



***Environmental Professionals' Organization of Connecticut***

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Public Hearing – September 17, 2020

Statement of Nelson Walter, LEP, President; Rachel Rosen, LEP Vice President; and Sam Haydock, LEP, Secretary

Environmental Professionals' Organization of Connecticut

Joint Public Hearing before the Commerce and Environment Committees

September 17, 2020

Regarding LCO No. 3962, An Act Concerning Various Revisions To The Property Transfer Law And Spill-Based Remediation of Certain Hazardous Waste

Senator Hartley, Representative Simmons, Senator Martin and Representative Cummings and members of the Commerce Committee.

Senator Cohen, Representative Demicco, Senator Miner and Representative Harding and members of the Environment Committee.

Testimony submitted by Nelson Walter, Rachel Rosen and Sam Haydock on behalf of the Environmental Professionals' Organization of Connecticut (EPOC)

TRANSFER ACT AND RELEASED-BASED PROPOSAL WORKING DRAFT SEPTEMBER 9, 2020.

The Environmental Professionals' Organization of Connecticut (also known as "EPOC") was formed in 1996 to represent the interests of Connecticut's Licensed Environmental Professionals (LEPs). LEPs are the professionals authorized by the DEEP to perform investigation and remediation of property in Connecticut and certify, through a Verification, that the property meets the Connecticut Remediation Standard Regulations. The 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.

Thank you for the opportunity to provide you with this testimony regarding the working draft language that provides welcome revisions to CT's Transfer Act law and proposes a transition to a released-based cleanup program. EPOC supports this concept as we believe a properly devised released-based program can allow for environmentally sound management and cleanup of pollution along with increasing opportunities to restore properties to productive uses in a timely manner. This is both an opportunity for better environmental cleanups and increased economic development.

As we will discuss in our testimony today, we support the overall plan; however, we have concerns with certain aspects of the currently proposed statute and recommend that certain modifications be inserted and addressed.

Both Rachel Rosen and Sam Haydock participated in the Transfer Act Working Group that was established in the summer of 2019 under Public Act 19-75. We believe that our participation and support for the revisions directly contributed to the welcome revisions currently proposed for adoption. EPOC supports the proposed modifications to the Transfer Act as proposed in Sections 1 through 14 of the working draft and as recommended by the Transfer Act Working Group. We commend the efforts of this group, and we strongly recommend these beneficial changes be enacted, even if it is independent of the proposed released based remediation program legislation.

With regard to Sections 501 through 509, we support in concept the proposed modifications to sunset the Transfer Act and transition to a released based remediation program. We would note that the current proposal to sunset the Transfer Act and develop a new cleanup program seems rushed. We were first introduced to the proposed legislation in late mid-February and the process was largely put on hold due to Covid-19 from mid-March until early September, when we were made aware of an effort to revive the legislation and move it through the pending Special Legislative Session, and we received the current version of the proposed Act yesterday. This short timeframe does not do justice to the effort required to successfully implement the desired transition without clear provisions for sufficient stakeholder involvement and input, and without a clear requirement to appropriately evaluate comparable/nearby state programs and include the elements that Connecticut deems worthwhile. Further, the proposal does not address one of the key stated goals of the Department to develop a unified, integrated cleanup program.

In the short time that was available, we worked with DEEP and other stakeholders to recommend modifications and addition of clarifying detail to the statute, and we are committed to continue to provide input during development of implementing regulations. We are appreciative of these efforts by DEEP to improve the proposed statute over the past few months. Many improvements to the original language have been made, including the addition of definitions and details regarding the ensuing regulations; however, due to time constraints and the complexity of the issues and the short timeframe, this process may result in a statute with unintended consequences. Some of the challenging issues we face with transition to a release-based cleanup program include but are not limited to the items below. We support passage of the proposed bill if these critical items are addressed satisfactorily.

1. Establishing new numerical standards to identify properties that require cleanup due to current spills or historic releases. These entry points would be best served by using reportable concentrations for historic contamination and reportable quantities for individual substances for new spills. We applaud DEEP for including language that would include a tiered system for classifying the urgency of addressing these releases/spills depending on the toxicity and size of the release.

Currently, for most properties, there are no requirements to report contamination until there is a property transfer, or unless the contamination is at a significant hazard level, which leaves many known contamination issues untouched. At the other end of the

spectrum, all spills, regardless of their significance must be reported. A solution for this is to develop a clear list of new numerical standards such as reportable quantities (new spills) and reportable concentrations (past releases) for individual chemicals, which will be the triggers in determining if contamination needs to be remediated and/or reported. The reportable quantities/concentrations would be based on the specific, relevant and current risk information for each constituent, the site setting and groundwater classification. In addition, LEPs should be provided the authority to further determine, using the DEEP's proposed tiered reporting system, if reporting was necessary, if remediation was necessary, if an engineered solution would adequately address risks, and if site/release specific remediation criteria could be developed.

In developing these reportable concentrations and quantities practical considerations in addition to risk must be taken into account. Connecticut has a long industrial and agricultural history and is downwind from a number of sources of air pollution, some of which has been deposited onto our soils. Many urban sites present in this state have some level of impact resulting from historical activity, and likewise, many suburban and rural sites have been impacted by air pollution deposition or residuals from agriculture. It is not reasonable nor practical to attempt to remediate all of these contaminants as they are encountered, and the standards should consider these real issues.

2. Establishing a process to efficiently develop alternate cleanup criteria to allow cleanups appropriate to the proposed use or reuse of properties. These exit points would include provisions to allow self-implementing risk assessment to develop alternate cleanup standards as appropriate under the direction of LEPs. Other provisions should include conditional closure of sites with groundwater issues that will take decades to remediate to acknowledge the ability to redevelop these properties safely.

One of the current roadblocks to completion of cleanup of sites in Connecticut is the rigid requirement to meet the list of cleanup standards in the current Remediation Standard Regulations, with few options to consider alternate cleanup levels to address conditions that are different than the standard "residential" or "industrial/commercial" exposure criteria. We believe that LEPs should be allowed, as they are in Massachusetts, to develop alternate clean-up criteria following risk assessment protocols that have been accepted nationally and by other states.

Many sites with groundwater contamination that will take a long time to remediate cannot be verified under the current system, stigmatizing these properties and acting as a deterrent to future redevelopment. Creating a system for conditional or interim closure criteria which control the risks to exposure would help reduce the constraints on redevelopment.

3. Limiting the liability of LEPs while working to investigate and remediate sites when they are not responsible for the historic contamination or spills.

The language in the current proposed Act prohibits a person from creating or maintaining a release to the land and waters of the. We propose addition of language that indicated that “efforts made or taken to investigate, monitor and/or remediate a release within the scope of a person’s professional license shall not be deemed to be creating or maintaining a release”.

4. Assessing program oversight by DEEP and whether DEEP has sufficient resources to manage the new cleanup program. Development of the regulations for a comprehensive, well thought out program will be labor-intensive if it is to be done in a reasonable period of time. Beyond the effort to develop the regulations, the release-based program will potentially result in an increase in the number of releases which require some level of remediation. The DEEP does not have, and in the near future is not likely to have, the additional resources required to review each of the individual release closure reports. There are two options, either increase DEEP funding so additional oversight can be provided, or, a more workable option, ensure that additional authority is delegated to LEPs to oversee and close releases using all of the tools and options available. These tools and options include, but are not limited to, tiered remediation options to encourage rapid cleanup of smaller releases, self-implementing risk assessments for the development of site-specific and release specific remediation criteria, and flexibility to allow implementing nationally accepted and scientifically valid alternative methods for sample collection, analysis and evaluation.
5. Ensuring that the requirements for investigation and remediation of pollution during the transition period are clear. There are currently at least five components of the current regulatory framework that are going through revision – RSRs, EURs, CTA, and Spills. Add to this the development of a release-based program and there is potential for create confusion in the marketplace for what is required. One example of this is the is of the applicability of the current RSRs that has arisen out of the proposed RSR Wave II revisions. Based on the Statement of Reasons from the Hearing Officer indicating that the current RSRs apply to all pollution at all Sites regardless of whether or not a Site is in a program, 20 years of precedent under the RSRs has been turned upside down. This is an unintended consequence that needs further discussion and clarification
6. Developing a uniform or well-integrated regulatory program that requires combining and/or sunseting other regulatory programs that require site investigation and remediation. There are currently proposed revisions to the RSRs, the EUR process, the Transfer Act, and spill reporting regulation in the works and it is unclear how these will integrate with the new program as well as other existing programs. We have 16 or 17 environmental statutes which have resulted in multiple sets of existing regulations and programs, all with different entry and exit points.

We believe that it is critical to create a program that is consistent and integrated with other remedial programs that the regulated and business communities can understand. The regulations need to provide clear direction about what needs to be done to report and cleanup sites, without overlap. The proposed statute should require that the State streamline and eliminate as many as possible.

An example of this is that the proposed Act requires reporting of new releases while there are existing spill regulations in place. New releases or spills should be covered under one system such that duplicative or conflicting requirements do not exist.

Other examples include the RCRA Corrective Action Delegation from EPA, the SEH statute (22a-6u) and associated regulations, and UST regulations.

To address some of these concerns, we propose an addition to the language in the bill that would state:

*In adopting the regulation under this subsection, the Commissioner shall incorporate the requirements of other cleanup statutes to assure consistency in the application of the remediation regulations and to minimize the number of different remediation regulations, or may modify existing remediation regulations. This provision shall also allow for revising or eliminating existing regulations to eliminate unnecessary duplication of or confusion regarding how to achieve compliance.*

In addition, the legislation should include provisions to require the use of a stakeholder group in the development of the regulations to implement this new release-based program in an effort to avoid unintended consequences of regulations that are developed without adequate the benefit of stakeholder input. It is critical to allow LEPs and other stakeholders to assist in the development of the new legislation and the new or revised regulations. We believe that a Working Group, similar in structure and composition to the Transfer Act Working Group, be established to develop both the proposed statute to enable the release based remediation program and the regulatory changes needed to make the program successful. Language similar to below may be helpful in establishing that group.

Sec. XXX. (NEW) (Effective from passage) (a) The chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to commerce and the environment shall convene a working group to develop recommendations for regulations to be adopted by the commissioner in accordance with the provisions of chapter 54 of the general statutes, that the commissioner deems necessary for implementation, administration and enforcement of this section and sections 6 to 9, inclusive, of this act. The working group shall be composed of: (1) the chairpersons of said joint standing committees, or the chairpersons' designees, (2) the ranking members of said joint standing committees, or the ranking members' designees

*(3) the Commissioner, or the commissioner's designee, (4) the Commissioner of Economic and Community Development, or the commissioner's designee, (5) environmental transaction attorneys, (6) commercial real estate brokers, (7) licensed environmental professionals, (8) environmental advocates, (9) municipal representatives, and (10) representatives from the Brownfield Working Group established under section YYY of the General Statutes. The working group may also include members of said joint standing committees. The chairpersons of such joint standing committees shall select the individuals representing the communities specified in subdivisions (5) thru (10) of subsection 10 of this section, and may designate the Commissioner and the Commissioner of Economic Development, or their designees, to cochair the working group.*

As professionals charged with investigating and remediating pollution in Connecticut, LEPs have first-hand experience and fully understand the costs associated with overlapping, conflicting, and redundant statutes and regulations that impede our ability to provide clear direction to our clients on the process and associated time and resources required to achieve regulatory compliance. These costs, the costs of unintended consequences resulting from rushed legislation and or rushed regulation, can include years of additional time and effort to get to closure, tens if not hundreds of thousands of dollars in investigation and remediation costs that may not be necessary to protect human health or the environment, and missed opportunities for economic development and growth in the State of CT. 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 "front line" of any such new program.