



Connecticut Department of  
**ENERGY &  
ENVIRONMENTAL  
PROTECTION**

**STATE OF CONNECTICUT  
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

Public Hearing – March 22, 2013  
Environment Committee

Testimony Submitted by Commissioner Daniel C. Esty  
Presented By Deputy Commissioner Macky McCleary

**Raised Senate Bill No. 1082 - AAC Brownfield Redevelopment, Institutional Controls and Significant Environmental Hazard Programs**

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 1082 – AAC Brownfield Redevelopment, Institutional Controls and Significant Environmental Hazard Programs. The Department of Energy and Environmental Protection (DEEP) offers the following testimony.

DEEP appreciates the Committee’s willingness to raise this bill at the request of the DEEP. This proposal, which we strongly support, takes the first small – but significant – step toward transforming Connecticut’s cleanup programs.

DEEP has been working with a broad group of stakeholders over the last two years to evaluate Connecticut’s various cleanup statutes and regulations, and to develop a proposal that will make a greater number of contaminated properties in Connecticut viable for redevelopment. DEEP recently completed a draft report entitled [Proposal for a Transformed Cleanup Program](#) (report). This report (available at [www.ct.gov/deep/remediation-transform](http://www.ct.gov/deep/remediation-transform)) includes recommendations for a comprehensive approach to replace the existing patchwork of cleanup laws. DEEP, working with stakeholders, is committed to improving Connecticut’s cleanup program by simplifying program requirements and bringing more “common sense” approaches to the way in which cleanups can occur in Connecticut – which will ultimately properly focus the time, attention, and efforts of the regulated community and the Department on the highest risk sites, and will quickly move low risk sites back into productive use.

To achieve this goal, DEEP is pursuing comprehensive and wide-ranging regulatory changes that will transform the cleanup program in a manner that lessens the hurdles for economic development, increases the number of sites that are cleaned up, and improves overall public health and environmental protection.

This session, DEEP offers a narrowly-focused, targeted bill that we believe complements the broader ongoing regulatory transformation. As explained in greater detail below, this narrowly-focused bill (1) provides municipalities liability relief to encourage more, faster, and cheaper cleanup and redevelopment brownfields; (2) provides greater protection to human health and the environment through upgrades to the significant

environmental hazard notification program; and (3) provides private landowners a new faster, cheaper, and more flexible legal tool for placing controls on future uses of low-risk contaminated properties. During the next legislative session, DEEP expects to offer additional statutory changes that will be informed by continued stakeholder engagement and guidance during the transformation of the cleanup regulations.

**Section 1** of this bill offers a comprehensive liability relief program for municipalities that wish to facilitate the investigation, cleanup, and redevelopment of brownfields. Contaminated properties – particularly when located in downtown commercial areas or residential neighborhoods – can be a drain on the tax base, pose a risk to public health and resources, and stymie redevelopment and economic growth in the surrounding area. This bill provides our cities and towns with the tools they need to acquire derelict brownfield properties and position them for cleanup and redevelopment, without fear of liability for past releases of hazardous substances.

Under this proposal a city or town would be able to acquire a brownfield property using its existing legal authority, perform some site work to improve and position the property for productive re-use, and market the property to prospective end users – all without being liable to the State of Connecticut for cleanup or cleanup costs. Further, municipalities that acquire a brownfield under this new program would have liability relief from all third parties (e.g., future owners, future users, or adjacent property owners). We note that the municipal liability relief provisions proposed in this bill are similar to certain federal liability protections.

**Sections 2 and 3** of this bill propose improvements to the Significant Environmental Hazard Notification statute, section 22a-6u of the Connecticut General Statutes (CGS). This program protects our citizens and resources from significant hazards from past releases of oil and hazardous substances. The essence of this program is that when high risk conditions are discovered, immediate attention and quick action is warranted. Under this law, when a significant hazard condition is identified, two things are required: (1) the condition must be reported, and (2) quick action must be taken to prevent direct harm to people, groundwater, or the environment by stopping potential exposure to the discovered high-hazard pollution. Cleanup, though desirable, is not required.

Currently, parties who discover significant environmental hazards must wait for DEEP's instructions before they can address exposure to the pollution they have discovered. This bill streamlines existing law by spelling out in statute exactly what a party must do to mitigate a significant hazard once discovered, thus eliminating the need for parties to wait for DEEP's instructions before eliminating exposure to the high risk pollution they have discovered.

Currently, the trigger for notification and action for soil and vapor exposure risk is thirty times the state standard. Thus, many areas of contamination known to exist throughout the state at ten, twenty, or twenty-five times the state's existing cleanup standards go unaddressed. People, groundwater, and the environment can be exposed to these high risk pollutants for many years – even decades – without even minimal containment of the contamination. This bill achieves greatly improved public health and environmental protection by changing the trigger from thirty times the state standard to ten times the state standard for two of the six categories of hazards: (1) the category concerning people being directly exposed to high levels of contaminated soil at or near the surface, and (2) the category concerning groundwater containing volatile organic compounds under a building which can potentially create vapors in the building. DEEP is currently working with our stakeholders to create common sense exceptions to this new requirement where the likelihood of exposure is very low, the property owner is working to address the pollution and prevent exposures until such work is complete, or the compounds are ubiquitous (e.g., the components of asphalt that are commonly found in soil).

The Department wishes to provide four important clarifications or edits to the significant hazard sections of this bill:

- (1) Petroleum hydrocarbons are currently exempt from the soil category, and would remain so under the proposed bill.
- (2) The bill as drafted says the soil exposure category applies to the top ten feet of soil, though this is not what DEEP proposed. DEEP believes the current law's two foot zone should remain unchanged.
- (3) DEEP believes additional language can be added to indicate that if current conditions already prevent direct exposure to soil, such as pavement over the contaminated soil, then notification may not be required (or notification may be addressed in another manner under certain circumstances).
- (4) DEEP is amenable to reducing the number of mailings that occur with notifications, and is open to working with this committee and interested persons on adjusting to whom and how notifications are sent.

Other states, such as Massachusetts, have had similar laws in place regarding significant hazards, for twenty years. In Massachusetts, the significant hazard threshold for short-term action is generally set at ten times or less of the cleanup standards.

**Sections 4 and 5** of this bill provides an additional faster, flexible, and cheaper tool for cleanup, by allowing property owners to use a self-implementing Deed Notice as an optional legal control on future uses of certain low risk sites where pollution will be left in place. Currently, only one option is permitted for managing the long term control of a property with pollution that presents no significant current risk, but could pose a risk in the future. The existing option, called a Declaration of Environmental Land Use Restriction and Grant of Easement, can be legally cumbersome for many situations, especially for lower risk sites. This bill's self-implementing Deed Notice option is a faster and cheaper tool to deal with the long term management of pollution on a site that poses no current risk. Other states, such as Massachusetts, allow these types of deed notices as a method to control future uses of low-risk sites.

The Department believes that the broad transformation of our cleanup regulations that is currently underway will have a positive impact on our economy, public health, and the environment. This targeted bill is an important step in forging a more effective cleanup program in Connecticut, and the bill complements the goals of the broader transformation of the cleanup regulations by empowering municipalities to cleanup and reuse brownfield properties, by addressing more significant high-risk hazards more quickly, and by allowing cleanup of low risk sites to be done more quickly and less expensively. DEEP strongly encourages passage of this bill. DEEP also has language suggestions to improve the practical implementation of some of the provisions, and would be happy to work with the committee and key stakeholders to improve the bill.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact DEEP's legislative liaison Robert LaFrance at (860) 424-3401 or [Robert.LaFrance@ct.gov](mailto:Robert.LaFrance@ct.gov).