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Lanoue, Reyes, Rochelle,
Simmons, Wood, Yaccarino

SENATOR HARTLEY (15TH): This public hearing, joint public hearing between the Commerce and Environment Committee. I'd first like to ask if my co-chairs and co-chairs of Environment have any opening comments.

SENATOR COHEN (12TH): Just a brief comment that this has been a long time coming, even before my tenure, and I certainly know how hard Senator Hartley, in particular, has worked on reforming -- or making some transformations on the Transfer Act, and we made some progress last year, some really solid progress, and the working group continued. So, I'm excited about this Public Hearing today because it's just evidence of more progress on something that desperately needed some fixes from both an environmental perspective and a commerce perspective. I'm so glad that we could work together in a largely bipartisan way across departments and come together to make some good things happen for Connecticut. So, again, excited to hear what everybody has to say today and look forward to, again, making some progress going forward.

SENATOR HARTLEY (15TH): Thank you, Senator Cohen. Representative Simmons.

REP. SIMMONS (144TH): Thank you, Madam Chair. And I just want to echo Senator Cohen's comments and want to especially thank the leadership of Senator Hartley on this, and Senator Cohen and for the many months of work that all the tremendous advocates we have in the room today have put into this as well as our agency leads, both of our Commissioners -- Commissioner Lehman and Commissioner Dykes and your teams. We're really looking forward to your testimony today. And I's also especially excited. I think this is the first official Joint Commerce Environment Hearing we've done, and I'm really excited to be talking about both a pro-business, pro-environment initiative and looking forward to hearing the testimony and feedback from both of our committees on this. Thank you, Madam Chair.

SENATOR HARTLEY (15TH): Thank you, Representative Simmons. And so, if I just might, lest we don't have time as this all unfolds, to say to all my colleagues here, thank you for being here and to all of the leadership on the Environment and the Commerce Committee, were it not for the willingness to dedicate the time that this subject has absorbed, we would not be at this point. And, so, some might say it was long summer. I thought it was productive, and I am particularly grateful to the Governor who has very much paid attention to this pivotal issue, and to the commissioners -- Commissioner Dyke and Commissioner Lehman -- who have brought to the table their teams ready to sit down and work with each other.

So, in many respects, this is kind of a milestone event, the working group was as is what we're going to be talking about today. I will just say, though, that the jury is still out, and there is much more

work to be done, but I do think that the common ground and the common denominator is we recognize the importance and that there is a place where we can find equilibrium in supporting and protecting human health and the environment and growing the state's economy. So, with that, I just want to welcome our public officials -- that is Commissioner Dykes and Commissioner Lehman. Thank you for being here, and it's all yours, folks.

COMMISSIONER LEHMAN: Thank you very much, Co-Chairs of both Commerce and the Environment Committee. It is a pleasure for Commissioner Dykes and me to be here. I am going to make a few opening remarks to set the table a bit and then pass it over to Commissioner Dykes who is going to take you through what I think will be a very informative PowerPoint. Let me first say I've been in my seat for around 12 months, and there has been considerable time and I will underscore the point that Senator Cohen and Representative Simmons made. Senator Hartley, you're the leadership. Without your leadership, we wouldn't be here today, and, candidly, we would not have made the progress that we need to make in the state to encourage investment and job creation.

But on the Transfer Act, in particular, the Transfer Act Working Group, where a lot of hard, great work was done as Senator Cohen mentioned, a lot of progress was made last legislative session, more progress was made over the summer and up until this legislative session, and I think we're at a point where there are significant amendments and enhancements to the Transfer Act. I think what we realized as we spent a lot of time, though, thinking about the Transfer Act and another turn of amendments, and as Commissioner Dykes will tell you,

this has been done several times since the Transfer Act's been in place since the mid-80s -- what we realized very quickly is that the Transfer Act is not the right regulatory framework either from an environmental perspective or from the jobs and investment perspective.

You know, from my seat, in particular, focused on the State's economy, I'm always focused on what policy, what tax, what do we have that's unique relative to the other 49 states that are out there, and if we have a unique policy, in my mind, there'd better be a very good reason for it as it relates to the economy or what we're trying to incentivize. As many of the folks on this committee know, we're one of only two states that has the Transfer Act, New Jersey being the other one. So, my antenna goes up right away when I hear that, and I want to understand why is that, why is the Transfer Act the best and we're not doing what the other states, the majority of other states, are doing as it relates to a regulatory framework. And the more we peel back the onion, trying to figure out, "Is this the right framework?" we determined it's not, again, from an environmental perspective and from a business perspective.

So, we're here today to advocate for two things: One, reforming the Transfer Act which we think is an important next step, but where we have the most conviction and what we feel most passionately about is moving towards a release-based environmental framework here to clean up properties in the State of Connecticut, similar to many of our peers, most notably Massachusetts, who I think is a guidepost for us in many ways. I think the endgame for us to encourage investment, to reduce uncertainty, to

provide regulatory consistency, is this release-based framework because the Transfer Act -- and I'm trying to be concise, but I'm happy to answer any questions -- it increases consistency, it dissuades investment, and it dissuades job creation. We've heard that consistently from people whether in the real estate industry or whether they're just broadly job creators around the state. It's a real issue, and it's cost the state, candidly, thousands of jobs and economic output over the preceding decade and beyond. So with that, I'll turn it over to Commissioner Dykes.

COMMISSIONER DYKES: Great. Thank you so much, Commissioner Lehman, and I know -- this has been a pleasure to work with both committees on these efforts, especially on the Transfer Act Working Group, and now on this effort with respect to moving to a release-based framework. I want to ask Graham Stevens who's our Bureau Chief, who's been leading many of these efforts for DEEP, to join us here for the illustrious task of advancing slides but also helping with questions. But this is a presentation that we wanted to put together just to provide kind of a common level of understanding and support of how we've been approaching this opportunity within the administration, and we've shared some of this with different stakeholders and are pleased for the opportunity to walk through this with the committee.

So, the first, you know, I think as Steve had mentioned, we really do feel that the Transfer Act, we've gone about as far as we can go in trying to reform it in a way that can achieve the positive outcomes we were looking for, for spurring economic development, supporting Connecticut's economic competitiveness, and achieving good outcomes for the

environment. And, you know, as we've had the chance to dialogue together and talk with the Governor and his team about this opportunity, you know, really I can say from DEEP's perspective, we want to have a framework that is spurring investment and ensuring that the private market is incented to clean sites up, and what we see with the Transfer Act is we have a framework that is trapping properties into a cleanup program that they're challenged to get out of and that it's not really spurring investment in this cleanup.

So, of the approximately 4200 properties that entered the Transfer Act since it was first established in 1985, only about a quarter of those properties have completed site cleanups, and that, I think, speaks volumes. Even though this General Assembly has worked to improve the program, the Act has been amended over 20 times since it was first established. I think we see with the changes that are being advanced to improve the Transfer Act this year, you know, even more robust improvements and efforts to streamline, but I think the framework itself is just fundamentally flawed, and to get to the outcome that we really need for the state, we need something that works better.

So, what are some of those challenges that we see with the Transfer Act? First, it imposes an investigation and cleanup obligation only on certain properties which are called establishments. You know, I think as I understand it, Connecticut was a real first mover. We've been a great leader in environmental protection here in the state, and in the early '80s, Connecticut was a pioneer in adopting a regulatory framework to address concerns from the private market around having more

transparency on the oversight of cleanups of contamination. But what Connecticut adopted as that first mover was something that was focusing the regulatory oversight on certain types of properties as opposed to focusing it on certain types of contamination. And so, as a result, because that's the framework, the fundamental challenge that we have is that it defines and limits that oversight to those certain types of properties that are defined as establishments.

Meanwhile, that means that many other properties are exempted from oversight, and, so, that creates a fundamental inequity in how different businesses and different property owners are treated, and it compromises environmental outcomes. As Commissioner Lehman mentioned, Connecticut is -- our uniqueness sets us back from an economic competitiveness standpoint in that we are only one of two states that use the Transfer Act framework, while 48 other states, when they developed their regulatory frameworks, they adopted a release-based system. Connecticut, of course, at DEEP we are really focused on this opportunity to move forward with this transformation to a release-based system for many reasons, but one key one that I'll mention is that doing this change now aligns with some of the turnover and the ways that we're modernizing our department and our workforce in light of the expected retirements of staff and new staff coming in around 2022.

So, we believe that this is the opportunity that we have here is to really refocus, not on just the regulatory framework but where we are aligning -- or where we are focusing DEEP's staffing resources and our regulatory oversight to not be focused on

certain types of properties or establishments in a sort of guilty-until-proven-innocent kind of approach but really aligning our staffing and oversight on the highest-risk contamination that's really hurting our human health and the environment.

But I do want to take a moment just to share that the administration, DEEP, and DECD, we are aligned in supporting all of the changes that are being advanced by the committee to improve the Transfer Act, and, again, we were pleased to be part of those Working Group meetings over the last many months. We are grateful to the committee leadership and especially Senator Hartley, that we are here today to be able to speak positively about these changes because they've been moved forward on a consensus basis. And, so, we know that there were many important stakeholders that were a part of that discussion, and we know that these consensus items give us the opportunity to address many, longstanding concerns and build upon some of the significant changes that were enacted last session. And these changes will be able to go in place immediately so that businesses can get the advantage of those improvements to the Transfer Act immediately upon passage of the bill. So, I think that's just really important point that we are collectively supportive from the administration of moving those changes to the Transfer Act forward.

And I can't escape taking the opportunity to also talk about what we are doing within DEEP, within our executive authority, to support this general emphasis on streamlining the Transfer Act, and particularly through our 20BY20 effort, we've been focused on reducing time for the Transfer Act audits to where we're completing 94 percent of those within

90 days. So, again, it's something that is very important to Governor Lamont, very important to us at DEEP that we're supporting this effort not just through this legislation but also how we're doing business every day at our agency.

Now, the opportunity that we're excited to testify in support of today is a second piece of the legislation on the bills that are raised today which is transitioning to a release-based system. And so, just a little bit about what's animating our interest in this. We believe that by moving to a release-based model Connecticut will be able to achieve better outcomes for economic development, for environmental quality, and also for modernizing our regulatory framework. So, again, by contrast to the Transfer Act, we believe that having our regulatory framework be consistent with 48 other state will help deals get done faster and will avoid some of the compliance costs that are slowing down transactions, and it will remove the inequities in the treatment of properties that are considered establishments versus those properties that are not establishments under the current framework.

We also are excited about the opportunity to move to release-based because we think it will better ensure cleanup of the highest-risk contamination. Again, when we're redefining the regulatory oversight, not just about, you know, whether you were a dry cleaner or not, but about what type of contamination you've discovered, then we are much better aligning both our regulatory resources as well as the focus of the private market on cleaning up the highest-risk contamination. And, of course, we also want to make sure that as part of this release-based system that

these cleanups are happening within a specified time.

I think a lot of -- you know, we've had the opportunity to have some discussion just over the last few weeks as this topic has come up about moving to release-based about the feasibility of making this change and switching to release-based from the Transfer Act and how this transition would occur. Of course, we are not starting from scratch here. We have the benefit of both a strong regulatory framework and regulatory partners with respect to our licensed environmental professional community here in the state that we can build on. We also have the examples of neighboring states who have a robust and successful release-based programs, and here I would specifically point to Massachusetts. Many of the licensed environmental professionals who are helping implement the Transfer Act today, assisting businesses in Connecticut today on cleanups, are also participating in and familiar with the Massachusetts program, and we've really benefitted from thinking about how we can build a release-based, statutory framework for Connecticut that leverages the components of our existing statutes but also is able to import some of those familiar elements of the Massachusetts program. I think that this positions us really well not to be starting from scratch but to be able to make this transition in an orderly and effective way that's familiar to stakeholders.

So, again, one of the major benefits that we see of replacing the Transfer Act with a release-based system is that it will enable the private market to drive investigations. So, again, the licensed environmental professionals have been supporting the

implementation of the Transfer Act, and we see a real opportunity in designing a release-based system that has multiple tiers to it that will calibrate the degree of DEEP's oversight to focus on the highest tier, meaning those releases that have the highest risk to human health and the environment, but providing a clear framework through our remediation standard regulations, a consistent framework for what cleanup standards should apply for all cleanups and then really being able to leverage the work of the licensed environmental professional, or LEPs, to assist private parties to meet those standards without having to have DEEP oversight of those lower-risk releases. So, I think this is a real great efficiency in modernizing the way that we would implement this program.

I'll just switch here to the circles here. This has really helped me in terms of thinking about what's different between the Transfer Act and moving to a release-based system. If you look at the blobs on your left here, this sort of represents if you think about the green circle being the overall universe of sight or contamination in the state, of course, the regulatory framework that we have currently under the Transfer Act coupled with some of our other programs that we implement -- your voluntary cleanup programs as well as our brownfields programs and the even more limited universe of sight where DEEP undertakes an enforcement action. You know, there are focused on just a small subset or just a subset of properties that are out there, and, so, what's happening in the rest of that circle -- the white part -- we really have no idea about the levels of contamination or what standards of cleanup are occurring.

There is no real transparency for affected communities for example, to understand how those properties' contamination may be cleaned up because the Transfer Act, again, focuses our regulatory oversight just on a certain subset of types of properties or establishments. Again, there may be high-risk contamination that's occurring on non-establishment sites that we really have no visibility into. So, what we see as the benefits of moving to the release-based system which is where the pie chart to the right, is that now we have a level playing field. All sites are covered. The remediation standard regulations would establish standards for cleanup that are applicable to all sites, but the scale and the scope of the intensity of the oversight would just be limited to those sites in that sort of highest tier that have the highest-risk contamination. And I should also clarify, the lines or the divisions of this pie chart are not to any particular scale. So, it's really just our PowerPoint technique. So, again, these wedges would be aligned to the definition and how we characterized those different tiers of cleanup requirement.

Just quickly because I think that the sequence in the process here is also very important. As we would envision a road map for progress in making this transition, it looks this way to use from the administration perspective. Really seizing this opportunity in the legislative session in 2020 to enact a significant statutory framework that sets us on this path. First and foremost, implementing the consensus recommendations from the Transfer Act Working Group as task number one. And then two, creating the authorization for the move to a

release-based program. We would support this legislation having a target date for sunseting the Transfer Act of July 1, 2022. We think that that is a date that is feasible and also represents the urgent opportunity to make the shift and to make this change.

Importantly, I want to underscore around this date for the sunset of the Transfer Act, an important change that we would -- that DEEP and DECD would recommend to the committees' consideration, which is to modify the bills that have been raised to -- well currently they say that the Transfer Act would end in July 2022 whether or not the regulations implementing a release-based framework have been adopted and approved by the Regulations Review Committee, and we've heard from stakeholders a lot of consternation about what chaos might ensue in the event that regs are not adopted by 2022. So, we, in being sensitive to those concerned, we think it makes great sense to submit to the Committee the recommendation to amend that section, revise it to say that the Transfer Act would sunset on July 1, 2022, or on the date that regs implementing a release-based framework are adopted, whichever is later. I know that July 2022 is a date that matters a lot to our boss because he wants to see us move quickly and have a target that we're shooting for, but we also want to make sure that we don't have any unintended consequences or a bumpy transition if, in fact, regs are not approved by that date.

We would, of course, very strongly recommend that the legislature move forward with adopting authorization for DEEP to develop regulations to implement a release-based program, and we feel very strongly that we need to have that authorization in

statute and need it this legislative session in order to move forward in an efficient manner. The statutory framework should -- you know, we see opportunities to fill in the blanks, if you will, from what is currently before the legislature, we think that there are ways to further clarify that statutory authorization in time for getting this bill voted on and approved this legislative session. We would see the key components of that framework to have the affirmative obligation to report and clean up discovered releases, provide for the assignment of liability, and provide for the cleanup of reported new spills and discovered historic releases. I just want to point out this is one of the key changes from Transfer Act to the release-based system, is that while under the circles that we showed, the regulatory oversight and framework would now apply to all properties, not just establishments, what's different is under the Transfer Act if you're a property that is covered by the Transfer Act, you have an obligation to investigate and go looking for contamination. Now with a release-based framework, that investigation requirement would not be in play. The requirement would be to remediate discovered releases to the environment. And so we think that that strikes a balance and aligns with how I think the private market is assessing these risks and ensures that we get that benefit of a more equitable regulatory framework that is also not forcing properties to go out on a seemingly exhaustive search for contamination and cleanup.

The regulatory reform that we would see working in complement with this statutory authorization would see DEEP continuing our progress to adopt the Wave 2

remediation standard regulations or RSRs and environmental use restrictions or EURs, this year. That's already currently on our work plan to complete those. We are also working to adopt and put out for public comment the spill reporting regulations for future releases, which we know have been long awaited, and our team is making great progress in moving those forward, and we're really excited to have a collaborative process in seeking public input on those. As well as then DEEP would be moving forward a regulatory package of spill reporting regulations for historical releases for 2021 timeframe. We would be creating tiered cleanup regulations, again, once we have anticipated authorization to develop those, and that would enable us to move forward and further refine the tiers of risk that would determine what the cleanup requirements would be and then expanding the use of institutional controls.

And finally I just want to underscore process is really critical. We've had -- since we had the opportunity to meet with the chairs of the committee just a couple of weeks ago to talk about this opportunity to move to release-based, we have also been very grateful to many, many stakeholders who have joined us in meetings to really roll up their sleeves and talk about how we could fill in the blanks, if you will, and further clarify the statutory framework that could support a move to release-based framework. We've had about five meetings just in the last week and a half. They've been really, in my view, very productive, and we've had a lot of dialogue. We've been eager to listen and hear some of the concerns and the issue spotting especially from those practitioners who are out

there advising clients on how to implement these programs every day.

We really are excited about the opportunity to implement -- take a really collaborative approach to developing the regulations that would follow from adoption of a statutory framework. We are grateful for, you know, the collaboration and the opportunities for further collaboration that we have with the licensed environmental professionals who we would be counting on to be able to implement this program effectively, but at the highest level, I think, our departments are really aligned on having a collaborative approach because ultimately, you know, we see this as just a generational opportunity. I've been -- I think, you know, sitting here before the Committee today and talking about this, you know, I have to reflect on some of the comments that people had made, you know, to me just over the last few weeks, and we've talked about it. And I think I've heard a lot of folks, and hopefully you'll be hearing this in testimony today, as well, saying, you know, we know that the Transfer Act has challenged. We know that a release-based framework makes a lot of sense. I think that the concerns that people have been having are around, you know, is it really feasible to lift this and get this done? And I have to ask the question is it feasible for us to not do this and expect that we can continue to make progress in achieving our collective vision of a safer environment, healthy communities, and having a thriving economy that's really catalyzing and incenting our businesses to clean up sites and make Connecticut a really positive place to develop and expand their businesses.

So, that's why we're here. That's why, you know, the Governor has told -- we're pushing things aside on the calendar to sit down with folks and do whatever work we can, whatever it takes, to help seize this opportunity this year. We think it is doable. Some have said, you know, Commissioner Dykes, well what about just doing a study this year, you know, get authorization for a study bill and then come back and implement a release-based framework, you know, in statute next year. And I think that, you know, we see that, first, I don't think that's necessary. I think just the progress that we've made in the last two or three weeks and sitting down with stakeholders has reinforced my confidence that we can fill in the blanks and have a statutory framework that works this session. And, secondly, I don't think that we -- I think we will really miss our opportunity. DEEP can't really start writing regulations for a release-based framework on any expectation or guess as to what statutory authorization the General Assembly choose to support, you know, next year. So, we really lose a year, in my view, a year that we don't have, in order to make this transition, and I think that we've seen -- I look back. Commissioners past at DEEP have started processes on this. We had an extensive stakeholder process in 2011/13 to look at many of these issues, but it didn't really advance. I can tell you that, you know, this is my entering year two. You know, we're here. We have the time in the Governor's first term here to really deliver this, and we wouldn't be asking the Committee to move this forward if we weren't fully committed to put the time and the resources and the emphasis so that we can hopefully not just get a bill through this session but that we can deliver regs to

Regulations Review Committee that have the benefit of all the stakeholder input and collaboration by July 1, 2022. That's our goal, and I'm just thrilled to have the opportunity to speak, I apologize, at great length, about this opportunity. Happy to take any questions you may have.

COMMISSIONER LEHMAN: Senator, if it's all right, can I just make one more comment before we go to the question period? I just want to underscore this point. For my state, this is one of the most significant things we can do to improve the business and investment climate in the state is amend and then ultimately get rid of the Transfer Act. I just want to be very clear about that with this group. You know, and really what we're doing at its heart here is we're providing certainty where there was a lot of uncertainty, and that's not just to businesses and landowners, property owners, but it's also to environmentalists. The ambiguity that is in the Transfer Act in disproving a negative is terrible. We need to get away from that, and we need to get away from that very, very quickly.

Also, as Commissioner Dykes mentioned, we're advocating using private resources, LEPs, where possible, and I think that is smart and it's efficient given some of the head counts and strengths we have, and, again, we're looking to best practices away from us from a benchmarking perspective. So, the last thing I'll say is -- and I'm sure we'll talk more about this today, but a lot of the concerns that I have heard about this, and I have significant conviction that this is where we need to go, they relate to this uncertainty around the regulations, and there is going to be some uncertainty. We're endeavoring to provide as much

clarity and certainty as possible. We understand the importance of that, but there is going to be some uncertainty here as we work through the regulations in this new framework.

SENATOR HARTLEY (15TH): Thank you, Commissioner, and thanks for this simplification, quite frankly, of a very deep subject. So, if I might just start off to try to keep this in an orderly fashion. So, we have before us the results of this Working Group and the consensus agreement, and I'm hoping that everybody has gotten a copy of the Working Group's report. If not, we will be sure to get that to you; just let us know.

So, I will just ask you, on that document, okay, there are a few in the report, talks about some areas that I think kind of continued after the actual report went to print. One of them was the multitenant property discussion. And, so, in the report was it was saying that did not reach consensus on that agreement. Could you give us the update on that, Commissioner?

COMMISSIONER DYKES: Sure. Well, we're pleased to say that the administration is supportive of making a change to address the multitenant property issue. I know that given that that is a little bit late-breaking after the last Working Group discussion, we are supportive of that moving forward. I think we've had some dialogue with some back-and-forth on some of the technical aspects of how that is written with some of the Transfer Act Working Group members, and we're feeling positive that we can find language that achieves the objective.

SENATOR HARTLEY (15TH): So, but, do I -- do we have that language?

GRAHAM STEVENS: Hello, I'm Graham Stevens. I'm the Bureau Chief of Water Protection and Land Reuse, member of the Transfer Act Working Group. Thank you all for your leadership on that Working Group. We had a lot of good dialogue. We did talk about the multitenant piece as well as the industrial and commercial condo exemption. We didn't get to final resolution; so, DEEP has, since we did decide to move forward with that change -- we did draw up language for consideration. I know that the co-chair of the Establishment, you know, Subcommittee of the Transfer Act Working Group also is working on language. So, I think -- the plan is after this hearing is to try to get together, sit down, and see if we can look at those two approaches and come up with a consensus approach that can be provided very shortly to the Committees for consideration.

SENATOR HARTLEY (15TH): And, Graham, I just wanted to take a minute to, you know, tip my hat to you and to all of your colleagues and, you know, coming back off of paternity leave and getting, once again, thrown into deep end of the pool. You did well, and thank you very much.

GRAHAM STEVENS: Thank you, Senator.

SENATOR HARTLEY (15TH): So, maybe at some point, the staff can move the slide projector out of the way so that folks who are sitting there are not having to look into that. Okay, so on that note, then, you know, we've got to put some timeframes on this because, you know, this is one of -- I have to tell you, you know, I -- one of the things that keeps nagging me and that is, you know, having lived through last year and, you know, the give and take which is all very important, but how long it took us

to get to some of those changes, you know, if that turns out to be how we continue to go, we're not going to be making these deadlines. So, on this particular issue, I think we've got to have closure on it. So, today's, you know, Thursday. The beginning of the week because we've been going back and forth, going back and forth, and, you know, and now we've got to move on. So, I'm just trying to make sure that the Working Group's report that we have in front of us is, in fact, the complete compilation of everything that we have worked on and come to agreement on because, once again, to your point, Madam Commissioner, you know, we're shooting for this 2022 date, and we now recognize that if we don't get there, it's going -- the language will reflect until such time that we have adopted the regulations, which means we're working under this particular set of guidelines, and we want them to be as current and workable as possible, and I don't want to leave anything, you know, by the side on this particular first iteration of our work.

GRAHAM STEVENS: And, Senator, I'd be happy to respond to that. I think DEEP has analyzed that the two raised bills and with respect to the Transfer Act Working Group changes, there're a few additional items which we believed were consensus items, which are progress with respect to how the Transfer Act would be implemented that we have drafted up and are willing to offer. I think everyone would agree those are things that we previously had on our consensus list. And as far as the deadline with respect to next week, hopefully, we can get consensus by that timeframe with respect to the multitenant.

COMMISSIONER DYKES: If I could share that, I think that from the highest level to in our discussion with the Governor about this, I think, you know, he is viewing success and has directed us that success means moving forward the release-based authorization to his desk and all of the Transfer Act Working Group consensus changes including the multitenant property change. So, we're really working under that direction. I think we view these as sort of technical changes, but we will certainly move this expeditiously and appreciate the work of the other Transfer Act Working Group members to help us bring that language to closure.

SENATOR HARTLEY (15TH): Thank you very much. So, yeah, we've got some -- we've probably got some smaller items, but multitenant was the big one, I think. Am I missing anything else? There were probably a few other things we were going back and forth. And as we hear testimony from, you know, the members of the Working Group, too, I'm sure they'll chime in on that. Okay, there're probably going to be a lot of questions, and Chair of the Environment Committee, Senator Cohen.

SENATOR COHEN (12TH): Thank you. Thank you, Commissioners again, and Graham for being here and so thoroughly presenting to us. I do have a few questions. In looking through the testimonies of various individuals and organizations, I see that there is some concern about transparency and wanting to make sure that there is some sort of reporting system for all spills. Commissioner, you mentioned spill reporting regulations. Would these be a part of that sort of system going forward, and what might that look like, and when might that be implemented?

COMMISSIONER DYKES: So, we are working on the spill reporting regs which we have already had authorization for, for new releases, and, as I mentioned, I know I have a briefing scheduled from the team on that for me next week, and, so, we're really making a lot of progress to move that package forward, and that would be an important component that would not only support the existing Transfer Act -- or existing regulatory framework but also be adapted to a release-based system going forward.

And I think to the point of transparency, just more generally, you know, we see a great opportunity where we have oversight over just the establishment properties today on the Transfer Act. Moving to release-based system with clear reporting guidelines provides for the opportunity for transparency across all, you know, sites and especially around the highest-risk contaminations. So, this is a major improvement, I think, to the information that's available and will be available around contamination in the state.

SENATOR COHEN (12TH): So, Commissioner, would you envision then that all spills would be reported, you know, on a website, on the DEEP website, at some point.

GRAHAM STEVENS: So, with respect to the spills, the way that we talk about this, and sometimes our language is a little bit different, but there's new releases and then there's the discovery of historical releases. So, the regulation the Commissioner is speaking to is for new releases, so something that happens tomorrow, a drum falls over, a tanker truck rolls over on the highway and has a release of, you know, oil or gasoline. So, that

would be something that we're moving forward in a regulatory package soon, and like the Commissioner said, the briefing is set up for her for next week to go through the concepts of how those regulations would be laid out, and the transparency idea is to have those releases that are reported, the current spills, and when we develop the new regulations for historical release reporting, having that information be available on the Web.

And the one other thing I would add is with respect to those both the current spill reporting requirements and the new discovery of historical release requirements, there are going to be certain situations where, you know, there's no report required. So, there are some areas where there wouldn't be complete transparency because one of the ideas is to incentivize quick action. So, if you have a manufacturer who has a spill inside their shop, it's not getting to the environment. They quickly clean it up. It's not a large amount of a spill, just compound. It's not something that's incredibly toxic to the employees or the environment. Then that is something that wouldn't necessarily be reported. And that's what businesses are typically doing today anyway. So, we don't necessarily want to encourage more reporting; we just want to encourage the correct reporting.

SENATOR COHEN (12TH): Thank you. Also, reading through some of this testimony, there is a lot of concern over other states' abilities to implement these systems, and they do have these in place, and Connecticut's ability to do so in a similar manner. I wonder -- and probably most specifically Massachusetts is the direct comparison that I'm reading over and over again. Could you perhaps

highlight some of the differences that might either be a benefit to Connecticut moving -- let's say the system going forward, or perhaps a detriment as is indicated in some of this opposition.

COMMISSIONER DYKES: Well, the benefit, again, of not being the first "newber" here and having the model of a release-based system in our neighboring state is that we can work with stakeholder sites to identify some of those elements of the Massachusetts' program, just for an example, that we think our working really well and that are delivering a lot of value and implement those. We don't have to take every aspect of it, and I think it's been helpful just in the meetings that we had just over the last week and a half with different stakeholders to hear about, you know, where Massachusetts is allocating staff resources with risk assessors and other types of things, whether that type of staffing at the state level is really a necessity or is really providing a lot of value. We have this opportunity to take that, look at that Massachusetts model but make decisions about our resource allocation here in Connecticut that matches where we're going to provide that at best value.

The other thing I will just indicate, too, is why 2022 and the time sensitivity of this, you know, where we have 40 percent of DEEP's work force that is going to be, you know, potentially leaving state service between now and that timeframe, and we're already seeing a lot of turnover, and we're bringing in new employees into the department. You know, making this change now is not only helpful from the economic development standpoint in turning this framework around, but it also ensures that as we are refilling vacancies, as we are bringing in new staff

to replace the veteran staff at DEEP, that we are hiring for the types of expertise and function and skills that will align with the framework that we want to be moving to. And, so, currently under the Transfer Act, unfortunately, you know, because it is so focused -- focuses its regulatory oversight on the time of transfer, it means that we have, you know, folks who are expert in addressing -- you know, scientists on our staff who are expert at addressing contamination, who have to get trained in corporate structure and corporate transactions in order to implement their -- in order to do our jobs. And we find that we're having to send enforcement resources within our staffing on, you know, enforcing against failure to fill out paperwork properly. What we want to be doing, you know, with the release-based system is utilizing our talented men and women, our scientists, our regulators within DEEP, to be focused on, you know, oversight of cleanup of high-risk contamination, and that's, I think what we see with the design of this, but we are very much keeping in mind headcount and FTEs and resources as we think about, for example, the tiers, the tiering of the resources, the degree of -- what DEEP's involvement would be in auditing or, you know, our oversight of the different tiers. I think we are very much keeping those resource constraints in mind.

GRAHAM STEVENS: And the only other thing that I would add is that, you know, we are going to see a lot of retirements of very talented people who've been with the department for over 30 years in many cases, and we want to capture their expertise as we craft these regulations because they're the ones who've been working on the regulatory side with the

LEPs to clean up these sites. True it's under a Transfer Act scenario, but at the end of the day, it's all about how is the pollution addressed.

SENATOR COHEN (12TH): So, just sort of to reframe that, you would be concerned -- and you know, we did hear from folks asking that the Working Group sort of be continued. So, you would be very concerned about that prospect because you would not then be able to develop the regulations necessary -- the EURs, RSRs -- because you wouldn't necessarily know what the framework was. Is that correct?

COMMISSIONER DYKES: Yeah. Thanks for that question. So, the RSRs, the Wave 2 RSRs and the EURs -- the spill-reporting regs for the new releases -- those are all things that we are moving forward under any scenario. They're very important, I know. The regulatory community, many have been waiting for many years for some of these regulatory packages and were eager to move those forward regardless. But if we don't have the authorization for developing the further regulatory components to implement a release-based system from the General Assembly this year, we can't undertake the beginning of that regulatory development process until we have that. And then if we didn't get that, let's say, until 2021, I don't believe that there's enough time for us to be able to move those regulations forward, adopt them, especially in a collaborative way that is taking stakeholder input in, and be able to meet a 2022 timeframe. So that's the reason that we think it's really important for us to, hopefully, obtain a statutory authorization in this session, and I think it's very timely.

SENATOR COHEN (12TH): Perhaps this is my last question for now. I am curious -- we talked a little bit about current Transfer Act properties, what happens to them as we move to a release-based system, and with the staff moving to a release-based model, are you confident that you can continue to move Transfer Act properties along through a more expeditious process than they have been involved in currently.

GRAHAM STEVENS: So, I would say, to respond to your question, when we first adopted the remediation standard regulations, it was 1996, and we had a lot of forward-thinking ideas. It took a long time to take a crack at revising those standards, but when we did, we saw a massive uptick in how many verifications, which is the endpoint of a Transfer Act, were occurring. Wave 2, as we call it, this is kind of an ominous way to talk about regulation changes -- but Wave 2 which is currently drafted, and we are responding to public comments, will also see an uptick in how easily people can get to a verification endpoint. We've learned some things with these regulations that maybe they weren't, you know, properly aligned with respect to risk, and the future regulations as we envision it, will be to the benefit of not only release-based reported releases but also current Transfer Act sites.

So, we've been told by the regulated community and business folks that what they don't want us to do is to take sites that are in the Transfer Act and make them pour out into a release-based system because the Transfer Act is a real estate, either selling a business or property, obligation to clean up. There's often a contract which binds those parties to performance under that Transfer Act. So, if we

were to interfere with those contracts, we could cause some havoc. So, what we're doing for the Transfer Act sites that will be in there at the time that this new program is implemented is they will stay in that Transfer Act. The good news is that if someone were to generate some hazardous waste after they clean up, they're not going back into the Transfer Act; they would only be dealing with future releases. So, we think that that's a good system which is also applicable to our brownfield programs. We've heard some stakeholder feedback on our brownfield programs which I'll say through the Commerce Committee and Environment Committee leadership, we have some of the best brownfield programs in the nation. We want to ensure that those programs remain because many times when you're dealing with a brownfield, you're dealing with assemblage of property, dealing with, you know, longer term solutions, and those programs can be very beneficial to new redevelopers.

SENATOR HARTLEY (15TH): Thank you, Senator.
Representative Simmons.

REP. SIMMONS (144TH): Thank you, Madam Chair, and thank you, Commissioner Lehman and Commissioner Dykes and Graham for your testimony today and, again, for all the work that you and your teams have completed on this important initiative. A couple questions. First, for Commissioner Lehman, and thank you for pointing out how important this is for economic development for our state. I'm wondering if you could elaborate on that further because this is a huge shift that we're making, and I think it's important for both our Committees to hear how important this is going to be for jobs, for driving investment, and economic development in our cities

and, also, in particular, the timing right now with the potential to capitalize on opportunity zones and all the potential opportunities, and if you have any estimate on numbers of jobs and numbers of properties that have been getting held up by this.

COMMISSIONER LEHMAN: Well, so, there's a lot to unpack there. I'll give it a try concisely. So, Commissioner Dykes referenced the number of properties that have been in the Act and what's been cleaned up since inception. There have been studies done, just to stick with the data for a second, where the number of jobs either lost or foregone by the state -- and I think Advance Connecticut did this last year in advance of the session -- anywhere from, I think it was 5000 to 20,000 or maybe it was 7000 to 20,000. So, considerable when you consider 1.8 million approximately is the workforce of the State of Connecticut.

So, we're talking about jobs safely in the thousands that, again, would have been here but aren't here, and maybe it's best to go through an example to put it in plain English here. If one is considering building a factory in the State of Connecticut, then they want to purchase an existing facility, and it may or may not be a brownfields, but it would have been considered an establishment as it relates to the Transfer Act. The vendor or the seller of that property is going to need to take that through the Transfer Act with the buyer. And what that does is that creates this uncertainty. You know, Commissioner Dykes referred to it as proving the negative earlier, as did I, where there is a process, and DEEP has done a phenomenal job at trying to shorten the audit time and reduce that uncertainty, but there is a process of what

previously was a longer time period where there was an unspecified amount of potential cleanup that would need to be done. So there was a question as it relates to the cost in addition to the timing, and there had been several instances where there really has not been quick closure because of that inability to prove a negative.

So, what you're seeing happen, and again it's tough to quantify this with precision, but if one could buy that same factory in Massachusetts and not have to worry about the ambiguity and uncertainty, both in terms of time and cost of the Transfer Act. And, by the way, that's just cost relating to potential cleanup and remediation. Lots of lawyers and incremental friction costs, LEPS, etc., are also associated with that. What we're seeing from certain folks is they're going to say, "All right, I'm just going to go to New York, or I'm going to go to Massachusetts and create my jobs there because this is a headache I don't need." Beyond that, you've seen real estate investors because of this same uncertainty and friction costs, you know, they're saying, "I'm going to invest in properties outside of Connecticut and New Jersey because I don't need to deal with that question mark in these other states."

So, what we're making ourselves -- with the Transfer Act, we're making ourselves a tougher place to invest, and folks that can be more easily going elsewhere, and that's been the lost jobs over the past decade-plus.

REP. SIMMONS (144TH): Thank you for that answer, and I think that example really helpfully illuminates the challenge with the ambiguity and

uncertainty and then the job numbers are really helpful, too. Thank you. And then, Commissioner Dykes, again I want to thank you and your team for all the work you've achieved on this. Two questions. One, in terms of the process for transitioning to the release-based system, do you anticipate that if the regs don't get approved by the July 1, 2022, date, will this hold up existing projects, and, you know, given staffing concerns, could this cause more complications?

COMMISSIONER DYKES: Well, certainly this is why we want to get the authorization to get started with the reg process, you know, in 2020, so that we can hit that 2022 implementation date. Knowing these are complex regs, we do want to make sure that we are able to have a really collaborative dialogue on them even as we're drafting and developing the initial framework. I think the meetings we've had just over the last two weeks, you know, are showing us how productive that kind of informal interaction will be. So, I think that's really critical. You know, we do believe that this is something we can lift and we can get done by 2022. That's why we want to keep that target date in the statute so everybody knows what we're shooting for.

You know, I think this effort kind of tells you how my leadership style is, you know, making sure that we're being publicly accountable to deadlines, as it helps us within our internal team, you know, make sure that we're prioritizing the right things so that we can deliver things on time. And, so I'm confident that if we get that authorization this year, we will be able to meet that timeframe. But, you know, to be sensitive to, you know, how others will perceive the risks of not getting something

adopted in that timeframe, we think it is a really helpful backstop to just be clear that the Transfer Act including some of the improvements that the Committee is considering to the Transfer Act will remain in place until these regs are adopted, so that we don't have -- you know, we certainly wouldn't want this transition period to deter any deals or any investment or contribute to any regulatory uncertainty.

COMMISSIONER LEHMAN: And just to be clear, I don't -- the way that Commissioner Dykes proposed with the later of the date and when the regs are adopted, you know, you're much better off than where you are now; so, I think we're already reducing the uncertainty and that ultimately we'll get to the new paradigm, hopefully, by the summer of 2022.

REP. SIMMONS (144TH): Thank you for that. And just one additional question. I'm wondering if you could elaborate. I think one of the unique things about this bill and this process is that it's not only going to help support economic development and jobs, but it's also going to help our environment, and I'm wondering if you could elaborate on how this will help not only [inaudible-00:56:46] better clean up more properties but also for DEEP to focus on those high-risk, high-contamination properties.

COMMISSIONER DYKES: Thank you. Thank you, Representative. I mean, I think that this is really -- unfortunately, you know, sometimes we see the rhetoric out there really pitting environmental quality and environmental protection as something that we have to trade off against economic thriving. And I know the Governor's vision is around leveraging both of those things. You know, we have

a strong commitment to the legacy of support for environmental protection, as the state, you know, contributes to having things like some of the highest quality drinking water in the country. You know, we know that protecting those types of resources, being able to turn around brownfield sites, and to ensure that there is a great, you know, a predictable pathway for private investment to clean them up, you know, prevents us from having sprawl and damaging, you know, greenfield sites in our state.

We want to be able to turn those things around, and we think that, you know, these are just examples of how this commitment to environmental protection, you know, with the right -- if we have the right regulatory framework in place, it can be aligned with positioning the state for economic development, and I think that's what's wonderful about having this joint committee hearing. It's just like, you know, the fact that Commissioner Lehman and I are constantly -- I think we probably talk once a day -- we're constantly working on how to deliver that combined vision together, and what the challenges that we face, I think, with the Transfer Act, frankly, is that because of that framework and the inequities within it, it really does force us, you know, if we go any further for future changes to that -- you know, we really are having to make those tradeoffs between economic development and environmental protection or environmental outcomes.

So, this is, I think, it's a great opportunity, it's a generational opportunity, and it's one that helps us put ourselves on a path. When I see -- you know, you think about talking to a company that is saying, "Look, here's the compliance cost for cleanups here

in Connecticut," and this is adding to the regulatory burden or the cost of doing business in our state. You know, when they're thinking about those -- those are precious dollars, right, that they're having to allocate to compliance costs, and if we see that our regulatory framework is causing these businesses to spend those precious dollars going out and hunting for contamination or proving negatives or, you know, addressing low-risk contamination, it's not delivering the value that we need for environmental quality. So, we really want to have a framework that is taking that private money -- those precious dollars -- and putting it towards cleanup of the highest-risk sites.

REP. SIMMONS (144TH): Thank you for that answer. And then, final question. Do you anticipate any fiscal note or costs for this bill?

COMMISSIONER DYKES: So, we don't at this time. I think the first piece is to understand the statutory framework. It would be hard to conjecture about a fiscal note or implications until we have more details of the implementation of this bill, but I can say that, you know, we believe that it is feasible for us to advance on this program within the footprint of our resources that we have within the department. That's what we're going to be focused on in terms of the development of these regulations, and so, that's -- I think that's a key piece of this, yeah.

REP. SIMMONS (144TH): Thank you, and again, I just want to commend you both for your leadership and for coming together. I think it's really unique to have, you know, two of our key departments working together, as so often I think some of our

departments operate in silos, but the reality is a lot of our state statutes affect so many different issues and so many different interests from different communities. So, I really want to commend your partnership, and I think it's a great model that we need to do more of; so, thank you both. Thank you, Madam Chair.

SENATOR HARTLEY (15TH): Thank you, Representative Simmons. Representative Gresko.

REP. GRESKO (121ST): Thank you, Madam Chair. All my questions were basically answered except for one, and if you could give us a scenario maybe of a Tier II situation, how that would be handled now through the Transfer Act and how it would be streamlined potentially with the adoption of this language -- I mean I don't want to belabor the point but just a difference that if some of our constituents ask us what we're dealing with the Transfer Act, we can give them a streamline.

GRAHAM STEVENS: Thank you, Representative, for the question. So, just for clarity for the Committees, Tier II is our sites that are required to have an LEP lead for the cleanup that do not have DEEP touchpoint with respect to audits. So, these are the sites that are, if you think about back to the pie chart, it's the medium-risk scenarios, and this is a lot of our commercial and light industrial realm where really what you're dealing with is low-level contamination, maybe some urban fill that occurred long ago before the manufacturing or commercial uses, possibly some underground storage tanks that have some potential releases, but you're not looking at massive ground-water plumes that impact sensitive receptors or drinking water wells.

That's the very uncommon scenario, that would be what we're calling Tier I where DEEP would have to be involved. So, I think of it -- in my opinion from dealing with the historical contamination, a majority of the sites would fall under the Tier II scenario, but there would be cases whereby in the course of an investigation, if something new came to light where there was a sensitive ecosystem that was impacted, there was something which immediately dangerous to life or the environment, that DEEP may have to step in and get involved.

So, if you think about, you know, a small manufacturing setting, which I'm sure you're very familiar with in your district in some of the downtown areas. So, you know, there are situations where there's contamination, and those are not really immediately dangerous to life or the environment. You know, those may come through the Transfer Act because someone generated waste and handled it properly and manifested it off the site. That is the lens in which now sites get the extra scrutiny, but in the future, if someone were to be purchasing or redeveloping one of those properties and chose in the course of their ownership to do an investigation and found one or two releases, they could handle that under the Tier II.

SENATOR HARTLEY (15TH): Thank you, Representative Gresko. Representative Wood to be followed by Representative Demicco.

REP. WOOD (29TH): Hi, good afternoon. I am one of the biggest proponents of streamlining the Transfer Act, but I have some concerns with the way this bill currently reads. First thing is I'm concerned that we're going towards a release-based system and

comparing ourselves to Massachusetts. You know, why are we choosing that when Massachusetts has much more resources in their agencies to manage that program. Their standards are much less complicated than ours, and LEPs are allowed to be much more independent. So, are we making all of those changes? And then, secondly, would more commercial properties and businesses fall under the release-based system? I mean, really the goal is to have less, and, so, if we move from a Transfer Act to a release-based are we now bringing in all these other properties that are now going to be challenged, you know, and have to go through, you know, these hurdles?

COMMISSIONER LEHMAN: I might talk out of school here, Katie, so kick me if I do. You're bringing up great points, Representative Wood, and I referenced Massachusetts, as did Commissioner Dykes previously. I think we're supposed to think about this with a whiteboard of sorts, meaning we've done the Transfer Act for a very long time. It is not active, and it's not effective, in my opinion, and really it's a lose-lose from environment as well as business. With Massachusetts -- and we can talk about resourcing, we can talk about their regs relative to what we think whose going to be caught up in it, but I think we are supposed to look at Massachusetts as the guide and candidly true emulate it and look like Massachusetts as much as possible. Obviously, we're not Massachusetts; I understand that, but one of the interesting things about government, from my perspective, is we can look at best practices out there, and we don't necessarily need to recreate the wheel. If there's a framework that works, we should copy it, and I think Massachusetts does have a

framework that works. So, to the extent that we can replicate that as much as possible in all aspects, from my seat, that is what we should absolutely do in this transition.

COMMISSIONER DYKES: And I'll just speak to your comment about bringing more properties in. I mean, I think that's exactly what we're trying to move away from. Under the Transfer Act, it's defined around certain types of properties. It has an affirmative obligation that those property owners have to go in and go hunt for contamination, and then there are other properties outside of the Transfer Act that are not covered at all. We want to move away from defining regulatory obligations just around entire sites or entire properties and focus it on releases and specifically calibrating the degree of oversight and regulatory responsibility around releases of contamination that poses high risks to the environment. I know Commissioner Lehman and I have had like these debates a lot about, you know, what's happening outside the Transfer Act. We know that private banks and lenders are asking property owners, you know, in transactions, in deals, are assessing risk. What this move to a release-based system does is ensure that there's sort of a common standard of cleanup that can inform how the private market is assuring in due diligence that those cleanups are occurring appropriately, and that we have, again, the oversight and the responsibility not burdening, you know, just a specific set of properties but targeted to high-risk contamination and high-risk releases, if that's helpful.

REP. WOOD (29TH): Having a little bit of experience in this industry, when LEPs are given more

independence, I will say that the industry regulates itself very well. There's no cutting corners when it comes to, "Let's, you know, turn our eye the other way; we can't pull this out of the ground." So, you know, I just want to leave you with my, you know, take which is we're getting overlooked by development because of our, you know, regulatory process, and not transferring these properties means they don't get cleaned. And if we're just going to be on the level of Massachusetts, I am a little bit concerned with that. Especially looking at economies across the state, I think we should be in a spot that says we can do it a lot better, cheaper, easier, and where your partner is still going to come out with the same, you know, environmental standards. Will a property under release-based system, transfer faster than our current Transfer Act?

COMMISSIONER DYKES: I think our expectation is that it will. We wouldn't be here, you know, advocating for this. That is one of the critical kind of failings of the Transfer Act that we've been focused on. I think that's what we want to see. We see that it's slowing down deals. So, that is the definition of success, I think, in moving to this framework and one of the critical reasons animating it. So, I couldn't agree with you more about, you know, making sure that this is a framework that works. We have the model of Massachusetts, but we're not advocating for a copy-and-paste of the Massachusetts framework. We just are utilizing the Massachusetts framework as a way to say, you know, in a short period of time, we think we can take pieces of, or components or elements of, the Massachusetts framework that stakeholders feel are

working well and delivering value and being able to import those into a program here in Connecticut while leveraging, you know, many of the components of the Connecticut -- our existing framework that work well.

What we're not doing here is trying to extend the Transfer Act or expand it to more properties. We're trying to get rid of that approach and move to the release-based, and we know in our department -- I'll just be a little candid, that you know, over the many years we've had the development of the LEP program, and I think that, you know, we're at a point now that the Department, with this move, we're letting go of a lot of control. Where we under the Transfer Act, we see everything that's coming in, you know, we audit it; we're working hard to speed up the audit timeframes. Under the release-based framework, much of this work we will never see. Right? It will be fully implemented by the LEPs who are advising their clients and especially, you know, in the area of the low- and moderate-risk contamination.

So, that's a sea change and a cultural change for our agency, but one that we are willing to embrace. We would not be here asking for this authorization if we weren't ready within our department to let go and trust that that work is doing because what we get in return is knowing that all of those properties outside the Transfer Act that aren't currently addressed, you know, LEPs are going to be there, and the RSR standards are what they will be working under. That gives us great confidence, and we have, you know -- over these decades, the LEP community, you know, has really expanded and

demonstrated that they can do this work, and we're appreciative of that partnership.

REP. WOOD (29TH): It's really refreshing to hear that you're ready to give up some control over this, and I do just want to reassure my colleagues that, you know, the industry has been, you know, very good at regulating and cleaning, and I think we have some really talented companies in the state that are really probably some of the best in the country. So, thank you.

SENATOR HARTLEY (15TH): Thank you. Representative Demicco.

REP. DEMICCO (21ST): Thank you, Madam Chair. And thank you, Commissioner and Commissioner and Graham, all three of you for coming here and testifying, and I also wanted to say thank you for all of your help and cooperation. You lent a tremendous amount of support to the Working Group over the last several months and were really hands-on, you know, with what was going on there, and I think that that was beneficial for everyone. So, I had the opportunity to be on that Working Group, and I really appreciate that both departments lent a lot of expertise and a lot of good information.

So, I'm reminded a little bit -- as the Co-Chair of the Environment Committee, we deal with a lot of animal bills, and specifically with regard to dogs. And I'm reminded a little bit in this discussion of going from a transfer-based system to a release-based system -- I'm reminded of the phrase that people when talking about bad behavior by dogs -- we should punish the deed and not the breed. So, I think a little bit in my mind, this is your version of that. You know, go after the deed; don't go

after the breed. But anyhow, I think, you know, it's been a long time coming, and I'm glad to see we're moving in that direction.

So, one of the things I admire about you, Commissioner Dykes, is that you are very optimistic and you're very hopeful. I think in this case, based on some of the testimony that I'm reading, maybe you're being overly optimistic that we can get this done in a matter of two years. There's been a lot of reference to Massachusetts here. I've been hearing Massachusetts for the last 15 or 20 minutes. So, I'm looking at one piece of testimony that talks about the development of the statutory foundation for the Massachusetts release-based system took five years to complete and adopt. Again, I know we're smarter and better than Massachusetts, but, Kate, can we really do this what it took them five years to do -- can we really do it in two years?

COMMISSIONER DYKES: Well, Representative, thank you. I'm optimistic because when Massachusetts was starting, they had a blank sheet of paper. They were at the very beginning. There was nothing -- you know, they were starting from scratch. And so why I feel confident, not just optimistic but confident that we can get this done is that we already have many elements that are in Connecticut General Statutes that are supportive and can be incorporated into this framework. It unifies actually many pieces of our remediation standards and statutory elements that have been somewhat disparate and disorganized. And it also -- again, we have an example with Massachusetts, almost like a straw proposal out there, that we can cherry pick the pieces that, you know, really fit and work well and work for Connecticut.

So, we have the benefit of knowing, you know, and hearing from folks about what is working in Massachusetts and what's not working or where things that just may not be delivering, you know, the value or what's needed. And I think that that's -- again, we don't want to put Massachusetts on a pedestal, but I think that part of what's animating this is, you know, where Commissioner Lehman started -- if we're different, we want to be different for a reason and different for a reason that's providing value. And, so, being able to have some, you know, consistency and benchmarking to our neighboring state -- again, that's how folks that are looking to invest, that's how they're looking at this landscape, right? And so, providing that consistency where it's delivering value for Connecticut, we want to be able to do that, and we think with their existing framework, as well as the elements already in statute, I think this is doable in the timeframe that we're outlining. I am an optimist, but I will also say that some of this is optimism out of necessity. We need to turn the state's economy around, and I don't want to see us in a position of starting to backslide of having to compromise on environmental outcomes in order to do it. And I think that we've kind of run out of rope when it comes to the Transfer Act. We've really gone as far as we can, and I don't want to be in a position of having to make a choice, so.

COMMISSIONER LEHMAN: I would just say we're not being Pollyannaish here in terms of the timing, but just to that last point. I don't think we have the option here. I mean, the Transfer Act, is doesn't work. So, by embracing it or trying to keep it in some form for even longer, I think, is just a real

mistake. So, we need to bite the bullet and adopt regulations that are sensible. There needs to be a balance there, but there're 48 other states that we can look to. We don't need to recreate the wheel. So, I think we need to do this. I don't think we have an option.

REP. DEMICCO (21ST): I appreciate that. I appreciate that. I just have one other question or remark having to do with oversight. So, I appreciate that DEEP has, you know, limited resources, and shame on us for not giving you enough resources, but, you know, that's -- I guess we could say the same for many agencies. But in view of your limited resources, the proposal for the release-based system, you know, that you outlined with those Venn diagrams and so forth. Again, I'm looking through some testimony here, and I'm sure there will be others forthcoming, that questions if DEEP is perhaps giving up too much oversight power and putting too much oversight and authority into the hands of LEPs and non-government officials. So, I'm just wondering if you could comment on that.

COMMISSIONER DYKES: Well, it's a real balance that you need to achieve, right? And I think that, again, what we're getting here is that we're shifting where we currently have a lot of oversight, right, but defined around certain types of properties. We don't know, you know, in the universe of properties that are not covered by the Transfer Act there's potentially high-risk contamination on those sites that we never see. So, what we're not talking about is the fact that our current regulatory framework has that kind of risk escaping oversight. So, what we're doing -- the fundamental piece of this is developing these tiers,

identifying that high-risk tier where we can provide the confidence to the regulated community and to communities that are living next door to these properties, that they know that DEEP's oversight is capturing the universe of releases that are highest risk.

The other thing that we gain here is that currently in that universe that's not covered by the Transfer Act it's unclear -- we know that the private market is ensuring some cleanups are happening, that lenders are asking these questions, but we don't know what standards those cleanups are being done to, right? Because there's not sort of a common baseline of remediation standards that apply across all releases. And we don't have, necessarily, the transparency there, as well. So while, you know, again the cultural change that we've had here at DEEP -- we want to make sure that we're being sensitive in hearing all the concerns of folks to make sure that there is the appropriate level of auditing and oversight and recordkeeping and reporting, you know, to DEEP that's aligned to the highest-risk contamination. And I want to -- and we think it's important for stakeholders to all feel the confidence that we will feel that for the other tiers, right, that the combination of universal applicability of those remediation standards and those self-reporting items, will give people confidence that these cleanups are occurring and these more moderate and low-risk spills are also being addressed.

GRAHAM STEVENS: And to make sure if I could just add one thing to your question, Representative. I mean, licensed environmental professionals are licenses, and their license is their livelihood, and

it's just like professional engineers. I mean, there may not be oversight on every bridge that's constructed, but when a professional engineer puts the stamp on, we have the confidence. And to Representative Woods's, you know, comments earlier, this program is not new. These are professionals, and there is a high level of respect among the two communities -- the DEEP staff and the LEP community. And really what the Transfer Act and some of the processes in my experience have caused over the last, you know, 30-plus years is that, you know, there's -- we're not maximizing that community to its fullest, and, so, with the greater autonomy, I think you're going to see that community achieving even better results.

And as it stands right now, the business community is driving cleanups; they don't come to us. All right? So, private market forces are driving cleanups, and LEPs are the ones doing that work. But they have some regulatory uncertainty with respect to, you know, how is that work supposed to be accomplished. They're very good at understanding our regulations and implementing them. So, in the future scenario, I think you have great clarity with respect to what they're doing. They have great clarity on where they're operating, right in the Tier II realm, and, also, you will have public accountability because we certainly want to encourage or establish public notice provisions so that the community knows that cleanups are occurring. You know, right now, outside of the regulatory framework, that isn't always happening.

REP. DEMICCO (21ST): If I may, Madam Chair, just a quick follow-up question; I don't want to monopolize things. And, so, I appreciate everything that both

of you said just now. So, the suggestion is made in one of the testimonies that we received today that DEEP should reserve the right to audit to all tiers of cleanups. Is that in your proposal, or would you be willing to consider that as part of your proposal, or does that defeat the purpose of your proposal anyhow?

COMMISSIONER DYKES: I think that these are the discussions that we need to have with stakeholders. We understand -- you know, the intent there is to have that assurance, you know, that there is going to be oversight at DEEP over everything. But we have to strike that right balance between making sure that, you know, there's oversight and auditing but really tier II, where we're getting the most value in terms of environmental protection, and that is really focused on the high-risk.

I think that what I see here is that we're talking about a very significant universe of spills that is coming into, you know, this framework now. And the vast majority are low-risk contamination, low-risk spills. I feel confident that, you know, we need to focus that auditing and that oversight to the high-risk. We want to have, you know, more dialogue. We've had a lot of great discussion over the last two weeks, so I really do want to, you know, hear more directly from folks about exactly where to strike that balance, and I am confident we'll be able to do that. But I think that, you know, it's really getting comfortable with the understanding that we're focusing on the highest risk and that the low-risk will be addressed really through having a common framework of the standards that apply and leveraging the work of the LEPS.

GRAHAM STEVENS: And certainly we've heard some concerns along the same lines from some of our environmental advocate stakeholders, and, you know, they've provided us scholarly articles on auditing programs and provisions, but one of the things that we've also talked to them about is -- and with others about is even in a realm where DEEP isn't auditing, there's got to be some provision for if something goes wrong, DEEP should have access to these records to make sure that we're protecting the program's integrity, and the other thing to point out is that the LEPs, you know -- there is a Board of Examiners, so to speak, that oversees LEPs, and they handle complaints and investigations of LEPs and their actions if and when something like that ever occurs. So, there is some additional backstop with respect to if there were very bad decisions made or inappropriate decisions made, there is another regulatory body that is available to address those with respect to LEP action.

REP. DEMICCO (21ST): Thank you all very much. I appreciate it. Thank you, Madam Chair.

SENATOR HARTLEY (15TH): Thank you. Senator Martin.

SENATOR MARTIN (31ST): Thank you, Madam Chair. Thank you, Commissioners, for being here today, and Graham, thank you for all the knowledge that you brought to that Working Group. I was part of that group when I could attend, and just listening to all of you talk made me feel miniscule in my knowledge of what you guys deal with every day. But, I did recognize that it took a lot of meetings, a lot of communication between the private sector, public sector to keep this simple on my end here, but your agency and -- there are a lot of little details.

And I'm reading through some of the testimony where I'm listening and trying to do a couple things at a time here, and there're some reservations regarding the speed at which we're introducing this release-based -- you know, transition to this release-based. And the comments that I'm reading suggest that, gee, there are a lot of details.

Knowing the complexity that we had to deal with, with the Transfer Act and those discussions that took place throughout the summer here, they're sort of raising the same concerns that -- listen, there are a lot of details that need to be talked about, and they don't think that in this session we would be really doing justice to this. So, can you just tell me, you know, is there something? Maybe elaborate on that a little bit.

COMMISSIONER DYKES: Yeah, thank you, Senator. Just to respond, I have two points. One, you know, my observation -- I wasn't able to attend every meeting, but you know you had this little DEEP team engaged in the Transfer Act Working Group, and I think from my perspective, where I sat, one of the things that made it such a laborious process, you know, for everyone is that the trade-offs that were implicated in some of these different proposals. Again, because of the inequities within the Transfer Act framework, you know, looking for those opportunities that we could advance on a consensus basis that would help to streamline it, but without compromising on environmental outcomes, you know, is one of the things that just -- it's a very small needle to thread, and I think that's what took -- made those conversations so intensive and required so much back and forth, is that we were trying to thread that needle. And it's very difficult,

frankly, within the Transfer Act framework to do that -- to address those real concerns that people had about the inequities and slowing down transactions without then cutting loopholes into the program that would ensure, you know, that would have cleanups not being addressed.

So, I would submit that, you know, I wouldn't take the Transfer Act discussions -- they were very productive because we delivered, you know, through the leadership of the Committees many, many changes, but I wouldn't take that -- my personal view -- as a barometer of how much time it takes to get consensus on a statutory framework to authorize release dates.

The other piece is the regulations that Massachusetts has in place to implement their program are a thousand pages long, you know. I know that we have to be carefully aligned between the statutory framework and the regulations that are adopted to implement. Many of the details of implementing a release-based system necessarily need to be addressed in regulations, and I know that Connecticut, you know, because of this unique framework that we have where regulations come back to the Regs Review Committee, I think that, hopefully, that can provide the confidence to the Committee that the Transfer Act would not sunset until those regs have been adopted and approved by the Regs Review Committee, but many of these details -- I think we can fill in many of the blanks on the statutory authorization this session, and that gives us more time to run a collaborative regulatory process that can deliver us a package of regulations with those details addressed that will successfully have the support of the Regs Review Committee.

SENATOR MARTIN (31ST): That was -- I'm glad you addressed that last part because in your implementation strategy graph here, you left -- and I see the statutory changes in the front end, and that would cover this session, but on the sort of tail-end of it, you don't address it here. So, one of my questions was would we have to come back and implement some statutes in order to move forward with this? And you seem to have answered that. So, my next question is this was really a good Working Group. Is the plan -- with the policies that you're going to be assembling here, is it planned to include the stakeholders that were at the table?

COMMISSIONER DYKES: So, we have just again over the last week and a half had five different meetings with -- I know all the Transfer Act Working Group members were invited, were included, and we were so grateful that so many folks had participated in those discussions. We've also had the benefit of being able to go to different working groups and other forums to -- I know the Brownfields Working Group, the Environmental Forum -- you know, a number of those other venues where many of the stakeholders that are affected or would be implementing this program are convening. We've taken the opportunity and appreciated invitations to have this discussion in those forums, not just over the last like two or three weeks.

So, we are approaching this wanting to invite everyone in to these discussions to help inform our views and, hopefully, to be able to advise the committees during the session, on how we can further fill in the blanks of the statutory authorization in a way that has the confidence of the regulated community, our environmental advocates, the LEPs,

the environmental bar -- the many, many individuals, men and women, who have expertise in this area and who are part of implementing a successful framework. So, you know, we want to be as inclusive as possible, I think is the short answer.

SENATOR MARTIN (31ST): And that will continue going forward? So, you've done that in the last couple weeks, but going forward, are you going to have the same? So the input would be provided?

COMMISSIONER DYKES: We're eager to continue that. Yes.

SENATOR MARTIN (31ST): And how about a public hearing? Is that somewhere along the process here going to be part of all this?

COMMISSIONER DYKES: Well, certainly for any regulatory adoption process, we would have a full public process for engagement, but importantly, and I think personally hearing from stakeholders just in this last short period of time -- you know, people are looking for "Hey, bring us in early, even before we get to the public hearing process; you know, help us help you design something that is implementable." Yes, so we're very committed.

SENATOR MARTIN (31ST): Commissioner, I think you wanted to say something.

COMMISSIONER LEHMAN: No, I was just going to -- what I've heard and you'll hear some of this later, is my expectation based on the testimony. The concerns are not about the statutory process this session. The concern is the regulations that are going to be enacted subsequent to that concerning the release-based system. And I've referred to it before as it's the fear of the unknown, and I think,

candidly, there's some history where there're questions about the timing and the efficacy of putting regulations in place quickly on the environmental side. But, again I would submit we don't have an alternative, or in my opinion, we don't have a good alternative, and we need to do this expeditiously, and there're plenty of templates out there that we can look towards, and I think the process that Commissioner Dykes has already kicked off is a great first step. In my mind, we should absolutely be able to do this in two years, but we need to get folks comfortable that we're going to do this with the right balance, the cost-benefit analysis, to make sure we bring folks around the table, and there's a real understanding why we're advocating for certain regulations.

SENATOR MARTIN (31ST): Okay. Thank you to the both of you. Thank you.

SENATOR HARTLEY (15TH): Thank you, Senator Martin. Are there further questions from Committee members? I would just like to say in view of the enormity of the task, we probably shouldn't be in this room. We should be locked in another room hashing through all this stuff. But let me just ask you very quickly -- Do you have a number of properties that are currently, right now, in the Transfer Act?

GRAHAM STEVENS: So, since its inception, we've -- individual properties -- sometimes one property can have multiple filings, 4, 5, or 6 filings, under the Transfer Act with all those parties obligated to clean up the same property. So, we've counted that there're 4200 sites that have come into the program and 1000 who've exited. So, 3200 sites is the current universe in the Transfer Act.

SENATOR HARTLEY (15TH): So, that's the universe that we're talking about that would be in the pipeline in view of the fact if we do go through this transition, and they're going to be operating under the existing parameters of the Transfer Act to its completion.

GRAHAM STEVENS: Correct. But one thing that they are going -- so the Transfer Act sets up the framework for who has to complete investigations and remediations, but the one thing is that the regulations that we'll be adopting under any new provision will also be available to the Transfer Act site. So if we create a new regulatory framework, that expedites remediation -- the good thing is that our current cleanup standards are release-based -- then that would also be available for the Transfer Act universe, that remaining 3200 sites, to avail themselves of. So, like I stated early on, when we first did our first wave of remediation standard regulation revisions, we saw a massive uptick in the number of sites that were able to get out of the Transfer Act, complete their cleanup. Wave 2 will increase that, as well, and Wave 3, which would be the adoption of regulations under this regulatory framework if it were established, would, again, help expedite the cleanups.

SENATOR HARTLEY (15TH): And so for the purposes of the LEPs, they will be working functionally under two sets of guidelines depending upon what regulations have been adopted at a time certain.

GRAHAM STEVENS: There'll always be one set of cleanup regulations. So, you know, it's going to be either remediation standard regulations as the sit now, changed with the Wave II adoption, and then

changed again to introduce the release-based approach, and that would be one regulatory framework that's applicable to those that are still within the Transfer Act and those releases that are reported under a future release-based system, as well as those that are in the Brownfields Program.

SENATOR HARTLEY (15TH): Thanks, Graham. Another question. Did we have any changes or clarifications about that new ruling that came out with regard to administrative rejections, kind of that changing of the process? Have we done any changes on that since it was first rolled out a couple weeks ago?

GRAHAM STEVENS: And so, Senator, in response to that -- so this stems from one of the 20BY20 initiatives whereby we're trying to strive to meet the 90-day time period for making a decision on audits. So, in the past -- it's a terminology change in some ways; it doesn't prejudice folks. So what we used to say is we used to say if someone submitted a verification that had a technical defect with respect to the paperwork, we would issue a notice of administrative insufficiency, or we used to call it some other things in the past. You know, we're seeing about 50 percent of the forms coming in right now, not meeting the baseline standards. We've worked with the Environmental Professionals of Connecticut which is the group that is a coalition of the LEPs to try to make sure our forms make sense. But really what we're trying to say to people with a change to an administrative rejection is that you can resubmit within 30 days and get to stay within the pipeline if you're able to fix your changes, but if it's something that's more significant, then you'll have to revise and submit anew.

So really it's a way for us to keep our attention on the most current items that are coming across our desks. It really is almost an initiative. It really is almost, you know, an issue of semantics, but we're hopeful too that it does give some heightened attention to making sure that the forms are filled out properly. We don't want to be spending time looking at forms. We want to be looking at how is pollution addressed.

SENATOR HARTLEY (15TH): Okay, and I'm assuming that you talked with the LEP EPOC group about this and the posting of whatever this listing is of rejections.

GRAHAM STEVENS: And just to be absolutely clear, Senator, the administrative rejections are not intended to be posted. So, that is a flag for the LEPs that you need to get your paperwork straight. We can't waste time on paperwork, and you've got 30 days to resubmit, and we can process it if you fix the mistakes. But we have talked with the -- and I have talked for many years with environmental professionals of Connecticut about more transparency with respect to, you know, audits and outcomes of audits, and what we're trying to do is address the manner in which that information is posted. And this is not something that's imminent, but we're trying to work with them to make sure that our intent is not to, you know, create a list of bad actors. Our intent is just to put up information about properties. The LEP will be associated with that, but it's not going to be something where we're trying to create a list of bad actors, and we're working very closely with EPOC on how that will be done in the future. But, again, those issues are definitely separate.

SENATOR HARTLEY (15TH): Yeah, so many conversations here. So many pieces of this thing. Do you anticipate that there is a need for any change in the structure of the LEP program? You know, you talked about this Board of Overseers. Are you anticipating in this envision transition that there will be any changes in that group, that designation? Regulatory or oversight or cleanup?

COMMISSIONER DYKES: It's not something that we're contemplating with this change, but, again, to underscore, you know, as we've started this process and really looking at release-based, I've been just personally grateful to have the opportunity to have at least one meeting with the EPOC Board. I know we've had LEPs who've been participating, including Board members, in some of these meetings that we've been having about the framework of the statute. It's incredibly important that the LEP role and participation and that oversight piece, you know, is something that we're in direct dialogue with them about and that we can ensure we can continue to leverage the success of that program and be supportive of our partners, the LEPs, in this process.

SENATOR HARTLEY (15TH): Thank you, Commissioner, because I think, you know, this transition is a sea change, and it's very, very different, I think, particularly for the role of LEPs now, and it seems to me that the history is such that it's imperative that there be a refresh with the Department and this community, you know, in working in sync together.

COMMISSIONER DYKES: I completely agree.

SENATOR HARTLEY (15TH): So, I'll be interested to watch that unfold. And so just very quickly because

there're a lot of people here, and I'm very sensitive of the time that all these public hearings absorb. So, for the purposes of understanding, there're two bills before us today. The first one is 281, and sections 1 through 5 effectively are the work of the Working Group, the TA Working Group. We are in agreement on those. That represents the consensus other than the fact of what we talked about that there are some, you know, a few in number compared to what we've gone through, that will be resolved within the next week.

Okay, but then the rest of the bill, which is sections 6 through 10. It is, I'm assuming, fair to say that this is the area where we are not in agreement on, that there is much work to do on these sections and that's the need for, you know, this intensity and this optimism of trying to get there in view of this very short session. Is that correct?

COMMISSIONER DYKES: Absolutely. I think that, you know, the Administration is aligned in making this a priority to be able to move this forward for all the reasons you've indulged us to share today, and, you know, this is why we're appreciative of the Committee coming together in this historic joint session to hear about your comments and testimony on the release-based framework. We believe that, you know, the leadership of the Committees is crucial in signaling to all the stakeholders in this community that there is a willingness and support to get a proposal together to fill in the blanks of that 6 through 10 and to be able to deliver authorization for a release-based system in this 2020 session.

COMMISSIONER LEHMAN: If I can just weight in here, when you say consensus, DEEP and DECD and the Governor's office, we have a very high conviction this is something that we want to achieve this session. We understand, though, that details matter, and certainty matters. So, it is our goal to provide this Committee and the community as much certainty as possible this session, but we want to get this passed this session ideally, given what we view as the importance of the bill.

SENATOR HARTLEY (15TH): Thank you, Commissioners, and so I'll just restate Sections 6 through 10 are not in agreement, and that's where we have to, hopefully, get to agreement. If lightning strikes, we hope to all be there and that this is probably true of S.B. 293, as well, because that is the companion piece to those last sections in 281. So, if you want to make any comments about that. If not, then I will say thank you so much for your time and everything that's gone into this, and once again, yeah, I will be astounded -- pleasantly astounded should we be able to, you know, get closure on Sections 6 through 10. However --

COMMISSIONER LEHMAN: We have confidence in these Committees, but I'll take the over on lightning striking.

SENATOR HARTLEY (15TH): I've just listened through, you know, a year and a half of this now, and compared to some in this room, that's nothing. So, anyway, thank you. Thank you all, and it's to be continued. Okay and with that, if there are no other questions from my colleagues, we're going to open up the public section of today's joint hearing, and you all can have some lunch now, and we'll first

invite, representing EPOC, Seth Molofsky and Nelson Walter are here. I'm hoping we're not losing people, too. Good afternoon, and you may begin just as soon as you are settled in there, by introducing yourself, if you would, for the benefit of the Committee.

SETH MOLOFSKY: Thank you for the opportunity to provide you with this testimony on behalf of the Environmental Professionals Organization of Connecticut regarding the subject bills to provide updates to Connecticut's Transfer Act and proposes a transition to a release-based program.

My name is Seth Molofsky. I'm the Executive Director of the Environmental Professionals Organization of Connecticut, or EPOC. With me today is EPOC's President, Nelson Walter. Nelson is a licensed environmental professional in Connecticut as well as a licensed site professional in Massachusetts, and he is Vice President of Wood Environment and Infrastructure Solutions. We were working last night at our Board Meeting on our testimony, so I apologize. It got submitted this morning, so I don't know if you have a paper copy of it, but it has been submitted, so I assume that the Committees will see our written testimony in short order.

Just as a little bit of background, I know most of you know who we are, but maybe not everyone in the room does. Our organization, EPOC, was formed in 1996 to represent the interests of Connecticut LEPs who are the professionals authorized by DEEP to perform investigation and remediation of property in Connecticut. LEPs are responsible for verifying cleanups are done to protect human health and the

environment and meet the standards in the DEEP remediation regulations. LEPs are, therefore, directly affected by the policies and procedures established under the General Statutes and their associated regulations for investigation and remediation of contaminated sites in Connecticut including brownfields.

I'm going to begin today with comments on Senate Bill 281, THE ACT CONCERNING VARIOUS REVISIONS TO THE PROPERTY TRANSFER ACT, and just a short statement here is that EPOC supports the proposed modifications to the Transfer Act as Sections 1 through 5 of 281 as recommended by the Transfer Act Working Group. We want to commend the efforts of the Working Group. We had a number of representatives from our Board, LEPs and attorneys, that represented our interests with the group, and we strongly recommend these beneficial changes be enacted regardless of the fate of the transitional items that were included in transformation in the Commerce Committee Bill.

I'm going to shift now to Senate Bill 293, AN ACT ESTABLISHING A RELEASE-BASED PROPERTY REMEDIATION PROGRAM, which is also, as you know, included in Sections 6 through 10 of 281. EPOC has been supportive of previous efforts to transform Connecticut's remediation program, first introduced in 2011 under then DEEP Commissioner Daniel Esty. At that time there was a robust effort over two years to assess Connecticut's cleanup laws and regulations and to develop a proposal for a transform cleanup program. Numerous stakeholder groups participated including many LEPs, several that are in this room, and much progress was made in developing a detailed framework of the new program.

We now see this renewed effort by Connecticut DEEP to develop a release-based program, and we support this concept, as we believe a properly devised release-based program can allow for environmentally sound management and cleanup of contamination along with increasing opportunities to restore properties to productive use in a timely manner.

EPOC generally supports the concepts in Senate Bill 293 and 6 through 10 of 281; however, the proposed statute as currently drafted does not provide, in our opinion, enough detail of what will be included in future regulations. We have been involved in the recent effort by DEEP to add additional detail to the statute to inform future regulations, and we are appreciative of these efforts by DEEP, but given the time constraints and the complexity of the issues, we're concerned the process may result with a statute with unintended consequences.

Some of the challenges we face with transition to a release-based cleanup program, which I think have already been mentioned today, but since I wrote it, I'm going to go through it. Establishing new numerical standards to identify properties that require cleanup due to current spills or historical releases or entry points, establishing a process to efficiently develop alternate cleanup criteria to allow cleanups appropriate to proposed use or reuse of properties or exit points, developing a uniform program that requires combining or sunseting other regulatory programs that require remediation, and another item is assessing program oversight by DEEP and whether DEEP has the sufficient resources to manage the cleanup program.

Transformation of the state's entire remediation program deserves a detailed review and thoughtful process with input from the many stakeholders including LEPs who will be on the frontline of any such new program. In conclusion, EPOC is in support of the transition to a release-based regulatory framework, and we do look forward to working with DEEP and other stakeholders over the coming weeks to move this effort forward and to attempt to clarify the intent and boundaries of the proposed statute. However, we do respectfully reserve the right to withdraw support if the statute does not contain an appropriate level of detail regarding the substance of future regulation. If the proposed bills are not able to advance, EPOC would certainly support a bill that established a Work Group of stakeholders to work with DEEP to collaboratively develop the statute and regulations that would support the release-based program down the road. Thank you very much for your time.

SENATOR HARTLEY (15TH): Okay, thank you. We appreciate that. Nelson, do you have any comments?

NELSON WALTER: I don't have any additional comments, but I am just here to answer questions if needed.

SENATOR HARTLEY (15TH): Okay, moral support here. Yeah. Okay, thanks. So, can you just comment on the fact that hypothetically if we move forward either of these bills or 281 that this is before any regulations have been adopted and a regulatory process has unfolded, and we essentially, some might say, are putting, you know, the cart before the horse.

SETH MOLOFSKY: Yes, that is a great concern of ours, and that is our concern with putting enough guidelines and direction in a statute so that we can confidently feel that the regulations will be developed in a way that we can support. The devil's in the details. The regs are going to have the bulk of all the numerical standards and all the tiers and entry and exit points and such, and we understand that you can't necessarily write a statute that, you know, can define all of those parameters, but we're grappling with what is enough in a statute to give us confidence that we can go to our clients and that the regulated community can understand and we can put some scenarios through so that we can understand if it's implementable by LEPs. We are the folks that do the work on the ground, and we have to understand that this program actually works and is an improvement of where we are, and, so that's our challenge.

SENATOR HARTLEY (15TH): Indeed, indeed it is. So, with regard to the regulatory process which is underway right now, the RSRs and EURs and we're into Wave 2 and so forth, do you feel -- does your association feel that you have had ample opportunity to provide input and work through those so that the end result, when they are on the final track which will be before the regulations review process -- that they are representative of your association?

SETH MOLOFSKY: I appreciate that question, and it's a tricky answer. We certainly have been given the opportunity by the agency to participate, and they've had many Work Groups; their remediation roundtables, and outreach to the community is commendable. We, you know, always appreciate that. Can their collaboration be improved? In our view,

given that we are the primary stakeholders that are, you know, going to be doing this day-to-day as our livelihood, we certainly wouldn't say that the collaborative effort could not be improved. And we think in this instance when we're developing such a complex new program that we really need to have that improved so that they can see what maybe unintended consequences are of regulations because we have that experience.

I will say that in studying a little bit of the Massachusetts process and how they develop their Massachusetts contingency plan, their MCPs which is one giant regulation that combines many of the factors that we're talking about in Connecticut, they had, according to all accounts, a very robust and collaborative effort with the various stakeholders. Folks sort of left here, you know, hats at the door and went in and really tried to put together something that would work, and that was a very successful collaboration. I would move to bring some of those folks to Massachusetts as experts when we're in this process so we can learn from their experience on what worked, how they had to make compromises, how everyone had to give a little bit to get to the endpoint of a better cleanup program.

SENATOR HARTLEY (15TH): Thank you, Seth. So, we have this conversation when we got the plan in front of us which is going to be effectively, you know, a three-tier system where DEEP is really involved in the highest-risk properties, the most hazardous. And the LEPs are running effectively the other two tiers. But then I heard some conversation about the fact that there may be some kind of a caveat which says that on any of the tiers DEEP would be able to

go back into that work. Do you have a comment on that?

NELSON WALTER: Yes, thank you for inviting us, first of all. As LEPS, I don't think that we have any problem with audits or DEEP oversight. We want that to be quick and professional and at the right levels. We don't think that all sites need to be audited. But if there is a need for additional oversight, we don't have a problem with that. I would just also add that as Graham mentioned earlier, our licenses and our livelihoods are very connected, and the LEPS, by and large, are very professional, very smart, and very diligent in their cleanup of sites. And, so, we don't feel uncomfortable without audits, as engineers are when they stamp a design, but we're okay with audits, also.

SENATOR HARTLEY (15TH): Yeah, I understand that. So, basically you don't think that's a contradiction in terms where we're trying to go to this three-tier system where the Department is focused on that highest level, and we are utilizing these licensed professionals on the other two, but yet we have some kind of an overarching clause which says that at any point, any time go into any of the other two tiers. Is that not a contradiction? Help me understand this.

NELSON WALTER: So, I believe it's similar to other states. You know, there's oversight by the Department. I think that the goal here that we would like to see is that LEPS, by and large, are able to implement cleanups, get them done, verify the sites, and close them out. If there's some small percentage of sites that are audited just as

sort of a quality assurance check, that seems to be okay, and I think even on the Tier I sites, I think by and large the LEPs would be in charge of cleaning those up and then having maybe some percentage of those being audited.

SENATOR HARTLEY (15TH): Is that similar to the Mass Model?

NELSON WALTER: Yes. Yeah, in the Mass Model, most sites go through without audit, although some of the more sensitive sites, especially those with activity and use limitations, you know, deed restrictions that are not completely cleaned up. -- more of those get audited as a result of that there's contamination left behind.

SENATOR HARTLEY (15TH): Okay. Lastly, would you comment on the actual, our LEP program? Do you have any suggestions in terms of if we were moving down to this very different approach now, does the LEP program need any kinds of refinements or changes? I know that there's this Board of Overseers and the composition of that board. So you see the need for any kind of refinements.

NELSON WALTER: So the LEP Board is functioning -- it seems to be functioning well. It oversees professionals, and some small number of LEPs are brought every year to have disciplinary actions, and there's a reasonable process for that. I would also say, though, that I don't think that the LEP program in and of itself needs a lot of changes. I think the regulations implementing the remediation do need revision to accomplish the goals of the release-based program. And I would also -- my own personal view after having some experience in Massachusetts and in Connecticut -- I would just encourage us,

especially if we wanted to do this quickly, to really follow the Massachusetts example and stick closely to that which is a system that works well. It cleans up thousands of sites and has been very effective and very well respected.

SENATOR HARTLEY (15TH): Thank you, Nelson. Thank you. Questions from Committee members? Seeing none. Thank you very much, and thanks for waiting, and you did submit testimony, so for those who have other overlapping meetings, they will have the benefit of your testimony. Thank you very much. I'd like to invite now Eric Brown, CBIA.

ERIC BROWN: Good afternoon, Senator Hartley, and distinguished leaders and members of the Environment and Commerce Committee. My name is Eric Brown, and I'm a vice president with the Connecticut Business and Industry Association. I want to first thank you, as others have, for pulling together this Joint Committee Hearing. I don't think I recall ever seeing a joint committee hearing with Environment and Commerce, and I think maybe it's a good precedent to set. I think one of the good thing about it is it reflects your perception that this an issue of great gravity, which indeed it is. I was thinking on my way up here this morning I've been doing this, working on environmental regulations and statutes up here for over 30 years, and I cannot remember a single example of an issue that has greater potential consequence than what you have before you today. Even, for example, the RSRs -- I thought, oh what about the RSRs, that's a big one, and that's how clean is clean. It doesn't get much more significant than that. That's just one piece of this big pie that you're looking at here.

Another thing I wanted to emphasize is you'll note in our testimony that we are opposed to both bills in their current form. I know they're works in progress, but I think it's important for us to make clear that as much as we appreciate all the work that's gone into some really good Transfer Act proposed changes, if those changes are, in fact, attached to a release-based reporting statute that would remain flawed, we would much -- it's not even close -- we would much rather lose the Transfer Act changes than to adopt a flawed proposal in terms of changing over to a release-based system.

So, our specific recommendations -- I apologize my testimony written was pretty long, but right near the top, three recommendations favorably report out the Transfer Act changes of S.B. 281, strip Section 6 through 11 of that bill. Through that process, you've essentially decoupled the Transfer Act proposals and the release-based proposals. And then what we're proposing for a process, which is really the focus of a lot of people's concern, is to put in place a two-phased system within Senate Bill 293 whereby for the next year, the focus will be on developing the statutory framework and basis for this transition, and the second phase will be the working through of the regulations, and through that process, we can maintain the administration's goal of having a goal of July 2022.

So, I heard the bell, and I want to be respectful of that, but those are our concrete recommendations for your consideration.

SENATOR HARTLEY (15TH): Thank you, Eric, and thank you for today's testimony and also for your work really kind of over the decades on this subject. I

do believe that, you know, what we're talking about is so pivotal to the direction of the state, and I do think that it moves the needle. I have, you know, said more than once or twice that it is probably the one thing that we could do that moves the needle in this state without incurring great costs in view of, you know, our budgetary restraint. But having said that, I'm grateful for all of the work and time that's been put in from the regulated community, the EPOC, your association heading it up, but I do believe that this next conversation is a quantum leap, and I want to have the optimism that our two Commissioners have, and I'm having a little trouble getting there, as you folks may have noticed. I thank you for your three recommendations.

There's going to be a lot of hours between what we have in front of us today and end of session, albeit it's a very, you know, short timeframe. Just so everybody knows, our deadline on the Commerce Committee is March 19 that we are going to be moving out some legislation, and then, or course, we will continue to work on whatever it is after the 19th until the end of session which is in the beginning of May. But that is, as you know well, what the deadline is. So, not that we're going to get there by the 19th; there's obviously no hope for that. So, I thank you and questions from Senator Cohen.

SENATOR COHEN (12TH): Thank you, Eric, and I echo Senator Hartley's sentiments. Thank you for all your good work on this. I know you were at the table at all of our Working Group sessions, and I so appreciate all of your input. The Commissioner testified earlier pursuant to a lot of the concerns around having the regs adopted in time for that

sunset of July 1, 2022. Would her comments to modify the language in a way that would say or on the date that regs are adopted, whichever is later, would that satisfy some of your concerns?

ERIC BROWN: It would satisfy a concern. Without that change, it would be absolutely untenable on the face of it. You know, I think the best chance that we have of actually meeting that July 2022 deadline is to take the time to get the statute right. The better job we're able to do, the more detail we're able to get into that statute, the easier it's going to be to get the regulations done based on that. The more wide open the statute is, the less directives there are from you on what those regulations should look like, the wider the universe of the conversation. And I have to say it's hard to comprehend getting that done in that kind of situation.

I've just been through too many wars with too many regulations that to this day have never been adopted. Forty years we've had a statute that said adopt -- that called for the adoption of spill regulations. I sat in your office, Senator Hartley, with DEEP four years ago where they promised we'll have a public notice on your desk and published by the end of the calendar year. That was three years ago that deadline passed. We have still not even seen what those draft release reporting regulations look like. I've asked them why you wouldn't share them with us. If we've got a whole new way of looking at things, why wouldn't you share those with us? They won't release them.\

There's just a lot of -- and all the people that have been involved in this and given so many hours

of their time are not doing that for the first time. We've been through this over and over and over and over again with one frustration after another. The Wave 2 you've hearing about -- that's been in the works for years. We don't know what those look like in their current form. They talk about a different relationship with the LEPs, but they said here they didn't think there was any need to change to statute or the regulations. Well, what engenders any confidence in the regulated community or, frankly, the LEP community that that's going to change if they're not willing to step up now and say concretely how do we need to change the regs. How do we need to change the makeup of the Board? How do we change the nature of our conversation? How do we look at a state like Massachusetts that sees their LSPs as partners and an audit there is more of a team approach of how do we solve this particular problem that's lying before you? It's not an enforcement scenario. It's not a gotcha. It's not "you better do what we say or we're going to take your license away." So, there are just numerous very, very fundamental changes that have to occur. They can occur, but they are significant.

So, you know, one little prop I brought up with me is the Massachusetts Statute, about 85 pages the way printed out here. You know, we go through these battles all the time where DEEP is charged with doing a regulation. So, they throw something out, they bring the groups together. The environmentalists aren't happy because of one thing. The business community's not happy, and the process is sort of "can we get to a point, or can the agency get to a point and you all get to a point where everybody can close their eyes, hold their nose, and

jump over the cliff and hope everything works out for the best." That can't happen with this process. There's too much at stake.

So, I think instead of focusing on trying to find out where we can -- how we can balance before, you know, we can get something through, why don't we start with something that everybody, I think, would say, "Works to a good degree"? The Massachusetts is not perfect, there're things the business community doesn't like about it, there're things the environmental community doesn't like about it, but I think everybody would kind of have to admit that Massachusetts is protecting their environment and they're moving economic development projects forward.

So, you know, we threw out to DEEP the consideration why instead of starting with a blank sheet of paper or this proposal you've got in front of us, why don't we all roll up our sleeves, look at this, start with a global replace of Massachusetts with Connecticut. It's going to have to be a lot more than that, and I'd like Seth's idea of bringing people in from Massachusetts, LSPs. This took five years. We're talking about five weeks. This took five year. Bring some LSPs down from Massachusetts and people from MassDEP if they'll come down and say as we go through this, say, "We're thinking of changing it this way, we're thinking of changing it that way, are we missing something? Did you guys think about that? Are there unintended consequences we might be doing?" Learn from their experience, I guess, is what I'm saying.

And I'm just sort of suggesting that as a possible different approach than the conventional let's have

hours and hours of meetings and see if we can find a place where the environmental community and the business community kind of hate it equally and hope for the best. So, that's just one suggestion for what we might do, again, over the next year rather than the next five weeks.

SENATOR COHEN (12TH): And, Eric, is that the actual statute, or are those -- okay [crosstalk]

ERIC BROWN: Yeah, actually a colleague of mine brought the regulations which would make this look rather tame, but, yeah, you know, these aren't perfect. I know DEEP wants to preserve some things in Connecticut. We want to. I mean, there's a section in here on brownfields. We have a really good Brownfields Program, so maybe we just extract that piece of this and we put the Connecticut brown -- or just reference the Connecticut brownfields statutes in here. But at least you're working off of something that you can have some confidence that in Massachusetts, as I said, it's protective and, at the same time, is allowing properties to move forward.

SENATOR COHEN (12TH): Which certainly is in our benefit. You know, well that took them five years. I don't suspect we would have to go through quite as many years of, you know, and different iterations as they likely did in the process since we have them as a good model to look forward to. But, I appreciate your comments. Thank you.

SENATOR HARTLEY (15TH): Thank you, Senator. So, Eric, how does our LEP program compare to the Massachusetts model?

ERIC BROWN: Well, I'm certainly not the expert to tell you on that. All I can say is what I hear from our LEP community or our legal community -- it does work in both of these states -- is that the relationship between the Massachusetts DEP and their LSP community is very different from Connecticut's. I would leave it to others that will come before you that have that actual hands-on professional experience to expand on that, but, you know, clearly there's a different relationship.

SENATOR HARTLEY (15TH): Well, thank you for that comment. So, let me just ask this question, and if you want to pass on it, that's okay, as well. So, since we've been engaged in, you know, this effort, and I think everybody, quite frankly, is together in what the effort is. We recognize this, and I am very grateful, you know, to both departments here on their willingness. But, so, you know, it's kind of the difference between, you know, the theory and the practice.

So, in practice is there any sense that there's any kind of change going on in terms of, you know, the culture here that's part of what we're dealing with? And I ask that because of, you know, I understand that we are trying to have certainty on timelines -- that was a big part of our legislation last year, and, you know, we want to broadcast this to, you know, hopefully contribute to, you know, our overall movement in the economy. But then we have changes that go on like -- that I just talked a little bit about before on this insufficiency notice and the administrative, you know, rejection. So, if you don't want to comment, that's okay, but I'm trying to take the temperature here. I mean, we're talking

about sea changes, and there's got to be sea change in terms of, you know, I think the culture.

ERIC BROWN: Yeah, I mean, I think Commissioner Dykes it was that used, or maybe it was Graham that used the phrase, you know, we've got to let go. Well, that's nice, but I would respectfully expect that the environmental advocacy community is not of that mind. So, you've got an immediate tension there. So, where's that tension gonna, you know, wind up on the scale? I would say in terms of these proposals, I think everybody's motivations are good and genuine, and I think, you know, with respect to Commissioner Lehman, I know he's anxious to -- I mean, he's one of the ones that said, you know, why are we doing something different than 48 other states? We should be more in line, which you'll hear us talk about all the time on any number of issues. So, we appreciate that.

What we've been trying to do over the last couple weeks is educate him and, frankly, Commissioner Dykes 'cause she is new to that position, and others that while that goal is good, we're onboard with the goal. But we don't think there's an adequate appreciation of the hill that is in front of us that needs to be climbed, and five weeks just doesn't seem to be something -- although we're engaged in the process. We're going to as many Friday afternoon, three o'clock meetings as we can to try and make this as good as we can. I'm just trying to be realistic about it. And, again, with his goal of 2022, we're not asking to sacrifice that goal; we're just sort of suggesting a different process to try and get there, to maximize the opportunity to get there, but we are still committed to try and get there by July of 2022.

SENATOR HARTLEY (15TH): And then just lastly, okay, so we've got a lot of regulations kind of in the pipeline and so forth and over some long periods of time. And to my understanding, with all of these just hanging out there, they seem to be so fundamental to the premise of what we're trying to do under the Transfer Act and then the release-based. So, I don't know how these coordinate. And, I have some trouble about the fact that you say you've been trying to share information on the Wave 2 and you're not being able to do that. I mean, it seems to me that these are all part of this complicated and very big picture.

ERIC BROWN: They certainly are. At least the Wave 2 has had a hearing, and comments were received, but that was -- you know, I was trying to get the date, but it was a long time ago. And so we have no idea what the agency has done with those comments, what adjustments, if any, they've made to the regulations. The spill reporting ones, we haven't seen anything of. There's been no sharing of that, no public notice, no hearing or anything. So, when something like that is so critical that something like this, and the Department's saying, "We've got to do things differently, and we've got to be more practical," that would be a great way -- and I suggested this quite frankly to the Commissioners just yesterday. You know, if you release that, it you'd shared that information so that people could sort of see, "Hey, they really are looking at it this way or that way," you know, that would help boost some confidence, I think. But, you know, with all the good intent in the world, we're still looking at a statute at this point that says, "Don't

worry about it. Trust us; we'll take care of it in the regulations."

SENATOR HARTLEY (15TH): Right, I thank you for those comments, and, you know, I'm hoping that, you know, the precious time we're using at this public hearing is also instructive in terms of trying to address some of these really big pieces of this overall proposal in front of us. Are there questions from Committee members? Senator Martin.

SENATOR MARTIN (31ST): Thank you, Madam Chair. Eric, thank you; thank you for all the time that you've put in to this policy that we're looking to change here. I know the diverse group that met throughout the summer, you know, the LEPS, the consultants, the DEEP staff, the private sector, environmental lawyers, and the legislators that were in that room, it was very diverse group. And there was a lot of discussion back and forth, not only in the original group but the subcommittee groups, as well. A lot emails that went back and forth. But the complexity in that, and now you're bringing to light along with some other people, "Gee, there's other complexities should we go to this release-based action that we're about to do here."

So, there seems to be another hill, so to speak, to get over here. So, if we did this -- so we charge DEEP or charge whomever to collect all the players again, that diverse group, and then within, I guess, the time that the Commissioners are looking to get this thing done in 2022, so, next year, we would have a whole year of this back and forth, addressing the unforeseen consequences, the complexities of if we do this, then this will happen. Now we've got to answer that, and that may lead to something else. I

like the idea of bringing in the Massachusetts I don't know who, but maybe it's the LEPS. I think you mentioned that. But maybe we also need to bring in the realtors because we had the realtors in that diverse group, as well. But maybe we need to bring the business community in, the developers, who have now experienced Massachusetts release-based, get that input. Do you think that's maybe the better approach than what we're trying to do with this Sections, I don't know, 1 through 6, or whatever it may be? Your thoughts.

ERIC BROWN: Yes, obviously, yes, we do think it has to be some kind of collaborative process. What we've been trying to think about is the collaborative processes that are generally used, quite frankly, I don't think there's any chance we could get this done in ten years. So, we have to think of some other way to do it, and that's why I suggested, you know, since the goal is a Mass-like program, and I think most people think that Mass works not perfectly, but is doing, I think, what we are all trying to accomplish here.

Start with that; bring in, as you say, the Massachusetts folks that have been through the battle to get here, to help guide us. I do think that that's doable, to come up with a statute for Connecticut -- a detailed, workable, and most importantly, a potentially successful statute for Connecticut in time for next session. I think that is very doable. Of course, I get paid to do this. I always feel bad for these folks. I mean, they get paid by, you know, how many hours they can bill to clients, and, you know, this is going to be a huge effort. But, therefore, you know, much to their credit -- so, I do think the type of process you're

envisioning would work, and I think it would work in time to meet the goals for next session.

SENATOR MARTIN (31ST): You know, Eric, the year we passed some legislation, and we heard the feedback quickly regarding some changes in the Transfer Act that was very positive in the real estate world. And I can see the legislation that we pass this year, excluding this section here, but the revised changes that we spent the summer accomplishing here, adopting those and that moving the ball up the field a little bit more, and now taking timeout to really do a really good job so that we can minimize unforeseen consequences down the road. We could really score some good points if we really maybe hit the pause button and do the job that we really need to do instead of sort of pushing forward.

ERIC BROWN: It's a really good point, Senator. I think -- I don't think we've had adequate testimony today on the significance of the Transfer Act changes that, you know, you all have led the charge on. Those changes will make a significant difference, I think, in the efficacy of the Transfer Act. And, so, no matter how long it takes to get the release-based system in place, those changes are really important because however long it's going to take and the better Transfer Act we have, you know, the better off we are as a state. I understand the Commissioner's sense of urgency, but the Transfer Act's been around since, I believe, 1985. So, we've been suffering with it, if you will, a long time but through your leadership, it's gotten better, and others can tell you better than I can later on, but my understanding is what you've got in your bill and what you were able to come up with over these many months will be very meaningful in terms of

addressing some of the biggest problems with the Transfer Act.

SENATOR MARTIN (31ST): Thank you, Eric.

SENATOR HARTLEY (15TH): Thank you, Senator Martin. Further comments? Yes, Representative Wilson.

REP. WILSON (66TH): Thank you, Madam Chair. Thank you, Eric, for being here. Good to see you. As I listen on this, I sit thinking that you're representing a good number of business owners here in the state of Connecticut; so, that to me presumes that's why you're passionately driven by this. And, so, my question is a correlation-kind of question. Do you have any feel for the number of businesses that are in your membership that are in establishment position? In other words, I'm thinking that you're hearing from those people, and that's why you've taken the position that CBIA has taken, and could you help us with an understanding of how many of your members are actually affected by this.

ERIC BROWN: Well, in terms of how many of our members are actual establishments, I couldn't give you a number. I think somebody said there's 4800 in the system right now; is that?

REP. WILSON (66TH): I think I heard 42 with maybe a net now of 32, something like that.

ERIC BROWN: So, you know, I don't know, but I would imagine it's on the scale of a few hundred, several hundred. Perhaps more importantly, as we look at going to the release-based system, how many of them have not had some sort of spill, contemporaneous or historic, or won't have spills in the future. Let's say all of them. So, if we don't get this right,

this is going to affect all of them and well beyond our membership. So, again, we are supportive of moving to that release-based system, but the consequences of not doing it correctly are huge.

REP. WILSON (66TH): Thank you for your comments. Thank you, Madam Chair.

SENATOR HARTLEY (15TH): Thank you. Further comments? So, we have to all get past this issue of, you know, trust -- one side doesn't trust the other side -- and recognize that we're kind of all in this together, and we're going to make these changes, and we're going to make them right for the betterment of both sides. So, let's get on the roundtable, not the rectangular table, no sides on the table, and really continue to plow through this. Thank you, Eric. And, so, at this point, we'd like to invite Garrett Sheehan. Thank you, Garrett. Go right ahead, sir. You've got the red light on there.

GARRETT SHEEHAN: Great. Senator Hartley, Senator Cohen, Representative Simmons, and members of the Commerce and Environment Committee; thank you for this opportunity. My name is Garrett Sheehan, and I'm the President and CEO of the Greater New Haven Chamber of Commerce and also currently the President of CEDAS which is the Connecticut Economic Development Association. I'm here in general support of Senate Bill 281 and 293. I'll tell you just a little bit about the two organizations that I represent today. The Regional Chamber in New Haven, we have approximately 1300 members, businesses, many of them developers, real estate, commercial brokers, attorneys who deal in land use, and then also in CEDAS we have about 400 members. These are the

economic developers that work in each of your communities, whether in a municipality or in a region.

The Transfer Act has been a thorn in the side of both of these groups, and, so, to be able to move forward is a great opportunity here. Now obviously the devil is in the details, and I respect what CBIA has said, and we care about those details because we don't want to walk ourselves into something that is worse than what we have right now. But we do need to have an urgency and move forward with legislation that takes the Transfer Act out of operation.

I'll just give you a little aside. We regularly at the Chamber meet with our businesses. We have a business retention and expansion program that we're doing right now. So, over the last four months, we've met with 46 of our businesses. When we asked them what is the number one barrier to having growth here in Connecticut, expanding your operation, 25 percent say the cost of doing business. No, they're not saying the Transfer Act in particular, but the Transfer Act is something that adds to that cost of doing business. Another ten percent say it's regulations; again, not specifically the Transfer Act.

So, I think it just speaks to what we've had in Connecticut. We've had low economic growth, and, so, we need to do things -- we need to do it the right way. I don't want to step away from that at all, but getting something done on the Transfer Act will help. I want to applaud this Committee and the work that was done last year to make changes. I think that was a great start. The work that DEEP, DECD, and especially the Working Committee. We have

several members who are a part of that. So, I applaud their efforts and hope that that work will continue in this very short timeframe to get some changes made to get this to the right place because there is the support out there for change. Thank you for your time.

SENATOR HARTLEY (15TH): Garrett, thank you, and I apologize for the wait. Are there comments from colleagues? Seeing none. Thanks so much for being with us. And, so, I'd like to invite Kat Fiedler. Good afternoon to you, Kat.

KAT FIEDLER: Good afternoon, Co-Chairs and members of the Environment and Commerce Committees. My name is Kat Fiedler. I'm a legal fellow and an attorney with Connecticut Fund for the Environment and Save the Sound, and I want to acknowledge the effort that DEEP is spearheading right now to listen to all the stakeholders, and we hope that these committees will be responsive to what is developing in those conversations. I did want to note that there were no environmental stakeholders at the table for last year's Transfer Act Working Group. So, I do hope that our voice can be heard today and during this legislative session.

To start, we do support the transition to a release-based program, but we do have concerns with the current proposal, as have already been mentioned today by the Committee members. The current proposal, we feel, fails to incorporate accountability and transparency measures. We know that this system is a shift towards a more privatized cleanup system, and that is, in part, due to the limited resources of DEEP and an effort to streamline these processes. And we're sympathetic

to the limited resources of the agency. We understand that DEEP will be burdened even further with upcoming retirements before July of 2022. But we believe that the release-based program must be structured so it is not an abdication of DEEP's responsibilities but rather an effective remediation program with proper oversight and control measures in place.

Under the current proposal, as you've heard, DEEP does not lead any cleanups. The cleanups are led by private LEPs. DEEP would only audit cleanups of the most severe contamination, and only these cleanups would require reporting, although I believe that the second tier now has the option for some reporting, and that has been a recent change. As has been mentioned, release-based systems are the norm across the country, but this privatized model is not the norm. New Jersey and Massachusetts are the only two states that have this sort of system that has so much emphasis put on cleanups being led by LEPs. And we understand that most LEPs consistently hold their work to the highest standards and that they are professionals, but we still have to install protective measures for the worst cast scenarios or any bad actors. We have to acknowledge that there could be market forces or conflicts of interest that might incentivize shortcuts, and I mean that with no disrespect to LEPs. We just have to have that safety net in place.

There are a few components that we believe should be incorporated in this statute and not be held back for the regulatory development process. A few, again, have been mentioned today, the first being audits. Right now, DEEP only will be auditing the most severe, the highest-risk tier of cleanups. We

hope that DEEP audits a specific percentage of those cleanups, not just leaving that open. So, we recommend that 40 percent of those cleanups be audited. Massachusetts audits about 20 percent, and they are still finding many of those cleanups having problems. I cannot speak to exactly the depth of those problems, and I'm certainly willing to look into that more if that's of interest.

Quickly, just to sum up, for our other two components that we hope to see in the statutes, again, a reporting of all cleanups and all spills, and this is important both for oversight but also just for public knowledge. It's not only a tool to be used for enforcement. It's not a stick. It is just so the public knows what's going on in their backyards. A lot of these activities that could cause spills and contamination are happening in environmental justice communities, and they might just not know what is going on, and, of course, this reporting could also be used for enforcement if that becomes necessary.

And finally, we do hope that a citizen suit provision is included in the statute. Again, the agency is strained with resources, and I think to acknowledge that and to understand that the public plays an important enforcement role is critical here, and nearly 21 states as of the early 2000s do have a citizen enforcement provision in their environmental cleanup statute, and I'm sure there are more in the last two decades that have been added in, so this would not be unusual. Massachusetts does have this provision, as well, that we could adopt as part of this package.

I did submit written testimony with more details, and I apologize for going over time. I would be happy to answer any questions, and certainly more detail of what we hope to see for oversight is included in that testimony.

SENATOR HARTLEY (15TH): Thank you very much, Kat. Yeah, so you did submit the testimony? I don't seem to have it here in my stack. Okay, I'll be sure to single that out. Are there questions from Committee members? If not, thank you very much for being here and I apologize for the wait. David Sutherland, please. David Sutherland. Has David left us? Okay, well, we're going to move on. Frank Hird and Jeff Ryer. Thank you.

JEFF RYER: Good afternoon, can you hear me okay? Thank you. I am Jeff Ryer with Ryer Associates Commercial Real Estate. I was a member of the Working Group, and I want to thank Senator Hartley and Representative Simmons for their guidance and leadership in that. I think we did a really great job, and they did a great job herding the cats there. So, I am testifying -- well, first I've submitted personal testimony, and CTR, Connecticut Association of Realtors, has also submitted testimony, and, fortunately, both of our positions align, but I'm here to support the first five sections of the Senate Bill 281 and in concept really, really like the idea of a release-based system, but I am very concerned that the timeframe allotted to develop this thing, as has been pointed out by many others, has just not been enough, and the ramifications of doing it wrong are really, really impactful of the commercial real estate market. I'll go with -- you want to --.

FRANK HIRD: I'm Frank Hird and a commercial real estate broker with OR&L Commercial. My thoughts are in line with what Jeff said and what Connecticut Realtors has put forward in their written testimony. I'm not part of the Working Group this year; I was last year. The original Working Group, as we were kind of cutting our way through the jungle, so to speak, we got great help from Senator Hartley and Representative Simmons, and also Senator Cohen helped us, and we really appreciate that.

I just wanted to give you a quick historical perspective. The items that we got passed last year have had an absolute impact on the economy of Connecticut. I've been stopped on multiple occasions in brokerage meetings, at the grocery store, in the library; wherever I am, somebody seems to come up to me and say, "Hey, weren't you part of that?" And I would say, "Yes, I was." You know, I was on the light lifting; you guys did the heavy lifting on it. But then they'll relate a story where maybe it's a lawyer who says, you know, I had a client who was afraid to sell their property, and once that was passed, they were able to move forward, sell their property, and grow their business. And then very quickly, another story. Today, I'm representing a company that has been in the same building in Connecticut for 15 to 20 years, and they've been afraid to move. I got to give them the good news of these changes that gave them the signal okay. They're moving from a \$10,000 square foot building, which we're selling, to a \$20,000 square foot building. They'll roughly double their workforce. They couldn't have done it if they had to stay in that small building with no way out.

So, all of those people send their thanks to you and also to DEEP for working with us, and I would reiterate this as "we're all on the same team." You folks, DEEP, the brokers, the LEPs, the lawyers, everybody. Thank you.

SENATOR HARTLEY (15TH): Thank you both for being here today, being patient and waiting, but also for all the work that you've done to this point. And it's just so vital to make sure that everybody is in the room and that, you know, we have this full vetting opportunity. And it's really nice to anecdotally hear those stories about how this is playing out now in the community, and I think, hopefully, also in short order, there will be an opportunity for us to have some definitive metrics to actually substantiate what we long felt as we all have gone through this process on both sides.

I want to particularly, you know, take my hat off to the two of you and to the Realtors Association because really part of the whole launch of this was a report that was done which so vividly demonstrated how we were mothballing ourselves, shuttering properties, totally in gridlock by this. And it's been a long history. There've been a lot of people who've been involved in this, and they've all, I think, contributed to the point that we are here today. It's not, you know, any individual or whatever. So, I just recognize your fingerprints on where we are today. And, you know, the other thing is when I talk about building trust, that's really important because through this long history, there have grown, you know, these great silos of distrust, and that behooves no one, and we're just too small of a state to kind of get stuck here on opposite

sides. So, are there questions or comments from Committee members? Representative Simmons.

REP. SIMMONS (144TH): Thank you, Madam Co-Chair. I want to echo the sentiments of Senator Hartley and thank you both for all of your work on the Working Group and support for this. And one question I have is, you know, referring back to what the Commissioner said earlier about the ambiguity in length of time it takes to sell properties under the Transfer Act. I'm wondering if you could kind of specify, on average, how long it takes to sell a property that's, you know, entered into the Transfer Act versus one that's not.

FRANK HIRD: I'll go first, and then I'll let Jeff add his comments to it. It's very hard to predict how long it will take to sell any property, but if it's properly marketed and properly priced, if I have somebody approach me to list the property where I know it's not going to be part of the Transfer Act, I tell them I'm probably going to be done in six months; we'll be at a closing. If it is part of the Transfer Act, it's going to be a minimum of a year, just an absolute minimum of a year. Part of that time would be spent figuring out if there isn't an existing phase 1, you have to have that done, and then you have to figure out is this going to be part of the Transfer Act. If it is, I'm going to say it's at least a year, and there're plenty of examples where it's gone on two years, and from a sense of commerce, that's way too long. Businesses can't wait. When they need to move, they need to move.

JEFF RYER: So, last year you all made some legislative changes which have actually helped. Up

until then, there was also a potential for DEEP to audit the property and take up to three years to make an audit or no-audit decision. It's hard to imagine many buyers who would want to acquire a property and then find out they are subject to additional remediation standards three years from the day they bought it, particularly if it's a redevelopment into, say, a hotel or sports complex or something like that, that they have to put on hold with their bank holding it and financing and their tenants and all that. It's very hard to -- and it basically becomes stifling. But you wouldn't know that until you went through the whole process, and the DEEP issues their audit/no-audit order. Fortunately, the changes in last year's legislative session have limited it now; I think they've got a year to say whether they are going to audit and three years to complete it. So, that's gone a long ways. But even still, it's a long way. So, it can take a lot; it's prohibitive.

REP. SIMMONS (144TH): Thank you for that answer, and that was going to be my next question. That's really helpful. And then just one final question is, you know, if we are able to get this passed and transition successfully to this release-based program, do you think we need to do, you know, a proactive marketing campaign to get the word out about these changes, or do you think this will send a signal and people will know about it pretty quickly?

FRANK HIRD: I would say absolutely we need to be proactive with it. Even with the changes we made last year, it hadn't been signed by the governor, buy you all had passed it. I had lawyers and plenty of developers and property owners who had no idea

that that had been passed, and some of them, quite honestly, when they found out, they waited until October because they knew they might have been over 100 kilograms once. They waited and sold their property after October. So, I think the same holds true moving forward. I would also say if we go to a spill, release-based system, you don't want to stop commerce either; so, we don't want people saying today, "I'm going to wait two years for that to take effect." I think they're probably going to come together kind of slowly over those two years, and that won't be the case, but, hopefully, that doesn't happen.

REP. SIMMONS (144TH): Thank you for that feedback. Thank you, Madam Chair.

SENATOR HARTLEY (15TH): Thank you. Senator Martin.

SENATOR MARTIN (31ST): Thank you, Madam Chair. I want to thank the realtors for last year you came to the public hearing, and you introduced this idea of we need some changes to the Transfer Act, and as a result, we passed legislation last year, and now here we are today looking to change the Transfer Act some more and then even take it a step further in heading towards the release-based property remediation program. So, Jeff, thank you for the meetings that you attended. I know that you're part of that diverse group that covered the DEEP staff, the lawyers that dealt with the environmental issues, the consultants, the LEPs, etc. So, Jeff, are we missing anybody at the table, so to speak? What are your thoughts?

JEFF RYER: Well, going forward, definitely you'll need environmental. I was not included in the most recent iteration of -- I was part of a Working Group

over the summertime, but this more recent thing about moving into a release-based system, there were no commercial brokers, to my knowledge, in that group. And whether it's me or Frank or another commercial broker or perhaps two, I think a market-impact perspective -- now Jim Hackman from CTR was in it, but a broker with boots on the ground and dealing with clients, I think, a market perspective on that. I thought I added some value to the Transfer Act Working Group over the summertime, and I think that going forward, CTR and commercial brokers' involvement would be important, and I think I saw that some environmental groups are already on this thing -- on this move toward this release-based, but, yeah, be as diverse as you can. I'd also caution -- I mean, we're all talking about Massachusetts and from the sound of things, Massachusetts is doing a great job. But we have a chance to make something that, if the Transfer Act is any, you know, any example, might last for 40 or 50 years. So, let's do it right. Let's look at Arizona. Let's look at California. Let's look at places and then pick and choose the concepts that work best and legislation that works best. I don't think you can do that in the legislative session that we have now.

SENATOR MARTIN (31ST): So, the idea that I sort of assembled for a while listening to everybody and reading some of the comments of, I'm going to call it, sort of hitting the pause button a little bit, but forming a Working Group again to charge that Working Group to do that study or -- probably that's not the right word -- but, you know, look at all the various and, you know, the space programs that are out there throughout the country, and then coming

back next year with the right language and the right statutes that we need to put into place.

JEFF RYER: And what about the buy-in from all those stakeholders, too? Absolutely.

SENATOR MARTIN (31ST): Okay, all right. Thank you.

SENATOR HARTLEY (15TH): Thank you, Senator. Further questions? Thanks very much for being with us, Jeff and Frank. We so appreciate all of your involvement. Lee Hoffman, please. Is Lee here? Good afternoon, sir.

LEE HOFFMAN: Good afternoon. [Laughing]. You were warned about me.

SENATOR HARTLEY (15TH): We see it. [Laughing].

LEE HOFFMAN: So, my name is Lee Hoffman. I am the Chair of the Environmental Section of the Bar Association. I'm also a member of the Brownfields Working Group which the Commerce Committee commissioned ten years ago, and I'm still there. But I'm not speaking in either of those capacities. I'm speaking in my capacity as an individual who's been dealing with remediation for 25 years. And I think it's safe to say that the Transfer Act is a cancer. It's consuming economic resources, it's consuming environmental resources, and it's not an effective method of allocating those resources in either sphere. The good news is it's a very slowly metastasizing cancer in that we've had it for 35 years, and we're still alive. And I know that you would think that the thing to do with cancer is to immediately excise it and cut it out, and that's what I see with the second half of Bill 281 and all of Bill 293, but I'm reminded of the admonition of

the first codicil of the Hippocratic Oath, which is first do no harm to the patient.

And I think that we need to consider what it is that we're going to do and begin with the end in mind as we do this. And the cancer of the Transfer Act has metastasized to lot of different places -- brownfields, economic development, municipalities. As we shift to a resource-based program, among other things, the state is going to be impacted, not in the way that was discussed with the DEEP and the DECD Commissioners, but rather the Department of Transportation will have a lot of releases and a lot of sites where they're going to discover releases. They don't transfer those sites. They're going to be brought into this program where they wouldn't be already.

And we've been holding out Massachusetts as an example, and so I did bring props. I'm the guy that Eric warned you about. This is what we're trying to do in two years. That is the Massachusetts regulations. This, by way of comparison, is the current remediation standard regulations for the State of Connecticut including the environmental land-use restriction regulations. The reason why this is so much thicker in part goes to the answer to your question from earlier, Senator Hartley, when you asked about the LSP versus the LEP program. In Massachusetts, the LSPs actually have the ability to do site-specific determinations of risk on the site without going to the agency; making those determinations, they obviously have to follow very detailed guidance. Connecticut doesn't have that. That's just one example, but, by and large, that's the sort of room that's afforded to the LSP.

I'll close just by pointing out that the daunting task before us now, that's the implementing statute in Massachusetts, and that's the Transfer Act. And there's still a difference in height. We've got five weeks to get to here, and we've got two years to get to there. That's a lot of work. It's possible with everybody working together, but, quite frankly, to Senator Martin's point, hitting the plan that's going to work. Because right now, we're going to have really unintended consequences. Right now, sitting in the statute among other things, and this is what I'll close with, is we've changed the definition of person to add the following, "and any officer or governing or managing body of any partnership, association, firm, or corporation or any member of a limited liability company will be responsible for reporting and cleaning up releases." That's in addition to the Transfer Act language, which means that individual members of LLCs are now going to bear responsibility. That, I think, is going to scare off commerce at least with my clients. Thank you for your attention, and I'm happy to answer any questions and to hide the various regulations because I know they're awful.

SENATOR HARTLEY (15TH): Lee, thanks very much. Yeah, you make your point. Did you give us written testimony?

LEE HOFFMAN: Yes, Ma'am, I did.

SENATOR HARTLEY (15TH): Okay, thank you for that.

LEE HOFFMAN: And it's the cancer testimony.

SENATOR HARTLEY (15TH): Oh, so, I don't need the graphics; I just want the facts. [Laughter]. Okay,

thank you. It was pretty gruesome, actually, your description, if you want to know.

LEE HOFFMAN: It's a gruesome problem.

SENATOR HARTLEY (15TH): Questions from Committee members? Yes, Senator Martin.

SENATOR MARTIN (31ST): Thank you. Lee, thank you so much for testifying. I can say without a doubt with that description you just gave to those that will be responsible -- LLC and all their managers, all their members, etc., no one will be buying any type of contaminated site at all, or establishment at all.

LEE HOFFMAN: Right, and it's absolutely appropriate. The definition is taken from other pieces of other environmental statutes where it is appropriate to hold individuals liable in their capacity as corporate officers or managers or what have you. Please don't misunderstand that. It's not something that's made out of whole cloth, but when you graft it onto a new remediation standard, that makes a difference. And the standards -- not to get too far in the weeds -- the standards of strict liability versus negligence also play in because where you have individuals involved, if they were negligent, I think it's a fairer thing to do to hold someone accountable for the negligence. But if we go to a strict liability release reporting system, that's little less fair.

SENATOR MARTIN (31ST): Thank you.

SENATOR HARTLEY (15TH): Thank you, Senator Martin. Questions from Committee members? And your contact information, by the way, must be on your testimony, I'm assuming.

LEE HOFFMAN: It is.

SENATOR HARTLEY (15TH): If there are no further questions, thank you very much. I'd like to invite Pam Elkow. Once again, I'm so sorry about this list and the time it takes us to get here.

PAM ELKOW: Understood. This is an important thing, and we should be spending the right amount of time on this. So, thank you, Senator Hartley, Senator Cohen, Representative Simmons, and other Committee members for the opportunity. My name is Pamela Elkow. I'm an attorney with Carmody, Torrance, Sandak & Hennessey. I've been practicing environmental law -- I'm saying this out loud on the record -- just over 30 years now [Laughter], and I primarily represent people who are buying and selling --

SENATOR HARTLEY (15TH): Are you going to bill us?

PAM ELKOW: I am going to bill you [Laughter]. Senator, you know how much I have done on this. [Crosstalk].

SENATOR HARTLEY (15TH): Believe me, I feel guilty about this.

PAM ELKOW: But this is important. My practice, where I do bill people, focuses primarily on people who are buying and selling industrial commercial property. I also do a lot of work on brownfields. So, I've been working with the Transfer Act my entire career. I am also a member of the Transfer Act Working Group and have been working with all of you on that. So, thank you again for that opportunity.

I am here to talk about both S.B. 281 and S.B. 293. I obviously am in favor of 281 Sections 1 through 5, and I did submit testimony; so, I'm not gonna go in great detail. I was prepared to talk about the definition of establishment, the multitenant properties, and the industrial condo. I am the person that Graham Stevens is meeting with when I'm done talking here today. We're, hopefully, going to get that language straightened out. I'm happy to answer questions about that, but too much time on it because, in fact, what everybody else has been spending time on is the rest of 281 and all of 293. And, as you will see from my written testimony, I agree wholeheartedly in concept of moving from the Transfer Act to a release-based system. I do not have Lee's way with words. I now have the cancer analogy stuck in my head, but I do think that it is an act that has to go. It is just slowing down investment in Connecticut, and there are better ways to do it.

The reason we look at Mass is because it does have a privatized system. Most other states don't, so it's an obvious, natural place to look, but wherever we look, we need that. That said, just the number of questions that happened here today, we weren't talking about the Transfer Act Working Group recommendations in this hearing. We were talking about the rest of the issue which is the release-based system, and all of you had lots and lots of questions. The act as it's written now is completely unacceptable. Utter chaos will result, particularly with the before language as opposed to the after July 1, 2022, language in it. But even with that, there's not enough in there in order to give a framework to the regulations that need to be

adopted. We really need to understand. I had in my notes "devil is in the details." I think I counted at least four other people saying that earlier today; so, count me as the fifth. There is a lot that should go in the statute. We need those regulations to really reflect what we all agree is the program. We can't just have a very short statute that describes that. So, with that, I know the buzzer went off. I will stop talking. I'm going to say what you've heard from lots of people. So, but I'm happy to answer any questions.

SENATOR HARTLEY (15TH): Thank you so much, Pam. First of all, I'm derelict in not recognizing the Subcommittee Chairs on the Transfer Act Working Group, Pam being one of them. You headed up the Establishment Subcommittee. These were very large tasks and work products, and then the other two on the Working Group were Beth Barton and Franca DeRosa, who are also here with us today, and they headed up the Transfer Act Subcommittee in the Working Group. Once again, just yeoman's job in terms of, you know, the amount of time and the expertise and so forth, and without you three, we would not be here today talking about, you know, some consensus items and some, you know, I think, a significant movement forward from what we got in last year's legislation. So, a collective thank you to you, and I am remiss early on for not pointing that out to everyone.

So, anyway, you are absolutely right, Pam. What we've been talking about here is Section 6 through 10 and then the companion piece and not the basis of the Working Group's report. And so I did, for the record, try to make sure that the report is reflective of everything that we had worked on and

then even after it went to press, so to speak, there were ongoing items; one of them was the multitenant. So, if you want to comment, you know, and earlier we talked about a definite time by which we can get that incorporated.

PAM ELKOW: As I said, Graham and I are set to sit down as soon as I'm done talking. So, I think that'll help. So, a couple things that actually, I think, did make it into some language in the bill, but that language was not necessarily consensus language; it was kind of placeholder language 'cause the concept had been agreed to. The concept as I understand for everybody is right now, when you have a parcel of property in which one tenant or occupant has engaged in those activities that meets the definition of an establishment, when that property is sold, the entire property needs to be investigated including those portions of the property where no establishment activities happened. And because of the way investigations are required to be done on the site characterization guidance document, you are, again, as Commissioner Dykes said, you're proving the negative. You are going to places where you have no idea if there's a spill or not, but there is at least the potential of a spill -- a loading dock, a dumpster -- and you have to go sample in those areas and prove that there has been no release. So, if the entire property is an establishment, that makes sense. But, again, on properties where only one tenant is one, right now, you need to go to the other tenants in that same, you know, industrial park, go to a separate building and require an investigation of that.

The amendment that we've agreed to in concept is that for those properties the investigation or

remediation will be limited to the part of the property where the establishment is, or if there was historically an establishment, was located. We're still working out the details, but that's the concept.

On the industrial condo piece which is sort of similar in nature, because of the nature of condominium law, when you have a condominium, all of the unit holders own in common an undivided interest in the common elements. So, I may own a unit. I own inside the walls of my unit, and I own the dirt together with everybody else in that condo. If one unit holder in a condo engages in activities that meet the definition of establishment, that causes the common elements, which are part of their unit, to become an establishment. That means when somebody owns and tries to sell a unit that is not an establishment -- they've never engaged in those activities -- they are, in fact, selling an establishment because their unit also includes an undivided interest in the common elements which is the dirt below the building. And I have had at least two or three clients that have been in this position.

And so, people who have never engaged in activities that would meet the definition of establishment then have to investigate and clean up the entire condominium the way -- it's the intersection of the Transfer Act and real estate law. So, what we've agreed to again in concept, and I think we're a little bit more in agreement with this language, is that for purposes solely of the Transfer Act, the establishment real estate would be defined as the

unit where the establishment activities occurred and then any other limited common elements where they have control over that and then any part of the common elements where that unit owner managed hazardous substances. So, if there was a common loading dock, you would still have to investigate the loading dock. But that's the idea, is to try to limit the geographic expanse of the investigation that's required as a result of the Transfer Act on those properties where there're multiple occupants. So, hopefully, that made sense.

SENATOR HARTLEY (15TH): Well, yeah, and that was a layman's explanation. Thank you very much for that. And so those are very important pieces to this, and, so, I just want to make sure that our legislation reflects everything and, quite frankly, all the work that was done. So, we'll be waiting for that response.

PAM ELKOW: And, again, there is language to that effect in the bill already, but it's not necessarily agreed to. So, we will tweak that language, and we'll get that to you as soon as we possibly can.

SENATOR HARTLEY (15TH): Okay, Pam, that's great. And thank you for, you know, your assessment on, you know, Section 6 through 10 and the companion piece. So, we hear you clearly, and I'm understanding you are also part of this -- [Crosstalk]

PAM ELKOW: I am. I'm not getting paid for that either. Yeah, I am. That's okay. All joking aside, this, and I lost track of who said it -- it was probably Eric who said it -- this is the most significant change in environmental law since I've been practicing, and I think for anybody in this room. This is really important, and we need to get

it right. Because if we get it right, we will be doing two really good things. We will be continuing to clean up Connecticut, and we will be sending a signal to people that this is a place they should be willing and happy to invest in because they're not going to be stuck in the do-loop that is the Transfer Act. If we do it wrong, then it's going to be just that much harder to fix again, and we just really can't afford that right now.

SENATOR HARTLEY (15TH): Agreed. Totally agreed. Comments from colleagues? Yes, Senator Martin.

SENATOR MARTIN (31ST): Thank you. Thank you, Pam. Thank you so much for testifying, but thank you for all the work that you've done. It's not unseen, just to let you know, and I'm sorry you didn't get paid.

PAM ELKOW: That's okay. [Laughter] I'm not the only lawyer here who did not get paid for all this work.

SENATOR HARTLEY (15TH): I'm sorry, I'm missing that. What --

PAM ELKOW: Oh, no. Senator Martin offered to pay me. [Laughter] That's what he meant.

SENATOR HARTLEY (15TH): Thank you, Senator Martin. Yes, Representative Simmons.

REP. SIMMONS (144TH): Thank you, Madam Co-Chair, and no question. I just want to commend you and thank you so much, Pam, for all of your work not only on the Working Group over the past year but in helping us get the bill through the legislature last year that shortened up the audit period, and it's just so commendable all the hours you've spent --

unpaid hours -- on top of the good work you do. We're so proud that you are from Stamford and lucky to have you as one of our leading female partners down there. So, thank you for all the work you do in our community in Stamford and for all the service you've really given to our state supporting this initiative.

PAM ELKOW: Thank you.

REP. SIMMONS (144TH): Thank you, Madam Chair.

SENATOR HARTLEY (15TH): Thank you, Representative Simmons. Further comments? Oh, Senator Leone.

SENATOR LEONE: Thank you, Madam Chair. I just wanted to say thank you for coming on up. Any time we have a Stamford constituent, we always like to acknowledge the fact that they took the time to come from so far away and the fact that you are working for a premier law firm that does so many good things for us down in Stamford. So, thanks.

PAM ELKOW: Thank you.

SENATOR LEONE: Thank you, Madam Chair.

SENATOR HARTLEY (15TH): Thank you, Senator. Are there further comments? Thanks, Pam. We'll let you get back on the clock, but we're really grateful, you know, really for all the fingerprints that are on here, and yours are certainly included.

PAM ELKOW: Thank you.

SENATOR HARTLEY (15TH): Okay, so appreciated. And then, your counterparts -- Beth Barton and Franca DeRosa.

BETH BARTON: Good afternoon to the Co-Chairs and the members of the Environment and Commerce

Committees. Thank you very much for the opportunity to testify today on these two bills. I did submit electronic testimony, so I won't repeat that. I'm also mindful of the hour, so I'll try to be pretty succinct in my remarks, and obviously I'm very happy to answer any questions. As Senator Hartley mentioned previously, I was a member of the Transfer Act Working Group and a Co-Chair of the Subcommittee that dealt with the definition of transfer. And next to me is Franca DeRosa from Brown Rudnick who was my Co-Chair with respect to the work that we did on the Subcommittee for the definition of transfer. Is there anything you want to add?

I thank you very much, as I said, for the opportunity to be here. I am an environmental attorney with Day Pitney, resident in our Hartford office. My practice is pretty much pretty similar to what you already heard from Pam. I think that's probably true for Franca, as well. My payment scheme and competition scheme probably is too, but that's not anything that I'm wrapped up in. I've been practicing environmental law in Connecticut for over 35 years, and I'm here today really because I have a continuing commitment to support action that will facilitate and not frustrate or needlessly complicate the environmentally and economically sound management, disposition, and use of Connecticut properties and businesses that have actual or potential environmental challenges.

I won't take the time to talk about Sections 1 through 5. I obviously support those sections and very much hope we can find a mechanism whereby to put those into law and market them and get the benefit from them. Other than to say that I think it is even in the context of the discussion of

Section 6 through 11 with all due respect to Commissioner Dykes, I think it is relevant that over a six-month period we had 19 meetings and we worked very intensively. We shared lots and lots of drafts, and we only dealt with a couple of discrete provisions of the Connecticut Transfer Act. I wholeheartedly concur in what you've heard from the previous individuals testifying about the monumental significance of what we're about to embark on here.

With respect to the opposition that I have to Sections 6 through 11 of raised Senate Bill No. 281 and raised Senate Bill 293, I want to emphasize, as other have, that this is not opposition to a move by Connecticut to a new release-based program, presumably eventually and ideally with a unified set of cleanup regulations. Rather the opposition emanates from the many concerns I have and I've heard about the rush to legislate what in the Senator's words as well as DEEP's own words is a sea change and a change that will significantly alter the way DEEP works. There is a concern that the rush is going to result in an incomplete framework without full and adequate consideration of intended as well as unintended consequences, and this proposed language, as you already heard, has the potential to impact every property in the State of Connecticut, not just 4200; every property in the State of Connecticut and every person in or maybe who was ever in the State of Connecticut in light of certain of the language.

I'm going to touch on rather than the concern about the description of the regulations, which I concur in. I just want to touch on the fact that Sections 6 through 11 consist of seven pages, and five of those seven pages deal primarily with not the

particulars of the new release-based program or the complex and complicated transitioning from the multiple other very good programs we currently have in place, but rather enforcement. You already heard one reference by Lee Hoffman in terms of the problems with Section 6. In addition, Section 7 states that any release by any person is deemed a public nuisance. In two sentences I would submit perhaps changing the law of public nuisance in Connecticut. Nothing more; it's just two sentences.

Also, I'd like to point out that in Section 9, there is an authorization for the issuance of a cease and-desist order without a prior hearing if there's-any violation of the statute. Notably absent from that subsection is language in existing Section 22a-7 which addresses DEEP's authority to issue cease-and-desist orders but requires that DEEP have investigated and concluded that the activity or the condition that's the subject of the cease-and-desist order, "Will result in, or is likely to result in, imminent and substantial damage to the environment or to public health. That's nowhere in Sections 6 through 11.

I think that in many respects ironically while we're certainly in a very different place from where Massachusetts was when it had its clean slate in the late 1980s. Rather than viewing that as an indication of something we can take solace in that this will move very quickly, I think that fact that we do have 35 years of experience and, as we've heard, some very, very good programs in place. I think that makes our task only more complicated than the task before Massachusetts back in the 1980s, not less complicated. We have to make sure, as has already been said, that we do this right.

So, in conclusion, I, like others in the private sector, support transitioning to a new release-based program, but this is a very, very heavy lift, and it has many, many ripple effects. While I commend DEEP including certainly Commissioner Dykes and key members of her staff for their availability and commitment to this effort. The remaining days in the session are not enough to accomplish this very tall task with intentionally all-encompassing impact. It's in everyone's interest, as we've heard from others, that this new program be a success and favorably viewed inside and outside Connecticut. As with past DEEP efforts to bring about a transformation of this magnitude, which failed, DEEP has heard loud and clear the interest and willingness of the regulated community to again roll up their sleeves without compensation for them. But I believe it can't be done, at least not certainly well, in two months. I'm happy to answer any questions.

SENATOR HARTLEY (15TH): Thank you, Beth. Yes, Franca.

FRANCA DEROSA: Hello, everyone. I'm Franca DeRosa from Brown Rudnick. Like Pam and like Beth and other attorneys in the room, I've been practicing and dealing with the Transfer Act for almost 30 years. I hate to admit that out loud, but it's been that long. And like everyone else in the room, I'm in strong support of Sections 1 through 5 of the bill. I think our Committee did a great job working together to do some really good changes that will benefit the state and benefit economic development in the state, and, so I do support 1 through 5. The transition to release-based is, as Eric has said, a huge, huge sea change, and I think everyone in this

room wants to leave a legacy of a program that works, not one that is rushed through and is not effective and has detrimental effects either intentionally or unintentionally. So I would caution that it's too much to do in 2 months as you've heard from all the other speakers. I'll be happy to answer any questions.

SENATOR HARTLEY (15TH): Thank you, both very much, and as I said earlier, as the Subcommittee Chairs of the Transfer Subcommittee, you were dealing with that unending list of -- and then of course, I looked at the draft report, and the truth is, we only did something with ten of the 29. So, I was like, ugh, that long list right through BB is still hanging out there. And that's just almost like a graphic of, you know, kind of what the problems are with the Transfer Act. It's proving a negative, and there's this long list of exceptions, and it's confusing and time-consuming and all those things.

So, I just want to ask the both of you right now, the Working Group, the reports the Working Group did, and then what is now in the proposed legislation, I just want to know that you were in sync and that it represents everything that we ended up with that list of consensus items. And, I mean, we still have just a few outstanding ones on the Establishment Subcommittee, but with regard to the Transfer Subcommittee, is this complete and representative?

BETH BARTON: I believe the answer is yes, certainly with respect to the provisions that relate to transfer. I am, aware as we've heard, that there is some discussion still ongoing with respect to some of the other provisions that came out of the

Establishment Committee. I haven't seen that resolution. I'm sure at some point we will, but we haven't seen it. There was also a reference during the Department's testimony earlier to their being some other consensus items that didn't find their way into the act. I honestly don't know what those were. I'm happy to take a look at them to your point, Senator, if there is something on which we have consensus, and it was missed, and it could increase the number as to which we hopefully make things better. I think we'd be more than happy to sign onto them. So, I would ask, and I have every confidence they will let DEEP share with us that those items are. I don't really know what they are.

SENATOR HARTLEY (15TH): And, so, I know Pam is going to be working with Graham, and maybe, you know, you might just check in on that. I actually did make a note about that; we should find out. Because, once again, we want to include the full body of that work and those items. And if, you know, any one of the three of you can kind of follow up and get back to us on that so we could get that incorporated and not leave anything by the wayside.

So, let me ask this question. So, with respect to Sections 6 through 10, so playing devil's advocate here, there is language that says that those regulations are not effective until regulations have been adopted. So, tell me, does that not give a failsafe to the fact that whatever it is that we need to do, we will do it because this will not be triggered until such time?

BETH BARTON: It certainly is helpful. I would agree with prior testimony that you've heard in that without that, it is totally and completely

unworkable. The prospect of totally upending the way in which we identify and clean up properties in Connecticut, with no matter how good the statute is, no regulations is just mindboggling. You look at the issues we've had with spills for, what did Eric say, 40 years, and that's just a very small component of this huge task that we're all looking at ahead of us. But that's not enough, respectfully, Senator. I cited a couple of the things where you're wearing a legal hat, which I have trouble taking off.

The language is just totally unworkable, and the ramifications and the impact it will, of necessity, have to have if it were to be in its current form, when we're asked to advise clients, whether they be seller, prospective purchasers, investor, lenders, as to what that language means or what the level of risk is that they're potentially putting before themselves if they were to move forward with the transaction. The language alone about the public nuisance is a terrible thing to have to convey to someone. If you are looking to purchase a piece of property on which there's ever been a release of any amount by any person, that release is a public nuisance. That's not the law in the State of Connecticut with respect to public nuisance.

So, that along is, to my way of thinking, an example of something that unequivocally can't be dealt with in regulations; it's got to be dealt with in stature. And to even put that out there, even is, as was suggested, we'll make later legislative changes, is going to be a horrible thing to have to try to deal with from a marketing perspective in terms of convincing people that this is a really great program that you should sign onto.

SENATOR HARTLEY (15TH): Thank you; you make your point. Yes, Franca.

FRANCA DEROSA: I agree with Beth, with what Beth said. There are a lot of provisions in there that require a lot more discussion. As you saw during our subcommittee process, there were many items that were put on the table, and we labored over words, simple words that should have been easy but required a lot of discussion, a lot of thought, and I commend everyone, all the stakeholders that were at the table for putting the time and effort into making sure we got it right. And that was on a very discrete portion of the Transfer Act, and now we're making a major sea change with this new approach -- release-based approach -- and I just don't think we should do it so quickly without taking the same care that we did with the changes we incorporated into the Transfer Act.

SENATOR HARTLEY (15TH): Thank you, Franca. Yes, Senator Martin.

SENATOR MARTIN (31ST): Thank you, Madam Chair. Thank you for your pro bono lawyering, I guess. All of you, the two of you with Pam and all of the entire committee should be commended for all the hours. I don't think we can actually thank you the right way for what you've done and what you're about to do. But the diverse group was, I thought, the right players that were there. I did ask Jeff from the realtors should we include someone else, and I'd like to think that we're going to hit the pause button regarding what you're suggesting here regarding the release-based property act. So, I'm asking should we be including somebody else that should be at the table in these discussions.

BETH BARTON: Well, I believe we did get feedback that the environmental groups did not have a seat at the table -- at least, that was their perception. Again, the meetings were all open, they were noticed, anybody that wanted to participate could certainly participate. But we should have someone from the environmental groups to also participate. As you've heard from one of the previous speakers, they have very certain ideas that they want articulated and thought about, and we may not agree, but I think that they do deserve a place at the table.

FRANCA DEROSA: I would also suggest that in light of the all-encompassing nature of what we're about to embark on, that really there should be a hard look at categories of folks who own or otherwise are involved in any transaction dealing with a piece of property. And an example that readily comes to mind that probably we could benefit from having additional representation would be the municipalities. The potential consequences for municipalities of this type of legislation, many of whom own a lot of properties, many of whom have taken advantage of some of the different liability relief programs that we have, have taken on properties. Right now, certainly, those municipalities are all impacted and are going to be pulled within the definition of person and are going to have to make these reports and are going to have to remediate.

So, I think that probably I would cite that as an example of one category that may not have been as critical to the narrow task that was before the Working Group, but, again, when I think you look at the all-encompassing nature of this effort, I think

they probably should be at the table. And probably, there should be, I think it was Lee who mentioned, DOT. Probably there should be someone on behalf of the owners of state properties, DAS, DOT, someone because, again, all of those property owners are impacted.

SENATOR MARTIN (31ST): Thank you. Very good suggestions. We heard earlier about the spills. Can you give me a definition of what a spill is?

BETH BARTON: That's been subject to 40 years of contentious discussion. [Laughter] So, there is no easy answer. I will say that the statute that exists today requires the reporting of any spill in any amount anywhere.

SENATOR MARTIN (31ST): So, any spill requires a notification.

BETH BARTON: A notification; that is literally what the statute says in 22a-430. Now, practically does that occur? We talked about -- I can't remember-- one of the other speakers was saying practically what happens today -- I think it was Graham -- that sometimes there are releases in a manufacturing building, for example, and it's contained and it's a small amount. It's not toxic. It's cleaned up right away. It's addressed properly, and a lot of people don't report those because it happens, it's cleaned up right away. It doesn't have lingering effects to the environment, to any workers, to the indoor air quality or anything like that. But the literal reading of the statute is any spill in any amount must be reported.

SENATOR MARTIN (31ST): Any amount, really. A quart of something?

BETH BARTON: Yes.

SENATOR MARTIN (31ST): Wow, very broad.

BETH BARTON: Yeah, I agree completely with Franca. That unequivocally is what the statute says, and I have to tell you when you answer that question when it's put to you by a client, they look at you and they say, "Are you kidding me?" and I said, "No, that's what the law is." From there, you know, there are people exercising judgment, particularly people that have experience in other states where they have as perhaps the spill regs we're going to be getting will have, where they have reportable quantities; so, there are thresholds. But right now, we don't have anything like that. In some other states, they also have thresholds that are based upon what the nature of the material is. In some other states, they also have thresholds based upon to Franca's point -- spills anywhere, on where it's spilled, I mean. Is it contained? Do you address it promptly? So those sorts of things may be addressed in the spill regs, but right now all we have is the statute which says any spill of anything at any time in any place.

SENATOR MARTIN (31ST): So, using the Massachusetts document with the release-based statute they have, is that addressed in that document?

BETH BARTON: They have reportable quantities, and they have reportable concentrations, and they also have even in the statute sections dealing with types of materials that would be outside the scope of the act and types of sites that might be dealt with outside the act. So, it does -- I mean, it's not squarely dealing with what you're saying in terms of the definition of the spill, but the effect of the

provisions is to certainly narrow what is otherwise the legislation we presently have.

SENATOR MARTIN (31ST): Better than us.

BETH BARTON: But they definitely have reportable concentrations and reportable quantities.

SENATOR MARTIN (31ST): Just one last question, and I probably should ask Mr. Hoffman this question. Is the Massachusetts document statute a good framework to start from, or is there something else out there?

BETH BARTON: I think, I mean, DEEP has said that they're paying a lot of attention to Massachusetts, and I think that makes sense if only because other than New Jersey, it's the only state that has something like the LEP program. So, I think it would be -- it wouldn't make any sense not to at least pay attention to Massachusetts. I think there are many good concepts. I will say that it's not like everything has been a bed of roses with the Massachusetts; with 21E and the MCP, they had a kind of rough start. But it's gotten into a place now where I think generally speaking what you hear, no matter who you're talking to round the table, the comments are very positive. So, I think that speaks to it being certainly a statute to pay attention to. They are right next door. They presumably to some degree are competing for some of the same economic opportunities as we, but someone else made the comment, which I would also support, that if we had time, it makes perfectly good sense to look at some of the other 48 states, as well. For example, over the years -- I don't personally practice in Pennsylvania -- but over the years, you've heard a number of very positive comments about the way the release-based program in Pennsylvania works. I'm

sure they're other states, as well, from whom there might be -- I mean we're not in an area where you have to reinvent the wheel.

The good news is that there is a lot of experience out there, and I agree with the comments that were made that we can benefit from that experience. But it takes time to get that information, and then once you have that information, to figure out how with it all it fits in with the particular scheme that we as a state are interested in putting in place.

FRANCA DEROSA: I also want to echo I think what Commissioner Dykes and some other speakers have said, which is we do have some great programs in Connecticut like the Brownfields Programs that all of you have enacted, I should say. And they have great benefits, and, so, I don't think we should throw anything away. We have a lot of good tools that the agency has developed and the legislature has passed. So, we have building blocks. It's a matter of putting them together in a way that makes sense.

BETH BARTON: That is an excellent point, and specifically having worked on the Brownfields Revitalization and Remediation Program way, way back, I will say that to this day, and I think it goes back now maybe seven years, there's not a conference out-of-state that I go to where I don't get asked questions about that program. People are so impressed with that program. The folks in New Jersey said they try every single year to see if they can get a similar program put in place in their state because they see it as such a positive message to folks who have no responsibility for contamination at a property and are willing and

interested in coming in and developing that piece of property, but they don't want to have to deal with whatever the legacies are that might have gone offsite. I mean, we've gotten a lot of very, very positive marketing because of your passage of that statute, and there are others, as well.

SENATOR MARTIN (31ST): Beth and Franca, thank you so much.

SENATOR HARTLEY (15TH): Thank you. Senator Leone.

SENATOR LEONE (27TH): Thank you, Madam Chair. Good afternoon, ladies. So, and I apologize for not being here for the whole thing, but I caught some of it if not most of it. I'm hearing from you and other testimonies that the original Transfer Act in its current form is antiquated and needs to be revised or changed and improved upon. But I'm also hearing from your testimonies some reluctance that we're moving too fast and that more time is necessary. And if that's true, the question is how much time would you recommend that we put aside before we finally do act. I think this legislation was to do something, but I'm hearing that maybe we're moving too quickly, and if that's true, how much more time? Do we go into next session or even further, given some of the complications with arguing over a word or a definition? So at some point, we do have to act, and I guess the question is in your minds, when should that be.

FRANCA DEROSA: It's difficult to give a definitive answer because there are so many components of it, like the spill regulations you've heard about and the other types of programs that all have to be integrated within it.

SENATOR LEONE (27TH): So, maybe if you put it another way, could it be done in pieces instead of in one fell swoop?

FRANCA DEROSA: Speaking for myself, I think one program that's enacted all at once is the better option. I think that, as you've heard, we've already met five times -- Friday afternoons at three o'clock are now what we do -- with the Department and other stakeholders to try to address some of these issues. So, I don't think it has to be forever, but the concept that someone threw out of a Working Group that has a deadline like we did for the Transfer Act that works together, has the right stakeholders in the room, I think we can get it done. I don't think you can do it in three months, but I think maybe a year.

BETH BARTON: I would agree in terms of getting a workable piece of legislation that that framework could work. There's not -- I don't know if you were suggesting this, but if you were, there's not really an inconsistency between move fast and adopt the revisions to the Transfer Act but put, to take up Senator Martin's phrase, the pause on the new release-based program because no matter how fast you move, even if you were to stick with the schedule that the Department was suggesting, you're going to have a period of time when you're going to be continuing to operate and even get new sites in under the existing statutory framework. And, so, if we can make that framework better for however long it is around, that from our perspective is definitely worth doing, and, therefore, we commend you for having passed 19-75 last year and for creating the Working Group and hopefully passing Sections 1 through 5 of this bill this year. But

with respect to the release-based program, it is with everybody making the commitment to do so, workable to put together, aside from how long it took in Massachusetts, good solid legislation that would provide the framework for then moving forward with the implementation of a new program. And I think that's potentially possible in a year and report back to you guys.

SENATOR LEONE (27TH): Okay, so, just from being on the committee that we may have to vote on legislation, what I guess I'm trying to get to, are you in support of this bill moving forward, or are you asking for us to pause and put a little bit more time and effort into it?

BETH BARTON: Well, speaking for myself as strongly as I feel about Sections 1 through 5, the revisions to the Transfer Act, and how good I feel those would be for our state, if they can only pass with Sections 6 through 11 in anything even remotely close to its current form, I would oppose the bill in its entirety. I would urge you to not pass it. And that's very painful to say, having spent six months and a lot of meetings and a lot of sweat to get to those consensus revisions to the Transfer Act, but echoing what you've heard from prior speakers, this second piece, 6 through 11, is such a huge task and there's so much at stake that personally I'd be willing to sacrifice those changes in 1 through 5 if it meant 6 through 11 wouldn't pass.

FRANCA DEROSA: I agree with Beth wholeheartedly. One through 5 makes the Transfer Act a better law. And we're going to live with it for a while, so let's make it the best we can make it and make it in

a form that is acceptable to the regulated community as well as developers and investors, economic investors in the State of Connecticut. So, to not have 1 through 5 enacted would really be a shame because they would help us, but if it has to be done in conjunction with the rest of it, then, unfortunately, I would agree not to pass any of it.

SENATOR LEONE (27TH): Okay, so, I guess I'm getting closer to what I was trying to figure out. So, if it was all, then it would be nothing, but if it was some, you would be in favor of the front-end, and if we could do that and then pause on the remainder. Is that correct?

BETH BARTON: Yes, or I don't know you're business as well as you do or even just strip out 6 through 11 and pass 1 through 5 and then deal with 6 through 11 through the other bill, the environment bill. I mean, that would seem to me to be another way so at least you don't get the Transfer Act revisions all, you know, wrapped up or combined with whatever ends up happening with 6 through 11.

SENATOR LEONE (27TH): And if we did that, the 6 through 11, you're saying, there's not enough time to do in the short period of time. It needs a whole lot more, many more months of involvement and consensus.

BETH BARTON: Respectfully, that would be my position.

SENATOR LEONE (27TH): Okay. Well, that helps me. I don't know if it helps the Committee or the Chairs, but thank you for taking the time to walk me through that, and I appreciate the Chair's indulgence.

SENATOR HARTLEY (15TH): Thank you very much, Senator. Can I just follow up a little bit on that? So, if, in fact, we, you know, adopted 1 through 5, knowing what the big goal is, and that is to transition to release-based, what would the urgency be to do that, I mean, right now? The theory is you've got both of these coupled, and that was for the purpose of, you know, the public hearing so we can have this opportunity. But what would be the urgency on 6 through 10 or 11, whatever it is? And would we find ourselves again in that cycle that has gone on, quite frankly, for the last three decades.

BETH BARTON: Well, Senator, as you heard from the realtors that testified and from the other speakers, there is universal disappointment in the Transfer Act and the recognition that it is economically harming the State of CT. There is no stakeholder that stood up here and said, "Transfer Act is the best thing that ever happened to the State of Connecticut; let's keep it in place." No one said that. And I think you have a lot of different interest groups that are all telling you the same thing today, which is the Transfer Act needs to be sunsetted and we need to move to something else. So, I think that's the urgency, that there is recognition that it is not good for the State of Connecticut economically, and we need to do something to fix it.

SENATOR HARTLEY (15TH): Thank you. That's what I wanted to hear or you to have the opportunity to articulate. So, you essentially think that it doesn't jeopardize the overarching goal? It improves where we are right now, and that's what we did the last session with the changes that we made, and this is the next iteration of those changes, as,

you know, painstaking as they were to get to, and believe me, I appreciate what everybody has been saying here this afternoon. So, the other argument to that would be but then what -- we get these changes and we're complacent and we really don't have the energy and the incentive to get to what the real underlying goal is.

BETH BARTON: And I would agree. I mean nobody wants to appear complacent in terms of dealing with the bigger picture or the longer-term goal, and, so, I guess in terms of messaging, there is benefit to showing that some specific steps like a Working Group, as Eric had spoken to, are being taken with the goal of working on detailed legislation that would provide the framework for a new program. What that has to be balanced against, though, and where I think you're hearing a problem from a number of us, is we don't want to shoot ourselves in the foot in the process. We don't want to communicate that we've heard folks and the Transfer Act is going to be dealt with and we're going to put in place a program more consistent with what you see elsewhere, but we don't want to put things in that second message that would lead people to say, "That's even worse than where we are." I think that's the challenge, that's the tension, and that's what makes a number of us very nervous.

FRANCA DEROSA: It's also, just to add one more thing, the perspective of this new release-based. So many more sites in Connecticut will be subject to that, so we don't want to go from a bad situation to a worse. So, we have the Transfer Act that affects the 4000 or whatever the number was, and suddenly we have a program that affects 400,000, and we're not

prepared to deal with it the right way. That would be very bad.

BETH BARTON: And just again, as was referred to before the devil's in the details, and maybe as we heard from DEEP, certain things will defined differently, but in Massachusetts within the first few weeks of their program, they had 9000 filings. And since the statistics I saw since 1985, I think, through 2018, they've had over 60,000. So, I understand that a number of those are what the agency appropriately refers to as "light touch," but that's still a huge number of filings, and it obviously is ignoring that there's a huge number of properties that are being impacted, and no matter how light the touch, there's still a touch. So, now maybe we can learn from what's happened in Massachusetts, and I'm sure DEEP is very conscientiously spending the time understanding what works and doesn't work in DEEP and that they'll work to reflect that, consistent with where they think the program should go. But, nonetheless, those are numbers that have to be dealt with.

I mean, one other section that's in the -- which gets back to a question a couple of you guys had raised previously. One other section -- I think a very important section in Chapter 21E of the Massachusetts statute is the section that expressly required that within a year of the passage of the law, MassDEP had to report back to the legislature on the resources that would be needed to implement the program and also to provide assurance that no other programs within their purview would be adversely impacted by the channeling of resources to the implementation of the 21E program. And they have to report annually to the legislature on those

resources. Now, I don't know enough about what happens in Massachusetts; maybe that's true of every single agency. I'm not suggesting; I'm really just focusing on a specific provision that was in that act.

So, they were concerned about the resources that would be needed, and they were concerned that other programs that obviously they wanted to have remain vibrant weren't adversely impacted. I understand that coming out of their first report was the decision to hire several dozen risk assessors, for example. So, again, what will or won't be needed for this particular program depends upon exactly how the program shapes up. But those are the types of things that I know all of you appreciate you can't just rush into and pull a number out of the air or pull a framework out of the air. And I'm not suggesting -- I don't want to come across as suggesting I think there's been anything other conscientious and well-motivated in what they're doing. I'm not suggesting they're pulling things out of the air, but I'm just suggesting that no matter how much time between now and two months from now you spend on this, it just is an insurmountable challenge.

SENATOR HARTLEY (15TH): Run that by me again. So, the first week they had 6000 filings and then --

BETH BARTON: Nine thousand in the first few weeks. Yeah, I don't have the exact timeframe, and there is a website that reports on their progress, and it was there that I got the number, I think it was around 58,000, so that was why I said almost 60,000, total reports since the commencement of the program. But they also break down how many reports they received

based upon another detail which I don't want to bore you guys with details -- but another detail that's in the statute relates to what types of releases have to be reported immediately, what type have to be reported in two hours, what type have to be reported within 120 days, and they even break down the number of reports they get by those categories of releases. So, it's a very useful website, which I'm sure DEEP has been consulting

SENATOR HARTLEY (15TH): Yes, it sounds like both are mature programs over time. Further questions. Representative Wood, did you have a question?

REP. WOOD (141ST): I mean, I just really quickly, this is the comment that I was making about, you know, switching to this program and then all the sudden including a lot more properties. That is a concern that I have. And my other concern is if the Working Group is supportive of Sections 1 through 5, why are we looking at a bill with 1 through 12?

SENATOR HARTLEY (15TH): I don't know the answer to that question.

BETH BARTON: I can't answer that; I don't know.

REP. WOOD (29TH): Thank you.

SENATOR HARTLEY (15TH): Thank you. Further questions by colleagues? I can't thank you enough for the work that you've done, you know, so far and how invested you have been in this initiative. Once again, I just ask if kind of connect the dots on the existing report that it's very painful to hear that you guys would be willing to walk away from all of that work but for keeping Sections 6 through 10 in there. So, this is to be continued. There's much work to be done. If you just circle back with us on

the Working Group, other issues that might not have gotten in there, and then -- you are both part of the Working Group now going on? I guess the meeting's been in DEEP.

BETH BARTON: Yes, Senator, we attended when schedules allow. I think, though, DEEP has made every effort to be all-inclusive. I think at one point Graham had said he had 70 or 80 people on the list. So, it's a different kind of setting from the setting that you oversaw for the Transfer Act Working Group. But definitely they've been very inclusive in terms of letting people know when meetings are scheduled, letting people know what the topics are, and open to having as many people as want to show up, show up.

FRANCE DEROSA: They've also -- after every meeting, they've circulated a summary of what's been discussed, so even if you couldn't attend, at least you have the opportunity to read the content of what was discussed at the meeting. So, there is a tremendous effort by the Department to be very inclusive and include everyone.

SENATOR HARTLEY (15TH): Thank you for that note, and I had them marked on my calendar, but each time, you know, we were hunkered down here. And we haven't gotten the [loud scraping noise] of those summaries, so maybe we can just kind of follow through on that. That would be helpful, at a minimum.

BETH BARTON: We can ask Graham that.

SENATOR HARTLEY (15TH): Thank you. If there are no further questions -- Yes, Senator Cohen.

SENATOR COHEN (12TH): Sorry, I just wanted to clarify. You had spoken about the obviously specific language in Section 7 and Section 9. You submitted testimony. Are those pieces in your testimony?

BETH BARTON: Yes they are.

SENATOR COHEN (12TH): Okay, I just was looking on mine, and I don't think it's appeared up here yet, but I'm sure it will shortly. So, thank you.

SENATOR HARTLEY (15TH): And, thank you so much. Apologies for the wait. Thanks for being here. And so I don't know if David Sutherland is back in the room with us. I'm not seeing David. Is there anyone else who did not sign up who wants to testify? Yes, indeed, it's none other than Mr. Tom Hill. By all means.

TOM HILL: Thank you. Tom Hill, commercial real estate broker here for myself. I had to park at the Bushnell, so could anybody validate my parking ticket, please? [Laughter] Wow, what a meeting. My wife said what're you going to the Capitol for today, and I'm a real estate broker, and I have my own, but I also have the same credentials as Jeff Ryer and Frank, and I've worked to the outside of this group just trying to encourage it. She said, "What are you going there for?" I said, "I've been complaining about the Connecticut Transfer Act for 35 years," and I've gone to, and many of the representatives that were in here, I've gone to their local parties and talks to see if I could talk about it a little bit. But, I'm for the 281 and I'd hope in the next couple of weeks that you can fix 6 to 10 and be, what would say, pleasantly astounded. I would love to see that. It's just really

refreshing to see everybody coming together -- all the brokers, the Working Group, the lawyers -- it's been an educational meeting today, and, Jan, let me see if I can get the guy's name from DEEP, the fellow, his name was Jan Czeczotka. He was in the audience today, and I got to go to a meeting where he sat and let 40-50 brokers vent with regard to our problems with the Transfer Act. And what is your name, Representative with the green?

REP. WOOD (29TH): Kerry Wood. And Ms. Simmons.

TOM HILL: The average cost of a Transfer Act property in Connecticut is \$125,000 dollars in fees and at least two years to get rid of them. And I deal in Waterbury and the surrounding towns, and I have had folks it's their retirement, and they get caught for these kind of fees, and the economics just don't work. So, I was happy that the DEEP is listening and we're all talking about that. Two more things and I'll get out of your way because I know you've been here for a very, very long time today. It's just really interesting.

Oh, to your point of the LEPs, I have some very successful multiple owners that say that they find one of the big problems with this in that they have to pay the LEPs, and the LEPs aren't really advocating. They keep going back to the DEEP, and DEEP says this is not clean or we want you to do more drilling, more drilling, more drilling. And these are professional people that own lots of buildings, and they're saying, "Something's wrong. The LEP should be advocating for us," but maybe if we can get the right rules and regulations in one of these bills -- and again, I'd like the 281. In a couple of weeks maybe we can get that worked out.

But I just won't go on and on; they're probably other people. But this has really been a hard thing in my business. I come from an industrial city that's brown, and I used to make a living in just industrial, but after the first five or six years, I realized that I had to learn how to do CVS's and shopping plazas and churches. But as time goes on, CVS's are now impacted because of their photo; so, they get caught in the Transfer Act. And shopping plazas have one dry cleaner in it, and in a \$20 million dollar shopping plaza, all of the sudden, the whole plaza's in trouble because of the dry cleaners. So, it's really been a big frustration that I've always come and talked about; so, that's why I thought I had to get up here. And I want to thank Senator Hartley, Senator Simmons, and there were a lot of other people in the room that have helped on this, and a very educational day. Thank you so much.

SENATOR HARTLEY (15TH): Thank you, Tom. Are there questions for Tom before he runs out on us?

[Laughter] It's been a long day, too, and I'm sure everybody wants to, yeah, get on 84 before we have any shut-down there, as well. but I want to thank you for, you know, being such a strong advocate on this and also helping with the networking on this just throughout the entire process, you know, of keeping people informed and bringing in input that we so vitally needed, you know, to make sure we have a representative project.

TOM HILL: I owe it to my clients 'cause I'm still working 10 more years, and if I don't help them with their problems, I'm nowhere. So, I thank you.

SENATOR HARTLEY (15TH): No, it would be a great message, truly. But anyway, if there are no further comments, I want to thank you very much, Tom, and I hope somebody can validate your ticket out there. [Laughter] I don't think we have that ability.

TOM HILL: Thank you. You can put it in the Transfer Act. [Laughter]

SENATOR HARTLEY (15TH): We'll put it in legislation. Okay, thank you very much. Is there anybody else who wanted to testify? Yes, please. Well, how about this -- how about if you sign up and in the order that you sign up, we will hear from you. Okay, quick, quick. All right?

Who do we have here? Just if you can, Clerk, share with us who's next on the list. Thank you. Whoever was first on that list, just sit right down. Okay, go ahead.

ELISHA SHERMAN: Hi, my name is Elisha Sherman. I'm executive director of Rivers Alliance of Connecticut, and today is my husband's birthday. I promised him I'd be in the fast track at four, so I promise I will be quick. So, we signed onto the letter submitted by the Connecticut Fund for the Environment where they also articulated that we are in favor of a release-based program and have put the details in that. So, I encourage you to take a look at that.

However, listening to the conversations today, there is one comment I wanted to make, and that's, I heard two people say that this is one of the most important changes in our environmental law in a long time. I mean, Eric Brown's been around for a long time, and if he says that he knows of, this has to

be really significant. Yet, I've heard the environmental community mentioned as an afterthought, as a primary stakeholder here. Now, I understand that the Transfer Act Group was publicly noticed, but there's a big difference between being invited to the table and having to comb through notices to sit and listen to the adults talk. So, I really hope that if this goes forward and there's a formal group that's formed, and we have been involved with the groups that have been talking with DEEP, as well as with the stakeholders here in the room. But I really hope that if we're here again next year and we're talking about this, that you all have a chance to thank my colleagues for the work we did on this release-based program. And that's all I have to day. Thank you very much.

SENATOR HARTLEY (15TH): First of all, thanks for being here. I don't want to hold you up because I know you've got some very important business to attend to. Your comments are very important and duly noted. So, thanks again, and happy birthday to him.

ELISHA SHERMAN: Okay, thank you for your time.

SENATOR HARTLEY (15TH): And one other comment.

SENATOR COHEN (12TH): Yeah, I mean, obviously I know you, Elisha, and I know all of the good work you do, and I also want to echo Senator Hartley's comments. I will tell you that during the Working Group meetings there were many comments, at least from my Co-Chair and I, about how first and foremost the environment needs to come into play, and without your voices, you know, in the room, especially on this release-based system, as we move forward you know, that would be overlooked. We need people,

environmentalists, to lead the way and tell us how we can do this effectively with our earth in mind and with Connecticut's environment, in particular, in mind, which I know is why Commissioner Dykes felt it very important to make sure that environmentalists were onboard before moving forward with her aspects of the idea on a release-based system. So, I appreciate your comments and making mention that environmentalists absolutely do need to be at the table moving forward. So, thank you.

ELISHA SHERMAN: Thank you, Senator Cohen.

SENATOR HARTLEY (15TH): Thank you, and seeing no further comments. Yes. Travel safe. Okay, so the next person who got onto that list was David Hurley. Okay.

DAVID HURLEY: I'll be very brief. I just decided to speak up after hearing some of the discussion about what we've got to look ahead -- what we've got as we look ahead. I'm an LEP with Langan Engineering.

SENATOR HARTLEY (15TH): And just for the record, introduce yourself, so it's recorded, please.

DAVID HURLEY: Yes. David Hurley. I'm a licensed environmental professional with Langan Engineering. I was a member of the Transfer Act Working Group, and I'm a member of the Brownfields Working Group. So, I just want to throw out a couple of concepts in terms of things that we might be able to do going forward. As everyone has said, the regulations are so important with this, and actually when you look at the Transfer Act and the issues with the Transfer Act, aside from the legal issues, the Transfer Act in terms of how it affects a particular entity. The

Transfer Act is sort of the entry into the program, and the biggest complaint from the regulated community is the program. They associate the Transfer Act with it, but it's the same program for cleaning up, you know, in the voluntary program. It's the same set of regs.

So, getting the regs right is critical. And, so in this new venture of going to release-based, we've got to have confidence that they work. Now, one thing I wanted to point out is that we have modified under the -- actually the Brownfields Working Group -- added to the Brownfields Program, said it's in the Transfer Act. Nelly P. can verify based on the release. So, we can do a release-based verification now. So, as we start to consider new regulations, we could to try to use those on sites and see if they actually work. So, that's just an idea I'm throwing out there that in order for us to have confidence, we can do some real case studies and so forth, if we've got the time to try some of the different regulatory concepts.

SENATOR HARTLEY (15TH): Thank you, Dave. So, it that synonymous with the site characterization?

DAVID HURLEY: Well, the issue right now -- I don't want to get too technical -- the issue right now is that the way the site characterization guidance document interprets this is that you still have to study the entire site to make sure that you completely define the release. Which is one of the principle things that we're going to be looking at as an LEP in terms of how DEEP wants to handle this, to see if it's going to work.

But, you bring up the site characterization guidance document, and that is another thing that we can do

now for the intervening years to improve things, and there have been discussions during our Working Group sessions from members of DEEP that they would be willing to convene some groups to look at revisions to the site characterization guidance document. And that would be an interim measure just as the revisions to the Transfer Act are, but that could have a significant impact as far as the current program working more smoothly.

SENATOR HARTLEY (15TH): Yes, that's something that really didn't come before the Working Group. Okay, that's interesting.

DAVID HURLEY: But it was in -- you may have missed some of the discussions, but it came up as a sidebar discussion, and even Jan, for instance, said he'd be glad to -- he would really like to do that to, you know, revise the site characterization guidance document.

SENATOR HARTLEY (15TH): Questions from colleagues? Yes, Senator Martin.

SENATOR MARTIN (31ST): Not a question but just to thank you, Dave. I know that you spent time on the Transfer Act Committee, the Working Group, and now you mentioned the Brownfields Group, as well. So, that's a lot of time and commitment on your part, and along with all the others, just thank you for what you're doing.

DAVID HURLEY: Thank you.

SENATOR HARTLEY (15TH): Thank you, Senator. And, so, David, have you been in this latest segment of meetings.

DAVID HURLEY: No, I haven't. I did find out about them and got a phone number, and I called in for -- I've heard one portion of them, but calling in is not very productive with such a large group.

SENATOR HARTLEY (15TH): Yes, it's tough. Okay, thank you, and let's just, you know, try to keep one foot in front of the other here.

DAVID HURLEY: Thank you.

SENATOR HARTLEY (15TH): Thanks very much, David. Much appreciated. Was there a third person?

ZOE BELCHER: My name is Zoe Belcher. I'm an LEP, and I own my own firm, BGTEnvironmental, and I just wanted to make a statement with regard to the LEP program and other programs that we've seen -- the LSP, the PE program. I've heard many people PEs in other businesses, other people complaining about the LEPs and how we don't stand for a lot of things and we don't do a lot of things, but you have to remember that the regulations dictate what we are allowed to do and what we are not allowed to do. So, those regulations will have to be looked at if we go to a release-based system, to allow us to verify, sign off on different things.

We are educated. We have to have a certain amount of time in the business after we've gotten our degrees and pass an exam. Our program also requires continuing education which some of the other programs don't require. So, just keep that in mind when you're thinking about how we work and how qualified are we to sign off on some of these things.

The other thing that I would mention is while you're all talking about some of the other programs -- the

spills, the Brownfields -- that are related to the Transfer Act, don't forget the underground storage tank fund. I do have clients that are in this -- not the fund but the program -- due to leaking underground storage tanks, and because of Section 22a-106, I think it's (u) but don't quote me on that one -- they're required to clean up to the RSRs, basically to a program that the Commissioner approves, which right now is the RSRs. But because the Tank Division does not sign off on RSR sites, they have to have Remediation sign-off on those sites, but Remediation can't do that unless we join a voluntary program. Not all of your clients want to join voluntary programs. They want to clean up to the regulations, and they're doing good fair effort. So, when you're looking at this release-based program, it's now they're in the tank, under a LUST (leaking underground storage tank), and now they could be in release program, as well. How do those two departments work to close out these sites? Thank you.

SENATOR HARTLEY (15TH): Zoe, thank you very much for your wait and also for testifying and sharing that with us. Questions from Committee members? Thank you. Hopefully, we can get this right. I don't know how, but we're going to make that [Crosstalk] So, if there are no further people to testify, we're going to declare the public hearing adjourned. Looks like we're all buttoned up for today. Thank you.