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## Senate Bill 567, An Act Limiting Liability for Environmental Permit Violations Environment Committee February 13, 2009

### CCIA Position: Support

Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in Connecticut and is committed to working together to advance and promote a better quality of life for all citizens in the state. CCIA is comprised of more than 350 members, including commercial, industrial and institutional construction contractors, subcontractors, suppliers and professionals serving the construction industry and representing all aspects of the construction industry.

Proposed Senate Bill 567, An Act Limiting Liability for Environmental Permit Violations, would prohibit the Commissioner of Environmental Protection from enforcing a permit violation against any person who performs work at the direction of the permittee or against any person other than the permittee. CCIA supports the bill as a priority and we want to thank Sen. Meyer, co-chairman of the committee, for introducing the bill. CCIA respectfully requests that the Environment Committee vote to draft the bill, and ultimately approve it.

The authority of the Commissioner of Environmental Protection should be limited to issue a violation to a permittee where a properly issued permit authorizes the permittee to carry out regulated activities. CCIA believes – and the public policy of the state should reflect – that the Commissioner’s remedies for permit violations should be solely against the permittee and the Commissioner should not be able to bring an action against any other person for work performed as directed by a permittee. This would provide fairness, equity and accountability in the permitting process.

A permittee (or registrant pursuant to a general permit) is legally responsible for permit compliance. The permittee should also be solely responsible for permit violations resulting from third-party actions taken at the direction of the permittee.

If the owner is the permittee, then the owner is the responsible party. The owner is obliged to comply with the permit and to ensure that work performed by a contractor is consistent with the owner’s permit obligations. By contrast, the contractor’s responsibility is to carry out its contractual obligations in a manner consistent with the owner’s direction. If the contractor performs work as directed by the permittee and the manner or method of performing the work constitutes a permit violation, then the



Department of Environmental Protection's action should lie against the permittee only.

Senate Bill 567 would not impact DEP's authority to enforce against an environmental violator where the violation lies outside of permitted activities.

A contractor performs work only as authorized by the owner/Department of Transportation engineer assigned to the site. On state projects, an advance directive from the engineer is a condition precedent to performance by the contractor. (For example, regarding water pollution control/soil erosion controls, see generally CTDOT Form 816, Section 2.10). If the contractor installs controls because they are needed but without a directive from ConnDOT, the contractor is likely doing the work for free. Therefore, when the ConnDOT engineer says "no", additional controls aren't installed. When the lack of controls results in DEP enforcement, both ConnDOT and the contractor get punished. This is unfair to lawful state contractors and SB 567 would help resolve this inequity.

Please contact Matthew Hallisey at CCIA at (860) 539-5189 if you have any questions or if you need additional information.