

Statement Regarding Raised Bill No. 5343

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My name is Elizabeth Barton. I am a partner in the Real Estate, Environmental and Land Use Department at Day Pitney LLP. We represent and consult with businesses, property owners, developers, lenders, and municipalities throughout Connecticut and also outside Connecticut. I have had the opportunity to be a member of various groups in Connecticut over the years, who have worked on amendments to Connecticut's Remediation Standard Regulations and the streamlining of environmental permitting in Connecticut. I greatly appreciated the opportunity to be a part of Governor Malloy's Transition Team on environmental matters. I am writing today to share concerns about Raised Bill No. 5343.

I commend the Governor, the legislature and Commissioners Esty and Smith for their significant commitment to the furtherance of brownfields redevelopment. This commitment was instrumental in, for example, the unanimous passage of the new Brownfields Remediation and Revitalization Program, otherwise known as Section 17 of Public Act No. 11-141. This Program, which affords first of its kind liability protection and relief, has received well-deserved positive attention outside as well as within Connecticut. Such attention is relevant to the desired and sustainable growth of Connecticut's economy. Other states have taken note of Connecticut's progressive initiative in the brownfields redevelopment arena, when working on their own initiatives to mitigate impediments to the return of these environmentally challenged properties to productive reuse.

But unlike Section 17 of Public Act No. 11-141, Raised Bill No. 5343 is not a "brownfields" bill. Contrary to its statement of purpose, Raised Bill No. 5343 is not providing for "an in-depth analysis of the state's Brownfield remediation and development program." The bill could discourage, not encourage, brownfields remediation and redevelopment. As written, it signals a predetermination of the outcome of a regulatory process. This process affects all properties, property owners and businesses – public and private, large and small - in Connecticut. It is a process that should begin with revisions to the Remediation Standard Regulations, the foundation of Connecticut's remediation programs. The bill's message is that there will be a significantly expanded release response program at an undefined point in the future, with attendant unspecified cost and no indication as to what, if any, thresholds or triggers there will be for obligations under the program. In fact, the language of subsection (b) suggests that all "threatened, new and historical releases" for all properties, i.e., even "minor releases", will carry a notification obligation, multiple reports, fees, and "public participation in proposed and ongoing response actions." The bill does not define "threatened, new and historical releases."

As there was with respect to environmental permitting prior to the development of the Department of Energy and Environmental Protection's general permit program, there appears to be agreement that there is room for improvement in the way remediation works in Connecticut. We have in the neighborhood of 4000 properties in current

regulatory programs and there is dissatisfaction with the implementation of these programs. Respectfully, the answer is not to put more individuals, entities and properties into these programs or revamped programs, especially without additional Department resources to commit to moving properties or release areas through any programs. While the Licensed Environmental Professionals will likely figure prominently in any improvement plan, the initial issue is with the standards that guide their actions. The approach being legislated with Raised Bill No. 5343 is premature.

It is not clear why a bill is needed for the Department to continue with its transformation initiative. If a bill will be moving ahead, Raised Bill No. 5343 should be revised to delete subsections (b), (c) and (d), leaving only subsection (a), wherein the reference to brownfields should be removed.

Thank you.