



General Assembly

**Raised Bill No. 293**

*February Session, 2020*

LCO No. 2064



\* 0 2 0 6 4 ENV \*

Referred to Committee on ENVIRONMENT

Introduced by:  
(ENV)

***AN ACT ESTABLISHING A RELEASE-BASED PROPERTY  
REMEDIATION 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.]*