

**CTDEEP RELEASE-BASED CLEANUP REGULATIONS WORKGROUP
Ad Hoc Committee for Historical Fill**

**Draft Summary of Issues Raised by Five Subcommittees
Discussed at the Workgroup Meeting - September 14, 2021
Revised and Submitted to DEEP – October 7, 2021**

As currently defined by Public Act 20-9, the Ad Hoc Committee is concerned that the presence of historical fill containing contaminants (which by its very nature as “fill” was placed there by someone at some time) would fall within the definition of a “release” under the statute and the Release-Based Cleanup Program. This raised many concerns in the various committees, which all agree that historical fill should be treated differently from discrete historical releases of contaminants. The Ad Hoc Committee concluded, after reviewing all the subcommittee reports, that the most effective way to do this would be to redefine “release” in the statutes and/or regulations such that the presence of historical fill is not a historical release. The presence of historical could also be explicitly excluded from the proposed Release-Based Cleanup Regulations’ reporting and cleanup obligations for historical releases. As noted above, regardless of how this is done, whether through statute or regulation or a combination of both, historical fill should be viewed differently from discrete historical releases, which we understand to have been the intent of PA 20-9.

Set forth below is a summary of how each subcommittee addressed or discussed “historical fill.”

From Subcommittee 1 – Discovery of Historical Release

- “Historical release” means the presence of oil or petroleum or chemical liquids or solids, liquid or gaseous products, or hazardous waste (as defined in section 22a-448 of the Connecticut General Statutes) in, on or under the land and waters of the state as a result of a release, as defined in Public Act 20-09. “Release” as defined by Subcommittee 1 does not include the presence of naturally occurring substances, the application of fertilizer or pesticides consistent with their labeling, or the presence of substances found at concentrations consistent with anthropogenic background. This definition of “Release” may require legislative changes to codify the additional exemptions.
- “Naturally occurring substance” means an element, compound or material which is already present in the environment (soil, water, air) and in forms or concentrations that have not been directly altered by human activity.
- “Anthropogenic background” means those levels of oil or petroleum or chemical liquids or solids, liquid or gaseous products that are not attributable to a specific release and which are:
 - a. attributable to atmospheric deposition of industrial process or engine emissions and are ubiquitous and consistently present in the environment,

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- b. releases to groundwater from a public water supply system,
- c. petroleum residues that are incidental to the normal operation of motor vehicles,
- d. Constituents of concrete and breakdown of concrete, or
- e. Natural breakdown of bituminous concrete in the state of its intended purpose in the absence of mechanical removal, landfilling, etc.

From Subcommittee 2 – Reporting of Historical Release

- Fill containing regulated compounds related to coal, coal ash, or wood ash, excluding wood ash resulting from the combustion of lumber or wood products that have been treated with chemical preservatives should be exempt from reporting.

From Subcommittee 3 – Characterization of Historical Release

- Acknowledging the presence of background conditions is an important aspect of any characterization effort, since it is not appropriate to expect a responsible party for a particular release to cleanup conditions that existed before that particular release occurred (anthropogenic background) or to attempt to characterize the extent of conditions that are actually representative of naturally occurring concentrations (naturally occurring background).
- DEEP should identify and publish ranges for naturally occurring concentrations of metals in soil (and possibly groundwater), so that environmental professionals can quickly determine if the concentration of a metal detected in a soil sample is within the range that can be considered to be naturally occurring for the particular metal and conclude that the concentration is not indicative of a release.
- Metals, SVOCs, petroleum hydrocarbons and PFAS are contaminants that are present in fill material or as a result of atmospheric or widespread deposition, and DEEP should consider developing guidelines for typical ranges of anthropogenic background conditions that could be used to at least minimize characterization efforts needed to distinguish between the background conditions and a discovered historical release.

From Subcommittee 4 – Immediate Removal Actions

- A possible pathway for historical releases of polluted fill with impacts to soil would not involve emergency spill response, would have a low probability of an SEH, and a high probability of an expediated remedial action, with an intermediate action as an option, likely fall outside the tier classification, with likely involvement of CTDEEP Remediation Group and/or an LEP.
- A release associated with historical polluted fill that impacts water could require an Emergency Response, but cleanup/characterization would likely be overseen by an LEP with some CTDEEP Remediation Group involvement.

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From Subcommittee 5 - Tiering

- Newly discovered historical releases (primary release) on parcels or in areas of parcels that contain polluted historical fill/anthropogenic background should not be subject to additional or more onerous requirements to reach closure based on the presence of these materials. The tiering and response to the primary release should be limited to the risk posed by the primary release and the presence of polluted historical fill/anthropogenic background should not create additional obstacles or delays to the reuse of properties by requiring the owner to address the historical fill on the full parcel or larger portions of the parcel beyond the primary release area for the newly discovered historic release, unless the fill poses an imminent threat to human health or sensitive receptors.
- Some Subgroup members do not agree that anthropogenic background/historical fill containing substances above applicable remedial criteria should be treated differently from other releases.

Summary of Key Points Discussed by the Ad Hoc Group

- Historical fill that meets the definition of "Clean Fill" means (1) natural soil (2) rock, brick, ceramics, concrete, and asphalt paving fragments which are virtually inert and pose neither a pollution threat to ground or surface waters nor a fire hazard and is not a release or an historical release.
- Historical fill needs to be treated differently from a historical release regulated under the proposed Release-Based Cleanup Regulations. The owner of property who is addressing a new or historical distinct release unrelated to the presence of historical fill should not be required to address the historical fill, including on the full parcel or larger portions of the parcel beyond the primary release area for the newly discovered release or historical release.
- Where material that is part of the historical fill creates a Significant Environmental Hazard, which needs to be redefined and/or clarified under the proposed Release-Based Cleanup Program, characterization and remediation to mitigate the hazard should be evaluated and possibly required.