Remarks of Gary B. O'Connor
Co-Chair, Brownfield Working Group
Before the Environment and Commerce Committees of the General Assembly
Regarding
The Transfer Act and the Transition to a Released-Based Property Remediation Program

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Good afternoon, my name is Gary O'Connor and I am a partner at the law firm of Pullman & Comley. I have practiced law for over 30 years, concentrating in the areas of environmental law and real estate development. I serve with Ann Catino as co-chair of the Brownfield Working Group appointed by the General Assembly. I would like to thank the Environment and Commerce Committees for the opportunity to speak today regarding the Transfer Act and the Transition to a Released-Based Property Remediation Program.

Since the creation of the Brownfield Working Group (f/k/a the Brownfield Task Force) in 2006, we have examined issues relating to the remediation and redevelopment of brownfields in this state, the regulatory scheme for remediating such properties, funding requirements and liability concerns. Over the years, we have made recommendations to the General Assembly on reducing the barriers to brownfield redevelopment by creating more certainty, streamlining regulatory requirements, providing certain liability immunities, reducing the cost and time of remediation and providing cleanup funds to eligible businesses, developers and municipalities. Many of these recommendations have become law and have greatly assisted stakeholders in revitalizing Connecticut's brownfields.

Recently, we were apprised that the Department of Energy and Environmental Protection ("DEEP") intended to add additional sections to a proposed bill which the Transfer Act Working Group had drafted. We understand that this revised bill (the "Bill") is the subject of today's virtual Listening Session. Attorney Catino is on trial and has asked me to inform both Committees that she has reviewed my remarks and shares in them. Although we did not have time to hold a formal meeting of the Brownfield Working Group, we did reach out to a majority of the voting members of the Group and are authorized to express our concern regarding certain sections of the Bill.

DEEP's additions to the Bill, while well-intentioned, suffer from a lack of specificity, have not been fully vetted by all stakeholder groups, will create more uncertainty in the regulated community, and may result in a number of material unintended consequences. There is no good reason to pass the Bill in the Special Session of the General Assembly when it is not ready for prime time. In our opinion, the General Assembly should consider passage of those sections of the Bill drafted by the Transfer Act Working Group and request that DEEP work with stakeholder groups and propose a more comprehensive bill, next legislative session, which would sunset the Transfer Act and transition to a release-based property remediation program.

There are two main components to the Bill:

1. Revisions to the Transfer Act which provide further clarity to the law and eliminates some of its more unfair provisions. These revisions are positive changes for the regulated community and continue to be protective of the environment. They are also the result of more than a year of substantive review and negotiations among the Transfer Act Working Group, DEEP and other stakeholders.

2. DEEP's additional sections, which create a new release-based approach to property remediation in Connecticut. Although the goal of moving from the Transfer Act program to a release-based property remediation program is admirable, the proposed language suffers from material deficiencies. In the interest of time, I will focus on a few of the major general deficiencies and those issues impacting brownfield redevelopment:

- The legislative proposal has no specifics. It essentially defers most substantive matters to the passage of regulations, which could take many years to approve. We recognize that state officials have assured that the regulations will be fast-tracked; however, our opinion to the contrary is informed by a number of unsuccessful attempts to make comprehensive revisions to the property remediation regulations, dating back to the Rell Administration. These regulations were never enacted due to a lack of consensus among DEEP, environmental groups and the regulated community.

- The proposed legislation does not distinguish between new releases – which are already covered by different statutes – and historic releases. In addition, it does not provide sufficient protections for operating businesses that did not cause the historic releases. This deficiency has the potential for causing existing businesses, with historic releases, to become obligated to investigate and remediate all of the contamination on its property – contamination that occurred from the past use of the property by previous owners. This result would be incredibly harmful to many small manufacturers and other businesses in the state that own legacy properties, but do not have the financial ability to fully investigate and remediate their properties. ***It could turn those properties into tomorrow's brownfields.*** We have not been given an adequate explanation on how these very important businesses will be protected, nor has there been any analysis provided with respect to the negative impact on our economy if these businesses are forced to close. The Transfer Act, for all its problems, has allowed these legacy businesses to operate and often expand without triggering a comprehensive investigation and remediation of their properties. We are all deeply committed to improving the environment as quickly as possible, but we cannot ignore the negative impacts – not just economic impacts but public health impacts - when businesses close and people lose their jobs.

- DEEP's proposal is not fully protective of the extremely effective and highly regarded brownfield programs, which have been passed by the General Assembly over the past fourteen years. For instance, the proposed language provides that a property is not subject to the new release-based remediation program if a release occurs before a site has been accepted into a brownfield program. However, if the release occurs prior to acceptance of the property into a brownfields program, but is not discovered until after such property has fully satisfied the requirements of that brownfields program, the release shall be subject

to the requirements of the released-based remediation program. Likewise, if it can't be determined when the release occurred, the release will be subject to the new law. The proposed language will, in our opinion, diminish the value of the brownfield liability relief programs, because it eliminates the certainty of knowing that once you have satisfied the requirements of a particular brownfield program, you will not be required to conduct further investigations and remediation of prior releases. . In addition, it does not address what happens under other existing programs created by the Brownfield Working Group, including those that allow municipalities to engage in exploratory investigations on potential brownfield properties (e.g., those that may or may not be current on property taxes but are blighted properties in the community).

- Another unintended consequence of the proposed legislation on brownfield redevelopment involves pre-acquisition due diligence by municipalities of brownfield properties. This type of on-site due diligence is often necessary for municipalities to obtain approval from their legislative bodies to enter into purchase agreements. The proposed language will make it nearly impossible for a municipality to obtain access to a brownfield property from an interested prospective seller, because the discovery of an historic release by the municipality will trigger reporting, investigation and remediation obligations by the prospective seller.

- There are no details as to the level of reporting, investigation or clean-up required for even a small release. The regulated community is told that releases will be categorized into "tiers." A higher tier will require more reporting, investigating and clean-up; however, the identification of what releases will be included in each tier or the level of clean-up is deferred to the future when regulations are passed. This will result in tremendous uncertainty in the real estate and business community until the regulations are passed.

- Municipalities may have additional and expensive reporting, investigation and clean-up responsibilities – remember, not every property owned by a municipality is in a brownfield program; in fact, most are not.

In conclusion, Ann and I are supportive of the proposed revisions to the Transfer Act prepared by the Transfer Act Working Group. We are also, supportive of the goal of making a thoughtful well-structured transition from the Transfer Act to a released-based property remediation program – one which has been thoroughly analyzed and vetted by all the major stakeholder groups, including the Brownfield Working Group. The legislative proposal by DEEP has not gone through this necessary process. It will only serve to create even more uncertainty and economic development challenges. Ann and I have represented businesses, developers, and financial institutions, and we have addressed brownfield issues for over a decade with many

administrations and legislatures. We can assure you that the State will survive a short delay in transitioning to a release-based cleanup program. The paramount goal is to ensure that the transition legislation is correct. We applaud the pro-active position taken by DEEP, but we are very concerned about the impact of the proposed legislation on existing brownfield sites and properties owned by small manufacturers and other businesses that drive our economy.

Thank you for the opportunity to participate in this virtual Listening Session.