

2007 Public Acts Affecting Programs of the Remediation Division

In the 2007 Regular Session of the General Assembly, legislative changes were made to the Connecticut General Statutes that affect Remediation Division programs.

Public Act 07-81 - "An Act Concerning Licensed Environmental Professionals" signed by the Governor on June 1, 2007, with an effective date of October 1, 2007.

The LEP Bill (PA 07-81) changed the following sections:

CGS §22a-134(19) The definition of "Verification" has been revised to mean the rendering of a written opinion by a licensed environmental professional on a [verification form](#) prescribed by the Commissioner.

CGS §22a-134a Minor changes were made to subsections (a) and (h) through (m). Changes made by this Bill (PA 07-81) to subsections (e) and (g) were superseded by subsequent changes made by the Brownfields Bill (PA 07-233).

The Licensed Environmental Professional (LEP) Program:

CGS §22a-133v(g) is revised to provide for "any other sanctions that the Board deems appropriate" in addition to revoking or suspending a license, or denying an application for licensure when a finding that an environmental professional has submitted false or misleading information to the board or has engaged in professional misconduct or has violated any provision of this section or regulations adopted under the provisions of section 22a-133v. Changes to the LEP Regulations, section 22a-133v of the Regulations of Connecticut State Agencies, (RCSA), will likely be proposed to implement this statutory provision for "any other sanctions."

The Voluntary Remediation Program:

CGS §22a-133x

Subsection (a) now provides for automatic LEP oversight of investigation and remediation (and LEP verification) at sites in this voluntary remediation program **unless** the Commissioner notifies the owner or a political subdivision (within 30 days of receipt of a completed ECAF and fee) that the Commissioner's review and written approval of remediation at the establishment or property will be required.

Subsection (b) now states that if DEP approval is not required, a statement of proposed actions and schedule shall be submitted by the owner or political subdivision to DEP 90 days after submitting a complete ECAF and fee. Section 22a-133x(b) refers to "certifying party" instead of "owner or political subdivision" in the third sentence from the end of the subsection.

Subsection (c) now states that if DEP approval is required, a statement of proposed actions and schedule shall be submitted 30 days after receiving notice that DEP approval is required.

Subsection (g) Minor changes and a correction to the provision for providing public notice by either posting signs or mailing notice 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..."

Public Act 07-233 - "An Act Implementing the Recommendations of the Brownfields Task Force" signed by the Governor on July 6, 2007, with an effective date of July 1, 2007.

The Brownfields Bill (PA 07-233) changed the following sections:

The Property Transfer Program:

CGS §22a-134a

Subsection (e) is modified to provide for automatic Licensed Environmental Professional (LEP) oversight of investigation and remediation and LEP verification at Form III or Form IV sites in the Property Transfer Program unless the Commissioner notifies the certifying party (within 75 days of receipt of a completed ECAF and fee) that the Commissioner's review and written approval of remediation will be required.

Subsection (g) requires the certifying party on a Form III or Form IV to submit a schedule for investigation and remediation. **The schedule is now due 75 days after the date the certifying party receives notice from DEP that the Form III or Form IV is complete.** This schedule must provide for investigation to be completed within two years, public notice of remediation prior to the start of remediation, and remediation to be initiated within three years after the date the certifying party receives notice from DEP that the Form III or form IV is complete.

New Requirements:

Subsection (g)(1) Not later than two years after the date of receiving notice that the Form III or Form IV* is complete, the certifying party must submit documentation approved by a LEP, in a form prescribed by the Commissioner, that the investigation has been completed in accordance with prevailing and guidelines. A [new form](#) and [instructions](#) are now available for submitting this documentation to DEP.

Not later than three years after the date of receiving notice that the Form III or Form IV* is complete, the certifying party must notify the Commissioner that the remediation has been initiated and must submit to the Commissioner a Remedial Action Plan approved in writing by a LEP in a form prescribed by the Commissioner. A [new form](#) and [instructions](#) are now available for submitting the Remedial Action Plan to DEP.

*Note: Filing a Form IV is appropriate when remediation has been completed, except for post-remediation monitoring, natural attenuation monitoring, or recording of an Environmental Land Use Restriction. Consult the definition of Form IV at CGS §22a-134(13) for further information on what is required with a Form IV filing, including verification from a LEP stating that the site has been investigated in

accordance with prevailing standards and guidelines and remediated in accordance with the RSRs.

The Audit Program:

CGS §22a-134a(g)(3)(A) The Commissioner can audit any Property Transfer verification, but cannot conduct an audit of a final verification of an entire establishment more than three years after receipt of the final verification, unless an exception listed in 22a-134a(g)(3)(B) or (C) applies.

CGS §22a-134a(g)(3)(B) The Commissioner may request additional information during an audit, and such additional information shall be submitted within 90 days (or any longer time as the commissioner may determine in writing). If such additional information is not provided within the specified timeframe, the Commissioner may either suspend the audit, which for a final verification shall suspend the running of the three year audit timeframe until the Commissioner receives the information requested, or complete the audit based on the information provided in the verification before the request for additional information.

CGS §22a-134a(g)(3)(C) The Commissioner shall not conduct an audit of a final verification of an entire establishment after three years from receipt of such verification unless:

- i. the 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 misrepresentations were made in connection with the submittal of the verification,
- ii. a verification is submitted pursuant to an order of the Commissioner pursuant to subdivision (j) of section 22a-134a,
- iii. any post-verification monitoring, or operations and maintenance, is required as part of a verification and which has not been done,
- iv. 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,
- v. the Commissioner determines that there has been a violation of sections 22a-134 to 22a-134e, or the Commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment.

Covenant Not To Sue:

CGS §22a-133aa

Subsection (a) allows the Commissioner to enter into a covenant not to sue when a brownfield investigation plan and remediation schedule, as defined in subsection (f) of CGS 22a-133aa, has been approved by the Commissioner. The brownfield investigation plan and remediation schedule is incorporated by reference into the covenant.

Subsection (b) adds three new clauses to the four original clauses by which the covenant not to sue can be voided. The three new clauses are:

1. prior to DEP approval of a written plan for remediation, pursuant to a brownfield investigation plan and remediation schedule, there is substantial noncompliance by the holder of the covenant with the plan and schedule, or lack of good faith effort to substantially comply therewith,
2. for a property subject to a brownfield investigation plan and remediation schedule, the Commissioner does not approve a detailed written plan for remediation, or
3. the prospective buyer or owner fails to pay the fee, including failure to pay in accordance with any payment schedule pursuant to 22a-133aa(c).

Subsection (c) exempts municipalities, municipal development agencies, and certain public interest non-profit economic development corporations from the fee for a covenant not to sue under 22a-133aa, and allows a schedule for payment of the fee to be incorporated into the covenant with an owner or prospective purchaser who has a brownfield investigation plan and remediation schedule approved by DEP.

Subsection (f)

- contains the definition of a "brownfield investigation plan" and "remediation schedule;"
- states that the Commissioner may determine whether DEP review and approval is required, or whether such oversight will be delegated to a LEP;
- requires for each property with a covenant and an approved brownfield investigation plan and remediation schedule, the owner or prospective purchaser to perform all investigation and remediation activities under the direction of a LEP and to ensure that all documents required to be submitted contain a written approval of a LEP, even at properties at which oversight has not been delegated to a LEP; and
- states that a brownfield investigation plan and remediation schedule must have a schedule 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 (submitted for the Commissioner's review, and as appropriate, approval),
 - completion of remediation in accordance with standards adopted pursuant to CGS 22a-133k, and
 - submittal of a final remedial action report.

If the Commissioner approves the plan for remediation, it is incorporated, by reference, into the covenant not to sue. DEP may also require other plans and reports to be submitted for review and approval.