

Testimony of

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Joint Public Hearing, March 5, 2020 of the
Environment & Commerce Committees

In Opposition to Proposed Bill Nos. 281 (RAISED) AN ACT CONCERNING VARIOUS REVISIONS TO THE PROPERTY TRANSFER LAW (except for sections 1-5) and S.B. No. 293 (RAISED) AN ACT ESTABLISHING A RELEASE-BASED PROPERTY REMEDIATION PROGRAM.

Attorneys Ann Catino and Gary O'Connor have each practiced in the area of environmental law and real estate development for over thirty years. We have been chairing the Brownfield Working Group since it was first created as the State's Task Force on Brownfield Strategies fourteen (14) years ago through Public Act 06-184. The Task Force was first authorized by the General Assembly to address the derelict, abandoned and long forgotten properties that plague every municipality in our state and no longer contribute to the vitality and economy of the town or City. Our job was to propose long-term solutions for addressing and cleaning up these Brownfields and restoring them to productive reuse. Specifically, the Task Force was charged with proposing new incentives and programs to stimulate investment and the rehabilitation of Brownfields. We issued our first Report to the Commerce and Environment Committees in February 2007. Since that time, our Working Group was renewed every year and, through legislation that has created the Working Group as a standing working group, we are now continually charged to work with DECD, DEEP, and other stakeholders to address and monitor Brownfield redevelopment, the efficacy of the programs that were created, the State's initiatives and to prevent further Brownfields from occurring.

Examples of the initiatives we proposed and the new laws that were passed virtually every year broke ground on many new and innovative programs. New initiatives included:

- Establishment of the Office of Brownfield Remediation and Development (OBRD) as a "one stop shop" for all Brownfield programs and assistance.
- New grants and loan programs were established targeted at new developers and municipalities.

- New Liability relief programs were developed and are administered by the DECD and DEEP including:
 - o the Abandoned Brownfield Cleanup Program
 - o the Brownfield Remediation and Revitalization Program
 - o the Municipal Liability Relief Program

- Revisions to the Significant Environmental Hazard Program to allow for properties for very high levels of contaminants to be subject to mitigation (or made safe before a full remedial action would occur)

- Land Banks were authorized to consolidate focus and expertise on a regional basis.

Under these various legislative initiatives, the DECD runs an efficient and highly effective brownfields program in collaboration with DEEP. The partnership between DECD and DEEP is exemplary. These agencies work together seamlessly when it comes to seizing brownfield redevelopment and turning properties back to productive reuse and in working with our State's municipalities – no matter how big or small.

While we have seen many successes, we continue to meet to be your eyes and ears, and to determine whether the programs are working and to determine what more needs to be done and when. We are the legislatively mandated advocates for the proper redevelopment of Brownfield properties and we also respond if we have concerns regarding proposals that could unwittingly create Brownfields. And we do have those concerns regarding SB 281 (Sections 6 - 11) and 293.

The concept of evaluating the State's remediation programs and creating clear criteria and standards for the efficient remediation of properties has been challenging for well over a decade. In fact, in Public Act 13-308¹ § 28, DEEP was charged with evaluating risk-based decision making related to the remediation of contaminated sites, which could have formed the framework for a modified program. Per the Act, DEEP engaged an independent expert, with broad national experience, to conduct such evaluation and prepare a report that includes an assessment of the existing process of risk-based decision making including risk assessment and risk management tools utilized to protect public health, general welfare and the environment. Such evaluation and report also included the identification of best practices in ecological and human health risk assessment and risk management used by the United States Environmental Protection Agency and other regulatory agencies, and those published by the National Academy

¹ PA 13-308 was entitled: "AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE OF CONNECTICUT BROWNFIELD WORKING GROUP AND CONCERNING BROWNFIELD LIABILITY RELIEF, NOTIFICATION REQUIREMENTS FOR CERTAIN CONTAMINATED PROPERTIES AND THE USE OF NOTICE OF ACTIVITY AND USE LIMITATIONS"

of Sciences. The purpose of the initiative was to provide a context, protective of human health and safety, for a better and clear program. That was in 2013 and little dialogue about the construct of that program from a holistic perspective has occurred since the consultant hired by DEEP (CDM) issued its report in 2014. And, today – six years later, without the benefit of new regulations (that have been under development for years) and in only a matter of weeks, we are presented with a sweeping transformation, without the benefit of having engaged in a comprehensive, thoughtful and meaningful discussion of how such a transformation will impact economic development and property remediation in the State.

It is in the context of the potential impact on the existing brownfield programs and the likelihood on new brownfield creation that we object at the present time to a release-based system. More work needs to be done before such a program should be adopted by the General Assembly. While we applaud the effort, the engine that fuels these programs (*i.e.*, the clean-up standards themselves and providing for more self-implementation) require the attention in the first instance.

Under these bills, DEEP proposes wholesale changes to the State’s remediation program by sunseting the Connecticut Transfer Act and replacing it with a new, wider reaching release-based system. While we believe the goal is laudable, we are very concerned about unintended consequences and the creation on new brownfields in our State, that will burden municipalities for years to come. Over the last fourteen years, so much progress has been made, so it would be unwise to create new legislation without having a meaningful and full discussion around all potential impacts resulting from the reach of this new program.

In brief, these are our initial thoughts, concerns and questions:

- Will the existing brownfield programs (including those listed above) remain? We have been advised that the Brownfield programs will remain as standalone programs, but there are integration issues regarding detection of various releases and what a brownfield redeveloper or municipality should do – especially if such entity becomes the property owner?
- Impacts to and integration with the Significant Environmental Hazard Program, which was specifically designed to address higher risk sites
- What will be the impact on smaller and mid-sized legacy (family) businesses who seek to expand? If they conduct an investigation for purposes of an expansion and financing for such expansion, but there are no resources to address the conditions, there will be no expansion, no growth, no development. Or will they move the business elsewhere and effectively abandon or close-up the existing facility?

- Will small manufacturers, located on properties contaminated with historic releases, be required to investigate and remediate the entire site, now? What negative financial impact will this have on these small operations that collectively employ significant numbers of employees, but don't have the available financial resources to finance the cost of site-wide investigations and remediation?
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- What if the business seeks to sell, the buyer does the investigation (without communication with the owner because now the owner won't want to know) and walks away? What happens to the Property in that scenario?
- What happens to an existing brownfield property that a municipality seeks to foreclose upon or otherwise acquire, it investigates the Property and finds urban fill or historic contamination (all scenarios under which municipalities are currently immune from liability)?

These are only a few of our questions. There are many more questions than answers right now – what is a release, how are the various types of releases handled, who reports, who has liability and who doesn't? What will the cleanup standards be? Are the standards clear so that affected parties know what to do? Does DEEP have the staff to execute on this initiative?

While the proposal is laudable, the consequences can be great and can hurt the State's initiatives and new brownfields may be created. We caution and advise against the passage of this bill this year, most certainly in this framework. More work needs to be done. Deliberate attention is required. While it is easy to say this program will make us more like other states, this proposal does not look like other state's programs. As a result, more brownfields may be created (which could overburden our brownfield initiatives and also thwart the transit-oriented development initiatives) and development will go elsewhere. We welcome the opportunity to continue to work with the agencies and the other stakeholders. We look forward to meaningful reform, even if incrementally achieved (like the limited Transfer Act changes, which we support). We've learned, over the years we've been working on the brownfield initiatives, how critical dialogue is to the process and large reforms take time (many of our larger brownfield reforms took years and some we are still trying to achieve and we welcome the opportunity to present these to both the Commerce and Environment Committees at the appropriate time).

We've participated in the discussions convened by DEEP and/or CBIA and intend to continue to do so. Our March 3, 2020 Brownfield Working Group meeting spent almost the entire meeting on this proposal. It is quite clear that more work needs to be done, various options discussed (and there are several options to create a different system) before any legislation is passed this session. We are ready to be at the table and welcome the opportunity.

We ask you to pause, be mindful of unintended consequences – like the impact on brownfield programs and the potential creation of new ones, and to foster dialogue over the next

year. When proposals of this magnitude occur in a matter of weeks and are rushed, surely there will be issues. The regulated community and the State will only benefit if this transformation proceeds cautiously and thoughtfully.

In closing, we believe the Transfer Act changes in Sections 1-5 of SB 281 should move ahead as a standalone proposal. Modifications to the Transfer Act such as these are welcome and we appreciate the work of the Transfer Act Working Group.

Finally, regrettably we had prior commitments that prevented us from attending the public hearing in person, but we are ready to meet with the Committee Chairs and any committee member to discuss our concerns and Brownfield initiatives in more detail.

We THANK YOU for your attention to this very important initiative and for all the work the Committee has done for the past 14 years to support redevelopment of the brownfields in our State.