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2019 Connecticut Environmental Legislative Update No. 12

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by Christopher P. McCormack

Welcome to our Environmental Legislative Updates.

Throughout Connecticut's legislative session, these updates highlight developments concerning environmental law and policy. The author prepares updates as Legislative Liaison of the Connecticut Bar Association's Environmental Law Section. Pullman & Comley is pleased to offer them in this format to a wider audience.

As the session proceeds, early updates will alert readers to proposals on a broad range of issues concerning the environment, narrowing focus over time on bills that continue to progress, and concluding with a post-session wrap-up of bills that pass as well as noteworthy also-rans. Along the way they'll summarize and challenge arguments pro and con, examine the policy and science behind proposals, and occasionally cast a side glance at the vicissitudes and vagaries of the process. The views expressed will be the author's own, not necessarily those of Pullman & Comley LLC.

Questions, comments, requests and suggestions are always welcome. Please contact one of our Environmental attorneys.

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A brief note on a significant late-session development, and perhaps a surprise to those who may have despaired at the prospect of common-sense reforms to the Transfer Act: the Senate has just passed SB 1030, making some common-sense reforms to the Transfer Act.

The bill as amended follows through on the concept that has been in this bill since its introduction, which is to shorten the audit period for verifications from three years to something less. As originally proposed, "something less" was six weeks, which to no one's surprise was unpalatable in a certain former insurance company building in Hartford. The compromise is that an audit can't be commenced more than a year after a verification (full or interim), and must be completed within three years, subject to various exceptions - if more information is needed, or if there's something fishy about the verification (we paraphrase), or an ELUR

required for the verification to work has not been recorded. Most of those are already in the statute, so the delta here is to place the end point at one year rather than three unless exceptions apply. That's ... common sense, we dare say perhaps even progress.

As we've previously observed, the wish list of other amendments proposed in the course of the session (for instance, this one) covered a fair range of additional issues. Among those were a "generation" exception for "episodic events as defined in" 40 CFR 262.231. The latter concept appears in a different form as the other major substantive change in the Senate-passed bill: "establishment" would not include one-time generation of hazardous waste above the 100 kg threshold, "one time" meaning at any time or after a prior Transfer Act filing. And in addition to the existing exception for remediation waste, new exceptions would be added for removal or abatement of building materials, removal of unused chemicals in connection with "emptying or clearing out a building," or complete cessation of business operations, if removed within ninety days. That may not be the whole list of incidental waste generation events that have swept sites into the Transfer Act, but it's a good start.

Last but not least, in what appears to be a collective exercise in giving the proverbial can a mighty kick down the road, the Senate bill proposes a "working group" to examine and develop recommendations for further changes to the Transfer Act. Report on or before February 1, 2020. Are they insinuating it's not perfect yet? Well, maybe there's still room for improvement. Perhaps while they're out there, they can send word of the risk-based decision making initiative.

We'll see what the House has to say.

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