



# House of Representatives

## File No. 671

General Assembly

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February Session, 2004 (Reprint of File No. 351)

Substitute House Bill No. 5611  
As Amended by House  
Amendment Schedule "A"

Approved by the Legislative Commissioner  
April 26, 2004

### **AN ACT CONCERNING NOTIFICATION OF CONTAMINATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-6u of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) For the purposes of this section:

4 (1) "Commissioner" means the Commissioner of Environmental  
5 Protection, or his designee;

6 (2) "Parcel" means a piece, tract or lot of land, together with  
7 buildings and other improvements situated thereon, a legal description  
8 of which piece, parcel, tract or lot is contained in a deed or other  
9 instrument of conveyance and which piece, tract or lot is not the  
10 subject of an order or consent order of the commissioner which  
11 involves requirements for investigation or reporting regarding  
12 environmental contamination;

13 (3) "Person" means person, as defined in section 22a-2;

14 (4) "Pollution" means pollution, as defined in section 22a-423;

15 (5) "Release" means any discharge, uncontrolled loss, seepage,  
16 filtration, leakage, injection, escape, dumping, pumping, pouring,  
17 emitting, emptying or disposal of oil or petroleum or chemical liquids  
18 or solids, liquid or gaseous products or hazardous wastes;

19 (6) "Residential activity" means any activity related to (A) a  
20 residence or dwelling, including, but not limited to, a house,  
21 apartment, or condominium, or (B) a school, hospital, day care center,  
22 playground or outdoor recreational area;

23 (7) "Substance" means an element, compound or material which,  
24 when added to air, water, soil or sediment, may alter the physical,  
25 chemical, biological or other characteristics of such air, water, soil or  
26 sediment;

27 (8) "Upgradient direction" means in the direction of an increase in  
28 hydraulic head; and

29 (9) "Technical environmental professional" means an individual,  
30 including, but not limited to, an environmental professional licensed  
31 pursuant to section 22a-133v, as amended, who collects soil, water,  
32 vapor or air samples for purposes of investigating and remediating  
33 sources of pollution to soil or waters of the state and who may be  
34 directly employed by, or retained as a consultant by, a public or  
35 private employer.

36 (b) (1) If a technical environmental professional determines in the  
37 course of investigating or remediating pollution after October 1, 1998,  
38 which pollution is on or emanating from a parcel, that such pollution is  
39 causing or has caused contamination of a public or private drinking  
40 water well with a substance for which the Commissioner of  
41 Environmental Protection has established a ground water protection  
42 criterion in regulations adopted pursuant to section 22a-133k at a  
43 concentration above the ground water protection criterion for such  
44 substance, such professional shall notify his client and the owner of the

45 parcel, if the owner can reasonably be identified, not later than twenty-  
46 four hours after determining that the contamination exists. If, seven  
47 days after such determination, the owner of the subject parcel has not  
48 notified the commissioner, the client of the professional shall notify the  
49 commissioner. If the owner notifies the commissioner, the owner shall  
50 provide documentation to the client of the professional which verifies  
51 that the owner has notified the commissioner.

52 (2) The owner of a parcel on which exists a source of contamination  
53 to soil or waters of the state shall notify the commissioner if such  
54 owner becomes aware that such pollution is causing or has caused  
55 contamination of a private or public drinking water well with a  
56 substance for which the commissioner has established a ground water  
57 protection criterion in regulations adopted pursuant to section 22a-  
58 133k at a concentration at or above the ground water protection  
59 criterion for such substance. Notice under this section shall be given to  
60 the commissioner (A) orally, not later than one business day after such  
61 person becomes aware that the contamination exists, and (B) in  
62 writing, not later than five days after such oral notice.

63 (c) (1) If a technical environmental professional determines in the  
64 course of investigating or remediating pollution after October 1, 1998,  
65 which pollution is on or emanating from a parcel, that such pollution is  
66 causing or has caused contamination of a public or private drinking  
67 water well with: (A) A substance for which the commissioner has  
68 established a ground water protection criterion in regulations adopted  
69 pursuant to section 22a-133k at a concentration less than such ground  
70 water protection criterion for such substance; or (B) any other  
71 substance resulting from the release which is the subject of the  
72 investigation or remediation, such professional shall notify his client  
73 and the owner of the parcel, if the owner can reasonably be identified,  
74 not later than seven days after determining that the contamination  
75 exists.

76 (2) The owner of a parcel on which exists a source of pollution to  
77 soil or the waters of the state shall notify the commissioner if such

78 owner becomes aware that such pollution is causing or has caused  
79 contamination of a private or public drinking water well with: (A) A  
80 substance for which the commissioner has established a ground water  
81 protection criterion in regulations adopted pursuant to section 22a-  
82 133k at a concentration less than such ground water protection  
83 criterion for such substance; or (B) any other substance which was part  
84 of the release which caused such pollution. Notice under this  
85 subdivision shall be given in writing not later than seven days after the  
86 time such person becomes aware that the contamination exists.

87 (d) (1) If a technical environmental professional determines in the  
88 course of investigating or remediating pollution after October 1, 1998,  
89 which pollution is on or emanating from a parcel, that such pollution  
90 of soil within two feet of the ground surface contains a substance,  
91 except for total petroleum hydrocarbon, at a concentration at or above  
92 thirty times the industrial/commercial direct exposure criterion for  
93 such substance if the parcel is in industrial or commercial use, or the  
94 residential direct exposure criterion if the parcel is in residential use,  
95 which criteria are specified in regulations adopted pursuant to section  
96 22a-133k, such professional shall notify his client and the owner of the  
97 parcel, if such owner is reasonably identified, not later than seven days  
98 after determining that the contamination exists, except that notice will  
99 not be required if the land-use of such parcel is not residential activity  
100 and the substance is one of the following: Acetone, 2-butanone,  
101 chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,1-  
102 dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene,  
103 ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene,  
104 toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene,  
105 butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl  
106 phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene,  
107 phenanthrene, phenol and pyrene.

108 (2) The owner of the subject parcel, shall notify the commissioner in  
109 writing not later than ninety days after the time such owner becomes  
110 aware that the contamination exists except that notification will not be  
111 required if not later than ninety days: (A) The contaminated soil is

112 remediated in accordance with regulations adopted pursuant to  
113 section 22a-133k; (B) the contaminated soil is inaccessible soil as that  
114 term is defined in regulations adopted pursuant to section 22a-133k; or  
115 (C) the contaminated soil which exceeds thirty times such criterion is  
116 treated or disposed of in accordance with all applicable laws and  
117 regulations.

118 (e) (1) If a technical environmental professional determines in the  
119 course of investigating or remediating pollution after October 1, 1998,  
120 which pollution is on or emanating from a parcel, that such pollution is  
121 causing or has caused ground water within fifteen feet beneath an  
122 industrial or commercial building to be contaminated with a volatile  
123 organic substance at a concentration at or above thirty times the  
124 industrial/commercial volatilization criterion for ground water for  
125 such substance or, if such contamination is beneath a residential  
126 building, at a concentration at or above thirty times the residential  
127 volatilization criterion, which criteria are specified in regulations  
128 adopted pursuant to section 22a-133k, such professional shall, not later  
129 than seven days after determining that the contamination exists, notify  
130 his client and the owner of the subject parcel, if such owner can  
131 reasonably be identified.

132 (2) The owner of such parcel shall notify the commissioner in  
133 writing not later than thirty days after such person becomes aware that  
134 the contamination exists except that notification is not required if: (A)  
135 The concentration of such substance in the soil vapor beneath such  
136 building is at or below thirty times the soil vapor volatilization  
137 criterion, appropriate for the land-use for the parcel, for such  
138 substance as specified in regulations adopted pursuant to section 22a-  
139 133k; (B) the concentration of such substance in groundwater is below  
140 thirty times a site-specific volatilization criterion for ground water for  
141 such substance calculated in accordance with regulations adopted  
142 pursuant to section 22a-133k; (C) ground water volatilization criterion,  
143 appropriate for the land-use of the parcel, for such substance specified  
144 in regulations adopted pursuant to section 22a-133k is fifty thousand  
145 parts per billion; or (D) not later than thirty days after the time such

146 person becomes aware that the contamination exists, an indoor air  
147 monitoring program is initiated in accordance with subdivision (3) of  
148 this subsection.

149 (3) An indoor air quality monitoring program for the purposes of  
150 this subsection shall consist of sampling of indoor air once every two  
151 months for a duration of not less than one year, sampling of indoor air  
152 immediately overlying such contaminated ground water, and analysis  
153 of air samples for any volatile organic substance which exceeded thirty  
154 times the volatilization criterion as specified in or calculated in  
155 accordance with regulations adopted pursuant to section 22a-133k. The  
156 owner of the subject parcel shall notify the commissioner if: (A) The  
157 concentration in any indoor air sample exceeds thirty times the target  
158 indoor air concentration, appropriate for the land-use of the parcel, as  
159 specified in regulations adopted pursuant to section 22a-133k; or (B)  
160 the indoor air monitoring program is not conducted in accordance  
161 with this subdivision. Notice shall be given to the commissioner in  
162 writing not later than seven days after the time such person becomes  
163 aware that such a condition exists.

164 (f) (1) If a technical environmental professional determines in the  
165 course of investigating or remediating pollution after October 1, 1998,  
166 which pollution is on or emanating from a parcel, that such pollution is  
167 causing or has caused contamination of ground water which is  
168 discharging to surface water and such ground water is contaminated  
169 with a substance for which an acute aquatic life criterion is listed in  
170 appendix D of the most recent water quality standards adopted by the  
171 commissioner at a concentration which exceeds ten times (A) such  
172 criterion for such substance in said appendix D, or (B) such criterion  
173 for such substance times a site specific dilution factor calculated in  
174 accordance with regulations adopted pursuant to section 22a-133k,  
175 such professional shall notify his client and the owner of such parcel, if  
176 such owner can reasonably be identified, not later than seven days  
177 after determining that the contamination exists.

178 (2) The owner of such parcel shall notify the commissioner in

179 writing not later than seven days after the time such person becomes  
180 aware that the contamination exists except that notice shall not be  
181 required if such person knows that the polluted discharge at that  
182 concentration has been reported to the commissioner in writing within  
183 the preceding year.

184 (g) (1) If a technical environmental professional determines in the  
185 course of investigating or remediating pollution after October 1, 1998,  
186 which pollution is on or emanating from a parcel, that such pollution is  
187 causing or has caused contamination of ground water within five  
188 hundred feet in an upgradient direction of a private or public drinking  
189 water well which ground water is contaminated with a substance  
190 resulting from a release for which the commissioner has established a  
191 ground water protection criterion in regulations adopted pursuant to  
192 section 22a-133k at a concentration at or above the ground water  
193 protection criterion for such substance, such technical environmental  
194 professional shall notify his client and the owner of the subject parcel,  
195 if such owner can reasonably be identified, not later than seven days  
196 after determining that the contamination exists.

197 (2) The owner of the subject parcel shall notify the commissioner in  
198 writing not later than seven days after the time such owner becomes  
199 aware that the contamination exists.

200 (h) (1) If a technical environmental professional determines in the  
201 course of investigating or remediating pollution after October 1, 1998,  
202 which pollution is on or emanating from a parcel, that such pollution is  
203 causing or has caused polluted vapors emanating from polluted soil,  
204 groundwater or free product which vapors are migrating into  
205 structures or utility conduits and which vapors pose an explosion  
206 hazard, such technical environmental professional shall immediately  
207 notify his client and the owner of the subject parcel, if such owner can  
208 reasonably be identified, not later than twenty-four hours after  
209 determining that the vapor condition exists. If the owner of such parcel  
210 fails to notify the commissioner in accordance with this subsection,  
211 such client shall notify the commissioner. If the owner notifies the

212 commissioner, the owner shall provide documentation to the client of  
213 the professional which verifies that the owner has notified the  
214 commissioner.

215 (2) The owner of such parcel shall orally notify the commissioner  
216 and the local fire department immediately and under all circumstances  
217 not later than two hours after the time a technical environmental  
218 professional notifies the owner that the vapor condition exists, and  
219 shall notify the commissioner in writing not later than five days after  
220 such oral notice.

221 (i) All notices, oral or written, provided under this section shall  
222 include the nature of the contamination or condition, the address of the  
223 property where the contamination or condition is located, the location  
224 of such contamination or condition, any property known to be affected  
225 by such contamination or condition, any steps being taken to abate,  
226 remediate or monitor such contamination or condition, and the name  
227 and address of the person making such notification. Written  
228 notification shall be clearly marked as notification required by this  
229 section and shall be either personally delivered to the Water  
230 Management Bureau of the Department of Environmental Protection  
231 or sent certified mail, return receipt requested, to the Water  
232 Management Bureau of the Department of Environmental Protection.

233 (j) The commissioner shall provide written acknowledgment of  
234 receipt of a written notice pursuant to this section not later than ten  
235 days of receipt of such notice. Such acknowledgment shall be  
236 accompanied by (1) a statement that the owner of the parcel has up to  
237 ninety days within which to submit to the commissioner a plan to  
238 remediate or abate the contamination or condition. If such plan is not  
239 submitted or is not approved by the commissioner, the commissioner  
240 shall prescribe the action to be taken, or (2) a directive as to action  
241 required to remediate or abate the contamination or condition. If a  
242 plan is submitted which details actions to be taken, or a report is  
243 submitted which details actions taken, to mitigate the contamination or  
244 conditions such that notice under this section would not be required,

245 and such plan or report is acceptable to the commissioner, the  
246 commissioner shall approve such plan or report in writing. When  
247 actions implementing an approved plan are completed, the  
248 commissioner shall issue a certificate of compliance.

249 (k) An owner who has submitted written notice pursuant to this  
250 section shall, not later than five days after the commencement of an  
251 activity by any person that increases the likelihood of human exposure  
252 to known contaminants, including, but not limited to, construction,  
253 demolition, significant soil disruption or the installation of utilities,  
254 post such notice in a conspicuous place on such property and, in the  
255 case of a place of business, in a conspicuous place inside the place of  
256 business. An owner who violates this subsection shall pay a civil  
257 penalty of one hundred dollars for each offense. Each violation shall be  
258 a separate and distinct offense and, in the case of a continuing  
259 violation, each day's continuance thereof shall be deemed to be a  
260 separate and distinct offense. The Attorney General, upon complaint of  
261 the commissioner, shall institute an action in the superior court for the  
262 judicial district of Hartford to recover such penalty.

263 (l) Not later than ten days after receipt of any written notice  
264 received under this section, the commissioner shall: (1) Forward a copy  
265 of such notice to the chief elected official of the municipality in which  
266 the subject pollution was discovered by the technical environmental  
267 professional, (2) forward a copy of such notice to the state senator and  
268 state representative representing the area in which the subject  
269 pollution was discovered by the technical environmental professional,  
270 and (3) maintain a list on the department's Internet website of all the  
271 notices received under this section.

272 [(k)] (m) Nothing in this section and no action taken by any person  
273 pursuant to this section shall affect the commissioner's authority under  
274 any other statute or regulation.

275 [(l)] (n) Nothing in this section shall excuse a person from  
276 complying with the requirements of any statute or regulation except

277 the commissioner may waive the requirements of the regulations  
278 adopted under section 22a-133k if he determines that it is necessary to  
279 ensure that timely and appropriate action is taken to mitigate or  
280 minimize any of the conditions described in subsections (b) to (h),  
281 inclusive, of this section.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Department of Environmental Protection	Environmental Quality/GF - Cost	Minimal	Minimal
Resources of the General Fund	GF Revenue	Potential	Potential

**Municipal Impact:** None

**Explanation**

It is anticipated that the notification procedures requiring the Department of Environmental Protection (DEP) to forward a copy of a contamination notice to the chief elected official where the contaminated property is located, to the state senator and representative, and to maintain a list of notices on the internet, could be handled within the routine duties of the agency personnel.

Instituting a \$100 civil penalty for each offense concerning posting of notices could increase revenue to the General Fund. The revenue would depend on the number of violations.

House "A" changed the notification procedures and eliminated a requirement that DEP contact the workers' collective bargaining representatives, eliminating the costs of the underlying bill.

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**OLR Bill Analysis**

sHB 5611 (as amended by House "A")\*

**AN ACT CONCERNING NOTIFICATION TO MUNICIPALITIES OF CONTAMINATION****SUMMARY:**

This bill requires the owner of a contaminated parcel of land, who has notified the Department of Environmental Protection (DEP) commissioner, as required by law, to post notice of contamination in a conspicuous place on the affected property and in his place of business (when one exists) no later than five days after an activity begins that increases the likelihood of human exposure to known contaminants. Activities requiring posting under the bill include construction, demolition, significant soil disruption, or utilities installation. Since October 1, 1998 the law has required an owner to inform the DEP commissioner of certain contamination on his property after being informed about it by a technical environmental professional (TEP).

The bill requires the DEP commissioner, no later than 10 days after receiving one of these notices, to forward a copy to the (1) chief elected official of the town where the contaminated property is located and (2) the state senator and representative who represent that town. It also requires him to maintain a list on its website of all contamination notices he receives.

Landowners who fail to post the notices must pay a civil penalty of \$100 for each day of noncompliance. The attorney general must sue the owner in Hartford Superior Court to recover the penalty upon complaint from the commissioner.

\*House Amendment "A" requires (1) notice to be posted when an activity that increases the likelihood of human exposure to known contaminants begins and penalties for failure to do so and (2) notification of contamination to go to the town and legislative officials.

EFFECTIVE DATE: October 1, 2004

## **BACKGROUND**

### ***Technical Environmental Professional (TEP)***

By law, a TEP is anyone, including a licensed environmental professional, who collects soil, water, vapor, or air samples to investigate and remediate pollution of the state's soil or water, and who may be directly employed or retained as a consultant by a public or private employer.

### ***Contamination***

The law requires a TEP to notify his client and the property owner, if he can be identified, within a specified period after determining, while investigating or remediating water pollution, that such pollution is causing or contaminated:

1. a public or private drinking water well,
2. ground water within 500 feet of a drinking water well,
3. soil within two feet of the surface,
4. ground water under a building,
5. ground water discharging to surface water, or
6. vapors in soil or water which pose an explosion threat.

The pollution must be on or emanating from property not subject to a DEP order to investigate or report environmental contamination.

The law also requires the owner of the contaminated property to notify DEP of the contamination once he becomes aware of it and, in some circumstances, requires the TEP's client to notify DEP if the owner does not. It specifies that neither these provisions nor any other action taken under these provisions affects the commissioner's authority under any other law.

### ***Legislative History***

On April 7, the House referred the bill (File 351) to the Judiciary Committee, which reported it favorably without changes on April 14.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute  
Yea 27    Nay 0

Judiciary Committee

Joint Favorable Report  
Yea 40    Nay 0