

CBIA e² Waste Task Force Summary
November 20, 2020

Harold Blinderman: Day Pitney LLP

Mark Bobman: Bristol Resource Recovery

Issue	Notes
<p>DEEP – RELEASED – BASED REMEDIAION PROGRAM DEVELOPMENT</p>	<ul style="list-style-type: none"> • On October 2, Gov. Ned Lamont signed into law P.A. 20-9, "An Act Revising Provisions of the Transfer Act and Authorizing the Development and Implementation of a Release-Based Remediation Program". Effective immediately, P.A. 20-9 adopts important changes to the Connecticut Transfer Act (C.G.S. §§ 22a-134 et seq.) and provisions for an eventual transition from remediation under the Transfer Act to a new release-based reporting and remediation program in Connecticut. • P.A. 20-9 Revisions: <ul style="list-style-type: none"> ❖ P.A. 20-9 consolidates, clarifies and eliminates a number of the 29 exclusions from the "transfer of an establishment" definition in the Transfer Act. The revisions include (1) the exclusion of the transfer of a unit in a residential common-interest community, (2) the exclusion of transfers of ownership interests of 50 percent or less, (3) the transfer to and from municipalities using specified mechanisms, and (4) a name change for a limited liability company (LLC). In connection with the clarification of the exclusion for transfers of residential units, the Public Act revises statutory provisions setting forth the obligations of the common-interest community's declarant. ❖ P.A. 20-9 further revises the definition of "establishment" definition. The amendments clarify that "universal waste" is excluded from the definition of "hazardous waste" when determining Transfer Act applicability. And for industrial/commercial condominium properties and multitenant properties, the P.A. 20-9 defines the extent of the regulated area requiring investigation and, as necessary, remediation to comply with the Transfer Act by reference to the footprint of the industrial/commercial unit or the areal extent of the space leased by the establishment along with any other areas within the common-interest community or the multitenant space used by the establishment as part of its operations. P.A. 20-9 further clarifies the point at which a transfer of a property will no longer trigger the need to comply with the Transfer Act. ❖ Sections 15 through 23 of P.A. 20-9 provide a broad framework for the planned transitioning from remediation under the Transfer Act program to a release-based reporting and remediation program. The new program will be triggered when there is the discovery of a release. <i>However, these sections are not</i>

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<p>DEEP – RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT (continued)</p>	<p><i>effective until DEEP adopts, amends and/or repeals regulations as necessary for the purposes of Sections 15 through 23. Once the release-based program is in effect, any person who creates or maintains a covered release at any commercial, industrial or residential property will be required to report and then remediate the reported release in accordance with the regulations to be promulgated.</i></p> <ul style="list-style-type: none"> ❖ Section 18 addresses DEEP's enforcement of the release-based reporting and remediation requirements, providing for, among other things, the issuance of cease and desist orders and the assessment of civil penalties. ❖ At various points in Sections 16 through 22, certain categories of releases are excluded from the release-based reporting and remediation requirements. These exclusions include: <ul style="list-style-type: none"> ▪ Historic releases where the only evidence of the release is data available or generated prior to the adoption of the regulations for the release-based program. ▪ Certain releases being investigated and remediated under the Transfer Act. ▪ Releases occurring after the filing of a Form III or IV under the Transfer Act but before the completion of a Phase II investigation. ▪ Certain releases at a property being remediated under an existing Connecticut brownfield program. ▪ Releases, if any, DEEP might exclude from all or part of the statutory requirements in the yet to be adopted regulations. ❖ The Public Act provides certain liability protection for persons who did not create a release but properly report and clean up the release. This protection will be unavailable to a property owner if, for example, the owner fails to comply with EURs or variance requirements. ❖ The Public Act identifies some of the components of the regulations to be adopted by DEEP. Among these components, DEEP is directed to establish tiers of releases, taking into consideration the significance, extent and potential risk of the release. Section 19(b) directs DEEP, in conjunction with the Department of Economic and Community Development (“DECD”), to convene a working group to provide advice and feedback on the regulations to be adopted by DEEP. This working group is to meet monthly until the regulations are adopted.

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<p>DEEP – RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT (continued)</p>	<ul style="list-style-type: none"> • Implementation: <ul style="list-style-type: none"> ❖ DEEP and DECD have launched a new webpage associated with the development of release-based cleanup program regulations. All documents and opportunities for stakeholder participation in the development of a release-based cleanup program can be found at DEEPs Release-Based Clean Up Program Regulation Development webpage. ❖ The Commissioners of DECD and DEEP will co-convene a working group, in accordance with section 19 of P.A. 20-9, for the purpose of receiving advice and feedback for regulations to be adopted by DEEP. The Public Act specifies that the Working Group be comprised of certain member-based stakeholders. DEEP and DECD have solicited nominations from the various membership groups listed in the statute. DEEP and DECD are also seeking participants from: <ul style="list-style-type: none"> ▪ Licensed Environmental Professionals ▪ Representatives of environmental advocacy groups ▪ Municipal representatives ▪ Members of the general public ❖ The first Working Group meeting will be held on December 8, 2020 from 1 – 3 pm via Zoom and will be open to the public. Details of all meetings of the Working Group will be posted on the DEEP’s Release-Based Working Group Meetings webpage. ❖ DECD and DEEP have posted potential topical subcommittees on DEEP’s Release-Based Cleanup Program Topical Subcommittees webpage. DECD and DEEP will discuss public comments and finalize the subcommittee topics with the members of the Working Group at its first meeting on December 8, 2020. There will be the opportunity for additional stakeholders to serve on Subcommittees. ❖ DEEP’s current schedule is as follows: <ul style="list-style-type: none"> ▪ November 6-17, 2020 Solicitation of nominations for the Working Group ▪ November 17, 2020 Posting of the topical subcommittee concept ideas ▪ December 8, 2020 First Working Group meeting ▪ December 11, 2020 Solicitation of nominations for subcommittees ▪ January 12, 2020 Second Working Group meeting

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<p>AN ACT CONCERNING ENHANCEMENTS TO THE STATE'S ENVIRONMENTAL JUSTICE LAW</p>	<ul style="list-style-type: none"> • HB 7008, LCO 4341 <ul style="list-style-type: none"> ❖ "Community environmental benefit agreement" means a written agreement entered into by the <u>chief elected official or town manager of</u> a municipality and an owner or developer of real property... provide financial resources for the purpose of the mitigation of... impacts on the environment, <u>including, but not limited to, air quality and watercourses, quality of life, asthma rates, traffic, parking and 46 noise.</u>
<p>DEEP – CLEAN UP TRANSFORMATION</p>	<ul style="list-style-type: none"> • RSR Wave 2 Proposed Regulations/Environmental Use Restriction (EUR) Proposed Revisions <ul style="list-style-type: none"> ❖ Hearing officer's reports on Wave 2 RSRs and EURs were posted on July 23, 2020. ❖ Both sets of regulation packages were submitted to the Legislative Regulation Review Committee (LRR) on September 1, 2020. <ul style="list-style-type: none"> ▪ For Wave 2: see https://eregulations.ct.gov/eRegsPortal/Search/RMRView/PR2016-005 ▪ For the EURs: see https://eregulations.ct.gov/eRegsPortal/Search/RMRView/PR2017-071 ❖ On October 16, 2020, the Legislative Commissioner's Office (LCO) issued two memoranda, one for each set of regulation packages, both of which identified substantive concerns, technical corrections and concluded with the recommendation that the LRR reject without prejudice the respective regulation package. ❖ Consistent with the LCO's memoranda, both sets of regulation packages were subsequently rejected without prejudice by the LRR on October 27, 2020. ❖ On October 30, 2020, updated RSRs were approved as to legal sufficiency by the CT Attorney General and were resubmitted to the LRR by DEEP, along with a response document that reviews DEEPs responses to each of the LCO's recommendations. ❖ On November 2, 2020, the updated EUR Regulations were approved as to legal sufficiency by the CT Attorney General and the updated EUR Regulations were then resubmitted to the LRR, along with a response document that reviews DEEPs responses to each of the LCO's recommendations, on November 3, 2020. ❖ Both sets of updated regulation packages will be before the LRR at the November 24, 2020 meeting. ❖ The LRR decision due date for both sets of updated regulation packages is December 8, 2020.

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<p>DEEP -- RELEASE REPORTING</p>	<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, on July 20, 2020, held a stakeholder meeting for interested parties to provide input on DEEP’s proposed framework for these regulations. • DEEP asked for public comments on their framework by August 20, 2020 and plans to post a summary of comments on their website. • DEEP anticipates public notice of proposed draft language around the start of 2021. • For further information see: https://portal.ct.gov/DEEP/Emergency-Response-and-Spill-Prevention/Emergency-Response-and-Spill-Prevention
<p>DEEP COVID-19 Response</p>	<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

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<p>DEEP COVID-19 Response (continued)</p>	<p>achieve full compliance.</p> <ul style="list-style-type: none"> ❖ 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
<p>EPA TERMINATES COVID-19 ENFORCEMENT DISCRETION POLICY</p>	<ul style="list-style-type: none"> • EPA’s temporary policy regarding the exercise of enforcement discretion during the COVID-19 public health emergency ended 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.
<p>EPA Recycling Guidance</p>	<ul style="list-style-type: none"> • “Don’t Recycle PPE” <ul style="list-style-type: none"> ❖ https://www.youtube.com/watch?v=S1cERi3IbeY&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
<p>DEEP</p>	<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

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<p>Connecticut Coalition for Sustainable Materials Management (CCSMM)</p>	<ul style="list-style-type: none"> • DEEP and participating municipalities from across the state have participated in the <i>Connecticut Coalition for Sustainable Materials Management (CCSMM)</i> to explore ways to reduce the amount of waste generated the state <ul style="list-style-type: none"> ❖ improve reuse, recycling ❖ organics collection ❖ unit based pricing (pay as you throw) ❖ extended producer responsibility (EPR) • Alternative Funding Options: <ul style="list-style-type: none"> ❖ According to DEEP, landfill capacity is expected to decrease by 40% in the next 5 years ❖ DEEP noted that comparing a solid waste assessment (\$/ton) is lowest in Wisconsin (\$13/ton) ❖ Options: a) apply a fee to all MSW including construction & demolition waste and other wastes delivered to transfer stations/volume reduction facilities; b) performance-based differentials to a solid waste assessment to reward success in achieving or supporting diversion. • This initiative is co-chaired by: <ul style="list-style-type: none"> ○ Katie Dykes, DEEP Commissioner ○ Laura Francis, First Selectman, Durham ○ Matt Knickerbocker, First Selectman, Bethel • For further information please go to: https://portal.ct.gov/DEEP-CCSMM