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Honorable Peter F. Villano
House of Representatives
State Capitol
Hartford, CT 06106-1591

Dear ^{Peter} Representative Villano:

CO?

In your letter of August 29, 2006, you ask for an opinion as to the responsibility of the Department of Environmental Protection ("DEP"), under our statutes and regulations, for assuming financial cost of repairing homes sitting on contaminated soil in the Newhall neighborhood in Hamden. You further state in your letter that DEP staff has indicated that the Department will pay for remediation of the contaminated soil but not for repairs that will reverse deterioration and assure the integrity of these homes. As you are aware, I am permitted to issue a formal opinion only at the request of the leadership, but the following information may be helpful to you.

Our central conclusion is that monies may be provided by the DEP under the superfund program to repair homes and other purposes resulting from hazardous waste contamination.

There are two statutory vehicles that authorize the Commissioner of Environmental Protection to spend state funds for the removal of hazardous waste. The first, Conn. Gen. Stat. §22a-451, authorizes the Commissioner to expend funds from the Emergency Spill Response Account to act in an emergency situation. The second, Conn. Gen. Stat. §22a-133a through 22a-133k, which comprise the state's superfund program, provides the Commissioner of DEP with authority to spend state funds to perform a remedial action, in accordance with §22a-133e, which the Commissioner deems is necessary. Whereas §22a-451 authorizes the expenditure of state funds in an emergency situation, the state's superfund program authorizes the expenditure of state funds to provide for a permanent remedy, which is defined in §22a-133a(4) as a "final remedial action." Because the Newhall neighborhood does not involve an emergency spill situation, the state's superfund program appears to be the appropriate funding vehicle available to the Commissioner in a non-emergency situation.

Under the state's superfund program, the term "remedial action" is defined in §22a-133a(2) to mean "the discovery and evaluation of hazardous waste disposal sites, the containment or removal of hazardous waste from and mitigation of the effects of hazardous waste on such sites to the satisfaction of the commissioner..." (emphasis added)

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Therefore, under the state's superfund program, the Department of Environmental Protection may be able to assume the cost of the home repairs if the Commissioner, pursuant to §22a-133e, determines as part of the remedial action that the repairs are necessary to mitigate the effects of hazardous waste.

If I can be of additional assistance, do not hesitate to contact me.

Very truly yours,



RICHARD BLUMENTHAL

RB/JML/km