



Initiatives Reshaping Energy, Environmental Landscape

LEGISLATION CREATES NEW DEPARTMENT WITH WIDER RANGE OF RESPONSIBILITIES

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Significant energy and environmental initiatives are under way as a result of milestone legislation passed into law by the Connecticut legislature in June. Highlighting an active legislative session, the legislature passed laws integrating energy and environmental policy within a new state agency and creating an innovative remediation and a revitalization program designed to assist in the return of brownfield sites to productive reuse.

Additionally, other environmental and energy legislation enacted this year includes acts affecting the Connecticut Transfer Act and related programs, management of hazardous materials, power project siting, asbestos related product liability claims and recreational land use.

New Department

Effective July 1, 2011, Public Act 11-80 created a new Department of Energy and Environmental Department (DEEP) by combining the Departments of Environmental Protection and Public Utility Control. The legislation sets forth clear energy and environmental goals for DEEP.

On the energy side, the law states that DEEP's objectives include reducing rates and decreasing costs for rate payers, ensuring the reliability and safety of Connecticut's energy supply, increasing the use of clean energy and supporting technologies and growing an energy-related

economy within Connecticut. DEEP's environmental goals continue to be to conserve, improve and protect the natural resources of the state and to preserve the natural environment while fostering sustainable development.

The new legislation requires DEEP to develop a comprehensive State Energy Plan by July 1, 2012, and implement a variety of new initiatives designed to promote energy efficiency and renewable energy. In this regard, the new law seeks to promote the development of a broad range of clean energy technologies. Under the law, a new Clean Energy Finance and Investment Authority is established and will now be responsible for administering the Clean Energy Fund and coordinating the various investment initiatives created by the legislation.

Also of note, provisions of the law require electric utilities to enter into long-term contracts to buy renewable energy credits with owners or developers of zero and low emission generating systems.

The legislation creates an energy branch within DEEP, and has triggered a series of organizational and administrative changes. For instance, the Department of Public Utility Control is now the Public Utilities Regulatory Authority (PURA) within DEEP and a new Bureau of Energy and Technology Policy has been created to con-



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duct the analytical work needed to develop the State's energy strategy.

In addition, DEEP now has powers which were originally held by the Office of Policy Management, including regulation of the fuel oil industry, green building standards, lighting standards and plumbing fixture efficiency standards.

Building Blocks

Reflecting the state's focus on economic development, the Department of Economic Development (DECD) is responsible for implementing a new brownfields program which seeks to entice developers to acquire and remediate brownfield properties by offering new liability protections under Section 17 of Public Act 11-141. Up to 32 eligible projects per year may be selected for the Section 17 program. If accepted, parties are exempt from Connecticut Transfer Act requirements and potentially may be relieved of liability to the state and third parties relative to the off-site migration of pollution.

The legislation also strengthens the responsibilities of the Economic Develop-

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ment Department's Office of Brownfield Remediation Development (OBRD) to be able to better facilitate coordination with state and local agencies in seeking federal funding for projects.

On Sept. 19, 2011, OBRD announced that applications for two of its brownfields programs (Targeted Brownfield Development Loans and Regional Brownfield and Economic Development Grants) are due or before Oct. 14, 2011, with notice of awards by Nov. 14. OBRD also announced that additional applications under DECD's Brownfield Liability Relief Program are due by Oct. 14. The first awards under this program are anticipated in October.

The legislation also addresses a number of brownfield-related issues. For instance, Section 6 of Public Act 11-141 requires DEEP to "commence a comprehensive evaluation of the property remediation programs and the provisions of the general statutes" affecting property remediation. The results of this evaluation are due to the legislature by Dec. 15, 2011. Other sections modify provisions of the Transfer Act Program. In this regard, Sections 4 and 10 of Public Act 11-141 clarify the scope of a certifying party's obligations under the Transfer Act Program.

Scope Of Liabilities

As of Oct. 1, 2011, Public Act 11-162 prohibits DEEP from modifying remediation standards specified in consent orders entered by the department and a party in connection with land remediation. This law affords parties some planning certainty in that the standards agreed to in a consent order cannot be changed during the duration of the consent order if more strict standards are adopted by the state during that period. However, the statute provides that the consent order standards may be modified by agreement of both parties.

In response to issues relating to concerns

about personal liability claims arising from recreational use of government properties, Public Act 11-211 limits state and municipal liability with regard to certain types of land available for public use without charge for recreational purposes. The law became effective on Oct. 1, 2011.

Public Act 11-200 expands the period of time in which to bring a lawsuit for a personal injury or death caused by exposure to asbestos. As of July 13, 2011, the period of time during which a person can file a lawsuit for personal injuries arising from asbestos increases from 60 to 80 years after the person's last contact with or exposure to asbestos. The 30-year statute of limitations for claims relating to property damage remains unchanged.

Other Environmental Bills

Among the bill passed this year, the legislature also addressed:

- **Wind Power Projects:** Public Act 11-245 creates a moratorium on all wind power projects in Connecticut until the Connecticut Siting Council promulgates regulations governing the siting of such projects. Also pertaining to the Siting Council, Gov. Dannel Malloy vetoed House Bill 6250 (An Act Concerning the Siting Council) relating to the review of applications for television and cell phone towers.
- **Paint Stewardship:** Public Act 11-24 establishes a new program to manage unused and unwanted "architectural paint" in the state. The program will be funded by an assessment on each container of paint sold in Connecticut, to be paid by paint producers. "Architectural paint" is defined as interior and exterior architectural coatings sold in containers of five gallons or less, excluding industrial, original equipment or specialty coatings.
- **Ban on Bisphenol-A in Receipt Paper:** Public Act 11-222 bans the manufacture, sale or use of Bisphenol-A in thermal re-

ceipt paper as of Oct. 1, 2013. The chemical is commonly used in paper utilized for ATM and cash register receipts. This ban may be delayed until July 1, 2015 if the federal Environmental Protection Agency determines there is no safe, alternative available to replace Bisphenol-A at this time.

- **Ban on Certain Button Cell Batteries:** As of July 1, 2011, Public Act 11-231 prohibits the sale or distribution of button cell batteries containing mercury for promotional batteries or any product containing button cell batteries. Two types of batteries are not immediately subject to the ban: (1) mercury-silver oxide batteries used exclusively in a medical device to automatically deliver insulin to a person may be sold or distributed for promotional purposes until January 1, 2015 and (2) silver oxide batteries and any product containing them may be offered for sale or used for promotional purposes until July 1, 2012.

Looking To Future

Pursuant to Public Act 11-141, DEEP's Remediation Division has launched an extensive initiative to evaluate the state's current cleanup laws. Seeking input from all stakeholders, DEEP continues to hold open-forum remediation roundtables to receive comments and identify issues regarding the current regulatory framework. As part of this effort, the Commissioner appointed six working groups to each focus on a specific topic and issue their findings by the end of September. The results of these working group reports may form the basis for significant reform of DEEP's approach to remediation during the next legislative session.

Additionally, proposed legislation may again surface seeking to further expedite DEEP's environmental permitting processes and the streamlining of various environmental programs. ■