



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



March 16, 2009  
Committee on Environment

Testimony Submitted by Commissioner Gina McCarthy  
Department of Environment Protection

**Senate Bill No. 1106 (Raised) - AN ACT CONCERNING THE PROCESS OF  
REMEDICATION OF RELEASES OF HAZARDOUS WASTE AND HAZARDOUS  
SUBSTANCES**

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Thank you for the opportunity to present testimony regarding Senate Bill No. 1106 (Raised) - AN ACT CONCERNING THE PROCESS OF REMEDIATION OF RELEASES OF HAZARDOUS WASTE AND HAZARDOUS SUBSTANCES. We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, will result in three important benefits to the remediation and clean-up systems in Connecticut. These benefits include risk reduction for citizens, greater certainty for the regulated community and a clear end point for regulatory oversight by the Department. The bill will also benefit the state and its efforts to redevelop brownfields, revitalize urban areas and reduce development pressures on greenfields.

This bill will achieve these benefits by amending three laws that regulate remediation and clean-up: the significant hazard law, the spill reporting and response laws, and the property transfer act. It will standardize procedures, set practical and affirmative timeframes for action, and establish clear and objective finish lines.

The three laws noted above overlap because they all relate to the releases of hazardous substances and hazardous waste into the environment. While a great deal of clean-up and risk reduction has been achieved over the years by the Department, licensed environmental professionals (LEPs) and responsible parties under these statutes, it is time for changes that will improve the efficiency of these cleanup programs and the resultant public health and environmental results.

Emergency response and other immediate actions to contain, and in some cases to assess, the extent of public health and environmental damage and risks resulting from spills and releases are taken when spills are reported to the Department. Unfortunately, there is no actual statutory requirement for clean up to be completed. While most residents of the state assume that contaminated sites regulated under these laws are actually getting cleaned, in most cases cleanup languishes for years with no real end in sight. And, with the current lack of clearly defined cleanup standards for spills and significant hazard releases, even responsible parties who want to clean up these sites find the case-by-case decision-making process defined in these statutes to be confusing, time-consuming and

unpredictable. As a result, there have been thousands of sites entering into the state's clean-up programs since these laws were enacted, with very few sites actually getting cleaned up and out of the Department's active oversight.

While all well intended and forward thinking when enacted, history has shown them to be inconsistent and in need of coordination, standardization and clarity. The purpose of Raised Senate Bill No. 1106 is to update these statutes to correct these well-known and acknowledged deficiencies so that Connecticut residents can get the results they expect for clean up laws: clean sites.

This bill is good for the environment and public health because it promotes risk reduction and timely redevelopment of contaminated property. These outcomes are essential for our cities and towns that want to see progress on contaminated and abandoned properties that all too often sit idle and unproductive for years. The bill standardizes the process across various laws for clean-up of the release: two years to complete investigation, three years to prepare a remedial action plan and six years to complete cleanup with state remediation standards as the common finish line.

#### Sections 1 to 5

Sections 1 through 5 of the bill amend the significant hazard reporting and response statute. The objective of significant hazard law is to cut off exposure pathways to contamination deemed to pose a significant hazard to people who may come into direct contact with it. The law does not necessarily require a complete clean-up of the release that is causing the significant hazard.

The bill amends the statute by adding the logical step – mandate that the release that is causing the hazard be cleaned-up by a date certain. The bill establishes a standardized process for cleanup of the release under the timeframes noted above and provides practical exceptions to the affirmative clean-up requirement for releases from heating oil tanks at 1-4 family residences, or where the release was from a source of contamination located on an up-gradient property. Under current law there is an obligation to cut-off any direct exposure and this requirement remains in place.

#### Section 6

Section 6 of the bill is a new section to compliment existing statutes concerning reporting and response to spills. These laws have as their objective the immediate response to spills and releases in order to remove the "spill or release" to a condition which no longer poses short-term risk or threat to either human health or the environment. The endpoint of a spill response may or may not be to meet the state's remediation standards. In those cases where a contaminated condition is abated to a level not meeting the state's remediation standards, there is no finality for the work performed, and no certainty that long-term protection is achieved.

Section 6 of this bill completes the cleanup process for spills that are reported to DEP pursuant to the spill reporting law, 22a-450. This bill makes clear that a person who is required to report a spill of hazardous waste or substances to DEP, in addition to

conducting immediate actions to mitigate the spill as discussed above, must also ensure long-term protection by completing cleanup of the spill to state standards if it impacts the land or water. The bill establishes a standardized process: use a licensed environmental professional (LEP) to oversee cleanup instead of the Department and step-by-step review with two years to complete investigation, three years to prepare a remedial action plan and six years to complete cleanup with state remediation standards as the common finish line.

Section 6 also provides for fees, with incentives to complete cleanup early: no fees for releases that are cleaned up within two years after the spill report. Two years for a cleanup is normally more than ample time for a new spill which can be responded to quickly.

### **Section 7 and 8**

Sections 7 and 8 of the bill amend existing laws that authorize the DEP commissioner to adopt regulations for state remediation standards and for environmental land use restrictions, by adding that the commissioner may also include fees in such regulations.

### **Section 9**

Section 9 of the bill amends the voluntary cleanup law, 22a-133x. Currently, this law says that only certain persons may voluntarily cleanup releases of hazardous materials. This bill would amend that law to say any person may voluntarily clean up a release.

### **Section 10**

Section 10 of the bill defines a new term, "interim verification". This term compliments the other sections of this bill, which would establish a six-year schedule for cleaning up spills, significant hazards and transfer act properties. While six years is often more than ample time to complete response actions for contaminated soil, sometimes if there is contaminated groundwater the remedy may need to be operational for more than six years before groundwater standards are met. An interim verification means that the investigation is complete, all soil standards are met, there are no current exposures to the polluted groundwater, and the remedy for groundwater is in operation and will remain in operation for a period of time beyond the sixth year. Therefore, an interim verification can be submitted at the six-year mark if a final verification is premature. We believe that this provision will be very helpful in the future transfer of such properties.

### **Section 11**

Section 11 of the bill amends certain parts of the transfer act. The transfer act law has as its objective the complete investigation and remediation of environmental contamination to the state's remediation standards at certain sites called "establishments."

Commencing at the time these "establishments" undergo a property transfer, the goal of cleaning-up a transfer act site to the state remediation standards is clear, but the time in which this must be accomplished is not. In many cases transfer act properties just move from owner to owner and never get cleaned-up. This slow rate of completing cleanups under the property transfer act means many more sites enter the system (about 200) each year than leave it (about 35). This is true despite the fact that the Department has been

delegating roughly 85% of transfer act sites to licensed environmental professionals for oversight in lieu of Department oversight.

**Section 12**

Section 12 of the bill severs the transfer act responsibility after a cleanup is complete which is something that the development community has been seeking. Spills that occur after the transfer act cleanup is complete would be required to be addressed pursuant to the provisions of section 6 of this bill – cleanup of reportable spills.

We need to modernize the state’s patchwork of laws that address cleanup of releases of hazardous substances and hazardous waste. Current laws go only so far, lack clear affirmative, self-implementing provisions, and have inconsistent endpoints for determining what is protective and when work is done. The place to start is to create a standard system, provide a common endpoint for common problems, and set affirmative timeframes to complete action. Senate Bill No, 1106 standardizes the process across various laws for clean-up of the release: two years to complete investigation, three years to prepare a remedial action plan and six years to complete cleanup with state remediation standards as the common finish line.

We strongly support Raised Senate Bill No. 1106 and thank you for the opportunity to present the Department’s views on the bill. Some portions of the bill might need to be reworked to provide clarity. The Department would be happy to work with the Committee and other interested parties to improve the bill. If you require any additional information, please contact the Department’s legislative liaison, Robert La France, at 424-3401.

An "At A Glance" Chart of Results Under Current Laws:

Law	# of sites (approx)	# cleanup completed to state standards (approx)	Avg yrs to complete (approx)	Avg new sites or releases/yr (approx)
Transfer Act (22a-134)	3,000	300	for those that complete -7 yrs; otherwise unlimited	200
"Significant Hazard" notifications (22a-6u)	600 (about half are also Transfer Act sites)	Unknown. Short-term risks are controlled. No affirmative, complete cleanup req'd by statute.	n/a	55
Spills (reported under 22a-450)	>100,000 releases	Unknown; short term risks are controlled. No, affirmative, complete cleanup req'd by statute.	n/a	8,000 (not all are haz substance, haz waste)
Leaking underground vehicle fuel tanks	2,500	285; short term risks are controlled. No affirmative, complete cleanup req'd by statute.	n/a	34
Releases not subject to any statutory program	unknown	unknown	n/a	n/a

