



CBA QUESTION & ANSWER RELEASE-BASED CLEANUP REGS

Presented by: [Graham Stevens](#), Water Protection and Land Reuse Bureau Chief & [Brendan Schain](#), Environmental Quality Legal Office Director

OUTREACH TO DATE

Organization	Location	Date	Time
<u>Workshop 1:</u> <u>Introduction to the</u> <u>RBCRs</u> <u>Zoom recording</u>	Gina McCarthy Auditorium, 79 Elm St., Hartford and Zoom	August 6, 2024	10:30 a.m.
<u>Workshop 2: Discovery</u> <u>& Reporting</u> <u>Zoom recording</u>	Gina McCarthy Auditorium, 79 Elm St., Hartford and Zoom	August 15, 2024	1:00 p.m.
<u>Workshop 3: New</u> <u>Releases, Significant</u> <u>Existing Releases, &</u> <u>Immediate Actions</u> <u>Zoom recording</u>	Gina McCarthy Auditorium, 79 Elm St., Hartford and Zoom	September 9, 2024	9:30 a.m.

OUTREACH TO DATE (CONT.)

Workshop 4:
Cleanup Standards, Closure Documentation, & Audits
Zoom recording

Gina McCarthy
Auditorium, 79 Elm St.,
Hartford and Zoom

September 16, 2024

9:30 a.m.

Connecticut Business
& Industry
Association Question &
Answer Session

Teams Meeting Link

September 19, 2024

9:00 a.m.

Connecticut
Bar Association
Question & Answer
Session

Zoom Registration Link

September 23, 2024

Public Hearing

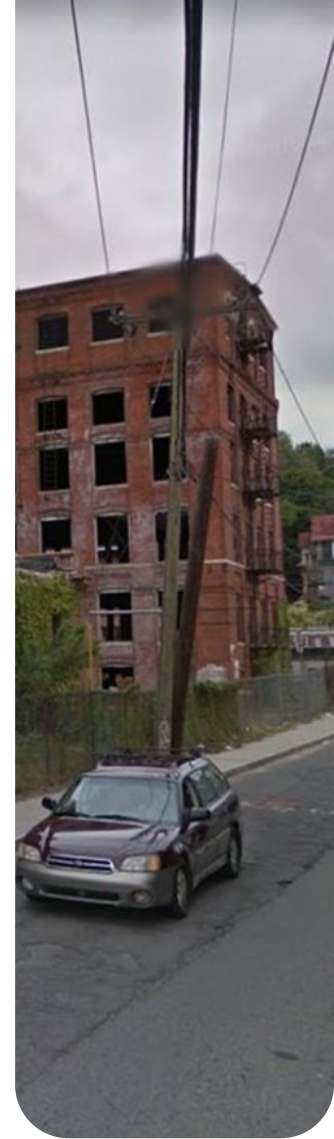
Gina McCarthy
Auditorium, 79 Elm St.,
Hartford

October 10, 2024

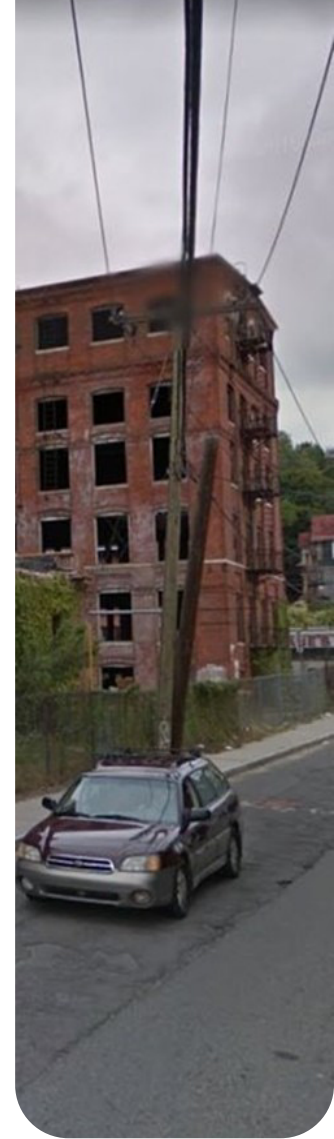
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QUESTION 1

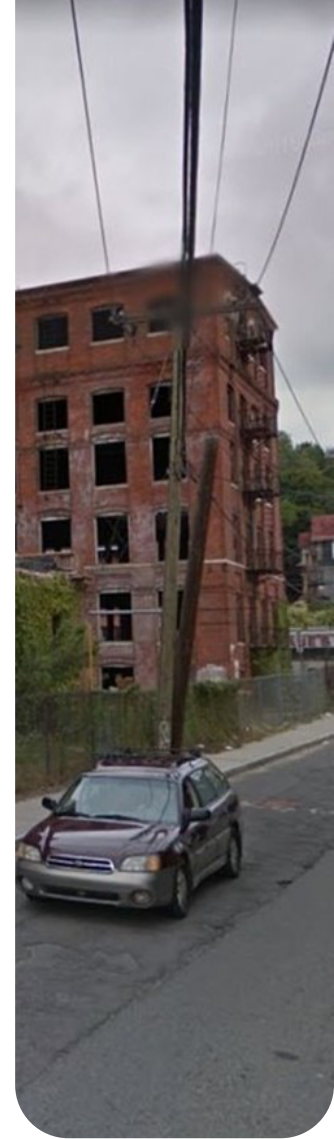
Let's suppose a spill occurs when tenant's contractor knocks over containers of hazardous materials in tenant's facility. In that scenario there might be two creators (tenant and contractor) and one maintainer (landlord). Let's assume that the tenant reported the spill and signed the report as "creator."



For releases with multiple creators/maintainers, how does DEEP intend to identify the “lead” party actually performing the work and receiving correspondence from DEEP? Will that be up to the parties themselves?



What if the parties decide (e.g., because of a settlement) that the party in the lead should change (e.g., contractor agrees to take the lead, notwithstanding the fact that tenant made the initial report)? Will there be a mechanism for identifying the point of contact for DEEP?



QUESTION 2

Let's suppose the owner of a facility discovers an existing release. We assume owner is the maintainer. Let's also assume that based on the COCs in the release it obviously occurred during the operations period of the owner who owned between 5-10 years ago. Let's assume that there was a Phase II in the filing cabinet and owner had some knowledge of the conditions before acquiring 5 years ago.



Does DEEP envision that the current owner/maintainer would pursue the past owner/creator for contribution to remediation costs?

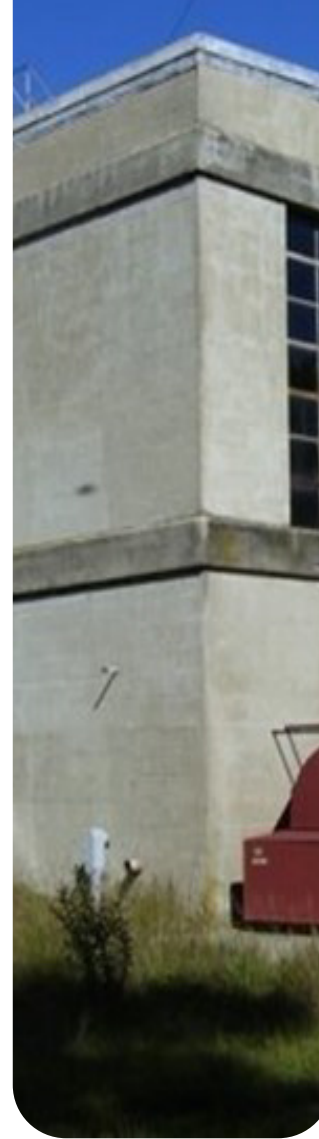


How does the Department envision this will be reconciled with the 3-year statute of limitations for contribution actions under 22a-452?

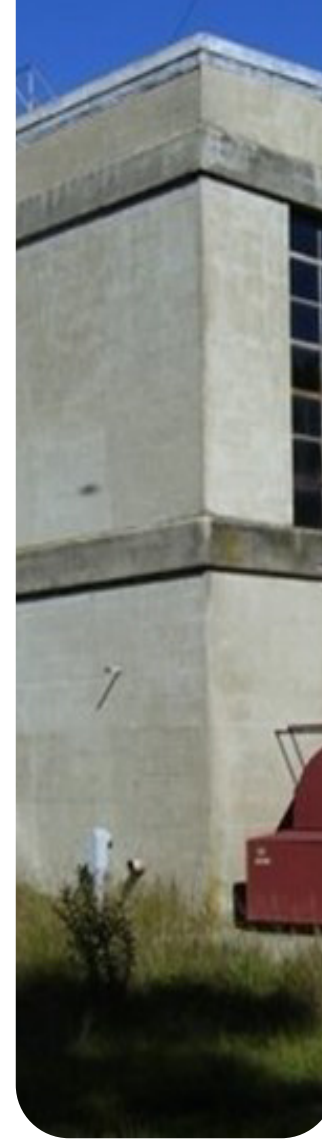


QUESTION 3

Are banks considered “maintainers” when they foreclose on a property?



What happens when the entity they foreclosed on was in the middle of a release cleanup?
Do banks have any liability? Would it pass to the Buyer? What if the Buyer does not do any due diligence and has no knowledge of the release cleanup?
Would DEEP then step in and enforce when they take title?



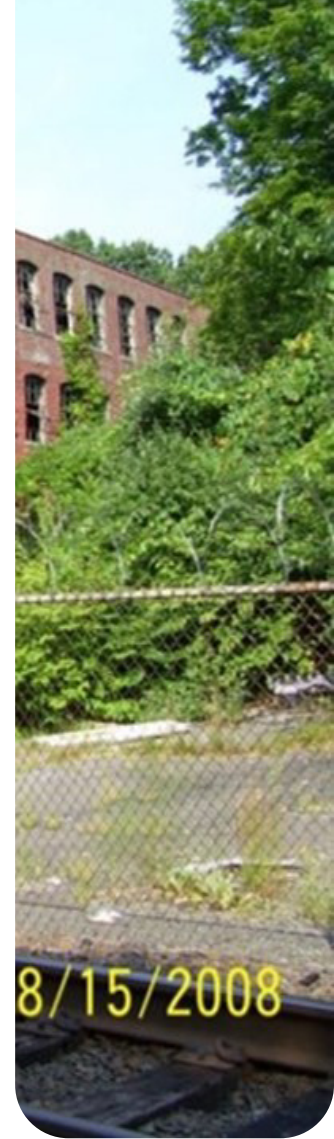
QUESTION 4

Are executors of estates considered “maintainers” when they obtain the property through probate and do not intend to keep the property?



QUESTION 5

Who determines if a spill hits “land and waters of the US”? How is this proven?



QUESTION 6

What is DEEP's position on enforcement of known contaminated properties that would not end up falling under this program (e.g., because the information is in the filing cabinet and there have been no new discoveries)?



What would be the priority for enforcement?

Properties with releases extending to abutting properties? Properties reported to DEEP by disgruntled tenants? Properties with discovered releases by potential Buyers who did not end up purchasing the property because the Seller instead took a cash offer with due diligence waived?



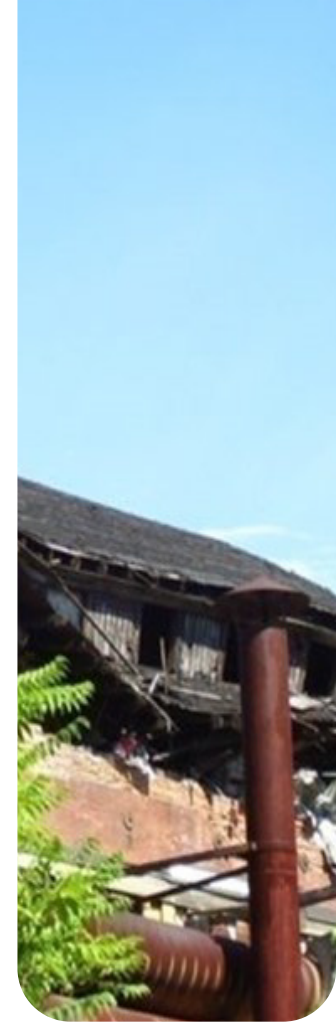
QUESTION 7

Will PEPs be able to be employees of the maintainer's/creator's property that they are certifying?



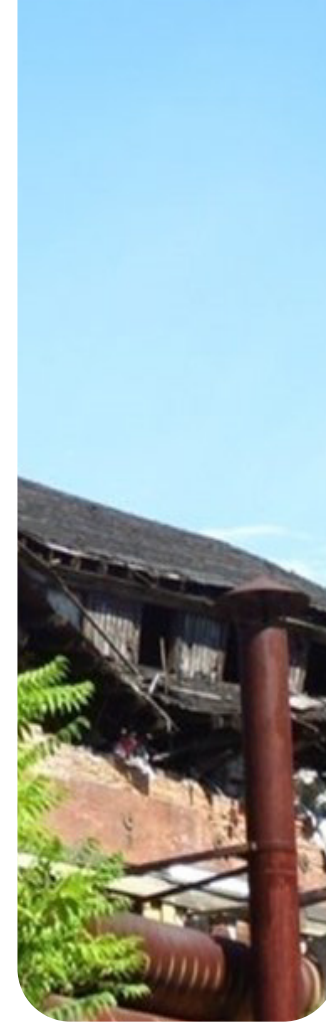
QUESTION 8

In 22a-452b – who must provide potable water? Probably the Department?



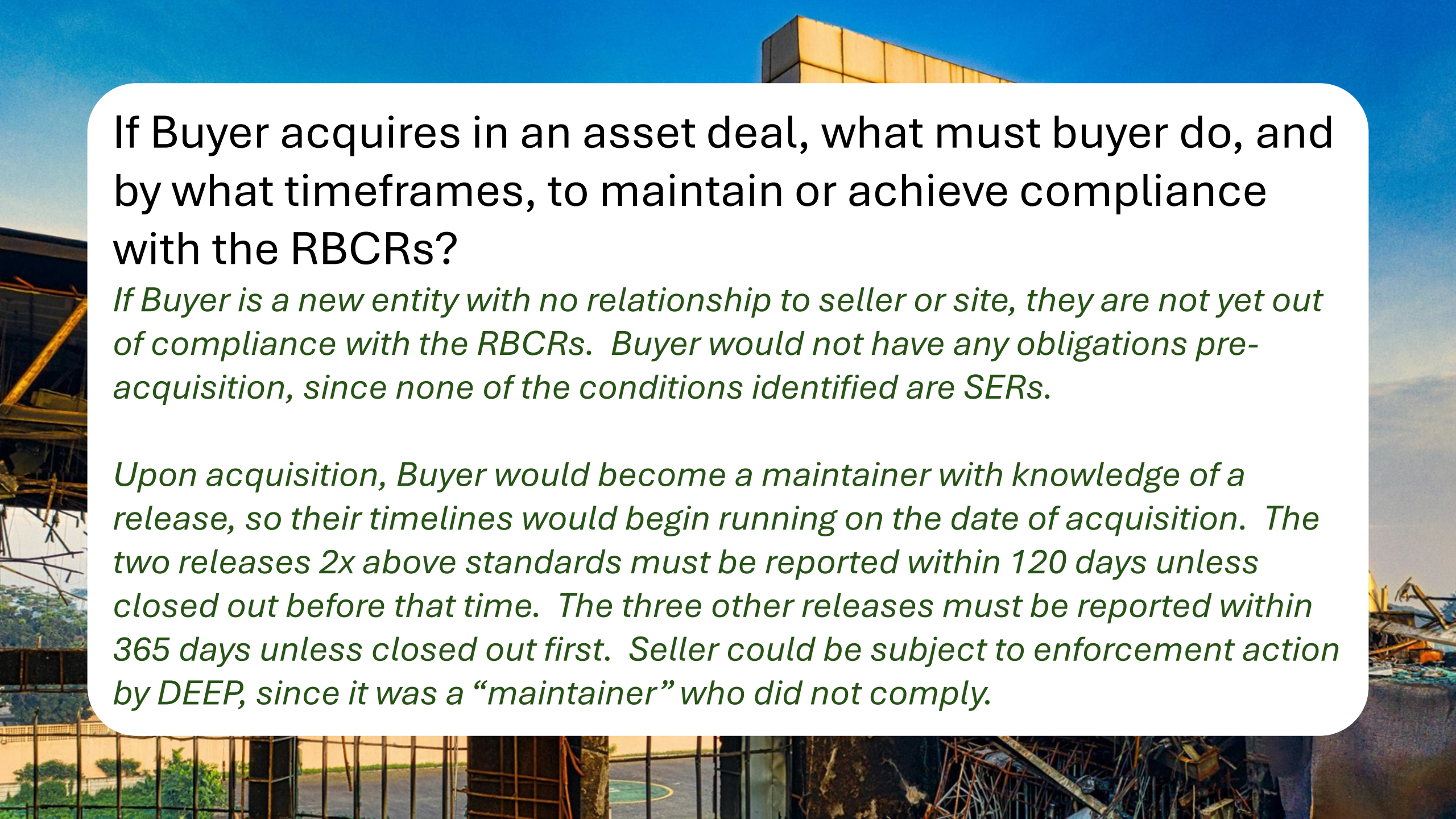
QUESTION 9

We see that VC grandfathering provisions implemented in Wave 2 have not been carried through to the RBCRs. Can you please explain the Department's thinking?



SCENARIO

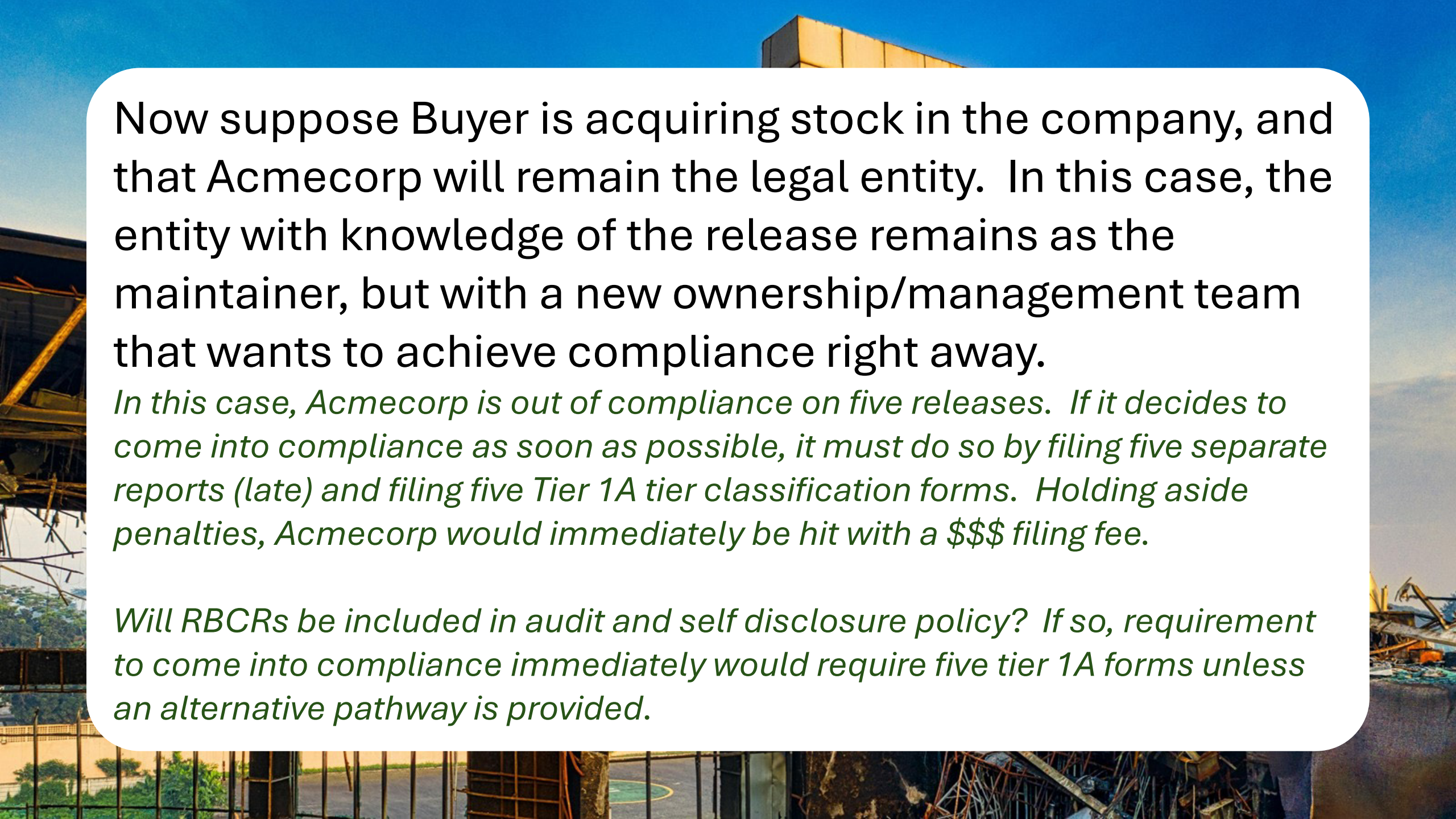
A manufacturer has operated at its present location for 40 years and was never subject to a transfer under the Transfer Act. The owners are now preparing to sell, and a prospective buyer has been identified. During buyer's due diligence they asked for, and received, seller's past environmental reports. Upon review, buyer determined that seller had commissioned a Phase II report after the RBCR effective date but two years in the past. The Phase II had identified five different release areas. Two release areas had concentrations of constituents above the 2x standard and the other three had identified concentrations above the standard but less than 2x the standard.



If Buyer acquires in an asset deal, what must buyer do, and by what timeframes, to maintain or achieve compliance with the RBCRs?

If Buyer is a new entity with no relationship to seller or site, they are not yet out of compliance with the RBCRs. Buyer would not have any obligations pre-acquisition, since none of the conditions identified are SERs.

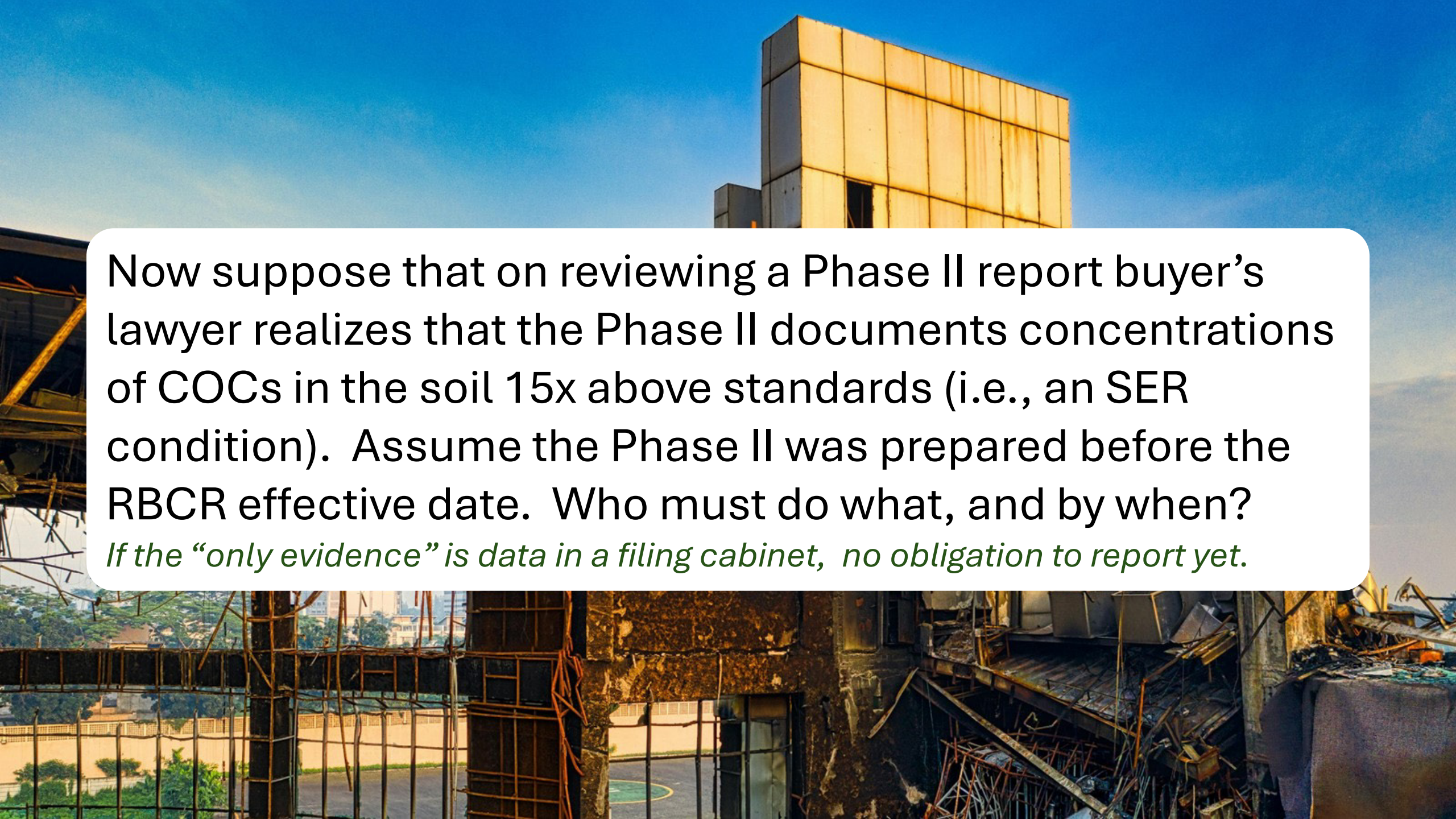
Upon acquisition, Buyer would become a maintainer with knowledge of a release, so their timelines would begin running on the date of acquisition. The two releases 2x above standards must be reported within 120 days unless closed out before that time. The three other releases must be reported within 365 days unless closed out first. Seller could be subject to enforcement action by DEEP, since it was a “maintainer” who did not comply.



Now suppose Buyer is acquiring stock in the company, and that Acmecorp will remain the legal entity. In this case, the entity with knowledge of the release remains as the maintainer, but with a new ownership/management team that wants to achieve compliance right away.

In this case, Acmecorp is out of compliance on five releases. If it decides to come into compliance as soon as possible, it must do so by filing five separate reports (late) and filing five Tier 1A tier classification forms. Holding aside penalties, Acmecorp would immediately be hit with a \$\$\$ filing fee.

Will RBCRs be included in audit and self disclosure policy? If so, requirement to come into compliance immediately would require five tier 1A forms unless an alternative pathway is provided.




Now suppose that on reviewing a Phase II report buyer's lawyer realizes that the Phase II documents concentrations of COCs in the soil 15x above standards (i.e., an SER condition). Assume the Phase II was prepared before the RBCR effective date. Who must do what, and by when?

If the "only evidence" is data in a filing cabinet, no obligation to report yet.

Now suppose that on reviewing a Phase II report buyer's lawyer realizes that the Phase II documents concentrations of COCs in the soil 15x above standards (i.e., an SER condition). Assume the Phase II was prepared before the RBCR effective date. Who must do what, and by when?

Follow-up questions:

- If there was some other evidence (e.g., stained soil) then we might be in a multiple lines of evidence scenario. How do multiple lines of evidence interplay with SERs?
- If Phase II was prepared after RBCRs, does Buyer team have an obligation to do anything if they didn't take the samples themselves?



Now suppose Seller made the necessary reports after receiving its Phase II two years ago, and remediation has been completed as to three release areas but is ongoing at the other two. Will there be a mechanism for Seller to transfer ongoing obligations to buyer? Will there be a mechanism for seller to retain the obligations?



We are happy to take questions. More information on how to submit comments and for links to past info sessions, see here:

<https://portal.ct.gov/deep/remediation--site-clean-up/comprehensive-evaluation-and-transformation/release-based-cleanup-regulations-formal-regulation-adoption>

**Question can be directed here:
DEEP.cleanup.transform@ct.gov**