

Testimony of
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Connecticut Fund for the Environment
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Before the Joint Committee on Environment

Regarding **SB 1082**, AN ACT CONCERNING BROWNFIELD REDEVELOPMENT,
INSTITUTIONAL CONTROLS AND SIGNIFICANT ENVIRONMENTAL HAZARD PROGRAMS

March 22, 2013

Dear Senator Meyer, Representative Gentile, and members of the Joint Committee on Environment:

The above organizations submit this testimony in regard to SB 1082, An Act Concerning Brownfield Redevelopment, Institutional Controls and Significant Environmental Hazard Programs. We generally support the Department of Energy and Environmental Protection's interest in transforming the state's site cleanup laws, of which SB 1082 is a part but believe this bill must be significantly modified before approved. While liability relief is an appropriate tool in certain instances, it must be done in a way to provide for the immediate cleanup of imminent health hazards and the ultimate and timely cleanup of the site. Moreover, while institutional controls can streamline measures, they must be instituted in a manner that is transparent and enforceable. We believe Massachusetts has addressed many of these issues and has balanced the need for streamlining with the need to ultimately clean up these sites and protect the public. We strongly suggest that the legislature and DEEP look to the Massachusetts model as an example for changes to the remediation program now and in the future.

Section 1 - Municipal Liability Relief

The groups believe that if constructed properly, a municipal liability relief program can effectively foster cleanup, and promote economic revitalization, transit-oriented development, and environmental justice. However, the program should apply only to genuinely abandoned sites, provide for containment of imminent hazards and provide for timely cleanup of the site.

While DEEP held a discussion about remediation transformation, we do not believe that municipal liability was a serious part of this discussion so we believe many of these concepts have not been thoroughly thought through and discussed. By way of example, Section 1(d) and Section 1(e) appear to be inconsistent. Section 1(d) seems to allow a brownfield to remain

contaminated throughout redevelopment so long as the contamination is not exacerbated. Section 1(e) seems to require the applicant to “facilitate the investigation, remediation, and redevelopment” of the brownfield. We suggest taking more time on this and looking to what has been done in Massachusetts and other states to proceed in a manner that achieves all of our streamlining goals while protecting public health and encouraging site cleanup.

Sections 2-3 - Significant Hazards

The groups strongly support the bill’s provisions strengthening the existing Significant Environmental Hazard Program. Sections 2 and 3 should be improved by incorporating all of the significant environmental hazards discussed in the Department’s “Draft Proposal for a Transformed Cleanup Program” (February 7, 2013). By way of example, the bill does not address pollution that poses a risk of explosion or highly concentrated soil pollution that is above the water table. The notification and abatement deadlines should be expedited. For example, Section 2(e)(1) covers groundwater pollution that is ten times the industrial/commercial volatilization criterion but addresses pollution of groundwater in residential areas only if that pollution is at least thirty times the residential volatilization criterion. Further, Sections 2 and 3 should clearly delineate the responsibility of a technical environmental professional to notify the Department directly of a significant environmental hazard, when others fail to do so.

Sections 4-7 - Institutional Controls

The groups support the concept of expanding institutional controls to include a Notice of Activity and Use Limitation in addition to an Environmental Land Use Restriction, so long as the expansion remains fully protective of public health and the environment and is capable of being enforced. By way of example, we believe Section 4(c)(1)(D)(ii) should contain a standard for polluted soil equal to or less than ten cubic yards. Similarly, the bill should clarify which engineering controls may be covered by a Notice of Activity and Use Limitation under Section 4(c)(1)(C).

It is also essential that the Department of Energy and Environmental Protection: (1) be given written notification upon the imposition or modification of a Notice of Activity and Use Limitation; (2) enjoy clear authority to conduct inspections and audits of all property covered by a Notice of Activity and Use Limitation; and (3) be able to unilaterally modify a Notice of Activity and Use Limitation. The bill should include provisions to ensure that a Notice of Activity and Use Limitation can be fully enforced against past, present, and future owners of land to which the Notice applies, from the time the Notice is filed in the land records. Again, we believe Massachusetts has addressed similar issues and provides a model that would be helpful for Connecticut as a way to encourage cleanups in a manner that will continue to protect the public health.

Thank you for your time and consideration in this matter.