

Senate, April 1, 1998. The Committee on Environment reported through SEN. DAILY, 33rd DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING NOTICE OF CONTAMINATION EVENTS, ENVIRONMENTAL PERMIT APPLICATIONS AND ENFORCEMENT ACTIONS, RECOVERY OF STATE COSTS OF REMEDIATION AND THE STATUTE OF LIMITATIONS FOR ACTIONS RELATING TO ENVIRONMENTAL CONTAMINATION.

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

1 Section 1. Subsection (a) of section 22a-449
2 of the general statutes is repealed and the
3 following is substituted in lieu thereof:

4 (a) The Commissioner of Environmental
5 Protection shall, to the extent possible,
6 immediately, whenever there is discharge,
7 spillage, uncontrolled loss, seepage or filtration
8 of oil or petroleum or chemical liquids or solid,
9 liquid or gaseous products or hazardous wastes
10 upon any land or into any of the waters of the
11 state or into any offshore or coastal waters,
12 which may result in pollution of the waters of the
13 state, damage to beaches, wetlands, stream banks
14 or coastal areas, or damage to sewers or utility
15 conduits or other public or private property or
16 which may create an emergency, cause such
17 discharge, spillage, uncontrolled loss, seepage or
18 filtration to be contained and removed or
19 otherwise mitigated by whatever method said

20 commissioner considers best and most expedient
21 under the circumstances. The commissioner shall
22 also (1) determine the person, firm or corporation
23 responsible for causing such discharge, spillage,
24 uncontrolled loss, seepage or filtration and (2)
25 [notify, in writing,] SEND NOTICE, IN WRITING, TO
26 the chief executive officer and the local director
27 of health of the municipality in which such
28 discharge, spillage, uncontrolled loss, seepage or
29 filtration occurs of such occurrence. Such
30 notification shall be [provided in a timely
31 manner] SENT NOT LATER THAN TWENTY-FOUR HOURS
32 AFTER THE COMMISSIONER BECOMES AWARE OF THE
33 CONTAMINATION.

34 Sec. 2. Section 22a-6g of the general
35 statutes is repealed and the following is
36 substituted in lieu thereof:

37 Notwithstanding any other provision of this
38 title or regulations adopted hereunder, any person
39 who submits an application to the Commissioner of
40 Environmental Protection for any permit or other
41 license pursuant to section 22a-32, 22a-39,
42 22a-174, 22a-208a, 22a-342, 22a-361, 22a-368,
43 22a-403 or 22a-430, subsection (b) or (c) of
44 section 22a-449, section 22a-454 or Section 401 of
45 the federal Water Pollution Control Act (33 USC
46 466 et seq.), except an application for
47 authorization under a general permit shall: (1)
48 Include with such application a signed statement
49 certifying that the applicant will publish notice
50 of such application on a form supplied by the
51 commissioner in accordance with this section; (2)
52 publish notice of such application in a newspaper
53 of general circulation in the affected area; [and]
54 (3) send the commissioner a certified copy of such
55 notice as it appeared in the newspaper; AND (4)
56 NOTIFY THE CHIEF ELECTED OFFICIAL OF THE
57 MUNICIPALITY IN WHICH THE REGULATED ACTIVITY IS
58 PROPOSED. Such [notice] NOTICES shall include: (A)
59 The name and mailing address of the applicant and
60 the address of the location at which the proposed
61 activity will take place; (B) the application
62 number, if available; (C) the type of permit
63 sought, including a reference to the applicable
64 statute or regulation; (D) a description of the
65 activity for which a permit is sought; (E) a
66 description of the location of the proposed
67 activity and any natural resources affected

68 thereby; (F) the name, address and telephone
69 number of any agent of the applicant from whom
70 interested persons may obtain copies of the
71 application, and (G) a statement that the
72 application is available for inspection at the
73 office of the Department of Environmental
74 Protection. The commissioner shall not process an
75 application until the applicant has submitted to
76 the commissioner a copy of the notice required by
77 this section. The provisions of this section shall
78 not apply to discharges exempted from the notice
79 requirement by the commissioner pursuant to
80 subsection (b) of section 22a-430, to hazardous
81 waste transporter permits issued pursuant to
82 section 22a-454 or to special waste authorizations
83 issued pursuant to section 22a-209 and regulations
84 adopted thereunder.

85 Sec. 3. Section 22a-6h of the general
86 statutes is repealed and the following is
87 substituted in lieu thereof:

88 (a) The Commissioner of Environmental
89 Protection, at least thirty days before approving
90 or denying an application under section 22a-32,
91 22a-39, 22a-174, 22a-208a, 22a-342, 22a-361,
92 22a-368, 22a-403 or 22a-430, subsection (b) or (c)
93 of section 22a-449, section 22a-454 or Section 401
94 of the federal Water Pollution Control Act (33 USC
95 466 et seq.), shall publish or cause to be
96 published, at the applicant's expense, once in a
97 newspaper having a substantial circulation in the
98 affected area notice of his tentative
99 determination regarding such application. Such
100 notice shall include: (1) The name and mailing
101 address of the applicant and the address of the
102 location of the proposed activity; (2) the
103 application number; (3) the tentative decision
104 regarding the application; (4) the type of permit
105 or other authorization sought, including a
106 reference to the applicable statute or regulation;
107 (5) a description of the location of the proposed
108 activity and any natural resources affected
109 thereby; (6) the name, address and telephone
110 number of any agent of the applicant from whom
111 interested persons may obtain copies of the
112 application; (7) a brief description of all
113 opportunities for public participation provided by
114 statute or regulation, including the length of
115 time available for submission of public comments

116 to the commissioner on the application; and (8)
117 such additional information as the commissioner
118 deems necessary to comply with any provision of
119 this title or regulations adopted hereunder, or
120 with the federal Clean Air Act, federal Clean
121 Water Act or federal Resource Conservation and
122 Recovery Act. THE COMMISSIONER SHALL FURTHER GIVE
123 NOTICE OF SUCH DETERMINATION TO THE CHIEF ELECTED
124 OFFICIAL OF THE MUNICIPALITY IN WHICH THE
125 REGULATED ACTIVITY IS PROPOSED. Nothing in this
126 section shall preclude the commissioner from
127 giving such additional notice as may be required
128 by any other provision of this title or
129 regulations adopted hereunder, or by the federal
130 Clean Air Act, federal Clean Water Act or federal
131 Resource Conservation and Recovery Act. The
132 provisions of this section shall not apply to
133 discharges exempted from the notice requirement by
134 the commissioner pursuant to subsection (b) of
135 section 22a-430, to hazardous waste transporter
136 permits issued pursuant to section 22a-454 or to
137 special waste authorizations issued pursuant to
138 section 22a-209 and regulations adopted
139 thereunder.

140 (b) For the purposes of this section,
141 "application" means a request for a license or
142 renewal thereof or for any permit or modification
143 of a license or permit or renewal thereof if the
144 modification is sought by the licensee.

145 Sec. 4. (NEW) Prior to, or concurrent with,
146 taking any enforcement action under title 22a of
147 the general statutes or any action to recover any
148 civil penalty imposed under said title 22a, the
149 Commissioner of Environmental Protection shall
150 give notice of such action to the chief elected
151 official of the municipality in which the
152 regulated activity which gave rise to such action
153 is located. Such information shall be held
154 confidential by such official and shall not be
155 considered a public record or public information
156 for purposes of chapter 3 of the general statutes.

157 Sec. 5. Subsection (a) of section 22a-451 of
158 the general statutes, as amended by section 1 of
159 public act 97-241, is repealed and the following
160 is substituted in lieu thereof:

161 (a) Any person, firm or corporation which
162 directly or indirectly causes pollution and
163 contamination of any land or waters of the state

164 or DIRECTLY OR INDIRECTLY causes an emergency
165 through the MAINTENANCE, discharge, spillage,
166 uncontrolled loss, seepage or filtration of oil or
167 petroleum or chemical liquids or solid, liquid or
168 gaseous products or hazardous wastes or which owns
169 any hazardous wastes deemed by the commissioner to
170 be a potential threat to human health or the
171 environment and removed by the commissioner shall
172 be liable for all costs and expenses incurred in
173 investigating, containing, removing, monitoring or
174 mitigating such pollution and contamination,
175 emergency or hazardous waste, and legal expenses
176 and court costs incurred in such recovery,
177 provided, if such pollution or contamination or
178 emergency was negligently caused, such person,
179 firm or corporation may, at the discretion of the
180 court, be liable for damages equal to one and
181 one-half times the cost and expenses incurred and
182 provided further if such pollution or
183 contamination or emergency was wilfully caused,
184 such person, firm or corporation may, at the
185 discretion of the court, be liable for damages
186 equal to two times the cost and expenses incurred.
187 The costs and expenses of investigating,
188 containing, removing, monitoring or mitigating
189 such pollution, contamination, emergency or
190 hazardous waste shall include, but not be limited
191 to, the administrative cost of such action
192 calculated at ten per cent of the actual cost plus
193 the interest on the actual cost at a rate of ten
194 per cent per year thirty days from the date such
195 costs and expenses were sought from the party
196 responsible for such pollution, contamination or
197 emergency. The costs of recovering any legal
198 expenses and court costs shall be calculated at
199 five per cent of the actual costs, plus interest
200 at a rate of ten per cent per year thirty days
201 from the date such costs were sought from the
202 party responsible for such pollution,
203 contamination or emergency. Upon request of the
204 commissioner, the Attorney General shall bring a
205 civil action to recover all such costs and
206 expenses.

207 Sec. 6. Section 52-577c of the general
208 statutes is repealed and the following is
209 substituted in lieu thereof:

210 (a) For the purposes of this section: (1)
211 "Environment" means any surface water, ground

212 water, drinking water supply, land surface or
213 subsurface strata or ambient air within the state
214 or under the jurisdiction of the state; (2)
215 "exposure" means any contact, ingestion,
216 inhalation or assimilation, including irradiation;
217 (3) "hazardous chemical substance or mixture"
218 means PETROLEUM, A PETROLEUM PRODUCT OR any
219 chemical substance or mixture for which there is a
220 federal standard, including any law, requirement,
221 tolerance, prohibition, action level or similar
222 legal authority adopted by an agency pursuant to
223 federal law, including any such standard or legal
224 authority adopted by a state or local government
225 pursuant to federal law, generally intended to
226 prevent, reduce or mitigate the risk of a disease
227 or class or type of diseases to an individual or
228 individuals resulting from exposure to such
229 chemical substance or mixture; (4) "hazardous
230 pollutant" means any designated, specified or
231 referenced chemical considered to be a "hazardous
232 substance" under Section 101(14) of the
233 Comprehensive Environmental Response,
234 Compensation, and Liability Act, 42 USC 9601 (14);
235 (5) "release" means any spilling, leaking,
236 pumping, pouring, emitting, emptying, discharging,
237 injecting, escaping, leaching, dumping or
238 disposing into the environment.

239 (b) Notwithstanding the provisions of
240 sections 52-577 and 52-577a, no action to recover
241 damages for personal injury or property damage
242 caused by exposure to a hazardous chemical
243 substance or mixture or hazardous pollutant
244 released into the environment shall be brought but
245 within two years from the date when the injury or
246 damage complained of is discovered or in the
247 exercise of reasonable care should have been
248 discovered.

249 (c) The provisions of subsection (b) of this
250 section shall not apply to an action brought
251 against (1) any municipal waterworks system
252 established and operated under chapter 102 or any
253 special act, (2) any regional water authority
254 established under any general statute or special
255 act, or (3) any water company as defined in
256 section 16-1.

257 ENV COMMITTEE VOTE: YEA 22 NAY 1 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 435

STATE IMPACT	Minimal Cost, Within Budgetary Resources, Potential Savings, see explanation below
MUNICIPAL IMPACT	Potential Savings, see explanation below
STATE AGENCY(S)	Department of Enviromental Protection, Judicial Department

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: Requiring the Department of Enviromental Protection to provide notice to towns of enforcement actions, faster notification of spills and notice of tentative permit decisions can be handled by the existing staff and within the existing resources of the agency.

Specifying that liability applies to those who indirectly cause an emergency or causes an emergency through maintenance of the containment could increase the state's cost recoveries. The exact impact is indeterminate.

Reducing the time a person has to bring suit for injury or damages caused by petroleum or petroleum products could result in long-term savings to the Judicial Department and to the state and municipalities to the extent that litigation would be reduced by the bill. The degree to which the courts may see a reduction in cases and the extent to which the state or municipalities are currently the subject of such lawsuits (involving legal costs and potential pay-outs) is not known at this time but is not anticipated to be

significant. It should be noted that sHB 5201, (the revised Appropriations Act for FY 1998-99, as favorably reported by the Appropriations Committee) includes \$870,000 in partial-year funding for the addition of five judges, associated staff, expenses and sheriffs to more properly address civil case backlogs. This funding is the first phase of an anticipated three year phase-in of 15 more judges for this effort at a cumulative cost of \$7.8 million at the end of three years.

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OLR BILL ANALYSIS

sSB 435

AN ACT CONCERNING NOTICE OF CONTAMINATION EVENTS, ENVIRONMENTAL PERMIT APPLICATIONS AND ENFORCEMENT ACTIONS, RECOVERY OF STATE COSTS OF REMEDIATION AND THE STATUTE OF LIMITATIONS FOR ACTIONS RELATING TO ENVIRONMENTAL CONTAMINATION

SUMMARY: This bill requires towns to be notified of various regulated environmental activities occurring within the town. It requires the Department of Environmental Protection (DEP) commissioner to notify a town (1) prior to or concurrent with taking an enforcement action; (2) within 24 hours of a hazardous spill, instead of in a timely manner; and; (3) when he issues a tentative permit decision. It also requires a permit applicant to notify a town that he has applied for a permit.

By law anyone who contaminates the lands or water of the state or creates or owns a potential threat to human health or the environment is liable for investigation, remediation, and related legal costs incurred by DEP. The bill specifies that this law also applies to anyone who (1) indirectly causes an emergency or (2) causes an emergency through the maintenance of the contaminate.

The bill reduces the time a person has to bring suit for injury or damages caused by petroleum or petroleum products. Under current law, an action founded upon a tort must be brought within three years of the date of

the act or omission. One based on a product liability claim must be brought within three years of the date the injury or damage was first sustained, discovered, or should have been discovered in the exercise of reasonable care but no later than 10 years from the date the party sued last parted with possession or control of the product. The bill instead requires that a suit based on personal injury or property damage caused by exposure to petroleum or petroleum products released into the environment be brought within two years from the date the injury or damage complained of was discovered or should have been discovered in the exercise of reasonable care.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Notice to Towns of Enforcement

The bill requires the DEP commissioner to notify a town's chief elected official before or at the same time he takes any enforcement action or action to recover any civil penalty concerning a regulated activity located in the town. The information must be held confidential by the official and is not considered a public record or public information under the Freedom of Information law.

Notice to Towns of Permit Applications

The bill requires applicants to notify the chief elected official of the town where the regulated activity is proposed of the application. It applies to permits involving the tidal or inland wetlands, air pollution control, solid waste, stream channel encroachment, structures and dredging, diversion, dam repair, water pollution control, hazardous waste, oil and chemical terminal license, and federal water pollution control laws. By law, the applicant must also publish newspaper notice of his application.

The bill also requires the commissioner to notify the chief elected official of the town where a regulated activity is proposed of his tentative permit decision. By law, the commissioner must publish newspaper notice of his tentative permit decisions at least 30 days before the decision is final.

Notice to Towns of Spills

The bill requires the DEP commissioner to send written notice to a town's chief executive officer and the local health director of any hazardous spill within 24 hours of the spill rather than in a timely manner. The requirement applies to any discharge, spill, or seepage of oil, petroleum, chemicals or hazardous waste upon land or into water which may result in pollution of or damage to the waters, land, or utilities or an emergency.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 22 Nay 1