

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Connecticut's Municipal Aquifer Protection Agencies

From: Betsey Wingfield, Bureau Chief *BW*
Bureau of Water Protection and Land Reuse

Dated: November 23, 2010

Re: 2010 Legislation and Regulations Advisory, Aquifer Protection Areas

The passage of Public Act No. 10-135 (An Act Concerning Brownfield Remediation Liability) amended certain requirements for regulated activities in aquifer protection areas. (See attached copy of P.A. No. 10-135.) Section 6 of this Public Act created a new Aquifer Protection Area statutory exception for any municipally-owned site undergoing remedial action pursuant to 40 CFR 271. Specifically, the new language extends the time frame for registration of regulated activities at such sites from five years to ten years.

You should plan to revise your municipal aquifer protection area regulations to reflect the amendments in Section 6 of Public Act No. 10-135, which became effective October 1, 2010. The provisions of the Public Act govern until such time that your municipal regulations are amended. In order to be consistent with the Public Act, the following changes to your municipal aquifer protection area regulations must be made:

The underlined language noted below is new and should be added to your regulations. The bracketed ([]) language is deleted and should be removed from your regulations.

Section 4: Prohibited and Regulated Activities

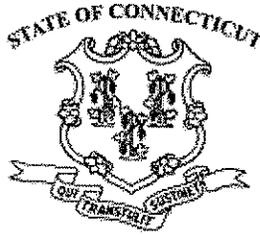
4(b)(3) a regulated activity which is on any municipally owned site undergoing remedial action pursuant to 40 CFR 271 at the time the applicable aquifer protection area is designated on a municipal zoning district map or inland wetland map, provided: (1) no such regulated activity substantially commenced or was in active operation for the five-year period preceding the date that the applicable aquifer protection area is designated on a municipal zoning district map or inland wetland map, and (2) any person who engages in such regulated activity within the ten-year period commencing on the date that such applicable aquifer protection area is designated on a municipal zoning district map or inland wetland map registers such regulated activity on a form prescribed by the Commissioner of Environmental Protection and in accordance with the provisions of section 22a-354i-7 of the Regulations of Connecticut State Agencies.

Section 8: Registration Requirements

- 8(a) Any person engaged in a regulated activity which substantially commenced, or was in active operation within the past five (5) years, or with respect to which a municipal building permit was issued, either (A) before the effective date of the state aquifer protection regulations, or (B) before the date an applicable aquifer protection area is designated on a municipal zoning district map or inland wetland and watercourse areas map, whichever occurs later, or for any municipally owned site undergoing remedial action pursuant to 40 CFR 271, any person who engages in a regulated activity within the ten (10) year period commencing on the date the applicable aquifer protection area is designated on a municipal zoning district map or inland wetlands map, shall register the activity in accordance with this Section unless such person has pending an application for an exemption pursuant to §22a-354i-6 of the Regulations of Connecticut State Agencies.
- 8(a)(2) If the regulated activity is not specified in §22a-354p(g) of the Connecticut General Statutes, the person engaged in such activity shall submit a registration to the Agency not later than one hundred eighty (180) days after adoption of regulations pursuant to §22a-354p of the Connecticut General Statutes, or the designation the aquifer protection area pursuant to §22a-354i-2 of the Regulations of Connecticut State Agencies, whichever occurs later. Any municipally owned site undergoing remedial action pursuant to 40 CFR 271, the person engaged in such regulated activity shall submit a registration within the ten (10) year period commencing on the date the applicable aquifer protection area is designated on a municipal zoning district map or inland wetlands map. [Said person] Any person submitting a registration pursuant to the requirements of this subsection shall simultaneously file a copy of the registration with the Commissioner, Commissioner of Public Health and the affected water company.

Further information on this new provision is incorporated into the Reference Document for Model Municipal Aquifer Protection Area Regulations and also will be provided at our annual training. Specifically, 40 CFR 271 is the section of the federal code that authorizes a memorandum of agreement (MOA) between the federal Environmental Protection Agency (EPA) and the states to have the lead on Hazardous Waste under Section 3006 of RCRA. Under the MOA between CT DEP & EPA, the state has the lead on RCRA Corrective Action where sites are undergoing remedial cleanup of contamination. Our current records show there are 234 sites in CT in the Resource, Conservation and Recovery Act (RCRA) Corrective Action Program and of these, 12 are in APAs. At least 8 sites are active and will be able to register directly under APA program. Of the remaining sites, we are aware of only one site (Century Brass site in New Milford) which is municipally owned and will therefore be allowed the extended time frame to register.

If you have any questions regarding the above changes, please feel free to contact Kim Czaplá of the Aquifer Protection Area Program at (860) 424-3335.



Substitute House Bill No. 5436

Public Act No. 10-135

AN ACT CONCERNING BROWNFIELD REMEDIATION LIABILITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (f) of section 22a-133m of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(f) There is established an Urban Site Remediation Fund. The fund may contain any moneys required by law to be deposited in the fund and shall be held by the Treasurer separate and apart from all other moneys, funds and accounts. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the fiscal year next succeeding. The fund shall be used (1) by the Commissioner of Environmental Protection (A) for costs incurred in the assessment and remedial activities conducted at real property acquired pursuant to subsection (e) of this section, or (B) to reimburse the costs to obtain directors' and officers' liability and general liability insurance of (i) a municipal economic development agency or entity created or operating under chapter 130 or 132, or (ii) a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132; and (2) by the Commissioner of Economic and Community Development to pay any local property taxes on real property acquired pursuant to subsection (e) of this section and the costs of administering the program. The Commissioner of Economic and Community Development may allocate money from the fund to a regional economic development entity organized for the purpose of remediating contaminated real property.

Sec. 2. (*Effective from passage*) (a) There is established a working group to examine the remediation and development of brownfields in this state, including, but not limited to,

the remediation scheme for such properties, permitting issues and liability issues, including those set forth by sections 22a-14 to 22a-20, inclusive, of the general statutes.

(b) The working group shall consist of the following eleven members, each of whom shall have expertise related to brownfield redevelopment in environmental law, engineering, finance, development, consulting, insurance or another relevant field:

- (1) Two appointed by the Governor;
 - (2) One appointed by the president pro tempore of the Senate;
 - (3) One appointed by the speaker of the House of Representatives;
 - (4) One appointed by the majority leader of the Senate;
 - (5) One appointed by the majority leader of the House of Representatives;
 - (6) One appointed by the minority leader of the Senate;
 - (7) One appointed by the minority leader of the House of Representatives;
 - (8) The Commissioner of Economic and Community Development or the commissioner's designee, who shall serve ex officio;
 - (9) The Commissioner of Environmental Protection or the commissioner's designee, who shall serve ex officio; and
 - (10) The Secretary of the Office of Policy and Management or the secretary's designee, who shall serve ex officio.
- (c) All appointments to the working group shall be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.
- (d) The working group shall select chairpersons of the working group from among the appointed members of the working group. Such chairpersons shall schedule the first meeting of the working group, which shall be held no later than sixty days after the effective date of this section.
- (e) On or before January 15, 2011, the working group shall report, in accordance with the provisions of section 11-4a of the general statutes, on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to commerce.

Sec. 3. Section 12-81r of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010, and applicable to assessment years commencing on and after October 1, 2010*):

(a) Any municipality may (1) enter into an agreement with the owner of any real property to abate the property tax due as of the date of the agreement for a period not to exceed seven years if the property has been subject to a spill, as defined in section 22a-452c, and the owner agrees to conduct any environmental site assessment, demolition and remediation of the spill necessary to redevelop the property. Any such tax abatement shall only be for the period of remediation and redevelopment and shall be contingent upon the continuation and completion of the remediation and redevelopment process with respect to the purposes specified in the agreement. The abatement shall cease upon the sale or transfer of the property for any other purpose unless the municipality consents to its continuation. The municipality may also establish a recapture provision in the event of sale provided such recapture shall not exceed the original amount of taxes abated and may not go back further than the date of the agreement; [or] (2) forgive all or a portion of the principal balance and interest due on delinquent property taxes for the benefit of any prospective purchaser who has obtained an environmental investigation or remediation plan approved by the Commissioner of Environmental Protection or a licensed environmental professional under section 22a-133w, 22a-133x or 22a-133y and completes such remediation plan for an establishment, as defined in section 22a-134, deemed by the municipality to be abandoned or a brownfield, as defined in subdivision (1) of subsection (a) of section 32-9kk; or (3) enter into an agreement with the owner of any real property to fix the assessment of the property as of the last assessment date prior to commencement of remediation activities for a period not to exceed seven years, provided the property has been the subject of a remediation approved by the Commissioner of Environmental Protection or verified by a licensed environmental professional pursuant to section 22a-133w, 22a-133x, 22a-133y or 22a-134.

(b) Any abatement or forgiveness of taxes or fixed assessment or any combination thereof under subsection (a) of this section shall be approved by vote of the board of finance, if applicable, and the legislative body of the municipality, or by vote of the board of finance, if applicable, and the board of selectmen in a municipality where the legislative body is a town meeting and contingent upon any other conditions deemed appropriate by such body.

(c) A municipality shall notify the Commissioner of Environmental Protection, the Commissioner of Economic and Community Development and the Secretary of the Office of Policy and Management not later than thirty days after granting any abatement or forgiveness of taxes or any fixed assessment under subsection (a) of this section. Such notice shall provide the owner or purchaser's name, as the case may be, and the address of the property.

Sec. 4. Subsection (c) of section 22a-134b of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(c) This section shall apply to any action brought for the reimbursement or recovery of costs associated with investigation and remediation, [as defined in subsection (n) of section 22a-452] which includes assessment, investigation, containment, mitigation, removal, remediation and monitoring, and all direct and indirect damages, except any action that becomes final and is no longer subject to appeal on or before October 1, 2009.

Sec. 5. Subsection (b) of section 22a-133u of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(b) The Commissioner of Economic and Community Development may use any funds deposited into the Special Contaminated Property Remediation and Insurance Fund pursuant to section 3 of public act 96-250 for (1) loans to municipalities, individuals or firms for Phase II environmental site assessments, Phase III investigations of real property or for any costs of demolition, including related lead and asbestos removal or abatement costs or costs related to the remediation of environmental pollution, undertaken to prepare contaminated real property for development subsequent to any Phase III investigation, [and] (2) expenses related to administration of this subsection provided such expenses may not exceed one hundred twenty-five thousand dollars per year, (3) funding the remedial action and redevelopment municipal grant program established pursuant to subsection (e) of section 32-9kk, and (4) funding the targeted brownfield development loan program developed pursuant to subsection (f) of section 32-9kk.

Sec. 6. (NEW) (*Effective from passage*) Regulated activity, as defined in section 22a-354h of the general statutes, shall not be prohibited in aquifer protection areas on any municipally owned site undergoing remedial action pursuant to 40 CFR 271 at the time the applicable aquifer protection area is designated on a municipal zoning district map or inland wetland map, provided: (1) No such regulated activity substantially commenced or was in active operation for the five-year period preceding the date that the applicable aquifer protection area is designated on a municipal zoning district map or inland wetland map, and (2) any person who engages in such regulated activity for the ten-year period commencing on the date that such applicable aquifer protection area is designated on a municipal zoning district map or inland wetland map registers such regulated activity on a form prescribed by the Commissioner of Environmental Protection and in accordance with the provisions of section 22a-354i-7 of the regulations of Connecticut state agencies.

Approved June 8, 2010