September 30, 2014

RE: Comments to the Connecticut Department of Energy and Environmental Protection regarding the Final Report titled "Evaluation of Risk-Based Decision Making" prepared by CDM Smith, dated August 29, 2014.

Connecticut Fund for the Environment ("CFE") is a non-profit environmental organization with over 5,500 members statewide. The mission of CFE, and its bi-state program Save the Sound, is to protect and improve the land, air and water of Connecticut and Long Island Sound. We use legal and scientific expertise and bring people together to achieve results that benefit our environment for current and future generations.

Dear Cheryl Chase,

Connecticut Fund for the Environment respectfully submits these comments regarding the Final Report titled "Evaluation of Risk-Based Decision Making" prepared by CDM Smith. We begin with a comment about the methods used in the formulation of report, followed by comments on each of the six recommendations made in the report, and conclude with a comment regarding the overarching issue at hand.

In evaluating risk based decision-making, the paramount concern must, of course, be human health and environmental protection. Within these constraints we must, of course, make the process as quick as is feasible and ensure it results in real cleanups. While there are some good suggestions in the report, we believe that there are also a number of suggestions that de-emphasize the need to protect human health and suggest any conclusions taken from the report re-instate this emphasis.

As a matter of opening comment, we note that the evaluators interviewed with staff from DEEP, DPH, EPA and NOAA, to seek information on proposed best management focuses, and past and present conflicts between certain stakeholders and the regulated community. Undoubtedly, the staff at these agencies possess great knowledge and experience with the current system, and certainly can provide the evaluator with valuable insight. We offer the comment that the report could have benefitted from the upfront and continued communication with non-governmental stakeholders, such as environmental, human health, and environmental justice organizations, as well.

CDM Smith - Recommendation 1: "First, we suggest that Connecticut consider amending relevant law to place these four activities — HHRA, HHRM, ERA, and ERM — all within DEEP."

The report recommends moving the human health risk assessment ("HHRA") to within DEEP. We strongly disagree with this recommendation. While we understand it is attempting to streamline the functions into one agency, human health must remain an integral part of this analysis and staff from the DPH has the appropriate expertise, mission, and oversight to do this job. Removing this critical agency from the process would send the wrong message about priorities. Therefore, we recommend that the first recommendation of the report be rejected.

CDM Smith - Recommendation 2: "Second, we suggest that DEEP establish a process whereby property owners, local governmental officials, and other stakeholders are encouraged to develop and present to DEEP, for its approval, nonstandard solutions to improve public health in communities burdened with brownfields. Such solutions could also include improvements to already protected habitats and conservation areas elsewhere in the State, in lieu of costly but likely less effective restoration at the developed sites per se. To the extent that DEEP needs to be granted additional authority to approve such nonstandard solutions (as permanent solutions), the legislature should grant the Agency this authority."

In several places, the report emphasizes the need for site-specific solutions to the problems present at each site. Recommendation 2 calls for the establishment of a process for requesting and approving "nonstandard" solutions to "improve public health in areas burdened with brownfields." It then suggests the possibility of providing for an off-site improvement instead of more costly on-site remediation. This recommendation presents several problems.

While we agree with the desirability of solutions tailored to the needs of each site, we are concerned about the undefined use of the term "nonstandard," and worry about permitting piecemeal solutions on the whim of the LEP or developer. We understand the unique problems that brownfields present, and agree that the current remediation regulatory structure does not adequately provide for their remediation and redevelopment. Instead of creating a system of case-by-case "nonstandard" solutions for the tough-to-solve contamination cases, the entire remediation program should be redeveloped to account for these. The remediation program should incentivize re-development of brownfields and provide special help or tax breaks to reduce to economic burden on owners/developers, but allowing piecemeal solutions to get around the expense of health protective remediation is not the way to do it.

In regard to performing off-site improvements as opposed to more costly on-site improvements, again, this cannot be used as a justification to increase exposures above acceptable risk levels as determined by scientists and professionals. While such projects could serve to offset the damage done to a community from the site, off-site improvements cannot be substituted just because full remediation is more costly.

CDM Smith - Recommendation 3: "***Third, we suggest that (i) DEEP fully and electronically document all of the underlying assumptions, models, exceptions, and other aspects of each default criterion in the RSRs; (ii) DEEP consider updating these criteria, per British Columbia's criteria, to account for risks to soil invertebrates and to plants as well as for risks to public health; and (iii) to the extent that legislative involvement is currently required before criteria are updated, this requirement be modified to grant DEEP the requisite authority."***

We agree that the health criteria must be updated to reflect modern knowledge about health risks, and that ecological criteria must be included. Our environment, health, and well-being are inextricably connected and we cannot sacrifice one for the other. This must be set, however, at a level that DPH determines is protective of the public health. Political judgments and pressures should not be allowed to play a roll. While stakeholder input is important, it is the regulators, using the best science, which must be determining what is necessary to protect the public health, not the industries.

CDM Smith – Recommendation 4: "***Fourth, we suggest that DEEP adopt and, as needed, adapt the successful ecological risk assessment and ecological risk management programs already in place in Massachusetts and in British Columbia."***

The report contains minimal reasoning for its endorsement of Massachusetts's and British Columbia's ecological risk
assessment and ecological risk management programs. We therefore cannot agree with such endorsement. We advise a more thorough explanation for these endorsements be made which clearly state how the adoption of such practices will help Connecticut's remediation policy protect human health and the environment.

CDM Smith – Recommendation 5: "***Fifth, we suggest that DEEP encourage the use of advanced, site-specific risk assessments for sites where application of RSR default criteria may be inappropriate."***

This recommendation is another instance of the report's emphasis on site-specific assessment and remediation criteria. We are concerned that the phrase "use of advanced, site-specific risk assessment" which diverts from the default criteria just means: "remediation to a lesser standard." To prevent this, we believe we need strong standards for when deviations can be made, as well as strong oversight and regulation of Licensed Environmental Professionals. Until we get a more vigorous system of oversight, it will be impossible to control the great amounts of discretion given to LEPs and developers on a site by site basis, while still protecting public health. Thus, no deviations should be considered unless it can be documented and assured that the deviation will not meaningfully increase the risk to human health and the environment. Unfortunately, at this point it does not appear that there are resources or a regulatory oversight structure at the agency that would allow this.

CDM Smith – Recommendation 6: "***Finally, sixth, for potentially carcinogenic site contaminants, we suggest that DEEP adopt risk management goals for the reasonably maximally exposed individual (RMEI) of up to 1 in 100,000 per chemical, and up to 1 in 10,000 per site."***

We strongly oppose this recommendation. This would make Connecticut the only mid-Atlantic state with such a high allowable risk, and this would unfairly and unjustifiably increase the lifetime exposure risks of poorer demographics, who tend to live in closer proximity to contaminated sites. Connecticut should not be blazing a trail toward having the most allowable carcinogens. It is bad policy, and it is dangerous. Therefore we wholeheartedly call for the rejection of recommendation 6 of the report.

In conclusion, we offer one more comment regarding the remediation policy in Connecticut. Over the past several years, there has been tremendous pressure on the legislature and DEEP to steer the regulatory system controlling remediation of contaminated sites toward one which is less protective of human health and the environment, to one that is more economically productive. We caution against losing sight of the most important consideration: the protection of human health. It is pertinent that this consideration be positioned on a greater pedestal than economic interests, because there is no greater need to be protected than human life. Only when the public health is protected and such is documented by DPH, should we start considering the most cost effective ways to move forward.

Instead of doing piece-by-piece reconstruction of the remediation program, which can lead to a disjointed and less protective system, the laws controlling contaminated site remediation should be re-written in a major way and designed intelligently to balance the need to keep remediation economically viable, but still deliver on the primary goal: the protection of human health and the environment.

Sincerely,

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