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Connecticut General Statutes Annotated Currentness

Title 32. Commerce and Economic and Community Development (Refs & Annos)

Chapter 578. Department of Economic and Community Development (Refs & Annos)

→→ § 32-9mm. Brownfield remediation and revitalization program. Definitions. Eligibility

(a) As used in this section:

(1) “Bona fide prospective purchaser” means a person that acquires ownership of a property after July 1, 2011, and establishes by a preponderance of the evidence that:

(A) All disposal of regulated substances at the property occurred before the person acquired the property;

(B) Such person made all appropriate inquiries, as set forth in 40 CFR Part 312, into the previous ownership and uses of the property in accordance with generally accepted good commercial and customary standards and practices, including, but not limited to, the standards and practices set forth in the ASTM Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process, E1527-05, as may be amended from time to time. In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a property inspection and a title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph;

(C) Such person provides all legally required notices with respect to the discovery or release of any regulated substances at the property;

(D) Such person exercises appropriate care with respect to regulated substances found at the property by taking reasonable steps to (i) stop any continuing release, (ii) prevent any threatened future release, and (iii) prevent or limit human, environmental or natural resource exposure to any previously released regulated substance;

(E) Such person provides full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration at the property, including, but not limited to, the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial response actions or natural resource restoration at the property;

(F) Such person complies with any land use restrictions established or relied on in connection with the response action at the property and does not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response action; and

(G) Such person complies with any request for information from the Commissioner of Energy and Environmental Protection.

(2) “Brownfield” has the same meaning as provided in section 32-9kk.

(3) “Brownfield investigation plan and remediation schedule” means a plan and schedule for investigation and a schedule for remediation of an eligible property under this section. Such investigation plan and remediation schedule

shall include both interim status or other appropriate interim target dates and a date for project completion not later than eight years after a licensed environmental professional submits such investigation plan and remediation schedule to the Commissioner of Energy and Environmental Protection, provided the Commissioner of Energy and Environmental Protection may extend such dates for good cause. The plan shall provide a schedule for activities including, but not limited to, completion of the investigation of the property in accordance with prevailing standards and guidelines, submittal of a complete investigation report, submittal of a detailed written plan for remediation, publication of notice of remedial actions, completion of remediation in accordance with standards adopted by said commissioner pursuant to section 22a-133k and submittal to said commissioner of a remedial action report. Except as otherwise provided in this section, in any detailed written plan for remediation submitted under this section, the applicant shall only be required to investigate and remediate conditions existing within the property boundaries and shall not be required to investigate or remediate any pollution or contamination that exists outside of the property's boundaries, including any contamination that may exist or has migrated to sediments, rivers, streams or off site.

(4) "Commissioner" means the Commissioner of Economic and Community Development.

(5) "Contiguous property owner" means a person who owns real property contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a regulated substance from, real property that is not owned by that person, provided:

(A) With respect to the property owned by such person, such person takes reasonable steps to (i) stop any continuing release of any regulated substance released on or from the property, (ii) prevent any threatened future release of any regulated substance released on or from the property, and (iii) prevent or limit human, environmental or natural resource exposure to any regulated substance released on or from the property;

(B) Such person provides full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration at the property from which there has been a release or threatened release, including, but not limited to, the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial response action or natural resource restoration at the property;

(C) Such person complies with any land use restrictions established or relied on in connection with the response action at the property and does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(D) Such person complies with any request for information from the Commissioner of Energy and Environmental Protection; and

(E) Such person provides all legally required notices with respect to the discovery or release of any hazardous substances at the property.

(6) "Distressed municipality" has the same meaning as provided in section 32-9p.

(7) "Economic development agency" means a municipality, municipal economic development agency or entity created or operating under chapter 130 [FN1] or 132, [FN2] 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 nonstock corporation or limited liability company established or controlled by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

(8) "Innocent landowner" has the same meaning as provided in section 22a-452d.

- (9) “Interim verification” has the same meaning as provided in section 22a-134.
- (10) “Municipality” has the same meaning as in section 32-9kk.
- (11) “National priorities list” means the list of hazardous waste disposal sites compiled by the United States Environmental Protection Agency pursuant to 42 USC 9605.
- (12) “PCB regulations” means the polychlorinated biphenyls manufacturing, processing, distribution in commerce and use prohibitions found at 40 CFR Part 761.
- (13) “Person” means any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, municipality, economic development agency, agency or political or administrative subdivision of the state and any other legal entity.
- (14) “Principles of smart growth” means standards and objectives that support and encourage smart growth when used to guide actions and decisions, including, but not limited to, standards and criteria for (A) integrated planning or investment that coordinates tax, transportation, housing, environmental and economic development policies at the state, regional and local level, (B) the reduction of reliance on the property tax by municipalities by creating efficiencies and coordination of services on the regional level while reducing interlocal competition for grand list growth, (C) the redevelopment of existing infrastructure and resources, including, but not limited to, brownfields and historic places, (D) transportation choices that provide alternatives to automobiles, including rail, public transit, bikeways and walking, while reducing energy consumption, (E) the development or preservation of housing affordable to households of varying income in locations proximate to transportation or employment centers or locations compatible with smart growth, (F) concentrated, mixed-use, mixed income development proximate to transit nodes and civic, employment or cultural centers, and (G) the conservation and protection of natural resources by (i) preserving open space, water resources, farmland, environmentally sensitive areas and historic properties, and (ii) furthering energy efficiency.
- (15) “Regulated substance” means any element, compound or material that, when added to air, water, soil or sediment, may alter the physical, chemical, biological or other characteristic of such air, water, soil or sediment.
- (16) “Release” means any discharge, spillage, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying or disposal of a substance.
- (17) “Remediation standards” has the same meaning as provided in section 22a-134.
- (18) “RCRA” means the Resource Conservation and Recovery Act promulgated pursuant to 42 USC. [FN3]
- (19) “Smart growth” means economic, social and environmental development that (A) promotes, through financial and other incentives, economic competitiveness in the state while preserving natural resources, and (B) uses a collaborative approach to planning, decision-making and evaluation between and among all levels of government and the communities and the constituents they serve.
- (20) “State of Connecticut Superfund Priority List” means the list of hazardous waste disposal sites compiled by the Connecticut Department of Energy and Environmental Protection pursuant to section 22a-133f.
- (21) “Transit-oriented development” has the same meaning as provided in section 13b-79o.
- (22) “UST regulations” means regulations adopted pursuant to subsection (d) of section 22a-449.

(23) “Verification” has the same meaning as provided in section 22a-134.

(b) The commissioner shall, within available appropriations, establish a brownfield remediation and revitalization program to provide certain liability protections to program participants. Not more than thirty-two properties a year shall be accepted into the program. Participation in the program shall be by accepted application pursuant to this subsection or by approved nomination pursuant to subsection (d) of this section. To be considered for acceptance, an applicant shall submit to the commissioner, on a form prescribed by the commissioner, a certification that: (1) The applicant meets the definition of a bona fide prospective purchaser, innocent land owner or contiguous property owner; (2) the property meets the definition of a brownfield and has been subject to a release of a regulated substance in an amount that is in excess of the remediation standards; (3) the applicant did not establish, create or maintain a source of pollution to the waters of the state for purposes of section 22a-432 and is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property; (4) the applicant is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such purchaser’s interest in such property is to be conveyed or financed; and (5) the property is not currently the subject of an enforcement action, including any consent order issued by the Department of Energy and Environmental Protection or the United States Environmental Protection Agency under any current Department of Energy and Environmental Protection or United States Environmental Protection Agency program, listed on the national priorities list, listed on the State of Connecticut Superfund Priority List, or subject to corrective action as may be required by RCRA. The commissioner may review such certifications to ensure accuracy, in consultation with the Commissioner of Energy and Environmental Protection, and applications will not be considered if such certifications are found inaccurate.

(c) To ensure a geographic distribution and a diversity of projects and broad access to the brownfield remediation and revitalization program, the commissioner, in consultation with the Commissioner of Energy and Environmental Protection, shall review all applications received and determine admission of eligible properties into the brownfield remediation and revitalization program taking into consideration state-wide portfolio factors including: (1) Job creation and retention; (2) sustainability; (3) readiness to proceed; (4) geographic distribution of projects; (5) population of the municipality where the property is located; (6) project size; (7) project complexity; (8) duration and degree to which the property has been underused; (9) projected increase to the municipal grand list; (10) consistency of the property as remediated and developed with municipal or regional planning objectives; (11) development plan’s support for and furtherance of principles of smart growth or transit-oriented development; and (12) other factors as may be determined by the commissioner. Admittance into the brownfield remediation and revitalization program shall not indicate approval or award of funding requested under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program.

(d) The commissioner shall accept nominations of properties for participation in the program established pursuant to subsection (b) of this section by a municipality or an economic development agency, where no bona fide prospective purchaser, contiguous property owner or innocent land owner has applied for participation in the program. For a property to be considered for approval for nomination to the program established pursuant to this section, a municipality shall submit to the commissioner, on a form prescribed by the commissioner, a certification that the property meets the eligibility requirements provided in subdivisions (2) and (5) of subsection (b) of this section and any other relevant factors, including state-wide portfolio factors provided in subsection (c) of this section, as may be determined by the commissioner. After the commissioner approves a property’s nomination, any subsequent applicant shall apply in accordance with subsections (b) and (g) of this section. In any such application, the applicant shall demonstrate it satisfies the eligibility requirements provided in subdivisions (1), (3) and (4) of subsection (b) of this section and shall demonstrate satisfaction of subdivisions (2) and (5) of subsection (b) of this section for the period after the commissioner’s acceptance of the municipality’s or economic development agency’s nomination of the property.

(e) (1) Properties otherwise eligible for the brownfield remediation and revitalization program currently being investigated and remediated in accordance with the state voluntary remediation programs under sections 22a-133x and

22a-133y, the property transfer program under section 22a-134, and the covenant not to sue programs under section 22a-133aa or 22a-133bb shall not be excluded from eligibility in said program, provided the other requirements set forth in this section are met.

(2) Properties otherwise eligible for the brownfield remediation and revitalization program that have been subject to a release requiring action pursuant to the PCB regulations or that have been subject to a release requiring action pursuant to the UST regulations shall not be deemed ineligible, but no provision of this section shall affect any eligible party's obligation under such regulations to investigate or remediate the extent of any such release.

(f) Inclusion of a property within the brownfield remediation and revitalization program by the commissioner shall not limit any person's ability to seek funding for such property under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program. Admittance into the brownfield remediation and revitalization program shall not indicate approval or award of funding requested under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program.

(g) Any applicant seeking a designation of eligibility for a person or a property under the brownfield remediation and revitalization program shall apply to the commissioner at such times and on such forms as the commissioner may prescribe. The application shall include, but not be limited to, (1) a title search, (2) the Phase I Environmental Site Assessment conducted by or for the bona fide prospective purchaser or the contiguous property owner, which shall be prepared in accordance with prevailing standards and guidelines, (3) a current property inspection, (4) documentation demonstrating satisfaction of the eligibility criteria set forth in subsection (b) of this section, (5) information about the project that relates to the state-wide portfolio factors set forth in subsection (c) of this section, and (6) such other information as the commissioner may request to determine admission.

(h) Any applicant accepted into the brownfield remediation and revitalization program by the commissioner shall pay the Commissioner of Energy and Environmental Protection a fee equal to five per cent of the assessed value of the land, as stated on the last-completed grand list of the relevant town. The fee shall be paid in two installments, each equal to fifty per cent of such fee, subject to potential reductions as specified in subsection (i) of this section. The first installment shall be due not later than one hundred eighty days after the later of the date the eligible applicant is notified that the application has been accepted by the commissioner or the date that the eligible applicant takes title to the eligible property. The second installment shall be due not later than four years after the acceptance date. Upon request by an eligible applicant, a municipality or an economic development agency, the commissioner may, at the commissioner's discretion, extend either or both of the installment due dates. Such fee shall be deposited into the Special Contaminated Property Remediation and Insurance Fund established pursuant to section 22a-133t and shall be available for use by the Commissioner of Energy and Environmental Protection pursuant to section 22a-133u.

(i) (1) The first installment of the fee in subsection (h) of this section shall be reduced by ten per cent for any eligible party that completes and submits to the Commissioner of Energy and Environmental Protection documentation, approved in writing by a licensed environmental professional and on a form prescribed by said commissioner, that the investigation of the property has been completed in accordance with prevailing standards and guidelines within one hundred eighty days after the date the application is accepted by the commissioner.

(2) The second installment of the fee in subsection (h) of this section shall be eliminated for any eligible party that submits the remedial action report and verification or interim verification to the Commissioner of Energy and Environmental Protection within four years after the date the application is accepted by the commissioner. In the event an eligible party submits a request for the Commissioner of Energy and Environmental Protection's approval, where such approval is required pursuant to the remediation standard and where said commissioner issues a decision on such request beyond sixty days after submittal, such four-year period shall be extended by the number of days equal to the number of days between the sixtieth day and the date a decision is issued by said commissioner, but not including the number of days that a request by said commissioner for supplemental information remains pending with the eligible party.

(3) The second installment of the fee in subsection (h) of this section shall be reduced by, or any eligible party shall receive a refund in the amount equal to, twice the reasonable environmental service costs of such investigation, as determined by the Commissioner of Energy and Environmental Protection, for any eligible party that completes and submits to the Commissioner of Energy and Environmental Protection documentation, approved in writing by a licensed environmental professional and on a form that may be prescribed by said commissioner, that the investigation of the nature and extent of any contamination that has migrated from the property has been completed in accordance with prevailing standards and guidelines. Such refund shall not exceed the amount of the second installment of the fee in subsection (h) of this section.

(4) No municipality or economic development agency seeking designation of eligibility shall be required to pay a fee, provided, upon transfer of the eligible property from the municipality or economic development agency to an eligible person, that eligible person shall pay to the Commissioner of Energy and Environmental Protection the fee in subsection (h) of this section in accordance with the applicable requirements in this subsection.

(5) A municipality or economic development agency may submit a fee waiver request to the commissioner to waive a portion or the entire fee for an eligible property located within that municipality. The commissioner, at his or her discretion, shall consider the following factors in determining whether to approve a fee waiver or reduction: (A) Location of the eligible project within a distressed municipality; (B) demonstration by the municipality or economic development agency that the project is of significant economic impact; (C) demonstration by the municipality or economic development agency that the project has a significant community benefit to the municipality; (D) demonstration that the eligible party is a governmental or nonprofit entity; and (E) demonstration that the fee required will have a detrimental effect on the overall success of the project.

(j) An applicant whose application has been accepted into the brownfield remediation and revitalization program shall not be liable to the state or any third party for the release of any regulated substance at or from the eligible property, except and only to the extent that such applicant (A) caused or contributed to the release of a regulated substance that is subject to remediation or exacerbated such condition, or (B) the Commissioner of Energy and Environmental Protection determines the existence of any of the conditions set forth in subdivision (4) of subsection (n) of this section.

(k) (1) An applicant whose application to the brownfield remediation and revitalization program has been accepted by the commissioner (A) shall investigate the release or threatened release of any regulated substance within the boundaries of the property in accordance with prevailing standards and guidelines and remediate such release or threatened release within the boundaries of such property in accordance with the brownfield investigation plan and remediation schedule and this section, and (B) shall not be required to characterize, abate and remediate the release of a regulated substance beyond the boundary of the eligible property, except for releases caused or contributed to by such applicant.

(2) Not later than one hundred eighty days after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (h) of this section, the eligible party shall submit to the commissioner and the Commissioner of Energy and Environmental Protection a brownfield investigation plan and remediation schedule that is signed and stamped by a licensed environmental professional. Unless otherwise approved in writing by the Commissioner of Energy and Environmental Protection, the eligible party shall submit a brownfield investigation plan and remediation schedule which provides that the investigation shall be completed not later than two years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (h) of this section, remediation shall be initiated not later than three years from the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (h) of this section and remediation shall be completed sufficiently to support either a verification or interim verification not later than eight years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (h) of this section. The schedule shall also include a schedule for providing

public notice of the remediation prior to the initiation of such remediation in accordance with subdivision (1) of subsection (k) of this section. Not later than two years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (h) of this section, unless the Commissioner of Energy and Environmental Protection has specified a later day, in writing, the eligible party shall submit to the Commissioner of Energy and Environmental Protection documentation, approved in writing by a licensed environmental professional and in a form prescribed by the Commissioner of Energy and Environmental Protection, that the investigation of the property has been completed in accordance with prevailing standards and guidelines. Not later than three years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (h) of this section, unless the Commissioner of Energy and Environmental Protection has specified a later day, in writing, the eligible party shall notify the Commissioner of Energy and Environmental Protection and the commissioner in a form prescribed by the Commissioner of Energy and Environmental Protection that the remediation has been initiated, and shall submit to the Commissioner of Energy and Environmental Protection a remedial action plan, approved in writing by a licensed environmental professional in a form prescribed by the Commissioner of Energy and Environmental Protection. Not later than eight years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (h) of this section, unless the Commissioner of Energy and Environmental Protection has specified a later day, in writing, the eligible party shall complete remediation of the property and submit the remedial action report and verification or interim verification to the Commissioner of Energy and Environmental Protection and the commissioner. The Commissioner of Energy and Environmental Protection shall grant a reasonable extension if the eligible party demonstrates to the satisfaction of the Commissioner of Energy and Environmental Protection that: (A) Such eligible party has made reasonable progress toward investigation and remediation of the eligible property; and (B) despite best efforts, circumstances beyond the control of the eligible party have significantly delayed the remediation of the eligible property.

(3) An eligible party who submits an interim verification for an eligible property, and any subsequent owner of such eligible property, shall, until the remediation standards for groundwater are achieved, (A) operate and maintain the long-term remedy for groundwater in accordance with the remedial action plan, the interim verification and any approvals issued by the Commissioner of Energy and Environmental Protection, (B) prevent exposure to any groundwater plume containing a regulated substance in excess of the remediation standards on the property, (C) take all reasonable action to contain any groundwater plume on the property, and (D) submit annual status reports to the Commissioner of Energy and Environmental Protection and the commissioner.

(4) Before commencement of remedial action pursuant to the plan and schedule, the eligible party shall: (A) Publish notice of the remedial action in a newspaper having a substantial circulation in the town where the property is located, (B) notify the director of health of the municipality where the property is located, and (C) either (i) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the property, which shall be clearly visible from the public highway and shall include the words "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT: " and include a telephone number for an office from which any interested person may obtain additional information about the remedial action, or (ii) mail notice of the remedial action to each owner of record of property which abuts such property, at the address on the last-completed grand list of the relevant town. Public comments shall be directed to the eligible party for a thirty-day period starting with the last provided public notice provision and such eligible party shall provide all comments and any responses to the Commissioner of Energy and Environmental Protection prior to commencing remedial action.

(5) The remedial action shall be conducted under the supervision of a licensed environmental professional and the remedial action report shall be submitted to the commissioner and the Commissioner of Energy and Environmental Protection signed and stamped by a licensed environmental professional. In such report, the licensed environmental professional shall include a detailed description of the remedial actions taken and issue a verification or interim verification, in which he or she shall render an opinion, in accordance with the standard of care provided in subsection (c) of section 22a-133w, that the action taken to contain, remove or mitigate the release of regulated substances within the boundaries of such property is in accordance with the remediation standards.

(6) All applications for permits required to implement such plan and schedule in this section shall be submitted to the permit ombudsman within the Department of Economic and Community Development.

(7) Each eligible party participating in the brownfield remediation and revitalization program shall maintain all records related to its implementation of such plan and schedule and completion of the remedial action of the property for a period of not less than ten years and shall make such records available to the commissioner or the Commissioner of Energy and Environmental Protection at any time upon request by either.

(8) (A) Within sixty days of receiving a remedial action report signed and stamped by a licensed environmental professional and a verification or interim verification, the Commissioner of Energy and Environmental Protection shall notify the eligible party and the commissioner whether the Commissioner of Energy and Environmental Protection will conduct an audit of such remedial action. Any such audit shall be conducted not later than one hundred eighty days after the Commissioner of Energy and Environmental Protection receives a remedial action report signed and stamped by a licensed environmental professional and a verification or interim verification. Within fourteen days of completion of an audit, the Commissioner of Energy and Environmental Protection shall send written audit findings to the eligible party, the commissioner and the licensed environmental professional. The audit findings may approve or disapprove the report, provided any disapproval shall set forth the reasons for such disapproval.

(B) The Commissioner of Energy and Environmental Protection may request additional information during an audit conducted pursuant to this subdivision. If such information has not been provided to said commissioner within fourteen days of such request, the time frame for said commissioner to complete the audit shall be suspended until the information is provided to said commissioner. The Commissioner of Energy and Environmental Protection may choose to conduct such audit if and when the eligible party fails to provide a response to said commissioner's request for additional information within sixty days.

(C) The Commissioner of Energy and Environmental Protection shall not conduct an audit of a verification or interim verification pursuant to this subdivision after one hundred eighty days from receipt of such verification unless (i) said commissioner has reason to believe that a verification was obtained through the submittal of materially inaccurate or erroneous information, or otherwise misleading information material to the verification or that material misrepresentations were made in connection with the submittal of the verification, (ii) any post-verification monitoring or operations and maintenance is required as part of a verification and has not been done, (iii) a verification that relies upon an environmental land use restriction was not recorded on the land records of the municipality in which such land is located in accordance with section 22a-133o and applicable regulations, (iv) said commissioner determines that there has been a violation of law material to the verification, or (v) said commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment for releases on the property.

(l) Not later than sixty days after receiving a notice of disapproval or a verification or interim verification from the Commissioner of Energy and Environmental Protection, the eligible party shall submit to said commissioner and to the commissioner a report of cure of noted deficiencies. Within sixty days after receiving such report of cure of noted deficiencies by said commissioner, said commissioner shall issue a successful audit closure letter or a written disapproval of such report of cure of noted deficiencies.

(m) Before approving a verification or interim verification, the Commissioner of Energy and Environmental Protection may enter into a memorandum of understanding with the eligible party with regard to any further remedial action or monitoring activities on or at such property that said commissioner deems necessary for the protection of human health or the environment.

(n) (1) An eligible party who has been accepted into the brownfield remediation and revitalization program shall have no obligation as part of its plan and schedule to characterize, abate and remediate any plume of a regulated substance

outside the boundaries of the subject property, provided the notification requirements of section 22a-6u pertaining to significant environmental hazards shall continue to apply to the property and the eligible party shall not be required to characterize, abate or remediate any such significant environmental hazard outside the boundaries of the subject property unless such significant environmental hazard arises from the actions of the eligible party after its acquisition of or control over the property from which such significant environmental hazard has emanated outside its own boundaries. If an eligible party who has been accepted into the brownfield remediation and revitalization program conveys or otherwise transfers its ownership of the subject property and such eligible party is in compliance with the provisions of this section and the brownfield investigation plan and remediation schedule at the time of conveyance or transfer of ownership, the provisions of this section shall apply to such transferee, if such transferee meets the eligibility criteria set forth in this section, pays the fee required by subsection (h) of this section and complies with all the obligations undertaken by the eligible party under this section. In such case, all references to applicant or eligible party shall mean the subsequent owner or transferee.

(2) After the Commissioner of Energy and Environmental Protection issues either a no audit letter or a successful audit closure letter, or no audit decision has been made by said commissioner within one hundred eighty days after the submittal of the remedial action report and verification or interim verification, such eligible party shall not be liable to the state or any third party for (A) costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in the brownfield investigation plan and remediation schedule, and (B) historical off-site impacts including air deposition, waste disposal, impacts to sediments and natural resource damages. No eligible party shall be afforded any relief from liability such eligible party may have from a release requiring action pursuant to the PCB regulations or a release requiring action pursuant to the UST regulations.

(3) The provisions of this section concerning liability shall extend to any person who acquires title to all or part of the property for which a remedial action report and verification or interim verification have been submitted pursuant to this section, provided (A) there is payment of a fee of ten thousand dollars to said commissioner for each such extension, (B) such person acquiring all or part of the property meets the criteria of this section, and (C) the Commissioner of Energy and Environmental Protection has issued either a successful audit closure letter or no audit letter, or no audit decision has been made by said commissioner within one hundred eighty days after the submittal of the remedial action report and verification or interim verification. No municipality or economic development agency that acquires title to all or part of the property shall be required to pay a fee, provided the municipality or economic development agency shall collect and pay the fee upon transfer of the property to another person for purposes of development. Such fee shall be deposited into the Special Contaminated Property Remediation and Insurance Fund established under section 22a-133t and such funds shall be for the exclusive use by the Department of Energy and Environmental Protection.

(4) Neither a successful audit closure nor no audit letter issued pursuant to this section, nor the expiration of one hundred eighty days after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Energy and Environmental Protection, shall preclude said commissioner from taking any appropriate action, including, but not limited to, any action to require remediation of the property by the eligible party or, as applicable, to its successor, if said commissioner determines that:

(A) The successful audit closure, no audit letter, or the expiration of one hundred eighty days after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Energy and Environmental Protection was based on information provided by the person submitting such remedial action report and verification or interim verification that the Commissioner of Energy and Environmental Protection can show that such person knew, or had reason to know, was false or misleading, and, in the case of the successor to an applicant, that such successor was aware or had reason to know that such information was false or misleading;

(B) New information confirms the existence of previously unknown contamination that resulted from a release that occurred before the date that an application has been accepted into the brownfield remediation and revitalization program;

(C) The eligible party who received the successful audit closure or no audit letter or where one hundred eighty days lapsed without an audit decision by the Commissioner of Energy and Environmental Protection has materially failed to complete the remedial action required by the brownfield investigation plan and remediation schedule or to carry out or comply with monitoring, maintenance or operating requirements pertinent to a remedial action including the requirements of any environmental land use restriction; or

(D) The threat to human health or the environment is increased beyond an acceptable level due to substantial changes in exposure conditions at such property, including, but not limited to, a change from nonresidential to residential use of such property.

(5) If an eligible party who has been accepted into the brownfield remediation and revitalization program conveys or otherwise transfers all or part of its ownership interest in the subject property at any time before the issuance of a successful audit closure or no audit letter or the expiration of one hundred eighty days after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Energy and Environmental Protection, the eligible party conveying or otherwise transferring its ownership interest shall not be liable to the state or any third party for (A) costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in the brownfield investigation plan and remediation schedule, and (B) historical off-site impacts including air deposition, waste disposal, impacts to sediments and natural resource damages, provided the eligible party complied with its obligations under this section during the period when the eligible party held an ownership interest in the subject property. Nothing in this subsection shall provide any relief from liability such eligible party may have related to a release requiring action pursuant to the PCB regulations, or a release requiring action pursuant to the UST regulations.

(6) Upon the Commissioner of Energy and Environmental Protection's issuance of a successful audit closure letter, no audit letter, or one hundred eighty days have passed since the submittal of a verification or interim verification and said commissioner has not audited the verification or interim verification, the immediate prior owner regardless of its own eligibility to participate in the comprehensive brownfield remediation and revitalization program shall have no liability to the state or any third party for any future investigation and remediation of the release of any regulated substance at the eligible property addressed in the verification or interim verification, provided the immediate prior owner has complied with any legal obligation such owner had with respect to investigation and remediation of releases at and from the property, and provided further the immediate prior owner shall retain any and all liability such immediate prior owner would otherwise have for the investigation and remediation of the release of any regulated substance beyond the boundary of the eligible property. In any event, the immediate prior owner shall remain liable for (A) penalties or fines, if any, relating to the release of any regulated substance at or from the eligible property, (B) costs and expenses, if any, recoverable or reimbursable pursuant to sections 22a-134b, 22a-451 and 22a-452, and (C) obligations of the immediate prior owner as a certifying party on a Form III or IV submitted pursuant to sections 22a-134 to 22a-134e, inclusive.

(o) A person whose application to the brownfield remediation and revitalization program has been accepted by the commissioner or any subsequent eligible party whose application to the brownfield remediation and revitalization program has been accepted by the commissioner shall be exempt for filing as an establishment pursuant to sections 22a-134a to 22a-134d, inclusive, if such real property or prior business operations constitute an establishment. Nothing in this section shall be construed to alter any existing legal requirement applicable to any certifying party at a property under sections 22a-134 and 22a-134a to 22a-134e, inclusive.

(p) Notwithstanding the provisions of this section, eligible parties shall investigate and remediate, and remain subject to all applicable statutes and requirements, the extent of any new release that occurs during their ownership of the property.

CREDIT(S)

(2011, P.A. 11-80, § 1, eff. July 1, 2011; 2011, P.A. 11-141, § 17, eff. July 1, 2011; 2012, P.A. 12-183, § 9, eff. July 1, 2012.)

[FN1] C.G.S.A. § 8-124 et seq.

[FN2] C.G.S.A. § 8-186 et seq.

[FN3] 42 U.S.C.A. § 6901 et seq.

Current with enactments from the 2012 February Regular Session and June 12 Special Session

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