

CBIA e² Waste Task Force Summary
May 21, 2021

Harold Blinderman: Day Pitney LLP

Mark Bobman: Bristol Resource Recovery

Issue	Notes
DEEP: RELEASE REPORTING	<ul style="list-style-type: none"> On March 11, 2021, DEEP posted a Notice of Intent (NOI) to adopt proposed Release Reporting Regulations. For a copy of the NOI, see: https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid={10B22178-0000-C51D-B82E-4EF94B6273DB} The comment period closed on May 10, 2021. Over 15 comments were received including those from CBIA, Environmental Professionals Organization of CT (EPOC) Board of Directors, Eversource, Dominion Energy Services, Tradebe Environmental Services, AECOM, Luminant (Milford Power Company and Lake Road Generating Company), BYK USA, and South Central CT Regional Water Authority. For all comments, please see: https://eregulations.ct.gov/eRegsPortal/Search/ViewComments?CommentPeriod={D0B22178-0000-C05E-81BE-DEAD5B6E9854} Generally, commenters raised concerns that include: <ul style="list-style-type: none"> ❖ The proposed 1 hour reporting requirement. ❖ The definitions of release, reportable materials, chemical liquids, underground storage tanks system and underground stream. ❖ The reporting thresholds for: (1) releases of oil and petroleum; (2) releases of materials containing PCBs; (3) releases that contain a concentration of 30 percent or more by weight of any Material of Special Concern; and (4) releases to secondary containment systems. ❖ The proposed reporting exemptions for certain releases, which are contained and removed or otherwise properly mitigated within either 1 or 2 hours. ❖ The interplay between the various reporting provisions for oil and petroleum releases. ❖ The use of the term “catch basin” in the conditions that could trigger reporting obligations for releases of oil, petroleum and materials containing PCBs.. ❖ The reporting requirement for any release, which poses a risk or potential risk to human health, public safety or the environment. ❖ The lack of a stated timeframe within which DEEP may request additional information on a reported release via a follow-up report.

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DEEP: RELEASE REPORTING (CONTINUED)	<ul style="list-style-type: none"> ❖ The penalties associated with failures to report within the required time frames and associated with conducting mitigation and/or remediation acts without a spill cleanup permit/license. ❖ The removal costs eligible for reimbursement. ❖ The reporting requirements for releases of oil and water mixtures.
DEEP: RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT	<ul style="list-style-type: none"> • Working Group and Topical Subcommittees continue to meet regularly. • Next meeting of Working Group is June 8, 2021 • Topical Subcommittees are actively developing position papers for the consideration of the Working Group. White papers are due June 11, 2021 • OVERVIEW: <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 DEEP's 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. 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

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DEEP: RELEASED – BASED REMEDATION PROGRAM DEVELOPMENT (continued)	<ul style="list-style-type: none"> ▪ 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 ▪ 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. ▪ Additional subcommittees to be added as the process unfolds <p>❖ For Background - P.A. 20-9 Revisions:</p> <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.

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DEEP: RELEASED – BASED REMEDATION PROGRAM DEVELOPMENT (continued)	<ul style="list-style-type: none"> ▪ 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 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> ▪ 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.

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	<ul style="list-style-type: none"> ▪ 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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**DEEP: REVISIONS TO
REMEDiations STANDARD
REGULATIONS AND
ENVIRONMENTAL USE
RESTRICTION REGULATIONS**

- **RSR Wave 2 Proposed Regulations/Environmental Use Restriction (EUR) Proposed Revisions:**
 - ❖ **Both sets of regulations became effective on February 16, 2021**
 - ❖ Recent Developments:
 - Environmental Use Restriction (EUR) Annual Inspection Form and Fact Sheet posted on DEEP website. See: <https://portal.ct.gov/DEEP/Remediation-Site-Clean-Up/Environmental-Use-Restrictions/Environmental-Use-Restrictions>
 - 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.
 - Owners of property subject to an EUR are responsible for ensuring that an EUR FactSheet is maintained either on the property 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 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.
 - DEEP is currently developing new EUR forms. DEEP is no longer accepting EUR applications on old forms—EUR submittals are on hold until DEEP issues the new application forms.
 - Draft forms of the Attorney Opinion Letter and NAUL Notice/Agreement have been provided to the CT Bar Environmental Section's for review/comment.
 - Revised RSR FAQs and new EUR FAQs are posted on the DEEP's website. See https://portal.ct.gov/-/media/DEEP/site_clean_up/remediation_regulations/Revised-RSR-FAQs.pdf and https://portal.ct.gov/-/media/DEEP/site_clean_up/EUR/EUR-FAQs.pdf
- **RSR Wave 2 Revisions – Background**
 - ❖ 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.

Commented [BHM1]: Barb- Let's re-order – make this #3

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REGULATIONS AND ENVIRONMENTAL USE RESTRICTION REGULATIONS (continued)	<ul style="list-style-type: none"> ❖ 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"> ▪ 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"> ○ Verifications and ELURs finalized prior to February 16 are not affected. ○ 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"> • 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. • For ELUR applications that were not 'complete' by February 16, the new regulations will apply.

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MIRA/DEEP MIRA/DEEP (continued)	<ul style="list-style-type: none"> • May 12 Board Meeting <ul style="list-style-type: none"> ❖ Minutes of the meeting state: <i>“Mr. Isner [Robert Isner, DEEP] expounded upon and discussed with the Board DEEP’s disagreement with MIRA’s understanding regarding operation of the South Meadows property as a transfer station without a modification to the existing solid waste permit or issuance of a new permit.”</i> ❖ Hartford Courant – May 16, 2021: <i>“MIRA’s governing board was told this week by a state environmental official that it may be blocked from pursuing its alternative plan — which is to turn the Hartford plant into a big transfer station from which its 48 customer towns’ garbage would be trucked out to landfills, including big ones in rural Ohio and western New York. Robert Isner, manager of solid and hazardous waste for the Department of Energy and Environmental Protection (DEEP), told the MIRA board at a Wednesday meeting that before MIRA can proceed with that plan, it would likely have to go through an application process for either an entirely new DEEP permit, or for the modification of its existing one. Under either option, Isner said, “there is a reasonable to high likelihood of a request for a hearing, adding substantial time to the process.”</i> ❖ The Courant quotes MIRA President Tom Kirk: <i>““MIRA is anticipating that it will still have a contractual obligation through June 30, 2027 to ensure the proper disposal of waste generated by 48 Connecticut municipalities that have signed Tier 1 Long-Term Municipal Service Agreements (MSAs) with MIRA. The annual tonnage ... is approximately 440,000 tons ... which MIRA will manage through its network of three regional transfer stations and the [Hartford] Facility. ... MIRA intends to utilize the existing authority under Solid Waste Permit No. 06401260-PO to manage the received [municipal solid waste] for off-site transfer to other properly-permitted solid waste management facilities. ... Specifically, the permitted limits [are] for the off-site transfer of up to 680 tons of [garbage] per day, seven days per week...We understand and read the permit a little differently” [compared to DEEP interpretation]</i>
DEEP WASTE REDUCTION	<ul style="list-style-type: none"> • New anaerobic digesters for agricultural applications proposed in Thompson, Colchester – primary application is treatment of manure but may include food waste; numerous small scale “pilot” and “demonstration” facilities under development in municipalities throughout the state; DEEP to issue new General Permit for small scale composting of food scraps
EPA: TRI Reporting	<ul style="list-style-type: none"> • On April 29, 2021, EPA announce plans to take “important steps under the Toxics Release Inventory (TRI) to advance Environmental Justice, improve transparency, and increase access to environmental information.” • Of note, EPA plans to expand the scope of TRI reporting requirements to include additional chemicals and facilities, including facilities that are not currently reporting on ethylene oxide (EtO) releases.

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U.S. House of Representatives – Production Tax Credits	<ul style="list-style-type: none"> • Renewable electricity production tax credit (PTC) - Internal Revenue Code §45 <ul style="list-style-type: none"> ❖ per-kilowatt-hour (kWh) tax credit for electricity generated using qualified energy resources ❖ expired December 2020; projects that began construction before the end of 2020 qualify for PTC ❖ PTC extended in the Taxpayer Certainty and Disaster Tax Relief Act of 2019 and Consolidated Appropriations Act of 2020; For wind facilities, the PTC was extended for one year ❖ In 2019, closed-loop biomass and geothermal technologies qualified for the full credit amount of 2.5 cents per kWh; other technologies (open-loop biomass, small irrigation power, municipal solid waste (MSW), qualified hydropower, marine, and hydrokinetic) qualified for a half-credit amount, or 1.2 cents per kWh in 2019 ❖ Wind facilities starting construction in 2019 will qualify for 40% of the full credit amount, whereas wind facilities that start construction in 2020 will qualify for 60% of the full credit amount. Credit amounts are adjusted annually for inflation, estimated foregone revenues for PTC were \$5.1 billion (2019) ❖ Exclusion of MSW generation likely to stifle growth and possibly lead to closure of existing facilities given market conditions and opposition to the technology.