STATEMENT ON HB 5343

by Barry J. Trilling, Partner, Wiggin and Dana, LLP

Urging the deletion of Subsection 1(b) of the bill

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I offer this statement in reaction to HB 5343, a bill entitled "An Act Concerning Economic Development Through Streamlined and Improved Brownfields Remediation Programs." My name is Barry Trilling. I practice law as a partner in the Stamford, Connecticut office of the Wiggin and Dana LLP law firm where I lead the firm's environmental law practice. I have been admitted to practice since 1972 and have represented clients in the area of brownfield remediation and redevelopment since the early 1990s. I currently serve as President of the Connecticut and Suburban New York Chapter of NAIOP, Commercial Real Estate Development Association, and am a member of the national corporate Board of Directors of this 16,000 member association, and I also chair its national Urban Redevelopment Forum. I have advised the US EPA on its development of remediation investigation standards and have served on the executive committee of the Connecticut Chapter of the National Brownfields Association. I have also spoken and written extensively on the subject of brownfields, including having co-authored the November 2008 Quinnipiac Law Review article, "Brownfield Development in Connecticut, Overcoming the Legal and Financial Obstacles." I have also recently been invited to become a charter member of the Council on Brownfield Redevelopment and Reuse of the Urban Land Institute. I make this statement today in my individual capacity, but based on the above experience and qualifications. (Time constraints, our only learning of the introduction of HB 5343 last week and the scheduled receipt of testimony today, have not enabled our NAIOP chapter to present a formal response.)

I understand that this legislation arises out of and in response to the job assigned to the Department of Energy and Environmental Protection (DEEP) by the legislature in last year's P.A. 11-141 to make recommendations for changes to regulatory programs that will result in "a more streamlined or efficient remediation process." Much to be commended in HB 5343 is that portion of Section 1(a) which requires the DEEP Commissioner to consider several different factors when making recommendations for any such changes, particularly the consideration of the potential impact of those changes on certain small businesses and how any such changes may facilitate remediation and economic development, including at properties with existing remediation responsibilities. The Commissioner's consideration of these factors are consistent with statements made by DEEP Commissioner Dan Esty that his agency might more appropriately be called "DEEEP"—adding another "E" for the economy.

Further, by focusing solely on the regulated community, Section 1(b) suffers from the absence of any recognition that DEEP's own conduct comprises an important component of remediating the environment. If the bill really has the intent of streamlining remediation programs, whether of brownfields or any property subject to DEEP's regulatory review, the Commissioner's report should be required to include recommendations pertaining to speeding up and providing both clarity and certainty to DEEP's regulatory review process, including its review of any reports submitted pursuant to current and proposed systems. Section 1(b) of the bill currently requires the commissioner's report to contain recommendations relating to 13 different regulatory issues; to the extent Section 1(b) may remain in the bill, at least two additional recommendations should be added relating, respectively, to (i) assuring the prompt and timely review by the Department of Energy and Environmental Protection of all reports required by any such recommendations, and the prompt and timely response by said agency to any licensed environmental professionals, owner, operator, or associated party, as applicable who has submitted such a report, consistent with the legitimate business concerns of such reporting entity, (ii) adopting aspects of the self-implementing programs of other states, such as Pennsylvania, that have met goals for protection of human health and the environment while streamlining the regulatory administrative process.

As currently drafted, Section 1(b) of HB 5343 bill presents a blueprint that opponents of regulatory reform will likely argue *requires* certain results, such as mandatory reporting of historical releases and the imposition of a system that imposes mandatory reporting, investigation, and remediation of all releases, regardless of their adverse impact on human health and the environment. **The bill, and its stated purposes, would best be served by deleting all of section 1(b).** As an alternative, I urge the legislature to clarify that the bill is specifically not intended to be "outcome determinative" with regard to the report and recommendations required by the bill and that such report and recommendation also consider means by which DEEP can become a more "user friendly" agency, in the sense of assisting businesses in the state to meet environmental goals while recognizing the need to keep the state economically competitive.