



Environmental and Utilities Legal Update

New Revisions to the Connecticut Property Transfer Act

Public Act No. 09-235, An Act Concerning Brownfields Development Projects (the "Act") was signed into law on June 25, 2009, making important changes to the Connecticut Property Transfer Act (the "Transfer Act").

Section 2 of the Act amends C.G.S. § 22a-134(1)(B) and broadens the types of transfers to and from a municipality that are *not* "transfers of establishments." The list of exempted conveyances now includes the exercise of eminent domain or condemnation under various economic development statutes, the purchase by a municipality of a "brownfield" authorized by its legislative body to acquire property through eminent domain, and tax foreclosure of the property, as well as the subsequent transfer by the municipality to a third party. To qualify for the exemption, however, the party acquiring property or the municipality must enter and remain in the voluntary remediation program administered under C.G.S. § 22a-133x. Transfers to entities responsible for the environmental conditions at the property are not exempt.

Subsection (b) of Section 5 of the Act imposes a six-year statute of limitations for a transferee's recovery of damages arising from the transferor's failure to comply with the Transfer Act. The new statute of limitations runs from the later of "(1) the due date for the filing of the appropriate transfer form pursuant to section 22a-134a, as amended by this act, or (2) the actual filing date of the appropriate transfer form." Subsection (c) of Section 5 of the Act also applies this limitations period to cover "costs associated with investigations and remediations defined in subsection (n) of section 22a-452, as amended by this act, and all direct and indirect damages, except any action that becomes final and is no longer subject to appeal on or before October 1, 2009."

One of the most important changes to the Transfer Act is found in Section 8, which provides a new option for submitting an interim verification. Interim verifications are filed when the investigation is performed in accordance with prevailing standards and guidelines and remediation is completed in accordance with the Remediation Standard Regulations, but the remediation standards for groundwater have not yet been met. The interim verification must include long-term plans for implementing a procedure to achieve the groundwater standards, such as monitored natural attenuation. The interim verification cannot be completed until all groundwater exposure pathways have met the remediation standards.

The interim verification fits neatly into Section 9 of the Act, which amends C.G.S. § 22a-134a(g)(1) to require a certifying party submitting a Form III or Form IV *after* October 1, 2009, to submit either an interim or final verification to the commissioner within eight years. The commissioner has the authority to grant requests for extensions.

Parties to earlier Transfer Act filings should revisit their potential obligations and claims in light of these new amendments. Future transactions involving the Transfer Act should also incorporate the key revisions to evaluate potential options and ensure appropriate protection.

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