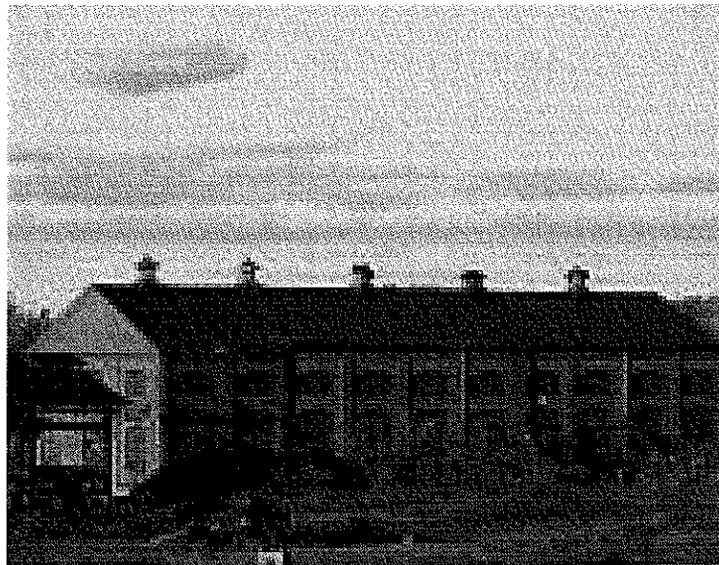


FIRST REPORT
OF THE
**STATE OF CONNECTICUT
BROWNFIELD WORKING GROUP**

ESTABLISHED PURSUANT TO PUBLIC ACT NO. 10-135



Submitted to the
Commerce Committee
of the
Connecticut General Assembly

March 8, 2011

PURPOSE OF THE REPORT

The purpose of this report is to respond to Public Act 10-135 "An Act Concerning Brownfield Remediation Liability." Pursuant to section 2, an eleven member working group was created "to examine the remediation and development of brownfields in this state, including, but not limited to, the remediation scheme for such properties, permitting issues and liability issues, including those set forth by sections 22a-14 to 22a-20, inclusive, of the general statutes."

The Working Group members are grateful to the staff of the Departments of Economic and Community Development and Environmental Protection, and the Connecticut Development Authority, which spent the time with us and assisted us in our meetings, researched issues, invited various interested persons to our discussions, and responded to our various questions and in engaged in lively debate and discussion. We believe we have been successful collaborating and working together on a number of issues. Through the process, we do believe that we have made progress but more has yet to be accomplished.

The Working Group members also thank the General Assembly and the appointing authorities for the opportunity to serve on this Working Group and make recommendations for what we believe is the continuation of a very important initiative for determining the future of Connecticut Brownfield properties.

Finally, the Task Force specifically recognizes the Co-Chairs of the Commerce Committee, Representative Jeffrey Berger from Waterbury and Senator Gary LeBeau from East Hartford, who recognized early on the importance of Brownfields revitalization to municipal economic and community development and public health and safety. We thank them for their leadership, support and tenacity as they have embraced Brownfield redevelopment as the key for turning around our communities, restoring a property to a beneficial reuse, and restoring a municipality's tax base.

A strong Brownfields program will provide a needed economic stimulus to our state, is smart growth, and will restore our communities.

MEMBERS OF THE BROWNFIELDS WORKING GROUP

<u>Member</u>	<u>Position/Occupation</u>
Ann M. Catino Co-Chair	Partner, Halloran & Sage, LLP
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Marie O'Brien	President of the Connecticut Development Authority
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*Both Commissioners participated in the Working Group. However, at the time this report was issued, a new Commissioner was appointed at DECD and a new Commissioner was appointed at DEP. Staff from both DECD and DEP participated extensively in the Working Group: Peter Simmons and Susan Decina from DECD and Graham Stevens and Robert Bell from DEP. In addition, Cynthia Petruzzello, Vice President, Connecticut Development Authority/Connecticut Brownfield Redevelopment Authority also participated extensively in the meetings and discussions of the Working Group. The Working Group extends many thanks to the staff for their support and responsiveness to our information requests.

FIRST BROWNFIELD WORKING GROUP REPORT

March 8, 2011

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**On March 7, 2011, the Brownfield Working Group members adopted this report. In keeping with the separation of power between the Executive Branch and Legislative Branch of Government, and the transition between the prior administration and the new one, the public officials who are members of the Agencies that serve on the Working Group, either did not vote on or abstained from the Working Group's Report.*

I. INTRODUCTION

This Report and the work of the Brownfield Working Group created pursuant to Public Act 10-135 essentially continues the work of the Task Force on Brownfield Strategies that was created through Public Act 06-184, "An Act Concerning Brownfields", which was continued through Public Act 07-233, "An Act Implementing the Recommendations of the Brownfields Task Force" and Public Act 09-235, "An Act Concerning Brownfields Development Projects." The Task Force was created to develop long-term solutions for cleaning up Brownfields and to propose new incentives to stimulate investment and rehabilitation of Brownfields. The Task Force issued its first Report to the Environment and Commerce Committees in February 2007, its second Report to the Environment and Commerce Committees in February 2008, and its third Report in February 2009. The Working Group reaffirms the prior reports, the recommendations and analyses of the Task Force.

The Working Group urges the Connecticut General Assembly to continue to recognize that brownfield redevelopment is an important economic driver in the State as it creates jobs, enhances our State and municipal tax base, and restores idle and blighted properties to productive use. These changes and the recommendations the Working Group proposes are significant economically to our State as new jobs would be created and new revenue streams are anticipated, which is needed in these uncertain times. On the environmental side, brownfield redevelopment is "green" as it saves land, reduces the effect of contamination on our soil and water resources, and provides redevelopment where existing infrastructure exists. It remains important to the quality of our municipalities and is consistent with principles of smart growth and transit oriented development.

The Working Group has evaluated the success of the programs created from 2005-2010 in Public Acts 06-184, 07-233, 08-174, 09-235 and 10-135 and has evaluated many of the remediation programs administered by the Connecticut Department of Environmental Protection. Further, it has recognized the need to develop new programs to provide solutions to the State's brownfields. In prior years, the Task Force balanced proposing incremental changes with sweeping changes. The Working Group similarly builds upon this approach, however, it also believes that it is time that a comprehensive evaluation of all regulatory remediation programs (including those not limited to brownfields exclusively) take place with the Connecticut Department of Environmental Protection and it has also included an exceptionally progressive program that applies to all contaminated sites to foster a larger discussion on the appropriate approach to all our state's contaminated properties.

Unlike the Task Force reports, the Working Group spent time not only deliberating these issues, but crafting proposed legislation to address these topics (Attachment 1), which is largely reflected in Proposed Bill 6526. Admittedly, some of the sections of the Working Group's recommendations and this proposed bill are "works in progress." Because some of the proposals considered and debated by the Working Group will undoubtedly require accepting significant and, in some cases, controversial changes to existing programs, structures and philosophies, the Working Group is trying to be as open as possible to new ideas and balancing the various

interests. Additionally, we elected to move forward with a number of proposals received from outside the Working Group and, in the interest of transparency and to foster further discussion, these sections were included in this report and, ultimately, the proposed bill. Therefore, some of the proposals are not in final form and are not embraced by all the private sector members of the Working Group, but are in furtherance of a dialogue with the many and varied interests that are important to a successful brownfield program.

Although not in the bill, the Working Group also encourages the Departments of Economic and Community Development and Environmental Protection to educate municipalities and stakeholders as to the various programs that are available. Many resources and programs are available, but such resources are often untapped. Marketing the State programs within and outside of the State are important to change the direction of the State and let potential developers and businesses know that the State is open for business.

Municipalities also should work collaboratively to seek brownfield funding. Public Act 10-168 "An Act Concerning Regional Economic Development" was a milestone for regional economic development collaboration. As part of that legislation, a goal was clearly stated to use the regional Comprehensive Economic Development Strategy (CEDS) process to establish strategies for brownfield redevelopment as well as economic development, housing development and open space preservation. To the extent the CEDS regions can leverage federal funding for brownfield redevelopment, they should. In partnership with the Department of Economic and Community Development, funds can be leveraged from federal sources to address priority brownfield projects in the region. Currently the northeast CEDS, comprising 21 communities, in partnership with DECD, have submitted such an application to USEPA to fund a \$1,000,000 coalition assessment grant program to address ten priority brownfield projects in the region.

Finally, while it may not be appropriate for a legislative proposal, the Working Group believes very strongly that the Executive Branch should *embrace brownfield redevelopment for all State development*. All State agencies and quasi-public agencies, universities and colleges, should consider and select brownfield sites when the State is looking to develop new properties for new State buildings. While years ago a decision was made, for example, to select an open space property for the new State laboratories, the Working Group believes and urges all public officials to first consider brownfield sites when making decisions relating to siting new State buildings or facilities proposed to be developed for a public purpose or with public funding. In addition, the next five year State Plan of Conservation and Development should emphasize and target brownfield sites as a redevelopment goal for all projects that are to be consistent with the State Plan. To the extent the State truly embraces principles of smart growth, the State should therefore plan and engage in brownfield redevelopment for State facilities.

II. SUMMARY OF RECOMMENDATIONS

In this Report, the Working Group continues to follow the overall themes and prioritize changes to address: organizational reform, funding and financing initiatives, regulatory programs, liability relief. In addition, the Working Group also addressed issues common to contaminated sites in general as well as brownfield sites as many of those programs may tend to create new brownfields or serve as impediments to determining when a site is finally cleaned up.

The Working Group's recommendations are highlighted as follows:

- that brownfield development and redevelopment be one of the highest priorities for DECD, CDA and DEP. *See Section II.B., infra.*
- that a director of OBRD be hired and the director and OBRD report directly to the Commissioner of DECD. *See Section II.A., infra.*
- the Executive Branch should require all agencies, quasi public agencies, and colleges and universities to look at and redevelop brownfield sites for all new State development.
- to emphasize brownfield redevelopment in the State Plan of Conservation and Development.
- \$1.5 million be allocated to DECD to staff and run the office, that DEP be similarly funded, and that \$500,000 be allocated to marketing, education and outreach programs. *See Section II.A., infra.*
- that the grant program established pursuant to CGS § 32-9cc and the grants and loan program established pursuant to CGS § 32-9kk and administered by DECD be funded annually and/or that DECD be provided with a capital budget to administer these programs. In 2006, the Task Force recommended that the programs be capitalized with \$75 million of initial funding, with an additional \$25 million allocated every year for five years to provide a consistent revenue stream to the programs. This amount would have put us on equal footing with other states. The funding that did occur fell far short of this goal. *See Section II.B., infra.*
- the pilot program be open to all municipalities *See Section II.B., infra.*
- the abandoned brownfield program be expanded to include more properties and further protections from liability be provided. *See Section II.B., infra.*
- that participants in the brownfield programs be excluded from certain fees and from the rigors of other state programs. *See Section II.C.1., infra.*
- that the Transfer Act be modified to provide clarity as to what releases a certifying party is responsible to address and to exempt the creation of an "establishment" if the only wastes generated are those from the demolition of a building. *See Section II.D.1., infra.*

- that the state's remediation standards be reviewed on a regular basis to insure that the standards are protective of human health and the environment, feasibly achieved and consistent with best scientifically available standards. *See Section II. D.2., infra.*
- that the process by which the DEP maps and classifies properties under the state's water quality program be streamlined. *See Section II.D.3., infra.*
- that certain existing programs be provided with additional clarity such that Licensed Environmental Professionals be better equipped to verify a site and new tools be made available under the programs administered by the Connecticut Department of Environmental Protection, such as a Notice of Activity Use Limitation. *See Section II.D.4., infra.*
- that consideration be given to a new program designed to stimulate redevelopment of contaminated sites that are not abandoned brownfield properties but where redevelopment is limited due to uncertainties relating to schedule and offsite contamination issues. *See Section II.D.5., infra.*
- that, by February 1, 2012, DEP perform a comprehensive evaluation of all the property remediation programs and make recommendations to streamline and improve those programs such that the process for brownfield and contaminated property redevelopment be streamlined, more efficient and improved. *See Section II.D.6., infra.*

III. PROPOSALS AND RECOMMENDATIONS

A. Organizational

In 2006, with the enactment of Public Act 06-184, the Office of Brownfield Remediation and Development (OBRD) was created. The OBRD was to be a "one stop shop" for all brownfield programs in the State. It was to have a highly positioned director, be well staffed and funded. In 2006, the Task Force recommended that the OBRD be funded at \$1.5 million to appropriately staff and run the office, that DEP be similarly funded, and that \$500,000 be allocated to marketing, education and outreach programs. No such dedicated funding has occurred and the DECD never filled the position of a high level director although it was advertised. The staff, while well intentioned, is lean and they serve other programs as well as OBRD.

With each new Public Act, more programs and responsibilities were placed upon the OBRD without adding the necessary director, staff or resources. (A list of all the programs administered by OBRD is included in Attachment 2 as well as a list of representative brownfield programs administered by the DEP and CDA). The existing staff is lean and they serve other programs as well as OBRD. Nonetheless, they do serve to assist municipalities with the grant and loan programs and assist them in seeking federal funds. And, the OBRD has implemented many of the programs established between 2006-2010. *See Attachment 2* for a full outline of the work and projects that have been accomplished. With more dedicated staff, additional projects

could be undertaken. And, more municipalities could be educated and participate in these programs either individually or in CEDS, with the goal of one day being self sufficient.

Consistent with the recommendation of the Environment Working Group Transition Team established by Governor Malloy, the OBRD should be directed by a "deputy commissioner reporting to the Commissioner of DECD and/or the Governor, with sufficient staff focused on the mission of coordinating Brownfield redevelopment, permitting transit oriented development and responsible growth.... It needs to be accessible to the development community and vested with the appropriate authority to oversee and manage large and small projects, implement the funding (grant and loan programs) and market/educate the business and development community and the municipalities as to the programs and assistance the state provides. Brownfield programs and responsible growth initiatives should run through this office and it should be the 'one stop shop' for such development."

The Brownfield Working Group concurs with the recommendation of the Environment Working Group Transition Team.

B. Funding Programs

In Attachment 2, a chart identifies the funding programs administered by DECD, CDA and DEP that would allow monies to be used for brownfield and/or contaminated property remediation and redevelopment. Beginning in 2006, several new funding programs were created specifically targeted to brownfields. These programs are a municipal pilot grant program (codified at § 32-9cc of the Connecticut General Statutes), a remedial action and redevelopment municipal grant program (codified at § 32-9kk(f)) and a targeted brownfield development loan program (codified at § 32-9kk(g)). Two accounts were created: one for the § 32-9cc program (called the Connecticut brownfields remediation account) and one for both funding programs created under § 32-9kk (called the "brownfield remediation and development account").

Funding has only been provided in increments and not in the amounts recommended by the Task Force.

Municipal Pilot Program CGS § 32-9cc. This is a competitive program for grants to five municipalities per round of funding. \$7.5 million was authorized, however, only \$4.5 million was actually approved through two \$2.25 million increments. Through two rounds of competitive bidding eleven municipal pilot projects received funding. See Attachment 2. DECD reported robust competition for these funds. Between 15-19 applications were received each round and some very good projects were not funded. The success of this program means that there is a demand. Additional funds should be provided and, in sections 1-3 of the proposed bill, the Working Group recommends that its pilot status be eliminated and that for each round of funding, at least six municipalities be selected.

Remedial action and redevelopment municipal grant program CGS § 32-9 kk(f). This program provides a broader reach than the Municipal "Pilot" Program and creates additional opportunities for municipalities and other related organizations. And, it established regular

deadlines for grants to be provided. This program is to be administered by the DECD, but no funds have been authorized and made available in the brownfield remediation and development account for this program. Given the demand for the municipal pilot program, this program should be funded.

Targeted brownfield development loan program CGS § 32-9kk(g). This program was set up as a revolving loan fund available to provide financial assistance in the form of low-interest loans to eligible applicants who are potential brownfield purchasers who have no direct or related liability for the site conditions and eligible applicants who are existing property owners who (A) are currently in good standing and otherwise compliant with the Department of Environmental Protection's regulatory programs, (B) demonstrate an inability to fund the investigation and cleanup themselves, and (C) cannot retain or expand jobs due to the costs associated with the investigating and remediating of the contamination. A wide variety of projects can be administered including manufacturing, retail, residential and mixed use. \$10.0 million was authorized by the legislature for the brownfield remediation and development account for this program in two five million dollar tranches over two years. However, only half of the first year's tranche has been approved. In other words, the Bond Commission has approved only 25% of the authorized amount (i.e., \$2.5 million) to date. Funds should be made available to this program as demand for this program is real and exists.

The Working Group noted that the "brownfield" definition was slightly different between the various programs and, therefore, recommends that all definitions be made parallel and to include properties where, among other things, "redevelopment, reuse or expansion may be complicated by the presence of pollution." These definitional changes are made in sections 1 and 8 of the proposed bill.

Other programs also exist and have been used in the past to provide financial assistance to a variety of developments. However, these programs are typically provided through bonding, as and when needed. The lack of certainty of funding often remains an impediment to the small and medium size project development. Therefore, a capital budget for the programs identified above is critical to the smaller and medium sized projects moving forward. Finally, two programs also were created several years ago to provide assistance to underground storage tank clean ups and dry cleaners. These two programs were funded by essentially a tax on these entities; however, both programs are woefully under funded and really have not been funded for years. The SCPRIF program has funds available, however, its utility is limited to "construction loans".

DECD staff does look to the federal government for funding as well as the State and they do seek to leverage the funds they receive and try to expand them to brownfield sites. For example, the DECD does successfully obtain federal brownfield monies for the State from EPA (generally, revolving loan fund monies) and HUD. Among other programs, staff does work on obtaining the HUD Section 108 Loan guarantees that are an extension of the Small Cities/Community Development Block Grant Program (SC/CDBG). This program was expanded under the federal Omnibus Appropriations Act allowing states to be principal borrowers on behalf of its entitlement communities. The program is designed to assist non-entitlement local governments with eligible large scale projects that address public needs and

that could not otherwise advance without the loan guarantee. The loans can be used to eliminate or prevent slums or blight and meet urgent needs of a community, with 10% minimum equity participation. DECD does repay the loan through various projects it funds. And, where shortfalls may exist, the State uses its future annual allocations as the ultimate repayment source in case of a repayment default by the loan recipients.

However, federal programs are also not as robust as they once were and the Brownfield Economic Development Initiative (BEDI) grant program that was designed to assist cities with the redevelopment of abandoned, idled and underused industrial and commercial facilities where contamination exists or potentially exists was not reauthorized by Congress. Therefore, the State must step in.

Connecticut Development Authority has three programs – a tax increment financing, direct loan and loan guarantees. The TIF, while a good program, has limited utility for residential and mixed use development that includes a residential component. Because of this, other programs must fill the gap. For the direct loan and loan guarantees, a lead lending institution is needed and the developer must have a solid banking relationship. While these are good programs, the smaller and medium-size developer may not qualify as readily. Nonetheless, the Working Group believes that the CDA programs are of very high quality, are quite expansive, and are an important part of the mix and should continue. Section 18 of the proposed bill eliminates the sunset date for the brownfields TIF.

While the Working Group acknowledges that funding is difficult in these economic times, the Working Group also urges the General Assembly and the Governor to consider that brownfield redevelopment is a stimulus to the economy. As was referenced in the Third Task Force Report, a 2008 report by the Northeast-Midwest Institute found that:

- \$10,000 to \$13,000 in public investments in brownfields creates/retains one job
- \$1 of public money leverages \$8 total
- public investments in Brownfields are recouped from local taxes in five years
- on average, each brownfield site has the potential to create 91 jobs.

Therefore, brownfield redevelopment should be a very high priority.

C. Regulatory & Liability Reform for Brownfields

Connecticut, not unlike other states, struggles with the appropriate scope of programs to stimulate brownfield development. The Working Group looked closely at the brownfield programs referenced above as well as programs where state funding may not be sought in the context of brownfields and made a number of recommendations in the proposed bill as follows.

1. The Abandoned Brownfield Clean-up (ABC) Program. In previous legislative initiatives, efforts have been made to untie abandoned brownfields from the vast array of programs that burden contaminated sites where a responsible party exists and, instead, create a more streamlined approach that provides such incentives as liability relief. In particular, the

ABC program was created by the General Assembly to efficiently streamline the redevelopment of those properties and to limit persons who have no responsibility for the condition of the property from investigating or remediating any pollution or source of pollution that has emanated from such property prior to such person taking title to such property. To date, no one has enrolled in this program, potentially due to the economy or potentially due to limitations in the program itself. Therefore, in sections 10-12 of the proposed bill, the Working Group recommends to change the definition of what is an "abandoned brownfield" to a property that has been a brownfield at least five years before application, versus the statutorily required date of "since October 1, 1999". A "municipality" is also specifically proposed to be included in the program and is defined, consistent with the other DECD administered programs, to include economic development agencies/entities, or nonprofit economic development corporations funded, controlled or established by a municipality. And, a municipality can request determination of eligibility regardless of who owns a property.

In addition, the Working Group believes that further exclusions for abandoned brownfields are necessary and that some existing statutory requirements may serve as an impediment to redeveloping such a property. Therefore, the Working Group proposes exempting the person or municipality that is within the ABC program from the Transfer Act. Section 11 amends the Transfer Act, CGS § 22a-134 by adding a new subparagraph (x) to the exempt transaction list. Acquisition of the property and subsequent transfer are exempt, if remediation is ongoing or complete in accordance with 32-911. In addition, the Working Group believes that a prospective purchaser or municipality remediating property under ABC program should qualify for a covenant not to sue at no cost. And, the covenant not to sue should be transferable to subsequent owners if the property is undergoing remediation or remediation is complete per 32-911. (See Section 12).

Whether these changes will provide sufficient incentive to redeveloping abandoned brownfields remains uncertain. Other recommendations worthy of discussion include the timing of a covenant not to sue and whether additional liability relief should be provided. For example, it may make sense to specify that the person who acquires title of the property pursuant to the ABC program shall not be held liable under section 22a-432, 22a-433, 22a-451 or 22a-452, provided that such person does not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste and such person is not a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452.

2. Fees. Given the challenges associated with the brownfield sites that seek and qualify for funding under the state programs, the Working Group believes that those projects should not pay certain transfer act and voluntary remediation program fees waived for recipients of funding under the newly expanded brownfields program. Therefore, Section 9 of the bill exempts persons who have received financial assistance for a brownfield site from any department, institution, agency or authority of the state for the purpose of investigation or remediation, or both from paying fees that may required pursuant to sections 22a-133x, 22a-133aa, 22a-134a or 22a-134e of the general statutes.

D. Regulatory & Liability Reform for Other Contaminated Properties to Prevent Creation of Brownfields

Brownfield redevelopment are often entangled with programs designed for contaminated properties where responsible parties exist and those programs may unnecessarily stifle brownfield redevelopment or may actually promote the creation of brownfields. The Working Group looked closely at these programs and offers some proposals that address all contaminated properties. In brief, the intent is to make it easier to redevelop, transfer and cleanup existing brownfield and contaminated sites such that a brownfield will not be created.

1. Amendment to the Transfer Act to provide clarity as to what releases have to be investigated and remediated by a certifying party. Section 4 of the proposed bill amends CGS § 22a-134a by adding new subsection (n) providing that a Form III or Form IV certifying party does not need to investigate or remediate a release or potential release that occurs after the date of "transfer." The Working Group believes that this is a necessary clarification to the Transfer Act that should apply to all properties within the program. The Working Group believes that, particularly for sellers, it is inequitable to require them to investigate and remediate releases that occur after they relinquish title and essentially lose control of the property. Because of the backlog of Transfer Act filings, this clarification is necessary so that prior owners can close out their responsibility and liability for a property. On February 3, 2010, the Environmental Professionals Organization of Connecticut submitted a "white paper" to DEP on this issue, which correspondence is included here as Attachment 3, and the Working Group believes that Section 4 of HB 6526 is important such that properties can move through the Transfer Act. Such a change will provide clarity as well when determining whether a brownfield exists or is being created because of inaction on the part of a person in the chain of title.

2. Require the Commissioner of DEP to review the State's Remediation Standard Regulations (RSRs). Section 5 of the proposed bill amends CGS § 22a-133k by adding a new subsection (c) that requires the Commissioner to review and recommend revisions to the RSRs three years after this amendment goes into effect, and to hold a public hearing every five years thereafter on the adequacy of the standards and revise as needed to insure that the regulations insure environmental protection and are consistent with best available scientific information. The RSRs were adopted in 1996 and have not been modified. DEP attempted to propose modifications approximately two years ago, but those proposed changes were fraught with controversy. To some degree, there was concern about whether the standards were feasible and achievable and whether such proposed limits were economically or technically achievable. There was a very real concern that the proposed standards were not based upon the best available scientific information. Many changes to the RSRs are needed and could be accomplished. The Working Group believes that DEP should make those changes, periodically review the RSRs and to modify them as needed. Caution, however, should be exercised to make sure that the limits are consistent with federal standards and are capable of being achieved. In addition, sites currently being remediated or those that are closed should not be reopened with the adoption of new standards.

3. Groundwater Reclassification. Section 9 of Public Act 10-158 required the Commissioner to modify the State's groundwater classifications and standards through a rulemaking process set forth under the Uniform Administrative Procedures Act (UAPA). The purpose section 9 is to provide a streamlined method to classify and re-classify surface and ground waters of the state outside of the regulation adoption process under the UAPA. As set forth in the attached memo from a Working Group member (Attachment 4), this modification "is necessary to further Brownfields redevelopment because many of the state's ground water resources have historically been assigned a GA classification (ground water presumed potable without treatment) to areas which should have been classified GB (groundwater impacted by historic contamination) due to mapping errors and incomplete information. The Water Quality Standards provide more stringent requirements for GA areas than GB areas. In addition, the Remediation Standard Regulations require more stringent soil and ground water clean-up targets for GA ground water areas than those classified GB.

An inappropriate GA classification translates into overly conservative clean-up standards for brownfield properties. And, under Public Act 10-158, the only way to correct it is to change the classification, which would entail a lengthy UAPA proceeding that could slow down a brownfield redevelopment and likely add a significant cost to a project in terms of time and money. A process allowing the Department to classify or re-classify surface and ground waters with a notice of a public hearing in the Law Journal and a newspaper of general circulation, and individual notice to the municipal officials in the community involved, should be adopted to allow these changes to be made efficiently and as they had been under the prior statutory scheme

Therefore, section 6 amends 22a-426 by adding new sections (d) to (g) by essentially restoring the prior streamlined procedure of providing an opportunity for notice and comment, but the process does not give rise to a full rulemaking procedure under the UAPA. And, it makes it clear that unless modified in accordance with these procedures or those already in effect for the water quality standards, CGS § 22a-426(a), the surface and ground water classifications and water quality standards in effect as of February 28, 2011 remain in force.

4. Notice of Activity and Use Limitations. Due to difficulties experienced by property owners and DEP with the Environmental Land Use Restriction (ELUR), representatives of DEP introduced an alternative to the ELUR. The Notice of Activity and Use Limitations (NAUL) is intended for less contaminated properties (generally within the order of magnitude of the RSR criteria). It is less cumbersome than an ELUR in that the subordination of current property interests is not required.

An ELUR and a NAUL are similar in that they both document the nature and extent of pollution on a property and they both are intended to minimize the risk of human exposure to pollutants and hazards to the environment by preventing specific uses and activities at a property. However, an ELUR and a NAUL are dissimilar in many ways.

An ELUR is an enforceable contract that conveys a property interest to the Commissioner of DEP. It requires the subordination of current holders of property interests before it can be recorded. Current and future property owners, current interest holders (who have subordinated)

and future interest holders are legally bound to comply with terms and restrictions of the ELUR. The Commissioner, as the grantee, may enforce the terms of the ELUR if its terms are violated.

A NAUL is not a legally enforceable contract nor does it convey a property interest to the Commissioner. A NAUL does provide notice of important information related to a property's activity and use restrictions. Although it cannot bind prior or current property interest holders, such as mortgagees and easement holders, it can be enforced against the owner, who filed the NAUL while the owner continues to own the property, and any transferee of a property interest from such owner for violating the remedial action plan when the terms of the NAUL have not been met.

The Working Group believes that a NAUL is an important, less cumbersome option to an ELUR and deserves consideration. The Working Group has been discussing the proposed NAUL with the DEP for many weeks and agreed that the NAUL section should move forward for additional comment and feedback. In addition, the Working Group reached out to other interest holders for feedback and comment as we believed that real property interests could be affected by this NAUL. Informal comments were received from environmental lawyers and real property lawyers and those comments are attached in Attachment 5. Therefore, the NAUL should be revised to take into consideration due process and real property law concerns. In addition, the Working Group understands that the NAUL is modeled on the Massachusetts program, although some differences exist that can have meaningful consequences in Connecticut. Therefore, no consensus on this language exists among the voting members of the Working Group and we look forward to working with the Commerce Committee and DEP further on this issue, with the hopes of creating a meaningful tool for property owners to use.

5. "Brownfield" remediation and revitalization program (BRRP). In brief, section 17 establishes a comprehensive brownfield remediation and revitalization program within the OBRD, to be administered by its Director. An interested party, including a municipality, economic development agency, a property owner or prospective property owner who is not responsible for a property's contamination, or a neighboring property owner may apply to include a contaminated property in this program. Provided they otherwise meet the Program criteria, properties that are already under investigation under the State Voluntary Remediation programs, or the Covenant Not to Sue programs are eligible for inclusion in the Program. Properties that are currently the subject of an enforcement action by the DEP or the United States Environmental Protection Agency are not eligible for inclusion in the Program.

The mechanics are as follows: Not more than twenty properties at a time shall be accepted into the program and a new property shall be added upon the withdrawal of a property from the program or completion of the remedy and a no further action letter is issued. Participation in the program shall be by accepted upon at least one of the following criteria: (1) the likely creation of jobs, including, but not limited to, those related to remediation, design, development and construction; (2) the projected increase to the municipal grand list; (3) the consistency of the property as remediated and developed with municipal or regional planning objectives; and (4) the development plan's support for and furtherance of principles of smart growth or transit oriented development.

An application for inclusion in the Program shall include an Environmental Condition Assessment Form as well as documentation demonstrating satisfaction of eligibility criteria – that is, that the owner and property are “eligible.” An application fee of \$3000 is due at the time the application is submitted. The Director must approve or deny the application within 60 days after receipt or the application will be deemed approved.

If a property is accepted or deemed to be accepted into the Program, the Applicant shall investigate and remediate the release or threatened release of regulated substances on the property in accordance with a Brownfield Investigation Plan and Remediation Schedule (the “Schedule”) approved by the DEP following a public comment period. Persons whose applications have been accepted or which have been deemed accepted into the Program shall not be required to characterize, abate, and remediate any releases of regulated substances beyond the boundaries of the eligible property that exceed limits set in the RSRs.

The Commissioner shall have 60 days after the receipt of the Schedule to notify the Applicant of his or her approval or disapproval, with the schedule deemed to be approved if the Commissioner does not reply within those 60 days. If the Commissioner disapproves a proposed Schedule, the Applicant shall have an opportunity to revise the Schedule to address the Commissioner’s comments. The Commissioner’s disapproval shall also be subject to judicial review.

Permits required to implement the Schedule shall be submitted to and expedited by the permit ombudsman within DECD.

Before beginning remediation, the Applicant shall provide public notice of the remediation. All activities shall be supervised by a Licensed Environmental Professional.

Following completion of the remediation, a Licensed Environmental Professional shall submit a final remedial action report to both the Commissioner of DEP and the Director of OBRD. The report shall include a verification by the Licensed Environmental Professional that the remediation took place in accordance with the RSRs. The report will be subject to approval by the Commissioner, but will be deemed approved if within 60 days the Commissioner does not approve, disapprove, or request an audit of the report. As noted, the Commissioner may, within 60 days after receipt of the report, choose to audit the completed remediation to determine whether further remedial action is required to protect human health or the environment. Following an audit, which the Commissioner shall complete with six months after notifying the applicant that he or she will undertake the audit, the Commissioner may disapprove the report and require further remediation to be undertaken by the Applicant. The Commissioner’s decision to reject a report shall be subject to judicial review. The Applicant shall maintain all records related to its participation in the Program for at least ten years.

Upon the approval or deemed approval of the report the Commissioner will issue to the applicant a Notice of Completion and No Further Action Letter which provides that the applicant shall not be liable to the state or any third party for the for damages, costs, or equitable relief pertaining to the release of any regulated substance at or from the eligible property. This liability

relief would also extend to liability to the state or any third party for historic off-site impacts including air deposition, waste disposal, impacts to sediments, and Natural Resource Damages. This liability protection shall extend to any eligible person who thereafter acquires title to the property following approval of a final remedial action report and pays an extension fee of \$3000. In addition, the property shall no longer be subject to the requirements of the Transfer Act provided that no activities occur at the property following approval of the final remedial action report that would subject the property to the Transfer Act.

Liability relief is a significant component of this new program. Initially, the applicant is not held liable for the existing conditions, provided it did not create them. Then, to the extent that a Licensed Environmental Professional verifies that a site which has been accepted into the Program has been investigated and remediated in compliance with the standards set forth in the Act, and the final remedial action report for the site has either been approved by the Commissioner or deemed approved, the person that undertook that remediation, regardless of its own eligibility to participate in the program, shall receive the same protections from liability as the applicant, except that any obligation such person may have to characterize and remediate regulated substances that have migrated from the subject property shall continue.

Such relief from liability, however, will not preclude the Commissioner from taking any appropriate action to require additional remediation of the subject property where the Commissioner has determined that (a) the Applicant knew or should have known that it provided false or misleading information to the Director or the Commissioner demonstrates that the Applicant's successor was aware of such misinformation; (b) new information confirms previously unknown contamination; (c) the Applicant fails to complete the remediation described in the Schedule or fails to comply with monitoring, maintenance, operating or environmental land use restriction requirements; or (d) there are changes in exposure conditions, for example, a change from nonresidential to residential use of the property.

No consensus on this language exists among the voting members of the Working Group on the proposal attached to this report or HB 6526. However, the Working Group notes that HB 6526 is different than the proposal attached to this report in a significant way. That is, the inclusion of subsection (g) in HB 6526. The Working Group does not believe this section is needed at all. First, DECD has several programs that could be affected by this language and it may unintentionally thwart the purpose of some of those programs and the flexibility DECD has in developing the appropriate menu of funding options for an applicant. Second, it also affects the analysis performed by undefined quasi-public agencies and criteria for their various programs. The Brownfield Task Force carefully proposed the criteria for the new DECD brownfield programs enacted from 2006-2009 and it purposefully crafted the criteria broadly to meet the needs of the municipalities and various applicants and it did so in a manner that was acceptable to the funding agencies. Ultimately, these changes were acceptable to the legislature and there is no compelling reason to modify the criteria in this section, which is not even narrowly tailored to the affected programs.

Having distinguished HB 6526 from the proposal attached to this report, the remaining parts of this section 17 clearly represent revolutionary change as opposed to the evolutionary change that has been occurring. It was recommended by members of the Working Group and

other environmental practitioners. Essentially, this section does go well beyond the traditional brownfield programs previously proposed; it establishes a new program that may address *any* contaminated property efficiently, upon acceptance into the program by OBRD. This proposed section 17 provides a springboard for further discussion and the Working Group welcomes the opportunity to hear comments and continue the dialogue.

6. Comprehensive evaluation of the property remediation programs. The Working Group (and previously the Task Force) discussed the need for a comprehensive evaluation of all DEP's remediation programs, including but not limited to the Transfer Act. The DEP agreed and this year announced that it was going to undertake such an evaluation. (Attachment 6) The Working Group welcomed DEP's initiative, however, it believed that certain parameters and time frames should be placed upon the DEP (Section 7 of the proposed bill). In particular, the Working Group believes that the DEP should complete its evaluation by February 1, 2012, prior to the next legislative session so that any necessary statutory modifications can be proposed. In addition, the Working Group believed that DEP should be directed to conduct a study that considers a number of factors including: (1) those that influence the length of time to complete investigation and remediation under existing programs; (2) the number of properties that have entered into each property remediation program, the rate by which properties enter and the number of properties that have completed the requirements of each property remediation program; (3) the use of licensed environmental professionals in expediting property remediation; (4) audits of verifications rendered by licensed environmental professionals; (5) the programs provided for in chapters 445 and 446k of the general statutes that provide liability relief for potential and existing property owners; (6) a comparison of existing programs to states with a single remediation program; (7) the use by the commissioner of resources when adopting regulations such as studies published by other federal and state agencies, the Connecticut Academy of Science and Engineering or other such research organization and university studies; and (8) recommendations that will address issues identified in the report or improvements that may be necessary for a more streamlined or efficient remediation process.

The Working Group recognizes that this is an ambitious undertaking for DEP during the next year, but it is a vitally important one. The Working Group is available to assist DEP in any way so that it can achieve its deadline and it looks forward to working with the agency on this initiative.

IV. CONCLUSION

The Working Group welcomes the opportunity for further dialogue and discussion on its recommendations and the proposed bill. While consensus has been reached on several sections, as set forth above, others are still a work in progress and we look forward to working with all stakeholders and members of the Commerce Committee as the bill moves forward. As we all know, redeveloping brownfields is an important goal for our State's future, our communities and our neighbors. It preserves open space, creates jobs, adds to the state and local tax base, removes blight and cleans up contaminants from our environment. It is truly a win-win-win.

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Section 1: Section 32-9cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

- (a) There is established, within the Department of Economic and Community Development, an Office of Brownfield Remediation and Development.
- (b) The office shall:
- (1) Develop procedures and policies for streamlining the process for brownfield remediation and development;
 - (2) Identify existing and potential sources of funding for brownfield remediation and develop procedures for expediting the application for and release of such funds;
 - (3) Establish an office and maintain an informational webpage to provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs;
 - (4) Provide a single point of contact for financial and technical assistance from the state and quasi-public agencies;
 - (5) Develop a common application to be used by all state and quasi-public entities providing financial assistance for brownfield assessment, remediation and development;
 - (6) Identify and prioritize state-wide brownfield development opportunities; and
 - (7) Develop and execute a communication and outreach program to educate municipalities, economic development agencies, property owners and potential property owners and other organizations and individuals with regard to state policies and procedures for brownfield remediation.
- (c) Subject to the availability of funds, there shall be a state-funded [pilot] Municipal Brownfield Grant Program [program] to identify brownfield remediation economic opportunities in [five] Connecticut municipalities. For each round of funding the Commissioner may indentify at least six municipalities, one of which shall have a population of less than fifty thousand, one of which shall have a population of more than fifty thousand but less than one hundred thousand, two of which shall have populations of more than one hundred thousand and [one] two of which shall be selected without regard to population. The Commissioner of Economic and Community Development shall designate [five] [pilot] municipalities in which untreated brownfields hinder economic development and shall make grants under such [pilot] program to these municipalities or economic development agencies associated with each of the [five] selected municipalities that are likely to produce significant economic development benefit for the designated municipality.
- (d) The Department of Environmental Protection, the Connecticut Development Authority and the Department of Public Health shall each designate one or more staff members to act as a

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liaison between their offices and the Office of Brownfield Remediation and Development. The Commissioners of Economic and Community Development, Environmental Protection and Public Health and the executive director of the Connecticut Development Authority shall enter into a memorandum of understanding concerning each entity's responsibilities with respect to the Office of Brownfield Remediation and Development. The Office of Brownfield Remediation and Development may [develop and] recruit two volunteers from the private sector, including a person from the Connecticut chapter of the National Brownfield Association, with experience in different aspects of brownfield remediation and development. Said volunteers may assist the Office of Brownfield Remediation and Development in [achieving the goals of this section] marketing the brownfields programs and activities of the state.

(e) The Office of Brownfield Remediation and Development may call upon any other department, board, commission or other agency of the state to supply such reports, information and assistance as said office determines is appropriate to carry out its duties and responsibilities. Each officer or employee of such office, department, board, commission or other agency of the state is authorized and directed to cooperate with the Office of Brownfield Remediation and Development and to furnish such reports, information and assistance.

(f) Brownfield sites identified for funding under the [pilot] grant program established in subsection (c) of this section shall receive priority review status from the Department of Environmental Protection. Each property funded under this program shall be investigated in accordance with prevailing standards and guidelines and remediated in accordance with the regulations established for the remediation of such sites adopted by the Commissioner of Environmental Protection or pursuant to section 22a-133k and under the supervision of the department or a licensed environmental professional in accordance with the voluntary remediation program established in section 22a-133x. In either event, the department shall determine that remediation of the property has been fully implemented, or whether an audit will not be conducted, upon submission of a report indicating that remediation has been verified by an environmental professional licensed in accordance with section 22a-133v. Not later than ninety days after submission of the verification report, the Commissioner of Environmental Protection shall notify the municipality or economic development agency as to whether the remediation has been performed and completed in accordance with the remediation standards, whether an audit will not be conducted, or whether any additional remediation is warranted. For purposes of acknowledging that the remediation is complete, the commissioner or a licensed environmental professional, may indicate that all actions to remediate any pollution caused by any release have been taken in accordance with the remediation standards and that no further remediation is necessary to achieve compliance except postremediation monitoring[,] or natural attenuation monitoring [or the recording of an environmental land use restriction].

(g) All relevant terms in this subsection, subsection (h) of this section, and sections 32-9dd to 32-9ff, inclusive, [and section 11 of public act 06-184*] shall be defined in accordance with the definitions in chapter 445. For purposes of subdivision (12) of subsection (a) of section 32-9t, this subsection, subsection (h) of this section, and sections 32-9dd to 32-9gg, inclusive, [and section 11 of public act 06-184*,] "brownfields" means any abandoned or underutilized site where redevelopment, [and] reuse, or expansion may be complicated by [has not occurred due to] the presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before [prior to] or in conjunction with the restoration, redevelopment or [and] reuse

of the property.

(h) The Departments of Economic and Community Development and Environmental Protection shall administer the provisions of subdivision (1) of section 22a-134, section 32-1m, subdivision (12) of subsection (a) of section 32-9t, and sections 32-9cc to 32-9gg, inclusive, [and section 11 of public act 06-184*] within available appropriations and any funds allocated pursuant to sections 4-66c, 22a-133t and 32-9t.

Section 2: Section 32-9ee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

Sec. 32-9ee. Brownfield [remediation pilot] Municipal Grant Program [program] and grants. (a) The municipality or economic development agency that receives grants through the Office of Brownfield Remediation and Development's [pilot] grant program established in subsection (c) of section 32-9cc shall be considered an innocent party and shall not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452 as long as the municipality or economic development agency did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution that is subject to remediation under this [pilot] program; does not exacerbate the conditions; and complies with reporting of significant environmental hazard requirements in section 22a-6u.

(b) In determining what funds shall be made available for an eligible brownfield remediation, the Commissioner of Economic and Community Development shall consider (1) the economic development opportunities such reuse and redevelopment may provide, (2) the feasibility of the project, (3) the environmental and public health benefits of the project, and (4) the contribution of the reuse and redevelopment to the municipality's tax base.

(c) No person shall acquire title to or hold, possess or maintain any interest in a property that has been remediated in accordance with the [pilot] grant program established in subsection (c) of section 32-9cc if such person (1) is liable under section 22a-432, 22a-433, 22a-451 or 22a-452; (2) is otherwise responsible, directly or indirectly, for the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste; (3) is a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable to under section 22a-432, 22a-433, 22a-451 or 22a-452; or (4) is or was an owner, operator or tenant. If such person elects to acquire title to or hold, possess or maintain any interest in the property, that person shall reimburse the state of Connecticut, the municipality and the economic development agency for any and all costs expended to perform the investigation and remediation of the property, plus interest at a rate of eighteen per cent.

Section 3: Section 32-9ff of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) There is established an account to be known as the "Connecticut brownfields remediation account" which shall be a separate, nonlapsing account within the General Fund. The account

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shall contain any moneys required by law to be deposited in the account and shall be held separate and apart from other moneys, funds and accounts. Investment earnings credited to the account shall become part of the assets of the account. Any balance remaining in the account at the end of any fiscal year shall be carried forward in the account for the next fiscal year.

(b) The Office of Brownfield Remediation and Development, established in subsections (a) to (f), inclusive, of section 32-9cc may use amounts in the account established pursuant to subsection (a) of this section to fund remediation and restoration of brownfield sites as part of the [pilot] grant program established in subsection (c) of section 32-9cc.

Section 4: (NEW) (Effective from passage) Section 22a-134a of the general statutes is amended by adding new subdivision (n) as follows:

Notwithstanding any other provisions of this section, the execution of a Form III or a Form IV shall not require a certifying party to investigate or remediate any release or potential release of pollution at the parcel that occurs from and after the date of the transfer of establishment for which such Form III or Form IV was signed.

Section 5: (NEW) Section 22a-133k of the general statutes is amended by adding subdivision (c) as follows:

(c) In accordance with the provisions of chapter 54, the Commissioner shall review and recommend revisions to the standards for the remediation of environmental pollution at hazardous waste disposal sites and other properties which have been subject to a spill, as defined in section 22a-452c, as have been adopted pursuant to subsection (a) within three years from the date of passage of this Section 5 and, every five years thereafter, the Commissioner shall hold a public hearing on the adequacy of such standards and revise such standards as may be deemed necessary to insure that the regulations shall fully protect health, public welfare and the environment, are feasible, and are consistent with the best scientifically available information, including consideration of the standards adopted by the federal government.

Section 6: (NEW) (Effective from passage): Section 22a-426 of the general statutes, as amended by section 9 of P.A. 10-158, is amended by adding new subsections (d), (e), (f) and (g) as follows:

(d) On or after March 1, 2011, the commissioner may reclassify surface or ground water within the state. Notwithstanding the provisions of subsection (a) of this section, the following procedures shall apply to any surface or ground water re-classification proposed by the Commissioner: (1) the Commissioner shall hold a public hearing in accordance with subsection (e)(4) of this section. Such public hearing shall not be considered a contested case pursuant to chapter 54; (2) notice of such hearing specifying the surface or ground waters for which re-classification is proposed, and the time, date, and place of such hearing shall be published once in a newspaper having a substantial circulation in the affected area and shall provide the information set forth in subsection (e)(2)(D); (3) such notice shall also be provided to municipal officials in accordance with subparagraph (e)(2)(E). Following the public hearing, the Commissioner shall provide notice of the reclassification decision in accordance with subsection (e)(5).

(e) On or after March 1, 2011, at the request of any person, the commissioner may reclassify any surface or ground water within the state. Notwithstanding the provisions of subsection (a), the following procedures shall apply to any such reclassification: (1) any person seeking a reclassification shall apply to the Commissioner on forms prescribed by the Commissioner and shall provide the information required by such forms; (2) the commissioner shall publish or cause to be published, at the expense of the person seeking a reclassification, once in a newspaper having a substantial circulation in the affected area (a) the name of the person seeking a reclassification, (b) an identification of the surface or ground waters affected by such reclassification, (c) notice of the commissioner's tentative determination regarding such reclassification, (d) how members of the public may obtain additional information regarding such reclassification, and (e) the time, date and place of a public hearing regarding such reclassification. Any such notice shall also be given by certified mail to the chief executive officer of each municipality in which the water affected by such reclassification is located, with a copy to the director of health of each municipality, at least thirty days prior to the hearing; (3) the commissioner shall conduct a public hearing regarding any tentative determination to reclassify surface or ground waters; (4) the public hearing shall be conducted in a manner which affords all interested persons reasonable opportunity to provide oral or written comments. Any such hearing shall be conducted in accordance with the procedures set forth in section 4-168(a)(6), provided that no such hearing shall be considered a contested case, and the commissioner shall maintain a recording of the hearing; and (5) following the public hearing, the commissioner shall provide notice of the decision in the Connecticut Law Journal and to the chief elected official and the director of health of each municipality in which the water affected by such reclassification is located.

(f) Any decision by the commissioner to reclassify surface or ground water shall be consistent with the state's water quality standards and shall comply with all applicable federal requirements regarding reclassification of surface water.

(g) Unless modified in accordance with subsections (a), (d), (e) and (f), the state's surface and ground water classifications and water quality standards, effective as of February 28, 2011, shall remain in full force and effect.

Section 7: NEW (*Effective from passage*)

Not later than seven days from the effective date of this section, within available resources, the commissioner of environmental protection shall commence a comprehensive evaluation of the property remediation programs, and the provisions of the general statutes that affect property remediation. Not later than February 1, 2012, the commissioner shall issue a comprehensive report, in accordance with section 11-4a, to the Governor and to the joint standing committees of the general assembly having cognizance of matters relating to the environment and commerce. The evaluation shall include (1) factors that influence the length of time to complete investigation and remediation under existing programs; (2) the number of properties that have entered into each property remediation program, the rate by which properties enter and the number of properties that have completed the requirements of each property remediation

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program; (3) the use of licensed environmental professionals in expediting property remediation; (4) audits of verifications rendered by licensed environmental professionals; (5) the programs provided for in chapters 445 and 446k that provide liability relief for potential and existing property owners; (6) a comparison of existing programs to states with a single remediation program; (7) the use by the commissioner of resources when adopting regulations such as studies published by other federal and state agencies, the Connecticut Academy of Science and Engineering or other such research organization, and university studies and (8) recommendations that will address issues identified in the report or improvements that may be necessary to for a more streamlined or efficient remediation process.

Section 8: Subsection (1) of section 32-9kk of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*).

(1) "Brownfield" means any abandoned or underutilized site where redevelopment, [and] reuse, or expansion may be complicated by [has not occurred due to] the presence or potential presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the restoration, redevelopment and reuse of the property;

Section 9: (New) (*Effective from passage.*) Sec. 22a-6 is amended by adding new subsections (i) and (j) as follows:

(i) Notwithstanding the provisions of subsection (a) of this section, no person shall be required to pay any fee established by the commissioner pursuant to section 22a-133x, 22a-133aa, 22a-134a, 22a-134e provided such person has received financial assistance from a State of Connecticut department, institution, agency or authority for the purpose of investigation or remediation, or both, of a Brownfield site, as defined in section 32-9kk, and such activity would otherwise require a fee to be paid to the commissioner for the activity conducted with such financial assistance.

(j) Notwithstanding the provisions of subsection (a) of this section, no department, institution, agency or authority of the state or the state system of higher education shall be required to pay any fee established by the commissioner pursuant to section 22a-133x, 22a-133aa, 22a-134a, 22a-134e provided such division of the state is conducting investigation or remediation, or both of a Brownfield site, as defined in section 32-9kk, and siting a state facility on such Brownfield site.

Section 10: Section 32-9ll of the general statutes is statutes is repealed and the following is substituted in lieu thereof:

(a) There is established an abandoned brownfield cleanup program. The Commissioner of Economic and Community Development shall determine, in consultation with the Commissioner of Environmental Protection, properties and persons eligible for said program.

(b) For a person, municipality and a property to be eligible, the Commissioner of Economic and

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Community Development shall determine if (1) the property is a brownfield, as defined in section 32-9kk of the general statutes and such property has been unused or significantly underused for at least five years prior to an application filed with the Commissioner pursuant to subsection (g) [since October 1, 1999]; (2) such person intends to acquire title to such property for the purpose of redeveloping such property; (3) the redevelopment of such property has a regional or municipal economic development benefit; (4) such person did not establish or create a facility or condition at or on such property that can reasonably be expected to create a source of pollution to the waters of the state for the purposes of section 22a-432 of the general statutes and is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than a relationship by which such owner's interest in such property is to be conveyed or financed; (5) such person is not otherwise required by law, an order or consent order issued by the Commissioner of Environmental Protection or a stipulated judgment to remediate pollution on or emanating from such property; (6) the person responsible for pollution on or emanating from the property is indeterminable, is no longer in existence or is either required by law to remediate releases on and emanating from the property or otherwise unable to perform necessary remediation of such property; and (7) the property and the person meet any other criteria said commissioner deems necessary.

(c) For the purposes of this section, municipality shall be defined as a municipality, economic development agency, or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

(d) Notwithstanding subsection (b) of this section, a municipally-owned property shall not be subject to section 32-9ll(b)(6).

(e) Notwithstanding subsection (b) of this section, a municipality can request the Commissioner of Economic and Community Development to determine if a property is eligible regardless of the person who currently owns such property.

(f) [(b)]Upon designation by the Commissioner of Economic and Community Development of an eligible person or municipality who holds title to such property, such eligible person or municipality shall (1) enter and remain in the voluntary remediation program established in section 22a-133x of the general statutes, [provided such person will not be a certifying party for the property pursuant to section 22a-134 of the general statutes, as amended by this act, when acquiring such property;](2) investigate pollution on such property in accordance with prevailing standards and guidelines and remediate pollution on such property in accordance with regulations established for remediation adopted by the Commissioner of Environmental Protection and in accordance with applicable schedules; and (3) eliminate further emanation or migration of any pollution from such property. An eligible person or municipality who holds title to an eligible property designated to be in the abandoned brownfields cleanup program shall not be responsible for investigating or remediating any pollution or source of pollution that has

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emanated from such property prior to such person or municipality taking title to such property.

(g) [(c)] Any applicant seeking a designation of eligibility for a person, municipality or a property under the abandoned brownfields cleanup program shall apply to the Commissioner of Economic and Community Development at such times and on such forms as the commissioner may prescribe.

(h) [(d)] Not later than sixty days after receipt of the application, the Commissioner of Economic and Community Development shall determine if the application is complete and shall notify the applicant of such determination.

(i) [(e)] Not later than ninety days after determining that the application is complete, the Commissioner of Economic and Community Development shall determine whether to include the property and applicant in the abandoned brownfields cleanup program.

(j) [(f)] Designation of a property in the abandoned brownfields cleanup program by the Commissioner of Economic and Community Development shall not limit the applicant's or any other person's ability to seek funding for such property under any other brownfield grant or loan program administered by the Department of Economic and Community Development, the Connecticut Development Authority or the Department of Environmental Protection.

(k) Designation of a property in the abandoned brownfields cleanup program by the Commissioner of Economic and Community Development shall exempt such eligible person or eligible municipality for filing as an establishment pursuant to section 22a-134a to 22a-134d, if such real property or prior business operations constitute an establishment.

(l) Upon completion of the requirements of subsection (e) of this section to the satisfaction of the Commissioner of Environmental Protection, such person or municipality shall qualify for a Covenant Not To Sue from the Commissioner of Environmental Protection without fee, pursuant to section 22a-133aa.

Section 11. (New) (Effective from passage.) Sec. 22a-134(1) is amended by adding new subsection (x) as follows:

(NEW) (x) Acquisition of an establishment that is in the abandoned brownfield cleanup program set forth in section 32-91l and all subsequent transfers of the establishment, provided the establishment is undergoing remediation or is remediated in accordance with subsection (f) of 32-91l.

Section 12. (New) (Effective from passage.) Sec. 22a-133aa is amended by adding new subsection (g) as follows:

(NEW). Any prospective purchaser or municipality remediating property pursuant to the abandoned brownfield cleanup program set forth in section 32-91l shall qualify for a covenant not to sue from the Commissioner of Environmental Protection without fee. Such covenant not to

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sue shall be transferable to subsequent owners provided the establishment is undergoing remediation or is remediated in accordance with subsection (f) of 32-9ll.

Section 13. Section 22a-133o is repealed and the following is substituted in lieu thereof:

(a) An owner of land may execute and record an environmental use restriction under sections 22a-133n to 22a-133r, inclusive, on the land records of the municipality in which such land is located if (1) the commissioner has adopted standards for the remediation of contaminated land pursuant to section 22a-133k and adopted regulations pursuant to section 22a-133q, (2) the commissioner[, or in the case of land for which remedial action was supervised under section 22a-133y, a licensed environmental professional,] determines, as evidenced by his signature on such restriction, that it is consistent with the purposes and requirements of sections 22a-133n to 22a-133r, inclusive, and of such standards and regulations, and (3) such restriction will effectively protect public health and the environment from the hazards of pollution. An environmental use restriction may be in the form of either an environmental land use restriction in accordance with subsection (b) of this section, or a notice of activity and use limitation in accordance with subsection (c) of this section.

(b) (1) No owner of land may record an environmental land use restriction on the land records of the municipality in which such land is located unless he simultaneously records documents which demonstrate that each person holding an interest in such land or any part thereof, including without limitation each mortgagee, lessee, lienor and encumbrancer, irrevocably subordinates such interest to the environmental use land restriction provided the commissioner may waive such requirement if he finds that the interest in such land is so minor as to be unaffected by the environmental land use restriction. An environmental land use restriction shall run with land, shall bind the owner of the land and his successors and assigns, and shall be enforceable notwithstanding lack of privity of estate or contract or benefit to particular land.

[(c)] (2) Within seven days of executing an environmental land use restriction and receiving thereon the signature of the commissioner or licensed environmental professional, as the case may be, the owner of the land involved therein shall record such restriction and documents required under subsection (b) of this section on the land records of the municipality in which such land is located and shall submit to the commissioner a certificate of title certifying that each interest in such land or any part thereof is irrevocably subordinated to the environmental land use restriction in accordance with said subsection (b).

[(d)] (3) An owner of land with respect to which an environmental land use restriction applies may be released, wholly or in part, from the limitations of such restriction only with the commissioner's written approval which shall be consistent with the regulations adopted pursuant to section 22a-133q and shall be recorded on the land records of the municipality in which such land is located provided the commissioner may waive the requirement to record such release if he finds that the activity which is the subject of such release does not affect the overall purpose for which the environmental land use restriction was implemented and does not alter the size of the area subject to the environmental land use restriction. The commissioner shall not approve any such release unless the owner demonstrates that he has remediated the land, or such portion

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thereof as would be affected by the release, in accordance with the standards established pursuant to section 22a-133k.

[(e)] (4) An environmental land use restriction shall survive foreclosure of a mortgage, lien or other encumbrance.

(c) (1) A notice of activity and use limitation may only be used and recorded for releases remediated in accordance with the regulations adopted pursuant to sections 22a-133k and 22a-133q, as amended by this act, for the following purposes:

(A) To achieve compliance with industrial or commercial direct exposure criteria, groundwater volatilization criteria, and soil vapor criteria set forth in regulations adopted pursuant to section 22a-133k, as amended by this act, by preventing residential activity and use of the area to be affected by the notice of activity and use limitation provided that the property is zoned to exclude residential activity as defined in regulations adopted pursuant to section 22a-133k, as amended by this act;

(B) To prevent disturbance of polluted soil that exceeds the applicable direct exposure criteria but is inaccessible, in compliance with the provisions of regulations adopted pursuant to section 22a-133k, as amended by this act, provided pollutant concentrations in such inaccessible soil do not exceed ten times the applicable direct exposure criteria;

(C) To prevent disturbance of an engineered control to the extent such engineered control is for the sole remedial purpose of eliminating exposure to polluted soil that exceeds the direct exposure criteria, provided pollutant concentrations in such soil do not exceed ten times the applicable direct exposure criteria;

(D) To prevent demolition of a building or permanent structure that renders polluted soil environmentally isolated, provided that either: (i) The pollutant concentrations in the environmentally isolated soil do not exceed ten times the applicable direct exposure criteria and the applicable pollutant mobility criteria, or (ii) the total volume of soil that is environmentally isolated is less than or equal to ten cubic yards; or

(E) Any other purpose the commissioner may prescribe by regulation.

(2) No owner shall record a notice of activity and use limitation on the land records of the municipality in which such land is located unless the owner provides written notice to each person holding an interest in such land or any part thereof, including without limitation each mortgagee, lessee, lienor and encumbrancer, not later than sixty days prior to the recordation of such notice. Such notice of the proposed notice of activity and use limitation shall be sent by certified mail, return receipt requested, and shall include notice of the existence and location of pollution within such area and the terms of such proposed activity and use limitation. Such sixty-day-notice period may be waived upon the written agreement of all interest holders.

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(3) A notice of activity and use limitation recorded pursuant to this subsection shall be implemented and adhered to by the owner and holders of interests in the property and any person that has a license to use such property, and their successors and assigns, or to conduct remediation on any portion of such property.

(4) A notice of activity and use limitation shall be deemed implemented and shall be in effect upon being duly recorded on the land records of the municipality in which such property is located.

(5) (A) A notice of activity and use limitation shall be prepared on a form as prescribed by the commissioner.

(B) A notice of activity and use limitation decision document, signed by the commissioner or signed and sealed by a licensed environmental professional, shall be referenced in and recorded with the notice of activity and use limitation, and shall specify:

(i) Why the notice of activity and use limitation is appropriate to achieve and maintain compliance with the regulations adopted pursuant to section 22a-133k, as amended by this act;

(ii) Activities and uses that are inconsistent with maintaining compliance with such regulations;

(iii) Activities and uses to be permitted;

(iv) Obligations and conditions necessary to meet the objectives of the notice of activity and use limitation; and

(v) The nature and extent of pollution in the area that is the basis for the notice of activity and use limitation, including a listing of contaminants and concentrations for such contaminants, and the horizontal and vertical extent of such contaminants.

(6) Upon transfer of any interest in or a right to use property, or a portion of property, that is subject to a notice of activity and use limitation, the owner of such land, any lessee of such land, and any person who can sub-divide or sub-lease the property, shall incorporate such notice either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer. A notice of activity and land use limitation shall survive foreclosure of a mortgage, lien or other encumbrance.

Section 14. Section 22a-133p is repealed and the following is substituted in lieu thereof:

(a) The Attorney General, at the request of the commissioner, shall institute a civil action in the superior court for the judicial district of Hartford or for the judicial district wherein the subject land is located for injunctive or other equitable relief to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder, or to recover

a civil penalty pursuant to subsection (e) of this section.

(b) The commissioner may issue orders pursuant to sections 22a-6 and 22a-7 to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder.

(c) In any administrative or civil proceeding instituted by the commissioner to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder, any other person may intervene as a matter of right.

(d) In any civil or administrative action to enforce an environmental use restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder, the owner of the subject land, and any lessee thereof, shall be strictly liable for any violation of such restriction or sections 22a-133n through 22a-133q and regulations adopted thereunder and shall be jointly and severally liable for abating such violation.

(e) Any owner of land with respect to which an environmental use restriction applies, and any lessee of such land, who violates any provision of such restriction, fails to adhere to such restriction or violates sections 22a-133n through 22a-133q or regulations adopted thereunder, shall be assessed a civil penalty under section 22a-438. The penalty provided in this subsection shall be in addition to any injunctive or other equitable relief.

Section 15. **Section 22a-133q is repealed and the following is substituted in lieu thereof:** The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the purposes of sections 22a-133n to 22a-133r, inclusive. Such regulations may include, but not be limited to, provisions regarding the form, contents, fees, financial surety, monitoring and reporting, filing procedure for, and release from, environmental use restrictions.

Section 16. (*Effective from passage*) Section 2 of Public Act 10-135 is amended as follows:

(a) There is established a working group to examine the remediation and development of brownfields in this state, including, but not limited to, the remediation scheme for such properties, permitting issues and liability issues, including those set forth by sections 22a-14 to 22a-20, inclusive, of the general statutes.

(b) The working group shall consist of the following eleven members, each of whom shall have expertise related to brownfield redevelopment in environmental law, engineering, finance, development, consulting, insurance or another relevant field: (1) ~~Two~~ Four appointed by the Governor; (2) One appointed by the president pro tempore of the Senate; (3) One appointed by the speaker of the House of Representatives; (4) One appointed by the majority leader of the Senate; (5) One appointed by the majority leader of the House of Representatives; (6) One appointed by the minority leader of the Senate; (7) One appointed by the minority leader of the House of Representatives; (8) The Commissioner of Economic and Community Development or the commissioner's designee, who shall serve ex officio; (9) The Commissioner of Environmental

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Protection or the commissioner's designee, who shall serve ex officio; and (10) The Secretary of the Office of Policy and Management or the secretary's designee, who shall serve ex officio.

(c) All appointments to the working group shall continue and, for any new appointment, be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) The working group shall select chairpersons of the working group from among the appointed members of the working group. Such chairpersons shall schedule the first meeting of the working group, which shall be held no later than sixty days after the effective date of this section.

(e) On or before [January 15, 2011] February 15, 2012, the working group shall report, in accordance with the provisions of section 11-4a of the general statutes, on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to commerce.

Section 17. (NEW) (a) There is established a comprehensive brownfield remediation and revitalization program within the Office of Brownfield Remediation and Development, to be administered by the Director of the Office. No more than twenty properties at a time shall be accepted into the program and a new property shall be added upon the withdrawal of a property from the program or upon issuance of a "Notice of Completion of Remedy and No Further Action Letter" pursuant to subsection (h)(2). The Director shall determine, pursuant to the procedures set forth below, the properties and persons eligible for inclusion within said program and shall select properties based upon at least one of the following criteria: (1) the likely creation of jobs, including, but not limited to, those related to remediation, design, development, and construction; (2) the projected increase to the municipal grand list; (3) the consistency of the property as remediated and developed with municipal or regional planning objectives; (4) the development plan's support for and furtherance of principles of smart growth or transit oriented development. The Director may adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this section. As used in subsections (a) – (i) of this section, inclusive:

"Bona fide prospective purchaser" means a person (or a tenant of a person) that acquires ownership of a property after January 11, 2002, and that establishes each of the following by a preponderance of the evidence: (i) All disposal of regulated substances at the property occurred before the person acquired the facility; (ii) The person made all appropriate inquiries, as set forth in section 40, part 312 of the code of federal regulations into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices. The standards and practices set forth in the ASTM Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process, E1527-05. as it may periodically be updated, shall be considered to satisfy the requirements of this subparagraph; (iii) In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a property inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph; (iv) The person provides all legally required notices with respect to the

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discovery or release of any regulated substances at the property; (v) The person exercises appropriate care with respect to regulated substances found at the property by taking reasonable steps to (A) stop any continuing release; (B) prevent any threatened future release; and (C) prevent or limit human, environmental, or natural resource exposure to any previously released regulated substance; (vi) The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the property); (vii) The person (A) is in compliance with any land use restrictions established or relied on in connection with the response action at the property; and (B) does not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response action; and (viii) The person complies with any request for information or administrative subpoena issued by the Commissioner of Environmental Protection.

"Brownfield" means any abandoned or underutilized site where redevelopment, reuse, or expansion may be complicated by the presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the restoration, redevelopment or reuse of the property.

"Brownfield investigation plan and remediation schedule" means a plan and schedule for investigation, and a schedule for remediation of an eligible property under this section. Such investigation plan and remediation schedule shall include both interim status or other appropriate interim target dates and a target date for project completion within five years after the Commissioner of Environmental Protection approves the plan and schedule, provided however that the Commissioner of Environmental Protection may extend such dates for good cause. The plan shall provide a schedule for activities including, but not limited to, completion of the investigation of the property in accordance with prevailing standards and guidelines, submittal of a complete investigation report, submittal of a detailed written plan for remediation, completion of remediation in accordance with standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k, and submittal to the Commissioner of Environmental Protection of a final remedial action report. Except as otherwise provided in this section, in any detailed written plan for remediation submitted under this section, the applicant shall only be required to investigate and remediate conditions existing within the property boundaries and shall not be required to investigate or remediate any pollution or contamination that exists outside of the property's boundaries, including any contamination that may exist or has migrated to sediments, rivers, streams or off site.

"Contiguous property owner" means a person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a regulated substance from, real property that is not owned by that person, provided (i) with respect to the property owned by that person, the person takes reasonable steps to: (A) stop any continuing release of any regulated substance released on or from the property; (B) prevent any threatened future release of any regulated substance released on or from the property; and (C) prevent or limit human, environmental, or natural resource exposure to any regulated substance released on or from the property; (ii) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural

resource restoration at the property from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the property); (iii) the person (A) is in compliance with any land use restrictions established or relied on in connection with the response action at the property and (B) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action; (iv) the person is in compliance with any request for information or administrative subpoena issued by the Commissioner of Environmental Protection; and (v) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the property.

“Economic Development Agency” means a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or nonstock corporation or limited liability company established or controlled by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

"Innocent landowner" means: (i) A person holding an interest in real estate, other than a security interest, that, while owned by that person, is subject to a spill or discharge if the spill or discharge is caused solely by any one of or any combination of the following: (A) An act of God; (B) an act of war; (C) an act or omission of a third party other than an employee, agent or lessee of the landowner or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the landowner, unless there was a reasonably foreseeable threat of pollution or the landowner knew or had reason to know of the act or omission and failed to take reasonable steps to prevent the spill or discharge, or (D) an act or omission occurring in connection with a contractual arrangement arising from a published tariff and acceptance for carriage by a common carrier by rail, unless there was a reasonably foreseeable threat of pollution or the landowner knew, or had reason to know, of the act or omission and failed to take reasonable steps to prevent the spill or discharge; or (ii) a person who acquires an interest in real estate, other than a security interest, after the date of a spill or discharge if the person is not otherwise liable for the spill or discharge as the result of actions taken before the acquisition and, at the time of acquisition, the person (A) does not know and has no reason to know of the spill or discharge, and inquires, consistent with good commercial or customary practices, into the previous uses of the property; (B) is a government entity; (C) acquires the interest in real estate by inheritance or bequest; or (D) acquires the interest in real estate as an executor or administrator of a decedent's estate.

“Interim Verification” means a written opinion by a licensed environmental professional, on a form prescribed by the Commissioner of Environmental Protection, that (A) the brownfield investigation plan and remediation schedule has been performed in accordance with prevailing standards and guidelines, (B) the remediation has been completed in accordance with the standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k, except that, for remediation standards for groundwater, the selected remedy is in operation but has not achieved compliance with the standards for groundwater, (C) identifies the long-term

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remedy being implemented to achieve groundwater standards, the estimated duration of such remedy, and the ongoing operation and maintenance requirements for continued operation of such remedy, and (D) there are no current exposure pathways to the groundwater area that have not yet met the remediation standards.

"Municipality" means any town, city or borough.

"National Priorities List" means the list of hazardous waste disposal sites compiled by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 9605 .

"Person" for the purposes of this section means any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, municipality, Economic Development Agency, agency or political or administrative subdivision of the state, and any other legal entity.

"Principles of smart growth" means standards and objectives that support and encourage smart growth when used to guide actions and decisions, including, but not limited to, standards and criteria for (A) integrated planning or investment that coordinates tax, transportation, housing, environmental and economic development policies at the state, regional and local level, (B) the reduction of reliance on the property tax by municipalities by creating efficiencies and coordination of services on the regional level while reducing interlocal competition for grand list growth, (C) the redevelopment of existing infrastructure and resources, including, but not limited to brownfields and historic places, (D) transportation choices that provide alternatives to automobiles, including rail, public transit, bikeways and walking, while reducing energy consumption, (E) the development or preservation of housing affordable to households of varying income in locations proximate to transportation or employment centers or locations compatible with smart growth, (F) concentrated, mixed-use, mixed income development proximate to transit nodes and civic, employment or cultural centers, and (G) the conservation and protection of natural resources by (i) preserving open space, water resources, farmland, environmentally sensitive areas and historic properties, and (ii) furthering energy efficiency.

"Regulated Substance" means any element, compound or material which, when added to air, water, soil or sediment, may alter the physical, chemical, biological or other characteristic of such air, water, soil or sediment and for which there are remediation standards adopted pursuant to section 22a-133k or for which such remediation standards have a process for calculating the numeric criteria of such substance.

"Release" means any discharge, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying or disposal of any regulated substance.

"Remediation Standards" means standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k.

"Smart growth" means economic, social and environmental development that (A) promotes, through financial and other incentives, economic competitiveness in the state while preserving natural resources, and (B) utilizes a collaborative approach to planning, decision-

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making and evaluation between and among all levels of government and the communities and the constituents they serve.

“Transit Oriented Development” means the development of residential, commercial and employment centers within one-half mile or walking distance of public transportation facilities, including rail and rapid transit and services that meet transit supportive standards for land uses, built environment densities and walkable environments, in order to facilitate and encourage the use of those services.

"Verification" means the rendering of a written opinion by a licensed environmental professional that an investigation of the eligible property has been performed in accordance with prevailing standards and guidelines and that the eligible property has been remediated in accordance with the remediation standards.

(b) (1) Any eligible person as defined in subsection (c) below making application to the comprehensive brownfield remediation and revitalization program must demonstrate to the Director of the Office of Brownfield Remediation and Development that: (i) the property meets the definition of a brownfield, and (ii) there has been a release at the property of a regulated substance in an amount that exceeds the remediation standard regulations adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k.

(2) A property that is currently the subject of an enforcement action, including any Consent Orders issued by the Department of Environmental Protection or the United States Environmental Protection Agency under any current Department of Environmental Protection or United States Environmental Protection Agency program or that is listed on the National Priorities List is not eligible to participate in the comprehensive brownfield remediation and revitalization program.

(3) A municipality or an economic development agency may nominate a property for acceptance into the comprehensive brownfield remediation and revitalization program without an application by an eligible person, the acceptance of which property into the comprehensive brownfield remediation and revitalization program will preserve the eligibility for liability relief for an applicant that may thereafter be accepted into the comprehensive brownfield remediation and revitalization program and who fulfills the obligations of an applicant under subsection (g) of this section.

(4) Properties currently being investigated and remediated in accordance with the State Voluntary Remediation programs under sections 22a-133x and 133y, and the Covenant Not to Sue programs under sections 22a-133aa and bb, if the properties and the applicants are otherwise eligible under this section, may participate in this comprehensive brownfield remediation and revitalization program.

(c) A person eligible to be an applicant and to participate in the comprehensive brownfield remediation and revitalization program is defined to include any one of those persons listed in subsection (c)(1) – (4), provided that such person also meets the definition set forth in subsection (c)(5).

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- (1) an innocent landowner and which may include a municipality or economic development agency,
 - (2) a bona fide prospective purchaser and which may include a municipality or economic development agency,
 - (3) a contiguous property owner, and which may include a municipality or economic development agency, or
 - (4) a person who receives property from either an innocent landowner, bona fide prospective purchaser, contiguous property owner or the successor to such person; and
 - (5) The person (i) did not establish or create a facility or condition at or on such property which reasonably can be expected to create a source of pollution to the waters of the state for purposes of section 22a-432 and has not maintained any such facility or condition at such property for purposes of said section, and such purchaser is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property; and (ii) is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such purchaser's interest in such property is to be conveyed or financed.
- (d) Inclusion of a property within the comprehensive brownfield remediation and revitalization program by the Director shall not limit any person's ability to seek funding for such property under any federal, state or municipal grant or loan program, including but not limited to any state brownfield grant or loan program.
- (e) Any applicant seeking a designation of eligibility for a person or a property under the comprehensive brownfield remediation and revitalization program shall apply to the Director at such times and on such forms as the Director may prescribe and shall pay a fee of Three Thousand Dollars along with its completed application. Such fee will be deposited in the brownfield remediation and development account established pursuant to section 32-9kk(1). The application shall include a completed environmental condition assessment form as defined in section 22a-134(17) for the eligible property and documentation demonstrating satisfaction of the eligibility criteria set forth in subsections (b) and (c). The applicant shall certify to the Director, in writing, that the information contained in its application is correct and accurate to the best of the applicant's knowledge and belief. Not later than thirty days after receipt of the application, the Director shall notify the applicant whether the application is complete or incomplete. If the Director fails to notify the applicant within thirty days after his or her receipt of an application, the application shall be deemed complete.
- (f) Acceptance or rejection of application; innocent party status. (1) Not later than sixty days after the application is determined to be or is deemed to be complete, the Director shall notify the applicant whether the eligible property is included or not included in the comprehensive brownfield remediation and revitalization program. If the Director fails to notify

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the applicant within sixty days, the application shall be deemed accepted into the comprehensive brownfield remediation and revitalization program.

(2) A person whose application has been accepted or deemed accepted into the comprehensive brownfield remediation and revitalization program shall not be liable to the state or any third party for the release of any regulated substance at or from the eligible property except and only to the extent that such Applicant (i) caused or contributed to the release of a regulated substance that is subject to remediation under the remediation standards or (ii) exacerbated such condition, or (iii) except to the extent the Commissioner of Environmental Protection determines the existence of any of the conditions set forth in subsection (g)(2)(ii) below.

(g)(1)(i) A person whose application to the comprehensive brownfield remediation and revitalization program has been approved or deemed approved by the Director shall (A) investigate the release or threatened release of any regulated substance within the boundaries of the property that exceeds the remediation standards in accordance with prevailing standards and guidelines, and (B) remediate such release or threatened release within the boundaries of such property in accordance with the remediation standards and in accordance with a schedule to be established in the brownfield investigation plan and remediation schedule, to be prepared in accordance with subsection (g)(2). (ii) A person whose application to the comprehensive brownfield remediation and revitalization program has been approved or deemed approved by the Director shall not be required to characterize, abate, and remediate the release of a regulated substance that exceeds the remediation standards beyond the boundary of the eligible property.

(2) Within one hundred eighty (180) days after the application is determined to be or is deemed complete, or such longer period approved by the Commissioner of Environmental Protection upon good cause shown, the Applicant shall submit to both the Commissioner of Environmental Protection and the Director a Brownfield Investigation Plan and Remediation Schedule. The Commissioner of Environmental Protection will issue notice of his or her receipt of the brownfield investigation plan and remediation schedule on the Department's website and in the Connecticut Law Journal in accordance with this section, stating that such brownfield investigation plan and remediation schedule is available for review on the Department of Environmental Protection website. Any person may provide comments to the Commissioner of Environmental Protection, the Director, and the Applicant on the brownfield investigation plan and remediation schedule within thirty days after the posting of those documents on the Department of Environmental Protection's website.

(3) Not later than sixty (60) days after receiving the brownfield investigation plan and remediation schedule, the Commissioner of Environmental Protection shall notify the Applicant and the Director whether the brownfield investigation plan and remediation schedule is approved in full or in part or rejected in full or in part, with an explanation of the reasons for the decision to approve or disapprove all or any part of the brownfield investigation plan and remediation schedule. If the Commissioner of Environmental Protection neither approves nor rejects the brownfield investigation plan and remediation schedule within such timeframe, the brownfield investigation plan and remediation schedule shall be deemed approved. The Applicant shall

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have thirty (30) days to respond to any disapproval or rejection by the Commissioner of Environmental Protection of the brownfield investigation plan and remediation schedule and the time frames herein provided for comment and response shall continue until the Commissioner of Environmental Protection has approved the brownfield investigation plan and remediation schedule, the brownfield investigation plan and remediation schedule is deemed approved, or the Applicant has notified the Commissioner of Environmental Protection of its withdrawal from the program

(4) Prior to commencement of remedial action pursuant to the approved brownfield investigation plan and remediation schedule, the Applicant shall: (i) publish notice of the remedial action in a newspaper having a substantial circulation in the town where the property is located; (ii) notify the director of health of the municipality where the parcel is located; (iii) and either (A) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the property, which sign shall be clearly visible from the public highway, and shall include the words "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT:" and include a telephone number for an office from which any interested person may obtain additional information about the remedial action; or (B) mail notice of the remedial action to each owner of record of property which abuts such property, at the address on the last-completed grand list of the relevant town.

(5) The remedial action shall be conducted under the supervision of a Licensed Environmental Professional and the final remedial action report shall be submitted to the Commissioner of Environmental Protection and the Comprehensive Brownfield Remediation Officer by a Licensed Environmental Professional. In preparing such report, the Licensed Environmental Professional shall issue a verification or interim verification in which he or she shall render an opinion, in accordance with the standard of care provided for in subsection (c) of section 22a-133w, that the action taken to contain, remove or mitigate the release of a regulated substances within the boundaries of such property, as provided in subsection (g)(1), is in accordance with the remediation standards adopted by the Commissioner of Environmental Protection pursuant to section 22a-133k.

(6) All applications for permits required to implement the brownfield investigation plan and remediation schedule hereunder shall be submitted to the permit ombudsman within the Connecticut Department of Economic and Community Development to coordinate and expedite in accordance with Public Act No. 10-158.

(7) Every Applicant participating in the comprehensive brownfield remediation and revitalization program shall maintain all records related to its implementation of the brownfield investigation plan and remediation schedule and completion of the remedial action of the property for a period of not less than ten years and shall make such records available to the Commissioner of Environmental Protection or the Director at any time upon request by either or them.

(8) Any final remedial action report submitted to the Commissioner of Environmental Protection and the Director for such a property by a Licensed Environmental Professional shall be deemed approved unless, within sixty (60) days after such submittal, the Commissioner of

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Environmental Protection determines, in his or her sole discretion, and he or she provides notice of such determination to the Applicant and the Director, that an audit of such remedial action is necessary to assess whether remedial action beyond that which is detailed in such report is necessary for the protection of human health or the environment. Such an audit shall be conducted within six months after such determination. Within thirty (30) days after completing such audit the Commissioner of Environmental Protection may disapprove the report, provided he or she shall give his or her reasons therefore in writing to the Applicant and the Director and further provided the Applicant may appeal such disapproval to the Superior Court in accordance with the provisions of section 4-183. (i) Within sixty (60) days after receipt of a notice of disapproval of remedial action report from the Commissioner of Environmental Protection, the Applicant may submit to said Commissioner and to the Comprehensive Brownfields Remediation Officer a Report of Cure of Noted Deficiencies. Within sixty (60) days after receipt of such Notice of Cure of Noted Deficiencies by the Commissioner of Environmental Protection, unless disapproved in writing before then by the Commissioner of Environmental Protection, the Notice of Cure of Noted Deficiencies will be deemed approved and the Commissioner of Such fee will be deposited in the brownfield remediation and development account established pursuant to section 32-9kk(1). Environmental Protection shall issue the Notice of Completion of Remedy and No Further Action Letter provided for in subsection (h)(2). The Applicant may also appeal a Disapproval of the Notice of Cure of Noted Deficiencies to the superior court in accordance with the provisions of section 4-183. (ii) Prior to approving a final remedial action report or the remedial action report being deemed approved, the Commissioner of Environmental Protection may enter into a memorandum of understanding with the Applicant with regard to any further remedial action or monitoring activities on or at such property which the Commissioner of Environmental Protection deems necessary for the protection of human health or the environment.

(h) (1) An Applicant who has been accepted into the comprehensive brownfield remediation and revitalization program shall have no obligation as part of its brownfield investigation plan and remediation schedule to characterize, abate, and remediate any plume of a regulated substance outside the boundaries of the subject property, provided, however that the notification requirements of section 22a-6u pertaining to significant environmental hazards shall continue to apply to the property, further provided that the applicant, pursuant to section 22a-6u(i),(j), and (k) or otherwise, shall not be required to characterize, abate or remediate any such significant environmental hazard outside the boundaries of the subject property unless such significant environmental hazard arises from the actions of the applicant after its acquisition of or control over the property from which such significant environmental hazard has emanated outside its own boundaries. In the event of such notification to the Commissioner by the applicant pursuant to section 22a-6u the Commissioner shall not be required to acknowledge same pursuant to 22a-6u(j). In the event that an applicant who has been accepted into the comprehensive brownfield remediation and revitalization program conveys or otherwise transfers its ownership of the subject property to a different person, the provisions of this subsection shall apply to that person as well, if that person meets the eligibility criteria set forth in subsection (c), and provided that person complies with all the obligations undertaken by the Applicant under this section.

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(2) With the Commissioner of Environmental Protection's approval of a final remedial action report, or upon the deemed approval of such report, the Commissioner of Environmental Protection shall issue a "Notice of Completion of Remedy and No Further Action Letter" which shall provide that the Applicant is not liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in the brownfield investigation plan and remediation schedule and also any liability to the state or any third party for historic off-site impacts including air deposition, waste disposal, impacts to sediments, and natural resource damages.

(i) The "Notice of Completion of Remedy and No Further Action Letter" issued by the Commissioner of Environmental Protection shall extend to any person who acquires title to all or part of the property for which a remedial action report has been approved pursuant to subsection (h), provided, however, that (A) there is payment of a fee of \$3,000.00 to the Commissioner of Environmental Protection for each such extension, with such fee to be deposited in the brownfield remediation and development account established pursuant to section 32-9kk(l) and (B) such person acquiring all or part of the property meets the criteria of subsection (c)(5).

(ii) A "Notice of Completion of Remedy and No Further Action Letter" issued under this section shall not preclude the Commissioner of Environmental Protection from taking any appropriate action, including, but not limited to, any action by the Commissioner of Environmental Protection to require remediation of the property by the Applicant, or as applicable in subsection (A) below to its successor, if he or she determines that: (A) the "Notice of Completion of Remedy and No Further Action Letter" was based on information provided by the person seeking the "Notice of Completion of Remedy and No Further Action Letter" which information the Commissioner of Environmental Protection can demonstrate that such person knew, or had reason to know, was false or misleading, and in the case of the successor to an Applicant admitted to the comprehensive brownfield remediation and revitalization program if the Commissioner of Environmental Protection can demonstrate that such successor was aware or had reason to know that such information was false or misleading; (B) new information confirms the existence of previously unknown contamination which resulted from a release which occurred prior to the date that an application has been accepted or deemed accepted into the comprehensive brownfield remediation and revitalization program as set forth in subsection (g)(1); (C) the Applicant who received the "Notice of Completion and No Further Action Letter" has materially failed to complete the remedial action required by the brownfield investigation plan and remediation schedule or to carry out or comply with monitoring, maintenance, or operating requirements pertinent to a remedial action including the requirements of any environmental land use restriction issued pursuant to the remediation standards; or (D) the threat to human health or the environment is increased beyond an acceptable level due to substantial changes in exposure conditions at such property, including, but not limited to, a change from nonresidential to residential use of such property.

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(iii) The Applicant may appeal a determination made by the Commissioner of Environmental Protection under subsection (h)(2)(ii) above to the superior court in accordance with the provisions of section 4-183.

(3) To the extent that a Licensed Environmental Professional verifies that a site which has been accepted into the program, has been investigated and remediated in compliance with the standards as set forth above in subsection (g) , and the Commissioner of Environmental Protection has approved the final remedial action report or the final remedial action report has been deemed approved, the person that undertook that earlier remediation, regardless of its own eligibility to participate in the comprehensive brownfield remediation and revitalization program, will receive the same protections from liability and additional remedial action as an Applicant approved to participate in the comprehensive brownfield remediation and revitalization program, provided, however that the person who undertook that earlier remediation nonetheless shall retain any liability the person would otherwise have to characterize and remediate any continuing migration or threatened migration beyond the boundaries of the eligible property if such characterization and remediation has not been included in the remedial action report submitted by the Applicant and approved or deemed approved by the Commissioner of Environmental Protection.

(i) No person shall be required to comply with the provisions of section 22a-134 to 22a-134e inclusive, in connection with the transfer of a business or real property occurring on or after the effective date of this section (i) for which an application has been accepted or deemed accepted into the comprehensive brownfield remediation and revitalization program or (ii) for which a brownfield investigation plan and remediation schedule or a final remedial action report hereunder has been approved or deemed approved by the Commissioner of Environmental Protection, and (iii) at which no activities described in subdivision (3) of section 22a-134 have been conducted since the date of such approval.

Section 18. Include Bill 6221 – elimination of sunset dates for brownfield remediation projects funded by the Connecticut Development Authority.

Office of Brownfield Remediation and Development
Department of Economic and Community Development
Role Per CSG 32-9cc

- (1) Develop procedures and policies for streamlining the process for brownfield remediation and development;
- (2) Identify existing and potential sources of funding for brownfield remediation and develop procedures for expediting the application for and release of such funds;
- (3) Establish an office to provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs;
- (4) Provide a single point of contact for financial and technical assistance from the state and quasi-public agencies;
- (5) Develop a common application to be used by all state and quasi-public entities providing financial assistance for brownfield assessment, remediation and development; and
- (6) Identify and prioritize state-wide brownfield development opportunities; and
- (7) Develop and execute a communication and outreach program to educate municipalities, economic development agencies, property owners and potential property owners and other organizations and individuals with regard to state policies and procedures for brownfield remediation.

**Office of Brownfield Remediation and Development
Department of Economic and Community Development
Assistance Programs Overview**

EPA Site Assessment Program: Municipalities and related organizations refer sites for program consideration that may be complicated by hazardous substance contamination or petroleum contamination. OBRD hires an environmental consultant to investigate the environmental condition of an eligible site and to prepare the remedial action work plan.

EPA Statewide Revolving Loan Fund: EPA funds for the remediation of environmental contamination located in any CT municipality. Grants opportunities for municipalities and non-profits and loan opportunities available for eligible for-profit organizations.

EPA Statewide Revolving Loan Fund: EPA funds for the remediation of environmental contamination located in Hartford. Grants opportunities for municipalities and non-profits and loan opportunities available for eligible for-profit organizations.

Dry Cleaning Establishment Remediation Fund: This program is funded through taxes collected from CT dry cleaners. It provides grants of up to \$300k for the landowner or business operator for assessment and site clean up.

Special Contaminated Properties Remediation and Insurance Fund (SCPRIF): This is a loan program that provides assistance to municipalities, developers or owners for Phase II/III investigations, Remedial Action Plans (RAP), demolition and remedial action activities.

Urban Sites Remedial Action Program (USRAP): The State's flagship, and the oldest Brownfield specific redevelopment program. Jointly managed by OBRD and DEP for projects that are significant to the Connecticut's economy and quality of life. Site must be located in a distressed municipality. This program provides seed capital to facilitate the transfer, reuse and redevelopment of the property.

Brownfield Municipal Pilot Program: A competitive grant program for municipalities with projects that have been complicated by brownfields but will on completion make a significant economic impact. Only municipalities and municipal entities are eligible to apply however, the project sites do not need to be owned by the municipality.

Targeted Brownfield Development Loan Program: This program provides financial assistance in the form of low-interest loans to applicants who seek to develop property for purposes of retaining or expanding jobs in the state or for developing housing to serve the needs of first-time home buyers. Loans are available to manufacturing, retail, residential or mixed-use developments, expansions or reuses.

Abandoned Brownfield Cleanup Program: The ABC program offers an opportunity for developers, who are not responsible for contamination, to be afforded liability protection from the responsibility to investigate and remediate off-site contamination provided that the projects meet certain economic development thresholds and remediation is completed under a formal DEP program.

Office of Brownfield Remediation and Development (OBRD)
Department of Economic & Community Development

- OBRD created under Public Act 06-184
- 2006 - OBRD website development
- 2007 MOU signed – DECD, DEP, DPH, CDA
- 2007 – OBRD awarded \$1M statewide revolving loan fund (RLF) for remediation by EPA
- 2008 – Formalized partners meetings, streamlined application
- 2008 – OBRD awarded \$400,000 for environmental assessment by EPA
- 2008 – 1st round Brownfield Municipal Pilot Program remediation projects (\$2.25M):
 - Stamford, Commons Park at Harbor Point
 - Waterbury, Cherry Street Industrial Park
 - Redding, Georgetown
 - Norwalk, Train Station
 - Shelton, Axton Cross
- 2009 – Pope Park Zion remediation, Hartford (EPA HTFD RLF)
- 2009 - Roosevelt Mills Project, Vernon
- 2009 – Former Decker’s Laundry assessment, Salisbury
- 2009 – OBRD awarded \$600,000 in supplemental revolving loan funding by EPA
- 2009 - Legislative
 - Abandoned Brownfields Program
 - Targeted Brownfield Loan Program
 - Streamlined brownfield remediation in floodplains (2007)
- 2010 – 2nd round Brownfield Municipal Pilot Program (\$2.25M)
 - Hartford, Swift Factory
 - Waterbury, Waterbury Industrial Commons
 - Meriden, Factory H
 - Madison, Griswold Airport
 - Naugatuck, Train Station
 - Putnam, Cargill Falls Mill
- 2010 – Current EPA RLF remediation projects
 - Habitat for Humanity, New London
 - Remington Rand, Middletown
 - Willimantic Whitewater Partnership, Willimantic
 - 14 Bridge Street, Montville
- 2010 – Assessment projects
 - Willimantic Whitewater Partnership, Willimantic
 - 98 Prospect St., Enfield
 - P & A Mill, Killingly
 - Former Decker’s Laundry, Salisbury
 - Former Swift Factory Hartford
 - Former Hi-G, South Windsor
- 2010 – (Fall) Brownfield Opportunities list available on website

- 2010 – OBRD awarded \$200,000 in EPA RLF supplemental funds
- 2010 – OBRD collaborated with Windham Region Council of Governments & Northeast CT Council of Governments on \$1M EPA assessment funding application

List of Representative Brownfield Programs and Incentives in Connecticut

Remediation Programs/Incentives	Statutory Authority	Description/Comment	Primary Agency
Property Transfer Program	§ 22a-134 - 134e	Requires the disclosure of environmental conditions when certain real properties and/or businesses ("establishments") are transferred. When an establishment is transferred, one of eight Property Transfer Forms must be executed, and a copy of the form must be filed with the DEP. When transferring an establishment where there has been a release of a hazardous waste or a hazardous substance, the parties negotiate who will sign the Property Transfer Form as the Certifying Party to investigate the parcel and remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment. In all transfers, an investigation of the parcel is required in accordance with prevailing standards and guidelines.	DEP
Voluntary Remediation Program	§ 22a-133y	This voluntary program can be utilized for property where the groundwater is classified as GB or GC and such property is not subject to any order, consent order or stipulated judgment issued by the DEP Commissioner. Prior to commencement of remedial action, the owner of the property must submit a remedial action plan prepared by a LEP to the Commissioner for review.	DEP
Voluntary Remediation Program	§ 22a-133x	This voluntary program can be utilized by owners of sites which are (1) owned by a municipality, or (2) defined as establishments pursuant to § 22a-134 of the General Statutes or (3) on the inventory of hazardous waste disposal sites maintained pursuant to § 22a-133c of the General Statutes, or (4) located in a GA or GAA groundwater area.	DEP
Third-party liability protection	§ 22a-133ee	Provides for third-liability protection for owners that conduct investigation and remediation, the reports for which are approved by DEP, provided the owner did not cause the condition and is not related to or affiliated with the party that caused the condition	DEP
Urban Sites Remedial Action Plan	§ 22a-133m	Sites are targeted for evaluation and remediation on a prioritized basis that includes factors such as cost, complexity and development benefits.	DECD/DEP
Special Contaminated Property Remediation and Insurance Fund	§ 22a-133u	Provide financial assistance to investigate the environmental conditions of a site, remediate the site and ultimately encourage property redevelopment that is beneficial to the community. Assistance is provided through low-interest loans that have a term of five years	DECD/DEP
Covenants Not To Sue	§§ 22a-133aa and 22a-133bb,	Agreement by the Commissioner that the Commissioner shall release claims that are related to pollution or contamination on or emanating from the property, which contamination resulted from a discharge, spillage, uncontrolled loss, seepage, or filtration on such property prior to the effective date of the covenant. (first is discretionary, but fee is high; second is mandatory, has less "protection," and has no fee.	DEP
Brownfield Municipal Pilot Program	§§ 32-9 cc (c) and (f); 32-9cc; and 32-9 ff	Fund Brownfield projects with significant anticipated economic impact in five municipalities or municipal entities based on population as follows: two (2) in municipalities with populations > 100,000; one (1) in a municipality with population between 50,000 and 100,000; one (1) in a municipality with population < 50,000; and one (1) in a municipality selected by the Commissioner without regard to population	DECD
Tax Increment Financing (TIF)	§ 8-134 & 8-134a	Provide "up-front" funding for developers that remediate and	CDA/CBRA

Remediation Programs/Incentives	Statutory Authority	Description/Comment	Primary Agency
for Brownfields		redevelop environmentally contaminated properties. The incentive is equal to the net present value of a portion of the future incremental municipal tax revenues generated by the project.	
Dry Cleaner Establishment Remediation Fund	§ 12-263m (a)	Provides grants to owners or operators of dry cleaning businesses for clean up of dry cleaner establishments. It is funded by a 1 percent surcharge on the gross receipts of dry cleaning establishments	DECD
Targeted Brownfield Development Loan Program	32-9 kk (f)	The Targeted Brownfield Development Loan Program provides financial assistance in the form of low-interest loans to applicants who seek to develop property for purposes of retaining or expanding jobs in the state or for developing housing to serve the needs of first-time home buyers.	DECD
Connecticut Abandoned Brownfield Cleanup (ABC) Program	§ 32-9ll	The Commissioner of Economic and Community Development shall determine, in consultation with the Commissioner of Environmental Protection determine eligible sites for a program that allows innocent purchasers to participate in a streamlined remediation of the site.	DECD/DEP
Environmental Insurance Program	§ 32-222	Funded through the Economic Development and Manufacturing Assistance Act (EDMAA). Provides state funds for environmental insurance policy premiums and pay insurance deductibles and OBRD review of the policy.	DECD/OBRD
Property Tax Abatement or Forgiveness Program	§ 12-81r	Authorizes municipalities in certain circumstances to abate taxes for up to seven years if the owner agrees to assess and remediate contaminated site.	

Brownfield Municipal Pilot Update – November 2010

Brownfield Municipal Pilots – Round I			
Municipality	Project	Grant	Status
Stamford	Harbor Point Partnership	\$450,000	Project nearly complete
Redding	Georgetown Remediation Project	\$425,000	Contract in closing. Delays due to project scheduling & funding issues
Waterbury	Cherry St. Industrial Park Remediation	\$650,000	Funding closed, project in process
Shelton	Axton Cross Remediation	\$425,000	Funding closed, project in progress
Norwalk	South Norwalk Transit Remediation	\$300,000	Funding closed, project in progress
Total		\$2,250,000	

Brownfield Municipal Pilots – Round II			
Municipality	Project	Grant	Status
Hartford	Swift Factory	\$600,000	Closing on funding
Waterbury	Waterbury Industrial Commons	\$600,000	Finalizing proposal.
Meriden	Factory H	\$300,000	Closing on funding
Madison	Former Griswold Airport	\$200,000	Closing on funding
Naugatuck	Train Station	\$50,000	Closing on funding
Putnam	Cargill Falls Mill	\$500,000	Closing on funding
Total		\$2,250,000	

Financial Resources Summary

AGENCY	PROGRAM	PROGRAM DETAIL	TYPE	FUNDING SOURCE	AUTHORIZED	FUNDING AVAILABILITY	AMOUNT EXPENDED TO DATE	STRENGTHS	WEAKNESSES
CBRA	TIF	Up-front TIF based cash for developers	GRANT	BONDS		Subject to CDA's available funding	\$ 12,000,000.00	Immediate source of funding for developer	Projects have to meet a min. 400,000 threshold
CBRA	DIRECT LOAN	Direct senior and subordinated loans	LOAN	BONDS/CDA OPERATING FUNDS		Subject to CDA's available funding	\$ 250,000.00	Leverage institutional funding	Need lead lending institution/developer must have solid banking relationship
CBRA	LOAN GUARANTEE	Provide full coverage of lender's loss up to 30% of loan balance	LOAN	BONDS/CDA OPERATING FUNDS		Subject to CDA's available funding		Leverage institutional funding	Need lead lending institution/developer must have solid banking relationship
DECD	ABANDONED BROWNFIELD CLEANUP PROGRAM	Liability protection for developers	N/A	N/A		N/A		limits liability for off-site investigation and cleanup	Need lead lending institution/developer must have solid banking relationship
DECD	TARGETED BROWNFIELD DEVELOPMENT LOAN PROGRAM	Low interest loans for manufacturing/retail/residential/mixed use	LOAN	Bonds	\$ 10,000,000.00	\$ 2,500,000.00	\$ 1,500,000.00	accounts to receive funds, - interest, repayment, etc	Reliance on borrowing for majority of start up funding
DECD	BROWNFIELD MUNICIPAL PILOT PROGRAM	Competitive Program for Municipalities	GRANT	Bonds	\$ 7,500,000.00	\$ -	\$ 4,500,000.00	accounts to receive funds, - interest, repayment, etc	
DEP	URBAN SITES REMEDIAL ACTION PROGRAM (USRAP)	Site located in designated distressed community(OBRD and DEP)	GRANT	Bond Funds	\$ 32,870,390.00	\$ -	\$ 32,870,390.00	accounts to receive funds, - interest, repayment, etc	
DECD	CT EPA ASSESSMENT PROGRAM	Monies through the EPA for assessment	GRANT	Federal Funds	\$ 400,000.00	\$ 189,431.00	\$ 210,569.00		iterative, limited eligibility criteria
DECD	STATEWIDE REVOLVING LOAN FUND	EPA funds for the remediation of contaminated properties	GRANT/ LOAN	Federal Funds	\$ 1,800,000.00	\$ 880,432.00	\$ 919,568.00		limited eligibility criteria
DECD	Hartford EPA Revolving Loan Fund	EPA funds for the remediation of contaminated properties in Hartford	GRANT/ LOAN	Federal Funds	\$ 602,171.00	\$ -	\$ 602,171.00		limited eligibility criteria
DEP	UNDERGROUND STORAGE TANK PETROLEUM CLEANUP PROGRAM	Reimbursement Program - reimburses responsible parties and 3rd parties for investigation and clean up for certain UST releases	Reimbursement	General Fund Line Item				available to responsible parties and 3rd parties	limited eligibility criteria, insufficient funds to meet needs
DECO	DRY CLEANING ESTABLISHMENT REMEDIATION FUND	Provides grants for the landowner or operator for assessment/cleanup	GRANT	Tax Receipts	\$ 10,100,000.00	\$ -	\$ 10,100,000.00	Small business assistance	\$300k cap, limited funds
DECD	SCPRIF	Monies to be used for Phase II/Phase III and RAP/Remediation	LOAN	Bonds	\$ 6,000,000.00	\$ 506,285.00		accounts to receive funds, - interest, repayment, etc	"construction loan" too narrow
DECD	MANUFACTURING ASSISTANCE*	General DECD economic development assistance program; Monies used for hard and soft costs related to brownfield reuse including, engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT/ LOAN	Bonds	N/A	N/A	\$ 22,100,000.00	Flexibility in use of funds	1) bonded funds; 2) competing with general ED projects supporting business growth; 3) for economic development projects only
DECD	URBAN ACT*	General state development assistance program; Monies used for hard and soft costs related to brownfield reuse including, engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	Bonds	N/A	N/A	\$ 25,700,000.00	Flexibility in use of funds	1) Controlled by OPM; 2) bonded funds
OPM	Small Town Economic Assistance Program (STEAP)*	General state development assistance program to small towns; Some towns have used funding to support brownfield projects; Monies used for hard and soft costs related to brownfield reuse including, engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	bonds	N/A	N/A	\$ 1,000,000.00	Flexibility in use of funds	1) Controlled by OPM; 2) bonded funds
	* Brownfield Project Identification in progress								
DECD	HUD 106 Program	Direct HUD line of credit loan to qualified project	LOAN	Federal funds	N/A	\$ 3,000,000.00	Plotted in 2010	1) Can leverage BEDI grants; 2) Leverage HUD CDBG- Small Cities Allocation; 3) Can support non-remediation project activities	1) Subject to federal thresholds, national priorities, and income requirements; 2) HUD approval timeframe



Environmental Professionals' Organization of Connecticut
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February 3, 2010

Mr. Patrick Bowe
Connecticut Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06015

Dear Mr. Bowe:

I am writing on behalf of the Environmental Professionals' Organization of Connecticut to clarify a point of statutory interpretation regarding remediation of sites under the Transfer Act. A number of our members have been told by various Department of Environmental Protection (DEP) personnel that when a Verification is rendered for a site, it must contemplate that all of the areas of concern have been adequately investigated and, if necessary, remediated and monitored in accordance with the Remediation Standard Regulations, no matter when in time such areas of concern may first have arisen. However, a plain reading of the language of the Transfer Act indicates, and many of our clients assert to us, that the responsibility of a Certifying Party under the Transfer Act relates only to the contamination existing at the time a Form III or Form IV is signed and submitted to the DEP. We therefore asked Mr. Doug Pelham of Cohn Birnbaum & Shea to perform legal research and provide us with a White Paper that discusses the applicable law and reaches a conclusion regarding this question. We attach a copy of this White Paper for your review. As you can see, the case law and legislative history support the proposition that a Certifying Party is responsible only for the condition of a site on the date certified, which includes historical contamination, but not future contamination that may arise subsequent to such certification.

Please be assured that we hold human health and the environment of paramount importance, and are not suggesting that contamination that occurs after the date a Certifying Party files a Form III or a Form IV should be ignored or should not be investigated and, if necessary, monitored and remediated. Connecticut statutes and case law provide numerous avenues for and broad power to the DEP to require the responsible party and/or the landowner to address contamination at a site, and we agree with the strong public policy goal of not only protecting but improving the environment. However, we also believe there is a strong public policy goal of fairness that should govern the interpretation and application of our environmental statutes, and which must be considered in the DEP's policy-making decisions. The intent of the legislature in enacting the Transfer Act not only considers but indeed embraces the concept of fairness. One of the primary goals of the Transfer Act is to protect unsuspecting purchasers from unscrupulous sellers who hide or fail to disclose the true environmental condition of a site, and give impetus to the performance of appropriate due diligence so that the parties can establish, with everyone cognizant of the risks and potential costs, the responsibility for addressing the existing contamination at a site. Conversely, it is an unfair outcome, not supported by the Transfer Act or its legislative history, to require honest sellers (who agree to be the Certifying Party) to protect unscrupulous or inattentive purchasers from their own environmental misdeeds, by requiring such sellers to conduct and pay for investigation, remediation and monitoring of contamination at a site that occurred (or potentially occurred) after the sale.

The policy of requiring Verifications to address all contamination, no matter when in time it occurred, also results in a significant burden to the DEP, as well as economic waste. Many times the investigation and remediation of a site takes several years, and during the course of time, especially at operating sites, many new potential sources of contamination can arise. While it seems expedient to

Mr. Patrick Bowe
February 3, 2010
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require the Certifying Party to address such new sources before its Licensed Environmental Professional renders a Verification, in fact this policy may cause a Verification to be significantly delayed or never achieved, because such new sources require investigation and monitoring. Years are therefore added to the length of projects, keeping these projects in the DEP's system and adding to DEP's administrative burden. Previous investigation and groundwater monitoring efforts may become wasted, because further investigation must be performed, and monitoring extended because new areas of concern were identified.

We urge you to clarify the DEP's policy regarding Verifications to be consistent with the conclusions set forth in the attached White Paper. We believe that the case law, legislative history, fairness, and burden to Certifying Parties and the DEP, as well as a fair reading of the Transfer Act itself, all mandate that the DEP's policy be that Verifications under the Transfer Act should pertain solely to the contamination in existence at the time the Certifying Party submits its certification.

Very truly yours,

ENVIRONMENTAL PROFESSIONALS'
ORGANIZATION OF CONNECTICUT, INC.



Seth J. Molofsky
Executive Director

cc: Amey Marrella, Commissioner
Betsey Wingfield, Bureau Chief
Robert Bell, Assistant Director
Jack Looney, Esq.
EPOC Members

WHITE PAPER TRANSFER ACT LIABILITY LIMITATIONS

Introduction

In general, the Transfer of Hazardous Waste Establishments Act, Connecticut General Statutes Sections 22a-134 et seq. (the "Transfer Act") requires an owner, at the time of transfer, to determine whether its real property or business operation is an Establishment¹, and if it is, make a filing to the transferee and to the Connecticut Department of Environmental Protection on one of eight forms that informs the transferee and the DEP of the environmental status of the site and initiates DEP oversight. In connection with the filing, one of the parties associated with the transfer must agree to be the "Certifying Party" who is responsible for investigation and, if necessary, remediation of pollution at the site (unless it can be shown at the time of transfer that no releases have occurred or releases have been previously remediated).

A commonly recurring transaction in Connecticut involves the sale of a real property Establishment for which a Form III must be filed because the site has not been fully investigated at the time of closing. In this example transaction, we assume that the seller agrees to be the Certifying Party on the Form III, and diligently proceeds to investigate, remediate and perform groundwater monitoring at the site to comply with the RSRs.² The time period to complete the foregoing activities typically stretches over a number of years. We also consider the situation where a subsequent sale of the same Establishment occurs some years later, but before the site remediation is complete from the first sale, in which the seller (formerly the buyer) agrees to be the Certifying Party on another Form III filing.

DEP staff members have stated that the DEP policy regarding Verifications is that when a Verification is rendered for a site, that Verification must certify that the site meets the RSRs as of the date the Verification is rendered. DEP staff members have also stated that in cases where there is more than one Certifying Party for a site, it is the DEP's policy to hold each Certifying Party jointly and severally responsible for the investigation and remediation of the site. The practical effect of these two policies is that it extends the liability of a Certifying Party to those releases and potential releases that occur at the site after the date of its Form III filing, when such Certifying Party no longer owns or has control over the site.

The purpose of this White Paper is to determine whether the DEP policies are consistent with the Transfer Act statute, applicable case law and legislative history. We conclude that in the case of a Certifying Party who is the seller, the responsibility for pollution at the site is limited to the period prior to the transfer. Furthermore, the filing of a subsequent Form III does not impose joint and several responsibility between the two Certifying Parties with regard to

¹ An "Establishment" is any real property at which or any business operation from which (A) on or after November 19, 1980, there was generated, except as the result of remediation of polluted soil, groundwater or sediment, more than one hundred kilograms of hazardous waste in any one month, (B) hazardous waste generated at a different location was recycled, reclaimed, reused, stored, handled, treated, transported or disposed of, (C) the process of dry cleaning was conducted on or after May 1, 1967, (D) furniture stripping was conducted on or after May 1, 1967, or (E) a vehicle body repair facility was located on or after May 1, 1967.

² Remediation Standard Regulations, R.C.S.A. 22a-133k-1 through 3.

pollution that occurs following the filing of the first Form III; in other words, the first Certifying Party is still only responsible for pollution that existed at the site prior to the first transfer.

Discussion

A. Transfer Act Language

The Transfer Act is silent regarding the liability of a Certifying Party for pollution at a site that occurs after the date of the Form III filing. A Certifying Party on a Form III “agrees to investigate the parcel . . . and remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment . . .” (Transfer Act Section 22a-134 (6)). At the conclusion of the remediation, the LEP hired by the Certifying Party renders a Verification, which is “a written opinion . . . that an investigation of the parcel has been performed . . . and that the establishment has been remediated . . .” (Transfer Act Section 22a-134 (19)). Neither of these excerpts from the Transfer Act identify any timeframe applicable to the obligation of the Certifying Party to remediate the establishment. Under rules of statutory construction, the courts will not read a provision into legislation that is not clearly stated in its language, nor interpret a statute in a way that would yield a bizarre and unreasonable result or that does not comport with common sense. Clearly, the Transfer Act requires a Certifying Party to remediate pollution existing at a site at the time of the Form III filing. However, it is not fair or reasonable to read the Transfer Act to require a Certifying Party to have an ongoing responsibility for the post-sale pollution of others that occurs at the site, until such time that its LEP is able to render a Verification, since the Certifying Party no longer has control over the activities of the current owner and occupants of the site.

B. Case Law

There is no Connecticut court case that directly addresses the issue discussed in this White Paper, although the Connecticut Supreme Court has previously addressed the issue of liability of a party for another’s pollution. Under the common law of nuisance, liability for pollution of a site rested with the party in possession, because such party was presumably the one that created or was maintaining the nuisance. In *Starr v. Commissioner of Environmental Protection*, 226 Conn. 358, 627 A.2d 1296 (1993), the Connecticut Supreme Court determined that an owner of land could also be held liable for pollution on its site, because such owner was “maintaining” a source of pollution to waters of the State, even if ownership was completely passive and the owner was wholly innocent of causing or contributing to the pollution. In *Starr*, the court reasoned that it was the intention of the legislature, by enacting Connecticut General Statutes Sections 22a-432 and 22a-433, to codify the common law liability for nuisance that attached to the party in possession (Section 22a-432), as well as to expand liability to the owner, even if the owner had no part in creating the pollution (Section 22a-433). However, there is no statute or case law that explicitly extends liability to a party for pollution that occurs after a party no longer owns a site. Under the Connecticut statutory scheme and case law, the responsible parties for such pollution are the polluter, and, if different, the property owner, not a party that owned the property at some point in the past.

A party may also become liable for another's pollution if both parties negligently or intentionally pollute a site and there is no reasonable way to apportion the responsibility. The Connecticut Supreme Court set forth the standard to be applied in these circumstances in *Connecticut Building Wrecking Company, Inc. v. Carothers*, 218 Conn. 580, 590 A.2d 447 (1991), by incorporating Section 433B of the Restatement (Second) of Torts. Section 433B provides that "(1) Except as stated in Subsections (2) and (3), the burden of proof that the tortious conduct of the defendant has caused the harm to the plaintiff is upon the plaintiff, (2) Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor, and (3) Where the conduct of two or more actors is tortious, and it is proved that harm has been caused to the plaintiff by only one of them, but there is uncertainty as to which one has caused it, the burden is upon each such actor to prove that he has not caused the harm." Referring to our example transaction, we note that the seller voluntarily agrees to be the Certifying Party and remediate the existing pollution (voluntary in the sense that if the seller did not want to be the Certifying Party, the seller could negotiate with the buyer or another party to the transfer to be the Certifying Party, or simply not sell the site). The seller does not agree to investigate and remediate pollution caused by another party after the date in which the seller has no ownership or control of the site. Assuming the seller is diligently proceeding to investigate and remediate the pollution, there is no violation of the requirements of the Transfer Act and no tort or other violation of statute has been committed.

The DEP's policy on Verifications holds the Certifying Party automatically responsible for new contamination jointly with the current property owner (and the polluter, if different), even if the Certifying Party is not guilty of culpable conduct contributing to the contamination. Although under Section 433B of the Restatement a Certifying Party who caused the pollution that existed prior to the Form III filing *may* be jointly and severally liable with a current owner or occupant who also negligently caused pollution, DEP cannot arrive at this conclusion without first finding negligence or other culpable conduct on the part of Certifying Party, and then affording the Certifying Party with an opportunity to prove that the harm is capable of apportionment. The same logic applies to the situation where more than one Form III is filed; in the absence of negligent acts that caused pollution, the Certifying Parties are only responsible for what each agreed under the Form III filing.

C. Legislative History

An examination of the Transfer Act's legislative history does not reveal any intent of the legislature to hold a Certifying Party liable for future pollution. In fact, the original purpose of the Transfer Act was to "protect individuals who are planning to purchase a piece of property that has been used for hazardous waste storage" and to require sellers to tell a buyer that the "property is clean of any spillage, seepage or pollution." If the site was not clean, the Transfer Act required that someone "assume responsibility for a clean-up." (28 S. Proc., Pt. 6, 1985 Sess., p. 1801-02, remarks of Senator Benson.) "[T]he law had two purposes. First, the law required the disclosure of the environmental condition of properties identified in the law as establishments, at the time of transfer and the allocation of responsibility for clean up between the parties to the transfer. Second, the law created a largely self-implementing program for

discovering and cleaning up polluted sites.” (*Comm. on Environment, 1995 Sess., p. 2496, remarks of Commissioner Sidney Holbrook.*) As the State Board of Examiners of Environmental Professionals stated in *In the Matter of Russell Bartley*, Case #02-101, LEP License #104, 2005 WL 5671587 (Conn. Dept. Env. Prot., Oct. 13, 2005) at 38, “there is no indication that the legislature ever contemplated circumstances that might obligate a certifying party to assume liability for pollution that could be caused by the transferee and not the seller of the property.” The foregoing legislative history and the conclusion in the Bartley matter support the proposition that the Transfer Act requires a seller to inform a buyer of the environmental status of a site, so that the buyer can make informed decisions regarding the existing pollution, and provide for a mechanism for such pollution to be remediated, but does not obligate a seller to protect a buyer from the buyer’s own pollution.

Conclusion

We recognize that the DEP has the responsibility to protect the State’s environmental resources and the DEP’s policies must be directed toward cleaning up polluted properties. However, the DEP must accomplish its mission in accord with and limited by the authority granted by the environmental statutes. Connecticut General Statutes Sections 22a-424, 22a-432 and 22a-433 (among others) grant the Commissioner of the DEP broad powers to order persons who created or are maintaining a condition which may cause pollution to correct such condition. Therefore, DEP has the authority to require that releases occurring after a Form III filing be addressed by the current owner and/or responsible party, without pursuing a policy under the Transfer Act that is contrary to a plain reading of the statute, and is not consistent with the case law and the legislative history.

M E M O R A N D U M

TO: Gary O'Connor, Esq.
Ann Catino, Esq

FROM: Gregory A. Sharp

DATE: January 13, 2011

RE: Classification and Re-classification of the Waters of the State

As discussed in our conference call on January 12, 2011, I am providing a draft of a proposed amendment to Section 22a-426, as amended by P.A. 10-158 §9. The purpose of the amendment is to provide a streamlined method to classify and re-classify surface and ground waters of the state outside of the regulation adoption process under the Uniform Administrative Procedures Act ("UAPA"). The UAPA process will be required after March 1, 2011 in the absence of an amendment.

This amendment is necessary to further Brownfields redevelopment because many of the state's ground water resources have historically been assigned a GA classification (ground water presumed potable without treatment) to areas which should have been classified GB (groundwater impacted by historic contamination) due to mapping errors and incomplete information. The Water Quality Standards provide more stringent requirements for GA areas than GB areas. In addition, the Remediation Standard Regulations require more stringent soil and ground water clean-up targets for GA ground water areas than those classified GB.

As such, an inappropriate GA classification translates into overly conservative clean-up standards for Transfer Act sites and other Brownfield properties. The only way to correct it is to change the classification. The Department has been very responsive in the past in making these changes where the errors have been pointed out and confirmed and certain requirements met (See Standard GW 8 of the Ground Water Quality Standards adopted effective April 12, 1996). A process allowing the Department to classify or re-classify surface and ground waters with a notice of a public hearing in the Law Journal and a newspaper of general circulation, and individual notice to the municipal officials in the community involved, should be adopted to allow these changes to be made as they had been under the prior statutory scheme.

Such an amendment would allow the standards themselves to be established, as they should be, through the UAPA regulation adoption process but would provide that the classification and re-classification of specific bodies of ground and surface water would be performed through the more flexible notice and hearing process.

My suggested language is as follows:

Section 22a-426, as amended by P.A. 10-158, is as follows:

"NEW (d). The commissioner shall classify surface and ground waters within the state for the purpose of applying the applicable standards of water quality to those surface waters and areas of ground water. On and after March 1, 2011, prior to adopting a new classification or a re-classification of any such waters, the Commissioner shall conduct a public hearing. Notice of such hearing specifying the waters for which classifications are to be applied or revised, and the time, date and place of such hearing shall be published in accordance with the requirements of Section 22a-6, and in a newspaper of general circulation in the area affected and shall be given by certified mail to the chief executive officer of each municipality in such area, with a copy to the Director of Health of each such municipality, at least 30 days in advance of such hearing. Prior to the hearing, the commissioner shall make available to any interested person any information the commissioner has as to the specific body of water which is the subject of the hearing and the classification under consideration, and shall afford to any interested person the opportunity to submit any written material. At the hearing, any person shall have the right to make a written or oral presentation. The commissioner shall provide notice of the decision following the public hearing in the Connecticut Law Journal and to the chief executive officer and the director of health of the municipality in which the water body is located. A full transcript or recording of each hearing shall be made and kept available in the files of the Department of Environmental Protection.

NEW (e). Any person may petition the commissioner to re-classify any surface or ground water by providing a detailed description of the water body sought to be re-classified, and the reasons for the re-classification. If the commissioner determines that the petition has merit, the commissioner shall initiate the public hearing process as provided in sub-section (d). Notice of the decision on the petition following the public hearing shall be given to the petitioner, the chief executive officer and director of health of the municipality in which the water body is located."

I believe the foregoing nearly approximates the current process set forth in Section 22a-426(b), which was deleted in last year's revision, and in the Ground Water Quality Standards adopted in 1996. I have eliminated one newspaper notice from the notice requirements, which seemed like overkill.

cc: Brownfields Working Group

HB 6526, sections 13-14: Notice of Activity and Use Limitation

Notes from review by members of CBA Environmental and Real Property Sections

1. Proposed 22a-133o(c)(1)(A): Availability of the NAUL depends on a proviso that “property is zoned to exclude residential activity.” Zoning that permits commercial and industrial uses does not always “exclude” other uses, so this NAUL category may have limited availability as drafted. If the property is in an industrial or commercial zone, however, nonresidential use is sufficiently assured if the owner commits to it and the other interests in the property (mortgages, easements) do not confer rights to convert the property to residential use. Thus, for example, a nonresidential NAUL could be appropriate where (a) the zoning is commercial or industrial and (b) no current interest holder has the right to convert the use to residential. The latter condition could be documented and verified by reference to the instruments creating whatever other interests may exist at the time of the NAUL application. If the NAUL is imposed on subsequent interest holders by incorporation in deeds, etc. (see comment below re proposed 22a-133o(c)(6)), the combination provides adequate assurance of compliance.
2. The amendments seem to contemplate that an activity and use limitation will retroactively bind senior interest holders. See proposed 22a-133o(c)(3) (“shall be implemented and adhered to by ... holders of interests in the property and any person that has a license to use such property”). As a matter of property law, the system for recordation of property interests means that previously recorded or senior interests have and retain priority over later-recorded or junior interests. The idea of binding interest holders through mere notice, without more, therefore presents several concerns.
 - a. Restrictive covenants that run with the land are created by conveyance. This is why the Environmental Land Use Restriction is created by a “grant of easement” from the property owner to the State. Similarly, later-recorded interests cannot take priority over earlier-recorded interests – unless the senior interest agrees to subordinate. Again, this is why the ELUR mechanism requires subordination agreements with interest holders. Giving notice to a senior interest, without more, does not impair its priority. On this basis, the proposed “shall be adhered to” language would presumptively be ineffective as against senior interest holders.
 - b. If the “shall be adhered to” clause were effective to make the AUL enforceable merely upon notice, a senior interest holder could have a takings claim. The most obvious example would be a utility easement that allows excavation. A nondisturbance use restriction would impair the easement holder’s rights and possibly compromise the value of the easement. Similarly, if a use limitation materially curtails a use otherwise permitted under a lease, the lessor might be in breach of its covenant of quiet enjoyment, but the lessee might claim that the impairment of its leasehold interest constitutes a partial taking.
 - c. The “superlien” statute, 22a-452a, might seem to exemplify a situation where policy considerations trump property law to give a later-recorded interest priority. But 22a-452a contains due process features that are absent from the NAUL

proposal. The statute itself was not retroactive upon adoption. It allows an interest holder to challenge the lien and its amount, shifting the burden to the State to make a showing of probable cause analogous to standards for obtaining prejudgment attachments. It thus provides the notice and opportunity to be heard that are the essentials of due process – and that mitigate what might otherwise be an impermissible taking. The NAUL proposal’s “shall adhere to” clause lacks comparable protection.

- d. Imposing a retroactive use limitation without subordination could be disruptive to real estate financing. We understand that lenders and title insurance companies take great care to identify and understand title encumbrances, and they expect to take their interest subject only to known and approved encumbrances. Borrowers covenant to maintain the lender’s priority. An NAUL thus could be an instance of default under a mortgage. Lenders might eventually adapt by putting contractual limitations on a borrower’s ability to record an NAUL without notice and consent.
- e. Some of our discussions involved the idea of allowing a senior interest holder to maintain its priority, but requiring a foreclosing mortgage holder to proceed with any remediation that an activity and use limitation avoided. This solves the priority problem but not the impairment of interest problem.
- f. These problems could be addressed by giving interest holders the kind of options that are available in relation to a 22a-452a superlien. As a policy matter, the value of this solution would have to be balanced against the transaction costs of potential litigation, which could undermine the goal of streamlining the use restriction process. Another option could be to permit the NAUL only when the applicant makes a showing that the use limitations do not conflict with the rights of senior interest holders. A third option would be to drop the “shall adhere to” concept entirely based upon a policy determination that, for the subset of properties defined by the other NAUL criteria, a recorded use limitation binding on the current owner and later-recorded interests provides assurances of compliance that are adequate in light of the risk and the interests of placing contaminated properties back into productive use. Considering that three of the four proposed NAUL eligibility criteria involve direct exposure and pollutant mobility risks that are mitigated by the presence of buildings, “permanent structures” or engineered controls – all of which render the relevant RSR criteria inapplicable¹ – this would be a rational policy choice.

¹ RCSA 22a-133k-2(b)(3) (direct exposure criteria “do not apply to inaccessible soil” with use restriction); 22a-133k-2(c)(4)(B) (pollutant mobility criteria “do not apply to environmentally isolated soil” with use restriction). “Inaccessible” soil includes soil beneath “an existing building or ... another existing permanent structure,” 22a-133k-1(a)(28), which DEP views as including “engineered controls” as defined in 22a-133k-2(f)(2)(B) (criteria including “physically isolate polluted soil”).

- g. Obtaining subordinations of utility easements is among the more vexing difficulties of the current system. To the extent the “shall adhere” concept is intended to address this difficulty, it is problematic for the reasons stated above. Note, however, that nonresidential restrictions do not raise this problem. Nondisturbance or “no dig” restrictions do, but for that purpose, DEP has a policy regarding utility excavations that addresses the handling of media contaminated by third persons. Application of this policy would seem to address any concerns that might otherwise arise from the lack of formal subordination. As a matter of policy, the risk posed by the possibility of disturbance associated with utility easement work could be deemed acceptable.
3. An interest recorded after a mortgage would not ordinarily survive foreclosure of the mortgage. The last sentence of proposed 22a-133o(c)(6) therefore raises the questions noted in paragraph 2 above, and is moreover not curable by limiting the NAUL’s effect to “consistent” or “nonconflicting” senior interests. Again, the ELUR statute can provide for survival because the subordination requirement cures the priority problem: Unless this provision is meant to override substantive property law, it is likely to be unenforceable or raise takings issues. If it is meant to change property law, other sections of the General Statutes would have to be amended. A simpler alternative would be to reword this provision to require the owner that applies for the NAUL, and any subsequent interest holder, to incorporate the NAUL in subsequent instruments of conveyance. Thus: “The owner who records a notice of activity and use limitation on the land records, and any subsequent transferee of a property interest through such owner, shall incorporate such notice either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer.”
 4. Proposed Section 22a-133o(c)(1)(D) refers to restrictions on “a building or permanent structure that renders polluted soil environmentally isolated.” The Remediation Standard Regulation currently provides (RCSA 22a-133k-1(a)(15)) that the Commissioner makes the determination that an “existing and permanent structure” other than an “existing building” qualifies as a “permanent structure” for this purpose. If the intent is for the NAUL mechanism to permit LEPs to make necessary supporting technical findings, this raises a question as to whether the “permanent structure” option would be available without the Commissioner’s “determination.”
 5. Proposed 22a-133o(c)(1)(E): The Commissioner cannot unilaterally “prescribe” regulations. This provision should be deleted or rewritten to authorize the Commissioner to propose other purposes by regulation.
 6. Proposed 22a-133o(c)(2)(5)(B)(iii) requires the NAUL to list “activities and uses to be permitted.” By definition, the core of a “use restriction” is the prohibitory statement of the activities and uses that are limited, which is required by the preceding subsection. A requirement to list permitted uses presents practical difficulties, not least the risk of constraining uses that are consistent with the applicable restrictions but not specifically within the contemplation of the parties preparing the NAUL. This requirement would not enhance the protective value of the use restriction. The existing ELUR mechanism contains no similar provision.





Comprehensive Evaluation of Connecticut's Site Cleanup Programs

January 2011

I. Introduction

The Department of Environmental Protection (DEP) is committed to ensuring that Connecticut's site cleanup and Brownfield programs are achieving the results intended by the underlying laws. DEP believes the time has come to take a comprehensive look at the state's environmental site cleanup programs, particularly as they relate to underutilized sites that typically have been subject to multiple releases over time – commonly referred to as Brownfields.

The cleanup or remediation of contaminated sites is critical to the protection of human health and the environment. Remediation is also necessary for the reuse of previously degraded and currently underused properties. Reuse helps achieve several other environmental co-benefits, such as promoting smart growth, encouraging transit oriented development, and making better use of existing infrastructure. In the last twenty-five years, a strong foundation for the remediation of these sites has been laid. That foundation includes spill reporting and response laws that first appeared in 1969, passage of the Property Transfer Act in 1985, adoption of the Remediation Standards Regulations in 1996, the licensing of the first Licensed Environmental Professionals (LEPs) in 1997, creation of the Voluntary Remediation programs in 1995, and ongoing development of guidance documents with the cooperation and input of the regulated community.

The cleanup of contaminated sites is largely driven by state law. Some states, such as Connecticut, have a multitude of different laws that apply to discrete situations. Other states have or are moving to a single cleanup program. The primary federal site cleanup program known as Superfund deals with only the most contaminated sites, and there are a relatively small number of federal Superfund sites in each state, for example Connecticut has 14.

This document provides a baseline of information on Connecticut's site cleanup programs. The information is designed to assist in an evaluation of the extent to which intended results are being achieved, identify opportunities for improvement and efficiencies, and evaluate the potential of any changes to the site cleanup programs. The DEP hopes the evaluation will lead to greater success in the remediation of contaminated sites.

II. Current Cleanup Construct

A. Statutory Programs

In Connecticut, if a company knows it has had a past release of a hazardous substance, it may not be clear at times what the cleanup "finish line" is or within what timeframe cleanup must be finished. One or more of fourteen different laws might apply depending on the specific facts of the matter. Generally, the laws have different procedures for action and different timeframes and finish lines, if any.

Below is a list of laws that govern releases and pollution in Connecticut, and the year the original law was first adopted:

Authority	Statutory Reference	Date
Pollution or discharge of waste prohibition	CGS 22a-427	1967
Commissioner's authority to issue an order to require person to correct potential source of pollution	CGS 22a-432	1967
Commissioner's authority to issue Orders to a landowner, or municipality	CGS 22a-433 and 428, respectively	1967
Release Reporting	CGS 22a-450	1969
Release Response	CGS 22a-451	1969
Commissioner's authority to respond to and mitigate spills and releases	CGS 22a-449(a)	1969
PCB program	CGS 22a-463 – 469a	1976
Potable Water Program - DEP authorized to provide short-term water to residents/schools if they are served by a contaminated private well, to investigate for the source of such contamination, and to issue orders to either the responsible party (or if such party not known, to municipality) to supply safe drinking water.	CGS 22a-471	1982
Commissioner's authority to issue order to abate pollution	CGS 22a-430(d)	1982
Underground Storage Tanks	CGS 22a-449(d)-(h), RCSA 22a-449d-106	1983
Property Transfer Act - If and when certain properties defined as "establishments" are transferred, they must be investigated by a party to the transfer and then remediated.	CGS 22a-134	1985
State Superfund	22a-133e	1987
Voluntary Remediation Programs	CGS 22a-133x and -133y	1995
Significant Environmental Hazard Notification	CGS 22a-6u	1998
Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.; "RCRA") Corrective Action regulations	RCSA 22a-449(c)-105(h)	2002

B. Tools

In addition to the laws identified above, the following tools facilitate remediation of contaminated sites in Connecticut.

1. Environmental Land Use Restrictions (ELURs) (CGS 22a-133n through -133s), enacted in 1994. An ELUR is a deed restriction, given by a property owner to the Commissioner, which runs with the land. It allows contaminants to remain on a property as long as activities on the property are limited to prevent unacceptable exposures to the contamination. The deed restriction "locks in" the assumption about future activities – for example, no residential use.
2. Remediation Standard Regulations (RSRs) (RCSA 22a-133k-1 through -3), adopted in 1996. These regulations provide a common endpoint for cleanups of some sites, but do not apply to all releases and contaminated sites. RSRs also contain alternatives to the standards, some of which are self-implementing and others that require DEP approval. Some alternatives are widely used at brownfield sites, such as Engineered Controls and ELURs.

3. Licensed Environmental Professionals (LEPs) (CGS 22a-133v), established by statute in 1995. Licensed by the Board of Examiners of Environmental Professionals, LEPs are authorized to oversee the investigation and cleanup of sites under the Transfer Act, Voluntary Programs and RCRA Corrective Action, if oversight is delegated by DEP. Working with an LEP allows responsible parties to proceed at a faster pace than the traditional process of submitting reports for DEP review and approval. DEP retains authority to audit the cleanup work. The LEP program also frees up DEP's limited resources to focus on higher priorities.
4. Guidance Documents. The DEP has issued a series of guidance documents to help LEPs and parties conducting cleanup work. Guidance documents provide transparency, and identify a standard of care that DEP has found acceptable over time. Such standardization and transparency provides efficiency and certainty for regulated parties and DEP, while still allowing other "custom" site-specific approaches to meet requirements. Guidance is usually drafted by a committee of DEP staff and other technical professionals, such as LEPs.
5. RCRA Corrective Action delegation from US EPA to DEP, starting in 2004. Delegation allows DEP to administer the federal program and applies to cleanup of releases at certain sites regulated by RCRA. Regulations to administer the program are adopted at RCSA 22a-449c-105(h).
6. State financial incentives and assistance:
 - a. Administered by DECD's Office of Brownfield Remediation & Development in cooperation with DEP:
 - i. Urban Sites Remedial Action Program
 - ii. Special Contaminated Property Remediation & Insurance Fund
 - iii. Dry Cleaning Establishment Remediation Fund
 - iv. US EPA Revolving Loan Funds awarded to DECD - Hartford & Statewide
 - v. US EPA Site Assessment Program awarded to DECD
 - vi. Regional Brownfield Redevelopment Loan Fund
 - vii. Municipal Brownfield Pilots
 - b. Administered by DEP and a Review Board: UST Petroleum Cleanup Account (CGS 22a-449a through -449j, and 22a-449p), has been involved with the remediation of approximately 1,400 commercial tank sites, and 4,500 residential tank sites since 1992. Reimburses costs of investigation and cleanup.
7. Liability incentives. Prominent examples include:
 - a. Municipal Liability Relief:
 - i. Transfer Act exemptions for Municipalities
 - ii. Remediation Grants from DECD: no additional liability (32-9ee)
 - iii. Investigation: will not incur cleanup liability by entering property to investigate (22a-133dd)
 - b. Abandoned Brownfield Cleanup Program, enacted in 2009. Allows an innocent new owner, who acquires a brownfield (unused since 1999) to redevelop, clean up the property and avoid any state law obligation to investigate and clean up off-site contamination.
 - c. Transfer Act audits: three year window on DEP's authority to audit a final cleanup
 - d. Covenants Not to Sue (22a-133aa and -133bb), includes provisions to assist Brownfield redevelopment
 - e. State Liability Relief for innocent owners (defined at 22a-452d)
 - f. Third Party Liability Relief (22a-133ee): non-responsible parties that own a contaminated property, and investigate/remediate it, have no liability for costs or damages to any

person other than state or federal government for pollution on or from such owner's property that occurred prior to such owner taking title

There have been many recent activities to improve the above-referenced tools. For instance, the LEP regulations are currently undergoing a proposed amendment process; the public hearing was held in November 2010. In addition, recent guidance documents include Site Characterization (2007, updated 2010), Verification (2008), Engineered Controls (2009, updated 2010), Well Receptor Survey (2009), Laboratory Quality Assurance and Quality Control (2006-2009, updated 2010) and ELURs (2010).

As part of DEP's commitment to a lean culture, site cleanup-related "Lean Teams" used a "kaizen" event (a week-long event to take apart a process, identify waste, and reassemble the value-added steps) to improve efficiency and quality. The three teams are implementing improvements on:

- Engineered Controls - application/approval process,
- ELURs - application/approval process, and
- Potable Water program – supply of short-term safe drinking water.

C. Comparison of themes/actions

Each cleanup law has its own trigger and targeted outcome, which may differ in some way with the other laws.

Current Legal Requirement for Regulated Parties to perform response actions

Statute	Required to Control short-term hazards	Required to Timely Control Migration of Pollution	Trigger for Requirement to Act	Requirement Applies to Release or Site-wide	Required to Self-implement Action (don't wait for DEP to require action)	Published, standardized finish line	Published Timeline to Finish Cleanup
Spills/releases 22a-450 and 451	Yes	Yes	Release exists	Release	Yes	No	No
Transfer Act 22a-134	No	No	If and when a property transfers, if property meets definition of an "Establishment"	Site-wide	Investigate -Yes Cleanup – No (pre 10/1/09) Cleanup – Yes (post 10/1/09)	Yes - RSRs	Only if property transferred after 10/2009
Voluntary 22a-133x and 22a-133y	No	No	Voluntary	Release or Site-wide – 22a-133x Site-wide – 22a-133y	No	Yes - RSRs	No

Statute	Required to Control short-term hazards	Required to Timely Control Migration of Pollution	Trigger for Requirement to Act	Requirement Applies to Release or Site-wide	Required to Self-implement Action (don't wait for DEP to require action)	Published, standardized finish line	Published Timeline to Finish Cleanup
Significant Hazard Notification 22a-6u	In part	Potentially	Knowledge of release above thresholds	Release	No	No	No
Underground Storage Tanks (CGS 22a-449(d)-(h))	Yes	Yes	Release exists	Release	In part	In part – RSRs	No
RCRA Corrective Action regulations (RCSA 22a-449(c)-105(h))	No	No	Release exists at a RCRA facility	Site-wide	In part	Yes - RSRs	No
Potable Water 22a-471	In part	No	None	Release	No	No	No
PCB Program (CGS 22a-463 – 467)	Yes	Yes	Release exists	Release	In part	Yes – RSRs and federal requirements	No

D. Data

It is difficult to measure how well the site cleanup programs are working, due to a variety of factors. There is no direct measurement for risk reduction. We can measure “cleanups completed,” though not all cleanup laws/programs have finish lines, and those that do may have different finish lines. As we look at data, two caveats apply. One, some laws do not specify a “finish line,” and instead merely initiate a process, leaving vague what the law intended as a successful endpoint or final compliance. Two, a site may not have reached a formal, clear “all done” finish line, yet significant cleanup and risk reduction may have been achieved at the site.

The following table summarizes major site cleanup program data.

Site Cleanup Program Data

Statutory Program	Number of Sites (approx)	Number of Cleanups Completed (approx)	Average Years to Complete Cleanup (approx)	Average New Sites per Year (approx)
Transfer Act	3,762	395	7 years for those that complete	200
State Superfund	12	4	data not available	<1
Federal Superfund (National Priority List)	14	8	15 years	<1
Voluntary 22a-133x	381	23	data not available	23
Voluntary 22a-133y	78	11	data not available	6
"Significant Hazard" notifications	600	No complete cleanup required by statute	No complete cleanup required	55
RCRA Corrective Action	238	34	data not available	0

The above data can provide the basis for further analysis of site cleanup in Connecticut. For instance, under the Transfer Act, after 25 years relatively few sites have achieved the final cleanup endpoint. The factors responsible for this result may include:

- no statutory deadline to complete cleanup,
- over-reliance on expecting a future owner to do the work,
- cleanup is not counted as "complete" until all long-term remedies and monitoring are finished,
- DEP's ability to provide sufficient resources for timely action, when needed,
- sites where contamination is decades old, creating complex challenges such as off-site migration, bedrock impacts, or ground and surface water impacts, and/or
- waiting years for a transfer to trigger an investigation.

III. Past Evaluations and Changes

A. Recent amendments to site cleanup laws

The site cleanup program statutes have evolved over time. Many statutes have been amended a little at a time, usually independent of other cleanup statutes and regulations. That has led to what some call a "patchwork" of laws, each operating on its own instead of as part of a single system. Some past amendments to cleanup laws are highlighted below:

- 1996: Transfer Act amended to:
 - o create affirmative requirement to investigate releases (prior to 1996, parties had no affirmative requirement to conduct investigations); and
 - o allowed DEP to delegate oversight to LEPs.

- 2002: RCRA regulations amended:
 - o to make 100 of the 268 Corrective Action sites subject to an affirmative requirement to complete investigation and, when cleanup is complete, to meet the RSRs.
- 2007: Transfer Act amended to provide:
 - o quicker delegation to LEP oversight;
 - o affirmative obligation to submit investigation completion reports and remedial action plans within specified timeframes; and
 - o audit certainty: 3 year window for DEP to audit cleanup at LEP-lead sites.
- 2009: Transfer Act amended to provide:
 - o 8 year timeline to complete cleanup or support interim verification indicating most active remediation has been completed; and
 - o expanded exemptions for municipalities.

B. Brownfields action

The legislature has set up various Brownfield Task Forces over the past several years to explore opportunities to promote the cleanup and reuse of brownfield properties, and to make recommendations for public and private sector actions. Many of the changes outlined in the proceeding sections highlight some of the legislative improvements stemming from the efforts of those Task Forces. See also the website of the Office of Brownfield Remediation and Development – www.ctbrownfields.gov – within the Department of Economic and Communities Development, for additional information on the state's brownfield programs.

IV. Opportunities for the future

A comprehensive evaluation of the site cleanup programs is worthwhile to find opportunities for improvement. While progress has been made in the past through incremental improvements, the Brownfields Task Force indicated in their last report (February 2009) that sweeping changes remain necessary. The comprehensive evaluation should determine the extent and scope of changes to the site cleanup programs, and provide an opportunity for broad stakeholder input to ensure all interests are represented. Improvements could come in the form of statutes, regulations, guidance, program administration, best practices guidelines, and/or education. Recommended goals and analysis include the following:

A. Desired outcomes

1. Healthy Connecticut
2. Healthy economy and job growth
3. Sustainable communities
4. Environmental Justice

B. Overarching analysis

1. Is the current framework achieving the goals of the existing laws?
2. What are specific impediments to prompt clean up under existing site cleanup programs?
3. What mix of improvements could achieve better cleanup results?
4. Is there value in a comprehensive overhaul of laws governing remediation?

C. Evaluate other states

Other states have conducted significant and comprehensive site cleanup program revisions over the years. It is important to see if desired outcomes are being significantly achieved in these states. In addition, evaluation of other systems in other states will ensure Connecticut evaluates all options to improve the site cleanup system. Potential states for evaluation include:

1. New Jersey

New Jersey recently performed a comprehensive evaluation of its cleanup programs from 2006-2008. The evaluation resulted in significant changes to its cleanup laws in 2009. New Jersey adopted a system that moves aggressively towards a single cleanup system for most releases/sites, an affirmative process, and use of licensed professionals (LSPs – similar to LEPs) to oversee most sites.

2. Massachusetts

In the 1990s Massachusetts adopted a single cleanup system for all releases of hazardous materials. It is an affirmative program, with broad categories of Responsible Parties obligated to act, clear deadlines for completing and reporting each phase of investigation and cleanup, and reliance on licensed professionals at all sites.

D. Promote sustainable communities

Effective and efficient site cleanup promotes Brownfield remediation and reuse, which is a critical to supporting responsible growth and transit oriented development (TOD). In addition, increasing Brownfield remediation and reuse in the State could grow opportunities for renewable energy and low impact development (LID). The following points should be considered in a comprehensive evaluation of the State's site cleanup programs:

1. Environmental protection is benefited by sustainable development and wise use of existing resources. Can remediation programs be coordinated with them to increase incentives for both cleanup and sustainable use?
2. Although tools exist now to make cleanup cost-effective for brownfields, can additional cost-saving tools be identified for brownfields without creating real or perceived less protective standards than exist for other locations?
3. Can sustainable reuse of a site – e.g., LID, TOD, renewable energy – and the anticipated environmental benefits allow for more flexible cleanup standards or tools for clean up?
4. Could pilot/demonstration projects – publicly and/or privately financed - be initiated at abandoned brownfields, such as solar “brightfields?”

E. Stakeholder Process

To effectively evaluate Connecticut's site cleanup programs, a broad array of stakeholders is essential. A robust stakeholder process will ensure all issues are uncovered, discussed, and addressed before changes are made.