Environment Committee

Connecticut General Assembly

Room 3200, Legislative Office Building

Hartford, CT 061906

March 22, 2013

RE: SB 1082 (AN ACT CONCERNING BROWNFIELD REDEVELOPMENT, INSTITUTIONAL CONTROLS AND SIGNIFICANT ENVIRONMENTAL HAZARD PROGRAMS)

Dear Committee Members:

This letter comprises the testimony of the Connecticut and Suburban New York chapter of NAIOP, Commercial Real Estate Development Association, with regard to SB 1082 (AN ACT CONCERNING BROWNFIELD REDEVELOPMENT, INSTITUTIONAL CONTROLS AND SIGNIFICANT ENVIRONMENTAL HAZARD PROGRAMS). Our membership is made up of the owners and developers of all aspects of commercial, industrial, and mixed-use real estate and other businesses and professionals who support the industry, such as brokers, architects, engineering and environmental consultants, insurers, and lawyers. Our industry is a substantial contributor to our state's economy. In 2011 (the latest year for which we have compiled data), the value (hard costs alone) of office, industrial, warehouse, and retail/entertainment construction in Connecticut exceeded $1.2 billion. In addition, personal earnings generated from that activity exceeded $388 million, and it supported more than 7980 jobs. Legislation that adversely impacts the commercial real estate development sector adversely affects income and jobs in Connecticut.

In a misguided effort to streamline and improve current remediation programs , the Connecticut Department of Energy and Environmental Protection (DEEP) has initiated a legislative proposal, SB 1082, that, rather than streamlining and improving its programs, would significantly expand the number of properties and businesses , spills, and historic conditions that would be pulled into current DEEP cleanup programs that *DEEP itself has recognized are very much flawed*. In fact, SB 1082 would increase not only the current scope of these programs, but also the requirements imposed.

Despite DEEP having said that it agrees with the business, municipal, and economic development communities that, before it expands the universe of sites in its programs, it must first fix the foundational regulation upon which all of its cleanup programs rest – the so called, "Remediation

Standard Regulations" (or "RSRs"). DEEP has "put the cart before the horse" by seeking to have SB 1082 enacted before it has proposed important revisions to the RSRs. Moreover, the increased burdens that would be imposed by SB 1082 on industry in general, and on member s of the commercial real estate development community in particular, lack either scientific or practical justifications and , without any demonstrable benefit to public health and the environment, would ensnare a huge universe of historic contamination and environmental conditions into DEEP's regulatory nets.

Legislation enacted in 1998 that is codified at Sec. 22a-6u of the Connecticut General Statues created a Significant Environmental Hazard (SEH) program, which was purposely designed to address, on an urgent basis, imminent and significant environmental hazards. This concept of an *imminent and significant environmental hazard* disappears in the proposed legislation. Many, many more properties and environmental conditions, none of which would amount to an imminent or significant environmental hazard, would have to be reported to DEEP, municipalities, the Department of Labor, and legislators. Affected industries and property owners will need to hire consultants to prepare and lawyers to review reports to be reviewed and approved by DEEP, and investigation and "further action" will be required. Specifically, S.B. 1082 would drastically decrease the concentration threshold for the SEH program by 66% and increase the depth below the surface to which this new threshold applies by 500%.

Reporting of these properties will clearly stigmatize them further damaging an already crippled commercial real estate market. This may result in the creation of even more brownfield sites that will not be marketable because of the fear of buyers to get tied up in a complex and expensive regulatory scheme and the reluctance of lenders to provide the funds needed to purchase and redevelop these sites.

Further, for a property or business owner to close out any notice required under this proposed legislation, it must receive from DEEP a "certificate of compliance." This will significantly add to the backlog at DEEP. Rather than streamlining and improving existing inadequate programs, SB 1082 would create a new regulatory remediation program without the underlying trigger of a transfer and without the exclusions that exist under the Transfer Act for certain types of properties and operations. Moreover, it does so at a time when the DEEP itself recognizes that it is gearing its efforts towards a wholesale transformation of its remedial programs over the course of the next 12-18 months. We are hard-pressed to understand why DEEP wishes to take this issue on now when it can be part of the overall transformation which DEEP is currently working towards.

Several of our members have spoken with representatives of the DEEP, and it is our understanding that DEEP itself recognizes that the provisions as currently drafted will ensnare properties which pose little to no risk to human health or the environment and which should not be classified as imminent or significant environmental hazards. Moreover, it is our understanding that DEEP itself recognizes that the provisions of SB 1082 as currently drafted are unworkable, and that further discussions with stakeholders are necessary in order to properly modify SB 1082 so that it does not create yet another unworkable regulatory burden. To that end, members of NAIOP would welcome the opportunity to work with the DEEP to create a more workable solution. If such a solution is not forthcoming, however,

we must insist that the provisions of SB 1082 relating to significant environmental hazards be removed from the bill as currently drafted.

Along with such other Connecticut business organizations as CBIA, our NAIOP chapter urges the Environment Committee and the DEEP to remove these sections from S.B. 1082 and to recommit to the key principle of comprehensively fixing the RSRs before expanding the number of properties, businesses and conditions subject to these currently flawed regulations that are impeding the goal of brownfield revitalization.

Thank you for your attention,

David Allen, President

Connecticut and Suburban New York Chapter

NAIOP, Commercial Real Estate Development Association

Davis Marcus Partners

200 Connecticut Avenue

Norwalk, CT 06854