

**TESTIMONY OF ELIZABETH C. BARTON**  
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before the  
**THE ENVIRONMENT COMMITTEE**  
March 22, 2013

**Raised Bill No. 1082: AN ACT CONCERNING BROWNFIELD REDEVELOPMENT,  
INSTITUTIONAL CONTROLS AND SIGNIFICANT  
ENVIRONMENTAL HAZARD PROGRAMS**

Thank you for the opportunity to share my comments with you this morning. My name is Elizabeth Barton. I am a partner resident in the Hartford office of the law firm of Day Pitney LLP. I have been practicing environmental and land use law throughout Connecticut for over 25 years. Day Pitney's private and public sector client base includes individuals, small, medium and large businesses, and municipalities. Much of my practice involves the representation of the interests of owners, buyers, sellers, lenders, and investors associated with brownfields and large and small brownfields redevelopment projects, including the legal aspects of the environmental permitting, investigation and redevelopment of these projects. Examples of projects I have had the opportunity to work on include the Blue Back Square redevelopment in West Hartford, the BJ Wholesale Club redevelopment in Brookfield, the Learning Corridor redevelopment in Hartford, and the Brass Mill Center redevelopment in Waterbury. I commend this Committee and the General Assembly for their recognition of the importance of redevelopments such as these to Connecticut's economy. I thank you for your actions to facilitate the redevelopment of our brownfields and the associated benefits to Connecticut's environment.

**Against this backdrop, I urge this Committee to reject Raised Bill No. 1082.** If passed, this bill will be a step backward, not forward, for Connecticut's economy and our environment. This bill ignores a number of realities. Without scientific basis or justification, it will have the effect of channeling significant and limited resources, including perhaps most notably those of the Connecticut Department of Energy and Environmental Protection and also our municipalities, toward activity that will actually discourage, not encourage, the redevelopment of brownfields. Of note, its impact is not limited to brownfield properties.

Section 1 of Public Act No. 12-196 directed CT DEEP to submit a report to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to commerce and the environment. This report was to make recommendations to streamline and improve Connecticut's brownfield remediation programs. Recently, CT DEEP released this report and CT DEEP has solicited public comments on its content. The formal comment period ended Monday of this week. CT DEEP has met with many stakeholders

throughout the state and heard significant concerns about many of the proposals in this report. An overriding and consistent sentiment that has been conveyed to CT DEEP is the need to “fix” the Remediation Standards Regulations (RSRs), which are the foundation of Connecticut’s brownfield programs, **before** taking any steps that will expand these programs. Since CT DEEP has recently appeared to accept or agree with this sentiment, Raised Bill No. 1082 is disappointing and discouraging.

Sections 2 and 3 of Raised Bill No. 1082 should be deleted. These sections would misuse an existing statutory program, enacted for a specific and, by design, narrowly defined purpose, in order to actually expand CT DEEP’s brownfield programs, with the effect of significantly increasing an existing unmet burden on CT DEEP resources. The General Assembly has repeatedly recognized and sought to address or relieve this burden. And while CT DEEP should certainly be commended for its on-going reassessment of how it deploys its limited resources, these efforts have unfortunately not eliminated the reality that this burden still exists.

The intent and goal of the existing Significant Environmental Hazard program are to assure that a unique and fortunately not common subset of environmental conditions are promptly brought to the attention of CT DEEP as well as others including the first selectman or mayor of the town or municipality wherein the property is located. It is a mechanism whereby CT DEEP is to work with a property owner to address an environmental condition that presents a significant environmental hazard. Risk assessment is integral to any predetermination that a particular environmental condition is a significant environmental hazard. The SEH program does not replace, but rather supplements, CT DEEP’s remediation programs.

Sections 2 and 3 of Raised Bill No. 1082, which rely on and make reference to the very RSRs CT DEEP has repeatedly stated it will be amending, inappropriately makes use of the SEH program to expand CT DEEP’s existing remediation programs, in essence adding a new release response program without taking any action regarding the many existing programs. There is no scientific basis provided for pulling many, many additional environmental conditions into the definition of a significant environmental hazard. Sections 2 and 3 are, at best, premature and they should be deleted from the bill.

Section 1 purports to provide liability relief to municipalities taking title to brownfields. But it does not accomplish this endpoint, which many have urged should be self implementing. The terms in this section establishing what a municipality must do and need not do are unclear and not defined. Section 1 may actually expand the universe of conditions that the municipality must address once it takes title in exchange for liability relief for preexisting contamination at the property. The actions required are not limited to those intended to address preexisting contamination. Affording municipal liability relief is an appropriate goal, but it should not require the creation of yet another program, which is what Section 1 does.

Section 4 would establish a new name for certain land use restrictions, assuring, at a minimum, confusion, particularly outside the environmental community and Connecticut. To provide the flexibility CT DEEP appears to be seeking, there should be refinements to the existing statutes addressing Environmental Land Use Restrictions (ELUR), a recognized mechanism in Connecticut, not the creation of a new mechanism in the form of an Activity and Use Limitation (AUL).

Thank you again for the opportunity to share these concerns.

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