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The Connecticut General Assembly Puts the First Nail in the Transfer Act's Coffin: Connecticut to Adopt New Release-Based Remediation Program, but There is Still Much Work to be Done

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The General Assembly gave Connecticut an early Halloween present during the first week of October when both houses of the legislature passed H.B. 7001, *An Act Revising Provisions of the Transfer Act and Authorizing the Development and Implementation of a Released-Based Remediation Program* (the "Bill"). The Bill is now before Governor Lamont and awaits his signature. Given that the Bill was one of only four items on the Governor's Agenda for the Special Session, and that it passed through both houses with no opposition, Governor Lamont's signature is expected quickly.

The Bill makes a number of substantive changes to Connecticut's environmental property transfer law (Conn. Gen. Stat. § 22a-134 et. seq.), commonly known as the "Transfer Act." Some of the initial changes will be improvements to the Transfer Act, but those improvements will only last until relevant state agencies do what is needed to provide for the Transfer Act's ultimate cessation.

Yes, cessation. Under the Bill, the Transfer Act is scheduled to be replaced with a release-based system of reporting and remediation. For this to happen, the Connecticut Department of Energy and Environmental Protection (DEEP) must adopt, amend, and/or repeal regulations, as necessary, to implement the proposed release-based remediation program (the "Program"), which will supplant the Transfer Act.

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Pursuant to the Program, a person that creates or otherwise maintains a release of hazardous waste and/or substance(s) on a parcel of land must, upon notice thereof, report and remediate such a release according to the requirements of the (impending) release-based regulations (the "Regulations").

While the Regulations have yet to be promulgated by DEEP, the Bill dictates that they must include, *at minimum*, the following components:

1. Release reporting requirements, including threshold reportable quantities and concentrations;
2. Remediation procedures and deadlines, including public participation;
3. Remediation standards, including environmental use restrictions;
4. Verification and commissioner remediation audits;
5. Remediation supervision, based on either (a) pollutant type, concentration or volume or (b) harm to public health; and
6. Any required fees.

The Regulations must also provide for designated "tiers" of releases that vary according to their respective level of "risk," which DEEP will determine based on the following factors:

1. The existence, source, nature, and extent of the release;
2. The temporal nature of the release (e.g., immediate and/or future) and the extent of danger the release poses to public health, safety, welfare, and to the environment;
3. The magnitude and complexity of the actions that are necessary to assess, contain, and/or remove the release;
4. Whether the proposed remediation effort(s) will entirely abrogate the subject pollution, or whether future mitigative measures will be required; and
5. How much CT DEEP oversight is necessary to ensure compliance with the Bill.

Importantly, the Bill allows the Regulations to exempt certain releases from otherwise applicable reporting requirements, if it is discovered that the respective release can be (1) remediated by containment, removal, or mitigation and (2) remediated in the time and manner proscribed by the Regulations. In such instances, however, the Bill instructs that records of such remediation efforts must be maintained by the responsible party.

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DEEP must convene a working group under the Bill to assist it in the development of the Regulations. Astute students of Connecticut's environmental regulatory history will recall several instances where such regulatory working groups were convened to overhaul Connecticut's remediation regulations only to have their efforts fall short as the DEEP, the regulated community and environmental groups failed to reach a consensus. Hopefully, the lure of the elimination of the Transfer Act, once and for all, will be a sufficient incentive to bring these stakeholders together to succeed in crafting a new regulatory program. Until that is accomplished, however, the Transfer Act will continue to roam Connecticut's real estate transactions, much like a creature of the undead on All Hallows' Eve. More importantly, the lack of specificity in the Bill regarding the scope, substance and timing of the Regulations raises the specter of uncertainty which will provide a challenge for prospective purchasers of real property that will last far beyond Halloween, as those purchasers consider the acquisition of properties with a history of releases of contaminants.

If you would like more information regarding H.B. 7001 or how Connecticut is likely to shift to a release-based remediation program, please contact your responsible Pullman & Comley attorney, or contact us at brownfields@pullcom.com.

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