

WINNICK RUBEN HOFFNUNG PEABODY & MENDEL, LLC
Attorneys and Counselors

EDWARD B. WINNICK (RETIRED)
DIANE DASKAL RUBEN
WICK R. CHAMBERS
JOSHUA A. WINNICK
DANIEL N. HOFFNUNG
BRUCE R. PEABODY
AMY G. WINNICK
NANCY K. MENDEL

110 WHITNEY AVENUE
NEW HAVEN, CT 06510-1238
PHONE 203.772.4400
FAX 203.772.2763

NANCY K. MENDEL
203-772-4400 x 305
nancy.mendez@winnicklaw.com

Senator Gary LeBeau,
Representative Jeff Berger
Members of the Commerce Committee
Room 110, Capitol Building
Hartford, CT 06106

TESTIMONY OF NANCY K. MENDEL
Environmental Attorney, Principal
WINNICK RUBEN HOFFNUNG PEABODY & MENDEL, LLC
Submitted to the
COMMERCE COMMITTEE
March 6, 2011

Re: Raised Bill No. 5343: An Act Concerning Economic Development Through Streamlined and Improved Brownfield Remediation Programs

I would like to express support for Section 1(a) of Raised Bill 5343, but with the strong recommendation to delete in its entirety subsection (b) of the Bill as being problematic, unnecessary and premature.

I am an environmental attorney with 20 years experience working on the clean-up and redevelopment of brownfields, large and small, on behalf of buyers, sellers, private developers, manufacturers, municipalities, non-profits and fortune 500 companies in every county in the State. I have served as outside environmental counsel to the City of New Haven and the City of West Haven on several of their respective MDP projects, and to REX Development, the economic development entity for the fifteen towns served by the South Central Regional Council of Governments (SCRCOG) on their DECD and EPA brownfield assessment and remediation grant and loan programs, and have seen firsthand the challenges to Brownfields' site redevelopment. I have worked in the trenches with the Connecticut Transfer Act, the Voluntary Remediation Programs, the Licensed Environmental Professional program, Covenants not to Sue, Environmental Land Use Restrictions and all aspects of the Remediation Standard Regulations.

Over the last 20 years, I have been involved in various legislative and regulatory initiatives as a member of Coalition for Clean Sites back in the mid-90s, as past Chair of the

Environmental Section of the CBA, and most recently as a member of a group of volunteers who drafted the Comprehensive Brownfields Remediation and Revitalization Program, a version of which was passed last year as Section 17 of P.A. 11-141. This new program has already had significant beneficial effect on some of the most challenging brownfields in the state with bona fide prospective purchasers taking on their redevelopment in light of the new liability relief offered by Section 17.

Most if not all in the regulated community strongly supports the ongoing process currently underway at the Department of Energy and Environmental Protection (DEEP) by the Commissioner to review the general statutes as they relate to Brownfields remediation and development and more importantly, review and consider revisions to the Connecticut Remediation Standard Regulations (the RSRs) which form the foundation of any clean-up in the state. It is to be applauded. However, it is just that -- an ongoing process.

Subsection 1(a) of RB No. 5343, reflects the results, to date, of DEEP's transformation and review process and DEEP's decision to postpone making recommendations to the legislature until January 2013. Subsection 1(a) requires that the Commissioner consider the recommendations of the report submitted to the legislature by DEEP pursuant to Section 6 of public act 11-141 and five additional key goals to be considered in developing any changes to the statutes and regulations or in the development of a new program. Any new program being proposed should consider each and every one of these goals. On these we can all agree.

However, subsection 1(b) of RB No. 5343, as proposed, is not really about brownfields, which are underutilized or abandoned environmentally impacted sites. In reality, Subsection 1(b) outlines a new and significant regulatory structure for threatened, new and historical releases at active sites, not brownfields. Subsection 1(b) mandates the commissioner to develop a new spill program which includes increased investigation and remediation requirements, new timeframes, additional documentation, new fees, public notification and other similar requirements.

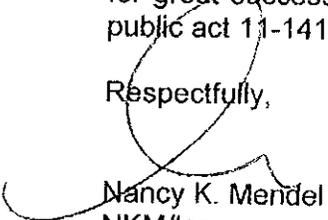
The transformation process is ongoing. Stakeholders are vested in working with the commissioner in developing a more streamlined and efficient remediation process. They have identified the goals for doing so, which are outlined in subsection 1(a). No limits or dictates should be imposed on the rest of this process. While subsection 1(b) lists issues to be considered by the commissioner, the legislature should not tie either the commissioner's or the stakeholders' hands by legislatively requiring these elements be included before the process has even been completed. Subsection 1(b) should either be deleted in its entirety, or reworded from a "shall include recommendations relating to" to a "may include recommendations relating to" so as not to mandate the outcome of what we all hope will be a successful process.

Most importantly, I bring to the attention of the committee, one key element without which no new program or changes to existing remediation statutes will be successful. There absolutely needs to be a concerted and dedicated effort by both DEEP and the regulated community to work together over the next 10 months, to identify the key elements of the RSRs and the way they are administered, that if changed, would make any program, new or old, workable, more streamlined and efficient. This effort needs to happen now, as a prerequisite to any further legislative change in any of the existing remediation programs or the development of a new program.

DEEP uses the analogy of a highway when it speaks about the transformation process and where it sees remediation programs going in the future. It contends that it is focused on streamlining the system while providing more so-called "off-ramps" for sites to get out of the regulated remediation system earlier and with more certainty, than is currently the case. However, what is being outlined in subsection 1(b), only widens the entrance ramp into the regulatory remediation process, capturing significantly more sites by its overreaching proposal, without truly fixing and/or widening the highway along which these sites will travel – which highway is the RSRs. Right now, of 3700 Transfer Act sites, only about 700 have reached closure. If you talk to LEPs, most would agree that the primary reason for this lack of successfully closed sites is the unworkability of the RSRs. If you don't fix and widen the highway, by making the RSRs more practicable, usable, self-implementing and risk based, then you will create a remediation traffic nightmare, before ever reaching any of these newly created off-ramps.

Thank you for your consideration and I remain hopeful about the process and the potential for great-success by working together for a common goal, just as was done last year with public act 11-141 Section 17 program.

Respectfully,



Nancy K. Mendel
NKM/tsr

