

**STATEMENT**

***Insurance Association of Connecticut***

Commerce Committee

Tuesday, March 9, 2010

HB 5436, An Act Concerning Brownfield Remediation Liability

The Insurance Association of Connecticut supports the concept of amending and clarifying current brownfield remediation liability requirements in Connecticut, however, we do not support HB 5436 as drafted.

The insurance industry has long been involved in attempting to create a more conducive and less litigious environment to bring about meaningful redevelopment of brownfield sites. The insurance industry has been very active in amending the process to encourage earlier contribution and involvement in brownfield site clean-ups. The current process alienates potentially responsible parties and white knights and fails to provide an opportunity for such parties to take an active and vested interest in the clean-up of contaminated sites without the threat of future litigation.

The insurance industry supports HB 5436's attempt to replace our current strict liability system with a fault-based system. Such a system bases liability on the nexus of one's actions to the site on a pro-rata basis rooted on equitable factors rather than joint and several liability. However, the protections afforded to such parties by HB 5436 only apply if a lawsuit is filed, which merely encourages litigation and will do nothing to promote remediation of brownfield sites.

No one party, including a municipality, should be completely exempt from liability if such a party had a role in creating a brownfield site. The measure of a party's liability should be directly related to their actions, or omissions, as determined by the standards in place and the use of the property by that party. A property owner who maintained and used their property in strict compliance with the standards in force during their ownership of such land should not later be held liable because the standards or the use for the land has changed. HB 5436 accomplishes neither of these objectives.

HB 5436 uses terms that are undefined, vague and ambiguous that can result in protracted litigation, increased costs and delay progress. For example the exculpatory provisions of this act do not apply if there is an "imminent or substantial danger" resulting from pollution migrating beyond the property line. What constitutes an "imminent or substantial danger"? Who makes that determination? Is the potentially responsible party now on the hook for all of the pollution at the site? Or just the escaping pollution? Are they responsible for their pro rata share or the whole cost? And to who are they now liable? This is but one example of such vague and ambiguous use of terms that will lead to protracted litigation, increased costs and delay the clean up while such issues get resolved.

The six year statute of limitations created by HB 5436 is also problematic as it is triggered only if notice is provided pursuant to this proposal. Yet there is no statute of limitation if the notices are not sent. As such, a claim for contribution could be brought at any time, even some thirty or forty years later if no notices were ever sent. Additionally, as drafted, HB 5436 could result in a multitude of

different statute of limitations applying for one clean up. Each notice provided would trigger a different statute of limitations. A site with twelve potentially responsible parties could result in twelve different statutes of limitations and possibly twelve individual suits that may not be joined, provided notice was given to each party. Such a provision will result in more, not less, lawsuits and do nothing to encourage brownfield site remediation.

Finally, HB 5436 places no requirement for an eligible party to timely undertake a clean-up of a brownfield site. A party may acquire a property with the intention of eventually cleaning up such a site, but for business reasons waits years before initiating the activities which trigger the notice requirements. The additional passage of time could result in further damage to a site and increase costs to the detriment of potentially responsible parties. HB 5436 does nothing to correct that behavior.

The insurance industry is willing to work with the committee to make create a workable solution to brown field remediation and respectfully request that HB 5436 be rejected as drafted.