

CERTIFIED COPY

STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND
ENVIRONMENTAL PROTECTION

RELEASE-BASED CLEANUP REGULATIONS

PUBLIC COMMENT HEARING held at the McCarthy Auditorium, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, Connecticut, on October 10, 2024, beginning at 9:46 a.m.

H e l d B e f o r e :

RAY FRIGON,
REMEDIATION DIVISION DIRECTOR

(Transcribed from digital recording.)

1 (Begin Recording: 0:00:00)

2 (9:46 a.m.)

3
4 **THE HEARING OFFICER:** Good morning, everybody. My name
5 is Ray Frigon. I'm the Director of DEEP's
6 Remediation Division, and I'm authorized by the
7 Commissioner of Energy and Environmental
8 Protection. I will be the Hearing Officer for
9 today's hearing.

10 Today is Thursday, October 10, 2024. The
11 time is 9:46, and this hearing is being conducted
12 in the McCarthy Auditorium at the Connecticut
13 Department of Energy and Environmental Protection,
14 79 Elm Street, Hartford, Connecticut. The hearing
15 record is now open for the Department of Energy
16 and Environmental Protection's proposed
17 release-based cleanup regulations.

18 The purpose of today's hearing is to receive
19 both oral and written comments on the regulations,
20 specifically Sections 22a-134tt-1 to 22a-134tt-13,
21 inclusive; and 22a-134tt-APP1 to 22a-134tt-APP12,
22 inclusive, of the regulations of Connecticut state
23 agencies.

24 The hearing will continue today until all
25 those present who wish to speak have been heard.

1 Written comments may be submitted until the close
2 of business on October 24, 2024.

3 Before we begin, we have a few logistics.
4 Restrooms are to my left, through the atrium area,
5 and you'll see the men's and women's room on
6 either side of the elevator. We also have
7 attendants in the hallway that can help you if you
8 lost your way.

9 Please turn off your cell phones and take any
10 conversations out to the hallway. I suggest going
11 to the foyer between the glass doors or the area
12 near the restrooms for phone calls or discussions.

13 We may take a brief moment break if we need,
14 and that will be determined by the number of
15 speakers that we have today.

16 Please be aware that food and drink are not
17 allowed in the auditorium with the exception of
18 bottled water or hot tea.

19 In the event of an emergency that requires an
20 evacuation of the building, please leave this room
21 by either of the exits to my left, to my right,
22 and follow the exit signs from there.

23 The hearing will be conducted in accordance
24 with the rules of practice of the Department of
25 Energy and Environmental Protection. If you wish

1 to make a statement during the hearing, please
2 sign up on the sheets at the table located near
3 the entrance of the auditorium.

4 So we have Lynn and Peter in the hallway.
5 Just a point of clarification, everybody in the
6 room should be signed up just for your attendance
7 today, seeing as though we had our security folks
8 just bring everybody straight upstairs. So that's
9 just for an accounting of who's in the room in the
10 event of an emergency. If you wish to speak,
11 please also sign up specifically on the speakers
12 list.

13 Speakers will be called to the microphone in
14 the order that their name appears on the list,
15 with the exception of state and municipal elected
16 officials who have signed up on the speakers list
17 and have identified themselves as elected
18 officials being given the opportunity to make
19 their comments at the beginning of the hearing in
20 the order that they appear on the list. Please
21 note that this hearing is being recorded.

22 Before we begin, are there any elected
23 officials in the room?

24
25 (No response.)

1 THE HEARING OFFICER: All right. As I call a speaker I
2 will announce the name of the subsequent speaker.
3 The person called to speak should proceed to the
4 microphone in the front center of the room. State
5 your name and affiliation, please, and begin to
6 present your comments.

7 The on-deck speaker should also proceed to
8 the front of the room and be prepared to proceed
9 to the microphone when called. Please be sure you
10 are present and prepared to begin your comments
11 when your name is called. If you miss your turn
12 and wish to speak, I request that you sign up at
13 the bottom of the list again.

14 In order to ensure that all speakers have an
15 opportunity to speak, I'm going to ask that you
16 limit your remarks to approximately five minutes.
17 I have a cell phone with a timer, so I will give a
18 warning when we get close to the five-minute mark.

19 We will continue the hearing today until all
20 those present have an opportunity to be heard. I
21 encourage you to use your limited time effectively
22 by keeping your statements brief and to the point.
23 I may exclude irrelevant and unduly repetitious
24 comments. If you agree with the prior speaker,
25 please note your concurrence rather than repeat

1 the previous speaker's comments.

2 Please note that there is no need to read
3 your comments into the record. You may supplement
4 or clarify your comments with written testimony.
5 If you have a written statement prepared for
6 submission today, please give that statement to
7 Lynn Olson-Teodoro, who is in the hallway
8 currently.

9 For those individuals wishing to submit
10 written comments but not comment verbally, you may
11 provide copies of your comments to Lynn or submit
12 them using the eRegulations system. Please be
13 sure you include your name, e-mail, and other
14 appropriate identifying information on your
15 written comments, and please be sure that they are
16 dated.

17 This hearing is one step in the
18 regulation-making process that is prescribed by
19 both the Connecticut General Statutes and the
20 Department's Rules of Practice. Upon closing the
21 record, all comments, both written and oral, will
22 be carefully considered.

23 The Department will prepare; one, the final
24 wording of the proposed regulations; two, a
25 statement of the principal reasons in support of

1 the Department's intended action; three, a
2 statement of the principal considerations raised
3 in opposition to the Department's intended action
4 in written and oral comments and the reasons for
5 rejecting such considerations; and fourth, a
6 revised fiscal note if that's necessary.

7 The final proposed regulations will then be
8 submitted to the Attorney General's office and
9 then to the Regs Review Committee of the General
10 Assembly for approval or disapproval.

11 All those submitting oral or written comments
12 will automatically receive a copy of the Statement
13 of Reasons when it is prepared. In addition,
14 individuals not commenting but who wish to receive
15 a copy may sign up using the eRegulations system.

16 Finally, please keep in mind that today's
17 hearing is to receive public comment. This is not
18 a trial, nor a debate, or a discussion. I
19 understand that everyone may not agree with all
20 the views that are expressed today, but all
21 individuals have the right to be heard in a
22 constructive, polite, and professional atmosphere,
23 and I trust we'll make that happen together.

24 The speakers list?

25 Thank you, Peter.

1 Our first speaker, Bryan Atherton, followed
2 by Seth Malofsky.

3 BRYAN ATHERTON: Good morning. My name is Bryan
4 Atherton. I am the current president of the
5 Connecticut Western Mass SIOR chapter. I do have
6 written testimony that was submitted to the
7 record. I'm here to just summarize that and thank
8 everybody in this room for the hard work that has
9 gone into sunseting the Transfer Act for 20-09,
10 as I was an integral part in the beginning when I
11 chaired the Connecticut Association of Realtors
12 legislative council -- legislative committee,
13 excuse me, and I was on the Executive Committee
14 from 2012 to 2018.

15 During that time, I realized at those
16 positions -- also president, past president of the
17 Connecticut CCIM chapter, Certified Commercial
18 Investment Member; those are all affiliates of the
19 National Association of Realtors. We are trained
20 to understand demographic and employment and
21 impact on economy and growth, and I realized in
22 those positions that the Connecticut Transfer Act
23 was stifling growth in Connecticut. So I commend
24 all of us for where we are today, because many
25 said it could not be done.

1 I would just urge all of us stakeholders that
2 we get this right, that this is a very important
3 big step, and we keep in mind that there are
4 ramifications to practical applications that we
5 can continue to cite in many of the organizations,
6 as many of the organizations I mentioned will have
7 a written testimony.

8 But I'm here to just encourage to work out
9 the minor details and not to rush, and not to just
10 say, don't worry and take care of it, as those
11 concerns or issues may arise. It's very easy. We
12 don't sail before we have a plan. We don't enter
13 a contract before we have a concise plan of the
14 details and the terms and conditions, so I would
15 just urge us to keep that in mind.

16 So, I will submit this written testimony, and
17 I appreciate the time. Thank you.

18 **THE HEARING OFFICER:** Thank you.

19 Seth Malofsky, followed by Brian Warner.

20 **SETH MALOFSKY:** Good morning. My name is Seth
21 Malofsky. I'm the Executive Director of the
22 Environmental Professionals Organization of
23 Connecticut, or EPOC. I'm here to present
24 testimony today on behalf of the EPOC Board of
25 Directors on the proposed release-based cleanup

1 regulations.

2 Many of you know EPOC is a non-profit
3 educational association which represents the
4 interests of Connecticut's Licensed Environmental
5 Professionals, or LEPs. LEPs will be one of the
6 principal implementers of the newly proposed
7 release-based program.

8 EPOC's board of directors has been actively
9 engaged in the established workgroup meetings over
10 the past four years. We want to recognize and
11 thank DEEP's staff for their extensive efforts in
12 bringing these draft regulations to the public
13 review notice period. We also wish to acknowledge
14 and thank members of the working group who,
15 through committees and individually, have provided
16 invaluable input during this process.

17 EPOC has been supportive of the
18 transformation to a release-based cleanup program
19 and recognizes its importance in protecting
20 environmental quality along with facilitating
21 cleanups to allow for increased economic growth
22 and redevelopment of Connecticut properties.

23 During this review process, EPOC has raised
24 numerous issues that we believe are vital to
25 ensuring that the new program incorporates the

1 appropriate technical requirements and, as a
2 practical matter, is implementable for LEPs and
3 other stakeholders.

4 We acknowledge that there have been some
5 improvements between the first and second drafts,
6 however, there are many areas where we believe the
7 draft regulations and supporting materials still
8 need further discussion and we will be providing
9 detailed written comments as part of this process
10 for consideration.

11 In brief, the following major areas have not
12 yet been addressed in the regulations to a degree
13 sufficient for us to support the passage of these
14 regulations as proposed. We believe these items
15 are essential to making the regulation, again,
16 implementable and avoiding unintended negative
17 consequences. I have eleven items; please bear
18 with me.

19 First, the requirement to take some action
20 for any detection above the laboratory reporting
21 limit with such, quote, lower-bound, unquote,
22 reporting limits lacking, which we consider to be
23 an essential component of the regulations and to
24 be in step with the Massachusetts release
25 reporting program.

1 Second, knowledge versus multiple lines of
2 evidence is too subjective and won't be
3 interpreted or applied consistently to identify if
4 a release has occurred.

5 Third, 22a-454 statutory permit requirements
6 newly identified by DEEP as being applicable to
7 contractors engaged in cleanups of existing
8 releases.

9 Fourth, administrative and fee burdens for
10 sites with multiple releases.

11 Next, availability and details of a sitewide
12 alternative program for sites with multiple
13 releases.

14 Item six, details on statutory changes needed
15 to avoid statutory and regulatory conflicts and
16 ensure consistency of the various cleanup
17 programs.

18 Seven, means and methods that DEEP will
19 accept for human health risk assessment.

20 Next, a technical support document for
21 development of background metal levels in the
22 environment.

23 Number nine, adequate DEEP staff resources to
24 manage the new program which will cover all
25 properties, residential, industrial, commercial,

1 municipal, et cetera, in addition to the
2 approximately 4,000 current open Transfer Act
3 sites.

4 Item ten, development of a financial support
5 resource and/or insurance reforms needed to assist
6 residential properties with potential cleanup
7 costs.

8 Lastly, license requirements and program
9 specifics for permitted environmental
10 professionals, or PEPs.

11 We are hopeful that these items can be
12 addressed during the future workgroup meetings and
13 through the Department's review and consideration
14 of submitted written comments. EPOC has
15 consistently maintained the position that it's
16 difficult, if not impossible, to fully evaluate
17 the new regulations and their impact on
18 Connecticut property owners until we see them in
19 their entirety and see how all the pieces work
20 together.

21 As recently as two days ago, more than two
22 months after the revised regulations were released
23 for public comment, new comments and proposed
24 regular -- new concepts and proposed regulatory
25 changes were introduced at the monthly working

1 group meeting.

2 While these appear to be positive concepts
3 and changes, they were presented at a high level
4 without sufficient detail to understand how they
5 will impact the overall program. And more
6 importantly, these critical concepts and changes
7 are not included in the proposed regulations
8 posted for public comment. Doing so implies these
9 regulations as proposed are not complete and still
10 sufficiently lacking in critical areas.

11 It is important to note that the new
12 regulations will be -- will formally expand
13 environmental compliance requirements from the
14 relative small universe of properties subject to
15 the Transfer Act to all properties where a spill
16 occurs, or a historic release is detected. All
17 properties means all properties; industrial,
18 commercial, institutional, municipal, and
19 residential. For this reason, we believe it is
20 essential that the proposed regulations and all
21 associated supporting materials and statutory
22 changes are fully developed before submitting a
23 regulatory package for adoption.

24 Thank you for your time today. We hope that
25 additional time is provided to allow DEEP to fully

1 develop the entire regulatory framework prior to
2 submitting the draft regulations for regulatory
3 review. I appreciate the opportunity to
4 participate, and EPOC does, in the continued
5 regulation development process. Thank you.

6 THE HEARING OFFICER: Great. Thank you, Seth.

7 Brian, followed by Emily Scott.

8 BRIAN WARNER: Good morning. Hello. I'm Brian Warner,
9 a licensed Connecticut -- a Connecticut licensed
10 environmental professional. In addition to my
11 comments today, I will be providing written
12 comments by the October 24th due date.

13 I'd like to take this opportunity to express
14 my concerns about the proposed RBCRs. As
15 currently drafted, the investigation and
16 corrective actions for releases from regulated
17 USTs in the State are not included under the
18 regulatory umbrella of the RBCRs. They're being
19 kept separate even though a significant number of
20 releases each year, and I presume the majority of
21 reported releases, are from the estimated 40,000
22 USTs previously or currently registered in
23 Connecticut, and the estimated 8,000 USTs
24 currently in use.

25 As many of you know, at the same time that

1 these RBCRs are being proposed, there are also a
2 new set of UST regulations being proposed for
3 passage which include a significantly different
4 set of regulations governing the investigation,
5 corrective actions, and closure process for
6 releases associated with USTs.

7 The primary objective with the adoption of
8 both sets of laws should be to simplify, clarify,
9 and provide consistency within the regulations
10 that govern the investigation and corrective
11 actions of all releases to the land and waters of
12 the state. Having two distinctly separate and
13 different regulations for UST releases and non-UST
14 releases creates confusion and uncertainty for
15 responsible parties and stakeholders.

16 I understand that there are federal EPA
17 requirements for the passage of the UST
18 regulations to occur in a strict timeframe, but I
19 would suggest that in order to streamline the
20 regulations in Connecticut the RBCRs should
21 include UST releases. And the proposed UST
22 regulations should simply refer to the RBCRs for
23 the requirements dealing with investigations and
24 corrective actions. If they can't -- or if they
25 can't simply be referred to the RBCRs, they should

1 at least be fully the same.

2 This would provide consistency for all
3 cleanups, for all release cleanup requirements
4 within the State. And the primary focus of the
5 UST regulations should be to stick with the
6 regulatory compliance, construction, and
7 installation side of things. So, that's why I
8 come today.

9 Thank you.

10 THE HEARING OFFICER: Thank you Brian.

11 Emily Scott?

12 EMILEE MOONEY SCOTT: Who's on deck? Do you want to
13 say who's on deck?

14 THE HEARING OFFICER: I'm sorry. There's no one else
15 on deck.

16 EMILEE MOONEY SCOTT: Oh, okay. Good morning. My name
17 is Emily Moody Scott, and I'm a partner with
18 Robinson & Cole, resident in the Hartford office,
19 though, I am speaking today only for myself and
20 not on behalf of my firm or any of its clients.
21 I'm also a member of the working group convened
22 pursuant to Public Act 20-9.

23 As you may know, I am the Chair of the
24 Connecticut Bar Association Environmental Section.
25 Section members, many of whom you know well from

1 the working group, are working hard to compile
2 written comments on behalf of the section. Since
3 those comments are still under development, and I
4 cannot yet identify the issues on which we have
5 achieved consensus, I am speaking today in an
6 individual capacity and not on behalf of the
7 section. Since others have already raised some of
8 the points that I would plan to raise myself, I'll
9 kind of briefly outline those points of consensus.

10 First, I agree with Mr. Atherton that it is
11 critically important that we get the details right
12 so that when the new program is implemented, it
13 will have the intended effect of improving the
14 economic and real estate condition in Connecticut,
15 rather than hindering it.

16 Secondly, I will concur with many of the
17 points that Mr. Malofsky raised, in particular,
18 the need to understand the full picture of the
19 statutes that are being proposed and will be the
20 framework upon which these regulations are built.
21 I cannot support any regulations that have been
22 proposed that are not congruent with the current
23 statutory scheme.

24 And as we discussed at the working group just
25 two days ago, there are necessary statutory

1 changes to make this work, and until those changes
2 are made we don't know exactly what they will be
3 or what they will say, and therefore I can't
4 support anything that's incongruent with the
5 statutes as they are now.

6 Given the short time and the, you know,
7 detailed written comments to follow, I would like
8 to focus my remarks today on two aspects of the
9 proposed regulations that will make the burden on
10 landowners and other parties in Connecticut trying
11 to implement these regulations more burdensome
12 than anticipated and, I believe, more burdensome
13 than intended by Public Act 20-9, and indeed, more
14 burdensome than our neighboring state of
15 Massachusetts that we've been looking to often for
16 inspiration on these proposed regulations.

17 First, as Mr. Malofsky alluded to, the
18 discovery trigger for existing releases as
19 presently written is too subjective. In
20 Massachusetts, obligations flow from the discovery
21 of existing releases based upon reportable
22 concentrations. There is no subjective multiple
23 lines of evidence trigger in Massachusetts.

24 The multiple lines of evidence discovery
25 trigger is overly subjective and will lead to

1 confusion as to when a release was discovered or
2 should have been discovered. And since the
3 reporting and tiering deadlines that I'll talk
4 about in a moment run from discovery, that is an
5 especially important feature, as each of these
6 overly burdensome individual factors build upon
7 each other in a synergistic manner that will cause
8 many more releases than intended to be part of the
9 system and ultimately part of tier 1A.

10 So as to the multiple lines of evidence
11 trigger, I understand the public policy rationale
12 against willful blindness, but the Department
13 has -- the department staff and working group
14 meetings, et cetera, has repeatedly assured us
15 that the intention is not to force testing, but to
16 provide a pathway about what to do upon the
17 discovery of contamination. The multiple lines of
18 evidence piece is out of step with that kind of
19 public policy framework of not forcing
20 investigation. So I think that more discussion at
21 the working group level is warranted to thread the
22 needle between those two competing public policy
23 goals.

24 And then even for releases detected by
25 analytical testing, discovery has occurred when a

1 release is detected above detection limits. And I
2 know I'm repeating a bit of what Seth said, but it
3 bears repeating. There is no lower bound for when
4 a release is discovered. And again, since the
5 reporting and tiering pieces build upon that, the
6 lack of a lower bound in the discovery context is
7 especially important.

8 And so pivoting then to reporting, there is
9 no lower bound for reporting either. For releases
10 less than two times the numeric criteria, a
11 release must be reported within 365 days unless a
12 release remediation closure report is prepared.
13 So, we have the trigger of two times the numeric
14 criteria for the difference between 120-day
15 reporting and 360 reporting, but then there's
16 nothing below that that says 365-day reporting is
17 not required if it was always below the numeric
18 criteria and no remediation was required in the
19 first place.

20 So, reporting is required within 365 days
21 unless a release remediation closure report is
22 prepared. That is an absurd requirement that will
23 have no benefit to public health. There needs to
24 be a clear exit for releases that were below the
25 remediation criteria in the first place. And

1 ideally, like Massachusetts, it would never even
2 be part of the system because the system does not
3 engage unless there is a reportable concentration
4 in place.

5 So, since the discovery triggers and
6 reporting triggers lack the lower bound, I would
7 predict that there are a number of releases that
8 will be missed because it's such an absurd result
9 that you need to file a release remediation
10 closure report for something that was 20 percent
11 of the standards and didn't require remediation in
12 the first place.

13 So let us now move to tier 1. Tier 1A will
14 be subject to DEEP supervision, the highest level
15 of oversight, and the greatest drain on staff
16 resources. And the tier checklist, as presently
17 configured, feeds all releases into one tier 1A as
18 the first page of the form. And so, to progress
19 through different tiers of risk and different
20 pages on the form you have to answer certain
21 questions.

22 So, if a release is missed and none of the
23 questions could be answered within the first year
24 because, you know, suppose it's, you know, day 367
25 and you're kind of trying to catch up to speed,

1 the only return to compliance is filing a tier 1A
2 form, even for, again, a release that could have
3 been, you know, 20 percent of the cleanup criteria
4 in the first place. So, there's no return to
5 compliance onramp for releases that never pose a
6 material risk in the first place.

7 So, and then furthermore, to the extent it
8 serves -- to the extent that the tier 1A default
9 serves as a disincentive for late reporting under
10 22a-450, it conflicts with the statutory directive
11 not to require reporting under the RBCRs for those
12 releases required to be reported under 450.

13 So, the lack of a lower bound in the
14 discovery, reporting, and tiering content context
15 are not added if they're geometric, and it will
16 cause a much greater than anticipated drain on
17 department resources by filtering releases that,
18 again, were below the cleanup criteria anyway into
19 tier 1A. We need much clearer offramps and lower
20 bounds at every step of that process.

21 Secondly, I will turn to the liability for
22 creators and maintainers, which is too broad and,
23 as I'll discuss in a minute, out of step with the
24 posture in Massachusetts.

25 So the Department has indicated that its

1 intention is to mirror the existing case law,
2 including the STAR case. And in that case, the
3 court required on the common law of nuisance to
4 interpret the term "maintaining," and also found
5 the passive ownership of land could give rise for
6 liability for maintaining a release as a remedial
7 measure to reach passive landowners that were
8 impacting other properties or others more
9 generally.

10 In both instances, however, so both on the
11 nuisance prong and the, kind of, remedial measures
12 prong, the court never said that the landowner is
13 liable in all circumstances, regardless. There
14 were impacts on other property owners that should
15 be taken into account in framing out the broad
16 liability for maintainers. There is no support
17 for the proposition of an entirely blameless party
18 with some possessory right to that liability as a
19 maintainer.

20 And this is especially significant when it
21 applies to tenants who are, as presently drafted,
22 considered maintainers until they comply with
23 their reporting obligations. To the extent that
24 tenants should have some reporting obligations,
25 that belongs in the reporting section, not by

1 subjecting tenants to maintainer liability writ
2 large.

3 Second, the creator-maintainer liability is
4 too punitive. There's no opportunity to dispute
5 identification as a creator or maintainer. So
6 when a report is filed -- we understand we haven't
7 seen the report on a draft, but we understand the
8 creators and maintainers will be identified.
9 There is no opportunity to push back on that
10 identification.

11 If a party feels that they have been wrongly
12 identified as a creator and maintainer, their only
13 option is to decline to participate in whatever
14 remediation is going on and open themselves up for
15 risk of enforcement action. And that enforcement
16 action could have any number of other consequences
17 that are outside DEEP's purview, so defaulting on
18 loan documents, for example, if you become subject
19 to an environmental enforcement action. There
20 needs to be a means for pushing back on
21 creator-maintainer liability before it gets to
22 that point.

23 Finally, maintainers do not have a sufficient
24 opportunity to seek contribution from creators and
25 other maintainers, given this, the three-year

1 statute of limitations on general statutes
2 22a-452. So, flipping back to Public Act 20-9, a
3 release shall not be deemed discovered if the only
4 evidence of a release is data available or
5 generated before the date when the RBCRs are
6 adopted. And it's expected that certain data will
7 be in filing cabinets for years, potentially,
8 before the release is discovered under this new
9 program.

10 It's entirely possible, however, that that
11 data in the filing cabinet will defeat the statute
12 of limitations and thereby make it impossible for
13 a maintainer, so the owner today, to seek
14 contribution for response costs from the creators
15 because there is a three-year statute of
16 limitations that runs from discovery. So the data
17 in the filing cabinet will not save you if it
18 comes time that you're tagged as a maintainer and
19 you need to seek contribution from creators.

20 And this should be contrasted with the
21 situation in Massachusetts. A person who has
22 undertaken, is undertaking, or plans to undertake
23 a, quote, necessary and appropriate response
24 action with respect to environmental contamination
25 for which another party is liable may seek

1 contribution or reimbursement for such costs, and
2 the statute of limitations does not start running
3 there.

4 There's a few different triggers, but one of
5 them -- and it's whichever runs latest, is three
6 years after the date on which the plaintiff incurs
7 all response costs at a site. So, the statute
8 doesn't start running until three years after your
9 response cost is -- your response is finished, as
10 opposed to in Connecticut where it's three years
11 from discovery.

12 So, maintainers are deprived from any
13 reasonable opportunity to seek cost contribution
14 from creators. And the file cabinet exemption, I
15 think, presents a false sense of security that,
16 you know, any number of creators who will be -- or
17 any number of maintainers, rather, who will become
18 maintainers on day one of the program have already
19 blown their statute of limitations. So, to the
20 extent the Department wants it to be joint and
21 several liability for all maintainers, those
22 maintainers need a reasonable mechanism to share
23 that burden with other creators and maintainers.

24 And all of this is even worse for homeowners,
25 because homeowners are least likely to understand

1 their requirements and document responses to
2 low-level releases. And they are, you know, for
3 example, in a fuel oil overfill context, which may
4 have been remediated to, you know, kind of
5 mitigated to some level five years ago, but didn't
6 achieve the RSRs, because it just didn't at that
7 time, a homeowner in that situation is a
8 maintainer.

9 The fuel oil exemption is not available to
10 them because it only applies when the homeowner
11 created the situation, and they do not have an
12 ability to use 22a-452 to pursue the creator for
13 completing the response action. So, homeowners
14 are especially vulnerable under all of these
15 synergistic factors, which is contrary to the
16 public intent -- to the legislative intent,
17 rather, of Public Act 20-9.

18 As we'll submit in the written comments,
19 there is clear legislative history pointing to the
20 spill regulations that were then under development
21 as, you know, setting a lower bound of one and a
22 half gallon to five gallon that would make life
23 easier for homeowners. Those lower bounds are not
24 in place here for existing releases, and we need a
25 lower bound.

1 Thank you.

2 THE HEARING OFFICER: Thank you. So you were a little
3 over on the five minutes, but we let that go.

4 Oh, would you like to?

5 TOM HILL, III: Yeah, I'd love to. And can I leave
6 something in writing if I don't get a chance to
7 speak?

8 THE HEARING OFFICER: You certainly may.

9 TOM HILL, III: Thanks.

10 THE HEARING OFFICER: I just need your name for the
11 record, and that would be it.

12 TOM HILL, III: (Unintelligible.)

13 THE HEARING OFFICER: Yeah. Okay. Fantastic.

14 All right. Mr. Hillett, you're up. Our next
15 speaker, Tim Hillett -- sorry, Tom Hillett.

16 TOM HILL, III: I'm Hill.

17 THE HEARING OFFICER: You're up.

18 TOM HILL, III: Oh, wow. Okay.

19 THE HEARING OFFICER: And I don't have any other
20 speakers on the list at this point in time, but
21 we'll take a call after Mr. Hillett.

22 Okay. Thank you. Okay.

23 TOM HILL, III: Tom Hill, commercial real estate broker
24 from Waterbury, CCIM, and SIOR. Delighted to be
25 here. A lot of effort to get up here.

1 And my record with the Transfer Act has
2 been -- I've been coming up for 15 years to all
3 kinds of things. I'm happy to see Graham in the
4 audience here. Thank you for coming to listen to
5 us at the New Haven CID.

6 A lot of us have worked really hard in this
7 industry. I'm in the third-tier market, and a lot
8 of my clients have been mom-and-pops and have
9 gotten whacked financially, economically
10 heartbreak over the Transfer Act over the past 10
11 or 15 years.

12 And I know LEPs, friends in the audience; so,
13 I'll mention a few names after that have had
14 clients of mine crying for what they had spent and
15 the time to get through this. And from the places
16 that I've gone, the word on the street, and other
17 LEPs and lawyers, is that there's a lot of things
18 in this new RSR system that need to be modified,
19 tweaked, to make for ease of entry economically,
20 et cetera.

21 I'm just begging the DEP and the regulation
22 folks to listen to people like Sam Haydock in the
23 front row; Tim Myjak who's over here; Attorney Pam
24 Elkow; Bryan Atherton, our president of CCIM --
25 well, he's SIOR president now, but these are all

1 people that are not nuts. They're on the ball.
2 They know what's going on, and you know we're
3 begging you to please try to revise these and make
4 them easier.

5 And I'm not going to bend everybody's ear all
6 day. I just, you know, I came up to say it, and
7 thank you very much.

8 THE HEARING OFFICER: Thank you. And we'll take
9 written comments. Yes, thank you.

10 TOM HILL, III: Thank you.

11 THE HEARING OFFICER: All right. I'm going to take a
12 last call for speakers. Anyone?

13
14 (No response.)

15
16 THE HEARING OFFICER: Okay. Well, thank you for your
17 attention and your thoughtful comments. We'll
18 take all these comments, carefully consider them,
19 and put together final language and a statement of
20 reasons.

21 Everyone who has provided comments will
22 receive a copy of the final language and statement
23 of reasons. These will also be posted on the
24 eRegulations system.

25 The time is now 10:24, and this hearing is

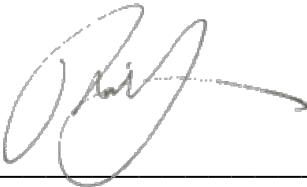
1 adjourned. Written comments will be accepted
2 until the close of business on October 24th of
3 2024. Thank you.

4
5 (End: +0:38:57)

6 (10:24 a.m.)
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CERTIFICATE

I hereby certify that the foregoing 32 pages are a complete and accurate computer-aided transcription of a digital recording (MP4) taken of the State of Connecticut Department of Energy and Environmental Protection PUBLIC COMMENT HEARING in Re: RELEASE-BASED CLEANUP REGULATIONS, which was held before RAY FRIGON, REMEDIATION DIVISION DIRECTOR, at the McCarthy Auditorium, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, Connecticut, on October 10, 2024.



Robert G. Dixon, CVR-M #857
Notary Public
My Commission Expires: 6/30/2025