



STATE OF CONNECTICUT

COUNCIL ON ENVIRONMENTAL QUALITY

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October 23, 2024

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Re: Draft Release-Based Cleanup Regulations (RBCR)

Aimee Petras

The Council on Environmental Quality (Council) acknowledges and appreciates DEEP's and the Department of Economic & Community Development's (DECD) efforts in drafting the proposed RBCR and in engaging a variety of stakeholders in its development. Input of private citizens, attorneys representing the interests of their clients (e.g. developers, lenders, real estate brokers), environmental professionals, scientists, and environmental groups, to name a few, has been encouraged and facilitated and their input seriously considered. The Council strongly supports the intent of the proposed RBCR to address the clean-up/remediation of releases to the land and waters of the state in a timely manner, which, in turn, should enhance public health and safety and bolster economic development.

S. Derek Phelps

Denise Rodosevich

Charles Vidich

William Warzecha

Regulations of this magnitude, like most, if not all significant environmental regulations, will have to be tested and likely refined as it is implemented, and case law will need to be developed. Such anticipated refinement should not be the basis for the rejection of the proposed RBCR. While the Council asks that DEEP consider its specific comments below, overall, the Council believes that the proposed RBCR represent a vast improvement over the Transfer Act and achieves an important balance between protecting the environment, looking out for the public interest, and facilitating economic development in the State.

Paul Aresta
Executive Director

The Council notes that the proposed RBCR are technically complex, extensive, and constitute a major shift in Connecticut's approach to cleaning up/remediating releases. Consequently, the Council recommends that DEEP continue to provide education and conduct outreach regarding the reporting and remediation provisions of the proposed RBCR.

Sec. 22a-134tt-2. Discovery of Releases

(a) Discovery of an Existing Release

(1) Except as provided in subsection (b) of this section, discovery of a release to the land and waters of the state occurs when a person who created or is maintaining an existing release has knowledge of such release, except that a release shall not be deemed discovered if the only evidence of such release is data available or generated before the date when regulations are first adopted pursuant to section 22a-134tt.

The Council questions the merit of disregarding evidence of a release from data generated before the adoption of these regulations. Among the main purposes of the regulations is to protect human health and the environment. It seems counter to this purpose to disregard such

evidence. At a minimum, such evidence should trigger a requirement for the owner, operator, maintainer, or person who has access to the site, to conduct an on-site investigation to determine whether the data is correct, with the triggering of applicable regulations if a release is verified.

Sec. 22a-134tt-3 Reporting Newly Discovered Existing Releases

(a) Report Required; Discovery By a Creator or Maintainer

(1) Significant Existing Releases

A significant existing release shall be reported not more than 72 hours after the discovery of such release, except that a significant existing release of NAPL or a substance for which a numeric groundwater protection criteria is specified in section 22a-134tt-App4 impacting a public or private drinking water supply well shall be reported not more than 24 hours after such impact is identified .

(b) Report contents and process

(1) Contents of Report

(A) Any report required by this section shall contain the following information regarding a discovered release:

(ix) Known or suspected sensitive receptors within 500 feet of the release, including, but not limited to, residential drinking water wells, public water supply wells or reservoirs, surface water bodies, schools and day care centers;

The Council suggests that drinking water sources, including both surface waters and groundwaters, within an Aquifer Protection Area (APA), drinking water supply watershed, and/or municipal water protection overlay area(s) be identified and included in the “Contents of Report” for the reporting of a discovered release. The Council notes that while subparagraph (b)(1)(A)(ix) requires information of “*known or suspected sensitive receptors within 500 feet of the release, including, but not limited to, residential drinking water wells, public water supply wells or reservoirs, surface water bodies, schools and day care centers*” be included in the *Contents of Report*; however, it is unclear if there is a requirement to notify the owner, operator, municipality, health district, and/or other “known or suspected sensitive receptors”(e.g. schools and day care centers) of the release. Notification is an important part of fulfilling the overarching purpose of this regulation, and therefore, explicit notification to entities corresponding to the “known or suspected sensitive receptors” should be included. This suggestion should apply to any reportable release that could adversely impact public health, and notification should be as soon as possible. Such notice should also be included in the requirements of *Sec. 22a-134tt-7. General Cleanup Standards Provisions, (d) Public Participation, (2) Public Notice, (B)*. In addition, the Council encourages DEEP to be as inclusive as possible in its enumeration of “*known or suspected sensitive receptors*” so the entities that could be adversely impacted by a release, are notified as soon as possible.

(c) Reports of Significant Existing Releases When the Person Who Discovers Such Release Did Not Create and Is Not Maintaining The Release

The Council suggests that terms, such as “*in a timely manner*” or “*timely report*” be specifically described.¹ For example, the RBCR indicates that an attorney must inform the attorney’s client of the obligation to report a release “*in a timely manner*”; however, the obligation for an “*employee, contractor, agent, representative, or otherwise has access to the geographic area of the release at the specific direction or with the direct consent of a person who created or is maintaining a release*” to notify such person is either one business day or six (6) hours, depending on the potential impact to a public or private drinking water supply well.

¹ Might also include unspecified terms found elsewhere in the draft RBCR, such as “*reasonable timeframe*” and “*substantially all*”.

(5) Persons Not Subject To Requirement To Notify

(B) If a significant existing release is discovered by a person who has access to the geographic area of the release pursuant to section 22a-133dd of the General Statutes, such person shall not be required to take any action pursuant to this subsection.

The Council questions why a municipality or a person acting on the behalf of a municipality who discovers a significant existing release and who has access to the geographic area of the release, pursuant to Section 22a-133dd of the General Statutes, is not required to take any action to inform the person who created or is maintaining such a release of the obligation to report such release or to report such release directly to DEEP, especially if the release has the potential to impact a public and/or private drinking water supply.

Comment generally applicable to all of subsection (c):

Subsection (c) sets forth many differing requirements (1) for who is to notify who (2) within an assortment of hours of discovery of a release and (3) for who has the final obligation to notify the commissioner. This seems unduly complicated and uses up what may be valuable time for notification to the commissioner and action. The Council encourages DEEP to simplify this section and advance the purpose of protecting public health and the environment by requiring that all significant existing releases known by the owner, operator, or maintainer or discovered by an individual who has access to the subject site be reported to the commissioner per subdivision (a)(1) upon discovery of the release, regardless of which one of these individuals discovers the release. It may be the case that other revisions to the regulation will need to be made as a result of this.

On the same subject as notification, the Council notes that as written, the regulations do not address discoveries by bystanders. Since discovering releases is fundamental to cleanup and remediation, and therefore the protection of human health and the environment, the Council urges DEEP to add provisions to the regulations that recognize discovery via notification from a bystander and incentivize such notifications (e.g. regulations that do not result in bystanders being subject to liability and onerous details, and only encourage sufficient information from which a site investigation can occur).

Sec. 22a-134tt-4. Characterization of Discovered Releases

(b) Identification of Prevailing Standards and Guidelines

This provision of the draft RBCR states that (1) “*the commissioner may specify, by posting on the department’s internet website, methods or protocols for the characterization of a release through the development of a conceptual site model ...*” and that “*methods or protocols posted on the department’s internet website pursuant to this subdivision shall be considered prevailing standards and guidelines.*” The Council recommends that any standards, guidelines, and/or protocols that are yet to be developed by DEEP, as it relates to the provisions of the RBCR, be publicly noticed and that the public be provided an opportunity to provide comments before adoption by DEEP of such standards, guidelines, and/or protocols.

Sec. 22a-134tt-5. Immediate Actions

(c) Time to Begin Required Immediate Actions

(1) The actions required by subsections (d) and (e) of this section shall begin immediately upon discovery of an emergent reportable release, if practicable, and under no circumstances later than 2 hours after discovery of such release...

The Council strongly supports the requirements of (d) “*Required Immediate Actions*” and (e) “*Required Immediate Actions for an Emergent Reportable Release*” to initiate remediation immediately upon

discovery of an emergent reportable release and within two (2) hours after discovery. The Council is uncertain if other provisions of the draft RBCR would then be applicable if the two-hour requirement is not met. The Council suggests that DEEP clarify or specify if any additional requirements might be imposed for Immediate Actions that are not undertaken within the required timeline (notwithstanding the penalties that might be imposed as specified in Table 5A).

Sec. 22a-134tt-5. Immediate Actions

(e) Required Immediate Actions for an Emergent Reportable Release

(1) In addition to the actions specified by subsection (d) of this section, the following actions shall be required if a release is an emergent reportable release that is present in a public or private drinking water well

(B) Identify each public or private drinking water well located on each parcel adjacent to the parcel on which the impacted well is located, collect samples of water from such wells, and send for laboratory analysis as soon as is practicable but not more than 36 hours after discovery that a public or private drinking water well has been impacted by such release;

(C) Identify each public or private drinking water well located within 200 feet of an impacted well, or within 500 feet downgradient of an impacted well, collect samples of water from such wells, and send for laboratory analysis as soon as is practicable but not more than 36 hours after discovery that a public or private drinking water well has been impacted by such release;

The Council notes that subparagraph (B) requires the identification and collection of samples from wells on “adjacent” parcels. While “adjacent” has been defined as “close to” or “nearby”, which is vague and open to interpretation, it is often misinterpreted as “abutting.” As with Subparagraph (C), specificity on the minimum distance should be provided in Subparagraph (B). The Council notes that the word “or” in the provisions of subparagraphs (e)(1)(C) and (f)(1)(D) suggests that the entity has a choice in the identification of public “or” private drinking water wells that might be impacted by a release. Further, in subparagraph (C), it is unclear if the intent is to identify wells 200 feet (upgradient?) of a release or 500 feet “downgradient” of a release.² The Council suggests that the word “or” be changed to “and” in this subparagraph and elsewhere in the draft RBCRs, so that both public **and** private wells are identified within 200 feet (upgradient?) **and** 500 feet downgradient of an emergent reportable release. The Council also notes that the 200-foot radius described in subparagraph (C) might be inconsistent with the 500-foot radius described in Section 22a-134tt-8(a)(1)(D)(ii) – “*consists only of oil or petroleum, is not within 500 feet of a drinking water well, and has not caused a persistent impact to groundwater...*”.

(D) Ensure that an alternative source of potable water is provided to the users of each public or private drinking water well impacted by such release;

The Council suggests that the timeframe for the provision of an alternative source of potable water be specified, such as “within 24 hours”, and that the “or” in subparagraph (D) be changed to “and.”

(g) Certification by a PEP or Verification by an LEP

(1) Immediate action required by this section may be directed by the commissioner in the event such release is determined to be an emergency or exigent condition pursuant to subsection (b) of this section. If such release is not determined to be an emergency or exigent condition pursuant to subsection (b) of this section, immediate action may be certified as complete by a PEP or verified as complete by an LEP...

² The same comments would apply to similar provisions of Section. 22a-134tt-5, subsection (f) Required Immediate Actions for a Significant Existing Release.

The Council suggests that this subsection reference “release record” and/or “remediation closure report” as it is unclear what the PEP will “certify” or what the LEP will “verify”, or reference the provisions of Section 22a-134tt-11.

(h) Immediate Action Transition-Points

(1) Emergent Reportable Release Transition-Points

If the release for which immediate action was required is an emergent reportable release, such immediate action shall result in compliance with the standards specified at section 22a-134tt-8 of the RBCRs, the applicable numeric criteria in the cleanup standards sections, an applicable additional polluting substances criterion calculated pursuant to section 22a-134tt-App 8 of the RBCRs, or if such criteria cannot be met within 1 year of discovery, an applicable immediate action transition-point, specified below:...

Specific citations are provided in (h)(1) for immediate actions and applicable additional polluting substances criterion, but not for the numeric criteria. The Council questions whether, instead of “numeric criteria,” the defined term “numeric cleanup standards” should be used or whether the references to the standards identified in sections 22a-134tt-APP2 to 22a-134tt-APP12, inclusive, of the RBCR, be specified.

(j) Immediate Action Plan

(4) The commissioner may review the immediate action plan, and may approve or reject such plan, in writing....

(5) If the commissioner rejects the proposed actions and schedule, the actions and schedule shall be revised and resubmitted for the commissioner’s review within 7 days. If the commissioner does not reject the immediate action plan within 21 days after receipt, the plan, including the proposed actions and schedule shall be automatically deemed approved.

Subdivision (4) contains no timeframe for the Commissioner’s review, while subdivision (5) sets a 21-day timeframe for a revised immediate action plan. The Council suggests that DEEP provide a timeframe for its initial review of each submitted immediate action plan.

Sec. 22a-134tt-6. Tiers

(d) Cleanup Oversight

(1) Releases assigned to tier 1A shall be supervised by the commissioner who may direct certain tasks to be performed by an LEP or other qualified professional and may exercise all authority over an emergency or exigent circumstance provided by section 22a-134tt-5(b);

(4) Releases assigned to tier 3 shall be supervised by a qualified professional, except that the performance of certain tasks including compliance monitoring, and the preparation of a verification shall require the supervision of an LEP.

The term “qualified professional” is not defined in the proposed regulations, and it is assumed that the term would apply to individuals other than a licensed environmental professional (LEP). The Council suggests that the term “qualified professional” be defined, including a description of activities which such individual is authorized to complete. (See also Section 22a-134tt-5(b)(3) and (c)(3) which refer to a “licensed contractor”, which also needs a definition).

Sec. 22a-134tt-7. General Cleanup Standards Provisions

(d) Public Participation

(1) Erection of a Sign

(2) Public Notice

The Council supports the public notice provisions identified in the draft RBCR. However, the Council questions who is responsible for providing notice described in subsection (d) and the timing for the public notice since remediation activities could be undertaken at a site for approximately one year prior to being

assigned to a tier.³ The Council suggests that DEEP specify who is responsible for such notice, and that the “erection of a sign” and (d)(2)(B) “Public notice shall be provided by mailing or personally delivering the public notice form to the chief elected municipal official and to the Director of Health of the municipality in which remediation will occur” be undertaken as an immediate action and/or within a short period of time, such as one week, of the discovery of a release.

The Council also suggests that there be provisions in the RBCRs to notify occupants of residential multi-family units of the restrictions associated with the provisions of the “managed multifamily direct exposure criteria”, specified in Section. 22a-134tt-9(b), especially when there might be restrictions that prohibit residents from digging in soil, limit active recreation, and/or prohibit residential activity other than managed multifamily residential activity. In other words, occupants of such multi-family dwellings should know why there is a prohibition from digging in the soil.

Sec. 22a-134tt-8. Releases Certified as Closed by a Permitted Environmental Professional

(a) Emergent Reportable Releases Certified as Closed by a Permitted Environmental Professional

(1) The remediation of a release shall be determined to have satisfied the requirements of the RBCRs if:

(D) The release:

(ii) consists only of oil or petroleum, is not within 500 feet of a drinking water well, and has not caused a persistent impact to groundwater as determined by subsection (c) of this section;

The Counsel observes that there is no subsection (c) in section 22a-134tt-8.

(b) Releases of Home Heating Fuel on Residential Properties

(1)(A)(iii) such release was created by the owner of the parcel on which the home heating fuel is being used or stored for future use, or by the owner or occupant of a dwelling unit on such parcel. A release shall be determined to have been created by the owner of such a parcel or the owner or occupant of such a dwelling unit if the release would not have occurred but for the actions or inactions of such person or if such person owns, leases, or is otherwise in possession of the equipment that cause the release of home heating fuel;

The Council questions if this subsection would apply to distributors or suppliers of home heating oil even though the owner occupant might own, lease or is otherwise in possession of the equipment. The Council suggests that DEEP clarify if the provisions of this subsection would apply to the release of home heating oil during its delivery or transfer.

Sec. 22a-134tt-9. Cleanup Standards for Soil

(b) Direct Exposure Criteria

(3) Conditional Exemptions for Inaccessible Soil

(A) Soil at a release area that is fifteen feet or more below the ground surface is not required to be remediated to the direct exposure criteria.

The Council suggests that DEEP specify the standard or criteria for polluted soil at a release area that is 15 feet or more below grade since it is not required to be remediated to the direct exposure criteria.

(k) Conditional Exemption for Dredge Spoils

(2) The pollutant mobility criteria, provided:

(A) The provisions of subdivision (1) of this subsection are complied with; and

(B) Dredged materials are reused in a location upgradient of the water body from which such dredge spoils have been removed.

³ Pursuant to Sec. 22a-134tt-6, subsection (c) Tier Assignment - “Not more than 1 year after discovery of a release, each release shall be assigned to a cleanup tier if a release remediation closure report has not been submitted for such release.”

The Council understands the logic for this, but questions whether an upgradient location could be upgradient from multiple water bodies, rivers, streams, wetlands, or drinking water sources located such that the contaminants could adversely impact these other resources. If that is the case, the Council suggests that this provision needs to be reconsidered to ensure that such dredged material is not contaminating these other water bodies, rivers, streams, wetlands and drinking water sources downgradient from the area of deposition.

Sec. 22a-134tt-10. Cleanup Standards for Groundwater

(b) Alternative Surface-Water Protection Criteria

With respect to substances in groundwater for which surface-water protection criteria are specified in section 22a-134tt-App5 of the RBCRs or approved by the commissioner pursuant to subsection (i)(2) of this section, alternative surface-water protection criteria may be calculated by an LEP or approved in writing by the commissioner, pursuant to this subsection...

(1) Groundwater Plume Discharge to a Watercourse

(A) For a substance in a groundwater plume that discharges to an inland surface watercourse classified as AA, A, or B in the Water Quality Standards, alternative surface-water protection criteria may be calculated...

The Council suggests that any alternative surface water protection criteria, calculated by an LEP, be pre-approved in writing by the commissioner for a groundwater plume that discharges to an inland surface watercourse classified as AA or A since such waters are designated as “existing or proposed drinking water supply” and “potential water supply”, respectively (the latter particularly because the effects of climate change and increasing population will make drinking water sources even more important to preserve and protect).

(c) Volatilization Criteria

(6) Exemption from Volatilization Criteria Through Indoor Air Monitoring

(A) A request in accordance with this subdivision shall be submitted to the commissioner in accordance with section 22a-134tt-1(c) of the RBCRs, and shall also include:

(ii) An indoor air monitoring program and measures to control the level of any such volatile organic substances in the air of the subject building...

The Council suggests that a reporting requirement be included in the proposed indoor air monitoring program to ensure that the owner/operator of a building that overlies groundwater with volatile organic substances complies with the requirements of the indoor air monitoring program including, but not limited to, subclause (IV) the proposed frequency of monitoring, and subclause (V) the parameters to be monitored.

(d) Groundwater Protection Criteria

(1) Exemption from Attaining Background Concentration in a GA Area

For substances in groundwater in a GA area, remediation to the background concentration may not be required if the concentration of each substance in a groundwater plume is equal to or less than the groundwater protection criteria and one of the following conditions exist:

- (A) (i) A public water supply distribution system is available within two hundred(200) feet of the parcel on which the release area is located, within two hundred (200) feet of all adjacent parcels, and within two hundred (200)feet of any parcel within the areal extent of the groundwater plume;***
- (ii) Such groundwater plume is not located in an aquifer protection area; and***
- (iii) Such groundwater plume is not located within the area of influence of any public water supply well;***

Only the above exemption is copied here, but please note that the following concern is applicable to the entire subsection and subdivision.

The Council is concerned that the groundwater criteria in Section 22a-134tt-10 generally, and in subsection (d)(1) particularly, may be too permissive, especially in light of drought conditions already experienced in Connecticut, population increases generally, and the fact that approximately 840,000 of Connecticut's residents already rely on groundwater for their drinking water supply. The Council urges DEEP to reexamine the groundwater protection criteria to ensure that potential drinking water groundwater (GA) and potential drinking water in watersheds (GAA) are protected by these regulations and will not jeopardize the existing GA and GAA designations of groundwater.

(3) LEP Calculation of Alternative Groundwater Protection Criteria

(A)(iv) A public water supply distribution system is available within five hundred (500) feet downgradient and two hundred (200) feet in any direction of the subject groundwater plume;

The Council questions why the alternative groundwater protection criteria is dependent on the distance to a public water supply distribution system being 500 feet if downgradient of a groundwater plume. The Council suggests that DEEP assess if a standard 200 feet "in any direction" should apply, which would also be consistent with the provisions of subsection (d)(1)(A)(i) of this Section.

(g) Conditional Exemption for Groundwater Polluted with Pesticides

Compliance with the groundwater criteria specified in subsection (a) of this section is not required for pesticides in groundwater resulting from the application of pesticides at the release area, provided that:

(4) Potable water supply wells on the parcel where pesticides are in groundwater have been sampled and any exposure pathway to drinking water in such wells is eliminated or mitigated to the extent necessary to protect human health;

The Council suggests that the phrase "on the parcel" be deleted so that the specified actions, such as sampling, are undertaken for all potable water supply wells that might be impacted where pesticides are in the groundwater.

(7) If pesticides applied at a parcel, for which a demonstration of compliance with the RBCRs is being made, are present in groundwater on other parcels at concentrations exceeding the groundwater criteria, best efforts have been made to ensure that an EUR has been placed providing notice that pesticides in groundwater on such affected parcels exceeds the groundwater criteria. A certification stating such best efforts have been made shall be submitted with the notice required under subdivision (8) of this section;

The Council questions if "best efforts" that have been made "to ensure that an EUR has been placed providing notice that pesticides in groundwater on such affected parcels exceeds the groundwater criteria" is sufficient to ensure public health on nearby parcels. In the interest of public health and the environment, the Council suggests that better notice than this should be provided.

Sec. 22a-134tt-12. Release Remediation Closure Report

(1) Include the following information

(B) The location of the release, including the property address and geographic information system coordinates;

The Council suggests that DEEP also require the year and datum for the geographic information system (GIS) coordinates, or alternatively, that the GIS coordinates should be provided as latitude and longitude in decimal degrees, which negates the need to specify the year and datum.

Sec. 22a-134tt-App10. Appendix 10

Potential Alternative Groundwater Protection Criteria Map, dated December 22, 2020

The Council suggests that the “Map” be provided as a geographic information system map or map application that would enable users to accurately identify potential alternative groundwater protection areas. The same comment applies for Appendix I of the Remediation Standards Regulations (RSRs).

Other Considerations

The Council suggests that a provision be added to the subject regulations to address how changes in owners/operators/maintainers will be made known to DEEP if changes occur before closure of the applicable remediation process.

Additionally, the Council questions DEEP’s reliance on PEPs and LEPs. While it is understood that the draft regulations, if adopted, should have the beneficial effect of ushering the clean-up/remediation of sites more quickly through the regulatory process, without sufficient DEEP staff to ensure PEP and LEP compliance with the regulations, standards, guidance, and protocols, the public and environment are only protected to the extent that PEPs and LEPs faithfully and competently fulfill the regulatory requirements. DEEP must have sufficient staff to audit/monitor the work of these professionals at a much higher audit level than specified in Section 22a-134tt-13(h)⁴. Without this, another consequence could be that property owners may decide noncompliance is a manageable risk.

Thank you for your consideration of the Council’s comments.

Sincerely,

A handwritten signature in black ink that reads "Paul Aresta". The signature is written in a cursive, flowing style.

Paul Aresta,
Executive Director

⁴ Ten (10) percent for Tier 1A (most serious), 20 percent for Tier 1B, ten (10) percent for Tier 2, and five (5) percent for Tier 3.