

Folks,

We are excited to have our first, in-depth discussion about the Phase II Subcommittee Advice and Recommendations from the Working Group tomorrow.

The Working Group's Review and Drafting Team has been hard at work on your behalf. Please find attached an outline of the efforts of this team to date.

We hope to see folks tomorrow.

Best,
Graham

Phase II Drafting Team – Report Outline

Circulated to Working Group for Discussion on June 14, 2022

I. Introduction

The charge of the Phase II Drafting Team is to evaluate the content of the concept papers produced by Subcommittees 6-8. In addition to reviewing the Phase II concept papers on their own merits, we are evaluating them within the context of the concept papers from subcommittees 1-5.

II. Assumptions

While the three Phase II subcommittees stated their assumptions in varying levels of detail, all appeared to begin their analysis on the assumption that the new release-based remedial program will take shape roughly along the lines suggested by the Phase I subcommittees.

III. Overview of Phase II Reports

A. Topical Subcommittee 6: Modification of Clean-up Standards for Lower-Risk Releases. Without achieving consensus on a definition of “lower-risk release,” Subcommittee 6 proposed three categories of lower-risk releases that could be closed with streamlined procedures and raised the issue of how to weave risk assessment into the process. Subcommittee 6 proposed that some of the lowest-risk contemporaneous releases should have a pathway to closure without analytical data. For other relatively low-risk releases, existing RSR pathways should remain available. Subcommittee 6 also recommended that the “Method 3” concept used in Massachusetts be further evaluated for adaptation to Connecticut.

B. Topical Subcommittee 7: LEP-Implemented, Risk-Based Alternative Cleanup Standards. Subcommittee 7 was charged with evaluating risk-based alternative cleanup standards to be implemented by LEPs without DEEP approval. Subcommittee 7 recommended expanding existing provisions of the RSRs to include greater opportunity for LEP-implemented means of demonstrating compliance or calculating alternative criteria; reducing the number of circumstances for which DEEP approval is required for implementation of various alternatives; and exploring additional alternative methods suitable for self-implementation by LEPs without prior Commissioner approval. Subcommittee 7 reviewed the Massachusetts Contingency Plan (MCP), which provides a model for risk-based cleanup standards implemented by environmental professionals with support from independent risk assessors, known as Method 3. Method 2 per the MCP is also a viable LEP-implemented alternative. Method 2 uses site-specific data to develop alternative standards. Subcommittee 7 expressly recognized that Connecticut statute places responsibility for overseeing human health risk assessment with the Department of Public Health (DPH) which was not represented in the Working Group. Subcommittee 7 recommended additional study of the Methods 2/3 concept, with additional stakeholders including DPH.

C. Topical Subcommittee 8: Clean-up Completion Documentation, Verifications, and Audit Frequency and Timeframes. Subcommittee 8 covered three related, but distinct topics concerning regulatory closure of releases: closure documentation, level of credentials required to sign off on closure

documentation, and audits of closure documentation. Subcommittee 8 recommended a user-friendly online system for reporting and closure of releases and provided recommendations on the information that would be required under such system. They also expressed an opinion that not all releases need LEP involvement for closure and recommended that non-LEP professionals be empowered to close certain releases. Finally, they provided recommendations on audits and record retention.

IV. Synthesis of Phase II Reports

A. *Common Themes*

1. A cohesive framework has emerged that traces a release from occurrence/discovery through cleanup and closure.
2. Need for a user-friendly reporting and tracking system, preferably online. The Subcommittee 8 paper discussed this issue in detail, but the concept was endorsed by Subcommittee 6 as well.
3. Need for some releases to be managed and closed by non-LEP professionals (without creating a new licensing program). Some minor releases could be managed by average citizens with no particular training.
4. Need for flexible and streamlined options to efficiently bring releases to regulatory closure.
5. As timelines have been proposed by the various subcommittees, the one-year mark has emerged as a significant milestone.

B. *Further Work Needed to Resolve Issues.* This is not a complete of open items that need further evaluation and detail.

1. The Department has agreed to revisit the Method 3 concept with a larger group of stakeholders, including DPH.
2. Several groups have attempted to impose order on a varied spectrum of releases by grouping the releases into categories (e.g., reportable versus not reportable; tiers; lower-risk releases eligible for streamlined closure; level of closure documentation and credentials required to close various categories of releases). All of these different categories will need to be integrated/harmonized into a cohesive system.
3. Specific role and credentials for non-LEP professionals.
4. Several of the Subcommittees have raised issues of timing both for submittals and for DEEP response times, and the various deadlines / response times need to be integrated.

5. Details around early exits, and associated timing (and avoiding tiering) need to be fleshed out and integrated.

6. Integration of new program with existing programs, particular the federal programs that would control (e.g. PCBs under TSCA).

7. Revisit special paths through these regulations (alternative groundwater standards, historic fill, residential).

V. Conclusion

At this time, the Drafting Team is unclear on the path forward to resolving the multitude of open items and building in the details needed to understand what the regulations will look like and how they will be implemented. There is some concern that the value of the Working Group and its ability to provide meaningful advice guidance and feedback is diminishing in the absence the Departments position on open items and the associated details that will be incorporated into the new regulations. The Working Group and Department need to define a process for moving forward.