

## CBIA e<sup>2</sup>Waste Task Force Summary

**July 16, 2021**

Harold Blinderman: Day Pitney LLP

Mark Bobman: Bristol Resource Recovery

Issue	Notes
<b>DEEP: RELEASE REPORTING</b>	<ul style="list-style-type: none"> <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>• The comment period closed on May 10, 2021. Hearing Officer preparing report and response to comments for issuance. <ul style="list-style-type: none"> <li>❖ 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.</li> <li>❖ For all comments, please see: <a href="https://eregulations.ct.gov/eRegsPortal/Search/ViewComments?CommentPeriod={D0B22178-0000-C05E-81BE-DEAD5B6E9854}">https://eregulations.ct.gov/eRegsPortal/Search/ViewComments?CommentPeriod={D0B22178-0000-C05E-81BE-DEAD5B6E9854}</a></li> <li>❖ Generally, commenters raised concerns that include: <ul style="list-style-type: none"> <li>▪ The proposed 1 hour reporting requirement.</li> <li>▪ The definitions of release, reportable materials, chemical liquids, underground storage tanks system and underground stream.</li> <li>▪ 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.</li> <li>▪ The proposed reporting exemptions for certain releases, which are contained and removed or otherwise properly mitigated within either 1 or 2 hours.</li> <li>▪ The interplay between the various reporting provisions for oil and petroleum releases.</li> <li>▪ The use of the term “catch basin” in the conditions that could trigger reporting obligations for releases of oil, petroleum and materials containing PCBs..</li> <li>▪ The reporting requirement for any release, which poses a risk or potential risk to human health, public safety or the environment.</li> </ul> </li> </ul> </li> </ul>

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<b>DEEP: RELEASE REPORTING (CONTINUED)</b>	<ul style="list-style-type: none"> <li>▪ The lack of a stated timeframe within which DEEP may request additional information on a reported release via a follow-up report.</li> <li>▪ 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.</li> <li>▪ The removal costs eligible for reimbursement.</li> <li>▪ The reporting requirements for releases of oil and water mixtures.</li> </ul>
<b>DEEP: RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT</b>	<ul style="list-style-type: none"> <li>• Working Group and Topical Subcommittees continue to meet regularly.</li> <li>• Topical Subcommittees submitted position papers for the consideration of the Working Group on June 11, 2021. Reports submitted from: <ul style="list-style-type: none"> <li>❖ Discovery of Historical Releases</li> <li>❖ Reporting Newly-Discovered Historical Releases</li> <li>❖ Characterization of a Discovered Release</li> <li>❖ Immediate Removal Actions</li> <li>❖ Tiers</li> </ul> </li> <li>• Transition Advisory Group report submitted on June 11, 2021</li> <li>• Public comment period on Topical Subcommittee position papers closed on July 6.</li> <li>• The Topical Subcommittees' Concept Papers have been posted DEEP's Release-Based Cleanup Program Stakeholder Engagement webpage. See: <a href="https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Cleanup-Program-Stakeholder-Engagement">https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Cleanup-Program-Stakeholder-Engagement</a></li> <li>• Working Group meeting held on Jul 13, 2021: <ul style="list-style-type: none"> <li>❖ Included a Q&amp;A session with co-chairs of Subcommittees 1 and 2</li> <li>❖ There will be a Q&amp;A session for the remaining Subcommittees at the next Working Group Meeting, August 10<sup>th</sup>, and a Q&amp;A session with DEEP on September 14<sup>th</sup></li> <li>❖ DEEP indicated that it will continue to solicit members for Ad Hoc Teams for each concept paper (each Ad Hoc Team will submit final reports to DEEP by September 21, 2021)</li> <li>❖ Once the Ad Hoc Teams are created and begin to participate a Drafting Team will be created</li> </ul> </li> </ul>

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<b>DEEP: RELEASED – BASED REMEDIATION PROGRAM DEVELOPMENT (continued)</b>	<ul style="list-style-type: none"> <li>❖ On October 26, 2021, the Working Group will discuss advice and recommendations from the Drafting Team</li> <li>• DEEP’s summary of the public comments to the Topical Subcommittees’ Concept Papers have been posted on DEEP’s website. See: <a href="https://portal.ct.gov/-/media/DEEP/site_clean_up/comprehensive_evaluation/Release-Based/Public-comments-concept-papers-summary.pdf">https://portal.ct.gov/-/media/DEEP/site_clean_up/comprehensive_evaluation/Release-Based/Public-comments-concept-papers-summary.pdf</a></li> <li>• DEEP’s Initial Response to Concept Papers has been posted on DEEP’s website. See: <a href="https://portal.ct.gov/-/media/DEEP/site_clean_up/comprehensive_evaluation/Release-Based/DEEP-initial-response-to-concept-papers.pdf">https://portal.ct.gov/-/media/DEEP/site_clean_up/comprehensive_evaluation/Release-Based/DEEP-initial-response-to-concept-papers.pdf</a></li> </ul>
<b>PERMIT CONCIERGE SERVICE (DEEP)</b>	<ul style="list-style-type: none"> <li>• Permit Concierge Service               <ul style="list-style-type: none"> <li>❖ A new advisory committee met for the first time on June 22: <a href="https://portal.ct.gov/DEEP/Permits-and-Licenses/Concierge-Permit-Assistance-Advisory-Committee">https://portal.ct.gov/DEEP/Permits-and-Licenses/Concierge-Permit-Assistance-Advisory-Committee</a>; the next meeting is schedule July 20</li> <li>❖ <a href="https://portal.ct.gov/DEEP/Permits-and-Licenses/Client-Concierge-Permit-Assistance">https://portal.ct.gov/DEEP/Permits-and-Licenses/Client-Concierge-Permit-Assistance</a></li> </ul> </li> </ul>

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#### DEEP: REVISIONS TO REMEDiations STANDARD REGulations AND ENVIRONMENTAL USE RESTRICTION Regulations

#### DEEP: REVISIONS TO REMEDiations STANDARD

- **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; Fact Sheet; Fee Form; Form for Allowable Disturbance, Release or Termination; and Temporary Release for Recurring Activities Template 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, NAUL Notice/Agreement, EUR Submittal Form (to be used for both ELURs and NAULs), and Declaration templates for ELURs and NAULs 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](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](https://portal.ct.gov/-/media/DEEP/site_clean_up/EUR/EUR-FAQs.pdf)
    - Revised Verification forms (Verification Addendum, Revised Form III Verification (Property)) are posted on DEEP's website. See <https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Licensed-Environmental-Professional-Program/LEP-Verifications>

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Issue	Notes
<b>REGULATIONS AND ENVIRONMENTAL USE RESTRICTION REGULATIONS (continued)</b>	<ul style="list-style-type: none"> <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>

## CBIA e<sup>2</sup>Waste Task Force Summary

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#### DEEP Additional Updates (Remediation Roundtable/PFAS/USTs, Beneficial Use)

#### DEEP Additional Updates (PFAS/USTs, Beneficial Use continued)

- Remediation Roundtable meeting held on June 22, 2021. See: [https://portal.ct.gov/-/media/DEEP/site\\_clean\\_up/remediation\\_roundtable/Roundtablepresent-06-22-2021.pdf](https://portal.ct.gov/-/media/DEEP/site_clean_up/remediation_roundtable/Roundtablepresent-06-22-2021.pdf). Next meeting scheduled on October 5, 2021.
- PFAS:
  - ❖ P.A. 21-111: AN ACT AUTHORIZING AND ADJUSTING BONDS OF THE STATE FOR CAPITAL IMPROVEMENTS, TRANSPORTATION AND OTHER PURPOSES, ESTABLISHING THE COMMUNITY INVESTMENT FUND 2030 BOARD, AUTHORIZING STATE GRANT COMMITMENTS FOR SCHOOL BUILDING PROJECTS AND MAKING REVISIONS TO THE SCHOOL BUILDING PROJECT STATUTES.
    - \$1.15 million per year in bond allocations for FY 2022 and FY 2023 for PFAS funding: Grants-in-aid to municipalities including provision of potable water and assessment and remedial action to address PFAS
  - ❖ P.A. 21-121: AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING VARIOUS REVISIONS TO THE PUBLIC HEALTH STATUTES.
    - Requires annual PFAS testing by water bottlers that utilize DPH-approved sources (beginning by January 2022)
    - Authorizes DPH to prohibit use of bottled water sources with PFAS levels above DPH Action Level until it no longer poses an unacceptable health or safety risk to consumers.
  - ❖ P.A. 21-191: AN ACT CONCERNING THE USE OF PERFLUOROALKYL OR POLYFLUOROALKYL SUBSTANCES IN CLASS B FIREFIGHTING FOAM.
    - Prohibits, upon passage, any person, local government, or state agency from using class B firefighting foam with intentionally added PFAS in any amount for training purposes or testing purposes.
    - Beginning October 1, 2021, it also prohibits anyone from using this foam for vapor suppression or firefighting purposes, unless the fire is flammable liquid-based and DEEP does not identify an alternative to the foam
    - Directs DEEP to develop or identify take-back program for municipally owned Class B firefighting foam
    - Bans in-state sale of PFAS-containing food packaging by manufacturers/distributors beginning January 2024
- USTs
  - ❖ On May 5, 2021, DEEP posted a Notice of Intent (NOI) to adopt minor revisions to the UST Regulations. The proposed UST Regulation revisions are in response to a final rule published by the EPA which made revisions

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<p><b>DEEP Additional Updates (USTs, Beneficial Use continued)</b></p>	<p>to the federal UST regulations, which require Connecticut to make additional changes to its UST Regulations to ensure the Connecticut UST program is no less stringent than the federal program. 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></p> <ul style="list-style-type: none"> <li>❖ The comment period closed on June 7, 2021. The Hearing Officer prepared report and response to comments. For a copy of the Hearing Officer's Report, see: <a href="https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid=%7b00033D79-0000-C21F-AA4B-67C9C39F7701%7d">https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid=%7b00033D79-0000-C21F-AA4B-67C9C39F7701%7d</a>.</li> <li>❖ On July 9, 2021, DEEP posted its notice of decision to move forward with the proposed regulation and filed the UST Regulation revisions to the with the AG's Office for a legal sufficiency determination.</li> <li>• Soils – HB 6496 H.B. 6496, An Act Concerning Certain Soil-Related Initiatives (Public Act 21-88)             <ul style="list-style-type: none"> <li>❖ establishes a pilot program to beneficially use reclaimed materials that have de minimis amounts of solid waste</li> <li>❖ inert asphalt, brick, concrete (including concrete with pyrrhotite if the DEEP commissioner provides written permission to use it), ceramic materials</li> <li>❖ waste sand from metal casting</li> <li>❖ crushed recycled glass; and</li> <li>❖ street sweepings/ catch basin materials</li> </ul> </li> </ul>

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Issue	Notes
<b>EPA Proposed New Reporting and Recordkeeping Rule for PFAS</b>	<ul style="list-style-type: none"> <li>On June 28, 2021, EPA proposed a new reporting and recordkeeping rule for per- and polyfluoroalkyl substances (PFAS) pursuant to Section 8(a)(7) of the Toxic Substances Control Act (TSCA), as amended by the National Defense Authorization Act.</li> <li>The proposed rule applies to PFAS manufacturers and importers, including small manufactures and manufacturers who produce PFAS as a byproduct. If finalized, the rule would require certain persons that manufactured or imported PFAS in any year since January 1, 2011, to report information related to chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal. Affected entities will have one year from the effective date of the final rule to submit their required disclosures to EPA. In addition to reporting, the proposed rule would require records documenting any information reported to EPA to be retained for a period of five years.</li> <li>EPA will accept comments on the proposed rule until August 27, 2021.</li> </ul>
<b>EXTENDED PRODUCER RESPONSIBILITY (EPR)</b>	<ul style="list-style-type: none"> <li>Connecticut H.B. 6386 (manage used tires, smoke detectors and gas cylinders) was voted out of committee but not taken up by the House.</li> <li>Maine Legislation Pending (as of 6/11/21): <ul style="list-style-type: none"> <li>❖ LD 1467 – An Act to Promote a Circular Economy through Increased Post-Consumer Recycled Plastic Content in Plastic Beverage Bottles</li> <li>❖ LD 1471 – An Act to Establish a Stewardship Program for Packaging</li> <li>❖ LD 1541 – An Act to Support and Improve Municipal Recycling Programs and Save the Taxpayer Money (packaging EPR)</li> <li>❖ LD 1631 – An Act to Amend the Laws Banning Polystyrene Foam to Exclude Packaging for food products</li> </ul> </li> </ul>



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<b>New England PFAS activity</b>	<ul style="list-style-type: none"> <li>• Maine – prioritization of sludge and septage land application site investigations ongoing; risk-based approach including knowledge of volumes and years land applied, and location of sensitive receptors               <ul style="list-style-type: none"> <li>❖ Approximately 350 private drinking water wells sampled to date</li> <li>❖ 80 wells over U.S. EPA Health Advisory Level of 70 parts per trillion for the sum of 5 PFAS (PFOA, PFOS, PFNA, PFHxS, PFHpA)</li> <li>❖ 46 filter systems installed to date</li> <li>❖ LD 1600 – An Act to Investigate Perfluoroalkyl and Polyfluoroalkyl Substance Contamination of Land and Groundwater                   <ul style="list-style-type: none"> <li>▪ Establishes “Land Application Contaminant Monitoring Fund”</li> <li>▪ \$10 per ton fee on the handling of sludge and septage</li> <li>▪ Requires development of a program to evaluate soil and groundwater</li> <li>▪ Requires development of a program for testing of landfill leachate</li> <li>▪ Establishes 17 new MDEP positions</li> </ul> </li> </ul> </li> <li>• New legislation and initiative also planned in Massachusetts, New Hampshire and Vermont</li> </ul>