

Dear Stakeholders,

Here are my initial thoughts.

You ever watch how Foie Gras is made? The Working Group is the duck. DEEP is the funnel. Here comes the draft regulations.

I'll tell you one thing for certain. You'll never get that funnel down Tim Whiting's throat. He knows.

Remember that oil spill in Wilton a couple years? It was one of the instances where DEEP actually enforced one of their penalties although it made no sense whatsoever. The companies fully cooperated and took responsibility from the outset. And to show the regulated community what happens when you cooperate and take responsibility, DEEP fined both companies \$25,000 and made a public spectacle out of it. Kenneth Leclerc. What a joke.

You ever sit back and wonder why all six surrounding properties refused to allow DEEP to test their private drinking wells for contamination? I mean all six homeowners would rather drink contaminated groundwater than allow DEEP to sample their water?

Go easy,  
Bryant

**Special Path for Residential Heating Oil:** “Trying to limit the burden of residential property owners if they are the responsibility party, to the extent that we can [The Commissioner], taking into consideration, the needs to protect public health and the environment.” Who determines the extent? The Commissioner?

When the term “extent” is used (“to the extent that we can” or “maximum extent prudent,” red flags should start flying. I listen for it all the time and make note. The same goes for “observable change,” “discretionary authority,” and “determinations” of any kind solely based on “experience” and “professional judgement” DEEP is a closed circuit. The Emergency Response Unit is notoriously autonomous as there is no oversight in the field.

DEEP cannot stand by its report of 68 UST Spills for the month of October, hence the reason why Lori Slaiby was absent from today’s discussion. The Department has noted an increase in the number of Reportable UST Leaks and Spills on Residential Properties. That is true. It’s been happening for a while, steadily growing, year after year. But the regulations writers and rule makers exist in a world far far removed from the field. The field is autonomous. Lori Saliby is not visiting the field. The field workers refer to Diane Duva as “Di”, a peer, an office worker, a subordinate. I’ve never seen anything like it.

I’ll respond to Emily’s comment because there is an explanation behind Immediate Action Endpoint. DEEP has a serious problem which needs a solution, and this is their solution. If you understand the problem, and how serious it is for DEEP, then you see how everything fits together. This problem wasn’t necessarily created by Graham or Brendan, but the problem has fallen on their laps nonetheless.

What is a PEP? No one really knows because the Working Group lost all control of the concept. The Department had no intent or interest in forming a new class of licensed professionals. That was made abundantly clear early on. But the Department has a problem, remember? The PEP helps solve their problem as does an Immediate Action Endpoint. The Department needs an early exit from Emergency Response Situations. It’s the language of the Spill Contracts, coupled with the unmanageability of the Emergency Response unit, which makes this priority number one.

Here is the Problem. If residential property owners are held strictly liable for all releases of pollution to the land and waters of the state regardless of fault, then who is holding The Emergency Response Coordinators and Spill Contractors responsible when their actions create an exposure scenario which elevates a potential threat to an irrefutable threat? The answer is, no one. It’s a closed loop. And it’s a problem in the current contractual language. The Department cannot admit fault. The Spill Contractors operate under the supervision and authority of The Commissioner. The PEP and Affidavit of Facts solves the problem for DEEP. Spill Contractors will be getting accountability for Christmas this year. The Affidavit of Facts will bind them to the results of their Immediate Actions. Problem solved.

There are about 50 other problems which no one sees but I see them. For example, Significant Environmental Hazards are determined from the outset of an Emergency Response. Two things happen within the first hour upon arrival on scene. 1) The Emergency Response Coordinator asks a single question: Do you have insurance coverage for this? Most homeowners will not know the answer although it doesn’t really matter. The ERC then calls the SERC and requests permission to activate the Case Recovery Fund and hire a CT Licensed Contractor. 2) If a Significant Environmental Hazard exists or

has been identified at a site, DEEP issues a Cease and Desist Order. It is now unlawful for the homeowners to enter the premises due to the threat caused by the SER. From here on out, DEEP and its spill contractor have 7 days to complete any immediate removal actions that they deem appropriate regardless of permits or sensitive receptors or any concrete, science-based investigations. DEEP is in full control of the site, the private residence. It is unlawful for the homeowners to enter the premises but not DEEP, The Commissioner, DEEP's Spill Contractor, or any subcontractor of the spill contractor. The SERC may, in some cases, suggest contacting SASU (Site Assessment and Support Unit) prior to geothermal drilling, slab removal, or soil excavation but SASU Case numbers can be deleted after the fact the same as Hazardous Waste Manifests. SASU has no authority—they are subordinates to Coordinators and Supervisors. These are facts and not debatable.

All Immediate Action Endpoints have to end within 7 days. Spill Contractors cannot proceed after 7 days without submitting an entirely new proposal for extended work up to 90 days. The terms get re-negotiated. It requires serious assessment of the site and a clear, cohesive plan moving forward. You don't see a lot of those plans, now do you? I didn't think so. You will moving forward.

The Commissioner needs to determine how to proceed with the Cease and Desist Order within 10 days of the issue date. The Cease and Desist Order was issued based on The Commissioner's determination that a Significant Environmental Hazard Exists on site. It is the Commissioner's statutory responsibility to notify the municipality as well as the Department of Public Health of the Significant Environmental Hazard. If the Commissioner determines that an SER posing a threat to Public Health, Safety and the Environment no longer exists, the rationale for making that determination will be evidenced by the Affidavit of Facts located in the Records Room at the Department. All true and attested copies signed by Emergency Response Coordinators and Supervising Emergency Response Coordinators are admissible in court and trial proceedings. Amendments can be made to those Affidavits of Facts under certain conditions and within certain timeframes but amendments can be problematic for the department. It lightens the veil of immunity and therefore is to be avoided at all costs. Enter the PEP. The scapegoat is here.

The Department won't get very far with their draft of Home Heating Regulations. Anything the Department puts forward I'll see through in 30 seconds.

Today the Department made a huge error. Groundwater can now be determined as safe based on observation alone. There's no coming back from that. Graham tried to talk his way out of it, but there was no way out. It's not his fault. He walked into it. I knew I had him within the first 5 seconds.

The Department of Public Health really has no idea what is going on. None of what the Department has proposed thus far fits in with the bigger picture. Where is the Department accountable again and responsible again? I couldn't tell you.

Connecticut Environmental Law establishes strict liability for spills into the environment. The homeowner is a responsible party even if the spill was not fault.

1. **Sec. 22a-451. (Formerly Sec. 25-54ee). Liability for pollution, contamination or emergency.**
  - (a) Any person, firm or corporation which directly or indirectly causes pollution and contamination of any land or waters of the state or directly or indirectly causes an emergency through the maintenance, discharge, spillage, uncontrolled loss, seepage or

filtration of oil or petroleum...deemed by the commissioner to be a potential threat to human health or the environment and removed by the commissioner shall be liable for all costs and expenses incurred in investigating, containing, removing, monitoring or mitigating such pollution and contamination, emergency or hazardous waste.

2. That means that any person, business, firm or contractor which directly or indirectly causes pollution and contamination to the waters of the state is also responsible.
3. Who has the power, duty, and responsibility to make such determinations?
  - a. **Sec.22a-449 DUTIES AND POWERS OF COMMISSIONER RE SOURCES OF POTENTIAL POLLUTION OR DAMAGE.**
    - i. (a) The Commissioner of Energy and Environmental Protection shall, to the extent possible, immediately, whenever there is discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes upon any land or into any of the waters of the state...which may result in pollution of the waters of the state...or other public or private property or which may create an emergency, cause such discharge, spillage, uncontrolled loss, seepage or filtration to be contained and removed or otherwise mitigated by whatever method said commissioner considers best and most expedient under the circumstances. The commissioner shall also (1) determine the person, firm or corporation responsible for causing such discharge, spillage, uncontrolled loss, seepage or filtration, and (2) send notice, in writing, to the chief executive officer and the local director of health of the municipality in which such discharge, spillage, uncontrolled loss, seepage or filtration occurs of such occurrence. Such notification shall be sent not later than twenty-four hours after the commissioner becomes aware of the contamination.
  - b. **Sec. 22a-423** As used in this chapter: "Commissioner" means the Commissioner of Energy and Environmental Protection or his designated agent...
  - c. **Sec. 22a-424(m)** Either on his own initiative or upon complaint, to investigate or order the person who caused or reasonably may be expected to cause the pollution to investigate all points of existing or potential waste discharge which may directly or indirectly result in pollution of the waters of the state...
  - d. **Sec. 22a-1, 22a-1s, Sec. 22a-1C...**
  - e. **Sec. 22a-2a** The Commissioner of Energy and Environmental Protection may designate as his agent any state agency...or employee thereof and delegate to such agent the authority to inspect in connection with the enforcement of or to enforce...
  - f. **Sec. 22a-5 (1-7)** Duties and Powers of Commissioner
  - g. **Sec. 22a-5a** Orders. Authority of commissioner to investigate.
  - h. **Environmental Protection Emergency Response Coordinator 1**
    - i. The State of Connecticut, Department of Energy and Environmental Protection (DEEP), is seeking to hire an Emergency Response Coordinator I in the Emergency Response and Spill Prevention Divisions' Emergency Response Unit.
    - ii. Duties: Performs a limited range of related duties in assisting and/or acting as a team leader in the response to hazardous materials spills, discharges, and releases; advises public safety authorities; coordinates on-site clean-up

activities; takes samples and collects data on materials spilled; develops appropriate course of action and liability recommends and issues orders on appropriate clean-up procedures; determines responsible party for spillage and assigns monetary liability; contacts and may oversee clean-up contractors; operates hand tools, deployment devices, and other tools and equipment used for containment and clean-up of; takes photographs of incident site; prepares written spillage reports; may testify at hearings; may conduct training for local authorities regarding hazardous materials and/or emergency response techniques; performs related duties as required.

- iii. **Hours:** Full time, 35 hours per week. The position requires the employee to be on-call and work evenings, weekends and holidays on a rotational basis. Based in Hartford, but does not typically require daily reporting to this location. The position is field based and is assigned a geographical area to cover.
- iv. **Benefits:** Healthcare coverage, retirement plan, paid time off, and more!
- v. After there is a spill, the CT DEEP will attempt to identify the parties that caused the spill and the property owners. CT DEEP personnel will advise the parties of their legal responsibility to clean up the pollution and will attempt to get these parties to take appropriate action to clean up the spill immediately. As required by **CGS Section 22a-454**, any clean up must be performed by a licensed contractor. If neither the person who caused the pollution nor the property owner makes immediate proper arrangement for cleaning up the pollution, the state may make arrangements to clean up the spill.

Under CGS Section 22a-451, the state will take action to recover all of its clean up expenses.