



General Assembly

Substitute Bill No. 941

January Session, 2015



**AN ACT DELAYING IMPLEMENTATION OF CERTAIN STANDARDS
AND SAMPLING REQUIREMENTS UPON THE DETECTION OF
POLLUTANTS CAUSING CONTAMINATION OF SOIL,
GROUNDWATER OR PUBLIC OR PRIVATE DRINKING WATER
WELLS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (*Effective June 30, 2015*) Sections 31 and 32 of public act 13-
2 308 shall take effect July 1, 2016.

3 Sec. 2. Section 22a-6u of the general statutes, as amended by sections
4 31 and 32 of public act 13-308 and section 1 of this act, is repealed and
5 the following is substituted in lieu thereof (*Effective July 1, 2016*):

6 (a) For the purposes of this section:

7 (1) "Commissioner" means the Commissioner of Energy and
8 Environmental Protection, or his designee;

9 (2) "Mitigation" means actions, including, but not limited to,
10 placement of gravel or pavement, fencing, water filtration or such
11 other interim measures, taken to control the contamination or
12 condition that reasonably prevent exposure, including continuing
13 inspection, maintenance or monitoring as necessary for the specific
14 measures taken;

15 (3) "Parcel" means a piece, tract or lot of land, together with
16 buildings and other improvements situated thereon, a legal description
17 of which piece, parcel, tract or lot is contained in a deed or other
18 instrument of conveyance and which piece, tract or lot is not the
19 subject of an order or consent order of the commissioner which
20 involves requirements for investigation or reporting regarding
21 environmental contamination;

22 (4) "Person" means person, as defined in section 22a-2;

23 (5) "Pollution" means pollution, as defined in section 22a-423;

24 (6) "Release" means any discharge, uncontrolled loss, seepage,
25 filtration, leakage, injection, escape, dumping, pumping, pouring,
26 emitting, emptying or disposal of oil or petroleum or chemical liquids
27 or solids, liquid or gaseous products or hazardous wastes;

28 (7) "Residential activity" means any activity related to (A) a
29 residence or dwelling, including, but not limited to, a house,
30 apartment, or condominium, or (B) a school, hospital, day care center,
31 playground or outdoor recreational area;

32 (8) "Substance" means an element, compound or material which,
33 when added to air, water, soil or sediment, may alter the physical,
34 chemical, biological or other characteristics of such air, water, soil or
35 sediment;

36 (9) "Upgradient direction" means in the direction of an increase in
37 hydraulic head; and

38 (10) "Technical environmental professional" means an individual,
39 including, but not limited to, an environmental professional licensed
40 pursuant to section 22a-133v, who collects soil, water, vapor or air
41 samples for purposes of investigating and remediating sources of
42 pollution to soil or waters of the state and who may be directly
43 employed by, or retained as a consultant by, a public or private
44 employer.

45 (b) (1) If a technical environmental professional determines in the
46 course of investigating or remediating pollution after [July 1, 2015,]
47 July 1, 2016, which pollution is on or emanating from a parcel, that
48 such pollution is causing or has caused contamination of a public or
49 private drinking water well with: (A) A substance for which the
50 Commissioner of Energy and Environmental Protection has
51 established a groundwater protection criterion in regulations adopted
52 pursuant to section 22a-133k at a concentration above the groundwater
53 protection criterion for such substance, or (B) the presence of
54 nonaqueous phase liquid, such professional shall notify his or her
55 client and the owner of the parcel, if the owner of the parcel that is the
56 source of such contamination can reasonably be identified, not later
57 than twenty-four hours after determining that the contamination
58 exists. If, seven days after such determination, the owner of the subject
59 parcel has not notified the commissioner, the client of the professional
60 shall notify the commissioner. If the owner notifies the commissioner,
61 the owner shall provide documentation to the client of the professional
62 which verifies that the owner has notified the commissioner.

63 (2) The owner of a parcel on which exists a source of contamination
64 to soil or waters of the state shall notify the commissioner if such
65 owner becomes aware that such pollution is causing or has caused
66 contamination of a private or public drinking water well with either
67 (A) a substance for which the commissioner has established a
68 groundwater protection criterion in regulations adopted pursuant to
69 section 22a-133k at a concentration at or above the groundwater
70 protection criterion for such substance, or (B) the presence of
71 nonaqueous phase liquid. Notice under this section shall be given to
72 the commissioner verbally, not later than one business day after such
73 person becomes aware that the contamination exists, and in writing,
74 not later than five days after such verbal notice.

75 (3) Not later than thirty days after the date the owner of such parcel
76 that is the source of the contamination becomes aware of such
77 contamination, such owner shall determine the presence of any other

78 water supply wells located within five hundred feet of the polluted
79 well by conducting a receptor survey and such owner shall seek access
80 to sample drinking water supply wells that are located on adjacent
81 parcels of property if such wells are within five hundred feet of the
82 polluted well. If such access is granted, such owner shall sample and
83 analyze the water quality of such wells. Not later than thirty days after
84 becoming aware of such contamination, the owner of such parcel shall
85 submit a report to the commissioner that includes proposals, as
86 necessary, for further action to identify and eliminate exposure to
87 contaminants on an ongoing basis.

88 (c) (1) If a technical environmental professional determines in the
89 course of investigating or remediating pollution after [July 1, 2015,]
90 July 1, 2016, which pollution is on or emanating from a parcel, that
91 such pollution is causing or has caused contamination of a public or
92 private drinking water well with: (A) A substance for which the
93 commissioner has established a groundwater protection criterion in
94 regulations adopted pursuant to section 22a-133k at a concentration
95 less than such groundwater protection criterion for such substance; or
96 (B) any other substance resulting from the release which is the subject
97 of the investigation or remediation, such professional shall notify his
98 client and the owner of the parcel, if the owner can reasonably be
99 identified, not later than seven days after determining that the
100 contamination exists.

101 (2) The owner of a parcel on which exists a source of pollution to
102 soil or the waters of the state shall notify the commissioner if such
103 owner becomes aware that such pollution is causing or has caused
104 contamination of a private or public drinking water well with: (A) A
105 substance for which the commissioner has established a groundwater
106 protection criterion in regulations adopted pursuant to section 22a-
107 133k at a concentration less than such groundwater protection criterion
108 for such substance; or (B) any other substance which was part of the
109 release which caused such pollution. Notice under this subdivision
110 shall be given in writing not later than thirty days after the time such

111 person becomes aware that the contamination exists.

112 (3) Not later than thirty days after the date such owner becomes
113 aware that such contamination exists, such owner shall perform
114 confirmatory sampling of the well. Not later than thirty days after the
115 date such owner becomes aware of such contamination pursuant to
116 subdivision (1) of subsection (c) of this section, such owner shall
117 submit a report concerning such confirmatory sampling to the
118 commissioner that includes proposals, as necessary, for any further
119 action to identify and eliminate exposure to contaminants on an
120 ongoing basis. If such confirmatory sampling demonstrates a
121 concentration above the groundwater protection criterion for such
122 substance, such owner shall proceed in accordance with the provisions
123 of subdivisions (2) and (3) of subsection (b) of this section.

124 (d) (1) If a technical environmental professional determines in the
125 course of investigating or remediating pollution after [July 1, 2015,]
126 July 1, 2016, which pollution is on or emanating from a parcel, that
127 such pollution of soil within two feet of the ground surface contains a
128 substance at a concentration at or above thirty times the
129 industrial/commercial direct exposure criterion for such substance if
130 the parcel is in industrial or commercial use, or at or above fifteen
131 times the industrial/commercial direct exposure criterion for
132 antimony, arsenic, barium, beryllium, cadmium, chromium, copper,
133 cyanide, lead, mercury, nickel, selenium, silver, thallium, vanadium,
134 zinc or polychlorinated biphenyls, excluding arsenic or lead from the
135 lawful application of pesticides, if the parcel is in industrial or
136 commercial use and such soil pollution is not more than three hundred
137 feet from any residence, school, park, playground or daycare facility,
138 or at or above fifteen times the residential direct exposure criterion if
139 the parcel is in residential use, which criteria are specified in
140 regulations adopted pursuant to section 22a-133k, such professional
141 shall notify his client and the owner of the parcel, if such owner is
142 reasonably identified, not later than seven days after determining that
143 the contamination exists, except that notice will not be required if

144 either: (A) The land-use of such parcel is not residential activity and
145 the substance is one of the following: Acetone, 2-butanone,
146 chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,1-
147 dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene,
148 ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene,
149 toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene,
150 butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl
151 phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene,
152 phenanthrene, phenol and pyrene, (B) the substance is total petroleum
153 hydrocarbons, or (C) the substance is antimony, arsenic, barium,
154 beryllium, cadmium, chromium, copper, cyanide, lead, mercury,
155 nickel, selenium, silver, thallium, vanadium, zinc, or polychlorinated
156 biphenyls below thirty times industrial/commercial direct exposure
157 criteria at an area of an industrial/commercial property that is covered
158 with pavement that is maintained in a manner that preserves the
159 integrity of such coverage or fenced off from the general public.

160 (2) The owner of the subject parcel shall notify the commissioner in
161 writing not later than ninety days after the time such owner becomes
162 aware that the contamination exists except that notification will not be
163 required if by the end of said ninety days: (A) The contaminated soil is
164 remediated in accordance with regulations adopted pursuant to
165 section 22a-133k; (B) the contaminated soil is inaccessible soil as that
166 term is defined in regulations adopted pursuant to section 22a-133k;
167 (C) the contaminated soil which exceeds thirty or fifteen times such
168 criterion, as applicable, is treated or disposed of in accordance with all
169 applicable laws and regulations; or (D) the substance is lead on a
170 residential property that is already in a lead abatement program
171 administered by the local health department for the town in which
172 such residential property is located. Any owner who is not required to
173 notify the commissioner pursuant to subparagraph (A), (B) or (C) of
174 this subdivision may voluntarily submit a notification at any time to
175 the commissioner and the department shall issue a certificate of
176 completion for purposes of this section if the area that exceeds fifteen
177 or thirty times such criterion, as applicable, was treated or disposed of

178 in accordance with all applicable laws and regulations. The
179 department shall wait until ninety days after the notice is received
180 before determining whether to post a notification received under this
181 subsection on its Internet web site list of notices received under this
182 subsection.

183 (3) If notice is not otherwise exempted pursuant to the provisions of
184 subdivision (2) of this subsection, not later than ninety days after the
185 owner becomes aware of such contamination, such owner shall, at a
186 minimum: (A) Evaluate the extent of such contaminated soil that
187 exceeds fifteen or thirty times the applicable direct exposure criteria, as
188 applicable, (B) prevent exposure to such soil, and (C) submit, with the
189 required notification, a report on such evaluation and prevention to
190 the commissioner that includes proposals for other action, as
191 necessary, including, but not limited to, maintenance and monitoring
192 of interim controls to prevent exposure to soil that exceeds fifteen or
193 thirty times, as applicable, the applicable criteria.

194 (e) (1) If a technical environmental professional determines in the
195 course of investigating or remediating pollution after [July 1, 2015,]
196 July 1, 2016, which pollution is on or emanating from a parcel, that
197 such pollution is causing or has caused groundwater within fifteen feet
198 of an industrial or commercial building to be contaminated with a
199 volatile organic substance at a concentration at or above ten times the
200 industrial/commercial volatilization criterion for groundwater for
201 such substance or, if such contamination is within fifteen feet of a
202 residential building, at a concentration at or above ten times the
203 residential volatilization criterion, which criteria are specified in
204 regulations adopted pursuant to section 22a-133k, such professional
205 shall, not later than seven days after determining that the
206 contamination exists, notify his client and the owner of the subject
207 parcel, if such owner can reasonably be identified.

208 (2) The owner of such parcel shall notify the commissioner in
209 writing not later than thirty days after such person becomes aware that
210 the contamination exists except that notification is not required if: (A)

211 The concentration of such substance in the soil vapor beneath such
212 building is at or below ten times the soil vapor volatilization criterion,
213 appropriate for the land-use for the parcel, for such substance as
214 specified in regulations adopted pursuant to section 22a-133k; (B) the
215 concentration of such substance in groundwater is below ten times a
216 site-specific volatilization criterion for groundwater for such substance
217 calculated in accordance with regulations adopted pursuant to section
218 22a-133k; (C) groundwater volatilization criterion, appropriate for the
219 land-use of the parcel, for such substance specified in regulations
220 adopted pursuant to section 22a-133k is fifty thousand parts per
221 billion; (D) not later than thirty days after the time such person
222 becomes aware that the contamination exists, an indoor air monitoring
223 program is initiated in accordance with subdivision (3) of this
224 subsection; (E) the parcel contains a building that is not occupied,
225 provided the owner shall submit the required notification not later
226 than the date such building is reoccupied, unless by the date of
227 reoccupancy data confirms concentrations no longer exceed the
228 notification threshold or another exception in this subdivision applies;
229 or (F) the parcel contains a building in an industrial/commercial use
230 and such volatile organic compounds are used in industrial activities,
231 and the use of such volatile organic compounds in such building is
232 regulated by the federal Occupational Safety and Health
233 Administration.

234 (3) An indoor air quality monitoring program for the purposes of
235 this subsection shall consist of sampling of indoor air once every two
236 months for a duration of not less than one year, sampling of indoor air
237 immediately overlying such contaminated groundwater, and analysis
238 of air samples for any volatile organic substance which exceeded ten
239 times the volatilization criterion as specified in or calculated in
240 accordance with regulations adopted pursuant to section 22a-133k. The
241 owner of the subject parcel shall notify the commissioner if: (A) The
242 concentration in any indoor air sample exceeds ten times the target
243 indoor air concentration, appropriate for the land-use of the parcel, as
244 specified in regulations adopted pursuant to section 22a-133k; or (B)

245 the indoor air monitoring program is not conducted in accordance
246 with this subdivision. Notice shall be given to the commissioner in
247 writing not later than seven days after the time such person becomes
248 aware that such a condition exists.

249 (4) Not later than thirty days after the date the owner becomes
250 aware of such contamination, the owner shall submit to the
251 commissioner with the required notification a proposed plan to
252 mitigate exposure to or permanently abate the contamination or
253 condition.

254 (f) (1) If a technical environmental professional determines in the
255 course of investigating or remediating pollution after [July 1, 2015,]
256 July 1, 2016, which pollution is on or emanating from a parcel, that
257 such pollution is causing or has caused contamination of groundwater
258 which is discharging to surface water and such groundwater is
259 contaminated with: (A) A substance for which an acute aquatic life
260 criterion is listed in appendix D of the most recent water quality
261 standards adopted by the commissioner at a concentration which
262 exceeds ten times (i) such criterion for such substance in said appendix
263 D, or (ii) such criterion for such substance times a site specific dilution
264 factor calculated in accordance with regulations adopted pursuant to
265 section 22a-133k, or (B) a nonaqueous phase liquid, such professional
266 shall notify his client and the owner of such parcel, if such owner can
267 reasonably be identified, not later than seven days after determining
268 that the contamination exists.

269 (2) For nonaqueous phase liquid that is not otherwise reported to
270 the commissioner pursuant to the general statutes or regulations of
271 Connecticut state agencies, the owner of such parcel shall notify the
272 commissioner (A) verbally, not later than one business day after such
273 person becomes aware such contamination entered a surface water
274 body, and (B) in writing, not later than thirty days after the date such
275 owner becomes aware of such contamination. For contamination with
276 a substance, as described in subdivision (1) of this subsection, such
277 owner shall notify the commissioner, in writing, not later than thirty

278 days after the time such person becomes aware that the contamination
279 exists. Notice shall not be required pursuant to this subdivision if such
280 person knows that the polluted discharge at that concentration or in
281 such physical state was reported to the commissioner, in writing,
282 within the preceding year.

283 (3) For any contamination with a substance as described in
284 subdivision (1) of this subsection, not later than the date written
285 notification is due pursuant to this subsection, the owner shall submit
286 with such notification a proposed plan to monitor, abate or mitigate
287 the contamination or condition.

288 (g) (1) If a technical environmental professional determines in the
289 course of investigating or remediating pollution after [July 1, 2015,]
290 July 1, 2016, which pollution is on or emanating from a parcel, that
291 such pollution is causing or has caused contamination of groundwater
292 within five hundred feet in an upgradient direction or two hundred
293 feet in any direction of a private or public drinking water well which
294 groundwater is contaminated with a substance resulting from a release
295 for which the commissioner has established a groundwater protection
296 criterion in regulations adopted pursuant to section 22a-133k at a
297 concentration at or above the groundwater protection criterion for
298 such substance, such technical environmental professional shall notify
299 his client and the owner of the subject parcel, if such owner can
300 reasonably be identified, not later than seven days after determining
301 that the contamination exists.

302 (2) The owner of the subject parcel shall notify the commissioner in
303 writing not later than thirty days after the time such owner becomes
304 aware that the contamination exists.

305 (3) Not later than thirty days after the date such owner becomes
306 aware of such contamination, such owner shall determine the presence
307 of any other water supply wells located within five hundred feet of
308 such polluted groundwater by conducting a receptor survey. Such
309 owner shall seek access for the purpose of sampling drinking water

310 supply wells that are on adjacent properties if such wells are within
311 five hundred feet of such polluted groundwater. If such access is
312 granted, such owner shall sample and analyze the water quality of
313 such wells. Not later than thirty days after the date such owner
314 becomes aware of such polluted groundwater, such owner shall
315 submit with the required notification a report to the commissioner
316 concerning such evaluation that includes proposals, as necessary, for
317 further action to identify and eliminate any exposure to contaminants
318 on an ongoing basis.

319 (h) (1) If a technical environmental professional determines in the
320 course of investigating or remediating pollution after October 1, 1998,
321 which pollution is on or emanating from a parcel, that such pollution is
322 causing or has caused polluted vapors emanating from polluted soil,
323 groundwater or free product which vapors are migrating into
324 structures or utility conduits and which vapors pose an explosion
325 hazard, such technical environmental professional shall immediately
326 notify his client and the owner of the subject parcel, if such owner can
327 reasonably be identified, not later than twenty-four hours after
328 determining that the vapor condition exists. If the owner of such parcel
329 fails to notify the commissioner in accordance with this subsection,
330 such client shall notify the commissioner. If the owner notifies the
331 commissioner, the owner shall provide documentation to the client of
332 the professional which verifies that the owner has notified the
333 commissioner.

334 (2) The owner of such parcel shall orally notify the commissioner
335 and the local fire department immediately and under all circumstances
336 not later than two hours after the time a technical environmental
337 professional notifies the owner that the vapor condition exists, and
338 shall notify the commissioner in writing not later than five days after
339 such oral notice.

340 (i) In the event the commissioner orders the testing of any private
341 drinking well, and such testing indicates that the water exceeds a
342 maximum contaminant level applicable to public water supply

343 systems for any contaminant listed in the Public Health Code or for
344 any contaminant listed on the state drinking water action level list
345 established pursuant to section 22a-471, the commissioner shall require
346 the respondent to such order to provide written notification of the
347 results of any testing conducted pursuant to such order not later than
348 twenty-four hours after said respondent receives such results to the
349 following: (1) The owner of record of the property upon which any
350 such private drinking well is located, (2) the local director of public
351 health, (3) any person that files a request with the local director of
352 public health to receive such notification, and (4) any other person the
353 commissioner specifically identifies in such order. Not later than
354 twenty-four hours after receiving such notification, such owner shall
355 forward a copy of such notification to at least one tenant of each unit of
356 any leased or rented dwelling unit located on such property and each
357 lessee of such property. Not later than three days after receiving such
358 notification, the local director of public health shall take all reasonable
359 steps to verify that such owner forwarded the notice required pursuant
360 to this subsection.

361 (j) All notices, oral or written, provided under this section shall
362 include the nature of the contamination or condition, the address of the
363 property where the contamination or condition is located, the location
364 of such contamination or condition, any property known to be affected
365 by such contamination or condition, any steps being taken to abate,
366 remediate or monitor such contamination or condition, and the name
367 and address of the person making such notification. Written
368 notification shall be clearly marked as notification required by this
369 section and shall be either personally delivered to the Remediation
370 Division of the Department of Energy and Environmental Protection or
371 sent by certified mail, return receipt requested, to the Remediation
372 Division of the Department of Energy and Environmental Protection.

373 (k) (1) The commissioner shall provide written acknowledgment of
374 receipt of a written notice pursuant to this section not later than ten
375 days after receipt of such notice and in such acknowledgement may

376 provide any information that the commissioner deems appropriate.

377 (2) In accordance with the time frames specified in this section, the
378 owner of the parcel shall submit to the commissioner either (A) (i) a
379 mitigation plan to prevent exposures, (ii) a plan to remediate the
380 contamination or condition, or (iii) a plan to abate the contamination or
381 condition, (B) documentation that the contamination or condition was
382 mitigated and that there are no exposure pathways from the
383 contamination, along with a plan to maintain such mitigation
384 measures, or (C) documentation that describes how the contamination
385 or condition was abated, as applicable. Submittals described in this
386 subsection may be submitted concomitantly with other notices
387 required in this section.

388 (3) If such plan, as described in subdivision (2) of this subsection, is
389 not submitted or is disapproved by the commissioner, the
390 commissioner shall prescribe the action to be taken or issue a directive
391 as to action required to mitigate or abate the contamination or
392 condition. If a plan is submitted which details actions to be taken, or a
393 report is submitted which details actions taken, to mitigate or abate the
394 contamination or conditions and such plan or report is acceptable to
395 the commissioner, the commissioner shall approve such plan or report
396 in writing. When a report is submitted that demonstrates permanent
397 abatement of the contamination or condition, such that notice under
398 this section would not be required, the commissioner shall issue a
399 certificate of compliance upon finding such report to be acceptable.

400 (l) An owner who has submitted written notice pursuant to this
401 section shall, not later than five days after the commencement of an
402 activity by any person that increases the likelihood of human exposure
403 to known contaminants, including, but not limited to, construction,
404 demolition, significant soil disruption or the installation of utilities,
405 post such notice in a conspicuous place on such property and, in the
406 case of a place of business, in a conspicuous place inside the place of
407 business. An owner who violates this section shall pay a civil penalty
408 of one hundred dollars for each offense. Each violation shall be a

409 separate and distinct offense and, in the case of a continuing violation,
410 each day's continuance thereof shall be deemed to be a separate and
411 distinct offense. The Attorney General, upon complaint of the
412 commissioner, shall institute an action in the superior court for the
413 judicial district of Hartford to recover such penalty.

414 (m) Not later than ten days after receipt of any written notice
415 received under this section, the commissioner shall forward a copy of
416 such notice to the chief elected official of the municipality in which the
417 subject pollution was discovered and to the local health director of
418 such municipality or region. Any forwarding of such notice, as
419 required by this subsection, may be performed by electronic means.
420 The commissioner shall maintain a list of all notices received under
421 this section that pertain to conditions that have not been mitigated or
422 permanently abated at the time of notification. Such list shall be on the
423 department's Internet web site and shall be amended to remove notices
424 after the condition is mitigated or permanently abated.

425 (n) Nothing in this section and no action taken by any person
426 pursuant to this section shall affect the commissioner's authority under
427 any other statute or regulation.

428 (o) Nothing in this section shall excuse a person from complying
429 with the requirements of any statute or regulation except the
430 commissioner may waive the requirements of the regulations adopted
431 under section 22a-133k if he determines that it is necessary to ensure
432 that timely and appropriate action is taken to mitigate or minimize any
433 of the conditions described in subsections (b) to (h), inclusive, of this
434 section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	June 30, 2015	New section
Sec. 2	July 1, 2016	22a-6u

Statement of Legislative Commissioners:

In section 1, the effective date was changed from "from passage" to "June 30, 2015" for consistency with the provisions of said section. Additionally, section 2 of the bill was added as a conforming change for consistency with section 1 of the bill.

ENV *Joint Favorable Subst.*