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TESTIMONY OF NANCY K. MENDEL
Environmental Attorney, Member
WINNICK RUBEN HOFFNUNG PEABODY & MENDEL, LLC
Submitted to the
COMMERCE COMMITTEE & ENVIRONMENT COMMITTEE
SEPTEMBER 17, 2020 JOINT LISTENING SESSION ON THE TRANSFER ACT AND THE
TRANSITION TO A RELEASED-BASED PROPERTY REMEDIATION PROGRAM.

I would like to express my STRONG support for Sections 1 through 5 of the proposed Transfer Act revisions, but my STRONG OPPOSITION to Sections 6 through 15 of the proposed transition to a released-based property remediation program in its entirety, as being, premature, problematic, unclear and lacking in sufficient details for an effective and successful sunseting of the Transfer Act and establishment of a successful release-based transition program.

The proposed revisions to the Transfer Act, albeit not perfect, are the result of a second phase of a year-long collaborative effort by numerous stakeholders using their collective experience to improve the Transfer Act. These revisions will go far in ameliorating the implementation of the program, providing much needed clarity, until a successful release-based program can be properly and thoughtfully developed and implemented. The passage of these revisions should not be hindered by or conditioned on the passage of the proposed release-based provisions, which as explained below, are thwart with deficiencies. Overhauling 35 years of remediation statutes and regulations with a totally transformative replacement program, cannot be successfully achieved without appropriate stakeholder input and support, thoughtful consideration of all the potential implications of such a program, and adequate time fully develop all of the relevant issues, certainly NOT less time than it took to revise just a few provisions and definitions to one long-time existing remediation program. The legislature must ensure that whatever program replaces the Transfer Act is assured of success and not failure.

I STRONGLY SUPPORT establishing the two-phase approach outlined both in March 5, 2020 Testimony to a Joint Public Hearing on SB 281 & SB 293 and referenced herein below with the goal of fully implementing a successful released-based reporting and cleanup system in Connecticut by July, 2022.

I am an environmental attorney with 30 years' experience working on the clean-up and redevelopment of brownfields, industrial, commercial and multi-family projects, both large and small, on behalf of buyers, sellers, private developers, manufacturers, municipalities, non-profits and fortune 500 companies in every county in the State. Most importantly, over that time, I have had the privilege of serving as outside environmental counsel to numerous municipalities and quasi-governmental economic development agencies in the state, including the City of New Haven, the City of West Haven, the Town of Guilford, the Town of Stonington and the City of Hartford on several of their respective MDP projects and other brownfields redevelopment projects, and to REX Development, the economic development entity for the fifteen towns served by the South Central Regional Council of Governments (SCRCOG) on their DECD and EPA brownfield assessment and remediation grant and loan programs, and have seen firsthand the challenges to economic development involved with Brownfields' site redevelopment from both the private and public sector. I have worked in the trenches with the Connecticut Transfer Act, the Voluntary Remediation Programs, the Licensed Environmental Professional program, Covenants not to Sue, Environmental Land Use Restrictions, the Municipal Liability Relief Program, the Brownfields Programs and all aspects of the Remediation Standard Regulations.

I was part of the original group of drafters of Connecticut's landmark Brownfields Revitalization and Remediation Act providing first of its kind in the nation state liability relief for Brownfield developers. It put Connecticut on the map and drew and continues to draw many out of state developers into the state to redevelop some of the most contaminated and difficult brownfields sites. The BRRP program has provided an attractive alternative to the onerous Transfer Act for successful and much needed site remediations. More recently, I was a member of the original stakeholders group working with DEEP under the leadership of the chairs of the Commerce & Environment Committees, to draft the first wave of the recent revisions to the Transfer Act, which were passed during the 2019 legislative session and codified in Public Act 19-75. Since passage, I have personally seen successful projects come to fruition as a direct result of these revisions, properties that otherwise would have remained undeveloped.

I participated in DEEP's release based program work groups back in early February 2020 with many of my colleagues over several weeks in an effort to work collaboratively with the agency to discuss the issues and many challenges related to establishing such a program. Shortly thereafter, DEEP drafted language which was reduced to raised SB 293, one of the bills on the March 5, 2020 agenda of a Joint Hearing of the Commerce and Environment Committees, at which I submitted testimony encouraging the legislature to adopt the proposed Transfer Act revisions in SB 281, but warning of the serious concerns by stakeholders about DEEP's rush to pass SB 293, and like others, strongly supported, in its stead, establishing a two-phase approach, whereby stakeholders would work with the administration to identify and craft the necessary statutory changes by February of 2021 (with the goal of adoption during the 2021 legislative session), and craft the regulatory components of the transition, with the goal of adoption by July of 2022 (thereby meeting the administration's stated goal for final implementation of the new system).

Covid-19 shutdowns struck the state the following week, and despite the recommendation offered at the Public hearing, and subsequent offers to bring stakeholders and the agency together to ensure a successful outcome, six months passed with no outreach until the past week when the agency shared their proposed revised language in Sections 6 through 15 in anticipation of today's Joint Listening Session. The current proposed language continues to leave serious concerns about the potential success of its implementation. Key concerns

include conflicts with existing remediation and liability relief programs including, as an example, jeopardizing the municipalities' ability to investigate properties without liability in anticipation of foreclosing or condemnation and thwarting the ability of municipalities' use of the very valuable Municipal Liability relief program, another key economic development tool allowing municipalities to take title to abandoned brownfields and to hold these properties for redevelopment. Other concerns include the lack of clear parameters for promulgating targeted regulations and the lack of consideration of interplay with numerous longstanding existing federal and state remediation statutes and regulations including the Remediation Standard Regulations (RSRs), the BRRP, the release reporting regulations, covenants not to sue, lender liability relief programs, UST regulations, release reporting, significant hazard reporting and many other federal and state remediation-related statutes and regulation. It is frankly irresponsible for the state to proceed with this major overhaul with a few months-worth of unilateral drafting effort, with little or no stakeholder involvement. This process involves a major overhaul that needs to be well supported by all stakeholders to ensure its success.

Contrary to popular belief on this issue, removing the Transfer Act will not necessarily translate into more economic development in the state. What drives economic development is certainty, clarity and trust in the system. It was crystal clear from the conversations held back in February, and further reinforced by the proposed language in sections 6 through 15 presented this week, that there are significant details that will need to be resolved in order to establish a successful framework of this program. The current push by DEEP to create such a statutory program, I'm afraid, will lead to a failed program and have the opposite effect of further disincentivizing economic development of these industrial properties in the state, regardless of the sunseting of the Transfer Act.

I thank you for your consideration and I remain hopeful about the process and the potential for great success by working together for a common goal, just as was done last year with public act 19-75 and the 2011 effort to create the BRRP program.

Respectfully,

Nancy K. Mendel