



General Assembly

February Session, 2010

Raised Bill No. 5436

LCO No. 1931

01931_____CE_

Referred to Committee on Commerce

Introduced by:

(CE)

AN ACT CONCERNING BROWNFIELD REMEDIATION LIABILITY.

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

1 Section 1. Section 22a-452 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2010*):

3 (a) (1) Any person, firm, corporation or municipality which contains
4 or removes or otherwise mitigates the effects of oil or petroleum or
5 chemical liquids or solid, liquid or gaseous products or hazardous
6 wastes resulting from any discharge, spillage, uncontrolled loss,
7 seepage or filtration of such substance or material or waste shall be
8 entitled, subject to the conditions in this section, to reimbursement
9 from any [person, firm or corporation] potentially responsible party
10 for the reasonable costs expended for such containment, removal, or
11 mitigation, including any investigation or remediation, if such oil or
12 petroleum or chemical liquids or solid, liquid or gaseous products or
13 hazardous wastes pollution or contamination or other emergency
14 [resulted from the negligence or other actions] was directly or
15 indirectly caused by or contributed to or exacerbated by the actions or
16 negligent omissions of such [person, firm or corporation] potentially

17 responsible party. When such pollution or contamination or
18 emergency results from the [joint negligence or other] actions or
19 negligent omissions of two or more [persons, firms or corporations]
20 potentially responsible parties, each shall be liable [to the others] for a
21 pro rata share of the costs of [containing, and removing or otherwise
22 mitigating the effects] investigation and remediation of the same and
23 for all damage caused thereby. No potentially responsible party shall
24 be liable for reimbursement of costs incurred unless such potentially
25 responsible party received notice and the opportunity to participate in
26 the investigation and remediation pursuant to subsection (f) of this
27 section. No such potentially responsible party shall be required to
28 reimburse the cost of any remediation above the land use that existed
29 when the potentially responsible party owned or operated or
30 deposited such substances on the property.

31 (2) If an imminent and substantial danger exists at the property or
32 arises from pollution migrating beyond the property line, the
33 provisions of this section limiting the potentially responsible party's
34 liability shall not apply to an action for the costs associated with the
35 investigation and remediation of such condition.

36 (b) No person, firm or corporation which renders assistance or
37 advice in mitigating or attempting to mitigate the effects of an actual or
38 threatened discharge of oil or petroleum or chemical liquids or solid,
39 liquid or gaseous products or hazardous materials, hazardous wastes
40 or hazardous substances, other than a discharge of oil as defined in
41 section 22a-457b, to the surface waters of the state, or [which] who
42 assists in preventing, cleaning-up or disposing of any such discharge
43 shall be held liable, notwithstanding any other provision of law, for
44 any costs of investigation and remediation under this section and civil
45 damages as a result of any act or omission by [him] such person, firm
46 or corporation in rendering such assistance or advice, except acts or
47 omissions amounting to gross negligence or wilful or wanton
48 misconduct, unless [he] such person, firm or corporation is
49 compensated for such assistance or advice for more than actual

50 expenses. For the purpose of this subsection, "discharge" means
51 spillage, uncontrolled loss, seepage or filtration and "hazardous
52 materials" means any material or substance designated as such by any
53 state or federal law or regulation.

54 (c) The immunity provided in subsection (b) of this section shall not
55 apply to (1) any person, firm or corporation responsible for such
56 discharge, or under a duty to mitigate the effects of such discharge, (2)
57 any agency or instrumentality of such person, firm or corporation or
58 (3) negligence in the operation of a motor vehicle.

59 (d) An action for reimbursement or recovery of the reasonable costs
60 expected for investigation and remediation shall be commenced on or
61 before six years after the date written notice was sent to the known
62 potentially responsible party pursuant to subsection (f) of this section.

63 (e) The provisions of this section shall not apply to any action filed
64 on or before July 1, 2010. A performing party who has begun incurring
65 costs for remediation started on or before July 1, 2010, who may seek to
66 recover such costs pursuant to this section shall provide notice
67 pursuant to subsection (f) of this section, not later than January 1, 2011.

68 (f) Except as provided in subsection (e) of this section, before any
69 performing party files an action under this section in the Superior
70 Court, such performing party shall provide written notice of intent to
71 conduct investigation or remediation activities to all known potentially
72 responsible parties not later than one hundred twenty days before the
73 commencement of such activity. Such notice shall identify (1) the
74 property, (2) the potentially responsible party's relationship to such
75 property, (3) the proposed investigation or remediation activity and its
76 estimated cost, (4) the means by which a potentially responsible party
77 could participate in such investigation and remediation, and (5) the
78 date that such activity is to commence. No such notice shall be
79 required before filing a lawsuit if an imminent and substantial danger
80 exists necessitating immediate action, provided notice is made within a
81 reasonable time after immediate action is taken. Notice provided

82 pursuant to this subsection shall be sent certified mail, return receipt
83 requested, to any potentially responsible party at their last-known
84 address on file at the Secretary of the State's office or their agent for
85 service of process, if any. If a potentially responsible party is no longer
86 on file with the Secretary of the State, notice shall be sent to the last-
87 known address of the president, of the known partners or of the
88 individual, as applicable. The performing party shall provide a copy of
89 the notice to the Office of the Attorney General and the Commissioner
90 of Environmental Protection. When other potentially responsible
91 parties become known to the performing party after it provides notice
92 pursuant to this section, the performing party shall provide notice
93 pursuant to this subsection not later than forty-five days after the
94 discovery of the other potentially responsible parties.

95 (g) Any potentially responsible party shall inform such performing
96 party, not later than ninety days after receipt of the notice required
97 pursuant to subsection (f) of this section, of their intent to negotiate
98 with the performing party regarding a reasonable pro rata allocation
99 for the costs of the investigation and remediation activities.

100 (h) A potentially responsible party that exercises its right to
101 participate in the investigation and remediation of the property shall
102 be responsible solely for such party's pro rata share of any necessary
103 and reasonable costs of investigation and remediation. A potentially
104 responsible party that fails to offer and share in the costs reasonably
105 proportionate to its pro rata share or who fails to participate or
106 respond to the notice provided in subsection (f) of this section shall (1)
107 waive any right to challenge the reasonableness of the costs of
108 investigation and remediation in any claim or action for
109 reimbursement of such investigation and remediation costs; (2) pay
110 damages to the performing party, including costs associated with any
111 lost business opportunities; and (3) pay the performing party's
112 attorneys fees, in the discretion of the court, and other costs of
113 litigation, in the event the performing party prevails in its claim or
114 action for reimbursement.

115 (i) In any action brought pursuant to this section, the Superior Court
116 may issue an order granting the reimbursement or payment of
117 reasonable costs to be incurred in the future consistent with the pro
118 rata share of the costs of the potentially responsible party.

119 (j) A performing party that has failed to provide notice and
120 opportunity to participate to any known potentially responsible party
121 shall be prohibited from seeking reimbursement of investigation and
122 remediation costs from such potentially responsible party.

123 (k) Nothing in this section shall relieve any potentially responsible
124 party from any liability to any third party for property damage or
125 personal injury based upon common law.

126 (l) Nothing in this section shall deprive any potentially responsible
127 party from any possible defenses to any action available by law,
128 including, but not limited to, contribution.

129 (m) No eligible party shall be liable for a claim under this section for
130 any costs or damages arising from any actual or threatened discharge
131 of oil or petroleum or chemical liquids or solid, liquid or gaseous
132 products or hazardous materials, hazardous wastes or hazardous
133 substances on or emanating from the property that occurred or existed
134 prior to such eligible party taking title to such property, provided the
135 eligible party did not establish, create or contribute to a condition or
136 facility at or on such property that reasonably can be expected to create
137 a source of pollution, contamination or emergency.

138 (n) No municipality shall be considered a potentially responsible
139 party or otherwise liable for a claim under this section to any
140 performing party or other person, firm or corporation for the costs
141 expended for such containment, removal, or mitigation of oil or
142 petroleum or chemical liquids or solid, liquid or gaseous products or
143 hazardous wastes pollution or contamination or other emergency
144 under this section, and shall not be held liable for any civil damages as
145 a result of any act or omission by the municipality or arising from any

146 pollution or source of pollution on or emanating from the property.

147 (o) For purposes of this section:

148 (1) "Potentially responsible party" means any person, firm or
149 corporation liable under this section for an act or negligent omission
150 that directly or indirectly caused or contributed to or exacerbated the
151 release, discharge, spillage, uncontrolled loss, seepage or filtration of
152 oil or petroleum or chemical liquids or solid, liquid or gaseous
153 products or hazardous wastes;

154 (2) "Eligible party" means a person, firm, or corporation that (A)
155 acquired the property after the pollution or source of pollution existed
156 or occurred, (B) is not otherwise responsible pursuant to section 22a-
157 428, 22a-432, 22a-433 or 22a-451 or pursuant to transfer of ownership
158 filing pursuant to section 22a-134 or 22a-134e, and (C) is not affiliated
159 with any person responsible for such pollution or source of pollution
160 through any direct or indirect familial relationship or any contractual,
161 corporate or financial relationship other than that by which such
162 owner's interest in the property was conveyed or financed;

163 (3) "Performing party" means the person, firm, corporation or
164 municipality that performs investigation and remediation activities or
165 contains or removes or otherwise mitigates the effects of oil or
166 petroleum or chemical liquids or solid, liquid or gaseous products or
167 hazardous wastes;

168 (4) "Investigation and remediation" means assessment,
169 investigation, containment, mitigation, removal, remediation and
170 subsequent monitoring;

171 (5) "Remediation" means the work performed on a site that is
172 undertaken pursuant to a remedial action plan;

173 (6) "Municipality" shall have the same meaning as in section 22a-
174 423, and includes (A) any municipal economic development agency or
175 entity created or operating under chapter 130 or 132, (B) any nonprofit

176 economic development corporation formed to promote the common
177 good, general welfare and economic development of a municipality
178 that is funded, either directly or through in-kind services, by a
179 municipality, or (C) nonstock corporation or limited liability company
180 established and controlled by a municipality;

181 (7) "Reimbursement" means the reimbursement of funds already
182 expended or the payment of funds to be expended, pursuant to this
183 section; and

184 (8) "Pro rata share" means an equitable proportionate share based
185 upon equitable and site-specific factors, including, but not limited to,
186 the activity conducted on the property, the duration of such activity or
187 ownership of the property, compliance with the laws, regulations and
188 other standards that existed at the time of ownership or operation with
189 respect to the ownership or operation of the property, type and
190 amount of pollution caused and prior efforts to prevent, contain,
191 mitigate or remediate such pollution.

192 Sec. 2. Subsection (c) of section 22a-134b of the 2010 supplement to
193 the general statutes is repealed and the following is substituted in lieu
194 thereof (*Effective July 1, 2010*):

195 (c) This section shall apply to any action brought for the
196 reimbursement or recovery of costs associated with investigation and
197 remediation, [as defined in subsection (n) of section 22a-452] which
198 includes assessment, investigation, containment, mitigation, removal,
199 remediation and monitoring, and all direct and indirect damages,
200 except any action that becomes final and is no longer subject to appeal
201 on or before October 1, 2009.

202 Sec. 3. Subsection (b) of section 22a-133u of the general statutes is
203 repealed and the following is substituted in lieu thereof (*Effective July*
204 *1, 2010*):

205 (b) The Commissioner of Economic and Community Development

206 may use any funds deposited into the Special Contaminated Property
 207 Remediation and Insurance Fund pursuant to section 3 of public act
 208 96-250* for (1) loans to municipalities, individuals or firms for Phase II
 209 environmental site assessments, Phase III investigations of real
 210 property or for any costs of demolition, including related lead and
 211 asbestos removal or abatement costs or costs related to the remediation
 212 of environmental pollution, undertaken to prepare contaminated real
 213 property for development subsequent to any Phase III investigation,
 214 [and] (2) expenses related to administration of this subsection
 215 provided such expenses may not exceed one hundred twenty-five
 216 thousand dollars per year, (3) funding the remedial action and
 217 redevelopment municipal grant program established pursuant to
 218 subsection (e) of section 32-9kk, and (4) funding the targeted
 219 brownfield development loan program developed pursuant to
 220 subsection (f) of section 32-9kk.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	22a-452
Sec. 2	<i>July 1, 2010</i>	22a-134b(c)
Sec. 3	<i>July 1, 2010</i>	22a-133u(b)

Statement of Purpose:

To facilitate the development of brownfields.

[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.]