

Report to the Connecticut Department of
Energy and Environmental Protection

on

**The Draft Proposed Program Outline
for a Transformed Cleanup Program**

Topic: Reportable Releases

November 20, 2012

Submitted to Support the Transformation of
Connecticut's Cleanup Program

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Introduction

The Department of Energy and Environmental Protection (DEEP) is working to improve Connecticut’s cleanup program through an interactive stakeholder process. As part of the transformation of the statutory and regulatory components of the cleanup program, DEEP solicited volunteers for and formed six transformation workgroups. DEEP asked these workgroups to comment on and make recommendations regarding certain aspects of the transformation, as summarized in the [Draft Proposed Program Outline for a Transformed Cleanup Program](#).

This transformation workgroup was asked to provide DEEP with comments and recommendations regarding the reporting of releases.

Comments and recommendations contained in this report are the opinions of the workgroup members. Care was taken to identify areas where consensus was not reached among workgroup members.

Workgroup Membership

The workgroup was made up of DEEP staff, environmental attorneys, LEPS, business & industry representatives and representatives of the public.

Reporting Releases

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Workgroup Meetings

The workgroup met in person at DEEP offices on six different days: October 11, 18 and 25, and November 1, 7 and 13, 2012 (conference call-in number was available at each meeting except November 13). A final conference call was held on November 19, 2012.

Background

Connecticut currently has 16 environmental programs, each with its own entry “trigger”. A central goal of the Cleanup Transformation, as stated in DEEP’s December 2011 report to the Governor, Commerce and Environment Committees is to “develop a simplified and unified cleanup program that addresses the highest risks posed from releases of pollution in a consistent manner.” The feature to unify these now disparate programs would consist of a single “entrance” to the cleanup program. Although this workgroup reached consensus on the concept of consolidating DEEP’s many programs, not all group members agreed that unification into a single program is either needed or desirable. Nonetheless, to achieve a single “entrance” unified program, in the September 27, 2012 [Draft Proposed Program Outline for a Transformed Cleanup Program](#) DEEP proposed a release reporting framework that covers certain releases regardless of the date of release.

DEEP has proposed adoption of spill reporting regulations pursuant to Connecticut’s release reporting statute, Connecticut General Statutes (CGS) §22a-450, a number of times over recent decades. The most recent proposed regulations, the 2009 [Proposed Regulations Concerning the Reporting of Releases](#), were released for public comment in August 2010. Those proposed regulations resulted in significant public comment and have not been adopted. This workgroup therefore considered the elements of a release reporting statute as well as the elements of release reporting regulations.

Working with the DEEP [Draft Proposed Program Outline for a Transformed Cleanup Program](#) the workgroup initially discussed all of the applicable components, including definitions, timing, scope or size of the entrance for reporting releases, etc. Considering the charge of the workgroup and the timeframe, it was decided to concentrate on the “what, when, and how much” to report, and to consider three general release reporting conditions: New or Contemporaneous Releases; Historic Releases; and Potential/Threatened Releases.

The discussions that took place during the workgroup meetings focused largely on existing DEEP regulations and practices, the 2009 [Proposed Regulations Concerning the Reporting of Releases](#) by DEEP, and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000.

Various models or options were researched, presented and discussed, with advantages and disadvantages of each listed. For contemporaneous releases, the various models or options

researched and discussed, included: the status quo (CGS § 22a-450), universal trigger - low or higher trigger quantities with exceptions (e.g., DEEP 2009 proposed spill reporting regulations), and chemical specific reportable quantities similar to the MCP. Research of recent spill reporting to DEEP was completed, and that information is included as Appendix A. For historic releases, the various options researched and discussed included: modify the current “Significant Environmental Hazard” law; reportable concentration system (e.g., MCP); and reporting of all releases. No exact models were discussed for potential/threatened releases; however, key elements of what would constitute or trigger this type of reporting were discussed, along with the possible use of guidance or simple statutory mandate to facilitate the reporting requirement.

Recommendations

Definition of Release

Section III.a., Definitions, of the [Draft Proposed Outline for a Transformed Cleanup Program](#), indicates that DEEP is seeking input on certain definitions which are key to release reporting. The workgroup initially discussed the definition of a “release” and generally concurred that the definition should not include specific types of materials that could be released. Rather, the workgroup preferred a definition similar to that included in the 2009 [Proposed Regulations Concerning the Reporting of Releases](#), with modifications, although no final language was agreed upon.

Reportable Releases

The workgroup provides the following recommendations for the three release reporting conditions. There were related topics discussed that require additional evaluation or refinement that are listed in the Discussion section below.

A. Contemporaneous Releases

The workgroup reached a strong consensus that the current system for the reporting of contemporaneous releases, or “spills”, could be markedly improved by focusing on the relatively narrow list of materials that comprise the vast majority of spills currently occurring and being reported in Connecticut (results of our research are attached in Appendix A).

The workgroup concluded that identifying specific, reasonable reporting quantities or thresholds for this narrow list of materials would provide clarity and certainty to the regulated community, minimize low risk release reporting to DEEP, and be protective of human health and the environment.

Specifically, DEEP records indicate that petroleum products and automotive fluids account for over 70% of currently reported spills. DEEP provided a preliminary table of materials that reporting quantities or thresholds could be developed for; this table is provided in Appendix B.

For materials spilled but not included in the table in Appendix B, the workgroup considered several options, including:

- 1.) All such spills must be reported regardless of quantity, containment or other factors that could mitigate a potential threat to human health or the environment; or
- 2.) All such spills must be reported regardless of quantity with certain exceptions such as containment, rapid cleanup, or other factors that would mitigate the potential risk to human health and the environment; or
- 3.) All such spills must be reported with certain exceptions such as quantity, containment, rapid cleanup, or other factors that would mitigate the potential risk to human health and the environment. This would require development of a second list of reportable quantities for specific chemicals.

The group did not reach consensus on which option was preferable, though most preferred consideration for exceptions or quantity thresholds.

B. Historic Releases

The following are recommendations to be considered moving forward:

1.) Modify current “Significant Environmental Hazard” law

Key Elements include: identify certain high risk conditions, like proximity to a potable well; set multiples of Remediation Standard Regulation (RSR) numeric criteria, ranging from 1 to 30, depending on the nature of the risk and the potential for exposure; report the discovery of non-aqueous phase liquids; and a report imminent health and safety hazards, like explosive or flammable vapor levels above some (to be determined) levels (i.e., not RSR based).

2.) Reportable Concentration Model (e.g., similar to the MCP)

Key Elements include: establish numeric criteria based on a multiple of RSR numeric criteria (the multiplier could be 1, another constant, like 30, or some other, easily identified number), above which historic contamination in environmental media (soil, groundwater, sediment, soil vapor) would have to be reported and remediated; report imminent hazards to health and safety; report non-aqueous phase liquid; and create exceptions for low risk circumstances.

The group did not reach consensus on what the multiples on RSR numeric criteria should be.

C. Potential/Threatened Releases

- (1) Identify high-risk potential releases such as tanker trucks, rail cars or drums damaged in an accident but not immediately leaking which must be reported.
- (2) Identify high risk potential releases such as oil and petroleum materials or unknown substances in abandoned drums, carboys, casks, bags, cylinders, boxes, or other containers which are not immediately leaking but which must be reported.
- (3) Provide guidance on recognizing other types of potential/threatened releases that should be reported. For example, if a release requires the use of personal protective equipment as required by OSHA 29 CFR 1910.120, this constitutes a threat to human health and this shall be reported.

The group reached consensus that certain potential/threatened releases posing very high risks should be reported, but did not reach consensus on a distinction between reportable and not reportable circumstances.

Discussion

It is the workgroup's understanding that DEEP is working to comply with the legislative directive of Public Act 12-196 which requires the agency to report on the "results of an ongoing review of the general statutes as they related to brownfield remediation and development and the [RSRs]". The Act further directs that "such report shall include any recommended changes to such statutes and regulations or recommendations for any new program for responding to hazardous material releases."

Within our Recommendations section we identify options that the workgroup considered for three "classes" of release reporting and the degree to which we reached consensus. Additional discussion is provided below:

- The workgroup's recommendations are provided in the hopes of achieving the legislative goals identified above regarding entry into the revised program. We have not taken a vote but several members feel strongly that it is critical that the RSRs be revised prior to adopting any new program that would increase the number of sites entering DEEP's response programs and only further exacerbate the underlying problems which spurred the legislature to act in the first place.
- The workgroup identified early on certain traits that any release-based program should have (which goes beyond just release reporting). Consensus was that such a program should be simple to understand, fair, and allow for multiple exits once a release is in the program.

- There was lively discussion on the need for release reporting for historic releases. Information was provided that, under certain conditions, routine property transfers result in market driven (by financial institutions, buyers, etc.) investigations and remediation outside the current regulatory framework for the vast majority of properties.
- With respect to the reportable concentration of historic releases, most members agreed that reportable concentrations should be a multiple of the RSRs. One member believed that the reportable concentration should be any detection. Other members felt that historic releases should only be reportable in extreme circumstances since a report would stigmatize a property and potentially affect its market value.
- With respect to potential or threatened releases, opinions on how to make the distinction between reportable and non-reportable circumstances ranged from presuming certain sites are contaminated, to finding abandoned drums, to finding overturned tanker trucks. Some members believed that procedures, training and other provisions (some state, some federal) are already in place to address these situations.
- With respect to non-reportable releases not otherwise authorized by law, the workgroup generally agreed that these releases should still be required to be addressed in some manner and that appropriate record keeping should be required. These releases should be required to be cleaned up by properly trained personnel and/or a Licensed Spill Clean-Up Contractor within a specified time frame. This topic should be evaluated further.
- As part of release reporting, the group discussed timeframes for reporting and most had no problem with relatively quick (but reasonable) reporting for new releases and imminent potential / threatened releases (though what the definition of this should be was debated). There was far less consensus on reporting of historic releases and on reporting “potential” risks (such as property types, drums in the woods, etc.) without clear evidence of a reportable release. Some of the discussions included exempting from reporting those historic releases that could be remediated within a certain time frame (for example, 120 days). A few felt that if a historic release was above a reporting threshold, a report should be required fairly quickly (err on the side of caution versus don’t over-report for small/easily corrected issues) and the spill regulations should allow early and multiple outs to address the historic release (beyond the scope of this workgroup, but to be addressed by the Early Exits Workgroup).
- One member strongly advocated for an approach where historical releases would not need to be reported to DEEP if a Phase II Environmental Site Assessment demonstrates that the concentrations of substances no longer exceed the threshold value or within a certain period of time (e.g., 120 days) the property is remediated to levels that no

longer exceed the threshold or a risk assessment concludes that no substantial risk to human health or the environment arises from the release. Other members had concerns with this approach, particularly with respect to the risk assessment in situations with a future change in property use (e.g., non-residential to residential).

- A question with respect to historic releases is whether the Connecticut Transfer Act should be abolished, maintained in its current form, or expanded to include some sites beyond “establishments”. Some workgroup members felt that Transfer Act could provide a valuable safety net for contaminated sites that may either not be otherwise identified or cleaned-up under whatever more “expedited” cleanup system might be adopted.
- The workgroup agreed that the success of any new release reporting system would require a robust tracking system or database. The group discussed the preference for a system which would allow for electronic data submittals which would be less costly for the parties reporting and would provide the public easier access to milestone documents, including closure documentation. It was also agreed that tracking release reporting would require a significant commitment of resources on the part of DEEP.
- Any tracking system for release reporting needs to be able to distinguish between confirmed releases and suspected or threatened releases.
- There may be additional substances which should be added to the table in Appendix B, such as sewage, biomedical, foodstuff, etc. to address other commonly released substances which pose a low risk to human health and the environment at limited quantities.

Appendices

Appendix A – Spill Report Statistics (July 1, 2010 through June 30, 2011)

Appendix B – Proposed Reportable Quantity Table

Appendix A – Spill Report Statistics (July 1, 2010 through June 30, 2011)

A total of 7,362 spill reports were called into DEEP between July 1, 2010 and June 30, 2011. Of these reports, 78.9% (5,808) did not result in a DEEP Emergency Response Unit mobilization and 93.8% (6,908) are marked as “closed” for further action by the DEEP Emergency Response Unit.

Flammable and combustible materials, including various motor vehicle fluids, account for nearly three-quarters of the spills reported.

Release Substance (sorted by type)	Number of Reports	Approximate Percentage of Total
#2 Fuel Oil	1178	16%
Antifreeze	1060	14%
Transformer Oil	832	11%
Gasoline	702	9%
Motor Vehicle Fluids	501	7%
Hydraulic Oil	433	6%
Diesel Fuel	401	5%
Motor Oil	252	3%
Transmission Oil	126	2%
Antifreeze & Motor Oil	97	1%
TOTAL	5582	74%

Note: The above list does not include the less common spellings for substances (such as “gas” instead of “gasoline” or “transmission fluid” instead of “transmission oil”). As such, this list may under represents the number of spills associated with these materials.

Appendix B – Proposed Reportable Quantity Table

Material	Reportable Quantity (pounds)	Estimated Equivalent Volume
Motor Oil	TBD	TBD
Hydraulic Oil	TBD	TBD
Lubricating Oil	TBD	TBD
Power Steering Fluid	TBD	TBD
Brake Fluid	TBD	TBD
Antifreeze	TBD	TBD
Ethylene Glycol	TBD	TBD
Propylene Glycol	TBD	TBD
Diesel Fuel	TBD	TBD
#2 Fuel Oil	TBD	TBD
Kerosene	TBD	TBD
Mineral Oil	TBD	TBD
Transformer Oil	TBD	TBD
Gasoline	TBD	TBD

TBD – to be determined