

TESTIMONY OF ERIC J. BROWN  
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CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION

Before the  
COMMERCE COMMITTEE

March 6, 2012

Good morning, my name is Eric Brown, associate counsel with the Connecticut Business & Industry Association ("CBIA") and I am pleased for this opportunity to provide the committee with comments on:

**RAISED BILL NO. 5343:** An Act Concerning Economic Development through Streamlined and Improved Brownfield Remediation Programs

**Position:** CBIA is strongly opposed to the inclusion of subsection 1(b) and other references to a new release reporting program contained in this bill as they are premature, prejudicial to forthcoming stakeholder deliberations, counter to principles previously articulated by DEEP to the legislature, and not aligned with the legislature's directive to streamline the cleanup process for Connecticut brownfields.

**Historic context of the spill reporting debate in Connecticut**

For 43 years, Connecticut has had a statute that declares spills are to be reported to the state "in accordance with regulations . . ." – regulations that have never been adopted. From the statute's inception, the then Department of Environmental Protection's ("DEP") official interpretation was that the statute required ALL spills to be reported. In response to industry frustration with the uncertainty about what spills "really needed to be reported" and in an effort to establish a clearer and more reasonable interpretation by DEP, the legislature in 1995 added a provision to the statute specifying that spills required to be reported were limited to those which "*pose a potential threat to human health or the environment.*" DEP countered by declaring that they were the only ones qualified to determine which spills pose a threat to human health or the environment and that therefore, ALL spills still needed to be reported and the DEP would determine which really need not have been reported - after the fact.

Throughout these years, there has been a significant debate in Connecticut, both outside of the DEP/DEEP and within it, as to the appropriate way to regulate spills in our state. Even more controversial, is the issue of how to handle the reporting, liability and remediation of historic spills. One camp wants all spills of any size of any material anywhere to be reported and for the most part, to be cleaned up in accordance with state remediation standard regulations by professional Licensed Environmental Professionals. The other seeks definitive reporting thresholds for only those spills that pose an unacceptable risk to human health or the environment, consistent with the current law as stated in section 22a-450 of the Connecticut General Statutes.

At least three significant working group efforts, beginning in the early 90s and as recently as 2009, have tried and failed to achieve a meeting of the minds in drafting regulations defining the spills that need to be reported. Now, we see a bill attempting to statutorily fortify, in isolation, the position of those who favor the “all-encompassing” approach under the heading of “streamlining brownfield remediation”.

### **Actions since last year’s brownfields legislation**

Last year, the landmark brownfield legislation that started in this committee and wound up with unanimous approval in the House and Senate and the Governor’s signature, included a provision that in order to make even further progress, authorized DEEP to conduct a study of its remediation programs and make recommendations to create “a more streamlined or efficient remediation process.”<sup>1</sup>

To its credit, DEEP almost immediately began an intensive stakeholder process to identify challenges with the current remediation programs and propose solutions to those challenges.

On November 14, 2011, CBIA joined with several of Connecticut’s top brownfield experts participating in the stakeholder process in submitting comments<sup>2</sup> to DEEP that expressed concern that there may be:

“a rush to create the framework of a dramatically new, comprehensive and inventory-driven system . . . [and that] . . . legislating such a framework could have the effect of increasing exponentially the universe of sites and incidents pulled into the state program.” “This direction, without more, carries a corresponding potential for crushing impacts on both the economy and DEEP’s ability to discharge its responsibilities consistently, predictably, fairly, and in a timely and cost-effective manner that is protective of the environment.”

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<sup>1</sup> See section 6 of Public Act 11-141

<sup>2</sup> See attached letter entitled, “Comments from a Group of Brownfield Advocates in Connecticut, Nov. 14, 2011

On December 21, 2011, DEEP sent a report to the legislature that was encouraging. While no clear specifics were agreed to in the stakeholder process, a solid consensus was reached on some encouraging key principles that the ultimate recommendations should reflect:

- **Protective:** Protect public health and the environment
- **Prioritized:** Focus on the highest risks
- **Flexible:** Allow site-specific decision-making
- **Efficient:** Create more self-implementing options
- **Simple:** Unify the program
- **Reasonable:** Balance level-of-effort with risk and economic factors
- **Transparent:** Improve guidance, public participation, and access to data
- **Certain:** Establish clear and multiple exits with interim milestones

Over the past two months since the report was released, DEEP staff has been working to draft a comprehensive bill that would include the specifics for a new brownfield remediation program reflecting these principles. Throughout that period of time, we have been nervously awaiting the unveiling of the proposal.

Just over a week ago, we heard from non-DEEP sources that DEEP had decided there was not enough time to draft such a significant bill for this legislative session and that they would be resuming the stakeholder process with recommendations to be developed in time for the 2013 legislative session. This seemed eminently reasonable to us.

#### **CBIA's reaction to the H.B. 5343 as released.**

CBIA saw the substance of the bill for the first time late last week. Subsection 1(b) represents precisely the isolated legislative initiative, focused on an inventory-driven system that we cautioned against in our November 14, 2011 letter to DEEP.

**Accordingly, while CBIA continues to strongly support the transformation initiative and looks forward to continuing to work collaboratively with DEEP and other stakeholders, we cannot support this bill with the inclusion of subsection 1(b) for the following reasons:**

1. This subsection is premature and ill-advised as it prejudices the months of deliberations yet to be held as recommendations are developed for the 2013 legislative session.
2. Such a program would be counter to nearly all of the eight key principles articulated in the December 21, 2011 report to the legislature and itemized above. The agency promises "exit ramps" that will allow some properties to exit this new regulatory program almost as quickly as they come into it. But there is nothing in subsection 1(b) of this bill that gives us confidence that this will be the case.

3. The issue of release reporting by itself has nothing to do with streamlining brownfield remediation – which was the directive to the DEEP under Public Act 11-141.
4. H.B. 5343 would create the statutory basis for a vastly encompassing reporting system that could unnecessarily overwhelm both industry and DEEP resources;
5. Subsection 1(a) of the bill reflects the DEEP’s decision to postpone making recommendations to the legislature until 2013. However, and significantly, the subsections includes a clause on lines 10 and 11 stating that in addition to recommendations for changing statutes and regulations that “relate to brownfield remediation and development” (see lines 6 and 7), the new report would also be required to include recommendations for a “new program for responding to hazardous material releases.” (i.e. spill-reporting). While the ultimate 2013 package of recommendations may include recommendations for adjustments to or an entirely new spill-reporting program, that should be decided in the context of the stakeholder deliberations that are yet to occur. DEEP should not unilaterally seek a new and separate legislative mandate on this sensitive issue; and
6. Removing the offending clause in subsection 1(a) and all of subsection 1(b) will allow the stakeholder process that successfully achieved consensus on key principles, to move forward with transforming those principles into a comprehensive set of brownfield recommendations that will, as the legislature called for in section 6 of Public Act 11-141, “a more streamlined and efficient remediation process.”

**CBIA’s recommendations for amending the bill**

For the reasons articulated above, CBIA respectfully urges the committee to make the following changes to H.B. 5343:

[Note: Suggested new language is underlined, suggested deletions are bracketed]

Beginning on line 10:

“statutes and regulations, [or any recommendations for any new program for responding to hazardous material releases.] Any recommendation for any such changes [or new program] shall consider ”

Beginning on line 18:

“environment; (4) the efficacy of responding to releases, including the greater use of and authority for licensed environmental professionals overseeing the investigation and remediation of releases: and [(5)] (4) how any such changes [or new program] may facilitate remediation and”

Beginning on line 24:

Strike subsection 1(b) in its entirety

Beginning on line 64:

“of any such changes [or new program] to ensure, among other things, the appropriate exercise of authority by licensed environmental professionals [and timely and effective action by those responsible for responding to releases.] Such means may include, but are not limited”

Beginning on line 72:

“implement any such recommended [program] changes including, but not limited to, the impact upon federally-delegated programs and the extent, if at all, to which any changes [or program] may be applicable to properties undergoing investigation and remediation under current statutory requirements.”

Once again, CBIA greatly appreciates this opportunity to share our perspectives with this committee that has done so much good work in the past to stimulate brownfield revitalization. We look forward to continuing to work with you and DEEP to continue that important momentum.

## **COMMENTS FROM A GROUP OF BROWNFIELD ADVOCATES IN CONNECTICUT**

November 14, 2011

Mr. Graham Stevens  
Department of Energy & Environmental Protection  
79 Elm Street  
Hartford, CT 06106

Dear Graham,

As a group of practitioners who were very pleased to have the opportunity to work with the Department of Energy and Environmental Protection, the Department of Economic and Community Development, the Connecticut General Assembly, and the Governor toward passage of Connecticut's landmark brownfield legislation earlier this year, we have an intense and continuing interest in DEEP's activities associated with its "Comprehensive Evaluation and Transformation of Connecticut's Cleanup Laws" initiative. We appreciate this opportunity to comment on the draft workgroup reports made available by DEEP.

We understand there are further milestones to be met in the course of DEEP's progress toward the development of the report and recommendations DEEP is required to submit to the legislature under section 6 of Public Act 11-141. We feel, though, that it is important to communicate to DEEP now our collective reservations regarding where the process stands as of today and our perception as to where it may be heading.

We strongly believe that transformation of any programs in Connecticut – legislative or regulatory, environmental or otherwise - must be designed and implemented in a manner consistent with and supportive of the top priority of Governor Malloy and the General Assembly to grow our economy and create jobs. In reading the workgroup reports, we are concerned that they may be signaling a rush to create the framework of a dramatically new, comprehensive and inventory-driven system. Without proper foundation, legislating such a framework could have the effect of increasing exponentially the universe of sites and incidents pulled into the state program and thereby put before the existing DEEP staff for action and without a clear path out. This direction, without more, carries a corresponding potential for crushing impacts on both the economy and DEEP's ability to discharge its responsibilities consistently, predictably, fairly, and in a timely and cost effective manner that is protective of the environment.

We urge DEEP to resist the urge to craft, in a few short months, an entirely new cleanup program for Connecticut. Rather, we recommend that DEEP focus on the foundational elements essential to building a program that will be risk-based, self-implementing, priority-driven, and effective in driving economic and job growth while protecting our environment, which elements are common themes emphasized in each of the draft transformation initiative

reports. We would be delighted to work with DEEP once again in the coordinated and comprehensive development of a foundation based on these principles.

As a starting point for building this strong foundation, we recommend DEEP focus on revising the state's Remediation Standard Regulations ("RSRs"), which were promulgated in 1996 as required by Section 22a-133k. We recognize and, subject to seeing a draft, support DEEP's recently proposed "consensus" amendments to the RSRs. As you know, DEEP shared a conceptual overview of these amendments with the regulated community at DEEP's Remediation Roundtable presentation last week. But these amendments are not enough to provide the necessary and critical foundation of the type of program DEEP's draft reports seem ultimately to be urging. Unlike earlier failed efforts to amend the RSRs, we are confident that with appropriate focus on the Governor's message and the clear and unwavering principles identified herein, Connecticut can be well on its way in relatively short order to having a cleanup program that protects the environment and fosters sustainable economic development.

Sincerely,



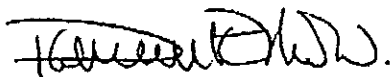
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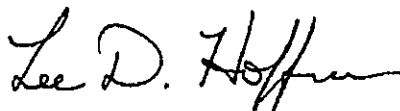
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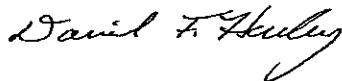
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