
OLR Bill Analysis

HB 7001

Emergency Certification

AN ACT REVISING PROVISIONS OF THE TRANSFER ACT AND AUTHORIZING THE DEVELOPMENT AND IMPLEMENTATION OF A RELEASE-BASED REMEDIATION PROGRAM.

SUMMARY

This bill transitions the state from its transfer-based approach to property remediation (i.e., the Transfer Act, see “CURRENT LAW – TRANSFER ACT,” below) to a release-based approach.

Under the bill, once the Department of Energy and Environmental Protection (DEEP) commissioner adopts new release-based remediation regulations, a person who creates or maintains a release (e.g., spill) of oil, petroleum, chemical liquids or solids, liquid or gaseous products, or hazardous waste to the land or waters of the state must report and remediate it according to the new regulations. The bill establishes a working group to provide advice and feedback on the regulations she will adopt.

In addition to reporting and remediation requirements, the regulations must include provisions on remediation supervision, verification, auditing, and any required fees. The regulations must also provide tiers of releases, based on risk, that assign the required level of supervision and verification.

Separately, the bill makes many changes to the Transfer Act. Principally, it (1) eliminates or modifies several exemptions to the definition of “transfer of establishment” and (2) limits the circumstances under which certain parcels are deemed to be establishments. It also exempts conveyances of units in residential common interest communities from the definition of “transfer of establishment” and instead requires declarants (i.e., developers) to

take certain actions before conveying units in communities that are establishments.

Additionally, the bill replaces several references to “environmental land use restrictions” (ELURs) with references to “environmental use restrictions” (EURs), which appears to conform to proposed revisions to DEEP regulations. It also makes minor changes to Form IV’s (i.e., a property transfer form filed with DEEP) required contents to conform to DEEP regulations. Lastly, the bill makes minor, technical, and conforming changes, such as adding internal references (§§ 1 & 6-8)).

EFFECTIVE DATE: Upon passage

CURRENT LAW – TRANSFER ACT

Connecticut’s environmental property transfer law (CGS § 22a-134 *et seq.*), known as the “Transfer Act,” requires the disclosure of environmental conditions when certain properties or businesses, referred to as “establishments,” are transferred. It generally applies to properties on which, or a business operation from which, (1) hazardous waste was generated or processed or (2) a dry cleaning, furniture stripping, or vehicle body repair business operated. The law sets out several specific exempt transfers (CGS § 22a-134).

Depending on the property involved, the Transfer Act may require investigation; remediation in compliance with the state’s clean-up standards, known as the Remediation Standard Regulations (RSRs) (Conn. Agencies Regs., §§ 22a-133k-1 to -3); or monitoring.

Under the Transfer Act, when an establishment is transferred, one of four property transfer forms must be filed with DEEP (i.e., Forms I, II, III, or IV) and the person signing the form’s certification is responsible for the property’s conditions. The type of form that must be filed depends on the environmental condition and investigation, if any, of the property.

§§ 15-23 — NEW RELEASE-BASED REMEDIATION PROGRAM

General Requirements and Applicability (§§ 16 & 17)

The bill prohibits any person from creating or maintaining a release

to the land and waters of the state in violation of the bill's release-based remediation requirements. If a person does so, the bill requires that, upon its discovery, the person must report and remediate the release according to procedures and standards in new regulations the bill requires DEEP to adopt (see "Required Regulations," below).

Failing to comply with the reporting and remediation requirements, and any associated regulations, makes a person liable for costs the DEEP commissioner or another person incurs to contain, remove, or mitigate the effects of the release.

The bill generally exempts releases required to be investigated and remediated under the Transfer Act from having to meet the bill's new release-based remediation requirements. However, releases on Transfer Act properties are subject to the new requirements if the releases occurred before a property transfer form was filed and they were not discovered until (1) after the commissioner approved the remediation, (2) the date of a Form III or IV verification, or (3) the date of a Form I or II filing.

Releases occurring after the filing of a property transfer form must generally follow the bill's new release-based remediation requirements. However, if a Phase II investigation (i.e., often involving soil or groundwater samples) occurs after filing a Form III or Form IV, then only releases that happen after the investigation are subject to the new requirements.

On its own, release data available or created prior to the regulations' adoption is inadequate to trigger the bill's requirements. Additionally, a release at a property that is part of an existing DEEP or Department of Economic and Community Development (DECD) brownfields program is exempt from the bill's release-based requirements if it (1) is discovered before the respective brownfields program's remediation requirements are fully met or (2) occurred before, but is discovered after, satisfying the remediation requirements of the brownfields program. Releases that occur after fully meeting a brownfields program's requirements are subject to the bill's release-based

provisions.

Definitions (§ 15)

Under the bill, a “person” includes an individual; firm, partnership, association, or corporation, including any associated officer or governing or managing body; limited liability company, including any associated member or manager; the federal government; the state or an instrumentality or subdivision of the state, such as a municipality or its organizations with authority to levy and collect taxes; or other entity.

A “release” is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of oil, petroleum, chemical liquids or solids, hazardous waste, or liquid or gaseous products, into or onto any waters and land surface in the state that is not authorized under the state’s environmental protection laws. It explicitly excludes (1) automotive exhaust or (2) applying fertilizer or pesticides consistent with their labeling.

“Remediation” refers to (1) determining a release’s nature and extent according to prevailing standards and guidelines and (2) containing, removing, and mitigating a release, including reducing pollution by monitoring natural attenuation (i.e. reducing contaminants without human intervention).

Regulations (§ 19)

Under the bill, the DEEP commissioner must adopt, amend, or repeal regulations, as needed and proper, to carry out the bill’s new release-based remediation program. It establishes a working group in DEEP to provide advice and feedback on the regulations.

Further, in adopting the regulations, the bill requires the commissioner to incorporate the requirements of other clean-up provisions set in state law to assure consistency, clarity, and efficiency when applying remediation requirements.

Regulation Content. The regulations must at least include the following components:

1. release reporting requirements, including threshold reportable quantities and concentrations;
2. remediation procedures and deadlines, including public participation;
3. remediation standards, including environmental use restrictions;
4. verification and commissioner remediation audits;
5. remediation supervision, based on (a) pollutant type, concentration, or volume or (b) harm to public health; and
6. any required fees.

The regulations must also provide separate tiers of releases that are based on risk, which the commissioner determines, and on the following release aspects:

1. existence, source, nature, and extent;
2. immediate and future nature and extent of danger to public health, safety, welfare, and to the environment;
3. magnitude and complexity of the actions needed to assess, contain, or remove it;
4. whether the proposed remediation will not remove it entirely and pollutants will remain that need to be managed through risk mitigation; and
5. how much oversight the commissioner needs to provide to ensure compliance with the bill.

Depending on the tier involved, the bill provides that a licensed environmental professional (LEP) may supervise the remediation of certain releases without verification or commissioner supervision. "Verification" refers to an LEP's written opinion on a commissioner-prescribed form that a release's remediation meets the applicable standards.

Working Group. The bill's working group is co-chaired by the DEEP

and DECD commissioners, or their designees, and includes the following additional members:

1. chairpersons and ranking members of the Environment and Commerce committees;
2. environmental transaction attorneys;
3. commercial real estate brokers;
4. LEPs;
5. representatives of (a) the Connecticut Manufacturers' Collaborative, (b) environmental advocacy groups, (c) the Environmental Professionals Organization of Connecticut, (d) municipalities, (e) the Brownfields Working Group (see BACKGROUND), (f) the Connecticut Conference of Municipalities and the Connecticut Council of Small Towns, and (g) the Council on Environmental Quality; and
6. any other interested members of the public the DEEP commissioner designates.

Under the bill, the DEEP commissioner convenes the meetings, which must occur monthly until she adopts the regulations.

Reporting Releases (§ 19)

Type and Timeframe. The bill requires the commissioner to specify in the regulations the types of releases that must be reported, in a way she specifies, and the timeframes for doing so. When making the specification, she must consider the same factors as when establishing the release tiers, other than whether remediation will entirely remove a release.

The bill allows the regulations to set reporting timeframes based on release risk level: the quickest reporting time requirement for releases that (1) pose an imminent or substantial human health or environmental threat, such as residential areas, parks, and schools; (2) are a higher risk to human health or the environment; or (3) are near

drinking water supplies.

Amend or Retract Report. The regulations must also provide a way to amend or retract an erroneous release report.

Exemptions. The bill allows for the regulations to exempt a release from being reported if, once it is discovered, it can be remediated (1) by containment, removal, or mitigation and (2) in a time and manner the regulations set. The regulations must, however, require that certain records be maintained by the person cleaning up the property and give a schedule for keeping the records.

The bill also exempts from reporting under the bill's provisions releases that already must be reported to DEEP by vessel masters, people responsible for loading and unloading terminals, vehicle operators, and others, under an existing water pollution control law.

Commissioner-Discovered Releases (§ 18)

The bill authorizes the DEEP commissioner, if she finds that a person created or maintained a release to the land or waters of the state on or after the date regulations are adopted, to order the person to comply with the release program requirements. The order must provide (1) why it was issued and (2) a reasonable time to comply. If more than one person is listed on the order or is responsible for the violation, each person is jointly and severally liable.

Under the bill, the order must be served by (1) certified mail, return receipt requested or (2) a state marshal or indifferent person, who must serve a true copy of the order and file the original, with the endorsed return of service, with the commissioner. An order is issued either upon service or when mailed.

An order recipient has a right to a hearing, but if a hearing is not requested within 30 days after the order's issuance, the order is final. The bill requires that a person request a hearing to appeal an order.

The bill also requires the commissioner to have a certified copy of the final order filed on the land records in the municipality where the

release is located. When the order is complied with or revoked, she must similarly have a certificate filed showing this fact on the land records.

Remediation Standards (§ 19)

The bill requires the DEEP commissioner to do the following when establishing the standards that must be met when remediating releases:

1. consider DEEP's existing standards for remediating pollution at hazardous waste disposal sites and other properties that were subject to a spill;
2. give preference to permanent clean-up methods, if feasible;
3. provide flexibility, when appropriate, for LEPs to establish and implement risk-based alternative clean-up standards that consider site use, exposure assumptions, geologic and hydrogeologic conditions, and the physical and chemical properties of the release substance;
4. consider groundwater classifications and any other factor she deems appropriate; and
5. provide less stringent standards than what is needed for residential land use under certain conditions and specify the types of industrial or commercial land uses for which the property may be used after remediation.

The less stringent standards are for sites in areas with a GB or GC groundwater classification and historically used for industrial or commercial purposes. In addition, there must be (1) no commissioner order, consent order, or stipulated judgment concerning the release and (2) an EUR executed after remediation.

Release Database (§ 17)

Under the bill, DEEP must, within available resources, provide a publicly accessible online database for all submitted release reports

and verifications. The database must enable (1) electronic document submission and (2) document searching. If the database is not available when the regulations are adopted, the bill requires that DEEP have a progress update published in the Environmental Monitor.

Verification Audits (§§ 19 & 20)

Purpose. The bill requires the DEEP commissioner to audit enough verifications to ensure (1) protection of human health and the environment and (2) a high frequency of compliance with the regulations.

Audit Types. Under the bill, the adopted regulations must (1) use multiple auditing levels and (2) prioritize auditing higher risk releases that may harm human health or the environment. The auditing levels may include the following:

1. screening documents or forms submitted to DEEP;
2. a thorough evaluation of the verification that includes a property inspection or requesting additional information about a release's investigation or remediation; and
3. a targeted audit of specific issues identified in screening documents or forms, conditions of a particular release, or issues that present a higher risk to human health or the environment.

Number of Audits. The regulations must also authorize the commissioner to audit any verifications and set goals for how many audits she must conduct. The audit goals must be at least (1) 20% of verifications for releases from at least one tier and (2) for the other tiers, at a frequency based on how many verifications are submitted for releases in each tier.

Timeframes. The timeframes that the regulations must set out for beginning audits must be within one year after verification.

Reporting. Starting two years after the regulations' adoption, the commissioner must begin annually reporting to the governor and the Environment and Commerce committees on the verification audits. The bill requires the report, which also must be published on DEEP's website, to include the following information for the previous year:

1. number of reported releases;
2. number of submitted verifications and audits conducted;
3. audit results; and
4. any recommendations to improve the audits, such as staffing levels or audit adequacy.

Reopening a Remediation (§ 19)

Under the bill, the regulations must allow for a remediation to be reopened in the following six situations:

1. the DEEP commissioner has reason to believe that a verification was obtained due to materially inaccurate or erroneous information, or other misleading information or misrepresentations;
2. there is information that the commissioner determines indicates that remediation may have failed to prevent a substantial public health or environmental threat;
3. the commissioner determines that there is a violation of the bill's release-based remediation provisions;
4. the submitted verification was the result of a commissioner's order to remediate a release;
5. a verification that relies upon an ELUR was not recorded in the applicable municipal land records; and
6. required post-verification monitoring, or operations and maintenance, is not complete.

Violations & Penalties (§ 18)

Cease and Desist Order. Under the bill, the DEEP commissioner may, after an investigation but without a prior hearing, issue a written cease and desist order to a person who is improperly creating or maintaining a release. She may do so only if (1) the violation is substantial and continuous and (2) it would prejudice the interest of the state’s people to delay action.

The bill applies to these orders the same requirements for cease and desist orders under existing law, such as posting notice of the order, immediate compliance by the subject of the order, a hearing, and possible court action for noncompliance.

Attorney General Action. The bill allows the DEEP commissioner to ask the attorney general to bring an action in Hartford Superior Court against a violator of the bill’s release-based reporting and remediation requirements and the associated regulations. The action may be for an injunction against the action or remedial measures to prevent, control, or stop the violation. It must receive preference in trial order.

The bill also requires, as under existing law, the attorney general to bring an action in Hartford Superior Court to collect civil or criminal fines for violations, if asked to do so by the commissioner.

Civil Fines. Under the bill, a violator is liable for a civil penalty of up to \$25,000 per violation, as set by the court. Each day a violation continues is considered a separate offense, but the bill exempts days during which a hearing or appeal of an order is pending.

Criminal Penalties. The bill subjects a violator of the bill’s release requirements to the penalties associated with four existing criminal offenses, as shown in Table 1 below (CGS § 22a-438).

Table 1: Criminal Offenses and Penalties

Offense	Penalties, Fine & Imprisonment
Violation committed with criminal	First Conviction: up to \$25,000 per day of

negligence	violation, up to one year imprisonment, or both Subsequent conviction: up to \$50,000 per day of violation, up to two years imprisonment, or both
Violation committed knowingly	First conviction: up to \$50,000 per day of violation, up to three years imprisonment, or both Subsequent conviction: class C felony, up to \$100,000 per day of violation, from one to 10 years imprisonment, or both
Knowingly makes a false statement, representation, or certification, or falsifies or tampers with a monitoring device	Up to \$25,000 per violation, up to two years imprisonment, or both
Willfully or with criminal negligence discharges gasoline	First conviction: up to \$50,000 per day of violation, up to three years imprisonment, or both Subsequent conviction: class C felony, up to \$100,000 per day of violation, from one to 10 years imprisonment, or both

Administrative Fines. The bill also allows the DEEP commissioner to adopt a schedule of administrative fines for violations.

Liability Protections (§§ 21 & 22)

Prior Releases. If certain conditions are met, the bill exempts a real property owner from liability for costs or damages to anyone other than this or another state or the federal government for a release on or coming from the property that occurred or existed before the owner took title to it.

To be exempt, the owner must not (1) have created the release or be

responsible for creating it under any other state law and (2) be affiliated with anyone responsible for the release through a family, contractual, corporate, or financial relationship, other than by the way the owner received or financed the property. The release on the property must also be remediated to the appropriate standards, as shown by an LEP's verification that is either approved by the commissioner in writing or that the commissioner has decided not to audit. The bill provides that remediation to the appropriate standards meets any requirements for public notice or notice to nearby property owners.

Under the bill, an owner remains liable under the following situations:

1. the owner failed to appropriately file or comply with an EUR or comply with conditions of a commissioner-approved variance for the property or
2. the commissioner determines that the owner (a) provided information that the owner knew or had reason to know was false or misleading or (b) failed to abide by an existing covenant not to sue or liability protection provided under another state law (see "Existing Protections," below).

Existing Protections. The bill specifies that it does not affect:

1. covenants not to sue entered into by DEEP and property owners concerning contaminated properties (see BACKGROUND),
2. liability protection under (a) an existing law for owners of property with contamination that preceded their ownership or (b) any brownfields program, or
3. other liability limitations or protections provided for under state law.

In addition, the bill caps the amount of costs and damages that individuals who (1) are innocent landowners under existing law and

(2) meet the bill's requirements for liability protection, are liable for to the state at the amount under the existing law.

Other Provisions (§§ 22 & 23)

The bill provides that its provisions do not (1) affect the DEEP commissioner's authority under other statutes or regulations or (2) allow for using or applying the innocent landowner defense under an existing law that, under specified circumstances, limits the liability of someone with a property interest for a spill or discharge on the property.

§ 1 —TRANSFER OF ESTABLISHMENT

Under current law, "transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership. The definition excludes more than two dozen specified circumstances (e.g., a change in ownership approved by the Probate Court).

The bill eliminates or modifies several of these exemptions and creates one new one, as described below. It also specifies that the definition applies to transactions or proceedings occurring up to the adoption date of DEEP regulations implementing the release-based remediation program.

Foreclosures

By law, "transfer of establishment" excludes, among other things, foreclosure of a municipal tax lien. The bill specifies that the exclusion (1) applies only to tax lien foreclosures in accordance with a specific statute (CGS § 12-181) and (2) also applies to a transfer of title to a municipality by deed in lieu of foreclosure. Under the bill, it appears that the exclusion does not apply to summary tax lien foreclosures (CGS § 12-182).

Transfer of Ownership

Under current law, "transfer of establishment" excludes transfers of stock, securities, or other ownership interests representing less than 40% of the ownership of the entity owning or operating the

establishment. The bill increases this threshold to 50% or less.

Universal Waste

The bill eliminates an exemption for universal waste and replaces it by creating a similar exemption to the definition of “establishment” (see below).

Brownfields

Under current law, “transfer of establishment” has three separate exemptions concerning brownfields. The bill merges these three exemptions into one consolidated exemption and makes conforming changes.

Under the bill, the consolidated exemption includes acquiring, and all subsequent transfers of, an establishment (1) in the abandoned brownfield cleanup program or the brownfield remediation and revitalization program, if the establishment complies with any applicable statutory requirements, or (2) by a Connecticut brownfield land bank. For land banks, the establishment must be entered into specified remediation or liability relief programs, and the transferor must be in compliance with the applicable program at the time of transfer or have completed the program requirements.

Bankruptcy Court Transfers

Under current law, “transfer of establishment” excludes the transfer of title from a bankruptcy court or municipality to a nonprofit organization. The bill clarifies that the exclusion applies to transfers from any entity (including municipalities) to a nonprofit organization, as ordered or approved by a bankruptcy court.

Smart Growth Projects

The bill eliminates an obsolete exemption in connection with properties acquired to carry out certain “smart growth” projects. By law, the economic and community development commissioner had to certify up to three of these projects to the governor by February 1, 2013.

LLC Name Changes

The bill excludes from “transfer of establishment” the change of an LLC’s name by filing an amendment to the company’s certificate of organization.

§§ 1 & 2 — DEFINITION OF ESTABLISHMENT

Under current law, “establishment” generally means real property on which, or a business operation from which, (1) more than 100 kilograms (kg.) (about 220 pounds) of hazardous waste was generated or processed in any one month on or after November 19, 1980; or (2) a dry cleaning, furniture stripping, or vehicle body repair business operated.

Current law establishes several exceptions to the above definition (e.g., waste generated from removing or abating building materials). The bill adds an exception for universal waste, which replaces a similar exemption in current law from the definition of “transfer of establishment.”

The bill also establishes specific requirements for determining what parts of certain multi-tenant properties, or properties occupied by both the owner and a tenant, are considered establishments. Additionally, it specifies certain conditions under which parcels are no longer considered to be establishments.

Universal Waste

Current law excludes universal waste from the definition of “transfer of establishment.” The bill eliminates this exclusion and replaces it by creating a similar exception to the definition of “establishment.” The primary difference is that under current law, a parcel qualifying for the universal waste exception is still an establishment, but the conveyance of it does not need to comply with the Transfer Act. Under the bill, such a parcel is not an establishment to begin with.

As under current law, the universal waste exemption, with certain exceptions, applies to any real property or business operation that qualifies as an establishment solely from (1) generating more than 100

kg. of universal waste in a calendar month; (2) storing, handling, or transporting universal waste generated at a different location; or (3) activities undertaken at a universal waste transfer facility. As under current law, this exemption does not apply if (1) the property or business otherwise qualifies as an establishment; (2) there has been universal waste contamination at or from the property or business; or (3) the waste was not properly recycled, treated, or disposed of at the property or business.

As under current law, “universal waste” includes batteries, pesticides, thermostats, lamps, and used electronics regulated as a universal waste under DEEP regulations.

Multi-Tenant and Certain Owner-Occupied Properties

Under the bill, if a property or business operation is an establishment, then for purposes of filing Forms I-IV after October 1, 2020, the establishment includes the entire parcel or parcels on which the establishment is located, except as described below.

The bill creates an exception for determining what parts of certain multi-tenant properties, or properties occupied by both the owner and a tenant, are considered establishments. It instead subjects these properties to the specific requirements shown in Table 2 below.

Table 2: Multi-Tenant and Certain Owner-Occupied Properties

Property Description	Part Deemed an Establishment Under the Bill
Leased or previously leased to two or more tenants	Area on which the business operation is or was located, including (1) the entire portion leased to the business operation and (2) any other area of the property used or occupied by the business operation
Occupied or previously occupied simultaneously by the owner and a	Same as above

tenant	
Commercial or industrial unit in a common interest community	Unit, limited common elements under exclusive use of the unit owner on which the establishment is or was operated, and portion of the common area used or occupied by the unit owner

The bill also specifies that for business operations that are establishments, the establishment includes the (1) real property on which the business operation is or was located and (2) entire portion of the property the business used or occupied.

Parcels no Longer Considered Establishments

Under current law, the transfer of an establishment does not need to comply with the Transfer Act if certain conditions are met. Generally, these are (1) completing any necessary remediation, (2) DEEP approving the remediation or an LEP verifying it, and (3) no subsequent activities occurring that meet the criteria for being deemed an “establishment.”

The bill instead deems these properties to no longer be establishments if, in addition to the above requirements, (1) the deadline for DEEP to audit an LEP verification passes without the commissioner requiring any further action or (2) DEEP issues a no-audit letter or audit closure letter.

§§ 1-5 & 9 — COMMON INTEREST COMMUNITIES

Conveyance of Residential Unit (§§ 1 & 3)

Current law excludes the conveyance of a unit in a residential common interest community from the definition of “transfer of establishment” if certain conditions are met (e.g., the declarant (i.e., developer) is a certifying party for purposes of remediating an establishment).

The bill makes the exclusion unconditional. Instead, the bill requires the declarant, or the declarant’s immediate predecessor in title, to take

the following actions before conveying a unit in a residential common interest community that is an establishment:

1. become a certifying party for purposes of investigating and remediating the parcel on which the community is located,
2. provide the financial assurance described below, and
3. record notice in the municipal land records that the parcel is being investigated and remediated according to the Transfer Act's requirements.

The notice must identify the volume and page number of any recorded EUR. If the declarant does not record this notice, then the bill allows the DEEP commissioner to record this notice or require an individual or entity authorized to act on behalf of the community to do so. Additionally, if the declarant or the declarant's immediate predecessor in title does not (1) become a certifying party for investigating and remediating the parcel on which the common interest community is located or (2) provide the financial assurance described below, then an individual or entity authorized to act on behalf of the community must provide written notice of the failure to the DEEP commissioner before conveying any unit in the community.

Under the bill, the financial assurance must identify the DEEP commissioner as the beneficiary and be in an amount and form approved by the commissioner and equal to the cost of investigating and remediating the subject property to the Transfer Act's standards. The assurance must be used solely at the affected community to investigate and remediate the property for the unit owners' benefit. Current law contains similar financial assurance requirements.

Enforcement (§§ 2 & 9)

Existing law allows the DEEP commissioner to issue an order to, or request that the attorney general bring an action against, any person who violates the Transfer Act's provisions. It also subjects violators to a fine or civil penalty of up to \$25,000 per offense (CGS § 22a-438).

The bill explicitly extends these enforcement powers to the above

provisions on residential unit conveyances.

Public Offering Statements (§§ 3 & 5)

Under current law, each time a seller conveys to a purchaser a unit in a common interest community that is an establishment, the seller must provide notice to the purchaser summarizing (1) the status of the community's environmental condition, (2) any investigation or remediation activities, and (3) any resulting EURs.

The bill instead requires that this notice be included in the public offering statement for residential common interest communities determined to be establishments as defined in the Transfer Act. (By law, a declarant must prepare a public offering statement before offering the public any interest in a unit.)

Under the bill, the determination that the community is an establishment must be based solely on actual knowledge, a notice on the land records, or an inquiry to DEEP if there is no notice. The inquiry must ask whether a Form I, II, II, or IV for the community was submitted to DEEP.

Notice to Purchaser (§ 4)

Under existing law, before conveying or transferring the right to possess a unit in a common interest community, a unit owner generally must provide a purchaser or purchaser's attorney with a certificate containing various statements. The bill additionally requires that the statements include a (1) copy of any land records notice (as described above) and (2) statement with the volume and page number from the applicable municipal land records of any EUR encumbering the parcel or any portion of the parcel on which the common interest community is located.

§§ 1-2 & 10-14 — OTHER TRANSFER ACT CHANGES

Environmental Use Restrictions (§§ 1-2 & 10-14)

Under DEEP regulations, an ELUR is an easement granted to DEEP by the property owner that is recorded on the municipal land records (Conn. Agency Regs. § 22a-133q-1). ELURs are legal instruments used

to prohibit activities that could increase people's risk of exposure to contamination.

With respect to remediation under the Transfer Act, DEEP's RSRs may require an ELUR for portions of a property that cannot be fully remediated (Conn. Agencies Regs. §§ 22a-133k-1 to -3). Current law has several references to ELURs (e.g., requiring an LEP to verify that an ELUR was recorded on the land records).

The bill replaces several of these ELUR references with references to EURs. By law, EURs include (1) ELURs and (2) notices of activity and use limitations (NAULs) (CGS § 22a-133n). The changes appear to conform to RSR and EUR regulation revisions proposed by DEEP, which permit the use of NAULs as an alternative to ELURs in certain circumstances. The proposed revisions are currently before the legislature's Regulation Review Committee.

The primary difference between ELURs and NAULs is that NAULs do not require a transfer of an interest in land to the state.

Form IV (§ 1)

Under current law, a person signing a Form IV must agree to conduct post-remediation monitoring or natural attenuation monitoring in accordance with DEEP's RSRs. The bill conforms the law to the RSRs by requiring the person to instead conduct groundwater monitoring. It makes conforming changes to the Form IV verification, which is submitted by LEPs and verifies that the appropriate monitoring is complete.

The bill also requires LEPs to verify the recording of an EUR, rather than an ELUR (see above).

BACKGROUND

Brownfields Working Group

By law, the working group examines the remediation and development of state brownfields, including permitting and liability issues, and annually reviews the progress of the Special Contaminated Property Remediation and Insurance Fund (CGS § 32-770).

Covenant Not to Sue

A covenant not to sue is a form of liability protection that protects a holder from liability related to pollution that was attributed to the property prior to the covenant's effective date. It gives the property owner assurance that once a site is remediated to current standards, DEEP will not require additional cleanup. However, a covenant does not protect against federal liability.

LEPs

DEEP licenses environmental professionals, who are people qualified to engage in activities and client services associated with the investigation and remediation of pollution and sources of pollution (CGS § 22a-133v).