

**Testimony of Ann M. Catino**  
Attorney, Halloran & Sage LLP  
&  
Co-Chair, State's Brownfield Working Group

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Proposed Bill No. 941

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.

By way of brief background the Brownfield Working Group, formerly known as the Brownfields Task Force, was first created by the legislature in 2006 in order to provide to develop long-term solutions for cleaning up Brownfields. We served through 2009 and then in 2011, we were recast as the Brownfield Working Group. Permanently created in 2013, we are to examine the remediation and development of brownfields in this state, including, funding programs, the remediation framework, permitting, and liability issues. We meet every two weeks from September through June with staff from DEEP and DECD, among other agency representatives.

I want to first thank the members of the Environment Committee for all your leadership and support for the brownfield initiatives that we have proposed. 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 and DECD and DEEP are working together on these programs and are making substantial progress. Not only do the programs promote the clean up of property to be protective of the future use and the environment, but brownfield redevelopment adds jobs, removes blight, restores a municipal tax base, and enhances communities. These programs have implemented the vision of the Working Group for a predictable and clearer approach to developing our state's brownfields. The DECD and DEEP Commissioners and staff are to be commended for their support in all these initiatives.

There is, however, more to do. First, one concern has been and remains the mechanism for cost-effectively getting to completion on a brownfield site that is protective of human health and the environment. The “exit” ramp needs to be clearly defined for the site. DEEP is hard at work trying to develop changes, but it isn’t done yet. Second, there has been a substantial question as to the underlying scientific basis of the state’s remediation standard regulations. How is risk incorporated in the development of the numeric criteria? Does one size really fit all? These questions form the backdrop of the change that was made in 2013 to the significant environmental hazard (SEH) reporting, which is the subject of SB 941.

During the 2013 legislative session, DEEP sought to change the existing SEH reporting statute and reduce the trigger from 30 times to 10 times the standard for certain parameters. At that time, several questions were raised:

- How many properties would be impacted if more properties were to come into this statutory framework?
- How does a property owner get out of this program?
- What is DEEP’s role and level of involvement?
- What is the cost to businesses?
- What is the scientific and technical basis for this change?
- Has the level of risk been fully evaluated?
- What impact does this change have on real estate transactions?
- What is the potential that more brownfields will be created as a result?

Gary O’Conner and I worked hard with the Commerce and Environment Committee leadership, DECD and DEEP representatives, and others in order to sort out these issues after the bill was proposed. What evolved in Public Act 13-308 was the development of a framework where some of these questions were to be answered. During the discussions, important modifications were made to some of the criteria in view of the uncertainty and the questions raised. For example, the reporting trigger went from the proposed 10 times the standard to 15 times the standard for certain constituents (mainly heavy metals) and an approach to “making it safe” was developed. It could be, for certain properties, fencing or asphalt cover. A statutory framework was

developed based upon a lower standard that, in our view, had not yet been fully scientifically supported.

Notwithstanding these changes, their effectiveness would be delayed pending an analysis of the scientific basis for the standards and the SEH reduction. Toward that end, DEEP was also tasked in PA 13-308 to hire a consultant to evaluate risk based decision-making related to the remediation of contaminated sites. Such evaluation and report was to include identification of best practices in ecological and human health risk assessment and risk management used by the EPA and other regulatory agencies, and those published by the National Academy of Sciences. The commissioner also was to provide opportunities for public review and input during the evaluation process. By October 1, 2014, after completion of the evaluation and report, the commissioner was to make recommendations for statutory and regulatory changes to the risk based decision making process including, but not limited to, those in section 22a-6u of the general statutes (the SEH statute).

From the enactment of PA 13-308, it took almost a year for DEEP to go through the State's procurement requirements but eventually, after a competitive process, DEEP hired a consultant, CDM Smith. On March 12, 2014, a public session with the consultant and the regulated community was held. A final report was delivered on August 29, 2014. An incredible amount of work was conducted by CDM Smith in a very short period of time. Standards and methodologies in other states and British Columbia were evaluated and compared to ours. Six recommendations were made. The CDM Smith report can be found at: [http://www.ct.gov/deep/lib/deep/site\\_clean\\_up/comprehensive\\_evaluation/CDMSmith\\_Risk-Based\\_Decision\\_Making\\_Report-final.pdf](http://www.ct.gov/deep/lib/deep/site_clean_up/comprehensive_evaluation/CDMSmith_Risk-Based_Decision_Making_Report-final.pdf).

DEEP has been evaluating the report since August 29, 2014. While CDM Smith had conducted a remarkably large undertaking in a very short time, they could not do everything that needed to be done. CDM Smith provided some significant recommendations, based upon their experience and public outreach and review of the other laws and regulations. They gave DEEP a road map as to what other states were doing, but didn't delve into full comparisons. Nor did they evaluate the SEH reporting statute or multipliers. DEEP is reportedly evaluating the report, filling in

some of the gaps and developing some recommendations. DEEP's work is not done and, right now, we don't know what their recommendations will be.

I am not being critical of the DEEP's missing of the October 1, 2014 deadline. I want to underscore that. A lot of work has to be done and we want the work done right. DEEP has a big job to do already, with limited staff and this analysis is a very large undertaking. We want to have a scientific basis for the standards, we want risk to be understood, we want peer review and public involvement is extremely important. We want recommendations that are well reasoned, well supported and that have involvement from not only the Brownfield Working Group but the regulated community, the Environmental Professionals Organization of Connecticut (EPOC)(who are the engineers and consultants who work with the remediation standards every day), the environmental groups and the public.

We are in a holding pattern.

In the meantime the changes made to the SEH reporting are due to take effect on July 1, 2015. The answers to the questions above (and below) have not yet been provided. We still want answers and answers are deserved prior to these changes being effective. The intent of SB 941 is to extend the effective date to July 1, 2017, to allow for the process to continue. All it means is the status quo continues until the DEEP recommendations are announced, reviewed and the public dialogue occurs.

Coordination of the effective date of the changes to the SEH and the report was intentional in 2013 and such coordination should continue. The changes to SEH should not take effect yet or we are exactly where we were in 2013.

The following is an excerpt of my testimony in 2013 which remains accurate today:

From a policy standpoint, our discussions center on a concern that these changes may have the unintended effect of maintaining and/or creating more brownfields and that the work that has been done over the past several years may be undone or not continue to be a success.

First, more brownfields may be created. While others today may detail the financial impact these new changes have on existing businesses and property owners, a concern that I personally share, this financial impact (*whether real or perceived*) may lead to the creation of more brownfields in the state. Owners may not engage in a voluntary investigation to ready a property for sale. Nor may owners allow customary investigations to take place for the fear that the property sale may not occur and that they will then be left with an issue that the owner cannot financially address. Municipalities end up with a closed business, blight, and a dwindling tax base. Another abandoned or underutilized property is created and maintained.

Second, over the last several years, new grant programs were created to provide funding for municipalities. These programs (administered by DECD) have become exceptionally successful, with municipalities and economic development agencies competing for these funds. At this time, more monies are needed. As part of the funding, municipalities are excluded from certain liabilities; however, the significant environmental hazard statute (22a-6u) must be complied with. While this requirement achieves a laudable goal, not all applications receive funding and, consequently, a municipality may not have the funds itself to address this contingency. As a result it may elect not to take on a property and bear this risk because the program changes in section 2 and 3 are so significant.

Third, even the municipal relief section of HB 1082 provides liability relief excluding compliance with 22a-6u. Lowering the threshold is a disincentive when we are looking to incentivize municipalities.

We understand that DEEP is looking to capture properties with significant risk of exposure. In 1998, that risk was determined to be impacts to private and public drinking water supplies or soil impacts at 30 times the applicable soil criteria. Hard questions need to be asked and answered before this section is modified:

- What is the scientific basis for dropping the 30 times standard to 10 times for direct exposure criteria?
  - Does this threshold exist in any other state?
- What is the rationale for considering that one isolated soil sample is an indicator of actual exposure?
- Should one such sample in a brownfield site require enhanced reporting and expedited remediation?
- Why is reporting required to the Commissioner if contaminants exist at the GWPC standard when GWPC is the goal?
- Why does groundwater upgradient of a release area require sampling?
- What is the scientific rationale to decrease to 10x in the volatilization context, when effects of volatilization and vapor intrusion are not well defined, particularly when industrial facilities may have interference from cleaners, chemicals and paints stored onsite and no one is working in the building any longer ?

- What is the scientific rationale for including reporting nonaqueous phase liquid in groundwater? Why, without regard to the nature of the surface water body shall the owner “take immediate action to mitigate and abate such discharge”? How is this to be accomplished?

The Working Group is prepared to continue the dialogue and work with DEEP and any other interested parties. We still have several concerns:

- the number of properties that this legislation may ensnarl
- the impact on existing brownfields, and the effect on creating new brownfields
- the stigma and burden that will be created
- the cost
- the DEEP workload and staffing to handle these properties, provide the appropriate approvals, and to get them out of the program in a timely manner so the stigma removed.
- maintenance of the DEEP website to effectively show when properties are removed

It is advisable that until the full report and recommendations by DEEP is released and scrutinized, more definition is provided as to how properties get out of (exit) any DEEP program, the questions above are answered, and that DEEP staffing is in place to handle this change, that the status quo be maintained.

SB 941 provides for the maintenance of the status quo for two more years and deserves support and passage.

THANK YOU.