



General Assembly

February Session, 2020

Raised Bill No. 293

LCO No. 2064



Referred to Committee on ENVIRONMENT

Introduced by:
(ENV)

***AN ACT ESTABLISHING A RELEASE-BASED PROPERTY
REMEDATION PROGRAM.***

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

1 Section 1. (NEW) (*Effective from passage*) For the purposes of this
2 section and sections 2 to 6, inclusive, of this act:

3 (1) "Commissioner" means the Commissioner of Energy and
4 Environmental Protection;

5 (2) "Person" means any individual, firm, partnership, association,
6 syndicate, company, trust, corporation, nonstock corporation, limited
7 liability company, municipality, agency or political or administrative
8 subdivision of the state, or other legal entity of any kind and any officer
9 or governing or managing body of any partnership, association, firm or
10 corporation or any member or manager of a limited liability company;

11 (3) "Release" means any spilling, leaking, pumping, pouring,
12 emitting, emptying, discharging, injecting, escaping, leaching,
13 dumping, or disposing into or onto the land and waters of the state, not
14 authorized under title 22a of the general statutes, of oil or petroleum or

15 chemical liquids or solid, liquid or gaseous products or hazardous waste
16 as defined in section 22a-448 of the general statutes. "Release" does not
17 include the authorized application of fertilizer or pesticides consistent
18 with their labeling;

19 (4) "Remediation" means determining the nature and extent of a
20 release, in accordance with prevailing standards and guidelines, and the
21 containment, removal and mitigation of such release, and includes, but
22 is not limited to, the reduction of pollution by monitored natural
23 attenuation;

24 (5) "Report" means to notify the commissioner of a release in
25 accordance with the provisions of sections 2 to 6, inclusive, of this act
26 and in the manner specified by the commissioner; and

27 (6) "Verification" means the written opinion of a licensed
28 environmental professional that the remediation of a release satisfies the
29 standards established in any provision of the general statutes.

30 Sec. 2. (NEW) (*Effective from passage*) No person shall create or
31 maintain a release to the land and waters of the state in violation of any
32 provision of this section or sections 3 to 6, inclusive, of this act. Any such
33 release shall be deemed a public nuisance.

34 Sec. 3. (NEW) (*Effective from passage*) (a) Any person who creates or
35 maintains, or created or maintained, a release to the land and waters of
36 the state shall report and remediate such release in accordance with the
37 provisions of section 2 of this act, this section or sections 4 to 6, inclusive,
38 of this act. If any person fails to comply with the provisions of said
39 sections, such person shall be liable for any costs incurred by the
40 commissioner in accordance with section 22a-451 of the general statutes,
41 or costs incurred by any other person who contains or removes or
42 otherwise mitigates the effects of such release in accordance with section
43 22a-452 of the general statutes.

44 (b) On and after July 1, 2022, or after the date when regulations are
45 adopted pursuant to section 5 of this act, whichever is earlier, any

46 person who creates or maintains a release shall, upon discovery of such
47 release:

48 (1) Report any release immediately, except those releases that
49 conform or comply with the terms and conditions of a currently valid
50 license issued by the commissioner, unless the release is reported
51 pursuant to, or not required to be reported by, regulations adopted
52 pursuant to section 22a-450 of the general statutes or section 5 of this act;
53 and

54 (2) Remediate any release to standards identified in regulations
55 adopted pursuant to section 5 of this act. Until the effective date of such
56 standards, a release shall be remediated to standards identified in
57 regulations adopted pursuant to section 22a-133k of the general statutes.
58 Any release shall be remediated as soon as is technically practicable.
59 Such obligation to remediate shall only be satisfied upon approval by
60 the commissioner or verification, unless regulations adopted pursuant
61 to section 11 of this act exempt from, or otherwise limit or modify, the
62 requirement to verify.

63 (c) A release shall not be deemed discovered if the only evidence of
64 such release is data available or generated before July 1, 2022, or before
65 the date when regulations are adopted pursuant to section 5 of this act,
66 whichever is earlier.

67 Sec. 4. (NEW) (*Effective from passage*) (a) (1) If the commissioner finds
68 that any person has created or maintained a release to the land and
69 waters of the state after July 1, 2022, or the adoption of regulations
70 pursuant to section 5 of this act, whichever is sooner, the commissioner
71 may order such person to take the necessary steps to comply with the
72 provisions of sections 2 to 6, inclusive, of this act. After such order
73 becomes final, the commissioner shall cause a certified copy thereof to
74 be filed on the land records in the town wherein the land is located, and
75 such order shall constitute a notice to the owner's heirs, successors and
76 assigns. When the order is complied with or revoked, the commissioner
77 shall issue a certificate showing such compliance or revocation, which

78 certificate the commissioner shall cause to be recorded on the land
79 records in the town wherein the order was previously recorded. A
80 certified copy of the certificate shall be sent to the owner of the land at
81 such owner's last-known address.

82 (2) Each order issued under this section shall be served by certified
83 mail, return receipt requested, or by service by a state marshal or
84 indifferent person. If the order is served by a state marshal or indifferent
85 person, a true copy of the order shall be served, and the original, with a
86 return of such service endorsed thereon, shall be filed with the
87 commissioner. The order shall be deemed to be issued upon service or
88 upon deposit in the mail. Any order issued pursuant to this section shall
89 state the basis on which it is issued and shall specify a reasonable time
90 for compliance.

91 (3) Any person who receives an order pursuant to this section shall
92 have the right to a hearing. Unless a person who receives an order files
93 a written request for a hearing before the commissioner not later than
94 thirty days after the date of issuance, such order shall become final. A
95 request for a hearing shall be a condition precedent to any appeal of
96 such order.

97 (b) If two or more persons are issued the same order pursuant to
98 subsection (a) of this section or are responsible for a violation of any
99 provision of sections 2 to 6, inclusive, of this act or any regulation, or
100 order adopted or issued under sections 2 to 6, inclusive, of this act, such
101 persons shall be jointly and severally liable under this subsection.

102 (c) If any person violates any provision of sections 2 to 6, inclusive, of
103 this act or any regulation, or order adopted or issued under sections 2
104 to 6, inclusive, of this act, the commissioner may request the Attorney
105 General to bring an action in the superior court for the judicial district
106 of Hartford to enjoin such person from such violation and to order
107 remedial measures to prevent, control or abate pollution. All actions
108 brought by the Attorney General pursuant to the provisions of this
109 section shall have precedence in the order of trial as provided in section

110 52-191 of the general statutes.

111 (d) Any person who violates any provision of sections 2 to 6,
112 inclusive, of this act shall be assessed a civil penalty not to exceed
113 twenty-five thousand dollars, to be fixed by the court, for each offense.
114 Each violation shall be a separate and distinct offense and, in the case of
115 a continuing violation, each day's continuance thereof shall be deemed
116 to be a separate and distinct offense. The Attorney General, upon
117 complaint of the commissioner, shall institute a civil action in the
118 superior court for the judicial district of Hartford to recover such
119 penalty. In determining the amount of any penalty assessed under this
120 subsection, the court may consider the nature, circumstances, extent and
121 gravity of the violation, the person's prior history of violations, the
122 economic benefit resulting to the person from the violation and such
123 other factors deemed appropriate by the court. The court shall consider
124 the status of a person as a persistent violator. The provisions of this
125 section concerning a continuing violation shall not apply to a person or
126 municipality during the time when a hearing on the order pursuant to
127 this or an appeal is pending.

128 (e) Any person who, with criminal negligence, violates any provision
129 of sections 2 to 6, inclusive, of this act shall be fined not more than
130 twenty-five thousand dollars per day for each day of violation or be
131 imprisoned not more than one year, or both. A subsequent conviction
132 for any such violation shall carry a fine of not more than fifty thousand
133 dollars per day for each day of violation or imprisonment for not more
134 than two years, or both. For the purposes of this subsection, "person"
135 includes any responsible corporate officer or municipal official.

136 (f) Any person who knowingly violates any provision of sections 2 to
137 6, inclusive, of this act shall be fined not more than fifty thousand dollars
138 per day for each day of violation or be imprisoned not more than three
139 years, or both. A subsequent conviction for any such violation shall be a
140 class C felony, except that such conviction shall carry a fine of not more
141 than one hundred thousand dollars per day for each day of violation.
142 For the purposes of this subsection, "person" includes any responsible

143 corporate officer or municipal official.

144 (g) The commissioner may, pursuant to section 22a-6b of the general
145 statutes, adopt a schedule for administrative civil penalties for
146 violations of the provisions of sections 2 to 6, inclusive, of this act. Upon
147 adoption of such schedule, the commissioner may issue administrative
148 civil penalty notices, pursuant to section 22a-6b of the general statutes,
149 for violations of sections 2 to 6, inclusive, of this act.

150 (h) Whenever the commissioner finds, after investigation, that any
151 person is maintaining a release to the land and waters of the state and
152 has violated the requirements of sections 2 to 6, inclusive, of this act, the
153 commissioner may, without prior hearing, issue a cease and desist
154 order, in writing, to such person to discontinue maintaining such
155 release. The provisions of subsections (b) to (d), inclusive, of section 22a-
156 7 of the general statutes shall apply to any order issued pursuant to this
157 subsection.

158 Sec. 5. (NEW) (*Effective from passage*) (a) The Commissioner of Energy
159 and Environmental Protection shall adopt regulations, in accordance
160 with the provisions of chapter 54 of the general statutes, that the
161 commissioner deems necessary for implementation, administration and
162 enforcement of sections 2 to 6, inclusive, of this act. Such regulations
163 may include, but need not be limited to, provisions regarding (1)
164 requirements for reporting releases; (2) procedures and deadlines for
165 remediation, including public participation; (3) standards for
166 remediation for any release to the land and waters of the state, including
167 environmental use restrictions as defined in section 22a-133o of the
168 general statutes; (4) verification and commissioner's audit of a
169 remediation; (5) supervision of remediation based on pollutant type,
170 concentration or volume, or based on the imminence of harm to public
171 health; and (6) fees.

172 (b) In regulations adopted pursuant to subsection (a) of this section,
173 the commissioner shall specify tiers of releases based on risk, as
174 determined by the commissioner, and that certain releases may be (1)

175 remediated without being reported, (2) remediated under the
176 supervision of a licensed environmental professional without the
177 supervision of the commissioner, and (3) cleaned up without being
178 verified.

179 (c) In establishing standards for remediation adopted pursuant to
180 subsection (a) of this section, the commissioner shall (1) give preference
181 to clean-up methods that are permanent, if feasible; (2) consider any
182 factor the commissioner deems appropriate, including, but not limited
183 to, groundwater classification of the site; and (3) provide for standards
184 of remediation less stringent than those required for residential land use
185 for polluted properties which (A) are located in areas classified as GB or
186 GC under the standards adopted by the commissioner for classification
187 of groundwater contamination, (B) were historically industrial or
188 commercial property, and (C) are not subject to an order issued by the
189 commissioner regarding such release, consent order or stipulated
190 judgment regarding such release, provided an environmental use
191 restriction is executed for any such property subsequent to the remedial
192 action in accordance with the provisions of section 22a-133aa of the
193 general statutes and such regulations specify the types of industrial or
194 commercial land uses to which any such property may be put
195 subsequent to such remedial action.

196 Sec. 6. (NEW) (*Effective from passage*) Nothing in sections 2 to 5,
197 inclusive, of this act shall be construed to affect the authority of the
198 Commissioner of Energy and Environmental Protection under any
199 other provision of the general statutes or the regulations of Connecticut
200 state agencies.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section

Sec. 6	<i>from passage</i>	New section
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Statement of Purpose:

To transition from a transfer-based property remediation program to a release-based property remediation program.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]