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TESTIMONY OF NANCY K. MENDEL
Environmental Attorney, Member
WINNICK RUBEN HOFFNUNG PEABODY & MENDEL, LLC
Before the Environment Committee
Submitted March 22, 2013

**RAISED SENATE BILL NO. 1082: AN ACT CONCERNING BROWNFIELD
REDEVELOPMENT, INSTITUTIONAL CONTROLS AND SIGNIFICANT
ENVIRONMENTAL HAZARD PROGRAMS**

I am submitting written testimony because my schedule does not permit me to attend this very important hearing in person. The bill before the committee attempts to codify certain aspects of DEEP's DRAFT Proposal for a Transformed Clean-up Program, the comment deadline for which was a mere 4 days ago. The regulated community, many of whom have contributed 100s, if not 1000s of free hours of expert advice to DEEP over the past two years on the transformation process, spoke loud and clear to DEEP in both the recommendations of the various stakeholder working group reports and in the recently submitted comments to the overall draft report warning the Department of their strong objections to and flaws with DEEP's proposed transformation approach. The overall conclusion of the regulated community for how DEEP could best achieve the goals and directives of the 2011 and 2012 legislation directing DEEP to streamline its remediation programs, was to **first fix the Remediation Standard Regulations prior to passing any initiatives to further expand the number of sites in any regulated program.**

The Bill before you today fails to consider the workgroup recommendations or recent comments on DEEP's draft proposal and appears to disregard a number of the clearly stated goals of the directive DEEP was given by the legislature to streamline the current cumbersome and complicated remediation process in the state. It is clear to most if not all of the regulated community, that passing this bill will have the immediate opposite effect of instantly expanding the number of sites in DEEP's remediation programs without any effort to revise the tools, the RSRs, for facilitating the exit from these programs. As such, it is premature to consider any such changes until DEEP has at least had an opportunity to consider the comments it received this week, finalize its Report and propose reasonable and scientifically based Remediation Standard Regulations that are workable and will allow sites to be cleaned up efficiently, effectively and in a manner that is truly protective of human health and the environment.

Specifically, I strongly oppose Sections 2 & 3 of Raised Bill 1082 and request that the Committee delete these sections from the bill in their entirety, as these sections are problematic, unnecessary and premature for the above stated reasons.

Expanding the number of sites that require reporting and burdensome remediation under these sections by arbitrarily lowering the thresholds for said reporting three fold, without any demonstration of scientific rationale for doing so, is wholly unacceptable. Especially when the new proposed arbitrary thresholds are based on the current RSRs, which all agree require revision. How does this streamline remediation of sites and promote economic development? It does not. It will only expand the number of properties entangled in a broken process, which is exactly what the legislature intended to avoid. The inevitable result will not only be an unsubstantiated stigma on otherwise marketable sites by labeling these sites as “imminent hazards”, but the creation of a universe of new brownfield sites with no clear path for reuse and/or redevelopment. I implore the committee to delete these two sections from the Bill and recommend that these issues be revisited when DEEP can substantiate the proper rationale to the legislature and the regulated community for doing so.

In addition, I strongly recommend that Section 1 of the Bill be replaced with a simple default self-implementing liability relief statute, rather than creating yet another new and redundant discretionary remediation program with unreasonable burdens and potential significant costs on the applicant municipalities, without the resources and expertise to take on such burdens.

I have served as outside environmental counsel to the Cities of New Haven and West Haven on several of their respective MDP projects; and recently assisted the Towns of Guilford and Clinton with some of their Brownfield projects. I have also worked for many years with 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 by all of these entities. Through my experience, I have come to appreciate the need to provide clarity to municipalities on their liability exposure and the consummate risk of taking on the ownership and redevelopment of the most difficult brownfield sites in their communities. Section 1 as written, fails to provide this clarity and the liability relief municipalities really need and imposes undetermined responsibilities in exchange. I respectfully request the committee simplify Section 1 as recommended hereunder.

Finally, I would like to caution the committee on the implications of passing subsection (c) of Section 4, which creates a new and confusing real estate remediation tool in the form of a notice of activity use restriction in addition to the already existing Environmental Land Use Restriction.

While we all agree that ELURs need to be easier to use overall, the creation of a new and separate tool to achieve that goal is both confusing, unnecessary and as proposed, may be contrary to Connecticut property law with the potential of creating an impermissible “taking” rather than streamlining and revising the existing ELUR to make them more workable. I would strongly recommend the Committee delete subsection (c) of Section 4 of the Bill, and direct the Department to revise the ELURs accordingly rather than add a questionable real estate tool that will be seen as further complicating the remediation process, rather than streamlining it.

I would like to thank the committee for its consideration of the above comments and hope they provide some insight and direction of the perils of certain sections of this raised bill. As

an environmental attorney with more than 20 years experience working exclusively 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 strongly support DEEP's efforts over the past two years to transform the way sites are currently remediated in the state. I remain hopeful about the process and the potential for great success by working together for a common goal. More work is needed before anything can be codified in law. Those of us in the regulated community remain committed to assisting the Department, just as we have done for over two years, but this committee should be confident that the ultimate product will be successful. Clearly, the Department should be encouraged to devote its efforts to first making the changes necessary to the underlying remediation tools, which are the RSRs, so that everyone can support a truly successful transformation.

Respectfully submitted,
Nancy K. Mendel
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