



General Assembly

February Session, 2006

Raised Bill No. 5440

LCO No. 1895

01895_____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

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:

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2 repealed and the following is substituted in lieu thereof (*Effective*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

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

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

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

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

T1 (Date) (Seller)
T2 (Date) (Seller)"

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

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

T3 (Date) (Seller)
T4 (Date) (Seller)"

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

35 "This report in no way relieves a real estate broker of the broker's

36 obligation under the provisions of section 20-328-5a of the Regulations
37 of Connecticut State Agencies to disclose any material facts. Failure to
38 do so could result in punitive action taken against the broker, such as
39 fines, suspension or revocation of license."

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

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

46 (F) Information concerning environmental matters such as lead,
47 radon, subsurface sewage disposal, flood hazards and such other
48 topics as the Commissioner of Consumer Protection may determine
49 would be of interest to a buyer and, if the residence is or will be served
50 by well water, as defined in section 21a-150, the results of a soil test for
51 volatile organic compounds, by an environmental professional,
52 licensed pursuant to section 22a-133v.

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

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

62 (a) For the purposes of this section:

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

65 (2) "Parcel" means a piece, tract or lot of land, together with
66 buildings and other improvements situated thereon, a legal description
67 of which piece, parcel, tract or lot is contained in a deed or other
68 instrument of conveyance and which piece, tract or lot is not the
69 subject of an order or consent order of the commissioner which
70 involves requirements for investigation or reporting regarding
71 environmental contamination;

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

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

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

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

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

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

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

95 (b) (1) If a technical environmental professional determines in the
96 course of investigating or remediating pollution after October 1, 1998,
97 which pollution is on or emanating from a parcel, that such pollution
98 may cause, is causing or has caused contamination of a public or
99 private drinking water well with a substance for which the
100 Commissioner of Environmental Protection has established a ground
101 water protection criterion in regulations adopted pursuant to section
102 22a-133k at a concentration above the ground water protection
103 criterion for such substance, such professional shall notify his client
104 and the owner of the parcel, if the owner can reasonably be identified,
105 not later than twenty-four hours after determining that the
106 contamination exists. If, seven days after such determination, the
107 owner of the subject parcel has not notified the commissioner, the
108 client of the professional shall notify the commissioner. If the owner
109 notifies the commissioner, the owner shall provide documentation to
110 the client of the professional which verifies that the owner has notified
111 the commissioner.

112 (2) The owner of a parcel on which exists a source of contamination
113 to soil or waters of the state shall notify the commissioner if such
114 owner becomes aware that such pollution may cause, is causing or has
115 caused contamination of a private or public drinking water well with a
116 substance for which the commissioner has established a ground water
117 protection criterion in regulations adopted pursuant to section 22a-
118 133k at a concentration at or above the ground water protection
119 criterion for such substance. Notice under this section shall be given to
120 the commissioner (A) orally, not later than one business day after such
121 person becomes aware that the contamination exists, and (B) in
122 writing, not later than five days after such oral notice.

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

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

136 (2) The owner of a parcel on which exists a source of pollution to
137 soil or the waters of the state shall notify the commissioner if such
138 owner becomes aware that such pollution may cause, is causing or has
139 caused contamination of a private or public drinking water well with:
140 (A) A substance for which the commissioner has established a ground
141 water protection criterion in regulations adopted pursuant to section
142 22a-133k at a concentration less than such ground water protection
143 criterion for such substance; or (B) any other substance which was part
144 of the release which caused such pollution. Notice under this
145 subdivision shall be given in writing not later than seven days after the
146 time such person becomes aware that the contamination exists.

147 (d) (1) If a technical environmental professional determines in the
148 course of investigating or remediating pollution after October 1, 1998,
149 which pollution is on or emanating from a parcel, that such pollution
150 of soil within two feet of the ground surface contains a substance,
151 except for total petroleum hydrocarbon, at a concentration at or above
152 thirty times the industrial/commercial direct exposure criterion for
153 such substance if the parcel is in industrial or commercial use, or the
154 residential direct exposure criterion if the parcel is in residential use,
155 which criteria are specified in regulations adopted pursuant to section
156 22a-133k, such professional shall notify his client and the owner of the
157 parcel, if such owner is reasonably identified, not later than seven days
158 after determining that the contamination exists, except that notice will
159 not be required if the land-use of such parcel is not residential activity
160 and the substance is one of the following: Acetone, 2-butanone,

161 chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,1-
162 dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene,
163 ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene,
164 toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene,
165 butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl
166 phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene,
167 phenanthrene, phenol and pyrene.

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

178 (e) (1) If a technical environmental professional determines in the
179 course of investigating or remediating pollution after October 1, 1998,
180 which pollution is on or emanating from a parcel, that such pollution
181 may cause, is causing or has caused ground water within fifteen feet
182 beneath an industrial or commercial building to be contaminated with
183 a volatile organic substance at a concentration at or above thirty times
184 the industrial/commercial volatilization criterion for ground water for
185 such substance or, if such contamination is beneath a residential
186 building, at a concentration at or above thirty times the residential
187 volatilization criterion, which criteria are specified in regulations
188 adopted pursuant to section 22a-133k, such professional shall, not later
189 than seven days after determining that the contamination exists, notify
190 his client and the owner of the subject parcel, if such owner can
191 reasonably be identified.

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

193 writing not later than thirty days after such person becomes aware that
194 the contamination exists except that notification is not required if: (A)
195 The concentration of such substance in the soil vapor beneath such
196 building is at or below thirty times the soil vapor volatilization
197 criterion, appropriate for the land-use for the parcel, for such
198 substance as specified in regulations adopted pursuant to section 22a-
199 133k; (B) the concentration of such substance in groundwater is below
200 thirty times a site-specific volatilization criterion for ground water for
201 such substance calculated in accordance with regulations adopted
202 pursuant to section 22a-133k; (C) ground water volatilization criterion,
203 appropriate for the land-use of the parcel, for such substance specified
204 in regulations adopted pursuant to section 22a-133k is fifty thousand
205 parts per billion; or (D) not later than thirty days after the time such
206 person becomes aware that the contamination exists, an indoor air
207 monitoring program is initiated in accordance with subdivision (3) of
208 this subsection.

209 (3) An indoor air quality monitoring program for the purposes of
210 this subsection shall consist of sampling of indoor air once every two
211 months for a duration of not less than one year, sampling of indoor air
212 immediately overlying such contaminated ground water, and analysis
213 of air samples for any volatile organic substance which exceeded thirty
214 times the volatilization criterion as specified in or calculated in
215 accordance with regulations adopted pursuant to section 22a-133k. The
216 owner of the subject parcel shall notify the commissioner if: (A) The
217 concentration in any indoor air sample exceeds thirty times the target
218 indoor air concentration, appropriate for the land-use of the parcel, as
219 specified in regulations adopted pursuant to section 22a-133k; or (B)
220 the indoor air monitoring program is not conducted in accordance
221 with this subdivision. Notice shall be given to the commissioner in
222 writing not later than seven days after the time such person becomes
223 aware that such a condition exists.

224 (f) (1) If a technical environmental professional determines in the
225 course of investigating or remediating pollution after October 1, 1998,

226 which pollution is on or emanating from a parcel, that such pollution is
227 may cause, causing or has caused contamination of ground water
228 which is discharging to surface water and such ground water is
229 contaminated with a substance for which an acute aquatic life criterion
230 is listed in appendix D of the most recent water quality standards
231 adopted by the commissioner at a concentration which exceeds ten
232 times (A) such criterion for such substance in said appendix D, or (B)
233 such criterion for such substance times a site specific dilution factor
234 calculated in accordance with regulations adopted pursuant to section
235 22a-133k, such professional shall notify his client and the owner of
236 such parcel, if such owner can reasonably be identified, not later than
237 seven days after determining that the contamination exists.

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

244 (g) (1) If a technical environmental professional determines in the
245 course of investigating or remediating pollution after October 1, 1998,
246 which pollution is on or emanating from a parcel, that such pollution
247 may cause, is causing or has caused contamination of ground water
248 within five hundred feet in an upgradient direction of a private or
249 public drinking water well which ground water is contaminated with a
250 substance resulting from a release for which the commissioner has
251 established a ground water protection criterion in regulations adopted
252 pursuant to section 22a-133k at a concentration at or above the ground
253 water protection criterion for such substance, such technical
254 environmental professional shall notify his client and the owner of the
255 subject parcel, if such owner can reasonably be identified, not later
256 than seven days after determining that the contamination exists.

257 (2) The owner of the subject parcel shall notify the commissioner in

258 writing not later than seven days after the time such owner becomes
259 aware that the contamination exists.

260 (h) (1) If a technical environmental professional determines in the
261 course of investigating or remediating pollution after October 1, 1998,
262 which pollution is on or emanating from a parcel, that such pollution is
263 causing or has caused polluted vapors emanating from polluted soil,
264 groundwater or free product which vapors are migrating into
265 structures or utility conduits and which vapors [pose an explosion
266 hazard] may cause, is causing or has caused harm to human health,
267 such technical environmental professional shall immediately notify his
268 client and the owner of the subject parcel, if such owner can reasonably
269 be identified, not later than twenty-four hours after determining that
270 the vapor condition exists. If the owner of such parcel fails to notify the
271 commissioner in accordance with this subsection, such client shall
272 notify the commissioner. If the owner notifies the commissioner, the
273 owner shall provide documentation to the client of the professional
274 which verifies that the owner has notified the commissioner.

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

281 (i) All notices, oral or written, provided under this section shall
282 include the nature of the contamination or condition, the address of the
283 property where the contamination or condition is located, the location
284 of such contamination or condition, any property known to be affected
285 by such contamination or condition, any steps being taken to abate,
286 remediate or monitor such contamination or condition, and the name
287 and address of the person making such notification. Written
288 notification shall be clearly marked as notification required by this
289 section and shall be either personally delivered to the Water

290 Management Bureau of the Department of Environmental Protection
291 or sent certified mail, return receipt requested, to the Water
292 Management Bureau of the Department of Environmental Protection.

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

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

323 (l) Not later than ten days after receipt of any written notice
 324 received under this section, the commissioner shall: (1) Forward a copy
 325 of such notice to the chief elected official of the municipality in which
 326 the subject pollution was discovered by the technical environmental
 327 professional, (2) forward a copy of such notice to the state senator and
 328 state representative representing the area in which the subject
 329 pollution was discovered by the technical environmental professional,
 330 (3) forward a copy of such notice to the Labor Commissioner where the
 331 Division of Occupational Safety and Health, within the Labor
 332 Department, has jurisdiction over the employers, employees and
 333 places of employment on the subject property, (4) forward a copy of
 334 such notice to the office of any collective bargaining representatives of
 335 workers at the subject property, and [(3)] (5) maintain a list on the
 336 department's Internet website of all the notices received under this
 337 section.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	20-327b(d)
Sec. 2	<i>October 1, 2006</i>	22a-6u

Statement of Purpose:

To require a seller of a residence to test the soil for volatile organic compounds where such residence is served by well water and to expand the provisions regarding notification of polluting events.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]