restriction may be in the form of either an environmental land use restriction in accordance with subsection (b) of this section, or a notice of activity and use limitation in accordance with subsection (c) of this section.

(b) (1) No owner of land may record an environmental land use restriction on the land records of the municipality in which such land is located unless he simultaneously records documents which demonstrate that each person holding an interest in such land or any part thereof, including without limitation each mortgagee, lessee, lienor and encumbrancer, irrevocably subordinates such interest to the environmental use land restriction provided the commissioner may waive such requirement if he finds that the interest in such land is so minor as to be unaffected by the environmental land use restriction. An environmental land use restriction shall run with land, shall bind the owner of the land and his successors and assigns, and shall be enforceable notwithstanding lack of privity of estate or contract or benefit to particular land.

[(c)] (2) Within seven days of executing an environmental land use restriction and receiving thereon the signature of the commissioner or licensed environmental professional, as the case may be, the owner of the land involved therein shall record such restriction and documents required under subsection (b) of this section on the land records of the municipality in which such land is located and shall submit to the commissioner a certificate of title certifying that each interest in such land or any part thereof is irrevocably subordinated to the environmental land use restriction in accordance with said subsection (b).

[(d)] (3) An owner of land with respect to which an environmental land use restriction applies may be released, wholly or in part, from the limitations of such restriction only with the commissioner's written approval which shall be consistent with the regulations adopted pursuant to section 22a-133q and shall be recorded on the land records of the municipality in which such land is located provided the commissioner may waive the requirement to record such release if he finds that the activity which is the subject of such release does not affect the overall purpose for which the environmental land use restriction was implemented and does not alter the size of the area subject to the environmental land use restriction. The commissioner shall not approve any such release unless the owner demonstrates that he has remediated the land, or such portion

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thereof as would be affected by the release, in accordance with the standards established pursuant to section 22a-133k.

[(e)] (4) An environmental land use restriction shall survive foreclosure of a mortgage, lien or other encumbrance.

(c) (1) A notice of activity and use limitation may only be used and recorded for releases remediated in accordance with the regulations adopted pursuant to sections 22a-133k and 22a-133q, as amended by this act, for the following purposes:

(A) To achieve compliance with industrial or commercial direct exposure criteria, groundwater volatilization criteria, and soil vapor criteria set forth in regulations adopted pursuant to section 22a-133k, as amended by this act, by preventing residential activity and use of the area to be affected by the notice of activity and use limitation provided that the property is zoned to exclude residential activity as defined in regulations adopted pursuant to section 22a-133k, as amended by this act;

(B) To prevent disturbance of polluted soil that exceeds the applicable direct exposure criteria but is inaccessible, in compliance with the provisions of regulations adopted pursuant to section 22a-133k, as amended by this act, provided pollutant concentrations in such inaccessible soil do not exceed ten times the applicable direct exposure criteria;

(C) To prevent disturbance of an engineered control to the extent such engineered control is for the sole remedial purpose of eliminating exposure to polluted soil that exceeds the direct exposure criteria, provided pollutant concentrations in such soil do not exceed ten times the applicable direct exposure criteria;

(D) To prevent demolition of a building or permanent structure that renders polluted soil environmentally isolated, provided that either: (i) The pollutant concentrations in the environmentally isolated soil do not exceed ten times the applicable direct exposure criteria and the applicable pollutant mobility criteria, or (ii) the total volume of soil that is environmentally isolated is less than or equal to ten cubic yards; or

(E) Any other purpose the commissioner may prescribe by regulation.

(2) No owner shall record a notice of activity and use limitation on the land records of the municipality in which such land is located unless the owner provides written notice to each person holding an interest in such land or any part thereof, including without limitation each mortgagee, lessee, lienor and encumbrancer, not later than sixty days prior to the recordation of such notice. Such notice of the proposed notice of activity and use limitation shall be sent by certified mail, return receipt requested, and shall include notice of the existence and location of pollution within such area and the terms of such proposed activity and use limitation. Such sixty-day-notice period may be waived upon the written agreement of all interest holders.

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(3) A notice of activity and use limitation recorded pursuant to this subsection shall be implemented and adhered to by the owner and holders of interests in the property and any person that has a license to use such property, and their successors and assigns, or to conduct remediation on any portion of such property.

(4) A notice of activity and use limitation shall be deemed implemented and shall be in effect upon being duly recorded on the land records of the municipality in which such property is located.

(5) (A) A notice of activity and use limitation shall be prepared on a form as prescribed by the commissioner.

(B) A notice of activity and use limitation decision document, signed by the commissioner or signed and sealed by a licensed environmental professional, shall be referenced in and recorded with the notice of activity and use limitation, and shall specify:

(i) Why the notice of activity and use limitation is appropriate to achieve and maintain compliance with the regulations adopted pursuant to section 22a-133k, as amended by this act;

(ii) Activities and uses that are inconsistent with maintaining compliance with such regulations;

(iii) Activities and uses to be permitted;

(iv) Obligations and conditions necessary to meet the objectives of the notice of activity and use limitation; and

(v) The nature and extent of pollution in the area that is the basis for the notice of activity and use limitation, including a listing of contaminants and concentrations for such contaminants, and the horizontal and vertical extent of such contaminants.

(6) Upon transfer of any interest in or a right to use property, or a portion of property, that is subject to a notice of activity and use limitation, the owner of such land, any lessee of such land, and any person who can sub-divide or sub-lease the property, shall incorporate such notice either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer. A notice of activity and land use limitation shall survive foreclosure of a mortgage, lien or other encumbrance.

Section 14. Section 22a-133p is repealed and the following is substituted in lieu thereof:

(a) The Attorney General, at the request of the commissioner, shall institute a civil action in the superior court for the judicial district of Hartford or for the judicial district wherein the subject land is located for injunctive or other equitable relief to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder, or to recover

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a civil penalty pursuant to subsection (e) of this section.

(b) The commissioner may issue orders pursuant to sections 22a-6 and 22a-7 to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder.

(c) In any administrative or civil proceeding instituted by the commissioner to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder, any other person may intervene as a matter of right.

(d) In any civil or administrative action to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder, the owner of the subject land, and any lessee thereof, shall be strictly liable for any violation of such restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder and shall be jointly and severally liable for abating such violation.

(e) Any owner of land with respect to which an environmental use restriction applies, and any lessee of such land, who violates any provision of such restriction, fails to adhere to such restriction or violates sections 22a-133n through 22a-133q or regulations adopted thereunder, shall be assessed a civil penalty under section 22a-438. The penalty provided in this subsection shall be in addition to any injunctive or other equitable relief.

Section 15. **Section 22a-133q is repealed and the following is substituted in lieu thereof:** The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the purposes of sections 22a-133n to 22a-133r, inclusive. Such regulations may include, but not be limited to, provisions regarding the form, contents, fees, financial surety, monitoring and reporting, filing procedure for, and release from, environmental use restrictions.

Section 16. (*Effective from passage*) Section 2 of Public Act 10-135 is amended as follows:

(a) There is established a working group to examine the remediation and development of brownfields in this state, including, but not limited to, the remediation scheme for such properties, permitting issues and liability issues, including those set forth by sections 22a-14 to 22a-20, inclusive, of the general statutes.

(b) The working group shall consist of the following eleven members, each of whom shall have expertise related to brownfield redevelopment in environmental law, engineering, finance, development, consulting, insurance or another relevant field: (1) [Two] Four appointed by the Governor; (2) One appointed by the president pro tempore of the Senate; (3) One appointed by the speaker of the House of Representatives; (4) One appointed by the majority leader of the Senate; (5) One appointed by the majority leader of the House of Representatives; (6) One appointed by the minority leader of the Senate; (7) One appointed by the minority leader of the House of Representatives; (8) The Commissioner of Economic and Community Development or the commissioner's designee, who shall serve ex officio; (9) The Commissioner of Environmental

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Protection or the commissioner's designee, who shall serve ex officio; and (10) The Secretary of the Office of Policy and Management or the secretary's designee, who shall serve ex officio.

(c) All appointments to the working group shall continue and, for any new appointment, be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) The working group shall select chairpersons of the working group from among the appointed members of the working group. Such chairpersons shall schedule the first meeting of the working group, which shall be held no later than sixty days after the effective date of this section.

(e) On or before [January 15, 2011] February 15, 2012, the working group shall report, in accordance with the provisions of section 11-4a of the general statutes, on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to commerce.

Section 17. (NEW) (a) There is established a comprehensive brownfield remediation and revitalization program within the Office of Brownfield Remediation and Development, to be administered by the Director of the Office. No more than twenty properties at a time shall be accepted into the program and a new property shall be added upon the withdrawal of a property from the program or upon issuance of a "Notice of Completion of Remedy and No Further Action Letter" pursuant to subsection (h)(2). The Director shall determine, pursuant to the procedures set forth below, the properties and persons eligible for inclusion within said program and shall select properties based upon at least one of the following criteria: (1) the likely creation of jobs, including, but not limited to, those related to remediation, design, development, and construction; (2) the projected increase to the municipal grand list; (3) the consistency of the property as remediated and developed with municipal or regional planning objectives; (4) the development plan's support for and furtherance of principles of smart growth or transit oriented development. The Director may adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this section. As used in subsections (a) – (i) of this section, inclusive:

"Bona fide prospective purchaser" means a person (or a tenant of a person) that acquires ownership of a property after January 11, 2002, and that establishes each of the following by a preponderance of the evidence: (i) All disposal of regulated substances at the property occurred before the person acquired the facility; (ii) The person made all appropriate inquiries, as set forth in section 40, part 312 of the code of federal regulations into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices. The standards and practices set forth in the ASTM Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process, E1527-05, as it may periodically be updated, shall be considered to satisfy the requirements of this subparagraph; (iii) In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a property inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph; (iv) The person provides all legally required notices with respect to the

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discovery or release of any regulated substances at the property; (v) The person exercises appropriate care with respect to regulated substances found at the property by taking reasonable steps to (A) stop any continuing release; (B) prevent any threatened future release; and (C) prevent or limit human, environmental, or natural resource exposure to any previously released regulated substance; (vi) The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the property); (vii) The person (A) is in compliance with any land use restrictions established or relied on in connection with the response action at the property; and (B) does not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response action; and (viii) The person complies with any request for information or administrative subpoena issued by the Commissioner of Environmental Protection.

"Brownfield" means any abandoned or underutilized site where redevelopment, reuse, or expansion may be complicated by the presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the restoration, redevelopment or reuse of the property.

"Brownfield investigation plan and remediation schedule" means a plan and schedule for investigation, and a schedule for remediation of an eligible property under this section. Such investigation plan and remediation schedule shall include both interim status or other appropriate interim target dates and a target date for project completion within five years after the Commissioner of Environmental Protection approves the plan and schedule, provided however that the Commissioner of Environmental Protection may extend such dates for good cause. The plan shall provide a schedule for activities including, but not limited to, completion of the investigation of the property in accordance with prevailing standards and guidelines, submittal of a complete investigation report, submittal of a detailed written plan for remediation, completion of remediation in accordance with standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k, and submittal to the Commissioner of Environmental Protection of a final remedial action report. Except as otherwise provided in this section, in any detailed written plan for remediation submitted under this section, the applicant shall only be required to investigate and remediate conditions existing within the property boundaries and shall not be required to investigate or remediate any pollution or contamination that exists outside of the property's boundaries, including any contamination that may exist or has migrated to sediments, rivers, streams or off site.

"Contiguous property owner" means a person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a regulated substance from, real property that is not owned by that person, provided (i) with respect to the property owned by that person, the person takes reasonable steps to: (A) stop any continuing release of any regulated substance released on or from the property; (B) prevent any threatened future release of any regulated substance released on or from the property; and (C) prevent or limit human, environmental, or natural resource exposure to any regulated substance released on or from the property; (ii) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural

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resource restoration at the property from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the property); (iii) the person (A) is in compliance with any land use restrictions established or relied on in connection with the response action at the property and (B) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action; (iv) the person is in compliance with any request for information or administrative subpoena issued by the Commissioner of Environmental Protection; and (v) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the property.

“Economic Development Agency” means a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or nonstock corporation or limited liability company established or controlled by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

"Innocent landowner" means: (i) A person holding an interest in real estate, other than a security interest, that, while owned by that person, is subject to a spill or discharge if the spill or discharge is caused solely by any one of or any combination of the following: (A) An act of God; (B) an act of war; (C) an act or omission of a third party other than an employee, agent or lessee of the landowner or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the landowner, unless there was a reasonably foreseeable threat of pollution or the landowner knew or had reason to know of the act or omission and failed to take reasonable steps to prevent the spill or discharge, or (D) an act or omission occurring in connection with a contractual arrangement arising from a published tariff and acceptance for carriage by a common carrier by rail, unless there was a reasonably foreseeable threat of pollution or the landowner knew, or had reason to know, of the act or omission and failed to take reasonable steps to prevent the spill or discharge; or (ii) a person who acquires an interest in real estate, other than a security interest, after the date of a spill or discharge if the person is not otherwise liable for the spill or discharge as the result of actions taken before the acquisition and, at the time of acquisition, the person (A) does not know and has no reason to know of the spill or discharge, and inquires, consistent with good commercial or customary practices, into the previous uses of the property; (B) is a government entity; (C) acquires the interest in real estate by inheritance or bequest; or (D) acquires the interest in real estate as an executor or administrator of a decedent's estate.

“Interim Verification” means a written opinion by a licensed environmental professional, on a form prescribed by the Commissioner of Environmental Protection, that (A) the brownfield investigation plan and remediation schedule has been performed in accordance with prevailing standards and guidelines, (B) the remediation has been completed in accordance with the standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k, except that, for remediation standards for groundwater, the selected remedy is in operation but has not achieved compliance with the standards for groundwater, (C) identifies the long-term

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remedy being implemented to achieve groundwater standards, the estimated duration of such remedy, and the ongoing operation and maintenance requirements for continued operation of such remedy, and (D) there are no current exposure pathways to the groundwater area that have not yet met the remediation standards.

"Municipality" means any town, city or borough.

"National Priorities List" means the list of hazardous waste disposal sites compiled by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 9605 .

"Person" for the purposes of this section means any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, municipality, Economic Development Agency, agency or political or administrative subdivision of the state, and any other legal entity.

"Principles of smart growth" means standards and objectives that support and encourage smart growth when used to guide actions and decisions, including, but not limited to, standards and criteria for (A) integrated planning or investment that coordinates tax, transportation, housing, environmental and economic development policies at the state, regional and local level, (B) the reduction of reliance on the property tax by municipalities by creating efficiencies and coordination of services on the regional level while reducing interlocal competition for grand list growth, (C) the redevelopment of existing infrastructure and resources, including, but not limited to brownfields and historic places, (D) transportation choices that provide alternatives to automobiles, including rail, public transit, bikeways and walking, while reducing energy consumption, (E) the development or preservation of housing affordable to households of varying income in locations proximate to transportation or employment centers or locations compatible with smart growth, (F) concentrated, mixed-use, mixed income development proximate to transit nodes and civic, employment or cultural centers, and (G) the conservation and protection of natural resources by (i) preserving open space, water resources, farmland, environmentally sensitive areas and historic properties, and (ii) furthering energy efficiency.

"Regulated Substance" means any element, compound or material which, when added to air, water, soil or sediment, may alter the physical, chemical, biological or other characteristic of such air, water, soil or sediment and for which there are remediation standards adopted pursuant to section 22a-133k or for which such remediation standards have a process for calculating the numeric criteria of such substance.

"Release" means any discharge, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying or disposal of any regulated substance.

"Remediation Standards" means standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k.

"Smart growth" means economic, social and environmental development that (A) promotes, through financial and other incentives, economic competitiveness in the state while preserving natural resources, and (B) utilizes a collaborative approach to planning, decision-

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making and evaluation between and among all levels of government and the communities and the constituents they serve.

"Transit Oriented Development" means the development of residential, commercial and employment centers within one-half mile or walking distance of public transportation facilities, including rail and rapid transit and services that meet transit supportive standards for land uses, built environment densities and walkable environments, in order to facilitate and encourage the use of those services.

"Verification" means the rendering of a written opinion by a licensed environmental professional that an investigation of the eligible property has been performed in accordance with prevailing standards and guidelines and that the eligible property has been remediated in accordance with the remediation standards.

(b) (1) Any eligible person as defined in subsection (c) below making application to the comprehensive brownfield remediation and revitalization program must demonstrate to the Director of the Office of Brownfield Remediation and Development that: (i) the property meets the definition of a brownfield, and (ii) there has been a release at the property of a regulated substance in an amount that exceeds the remediation standard regulations adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k.

(2) A property that is currently the subject of an enforcement action, including any Consent Orders issued by the Department of Environmental Protection or the United States Environmental Protection Agency under any current Department of Environmental Protection or United States Environmental Protection Agency program or that is listed on the National Priorities List is not eligible to participate in the comprehensive brownfield remediation and revitalization program.

(3) A municipality or an economic development agency may nominate a property for acceptance into the comprehensive brownfield remediation and revitalization program without an application by an eligible person, the acceptance of which property into the comprehensive brownfield remediation and revitalization program will preserve the eligibility for liability relief for an applicant that may thereafter be accepted into the comprehensive brownfield remediation and revitalization program and who fulfills the obligations of an applicant under subsection (g) of this section.

(4) Properties currently being investigated and remediated in accordance with the State Voluntary Remediation programs under sections 22a-133x and 133y, and the Covenant Not to Sue programs under sections 22a-133aa and bb, if the properties and the applicants are otherwise eligible under this section, may participate in this comprehensive brownfield remediation and revitalization program.

(c) A person eligible to be an applicant and to participate in the comprehensive brownfield remediation and revitalization program is defined to include any one of those persons listed in subsection (c)(1) – (4), provided that such person also meets the definition set forth in subsection (c)(5).

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- (1) an innocent landowner and which may include a municipality or economic development agency,
 - (2) a bona fide prospective purchaser and which may include a municipality or economic development agency,
 - (3) a contiguous property owner, and which may include a municipality or economic development agency, or
 - (4) a person who receives property from either an innocent landowner, bona fide prospective purchaser, contiguous property owner or the successor to such person; and
 - (5) The person (i) did not establish or create a facility or condition at or on such property which reasonably can be expected to create a source of pollution to the waters of the state for purposes of section 22a-432 and has not maintained any such facility or condition at such property for purposes of said section, and such purchaser is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property; and (ii) is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such purchaser's interest in such property is to be conveyed or financed.
- (d) Inclusion of a property within the comprehensive brownfield remediation and revitalization program by the Director shall not limit any person's ability to seek funding for such property under any federal, state or municipal grant or loan program, including but not limited to any state brownfield grant or loan program.
- (e) Any applicant seeking a designation of eligibility for a person or a property under the comprehensive brownfield remediation and revitalization program shall apply to the Director at such times and on such forms as the Director may prescribe and shall pay a fee of Three Thousand Dollars along with its completed application. Such fee will be deposited in the brownfield remediation and development account established pursuant to section 32-9kk(1). The application shall include a completed environmental condition assessment form as defined in section 22a-134(17) for the eligible property and documentation demonstrating satisfaction of the eligibility criteria set forth in subsections (b) and (c). The applicant shall certify to the Director, in writing, that the information contained in its application is correct and accurate to the best of the applicant's knowledge and belief. Not later than thirty days after receipt of the application, the Director shall notify the applicant whether the application is complete or incomplete. If the Director fails to notify the applicant within thirty days after his or her receipt of an application, the application shall be deemed complete.
- (f) Acceptance or rejection of application; innocent party status. (1) Not later than sixty days after the application is determined to be or is deemed to be complete, the Director shall notify the applicant whether the eligible property is included or not included in the comprehensive brownfield remediation and revitalization program. If the Director fails to notify

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the applicant within sixty days, the application shall be deemed accepted into the comprehensive brownfield remediation and revitalization program.

(2) A person whose application has been accepted or deemed accepted into the comprehensive brownfield remediation and revitalization program shall not be liable to the state or any third party for the release of any regulated substance at or from the eligible property except and only to the extent that such Applicant (i) caused or contributed to the release of a regulated substance that is subject to remediation under the remediation standards or (ii) exacerbated such condition, or (iii) except to the extent the Commissioner of Environmental Protection determines the existence of any of the conditions set forth in subsection (g)(2)(ii) below.

(g)(1)(i) A person whose application to the comprehensive brownfield remediation and revitalization program has been approved or deemed approved by the Director shall (A) investigate the release or threatened release of any regulated substance within the boundaries of the property that exceeds the remediation standards in accordance with prevailing standards and guidelines, and (B) remediate such release or threatened release within the boundaries of such property in accordance with the remediation standards and in accordance with a schedule to be established in the brownfield investigation plan and remediation schedule, to be prepared in accordance with subsection (g)(2). (ii) A person whose application to the comprehensive brownfield remediation and revitalization program has been approved or deemed approved by the Director shall not be required to characterize, abate, and remediate the release of a regulated substance that exceeds the remediation standards beyond the boundary of the eligible property.

(2) Within one hundred eighty (180) days after the application is determined to be or is deemed complete, or such longer period approved by the Commissioner of Environmental Protection upon good cause shown, the Applicant shall submit to both the Commissioner of Environmental Protection and the Director a Brownfield Investigation Plan and Remediation Schedule. The Commissioner of Environmental Protection will issue notice of his or her receipt of the brownfield investigation plan and remediation schedule on the Department's website and in the Connecticut Law Journal in accordance with this section, stating that such brownfield investigation plan and remediation schedule is available for review on the Department of Environmental Protection website. Any person may provide comments to the Commissioner of Environmental Protection, the Director, and the Applicant on the brownfield investigation plan and remediation schedule within thirty days after the posting of those documents on the Department of Environmental Protection's website.

(3) Not later than sixty (60) days after receiving the brownfield investigation plan and remediation schedule, the Commissioner of Environmental Protection shall notify the Applicant and the Director whether the brownfield investigation plan and remediation schedule is approved in full or in part or rejected in full or in part, with an explanation of the reasons for the decision to approve or disapprove all or any part of the brownfield investigation plan and remediation schedule. If the Commissioner of Environmental Protection neither approves nor rejects the brownfield investigation plan and remediation schedule within such timeframe, the brownfield investigation plan and remediation schedule shall be deemed approved. The Applicant shall

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have thirty (30) days to respond to any disapproval or rejection by the Commissioner of Environmental Protection of the brownfield investigation plan and remediation schedule and the time frames herein provided for comment and response shall continue until the Commissioner of Environmental Protection has approved the brownfield investigation plan and remediation schedule, the brownfield investigation plan and remediation schedule is deemed approved, or the Applicant has notified the Commissioner of Environmental Protection of its withdrawal from the program

(4) Prior to commencement of remedial action pursuant to the approved brownfield investigation plan and remediation schedule, the Applicant shall: (i) publish notice of the remedial action in a newspaper having a substantial circulation in the town where the property is located; (ii) notify the director of health of the municipality where the parcel is located; (iii) and either (A) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the property, which sign shall be clearly visible from the public highway, and shall include the words "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT:" and include a telephone number for an office from which any interested person may obtain additional information about the remedial action; or (B) mail notice of the remedial action to each owner of record of property which abuts such property, at the address on the last-completed grand list of the relevant town.

(5) The remedial action shall be conducted under the supervision of a Licensed Environmental Professional and the final remedial action report shall be submitted to the Commissioner of Environmental Protection and the Comprehensive Brownfield Remediation Officer by a Licensed Environmental Professional. In preparing such report, the Licensed Environmental Professional shall issue a verification or interim verification in which he or she shall render an opinion, in accordance with the standard of care provided for in subsection (c) of section 22a-133w, that the action taken to contain, remove or mitigate the release of a regulated substances within the boundaries of such property, as provided in subsection (g)(1), is in accordance with the remediation standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k.

(6) All applications for permits required to implement the brownfield investigation plan and remediation schedule hereunder shall be submitted to the permit ombudsman within the Connecticut Department of Economic and Community Development to coordinate and expedite in accordance with Public Act No. 10-158.

(7) Every Applicant participating in the comprehensive brownfield remediation and revitalization program shall maintain all records related to its implementation of the brownfield investigation plan and remediation schedule and completion of the remedial action of the property for a period of not less than ten years and shall make such records available to the Commissioner of Environmental Protection or the Director at any time upon request by either or them.

(8) Any final remedial action report submitted to the Commissioner of Environmental Protection and the Director for such a property by a Licensed Environmental Professional shall be deemed approved unless, within sixty (60) days after such submittal, the Commissioner of

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Environmental Protection determines, in his or her sole discretion, and he or she provides notice of such determination to the Applicant and the Director, that an audit of such remedial action is necessary to assess whether remedial action beyond that which is detailed in such report is necessary for the protection of human health or the environment. Such an audit shall be conducted within six months after such determination. Within thirty (30) days after completing such audit the Commissioner of Environmental Protection may disapprove the report, provided he or she shall give his or her reasons therefore in writing to the Applicant and the Director and further provided the Applicant may appeal such disapproval to the Superior Court in accordance with the provisions of section 4-183. (i) Within sixty (60) days after receipt of a notice of disapproval of remedial action report from the Commissioner of Environmental Protection, the Applicant may submit to said Commissioner and to the Comprehensive Brownfields Remediation Officer a Report of Cure of Noted Deficiencies. Within sixty (60) days after receipt of such Notice of Cure of Noted Deficiencies by the Commissioner of Environmental Protection, unless disapproved in writing before then by the Commissioner of Environmental Protection, the Notice of Cure of Noted Deficiencies will be deemed approved and the Commissioner of Such fee will be deposited in the brownfield remediation and development account established pursuant to section 32-9kk(1). Environmental Protection shall issue the Notice of Completion of Remedy and No Further Action Letter provided for in subsection (h)(2). The Applicant may also appeal a Disapproval of the Notice of Cure of Noted Deficiencies to the superior court in accordance with the provisions of section 4-183. (ii) Prior to approving a final remedial action report or the remedial action report being deemed approved, the Commissioner of Environmental Protection may enter into a memorandum of understanding with the Applicant with regard to any further remedial action or monitoring activities on or at such property which the Commissioner of Environmental Protection deems necessary for the protection of human health or the environment.

(h) (1) An Applicant who has been accepted into the comprehensive brownfield remediation and revitalization program shall have no obligation as part of its brownfield investigation plan and remediation schedule to characterize, abate, and remediate any plume of a regulated substance outside the boundaries of the subject property, provided, however that the notification requirements of section 22a-6u pertaining to significant environmental hazards shall continue to apply to the property, further provided that the applicant, pursuant to section 22a-6u(i),(j), and (k) or otherwise, shall not be required to characterize, abate or remediate any such significant environmental hazard outside the boundaries of the subject property unless such significant environmental hazard arises from the actions of the applicant after its acquisition of or control over the property from which such significant environmental hazard has emanated outside its own boundaries. In the event of such notification to the Commissioner by the applicant pursuant to section 22a-6u the Commissioner shall not be required to acknowledge same pursuant to 22a-6u(j). In the event that an applicant who has been accepted into the comprehensive brownfield remediation and revitalization program conveys or otherwise transfers its ownership of the subject property to a different person, the provisions of this subsection shall apply to that person as well, if that person meets the eligibility criteria set forth in subsection (c), and provided that person complies with all the obligations undertaken by the Applicant under this section.

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(2) With the Commissioner of Environmental Protection's approval of a final remedial action report, or upon the deemed approval of such report, the Commissioner of Environmental Protection shall issue a "Notice of Completion of Remedy and No Further Action Letter" which shall provide that the Applicant is not liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in the brownfield investigation plan and remediation schedule and also any liability to the state or any third party for historic off-site impacts including air deposition, waste disposal, impacts to sediments, and natural resource damages.

(i) The "Notice of Completion of Remedy and No Further Action Letter" issued by the Commissioner of Environmental Protection shall extend to any person who acquires title to all or part of the property for which a remedial action report has been approved pursuant to subsection (h), provided, however, that (A) there is payment of a fee of \$3,000.00 to the Commissioner of Environmental Protection for each such extension, with such fee to be deposited in the brownfield remediation and development account established pursuant to section 32-9kk(1) and (B) such person acquiring all or part of the property meets the criteria of subsection (c)(5).

(ii) A "Notice of Completion of Remedy and No Further Action Letter" issued under this section shall not preclude the Commissioner of Environmental Protection from taking any appropriate action, including, but not limited to, any action by the Commissioner of Environmental Protection to require remediation of the property by the Applicant, or as applicable in subsection (A) below to its successor, if he or she determines that: (A) the "Notice of Completion of Remedy and No Further Action Letter" was based on information provided by the person seeking the "Notice of Completion of Remedy and No Further Action Letter" which information the Commissioner of Environmental Protection can demonstrate that such person knew, or had reason to know, was false or misleading, and in the case of the successor to an Applicant admitted to the comprehensive brownfield remediation and revitalization program if the Commissioner of Environmental Protection can demonstrate that such successor was aware or had reason to know that such information was false or misleading; (B) new information confirms the existence of previously unknown contamination which resulted from a release which occurred prior to the date that an application has been accepted or deemed accepted into the comprehensive brownfield remediation and revitalization program as set forth in subsection (g)(1); (C) the Applicant who received the "Notice of Completion and No Further Action Letter" has materially failed to complete the remedial action required by the brownfield investigation plan and remediation schedule or to carry out or comply with monitoring, maintenance, or operating requirements pertinent to a remedial action including the requirements of any environmental land use restriction issued pursuant to the remediation standards; or (D) the threat to human health or the environment is increased beyond an acceptable level due to substantial changes in exposure conditions at such property, including, but not limited to, a change from nonresidential to residential use of such property.

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(iii) The Applicant may appeal a determination made by the Commissioner of Environmental Protection under subsection (h)(2)(ii) above to the superior court in accordance with the provisions of section 4-183.

(3) To the extent that a Licensed Environmental Professional verifies that a site which has been accepted into the program, has been investigated and remediated in compliance with the standards as set forth above in subsection (g) , and the Commissioner of Environmental Protection has approved the final remedial action report or the final remedial action report has been deemed approved, the person that undertook that earlier remediation, regardless of its own eligibility to participate in the comprehensive brownfield remediation and revitalization program, will receive the same protections from liability and additional remedial action as an Applicant approved to participate in the comprehensive brownfield remediation and revitalization program, provided, however that the person who undertook that earlier remediation nonetheless shall retain any liability the person would otherwise have to characterize and remediate any continuing migration or threatened migration beyond the boundaries of the eligible property if such characterization and remediation has not been included in the remedial action report submitted by the Applicant and approved or deemed approved by the Commissioner of Environmental Protection.

(i) No person shall be required to comply with the provisions of section 22a-134 to 22a-134e inclusive, in connection with the transfer of a business or real property occurring on or after the effective date of this section (i) for which an application has been accepted or deemed accepted into the comprehensive brownfield remediation and revitalization program or (ii) for which a brownfield investigation plan and remediation schedule or a final remedial action report hereunder has been approved or deemed approved by the Commissioner of Environmental Protection, and (iii) at which no activities described in subdivision (3) of section 22a-134 have been conducted since the date of such approval.

Section 18. Include Bill 6221 – elimination of sunset dates for brownfield remediation projects funded by the Connecticut Development Authority.

Office of Brownfield Remediation and Development
Department of Economic and Community Development
Role Per CSG 32-9cc

- (1) Develop procedures and policies for streamlining the process for brownfield remediation and development;
- (2) Identify existing and potential sources of funding for brownfield remediation and develop procedures for expediting the application for and release of such funds;
- (3) Establish an office to provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs;
- (4) Provide a single point of contact for financial and technical assistance from the state and quasi-public agencies;
- (5) Develop a common application to be used by all state and quasi-public entities providing financial assistance for brownfield assessment, remediation and development; and
- (6) Identify and prioritize state-wide brownfield development opportunities; and
- (7) Develop and execute a communication and outreach program to educate municipalities, economic development agencies, property owners and potential property owners and other organizations and individuals with regard to state policies and procedures for brownfield remediation.

**Office of Brownfield Remediation and Development
Department of Economic and Community Development
Assistance Programs Overview**

EPA Site Assessment Program: Municipalities and related organizations refer sites for program consideration that may be complicated by hazardous substance contamination or petroleum contamination. OBRD hires an environmental consultant to investigate the environmental condition of an eligible site and to prepare the remedial action work plan.

EPA Statewide Revolving Loan Fund: EPA funds for the remediation of environmental contamination located in any CT municipality. Grants opportunities for municipalities and non-profits and loan opportunities available for eligible for-profit organizations.

EPA Statewide Revolving Loan Fund: EPA funds for the remediation of environmental contamination located in Hartford. Grants opportunities for municipalities and non-profits and loan opportunities available for eligible for-profit organizations.

Dry Cleaning Establishment Remediation Fund: This program is funded through taxes collected from CT dry cleaners. It provides grants of up to \$300k for the landowner or business operator for assessment and site clean up.

Special Contaminated Properties Remediation and Insurance Fund (SCRIF): This is a loan program that provides assistance to municipalities, developers or owners for Phase II/III investigations, Remedial Action Plans (RAP), demolition and remedial action activities.

Urban Sites Remedial Action Program (USRAP): The State's flagship, and the oldest Brownfield specific redevelopment program. Jointly managed by OBRD and DEP for projects that are significant to the Connecticut's economy and quality of life. Site must be located in a distressed municipality. This program provides seed capital to facilitate the transfer, reuse and redevelopment of the property.

Brownfield Municipal Pilot Program: A competitive grant program for municipalities with projects that have been complicated by brownfields but will on completion make a significant economic impact. Only municipalities and municipal entities are eligible to apply however, the project sites do not need to be owned by the municipality.

Targeted Brownfield Development Loan Program: This program provides financial assistance in the form of low-interest loans to applicants who seek to develop property for purposes of retaining or expanding jobs in the state or for developing housing to serve the needs of first-time home buyers. Loans are available to manufacturing, retail, residential or mixed-use developments, expansions or reuses.

Abandoned Brownfield Cleanup Program: The ABC program offers an opportunity for developers, who are not responsible for contamination, to be afforded liability protection from the responsibility to investigate and remediate off-site contamination provided that the projects meet certain economic development thresholds and remediation is completed under a formal DEP program.

Office of Brownfield Remediation and Development (OBRD)
Department of Economic & Community Development

- OBRD created under Public Act 06-184.
- 2006 - OBRD website development
- 2007 MOU signed – DECD, DEP, DPH, CDA
- 2007 – OBRD awarded \$1M statewide revolving loan fund (RLF) for remediation by EPA
- 2008 – Formalized partners meetings, streamlined application
- 2008 – OBRD awarded \$400,000 for environmental assessment by EPA
- 2008 – 1st round Brownfield Municipal Pilot Program remediation projects (\$2.25M):
 - Stamford, Commons Park at Harbor Point
 - Waterbury, Cherry Street Industrial Park
 - Redding, Georgetown
 - Norwalk, Train Station
 - Shelton, Axton Cross
- 2009 – Pope Park Zion remediation, Hartford (EPA HTFD RLF)
- 2009 - Roosevelt Mills Project, Vernon
- 2009 – Former Decker’s Laundry assessment, Salisbury
- 2009 – OBRD awarded \$600,000 in supplemental revolving loan funding by EPA
- 2009 - Legislative
 - Abandoned Brownfields Program
 - Targeted Brownfield Loan Program
 - Streamlined brownfield remediation in floodplains (2007)
- 2010 – 2nd round Brownfield Municipal Pilot Program (\$2.25M)
 - Hartford, Swift Factory
 - Waterbury, Waterbury Industrial Commons
 - Meriden, Factory H
 - Madison, Griswold Airport
 - Naugatuck, Train Station
 - Putnam, Cargill Falls Mill
- 2010 – Current EPA RLF remediation projects
 - Habitat for Humanity, New London
 - Remington Rand, Middletown
 - Willimantic Whitewater Partnership, Willimantic
 - 14 Bridge Street, Montville
- 2010 – Assessment projects
 - Willimantic Whitewater Partnership, Willimantic
 - 98 Prospect St., Enfield
 - P & A Mill, Killingly
 - Former Decker’s Laundry, Salisbury
 - Former Swift Factory Hartford
 - Former Hi-G, South Windsor
- 2010 – (Fall) Brownfield Opportunities list available on website

- 2010 – OBRD awarded \$200,000 in EPA RLF supplemental funds
- 2010 – OBRD collaborated with Windham Region Council of Governments & Northeast CT Council of Governments on \$1M EPA assessment funding application

List of Representative Brownfield Programs and Incentives in Connecticut

Remediation Programs/Incentives	Statutory Authority	Description/Comment	Primary Agency
Property Transfer Program	§ 22a-134 - 134e	Requires the disclosure of environmental conditions when certain real properties and/or businesses ("establishments") are transferred. When an establishment is transferred, one of eight Property Transfer Forms must be executed, and a copy of the form must be filed with the DEP. When transferring an establishment where there has been a release of a hazardous waste or a hazardous substance, the parties negotiate who will sign the Property Transfer Form as the Certifying Party to investigate the parcel and remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment. In all transfers, an investigation of the parcel is required in accordance with prevailing standards and guidelines.	DEP
Voluntary Remediation Program	§ 22a-133y	This voluntary program can be utilized for property where the groundwater is classified as GB or GC and such property is not subject to any order, consent order or stipulated judgment issued by the DEP Commissioner. Prior to commencement of remedial action, the owner of the property must submit a remedial action plan prepared by a LEP to the Commissioner for review.	DEP
Voluntary Remediation Program	§ 22a-133x	This voluntary program can be utilized by owners of sites which are (1) owned by a municipality, or (2) defined as establishments pursuant to § 22a-134 of the General Statutes or (3) on the inventory of hazardous waste disposal sites maintained pursuant to § 22a-133c of the General Statutes, or (4) located in a GA or GAA groundwater area.	DEP
Third-party liability protection	§ 22a-133ee	Provides for third-liability protection for owners that conduct investigation and remediation, the reports for which are approved by DEP, provided the owner did not cause the condition and is not related to or affiliated with the party that caused the condition	DEP
Urban Sites Remedial Action Plan	§ 22a-133m	Sites are targeted for evaluation and remediation on a prioritized basis that includes factors such as cost, complexity and development benefits.	DECD/DEP
Special Contaminated Property Remediation and Insurance Fund	§ 22a-133u	Provide financial assistance to investigate the environmental conditions of a site, remediate the site and ultimately encourage property redevelopment that is beneficial to the community. Assistance is provided through low-interest loans that have a term of five years.	DECD/DEP
Covenants Not To Sue	§§ 22a-133aa and 22a-133bb;	Agreement by the Commissioner that the Commissioner shall release claims that are related to pollution or contamination on or emanating from the property, which contamination resulted from a discharge, spillage, uncontrolled loss, seepage, or filtration on such property prior to the effective date of the covenant. (first is discretionary, but fee is high; second is mandatory, has less "protection," and has no fee.	DEP
Brownfield Municipal Pilot Program	§§ 32-9 cc (c) and (f); 32-9cc; and 32-9 ff	Fund Brownfield projects with significant anticipated economic impact in five municipalities or municipal entities based on population as follows: two (2) in municipalities with populations > 100,000; one (1) in a municipality with population between 50,000 and 100,000; one (1) in a municipality with population < 50,000; and one (1) in a municipality selected by the Commissioner without regard to population	DECD
Tax Increment Financing (TIF)	§ 8-134 & 8-134a	Provide "up-front" funding for developers that remediate and	CDA/CBRA

Remediation Programs/Incentives	Statutory Authority	Description/Comment	Primary Agency
for Brownfields		redevelop environmentally contaminated properties. The incentive is equal to the net present value of a portion of the future incremental municipal tax revenues generated by the project.	
Dry Cleaner Establishment Remediation Fund	§ 12-263m (a)	Provides grants to owners or operators of dry cleaning businesses for clean up of dry cleaner establishments. It is funded by a 1 percent surcharge on the gross receipts of dry cleaning establishments	DECD
Targeted Brownfield Development Loan Program	32-9 kk (f)	The Targeted Brownfield Development Loan Program provides financial assistance in the form of low-interest loans to applicants who seek to develop property for purposes of retaining or expanding jobs in the state or for developing housing to serve the needs of first-time home buyers.	DECD
Connecticut Abandoned Brownfield Cleanup (ABC) Program	§ 32-911	The Commissioner of Economic and Community Development shall determine, in consultation with the Commissioner of Environmental Protection determine eligible sites for a program that allows innocent purchasers to participate in a streamlined remediation of the site.	DECD/DEP
Environmental Insurance Program	§ 32-222	Funded through the Economic Development and Manufacturing Assistance Act (EDMAA). Provides state funds for environmental insurance policy premiums and pay insurance deductibles and OBRD review of the policy.	DECD/OBRD
Property Tax Abatement or Forgiveness Program	§ 12-81r	Authorizes municipalities in certain circumstances to abate taxes for up to seven years if the owner agrees to assess and remediate contaminated site.	

Brownfield Municipal Pilot Update – November 2010

Brownfield Municipal Pilots – Round I			
Municipality	Project	Grant	Status
Stamford	Harbor Point Partnership	\$450,000	Project nearly complete
Redding	Georgetown Remediation Project	\$425,000	Contract in closing. Delays due to project scheduling & funding issues
Waterbury	Cherry St. Industrial Park Remediation	\$650,000	Funding closed, project in process
Shelton	Axton Cross Remediation	\$425,000	Funding closed, project in progress
Norwalk	South Norwalk Transit Remediation	\$300,000	Funding closed, project in progress
Total		\$2,250,000	

Brownfield Municipal Pilots – Round II			
Municipality	Project	Grant	Status
Hartford	Swift Factory	\$600,000	Closing on funding
Waterbury	Waterbury Industrial Commons	\$600,000	Finalizing proposal.
Meriden	Factory H	\$300,000	Closing on funding
Madison	Former Griswold Airport	\$200,000	Closing on funding
Naugatuck	Train Station	\$50,000	Closing on funding
Putnam	Cargill Falls Mill	\$500,000	Closing on funding
Total		\$2,250,000	

Financial Resources Summary

AGENCY	PROGRAM	PROGRAM DETAIL	TYPE	FUNDING SOURCE	AUTHORIZED	FUNDING AVAILABILITY	AMOUNT EXPENDED TO DATE	STRENGTHS	WEAKNESSES
CBRA	TIF	Up-front TIF based cash for developers	GRANT	BONDS		Subject to CDA's available funding	\$ 12,000,000.00	Immediate source of funding for developer	Projects have to meet a min 400,000 threshold
CBRA	DIRECT LOAN	Direct senior and subordinated loans	LOAN	BONDS/CDA OPERATING FUNDS		Subject to CDA's available funding	\$ 250,000.00	Leverage institutional funding	Need lead lending institution/developer must have solid banking relationship
CBRA	LOAN GUARANTEE	Provides full coverage of lender's loss up to 30% of loan balance	LOAN	BONDS/CDA OPERATING FUNDS		Subject to CDA's available funding		Leverage Institutional funding	Need lead lending institution/developer must have solid banking relationship
DECD	ABANDONED BROWNFIELD CLEANUP PROGRAM	Liability protection for developers	N/A	N/A	N/A	N/A		limits liability for off-site investigation and cleanup	limited eligibility criteria, and no source of state funds to address orphan share
DECD	TARGETED BROWNFIELD DEVELOPMENT LOAN PROGRAM	Low interest loans for manufacturing/retail/residential/mixed use	LOAN	Bonds	\$ 10,000,000.00	\$ 2,500,000.00	\$ 1,500,000.00	accounts to receive funds, - interest, repayment, etc	Reliance on borrowing for majority of start up funding
DECD	BROWNFIELD MUNICIPAL PILOT PROGRAM	Competitive Program for Municipalities	GRANT	Bonds	\$ 7,500,000.00	\$ -	\$ 4,500,000.00	accounts to receive funds, - interest, repayment, etc	
DEP	URBAN SITES REMEDIAL ACTION PROGRAM (USSRAP)	Site located in designated distressed community (OBRD and DEP)	GRANT	Bond Funds	\$ 32,870,380.00	\$ -	\$ 32,870,380.00	accounts to receive funds, - interest, repayment, etc	
DECD	CT EPA ASSESSMENT PROGRAM	Monies through the EPA for assessment	GRANT	Federal Funds	\$ 400,000.00	\$ 189,431.00	\$ 210,569.00		Iterative, limited eligibility criteria
DECD	STATEWIDE REVOLVING LOAN FUND	EPA funds for the remediation of contaminated properties	GRANT/ LOAN	Federal Funds	\$ 1,800,000.00	\$ 880,432.00	\$ 919,568.00		limited eligibility criteria
DECD	Hardford EPA Revolving Loan Fund	EPA funds for the remediation of contaminated properties in Hartford	GRANT/ LOAN	Federal Funds	\$ 602,171.00	\$ -	\$ 602,171.00		limited eligibility criteria
DEP	UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP PROGRAM	Reimbursement Program - reimburses responsible parties and 3rd parties for investigation and clean up for certain UST releases	Reimbursement	General Fund Line Item				available to responsible parties and 3rd parties	limited eligibility criteria, insufficient funds to meet needs
DECD	DRY CLEANING ESTABLISHMENT REMEDIATION FUND	Provides grants for the landowner or operator for assessment/cleanup	GRANT	Tax Receipts	\$ 10,100,000.00	\$ -	\$ 10,100,000.00	Small business assistance	\$300k cap, limited funds
DECD	SCRIF	Monies to be used for Phase II and RAP/Remediation	LOAN	Bonds	\$ 6,000,000.00	\$ 506,285.00		accounts to receive funds, - interest, repayment, etc	"construction loan" too narrow
DECD	MANUFACTURING ASSISTANCE	General DECD economic development assistance program; Monies used for hard and soft costs related to brownfield reuse including engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT/ LOAN	Bonds	N/A	N/A	\$ 22,100,000.00	Flexibility in use of funds	1) bonded funds; 2) competing with general ED projects supporting business growth; 3) for economic development projects only
DECD	URBAN ACT*	General state development assistance program; Monies used for hard and soft costs related to brownfield reuse including engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	Bonds	N/A	N/A	\$ 26,700,000.00	Flexibility in use of funds	1) Controlled by OPM; 2) bonded funds
OPM	Small Town Economic Assistance Program (STEAP)*	General state development assistance program to small towns; Some towns have used funding to support brownfield projects; Monies used for hard and soft costs related to brownfield reuse including engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	bonds	N/A	N/A	\$ 1,000,000.00	Flexibility in use of funds	1) Controlled by OPM; 2) bonded funds
DECD	* Brownfield Project Identification in progress	Direct HUD line of credit loan to qualified project	LOAN	Federal funds	N/A	\$ 3,000,000.00	Piloted in 2010		1) Subject to federal thresholds, national priorities, and income requirements; 2) Can support non-remediation project activities

**Environmental Professionals' Organization of Connecticut**

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Amston, Connecticut 06231-0176

Phone: (860) 537-0337, Fax: (860) 537-6268

February 3, 2010

Mr. Patrick Bowe
Connecticut Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06015

Dear Mr. Bowe:

I am writing on behalf of the Environmental Professionals' Organization of Connecticut to clarify a point of statutory interpretation regarding remediation of sites under the Transfer Act. A number of our members have been told by various Department of Environmental Protection (DEP) personnel that when a Verification is rendered for a site, it must contemplate that all of the areas of concern have been adequately investigated and, if necessary, remediated and monitored in accordance with the Remediation Standard Regulations, no matter when in time such areas of concern may first have arisen. However, a plain reading of the language of the Transfer Act indicates, and many of our clients assert to us, that the responsibility of a Certifying Party under the Transfer Act relates only to the contamination existing at the time a Form III or Form IV is signed and submitted to the DEP. We therefore asked Mr. Doug Pelham of Cohn Birnbaum & Shea to perform legal research and provide us with a White Paper that discusses the applicable law and reaches a conclusion regarding this question. We attach a copy of this White Paper for your review. As you can see, the case law and legislative history support the proposition that a Certifying Party is responsible only for the condition of a site on the date certified, which includes historical contamination, but not future contamination that may arise subsequent to such certification.

Please be assured that we hold human health and the environment of paramount importance, and are not suggesting that contamination that occurs after the date a Certifying Party files a Form III or a Form IV should be ignored or should not be investigated and, if necessary, monitored and remediated. Connecticut statutes and case law provide numerous avenues for and broad power to the DEP to require the responsible party and/or the landowner to address contamination at a site, and we agree with the strong public policy goal of not only protecting but improving the environment. However, we also believe there is a strong public policy goal of fairness that should govern the interpretation and application of our environmental statutes, and which must be considered in the DEP's policy-making decisions. The intent of the legislature in enacting the Transfer Act not only considers but indeed embraces the concept of fairness. One of the primary goals of the Transfer Act is to protect unsuspecting purchasers from unscrupulous sellers who hide or fail to disclose the true environmental condition of a site, and give impetus to the performance of appropriate due diligence so that the parties can establish, with everyone cognizant of the risks and potential costs, the responsibility for addressing the existing contamination at a site. Conversely, it is an unfair outcome, not supported by the Transfer Act or its legislative history, to require honest sellers (who agree to be the Certifying Party) to protect unscrupulous or inattentive purchasers from their own environmental misdeeds, by requiring such sellers to conduct and pay for investigation, remediation and monitoring of contamination at a site that occurred (or potentially occurred) after the sale.

The policy of requiring Verifications to address all contamination, no matter when in time it occurred, also results in a significant burden to the DEP, as well as economic waste. Many times the investigation and remediation of a site takes several years, and during the course of time, especially at operating sites, many new potential sources of contamination can arise. While it seems expedient to

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require the Certifying Party to address such new sources before its Licensed Environmental Professional renders a Verification, in fact this policy may cause a Verification to be significantly delayed or never achieved, because such new sources require investigation and monitoring. Years are therefore added to the length of projects, keeping these projects in the DEP's system and adding to DEP's administrative burden. Previous investigation and groundwater monitoring efforts may become wasted, because further investigation must be performed, and monitoring extended because new areas of concern were identified.

We urge you to clarify the DEP's policy regarding Verifications to be consistent with the conclusions set forth in the attached White Paper. We believe that the case law, legislative history, fairness, and burden to Certifying Parties and the DEP, as well as a fair reading of the Transfer Act itself, all mandate that the DEP's policy be that Verifications under the Transfer Act should pertain solely to the contamination in existence at the time the Certifying Party submits its certification.

Very truly yours,

ENVIRONMENTAL PROFESSIONALS'
ORGANIZATION OF CONNECTICUT, INC.



Seth J. Molofsky
Executive Director

cc: Amey Marrella, Commissioner
Betsey Wingfield, Bureau Chief
Robert Bell, Assistant Director
Jack Looney, Esq.
EPOC Members

WHITE PAPER TRANSFER ACT LIABILITY LIMITATIONS

Introduction

In general, the Transfer of Hazardous Waste Establishments Act, Connecticut General Statutes Sections 22a-134 et seq. (the "Transfer Act") requires an owner, at the time of transfer, to determine whether its real property or business operation is an Establishment¹, and if it is, make a filing to the transferee and to the Connecticut Department of Environmental Protection on one of eight forms that informs the transferee and the DEP of the environmental status of the site and initiates DEP oversight. In connection with the filing, one of the parties associated with the transfer must agree to be the "Certifying Party" who is responsible for investigation and, if necessary, remediation of pollution at the site (unless it can be shown at the time of transfer that no releases have occurred or releases have been previously remediated).

A commonly recurring transaction in Connecticut involves the sale of a real property Establishment for which a Form III must be filed because the site has not been fully investigated at the time of closing. In this example transaction, we assume that the seller agrees to be the Certifying Party on the Form III, and diligently proceeds to investigate, remediate and perform groundwater monitoring at the site to comply with the RSRs.² The time period to complete the foregoing activities typically stretches over a number of years. We also consider the situation where a subsequent sale of the same Establishment occurs some years later, but before the site remediation is complete from the first sale, in which the seller (formerly the buyer) agrees to be the Certifying Party on another Form III filing.

DEP staff members have stated that the DEP policy regarding Verifications is that when a Verification is rendered for a site, that Verification must certify that the site meets the RSRs as of the date the Verification is rendered. DEP staff members have also stated that in cases where there is more than one Certifying Party for a site, it is the DEP's policy to hold each Certifying Party jointly and severally responsible for the investigation and remediation of the site. The practical effect of these two policies is that it extends the liability of a Certifying Party to those releases and potential releases that occur at the site after the date of its Form III filing, when such Certifying Party no longer owns or has control over the site.

The purpose of this White Paper is to determine whether the DEP policies are consistent with the Transfer Act statute, applicable case law and legislative history. We conclude that in the case of a Certifying Party who is the seller, the responsibility for pollution at the site is limited to the period prior to the transfer. Furthermore, the filing of a subsequent Form III does not impose joint and several responsibility between the two Certifying Parties with regard to

¹ An "Establishment" is any real property at which or any business operation from which (A) on or after November 19, 1980, there was generated, except as the result of remediation of polluted soil, groundwater or sediment, more than one hundred kilograms of hazardous waste in any one month, (B) hazardous waste generated at a different location was recycled, reclaimed, reused, stored, handled, treated, transported or disposed of, (C) the process of dry cleaning was conducted on or after May 1, 1967, (D) furniture stripping was conducted on or after May 1, 1967, or (E) a vehicle body repair facility was located on or after May 1, 1967.

² Remediation Standard Regulations, R.C.S.A. 22a-133k-1 through 3.

pollution that occurs following the filing of the first Form III; in other words, the first Certifying Party is still only responsible for pollution that existed at the site prior to the first transfer.

Discussion

A. Transfer Act Language

The Transfer Act is silent regarding the liability of a Certifying Party for pollution at a site that occurs after the date of the Form III filing. A Certifying Party on a Form III "agrees to investigate the parcel . . . and remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment . . ." (Transfer Act Section 22a-134 (6)). At the conclusion of the remediation, the LEP hired by the Certifying Party renders a Verification, which is "a written opinion . . . that an investigation of the parcel has been performed . . . and that the establishment has been remediated . . ." (Transfer Act Section 22a-134 (19)). Neither of these excerpts from the Transfer Act identify any timeframe applicable to the obligation of the Certifying Party to remediate the establishment. Under rules of statutory construction, the courts will not read a provision into legislation that is not clearly stated in its language, nor interpret a statute in a way that would yield a bizarre and unreasonable result or that does not comport with common sense. Clearly, the Transfer Act requires a Certifying Party to remediate pollution existing at a site at the time of the Form III filing. However, it is not fair or reasonable to read the Transfer Act to require a Certifying Party to have an ongoing responsibility for the post-sale pollution of others that occurs at the site, until such time that its LEP is able to render a Verification, since the Certifying Party no longer has control over the activities of the current owner and occupants of the site.

B. Case Law

There is no Connecticut court case that directly addresses the issue discussed in this White Paper, although the Connecticut Supreme Court has previously addressed the issue of liability of a party for another's pollution. Under the common law of nuisance, liability for pollution of a site rested with the party in possession, because such party was presumably the one that created or was maintaining the nuisance. In *Starr v. Commissioner of Environmental Protection*, 226 Conn. 358, 627 A.2d 1296 (1993), the Connecticut Supreme Court determined that an owner of land could also be held liable for pollution on its site, because such owner was "maintaining" a source of pollution to waters of the State, even if ownership was completely passive and the owner was wholly innocent of causing or contributing to the pollution. In *Starr*, the court reasoned that it was the intention of the legislature, by enacting Connecticut General Statutes Sections 22a-432 and 22a-433, to codify the common law liability for nuisance that attached to the party in possession (Section 22a-432), as well as to expand liability to the owner, even if the owner had no part in creating the pollution (Section 22a-433). However, there is no statute or case law that explicitly extends liability to a party for pollution that occurs after a party no longer owns a site. Under the Connecticut statutory scheme and case law, the responsible parties for such pollution are the polluter, and, if different, the property owner, not a party that owned the property at some point in the past.

A party may also become liable for another's pollution if both parties negligently or intentionally pollute a site and there is no reasonable way to apportion the responsibility. The Connecticut Supreme Court set forth the standard to be applied in these circumstances in *Connecticut Building Wrecking Company, Inc. v. Carothers*, 218 Conn. 580, 590 A.2d 447 (1991), by incorporating Section 433B of the Restatement (Second) of Torts. Section 433B provides that "(1) Except as stated in Subsections (2) and (3), the burden of proof that the tortious conduct of the defendant has caused the harm to the plaintiff is upon the plaintiff, (2) Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor, and (3) Where the conduct of two or more actors is tortious, and it is proved that harm has been caused to the plaintiff by only one of them, but there is uncertainty as to which one has caused it, the burden is upon each such actor to prove that he has not caused the harm." Referring to our example transaction, we note that the seller voluntarily agrees to be the Certifying Party and remediate the existing pollution (voluntary in the sense that if the seller did not want to be the Certifying Party, the seller could negotiate with the buyer or another party to the transfer to be the Certifying Party, or simply not sell the site). The seller does not agree to investigate and remediate pollution caused by another party after the date in which the seller has no ownership or control of the site. Assuming the seller is diligently proceeding to investigate and remediate the pollution, there is no violation of the requirements of the Transfer Act and no tort or other violation of statute has been committed.

The DEP's policy on Verifications holds the Certifying Party automatically responsible for new contamination jointly with the current property owner (and the polluter, if different), even if the Certifying Party is not guilty of culpable conduct contributing to the contamination. Although under Section 433B of the Restatement a Certifying Party who caused the pollution that existed prior to the Form III filing *may* be jointly and severally liable with a current owner or occupant who also negligently caused pollution, DEP cannot arrive at this conclusion without first finding negligence or other culpable conduct on the part of Certifying Party, and then affording the Certifying Party with an opportunity to prove that the harm is capable of apportionment. The same logic applies to the situation where more than one Form III is filed; in the absence of negligent acts that caused pollution, the Certifying Parties are only responsible for what each agreed under the Form III filing.

C. Legislative History

An examination of the Transfer Act's legislative history does not reveal any intent of the legislature to hold a Certifying Party liable for future pollution. In fact, the original purpose of the Transfer Act was to "protect individuals who are planning to purchase a piece of property that has been used for hazardous waste storage" and to require sellers to tell a buyer that the "property is clean of any spillage, seepage or pollution." If the site was not clean, the Transfer Act required that someone "assume responsibility for a clean-up." (28 S. Proc., Pt. 6, 1985 Sess., p. 1801-02, remarks of Senator Benson.) "[T]he 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.” (*Comm. on Environment, 1995 Sess., p. 2496, remarks of Commissioner Sidney Holbrook.*) As the State Board of Examiners of Environmental Professionals stated in *In the Matter of Russell Bartley*, Case #02-101, LEP License #104, 2005 WL 5671587 (Conn. Dept. Env. Prot., Oct. 13, 2005) at 38, “there is no indication that the legislature ever contemplated circumstances that might obligate a certifying party to assume liability for pollution that could be caused by the transferee and not the seller of the property.” The foregoing legislative history and the conclusion in the Bartley matter support the proposition that the Transfer Act requires a seller to inform a buyer of the environmental status of a site, so that the buyer can make informed decisions regarding the existing pollution, and provide for a mechanism for such pollution to be remediated, but does not obligate a seller to protect a buyer from the buyer’s own pollution.

Conclusion

We recognize that the DEP has the responsibility to protect the State’s environmental resources and the DEP’s policies must be directed toward cleaning up polluted properties. However, the DEP must accomplish its mission in accord with and limited by the authority granted by the environmental statutes. Connecticut General Statutes Sections 22a-424, 22a-432 and 22a-433 (among others) grant the Commissioner of the DEP broad powers to order persons who created or are maintaining a condition which may cause pollution to correct such condition. Therefore, DEP has the authority to require that releases occurring after a Form III filing be addressed by the current owner and/or responsible party, without pursuing a policy under the Transfer Act that is contrary to a plain reading of the statute, and is not consistent with the case law and the legislative history.



MEMORANDUM

TO: Gary O'Connor, Esq.
Ann Catino, Esq

FROM: Gregory A. Sharp

DATE: January 13, 2011

RE: Classification and Re-classification of the Waters of the State

As discussed in our conference call on January 12, 2011, I am providing a draft of a proposed amendment to Section 22a-426, as amended by P.A. 10-158 §9. The purpose of the amendment is to provide a streamlined method to classify and re-classify surface and ground waters of the state outside of the regulation adoption process under the Uniform Administrative Procedures Act ("UAPA"). The UAPA process will be required after March 1, 2011 in the absence of an amendment.

This amendment is necessary to further Brownfields redevelopment because many of the state's ground water resources have historically been assigned a GA classification (ground water presumed potable without treatment) to areas which should have been classified GB (groundwater impacted by historic contamination) due to mapping errors and incomplete information. The Water Quality Standards provide more stringent requirements for GA areas than GB areas. In addition, the Remediation Standard Regulations require more stringent soil and ground water clean-up targets for GA ground water areas than those classified GB.

As such, an inappropriate GA classification translates into overly conservative clean-up standards for Transfer Act sites and other Brownfield properties. The only way to correct it is to change the classification. The Department has been very responsive in the past in making these changes where the errors have been pointed out and confirmed and certain requirements met (See Standard GW 8 of the Ground Water Quality Standards adopted effective April 12, 1996). A process allowing the Department to classify or re-classify surface and ground waters with a notice of a public hearing in the Law Journal and a newspaper of general circulation, and individual notice to the municipal officials in the community involved, should be adopted to allow these changes to be made as they had been under the prior statutory scheme.

Such an amendment would allow the standards themselves to be established, as they should be, through the UAPA regulation adoption process but would provide that the classification and re-classification of specific bodies of ground and surface water would be performed through the more flexible notice and hearing process.

My suggested language is as follows:

Section 22a-426, as amended by P.A. 10-158, is as follows:

"NEW (d). The commissioner shall classify surface and ground waters within the state for the purpose of applying the applicable standards of water quality to those surface waters and areas of ground water. On and after March 1, 2011, prior to adopting a new classification or a re-classification of any such waters, the Commissioner shall conduct a public hearing. Notice of such hearing specifying the waters for which classifications are to be applied or revised, and the time, date and, place of such hearing shall be published in accordance with the requirements of Section 22a-6, and in a newspaper of general circulation in the area affected and shall be given by certified mail to the chief executive officer of each municipality in such area, with a copy to the Director of Health of each such municipality, at least 30 days in advance of such hearing. Prior to the hearing, the commissioner shall make available to any interested person any information the commissioner has as to the specific body of water which is the subject of the hearing and the classification under consideration, and shall afford to any interested person the opportunity to submit any written material. At the hearing, any person shall have the right to make a written or oral presentation. The commissioner shall provide notice of the decision following the public hearing in the Connecticut Law Journal and to the chief executive officer and the director of health of the municipality in which the water body is located. A full transcript or recording of each hearing shall be made and kept available in the files of the Department of Environmental Protection.

NEW (e). Any person may petition the commissioner to re-classify any surface or ground water by providing a detailed description of the water body sought to be re-classified, and the reasons for the re-classification. If the commissioner determines that the petition has merit, the commissioner shall initiate the public hearing process as provided in sub-section (d). Notice of the decision on the petition following the public hearing shall be given to the petitioner, the chief executive officer and director of health of the municipality in which the water body is located."

I believe the foregoing nearly approximates the current process set forth in Section 22a-426(b), which was deleted in last year's revision, and in the Ground Water Quality Standards adopted in 1996. I have eliminated one newspaper notice from the notice requirements, which seemed like overkill.

cc: Brownfields Working Group



Comprehensive Evaluation of Connecticut's Site Cleanup Programs

January 2011

I. Introduction

The Department of Environmental Protection (DEP) is committed to ensuring that Connecticut's site cleanup and Brownfield programs are achieving the results intended by the underlying laws. DEP believes the time has come to take a comprehensive look at the state's environmental site cleanup programs, particularly as they relate to underutilized sites that typically have been subject to multiple releases over time – commonly referred to as Brownfields.

The cleanup or remediation of contaminated sites is critical to the protection of human health and the environment. Remediation is also necessary for the reuse of previously degraded and currently underused properties. Reuse helps achieve several other environmental co-benefits, such as promoting smart growth, encouraging transit oriented development, and making better use of existing infrastructure. In the last twenty-five years, a strong foundation for the remediation of these sites has been laid. That foundation includes spill reporting and response laws that first appeared in 1969, passage of the Property Transfer Act in 1985, adoption of the Remediation Standards Regulations in 1996, the licensing of the first Licensed Environmental Professionals (LEPs) in 1997, creation of the Voluntary Remediation programs in 1995, and ongoing development of guidance documents with the cooperation and input of the regulated community.

The cleanup of contaminated sites is largely driven by state law. Some states, such as Connecticut, have a multitude of different laws that apply to discrete situations. Other states have or are moving to a single cleanup program. The primary federal site cleanup program known as Superfund deals with only the most contaminated sites, and there are a relatively small number of federal Superfund sites in each state, for example Connecticut has 14.

This document provides a baseline of information on Connecticut's site cleanup programs. The information is designed to assist in an evaluation of the extent to which intended results are being achieved, identify opportunities for improvement and efficiencies, and evaluate the potential of any changes to the site cleanup programs. The DEP hopes the evaluation will lead to greater success in the remediation of contaminated sites.

II. Current Cleanup Construct

A. Statutory Programs

In Connecticut, if a company knows it has had a past release of a hazardous substance, it may not be clear at times what the cleanup "finish line" is or within what timeframe cleanup must be finished. One or more of fourteen different laws might apply depending on the specific facts of the matter. Generally, the laws have different procedures for action and different timeframes and finish lines, if any.

Below is a list of laws that govern releases and pollution in Connecticut, and the year the original law was first adopted:

Authority	Statutory Reference	Date
Pollution or discharge of waste prohibition	CGS 22a-427	1967
Commissioner's authority to issue an order to require person to correct potential source of pollution	CGS 22a-432	1967
Commissioner's authority to issue Orders to a landowner, or municipality	CGS 22a-433 and 428, respectively	1967
Release Reporting	CGS 22a-450	1969
Release Response	CGS 22a-451	1969
Commissioner's authority to respond to and mitigate spills and releases	CGS 22a-449(a)	1969
PCB program	CGS 22a-463 - 469a	1976
Potable Water Program - DEP authorized to provide short-term water to residents/schools if they are served by a contaminated private well, to investigate for the source of such contamination, and to issue orders to either the responsible party (or if such party not known, to municipality) to supply safe drinking water.	CGS 22a-471	1982
Commissioner's authority to issue order to abate pollution	CGS 22a-430(d)	1982
Underground Storage Tanks	CGS 22a-449(d)-(h), RCSA 22a-449d-106	1983
Property Transfer Act - If and when certain properties defined as "establishments" are transferred, they must be investigated by a party to the transfer and then remediated.	CGS 22a-134	1985
State Superfund	22a-133e	1987
Voluntary Remediation Programs	CGS 22a-133x and -133y	1995
Significant Environmental Hazard Notification	CGS 22a-6u	1998
Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.; "RCRA") Corrective Action regulations	RCSA 22a-449(c)-105(h)	2002

B. Tools

In addition to the laws identified above, the following tools facilitate remediation of contaminated sites in Connecticut.

1. Environmental Land Use Restrictions (ELURs) (CGS 22a-133n through -133s), enacted in 1994. An ELUR is a deed restriction, given by a property owner to the Commissioner, which runs with the land. It allows contaminants to remain on a property as long as activities on the property are limited to prevent unacceptable exposures to the contamination. The deed restriction "locks in" the assumption about future activities - for example, no residential use.
2. Remediation Standard Regulations (RSRs) (RCSA 22a-133k-1 through -3), adopted in 1996. These regulations provide a common endpoint for cleanups of some sites, but do not apply to all releases and contaminated sites. RSRs also contain alternatives to the standards, some of which are self-implementing and others that require DEP approval. Some alternatives are widely used at brownfield sites, such as Engineered Controls and ELURs.

3. Licensed Environmental Professionals (LEPs) (CGS 22a-133v), established by statute in 1995. Licensed by the Board of Examiners of Environmental Professionals, LEPs are authorized to oversee the investigation and cleanup of sites under the Transfer Act, Voluntary Programs and RCRA Corrective Action, if oversight is delegated by DEP. Working with an LEP allows responsible parties to proceed at a faster pace than the traditional process of submitting reports for DEP review and approval. DEP retains authority to audit the cleanup work. The LEP program also frees up DEP's limited resources to focus on higher priorities.
4. Guidance Documents. The DEP has issued a series of guidance documents to help LEPs and parties conducting cleanup work. Guidance documents provide transparency, and identify a standard of care that DEP has found acceptable over time. Such standardization and transparency provides efficiency and certainty for regulated parties and DEP, while still allowing other "custom" site-specific approaches to meet requirements. Guidance is usually drafted by a committee of DEP staff and other technical professionals, such as LEPs.
5. RCRA Corrective Action delegation from US EPA to DEP, starting in 2004. Delegation allows DEP to administer the federal program and applies to cleanup of releases at certain sites regulated by RCRA. Regulations to administer the program are adopted at RCRA 22a-449c-105(h).
6. State financial incentives and assistance:
 - a. Administered by DECD's Office of Brownfield Remediation & Development in cooperation with DEP:
 - i. Urban Sites Remedial Action Program
 - ii. Special Contaminated Property Remediation & Insurance Fund
 - iii. Dry Cleaning Establishment Remediation Fund
 - iv. US EPA Revolving Loan Funds awarded to DECD - Hartford & Statewide
 - v. US EPA Site Assessment Program awarded to DECD
 - vi. Regional Brownfield Redevelopment Loan Fund
 - vii. Municipal Brownfield Pilots
 - b. Administered by DEP and a Review Board: UST Petroleum Cleanup Account (CGS 22a-449a through -449i, and 22a-449p), has been involved with the remediation of approximately 1,400 commercial tank sites, and 4,500 residential tank sites since 1992. Reimburses costs of investigation and cleanup.
7. Liability incentives. Prominent examples include:
 - a. Municipal Liability Relief:
 - i. Transfer Act exemptions for Municipalities
 - ii. Remediation Grants from DECD: no additional liability (32-9ee)
 - iii. Investigation: will not incur cleanup liability by entering property to investigate (22a-133dd)
 - b. Abandoned Brownfield Cleanup Program, enacted in 2009. Allows an innocent new owner, who acquires a brownfield (unused since 1999) to redevelop, clean up the property and avoid any state law obligation to investigate and clean up off-site contamination.
 - c. Transfer Act audits: three year window on DEP's authority to audit a final cleanup
 - d. Covenants Not to Sue (22a-133aa and -133bb), includes provisions to assist Brownfield redevelopment
 - e. State Liability Relief for innocent owners (defined at 22a-452d)
 - f. Third Party Liability Relief (22a-133ee): non-responsible parties that own a contaminated property, and investigate/remediate it, have no liability for costs or damages to any

person other than state or federal government for pollution on or from such owner's property that occurred prior to such owner taking title

There have been many recent activities to improve the above-referenced tools. For instance, the LEP regulations are currently undergoing a proposed amendment process; the public hearing was held in November 2010. In addition, recent guidance documents include Site Characterization (2007, updated 2010), Verification (2008), Engineered Controls (2009, updated 2010), Well Receptor Survey (2009), Laboratory Quality Assurance and Quality Control (2006-2009, updated 2010) and ELURs (2010).

As part of DEP's commitment to a lean culture, site cleanup-related "Lean Teams" used a "kaizen" event (a week-long event to take apart a process, identify waste, and reassemble the value-added steps) to improve efficiency and quality. The three teams are implementing improvements on:

- Engineered Controls - application/approval process,
- ELURs - application/approval process, and
- Potable Water program – supply of short-term safe drinking water.

C. Comparison of themes/actions

Each cleanup law has its own trigger and targeted outcome, which may differ in some way with the other laws.

Current Legal Requirement for Regulated Parties to perform response actions

Statute	Required to Control short-term hazards	Required to Timely Control Migration of Pollution	Trigger for Requirement to Act	Requirement Applies to Release or Site-wide	Required to Self-implement Action (don't wait for DEP to require action)	Published, standardized finish line	Published Timeline to Finish Cleanup
Spills/releases 22a-450 and 451	Yes	Yes	Release exists	Release	Yes	No	No
Transfer Act 22a-134	No	No	If and when a property transfers, if property meets definition of an "Establishment"	Site-wide	Investigate -Yes Cleanup – No (pre 10/1/09) Cleanup – Yes (post 10/1/09)	Yes - RSRs	Only if property transferred after 10/2009
Voluntary 22a-133x and 22a-133y	No	No	Voluntary	Release or Site-wide – 22a-133x Site-wide – 22a-133y	No	Yes - RSRs	No

Statute	Required to Control short-term hazards	Required to Timely Control Migration of Pollution	Trigger for Requirement to Act	Requirement Applies to Release or Site-wide	Required to Self-implement Action (don't wait for DEP to require action)	Published, standardized finish line	Published Timeline to Finish Cleanup
Significant Hazard Notification 22a-6u	In part	Potentially	Knowledge of release above thresholds	Release	No	No	No
Underground Storage Tanks (CGS 22a-449(d)-(h))	Yes	Yes	Release exists	Release	In part	In part – RSRs	No
RCRA Corrective Action regulations (RCSA 22a-449(c)-105(h))	No	No	Release exists at a RCRA facility	Site-wide	In part	Yes - RSRs	No
Potable Water 22a-471	In part	No	None	Release	No	No	No
PCB Program (CGS 22a-463 – 467)	Yes	Yes	Release exists	Release	In part	Yes – RSRs and federal requirements	No

D. Data

It is difficult to measure how well the site cleanup programs are working, due to a variety of factors. There is no direct measurement for risk reduction. We can measure “cleanups completed,” though not all cleanup laws/programs have finish lines, and those that do may have different finish lines. As we look at data, two caveats apply. One, some laws do not specify a “finish line,” and instead merely initiate a process, leaving vague what the law intended as a successful endpoint or final compliance. Two, a site may not have reached a formal, clear “all done” finish line, yet significant cleanup and risk reduction may have been achieved at the site.

The following table summarizes major site cleanup program data.

Site Cleanup Program Data

Statutory Program	Number of Sites (approx)	Number of Cleanups Completed (approx)	Average Years to Complete Cleanup (approx)	Average New Sites per Year (approx)
Transfer Act	3,762	395	7 years for those that complete	200
State Superfund	12	4	data not available	<1
Federal Superfund (National Priority List)	14	8	15 years	<1
Voluntary 22a-133x	381	23	data not available	23
Voluntary 22a-133y	78	11	data not available	6
"Significant Hazard" notifications	600	No complete cleanup required by statute	No complete cleanup required	55
RCRA Corrective Action	238	34	data not available	0

The above data can provide the basis for further analysis of site cleanup in Connecticut. For instance, under the Transfer Act, after 25 years relatively few sites have achieved the final cleanup endpoint. The factors responsible for this result may include:

- no statutory deadline to complete cleanup,
- over-reliance on expecting a future owner to do the work,
- cleanup is not counted as "complete" until all long-term remedies and monitoring are finished,
- DEP's ability to provide sufficient resources for timely action, when needed,
- sites where contamination is decades old, creating complex challenges such as off-site migration, bedrock impacts, or ground and surface water impacts, and/or
- waiting years for a transfer to trigger an investigation.

III. Past Evaluations and Changes

A. Recent amendments to site cleanup laws

The site cleanup program statutes have evolved over time. Many statutes have been amended a little at a time, usually independent of other cleanup statutes and regulations. That has led to what some call a "patchwork" of laws, each operating on its own instead of as part of a single system. Some past amendments to cleanup laws are highlighted below:

- 1996: Transfer Act amended to:
 - o create affirmative requirement to investigate releases (prior to 1996, parties had no affirmative requirement to conduct investigations); and
 - o allowed DEP to delegate oversight to LEPs.

- 2002: RCRA regulations amended:
 - o to make 100 of the 268 Corrective Action sites subject to an affirmative requirement to complete investigation and, when cleanup is complete, to meet the RSRs.
- 2007: Transfer Act amended to provide:
 - o quicker delegation to LEP oversight;
 - o affirmative obligation to submit investigation completion reports and remedial action plans within specified timeframes; and
 - o audit certainty: 3 year window for DEP to audit cleanup at LEP-lead sites.
- 2009: Transfer Act amended to provide:
 - o 8 year timeline to complete cleanup or support interim verification indicating most active remediation has been completed; and
 - o expanded exemptions for municipalities.

B. Brownfields action

The legislature has set up various Brownfield Task Forces over the past several years to explore opportunities to promote the cleanup and reuse of brownfield properties, and to make recommendations for public and private sector actions. Many of the changes outlined in the proceeding sections highlight some of the legislative improvements stemming from the efforts of those Task Forces. See also the website of the Office of Brownfield Remediation and Development – www.ctbrownfields.gov – within the Department of Economic and Communities Development, for additional information on the state's brownfield programs.

IV. Opportunities for the future

A comprehensive evaluation of the site cleanup programs is worthwhile to find opportunities for improvement. While progress has been made in the past through incremental improvements, the Brownfields Task Force indicated in their last report (February 2009) that sweeping changes remain necessary. The comprehensive evaluation should determine the extent and scope of changes to the site cleanup programs, and provide an opportunity for broad stakeholder input to ensure all interests are represented. Improvements could come in the form of statutes, regulations, guidance, program administration, best practices guidelines, and/or education. Recommended goals and analysis include the following:

A. Desired outcomes

1. Healthy Connecticut
2. Healthy economy and job growth
3. Sustainable communities
4. Environmental Justice

B. Overarching analysis

1. Is the current framework achieving the goals of the existing laws?
2. What are specific impediments to prompt clean up under existing site cleanup programs?
3. What mix of improvements could achieve better cleanup results?
4. Is there value in a comprehensive overhaul of laws governing remediation?

C. Evaluate other states

Other states have conducted significant and comprehensive site cleanup program revisions over the years. It is important to see if desired outcomes are being significantly achieved in these states. In addition, evaluation of other systems in other states will ensure Connecticut evaluates all options to improve the site cleanup system. Potential states for evaluation include:

1. New Jersey
New Jersey recently performed a comprehensive evaluation of its cleanup programs from 2006-2008. The evaluation resulted in significant changes to its cleanup laws in 2009. New Jersey adopted a system that moves aggressively towards a single cleanup system for most releases/sites, an affirmative process, and use of licensed professionals (LSPs – similar to LEPs) to oversee most sites.
2. Massachusetts
In the 1990s Massachusetts adopted a single cleanup system for all releases of hazardous materials. It is an affirmative program, with broad categories of Responsible Parties obligated to act, clear deadlines for completing and reporting each phase of investigation and cleanup, and reliance on licensed professionals at all sites.

D. Promote sustainable communities

Effective and efficient site cleanup promotes Brownfield remediation and reuse, which is a critical to supporting responsible growth and transit oriented development (TOD). In addition, increasing Brownfield remediation and reuse in the State could grow opportunities for renewable energy and low impact development (LID). The following points should be considered in a comprehensive evaluation of the State's site cleanup programs:

1. Environmental protection is benefited by sustainable development and wise use of existing resources. Can remediation programs be coordinated with them to increase incentives for both cleanup and sustainable use?
2. Although tools exist now to make cleanup cost-effective for brownfields, can additional cost-saving tools be identified for brownfields without creating real or perceived less protective standards than exist for other locations?
3. Can sustainable reuse of a site – e.g., LID, TOD, renewable energy – and the anticipated environmental benefits allow for more flexible cleanup standards or tools for clean up?
4. Could pilot/demonstration projects – publicly and/or privately financed - be initiated at abandoned brownfields, such as solar "brightfields?"

E. Stakeholder Process

To effectively evaluate Connecticut's site cleanup programs, a broad array of stakeholders is essential. A robust stakeholder process will ensure all issues are uncovered, discussed, and addressed before changes are made.

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Environmental Consulting

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SUBMITTED TESTIMONY

7 March 2010

To: Commerce Committee
Connecticut State Legislature

By: Dennis Waslenchuk, Ph.D., LEP *Dennis Waslenchuk*

Subject: Public Hearing, 8 March 2011
HB 6526: An Act Concerning Brownfield Remediation and Development

Dear Members:

I am a Licensed Environmental Professional (LEP) in Connecticut. As a consulting environmental scientist, I have conducted and been in responsible charge of environmental site assessments of contaminated properties, including brownfields, in Connecticut for more than 25 years. As a DEP-appointed Task Group member, I have contributed to prevailing Connecticut environmental regulations and protocols concerning environmental assessment. As a long-standing member of ASTM, the international standards-setting organization, I was a key participant in the creation of the ASTM E1527 Phase I Environmental Site Assessment Standard Practice, and I was ASTM's Chair (2004-2009) of its E1903 Phase II Environmental Site Assessment Task Group charged with the current update and revision effort for that Standard.

I believe that HB 6526 intends to promote and facilitate the redevelopment of brownfield properties, and I agree this is a laudable goal. However, the Bill is **fatally flawed** by one technical provision in Section 17(a)(2)(B) which can be easily corrected by incorporating good scientific/engineering practice, to the benefit of brownfield re-development; the provision now reads as follows (ellipses and highlights added):

HB 6526, Section 17

(a) As used in this section:

- (1) "Blight" means ...;
- (2) "Bona fide prospective purchaser" means a person that acquires ownership of a property after January 1, 2012, and establishes by a preponderance of the evidence that:
 - (A) All disposal ...;
 - (B) Such person made all appropriate inquiries, as set forth in 40 CFR Part 312, into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including, but not limited to, the standards and practices set forth in the ASTM Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process, E1527-05. ...

The cited Federal "all appropriate inquiries" (known as "AAI") and commercial "ASTM standard" for environmental assessment are not consistent with prevailing Connecticut practice for investigating and remediating properties, and set a bar that is much too low to protect the interests of brownfield developers, the State and its tax payers, and human health and the environment. Please note that in order to be a **bona fide prospective purchaser (BFPP)**, a brownfield developer must identify conditions indicative of contamination prior to purchase. Having done so, the BFPP/developer must address those conditions, but is granted relief from responsibility and liabilities for existing contamination that is leaving the property. However, if the environmental assessment standard set by the Bill is inadequate,

then the developer will fail to identify contamination, resulting in acute post-acquisition re-development problems, as follows:

- Contamination that is not discovered until after the property is purchased will cause financial and schedule impacts to the project, threatening the success of the project if not killing it.
- The responsibility and liability for contamination not identified by the BFPP/developer prior to purchase might have to be assumed by the State.
- Contamination left to be mitigated by DEP would have to be done at tax-payers' expense, and DEP does not have the staff to direct the remediation of brownfield properties at the speed of a development project.
- Public resources for State funding of such programmatic brownfield-related environmental cleanups are increasingly scarce, if available at all.
- Contamination might not be remediated due to lack of public funds – posing a continuing threat to human health and the environment.
- The public might be forced into unplanned but programmatic, emergency expenditures in order to “save” laudable development projects that could revitalize the economy and reduce blight. The tax payers will be left holding the bag without knowingly consenting to it!

Our DEP has determined (as stated in its “Site Characterization Guidance Document”) that the **ASTM Standard** and Federal “**AAI**” may not include all protocols required for environmental assessment of a Connecticut property. The more accurate DEP protocols for Phase I assessments require little or no additional assessment cost, but they require the Connecticut environmental professional to use more brain power to recognize contamination that typically arises from Connecticut’s specific legacy of industrial/manufacturing operations and activities, which the lesser standards did not contemplate.

As an ASTM “insider”, I can say that the **ASTM E1527 Phase I standard** does indeed have a severe shortcoming when strictly applied to brownfield properties. The Federal “**AAI**” standard does likewise. Regardless of its wide use nationally, the ASTM/AAI standards are most suited to, and are defended by, parties who wish to apply a modicum of effort to give the appearance of due diligence, while having no real desire to identify all contamination. It is the product of unfortunate compromise between technical and “deal-maker” interests. Originally, the ASTM/AAI standards were intended to define good and customary practice, but ultimately they came to reflect only customary, not good, practice. Even so they successfully grease the wheels for deals involving properties with benign histories as suburban shopping plazas and office buildings. But clearly, these lesser standards are not up to the challenges of brownfield projects with industrial, manufacturing, or chemical-handling legacies, which by their very nature will involve excavations during re-development, and where contamination will not remain hidden.

I have written in more detail about the failure of the ASTM / AAI standards for brownfield redevelopment sites, and attach my recent essay on this topic from the American Bar Association’s “Environmental Transactions and Brownfields Newsletter” for your further consideration.

I recommend that the references to “*all appropriate inquires*” (*Code of Federal Regulations citation 40CFR312*), and the *ASTM E1527-05 Standard*, be deleted from the bill, and that the tried-and-true **Phase I protocols of the DEP “Site Characterization Guidance Document”** be substituted as the standard required to qualify as a bona fide prospective purchaser (BFPP).

Thank you for your consideration.

Attachment: “Phase I Site Assessments Are Not For Brownfields”, ABA *ETAB Newsletter*, v.13(1), 2011



Environmental Transactions and Brownfields Committee Newsletter

*see article
attached*

Vol. 13, No. 1

January 2011

MESSAGE FROM THE CHAIR

Rebecca Wright Pritchett

For those fortunate enough to attend the 18th Section Fall Meeting in New Orleans, we heard from a terrific group of experts on obstacles and incentives in green development projects, sustainable remediation, vapor intrusion, and rebuilding New Orleans and the Gulf Coast after Katrina. Nearly thirty people attended our committee dinner at Arnaud's for fantastic food and stimulating conversation, followed by an entertaining evening in the French Quarter. Thanks to everyone who made the Fall Meeting so productive and enjoyable, especially the Committee members and vice chairs who worked on programs and shared their time, knowledge, and company.

As your new chair, I want to welcome all of you and invite you to join us in committee activities. As usual, we're planning an active year for the Environmental Transactions and Brownfields Committee (ETAB). Steve McKinney—our Section chair for 2010-11—has committed the Section to “delivering the goods” to our members. We want to make sure that the ETAB Committee is providing you the information and assistance you need to become a better lawyer. Our committee traditionally has benefited from strong member participation, and the quality of our programs and activities springs directly from your involvement. If you would like to be a part of this effort and get involved in the committee's activities, please let us know and send us your ideas. Our committee web site

has the list of vice chairs, and any of us would welcome your input and participation.

The new year brings with it some interesting issues related to environmental transactions and brownfields in today's uncertain economy. We plan to track and alert ETAB members about these issues, new developments and notable cases through Section of Environment, Energy, and Resources (SEER) conference panels, newsletters, the ETAB list serve, and Quick Teleconferences, where appropriate. The articles in this issue address five of those issues: the latest evolutions regarding environmental insurance for transactions, the appropriateness of Phase I site assessments for brownfield sites, proposed changes to the ASTM Phase II due diligence standards, proposed alternatives to existing public notice requirements under the National Contingency Plan, and an interesting analysis of laws relating to a natural gas shale play in Pennsylvania.

We continue to work to provide you with better tools to keep you up-to-date on the latest developments which affect your practice. On our Web site (<http://www.abanet.org/environ/committees/envtab/>), we have added links to other useful sites and announcements of upcoming conferences that we think may be of interest to you; we welcome your additions to the list. We are providing you with information regarding conferences and recent developments through our list serve and encourage you to participate in the discussion. In addition, we hope you will participate in our One Million Trees Project (<http://www.abanet.org/environ/>

**Environmental Transactions and
Brownfields
Committee Newsletter
Vol. 13, No. 1, January 2011
Thomas R. Doyle, Dean Calland, and
Robert Gelblum, Co-Editors**

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Energy, and Resources.

projects/million_trees/home.shtml). We're planning
tree-planting events around the country. If you don't
see one planned in your area, contact us about
organizing one.

If you have topics that you would like to see addressed
in future newsletters, let me know. I can be reached at
rebecca@pritchettlawfirm.com. If you would like to
get more involved in any of the committee's activities,
just let me or any of the ETAB vice chairs know. All of
our contact information is listed on the ETAB Web site.

Upcoming Section Programs—

**For full details, please visit
www.abanet.org/environ/calendar/**

February 1, 2011
**Wave Energy in the U.S. Today: How
Technology, Academia, Regulations, and
Policies are Shaping the Industry**
Quick Teleconference

February 3, 2011
**Criminal Enforcement of Environmental
Laws: A Conversation with the Former
Head of EPA's Criminal Investigation
Division**
Quick Teleconference

February 10, 2011
Hot Topics in Diversity Law
Live Audio Webinar and Teleconference
Primary Sponsor: ABA Section of State and
Local Government Law

February 23-25, 2011
29th Annual Water Law Conference
San Diego

March 17-19, 2011
**40th Annual Conference on
Environmental Law**
Salt Lake City

PHASE I SITE ASSESSMENTS ARE NOT FOR BROWNFIELDS

Dennis Waslenchuk, PhD
Aquademia—Environmental Consulting
New London, Connecticut

"Facts do not cease to exist because they are ignored," Aldous Huxley, Proper Studies, 1927

A Phase I environmental site assessment (ESA) is not an adequate baseline for identifying the host of subsurface environmental problems likely to be encountered while redeveloping a brownfields property. Phase I ESAs performed to ASTM's E1527 standard or the U.S. Environmental Protection Agency's All Appropriate Inquiries (AAI) rule fail to recognize as many as 75 percent of the areas of concern (AOCs) at sites whose histories involved manufacturing or handling of potentially contaminating substances. Such standard Phase I ESAs do not offer the brownfields developer reliable protection against unforeseen contamination that often leads to construction delays and cost overruns.

With the advent of the two standards, Phase I ESAs have focused only on three prescribed lines of evidence that collectively comprise the keystone for identifying releases, while failing to exercise an all-important fourth line of evidence—*professional knowledge of inherent releases*. The standard Phase I ESA keystone evidence sources are (1) visual observations made during a property reconnaissance; (2) interviews with property personnel; and (3) agency records. Even on a collective basis, these sources only scratch the surface and are unlikely to reveal many AOCs (or "Recognized Environmental Conditions" (RECs) in ASTM terminology), considering (a) the chances are slim that an assessor will find visible evidence of many sorts of historical releases on the day of the site visit; (b) it's not reasonable to expect that site personnel will be aware of and reliably disclose all historical releases; and (c) regulatory agency records typically are poor indicators of release histories since many releases were never reported.

It's true that these prescribed Phase I ESA keystone evidence sources *could* reveal a historical release, so of course they're worth pursuing, but absence of

affirmative evidence in no way means absence of releases. Whereas checking the prescribed keystone evidence sources in performing a standard Phase I ESA may promise to secure landowner liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the usefulness to the brownfields developer is limited.

The most prescient line of evidence, not articulated by the standards, is the site assessor's knowledge of releases that are *inherent* to the kinds of activities and operations that have taken place at a property. For example, most environmental practitioners would conclude that a twenty-year tenure of a dry cleaner at a property would likely have led to contamination, even if there was no visible evidence of a release on the day of the site visit, the property personnel did not disclose any releases, and the regulatory agency databases contained no records of a release. This is because the accumulated knowledge of the assessment community has established that releases are inherent to the dry cleaning industry.

A Phase I ESA assessor commonly will cite such dry cleaning operations as a potential release (REC) despite the lack of affirmative evidence from the prescribed keystone evidence sources. In so doing, the assessor is going beyond the keystone evidence sources prescribed by the standards—unwittingly or not, the assessor is deducing the potential release based on professional knowledge of releases inherent to that specific site use. Ironically, the assessor could have concluded that the dry cleaning operation did not constitute a REC, and still have been in strict conformance with ASTM E1527 and AAI, because the standards do not prescribe this line of evidence; the exercise of deduction based on professional knowledge of releases inherent to certain activities and operations is not articulated by the standards. It's rare that an assessor will not identify a dry cleaning operation as a REC though, because dry cleaning enjoys such notoriety amongst the spectrum of site uses that dismissing it does not pass the straight-face test.

Contrarily, the same sort of deductive logic is not used in standard Phase I ESAs, so a host of other well-

known potential releases that are inherent to specific site uses are often not identified. Hence, the opportunity to forewarn the brownfields redeveloper of lurking problems is lost.

An ESA of a brownfields site warrants special consideration. By their nature, brownfields redevelopment projects involve construction and, very often, subsurface construction. Once a developer starts digging, the chances are high he will encounter any contamination that the standard Phase I ESA might have failed to predict, with significant negative impacts to the project's schedule and budget. This makes the transfer of a brownfields site unlike most other commercial real estate transfers. The brownfields developer cannot afford to let sleeping dogs lie—in contrast to parties to non-brownfields transactions who can often be content to let potential releases go undiscovered and to lean on the ASTM/AAI standard to meet their “innocent landowner” burden of proof.¹

In order to more reliably identify the universe of AOCs (i.e., potential release areas) at a brownfields site, an assessor can use his knowledge of the generic activities and operations associated with the former uses of the site to deduce potential release areas that are not revealed by the three lines of evidence prescribed by the Phase I standards. The brownfields industry has experienced many instances of stumbling upon site contamination and, in retrospect, this has given us insight into the historic operations and activities that typically result in such subsurface contamination. Likewise, the long history of regulatory-driven remedial investigations has provided the assessment community with many lessons as to activities and operations that commonly lead to site contamination. And so it is that we now know much about the sorts of releases that are inherent to a given site use.

We professionals know, for example, that widget manufacturing entails metal plating and degreasing. We know that drips of heavy metal-laden solutions from plating tanks, and solvents from degreaser units, are endemic and go through floors, and leak out of floor drain systems. We know that prior to the modern era of hazardous waste management, widget manufacturers stored messy, odorous drums of waste liquid on the ground outside the back door. If, in conducting the

standard Phase I ESA, we learned only that widget manufacturing occurred at the site in the past but no RECs were identified through the prescribed keystone evidence sources, we can still identify these AOCs through deduction based on the assessment community's knowledge of releases inherent to widget manufacturing, without ascertaining any affirmative evidence from the site reconnaissance, the site personnel interviews, or agency records.

One might acknowledge that such AOCs are more speculative than RECs identified in strict conformance with the Phase I ESA standards; nevertheless, they are obvious to, and able to be detected by, assessors who benefit from retroactive insights gained from brownfields cleanups and comprehensive remedial investigations. Simply said, a Phase I site assessment that follows the narrow prescription of the ASTM/AAI standards, but does not avail itself of the knowledge and experiences gained from brownfields redevelopment and remedial investigations, is deficient.

All good information is worth having, even if it is limited, so standard Phase I ESAs are valuable to a point. But their limitations—the evidence they do not consider—must be understood so that the brownfields developer can supplement the evidence and minimize surprise contamination, construction delays, and cost overruns.

Endnote

¹ Note, by the way, that a developer would likely lose any “innocent landowner” or “bona fide prospective purchaser” status he might think he'd earned (having performed his ASTM/AAI Phase I ESA) when contamination is newly discovered during site construction, if the court determines that the “ability to detect” and the “degree of obviousness” of the contamination were high. On this issue, “consult your attorney!” It is this writer's opinion that a large portion of AOCs missed by ASTM/AAI Phase I ESAs are indeed obvious, and that we have an adequate ability to detect them using information developed in Phase I ESAs, as averred in this essay.



March 4, 2011

To: Connecticut General Assembly, Commerce Committee

Re: **Support of Section 17 or Raised Bill 6526**

My name is Kim Morque and I am president of Spinnaker Real Estate Partners, LLC. I write in support of Section 17 or Raised Bill 6526, Spinnaker, located in South Norwalk, CT, develops, owns and manages mixed-use, commercial, and multi-family properties in Connecticut and other states and has a positive record in the development of formerly contaminated properties.

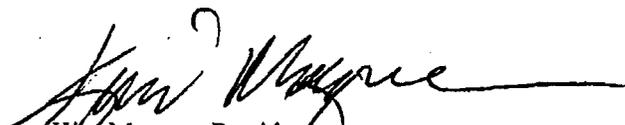
Our experience in Connecticut leads us to believe that the current program of addressing the cleanup and redevelopment of Brownfield properties has inhibited remediation and redevelopment of contaminated properties: the program is not only cumbersome administratively, it imposes liabilities on innocent purchasers for conditions they did not create and saddles them with unending liability.

Section 17 of Raised Bill 6526, however, sets out a one-stop comprehensive program that will provide clarity, predictability, simplicity, certainty, and efficiency, all geared to attract redevelopment and jobs in tough economic times with scarce public resources. The bill also aims to shift the expenditure of funds for cleanup of Brownfield sites from public to private sources.

Regrettably, the vast majority of the beneficial impacts of this section could be scuttled because subsection (b) of section 17 inserts limitations and subjective uncertainties into the program that will continue to put Connecticut at a disadvantage as a place to conduct Brownfield redevelopment relative to other states. This clause contradicts the spirit of the rest of the section that reflects the philosophy that cleaning up any Brownfield, no matter what size or location, positively advances the environment and the economy and should be enthusiastically encouraged, not restrained. As a further constraint, a second clause in subsection (b) would limit the program to 20 properties per year

(In addition, we also support the Statement in Support of Section 17 of Raised Bill 6526 submitted by the Connecticut and Suburban NY Chapter of NAIOP Commercial Real Estate Development Association, of which I am a past chapter President.)

Section 17 of Raised Bill 6526 comprises an innovative effort to attract private investment to redevelop and clean up our state's Brownfield sites for productive reuse and job creation. Once the limitations on the number of sites and the imposition of non-environmental criteria now proposed in HB 6526 are removed, the bill will deserve the ardent support of those who support both a clean environment and a strong economy.



Kim Morque, President
Spinnaker Real Estate Partners, LLC



8 March 2011

**TESTIMONY OF ANNE GATLING HAYNES, CEO, Economic Development Corporation of New Haven
BEFORE THE STATE OF CONNECTICUT LEGISLATURE COMMERCE COMMITTEE**

Re: Raised Bill No. 6526: An Act Concerning Brownfield Remediation and Development as an Economic Driver

The Economic Development Corporation of New Haven expressly supports Raised Bill 6526, legislation that will help expedite brownfield redevelopment in the city and throughout Connecticut. It supports the bill, however, with critical recommended deletions of subsection 17 (b) that would place counter-productive limits on the number and type of sites that could be considered for this program.

The Economic Development Corporation of New Haven (EDC) is a private not-for profit quasi public agency that works to enhance the business environment in New Haven through business retention as well as business attraction activities. The EDC has been a leader in facilitating public-private partnerships for Economic Development planning and land development opportunities in our city's growth areas of the Medical District and the Mill River Industrial Areas. The EDC works significantly with the City of New Haven's office of Economic Development and private landowners to assess and redevelop brownfields within these growth areas.

A brownfield condition continues to be an onerous hurdle for most urban redevelopers, and the majority of our remaining developable sites have some level of contamination and/or urban fill conditions that require costly land preparatory work in order to develop. Due to New Haven's increasing desirability to relocate and grow business, and the State's interest in developing sites along Smart Growth principals such as increased density in the urban core and development along transportation corridors, there is increased need to make these sites as appealing to developers as Greenfield sites in the remainder of the State.

Thusfar, there have been developers that will consider the value of working with these sites, especially as there have been dedicated funding streams to alleviate these significant up-front costs. As public funding has diminished, the City will find that private developers will be less inclined to take financial risks, especially given the additional bureaucratic requirements and delays associated with the Transfer Act and the potential liabilities that might arise from unforeseen site conditions.

Provisions in An Act Concerning Brownfield Remediation and Development as an Economic Driver, outlined in Section 17 of the bill, would incentivize developers to address site cleanup more readily as it alleviates some of the hurdles that a developer currently faces. A Department of Environmental

Protection issuance of a "Notice of Completion of Remedy and No Further Action Letter" and a clear and predictable process will go a long way to encourage more redevelopment of these underutilized industrial sites in New Haven.

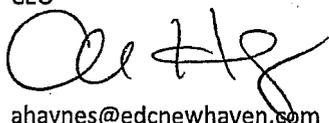
The EDC supports Section 17, but strongly recommends eliminating the conditions inserted in subsection (b) that put limits on the number of properties that can work in this program, and also adds social and economic criteria to determine eligibility. These conditions would result in increased political discussion about the potential sites to be included in this program, which would delay the remediation of these sites--completely counter to the initial point of the basic legislative effort. All brownfield sites should be able to be cleaned as soon as they can as it will increase overall land value and benefit overall community and environmental health.

Thank you for your consideration of this important piece of legislation.

Sincerely,

Anne Gatling Haynes

CEO



ahaynes@edcnewhaven.com

cc: David Silverstone, Science Park Development Corporation,
Chairman of the EDC Board of Directors.



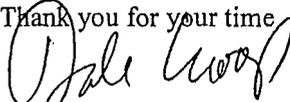
**TESTIMONY OF THE
CT ECONOMIC DEVELOPMENT ASSOCIATION (CEDAS)
Dale Kroop: President
Before the
COMMERCE COMMITTEE
March 8, 2011**

Re: Raised Bill No. 6526: An Act Concerning Brownfield Remediation and Development as an Economic Driver

CEDAS would like to express support for Section 17. of Raised Bill 6526, which will help expedite brownfields redevelopment in our community and throughout Connecticut, but with critical deletions to subsection 17(b) of the Bill, removing restrictions on the number and types of brownfields that can take advantage of the program. Additionally, CEDAS would like to see the \$3,000 fee identified in Section 20 (d) waived in the cases of applicants who are a municipality or a Non-Profit Development Corporation. This change would make Raised Bill 6526 consistent with previous brownfield legislation which provides for a *Covenant Not To Sue* from the Commissioner of DEP at no cost for these public agencies. Any of these agencies that get involved in brownfields because their complex nature (i.e. taxes owed, mortgage encumbrances, etc), have enough difficulty doing these projects, those that cannot be done by the private sector.

Prospective developers often become discouraged by the bureaucratic requirements and delays associated with the Transfer Act. Provisions in An Act Concerning Brownfield Remediation and Development, outlined in Section 17 of the bill would expedite the process throughout CT. It would also provide assurances to developers regarding liability through Department of Environmental Protection issuance of a "Notice of Completion of Remedy and No Further Action Letter" and provide developers with a clear and expedited process, avoiding costly and unreasonable delays which can frustrate site redevelopment, reuse and job creation.

CEDAS supports Section 17, but strongly recommends eliminating the conditions inserted in subsection (a) as irrelevant and potentially detrimental to the goal of timely brownfields redevelopment. These conditions are the limitation of participation in the program to 20 properties at any one time and the addition of social and economic criteria to eligibility determination for it. Finally the elimination of the \$3,000 application fee in Section 20 (d) for cash strapped communities and Non-Profit Development Corporations would make it possible to consider trying to develop the more difficult brownfield sites.

Thank you for your time

 Dale Kroop
 President



Bridgeport Landing Development LLC

10 Middle Street Bridgeport CT 06604 P 203 330 8200 F 203 334 8700

March 7, 2007

Rep. Jeffrey Berger
Sen. Gary Lebeau
Legislative Office Building
Hartford, CT 06106

RE: In support of HB No. 6526 An Act Concerning Brownfield Remediation and Development as an Economic Driver.

Dear Rep. Berger and Sen. LeBeau:

Bridgeport Landing Development, LLC is the selected master developer for the Steelpointe Development Project a public / private partnership with the City of Bridgeport.

Steelpointe in Bridgeport, CT is located on a Brownfield site which historically had a mixed use of heavy and light industry, United Illuminating Power Plant and residential uses.

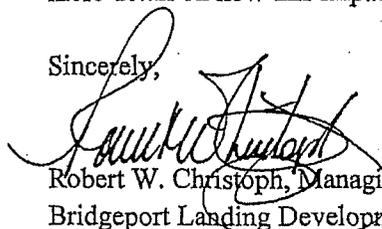
The three major provisions of this bill provide significant relief to developers of Brownfield Sites by:

1. Releasing the Developer from obligation to "chase" contamination off site.
2. Exemption from the Transfer Act under certain conditions
3. "Notice of Completion of Remedy / No Further Action" letter upon completion of RAP.

These three changes are critical to successful development of Brownfields and specifically the Bridgeport Steelpointe site.

My Project Coordinator, Mark Summers, will be available tomorrow at your hearing to provide more detail on how this impacts our project and answer any questions.

Sincerely,



Robert W. Christoph, Managing Member
Bridgeport Landing Development



805 Brook Street, Building 4, Rocky Hill, CT 06067-3405
 p: 860.571.7136 f: 860.571.7150 www.cerc.com

Testimony of Robert W. Santy, President of the Connecticut Economic Resource Center, Inc., before the Commerce Committee in support of HB 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver

I strongly urge the Committee to act favorable on HB 6526, particularly because of the important changes in section 17 concerning liability for developers of brownfields properties. Over 10 years ago the Clean Sites Coalition held a policy conference in this building, co-sponsored by this Committee and the Environment Committee. The Conference marked the end of more than a year of discussions between DEP, DECD and brownfields practitioners designed to improve Connecticut's approach to brownfields redevelopment. The participants addressed issues in three major areas: financing, regulatory unreasonableness and liability relief. Since that time, and thanks to the leadership of this committee, we have made great progress – though the legislation you are hearing today recognizes that there still is work to be done.

The liability issue has been particularly difficult. Brownfields redevelopers have not caused the environmental contamination on a potential development site. Yet, they take on the liability for and expense of the clean-up of the property in an effort to bring it back into productive use. They do so under a remediation plan and schedule and strict regulations to ensure the protection of public health and safety. Yet, under current law, they may continue to be responsible for environmental issues that migrate to other properties and for new unanticipated issues that arise well after their clean-up is complete. This broadly defined liability is a major reason more brownfields are not redeveloped in Connecticut.

Section 17 of this bill is well crafted to address this liability issue under appropriately rigorous guidelines. It provides timetables for both the remediation and the regulatory review. Under the provisions the DEP will provide the redeveloper with a Notice of Completion of Remedy and a no further action letter. This in turn provides an important assurance to a brownfields redeveloper that there will be an end to the regulatory review and some certainty that the development can move forward with out unreasonable delay, or the prospect of unreasonable re-opening of remediation issues.

Others will testify in more depth about some important proposed amendments with which I concur. These deal with the limit on the program to 20 properties at any given time, and to eligibility criteria based on certain economic development guidelines. I also recommend that the definitions of an economic development agency included in the bill be clarified to included regional economic development organizations created by two or more municipalities.

Thank you for the opportunity to present this testimony.

Robert W. Santy
 President and CEO

Board Members and Utility Funding Partners

▶ The Connecticut Light and Power Company ▶ The United Illuminating Company ▶ Yankee Gas Services Company ▶ Connecticut Natural Gas ▶ The Southern Connecticut Gas Company
 ▶ AT&T ▶ Aquarion Water Company ▶ The Connecticut Water Company ▶ Verizon ▶ Connecticut Municipal Electric Energy Cooperative ▶ Webster Bank ▶ Wiggin & Dana
 ▶ Dept. of Economic and Community Development ▶ Dept. of Public Utility Control ▶ Office of Consumer Counsel ▶ University of Connecticut

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Testimony of Mark Summers on behalf of Bridgeport Landing Development

To the Commerce Committee

March 8, 2011

In Support of HB 6526, An Act Concerning Brownfield Remediation and Development

My name is Mark Summers. I am the Project Coordinator for Bridgeport Landing Development, of 10 Middle Street, Bridgeport, Connecticut, the selected Master Developer for Steelpointe Harbor in Bridgeport. I am testifying today in support of HB 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver.

Steelpointe Harbor is a Brownfield revitalization project which will energize a blighted area of Bridgeport and provide new construction and permanent job creation. New tax generation (both Property and Sales Tax) is vitally important to both Bridgeport and the State of CT.

The Steelpointe Harbor redevelopment will be a mixed use project consisting of Commercial Retail, Office, Marina, Hotel and Residential uses. Ultimate build out of the project is anticipated to be about 2.7 million sq ft. and will create approximately 1,500 permanent direct jobs and up to 2,000 indirect jobs.

One of the most difficult aspects of getting this project started has been getting major tenants and co-developers comfortable with the Remediation plan and, in particular, the liability they might incur for someone else's past practices under CT Law. We are already in negotiations with a Major Anchor Retailer (a publicly traded company) for the site. This first tenant will be the critical ice breaker that will start the project. We have already approved a LOI with this tenant and they are proceeding to their Real Estate Committee (REC) in April to move the project forward. Their representatives have already warned us that once approved by REC the most difficult part of a full agreement will be the environmental concerns. Because they are a public company and as a large target, they will demand waivers of liability with respect to the environmental issues on their site as well as the impact the other parts of Steelpointe may have on their area or impact the ability of the rest of the project to succeed.

These concerns have been raised in preliminary negotiations with other interested Tenant s and Retailers and will continue to affect our ability to attract and secure partners in this project.

Of course it goes without saying that the cleaner and more protection from liability that we can demonstrate to investors and financial institutions the easier it is to secure financing to build Steelpointe. As I am sure you are aware, only the best deals are being financed today and no one is taking unnecessary risks. The additional assurances this bill will afford by exemption from the "Transfer Act" and providing a clean end to the liability with successful completion of RAP will significantly aid our ability to finance the vertical construction of Steelpointe.

Expedited permitting and reliable approval timeframes are extremely important to both the Master Developer and our Tenants and co-developers. We will have to make commitments to our Major Tenants to deliver them either a clean site or a finished building by certain deadlines. Permitting and approval delays are often unacceptable excuses to a major Retailer expecting to open for a specific season. They will require significant penalties if we don't deliver on time regardless of the reason. I believe this bill will help assure everyone that Permit and Approval delays won't be the norm. All that said, I would like to take a moment to express my thanks to all of the DEP staff who have been working with us on the Remedial requirements for Steelpointe and our initial permitting efforts. They all have been timely and more than cooperative; I strongly believe they understand the vital importance of this project to the City of Bridgeport and the State of CT. Notwithstanding their (DEP) primary responsibility to protect State resources they all are helping to expedite our requests and approvals.

JOINT
STANDING
COMMITTEE
HEARINGS

COMMERCE

PART 4

899-1114

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The latest hurdle we have been trying to address is "chasing the contamination." Currently we are trying to determine by additional testing and characterization to what extent the historic contamination of Steelpointe may have spread off site. Of particular concern is the sediment of Bridgeport Harbor. As you can imagine chasing contamination across the Harbor could potentially stop this project dead in the Water. While DEP staff has been understanding and realistic in their approach with us they still have their hands tied by the current regulations. I feel this legislation should give your staff the ability to be reasonable in this matter without causing any further harm.

In Summary I believe this bill will help immensely to assure the success of the Steelpointe project and provide thousands of new jobs so desperately needed in the region as well as bringing new tax dollars to both the City of Bridgeport and State of Connecticut.

Thank you for your time and continued support.

③

CAPLAN, HECHT & MENDEL, L.L.C.

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*Legal Assistant*MARTIN M. MERRIAM 1935-1983
BERNARD J. VIRSHUP 1952-1992TESTIMONY OF NANCY K. MENDEL
Environmental Attorney, Principal
CAPLAN, HECHT & MENDEL, LLC
Before the
COMMERCE COMMITTEE
March 8, 2011Re: Raised Bill No. 6526: An Act Concerning Brownfield Remediation and Development
as an Economic Driver*I would like to express support for Section 17. of Raised Bill 6526, but with critical deletions to subsection 17(b) of the Bill, removing restrictions on the number and types of brownfields that can take advantage of the program.*

I am an environmental attorney with close to 20 years experience working on the clean-up and redevelopment of brownfields, large and small, on behalf of buyers, sellers, private developers, manufacturers, municipalities, non-profits and fortune 500 companies in every county in the State. I have served as outside environmental counsel to the City of New Haven and the City of West Haven on several of their respective MDP projects, and to REX Development, the economic development entity for the fifteen towns served by the South Central Regional Council of Governments (SCRCOG) on their DECD and EPA brownfield assessment and remediation grant and loan programs, and have seen first hand the challenges to Brownfields' site redevelopment. I have worked in the trenches with the Connecticut Transfer Act, the Voluntary Remediation Programs, the Licensed Environmental Professional program, Covenants not to Sue, Environmental Land Use Restrictions and all aspects of the Remediation Standard Regulations.

Over the last 20 years, I have been involved in various legislative and regulatory initiatives as a member of Coalition for Clean Sites back in the mid-90s, as past Chair of the Environmental Section of the CBA, and most recently as a member of a group of volunteers who drafted the Comprehensive Brownfields Remediation and Revitalization Program, a version of which is currently found in Section 17 of RB 6526.

No one appears to disagree with the statement that Connecticut is burdened with contaminated properties that are lying boarded up, idle, or under-utilized ("Brownfields") and

that (i) public resources to clean-up these sites are increasingly scarce, and (ii) if not cleaned up and redeveloped, these sites pose a threat to the public's health, degradation to our environment and comprise an increasing liability to the state.

Faced with this scenario, Connecticut, which lags behind other states in the success of efforts to effectively and efficiently return Brownfields – large and small - to productive reuse, is in need of a comprehensive one-stop program specifically designed to encourage, attract and incentivize owners and developers with no prior connection to, or liability for contamination at such properties, to commit private resources to purchase, investigate, clean-up and redevelop these sites. A one-stop comprehensive program, as laid out in Section 17., will provide necessary clarity, predictability, simplicity, certainty and expediency, all geared to attract redevelopment and jobs in tough economic times and scarce public resources, and at the same time limit the state's continuing liability for the potential clean-up of these sites.

Specifically, Section 17. allows eligible brownfields developers, in exchange for agreeing to investigate and remediate contamination found at an eligible property, to take ownership of these sites and assume liability only to the extent of cleaning up the property itself -- while being released from the obligation to "chase" any possible off-site contamination. The developer would retain the obligation currently in place under state law to report to the Department of Environmental Protection any significant environmental hazard found to be migrating off-site. Further, those taking advantage of this program by taking ownership of brownfields that meet the definition of an "establishment" under the Connecticut Transfer Act, would not be required to enter the Transfer Act Program. Finally, upon approval of the remediation, DEP would be required to issue a "Notice of Completion of Remedy / No Further Action" letter, providing a critical end point to the process and releasing the developer from further state liability with respect to approved cleanup conducted under the program.

Prior to initiating any remediation of the property, an eligible party must submit a remedial plan for approval by the Department of Environmental Protection, satisfy the same public notice required for all current site clean-up programs, and then remediate the site to satisfy the same State clean-up standards (the Remediation Standard Regulations) required to be met for all current clean-up programs. Participants in the Section 17. program, will be afforded expedited permitting and reliable approval timeframes, thereby avoiding costly and unreasonable delays in site evaluation, clean-up and redevelopment. With limited public and private resources available,

When viewed as whole, Section 17 goes a long way toward spurring private development of brownfield sites, without the use of public funds. However, the conditions in subsection 17(b) limiting the number of sites in the program and adding social and economic criteria to eligibility must be deleted as there is no public funding component to the program demanding such limits and these are irrelevant and potentially detrimental to the goal of timely brownfields redevelopment. They would undoubtedly result in the delay of remediation, increased redeveloper costs for professional services and would add a level of political activity to what should ideally be a straightforward real estate and environmental cleanup effort.

Thank you.



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Disciplines to Deliver

Testimony of David Hurley
To the Commerce Committee
March 8, 2011

In Support of HB 6526, An Act Concerning Brownfield Remediation and Development

My name is David Hurley and I am a resident of Ellington. I am a Connecticut Licensed Environmental Professional and a Vice President and Director of Brownfields Programs at the Consulting Engineering firm Fuss and O'Neill Inc. of Manchester and Trumbull. I am a member of the General Assembly's Brownfield Remediation Working Group. I am here to speak in favor of House Bill 6526.

There are many challenges to the redevelopment of Brownfields sites. These include developing an understanding of the contamination at a site, the cost of assessment and remediation, potential third party liability, and regulatory complexities. The most significant challenges that I see affect potential redevelopers and municipalities are the difficulty in quantifying the upper limit of environmental costs, the long term potential liability associated with our laws and regulations, and the ultimate length of time it takes to redevelop the site and bring the remediation to finality.

Over the past five years these challenges have progressively been addressed by legislation introduced by this Committee. I would like to thank the Chairmen for your commitment and effort to move these issues forward. HB 6526 continues to address these challenges by providing some clarification of responsibilities under the Transfer Act, providing a mechanism for reclassification of waters in the state where it makes sense and establishing the Notice of Activity and Use Limitation, which is intended to simplify the administrative controls for these sites.

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Section 17 of this Bill offers a clear, streamlined and predictable program for cleaning up these sites while using our current cleanup standards. This program will provide the clarity and certainty that will attract private investment necessary to redevelop these sites.



Other states with successful Brownfields programs, such as New York and Pennsylvania, acknowledge that a party that has no connection with the historic ownership and activities of these sites and who is willing to take on the burdensome and expensive cleanup of the site should be provided some limits to their responsibilities and liabilities associated with environmental conditions. Section 17 of this Bill provides a separate Brownfields program that doesn't burden the applicant with the liability of other programs and then provides liability relief during the cleanup process and upon satisfactory completion of the cleanup. The innocent purchaser is responsible for cleaning up the site. If historic activities or releases from the site affected areas beyond the property limits, the same parties that were responsible prior to the applicants purchase would remain responsible. Under current law, if a metals products manufacturing company discharged metals to a river from 1890s to the 1960s the new innocent purchaser of their property is responsible for studying the metals in the river and their ecological impact for some, to be determined, distance downstream. Typically, here in Connecticut, other facilities have also contributed to impacts in the river and the responsibilities would have to be sorted out and apportioned. Section 17 addresses this barrier to redevelopment by making the innocent purchaser responsible for the property they purchase only. It would be acknowledged that the collective impacts of our manufacturing heritage can't be assumed by an innocent purchaser.

Brownfield sites are located throughout the state, in our cities, towns and historic villages. They may be large sites that have the potential for regional economic impacts or small blighted properties in our urban neighborhoods. Our brownfields programs should encourage private investment and remove the barriers to redevelopment in the small neighborhood sites as well as the larger regional impact sites. Thank you for the opportunity to speak about these issues and thank you for your ongoing commitment to helping Brownfields Redevelopment in Connecticut.

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Testimony on Raised Bill No. 6526
AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS
AN ECONOMIC DRIVER
Committee on Commerce
March 8, 2011

Good morning. My name is Beth Barton. I am partner at Day Pitney's Hartford office, practicing environmental law for more than 20 years. The nature of my practice in the environmental arena is and, over the years, has been diverse. It includes work on transactions and projects presenting environmental challenges and the representation of property owners, developers and others in connection with these transactions and projects. Working with various stakeholders as well as on behalf of specific clients, I have participated in a number of efforts to make the climate in Connecticut more hospitable to the return of economically underutilized properties to productive reuse, while assuring adequate protection of public health and our environment. I am a long-time member of the National Brownfields Association, including the Connecticut chapter whose first chair was Governor Malloy during his tenure as Stamford's Mayor. I am currently a member of the National Brownfields Association's national brownfields Advocacy Network.

I am here to voice my support for Raised Bill No. 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver, and in particular Section 17, for the very reason stated in the title of this bill. The reality is that Connecticut has many, many underutilized properties – large and small – particularly in our urban areas, which present significant impediments to economic revitalization and economic recovery efforts as well as the investigation and remediation of environmental conditions at these properties. An additional reality – whether actual or perceived – is that Connecticut is seriously behind the curve in removing or even mitigating these impediments.

In voicing my support, however, I must also express my disappointment in a subsection of Section 17 which unnecessarily limits its prospects for success. This is subsection (b) of Section 17. If the goal of Raised Bill No. 6526 is to be, or perhaps more to the point, have the redevelopment of our many, many brownfield sites – again large and small – be, an economic driver, why are we limiting the numbers and universe of properties that can benefit from participation in a comprehensive framework intended to entice previously uninvolved owners and developers to redevelop these sites? Why are we hampering the prospects for the much-needed success of this framework by interposing criteria for participating which is inconsistent with an emphasis on predictability and expediency? Concerns about predictability and expediency push development to greenfields and away from brownfields.

Importantly, Section 17 is not about public funding. There is no public funding component. That is the province of other statutes (some of which are referenced in this bill) that are not impacted by this proposed framework. Rather the framework presented in Section 17, unless it has the practical effect of creating an exclusive club to which a limited number of properties and persons will be admitted, is an opportunity for Connecticut to tout that it is a state open for, and welcoming of, brownfield redevelopment business.

I would like to briefly highlight several other sections of the bill, which I believe are in particular need of further attention. These are Sections 4, 5, 7 and 13.

Section 4. I am uncertain about the impetus behind this provision and I caution that, as drafted, it appears to reach back, that is, operate retroactively, potentially having significant and undesirable (or at least unintended) impacts and consequences for perhaps thousands of property transfers pursuant to deals struck by private parties. At best, again as drafted, it creates ambiguity for these past transfers and the on-going implementation of remedial action plans.

Not a good thing. In addition, if a provision such as this is to become law, other provisions of the very same statutory scheme – the Transfer Act – require amendment. For example, this section relieves a certifying party from any obligation to investigate and remediate any release or potential release following the sale of a property and presumably applies where there will be a verification by a Licensed Environmental Professional that the certifying party's obligations have been met. Another section of the Transfer Act – in Section 22a-134a - states that, where there has been a LEP verification, there is no requirement to comply with the Transfer Act at the time of a subsequent sale if the site has not operated as an establishment since the date of that verification. The date of verification will presumably be some time – could be up to 8 years or more – after the initial sale, yet only the activities since the verification, not the initial sale, will be looked at to determine whether there has to be a filing in connection with the subsequent sale. I'm not suggesting it is the intent of the proposed Section 4 to do an end run; I am merely citing this scenario to illustrate a need for further attention if Section 4 is to move forward.

Section 5. While I recognize that our technical knowledge is improving daily, I am sensitive to the mandate of this provision as worded, which creates at least an impression of uncertainty and unpredictability for those requiring a predictable and reliable endpoint to the investigation and remediation process. Is this provision necessary?

Section 7. This provision mandates “a comprehensive evaluation of the property remediation programs and the provisions of the general statutes that affect property remediation.” Initially, I would offer that this is very broad and presumably could be construed to go way beyond our environmental laws and even our economic development laws. Is that the intent? I also note the obvious. We have a new administration, we will have a new DEP commissioner and we may have even have a new Department . I fully support the intent and

good practice I assume is behind Section 7, that is, the reexamination of laws and regulations that are 10, 20, 30 and perhaps even, in some instances, almost 40 years old, but I am concerned again about the message such a statutory provision, as opposed to an administrative initiative, may send within and outside Connecticut as well as the need for its inclusion in this bill.

Lastly, Section 13. There are many concerns about the legality of the process and the mechanism this section would create. I urge, as I believe is happening, that members of, for example, the real estate community, including the real estate bar, have input into the consideration of this section. If, as I understand to be the case, the impetus behind this section is an interest in finding a way to address unduly burdensome and unnecessary existing prerequisites to the securing of an Environmental Land Use Restriction, could we instead seek to modify the existing statutory provisions to eliminate these burdensome and unnecessary prerequisites in appropriate scenarios?

Thank you.



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HB 6526
Testimony of Gregory A. Sharp, Esq.
Murtha Cullina LLP
Commerce Committee
March 8, 2009

I am offering this testimony as a practicing environmental lawyer and a member of the Brownfields Working Group. I will focus on two provisions of HB 6526 which are important to remove existing impediments to remediation of Brownfields and other contaminated sites in Connecticut.

First, Section 5 would require that the Department of Environmental Protection amend the Remediation Standard Regulations ("RSRs") within three years of passage of the bill and review them every five years thereafter to keep them current going forward.

The RSRs are the backbone of all of the state's remediation programs, and they provide the yardstick that enables Licensed Environmental Professionals ("LEPs") to verify that sites meet the state's remediation goals. The regulations were first adopted in 1996, and, unfortunately, despite significant developments in the area of environmental remediation over the past 15 years, the Department has never updated them.

In 2006, the Commissioner convened an advisory committee to update the regulations. As a member of that committee, I was extremely disappointed that, after three years of effort, the committee was disbanded, and the proposed regulations were scrapped, despite consensus on most of the proposed revisions. Adopting Section 5 of HB 6526 would send a clear signal to the Department that revising the regulations is an urgent priority if Connecticut's backlogged Brownfields and Transfer Act sites are to move forward.

Three years is more than adequate for the new Commissioner to complete the first revision, particularly considering the substantial support for most of the previously drafted revisions which would streamline the remediation process, move sites forward, and minimize transaction costs.

Section 4 would clarify that the relevant date for determining what releases must be addressed by a certifying party at Transfer Act sites is the date of the transfer. This clarification is critical, because the Department has issued guidance indicating that the certifying party must address all releases at the site which have occurred prior to the date an LEP submits a verification confirming compliance with the RSRs.

Murtha Cullina LLP | Attorneys at Law

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The problem with the Department's position is that Sellers who sign as a certifying party on a Form III or IV must remediate any post-closing releases caused by the Buyer in order to avoid a rejection of the verification submitted by an LEP. Considering that it generally takes a decade or more to clean-up these sites, this requirement has the effect of forcing certifying Sellers in many cases to clean-up post-closing releases caused by the Buyer, if they wish to close out their Transfer Act obligations.

The status quo is not only unfair, but it is completely at odds with the customary contractual commitments of parties to such transactions in which Sellers agree to address pre-closing releases, and Buyers agree to address post-closing releases.

In summary, this change in the statute would make it clear that the law is neutral as to the parties' contractual obligations, and, in the case of certifications by Sellers, that Sellers and Buyers are each liable for their own releases, thereby placing the liability on the party causing the contamination.



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Testimony of Gregory A. Sharp, Esq.
Connecticut Bar Association Environmental Law Section
**House Bill 6526, An Act Concerning Brownfield Remediation and Development As
An Economic Driver**
Commerce Committee
March 8, 2011

The Environmental Law Section of the Connecticut Bar Association **supports** passage of Section 6 of HB 6526. This provision would restore to Section 22a-426 of the General Statutes the streamlined process for re-classifying surface and ground water bodies, which is critical to facilitating redevelopment of Brownfield sites in Connecticut. As you will recall, last year's amendment of Section 22a-426 required that the Water Quality Standards be adopted in accordance with the Uniform Administrative Procedures Act ("UAPA"), and a provision to retain the more flexible process for re-classifying waters was lost in the end of session crush of important legislative business.

By way of background, the Water Quality Standards are comprised of three elements: the Standards themselves, including classifications of different water resources according to the desirable use of the resource; the Criteria, which include the both descriptive and numerical standards for the various classifications; and the Classification Maps, which depict, for each water body or segment, including ground water, the classification applicable to that body of water.

Section 6 of HB 6526 applies only to changes to the Classification Maps and would provide the Commissioner with a streamlined process to amend the maps following publication of a notice and a public hearing, without having to go through the lengthy process for adoption and amendment of regulations.

This is particularly important for Brownfields initiatives, because we now know that ground water in many areas of the state was historically classified incorrectly based on the information available at the time. As a result there are many locations where the ground water is classified as GA, which means it is presumed to be fit for human consumption without treatment, but should be classified as GB, which means the ground water is presumed to be contaminated.

An inappropriate GA classification translates into overly stringent clean-up standards for Brownfield properties with significant additional remediation costs, and the only way to correct the error is to change the classification.

The Department has been very responsive in the past in making these changes where the errors have been pointed out. The former process of allowing a request for a change to be made to the Department with supporting reasons and documentation, followed by publication of a notice of a public hearing, and individual notice to municipal officials in the community involved worked well, and it should be restored to provide the flexibility to address the problem of incorrect classifications in a timely manner.

If passed, Section 6 of HB 6526 would not affect the change made last year to require future amendments of the Standards themselves to be adopted through the UAPA regulation adoption process, but it would provide that when re-classifications of water bodies are necessary, the re-classification process will follow the more flexible notice and hearing process contained in the bill.

For all the foregoing reasons, the CBA Environmental Law Section urges the committee to **favorably report** Section 6 of HB 6526.

Thank you for the opportunity to appear and testify on this matter. I would be pleased to answer any questions that you may have.

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Jessie Stratton
31 Spring Street
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March 8, 2011

Testimony to the Commerce Committee Regarding

*H.B. 6526 (RAISED) AN ACT CONCERNING BROWNFIELD REMEDIATION AND
DEVELOPMENT AS AN ECONOMIC DRIVER*

Good morning, Senator LeBeau, Representative Berger and members of the Commerce Committee. Thank you for the opportunity to testify on H. B. 6526. My name is Jessie Stratton and I am here this morning in my capacity as Co-Chair of Governor Malloy's Environmental Policy Transition Team Committee and a recent member of the Brownfields Task Force. That group identified three priority areas for the administration to take action this session; Brownfield, Energy Efficiency and Long Island Sound Clean Water Programs.

While the group did not attempt to write specific legislation regarding Brownfield redevelopment, we did highlight why finding a new way to promote redevelopment is so important and also made some more specific policy recommendations.

As we know, every acre of Brownfield that is remediated and redeveloped reduces the pressure to develop valuable Greenfields, thereby limiting sprawl and the negative environmental impacts that accompany it. Further, Brownfield projects are most often found in transit hubs or along established transit corridors that are often proximate to population centers. Returning these transit friendly sites to productive use can by itself contribute to the goals of transit oriented development.

The Environment Working Group specifically suggested that the new Administration establish a targeted Brownfields program with specific criteria that prioritized sites on the basis of the kind of factors outlined in H.B. 6526 and which further defined the class of parties eligible to access the resources and incentives included in the new program.

From our discussions it became clear that the single biggest disincentive to potential "white knight" developers was the uncertainty inherent in being responsible for potential off site contamination. The Alternative Brownfield Cleanup Program (ABC) enacted a couple of years ago sought to address this issue by expanding the liability protection for off-site contamination for municipalities that undertook remediation of abandoned sites. Unfortunately that program has not been used by any municipality.

Rather than getting into the specifics of the proposed bill some of which I do not completely support, I want to express my strong support for the "pilot" concept that guided the approach in the bill. I recognize that such an approach falls far short of what some would propose and is too broad for others, but fundamentally, I believe there is good reason to expand the universe of eligible parties to which we would, on a limited basis, provide broader the liability protection and other incentives now available through the ABC program.

While the Transition Team recognized the need for a comprehensive and strategic review of all existing relevant statutory schemes relating to contaminated properties, an effort that conformed to the construct outlined above is something we believed could be implemented in the short term without prejudicing the needed more comprehensive review.

We also thought that reasonable additional fees for projects included in the limited program could be assessed to support staffing without being a disincentive to the pursuit of the project.

While I do not want to minimize the concerns raised regarding bifurcating on-site and off-site clean-up responsibility, I do think that the risks of providing such to a small universe of sites characterized by the benefits their redevelopment would bring, is reasonable and could provide valuable experience to help inform the broader reassessment of the State's approach to all of the issues regarding the Transfer Act, remedial activities, assignment of liability, and redevelopment incentives that is clearly needed, but which needs to be undertaken in a more deliberate and inclusive manner once our new Commissioners of the Department of Economic and Community Development and the Department of Environmental Protection are in place.

In closing, let me say that I think numerous components of H.B. 6526 raise concerns that the Committee should address, but I also want to say that I hope that a revised version of this bill will move forward with support from both the development community and the environmental and smart growth communities in order to determine whether a program that limits liability for off-site contamination can advance the clean-up and beneficial re-use of sites that promote sustainable growth and/or transit oriented development in a manner that enlists the support of the host community.

On the other side of the equation I would also recommend that at this point in time, the definition of parties eligible for this limited program be 1. Innocent landowners, as defined by state statute and municipalities; 2. Bona Fide Prospective Purchasers (BFPP), as defined in CERCLA, 3. Parties acquiring sites from either an Innocent Landowner or a BFPP that have no prior relationship to the site.

Thank you.

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Testimony of Douglas S. Pelham, Esq.

on behalf of

Environmental Professionals' Organization of Connecticut

Raised Bill 6526, An Act Concerning Brownfield Remediation and Development
As An Economic Driver

Commerce Committee

March 9, 2011

The Environmental Professionals' Organization of Connecticut (also known as "EPOC") was formed in 1996 to represent the interests of Connecticut's Licensed Environmental Professionals. LEPs are the people who are authorized by the DEP to perform investigation and remediation of property in Connecticut and certify, through a Verification, that the property meets the Connecticut Remediation Standard Regulations. The LEPs are therefore directly affected by the policies and procedures established under the General Statutes and their associated regulations for investigation and remediation of contaminated sites in Connecticut, including brownfields. We applaud the efforts of the Brownfields Task Force in putting together this bill, because it will improve the return of brownfields in Connecticut to productive use.

EPOC supports passage of HB 6526. In particular:

EPOC Supports Section 4 of the bill, because it clarifies that a seller of a property subject to the Transfer Act who is a Certifying Party under a Form III or Form IV is not responsible for contamination that happens after the sale. This eliminates a DEP policy, the result of which required a seller to investigate and remediate contamination caused by the buyer of the property, because the DEP would not allow the seller's LEP to issue a Verification for the site unless any post-sale releases were addressed.

EPOC Supports Section 5 of the bill, with suggested substitute language as attached to this testimony, because it requires periodic review of and revision to the Remediation Standard Regulations.

EPOC Supports Section 13 of the bill, because it provides for a more streamlined method for imposing activity and use restrictions, therefore decreasing the time needed to close out brownfields.

For all the foregoing reasons, the Environmental Professionals' Organization of Connecticut urges the committee to favorably report HB 6526.

Thank you for the opportunity to appear and testify on this matter. I would be pleased to answer any questions that you may have.

Environmental Professionals' Organization of Connecticut

Substitute Language Recommendations to Section 5 of Raised Bill No. 6526

Sec. 5. Section 22a-133k of the general statutes is amended by adding subsection (c) as follows
(*Effective from passage*):

(NEW) (c) In accordance with the provisions of chapter 54, the commissioner shall review and recommend revisions to the Remediation Standards Regulations, R.C.S.A. sections 22a-133k-1 through 22a-133k-3 [standards for the 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,] as have been adopted pursuant to subsection (a) three years after the effective date of this section and, every five years thereafter, the commissioner shall hold a public hearing on the adequacy of such standards and revise such standards as may be deemed necessary to insure that the regulations shall adequately [fully] protect human health, public welfare and the environment, are feasible, and are consistent with widely [the best scientifically] available scientific information, including consideration of the standards adopted by the federal government.



**Testimony of Marie C. O'Brien, President, Connecticut Development Authority
To the Commerce Committee**

March 8, 2011

**Raised Bill No. 6526, AN ACT CONCERNING BROWNFIELD REMEDIATION
AND DEVELOPMENT AS AN ECONOMIC DRIVER**

Thank you for the opportunity to support Raised Bill 6526, AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER.

We are pleased that this committee and the Legislature continue to review Connecticut's brownfield programs. As always, CDA is firmly committed to working with the Legislature and our other state partners to continuously improve the brownfield revitalization process. We believe that sections of this bill will enhance the state's ability to more productively place current brownfield properties back on the grand lists thus producing real revenue to the State of Connecticut and its municipalities, while adhering to smart growth goals and principles. More collaboration among all of the state's stakeholders should make the process more streamlined and efficient.

We all will be helped by amending the definitions of "brownfields" and "municipality" as it relates to this bill. We support eliminating the fees when applying and qualifying for a Covenant Not to Sue from the DEP.

CDA and its subsidiary, the Connecticut Brownfields Redevelopment Authority, both play an important role in financing projects and supporting developers that remediate, redevelop, and productively re-use brownfield sites across the state. CDA has always had staff dedicated solely to brownfields because we recognize the importance of brownfield remediation to economic development and smart growth. CDA will continue to apply its financial expertise, including its flexible programs and proven ability to leverage private capital, to the state's brownfields initiative. We continue to rely on smart growth principles as decision-making criteria.

In closing, CDA looks forward to working with this Committee on these and any other brownfields bills.

Thank you for the opportunity to comment.

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House Bill 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver Commerce Committee March 8, 2011

CCIA Position: Support with amendment

Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in the state and seeks to advance and promote a better quality of life for all citizens in the state. Formed over 40 years ago, CCIA is an organization of associations, where all sectors of the commercial construction industry work together to advance and promote their shared interests. CCIA is comprised of about 350 members, including contractors, subcontractors, suppliers and affiliated organizations representing many sectors of the construction industry. CCIA members have a long history of providing quality work for the public benefit.

CCIA **supports** House Bill 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver. CCIA respectfully requests that the committee revise the bill, as set forth below, and approve an amended bill.

House Bill 6526 would establish a state-funded municipal brownfield grant program operated by the Connecticut Department of Economic and Community Development (DECD) in at least six municipalities in the state. Currently, it is a pilot program limited to five cities and towns in Connecticut. The bill arose out of the working group established by the legislature in 2010 to examine the remediation and development of brownfields in the state. The bill, coupled with the \$100 million in financing of such projects over ten years in House Bill 6528, An Act Concerning Bonding for Brownfields, would go a long way toward redeveloping many of these dormant properties, restoring them to productive use, cleaning up the environment and creating jobs in the state. Additionally, the bill creates incentives for brownfield investment, a goal widely supported by municipalities, environmental advocates, labor, developers and businesses. It would provide relief from liability and other incentives to developers to encourage investment in remediating these highly risky sites.

CCIA does, however, have concerns with the limitations set forth in section 17(b) of the bill and would like to see those removed before the bill moves forward. Under the provision, not more than twenty properties at a time would be accepted into the program and new properties would be added only upon the withdrawal of a property from the program or upon a notice of completion of remedy. Attaining the criteria for acceptance into the program (likely creation of jobs, projected increase to the municipal grand list, consistency with municipal or regional planning objectives, and support for and furtherance of smart growth principles or transit oriented development) would impose additional constraints on developing these properties. Also, the state should not limit the



program to 20 properties per year if no state funding is involved and projects are being remediated and successfully developed.

The bill, as written, would impose eligibility requirements on prospective investors and developers. DECD would determine, through a subjective process, which sites can take advantage of the program. This subjectivity and uncertainty would continue to put Connecticut at a disadvantage compared with other states that have no such "review and approval" process. Also, many of the eligibility requirements are tied to receiving financial assistance from the state for brownfield development projects. While major state investments in brownfields should be guided by eligibility criteria, limiting projects that involve no state funding is equivalent to picking winners and losers—something the state should not do. It also contradicts the spirit of the bill: that cleaning up any brownfield—no matter its size or location—is a positive step for the environment and the economy and should not be limited.

Please contact CCIA President Don Shubert, AGC of Connecticut Executive Director John Butts, or CCIA Director of Government Relations and Legislative Counsel Matthew Hallisey, at 860-529-6855, if you have any questions or if you need additional information.



TESTIMONY
of the
CONNECTICUT CONFERENCE OF MUNICIPALITIES
to the
COMMERCE COMMITTEE
March 8, 2011

CCM is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent about 90% of Connecticut's population. We appreciate this opportunity to provide testimony to you on issues of concern to towns and cities.

HB 6526 "An Act Concerning Brownfield Remediation and Development as an Economic Driver."

This bill is a positive step toward encouraging brownfield remediation and redevelopment - *by providing liability relief and other incentives to brownfield landowners and redevelopers*. When greater resources and emphasis is placed on identifying and remediating brownfields, there is less pressure to utilize "greenfields" for the next building project.

CCM has long been a supporter of measures that would help clean up, and put back into productive use, blighted or contaminated brownfield properties. Brownfield remediation is an important part of Connecticut's efforts to 1) spur development in places where the infrastructure to support it already exists, 2) improve blighted areas, 3) limit sprawl and preserve open space in outlying areas, and 4) clean up our environment.

However, this bill *would also create barriers for brownfield remediation and redevelopment* - which appears counter to the intent of the bill - by limiting access to the program through stricter eligibility requirements and a set number of projects per year. While CCM understands the fiscal limitations of any program, care must be taken in limiting the scope and thus slowing down remediation of contamination in Connecticut. In addition, these new limitations are contradictory to the mission of the stakeholders involved - which is that cleaning up any brownfield, no matter its size or location, is a positive step towards improving the state's economy and environment.

CCM supports the spirit of the proposal - to remediate and develop brownfields - however *asks that the committee amend this bill to eliminate the language that places limits on the program* before taking any action on it.

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If you have any questions, please contact Donna Hamzy, Legislative Associate of CCM
via email dhamzy@ccm-ct.org or via phone (203) 843-0705.

(7)

Testimony of **Ann M. Catino**, Esq.
Halloran & Sage LLP
And
Co-Chair, Brownfield Working Group

Commerce Committee
March 8, 2011

HB 6526

My name is Ann Catino and I am a partner at the law firm of Halloran & Sage in Hartford. I have practiced for almost 25 years in the area of environmental law. For the past year, I have served as co-chair of the Brownfield Working Group established pursuant to Section 2 of Public Act 10-135. Prior to this position, I served for three years as co-chair of the State's Task Force on Brownfield Strategies.

I want to first thank the Commerce Committee chairs and the Committee members for their leadership on brownfield initiatives in this State. Beginning in 2006, this Committee drove the issue and broke new ground on many new and innovative programs. The Office of Brownfield Remediation and Development was established. New programs were developed administered by the Department of Economic and Community Development. A pilot program was established and funded to assist municipalities in development brownfield projects. A revolving loan program was established to provide needed funds to stimulate investment by the private sector. Flexibility was added to the programs administered by DECD, the Department of Environmental Protection and some obstacles relating to the standard liability schemes were removed for certain types of brownfield redevelopment.

This year, I have enjoyed working with members of the Working Group, DECD, DEP, CDA and various other stakeholders and interested parties as we move forward on a new frontier of brownfield programs. Our report, which was submitted to the Commerce Committee today, provides the context for my testimony and provides a greater depth of analysis and discussion. In brief, this year we spent time not only on the report, but on proposed legislation, which is largely represented in HB 6526. I want to acknowledge that some of the sections in the bill, as is expressed in our report, were not universally embraced by members of the Working Group and are "works in progress." I look forward to continuing the dialogue that began so that again this year a bill can move forward that will serve to stimulate investment and economic development in the brownfields of our state.

My co-chair, Gary O'Connor, has testified about organizational and funding improvements that are needed and I wholeheartedly support his testimony and comments. The Abandoned Brownfield Clean-Up (ABC) program is an innovative program that grew out of the Task Force's efforts, but as we move forward it needs further streamlining as set forth in the bill and the proposed report.

My testimony will step up the dialogue a notch further and ventures into another realm. Many challenges exist when brownfield development meets the statutory and regulatory clean-up programs administered by the DEP. It is at the juncture of brownfields and contaminated property programs that improvement is needed so that more properties do not become brownfields. More needs to be done.

In our report, we identify five areas that need fixing to stimulate the clean up of brownfields and contaminated properties. These modifications serve to move both types of properties through the DEP process more efficiently and effectively.

First, the Transfer Act should be amended to provide clarity to buyers and sellers of property as to what a certifying party needs to investigate and remediate. Section 4 of the HB 6526 addresses this issue. This is an issue of *fundamental fairness*. The Transfer Act was enacted to insure that buyers understood the condition or the risk associated with a certain type of property and that the cleanup of the property was addressed at the time of a transfer of the property or business. However, it has been interpreted to require sellers who may be certifying parties to investigate and remediate not only the historical contamination, but contamination that post-dates the sale. It is inequitable to require sellers to investigate and remediate releases that occur after they relinquish title and essentially lose control of the property. While sellers may have a claim against subsequent property owners, those property owners are not truly held accountable for their own acts. As a result, a prior seller who is a certifying party may not escape the rigors of the Transfer Act, the negotiations of sales become overly complex, subsequent sales can point to the first certifying party to address all releases, and the property may potentially fall into abandonment when stagnation sets in. On February 3, 2010, the Environmental Professionals Organization of Connecticut submitted a "white paper" to DEP on this issue, which correspondence is included in the Working Group report. I believe that Section 4 of HB 6526 provides an important clarification that unambiguously affixes a time frame to guide sellers and buyers when addressing cleanups under the Transfer Act. This clarification is necessary so that prior owners can close out their responsibility and liability for a property.

Second, by statute, DEP should be required to periodically review the Remediation Standard Regulations, which are the standards that guide all property cleanups. These standards have not been revised in approximately 15 years. Issues exist with the standards and the methods by which compliance with them is demonstrated. There are very real impediments to cleaning up properties and the DEP should update them. Modifications are necessary, additional regulatory flexibility is warranted consistent with environmental protectionism, but such challenges are especially acute when confronted with brownfield sites. Efforts to modify the RSRs are difficult and riddled with challenges. As a result, no changes are made. Section 5 of HB 6526 requires the Commissioner to review and recommend revisions to the RSRs three years after this amendment goes into effect, and to hold a public hearing every five years thereafter on the adequacy of the standards and revise as needed to insure that the regulations insure environmental protection and are consistent with best available scientific information. In addition, the Commissioner has to determine whether new standards are feasible and achievable and whether such proposed limits are economically or technically achievable. The Working Group believes that DEP should periodically review the RSRs and modify them as needed.

Third, flexibility needs to be built into the surface and groundwater reclassification mapping. The entire state is generally mapped; however, the maps are imperfect and sometimes, on a case by case basis, information is revealed that demonstrates that the mapping should be modified. This is especially true with the brownfield sites that are along rivers, in urban areas and that dot our State. To enhance brownfield redevelopment, the process of remapping should be more streamlined. Last year, Public Act 10-158 required the Commissioner to modify the State's groundwater classifications and standards through a rulemaking process set forth under the Uniform Administrative Procedures Act (UAPA). Including simple mapping modifications into this process was an unintended consequence. This session, such mapping should be excluded from the UAPA and section 9 of HB 6526 provides such an exclusion, while also providing adequate notice and comment opportunities.

Fourth, an alternative to the Environmental Land Use Restriction is necessary. An ELUR is an enforceable contract that conveys a property interest to the Commissioner of DEP. It requires the subordination of current holders of property interests before it can be recorded. Current and future property owners, current interest holders (who have subordinated) and future interest holders are legally bound to comply with terms and restrictions of the ELUR. The problem with an ELUR is obtaining a subordination agreement from the prior encumbrancers, particularly the utilities. As a result many sites are not remediated and are not closed out. An alternative is sorely needed and DEP recognizes that something must be done and DEP put on the table a "Notice of Activity and Use Limitation" (NAUL), which is intended for less contaminated properties (generally within the order of magnitude of the RSR criteria). It is less cumbersome than an ELUR in that the subordination of current property interests is not required. The NAUL is incorporated in section 13-14 of HB 6526.

The NAUL is a work in progress. Massachusetts has one, but DEP's proposal is not a simple as the one in Massachusetts in so far as the proposal seeks to reach back to prior encumbrancers and the owner is held responsible for the acts of such encumbrancers. In addition, the Working Group sought comments from other environmental lawyers and real property lawyers and those comments are included in the report. We are optimistic that we can move forward on this concept with the DEP and the Committee so that another tool is available in the toolbox that will allow a brownfield and contaminated to be closed out.

Fifth, and finally, section 17 is a new program, called a Brownfield Remediation and Revitalization Program; it represents a paradigm shift to move brownfields and contaminated properties more quickly and efficiently through the process. The Working Group report provides considerable detail of this program. It identifies those properties and property owners that are eligible, establishes important criteria for consideration by OBRD when a property is presented for entry and, quite significantly, establishes time frames for action or approval is automatic. Relief from investigating and remediating contamination that has migrated off-site is provided. Exemptions from the Transfer Act is allowed through participation in the program. Liability relief is a significant component. Initially, the applicant is not held liable for the existing conditions, provided it did not create them. But this liability protection could extend to predecessor owners and operators, regardless of that person's eligibility to participate in the

program, provided the property is cleaned up. However, liability protections are not extended to any responsible party for contamination that has migrated from the property.

Entry into the program is limited to 20 properties and it should read 20 properties per year. A property must meet the following criteria: (1) the likely creation of jobs, including those related to the cleanup; (2) the projected increase to the municipal grand list; (3) the consistency of the property as remediated and developed with municipal or regional planning objectives; and (4) the development plan's support for and furtherance of principles of smart growth or transit oriented development.

In fairness to some of our Working Group members, the details of this program were not unanimously embraced. It does present certain issues and is a departure from the standard programs. One glaring example, too, is that section 17 of HB 6526 includes a provision (subsection (g) that overlays a layer of analysis on the variety of criteria previously established for the funding programs that grew out of this Committee and it creates inconsistencies and ambiguities.

This program was proposed to the Working Group for consideration and we have included it because there should be a larger dialogue on it. It represents the next generation of programmatic and policy change. This program will have supporters and detractors, each with their own didactic, which you will likely hear today. As in the past, we are supportive of furthering the discussion and taking direction from the Committee to see if we can arrive at solution.

Finally, the Working Group is most interested in DEP's proposed comprehensive evaluation of DEP's remediation programs, including the much maligned and often controversial Transfer Act. This agency self-evaluation is long overdue and has been recommended by the prior Task Forces. The Working Group welcomes DEP's initiative, and it looks forward to a candid assessment of the state's remediation programs, their efficacy and issues, and proposals for improvement. However, it believes that certain parameters and time frames should be placed upon the DEP. As a result, section 7 of HB 6526 sets forth various items DEP should evaluate and mandates that DEP complete its evaluation by February 1, 2012, prior to the next legislative session so that any necessary statutory modifications can be proposed and acted upon.

We hope you find that the Working Group has served as a catalyst for innovative thought to take place, the result of which is HB 6526. With each session, this Committee has taken a decisive step forward with new programs and modifications to existing programs to address the State's brownfields and underutilized properties. More needs to be done as set forth in the Working Group's report and as discussed today. I commend you in leading the charge.

Thank you.

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**TESTIMONY OF GARY B. O'CONNOR
BEFORE THE COMMERCE COMMITTEE
OF THE GENERAL ASSEMBLY**

MARCH 8, 2011

**REGARDING THE FIRST REPORT OF THE STATE OF CONNECTICUT
BROWNFIELD WORKING GROUP AND RAISED BILL NO. 6526**

Good Morning. My name is Gary O'Connor. I am a partner at the law firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP and I have served as one of the Co-Chairs of the Brownfield Working Group created pursuant to Public Act. 10-135. I would like to thank the Commerce Committee for the opportunity to speak today on the First Report of the State of Connecticut Brownfield Working Group and, more specifically, on Raised Bill No. 6526. In addition, I would like to thank the Commerce Committee, especially its Chairs, Representative Jeff Berger and Senator Gary LaBeau, for recognizing early on the importance of brownfields revitalization in improving the environment and serving as a catalyst for economic development, jobs creation and smart growth. We thank you for your tireless leadership and support in providing the necessary tools for brownfields remediation and redevelopment.

This Report and the work of the Brownfield Working Group continue the work of the Brownfields Task Force which began in 2006. This year's Working Group did not meet until quite late, December 2010; nevertheless, the Group was able to accomplish a great deal in a short amount of time.

The Working Group's first priority was to evaluate the effectiveness of recent brownfield programs and many of the general remediation programs administered by DEP. As a result, the Working Group proposes a number of refinements to these programs. In addition, the Working Group has reviewed a more sweeping change in the form of a new "brownfield remediation and

revitalization program,” which it proposes for your consideration. Finally, the Working Group recommends that a comprehensive evaluation of all regulatory and remediation programs be conducted by DEP.

Unlike the past Task Force Reports, the Working Group spent time not only deliberating these issues but also crafting proposed legislation to address these topics, which is embodied in Raised Bill 6526. Let me be perfectly frank, this Bill is a work in progress. Some of the sections of the Bill deal with incremental refinements. There was strong consensus within the Working Group with respect to these sections. Other proposals—often received from outside the Working Group—call for more significant changes to existing programs, structures and philosophies. Although not all of these proposals received unanimous support of the Working Group, it was felt that in the interest of transparency and in order to foster further discussion that these proposals be incorporated into the proposed Bill. We expect and encourage debate on some of these sections and believe that the Bill as a whole will be made better as a result of input from all stakeholders.

In this Report, the Working Group continues to follow the overall themes of past Task Force Reports: organizational reform, funding and financing initiatives, regulatory programs and liability relief.

Organizational Reform

In 2006 the Office of Brownfields Remediation and Development (OBRD) was created. The OBRD was intended to be a one-stop shop for all brownfield programs in Connecticut. It was to be led by a highly positioned director, be well staffed by personnel dedicated solely to brownfield issues, and well funded. This has not happened.

Despite the lack of follow-through on the part of the State, the OBRD has had some significant successes as noted in Appendix A. However, there have been too few of these successes. OBRD does not have the resources to undertake significant numbers of new brownfield projects, to educate more municipalities and to market aggressively throughout the region. Accordingly, the Working Group recommends that (i) the OBRD be managed by a high level director who deals exclusively with brownfield issues; (ii) more staff be allocated by OBRD to work solely on brownfield matters; and (iii) the office be properly funded.

The recommendations of the Working Group are consistent with the recommendations of the Environment Working Group Transition Team established by Governor Malloy. That Group recommended that the OBRD should be directed by a Deputy Commissioner reporting to the Commissioner of DECD and/or the Governor, with sufficient staff focused on the mission of coordinating brownfield redevelopment, permitting transit oriented development and responsible growth. The Environment Working Group believed that it was necessary for the OBRD to be accessible to the development community invested with the appropriate authority to oversee and manage large and small projects, implement funding (grant and loan programs) and market/educate the business and development community and municipalities as to the programs and assistance the State provides. We concur.

Financing and Funding

There are a number of financing and funding programs administered by DECD, CDA and DEP that allow government funds to be used for various aspects of brownfield and/or contaminated property, remediation and redevelopment. A chart identifying these programs is included as Appendix B with this testimony. Beginning in 2006 several new funding programs

were created specifically targeted to brownfields. These programs include: (i) a municipal pilot grant program; (ii) a remedial action and redevelopment grant program and (iii) a targeted brownfield development loan program. Two accounts were created: one for the municipal pilot grant program called the Connecticut Brownfields Remediation Account and one for the other funding programs created under C.G.S. § 32-9kk, called the Brownfield Remediation and Development Account.

In short, over the past few years we have developed significant funding programs and accounts; however, funding has been abysmal. Even prior to the recent economic downturn, the State failed to show its commitment to the brownfields initiative by only providing incremental funding in amounts that were a fraction of the funding recommended by the Task Force. For instance, the municipal pilot program was authorized to receive \$7.5 million; however, only \$4.5 million was actually approved by the Bonding Commission in two increments of \$2.25 million. This program has been enormously successful and all of the funding has been allocated. DECD reported robust competition. Between 15 and 19 applications were received each round and some very good projects were not funded. The success of this program means that there is continuing demand from the municipalities. Accordingly, the Working Group recommends that the program's pilot status be eliminated and that the Legislature make the municipal pilot grant program a permanent program. We recommend that for each round of funding at least 6 municipalities be selected. These recommendations have been codified in Sections 1-3 of the proposed Bill. The Remedial Action and Redevelopment Municipal Grant Program is another opportunity for municipalities. It establishes regular deadlines for grants to be provided. This program has not been adequately funded. Likewise, the Targeted Brownfield Development Loan Program was created as a revolving loan fund available to provide financial assistance in the

form of low interest loans to eligible applicants including potential brownfield purchasers. The Legislature authorized \$10 million for these programs but only \$2.5 million was made available by the Bonding Commission. As a result, neither funding program has gained traction in the development community.

To put things in perspective, in 2008, the Brownfields Task Force recommended that the State provide an initial infusion of \$75 million in brownfield funding with additional contributions of \$25 million in each of the next 5 years. This funding recommendation, even at that time, was considered modest relative to the enormous investments made by other industrial states into their brownfields programs. The Working Group acknowledges that funding requests in this difficult economic time may appear on its face inappropriate, but it is important to note that brownfields redevelopment provides a very significant stimulus to the economy. A 2008 Report by the Northeast-Midwest Institute found that:

- \$10,000 to \$13,000 in public investments in brownfields creates/retains 1 job;
- \$1 of public money leverages \$8 total;
- Public investments in brownfields are recouped from local taxes in 5 years;
- On average, each brownfield site has a potential to create 91 jobs.

The Working Group respectfully suggests that funding brownfield redevelopment through a self-sustaining source of funding, unrelated to the Bonding Commission, is an effective way to spur economic development, create jobs and revitalize our urban centers.

Regulatory and Liability Reform for Brownfields

The Working Group has looked closely at a number of regulatory programs in an effort to reduce the impediments to brownfield redevelopment. One program that the Group analyzed was the Abandoned Brownfield Clean-up (ABC) Program (CGS § 32-911). This Program was

designed to remove eligible brownfield properties from the State's general remediation scheme by creating a more streamlined regulatory approach that provides a number of incentives to the applicant including some liability relief. In particular, the ABC Program provides that an eligible applicant is not responsible for investigating or remediating any pollution or source of pollution that has emanated from the applicant's property prior to his or her taking title to the property. This is an enormous incentive for potential developers of brownfield properties. Unfortunately, to date, no one has enrolled in this Program. It is not clear whether the lack of interest is due to the poor economy or due to certain limitations in the Program, itself. The Working Group believes that it may be a combination of the two. Therefore, in Sections 10-12 of the proposed Bill, the Working Group recommends a number of revisions that will expand the scope of the ABC Program. First, it clarifies the definition of abandoned property to one that has been a brownfield at least 5 years before the application. Second, municipalities are specifically included in the Program and defined to include economic development agencies/entities, non-profit economic development corporations, funded, controlled or established by a municipality; or non-stock corporations or limited liability companies controlled by municipalities or municipal economic development agencies/entities. Third, municipalities are not subject to the limitations of C.G.S. § 32-91(b)(6) which requires a showing that a person responsible for the pollution cannot be found or is unable to complete the remediation.

The Working Group also proposes exempting the person or municipality that is within the ABC Program from the requirements of the Transfer Act. (Section 11 amends the Transfer Act, C.G.S. § 22a-134 by adding a new paragraph (x) to the exempt transaction list. Acquisition of the property and subsequent transfer are exempt if remediation is ongoing or complete in accordance with § 32-91.) Likewise, the Working Group has proposed that a person eligible

under the ABC Program also qualifies for a Covenant Not To Sue at no cost. And that the Covenant Not To Sue should be transferrable to subsequent owners if the property is undergoing remediation or remediation is complete pursuant to §32-91l. (See Section 12.) It is the hope of the Working Group that these additional changes will provide the necessary incentives to redevelop sites under the Abandoned Brownfields Clean-Up Program.

My Co-Chair, Ann Catino, will address a number of other significant regulatory and liability relief proposals suggested by the Working Group. Again, I would like to congratulate the Commerce Committee on its commitment to brownfields revitalization. With your help we can send a strong message to the rest of the country that the State of Connecticut is committed to brownfields remediation and redevelopment.

Appendix A

**Office of Brownfield Remediation and Development (OBRD)
Department of Economic & Community Development**

- OBRD created under Public Act 06-184
- 2006 - OBRD website development
- 2007 MOU signed – DECD, DEP, DPH, CDA
- 2007 – OBRD awarded \$1M statewide revolving loan fund (RLF) for remediation by EPA
- 2008 – Formalized partners meetings, streamlined application
- 2008 – OBRD awarded \$400,000 for environmental assessment by EPA
- 2008 – 1st round Brownfield Municipal Pilot Program remediation projects (\$2.25M):
 - Stamford, Commons Park at Harbor Point
 - Waterbury, Cherry Street Industrial Park
 - Redding, Georgetown
 - Norwalk, Train Station
 - Shelton, Axton Cross
- 2009 – Pope Park Zion remediation, Hartford (EPA HTFD RLF)
- 2009 - Roosevelt Mills Project, Vernon
- 2009 – Former Decker’s Laundry assessment, Salisbury
- 2009 – OBRD awarded \$600,000 in supplemental revolving loan funding by EPA
- 2009 - Legislative
 - Abandoned Brownfields Program
 - Targeted Brownfield Loan Program
 - Streamlined brownfield remediation in floodplains (2007)
- 2010 – 2nd round Brownfield Municipal Pilot Program (\$2.25M)
 - Hartford, Swift Factory
 - Waterbury, Waterbury Industrial Commons
 - Meriden, Factory H
 - Madison, Griswold Airport
 - Naugatuck, Train Station
 - Putnam, Cargill Falls Mill
- 2010 – Current EPA RLF remediation projects
 - Habitat for Humanity, New London
 - Remington Rand, Middletown
 - Willimantic Whitewater Partnership, Willimantic
 - 14 Bridge Street, Montville
- 2010 – Assessment projects
 - Willimantic Whitewater Partnership, Willimantic
 - 98 Prospect St., Enfield
 - P & A Mill, Killingly
 - Former Decker’s Laundry, Salisbury
 - Former Swift Factory Hartford
 - Former Hi-G, South Windsor
- 2010 – (Fall) Brownfield Opportunities list available on website

- 2010 – OBRD awarded \$200,000 in EPA RLF supplemental funds
- 2010 – OBRD collaborated with Windham Region Council of Governments & Northeast CT Council of Governments on \$1M EPA assessment funding application

Financial Resources Summary

AGENCY	PROGRAM	PROGRAM DETAIL	TYPE	FUNDING SOURCE	AUTHORIZED	FUNDING AVAILABILITY	AMOUNT EXPENDED TO DATE	STRENGTHS	WEAKNESSES
CBRA	TIF	Up-front TIF based cash for developers	GRANT	BONDS		Subject to CDA's available funding	\$ 12,000,000.00	Immediate source of funding for developer	Projects have to meet a min 400,000 threshold
CBRA	DIRECT LOAN	Direct senior and subordinated loans	LOAN	BONDS/CDA OPERATING FUNDS		Subject to CDA's available funding	\$ 250,000.00	Leverage institutional funding	Need lead lending institution/developer must have solid banking relationship
CBRA	LOAN GUARANTEE	Provide full coverage of lender's loss up to 30% of loan balance	LOAN	BONDS/CDA OPERATING FUNDS		Subject to CDA's available funding		Leverage institutional funding	Need lead lending institution/developer must have solid banking relationship
DECD	ABANDONED BROWNFIELD CLEANUP PROGRAM	Liability protection for developers	N/A	N/A		N/A		limits liability for off-site investigation and cleanup	limited eligibility criteria, and no source of state funds to address orphan share
DECD	TARGETED BROWNFIELD DEVELOPMENT LOAN PROGRAM	Low interest loans for manufacturing/health/essential/mixed use	LOAN	Bonds	\$ 10,000,000.00	\$ 2,500,000.00	\$ 1,500,000.00	accounts to receive funds, - interest, repayment, etc	Reliance on borrowing for majority of start up funding
DECD	BROWNFIELD MUNICIPAL PILOT PROGRAM	Competitive Program for Municipalities	GRANT	Bonds	\$ 7,500,000.00	\$ -	\$ 4,500,000.00	accounts to receive funds, - interest, repayment, etc	
DEP	URBAN SITES REMEDIAL ACTION PROGRAM (USRAP)	Site located in designated distressed community(OBRD and DEP)	GRANT	Bond Funds	\$ 32,870,390.00	\$ -	\$ 32,870,390.00	accounts to receive funds, - interest, repayment, etc	
DECD	CT EPA ASSESSMENT PROGRAM	Monies through the EPA for assessment	GRANT	Federal Funds	\$ 400,000.00	\$ 189,431.00	\$ 210,569.00		Iterative, limited eligibility criteria
DECD	STATEWIDE REVOLVING LOAN FUND	EPA funds for the remediation of contaminated properties	GRANT/LOAN	Federal Funds	\$ 1,800,000.00	\$ 880,432.00	\$ 919,568.00		Limited eligibility criteria
DECD	Hanford EPA Revolving Loan Fund	EPA funds for the remediation of contaminated properties in Hanford	GRANT/LOAN	Federal Funds	\$ 602,171.00	\$ -	\$ 602,171.00		Limited eligibility criteria
DEP	UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP PROGRAM	Reimbursement Program - reimburse responsible parties and 3rd parties for investigation and clean up for certain UST releases	Reimbursement	General Fund Line Item				available to responsible parties and 3rd parties	limited eligibility criteria, insufficient funds to meet needs
DECD	DRY CLEANING ESTABLISHMENT REMEDIATION FUND	Provides grants for the landowner or operator for assessment/cleanup	GRANT	Tax Receipts	\$ 10,100,000.00	\$ -	\$ 10,100,000.00	Small business assistance	\$300K cap, limited funds
DECD	SCPRIF	Monies to be used for Phase II and PAP remediation	LOAN	Bonds	\$ 6,000,000.00	\$ 506,285.00		accounts to receive funds, - interest, repayment, etc	"construction loan" too narrow
DECD	Manufacturing Assistance*	General DECD economic development assistance program; Monies used for hard and soft costs related to brownfield reuse including engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT/LOAN	Bonds	N/A	N/A	\$ 22,100,000.00	Flexibility in use of funds	1) bonded funds; 2) competing with general ED projects supporting business growth; 3) for economic development projects only
DECD	URBAN ACT*	General state development assistance program; Monies used for hard and soft costs related to brownfield reuse including engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	Bonds	N/A	N/A	\$ 26,700,000.00	Flexibility in use of funds	1) Controlled by OPM; 2) bonded funds
OPM	Small Town Economic Assistance Program (STEAP)*	General state development assistance program to small towns; Some towns have used funding to support brownfield projects; Monies used for hard and soft costs related to brownfield reuse including engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	bonds	N/A	N/A	\$ 1,000,000.00	Flexibility in use of funds	1) Controlled by OPM; 2) bonded funds
DECD	Brownfield Project Identification in progress								
DECD	POTENTIAL NEW SOURCES OF FUNDING								
DECD	HUD 108 Program	Direct HUD line of credit loan to qualified project	LOAN	Federal funds	N/A	\$ 3,000,000.00	Plotted in 2010	1) Can leverage BED grants; 2) Leverage HUD CDBG- Small Cities Allocation; 3) Can support non-remediation project activities	1) Subject to federal thresholds, national priorities, and income requirements; 2) loan; 3) HUD approval timeframes

Appendix B

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NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

CONNECTICUT AND
SUBURBAN NEW YORK CHAPTER

March 8, 2011

As Chair of the Public Affairs Committee of The Connecticut and Suburban NY Chapter of NAIOP, Commercial Real Estate Development Association, and on behalf of our chapter President Brian Brennan, I write to comment on Raised Bill 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver. NAIOP supports this bill but with critical deletions to subsection 17(b), removing restrictions on the number and types of brownfields that can take advantage of the program.

Our chapter members, owners and developers of and investors in commercial, industrial, and mixed use properties, are keenly aware of the burden imposed on Connecticut by contaminated properties that are lying boarded up, idle, or under-utilized. Public resources to clean up these sites are increasingly scarce and, if not cleaned up and redeveloped, these sites pose a threat to the public's health and the environment. As these sites lie unremediated and idle, opportunity is lost for job creation and enlargement of the tax base. *Private sector developers are ready and willing to step in to clean up and redevelop these Connecticut properties at their own expense as they have in other states.* We view these sites through the lens of fundamental real estate "basics": if they make economic sense as clean properties they generally make sense as remediated properties. Cleaning them up will "level the playing field" for these sites with competing "Greenfield" properties, and will result in job creation and increases to the tax base. *The liability system in Connecticut, however, has prevented developers from remediation and redevelopment of contaminated properties: it is not only cumbersome administratively, it imposes liabilities on innocent purchasers for conditions they did not create and saddles them with unending liability.*

With the changes I mention below, Section 17 of Raised Bill 6526 would remove these impediments to brownfield development in Connecticut. Specifically, and most fundamentally, this section would allow brownfield developers to take ownership of these sites and assume liability only to the extent of cleaning up the property itself -- while being released from the obligation to "chase" any possible off-site contamination. The developer would retain the obligation currently in place under state law to report to the Department of Environmental Protection any significant environmental hazard found to be migrating off-site. Further, those taking advantage of this program by taking ownership of brownfields that meet the definition of an "establishment" under the Connecticut Transfer Act, would not be required to enter the Transfer Act Program. Finally, upon approval of the remediation, DEP would be required to issue a "Notice of Completion of Remedy / No Further Action" letter, providing a critical end point to the process and releasing the developer from further state liability with respect to approved cleanup conducted under the program.

OVER →

Regrettably, the vast majority of the beneficial impacts of this section would be defeated by portions of subsection (b) of section 17 which impose limitations and subjective uncertainties into the program that would continue to put Connecticut at a disadvantage as a place to conduct brownfield redevelopment, relative to other states. This clause contradicts the spirit of the rest of the section that reflects the philosophy that cleaning up any brownfield, no matter what size or location, positively advances the environment and the economy, and should be enthusiastically encouraged, not restrained. As a further constraint, a second clause in subsection (b) would limit the program to 20 properties per year. These limitations will prejudice smaller brownfield sites and impose a "beauty contest" based on subjective factors for even the larger sites: the kind of speculative and time-consuming contest that drives developers to less risky projects.

NAIOP urges our state legislators to support Raised Bill 6526 with removal of the restraints imposed in subsection 17(b).

NAIOP and Brownfields:

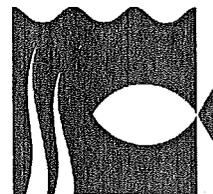
With about 15,000 members, and comprised of owners, investors, and developers of commercial, industrial, and mixed use real estate, NAIOP Commercial Real Estate Development Association is the nation's largest commercial real estate trade organization. In my professional life I am a partner in the Stamford, Connecticut office of Wiggin and Dana LLP where I lead the firm's climate change and sustainable development practice and my practice encompasses advising clients on the remediation and redevelopment of contaminated properties. In his business life our chapter President Brian Brennan serves as Director of Equity Investments for Allianz of America, a holding company located in Westport, Connecticut which provides investment services to insurance affiliates of the Allianz Group of North America.

NAIOP has a strong and committed interest in advancing the principals of environmentally sustainable development throughout the nation, and has played an important role in advancing the responsible remediation and redevelopment of Brownfield properties. For example, NAIOP was a leader in advocating enactment of the 2002 Small Business Liability Relief and Brownfields Revitalization Act that provided for liability relief from the federal "Superfund" law (otherwise known as the Comprehensive Environmental Remediation, Compensation, and Liability Act, or CERCLA) for innocent landowners and bona fide prospective purchasers. I acted as the NAIOP national organization's representative on the 25 member committee appointed by the U.S. Environmental Protection Agency that negotiated EPA's "all appropriate inquiry" (AAI) regulations. These regulations govern the investigatory diligence efforts such innocent landowners and bona fide prospective purchasers of contaminated properties must undertake to obtain protection from CERCLA liability.

If you have any questions in this regard, please contact me at, 203 363-7670, btrilling@wiggin.com



**Connecticut Fund
for the Environment**



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**Testimony of Connecticut Fund for the Environment
Before the Commerce Committee**

March 8, 2011

***SUPPORTING in part and OPPOSING in part H.B. No. 6526 AAC BROWNFIELD
REMEDICATION AND DEVELOPMENT AS AN ECONOMIC DRIVER and Supporting SB
1001 AN ACT CREATING THE FIRST FIVE PROGRAM***

By: Roger Reynolds, Senior Attorney

Connecticut Fund for the Environment ("CFE") is Connecticut's non-profit environmental advocate with over 5,700 members statewide. For over thirty years, CFE has fought to protect and preserve Connecticut's health and environment.

Connecticut fund for the Environment **supports the aspects of H.B. 6526** that would simplify the program and focus resources on a few prioritized sites to jump start the stalled Connecticut process. We urge the committee to modify the bill to limit the number of applicants to five or less so it will truly be a prioritization along the lines of S.B. 1001 and not a wholesale revision of the liability structure in Connecticut. We also support the idea of a large scale study of the Transfer Act to determine what big picture wholesale changes should be made to make it more effective in actually cleaning sites. We **oppose aspects of the bill** that dilute the definition of brownfields to spread limited resources to the less economically and environmentally significant sites. We also oppose those parts of the bill that propose various one-sided exemptions to the current Transfer Act. Such provisions do not look at the complete picture and will create litigation and uncertainty that will ultimately leave the state and taxpayers with responsibility to clean the exempted sites.

Brownfield sites in Connecticut are not being prioritized and cleaned up and this is harming the environment and the economy. Much of this has to do with a government that has not always acted cohesively and in a coordinated manner to ensure that brownfield sites that would spur economic development in the right places are prioritized and supported. Brownfield legislation, as well, has tended to propose small piecemeal fixes to specific problems, and as a result, has not always been cohesive or consistent with what has come before or after. Governor Malloy has stated his intention to take a different approach and has nominated dynamic and energetic heads of a new DEEP and DECD who will surely be champions. To the extent that we pass legislation this year, it should be to encourage and support economic and environmental prioritization of brownfield sites and to study the larger issues involved in the Transfer Act as a

whole, with the goal of replacing it. It should not be the same old practice of piecemeal exemption and patches that could unintentionally create more litigation and delay than progress.

A section by section analysis appears below:

Section 4 (Oppose) – This section eliminates liability for a spill that occurs after a Form III or IV is filed. Because some of these forms could have been filed decades ago, and because it is very difficult to determine when historic contamination occurred, this will almost certainly lead to additional litigation and uncertainty.

Section 6 (Oppose) – This modifies a statute that last year required Water Quality Standards to be passed as regulations. We believe the entire requirement that Water Quality Standards should be regulations is inappropriate and should be repealed, and it should not be selectively repealed as advantages the regulated community.

Section 7 (Support) – This section would require, inter alia, a comparison of existing programs to states with a single remediation program such as Massachusetts or New Jersey. We believe such a study is appropriate. If changes are made to the Transfer Act, or even if it is repealed in its entirety, it should not be piecemeal isolated changes that do not necessarily fit with what has come before or after. Instead, we need to think seriously about the best system to expedite cleanup, spur economic development and protect environment and public health. This is the proper way to make policy.

Section 8 (Oppose) – This section would expand the definition of brownfield to include any building that contains asbestos or lead paint. We oppose expanding the definition of brownfield. We believe the state should prioritize sites to concentrate resources where they will be most effective. This does the opposite in expanding the definition to include much smaller and economically less significant projects.

Section 10(b) (Oppose) – This section requires that a building have been underused for only five years instead of 1999. This will again unnecessarily expand the program to non-priority sites, as many such properties may have been dormant due to the economy rather than due to contamination.

Section 17 (Support in Part) – We strongly support the part of this section that prioritizes principles of smart growth and transit oriented development in selecting program participants. For too long, the state's brownfields programs have not had adequate direction and have failed to prioritize the most important sites for economic development and environmental protection. Principles of smart growth and transit oriented development have been applied elsewhere by DECD to prioritize economic development projects and we support their use in this instance. In Sections (b) and (g), the requirement that the project further at least one of the criteria set forth should be amended to require that it further "all" of the criteria set forth. Moreover, the criteria that it create temporary remediation jobs is redundant, circular and unnecessary and should be removed.

Subsection (j) provides for an automatic approval if an application is not acted upon and for appeal rights if an application is rejected. Automatic approvals are environmentally destructive and can lead to bizarre policy consequences. Appealability for grant program eligibility is inappropriate and will be time consuming and expend resources that should be expended on cleanup.

Section 17 (Oppose in Part) – With the exception of the prioritization concepts set forth above, we do not support implementing piecemeal reforms prior to a reconsideration of the remedial scheme.

Various sections provide for an automatic approval if an application is not acted upon and for appeal rights if an application is rejected. Automatic approvals are environmentally destructive and can lead to bizarre policy consequences. Appealability for program eligibility is inappropriate and will be time consuming and expend resources that should be expended on cleanup.

Sections (k) and (n) exempting pollution that has migrated off of a site from cleanup requirements at this time. While we do not think such a concept is ultimately something that should not be considered and debated, we think it should be considered in the context of an overhaul of the entire system. If we simply exempt properties without an alternative way to clean up sites, the state and taxpayers end up ultimately liable for the cleanup.

AAC FIRST FIVE PROGRAM

The Governor has been a vocal proponent of a directed state government that directs resources to the most important projects that will actually move the state forward. We believe that in prioritizing such projects, the DECD should apply principles of smart growth and transit oriented development. These are the projects with most potential to create immediate and lasting high quality jobs and improve the state's long term prospects by improving the quality of life. We commend the Governor for taking action to prioritize in a state that has often lacked economic and environmental leadership and strongly support this bill.

Thank you for the opportunity to speak today.

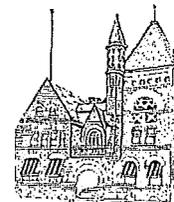


John M. Picard
Mayor

Eileen Buckheit
Commissioner

DEPARTMENT OF PLANNING AND DEVELOPMENT

City of West Haven
355 Main Street
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CITY HALL 1896-196

TESTIMONY OF Eileen Buckheit
Commissioner of Planning and Development
CITY OF WEST HAVEN
Before the
COMMERCE COMMITTEE
March 8, 2011

RAISED BILL NO. 6526
AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN
ECONOMIC DRIVER

Senator LeBeau, Representative Berger and members of the Commerce Committee. On behalf of the City of West Haven, I would like to express my support for Section 17 of Raised Bill 6526 which will greatly increase the development potential for our brownfield sites in West Haven, and the entire State, but with critical deletions to subsection 17(b) of the Bill, removing restrictions on the number and types of brownfields that can take advantage of the program.

As an economic development professional that has been involved in the investigation, cleanup and redevelopment of brownfields for fifteen years, I have seen the frustration, both from the public and private sectors, when dealing with complicated issues of liability, and timelines that never end. Any movement toward the reduction of this uncertainty and increasing the final closeouts of these sites will be invaluable to municipalities already reeling from the Great Recession.

The City of West Haven is fortunate to have an approved Municipal Development Plan (MDP), located on prime real estate – waterfront. Unfortunately, the majority of the land in the MDP is industrial property and former oil terminals. The City has struggled, with the assistance of the Connecticut DEP and federal EPA, to redevelop this site for years. We are gaining ground, and will be able to move toward a cleanup and redevelopment plan for the city-owned portion in the near future. However, these steps have all been very difficult and expensive to execute. RB 6526 will help to expedite orphan sites such as these and help us to place them back in private hands, and on our tax rolls.

Another site in West Haven is a former Ford car dealership, which has been contaminated by years of industrial uses, and auto body repair. We have a potential developer for the site who wishes to build mixed use housing and commercial at the site. As stated earlier, these prospective deals take years longer than clean sites, and are filled with uncertainty and intimidating bureaucracies and potential delays. Although no one has walked away from the table, the City is aware that due to these issues, these deals can fall apart at any time. An Act Concerning Brownfield Remediation and Development as an Economic Driver can expedite the cleanup and remove much of the liability questions with the “notice of Completion of Remedy and No Further Action Letter”, and the delays and uncertainty involved with the Transfer Act.

Lastly, the City of West Haven strongly supports the removal of fees charged to municipalities for this and other environmental clean up programs. Since West Haven is largely performing any brownfields activities through grant funding due to tight municipal budgets, such fees can only encourage municipalities to ignore these abandoned sites, any many times the public sector is their only hope for redevelopment.



TOWN OF HAMDEN, CONNECTICUT
Economic & Community Development Department
 2750 Dixwell Avenue
 Hamden, Connecticut 06518

Dale Kroop, *Director*

TESTIMONY OF DALE KROOP
Director of Economic and Community Development
TOWN OF HAMDEN
Before the
COMMERCE COMMITTEE
March 8, 2011

Re: Raised Bill No. 6526: An Act Concerning Brownfield Remediation and Development as an Economic Driver

The Town of Hamden would like to express support for Section 17. of Raised Bill 6526, which will help expedite brownfields redevelopment in our community and throughout Connecticut, but with critical deletions to subsection 17(b) of the Bill, removing restrictions on the number and types of brownfields that can take advantage of the program. Additionally, the Town of Hamden would like to see the \$3,000 fee identified in Section 20 (d) waived in the cases of applicants who are a municipality or a non-profit Development Corporation. This change would make Raised Bill 6526 consistent with previous brownfield legislation which provides for a *Covenant Not To Sue* from the Commissioner of DEP at no cost for these public agencies. Any of these agencies that get involved in brownfields because their complex nature (i.e. taxes owed, mortgage encumbrances, etc), have enough difficulty doing these projects, those that cannot be done by the private sector. The Town agrees that applicants who are private owners should pay the cost to the CT Taxpayers for the processing these applications by the State.

Brownfield redevelopment for neighborhood revitalization, for job creation and for increased tax revenue have become very important in Hamden as our commercial areas have become limited in their growth at the same time that the Town has worked hard to promote responsible development. Brownfield redevelopment has therefore become critical to our future economic development initiatives.

Prospective developers continue to be discouraged by the bureaucratic requirements and delays associated with the Transfer Act, which many brownfields projects fall under. Provisions in An Act Concerning Brownfield Remediation and Development as an Economic Driver, outlined in Section 17 of the bill, would expedite the process in Hamden and statewide. Most of all, it would provide assurances to the developer regarding liability through Department of Environmental Protection issuance of a "Notice of Completion of Remedy and No Further Action Letter" and provide developers with a clear and expedited process, avoiding costly and unreasonable delays which can frustrate site redevelopment, reuse and job creation.

The Town of Hamden supports Section 17, but strongly recommends eliminating the conditions inserted in subsection (a) as irrelevant and potentially detrimental to the goal of timely brownfields redevelopment. These conditions are the limitation of participation in the program to 20 properties at any one time and the addition of social and economic criteria to eligibility determination for it. They would undoubtedly result in the delay of remediation, increased redeveloper costs for professional services and would add a level of political activity to what should ideally be a straightforward real estate and environmental cleanup effort.

Finally the elimination of the \$3,000 application fee in Section 20 (d) for cash strapped communities and Non-Profit Development Corporations would make it possible to consider trying to develop the more difficult brownfield sites.

Thank you for your time


Dale Kroop
Director



Kelly Murphy, AICP
Economic Development
Administrator

Office of the Economic Development Administrator
City of New Haven
165 Church Street, New Haven, Connecticut 06510



John DeStefano, Jr.
Mayor

TESTIMONY OF HELEN ROSENBERG
Economic Development Officer
CITY OF NEW HAVEN
OFFICE OF ECONOMIC DEVELOPMENT
Before the
COMMERCE COMMITTEE
March 8, 2011

Re: Raised Bill No. 6526: An Act Concerning Brownfield Remediation and Development as an Economic Driver

The City of New Haven would like to express support for Section 17. of Raised Bill 6526, which will help expedite brownfields redevelopment in the city and throughout Connecticut, but with critical deletions to subsection 17(b) of the Bill, removing restrictions on the number and types of brownfields that can take advantage of the program.

The City of New Haven has been working successfully since the mid-1990's to address the need to cleanup and redevelop brownfields of all sizes throughout the city. These efforts included pursuing legislative changes through coordination of the Coalition for Clean Sites, resulting in bills passed in 1996 and 1998 which created Licensed Environmental Professionals, Covenants Not to Sue, Environmental Land Use Restrictions, expanded municipal site access powers and Remediation Standard Regulations revisions.

Despite the contributions these measures have made toward the redevelopment of contaminated sites, brownfields have become a growing problem in the city as globalization and economic change have taken their toll. A few years ago over 400 people in the city were employed in about 500,000 square feet of active industrial space on 26 acres that have since been vacated as plants have shut down. As public funding has all but disappeared, the City must rely on private investors to take on the environmental challenges these properties pose.

Prospective developers continue to be intimidated by the additional bureaucratic requirements and delays associated with the Transfer Act, which most of the city's brownfields fall under, as well as uncertainties regarding liabilities for conditions on these sites. Provisions in An Act Concerning Brownfield Remediation and Development as an Economic Driver, outlined in Section 17 of the bill, would expedite brownfield cleanup in the state and be of particular benefit to old, industrial cities such as New Haven. It would provide assurances to the developer regarding liability through Department of Environmental Protection issuance of a "Notice of Completion of Remedy and No Further Action Letter" and provide developers with a clear and expedited process, avoiding costly and unreasonable delays which can frustrate site redevelopment, reuse and job creation.

over

The City supports Section 17, but strongly recommends eliminating the conditions inserted in subsection (b) as irrelevant and potentially detrimental to the goal of timely brownfields redevelopment. These conditions are the limitation of participation in the program to 20 properties at any one time and the addition of social and economic criteria to eligibility determination for it. They would undoubtedly result in the delay of remediation, increased redeveloper costs for professional services and would add a level of political activity to what should ideally be a straightforward real estate and environmental cleanup effort.

Thank you.



TESTIMONY OF WILL WARREN
Economic Development Project Manager
REGIONAL ECONOMIC XCELERATION (REX) DEVELOPMENT
Before the
COMMERCE COMMITTEE
March 8, 2011

Re: Raised Bill No. 6526: An Act Concerning Brownfield Remediation and Development as an Economic Driver

Thank you for this opportunity to testify before the Commerce Committee in support of Section 17 of House Bill Number 6525, "An Act concerning Brownfield Remediation and Development as an Economic Driver." As the primary goal in Section 17 of the Bill, REX development recognizes the need to expedite the process of Brownfield redevelopment for the State of Connecticut, however, also strongly recommends eliminating the conditions in Section 17 subsection (b) of the House Bill as a potential obstacle to the goal of a more efficient remediation process. The two conditions referenced are, limitation of participation in the program to 20 properties at any one time and the addition of social and economic criteria to applicant eligibility determination. H. 6526

REX Development is the 501 (c)(4) quasi-governmental economic development organization serving 15 towns in the South Central Connecticut Region. Identifying the extreme need for Brownfield redevelopment in this industrious region, soon after the inception of REX in 1996 the organization created a Brownfield Assessment and Remediation Program with the initial infusion of funding from the Connecticut Department of Economic and Community Development. Since the creation, and the addition of State and Federal funding, REX has assisted with the assessment, cleanup and remediation of over 80 properties throughout the region.

REX has worked with municipalities, non-profits and for profit developers to help them leverage their assessment and clean-up activities, in turn creating jobs, economic viability and overall sustainability in the region. Coincidentally, REX has consistently seen additional bureaucratic requirements and delays associated with the Transfer Act as well as uncertainties regarding liabilities for conditions on these sites, become a major hindrance for the redevelopment process. Section 17 of House Bill 6525 would significantly reduce any concerns associated with liability issues in accordance with the remediation of a property. The components in Section 17 of the bill suggest a comprehensive and concise pathway to a clear and defining end point regarding liability, avoiding sometimes costly and unreasonable delays.

As you are well aware, Connecticut towns are more reliant on property tax revenues than all but two other states. With the recent housing and economic decline, REX has seen a considerable decrease in the number of projects that municipalities can afford to redevelop. It is the private sector that has the current financial resources necessary to revitalize our communities and create jobs and wealth. In this regard, it is important to spur private development without the use of public funds. Section (b) of the bill, however, will further impede the goal of a comprehensive process to encourage investment.

127 Washington Avenue, 4th FL West, North Haven, CT 06473
 T 203 821 3682 F 203 821 3683 www.rexdevelopment.org

BETHANY BRANFORD EAST HAVEN GUILFORD HAMDEN MADISON MERIDEN MILFORD
 NEW HAVEN NORTH BRANFORD NORTH HAVEN ORANGE WALLINGFORD WEST HAVEN WOODBRIDGE

ONE REGION. 15 TOWNS. UNLIMITED POTENTIAL.



Language referring to a limit of 20 properties should be removed, allowing as many properties as possible to take part in the program. Especially in a time of economic uncertainty, we should be encouraging the investment of remediation not focusing on a select few. In addition, language referring to additional criteria for eligibility should be removed. Including these economic, planning and job creation elements could potentially exclude a multitude of smaller properties in the smaller communities of our region, that are just as important to improving the health and overall sustainability.

Overall, this bill is a thoughtful and innovative effort to attract private investment and expedite what is sometimes a convoluted and frustrating process. Thank you again for the opportunity to testify before you today. We hope that you will take our comments into consideration.

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State of Connecticut
 HOUSE OF REPRESENTATIVES
 STATE CAPITOL
 HARTFORD, CONNECTICUT 06106-1591

REPRESENTATIVE ROLAND J. LEMAR
 NINETY-SIXTH ASSEMBLY DISTRICT

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MEMBER
 FINANCE, REVENUE AND BONDING COMMITTEE
 PLANNING AND DEVELOPMENT COMMITTEE
 TRANSPORTATION COMMITTEE

Testimony of State Representative Roland Lemar on HB 6526 (AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER) & HB 6528 (AN ACT CONCERNING BONDING FOR BROWNFIELDS)

Before the Commerce Committee
 Public Hearing; March 8, 2011

Senator LeBeau, Representative Berger and distinguished members of the Commerce Committee;

In the two towns that I represent, Hamden and New Haven, there are at least fifteen old industrial sites, representing nearly 100 acres which, because they are environmentally contaminated, are not being put to productive use. These brownfield sites are a significant drain on our public resources – they deplete our property tax base, they are eyesores in our communities, they pose serious threats to the public's health, the local environment, and comprise an increasing liability to the state. Re-developing these contaminated properties is the key to building our local property tax revenues, supporting the goals of smart growth, and facilitating key transportation investments.

As you know, many of these contaminated sites are strategically located near transportation infrastructure and in our cities and inner suburbs. They are ripe for redevelopment- and redeveloping these sites, rather than developing on our open space lands, is good for our environment.

It is also good for business. Because these sites are strategically located, often times private investors who are not responsible for the contamination are nevertheless willing to take on the costs of cleaning up these properties. Their investment will grow jobs and build property tax revenues. We can facilitate their investment by creating a comprehensive one-stop program specifically designed to encourage, attract, and incentivize owners and developers who are not responsible for the contamination to commit and attract private resources to purchase, investigate, clean-up and redevelop these sites. HB 6526 provides clarity, predictability, simplicity, certainty and expediency, all geared to attract redevelopment and jobs in tough economic times and at the same time limit the state's continuing liability for the potential clean-up of these sites.

We can make this good bill even better. HB 6526 goes a long way toward spurring private development of brownfield sites, without the use of public funds. However, the Bill as proposed includes two provisions that are actually detrimental to goal of cleaning up brownfields sites. Section 17(a) limits the number of eligible properties to "no more than twenty properties at a time." If this program is a good one, and I think that it is, and it can return vacant underutilized contaminated properties back to productive use, we should not be capping the number of eligible properties. If we are concerned about overwhelming our State agencies, we should address that by imposing a sensible application fee structure. But I do not ever want to go back to my constituents in New Haven and explain that the reason the Robbie Len building on State Street or an old manufacturing site on Dixwell Avenue in Hamden remains boarded up is because it was the 21st applicant to this program. This program does not cost the State anything. Why would we limit the extent to which the private sector invests in cleaning these sites up?

Second, eligibility for the program should not be based on a laundry list of discretionary factors, none of which has to do with whether the program applicant is responsible for the environmental contamination. The eligibility criteria laid out in Section 17(a) are appropriate for a funding bill – when the State provides tax credits or grants, we have the ability and the responsibility to award those limited dollars based on discretionary factors, like job creation and smart growth. Job creation and smart growth are issues of crucial importance but they have no business being in HB 6526. I am saying this as an avid environmentalist and Connecticut resident committed to the ideals of smart growth. House Bill 6526 has to do with innocent parties, with no connection to preexisting environmental contamination, taking on the responsibility of cleaning up an old site. Whether or not the project in question meets factors related to environmental contamination, should have no bearing on what sort of liability the innocent property owner takes on. The eligibility factors laid out in Section 17(a) are laudable goals that I support – they just feel a little out of place in this bill.

Where I feel these factors belong is in HB 6528, which authorizes bonding for brownfield remediation. When it comes to providing state dollars for remediation, which this terrific program would do, we should be investing in projects that constitute smart growth and that will build our job base. Section 17(a) of HB 6526 should be moved to establish a priority/criteria list for funding under HB 6528.

These changes will make good bills even better. Brownfields legislation should provide clarity and certainty regarding clean-up obligations, risk, and liability in a manner that will attract private investment, redevelopment, and jobs. The process for innocent parties to remediate contaminated properties should be streamlined and efficient and should limit the state's continuing liability for the potential clean-up of these sites. HB 6526, with these revisions, will do just that. In conjunction with HB 6528, this committee will establish a wonderful program that will help redevelop important sites in my home communities, as well as yours and will make a dramatic improvement in the economic, physical and environmental health of our State. Thank you for allowing me to testify and thank you for your work on these bills.

H-1109

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2011

VOL. 54
PART 18
5829-6187

The House will stand at ease.

(Chamber at ease.)

The House will come back to order. The Clerk will call Calendar 293.

THE CLERK:

On Page 41, Calendar 293, Substitute for House Bill Number 6526 AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER. Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER GODFREY:

The distinguished Chair of the Commerce Committee, Representative Berger.

REP. BERGER (73rd):

Good afternoon, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Good afternoon, sir.

REP. BERGER (73rd):

I move for acceptance of the Joint Committee's Favorable Report and passage of the Bill.

DEPUTY SPEAKER GODFREY:

The question is on acceptance and passage. Will you explain the Bill, please, sir.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker. Shortly, I'm going to be asking the Clerk to call an LCO Amendment that will be a strike-all Amendment that will be the body of the Bill that this Chamber will vote on this afternoon.

But before I do that, Mr. Speaker, in the way of some background for the Chamber about what we will do here today to spur economic development, to create jobs in the state and to spur tax revenue, both at the municipal level and at the state level.

Probably five to six years ago, this Chamber in working with the Commerce Committee and other committees of cognizance, started to work on an initiative, Mr. Speaker, that addressed a need to clean up contaminated sites throughout the State of Connecticut.

Not just an urban problem, Mr. Speaker, a problem that permeates the landscape of the entire State of Connecticut from small towns to large urban municipalities throughout the state.

And we embarked on that important work several years ago, and we have made progress. Incremental as it's been, we've made progress in what we consider this Chamber and the Commerce Committee and other committees of cognizance, to be important groundbreaking legislation that in and of itself, Mr. Speaker, is the best jobs bill that we can do

in this Chamber and in the Upper Chamber and in the General Assembly as a whole.

When we look at that Bill, the underlying Amendment that we'll call shortly, this continues that important work, deals with liability, strengthens the Office of Brownfield Remediation Development, and Mr. Speaker, even more importantly through the Executive Branch and the Governor's Office now in bonding, we have dollars that are real dollars that will make a difference in each one of our municipalities in this Chamber.

Mr. Speaker, it's not a Democrat issue. It's not a Republican issue. It's our responsibility as Legislators, to clear this problem and make this state a better place while maintaining our open space and farmland preservation.

And let's talk about that for a minute, Mr. Speaker. When we first embarked on this five to six years ago, there was fight back and forth between farmland preservation, open space, brownfields money, who was getting the dollars, who are not getting the dollars.

By what we do in this Chamber through legislation, open space and farmland has dedicated funds every year through bonding, required by legislation, required by law to maintain.

What we've been able to achieve in raising the alertness of brownfield remediation and development is that we're all in this together, that it's just not about cleaning up the contaminated sites.

It's just not about the pristine landscape of Connecticut, which we are maintaining by legislation every year in dollars that we put forward to buy farmland and open space and maintain that pristine landscape.

It's about working together. What we can say now through the Governor, through this Legislature, dollar for dollar, we have \$50 million in each year of the biennium that we have committed \$25 million in each year of the biennium to brownfield remediation and development.

Mr. Speaker, this is a huge step forward for us. Now, we can achieve goals of clean up. We can achieve goals of that factory that sits in our downtown area abandoned for years, contaminated, boarded up, useless to the tax rolls, useless to job stimulation, but sits there permeating the landscape of our urban environments and even the smallest of municipalities.

We're changing that here, continuing the work today that we've done in the past, and we're all making a difference, and that's what we're all elected to do.

And I cannot be happier in sitting here with my colleagues, standing here before this Chamber, saying in a bipartisan way, we've achieved that.

And again, I have to reiterate, Mr. Speaker, it's not about politics. It's about us really grabbing that ring and saying, we're doing something about this. And we have a Governor that has committed to this task.

So when we drive, and it's my vision, into the future, that will start this year, that as we drive and enjoy the landscape of the State of Connecticut, open fields, our farmland, our dairy farms, that we then now can drive through those areas that are contaminated by brownfields and days gone by and say, we've made a difference and cleaned up those sites.

That factory abandoned, polluted, boarded up, now is viable, has office space, has a new business, is creating jobs, has the property back on the tax roll. We've made a difference.

Today is an important day, and what we do each year moving forward is important.

Let me thank a few people involved in this. Certainly, everybody on the Commerce Committee, any committee of cognizance. You see before the Amendment that you have that I'll certainly call, numerous co-sponsors.

But Commissioner Este, Department of Environmental Protection has been so instrumental in helping us move this forward. His expertise both on the business side and the environmental side has been key for us to be able to move this document together, forward.

The DECD Commissioner, Katherine Smith has been exceptional. She also brings a tremendous knowledge and expertise in this area of what we need to do in the business community, but also we need to do to protect our environment, the pristine nature of what we all feel is part of our Connecticut fiber.

Everyone on the Commerce Committee has been so important, and I thank everyone. Certainly the Senate Chair, Senator LeBeau.

Certainly staff that's had to put up with me and the Senator over many, many months, and Representative Haddad, the House Vice-Chair.

And Ranking Members who have been instrumental. Representative Camillo, Senator Frantz, Ranking Members have been instrumental also in helping craft this legislation.

And let me not forget the working group. Ladies and gentlemen of the Chamber, my colleagues, these are

individuals with expertise that goes far beyond anything that I could really do on my own.

The environmental lawyers. Every person that has a stakeholder value in what we do here today, gave up their free time and some are lawyers that could make hundreds of dollars an hour, and they devoted their free time as a working group to what we do here today to help guide us in making the right decision and making a difference in our state.

So with that, Mr. Speaker, the Clerk is in possession of Amendment LCO 7473. I ask that he call and I be allowed to summarize the Amendment.

DEPUTY SPEAKER GODFREY:

The Clerk is in possession of LCO Number 7473, which will be designated House Amendment Schedule "A". Mr. Clerk, please call it.

THE CLERK:

LCO Number 7473, House "A", offered by Representatives Berger, Williams, et al.

DEPUTY SPEAKER GODFREY:

The gentleman has asked leave of the Chamber to summarize. Is there objection? Hearing none, please proceed, Representative Berger.

REP. BERGER (73rd):

Thank you, Mr. Speaker. The Amendment that has just been called by the Clerk is now the strike-all Amendment that will become the Bill.

I'm going to break down somewhat of a summary of what the Bill does. It's quite extensive. I anticipate some questions from my colleagues and we will hopefully be able to flush out any questions or concerns.

In the summary of the Bill in sections, you will see that it updates the Office of Brownfield Remediation Development and implements an effective powers and duties for that Commission.

In legislation in the past, we created OBRD within DECD. The problem is with that, is that it was not effective. So what we did was create --

DEPUTY SPEAKER GODFREY:

Excuse me, Representative Berger. If you could just quickly summarize and then move adoption and then we can discuss the merits of it. Thank you, sir.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker. Certainly there's going to be changes that relate to contaminated property and remediation and development and I've outlined that a little bit in my preamble to this and I move adoption of the Amendment.

DEPUTY SPEAKER GODFREY:

The question is on adoption. Now, sir, would you please remark.

REP. BERGER (73rd):

Thank you, Mr. Speaker. In continuing with the Office of Brownfield Remediation and Development, this will now create a power and duty of OBRD that is effective in its policy. This is very, very important for us to know because this office within DECD will help administer the programs that we do and the implementation of this Bill here today.

It also makes permanent the municipal brownfield pilot program, which in and of itself by its nature and name was a pilot. This now will become a permanent program.

Now, the Commissioner of DECD will have the ability within that program to do six projects per quarter, and following a certain guideline for municipalities because we want to be inclusive of not only municipalities of 100,000 or greater, but those that are 25,000 in population or less, and everything in between. We want to be able for them to get a fair share of the pie.

Within the pilot program we enable that to happen and it is funded, again, as I might reinforce, \$25 million this biennium and \$25 million in the second.

Another section exempts certain parties under the Transfer Act from investigating and remediating contamination that occurs after the property was remediated.

It also allows the Environmental Protection Commissioner to reclassify surface and ground water beginning March 1, 2011. These two very critical components have held up projects.

When we look at how we want to develop a project, we want to develop and clean up a site, there were many, many blockages and obstacles for us to be able to develop that.

With the great work of DEP, it's government liaison Bob LaFrance and others, we've been able to work through that problem and granted it's taken several months, maybe quite a few arguments back and forth but we reached consensus.

An important component of a brownfield clean up is, you have a property, and I'm a developer as an example, and I want to develop that piece of land. There is contamination, which I understand and realize.

The problem was on the liability. If I develop that piece of land and there is contamination that leaches from that land that I purchased and developed onto another property that's adjacent to it, I could have potentially

been liable for that, held accountable for something that was not done by my hand, that's something that existed.

This creates a liability vehicle that allows you to be able to move property within the borders you've purchased and expand it and create, create jobs, and also through the remediation and also potentially through what is created through that remediation. Very important for us to have that tool.

Another section makes more brownfield sites eligible for state funds and subject to regulatory requirements. We looked at a definition of a brownfield and what is quote, unquote, a contaminated property. We have then added asbestos and lead paint into the definition of what a contaminated property is.

It exempts government agencies and private organizations from paying Department of Environmental fees when cleaning up brownfields. This is a tool that helps the local governments, local agency, private organizations, to be able to not be subject and get some relief, to help push forward these projects that languish, push them forward and make them viable, expands the range of benefits and eligible entities under the ABC Program, which is the Abandoned Brownfield Cleanup Program.

And when we talk about all these programs we also talk about a funding source that is dedicated. It's just not words on a piece of paper. It's about putting the dollars to the project to make it happen.

It allows the DEP Commissioner to waive some of the requirements for recording environmental use restrictions and releasing parties from the requirements.

It also extends the term of the brownfields working group, the group that I spoke of earlier in my comments that has done a tremendous amount of work in guiding this Legislature through the committees and the committees of cognizance in making a viable, workable Bill.

It also establishes a program protecting parties investigating and remediating brownfields from liability to the state and third parties, the leaching of contamination into other properties that have been remediated or are under remediation.

Mr. Speaker, this is a comprehensive document that achieves many of the goals along with the financing component that we want to in moving this state forward.

So, in concluding the background, I look forward to the passage of this document. I look forward to the continued work that this Legislature will do and the leadership that this House and this Senate will do in

making Connecticut the state that we are all proud of, and which we all serve. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker, if I may, several questions to the proponent of the Amendment.

DEPUTY SPEAKER GODFREY:

Please frame your question, sir.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Looking at several of the references here and just to make sure that I'm clear on it. We refer to licensed environmental professionals in several areas of the Amendment.

And just for clarification, those licensed environmental professionals that we would be relying on would be state licensed environmental professionals, would they not? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger, do you care to respond?

REP. BERGER (73rd):

Yes, through you, Mr. Speaker, that is correct.

DEPUTY SPEAKER GODFREY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker, and I believe the proponent addressed the nature of some of the liability for having some access to these properties essentially going away as one of the principals of this.

Would that be possible for financial institutions that somehow obtain title to one of these sites possibly being protected from litigation? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

That is correct, yes.

DEPUTY SPEAKER GODFREY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. And I think I heard the good gentleman mention in lines 37 to 53 when we're looking at the various levels of sizes of communities that would be eligible, that there were two communities that would be chosen, would be selected without regard to population, I believe the reference was 25,000 or fewer, but you know, a community of 10,000 folks or so, would or not would qualify potentially for this? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker, that is correct.

Through the pilot program the Commissioner will have an option to have two municipalities regardless of population.

DEPUTY SPEAKER GODFREY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. I do thank the honorable Chairman of the Commerce Committee for bringing this Amendment out and I'm very pleased to support this.

Several folks that represent northeast communities learned this morning that one of our brownfields sites suffered a collapsed roof and it's a facility that's been in disrepair, disuse for nearly 20 years. And if we had had something on our books at some point, perhaps we would have been able to save this facility and get it back on the rolls, so I'm pleased to support this Amendment today.

Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. Through you, Mr. Speaker, if I can ask the proponent of the Amendment.

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DEPUTY SPEAKER GODFREY:

Please proceed.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. Could you tell us, or have an estimate in the state how many such brownfields do you think are there? Any idea at all? Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. I know probably for a fact that in the greater Waterbury area alone there's over 1,000 brownfields, so I would think we're probably, just off the top of my head into 50,000 or better contaminated sites throughout the entire State of Connecticut along all population line for a municipality. Through you.

DEPUTY SPEAKER GODFREY:

Representative Srinivasan. Thank you, Mr. Speaker. Through you, Mr. Speaker, in the selection process that we have in the pilot program, whether it be five or six municipalities that we choose, is there a protocol for this 50,000 sites that could apply and what would go into the selection, because obviously everybody wants their site to be chosen and for the remedy to occur.

So could you just tell me about that?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker. Certainly the competitive process of the program, which is now not a pilot but an existing program, there will be a competitive nature to it, but also within the guidelines of specific breakout of population, which covers the lowest of population and in fact the good Representative talked about 25,000.

I'll look through the document. I believe that less than 25,000 are also incorporated into that breakout, plus the two additional, plus the ABC Program. It should be noted, through you, Mr. Speaker, that the Commissioner will be allowed to do 32 projects a year.

So we have two bites at the apple. If you are a municipality that needs to have a clean up, you have the pilot program, which is now a full grant program, and then you have the ABC Program, which will allow 32 projects a year. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Through you, Mr. Speaker, if a particular site would like this project to be taken up, but because of obviously limitation of funds and how much we can take up a year, if that site cannot be remedied that particular year, do you anticipate, or are we concerned here that we may have some legal ramifications because certain sites were not chosen and other sites were chosen. Thank you, Mr. Speaker.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker, and through you, maybe just a clarification for me because I could see two questions in there.

So if, through you, Mr. Speaker, if you were to apply for a remediation project and you were to be accepted, is the good Representative saying is there a timeframe that you would need to have that project complete?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Hank you, Mr. Speaker. I'm sorry if I was not clear in my question. I apologize for that.

No, what I meant was, that if I apply and I am not considered and not given the opportunity for my site to be, to go through this, would you, or could we anticipate somebody then saying, how come we were not chosen and in what criteria was I turned down?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. The Commissioner will have six projects per quarter. If you were not so fortunate enough to be part of that you would also then again have an ability to be able to apply for one of the 32 other projects per year, plus the two discretionary.

So, you know, if you did not, through you, Mr. Speaker, if you weren't able to achieve that under the first round, certainly six per quarter would allow you then to reapply for another quarter, up to four quarters in one year, up to six projects per quarter, plus the 32.

So I would anticipate, and that certainly is our hope, that you would be able to, if the project warranted it under the Commissioner's discretion, then I'm sure that you would be able to get the funding proving the project to be

viable, both to the community for health concerns, and for job creation and revenue. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Through you, Mr. Speaker, thank you very much to the kind Representative for his answers.

Thank you, Mr. Speaker. Thank you.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Representative Shaban.

REP. SHABAN (135th):

Thank you, Mr. Speaker. Through you, a couple of questions to the proponent of the Amendment, please.

DEPUTY SPEAKER GODFREY:

Please proceed, sir.

REP. SHABAN (135th):

Thank you, Mr. Speaker. A couple, two questions. At the outset I want to voice my support of this Bill and I intend to support it, but I wanted to tease a couple of issues out through some questions.

Section 1c talks about grants to untreated brownfields, or I think that's the way I'm reading it, so through you, Mr. Speaker, my question is that if there's a brownfield that exists in the State of Connecticut that has

already started remediation, for lack of a better term, without shovels actually hitting the ground, would that brownfield be entitled to the grant?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. Just I guess as a follow up question to that question, would that be, through you, Mr. Speaker, an application that has been put forward through the DECD or would that be a project that predated legislation that had the programs available?

DEPUTY SPEAKER GODFREY:

Representative Shaban.

REP. SHABAN (135th):

Thank you, Mr. Speaker. My thought was something that predated, a previous brownfield attempt.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, and through you, Mr. Speaker, to the Representative, yes. That program or process that was ongoing could be applied for under several programs that

exist now, and would have to fall under their requirements and conditions of the programs that are in existence and under law right now.

DEPUTY SPEAKER GODFREY:

Representative Shaban.

REP. SHABAN (135th):

I thank the gentleman for his response.

Second question, Section 5, I think it's lines 236 and onwards, speak about the development of new water quality standards in connection with this act, or this Bill.

Through you, Mr. Speaker, my question is, would the development of those water quality standards, because I think they speak to surface water and ground water, would those standards be isolated to the brownfield part, be isolated to brownfield remediation, or are those standards anticipated to be broader, have broader application?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, I'm sorry, Mr. Speaker. Through you, it is through intent of what we're doing, it is our intent to have that limited to the project and scope that either is

applied for or is being investigated for the remediation under the program. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shaban.

REP. SHABAN (135th):

All right. Thank you, Mr. Speaker. I thank the gentleman for his answers. I support the Bill. I support the Bill as amended and I urge my colleagues to do the same.

I think this is some of the more important work we're doing here and I appreciate the time. Thank you.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Will you remark further on House Amendment Schedule "A"? Representative Camillo.

REP. CAMILLO (151st):

Thank you, Mr. Speaker, sorry. A few questions, through you.

DEPUTY SPEAKER GODFREY:

Please proceed.

REP. CAMILLO (151st):

To the Commerce Chairman, Section 17, which you referenced already allows the Commissioner to establish within certain, within available appropriations, a remediation and revitalization program that offers certain

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liability protections for program participants, and you had mentioned that it's now up to 32 properties.

First question is, how much would that cost?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. We actually have pared down that fiscal note from previous renditions of the Bill, but we have analysis that states there could be an expense of roughly \$63,736 potentially for reallocated funds. So these would not be new funds, through you, Mr. Speaker. They would be reallocated sources within the Department that are potentially needed for environmental analysis position through DEP.

DEPUTY SPEAKER GODFREY:

Representative Camillo.

REP. CAMILLO (151st):

Thank you, Mr. Speaker. Second question on Section 17, and thank you for that answer.

So what is the benefit of this program?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you. Actually, Mr. Speaker, and thank you Representative for that. This is probably one of the more important sections of the Bill, and the one that was probably the most contentious section when we had discussions through CBIA who also, I think I neglected in the first part of my comments, was very integral in this Bill as one of the placeholders through DEP.

Because this establishes new liability protection under the OBRD and establishes a structure by which within available appropriations, we're able to go out and effect program change and remediate sites.

This is a reallocation of funding that we're going to do in establishing the OBRD within DECD in conjunction with DEP and creates that protection of liability that all developers are looking for, all building associations would want, and which we would want as a Legislature in protecting the environment.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Camillo.

REP. CAMILLO (151st):

Thank you, Mr. Speaker and thank you to the Chairman for that answer.

A question on retroactivity. If a private owner or a municipality, say, had purchased a property ten years ago and it turns out that property was contaminated, would they be eligible to look to this Bill for some relief?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker, there actually could be twofold to that.

Yes, they would be eligible to be able to take advantage of the programs.

And number two, there would be protection within the Bill if that contamination was not by their fault and they purchased that property and did not result in contamination, this Bill would then protect that entity for development under the new programs and also protect their liability, both in the past and into the future.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Camillo.

REP. CAMILLO (151st):

Thank you, Mr. Speaker. And thank you to the Chairman for that answer.

Mr. Speaker, I think this is a really good Bill. It's one of the few bills that you could ever say that has the buy in of labor, the business community and the environmental advocates, and all three of those groups are represented on the Commerce Committee.

The environmentalists like this Bill because you're not adding any more properties. You're not adding impervious surfaces. These properties already exist.

The business community, well, it's an opportunity for them. A lot of these buildings are lying fallow. They're not doing anything. So certainly it helps them in labor. Of course it provides jobs.

So very rarely will you get all three of those groups agreeing on something and it's a great Bill for that reason alone and I support it and urge adoption.

Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Representative LeGeyt.

REP. LEGEYT (17th):

Thank you, Mr. Speaker. I rise with a couple of questions to the proponent of the Bill if I may?

DEPUTY SPEAKER GODFREY:

Proceed, sir.

REP. LEGEYT (17th):

My concern is about the size and location of some of the brownfields in our state. Is there a minimum size of a brownfield for it to be able to qualify under the provisions of this legislation?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, there are no minimum requirements.

DEPUTY SPEAKER GODFREY:

Representative LeGeyt.

REP. LEGEYT (17th):

Thank you. Does the good Chairman know if there are identified brownfields that encompass less than an acre of land? Through you.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, there could be.

DEPUTY SPEAKER GODFREY:

Representative LeGeyt.

REP. LEGEYT (17th):

Thank you. With regard to location, if a, was there any discussion in the workup that resulted in this legislation regarding potential issue of brownfields existing near the borders of our state and perhaps extending into an adjacent state and that discussion might have included questions about whether the cause of the brownfields was, occurred in Connecticut or in adjacent state, and if there was spreading and leaching involved either into another state or from the other state.

Is there any concern about that in this legislation, or was there any discussion about that issue as the Bill was put together? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker, to the Representative. Certainly what we do here today is obviously, we can only control what our Connecticut laws dictate and state.

However, a situation that existed prior to a purchase of a property, you would have title that would need to be covered both in the State of Connecticut and say in the State of Massachusetts.

Under that, there would be certain environmental conditions and tests that would have to be done on the property.

It would certainly be my hope that at that time if there were a problem for that person purchasing that property, he would be covered under liability for the property that he purchases.

However, he would be subject to law for the state of which the remaining parcel would be placed into.

Now, liability leaching from one parcel of land to another within the State of Connecticut, that individual would not have liability to the other adjacent properties within the State of Connecticut under this Bill. They would be protected as long as that contamination was not created by the individual that purchased or owned the property. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative LeGeyt.

REP. LEGEYT (17th):

Thank you, Mr. Speaker. I appreciate that answer and just to extend the conversation a bit further.

Was there any discussion or consideration of coordinating this legislation with brownfield legislation that already exists in adjacent states?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. There has been discussion through, and many people on the working group sit on national brownfield remediation and development projects and are part of that.

So the discussion of what other states are doing and what we're doing has often been brought up in the working group sessions and through the Commerce Committee and what we do in vetting the Bill through that committee process.

So, I would certainly believe, and I can stand here and say that many of what we do within this Bill is not only groundbreaking but it also is, adds a consensus from what other states may have enacted or may do.

So we worked in concert both nationally and northeast sections of the nation in crafting groundbreaking legislation that we think will be a model for other states to duplicate. Through you.

DEPUTY SPEAKER GODFREY:

Representative LeGeyt.

REP. LEGEYT (17th):

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Thank you very much, Mr. Speaker. I appreciate that. I am in strong support of this Bill, and quite frankly, would share that there's a serious brownfield issue in one of the towns in my district, and I'm hopeful that this legislation will allow the remediation of that troubled parcel to proceed and head toward improvement, and I'm glad to be able to vote for this Bill today.

Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Will you remark further on House Amendment Schedule "A"? Will you remark further on House Amendment Schedule "A"?

If not, let me try your minds. All those in favor signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, Nay. The Ayes have it. The Amendment is adopted.

Will you remark further on the Bill as amended?

Representative Mushinsky.

REP. MUSHINSKY (85th):

Thank you, Mr. Speaker. Through you, two questions for the proponent of the Bill as amended?

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DEPUTY SPEAKER GODFREY:

Please proceed, madam.

REP. MUSHINSKY (85th):

Thank you. Through you, I wish to ask the Chairman about Section 19 and 20 that we just amended.

Is there a reason why we are protecting only large municipalities over 90,000 people from liability to the state for the cost of pollution or hazardous waste? What would be the case if my town of 45,000 were to apply? Are we not exempt from this? Are we not protected from this liability? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. Certainly in Sections 19 and 20 there was a specific entity and project that was thought of that was in a hazardous area.

But also it should be noted that in the body of the Bill there is language for Commissioner discretion to be able to take into consideration viable remediation projects that may come up through the course of the biennium.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, not sure if that leaves out the small municipalities or not, or if it's just ultra clear that the large ones are protected.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. I think it's important to note here again that, and the good Representative makes a good point that I would like to re-clarify again.

That through the body of the Bill, this Bill does not specifically concentrate in its entire language, just specifically large municipalities.

It's our intent, it's our legislative intent, it's certainly our will, to address problems that exist from 10,000 population up to 140 in population, so there is a mechanism within the Bill that will allow for both liability and remediation to cover the gamut of all the municipalities that would have brownfields in the State of Connecticut.

DEPUTY SPEAKER GODFREY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Thank you, Mr. Speaker. Maybe what that means is that this will, the projects will begin with the larger municipalities and then as years go by, perhaps the smaller ones will come in and decide they need to seek protection from liability as well, although it's not here yet.

In Section 5 there's a discussion of reclassification of water quality standards. Now, how will this process make consistent water quality standards with the state, the existing state and federal water quality standards?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, I'm sorry, Mr. Speaker. The Section that the good Representative was questioning, or the line in the Bill that was questioning about the water standards?

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, this is Section 5. I'm just looking for reassurance as I consider this Bill. There's a discussion of reclassification of the water quality standards, so something that may have been described as dirty before, perhaps the standard will now change as a result of this process in this legislation.

How will we reconcile these changes with existing state and federal water quality standards?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker, and the good Representative I'm sure is concerned that we may be lowering those standards.

There is no intent within this Bill to lower any standards that currently exist. We are looking at a brownfields site to clean up to be within the new configured brownfield remediation and development standards that would not be in any less detrimental to water quality than existing legislation that now is in place.

DEPUTY SPEAKER GODFREY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Thank you, Mr. Speaker. And one other question, and I'm not sure which section it is in, but I'm just seeking reassurance from the Chairman.

For the first time ever, as far as I know, we are authorizing automatic approvals if something doesn't happen

by a certain date. I have never seen this before. It causes me some concern.

What assurances can you give me that environmental protection will still protect the public if a deadline has gone past and there has not yet been a response from an overworked and understaffed Department?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker, and thank you to the Representative for asking that, because that is very, very important.

In consultation with DEP we have said, and discussion with the Commissioner, that we need to move projects forward and that's part of what we're doing here today.

We can't have projects languish for years and years and years, but we cannot forsake the quality of what we do in protecting the environment and doing a project.

So the Commissioner will have discretion if we do fall outside that parameter of time, if an application is in process and they are doing everything they can to move that project forward, the Commissioner in essence, quote, unquote, doesn't necessarily need to put the hammer down on

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that project, that they can review that and continue the process and extend those days beyond the days listed in the Bill under Commissioner discretion.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, thank you for the reassurances from the Chairman. I will support the Bill. I hope I'm making the right decision. I guess we can revisit this if it doesn't work.

But I will trust what the Chairman's acknowledgements that the work has been done to make this a better Bill and hopefully this will work out and still protect the public health as well as the economic development of the State of Connecticut. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, madam. Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker. I just wanted to pick up on a couple of questions that Representative Mushinsky asked to the Chairman if I could, through you.

DEPUTY SPEAKER GODFREY:

Please proceed.

REP. MINER (66th):

Thank you, Mr. Speaker. Mr. Speaker, I just wanted to get to the issue of liability again, and my understanding in the Bill is that there's a threshold that relates to population. I think I'm correct. Is that correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, in lines 37 through 45 it outlines in one of the programs, the specification of population. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Miner.

REP. MINER (66th):

And if the gentleman could, for those communities who do not reach that threshold, how then do they gain the same protection under the Bill? Through you.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, I believe that we, though you, would have all the municipalities covered, one of which through in line 42 shall have a population of less

than 50,000, one of which shall have a population of more than 50,000 but less than 100,000 and two of which shall have populations of more than 100,000 and two of which shall be under the discretion of the Commissioner.

So I would think through you, Mr. Speaker, that we could cover the entire state.

DEPUTY SPEAKER GODFREY:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker. And with regard to the indemnification that was being discussed earlier, my understanding was that there's a downside limit of population, which seemed to be higher than 10,000.

Is that correct? Through you.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER GODFREY:

Representative Miner.

REP. MINER (66th):

And for those municipalities whose total population exists below 10,000 yet have significant parcels in need of

remediation, what is it under this Bill that provides them any protection? Through you.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. That would be the section, I believe it's 9, where we talk about abandoned brownfield clean up program. Under that program, through you, Mr. Speaker, we'd be able to move projects forward 32 per year.

So if you were not able to obtain under one specific program, you certainly would have the availability to apply as a municipality for 32 projects per year under a program that's incorporated into the body of this language.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker. And so for those smaller communities who nonetheless have kind of been saddled with these pieces of real estate, not that they currently own them, but they know that they exist, they know that they're an environmental problem. People are no longer paying taxes and so on.

So to the extent that we're setting about in this Bill a process to help larger municipalities with greater populations, there is an avenue for smaller communities let's say like the Town of Warren, who may actually have a small mill that is no longer function as a mill because we no longer do that anymore. Many of these were located next to small brooks and rivers, but this does provide them an opportunity similar to what exists for the larger populated communities? Through you.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker. The answer to that is a resounding yes, and also we did work in protections in last year's brownfield bill specifically targeting those mill towns next to a river that may have had a factory at some point back in the 1800s. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker, and I thank the gentleman for his clarification.

DEPUTY SPEAKER GODFREY:

Thank you, sir. The gentleman from Stratford,
Representative Larry Miller.

REP. MILLER (122nd):

Thank you, Mr. Speaker. A couple of questions to the
proponent, through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Please proceed, sir.

REP. MILLER (122nd):

We have a couple of brownfields that are, well, the
companies that own them are in bankruptcy, and so they're
only paper, their name is in paper only. There's no
finances to back up anything at all.

So there's some transfer fees and some application
fees. How would they go around bypassing the transfer fee
if there's no money by the paper company that owns it?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, through you, Mr. Speaker, there's specific
language in the Bill, and I might have to take a moment to
find it that protects that property that could be under
bankruptcy and held in ownership by an entity, a not-for-
profit entity, so to speak that would want to develop that.

So there's protections in here on a bankrupt property that would potentially have liability and then have to get remediated. Through you, Mr. Speaker.

REP. MILLER (122nd):

And through you, Mr. Speaker, we have the old Army engine plant in Stratford is something like 80 to 90 acres of contaminated property owned by the federal government.

Is there any maximum that the state would pay to clean up a brownfield or provide funds for, or a minimum that they provide funds for? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, that would be property that's in possession of the state and federal government that is a brownfield site. Is that the question?

Through you, Mr. Speaker.

REP. MILLER (122nd):

Through you, Mr. Speaker, the property is owned by the federal government, not by anybody else.

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Yes, so through you, Mr. Speaker, certainly that could qualify if the municipality where that property is located would help initiate that, not only through state, but the federal government. There are both programs on the federal side and on the state side that would have to be followed in order to move the project forward.

DEPUTY SPEAKER GODFREY:

Representative Miller.

REP. MILLER (122nd):

And through you, Mr. Speaker, is there a maximum amount of money the state would put up for any grants for clean ups?

DEPUTY SPEAKER GODFREY:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, there is no minimum or maximum.

DEPUTY SPEAKER GODFREY:

Representative Miller.

REP. MILLER (122nd):

Thank you for your answers, and thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Will you remark further on the Bill as amended? Will you remark further on the Bill as amended?

If not, staff and guests please come to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call.
Members to the Chamber.

The House is voting by Roll Call. Members to the Chamber, please.

DEPUTY SPEAKER GODFREY:

Have all the Members voted? Have all the Members voted? If so, the machine will be locked. The Clerk will take a tally and the Clerk will announce the tally.

THE CLERK:

House Bill 6526 as amended by House "A".

Total Number Voting 146

Necessary for Passage 74

Those voting Yea 146

Those voting Nay 0

Those absent and not voting 5

DEPUTY SPEAKER GODFREY:

The Bill as amended is passed.

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2011

VOL. 54
PART 21
6546-6914

mhr/cd/gbr
SENATE

501
June 7, 2011

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Also, calendar page 16, Calendar 532, House
Bill Number 6338.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Moving to calendar page 17, where we have
several items. The first: Calendar 533, House Bill
Number 6325.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

mhr/cd/gbr
SENATE

520
June 7, 2011

Mr. Clerk.

THE CLERK:

Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CLERK:

Madam President, the items placed..

THE CHAIR:

I would ask the Chamber to be quiet please so we can hear the call of the Calendar for the Consent Calendar.

Thank you.

Please proceed, Mr. Clerk

THE CLERK:

Madam President, the items placed on the first Consent Calendar begin on calendar page 5, Calendar 336, House Bill 5697.

Calendar page 7, Calendar 421, Substitute for House Bill 6126.

Calendar page 8, Calendar 449, Senate Bill 1149.

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Calendar page 10, Calendar 470, Substitute for
House Bill 5340. Calendar 474, Substitute for House
Bill 6274. Calendar 476, House Bill 6635.

Calendar page 12, Calendar 499, Substitute for
House Bill 6638. Calendar 500, House Bill 6614.
Calendar 508, House Bill 6222.

Calendar page 13, Calendar 511, House Bill
6356. Calendar 512, Substitute for House Bill 6422.
Calendar 514, House Bill 6590. Calendar 515, House
Bill 6221. Calendar 516, House Bill 6455.

Calendar page 14, Calendar 517, House Bill
6350. Calendar 519, House Bill 5437. Calendar 522,
House Bill 6303.

Calendar page 15, Calendar 523, Substitute for
House Bill 6499. Calendar 524, House Bill 6490.
Calendar 525, House Bill 5780. Calendar 526, House
Bill 6513. Calendar 527, Substitute for House Bill
6532.

Calendar page 16, Calendar 528, House Bill
6561. Calendar 529, Substitute for House Bill 6312.
Calendar 530, Substitute for House Bill 5032.
Calendar 532, House Bill 6338.

Calendar page 17, Calendar 533, Substitute for
House Bill 6325. Calendar 534, House Bill 6352.

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SENATE

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Calendar 536, House Bill 5300. Calendar 537, House
Bill 5482.

calendar page 18, Calendar 543, House Bill 6508.

Calendar 544, House Bill 6412. Calendar 546,

Substitute for House Bill 6538. Calendar 547,

Substitute for House Bill 6440. Calendar 548,

Substitute for House Bill 6471.

Calendar page 19, Calendar 550, Substitute for
House Bill 5802. Calendar 551, House Bill 6433.

Calendar 552, House Bill 6413. Calendar 553,

Substitute for House Bill 6227.

Calendar page 20, Calendar 554, Substitute for
House Bill 5415. Calendar 557, Substitute for House
Bill 6318. Calendar 558, Substitute for House Bill
6565.

Calendar page 21, Calendar 559, Substitute for
House Bill 6636.

Calendar page 22, Calendar 563, Substitute for
House Bill 6600. Calendar 564, Substitute for House
Bill 6598. Calendar 566, House Bill 5585.

Calendar page 23, Calendar 568, Substitute for
House Bill 6103. Calendar 570, Substitute for House
Bill 6336. Calendar 573, Substitute for House Bill
6434.

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Calendar page 24, Calendar 577, Substitute for
House Bill 5795.

Calendar page 25, Calendar 581, House Bill
6354.

Calendar page 26, Calendar 596, Substitute for
House Bill 6282. Calendar 598, Substitute for House
Bill 6629.

Calendar page 27, Calendar 600, House Bill
6314. Calendar 601, Substitute for House Bill 6529.
Calendar 602, Substitute for House Bill 6438.
Calendar 604, Substitute for House Bill 6639.

Calendar page 28, Calendar 605, Substitute for
House Bill 6526. Calendar 608, House Bill 6284.

Calendar page 30, Calendar number 615,
Substitute for House Bill 6485. Calendar 616,
Substitute for House Bill 6498.

Calendar page 31, Calendar 619, Substitute for
House Bill 6634. Calendar 627, Substitute for House
Bill 6596.

Calendar page 32, Calendar 629, House Bill
5634. Calendar 630, Substitute for House Bill 6631.
Calendar 631, Substitute for House Bill 6357.
Calendar 632, House Bill 6642.

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SENATE

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June 7, 2011

Calendar page 33, Calendar 634, Substitute for
House Bill 5431. Calendar 636, Substitute for
House, correction, House Bill 6100.

Page 34, Calendar 638, Substitute for House
Bill 6525.

Calendar page 48, Calendar 399, Substitute for
Senate Bill 1043.

Calendar page 49, Calendar 409, Substitute for
House Bill 6233. Calendar 412, House Bill 5178.
Calendar 422, Substitute for House Bill 6448.

Calendar page 52, Calendar 521, Substitute for
House Bill 6113.

Madam President, that completes the item placed
on the first Consent Calendar.

THE CHAIR:

Thank you, sir.

We call for another roll call vote. And the
machine will be open for Consent Calendar number 1.

THE CLERK:

The Senate is now voting by roll on the Consent
Calendar. Will all Senators please return to the
Chamber. The Senate is now voting by roll on the
Consent Calendar, will all Senators please return to
the Chamber.

mhr/cd/gbr
SENATE

525
June 7, 2011

Senator Cassano, would you vote, please, sir.

Thank you.

Well, all members have voted. All members have voted. The machine will be closed, and Mr. Clerk, will you call the tally?

THE CLERK:

Motion is on option Consent Calendar Number 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 1 has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

We might stand at ease for just a moment as we prepare the next item...

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)