



COUNCIL ON ENVIRONMENTAL QUALITY

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Peter Hearn
Executive Director

RE: Raised Bills 281 and 293 Before the Commerce and Environment Committees

March 4, 2020

Co-chairs Hartley, Simmons, Cohen and Demicco and distinguished members of the Committees,

The Connecticut Council on Environmental Quality (Council) offers the following comments on Raised Bills 281 and 293

The Council supports the purpose of these Bills, and calls for:

- elimination of the July 1, 2022 deadline;
- inclusion of more specific legislative direction regarding the key provisions that will be needed to implement their provisions; and
- consideration of a detailed study to fully explore the results of similar legislation in other states.

To date, approximately 4,200 properties have entered the Transfer Act program since 1985; however, only about one-quarter of those properties have completed site cleanups. The Transfer Act, while providing a degree of protection to the public and to likely purchasers, has not been an incentive to move these historically contaminated properties into remediation. The time for a simple reporting and remediation program to address releases is overdue.

The Department of Energy and Environmental Protection (DEEP) initiated a collaborative inquiry with members of the regulated community in 2013 to consider the issues that these Bills address. The 2013 effort took many months of consideration and deliberation. While a timely revision to the existing process of reporting and remediating releases is needed, the inclusion of the July 1, 2022, statutory deadline may not allow for sufficient consideration of the implementing regulations that will need to be drafted. The deadline should be replaced with the requirement that the effective date of the law is when the regulations are adopted. This will guarantee that there is sufficient time to draft new regulations, and for all stakeholders to review them and offer constructive suggestions.

Massachusetts has adopted a release-based program. It is uncertain if that model has been examined sufficiently to determine which elements have been successful and which need adjustment to transfer easily to Connecticut's existing laws and regulations governing releases and remediation. A detailed investigation of that question is warranted before sections of the Massachusetts laws are lifted and deposited into Connecticut's statutes. The addition to these Raised Bills of a requirement of such a study before any implementing regulations are drafted would be a prudent step.

An efficient and effective program to address releases and remediation will require the understanding, input and cooperation of many stakeholders. Presently, those stakeholders do not know what the implementing regulations will contain. It is not unusual for the specifics of regulation to be absent in legislation. In the case of these Raised Bills, which could have very high consequences for property values, environmental protection and public health, greater direction regarding the content of the regulations would be valuable. At the moment, stakeholders in the transfer process are in the dark about key elements of discovery and clean-up. Environmental advocates are equally uncertain if the protections they would like to see will be in the regulations.

The Raised Bills would benefit from specific guidance to DEEP regarding:

- the principles that would determine the level of contamination or risk that would make a property appropriate for inclusion in the tiers to be designated by the Commissioner;
- the controls, like audits, that would be in place to assure that releases, are not improperly categorized;
- the transparency mechanisms that will allow the interested public easy access to information about a release and its cleanup;
- the mechanisms that will exist to address an inadequate clean-up. In this regard, the Council would like to see DEEP retain authority to take over the site, or the public be allowed a statutory cause-of-action that would permit intervention, or both.

Normally details such as these are the province of regulations. While the regulatory detail is impossible at this time, additional legislative direction is called for given the significance of the proposed changes.

Thank you for consideration of these comments. The Council is available to answer any questions the Committees may have.

Respectfully,



Peter Hearn
Executive Director