



Environmental Professionals' Organization of Connecticut
P.O. Box 176
Amston, Connecticut 06231-0176
Phone: (860) 537-0337, Fax: (860) 603-2075

Testimony on behalf of

Environmental Professionals' Organization of Connecticut

Raised Bill 1082 – An Act Concerning Brownfields Redevelopment, Institutional Controls and Significant Environmental Hazard Programs

Environment Committee

March 22, 2013

The Environmental Professionals' Organization of Connecticut (also known as "EPOC") was formed in 1996 to represent the interests of Connecticut's Licensed Environmental Professionals. LEPs are the people who are authorized by the Connecticut Department of Energy and Environmental Protection to perform investigation and remediation of property in Connecticut and certify, through a Verification, that the property meets the Connecticut Remediation Standard Regulations. The LEPs are therefore directly affected by the policies and procedures established under the General Statutes and their associated regulations for investigation and remediation of contaminated sites in Connecticut, including brownfields. We appreciate the efforts of CTDEEP in putting together this bill, because, with some revisions, it will facilitate a transformed and improved regulatory program to sensibly protect human health and the environment.

EPOC **supports** passage of Raised Bill 1082 **with certain modifications**. In particular:

As a general comment, Sections 2 and 3 propose revisions to the Section 22a-6u of the general statutes regarding Significant Environmental Hazard Reporting. We believe the timing of revisions to that statute should coincide with adoption of the "Unified Program Implementer" that brings all of the transformed environmental statutes together to allow for a fully integrated program, rather than a more piece-meal approach.

Section 2(b)(3) should be amended to read "Not later than thirty days after the date ~~the~~ **SUCH** owner becomes aware ..." to clarify that the owner being referred to is the owner of a parcel on which exists a source of contamination. As currently written, the "owner" could be construed to mean the well owner that has been impacted.

Section 2(d)(1) should be amended to either: 1) set the threshold for notification and reporting of release on residentially used property at ten times the residential direct exposure criteria and the threshold on industrial and commercially used property at 30 times the industrial/commercial direct exposure criteria, or, 2) at a minimum, modify Section 2(d)(1)(A) to list semi-volatile organic compounds (SVOCs) as a class of excluded substances at concentrations below 30 times the industrial/commercial direct exposure criteria (I/C-DEC) for each individual SVOC. SVOCs are components of asphalts, oils and other petroleum products. SVOCs are found frequently at concentrations above 10 times the I/C-DEC (which for many SVOCs is the same numeric criteria as the residential direct exposure criteria) in urban fill as a result of coal ash, wood ash and asphalt fragments; immediately below pavement; as a result of normal vehicular operation; and in stormwater runoff from paved areas. Without excluding SVOCs at concentrations below 30 times the volume of Significant Environmental Hazard reports will increase significantly and inappropriately stigmatize properties impacted by the most common constituents caused by societal decisions to burn coal and wood and pave roadways and parking areas. The draft Remediation Standards Regulations recognize this issue and 1) include within the definition of inaccessible soils containing SVOCs a cover of 3-inches of pavement as an

appropriate form of remediation: it does not make sense to call the SVOCs a significant environmental hazard with a pavement only cap; and 2) provide an exception from direct exposure criteria for SVOCs resulting from normal operation of motor vehicles and from normal paving and maintenance of paved surfaces.

Section 2(d)(1)(B) should be amended to read "... data shows that within the top ~~ten~~ **TWO** feet of the ground surface the soil ... relevant direct exposure criteria, unless the technical environmental professional can demonstrate that the release was from a subsurface source greater than two-feet below ground surface". We believe this change is consistent with CTDEEP's intent, consistent with the definition of inaccessible soils in the current and proposed Remediation Standards Regulations and recognizes that a subsurface release, from an underground tank, for example, would not affect surficial soils.

Section 2(e)(1) proposed modifications seem counter-intuitive, in that the reporting threshold for industrial or commercial buildings is reduced to ten times while the reporting threshold for residential properties remains the same. We recommend that the reverse be proposed, in that the reporting threshold for industrial or commercial buildings should remain at 30 times, while the reporting threshold for residential properties, where a more susceptible population is found, be reduced to 10 times the applicable standard.

Sections 2(b)(1), (c)(1), (d)(1), (e)(1), (f)(1) and (g)(1) should have the dates modified from October 1, 1998 to the final implementation date (currently proposed as October 1, 2013) to clarify that this change applies to future detected contamination, not that owners are required to look back into their files and file new reports for old data.

Section 3(k) line 335 should be corrected to read "... than **NINETY DAYS** after the date such owner becomes aware ...". The time frame (90 days) was, we understand, inadvertently omitted in the raised bill.

Section 3(k): EPOC heartily endorses the intent of proposed language at the end of this section, which would allow a licensed environmental professional to issue a report to indicate closure of the significant environmental hazard. This provision, which allows a flexible option to the current requirement for DEEP to close out significant environmental hazards, is beneficial to the regulated community. However we recommend that the language be modified to recognize that it is the significant environmental hazard being closed out, not that full remediation of a release is complete (as would be required by other regulations or statutes). The relevant language should be amended to read "... demonstrates that such **HAZARD WAS ABATED** ~~release was remediated in accordance with regulations adopted pursuant to section 22a-133k, the ...~~"

Section 4: EPOC strongly supports the idea of allowing activity and use limitations in lieu of environmental land use restrictions in certain circumstances, though we believe the circumstances should be expanded, as noted below:

Section 4(c)(1)(A) should be amended to read "...such property is **NOT** zoned **SPECIFICALLY FOR** ~~to exclude~~ residential use and is not used for any residential use,..." Few if any municipalities set zoning requirements to specifically **EXCLUDE** any particular use. Without the recommended change, or something similar, the language of the raised bill would make the activity and use limitation impossible to use in most circumstances.

Section 4(c)(1)(B) should be amended to read "... provided pollutant concentrations in such inaccessible soil do not exceed **THIRTY TIMES THE APPLICABLE DIRECT EXPOSURE CRITERIA FOR SEMI-VOLATILE ORGANIC COMPOUNDS OR** ten times the applicable direct exposure criteria **FOR OTHER SUBSTANCES**". As noted earlier, SVOCs are components of asphalts, oils and other petroleum products and are found frequently at concentrations above 10 times the I/C-DEC as a result of typical societal practices. Since a frequent management for SVOCs above direct exposure criteria is to render the soils

inaccessible below a pavement cap, an activity and use limitation that allows for this option instead of requiring the more convoluted, time consuming and significantly more expensive environmental land use restriction should be accommodated and would be equally protective of human health.

Section 4(c)(1)(D)(i) should be amended to read "...provided: i) The pollutant concentrations in the environmentally isolated soil do not exceed ten times ~~the applicable direct exposure criteria and~~ the applicable pollutant mobility criteria...". EPOC notes that the remediation standards regulations within the definition of environmentally isolated soils refer to preventing migration of contaminants, not exposure to contaminants, thus soils above direct exposure criteria would not be environmentally isolated. The building would render such soil inaccessible. As discussed above, at a minimum, SVOCs should be allowed at higher concentrations than 10 times direct exposure criteria (i.e, 30 times).

Section 4(c)(1)(D)(ii) should be amended to read "... (ii) the total volume of soil that is environmentally isolated is less than or equal to ~~ten~~ **ONE HUNDRED** cubic yards;" A 10-yard threshold to use an activity and use limitation instead of an environmental land use restriction is unduly constrictive with no benefit to human health or the environment. While we would prefer that no limit be applied to the amount of soil rendered inaccessible or environmentally isolated below a building, at a minimum we strongly recommend a higher limit, and not less than 100 cubic yards, be used.

We appreciate the opportunity to comment on the raised bill and hope that our comments are helpful in the ongoing effort to produce a streamlined environmental program that is workable. EPOC is committed to assisting CTDEEP and the legislature in any way we can in this effort to develop a new cleanup program that is protective of human health and the environment, based on sound science and engineering principles, and that will not be overly burdensome to the point where it discourages remediation and economic development in our state.