

Dear Release-Based Working Group Members,

Again, thank you for your support of our mutual efforts to develop regulations for a release-based cleanup program. As you may know, the Subcommittees have been meeting weekly, and the meetings are well-attended and productive.

I am writing today to follow up on a few of the items discussed at our March 9 meeting. I look forward to speaking with everyone at our April meeting.

Topics covered in this email:

1. The tracking form being used by topical subcommittees
2. Issue for discussion at our next Working Group meeting
3. Second Phase Subcommittee Topics
4. Subcommittee Scenarios

### ***Tracking Form***

As you know, we have asked the topical subcommittees to track their assumptions, to list their questions for the working group, and to list issues that may relate to other topical subcommittees, using a form the Department has provided. Attached to this e-mail, you will find the forms submitted by each topical subcommittee to date (consolidated as one PDF). You will also find an updated version of this form, clarifying that the last entry on the form is a “parking lot” for ideas on the transition to the release-based cleanup program and potential interaction with other, existing statutes and regulations that have been identified and should be tracked. Each topical subcommittee should plan to submit this form to the Department on or before the first Monday of each month.

### ***Issue for Next Working Group Meeting***

Each of the submitted forms identifies important assumptions and considerations under discussion by the subcommittees that show that each group is beginning to understand the scope of its topic and the points of intersection with other subcommittees. A few of the subcommittee co-chairs have asked DEEP for enhanced coordination between the subcommittees. This topic is worthy of discussion at our next Working Group meeting.

When we collectively initiated this process, we contemplated that the subcommittees would establish their assumptions and develop a concept paper or papers for their specific topic. It feels that many want to ensure that their concept fits the framework of other subcommittee concepts. Originally, evaluation these concepts from subcommittees and piecing together the concepts as recommendations to DEEP, after public comment, was the responsibility of the Working Group.

### ***Second Phase Subcommittees***

As the topical subcommittees dive more deeply into their topics, it is also important to remember that certain questions may arise that will be taken up by the second phase subcommittees. The three second phase subcommittees currently posed for Working Group consideration are:

- **Modification of Clean-up Standards for Lower-Risk Tiers:** Clean-up standards will be adopted pursuant to [Public Act No. 20-9](#). The existing RSRs will form the basis for these clean-up standards. This subcommittee will provide advice and feedback, based on the concepts

developed by the first phase subcommittees, on what adjustments to the existing RSRs are necessary.

- LEP-implemented, Risk-Based Alternate Cleanup Standards: This subcommittee will provide advice and feedback regarding the use of LEP-implemented, risk based, alternate clean-up standards, with a focus on how those factors identified in [Public Act No. 20-9](#) control the applicability of a release-based approach. Again, these standards will add to existing alternatives currently available through the RSRs.
- Clean-up Completion Documentation, Verifications, and Audit Frequency and Timeframes: This subcommittee will provide guidance on the types of documents required to close out a clean-up, on when a “verification” is required, the role of the Department in reviewing those documents and verifications, and the timeframes for such review.

More detailed descriptions of the scope of each of these second-phase subcommittees is available on the [Department’s website](#) and was previously shared with the Working Group.

### ***Subcommittee Scenarios***

The Department will also be providing scenarios and associated questions to each subcommittee. The questions associated with the scenarios are based on the scope document provided to each subcommittee at the beginning of the process. Evaluating each scenario, and answering each question will help focus the subcommittees’ discussions and test the concepts under development. Once answers are provided, they will be shared with the Working Group and other subcommittees to provide additional insight on each subcommittee’s concepts and progress. We hope to discuss the scenarios, and associated questions and answers at the May working group meeting.

I appreciate everyone’s hard work and commitment. Subcommittees have been meeting weekly, and the meetings are well attended and productive. I look forward to speaking with everyone at our April meeting. ***Please look for Zoom reminders coming tomorrow and an hour before the session that will provide the accurate Zoom link for the April 13th webinar.***

Sincerely,  
Katie & David

# Release-Based Regulation Topical Subcommittee Notes

## Discovery of Historical Releases 2/24/2021

### **Assumptions Used (running list):**

Definition of “release” is the definition in PA 20-9 (section 15(6)) (which specifically calls out 2 types of anthropogenic background as not a “release”)

All releases are either “historical” or “new”

Some discovered releases will not be reportable

Not all reportable releases will need to be remediated

Some historical releases will pose a threat to human health/environment that require reporting by others if creator/maintainer does not

Naturally occurring substances are not a release

“Release” includes the placement of fill containing or consisting of “oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste as defined in section 22a-448 of the general statutes” at the time of placement.

Anthropogenic background and historical fill may meet the definition of “historical release” but should be treated differently under the reporting and cleanup obligations .

LEP program will still be in effect, but may need revisions so as to not discourage due diligence using LEPS

Some objective information will trigger obligation to determine whether a release previously occurred

Additional information/investigation may be needed to determine if a release is “reportable”

SCGD and RSRs will be supplemented/replaced by these regulations or other regulations/guidance specific to release-based program

ALL releases (both historical and new) will subject to these new Release-based regulations for purposes of remediation (if not reporting)

### **Identify issues that intersect with other subcommittees:**

Subcommittee: Reporting Newly-Discovered Historical Releases anthropogenic background and historical fill should be specifically addressed

Subcommittee: Characterization of a Discovered Release            relationship between potential harm and amount of characterization before report? And anthropogenic background and historical fill should be specifically addressed

Subcommittee: Tiers    anthropogenic background and historical fill should be specifically addressed

**Questions for Working Group, other subcommittees, DEEP, or DECD:**

Question for: Reporting Newly-Discovered Historical Releases    is the only trigger for reporting numerical, or will other circumstances be taken into account

Question for: Characterization of a Discovered Release    is this group only dealing with characterization after reporting, or to determine whether reporting thresholds have been achieved

Question for: Working Group    Can there be a “release” without understanding the release mechanism (e.g., how it got there)?

**Aspects of other state programs to be considered (include statutory references):**

Definition of “clean fill” in SW regs and RSRs, and implications for discovery of a historical fill

LEP regulations and implications for LEPs who perform investigations and “discover” releases – LEP regulations may need amendment

Significant environmental hazard statute may not capture the right circumstances to require reporting by others

Are on-going leaks from USTs historical releases, or new spills? Coordinate with the UST regulations

# Release-Based Regulation Topical Subcommittee Notes

## Reporting Newly-Discovered Historical Releases 3/3/2021

### Assumptions Used (running list):

- A newly discovered historical “release” (as defined in P.A. 20-9) has been identified. (We are not dealing with a new release or spill.)
- The person (as defined in P.A. 20-9, e.g., client, owner, operator) who *may* have an obligation to report has been identified and notified of the newly discovered historic release (the “Release”).
- Part of our subcommittee’s charge is to recommend thresholds (either quantitative and/or qualitative) for requiring reporting of the Release
- We also will consider/recommend requirements with respect to the timing and contents of any required release reports.
- Not all newly discovered historic releases will require reporting if no further investigation/remediation is required and the release does not trigger the quantitative or qualitative threshold for reporting. That is, there may be situations in which, a historic release is discovered but does not require reporting.
- Following up on the above, there will be categories of releases (including newly discovered historic releases) that will not trigger a reporting requirement under the to-be-established program per PA 20-9 (e.g., releases identified on sites that are subject to other state or federal cleanup programs).
- The Significant Environmental Hazard program (CGS 22a-6u) and other programs, as appropriate (e.g., the spill reporting regs being developed per 22a-450, the UST spill requirements) will be incorporated into this new program to limit reporting overlaps.
- There will be an opportunity/mechanism for following up on initial reports, including for example correcting/withdrawing release reports and being able to review (and possibly correct) them online.
- There will be some amount of flexibility to address certain situations, including, for example, an immediate removal action conducted prior to a reporting deadline.
- The information reported will be publicly available. [Which we recognize is not an easy task!]
- Information regarding Releases that do not require reporting will not be publicly available (no mechanism to do this).
- We are not addressing additional reporting (or investigation/remediation, etc.) that may be required after the initial report of the newly discovered historic release.

### Identify issues that intersect with other subcommittees:

Subcommittee: Characterization of a Discovered Release      Whether there will/should be a records retention component, especially for non-reportable releases. What evidence is appropriate/necessary for how you determined the Release was non-reportable.

Subcommittee: Discovery of Historical Releases      What newly discovered historic releases constitute an imminent and substantial risk to public health, safety or the environment? Under what circumstances will a person who discovers a historic release be required to notify the owner or operator?

Subcommittee: ...

### Questions for Working Group, other subcommittees, DEEP, or DECD:

Question for: Discovery of Historical Releases      Is Subcommittee 1 determining who must file a report?

Question for: Discovery of Historical Releases      Is due diligence considered discovery? That is, would identification of a historic release during a buyer’s due diligence be considered discovery?

Is Subcommittee 1 evaluating what constitutes a “reportable” release and/or an imminent threat to human health or the environment. [We understand that our subcommittee is/also evaluating the reporting threshold issue.]

Question for: Tiers      We would expect there to be different deadlines for reporting newly discovered historic releases based on the level of risk (potential threat to human health and the environment). Has the Tiers group developed factors to evaluate tiers specific to newly discovered historic releases?

**Aspects of other state programs to be considered (include statutory references):**

Exemptions from reporting requirement listed in MA MCP.

Aspects of New Jersey program that should be avoided

Connecticut/Federal

RCRA CA

SEH

LUST

Transfer Act

Voluntary Remediation Programs

Brownfield programs

## Release-Based Regulation Topical Subcommittee Notes

### Characterization of a Discovered Release 3/13/2021

#### **Assumptions Used (running list):**

- The determination of when a release is “discovered” has been established by Subcommittee 1; only the method or standards of characterization of such release is evaluated. We note that the term “discovered” is not defined in Public Act 20-9.
- Characterization is required for both contemporaneous releases (i.e., one that is reportable under R.C.S.A. 22a-450-1 to 6, inclusive) and historic releases, but the approach may be different. Alternative view: the Conceptual Site Model (CSM) approach is flexible enough to accommodate differences in contemporaneous releases (where more information is known prior to characterization) and historic releases (where more information needs to be developed) without making an initial distinction between the two.
- The methods or standards evaluated are limited to the characterization of a single release (i.e. each discovered release must be characterized separately).

#### **Identify issues that intersect with other subcommittees:**

Subcommittee: Tiers Does the risk presented by a release drive the characterization? How is the risk ascertained without adequate characterization?

Subcommittee: Reporting Newly-Discovered Historical Releases Will determination of whether a release must be reported change as characterization progresses?

Subcommittee: Discovery of Historical Releases Characterization of a release may lead to a suspicion that another release is present. If so, what is the obligation to ascertain whether an additional release has occurred?

#### **Questions for Working Group, other subcommittees, DEEP, or DECD:**

Question for: .. Question

Question for: .. Question

Question for: .. Question

#### **Aspects of other state programs to be considered (include statutory references):**

Characterization may be driven by other laws and regulations, such as RCRA, TSCA and UST removal.

# Release-Based Regulation Topical Subcommittee Notes

## Immediate Removal Actions 3/22/2021

### Assumptions Used (running list):

- a. Immediate Removal Actions are only applicable for active spills and releases (“contemporaneous”) or historic releases that impact environmental media including soil, groundwater, and surface water (i.e., IRAs are applicable to “Sites” and not “spills”). Spills and releases that do not impact environmental media would be addressed by first responders and permitted emergency contractors in accordance with current, amended, or proposed spill regulations. **(Note – still under consideration by group and also posed as a question below)**
- b. Based on considerations for risk-based tiering of releases specified in P.A. 20-9, the associated release-based regulations will require immediate response actions in situations where a release poses an immediate risk to sensitive receptors or public safety. The regulations will also allow for expedited clean-ups with reduced regulatory requirements in certain situations where releases are of limited extent and can be readily characterized and/or remediated.
- c. The Site Characterization Guidance Document and certain statutes and regulations including but not limited to the RSRs and those governing the LEP program will potentially be amended as recommended by this and other subcommittees.
- d. The DEEP is willing to issue “no further action” or other end point notifications under certain circumstances and authorize LEPs and DEEP Permitted Spill Cleanup Contractors under certain other circumstances to do the same.
- e. The current structure of LEPs and DEEP Permitted Spill Cleanup Contractors will remain with modifications to allow LEPs to undertake additional actions.

### Identify issues that intersect with other subcommittees:

Subcommittee: Discovery of Historical Releases

Subcommittee: Reporting Newly-Discovered Historical Releases

Subcommittee: Reporting Newly-Discovered Historical Releases

### Questions for Working Group, other subcommittees, DEEP, or DECD:

Question for: DEEP      **Question for all groups and stakeholders:** To what extent should the Release-Based Remediation Program include requirements for spills and releases that do not impact environmental media, and which are currently addressed by first responders and permitted emergency contractors in accordance with current spill regulations?

Question for: Characterization of a Discovered Release    Are you considering spills and releases that do not impact environmental media and which are currently addressed by first responders and permitted emergency contractors in accordance with current spill regulations, as part of your mandate?

Question for: Tiers      Question

### Aspects of other state programs to be considered (include statutory references):

MassDEP’s MCP and NJDEP’s Tech Regs

# Release-Based Regulation Topical Subcommittee Notes

Tiers 3/4/2021

## **Assumptions Used (running list):**

Per PA 20-9 Sec 19(d) “specify tiers of releases based on risk”

All reportable releases have a unique identifier.

Some base level of characterization would be needed to enter a Tier – unless there is a “holding” tier.

A property can have separate and potentially overlapping releases that may or may not be in the same tier.

## **Identify issues that intersect with other subcommittees:**

Subcommittee: Immediate Removal Actions      When IRAs meet all clean-up standards, can they exit the program before being assigned to a tier (compare to MA program where releases that are fully addressed within one year are never assigned to a tier).

Subcommittee: Reporting Newly-Discovered Historical Releases      At what point would a release enter a tier? At reporting? Something else? Would entry into a tier depend on the release?

Subcommittee: Characterization of a Discovered Release      At what point would a release enter a tier? On discovery? After characterization? Something else? Would entry into a tier depend on the characterization? Should there be a “holding tier for uncharacterized releases?

## **Questions for Working Group, other subcommittees, DEEP, or DECD:**

Question for: Characterization of a Discovered Release      We understand you envision some characterization happening after the tier designation, depending on the tier to which the release is assigned. What level of characterization do you envision prior to entry into a tier in the first place?

Question for: Working Group      Under what conditions would a release mandate significant CTDEEP involvement (beyond auditing & approvals for certain alternatives)? Should this be a separate tier?

Question for: Working Group      Should there be mandated time frames for reporting, IMAs, characterization, etc.? Should there be penalties for not meeting deadlines?

Question for: Immediate Removal Actions      What is your sense of what happens when the IRA has been completed? Does the release “graduate” from the program?

Question for: Reporting Newly-Discovered Historical Releases      Are we correct in assuming that there will be some level of release that need not be reported upon discovery?

## **Aspects of other state programs to be considered (include statutory references):**

MA MCP (310 CMR 40 Subpart E (regulations); MGL Chapter 21-E (statute) – pre-tier: 1 year to fully investigate/remediate; Tier 1– (1) groundwater above reportable concentrations within a wellhead protection area or within 500-ft of private well; (2) imminent hazard; (3) a remedial action required for immediate response action; or (4) action required to eliminate or mitigate a critical exposure pathway. Higher risk releases would require varying degree of DEP oversight. (TCE or PFAS are always Tier 1). Tier 2 is a lower risk level and would

not require direct DEP oversight (though DEP always has an auditing provision). Tier 1D – delinquent sites. Lesson learned – do not create too many tiers / waste of resources.

NJ Site Remediation Reform Act (SRRA: NJSA 58:10C-1 et seq)). Tried to overlap MA MCP with NJ regs – failure. SRRA puts all sites (release area or property) in same big bucket with same time frames, no tiering. Very proscriptive.

PA Act 2 (Title 25 Chapter 250): Voluntary and need to apply. Purpose for entering – liability protection. Not tiers per se but remedial choices (background, state standard, site-specific). Lesson learned: integrate with other programs to avoid glitches.

IL Tiered Approach to Corrective Action Objectives (TACO:35 IAC 742; dovetails with 35 IAC 740 (Site Remediation Program)). Voluntary, need to apply. Tiers 1 – 3: T1 lookup tables; T2 site-specific risk-based adjustments per formulae, allows institutional controls; T3 – site-specific risk/modeling. Value – NFA letters filed on land records.

# Release-Based Regulation Topical Subcommittee Notes

Select Subcommittee      Version Date

## **Assumptions Used (running list):**

Click or tap here to enter text.

## **Identify issues that intersect with other subcommittees:**

Subcommittee: Select one      Issue that intersects

Subcommittee: Select one      Issue that intersects

Subcommittee: Select one      Issue that intersects

## **Questions for Working Group, DEEP, or DECD (Questions facilitate consideration by Working Group. Subcommittees may and should independently proceed with recommendations based on their distinct charge without need to obtain responses):**

Question for: Select one      Question

Question for: Select one      Question

Question for: Select one      Question

## **Aspects of other state programs to be considered later in process (include statutory references):**

Click or tap here to enter text.

## **Parking Lot for out of scope topics, including transition issues:**

Click or tap here to enter text.