

Release-Based Clean-up Ad Hoc Team Summary Survey Results

Twelve people completed the survey: 5 LEPs, 3 environmental attorneys, 2 municipal representatives, 1 commercial real estate broker, and 1 CEQ representative. Results of the survey followed by condensed comments organized by topic are presented below.

Question	Discovery of Historical Release	Reporting Newly-Discovered Historical Release	Characterization of a Discovered Release	Immediate Removal Action	Tiers
1. Do you believe that subcommittees 1-5 have sufficiently answered the questions posed to them?	Yes: 8				
	No: 9				
2. If you answered no to the previous question, which concept paper(s) do you think didn't answer the question posed?	3	3	2	1	0
3. Which identified concept(s) do you most agree with?	8	6	2	7	4
4. Which identified concept most concerns you?	5	2	6	2	3
5. Are the identified concepts that you support but believe still need work?	Yes: 10				
	No: 2				
6. Are the major themes expressed in each of the five concept papers consistent with one another or in conflict?	Consistent: 11				
	Conflict: 1				

Comments

General Comments

- Compliments about the work of the subcommittees were received
- A number of respondents stated that this remains a work in progress and additional work is needed to integrate the proposed concepts into a cohesive program.
- All the concept papers should be revisited and evaluated periodically as the process advances and to identify and resolve potential conflicts with statutes and DEEP guidance.
- Concerns were expressed over the breadth of the program and the changes that will be required.
- Discovery and characterization are key to how the rest of the program will function.
- There is too large an opportunity for the regulated community to ignore potential releases due to their risk tolerance.
- The concept papers do not rely and reference the RSRs enough.
- There seems to be disagreement between the subcommittees about whether all releases should be reported.
- Many expressed concern about the role of LEPs and non-LEPs and professional qualifications.
- One respondent suggested the LEP Program would need to be reworked to function under the release-based program.
- One asked if LEPs would be required to oversee all release closures and if not, asked what other qualifications would be and how would they be structured.
- A number of respondents expressed concern that non-LEPs making determinations to potentially be problematic, citing lack of education, training, licensing and legal accountability.
- A number of respondents were concerned that statutory changes would be needed. Two respondents cited the need to unify existing statutes.
- Statutory definition of a release would need to be changed.
- One respondent felt that the Release-Based Programs would add requirements onto existing laws, citing spill reporting, RCRA, and Transfer Act as having inconsistent or conflicting requirements.

- Statutes beside the Transfer Act would be affected, which has not been given sufficient consideration.
- One respondent suggested merging Spills with the Release-Based Program.
- The need to hear how DEEP plans to facilitate the transition with existing programs, what the staffing needs will be was expressed. The transition needs to be orderly.
- There is a concern about how releases, investigation, and remediation documentation would be tracked.
- Two respondents noted that there are few early exits.

1. Discovery of Historical Releases

- The concept too easily discounts indirect evidence of releases, especially if multiple lines of evidence exist, which strongly discourages sampling and analysis and would lead to underreporting and underinvestigation of potentially significant releases.
- Clarification of what constitutes a release when analytic data exists is needed.
- There has not been any discussion of the special exemptions and that needs to be a separate ad-hoc committee. Another was also concerned about this topic.
- The discussion of how discovery of a historical release by non-owners should have included more discussion about legal liability and how PA 20-9 would apply, if at all. Would the liability change if the one that discovered the release purchased the property? Would the intended use of the property factor into these determinations.
- The role of LEPs in this process needs to be clarified.
- The discussion of which historical releases require reporting and remediation and which do not is overly broad, including historic fill, contamination from upgradient sources, releases on residential properties, and application of fertilizer or pesticides.

2. Reporting Newly-Discovered Historical Releases

- Thresholds were not provided and there was a lack of specificity and references to the RSRs.
- Implications are uncertain without knowing what reportable thresholds will be established.
- It isn't clear if reporting is required and what information would need to be reported. Would there be a mechanism for the public to become aware that a release occurred if reporting isn't required.
- A single tracking number for each release was suggested and that the database include the ability to search by GPS coordinates.
- Two respondents suggested one on-line reporting form be used for all types of releases.

3. Characterization of a Discovered Release

- Higher and lower limits of scope for characterization were not provided and asked what level of characterization is needed according to the magnitude of the release and noted the lack of specific references to the RSRs.
- It is not logical to establish acceptable background concentrations as naturally occurring for the state, as levels that are truly background in some areas would indicate a release in other areas of the state.
- The DEEP Site Characterization Guidance would need to be revised.

4. Immediate Removal Actions

- Concern was expressed about the amount of characterization/closure sampling that may be required for very small releases.

5. Tiers

- There should be a time period for investigation and clean-up of smaller releases before tiering to allow for early exits to incentivize quick clean-ups.
- Early exits for low-risk releases were suggested.
- This is a critical area that needs additional discussion and fine-tuning.
- There is disagreement between the Tiers group and others regarding historic fill/anthropogenic background needing special consideration.

Historic Fill/Anthropogenic Background

Many respondents commented on historic fill and anthropogenic background and the need for more work on this subject.

- Historical fill that is not clean fill is a big loophole.
- Historic fill should get special consideration in the context of release discovery.
- Another expressed concern about anthropogenic background.
- One respondent suggested the ad-hoc team begin the process by re-examining the fundamental concept of background before affording relief for anthropogenic background and assess the need for additional statutory exemptions for inconsequential release impacts.
- Characterization of historic fill with contaminant concentrations over the RSRs would be challenging if there were no limits, such as the property line.
- Preexisting natural or anthropogenic contamination is a broad category and was dealt with more broadly than is warranted.
- Decisions regarding historic fill and anthropogenic background will require integration and merging with other State regulations.