



To: State Board of Examiners of Environmental Professionals

From: Betsey Wingfield
Bureau Chief
Bureau of Water Protection and Land Reuse

Date: March 18, 2008

Re: **2007 Legislation Advisory**

The 2007 Legislature amended section 22a-133v of the Connecticut General Statutes regarding Licensed Environmental Professionals (LEP) with the passage of Public Act 07-81. Section 1 modified Subsection (g) of section 22a-133v of the Connecticut General Statutes and authorizes the LEP Board to levy sanctions other than revocation or suspension of a licensed environmental professional (LEP) license. This will give the LEP Board additional disciplinary tools and discretion to impose remedial types of discipline short of revocation. Section 2 amended Section 22a-133x of the Connecticut General Statutes to dispense with the requirement that the commissioner respond in writing when delegating authority for site remediation to a LEP, to require verification that the investigation was done in accordance with prevailing standards and to require that LEP verification be done on a form prescribed by the commissioner.

To assist the State Board of Examiners of Environmental Professionals and Licensed Environmental Professionals in understanding and communicating these changes, we are providing the Public Act language with the revisions highlighted.

Public Act 07-81 was signed by the Governor on June 1, 2007 and is effective October 1, 2007.

DEP in consultation with the LEP Board will be drafting revisions to departmental regulations concerning Licensed Environmental Professionals to reflect these statutory amendments. As of October 1, 2007, the provisions of Public Act 07-81 will govern until such time that the regulations are revised.

Should you have any questions regarding Public Act 07-81, please feel free to contact Kim Maiorano of the Remediation Division. You can call the Remediation Division at (860) 424-3705 or write to us at: Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127.

Public Act No. 07-81

AN ACT CONCERNING LICENSED ENVIRONMENTAL PROFESSIONALS.

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

Section 1. Subsection (g) of section 22a-133v of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(g) The board may conduct investigations concerning the conduct of any licensed environmental professional. The commissioner may conduct audits of any actions authorized by law to be performed by a licensed environmental professional. The board shall authorize the commissioner to: (1) revoke [or] the license of any environmental professional; (2) suspend the license of any environmental professional; (3) impose any other sanctions that the board deems appropriate; or [to] (4) deny an application for such licensure if the board, after providing such professional with notice and an opportunity to be heard concerning such revocation, suspension, other sanction or denial, finds that such professional has submitted false or misleading information to the board or has engaged in professional misconduct including, without limitation, knowingly or recklessly making a false verification of a remediation under section 22a-134a, as amended by this act, or violating any provision of this section or regulations adopted [hereunder] under the provisions of this section.

Sec. 2. Section 22a-133x of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Except as provided in section 22a-133y, a political subdivision of the state, an owner of an establishment, as defined in section 22a-134, an owner of property identified on the inventory of hazardous waste disposal sites maintained pursuant to section 22a-133c on October 1, 1995, or an owner of contaminated property located in an area for which the groundwater classification is GA or GAA, may, at any time, submit to the commissioner an environmental condition assessment form for such real property owned by such political subdivision or such owner and an initial review fee in accordance with subsection (e) of this section. [Within] The owner or political subdivision shall use a licensed environmental professional to verify the investigation and remediation, unless not later than thirty days [of his] after the commissioner's receipt of such form, the commissioner [shall notify] notifies the owner or political subdivision, in writing, [as to whether or not] that review and written approval of any remedial action at such establishment or property by the commissioner will be required. The commissioner shall not process any such form submitted pursuant to this section unless such form is accompanied by the required initial review fee.

(b) [If the commissioner notifies the owner that he will not formally review and approve in writing the investigation and remediation of the parcel, the] The owner or political subdivision shall, on or before ninety days [of the receipt of such notice] after the submission of an environmental condition assessment form, submit a statement of proposed actions for investigating and remediating the parcel or a release area, as defined in the

regulations adopted by the commissioner pursuant to section 22a-133k, and a schedule for implementing such actions. The commissioner may require the owner or political subdivision to submit to [him] the commissioner copies of technical plans and reports related to investigation and remediation of the parcel or release area. [, and may notify the owner if the commissioner determines] Notwithstanding any other provision of this section, the commissioner may determine that the commissioner's review and written approval of such technical plans and reports is necessary at any time, and in such case the commissioner shall notify the owner or political subdivision of the need for the commissioner's review and written approval. The commissioner shall require that the certifying party submit to [him] the commissioner all technical plans and reports related to the investigation and remediation of the parcel or release area if the commissioner receives a written request from any person for such information. The owner or political subdivision shall advise the commissioner of any modifications to the proposed schedule. Upon receipt of a verification by a licensed environmental professional that the parcel or release area has been investigated in accordance with prevailing standards and guidelines and remediated in accordance with the remediation standards, the owner or political subdivision shall submit [a copy of] such verification to the commissioner on a form prescribed by the commissioner.

(c) If the commissioner notifies the owner or political subdivision that [he] the commissioner will formally review and approve in writing the investigation and remediation of the parcel, the owner or political subdivision shall, on or before thirty days of the receipt of such notice, or such later date as may be approved in writing by the commissioner, submit for the commissioner's review and written approval, a proposed schedule for: (1) Investigating and remediating the parcel or release area; and (2) submitting to the commissioner technical plans, technical reports and progress reports related to such investigation and remediation. Upon the commissioner's approval of such schedule, the owner or political subdivision shall, in accordance with the approved schedule, submit technical plans, technical reports and progress reports to the commissioner for [his] the commissioner's review and written approval. The owner or political subdivision shall perform all actions identified in the approved technical plans, technical reports and progress reports in accordance with the approved schedule. The commissioner may approve, in writing, any modification proposed in writing by the owner or political subdivision to such schedule or investigation and remediation and may notify the owner, in writing, if [he] the commissioner determines that it is appropriate to discontinue formal review and approval of the investigation or remediation.

(d) If, in accordance with the provisions of this section, the commissioner has approved in writing or, as applicable, a licensed environmental professional has verified, that the parcel or release area has been remediated in accordance with the remediation standards, such approval or verification may be used as the basis for submitting a Form II pursuant to sections 22a-134 to 22a-134e, inclusive, as amended by this act, provided there has been no additional discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste at or on the parcel subsequent to the date of the commissioner's approval or verification by a licensed environmental professional.

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(e) The fee for submitting an environmental condition assessment form to the commissioner pursuant to this section shall be three thousand dollars and shall be paid at the time the environmental condition assessment form is submitted. Any fee paid pursuant to this section shall be deducted from any fee required by subsection (m) or (n) of section 22a-134e for the transfer of any parcel for which an environmental condition assessment form has been submitted within three years of such transfer.

(f) Nothing in this section shall be construed to affect or impair the voluntary site remediation process provided for in section 22a-133y.

(g) Prior to commencement of remedial action taken under this section, the [municipality or] owner or political subdivision shall (1) publish notice of the remediation, in accordance with the schedule submitted pursuant to this section, in a newspaper having a substantial circulation in the area affected by the establishment, (2) notify the director of health of the municipality where the parcel is located of the remediation, and (3) either (A) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the parcel, which sign 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 remediation, or (B) mail notice of the remediation to each owner of record of property which abuts the parcel, at the last-known address of such owner on the last-completed grand list of the municipality where the parcel is located.

Sec. 3. Subdivision (19) of section 22a-134 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(19) "Verification" means the rendering of a written opinion by a licensed environmental professional on a form prescribed by the commissioner that an investigation of the parcel has been performed in accordance with prevailing standards and guidelines and that the establishment has been remediated in accordance with the remediation standards.

Sec. 4. Section 22a-134a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) No person shall transfer an establishment except in accordance with the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act. Notwithstanding any provision of sections 22a-134 to 22a-134e, inclusive, as amended by this act, a person appointed by the Superior Court or any other court to sell, convey or partition real property or a person appointed as a trustee in bankruptcy shall not be deemed a party associated with the transfer of an establishment and shall not be required to comply with the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act.

(b) The commissioner may adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this section.

(c) Prior to transferring an establishment, the transferor shall submit to the transferee a complete Form I or a Form II and, no later than ten days after the transfer, shall submit a

copy of such Form I or Form II to the commissioner. The commissioner shall notify the transferor no later than ninety days after the submission of such Form I or Form II if the commissioner deems the Form I or Form II incomplete. If the transferor is unable to submit a Form I or a Form II to the transferee, the transferor shall, prior to the transfer, submit a complete Form III or Form IV prepared and signed by a party associated with the transfer to the transferee and, no later than ten days after the transfer, shall submit a copy of such Form III or Form IV to the commissioner. If no other party associated with the transfer of an establishment prepares and signs the proper form as a certifying party, the transferor shall have the obligation for such preparation and signing.

(d) The certifying party to a Form I, Form II, Form III or Form IV shall (1) upon receipt of a written request from the commissioner, provide to the commissioner copies of all technical plans, reports and other supporting documentation relating to the investigation of the parcel or remediation of the establishment as specified in the commissioner's written request, and (2) simultaneously submit with the submission of a Form I, Form III or Form IV to the commissioner a complete environmental condition assessment form and shall certify to the commissioner, in writing, that the information contained in such form is correct and accurate to the best of the certifying party's knowledge and belief.

(e) [No] Not later than thirty days after receipt of a Form III or Form IV, the commissioner shall notify the certifying party whether the form is complete or incomplete. [Within] The certifying party shall use a licensed environmental professional to verify the investigation and remediation, unless not later than forty-five days [of] after receipt of a complete Form III or IV [,] the commissioner [shall notify] notifies the certifying party, in writing, [whether] that review and approval of the remediation by the commissioner [will] shall be required. [, or whether a licensed environmental professional may verify that the investigation has been performed in accordance with prevailing standards and guidelines and that the remediation has been performed in accordance with the remediation standards.] Any person who submitted a Form III to the commissioner prior to October 1, 1995, may submit an environmental condition assessment form to the commissioner. The commissioner shall, [within] not later than forty-five days [of] after receipt of such form, notify the certifying party whether approval of the remediation by the commissioner will be required or whether a licensed environmental professional may verify that the investigation was performed in accordance with prevailing standards and guidelines and the remediation has been performed in accordance with the remediation standards.

(f) In determining whether review and approval of the remediation by the commissioner will be required, or whether a licensed environmental professional may verify that the remediation has been performed in accordance with the remediation standards, the commissioner shall consider: (1) The potential risk to human health and the environment posed by any discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance at the establishment; (2) the degree of environmental investigation at the parcel; (3) the proximity of the establishment to significant natural resources; (4) the character of the land uses surrounding the establishment; (5) the complexity of the environmental condition of the establishment; and (6) any other factor the commissioner deems relevant.

(g) (1) [If the commissioner notifies] Except as provided in subsection (h) of this section, the certifying party to a Form III or Form IV [that a licensed environmental professional may verify the remediation, such certifying party] shall, on or before [thirty] seventy-five days [of] after the receipt of [such] the notice that such form is complete or such later date as may be approved in writing by the commissioner, submit a schedule for the investigation of the parcel and remediation of the establishment. Such schedule shall, unless a later date is specified in writing by the commissioner, provide that the investigation shall be completed within two years of the date of receipt of such notice and that remediation shall be initiated within three years of the date of receipt of such notice. The schedule shall also include a schedule for providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. [The commissioner] Not later than two years after the date of the receipt of the notice that the Form III or Form IV is complete, unless the commissioner has specified a later day, in writing, the certifying party shall submit to the commissioner documentation in a form prescribed by the commissioner that the investigation has been completed. Not later than three years after the date of the receipt of the notice that the Form III or Form IV is complete, unless the commissioner has specified a later day in writing, the certifying party shall notify the commissioner in a form prescribed by the commissioner that the remediation has been initiated. Notwithstanding any other provision of this section, the commissioner may determine at any time that the commissioner's review and written approval is necessary and in such case shall notify [such] the certifying party [if the commissioner determines] that the commissioner's review and written approval is necessary. Such certifying party shall investigate the parcel and remediate the establishment in accordance with the proposed schedule or the schedule specified by the commissioner. When remediation of the entire establishment is complete, the certifying party shall submit to the commissioner a final verification by a licensed environmental professional. Any such final verification may include and rely upon a verification for a portion of the establishment submitted pursuant to subdivision (2) of this subsection.

(2) If a certifying party completes the remediation for a portion of an establishment, such party may submit a verification by a licensed environmental professional for any such portion of an establishment. The certifying party shall be deemed to have satisfied the requirements of this subsection for that portion of the establishment covered by any such verification. If any portion of an establishment for which a verification is submitted pursuant to this subdivision is transferred, conveyed or undergoes a change in ownership before remediation of the entire establishment is complete that would not otherwise be subject to the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, then the certifying party shall provide notice to the commissioner of such transfer, conveyance or change in ownership not later than thirty days of any such transfer, conveyance or change in ownership.

(h) (1) If the commissioner notifies the certifying party to a Form III or Form IV that the commissioner's review and written approval of the investigation of the parcel and remediation of the establishment is required, such certifying party shall, on or before thirty days of the receipt of such notice or such later date as may be approved in writing by the commissioner, submit for the commissioner's review and written approval a proposed

schedule for: (A) Investigating the parcel and remediating the establishment; (B) submitting to the commissioner scopes of work, technical plans, technical reports and progress reports related to such investigation and remediation; and (C) providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. Upon the commissioner's approval of such schedule, such certifying party shall, in accordance with the approved schedule, submit scopes of work, technical plans, technical reports and progress reports to the commissioner for the commissioner's review and written approval. Such certifying party shall perform all actions identified in the approved scopes of work, technical plans, technical reports and progress reports in accordance with the approved schedule. The commissioner may approve in writing any modification proposed in writing by such certifying party to such schedule or investigation and remediation. The commissioner may, at any time, notify such certifying party in writing that the commissioner's review and written approval is not required and that a licensed environmental professional may verify that the remediation has been performed in accordance with the remediation standards.

(2) A certifying party may complete the remediation of a portion of an establishment and request that the commissioner determine that the requirements of this subsection have been satisfied for any such portion of the establishment. If the commissioner determines that any such remediation is complete, the certifying party shall be deemed to have satisfied the requirements of this subsection for any such portion of an establishment. Any determination by the commissioner that remediation at the entire establishment has been completed may include and rely upon any determination made pursuant to this subdivision that remediation is complete at a portion of an establishment. If any portion of an establishment for which the commissioner determines that remediation is complete pursuant to this subdivision is transferred, conveyed or undergoes a change in ownership before remediation of the entire establishment is complete that would not otherwise be subject to the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, then the certifying party shall provide notice to the commissioner of such transfer, conveyance or change in ownership not later than thirty days of any such transfer, conveyance or change in ownership.

(i) The certifying party to a Form III or Form IV shall (1) publish notice of the remediation, in accordance with the schedule submitted pursuant to this section, in a newspaper having a substantial circulation in the area affected by the establishment, (2) notify the director of health of the municipality where the establishment is located of the remediation, and (3) either (A) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the establishment, which sign 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 remediation, or (B) mail notice of the remediation to each owner of record of property which abuts the parcel, at the address for such property on the last-completed grand list of the municipality where the establishment is located.

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(j) The commissioner may issue an order to any person who fails to comply with any provision of sections 22a-134 to 22a-134e, inclusive, as amended by this act, including, but not limited to, any person who fails to file a form, or files an incomplete or incorrect form or to any person who fails to carry out any activities to which that person agreed in a Form III or Form IV. If no form is filed or if an incomplete or incorrect form is filed for a transfer of an establishment, the commissioner may issue an order to the transferor, the transferee, or both, requiring a filing. The commissioner may also request that the Attorney General bring an action in the superior court for the judicial district of Hartford to enjoin any person who fails to comply with any provision of sections 22a-134 to 22a-134e, inclusive, as amended by this act, including, but not limited to, any person who fails to file a form, improperly files a Form I, Form II, Form III or Form IV or the certifying party to a Form III or Form IV to take any actions necessary to prevent or abate any pollution at, or emanating from, the subject establishment. Any person to whom such an order is issued may appeal such order in accordance with the procedures set forth in sections 22a-436 and 22a-437.

(k) Notwithstanding the exemptions provided in [subsection (a) of section 22a-134] section 22a-134a, as amended by this act, nothing contained in sections 22a-134 to 22a-134e, inclusive, as amended by this act, shall be construed as creating an innocent landowner defense for purposes of section 22a-452d.

(l) Notwithstanding any other provisions of this section, no person shall be required to comply with the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, when transferring real property (1) (A) for which a Form I or Form II has been filed for the transfer of the parcel on or after October 1, 1995, or (B) for which parcel a Form III or Form IV has been filed and which has been remediated and such remediation has been approved in writing by the commissioner or has been verified in writing in accordance with this section by a licensed environmental professional that an investigation has been performed in accordance with prevailing standards and guidelines and that the remediation has been performed in accordance with the remediation standards, and (2) at which no activities described in subdivision (3) of section 22a-134 have been conducted since the date of such approval or verification or the date on which the Form I or Form II was filed.

(m) Failure of the commissioner to notify any party in accordance with the provisions of this section in no way limits the ability of the commissioner to enforce the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act.

Approved June 1, 2007
