



Substitute House Bill No. 5440

Public Act No. 06-81

AN ACT CONCERNING THE PRESENCE OF VOLATILE ORGANIC COMPOUNDS AND NOTICE OF POLLUTING EVENTS.

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

Section 1. Subsection (d) of section 20-327b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(d) (1) The Commissioner of Consumer Protection, shall, by regulations adopted in accordance with the provisions of chapter 54, prescribe the form of the written residential disclosure report required by this section and sections 20-327c to 20-327e, inclusive. The regulations shall provide that the form include information concerning municipal assessments, including, but not limited to, sewer or water charges applicable to the property. Such information shall include: (i) Whether such assessment is in effect and the amount of the assessment; (ii) whether there is an assessment on the property that has not been paid, and if so, the amount of the unpaid assessment; and (iii) to the extent of the seller's knowledge, whether there is reason to believe that the municipality may impose an assessment in the future.

(2) Such form of the written residential disclosure report shall contain the following:

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(A) A certification by the seller in the following form:

"To the extent of the seller's knowledge as a property owner, the seller acknowledges that the information contained above is true and accurate for those areas of the property listed. In the event a real estate broker or salesperson is utilized, the seller authorizes the brokers or salespersons to provide the above information to prospective buyers, selling agents or buyers' agents.

.... (Date) (Seller)
.... (Date) (Seller)"

(B) A certification by the buyer in the following form:

"The buyer is urged to carefully inspect the property and, if desired, to have the property inspected by an expert. The buyer understands that there are areas of the property for which the seller has no knowledge and that this disclosure statement does not encompass those areas. The buyer also acknowledges that the buyer has read and received a signed copy of this statement from the seller or seller's agent.

.... (Date) (Seller)
.... (Date) (Seller)"

(C) A statement concerning the responsibility of real estate brokers in the following form:

"This report in no way relieves a real estate broker of the broker's obligation under the provisions of section 20-328-5a of the Regulations of Connecticut State Agencies to disclose any material facts. Failure to do so could result in punitive action taken against the broker, such as fines, suspension or revocation of license."

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(D) A statement that any representations made by the seller on the written residential disclosure report shall not constitute a warranty to the buyer.

(E) A statement that the written residential disclosure report is not a substitute for inspections, tests and other methods of determining the physical condition of property.

(F) Information concerning environmental matters such as lead, radon, subsurface sewage disposal, flood hazards and, if the residence is or will be served by well water, as defined in section 21a-150, the results of any water test performed for volatile organic compounds and such other topics as the Commissioner of Consumer Protection may determine would be of interest to a buyer.

(G) A statement that information concerning the residence address of a person convicted of a crime may be available from law enforcement agencies or the Department of Public Safety and that the Department of Public Safety maintains a site on the Internet listing information about the residence address of persons required to register under section 54-251, as amended, 54-252, 54-253 or 54-254, who have so registered.

Sec. 2. Section 22a-6u of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) For the purposes of this section:

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

(2) "Parcel" means a piece, tract or lot of land, together with buildings and other improvements situated thereon, a legal description of which piece, parcel, tract or lot is contained in a deed or other instrument of conveyance and which piece, tract or lot is not the

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subject of an order or consent order of the commissioner which involves requirements for investigation or reporting regarding environmental contamination;

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

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

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

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

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

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

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

(b) (1) If a technical environmental professional determines in the

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course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of a public or private drinking water well with a substance for which the Commissioner of Environmental Protection has established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration above the ground water protection criterion for such substance, such professional shall notify his client and the owner of the parcel, if the owner can reasonably be identified, not later than twenty-four hours after determining that the contamination exists. If, seven days after such determination, the owner of the subject parcel has not notified the commissioner, the client of the professional shall notify the commissioner. If the owner notifies the commissioner, the owner shall provide documentation to the client of the professional which verifies that the owner has notified the commissioner.

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

(c) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of a public or private drinking water well with: (A) A substance for which the commissioner has

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established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration less than such ground water protection criterion for such substance; or (B) any other substance resulting from the release which is the subject of the investigation or remediation, such professional shall notify his client and the owner of the parcel, if the owner can reasonably be identified, not later than seven days after determining that the contamination exists.

(2) The owner of a parcel on which exists a source of pollution to soil or the waters of the state shall notify the commissioner if such owner becomes aware that such pollution is causing or has caused contamination of a private or public drinking water well with: (A) A substance for which the commissioner has established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration less than such ground water protection criterion for such substance; or (B) any other substance which was part of the release which caused such pollution. Notice under this subdivision shall be given in writing not later than seven days after the time such person becomes aware that the contamination exists.

(d) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution of soil within two feet of the ground surface contains a substance, except for total petroleum hydrocarbon, at a concentration at or above thirty times the industrial/commercial direct exposure criterion for such substance if the parcel is in industrial or commercial use, or the residential direct exposure criterion if the parcel is in residential use, which criteria are specified in regulations adopted pursuant to section 22a-133k, such professional shall notify his client and the owner of the parcel, if such owner is reasonably identified, not later than seven days after determining that the contamination exists, except that notice will

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not be required if the land-use of such parcel is not residential activity and the substance is one of the following: Acetone, 2-butanone, chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,1-dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene, toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene, butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene, phenanthrene, phenol and pyrene.

(2) The owner of the subject parcel, shall notify the commissioner in writing not later than ninety days after the time such owner becomes aware that the contamination exists except that notification will not be required if not later than ninety days: (A) The contaminated soil is remediated in accordance with regulations adopted pursuant to section 22a-133k; (B) the contaminated soil is inaccessible soil as that term is defined in regulations adopted pursuant to section 22a-133k; or (C) the contaminated soil which exceeds thirty times such criterion is treated or disposed of in accordance with all applicable laws and regulations.

(e) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused ground water within fifteen feet beneath an industrial or commercial building to be contaminated with a volatile organic substance at a concentration at or above thirty times the industrial/commercial volatilization criterion for ground water for such substance or, if such contamination is beneath a residential building, at a concentration at or above thirty times the residential volatilization criterion, which criteria are specified in regulations adopted pursuant to section 22a-133k, such professional shall, not later than seven days after determining that the contamination exists, notify

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his client and the owner of the subject parcel, if such owner can reasonably be identified.

(2) The owner of such parcel shall notify the commissioner in writing not later than thirty days after such person becomes aware that the contamination exists except that notification is not required if: (A) The concentration of such substance in the soil vapor beneath such building is at or below thirty times the soil vapor volatilization criterion, appropriate for the land-use for the parcel, for such substance as specified in regulations adopted pursuant to section 22a-133k; (B) the concentration of such substance in groundwater is below thirty times a site-specific volatilization criterion for ground water for such substance calculated in accordance with regulations adopted pursuant to section 22a-133k; (C) ground water volatilization criterion, appropriate for the land-use of the parcel, for such substance specified in regulations adopted pursuant to section 22a-133k is fifty thousand parts per billion; or (D) not later than thirty days after the time such person becomes aware that the contamination exists, an indoor air monitoring program is initiated in accordance with subdivision (3) of this subsection.

(3) An indoor air quality monitoring program for the purposes of this subsection shall consist of sampling of indoor air once every two months for a duration of not less than one year, sampling of indoor air immediately overlying such contaminated ground water, and analysis of air samples for any volatile organic substance which exceeded thirty times the volatilization criterion as specified in or calculated in accordance with regulations adopted pursuant to section 22a-133k. The owner of the subject parcel shall notify the commissioner if: (A) The concentration in any indoor air sample exceeds thirty times the target indoor air concentration, appropriate for the land-use of the parcel, as specified in regulations adopted pursuant to section 22a-133k; or (B) the indoor air monitoring program is not conducted in accordance

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with this subdivision. Notice shall be given to the commissioner in writing not later than seven days after the time such person becomes aware that such a condition exists.

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

(2) The owner of such parcel shall notify the commissioner in writing not later than seven days after the time such person becomes aware that the contamination exists except that notice shall not be required if such person knows that the polluted discharge at that concentration has been reported to the commissioner in writing within the preceding year.

(g) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of ground water within five hundred feet in an upgradient direction of a private or public drinking water well which ground water is contaminated with a substance resulting from a release for which the commissioner has established a ground water protection criterion in regulations adopted pursuant to

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section 22a-133k at a concentration at or above the ground water protection criterion for such substance, such technical environmental professional shall notify his client and the owner of the subject parcel, if such owner can reasonably be identified, not later than seven days after determining that the contamination exists.

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

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

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

(i) In the event the commissioner orders the testing of any private

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drinking well, and such testing indicates that the water exceeds a maximum contaminant level applicable to public water supply systems for any contaminant listed in the public health code or for any contaminant listed on the state drinking water action level list established pursuant to section 22a-471, the commissioner shall require the respondent to such order to provide written notification of the results of any testing conducted pursuant to such order not later than twenty-four hours after said respondent receives such results to the following: (1) The owner of record of the property upon which any such private drinking well is located, (2) the local director of public health, (3) any person that files a request with the local director of public health to receive such notification, and (4) any other person the commissioner specifically identifies in such order. Not later than twenty-four hours after receiving such notification, such owner shall forward a copy of such notification to at least one tenant of each unit of any leased or rented dwelling unit located on such property and each lessee of such property. Not later than three days after receiving such notification, the local director of public health shall take all reasonable steps to verify that such owner forwarded the notice required pursuant to this subsection.

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

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[(j)] (k) The commissioner shall provide written acknowledgment of receipt of a written notice pursuant to this section not later than ten days of receipt of such notice. Such acknowledgment shall be accompanied by (1) a statement that the owner of the parcel has up to ninety days within which to submit to the commissioner a plan to remediate or abate the contamination or condition. If such plan is not submitted or is not approved by the commissioner, the commissioner shall prescribe the action to be taken, or (2) a directive as to action required to remediate or abate the contamination or condition. If a plan is submitted which details actions to be taken, or a report is submitted which details actions taken, to mitigate the contamination or conditions such that notice under this section would not be required, and such plan or report is acceptable to the commissioner, the commissioner shall approve such plan or report in writing. When actions implementing an approved plan are completed, the commissioner shall issue a certificate of compliance.

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

[(l)] (m) Not later than ten days after receipt of any written notice

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received under this section, the commissioner shall: (1) Forward a copy of such notice to the chief elected official of the municipality in which the subject pollution was discovered by the technical environmental professional, (2) forward a copy of such notice to the state senator and state representative representing the area in which the subject pollution was discovered by the technical environmental professional, (3) forward a copy of such notice to the Labor Commissioner where the Division of Occupational Safety and Health, within the Labor Department, has jurisdiction over the employers, employees and places of employment on the subject property, (4) forward a copy of such notice to the employee representatives who request such reports, (5) forward a copy of such notice to the federal Occupational Safety and Health Administration, and [(3)] (6) maintain a list on the department's Internet [website] web site of all the notices received under this section.

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

[(n)] (o) Nothing in this section shall excuse a person from complying with the requirements of any statute or regulation except the commissioner may waive the requirements of the regulations adopted under section 22a-133k if he determines that it is necessary to ensure that timely and appropriate action is taken to mitigate or minimize any of the conditions described in subsections (b) to (h), inclusive, of this section.

Approved May 30, 2006