

CBIA e² Waste Task Force Summary

July 17, 2020

Harold Blinderman: Day Pitney LLP

Mark Bobman: Bristol Resource Recovery

Issue	Notes
DEEP ANNOUNCEMENT – RELEASE REPORTING REGULATIONS – STAKEHOLDER ENGAGEMENT	<ul style="list-style-type: none"> On July 8, 2020, DEEP posted an announcement that it is commencing a process to develop and promulgate regulations for the reporting of releases pursuant to Connecticut General Statute Section 22a-450. As part of that development process, DEEP will be holding a stakeholder engagement for interested parties to provide input on the concepts for these regulations. A virtual presentation and opportunity for public input will be provided on July 20, 2020, at 11:00 am. The presentation will be followed by a comment period ending at 4:00pm on August 20, 2020. Register in advance for this meeting at: https://ctdeep.zoom.us/meeting/register/tJ0tceiqqT8uG9wGzUmkhbgkuMJA7k3DQG2 As stated in the announcement, DEEP “believes that transitioning to a release-based framework for regulating cleanups of contaminated properties will benefit the State’s economy and environment ... and ... hopes to engage stakeholders on an approach to spill regulations that focuses on new releases within existing authority, in a manner that will be compatible with and supportive of a release-based framework should the General Assembly enact legislation authorizing such a framework in the future.”
DEEP – Cleanup Transformation	<ul style="list-style-type: none"> RSR Wave 2 Proposed Regulations/Environmental Use Restriction Proposed Revisions/Spill Reporting <ul style="list-style-type: none"> ❖ Awaiting hearing officer’s reports on Wave 2 RSRs and EURs. ❖ “Soon”
CT Transfer Act	<ul style="list-style-type: none"> Transfer Act Working Group Report Issued February 25, 2020 SB-281 - AN ACT CONCERNING VARIOUS REVISIONS TO THE PROPERTY TRANSFER LAW <ul style="list-style-type: none"> ❖ Sections 1-5 address recommendations from the Transfer Act Working Group Report. Apparent working group consensus reached on these changes. If there is legislative consensus, there remains the possibility that these provisions could be passed by the legislature in 2020 ❖ The remaining sections seek to establish a release-based property remediation program and will not be taken up by legislature in 2020. Much more work to be done. Awaiting additional language from DEEP.

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DEEP COVID-19 Response	<ul style="list-style-type: none"> • Please see the DEEP website at https://portal.ct.gov/DEEP/COVID-19/DEEP-COVID-19-Response for a full description of DEEP's response to date. Of note: • DEEP has closed its offices to the public and the majority of DEEP's employees are working remotely. <ul style="list-style-type: none"> ❖ Wherever possible, DEEP programs are encouraging that submittals be sent digitally, rather than hard copy. Services that were previously available to in-person visitors at 79 Elm Street, Hartford may be accessible online. ❖ Select documents including Hazardous Waste Manifests are electronically accessible on the DEEP Document Online Search Portal. ❖ If you are looking to submit or pay for Registrations (Construction, Industrial and No Exposure) or Underground Storage Tank Notifications, go to DEEP's ezFile website. ❖ Access to DEEP's records center at 79 Elm Street, Hartford is not available to the public. Requests for records may be sent to DEEP.RecordsCenter@ct.gov. • Enforcement During COVID-19 <ul style="list-style-type: none"> ❖ Should extenuating circumstances associated with the COVID-19 emergency prevent a regulated entity from fully complying with environmental laws, DEEP recommends that the regulated entity document in detail and communicate in writing with DEEP as soon as practicable concerning the entity's inability to achieve full compliance. ❖ In the event that a regulated entity becomes aware that it did not or may not comply in a timely fashion with any requirement of Connecticut's environmental laws, including a license (permit, approval, registration, etc.) issued by DEEP, the regulated entity must document its compliance shortcoming(s), provide written notification to DEEP, and take all reasonable steps to achieve compliance without further delay. DEEP reserves the right to take action in response to non-compliance, taking into account the public health emergency and the particular facts and circumstances associated with a regulated entity's ability to achieve compliance. ❖ See https://portal.ct.gov/DEEP/Enforcement/Enforcement

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DEEP COVID-19 Response (continued)	<ul style="list-style-type: none"> • Fees <ul style="list-style-type: none"> ❖ Annual Fee Due Date Extension - DEEP is providing an extension to all annual fees due on 6/30/20 or 8/1/20 to the date of 9/30/20. Annual fee invoices will consequently be mailed out in early August. • Air <ul style="list-style-type: none"> ❖ Biennial Registration of X-Ray Devices - DEEP has extended the April 30, 2020 deadline to June 30, 2020, for biennial registration requirements for the operations of diagnostic and therapeutic x-ray devices, to ease the financial and administrative burden to the regulated community, many of whom are actively engaged in the COVID-19 public health response or are small businesses negatively impacted by the crisis. ❖ Continuous Emissions Monitoring (CEM) - DEEP is extending the April 30 deadline for the 1st Quarter reporting for Continuous Emissions Monitoring (CEM) (applicable to regulated businesses including fuel burning sources and municipal waste combustors). The new deadline will be June 1, 2020. ❖ Title V- DEEP is providing an extension to all Title V annual fees due on 7/1/2020 to the date of 9/30/20. Annual fee invoices will consequently be mailed out in early August. • Water <ul style="list-style-type: none"> ❖ Wastewater utilities have been classified as essential services pursuant to Executive Order No. 7H ❖ DEEP has established a dedicated address (DEEP.WPCF@ct.gov) for submission of Monthly Operating Reports and Aquatic Toxicity Monitoring Reports to allow facilities to submit those permit-required documents by email. ❖ DEEP is receiving files from dam owners electronically through email to DEEP.DamSafety@ct.gov or by uploading files to the dam Safety FTP site. Email DEEP.DamSafety@ct.gov to arrange access to electronic dam safety files. • Land & Water Resources Division <ul style="list-style-type: none"> ❖ The Land and Water Resource Division is accepting applications for the various regulatory programs it administers electronically through an ftp site. See https://portal.ct.gov/DEEP/COVID-19/DEEP-COVID-19-Response Applications are being reviewed and processed electronically in response to COVID-19.

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DEEP COVID-19 Response (continued)	<ul style="list-style-type: none"> • Remediation <ul style="list-style-type: none"> ❖ In order to maintain continuous processing of LEP verifications submitted to the Department, any LEP who submitted a verification after March 6, 2020, and for any verification submitted during the COVID-19 response, should email a copy of the verification form and verification report to Carolyn Fusaro at Carolyn.Fusaro@ct.gov • Other submittals from LEPs and regulated entities can be made electronically to the assigned project manager in the Remediation Division. • Licensed Environmental Professionals <ul style="list-style-type: none"> ❖ At its meeting on April 9, 2020, the State Board of Examiners of Environmental Professions addressed the following in response to the COVID-19 emergency: <ol style="list-style-type: none"> 1. The Board approved a waiver of the regulatory limitation on the number of credits a Licensed Environmental Professional (LEP) can receive from approved distance learning courses for the biennial period from July 1, 2019 through June 30, 2021. Only approved distance learning courses can be used for credit. 2. The Board clarified that a live webinar can be approved as a regular course for CECs. If the intent is to offer an on-demand version, i.e. not a live experience, then the course will need to be approved as a distance learning course, which, in addition to other requirements, is required to provide an assessment of learning at its conclusion on which the LEP needs to score at least 70%. 3. The LEP Exam currently scheduled for May 13, 2020 will be postponed. The Board is exploring an October date with the testing contractor. As an alternative, the Board will permit those admitted to take the current test to forego this year's test completely and take the regularly scheduled test for 2021 without needing to pay an additional fee

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<p>DEEP COVID-19 Response (continued)</p>	<ul style="list-style-type: none"> • Hazardous Waste <ul style="list-style-type: none"> ❖ Hazardous Waste Generators: Generators have contacted DEEP's Waste Engineering & Enforcement Division (WEED) asking what to do if it is impossible to comply with certain hazardous waste generator requirements due to the partial or complete shutdown of their facility during the COVID-19 pandemic. WEED responded with guidance for hazardous waste generators that may not be able to comply with requirements such as generator accumulation time limits and weekly container storage area inspections. See https://portal.ct.gov/-/media/DEEP/waste_management_and_disposal/hazardous_waste/HW-Generator-Accum-Time-and-Inspection-Requirements.pdf?la=en ❖ Hazardous Waste Transfer Facilities: A ten-day transfer facility in Connecticut inquired what to do if it is impossible for them to comply with their 10-day storage time limit due to delays in shipment caused the COVID-19 pandemic. WEED guidance can be found at https://portal.ct.gov/-/media/DEEP/waste_management_and_disposal/hazardous_waste/10-Day-Transfer-Facilities.pdf?la=en • Underground Storage Tanks <ul style="list-style-type: none"> ❖ DEEP has extended the life expectancy of underground storage tanks (UST) that otherwise would have reached the end of life expectancy between March 15, 2020 and September 30, 2020 to no later than December 31, 2020 if certain criteria are met. See https://portal.ct.gov/-/media/DEEP/COVID-19/COVID-19-Alternate-Life-Expectancy.pdf

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EPA ANNOUNCES TERMINATION OF COVID-19 ENFORCEMENT DISCRETION POLICY EFFECTIVE AUGUST 31	<ul style="list-style-type: none"> On June 29, 2020, EPA announced recently that its temporary policy regarding the exercise of enforcement discretion during the COVID-19 public health emergency (see below, pp. 8 - 10) will end on August 31, 2020. EPA's <i>COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program: Addendum on Termination</i> reminds regulated entities that they are expected to make every effort to comply with environmental laws and permits, and document any instances of noncompliance in accordance with EPA's Enforcement Discretion Policy. EPA may terminate the Enforcement Discretion Policy sooner than Aug. 31, 2020, based upon changing regional or national circumstances. EPA may also apply its enforcement discretion on a case-by-case basis after Aug. 31, 2020. EPA has not yet issued a termination addendum for its distinct interim guidance during the COVID-19 pandemic related to cleanups under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), Oil Pollution Act (OPA) and Underground Storage Tank (UST) program, as well as EPA emergency responses to releases or substantial threats of releases (see below, p. 7).
EPA INTERIM COVID-19 HEALTH AND SAFETY GUIDELINES FOR FIELD ACTIVITIES	<ul style="list-style-type: none"> On July 6, 2020, EPA issued two interim guidance documents pertaining to health and safety measures for field activities during the COVID-19 emergency (Interim COVID-19 Health and Safety Guidelines or the Guidelines). EPA's Interim COVID-19 Health and Safety Guidelines take into account national workforce-related COVID-19 guidance from other federal agencies, such as the Centers for Disease Control and Prevention (CDC) and the Occupational Health and Safety Administration (OSHA), and apply this guidance to environmental field activities. Specifically, the Guidelines provide information regarding appropriate COVID-19 personal protective equipment to be worn by EPA employees while engaged in field activities; field health and safety training; travel considerations; and other general recommendations that echo workplace guidance from the CDC and OSHA. EPA's Interim COVID-19 Health and Safety Guidelines also include a supplement to the standard Job Hazard Analysis (JHA Supplement) that EPA employees are required to submit before performing typical work activities in order to assess potential COVID-19 risk.

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<p>EPA COVID-19 Site Field Guidance dated April 10, 2020</p> <p>(No Change)</p>	<ul style="list-style-type: none"> On April 10, 2020, EPA issued interim guidance on field decisions for parties managing cleanups under CERCLA, RCRA, and other remediation programs. See https://www.epa.gov/sites/production/files/2020-04/documents/interim_guidance_on_site_field_work_decisions_due_to_impacts_of_covid.pdf In general, the interim guidance (“Interim Guidance”) confirms that EPA expects to make case-by-case decisions. As with its March 26, 2020 guidance, this policy applies to sites where EPA is the lead agency or has direct oversight. EPA identified certain circumstances that may impair a party’s ability to comply with response requirements, such as where (1) a site worker has tested positive for COVID-19, (2) social distancing is not possible at a site, (3) there may be interactions with high-risk groups (including work in homes), and (4) local authorities have restricted travel or requested that particular work or types of work stop. <i>Interim Guidance at 2-3.</i> EPA regions will consider three broad factors in determining whether field work should continue, but EPA explained that these factors “should not be considered in a manner that would override protection against unnecessary potential exposure to COVID-19.” The three factors are whether: <ul style="list-style-type: none"> ❖ failure to continue response actions would likely pose an imminent and substantial endangerment to human health and the environment and whether it is practical to continue such actions; ❖ maintaining any response actions would lead to a reduction in human health risk/exposure within the ensuing six months; and ❖ work that would not provide near-term reduction in human health risk could be more strongly considered for delay, suspension or rescheduling of site work, in coordination with state, tribal and local officials and with updated health and safety plans as appropriate. <i>Interim Guidance at 4-5.</i> Before taking any steps to reduce or suspend response actions due to COVID-19, companies should consult any consent decrees, administrative agreements or other enforcement instruments. Companies are expected to follow any applicable provisions governing schedule adjustments, force majeure, and notice and should proactively contact EPA if any delay in performance is expected. <i>Interim Guidance at 2-4.</i> While EPA will consider reducing or suspending field work due to COVID-19, EPA expects work on off-site activities, including investigation reports, modeling, workplans, progress reports and maintaining compliance with financial assurance and other obligations, to continue unless such activities would also risk COVID-19 exposure. <i>Interim Guidance at 5.</i>

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<p>EPA COVID-19 Enforcement Guidance dated March 26, 2020</p> <p>(Expires August 31, 2020)</p>	<ul style="list-style-type: none"> • Summary <ul style="list-style-type: none"> ❖ On March 26, 2020, EPA issued a memorandum entitled <i>COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program</i> (the "COVID-19 Memorandum"). See https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf ❖ Through the COVID-19 Memorandum, subject to several conditions, EPA adopted a policy of not seeking penalties for violations of routine compliance monitoring and reporting requirements caused by COVID-19. With respect to other potential violations (emissions limit exceedances, etc.) EPA will take the COVID-19 pandemic into account when considering the whether an enforcement response is appropriate. ❖ In addition, subject to several conditions, generators of hazardous unable to meet regulatory timeframes to transfer waste off-site due to the COVID-19 pandemic will continue to be treated as generators, not treatment, storage, and disposal facilities. ❖ The COVID-19 Memorandum <u>does not apply</u> to: 1) prevention of, response to, or reporting of accidental releases, 2) criminal violations, or 3) activities carried out under Superfund and RCRA Corrective Action enforcement instruments (separate policies are expected). <i>COVID-19 Memorandum at 2, 7.</i> ❖ In addition, EPA suggests that facilities subject to an administrative order or consent decree take advantage of force majeure provisions of those agreements.

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<p>EPA COVID-19 Enforcement Guidance dated March 26, 2020 (continued)</p> <p>(Expires August 31, 2020)</p>	<ul style="list-style-type: none"> • Conditions on Enforcement Discretion <ul style="list-style-type: none"> ❖ The exercise of any enforcement discretion under the COVID-19 Memorandum is conditioned upon: <ol style="list-style-type: none"> 1. Entities should make every effort to comply with their environmental compliance obligations, and 2. If compliance is not reasonably practicable, facilities with environmental compliance obligations should: <ol style="list-style-type: none"> a Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19; b Identify the specific nature and dates of the noncompliance; c Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity; d Return to compliance as soon as possible; and e Document the information, action, or condition specified in a. through d. • Routine Compliance Monitoring and Reporting <ul style="list-style-type: none"> ❖ The COVID-19 Memorandum outlines EPA’s decision to use its enforcement discretion not to seek penalties for “violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request.” <i>COVID-19 Memorandum at 3.</i> • Settlement Agreements and Consent Decrees <ul style="list-style-type: none"> ❖ For facilities subject to USEPA administrative settlement orders or consent decrees to which USEPA is a party, facilities should use the force majeure provisions in those documents, including any required notice provisions. <i>COVID-19 Memorandum at 4.</i>

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<p>EPA COVID-19 Enforcement Guidance dated March 26, 2020 (continued)</p> <p>(Expires August 31, 2020)</p>	<ul style="list-style-type: none"> • Facility Operations, including Failure of Air Emission Control or Wastewater or Waste Treatment Systems or other Facility Equipment <ul style="list-style-type: none"> ❖ The affected facility should submit a notification to the regulatory authority as soon as possible. “The notification also should include information on the pollutants emitted, discharged, discarded, or released; the comparison between the expected emissions or discharges, disposal, or release and any applicable limitation(s); and the expected duration and timing of the exceedance(s) or releases.” <i>COVID-19 Memorandum at 5.</i> EPA will evaluate the information submitted, and “The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether an enforcement response is appropriate.” <i>COVID-19 Memorandum at 5.</i> • Hazardous Waste Generators <ul style="list-style-type: none"> ❖ If a facility is a generator of hazardous waste and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer the waste off-site within the time periods required under RCRA to maintain its generator status, the facility should continue to properly label and store such waste and take the steps identified above to qualify for enforcement discretion. If these steps are met, as an exercise of enforcement discretion, the <u>EPA will treat such entities to be hazardous waste generators, and not treatment, storage and disposal facilities.</u> ❖ In addition, as an exercise of enforcement discretion, the EPA will treat Very Small Quantity Generators and Small Quantity Generators as retaining that status, even if the amount of hazardous waste stored on site exceeds a regulatory volume threshold due to the generator’s inability to arrange for shipping of hazardous waste off of the generator’s site due to the COVID-19 pandemic. <i>COVID-19 Memorandum at 5-6.</i> • Public Water Systems <ul style="list-style-type: none"> ❖ In the COVID-19 Memorandum, EPA “strongly encourages public water systems to consult with the state and EPA regional offices without delay if issues arise that prevent the normal delivery of safe drinking water and encourages states to continue to work closely with the EPA on measures to address the potential impacts of COVID-19.

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EPA Recycling Guidance	<ul style="list-style-type: none"> • “Don’t Recycle PPE” <ul style="list-style-type: none"> ❖ https://www.youtube.com/watch?v=S1cERI3lbeY&feature=youtu.be • “Recycling During the Health Crisis” <ul style="list-style-type: none"> ❖ https://www.youtube.com/watch?v=_ADZ8vH-r4M&feature=youtu.be
EPA Guidance	<ul style="list-style-type: none"> • EPA Proposes Rule to Formalize Guidance Document Process <ul style="list-style-type: none"> ❖ Agency guidance will be subject to certain standards and procedures under a proposed rule published by EPA in the <i>Federal Register</i> on May 22, 2020. According to EPA, the proposed rule is “intended to increase the transparency of EPA’s guidance practices and improve the process used to manage EPA guidance documents.” EPA will accept written comments on the proposed rule until June 22, 2020. ❖ Consistent with Executive Order 13891, <i>Promoting the Rule of Law Through Improved Agency Guidance Documents</i> (October 9, 2019), the proposed rule: <ul style="list-style-type: none"> • Provides that EPA will use an online portal to clearly identify guidance documents, • Defines “guidance document” and “significant guidance document,” • Establishes standard elements for such guidance documents and significant guidance documents, • Establishes procedures for public comment on proposed significant guidance documents, and • Establishes procedures for the public to request that an active guidance document be modified or withdraw

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DEEP	<ul style="list-style-type: none"> • New LEP Verification Process <ul style="list-style-type: none"> ❖ For LEP Verifications submitted after March 4, 2020, Notices of Insufficiency will be replaced by Administrative Rejections. ❖ A copy of the first and last page of the Verification Form (VF) will be stamped “Rejected” by DEEP, initialed, and dated by the Assistant Director of the Remediation Division. ❖ See https://www.ct.gov/deep/lib/deep/site_clean_up/lep/verifications/adminrejection_factsheet.pdf
Remediation Roundtable/ Solid Waste Advisory Committee	<ul style="list-style-type: none"> • Next meeting of the Remediation Roundtable is July 21, 2020 via Zoom from 1:30 – 3:30 PM Agenda is posted on the Remediation Roundtable page of DEEP’s website. See https://portal.ct.gov/-/media/DEEP/site_clean_up/remediation_roundtable/Roundtable_Agenda7_21_20.pdf • Solid Waste Advisory Committee -- next meeting currently scheduled for October 27, 2020.
New England Capacity Crisis MIRA/PA 14-94	<ul style="list-style-type: none"> • PA 14-94 – “Resource Rediscovery”, Solid Waste Management Plans <ul style="list-style-type: none"> ❖ May 8 Hartford Business Journal, quoting MIRA’s report to DEEP: “Most all [sic] towns insist on the need for the project to have competitive pricing absent which they will be forced for fiscal reasons to consider utilization of less desirable disposal options,” including shipping garbage to out-of-state landfills.”

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PFAS	<ul style="list-style-type: none"> • States Seek PFAS Requirements in Industrial Stormwater General Permit <ul style="list-style-type: none"> ❖ Colorado, Massachusetts, and New Mexico recently submitted comments on EPA’s draft Multi-Sector General Permit (MSGP) that ask EPA to require permitted industrial facilities to monitor PFAS in their stormwater discharges and to develop practices intended to minimize the potential for PFAS to be introduced into stormwater. ❖ Both Massachusetts and New Mexico—two states where the new MSGP will apply—requested that the MSGP require permitted facilities to monitor their stormwater discharges for PFAS. Massachusetts proposes that EPA should require annual monitoring of, at a minimum, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) in numerous sectors covered by the MSGP. ❖ The MSGP covers industrial stormwater discharges in the jurisdictions where EPA is the NPDES permitting authority, including Massachusetts, New Hampshire, Idaho, New Mexico, the District of Columbia, Puerto Rico, and tribal lands. EPA will likely issue the final MSGP sometime this fall. The MSGP should be watched closely as delegated states often look to the federal MSGP as a model for developing state general permit terms. • EPA Adds PFAS to 313 TRI Reporting for 2020 <ul style="list-style-type: none"> ❖ On May 18, 2020, EPA announced its final rule to add 172 per- and polyfluoroalkyl substances (PFAS) to the list of chemicals required to be reported annually under the EPCRA Section 313 Toxics Release Inventory (TRI) reporting requirements, and established a 100-pound reporting threshold for these substances. ❖ TRI Reporters need to collect information beginning in 2020, for the July 2021 report of 2020 releases.
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