

Testimony of Gary B. O'Connor
Co-Chair, Brownfield Working Group
Before the Commerce Committee of the General Assembly
In support of
Raised Bill No. 5573
An act concerning Brownfield Remediation and Development
March 18, 2014

Good morning, my name is Gary O'Connor and I am a partner at the law firm of Pullman & Comley. I have practiced law for over 30 years concentrating in the areas of environmental law and real estate development. I serve with Ann Catino as co-chair of the Brownfield Working Group appointed by the General Assembly. I would like to thank the Commerce Committee for the opportunity to speak today in support of Raised Bill No. 5573, An Act Concerning Brownfield Remediation and Development. I would also like to acknowledge and thank Senator LeBeau Representative Perone and the other members of the Commerce Committee for your leadership and support of brownfield redevelopment as an important catalyst for revitalizing our communities, restoring properties to beneficial reuse and enhancing the quality of life in Connecticut.

Since the creation of the Brownfield Working Group (f/k/a the Brownfield Task Force) in 2006, we have examined issues relating to the remediation and redevelopment of brownfields in this state, the regulatory scheme for remediating such properties, funding requirements and liability concerns. Over the years, we have made recommendations to the Commerce Committee on reducing the barriers to brownfield redevelopment by creating more certainty, streamlining regulatory requirements, providing certain liability immunities, reducing the cost and time of remediation and providing cleanup funds to eligible businesses, developers and municipalities. Many of these recommendations have become law and have greatly assisted stakeholders in revitalizing Connecticut's brownfields.

During last year's legislative session, the Brownfields Working Group worked closely with the Department of Energy and Environmental Protection ("DEEP") on additional incentives for municipalities, such as the Municipal Liability Relief Program. More importantly, we drafted legislation that called for the hiring of a national consulting firm to examine the State's risk-based decision making process as it relates to our cleanup laws and programs. The consultant has been charged with comparing Connecticut's risk-based decision making with best practices of other states, the Environmental Protection Agency ("EPA") and selected countries. The goal is to use the information from the consultant's report, in conjunction with DEEP's ongoing transformation process, to create a more appropriate, comprehensive and flexible cleanup program for the state; one which balances the protection of human health and the environment with the advancement of Connecticut's economic development. The fruits of DEEP's transformation process may be a number of years away, so it is critical that we continue to make incremental improvements to our brownfield programs and environmental laws. Raised Bill No. 5573 is intended to make such incremental changes.

Raised Bill No. 5573 makes revisions to Section 22a-133x, the statute which establishes the Voluntary Cleanup Program. The proposed revisions allow parts of properties under the

Voluntary Cleanup Program to be investigated, remediated and verified by a Licensed Environmental Professional ("LEP") under an interim verification as currently permitted under the Transfer Act. The goal is to incentivize an owner of a contaminated property to voluntarily remediate at least a portion of the property and be able to provide some assurance to prospective purchasers, bankers, investors and regulatory authorities that a property has been cleaned up in accordance with the remediation standards except for groundwater standards, which in many cases may take a number of years through natural attenuation in order to achieve compliance. The proposed bill also allows a verification or interim verification of a portion of a property. This will permit an owner with a large environmentally challenged parcel to concentrate on the remediation of one section of the parcel, subdivide it from the remainder of the parcel and sell it to a third party who, in turn, will be able to put this section of the original parcel back to productive use. The proceeds raised from a sale can be used to finance the investigation and remediation of other sections of the original parcel.

Raised Bill No. 5573 also requires DEEP, within sixty days of receipt of a final remedial action report, to give notice to a property owner if it intends to audit the report and to complete the audit within six months. The language needs to be revised to reference an audit of an LEP verification under 22a-133x not a final report as required under 22a-133y. The public policy rationale is very simple. If a property owner voluntarily cleans up a property under 22a-133x, the owner should receive some certainty that, except for extraordinary circumstances, DEEP cannot come back years after the submittal of the verification and conduct an audit. Potential purchasers and lenders will not be able to rely on a verification if there is no deadline on DEEP's ability to audit. DEEP has expressed certain concerns with an audit deadline and has suggested certain revisions to other proposed language to Section 22a-133x to provide additional clarity. We will be working with DEEP to resolve any differences and make appropriate changes.

Raised Bill No. 5573 makes certain changes to the Transfer Act. Specifically, it exempts the removal of Hazardous Building Materials from the definition of "Establishment." The non-public members of the Brownfield Working Group strongly believe that property owners should be encouraged to remove and abate Hazardous Building Materials on their properties. Under current law, the act of removing such materials from a property and disposing of them at an appropriate land fill might cause that property to become an "Establishment" under the Transfer Act. This, in turn, creates a major disincentive to property owners to go forward with such Hazardous Building Materials removal. DEEP has made a number of suggestions to clarify and limit the definition of Hazardous Building Materials as proposed. We agree. We will be working with DEEP to make those changes.

One other proposal being considered by the Department of Economic and Community Development ("DECD") involves a small revision to Section 32-765(H) to allow the Commissioner of DECD to modify the terms of any loan made pursuant to the brownfield grant and loan program, to provide for the forgiveness of interest, principal or both, or delay in the repayment of interest, principal or both, when the Commissioner determines such forgiveness or delay is in the best interest of the State. We wholeheartedly support this idea and, if DECD determines to pursue this matter, we will support a revision of this kind to Raised Bill No. 5573. Given the complexity and uncertainty of any brownfield project and given the State's interest in

promoting the revitalization of brownfield sites, the Commissioner of DECD should be given the maximum amount of flexibility with respect to loans made under the brownfield loan program.

In short, the Raised Bill No. 5573 is a work in progress. We believe that an additional meeting with DEEP and DECD is necessary to resolve issues and clarify language. Nevertheless, we believe a consensus can be reached and revisions can be made in the next two weeks. Thank you, again, for the opportunity to speak before your committee on behalf of Raised Bill No. 5573.