

File No. 643

(Reprint of File No. 278)

Substitute House Bill No. 5712
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 30, 1998

AN ACT CONCERNING THE REPORTING OF CERTAIN
SIGNIFICANT ENVIRONMENTAL HAZARDS BY OWNERS OF
CONTAMINATED PROPERTY, SUPPLEMENTAL ENVIRONMENTAL
PROJECTS, CONSISTENCY WITH FEDERAL ENVIRONMENTAL
LAWS AND REMEDIATION OF CONTAMINATED REAL
PROPERTY.

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

1 Section 1. (NEW) (a) For the purposes of this
2 section:
3 (1) "Commissioner" means the Commissioner of
4 Environmental Protection, or his designee;
5 (2) "Parcel" means a piece, tract or lot of
6 land, together with buildings and other
7 improvements situated thereon, a legal description
8 of which piece, parcel, tract or lot is contained
9 in a deed or other instrument of conveyance and
10 which piece, tract or lot is not the subject of an
11 order or consent order of the commissioner which
12 involves requirements for investigation or
13 reporting regarding environmental contamination;
14 (3) "Person" means person, as defined in
15 section 22a-2 of the general statutes;
16 (4) "Pollution" means pollution, as defined in
17 section 22a-423 of the general statutes;

18 (5) "Release" means any discharge,
19 uncontrolled loss, seepage, filtration, leakage,
20 injection, escape, dumping, pumping, pouring,
21 emitting, emptying or disposal of oil or petroleum
22 or chemical liquids or solids, liquid or gaseous
23 products or hazardous wastes;

24 (6) "Residential activity" means any activity
25 related to (A) a residence or dwelling, including,
26 but not limited to, a house, apartment, or
27 condominium, or (B) a school, hospital, day care
28 center, playground or outdoor recreational area;

29 (7) "Substance" means an element, compound or
30 material which, when added to air, water, soil or
31 sediment, may alter the physical, chemical,
32 biological or other characteristics of such air,
33 water, soil or sediment;

34 (8) "Upgradient direction" means in the
35 direction of an increase in hydraulic head; and

36 (9) "Technical environmental professional"
37 means an individual, including, but not limited
38 to, an environmental professional licensed
39 pursuant to section 22a-133v of the general
40 statutes, who collects soil, water, vapor or air
41 samples for purposes of investigating and
42 remediating sources of pollution to soil or waters
43 of the state and who may be directly employed by,
44 or retained as a consultant by, a public or
45 private employer.

46 (b) (1) If a technical environmental
47 professional determines in the course of
48 investigating or remediating pollution after the
49 effective date of this section, which pollution is
50 on or emanating from a parcel, that such pollution
51 is causing or has caused contamination of a public
52 or private drinking water well with a substance
53 for which the Commissioner of Environmental
54 Protection has established a ground water
55 protection criterion in regulations adopted
56 pursuant to section 22a-133k of the general
57 statutes at a concentration above the ground water
58 protection criterion for such substance, such
59 professional shall notify his client and the owner
60 of the parcel, if the owner can reasonably be
61 identified, not later than twenty-four hours after
62 determining that the contamination exists. If,
63 seven days after such determination, the owner of
64 the subject parcel has not notified the
65 commissioner, the client of the professional shall

66 notify the commissioner. If the owner notifies the
67 commissioner, the owner shall provide
68 documentation to the client of the professional
69 which verifies that the owner has notified the
70 commissioner.

71 (2) The owner of a parcel on which exists a
72 source of contamination to soil or waters of the
73 state shall notify the commissioner if such owner
74 becomes aware that such pollution is causing or
75 has caused contamination of a private or public
76 drinking water well with a substance for which the
77 commissioner has established a ground water
78 protection criterion in regulations adopted
79 pursuant to section 22a-133k of the general
80 statutes at a concentration at or above the ground
81 water protection criterion for such substance.
82 Notice under this section shall be given to the
83 commissioner (A) orally, not later than one
84 business day after such person becomes aware that
85 the contamination exists, and (B) in writing, not
86 later than five days after such oral notice.

87 (c) (1) If a technical environmental
88 professional determines in the course of
89 investigating or remediating pollution after the
90 effective date of this section, which pollution is
91 on or emanating from a parcel, that such pollution
92 is causing or has caused contamination of a public
93 or private drinking water well with: (A) A
94 substance for which the commissioner has
95 established a ground water protection criterion in
96 regulations adopted pursuant to section 22a-133k
97 of the general statutes at a concentration less
98 than such ground water protection criterion for
99 such substance; or (B) any other substance
100 resulting from the release which is the subject of
101 the investigation or remediation, such
102 professional shall notify his client and the owner
103 of the parcel, if the owner can reasonably be
104 identified, not later than seven days after
105 determining that the contamination exists.

106 (2) The owner of a parcel on which exists a
107 source of pollution to soil or the waters of the
108 state shall notify the commissioner if such owner
109 becomes aware that such pollution is causing or
110 has caused contamination of a private or public
111 drinking water well with: (A) A substance for
112 which the commissioner has established a ground
113 water protection criterion in regulations adopted

114 pursuant to section 22a-133k of the general
115 statutes at a concentration less than such ground
116 water protection criterion for such substance; or
117 (B) any other substance which was part of the
118 release which caused such pollution. Notice under
119 this subdivision shall be given in writing not
120 later than seven days after the time such person
121 becomes aware that the contamination exists.

122 (d) (1) If a technical environmental
123 professional determines in the course of
124 investigating or remediating pollution after the
125 effective date of this section, which pollution is
126 on or emanating from a parcel, that such pollution
127 of soil within two feet of the ground surface
128 contains a substance, except for total petroleum
129 hydrocarbon, at a concentration at or above thirty
130 times the industrial/commercial direct exposure
131 criterion for such substance if the parcel is in
132 industrial or commercial use, or the residential
133 direct exposure criterion if the parcel is in
134 residential use, which criteria are specified in
135 regulations adopted pursuant to section 22a-133k
136 of the general statutes, such professional shall
137 notify his client and the owner of the parcel, if
138 such owner is reasonably identified, not later
139 than seven days after determining that the
140 contamination exists, except that notice will not
141 be required if the land-use of such parcel is not
142 residential activity and the substance is one of
143 the following: Acetone, 2-butanone, chlorobenzene,
144 1,2-dichlorobenzene, 1,3-dichlorobenzene,
145 1,1-dichloroethane, cis-1,2-dichloroethylene,
146 trans-1,2-dichloroethylene, ethylbenzene,
147 methyl-tert-butyl-ether, methyl isobutyl ketone,
148 styrene, toluene, 1,1,1-trichloroethane, xylenes,
149 acenaphthylene, anthracene, butyl benzyl
150 phthalate, 2-chlorophenol, di-n-butyl phthalate,
151 di-n-octyl phthalate, 2,4-dichlorophenol,
152 fluoranthene, fluorene, naphthalene, phenanthrene,
153 phenol and pyrene.

154 (2) The owner of the subject parcel, shall
155 notify the commissioner in writing not later than
156 ninety days after the time such owner becomes
157 aware that the contamination exists except that
158 notification will not be required if not later
159 than ninety days: (A) The contaminated soil is
160 remediated in accordance with regulations adopted
161 pursuant to section 22a-133k of the general

162 statutes; (B) the contaminated soil is
163 inaccessible soil as that term is defined in
164 regulations adopted pursuant to section 22a-133k
165 of the general statutes; or (C) the contaminated
166 soil which exceeds thirty times such criterion is
167 treated or disposed of in accordance with all
168 applicable laws and regulations.

169 (e) (1) If a technical environmental
170 professional determines in the course of
171 investigating or remediating pollution after the
172 effective date of this section, which pollution is
173 on or emanating from a parcel, that such pollution
174 is causing or has caused ground water within
175 fifteen feet beneath an industrial or commercial
176 building to be contaminated with a volatile
177 organic substance at a concentration at or above
178 thirty times the industrial/commercial
179 volatilization criterion for ground water for such
180 substance or, if such contamination is beneath a
181 residential building, at a concentration at or
182 above thirty times the residential volatilization
183 criterion, which criteria are specified in
184 regulations adopted pursuant to section 22a-133k
185 of the general statutes, such professional shall,
186 not later than seven days after determining that
187 the contamination exists, notify his client and
188 the owner of the subject parcel, if such owner can
189 reasonably be identified.

190 (2) The owner of such parcel shall notify the
191 commissioner in writing not later than thirty days
192 after such person becomes aware that the
193 contamination exists except that notification is
194 not required if: (A) The concentration of such
195 substance in the soil vapor beneath such building
196 is at or below thirty times the soil vapor
197 volatilization criterion, appropriate for the
198 land-use for the parcel, for such substance as
199 specified in regulations adopted pursuant to
200 section 22a-133k of the general statutes; (B) the
201 concentration of such substance in groundwater is
202 below thirty times a site-specific volatilization
203 criterion for ground water for such substance
204 calculated in accordance with regulations adopted
205 pursuant to section 22a-133k of the general
206 statutes; (C) ground water volatilization
207 criterion, appropriate for the land-use of the
208 parcel, for such substance specified in
209 regulations adopted pursuant to section 22a-133k

210 of the general statutes is fifty thousand parts
211 per billion; or (D) not later than thirty days
212 after the time such person becomes aware that the
213 contamination exists, an indoor air monitoring
214 program is initiated in accordance with
215 subdivision (3) of this subsection.

216 (3) An indoor air quality monitoring program
217 for the purposes of this subsection shall consist
218 of sampling of indoor air once every two months
219 for a duration of not less than one year, sampling
220 of indoor air immediately overlying such
221 contaminated ground water, and analysis of air
222 samples for any volatile organic substance which
223 exceeded thirty times the volatilization criterion
224 as specified in or calculated in accordance with
225 regulations adopted pursuant to section 22a-133k
226 of the general statutes. The owner of the subject
227 parcel shall notify the commissioner if: (A) The
228 concentration in any indoor air sample exceeds
229 thirty times the target indoor air concentration,
230 appropriate for the land-use of the parcel, as
231 specified in regulations adopted pursuant to
232 section 22a-133k of the general statutes; or (B)
233 the indoor air monitoring program is not conducted
234 in accordance with this subdivision. Notice shall
235 be given to the commissioner in writing not later
236 than seven days after the time such person becomes
237 aware that such a condition exists.

238 (f) (1) If a technical environmental
239 professional determines in the course of
240 investigating or remediating pollution after the
241 effective date of this section, which pollution is
242 on or emanating from a parcel, that such pollution
243 is causing or has caused contamination of ground
244 water which is discharging to surface water and
245 such ground water is contaminated with a substance
246 for which an acute aquatic life criterion is
247 listed in appendix D of the most recent water
248 quality standards adopted by the commissioner at a
249 concentration which exceeds ten times (A) such
250 criterion for such substance in said appendix D,
251 or (B) such criterion for such substance times a
252 site specific dilution factor calculated in
253 accordance with regulations adopted pursuant to
254 section 22a-133k of the general statutes, such
255 professional shall notify his client and the owner
256 of such parcel, if such owner can reasonably be

257 identified, not later than seven days after
258 determining that the contamination exists.

259 (2) The owner of such parcel shall notify the
260 commissioner in writing not later than seven days
261 after the time such person becomes aware that the
262 contamination exists except that notice shall not
263 be required if such person knows that the polluted
264 discharge at that concentration has been reported
265 to the commissioner in writing within the
266 preceding year.

267 (g) (1) If a technical environmental
268 professional determines in the course of
269 investigating or remediating pollution after the
270 effective date of this section, which pollution is
271 on or emanating from a parcel, that such pollution
272 is causing or has caused contamination of ground
273 water within five hundred feet in an upgradient
274 direction of a private or public drinking water
275 well which ground water is contaminated with a
276 substance resulting from a release for which the
277 commissioner has established a ground water
278 protection criterion in regulations adopted
279 pursuant to section 22a-133k of the general
280 statutes at a concentration at or above the ground
281 water protection criterion for such substance,
282 such technical environmental professional shall
283 notify his client and the owner of the subject
284 parcel, if such owner can reasonably be
285 identified, not later than seven days after
286 determining that the contamination exists.

287 (2) The owner of the subject parcel shall
288 notify the commissioner in writing not later than
289 seven days after the time such owner becomes aware
290 that the contamination exists.

291 (h) (1) If a technical environmental
292 professional determines in the course of
293 investigating or remediating pollution after the
294 effective date of this section, which pollution is
295 on or emanating from a parcel, that such pollution
296 is causing or has caused polluted vapors emanating
297 from polluted soil, groundwater or free product
298 which vapors are migrating into structures or
299 utility conduits and which vapors pose an
300 explosion hazard, such technical environmental
301 professional shall immediately notify his client
302 and the owner of the subject parcel, if such owner
303 can reasonably be identified, not later than
304 twenty-four hours after determining that the vapor

305 condition exists. If the owner of such parcel
306 fails to notify the commissioner in accordance
307 with this subsection, such client shall notify the
308 commissioner. If the owner notifies the
309 commissioner, the owner shall provide
310 documentation to the client of the professional
311 which verifies that the owner has notified the
312 commissioner.

313 (2) The owner of such parcel shall orally
314 notify the commissioner and the local fire
315 department immediately and under all circumstances
316 not later than two hours after the time a
317 technical environmental professional notifies the
318 owner that the vapor condition exists, and shall
319 notify the commissioner in writing not later than
320 five days after such oral notice.

321 (i) All notices, oral or written, provided
322 under this section shall include the nature of the
323 contamination or condition, the address of the
324 property where the contamination or condition is
325 located, the location of such contamination or
326 condition, any property known to be affected by
327 such contamination or condition, any steps being
328 taken to abate, remediate or monitor such
329 contamination or condition, and the name and
330 address of the person making such notification.
331 Written notification shall be clearly marked as
332 notification required by this act and shall be
333 either personally delivered to the Water
334 Management Bureau of the Department of
335 Environmental Protection or sent certified mail,
336 return receipt requested, to the Water Management
337 Bureau of the Department of Environmental
338 Protection.

339 (j) The commissioner shall provide written
340 acknowledgment of receipt of a written notice
341 pursuant to this section not later than ten days
342 of receipt of such notice. Such acknowledgement
343 shall be accompanied by (1) a statement that the
344 owner of the parcel has up to ninety days within
345 which to submit to the commissioner a plan to
346 remediate or abate the contamination or condition.
347 If such plan is not submitted or is not approved
348 by the commissioner, the commissioner shall
349 prescribe the action to be taken, or (2) a
350 directive as to action required to remediate or
351 abate the contamination or condition. If a plan is
352 submitted which details actions to be taken, or a

353 report is submitted which details actions taken,
354 to mitigate the contamination or conditions such
355 that notice under this section would not be
356 required, and such plan or report is acceptable to
357 the commissioner, the commissioner shall approve
358 such plan or report in writing. When actions
359 implementing an approved plan are completed, the
360 commissioner shall issue a certificate of
361 compliance.

362 (k) Nothing in this section and no action
363 taken by any person pursuant to this section shall
364 affect the commissioner's authority under any
365 other statute or regulation.

366 (l) Nothing in this section shall excuse a
367 person from complying with the requirements of any
368 statute or regulation except the commissioner may
369 waive the requirements of the regulations adopted
370 under section 22a-133k of the general statutes if
371 he determines that it is necessary to ensure that
372 timely and appropriate action is taken to mitigate
373 or minimize any of the conditions described in
374 subsections (b) to (h), inclusive, of this
375 section.

376 Sec. 2. Section 22a-16a of the general
377 statutes is repealed and the following is
378 substituted in lieu thereof:

379 In any action brought by the Attorney General
380 under section 22a-16 or under any provision of
381 this title which provides for a civil or criminal
382 penalty for a violation of such provision, the
383 court, in lieu of any other penalties, damages or
384 costs awarded, or in addition to a reduced
385 penalty, damages or costs awarded, may order the
386 defendant (1) to provide for the restoration of
387 any natural resource or the INVESTIGATION,
388 remediation or mitigation of any environmental
389 pollution on or at any real property which
390 resource or property are unrelated to such action,
391 (2) to provide for any other project approved by
392 the Commissioner of Environmental Protection for
393 the enhancement of environmental protection or
394 conservation of natural resources, (3) to make a
395 financial contribution to an academic or
396 government-funded research project related to
397 environmental protection or conservation of
398 natural resources, or (4) to make a financial
399 contribution to the Special Contaminated Property
400 Remediation and Insurance Fund established under

401 section 22a-133t provided the total aggregate
402 amount of all contributions to said fund under
403 this section shall not exceed one million dollars
404 per fiscal year. [provided no] NO defendant
405 carrying out any order under this section may
406 claim or represent that its expenses in so doing
407 constitute ordinary business expenses or
408 charitable contributions or any other type of
409 expense other than a penalty for a violation of
410 the environmental laws.

411 Sec. 3. Section 22a-6 of the general statutes,
412 as amended by section 44 of public act 97-44, is
413 amended by adding subsection (h) as follows:

414 (NEW) (h) The commissioner may adopt
415 regulations pertaining to activities for which the
416 federal government has adopted standards or
417 procedures. All provisions of such regulations
418 which differ from the applicable federal standards
419 or procedures shall be clearly distinguishable
420 from such standards or procedures either on the
421 face of the proposed regulation or through
422 supplemental documentation accompanying the
423 proposed regulation at the time of the public
424 hearing on such regulation required under chapter
425 54. An explanation for all such provisions shall
426 be included in the regulation-making record
427 required under chapter 54. This subsection shall
428 apply to any regulation for which a notice of
429 intent to adopt is published on and after July 1,
430 1999.

431 Sec. 4. Subsections (a) and (b) of section
432 22a-133x of the general statutes are repealed and
433 the following is substituted in lieu thereof:

434 (a) Except as provided in section 22a-133y a
435 municipality, an owner of an establishment, [or]
436 an owner of property identified on the inventory
437 of hazardous waste disposal sites maintained
438 pursuant to section 22a-133c on October 1, 1995,
439 OR AN OWNER OF CONTAMINATED PROPERTY LOCATED IN AN
440 AREA FOR WHICH THE GROUNDWATER CLASSIFICATION IS
441 GA OR GAA, may, at any time, submit to the
442 commissioner an environmental condition assessment
443 form for such real property owned by such
444 municipality or such owner and an initial review
445 fee in accordance with subsection (e) of this
446 section. Within thirty days of his receipt of such
447 form, the commissioner shall notify the owner, in
448 writing, whether or not review and written

449 approval of any remedial action at such
450 establishment or property by the commissioner will
451 be required. The commissioner shall not process
452 any such form submitted pursuant to this section
453 unless such form is accompanied by the required
454 initial review fee. For the purposes of this
455 section, "municipality" means any of the one
456 hundred sixty-nine towns of the state.

457 (b) If the commissioner notifies the owner
458 that he will not formally review and approve in
459 writing the investigation and remediation of the
460 parcel, the owner shall, on or before ninety days
461 of the receipt of such notice, submit a statement
462 of proposed actions for investigating and
463 remediating the parcel OR A RELEASE AREA, AS
464 DEFINED IN THE REGULATIONS ADOPTED BY THE
465 COMMISSIONER PURSUANT TO SECTION 22a-133k, and a
466 schedule for implementing such actions. The
467 commissioner may require the owner to submit to
468 him copies of technical plans and reports related
469 to investigation and remediation of the parcel OR
470 RELEASE AREA, and may notify the owner if the
471 commissioner determines that the commissioner's
472 review and written approval is necessary. The
473 commissioner shall require that the certifying
474 party submit to him all technical plans and
475 reports related to the investigation and
476 remediation of the parcel OR RELEASE AREA if the
477 commissioner receives a written request from any
478 person for such information. The owner shall
479 advise the commissioner of any modifications to
480 the proposed schedule. Upon receipt of a
481 verification by a licensed environmental
482 professional that the parcel OR RELEASE AREA has
483 been remediated in accordance with the remediation
484 standards the owner shall submit a copy of such
485 verification to the commissioner.

486 Sec. 5. Subsection (b) of section 22a-133u of
487 the general statutes, as amended by section 13 of
488 public act 97-124, is repealed and the following
489 is substituted in lieu thereof:

490 (b) The Commissioner of Economic and Community
491 Development, with the approval of the advisory
492 board established in subsection (e) of this
493 section, may use any funds deposited into the
494 Special Contaminated Property Remediation and
495 Insurance Fund pursuant to section 12-63f or
496 section 3 of public act 96-250* for (1) loans to

497 municipalities, individuals or firms for Phase II
498 environmental site assessments, Phase III
499 investigations of real property [prepared in
500 accordance with section 22a-133y] or for any costs
501 of demolition undertaken to prepare contaminated
502 real property for development subsequent to any
503 Phase III investigation and (2) expenses related
504 to administration of this subsection provided such
505 expenses may not exceed one hundred twenty-five
506 thousand dollars per year.

* * * * *

"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."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5712

STATE IMPACT	Potential Cost, Minimal Cost, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Environmental Protection

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of this bill could result in additional costs to the Department of Environmental Protection (DEP). The bill requires technical environmental professionals (TEP) and the owner of the property, to notify DEP of pollution from property being investigated or remediated in various circumstances. It is unknown at this time how many new notifications of pollution which is causing or has caused contamination DEP will receive, and will have to investigate and take action to ensure the pollution is eliminated. If one or two additional contamination problems arise a month, existing staff could be able to absorb the workload increase. However, if one or two or more notifications are received a week, there would be a need for an additional inspector, analyst and support staff estimated at \$100,000. The exact impact is not known at this time.

In addition, the bill minimally expands the use of the Special Contaminated Property Remediation and Insurance Fund (SCPRIF) potentially increasing costs to the Fund. The SCPRIF currently has a \$162,000 balance due to fee collections and \$1 million of a \$5 million bond authorization has been allocated but not yet allotted to the Fund.

Allowing the DEP to adopt regulations for activities the federal government has adopted standards or procedures, can be handled within the existing resources of the agency.

In addition, the bill expands the voluntary site remediation program to include contaminated sites over current or future drinking water supplies. It is anticipated that any increase in workload will be offset by fees (\$2,000) already established.

House "A" expands the voluntary program, which costs are offset by fees. It also allows an increased use of the SCPRIIF, allows DEP to adopt regulations, minimally increasing costs and makes other changes concerning notices and reporting which do not change to impact of the bill.

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OLR AMENDED BILL ANALYSIS

sHB 5712 (as amended by House "A")*

AN ACT CONCERNING THE REPORTING OF CERTAIN SIGNIFICANT ENVIRONMENTAL HAZARDS BY OWNERS OF CONTAMINATED PROPERTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

SUMMARY: This bill requires a technical environmental professional (TEP) to notify his client and a property's owner, if he can be identified, within a specified period after determining in the course of investigating or remediating water pollution that (1) pollution is on or emanating from property that is not subject to a Department of Environmental Protection (DEP) order to investigate or report environmental contamination and (2) the pollution is causing or has caused contamination of:

1. a public or private drinking water well,
2. ground water within 500 feet of a drinking water well,
3. soil within two feet of the surface,
4. ground water under a building,

5. ground water discharging to surface water, or
6. vapors in soil or water which pose an explosion threat.

The bill also requires the owner of the contaminated property to notify the DEP of the contamination once he becomes aware of it and in some circumstances requires the TEP to notify the department, if the owner does not. It specifies that neither these provisions nor any other action taken under these provisions affects the commissioner's authority under any other law.

The bill allows the DEP commissioner to waive the regulatory requirements for site clean up if he determines a waiver is necessary to ensure that timely and appropriate action is taken to mitigate or minimize any contamination for which notification is required under this bill.

The bill defines a TEP as anyone, including a licensed environmental professional, who collects soil, water, vapor, or air samples in order to investigate and remediate pollution to the state's soil or water, and who may be directly employed or retained as a consultant by a public or private employer.

By law, courts may impose alternative sanctions in any suit filed by the attorney general for violations of environmental laws involving civil or criminal penalties or declaratory or equitable relief. The bill expands the alternative sanctions available to the court to include ordering defendants to provide for the investigation of environmental pollution at sites unconnected to the suit.

The bill allows the DEP commissioner to adopt regulations for activities for which the federal government has adopted standards or procedures. It requires any of these regulations that differ from the federal standards or procedures to be clearly distinguishable either on their face or through supplemental documentation at the time of the public hearing. The regulation's record must also contain an explanation for the differences. This provision applies to regulations for which notice is published after June 30, 1999.

The bill expands the voluntary site remediation program to cover present or future drinking water supplies and allows owner's plans to cover release areas, as well as the parcel itself.

Finally, it makes a minor expansion regarding the use of the state contaminated property clean up fund.

House Amendment "A" adds the provisions (1) allowing DEP to adopt regulations for activities for which the federal government has standards or procedures, (2) expanding the voluntary site remediation program and allowing land owners to either clean up the parcel or the release area, and (3) regarding use of the state contaminated property clean-up fund. It also limits a TEP's reporting duties to property not already under a DEP order; eliminates a responsible party's duty to report certain contamination under the bill; makes a technical change to the surface water contamination criteria; requires earlier notice to the commissioner of an explosion hazard, and expands the notice requirements.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Drinking Water Wells

Lands Above Criteria. The bill requires a TEP to notify his client and the property owner within 24 hours of determining that pollution on or emanating from the property is causing or has caused contamination of a public or private drinking water well. The contamination must be from a substance for which the DEP has established ground water protection criteria by regulation and be above the criteria for that substance. He must also notify the DEP commissioner, by seven days after his determination, if the property owner has not done so. If the owner notifies the commissioner, he must inform the TEP.

The bill requires anyone who owns the property containing such a source of contamination and becomes aware that the pollution is causing or has caused contamination of a public or private drinking water well to notify the commissioner both orally and in writing of this pollution. The oral notification must

be given within one business day after he becomes aware of the contamination. The written one must be given within five days of the oral notice.

Lands Below Criteria. The bill also requires a TEP to notify his client and the property owner within seven days of determining that the contamination is from (1) a substance for which the DEP has established ground water protection criteria by regulation and the concentration of the substance is below the criteria or (2) any other substance resulting from a release that is the subject of the investigation or remediation. The bill requires anyone who owns the property where such contamination exists and becomes aware of it to give written notice to the commissioner within seven days after the time he becomes aware of the contamination.

Within 500 Feet of a Well. The bill requires a TEP to notify his client and the property owner within seven days of determining that pollution on or emanating from a parcel is causing or has caused contamination of ground water with 500 feet in an upgradient direction of a public or private drinking water well. The contamination must result from a release of a substance for which the DEP has established ground water protection criteria by regulation and be at a concentration at or above the criteria for the substance. The property owner must notify the DEP commissioner within seven days after the time he becomes aware of the contamination.

Surface Contamination

The bill requires a TEP to notify his client and the property owner within seven days of determining that there is soil pollution with two feet of the parcel's surface. The pollution must be from a substance, except total petroleum hydrocarbons, for which the DEP has established by regulation industrial and commercial or residential direct exposure criteria and be at a concentration at or above 30 times the criteria. But notice is not required if the land is not used for residential activity and the substance is acetone or one of a number of other specified compounds.

The parcel's owner must notify the commissioner in writing within 90 days after he becomes aware of the contamination unless the soil is remediated,

inaccessible, or treated or disposed.

Beneath a Building

The bill requires a TEP to notify his client and the property owner within seven days of determining that pollution on or emanating from the property is causing or has caused contaminated ground water within 15 feet beneath a building. The pollution must be from a volatile organic substance for which the DEP has established by regulation industrial and commercial or residential volatilization criteria for ground water for such substance and be at a concentration at or above 30 times the criteria.

The property owner must notify the commissioner in writing within 30 days after he becomes aware of the contamination unless (1) the concentration in the soil vapor beneath the building is at or below 30 times the soil vapor volatilization criteria for the land's use, (2) the concentration in the ground water is below 30 times a site-specific volatilization criteria for the substance, (3) ground water volatilization criteria for the land's use for the substance is 50,000 parts per billion, or (4) with 30 days of becoming aware of the contamination an indoor air-monitoring program begins.

The bill requires the indoor air-monitoring program it establishes to (1) sample the indoor air once every two months for at least a year, (2) sample indoor air immediately above the contaminated ground water, and (3) analyze air samples for any volatile organic substance that exceeds 30 times the criteria. The owner must notify the commissioner in writing within seven days of becoming aware that (1) the concentration in any indoor air sample exceeds 30 times the target concentration or (2) the indoor air-monitoring program is not being conducted according to the bill's provisions.

Surface Water

The bill requires a TEP to notify his client and the property owner within seven days of determining that pollution on or emanating from the property is causing or has caused contamination of ground water which is discharging to surface water. The ground water must be contaminated with a substance for which DEP lists an

acute aquatic life criteria at a concentration which exceeds 10 times (1) the listed criteria or (2) the criteria for the substance times a site-specific dilution calculated using DEP regulations.

The property owner must notify the commissioner in writing within seven days after he becomes aware of the contamination unless he knows that the pollution at the same concentration has been reported in writing within the preceding year.

Explosion Hazard

The bill requires a TEP to notify his client and the property owner immediately when, but not later than 24 hours after, he determines that pollution on or emanating from the property is causing or has caused polluted vapors from polluted soil, ground water, or free product (product not yet absorbed into the soil or water) and the vapors are migrating into structures or utility conduits and pose an explosion hazard.

The property owner must orally notify the commissioner and the local fire department immediately when, but not later than two hours, after the professional notifies him and must notify the commissioner in writing within five days of the oral notice. The TEP's client must notify the commissioner if the property owner does not do so. If the owner notifies the commissioner he must inform the TEP's client.

Notice Requirement

The bill requires any oral or written notice to include:

1. the nature of the contamination;
2. the address of the contaminated property and the location of the contamination;
3. any property known to be affected by the contamination;
4. any steps being taken to abate, remediate, or monitor the contamination; and
5. the name and address of the person making the

notice.

A written notice must be marked as notice required by this bill and be either personally delivered or sent certified mail, return receipt requested, to DEP's Water Management Bureau. The commissioner must acknowledge receipt of the written notice within 10 days. The acknowledgement must be accompanied by (1) a statement that the owner has up to 90 days to remediate or abate the contamination (if the plan is not submitted or not approved, the commissioner must prescribe the remediation action) or (2) a directive as to the action required to remediate or abate the contamination. If a plan or report is submitted detailing actions taken or to be taken concerning the contamination such that notice would not be required and he finds the plan or report acceptable, the commissioner must approve it in writing. He must issue a certificate when the actions implementing an approved plan are completed.

Voluntary Site Remediation

The bill expands the voluntary site remediation program to allow owners of sites located over present or future drinking water supplies to apply to DEP for approval to remediate with DEP oversight or under the authority of an licensed environmental professional (LEP). By law, owners may apply to voluntarily remediate their property. The DEP can require its review and written approval of the remediation or allow an LEP to certify that the property has been remediated to DEP standards.

By law, if the commissioner notifies the owner that he will not formally review the property, the owner must submit various plans and reports to the commissioner about the parcel. The bill allows him to submit these plans and reports either about the release area or the parcel. A release area is the land area at and beneath which polluted soil from a release is located. Likewise the bill allows an LEP to verify that either the release area or parcel has been remediated in accordance with DEP standards.

Clean Up Fund

Current law allows the Department of Economic and Community Development commissioner to use the Special

Contaminated Property Remediation and Insurance Fund to make loans to municipalities, individuals, or firms for specific (1) environmental site assessments, (2) investigations of contaminated property, or (3) demolition costs necessary to prepare contaminated property for development. The bill eliminates the requirement that the investigation of contaminated property be done in accordance with the voluntary site remediation law.

BACKGROUND

Legislative History

The House referred the bill (File 278) on April 8 to the Appropriations Committee, April 18 to the Judiciary Committee, and April 26 to the Public Health Committee. The committees all reported the bill unchanged.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 22 Nay 1

Appropriations Committee

Joint Favorable Report
Yea 45 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 40 Nay 0

Public Health Committee

Joint Favorable Report
Yea 23 Nay 1