



General Assembly

January Session, 2013

Raised Bill No. 1082

LCO No. 4273



Referred to Committee on ENVIRONMENT

Introduced by:
(ENV)

***AN ACT CONCERNING BROWNFIELD REDEVELOPMENT,
INSTITUTIONAL CONTROLS AND SIGNIFICANT ENVIRONMENTAL
HAZARD PROGRAMS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2013*) (a) For the purposes of
2 this section:

3 (1) "Applicant" means any municipality, any economic development
4 agency or entity established pursuant to chapter 130 or 132 of the
5 general statutes, any nonprofit economic development corporation
6 formed to promote the common good, general welfare and economic
7 development of a municipality and that is funded, either directly or
8 through in-kind services, in part by a municipality, or a non-stock
9 corporation or limited liability company controlled or established by a
10 municipality, municipal economic development agency or entity
11 created or operating pursuant to chapter 130 or 132 of the general
12 statutes;

13 (2) "Municipality" has the same meaning as provided in section 8-

14 187 of the general statutes;

15 (3) "Brownfield" has the same meaning as provided in section 32-
16 9kk of the general statutes;

17 (4) "Commissioner" means the Commissioner of Energy and
18 Environmental Protection; and

19 (5) "Regulated substance" means any oil or petroleum or chemical
20 liquids or solids, liquid or gaseous products or hazardous wastes.

21 (b) There is established a brownfield liability relief program to assist
22 applicants with the redevelopment of eligible brownfields and to
23 provide such applicants with liability relief for such eligible
24 brownfields. The Commissioner of Energy and Environmental
25 Protection shall administer such relief program and accept brownfields
26 into said program based on the eligibility criteria, as established in this
27 section.

28 (c) Prior to acquiring a brownfield, any applicant may apply to the
29 commissioner, on such forms as the commissioner prescribes, to obtain
30 liability relief as described in subsection (d) of this section. Any
31 brownfield shall be eligible for the program if the commissioner
32 determines that: (1) The property is a brownfield; (2) such applicant
33 intends to acquire title to such brownfield for the purpose of
34 redeveloping or facilitating the redevelopment of such brownfield; (3)
35 such applicant did not establish or create a facility or condition at or on
36 such brownfield that can reasonably be expected to create a source of
37 pollution to the waters of the state and is not affiliated with any person
38 responsible for such pollution or source of pollution through any
39 contractual, corporate or financial relationship other than a contractual
40 relationship in which such person's interest in such brownfield will be
41 conveyed or financed; (4) such applicant is not otherwise required by
42 law, an order or consent order issued by the commissioner or a
43 stipulated judgment to remediate pollution on or emanating from such
44 brownfield; and (5) such brownfield and applicant meet any other

45 criteria that said commissioner deems necessary.

46 (d) (1) Upon the acceptance of any brownfield into such program by
47 the commissioner and upon such applicant taking title to such
48 property, such applicant shall not be liable to the state or any third
49 party for the release of any regulated substance at or from the eligible
50 brownfield that occurred prior to such applicant taking title to such
51 brownfield, except such applicant shall be liable to the state or any
52 third party to the extent that such applicant caused or contributed to
53 the release of a regulated substance that is subject to remediation and
54 to the extent that such applicant negligently or recklessly exacerbated
55 the condition of such brownfield.

56 (2) Any applicant that owns a brownfield that is accepted in such
57 brownfield liability relief program shall be considered an innocent
58 party and shall not be liable to the commissioner or any person under
59 section 22a-427, 22a-430, 22a-432, 22a-451 or 22a-452 of the general
60 statutes nor under any theory of common law for any prior existing
61 condition on such brownfield or any existing condition on such
62 brownfield property as of the date of taking title to such brownfield
63 provided such applicant (A) did not establish, cause or contribute to
64 the discharge, spillage, uncontrolled loss, seepage or filtration of such
65 hazardous substance, material, waste or pollution, (B) does not
66 exacerbate any such condition on such brownfield, (C) complies with
67 reporting and abatement of significant environmental hazard
68 requirements in section 22a-6u of the general statutes, and (D) makes
69 good faith efforts to minimize the risk to public health and the
70 environment posed by such brownfield and the conditions or materials
71 present at such brownfield. To the extent that any conditions on such
72 brownfield are exacerbated by such applicant, such applicant shall
73 only be responsible for responding to contamination exacerbated by
74 such applicant's negligent or reckless activities.

75 (e) Upon acceptance of any brownfield into such program by the
76 commissioner and upon such applicant taking title to such property,

77 such applicant shall (1) submit a plan and schedule for minimizing risk
78 to public health and the environment posed by such brownfield and
79 the conditions or materials present at such brownfield; and (2)
80 continue to facilitate the investigation, remediation, and
81 redevelopment of such brownfield.

82 (f) The commissioner shall determine whether an application
83 submitted pursuant to this section is complete. If the commissioner
84 determines that an application is complete and that such brownfield
85 and applicant meet the requirements for eligibility, as established in
86 subsection (c) of this section, the commissioner shall notify such
87 applicant that such brownfield has been accepted into the brownfield
88 liability relief program.

89 (g) Acceptance of a brownfield in such brownfield liability relief
90 program shall not limit such applicant's or any other person's ability to
91 seek funding for such brownfield under any other brownfield grant or
92 loan program administered by the Department of Economic and
93 Community Development, the Connecticut Brownfield
94 Redevelopment Authority, or the Department of Energy and
95 Environmental Protection.

96 (h) Acceptance of a brownfield in such brownfield liability relief
97 program shall exempt such applicant from the requirement to file as an
98 establishment pursuant to sections 22a-134a to 22a-134d, inclusive, of
99 the general statutes, provided such real property or prior business
100 operations constitute an establishment, as defined in section 22a-134 of
101 the general statutes.

102 Sec. 2. Subsections (b) to (g), inclusive, of section 22a-6u of the
103 general statutes are repealed and the following is substituted in lieu
104 thereof (*Effective October 1, 2013*):

105 (b) (1) If a technical environmental professional determines in the
106 course of investigating or remediating pollution after October 1, 1998,
107 which pollution is on or emanating from a parcel, that such pollution is

108 causing or has caused contamination of a public or private drinking
109 water well with: [a] (A) A substance for which the Commissioner of
110 Energy and Environmental Protection has established a ground water
111 protection criterion in regulations adopted pursuant to section 22a-
112 133k at a concentration above the ground water protection criterion for
113 such substance, or (B) the presence of nonaqueous phase liquid, such
114 professional shall notify his or her client and the owner of the parcel, if
115 the owner can reasonably be identified, not later than twenty-four
116 hours after determining that the contamination exists. If, seven days
117 after such determination, the owner of the subject parcel has not
118 notified the commissioner, the client of the professional shall notify the
119 commissioner. If the owner notifies the commissioner, the owner shall
120 provide documentation to the client of the professional which verifies
121 that the owner has notified the commissioner.

122 (2) The owner of a parcel on which exists a source of contamination
123 to soil or waters of the state shall notify the commissioner if such
124 owner becomes aware that such pollution is causing or has caused
125 contamination of a private or public drinking water well with either a
126 substance for which the commissioner has established a ground water
127 protection criterion in regulations adopted pursuant to section 22a-
128 133k at a concentration at or above the ground water protection
129 criterion for such substance, or the presence of nonaqueous phase
130 liquid. Notice under this section shall be given to the commissioner (A)
131 orally, not later than one business day after such person becomes
132 aware that the contamination exists, and (B) in writing, not later than
133 five days after such oral notice.

134 (3) Not later than thirty days after the date the owner becomes
135 aware of such contamination, such owner shall determine the presence
136 of any other water supply wells located within five hundred feet of the
137 polluted well by conducting a receptor survey and such owner shall
138 seek access to all drinking water supply wells within one hundred feet
139 of the polluted well for sampling. If such access is granted, such owner
140 shall sample and analyze the water quality of such wells, and submit a

141 report of such evaluation to the commissioner that includes proposals
142 for further action.

143 (c) (1) If a technical environmental professional determines in the
144 course of investigating or remediating pollution after October 1, 1998,
145 which pollution is on or emanating from a parcel, that such pollution is
146 causing or has caused contamination of a public or private drinking
147 water well with: (A) A substance for which the commissioner has
148 established a ground water protection criterion in regulations adopted
149 pursuant to section 22a-133k at a concentration less than such ground
150 water protection criterion for such substance; or (B) any other
151 substance resulting from the release which is the subject of the
152 investigation or remediation, such professional shall notify his client
153 and the owner of the parcel, if the owner can reasonably be identified,
154 not later than seven days after determining that the contamination
155 exists.

156 (2) The owner of a parcel on which exists a source of pollution to
157 soil or the waters of the state shall notify the commissioner if such
158 owner becomes aware that such pollution is causing or has caused
159 contamination of a private or public drinking water well with: (A) A
160 substance for which the commissioner has established a ground water
161 protection criterion in regulations adopted pursuant to section 22a-
162 133k at a concentration less than such ground water protection
163 criterion for such substance; or (B) any other substance which was part
164 of the release which caused such pollution. Notice under this
165 subdivision shall be given in writing not later than [seven] thirty days
166 after the time such person becomes aware that the contamination
167 exists.

168 (3) Not later than thirty days after the time such owner becomes
169 aware that such contamination exists, such owner shall perform
170 confirmatory sampling of the well, and submit a report concerning
171 such confirmatory sampling to the commissioner that includes
172 proposals for any further action. If such confirmatory sampling

173 demonstrates a concentration above the ground water protection
174 criterion for such substance, such owner shall proceed in accordance
175 with the provisions of subdivision (2) of subsection (b) of this section.

176 (d) (1) If a technical environmental professional determines in the
177 course of investigating or remediating pollution after October 1, 1998,
178 which pollution is on or emanating from a parcel, that such pollution
179 of soil within [two] ten feet of the ground surface contains a substance,
180 except for total petroleum hydrocarbon, at a concentration at or above
181 [thirty] ten times the industrial/commercial direct exposure criterion
182 for such substance if the parcel is in industrial or commercial use, or
183 the residential direct exposure criterion if the parcel is in residential
184 use, which criteria are specified in regulations adopted pursuant to
185 section 22a-133k, such professional shall notify his client and the
186 owner of the parcel, if such owner is reasonably identified, not later
187 than seven days after determining that the contamination exists, except
188 that notice will not be required if [the] either: (A) The land-use of such
189 parcel is not residential activity and the substance is one of the
190 following: Acetone, 2-butanone, chlorobenzene, 1,2-dichlorobenzene,
191 1,3-dichlorobenzene, 1,1-dichloroethane, cis-1,2-dichloroethylene,
192 trans-1,2-dichloroethylene, ethylbenzene, methyl-tert-butyl-ether,
193 methyl isobutyl ketone, styrene, toluene, 1,1,1-trichloroethane, xylenes,
194 acenaphthylene, anthracene, butyl benzyl phthalate, 2-chlorophenol,
195 di-n-butyl phthalate, di-n-octyl phthalate, 2,4-dichlorophenol,
196 fluoranthene, fluorene, naphthalene, phenanthrene, phenol and
197 pyrene, or (B) data shows that within the ten feet of the ground surface
198 the soil is not polluted at or above ten times the relevant direct
199 exposure criteria.

200 (2) The owner of the subject parcel shall notify the commissioner in
201 writing not later than ninety days after the time such owner becomes
202 aware that the contamination exists except that notification will not be
203 required if by the end of said ninety days: (A) The contaminated soil is
204 remediated in accordance with regulations adopted pursuant to
205 section 22a-133k; (B) the contaminated soil is inaccessible soil as that

206 term is defined in regulations adopted pursuant to section 22a-133k; or
207 (C) the contaminated soil which exceeds [thirty] ten times such
208 criterion is treated or disposed of in accordance with all applicable
209 laws and regulations.

210 (3) Not later than the due date for any written notification required
211 pursuant to subdivision (2) of this subsection, such owner shall, at a
212 minimum: (A) Evaluate the extent of such contaminated soil that
213 exceeds ten times the applicable direct exposure criteria, (B) prevent
214 exposure to such soil, and (C) submit a report on such actions to the
215 commissioner that includes proposals for further action, including, but
216 not limited to, maintenance and monitoring of interim controls to
217 prevent exposure to soil that exceeds ten times the applicable criteria.

218 (e) (1) If a technical environmental professional determines in the
219 course of investigating or remediating pollution after October 1, 1998,
220 which pollution is on or emanating from a parcel, that such pollution is
221 causing or has caused ground water within fifteen feet beneath an
222 industrial or commercial building to be contaminated with a volatile
223 organic substance at a concentration at or above [thirty] ten times the
224 industrial/commercial volatilization criterion for ground water for
225 such substance or, if such contamination is beneath a residential
226 building, at a concentration at or above thirty times the residential
227 volatilization criterion, which criteria are specified in regulations
228 adopted pursuant to section 22a-133k, such professional shall, not later
229 than seven days after determining that the contamination exists, notify
230 his client and the owner of the subject parcel, if such owner can
231 reasonably be identified.

232 (2) The owner of such parcel shall notify the commissioner in
233 writing not later than thirty days after such person becomes aware that
234 the contamination exists except that notification is not required if: (A)
235 The concentration of such substance in the soil vapor beneath such
236 building is at or below [thirty] ten times the soil vapor volatilization
237 criterion, appropriate for the land-use for the parcel, for such

238 substance as specified in regulations adopted pursuant to section 22a-
239 133k; (B) the concentration of such substance in groundwater is below
240 [thirty] ten times a site-specific volatilization criterion for ground
241 water for such substance calculated in accordance with regulations
242 adopted pursuant to section 22a-133k; (C) ground water volatilization
243 criterion, appropriate for the land-use of the parcel, for such substance
244 specified in regulations adopted pursuant to section 22a-133k is fifty
245 thousand parts per billion; or (D) not later than thirty days after the
246 time such person becomes aware that the contamination exists, an
247 indoor air monitoring program is initiated in accordance with
248 subdivision (3) of this subsection.

249 (3) An indoor air quality monitoring program for the purposes of
250 this subsection shall consist of sampling of indoor air once every two
251 months for a duration of not less than one year, sampling of indoor air
252 immediately overlying such contaminated ground water, and analysis
253 of air samples for any volatile organic substance which exceeded
254 [thirty] ten times the volatilization criterion as specified in or
255 calculated in accordance with regulations adopted pursuant to section
256 22a-133k. The owner of the subject parcel shall notify the commissioner
257 if: (A) The concentration in any indoor air sample exceeds [thirty] ten
258 times the target indoor air concentration, appropriate for the land-use
259 of the parcel, as specified in regulations adopted pursuant to section
260 22a-133k; or (B) the indoor air monitoring program is not conducted in
261 accordance with this subdivision. Notice shall be given to the
262 commissioner in writing not later than seven days after the time such
263 person becomes aware that such a condition exists.

264 (f) (1) If a technical environmental professional determines in the
265 course of investigating or remediating pollution after October 1, 1998,
266 which pollution is on or emanating from a parcel, that such pollution is
267 causing or has caused contamination of ground water which is
268 discharging to surface water and such ground water is contaminated
269 with: [a substance] (A) A substance for which an acute aquatic life
270 criterion is listed in appendix D of the most recent water quality

271 standards adopted by the commissioner at a concentration which
272 exceeds ten times [(A)] (i) such criterion for such substance in said
273 appendix D, or [(B)] (ii) such criterion for such substance times a site
274 specific dilution factor calculated in accordance with regulations
275 adopted pursuant to section 22a-133k, or (B) a nonaqueous phase
276 liquid, such professional shall notify his client and the owner of such
277 parcel, if such owner can reasonably be identified, not later than seven
278 days after determining that the contamination exists.

279 (2) [The] For nonaqueous phase liquid, the owner of such parcel
280 shall notify the commissioner (A) orally, not later than one business
281 day after such person becomes aware of such contamination, and (B) in
282 writing, not later than thirty days after such oral notice. For other
283 contamination, as described in subdivision (1) of this subsection, such
284 owner shall notify the commissioner, in writing, not later than [seven]
285 thirty days after the time such person becomes aware that the
286 contamination exists. [except that notice] Notice shall not be required
287 pursuant to this subdivision if such person knows that the polluted
288 discharge at that concentration [has been] or in such physical state was
289 reported to the commissioner, in writing, within the preceding year.

290 (3) For any location where nonaqueous phase liquid discharges to a
291 surface water, such owner shall (A) take immediate action to mitigate
292 and abate such discharge, and (B) not later than thirty days after the
293 date written notification is due pursuant to this subsection, submit a
294 report to the commissioner of mitigation measures taken and a plan for
295 further action to abate and mitigate such hazard. For any other
296 contamination described in subdivision (1) of this subsection, the
297 owner shall submit a proposed plan to the commissioner to abate and
298 mitigate the hazard.

299 (g) (1) If a technical environmental professional determines in the
300 course of investigating or remediating pollution after October 1, 1998,
301 which pollution is on or emanating from a parcel, that such pollution is
302 causing or has caused contamination of ground water within five

303 hundred feet in an upgradient direction or two hundred feet in any
304 direction of a private or public drinking water well which ground
305 water is contaminated with a substance resulting from a release for
306 which the commissioner has established a ground water protection
307 criterion in regulations adopted pursuant to section 22a-133k at a
308 concentration at or above the ground water protection criterion for
309 such substance, such technical environmental professional shall notify
310 his client and the owner of the subject parcel, if such owner can
311 reasonably be identified, not later than seven days after determining
312 that the contamination exists.

313 (2) The owner of the subject parcel shall notify the commissioner in
314 writing not later than [seven] thirty days after the time such owner
315 becomes aware that the contamination exists.

316 (3) Not later than thirty days after the date such owner becomes
317 aware of such contamination, such owner shall determine the presence
318 of any other water supply wells located within five hundred feet of
319 such location by conducting a receptor survey and seeking access for
320 sampling to all drinking water supply wells within one hundred feet of
321 such location. If such access is granted, such owner shall sample and
322 analyze the water quality of such wells and submit a report to the
323 commissioner concerning such evaluation that includes any proposals
324 for further action.

325 Sec. 3. Subsections (k) to (m), inclusive, of section 22a-6u of the
326 general statutes are repealed and the following is substituted in lieu
327 thereof (*Effective October 1, 2013*):

328 (k) The commissioner shall provide written acknowledgment of
329 receipt of a written notice pursuant to this section not later than ten
330 days after receipt of such notice [. Such acknowledgment shall be
331 accompanied by (1) a statement that] and in such acknowledgement
332 may provide any information that the commissioner deems
333 appropriate. Unless otherwise specified in this subsection, the owner

334 of the parcel [has up to ninety days within which to] shall, not later
335 than after the date such owner becomes aware that such contamination
336 exists, submit to the commissioner a plan to remediate or abate the
337 contamination or condition or that describes how the hazard was
338 abated, as applicable. If such plan is not submitted or is not approved
339 by the commissioner, the commissioner shall prescribe the action to be
340 taken [, or (2)] or issue a directive as to action required to remediate or
341 abate the contamination or condition. If a plan is submitted which
342 details actions to be taken, or a report is submitted which details
343 actions taken, to mitigate the contamination or conditions such that
344 notice under this section would not be required, and such plan or
345 report is acceptable to the commissioner, the commissioner shall
346 approve such plan or report in writing. When actions implementing an
347 approved plan are completed or when a report, stamped and sealed by
348 a licensed environmental professional, demonstrates that such release
349 was remediated in accordance with regulations adopted pursuant to
350 section 22a-133k, the commissioner shall issue a certificate of
351 compliance.

352 (l) An owner who has submitted written notice pursuant to this
353 section shall, not later than five days after the commencement of an
354 activity by any person that increases the likelihood of human exposure
355 to known contaminants, including, but not limited to, construction,
356 demolition, significant soil disruption or the installation of utilities,
357 post such notice in a conspicuous place on such property and, in the
358 case of a place of business, in a conspicuous place inside the place of
359 business. An owner who violates this [subsection] section shall pay a
360 civil penalty of one hundred dollars for each offense. Each violation
361 shall be a separate and distinct offense and, in the case of a continuing
362 violation, each day's continuance thereof shall be deemed to be a
363 separate and distinct offense. The Attorney General, upon complaint of
364 the commissioner, shall institute an action in the superior court for the
365 judicial district of Hartford to recover such penalty.

366 (m) Not later than ten days after receipt of any written notice

367 received under this section, the commissioner shall: (1) Forward a copy
368 of such notice to the chief elected official of the municipality in which
369 the subject pollution was discovered by the technical environmental
370 professional, (2) forward a copy of such notice to the state senator and
371 state representative representing the area in which the subject
372 pollution was discovered by the technical environmental professional,
373 (3) forward a copy of such notice to the Labor Commissioner where the
374 Division of Occupational Safety and Health, within the Labor
375 Department, has jurisdiction over the employers, employees and
376 places of employment on the subject property, (4) forward a copy of
377 such notice to the employee representatives who request such reports,
378 (5) forward a copy of such notice to the federal Occupational Safety
379 and Health Administration, and (6) maintain a list on the department's
380 Internet web site of all the notices received under this section. Any
381 forwarding required by this subsection may be performed by
382 electronic means.

383 Sec. 4. Section 22a-133o of the general statutes is repealed and the
384 following is substituted in lieu thereof (*Effective October 1, 2013*):

385 (a) An owner of land may execute and record an environmental
386 land use restriction under sections 22a-133n to 22a-133r, inclusive, as
387 amended by this act, on the land records of the municipality in which
388 such land is located if (1) the commissioner has adopted standards for
389 the remediation of contaminated land pursuant to section 22a-133k
390 and adopted regulations pursuant to section 22a-133q, as amended by
391 this act, (2) the commissioner, or in the case of land for which remedial
392 action was supervised under section 22a-133y, a licensed
393 environmental professional, determines, as evidenced by his signature
394 on such restriction, that it is consistent with the purposes and
395 requirements of sections 22a-133n to 22a-133r, inclusive, as amended
396 by this act, and of such standards and regulations, and (3) such
397 restriction will effectively protect public health and the environment
398 from the hazards of pollution. Such environmental land use restriction
399 may be in the form of an environmental land use restriction, as

400 described in subsection (b) of this section, or a notice of activity and
401 use limitation, as described in subsection (c) of this section.

402 (b) (1) No owner of land may record an environmental land use
403 restriction on the land records of the municipality in which such land
404 is located unless he simultaneously records documents which
405 demonstrate that each person holding an interest in such land or any
406 part thereof, including without limitation each mortgagee, lessee,
407 lienor and encumbrancer, irrevocably subordinates such interest to the
408 environmental land use restriction provided the commissioner may
409 waive such requirement if he finds that the interest in such land is so
410 minor as to be unaffected by the environmental land use restriction.
411 The commissioner shall waive the requirement to obtain subordination
412 agreements for any interest in land that, when acted upon, is not
413 capable of creating a condition contrary to any purpose of such
414 environmental land use restriction. An environmental land use
415 restriction shall run with land, shall bind the owner of the land and his
416 successors and assigns, and shall be enforceable notwithstanding lack
417 of privity of estate or contract or benefit to particular land.

418 [(c)] (2) Within seven days after executing an environmental land
419 use restriction and receiving thereon the signature of the commissioner
420 or licensed environmental professional, as the case may be, the owner
421 of the land involved therein shall record such restriction and
422 documents required under [subsection (b) of this section] subdivision
423 (1) of this subsection on the land records of the municipality in which
424 such land is located and shall submit to the commissioner a certificate
425 of title certifying that each interest in such land or any part thereof is
426 irrevocably subordinated to the environmental land use restriction in
427 accordance with [said subsection (b)] subdivision (1) of this subsection.

428 [(d)] (3) An owner of land with respect to which an environmental
429 land use restriction applies may be released, wholly or in part,
430 permanently or temporarily, from the limitations of such restriction
431 only with the commissioner's written approval which shall be

432 consistent with the regulations adopted pursuant to section 22a-133q,
433 as amended by this act, and shall be recorded on the land records of
434 the municipality in which such land is located. The commissioner may
435 waive the requirement to record such release if he finds that the
436 activity which is the subject of such release does not affect the overall
437 purpose for which the environmental land use restriction was
438 implemented, or for a temporary release, the activity is sufficiently
439 limited in scope and duration, and does not alter the size of the area
440 subject to the environmental use restriction. The commissioner shall
441 not approve any such permanent release unless the owner
442 demonstrates that he has remediated the land, or such portion thereof
443 as would be affected by the release, in accordance with the standards
444 established pursuant to section 22a-133k.

445 [(e)] (4) An environmental land use restriction shall survive
446 foreclosure of a mortgage, lien or other encumbrance.

447 (c) (1) A notice of activity and use limitation may be used and
448 recorded for releases remediated in accordance with the regulations
449 adopted pursuant to sections 22a-133k and 22a-133q, as amended by
450 this act, for the following purposes:

451 (A) To achieve compliance with industrial or commercial direct
452 exposure criteria, groundwater volatilization criteria, and soil vapor
453 criteria, as established in regulations adopted pursuant to section 22a-
454 133k, by preventing residential activity and use of the area to be
455 affected through the notice of activity and use limitation, provided
456 such property is zoned to exclude residential use and is not used for
457 any residential use, as defined in regulations adopted pursuant to
458 section 22a-133k;

459 (B) To prevent disturbance of polluted soil that exceeds the
460 applicable direct exposure criteria but is inaccessible, in compliance
461 with the provisions of regulations adopted pursuant to section 22a-
462 133k, provided pollutant concentrations in such inaccessible soil do not

463 exceed ten times the applicable direct exposure criteria;

464 (C) To prevent disturbance of an engineered control to the extent
465 such engineered control is for the sole remedial purpose of eliminating
466 exposure to polluted soil that exceeds the direct exposure criteria,
467 provided pollutant concentrations in such soil do not exceed ten times
468 the applicable direct exposure criteria;

469 (D) To prevent demolition of a building or permanent structure that
470 renders polluted soil environmentally isolated, provided: (i) The
471 pollutant concentrations in the environmentally isolated soil do not
472 exceed ten times the applicable direct exposure criteria and the
473 applicable pollutant mobility criteria, or (ii) the total volume of soil
474 that is environmentally isolated is less than or equal to ten cubic yards;
475 or

476 (E) Any other purpose the commissioner may prescribe by
477 regulations adopted in accordance with the provisions of chapter 54.

478 (2) No owner shall record a notice of activity and use limitation on
479 the land records of the municipality in which such land is located
480 unless such owner, not later than sixty days prior to such recordation,
481 provides written notice to each person that holds an interest in such
482 land or any part thereof, including each mortgagee, lessee, lienor and
483 encumbrancer. Such written notice of the proposed notice of activity
484 and use limitation shall be sent by certified mail, return receipt
485 requested, and shall include notice of the existence and location of
486 pollution within such area and the terms of such proposed activity and
487 use limitation. Such sixty-day-notice period may be waived upon the
488 written agreement of all such interest holders.

489 (3) A notice of activity and use limitation recorded pursuant to this
490 subsection shall be implemented and adhered to by the owner and
491 holders of interests in the property and any person that has a license to
492 use such property, and their successors and assigns, or to conduct
493 remediation on any portion of such property.

494 (4) Any notice of activity and use limitation shall be effective when
495 recorded on the land records of the municipality in which such
496 property is located.

497 (5) (A) Any notice of activity and use limitation, as described in this
498 subsection, shall be prepared on a form as prescribed by the
499 commissioner.

500 (B) A notice of activity and use limitation decision document, signed
501 by the commissioner or signed and sealed by a licensed environmental
502 professional, shall be referenced in and recorded with any such notice
503 of activity and use limitation, and shall specify:

504 (i) Why the notice of activity and use limitation is appropriate for
505 achieving and maintaining compliance with the regulations adopted
506 pursuant to section 22a-133k;

507 (ii) Any activities and uses that are inconsistent with maintaining
508 compliance with such regulations;

509 (iii) Any activities and uses to be permitted;

510 (iv) Any obligations and conditions necessary to meet the objectives
511 of the notice of activity and use limitation; and

512 (v) The nature and extent of pollution in the area that is the basis for
513 the notice of activity and use limitation, including a listing of
514 contaminants and concentrations for such contaminants, and the
515 horizontal and vertical extent of such contaminants.

516 (6) Upon transfer of any interest in or a right to use property, or a
517 portion of property that is subject to a notice of activity and use
518 limitation, the owner of such land, any lessee of such land and any
519 person who has the right to subdivide or sublease such property, shall
520 incorporate such notice in full or by reference into all future deeds,
521 easements, mortgages, leases, licenses, occupancy agreements and any
522 other instrument of transfer.

523 (7) Any notice of activity and use limitation shall survive foreclosure
524 of a mortgage, lien or other encumbrance.

525 Sec. 5. Section 22a-133p of the general statutes is repealed and the
526 following is substituted in lieu thereof (*Effective October 1, 2013*):

527 (a) The Attorney General, at the request of the commissioner, shall
528 institute a civil action in the superior court for the judicial district of
529 Hartford or for the judicial district wherein the subject land is located
530 for injunctive or other equitable relief to enforce an environmental land
531 use restriction, a notice of activity and use limitation or the provisions
532 of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and
533 regulations adopted thereunder or to recover a civil penalty pursuant
534 to subsection (e) of this section.

535 (b) The commissioner may issue orders pursuant to sections 22a-6
536 and 22a-7 to enforce an environmental land use restriction, a notice of
537 activity and use limitation or the provisions of sections 22a-133n to
538 22a-133q, inclusive, as amended by this act, and regulations adopted
539 thereunder.

540 (c) In any administrative or civil proceeding instituted by the
541 commissioner to enforce an environmental land use restriction, a
542 notice of activity and use limitation or the provisions of sections 22a-
543 133n to 22a-133q, inclusive, as amended by this act, and regulations
544 adopted thereunder, any other person may intervene as a matter of
545 right.

546 (d) In any civil or administrative action to enforce an environmental
547 land use restriction, a notice of activity and use limitation or the
548 provisions of sections 22a-133n to 22a-133q, inclusive, as amended by
549 this act, and regulations adopted thereunder, the owner of the subject
550 land, and any lessee thereof, shall be strictly liable for any violation of
551 such restriction, limitation or the provisions of sections 22a-133n to
552 22a-133q, inclusive, as amended by this act, and regulations adopted
553 thereunder and shall be jointly and severally liable for abating such

554 violation.

555 (e) Any owner of land with respect to which an environmental land
556 use restriction or a notice of activity and use limitation applies, and
557 any lessee of such land, who violates any provision of such restriction
558 or limitation or violates the provisions of sections 22a-133n to 22a-
559 133q, inclusive, as amended by this act, and regulations adopted
560 thereunder shall be assessed a civil penalty under section 22a-438. The
561 penalty provided in this subsection shall be in addition to any
562 injunctive or other equitable relief.

563 Sec. 6. Section 22a-133q of the general statutes is repealed and the
564 following is substituted in lieu thereof (*Effective October 1, 2013*):

565 The commissioner shall adopt regulations, in accordance with the
566 provisions of chapter 54, to carry out the purposes of sections 22a-133n
567 to 22a-133r, inclusive, as amended by this act. Such regulations may
568 include, but not be limited to, provisions regarding the form, contents,
569 fees, financial surety, monitoring and reporting, filing procedure for,
570 and release from, environmental land use restrictions and activity and
571 use limitations.

572 Sec. 7. Section 22a-133r of the general statutes is repealed and the
573 following is substituted in lieu thereof (*Effective October 1, 2013*):

574 In the event that a court of competent jurisdiction finds for any
575 reason that an environmental land use restriction or notice of activity
576 and use limitation is void or without effect for any reason, the owner
577 of the subject land, in accordance with a schedule prescribed by the
578 commissioner, shall promptly abate pollution thereon consistently
579 with standards adopted under section 22a-133k for remediation of land
580 used for residential or recreational purposes.

<p>This act shall take effect as follows and shall amend the following sections:</p>

Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	22a-6u(b) to (g)
Sec. 3	<i>October 1, 2013</i>	22a-6u(k) to (m)
Sec. 4	<i>October 1, 2013</i>	22a-133o
Sec. 5	<i>October 1, 2013</i>	22a-133p
Sec. 6	<i>October 1, 2013</i>	22a-133q
Sec. 7	<i>October 1, 2013</i>	22a-133r

Statement of Purpose:

To provide municipalities with liability relief when they take brownfield properties for redevelopment, to institute less cumbersome institutional controls on properties where the risk is managed and to compel property owners to address high levels of pollution on their property if it poses significant and imminent risks to public health and the environment.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]