

Statement on
The Transfer Act and The Transition to a “Released-Based Property
Remediation” Program

Submitted to the Joint Commerce and Environment Committee Listening Session
September 17, 2020

Senator Hartley, Senator Cohen, Representative Simmons, Representative Demicco:

Thank you for the opportunity to provide testimony. My name is Pamela Elkow. I am an environmental attorney with the law firm of Carmody Torrance Sandak & Hennessey, LLP, and have been practicing environmental law for just over 30 years. My practice focuses on transactional work – the buying and selling of commercial and industrial property, here in Connecticut, and across the country – as well as Brownfield redevelopment. I also worked with all of you as a member of the Transfer Act Working Group, created by Public Act 19-75, which also implemented certain changes the Transfer Act. Finally, I have been involved with recent discussions held by the Departments of Economic and Community Development and Energy and Environmental Protection on a proposed bill to amend the Transfer Act, and ultimately to sunset the Transfer Act upon the adoption of regulations to implement a “Released-Based” Remediation Program.

The last time I provided testimony to your committees, it was in March, before Covid-19, ended the 2020 legislative session. At that time, I testified on Raised Senate Bills 281 and 293. Senate Bill 281 had two components; it included the recommendations of the Transfer Act Working Group, and also includes language that would sunset the Transfer Act and replace it with a “released-based” remediation system. Senate Bill 293 was limited to the provisions that would sunset the Transfer Act and replace it. In March I testified in favor of the amendments to the Transfer Act, and today reiterate my support for those amendments. While the language has been somewhat modified from March, the substance is the same, and those changes were merely clarifications. A copy of my March testimony is attached here, and I will not spend time on the details of the Transfer Act changes in this testimony.

Both Senate Bill 281 and Senate Bill 293 proposed to sunset the Transfer Act and adopt instead a “released-based remedial program.” In March, I told you that while I wholeheartedly supported that goal, I was concerned that the details were missing, and that a working group was needed to work through the specifics of such a program. Since March, DEEP has worked on those specifics, and drafted legislation that outlined this new program. Once it became clear that this proposal might be ripe for a special session, the Commissioners pulled together a small but representative group of stakeholders to vet that draft legislation. I was part of that group. We spent considerable time discussing the DEEP proposed language, and reached agreement on some important changes. As now written, and with some additional critical changes discussed

below, I would support the passage of a bill during this a special session to move towards this “released-based” remedial program.

This draft legislation is now much more specific, including definitions and details that were missing. For example, it provides liability relief for a party that remediates a historical release in accordance with this new program, and limits the obligation to investigate and remediate to the identified release, rather than requiring (as the Transfer Act does) that a party “prove the negative,” e.g, look for potential releases and then remediate those.

Critically, the draft legislation also lays out the parameters of the required regulations, and tries to make it clear that this new program will not be effective until the adoption of those regulations. Since that is the intent, it would be helpful if the definition of “release” were changed to make it unambiguous that this program is applicable only to those releases discovered after the regulations are adopted.

Another even more important change I would recommend, which is also called for by the Environmental Professionals of Connecticut and others, is to include language that would ensure that the process of drafting those regulations is undertaken by a working group of stakeholders representing business, commercial real estate and environmental organizations, as well as DEEP staff, and that it be done expeditiously. In a relatively short period of time the Transfer Act Working Group, created by these committees through legislation in 2019, produced a consensus bill on the Transfer Act, which is Sections 1 through 5 of the draft legislation. A similar group, with full stakeholder representation, would be the most efficient way to ensure that these critical regulations result in a program that accomplishes the dual goal of cleaning up Connecticut and fostering economic development. If these regulations are not drafted cooperatively and adopted within a realistic period of time, however, there is the potential for some uncertainty in the marketplace, and I would urge that all stakeholders involved move this effort as quickly as possible.

A second critical change is to ensure that this new statute, and the resulting regulations, will be implemented in a way that this new program is consistent with the various other remedial programs in Connecticut, and does not create a disincentive for developers to take on Brownfield sites. For example, we need one set of cleanup criteria for properties, whether new spills or historical releases.

In short, I support this effort. Others will propose improvements to the draft legislation, which I believe will make it even better. In addition, I would suggest that the effort of drafting the regulations may bring to light critical improvements to this new “released-based” remedial program, and would urge the legislature to be receptive to additional changes that will improve it so as to continue to protect the environment, and the economy, in Connecticut.

Thank for you for your time.

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