

**CBIA e<sup>2</sup> Waste Task Force Summary**  
**April 16, 2021**

Harold Blinderman: Day Pitney LLP

Mark Bobman: Bristol Resource Recovery

Issue	Notes
<p><b>DEEP: REVISIONS TO REMEDIATIONS STANDARD REGULATIONS AND ENVIRONMENTAL USE RESTRICTION REGULATIONS</b></p>	<ul style="list-style-type: none"> <li>• RSR Wave 2 Proposed Regulations/Environmental Use Restriction (EUR) Proposed Revisions:               <ul style="list-style-type: none"> <li>❖ <b>Both sets of regulations became effective on February 16, 2021</b></li> <li>❖ NEW: Environmental Use Restriction (EUR) Annual Inspection Form and Fact Sheet posted on DEEP website. See: <a href="https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Environmental-Use-Restrictions/Environmental-Use-Restrictions">https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Environmental-Use-Restrictions/Environmental-Use-Restrictions</a> <ul style="list-style-type: none"> <li>▪ Owners of property subject to an EUR are responsible for complying with Annual and Five Year Comprehensive Inspections. Beginning in 2021, Annual Inspections are to be completed every year between April 1st and July 31st, except in a year when a Five Year Comprehensive Inspection is required. The first Five Year Comprehensive Inspection will occur in 2025, where such inspection must be completed between April 1st and September 30th. Within 30 days of any inspection, an inspection report, using the form prescribed by DEEP, must be completed.</li> <li>▪ Owners of property subject to an EUR are responsible for ensuring that an EUR FactSheet is maintained either on the property i or with the person responsible for maintenance or operation of the property. The EUR FactSheet must be maintained until the EUR is permanently released or</li> </ul> </li> </ul> </li> </ul>

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<p><b>DEEP: REVISIONS TO REMEDIATIONS STANDARD REGULATIONS AND ENVIRONMENTAL USE RESTRICTION REGULATIONS (continued)</b></p>	<p style="text-align: center;">terminated in whole. For properties where an EUR was recorded before February 16, 2021, the EUR FactSheet must be completed and complied with by April 17, 2021.</p> <ul style="list-style-type: none"> <li>• <b>RSR Wave 2 Revisions – Background</b> <ul style="list-style-type: none"> <li>❖ The 2021 revisions introduce changes and clarifications to the existing RSRs, including those dealing with polluted soils containing pesticides, potential vapor migration from groundwater into buildings, management of widespread polluted fill, and use of pollutant background concentrations.</li> <li>❖ The EUR regulations replace the existing ELUR regulations, and while the revisions retain the Environmental Land Use Restriction (ELUR) mechanism, they also prescribe rules for the implementation of new Notice of Activity and Use Limitations (NAULs).           <ul style="list-style-type: none"> <li>▪ As DEEP implements these changes, the regulated community should be aware of the following based on informal guidance from DEEP:               <ul style="list-style-type: none"> <li>○ Verifications and ELURs finalized prior to February 16 are not affected.</li> <li>○ For ELUR applications submitted to DEEP before February 16 but not yet finalized, DEEP will distinguish between applications that were administratively "complete" on or before the effective date of the regulations and those either submitted after the effective date of the EUR regulations or not deemed complete prior to the effective date of the EUR regulations.                   <ul style="list-style-type: none"> <li>• ELUR applications for which DEEP, on or before February 16, issued a Notice of Administrative Completeness (NOAC), or communicated to the applicant that the application is administratively complete and that DEEP will be issuing an NOAC, will be reviewed under the 'old' regulations.</li> <li>• For ELUR applications that were not 'complete' by February 16, the new regulations will apply.</li> </ul> </li> </ul> </li> </ul> </li> </ul> </li> <li>• On March 11, 2021, DEEP posted a Notice of Intent (NOI) to adopt proposed Release Reporting Regulations. For a copy of the NOI, see: <a href="https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid={10B22178-0000-C51D-B82E-4EF94B6273DB}">https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid={10B22178-0000-C51D-B82E-4EF94B6273DB}</a></li> <li>• A public comment period to receive written comments runs until 5 PM on 5/10/21.</li> </ul>

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	<ul style="list-style-type: none"> <li>In addition to accepting written comments, DEEP has scheduled a public hearing obtain public comment on the proposed regulations. This hearing will be held through Zoom on April 27, 2020 beginning at 1:30 PM. As stated in the NOI, interested persons can register to attend the public hearing and express their views on the proposed regulations using the following link: <a href="https://ctdeep.zoom.us/meeting/register/tJlrfuGrrzggGNLbdhPh9saaieXlpOTf5uL9">https://ctdeep.zoom.us/meeting/register/tJlrfuGrrzggGNLbdhPh9saaieXlpOTf5uL9</a></li> </ul>
<b>DEEP: RELEASE REPORTING</b>	<ul style="list-style-type: none"> <li>NEW: CBIA is soliciting comments from E2 members to be incorporated into a public comment letter. To that end, a CBIA Spill Reporting working group meeting was held via zoom on April , 20121. If you would like to participate or have comments, please contact Ashley Zane. Possible comments include:               <ul style="list-style-type: none"> <li>❖ Proposed 1 hour cleanup “Exemption” gallon oil/petroleum releases is not realistic</li> <li>❖ Clarification requested that proposed regulations apply only to those releases that both occur and are discovered after the date of promulgation.</li> <li>❖ Clarification requested regarding follow-up reporting requirements if information is not available within the first hour.</li> <li>❖ Reporting of PCB Releases should be for releases greater than 50 ppm rather than the reporting of all PCB releases</li> <li>❖ Requirement to report any Release “posing” a risk or potential risk to health, safety or the environment is too vague and ambiguous. Spills inside building should not be required to be reported</li> <li>❖ Provide a timeframe within which DEEP may request additional information on a reported release. At a minimum, clarify that if DEEP does not request additional information or verification within a time certain (ex. 90 days following the date the incident was reported), that the incident will be deemed as “closed” and that no further action will be required unless DEEP determines evidence exists indicating that measures taken to clean the spill were not successful in protecting human health or the environment.</li> <li>❖ Clarify in the proposed regulations that the release of products or materials designed for consumer use within a commercial or industrial facility are not reportable. For all other spills of Appendix A materials, the reporting threshold is the currently proposed 30% concentration</li> </ul> </li> </ul>
<b>DEEP 20BY20</b>	<ul style="list-style-type: none"> <li>See <a href="https://portal.ct.gov/DEEP/About/20-by-20/20-by-20">https://portal.ct.gov/DEEP/About/20-by-20/20-by-20</a> for the Final Report</li> </ul>

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<p><b>DEEP: RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT</b></p>	<ul style="list-style-type: none"> <li>• Working Group and Topical Subcommittees continue to meet regularly.</li> <li>• Next meeting of Working Group is May 11, 2021</li> <li>• Topical Subcommittees are actively developing position papers for the consideration of the Working Group</li> <li>• <b>OVERVIEW:</b> <ul style="list-style-type: none"> <li>❖ 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.</li> <li>❖ <b>Implementation and Working Group:</b> <ul style="list-style-type: none"> <li>▪ 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 <a href="#">Release-Based Clean Up Program Regulation Development</a> webpage.</li> <li>▪ 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 <a href="#">Release-Based Working Group Meetings</a> 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 <a href="https://portal.ct.gov/-/media/DEEP/site_clean_up/comprehensive_evaluation/Release-Based/Workgroup-Members.pdf">https://portal.ct.gov/-/media/DEEP/site_clean_up/comprehensive_evaluation/Release-Based/Workgroup-Members.pdf</a></li> <li>▪ 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 <a href="https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Topical-Subcommittee-Meetings">https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Topical-Subcommittee-Meetings</a></li> <li>▪ Topical subcommittees are as follows:               <ul style="list-style-type: none"> <li>• Discovery of Historical Releases</li> </ul> </li> </ul> </li> </ul> </li> </ul>

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<p><b>DEEP: RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT (continued)</b></p>	<ul style="list-style-type: none"> <li>• Reporting Newly-Discovered Historical Releases</li> <li>• Characterization of a Discovered Release</li> <li>• Immediate Removal Actions</li> <li>• Tiers &amp; Other subcommittees are under consideration.</li> <li>▪ Additional subcommittees to be added as the process unfolds</li> <li>❖ <b>For Background - P.A. 20-9 Revisions:</b> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ 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. <b>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</b></li> </ul> </li> </ul>

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	<p><b><i>residential property will be required to report and then remediate the reported release in accordance with the regulations to be promulgated.</i></b></p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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"> <li>• 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.</li> <li>• Certain releases being investigated and remediated under the Transfer Act.</li> <li>• Releases occurring after the filing of a Form III or IV under the Transfer Act but before the completion of a Phase II investigation.</li> <li>• Certain releases at a property being remediated under an existing Connecticut brownfield program.</li> <li>• Releases, if any, DEEP might exclude from all or part of the statutory requirements in the yet to be adopted regulations.</li> </ul> </li> <li>▪ 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.</li> <li>▪ 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.</li> </ul>
<p><b>PFAS &amp; Biosolids</b></p>	<ul style="list-style-type: none"> <li>• Average 37% cost increase for sludge processing &amp; disposal projected due to PFAS sampling &amp; analysis               <ul style="list-style-type: none"> <li>❖ <a href="#">Cost Analysis of the Impacts on Municipal Utilities and Biosolids Management</a></li> </ul> </li> </ul>

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<b>EPA: NEW ADMINISTRATOR</b>	<ul style="list-style-type: none"><li>On March 10, 2021, Michael Regan, previously Secretary of North Carolina’s Department of Environmental Quality, was confirmed as EPA head winning US Senate approval by a 66–34 vote.</li></ul>