

December 12, 2023

Graham Stevens  
Connecticut Department of Energy and Environmental Protection  
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By email: [Graham.Stevens@ct.gov](mailto:Graham.Stevens@ct.gov)

**RE: Comments by Environmental Attorneys on November 2023 Working Group Meetings**

Dear Graham,

The undersigned environmental transactional attorneys, acting in their individual capacities and not on behalf of any firm or organization with which they might be affiliated, submit the below comments in response to the November 2023 meetings of the Working Group convened pursuant to Public Act 20-09.

We thank the Department for taking the time to share its thinking on soil beneath impervious surfaces; new exposure scenarios (e.g., passive recreation), and residential releases of heating oil. Since these pathways are framed as alternatives to the default regulatory pathway, we are not in a position to offer specific comments until that default regulatory pathway is fully set forth. We defer specific comments on the three topics presented during the November Working Group meetings until after the draft regulatory package is released and we can evaluate those topics in their full context. That said, we offer the following comments on the general concept of early exits, offramps and special paths.

***The default pathway must be efficient***

While there is some value in streamlining the process for lower-risk releases, and crafting special paths for special circumstances, it is much more important that the overall system be clear, simple, predictable, implementable by regulators and user-friendly for regulated entities. To further belabor the roadway metaphor we have been using for years, it is critically important that the main highway be well-marked and smoothly paved. If the main road is overly difficult to travel, too much time and effort will be expended trying to find exit ramps rather than actually remediating pollution or reinvesting in Connecticut's economy. There is also a danger that too many carve-outs will add unnecessary complexity and make the overall program more cumbersome to navigate.

***Early exits are unhelpful if they are too difficult and/or expensive to meaningfully utilize***

From the information provided to date, it appears that at least some of the "early exit" pathways will be limited in availability, given the conditions attached which may be difficult or impossible to meet at many if not most Connecticut sites. For example, an alternate path for passive recreation is of limited usefulness if the many land trusts are excluded. A carve-out for

historically impacted material is of limited usefulness if one must prove a negative (i.e., that there are no significant environmental hazard-like conditions) in order to use it.

If significant expenditures are required to prove that the site qualifies for the “early exit” then that early exit may actually be too expensive for small businesses or residential property owners to use. A separate concern is that the immediate action pathways, for which removal of contaminated material has been identified as the preferred remedy, may be too expensive to be readily available to many or most medium or small business owners or residential property owners. In sum, the concern remains that that “early exits” that DEEP promotes under the new program may not be the hoped-for improvement over the Transfer Act that Public Act 20-9 sought. With the expanded reach of the new program to include effectively every property in the State, the early exits require a straightforward and cost-effective solution. While the new proposal runs the gamut from residential and park properties to every commercial/industrial property (with the vast majority of all containing historic fill) the new program must be mindful of the costs and a mechanism may be warranted to allow a balancing of those costs against potentially a minimal overall environmental benefit.

***Residential properties present unique challenges***

The expansion of the full remediation regime to residential properties has the potential to seriously chill the residential real estate market. Older homes, homes in urban environments, or homes on redeveloped farmland all present challenges that may chill investment from buyers and lenders. In particular, buyers (or their lenders) may insist that the seller investigate and remediate all historical contamination, effectively expanding the burdens of the Transfer Act far beyond its present scope. Additionally, the limited insurance coverage that DEEP identified as available to pay for certain work will not be enough to cover expenses of investigation and remediation required by the new program.

We hope that as the Department prepares to circulate draft regulations in just a few weeks it prioritizes clarity, simplicity, predictability, ease of use, and economic development. We look forward to continued productive discussions in the new year.

Respectfully Submitted:

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