

Good afternoon, Graham –

Following last month's Release-Based Working Group meeting, a lot of thought has gone into what the proposed Quantitative Reporting Thresholds could mean for transportation infrastructure. In short, without an appropriate exemption for roadways and public rights-of-way, the proposed Quantitative Reporting Thresholds (two times the respective RSR numerical criteria) will cause an undue burden on Connecticut Department of Transportation (CTDOT), the Department of Energy and Environmental Protection (DEEP), and the taxpayer to report, remedy and administer releases that are already mitigated by the physical and regulatory nature of a typical highway right-of-way.

These comments on the proposed Quantitative Reporting Thresholds are prefaced with the support that the CTDOT has for the recommendation that the Released Based Working Group's subcommittee on historic release had with respect to exempting releases in the public right of way. The [Discovery of Historical Releases Subcommittee final concept paper](#) indicates:

“Examples of historical releases that we [the subcommittee] do not think should require reporting/ remediation and/or should be subject to special handling/circumstances (we have not excluded them, because they are in fact “releases”). ... • Discovery of historical releases in public right of way during infrastructure installation/repair (e.g., akin to the MCP Utility-Related Abatement Measure) • Discovery of historical releases in public roadway...”

[DEEP's written feedback on the working group/subcommittees' concept papers](#) focuses on those topics which have a significant impact on the development of regulations but is silent on the recommendation for releases in the public right of way. It is understood that the statutory definition of “release” excludes automotive exhaust, that the [RSRs have a definition of public roadway](#), and that DEEP has a related Engineered Control Variance for pollution under the roadway. However, the RSR definition of public roadway specifically excludes landscaped or grassy areas beyond the outer edge of the travel way, and the Engineered Control Variance cannot be used for that which is laterally beyond the road.

To be able to effectively implement the subcommittee's recommendation to exempt releases in the public right of way, especially in light of what has been proposed as a quantitative reporting threshold, more will need to be done beyond the existing regulatory language and RSR tools.

As it relates to the proposed Qualitative Reporting Thresholds, there are particular constituents of concern associated with roadways – the polynucleic aromatic hydrocarbons (PAHs) that are found in asphalt. Given the RSR's low values for DEC and PMC for PAHs, which is 1 mg/kg in many cases, it is not unreasonable to think that through the natural degradation of asphalt and transport through roadway run-off that the PAHs in the pavement would make its way to landscaped areas beyond the travel way – especially in areas where there are no curbs – and that the concentrations in the soil in these areas could exceed two times the RSR criteria. Through the normal and responsible course of design for a state roadway improvement project, samples are typically collected for the purposes of planning for soil management and worker safety. Consider the direction exposure limitations already in effect by virtue of the prohibited access within the highway right of way. Unless some exemption like that for automobile exhaust is created for asphalt constituents, the number of PAH detections that will need to be reported and managed as releases will be overwhelming.

Also related to the proposed Qualitative Reporting Thresholds, motor vehicle collisions (MVC) can be expected to involve gasoline, diesel, oils and other fluids that will make their way into landscaped or

grassy areas along uncurbed stretches of roadway. The actual release during an MVC may be exempt from reporting, and the initial response is typically ended when the situation has been made safe, though not necessarily to RSR compliance. What of the detection in soil or groundwater some period of time after the MVC that caused the contaminant to be there? As part of soil or groundwater testing performed during roadway design, if a petroleum constituent or ETPH is detected at 2x its RSR value, will the state owner of the roadway's right-of-way be responsible for reporting? For closing out the release through some means of remediation? Can it be expected that even severe releases from tanker trucks would be pursued to the level of RSR compliance at the time of the response? Again, this speaks to the need for a broader exemption for public right of ways than what currently exists to protect the state as a landowner from liabilities caused by others.

On a broader but related subject, in reviewing the published deliverables of the Workgroup Subcommittees and DEEP, it is unclear if railway corridors were considered as part of the public right of way. The normal use of these corridors by rail makes it reasonable to expect that the presence of contaminants above 2x RSR limits would be found anywhere along the line. Would any detections made in support of proposed railway improvement project that exceeded a 2xRSR threshold cause the project owner or property owner to treat the corridor as a reportable release area? Consider the direction exposure limitations already in effect by virtue of the prohibited access within the rail right of way. The state-owned rail corridors should be included in the discussion of utility and public rights of way exemptions.

Other notes related to the Quantitative Reporting Thresholds:

- The risk of impacts to landscaped and grassy areas along the side of road is exacerbated by DEEP's MS4 stormwater management mandate to infiltrate more roadway runoff through off-road soils. Will detections attributed to stormwater infiltration be exempted from the reporting of newly discovered historic releases?
- Whether it be PAHs or constituents related to historic MVCs, treating these types of detections as reportable releases could cause beneficial re-uses of excess soil to be severely limited if not impossible, resulting in having to transport tons of soil to distant receiving facilities. Consider the overall environmental impacts associated with the transport of this material.
- An unintended consequence of the proposed Quantitative Reporting Thresholds without appropriate exemptions for roadways or railways will be disincentivizing the good practice of pre-characterizing the soil and groundwater quality within a proposed project work area.
- These comments are made specifically with respect to transportation infrastructure owned and maintained by CTDOT. However, many of the concerns could also be applicable to municipally-owned roads. No municipality or municipal organization was consulted during the preparation of these comments.

Lastly, there was a question posed by a stakeholder at the November 8<sup>th</sup> meeting that asked what were some of the key considerations that lead to the selection of two times the RSR values. Even after

reviewing the transcript, it is unclear what factors were used to lead to the “two-times” proposal. What would also help is if the two-times proposal were related in terms of a risk-based approach, which is understood to be currently under review by a workgroup subcommittee.

Regards,

-Jason

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