

CBIA e² Waste Task Force Summary

February 19, 2021

Harold Blinderman: Day Pitney LLP

Mark Bobman: Bristol Resource Recovery

Issue	Notes
<p>DEEP: RELEASED – BASED REMEDATION PROGRAM DEVELOPMENT</p>	<ul style="list-style-type: none"> • On October 2, 2020, 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. • Implementation and Working Group: <ul style="list-style-type: none"> ❖ DEEP and DECD have created a 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 Working Group established by P.A. 20-9 for the purpose of receiving advice and feedback for regulations to be adopted by DEEP meets the second Tuesday of every month via Zoom from 1:00 P.M. to 2:30 P.M. All meetings are open to the public. Details of all meetings of the Working Group are posted on the DEEP's Release-Based Working Group Meetings webpage. The most recent meeting of the Working Group was February 9; the next Working Group is March 9. A list of Working Group members can be found at https://portal.ct.gov/-/media/DEEP/site_clean_up/comprehensive_evaluation/Release-Based/Workgroup-Members.pdf ❖ The Working Group has initially established 5 topical subcommittees to assist it with addressing substantive aspects of regulation development. There will be the opportunity for additional stakeholders to serve on Subcommittees. See https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Topical-Subcommittee-Meetings

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<p>DEEP: RELEASED – BASED REMEDATION PROGRAM DEVELOPMENT (continued)</p>	<ul style="list-style-type: none"> ❖ Topical subcommittees are as follows: <ul style="list-style-type: none"> ▪ Discovery of Historical Releases ▪ Reporting Newly-Discovered Historical Releases ▪ Characterization of a Discovered Release ▪ Immediate Removal Actions ▪ Tiers & Other subcommittees are under consideration. • For Background - 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

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<p>DEEP: RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT (continued)</p>	<p>new program will be triggered when there is the discovery of a release. <i>However, these sections are not 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: 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 (LRRC) 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 LRRC 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 LRRC 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 LRRC by DEEP. ❖ On November 3, 2020, the updated EUR Regulations were resubmitted to the LRRC. ❖ On November 24, 2020, both sets of regulation packages were subsequently rejected without prejudice by the LRRC. ❖ On January 4, 2021, DEEP resubmitted updated regulation packages to the LRRC. ❖ On January 26, 2021, the LRRC approved the RSR and EUR regulations as revised ❖ Both sets of regulations became effective on February 16, 2021

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DEEP: RELEASE REPORTING	<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 in early 2021. For further information see: https://portal.ct.gov/DEEP/Emergency-Response-and-Spill-Prevention/Emergency-Response-and-Spill-Prevention
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

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DEEP: COVID-19 Response (continued)	<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
EPA TERMINATES COVID-19 ENFORCEMENT DISCRETION POLICY	<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.

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EPA Civil Monetary Penalty Adjustments	<ul style="list-style-type: none"> On December 23, EPA published its annual civil monetary penalty adjustments in the Federal Register. The Federal Civil Penalties Inflation Adjustment Act of 2015 requires federal agencies to make annual inflation adjustments to federal statutory civil penalty amounts. The annual inflation adjustments are based on a cost-of-living multiplier determined by changes to the Consumer Price Index. This year's inflation multiplier is 1.01182. The increased civil penalty amounts apply to every major environmental statute, including the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), and the Emergency Planning and Community Right-to-Know Act (EPCRA), among others. For these programs, the <u>maximum</u> civil penalty amounts increased as follows: <ul style="list-style-type: none"> ❖ CAA civil penalties increased to \$102,638 (from \$101,439) per day, per violation. ❖ CWA civil penalties increased to \$56,460 (from \$55,800) per day, per violation. ❖ SDWA civil penalties increased to \$59,017 (from \$58,328) per day, per violation. ❖ RCRA civil penalties increased to \$76,764 (from \$75,867) per day, per violation. ❖ TSCA civil penalties increased to \$41,056 (from \$40,576) per day, per violation. ❖ EPCRA civil penalties increased to \$59,017 (from \$58,328) per day, per violation. The adjusted amounts apply to penalties assessed on or after December 23, 2020 for violations that occurred after November 2, 2015, the date Congress enacted the penalty adjustment legislation. Despite these increases, the EPA continues to have discretion to take into account certain factual circumstances when issuing civil penalties, including "the seriousness of the violation, the violator's good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator's ability to pay."
Food & Drug Administration	<ul style="list-style-type: none"> Coronavirus (COVID-19) Update: FDA takes action to place import alert on alcohol-based hand sanitizers from Mexico FDA issued guidance outlining the agency's policy for drug manufacturers and compounders to test alcohol or isopropyl alcohol for methanol contamination prior to using the alcohol to produce drugs, including hand sanitizer products. <ul style="list-style-type: none"> ❖ applies to all pharmaceutical alcohol used as an active or inactive ingredient in a drug, including hand sanitizer under the FDA's temporary policies for preparing alcohol-based hand sanitizer

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EPA TSCA	<ul style="list-style-type: none"> • EPA is seeking input from small businesses, governments, and not-for-profits (Small Entity Representatives – SERs) to provide advice and recommendations to a Small Business Advocacy Review (SBAR) panel for Chrysotile Asbestos to focus on the agency’s development of a proposed rule • Persistent, Bioaccumulative, and Toxic (PBT) Chemicals under TSCA Section 6(h) – EPA issued five final rules for PBTs: <ul style="list-style-type: none"> ❖ decabromodiphenyl ether (DecaBDE) ❖ isopropylated phosphate (3:1) (PIP (3:1)) ❖ 2,4,6-Tris(tert-butyl)phenol (2,4,6-TTBP) ❖ hexachlorobutadiene (HCBD) ❖ pentachlorothiophenol (PCTP)
Connecticut Coalition for Sustainable Materials Management (CCSMM)	<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</i> (CCSMM) 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) and extended producer responsibility (EPR) • DEEP organics infrastructure – introductory meeting February 26, 2020 from 10:00am to 1:00pm <ul style="list-style-type: none"> ❖ discussion with stakeholders to seek input ❖ registration at the following link: https://ctdeep.zoom.us/meeting/register/tJMrc-igqDkiHdyS65F_Riue9NGxepmOPGPa • For further information please go to: https://portal.ct.gov/DEEP-CCSMM
Preliminary legislative proposals	<ul style="list-style-type: none"> • Raised Bill No. 855, LCO No. 3161 – ENERGY AND TECHNOLOG COMMITTEE – “AN ACT CONCERNING THE DECOUPLING OF THE PUBLIC UTILITIES REGULATORY AUTHORITY AND THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION” <ul style="list-style-type: none"> ❖ public hearing on February 18, 2021 at 10:30 A.M. via Zoom