

Testimony of **Ann M. Catino**, Esq.
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And
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Environment Committee
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HB 5544

My name is Ann Catino and I am a partner at the law firm of Halloran & Sage in Hartford. I have practiced for over 25 years in the area of environmental law. For the past several years, together with Gary O'Connor, I have been pleased to serve as co-chair of the Brownfield Working Group, formerly the State's Task Force on Brownfield Strategies.

I want to first thank Representative Gentile and Senator Meyer and the members of the Environment Committee for their leadership and support for the brownfield initiatives in this State that have been proposed by the Brownfield Working Group. Beginning in 2006, new laws were passed every year that broke ground on many new and innovative programs. The Office of Brownfield Remediation and Development was established and now we have a new director, Tim Sullivan. New programs were developed and are administered by the Department of Economic and Community Development. Municipal grant and loan programs were established, funded and multiple projects in many municipalities are underway. Flexibility was added to the programs administered by the Department of Energy & Environmental Protection and some obstacles relating to the standard liability schemes were removed for certain types of brownfield redevelopment, particularly relating to municipal liability relief.

Last year, was groundbreaking, in moving forward with a new initiative. The DEEP's transformation process has begun and a candid assessment of DEEP's remediation programs is underway. A consultant was hired to evaluate the State's remediation programs with a focus on evaluating risk based decision making in our State and in comparison to other States. While this initiative is far from over and may provide the framework for a new remediation program in our State, it is at its early stages right now and no one can predict with certainty what any new program will look like. This initiative is an excellent one, but we cannot ignore the sites that are entangled in the programs that exist today. Many sites and site owners/developers require assistance now so that they can, with some certainty, remove their sites or portions of their sites from the existing regulatory program, whether it is the Transfer Act or a voluntary clean-up program.

HB 5544 is a step in that direction. Simply stated, HB 5544 allows parts of properties that have been remediated to be closed out in accordance with the interim verification standard definition set forth in 22a-134. Under existing law, remediation of an entire site needs to occur and be completed before an interim verification can be provided. For larger and potentially more complicated sites, this framework often creates hardship for the property owner. For example, if

a 10 acres of a 20 acre site is remediated, that 10 acre portion should be allowed to receive an interim verification. Such a designation would allow that 10 acre site to be either sold or, quite importantly, leveraged and financed. This release of value from the site, to adopt the nomenclature Deputy Commissioner McCleary has used, would put that portion back into productive use. And, it could generate additional funds that may be needed for the other 10 acres. This change encourages remediation and I, personally, support such a concept.

The concept of providing an interim verification for a portion of a site has been discussed by and supported by the nonpublic members of the Brownfield Working Group. The Working Group has proposed a companion bill, HB 5573, which was introduced last week by the Commerce Committee. Like HB 5544, HB 5573 also serves to expand the use of interim verifications for portions of sites. In addition to these changes, in order to avoid any potential ambiguity that may emerge as to who is eligible to provide an interim verification, I would also recommend including in the beginning of 22a-134a(g)(2) the following language:

(2) **Notwithstanding the date the Form III or Form IV were submitted, [I]** if a certifying party completes the remediation for a portion of an establishment, such party may submit an interim verification by a licensed environmental professional, in accordance with subdivision (1) of this subsection, or a verification by a licensed environmental professional for any such portion of an establishment. The certifying party shall be deemed to have satisfied the requirements of this subsection for that portion of the establishment covered by any such verification. If any portion of an establishment for which a verification is submitted pursuant to this subdivision is transferred or conveyed or undergoes a change in ownership before remediation of the entire establishment is complete that would not otherwise be subject to the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, the certifying party shall provide notice to the commissioner of such transfer, conveyance or change in ownership not later than thirty days after any such transfer, conveyance or change in ownership

The Working Group has continued to work with DECD, DEEP, and various other stakeholders and interested parties. We are committed to developing, with the regulatory agencies, a better program and to address the concerns the regulatory agencies may have with HB 5544.

While a new frontier is being developed by DEEP due to legislation created two years ago and last year as part of the brownfield package, our work continues. The theme this year that has emerged is to help properties that have been remediated exit the regulatory programs. There are thousands of properties in the Transfer Act and the voluntary remediation programs. If portions of those properties can take advantage of an interim verification, the potential exists that they can either be put back into productive use and their value released. Whether a new program is developed next year or not, we need to continue to find solutions that allow properties to exit the regulatory programs. HB 5544 does that. We look forward to working with DEEP and with the members of this Committee.

Thank you.
Ann M. Catino