

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-141—sHB 6526

Commerce Committee

Environment Committee

Finance, Revenue and Bonding Committee

Judiciary Committee

AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER

SUMMARY: This act makes many changes in the laws and programs governing how contaminated property (i.e., brownfields) must be investigated and remediated. It specifically:

1. updates the Office of Brownfield Remediation and Development's (OBRD) powers and duties (§ 1);
2. makes permanent the municipal brownfield pilot program (§§ 1-3);
3. exempts "certifying parties" under the Transfer Act from investigating and remediating a release of hazardous substances that occurs after the property was remediated (§ 4);
4. allows the Department of Energy and Environmental Protection (DEEP, formerly, Department of Environmental Protection) commissioner to reclassify surface and ground water beginning March 1, 2011 (§ 5);
5. requires the DEEP commissioner to evaluate the state's brownfield programs and laws (§ 6);
6. makes more brownfields eligible for state funds and subject to regulatory requirements (§ 7);
7. exempts government agencies and private organizations from paying DEEP fees when cleaning up brownfields (§ 8);
8. expands the range of benefits and eligible entities under the Abandoned Brownfield Cleanup (ABC) Program (§§ 9-11);
9. exempts municipalities and the bankruptcy court from the Transfer Act when transferring titles to nonprofit organizations (§ 10);
10. allows the DEEP commissioner to waive some of the requirements for recording environmental use restrictions and releasing parties from their requirements (§§ 12-14);
11. extends the term of the brownfield working group (§ 15);
12. eliminates the sunset date for funding new projects under the Connecticut Development Authority's (CDA) tax increment financing program (§ 16);
13. establishes a program protecting parties investigating and remediating brownfields from liability to the state and third parties (§ 17);
14. allows Bridgeport's special taxing district to issue bonds to finance property improvements backed by the revenue the improvements generate (§ 18);
15. limits the liability of municipalities, special taxing districts, and

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metropolitan districts when they allow the public to use their land without charge for recreation purposes (§ 19); and

16. exempts large municipalities from clean-up costs, fines, and penalties when they acquire an easement over a property and allow the public to use it without charge for recreation (§ 20).

EFFECTIVE DATE: Various, see below.

§ 1 — OBRD

OBRD is an organizational unit of the Department of Economic and Community Development (DECD). The act explicitly requires OBRD to promote and encourage people and organizations to develop and redevelop brownfields. It also updates OBRD's statutory duties, requiring it to:

1. maintain an informational website;
2. cooperate with state and local agencies and individuals developing and administering brownfield programs, reaching out to the community, coordinating regional brownfield clean-up efforts, seeking federal funds, and implementing other brownfield redevelopment initiatives; and
3. expand its communication and outreach efforts to include state programs for redeveloping and remediating brownfields.

The act requires the Office of Policy and Management (OPM) secretary to help OBRD fulfill its mission. Under prior law, the CDA executive director and the commissioners of the departments of Environmental Protection, Economic and Community Development, and Public Health had to execute a memorandum of understanding (1) specifying their respective duties with respect to the office and (2) assigning one or more staff members to act as liaisons with OBRD. The act requires the OPM secretary to become part of the agreement and assign staff liaisons to OBRD.

Besides requiring state agencies to help OBRD fulfill its mission, the law allows OBRD to recruit private sector volunteers for that purpose. Prior law allowed OBRD to recruit volunteers to help it achieve its statutory goals. The act limits the recruits' role to marketing brownfield programs and redevelopment activities.

EFFECTIVE DATE: July 1, 2011

§§ 1-3 — MUNICIPAL BROWNFIELD PROGRAM

Assistance

The act makes permanent the pilot program providing grants and protection from liability to municipalities for investigating and remediating brownfields and renames the program the Municipal Brownfield Grant Program. Prior law authorized the program to fund brownfield projects in five municipalities, four based on population criteria and one without regard to population.

In making the program permanent, the act explicitly makes the DECD commissioner responsible for approving projects, allows her to approve more projects, and expands the range of eligible projects.

Prior law required the program to identify brownfield remediation projects in

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five municipalities. The act allows the commissioner to annually identify brownfield remediation projects in at least six municipalities per funding round, a process the act does not describe. She must choose projects in four municipalities based on population criteria and two, rather than one, without regard to population. As under prior law, she must fund the projects within available appropriations.

Besides increasing the number of projects the commissioner may approve, the act expands the range of eligible projects. The program had been open to abandoned and underused sites where the need to remediate contaminated soil and ground water complicated their restoration, redevelopment, and reuse.

The act expands the program in several ways. It makes potentially contaminated sites eligible for assistance and specifies that the real or potential contamination must complicate a site's development. It also specifies that the real or potential contamination must be investigated as well as remediated before the site can be expanded, as well as restored, redeveloped, or reused.

Lastly, the act transfers control over the program's fund account from OBRD to the DECD commissioner.

Verification of Remediation

The act narrows the grounds for determining if a brownfield was properly remediated under the program. By law, municipalities investigating and remediating brownfields under the program must have DEEP or a licensed environmental professional (LEP) supervise the work. When the work was completed, prior law required DEEP to indicate if the remediation meets DEEP standards and no further work is needed, except on-site monitoring or recording an environmental land use restriction.

The act explicitly requires a LEP to make these findings when he or she supervises the work. It also requires environmental land use restrictions to be recorded before the LEP or DEEP can decide if further work is needed.

The act allows the DEEP commissioner to audit remediation done under a voluntary agreement. By law, he must notify the municipality whether the work meets the remediation standards or additional remediation is needed within 90 days after receiving the LEP's report verifying the remediation was implemented. The act also requires the commissioner to notify the municipality if he will not audit the work.

EFFECTIVE DATE: July 1, 2011

§ 4 — CERTIFYING PARTY'S RESPONSIBILITY UNDER THE TRANSFER ACT

The act exempts certifying parties under the Transfer Act from investigating and remediating contamination that occurs after they remediated the property. By law, parties to the sale or transfer of a potentially contaminated property must notify DEEP about the transaction and submit forms describing its condition. They must submit a "Form III" if the property is contaminated or they do not know if it is. The form must also identify the party that will investigate the

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property's condition (i.e., "the certifying party") and, if necessary, clean up the contamination. The parties submit a "Form IV" if the property was contaminated and the contamination was investigated and remediated according to DEEP standards.

The act specifies that the certifying party does not have to investigate or clean up any real or potential contamination that occurs (1) after data was collected at the site (i.e., completed Phase II investigation) or (2) from the date when the Phase II investigation was completed or after the Form III or Form IV was filed, whichever is later.

EFFECTIVE DATE: Upon passage

§ 5 — SURFACE AND GROUND WATER RECLASSIFICATION

The act allows the DEEP commissioner to reclassify surface and ground water beginning March 1, 2011, consistent with the state's water quality standards and in compliance with applicable federal requirements. It specifies the reclassification procedures, which vary depending on whether he initiates the reclassification or responds to a person requesting it. In either case, the commissioner must hold a public hearing, which, under the act, is not a contested case. (A contested case is a proceeding in which an agency must determine a party's rights, duties, or privileges after a hearing.)

Commissioner-initiated Reclassifications. If the commissioner initiates the reclassification, he must hold a hearing on the proposal after (1) publishing a newspaper notice about its time, date, and place and (2) notifying each affected municipality's chief executive officer and public health director by certified mail at least 30 days before the hearing. The notice must identify the surface or groundwater the proposed reclassification affects and describe how the public can obtain additional information about the reclassification.

After the hearing, the commissioner must provide notice of his decision in the *Connecticut Law Journal* and to the affected municipalities' chief elected officials and health directors.

People-initiated Reclassifications. People requesting a reclassification must apply to the commissioner and provide any information he requests. The commissioner must publish a newspaper notice about the hearing at the requestor's expense at least 30 days before the hearing. The notice must identify the requestor and the affected waters; specify how the public can obtain additional information about the proposed reclassification and indicate the commissioner's tentative decision about it; and specify the hearing's time, date, and place. The notice must be mailed to the chief executive officers and the public health directors of the affected municipalities at least 30 days before the hearing. In conducting the hearing, the commissioner must allow all interested parties to comment orally or in writing. He must also keep a record of the hearing.

After the hearing, the commissioner must provide notice of his decision the same way he provides notice of decisions regarding the reclassifications he initiates.

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§ 6 — EVALUATING REMEDIATION PROGRAMS

By July 15, 2011, the DEEP commissioner, within available appropriations, must begin evaluating the state's brownfield remediation programs and the laws affecting brownfield remediation. He must report his findings to the governor and the Commerce and Environment committees by December 15, 2011. The report must address these points:

1. the factors that influence the time it takes to investigate and remediate a brownfield under existing programs;
2. the number of properties in each remediation program, the rate at which they enter it, and the number that complete each program's requirements;
3. the use of LEPs in expediting the remediation process;
4. audits of verifications LEPs complete;
5. statutory programs providing liability relief to existing and potential landowners;
6. comparison of existing remediation programs to states with a single program;
7. the commissioner's use of studies and other resources available from various academic and research organizations; and
8. recommendations to address issues the report raises or to streamline or expedite the remediation process.

EFFECTIVE DATE: Upon passage

§ 7 — DEFINITION OF BROWNFIELDS

The act expands the statutory definition of brownfields, thus making more types of property (1) eligible for state and local assistance and (2) subject to regulatory requirements. Prior law defined a brownfield as an abandoned or underused property that is not being redeveloped or reused because of real or potential contamination requiring remediation. The contamination can be in the ground water, soil, or buildings and must be cleaned up before the property can be restored, redeveloped, or reused or while these activities are occurring. The act broadens the definition of brownfields to include abandoned or underused property where real or potential contamination must be investigated or remediated before it can be redeveloped, reused, or expanded.

EFFECTIVE DATE: July 1, 2011

§ 8 — DEEP FEE EXEMPTIONS

The act sets conditions under which parties are exempt from paying DEEP fees for Transfer Act and environmental condition assessment forms and covenants not to sue. It exempts any public, private, or nonprofit entities from paying these fees if they have received state funds for investigating and remediating brownfields. The act also exempts state agencies, authorities, or higher education institutions from paying the fees when remediating a brownfield for siting a state facility.

The act also exempts parties from paying any DEEP fees when they intend to

investigate and remediate brownfields without state assistance. In these cases, they pay no fees for contamination other parties caused before they acquired the property.

EFFECTIVE DATE: Upon passage

§§ 9-11 — ABANDONED BROWNFIELD CLEANUP (ABC) PROGRAM

Expanded Benefits

The act expands the range of benefits and eligible entities and properties under the ABC program, which exempts its participants from investigating and remediating contamination that emanated from a property before they acquired it. The act adds another benefit; it limits the entities' liability to the state or any third party for this contamination to anything they do to cause or contribute to it or negligently or recklessly exacerbate it.

The act exempts entities remediating property under the program from filing the required Transfer Act forms. The exemption applies only if the property was used to generate or handle hazardous waste. The act also designates the entities innocent third parties, and specifies conditions exempting them from liability to the DEEP commissioner and other parties implementing abatement orders under the statutes and common law. But this exemption does not extend to anything they do that negligently and recklessly exacerbates the contamination.

The act also exempts them from paying the covenant not to sue fee and allows them to transfer the covenant to subsequent owners as long as the property is being or was remediated according to DEEP standards.

Eligible Property

The act expands the range of property eligible to participate in the program. Under prior law, a brownfield qualified if it had been unused or significantly underused since October 1, 1999. Under the act, it qualifies if it has been in either condition for at least five years before the participant applied to have the property admitted into the program.

The act allows the DECD commissioner to waive this five-year criterion if the applicant can show that the property otherwise qualifies for the program and demonstrates the value of redeveloping it.

Lastly, the act adds a criterion a property must meet to be admitted into the program. Under prior law, the property qualified if the party that contaminated it could not be determined, no longer exists, or could not remediate it (i.e., responsible party criteria). Under the act, it also qualifies if the responsible party must remediate the contamination, including any that emanates from the property.

Eligible Applicants

The act opens the ABC program to municipalities, their economic development agencies, and private entities (nonprofit and for-profit) acting on a municipality's behalf. It also allows them to nominate property for the program regardless of whether they own it. The act also exempts municipalities from having to meet the responsible party criteria described above for property they

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own.

The act eliminates two conditions an applicant must meet before the commissioner can admit the property into the program. Prior law required an applicant to hold the property's title. The act allows the commissioner to admit the applicant regardless of whether it holds the title. Prior law also required the applicant to enter into DEEP's voluntary remediation program, agree to investigate and remediate the contamination according to the applicable standards and regulations, and eliminate contamination emanating or migrating from the property. Further, it prohibited the commissioner from admitting the applicant if it was the certifying party under the Transfer Act (i.e., the party that must certify the property's condition before and after remediation). The act eliminates the latter condition.

Program Administration

The act requires parties acquiring property in the program to do so by submitting an application to the DECD commissioner, which she must prescribe and use to determine if they meet the program's eligibility requirements. The act specifies that the program's liability relief and other benefits apply only if the DECD commissioner accepts the property into the program.

EFFECTIVE DATE: July 1, 2011, except for the Transfer Act and covenant not to sue provisions (§§ 10 and 11, respectively), which take effect upon passage.

§ 10 — TRANSFER ACT EXEMPTIONS

The act exempts from the Transfer Act titles a municipality or bankruptcy court transfers to a nonprofit organization and makes two changes conforming to Transfer Act exemptions authorized under other sections of the act. It exempts brownfields that were remediated or undergoing remediation under the ABC program (§ 9) and those admitted into the act's new liability protection program (§ 17). The latter qualify for the exemption under the following circumstances:

1. the property is being investigated and remediated according to its investigation plan and remediation schedule,
2. the DEEP commissioner received a verification or interim verification and responded by issuing a no audit letter or successful audit closure letter, or
3. 180 days have passed since the verification or interim verification was submitted without the commissioner requiring the remediation to be audited.

EFFECTIVE DATE: Upon passage

§§ 12-14 — ENVIRONMENTAL USE RESTRICTIONS (EUR)

The act allows the DEEP commissioner to waive some of the requirements for recording EURs and releasing parties from them. An EUR is an easement a property owner records in the municipal land records prohibiting specific uses or activities at a property that could harm human health or the environment.

Recording EURs

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The law prohibits an owner from recording an EUR unless other parties with an interest in the property accept the restriction. The owner must record a document to that effect when he or she records the EUR (i.e., subordination agreement). Existing law, unchanged by the act, allows the commissioner to waive this requirement if the party's interest in the land is so minor as to be unaffected by the EUR. The act requires the commissioner to waive the requirement that the owner obtain subordination agreements from those parties whose interest in the land, if acted upon, would not create the conditions the EUR prohibits.

Releasing Parties from an EUR

The act changes the conditions under which the commissioner can release parties from the EUR's restrictions. Prior law allowed him to release a party for conducting an activity on all or part of the property if the owner remediated the entire property or the section where the activity was to have occurred. The commissioner's approval had to be in writing and consistent with the regulations governing EURs. The owner also had to record the release in the land records, unless the commissioner waived this requirement, which he could do if the activity did not affect the EUR's purpose or change the size of the area subject to the EUR (§ 12).

The act distinguishes between permanent and temporary releases. In doing so, it allows the commissioner to approve temporary releases for unremediated property. It also sets conditions allowing him to waive the recording requirement for these releases for activities that affect an EUR's purpose. Under the act, the commissioner may do so if the activity is limited in scope and duration and does not change the size of the area subject to the EUR. The act specifically authorizes the attorney general and the DEEP commissioner to enforce the statutes authorizing EURs. Prior law allowed them to enforce EURs without reference to the authorizing statutes.

The act also specifies that the commissioner's regulations governing EURs may cover fees, financial surety, monitoring, and reporting requirements.

EFFECTIVE DATE: Upon passage

§ 15 — BROWNFIELDS WORKING GROUP

The act extends the term of this working group to January 15, 2012, from January 15, 2011. The group was formed under PA 10-135, which required it to study how the state's brownfields were being cleaned up and remediated and report its findings to the Commerce Committee by its expiration date. The act requires the group to submit another report on this issue by January 15, 2012, to the governor and the Commerce and Environment committees.

The act allows current members to continue serving, but increases the group's membership from 11 to 13, requiring the governor to appoint the two new members by August 7. It also allows the members to appoint the group's chairperson from among all the members, including the OPM secretary and the DECD and DEEP commissioners.

EFFECTIVE DATE: Upon passage

§ 16 — CDA TAX INCREMENT BOND FINANCING PROGRAM SUNSET

The act makes CDA's tax increment financing program permanent by eliminating the July 1, 2012 sunset date for funding new projects. Under this program, CDA issues bonds on behalf of a municipality and backs them with new or incremental property tax revenue a completed project generates. The law allows CDA to issue these bonds for (1) cleaning up and redeveloping brownfield projects anywhere in the state and (2) financing information technology projects in economically distressed municipalities.

EFFECTIVE DATE: July 1, 2011

§ 17 — LIABILITY PROTECTION PROGRAM

Overview

The act authorizes the DECD commissioner to establish a program protecting developers from liability to the state and third parties for cleaning up brownfields according to the act's requirements. But the protection is not absolute; participants are liable for any contamination they cause, including exacerbating the contamination that was there before they acquired the brownfield. The act extends the protections during or after remediation to a brownfield's immediate prior owner and the party that subsequently acquires the brownfield from a participant.

The act requires the DECD commissioner to establish the program within available appropriations but divides the administrative duties between her and the DEEP commissioner: the DECD commissioner must select brownfields for participating in the program; the DEEP commissioner must monitor and audit their remediation.

EFFECTIVE DATE: July 1, 2011

Type and Scope of Benefits

The program protects participants from liability to the state and third parties only for contamination that existed before they acquired the property. It does not protect them from liability for any contamination they caused, contributed to, or exacerbated. Further, participants must clean up the property according to DEEP standards. They or their successors must also comply with any remediation orders DEEP may issue under the act after the property is remediated.

The participants are exempt from complying with the Transfer Act when they convey their property. But this exemption does not relieve them from complying with any other laws requiring parties to certify a property's environmental condition.

Lastly, the DECD commissioner's decision to accept the property into the program has no bearing on other municipal, state, and federal programs. Her decision does not automatically approve the property for funds under those programs, nor does it prevent the participant sponsoring the property from applying to them for funds.

Eligibility

Property. DECD may admit a property into the program if the property and its owners meet the act's application requirements. The property must be a "brownfield" whose redevelopment will benefit the economy (see § 7), and the applicant must show that the contamination levels exceed DEEP's standards for protecting the environment, health, and public welfare.

DECD may also admit into the program a property that is voluntarily being investigated and remediated under DEEP's voluntary site remediation and covenant not to sue programs. But it cannot admit into the program a property that is subject to a state or federal enforcement action, included on a state or federal list of contaminated property, or subject to a corrective action under federal law. Property contaminated by polychlorinated biphenyls (PCB), a chemical formerly used in manufacturing, can be accepted into the program, but acceptance does not relieve the owners from complying with PCB regulations. The same applies to property where petroleum and chemicals leak from underground tanks.

Applicants. The program is open to people, businesses, nonprofit organizations, municipalities, public and private municipal economic development agencies, and state agencies. These entities may apply to have a property admitted into the program if they are "innocent landowners," "bona fide prospective purchasers," or contiguous property owners.

An innocent landowner is a person or entity that owns property another party contaminated. A bona fide prospective purchaser is a person or entity that acquires a brownfield after July 1, 2011 and shows, by a preponderance of the evidence, that it:

1. acquired the property after it was contaminated;
2. is complying with any environmental use restrictions imposed on the property and federal law requiring purchasers to inquire about a property's previous owner and how such owner used the property;
3. has provided the notices required after discovering or releasing hazardous substances and taken appropriate steps to stop the release, prevent future releases, and prevent or limit harm to people and the environment;
4. is cooperating with people authorized to contain or clean-up the contamination; and
5. is providing the information DEEP requests.

A contiguous property owner is a person or entity that owns property next to a brownfield owned by another party. Contiguous owners can participate in the program if they:

1. addresses the contamination on their property as the act specifies,
2. helps people responding to contamination at their property or the adjacent one,
3. comply with environmental use restrictions, and
4. provides any information DEEP requests and all required notices regarding the contamination on their property.

In addition to these affirmative steps, the owner cannot do anything that prevents any institutional control (e.g., EURs) imposed on the owner's property or the adjacent property from working.

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Innocent landowners, bona fide prospective purchasers, and contiguous property owners can participate in the program only if they did not contaminate the property and are unaffiliated with the parties that did.

Acceptance in the Program

Method. DECD can accept a brownfield into the program by application or nomination. Eligible applicants may submit applications to the DECD commissioner on forms she provides. Municipalities and economic development agencies may nominate brownfields they do not own for acceptance into the program, but the act does not specify whether they can do so without the owner's permission or the process they must follow.

The commissioner may accept up to 32 brownfields per year into the program.

Application Content. The application must include:

1. a title search,
2. a DEEP-prescribed Phase I Environmental Site Assessment prepared by or for a bona fide prospective purchaser,
3. a current property inspection,
4. proof that the applicant and the property qualify for the program,
5. information the commissioner needs to select brownfields based on the act's statewide portfolio factors (see below), and
6. other information she requests.

(A Phase I Environmental Site Assessment evaluates a property's historical and current uses and the activities conducted there. The information helps identify potentially contaminated areas.)

Certifications. When applying for the program, applicants must certify that they meet the program's eligibility criteria. Specifically an applicant must certify, on a form the commissioner provides, that it is:

1. an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner;
2. did not contaminate the property and is not affiliated with the party that did; and
3. did nothing to pollute the state's waters.

The applicant must also certify the property's condition. It must show that the property is a brownfield and that the contamination exceeds DEEP's remediation standards. The applicant must also show that the brownfield is not subject to federal or state enforcement action or on the state or national lists of contaminated sites.

The commissioner, in consultation with the DEEP commissioner, must determine if the certifications are accurate and consider only those that are.

Statewide Portfolio Factors. The DECD commissioner must select applications to create a diverse portfolio of brownfield projects from around the state. She must do this in consultation with the DEEP commissioner based on the following "statewide portfolio factors":

1. a brownfield's capacity to create or retain jobs and generate the revenue needed to sustain itself,
2. the applicant's readiness to investigate and remediate the property,

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3. the portfolio's geographic distribution,
4. the populations of the municipalities represented in the portfolio,
5. the brownfield's size and the project's complexity,
6. the time and extent to which the brownfield has been underused,
7. the extent to which its remediation will increase the municipality's grand list,
8. the extent to which the remediated brownfield is consistent with municipal and regional planning objectives and addresses smart growth and transit-oriented development principles, and
9. other factors the DECD commissioner chooses to consider.

Fees

The act imposes fees on parties accepted into the program (i.e., acceptance fees) and on those that subsequently acquire property from them (i.e., transfer fees).

Acceptance Fees. Applicants accepted into the program (i.e., participants) must pay the DEEP commissioner a fee equal to 5% of the brownfield's assessed value as of the municipality's most recently completed grand list. (Municipalities annually update their grand lists on October 1.) A participant must pay the fee in two equal installments, but the act allows the commissioner to reduce or eliminate the installment amounts if an applicant meets specified conditions.

The participant must pay the first installment within 180 days after the DECD commissioner approves the application and the second within four years after that date. DEEP must deposit the fee in the Special Contaminated Property Remediation and Insurance Fund, which provides low-interest loans for investigating and remediating contaminated property. (DECD administers the fund in cooperation with DEEP).

The DEEP commissioner must reduce the installment amounts if the participant finishes investigating and remediating the brownfield ahead of the act's deadlines for completing these tasks. He must reduce the first installment by 10% if the participant finishes investigating the property within 180 days after the DECD commissioner approves its application. (As discussed below, the act gives participants up to two years to investigate the property.) The participant must document this fact on a form the DEEP commissioner provides and whose content an LEP approved in writing.

The DEEP commissioner must eliminate the second installment if the participant cleans up the property within four years after the application's approval date and submits the remedial action report and the verification or interim verification. The act gives participants up to eight years to remediate a property.

The commissioner must extend the four-year deadline if the participant requests his approval for a remediation standard and he takes over 60 days to reply. The extension must equal the number of days it took the commissioner to respond after the 60-day deadline, but not including the days it took the participant to respond to the commissioner's request for more information. Under the act, the commissioner can request information anytime while the property is in

the program.

Participants that do not remediate property within four years may still qualify for relief from paying the second installment. If a participant investigates contamination that migrated from the property, the commissioner must reduce the installment or give the participant a refund equal to twice the reasonable environmental service costs it incurred for investigating the off-site contamination, up to the installment amount. The participant must provide information showing that it investigated the contamination according to DEEP standards. The information must be approved by an LEP and submitted on a DEEP form.

The act exempts municipalities and economic development agencies from paying the application fee, but requires them to collect and remit to DEEP the fee for transferring property for development.

The act allows municipalities and economic development agencies acting on their behalf to request fee waivers for property others own and allows the DEEP commissioner to grant them based on:

1. the property's location within a distressed municipality,
2. the extent to which the municipality or the economic development agency demonstrates the project's economic impact and community benefits, and
3. proof that the property owner is eligible and paying the fee will undermine the project's success.

Transfer Fee. Parties acquiring property in the program must pay the DEEP commissioner a \$10,000 transfer fee. As with the acceptance fee, DEEP must deposit the fee revenue in the Special Contaminated Property Remediation and Insurance Fund. The act exempts municipalities and municipal economic development agencies from paying this fee when they acquire property in the program, but it requires them to collect and remit the fees to DEEP if they transfer the property to another party for development.

Participant Duties and Obligations

Although the act protects participants from liability to the state and third parties for contamination caused by others, it requires them to investigate and remediate the contamination according to DEEP standards. They must characterize, abate, or remediate the contamination on the property according to prevailing standards and guidelines and clean up the property according to the plan and schedule they must submit to DEEP for this purpose.

But participants may become liable for this contamination if the DEEP commissioner subsequently learns that the decisions accepting the property into the program and approving its remediation plan were based on incomplete or inaccurate information. The commissioner can take any appropriate action, including requiring additional remediation if:

1. he can show that the participant or its successor knew or had reason to know that the information in the documents attesting to the property's remediation was false or misleading;
2. new information confirms the existence of previously unknown contamination that resulted from a release that occurred before the

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- property was accepted into the program;
3. the participant failed to comply with its remediation plan and schedule; and
 4. conditions have changed and now endanger the environment or human health, such as a change in the property's use from business or other nonresidential use to residential use.

Participants are not obligated to characterize, abate, or remediate hazardous plumes or substances beyond the property's boundaries (except if they caused them), but they must comply with the notification requirements the law imposes on property where the contamination spreads beyond its boundaries.

Participants are liable for any contamination they cause or contribute to and must investigate and remediate it.

Investigation and Remediation Process

Preparing Brownfield Investigation Plan and Remediation Schedule. The act specifies the process and timeframes for investigating and remediating contaminated property. Participants must submit an investigation plan and remediation schedule for these purposes to the DEEP commissioner within 180 days after their applications were approved. These documents must be signed and stamped by an LEP.

The plan and schedule must show that:

1. the investigation will be completed within two years of the application's approval date,
2. remediation will be started within three years of that date, and
3. remediation will be completed within eight years of the approval date.

The plan and schedule must show that the property will be sufficiently remediated to support "verification" or "interim verification." Verification is the standard signifying that the property has been investigated and remediated according to state standards. Interim verification is the standard signifying that the soil has been remediated but that the ground water still requires remediation under a "long-term remedy."

The plan and schedule must address only the contamination that exists within the property's boundaries, unless the participant caused it to spread to other property. In any case, the participant must still comply with the notice requirements the law imposes on parties owning contaminated property.

The plan and schedule must include a deadline for notifying specified parties and the public before the remediation begins.

Implementing the Plan and Schedule. Before implementing the plan and schedule, the participant must notify adjacent property owners about its intent to remediate the property by posting a notice on the brownfield advising them about the planned remediation or mailing a notice about it to them. It must also notify the affected municipality's public health director and the general public. Lastly, the participant must publish a notice about the remediation in a newspaper serving the affected municipality.

The public has 30 days from the last notice to comment on the proposed remediation. The act implicitly requires the participant to respond to the public

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comments by allowing the participant to start cleaning up the property only after it submits those comments and its responses to the DEEP commissioner.

As the participant begins implementing the plan, it must submit all permit applications to the DECD permit ombudsman.

The participant must document when it completes a task and notify the DEEP commissioner to that effect. It must document that an investigation has been completed according to prevailing standards and guidelines on a form the commissioner must provide. An LEP must approve the documentation in writing.

The participant must also document and notify the commissioner on a DEEP form when the remedial work begins. The documentation must be accompanied by an LEP-approved remedial action plan.

The participant must also document that the property was remediated, which under the act must occur under an LEP's supervision. The participant must document the remediation by submitting a remedial action report in which the LEP describes the remedial work, states that it meets the remediation standards, and issues a verification or interim verification. The LEP must sign and stamp the report. The participant must submit the report to the DEEP and DECD commissioners.

A participant submitting an interim verification and its successors must continue remediating the ground water until the remediation standards are met. It must:

1. operate and maintain the long-term remedy as the remedial action report, the interim verification, and the commissioner's orders require;
2. prevent the land from being exposed to contaminated ground water plumes exceeding the remediation standards;
3. take all reasonable steps to contain any ground water plumes on the property; and
4. submit annual status reports to the DEEP and DECD commissioners.

Lastly, participants must keep the records that were created while the property was being investigated and remediated for at least 10 years and make them available upon request to the DEEP and DECD commissioners.

Before approving the verification or interim verification, the DEEP commissioner may enter into a memorandum of understanding with the participant requiring further remedial action and monitoring needed to protect the environment and human health.

Extending the Deadlines. The DEEP commissioner may extend the eight-year remediation deadline only if the participant can show that reasonable progress was made toward remediating the property but that forces beyond the participant's control delayed the work.

Audits

Timing. The act authorizes audits to verify if a property was properly investigated and remediated under two scenarios. The DEEP commissioner can audit an investigation and remediation anytime he requests information from the participant and does not receive a response within 60 days.

He can also audit the investigation and remediation after the participant

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submits the remedial action report and the verification or interim verification. In either case, he must first notify the participant about whether he will do so within 60 days after receiving the documents. If he decides to audit the actions, he must conduct the audit within 180 days after receiving the documents. In most cases, he may conduct an audit only within 180 days of receiving the remedial action report and the verification or interim verification.

The commissioner can request additional information anytime during the audit period. If he does not receive it within 14 days after requesting it, the audit is suspended and the 180-day clock stops until the participant provides the information. But the commissioner may restart the audit if the participant fails to respond to the commissioner within 60 days after his request.

The commissioner may audit the remediation more than 180 days after receiving the verification or interim verification if he believes:

1. it was based on inaccurate, erroneous, or misleading information;
2. material misrepresentations were made when the verification was submitted;
3. the law was violated in a way that is material to the verification; or
4. information exists showing that the remediation may have failed to prevent a substantial threat to public health or the environment.

The commissioner may also audit a verification or interim verification after 180 days if:

1. the post verification monitoring and other actions have not been taken or
2. verification relying on an environmental land use restriction was not recorded in the land records.

Audit Findings and Reply. Within 14 days after completing the audit, the DEEP commissioner must send the audit findings to the participant, the LEP, and the DECD commissioner. The audit findings may approve or disapprove the remedial action report and, if they do the latter, explain why.

If the DEEP commissioner disapproves the remedial action report and the verifications, the participant must submit to him and the DECD commissioner a “report of cure of noted deficiencies” within 60 days after receiving the commissioner’s disapproval notice. The DEEP commissioner has up to 60 days to disapprove this report or issue a successful audit closure letter.

Onset of Liability Protections

The act’s liability protections begin after the DEEP commissioner notifies the participant that he will not audit the process or that his audit findings have been addressed. They also begin if the commissioner fails to act on a remedial action report and the accompanying verifications within 180 days after receiving them.

In either case, the participant is not liable to the state or third parties for the costs incurred to remediate the contamination identified in the plan. Nor is it liable for the costs for equitable relief or damages resulting from the contamination. The protection also applies to any historical off-site impact, including air deposition, waste disposal, impact on sediments, and damage to natural resources.

But the protection does not extend to contamination that must be addressed

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under the regulations governing PCBs and underground storage tanks. Nor does it stop the commissioner from requiring further remediation after the liability protections begin. As noted above, the act specifies conditions under which he may do so.

Liability Protection After Transfers

Participants. The act protects participants from liability to the state and third parties after they transfer a property as long as they comply with its provisions. The protections apply when they transfer a property before the DEEP commissioner issues a no audit letter or a successful audit closure letter or 180 days expires after the remedial action report and verification or interim verification was submitted.

In these situations, a participant is not liable for the costs incurred to clean the property, equitable relief related to the contamination addressed in the investigation plan and schedule, or damages resulting from that contamination. Nor is the participant liable for any historical offsite impacts, including air deposition, waste disposal, impact on sediments, and natural resource damages.

The act's protection does not extend to contamination that must be addressed under the regulations governing PCBs and underground storage tanks.

Prior and Subsequent Owners. The liability protection extends to the party that owned the property immediately before the participant acquired it (i.e., immediate prior owner). But they do not extend to contamination emanating from the property or to penalties, fines, costs, expenses, and obligations that the immediate prior owner incurred while it owned the property. Nor do they extend to an owner that failed to fulfill any legal obligation to investigate and remediate the contamination at or from the property.

The liability protection extends to the party that acquires the property from the participant if (1) that party is eligible to participate in the program and pays the \$10,000 transfer fee and (2) the participant submitted the remedial action report and the verification or interim verification as the act requires.

§ 18 — BRIDGEPORT SPECIAL TAXING DISTRICT

The act expands the bonding powers of Bridgeport's special taxing district. PA 05-289 authorized the district's formation to finance roads, sewers, and other infrastructure and pay for the services needed to maintain it. It authorized the district to issue up to \$190 million in bonds secured by the district's full faith and credit; fees, revenues, and benefit assessments; or a combination of its full faith and credit and fees, revenues, and benefit assessments.

The act allows the district to issue bonds, without limit, to (1) finance property acquisition and improvements and back them only with fees, revenue, benefit assessments, or charges the district imposes on the property and (2) refund outstanding bonds, notes, and other obligations.

EFFECTIVE DATE: July 1, 2011

§ 19 — LANDOWNER RECREATIONAL LAND IMMUNITY

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The act extends to municipalities the liability protections the law provides to landowners who allow the public to use their land without charge for recreational purposes. By law, these owners owe no duty of care to (1) keep the land safe for recreational purposes or (2) give any warning of a dangerous condition, use, structure, or activity on the land to those entering for recreational purposes.

Additionally, the law provides that such a landowner does not thereby (1) make any representation that the land is safe for any purpose, (2) confer on the person using the land a legal status entitling the person to duty of care by the owner, or (3) assume responsibility for any injury to a person or property that is caused by the landowner's act or omission.

The statutory immunity from liability does not apply to (1) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity or (2) injuries suffered in any case where the landowner charges people who use the land for recreational purposes.

For purposes of these liability protections, prior law defined "owner" as the possessor of a fee interest, tenant, lessee, occupant, or person in control of the premises. The Connecticut Supreme Court ruled that municipalities are not "owners" under these provisions (*Conway v. Wilton*, 238 Conn. 653 (1996)). The act expands the statutory definition to include any (1) town, city, borough; (2) special taxing district; and (3) metropolitan district created by special act or under the statutes. It also includes railroad companies in the definition. (PA 11-61, § 139, repeals these provisions extending liability protection to municipal entities and railroad companies.)

By law, "charge" means the admission price or fee asked in return for an invitation or permission to use the land. The act specifies that any state or local taxes collected under state law are not considered a charge for using the property. (PA 11-61 repeals this provision.)

EFFECTIVE DATE: October 1, 2011

§ 20 — MUNICIPAL LIABILITY PROTECTIONS FOR CONTAMINATED PROPERTY

The act sets conditions protecting large municipalities from liability to the state for pollution or hazardous waste on or spreading from property for which they have an easement. The protection applies to anything discharged or deposited in any public or private sewer, or that otherwise comes into contact with any water, that contaminates state waters, makes them impure or unclean, or causes significant and harmful temperature changes. It also applies to waste posing a present or potential threat to human health or the environment when improperly handled.

The protection covers municipalities with a population over 90,000 that acquired and recorded an easement allowing the public to use the land for recreation without charge. (Under PA 11-61, § 140, charges do not include tax revenue municipalities or other owners collect with respect to the property.)

But the act does not relieve municipalities from ensuring that the contamination poses no risks to the public based on how they may use the land.

Under the act, these municipalities are not liable to the state for any fines,

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penalties, or costs associated with investigating or remediating the property. Municipalities are exempt from the clean-up costs, fines, and penalties if:

1. the contamination occurred before a municipality acquired the easement;
2. the municipality or its agent did not cause, create, or contribute to the contamination; and
3. the municipality or members of the public using the land covered by the easement do not contribute or exacerbate the contamination or prevent others from investigating and remediating it.

The act's protection extends only to the municipalities and the land subject to the easement. But the municipalities must allow people investigating and remediating the contamination to enter the property and not interfere with their work.

The act does not limit or affect the liability of landowners or operators under any law, including those requiring them to address pollution and pay fines and penalties.

EFFECTIVE DATE: October 1, 2011

BACKGROUND

Related Acts

PA 11-103 eliminates the sunset date for the CDA program that uses property tax and other specified revenues to repay bonds CDA issues on a municipality's behalf for cleaning up and redeveloping contaminated property or developing land for information technology uses. (It also eliminates the sunset date for the CDA program that uses incremental sales, hotel, dues, cabaret, and admission tax revenue to repay bonds CDA issues for projects that create jobs or stimulate significant business activity.)

Among other things, PA 11-61 repeals the act's extension of liability protections to municipalities, special taxing districts, and metropolitan districts that allow the public to use their land for recreation without charging admission fees. It also repeals the provision excluding state and local taxes from the definition of charges.

PA 11-61 also makes a conforming technical change to the act's provisions setting conditions under which municipalities are protected from liability to the state with respect to contaminated property for which they have an easement.

OLR Tracking: JR:TA:VR:ts