

DEEP Feedback on PA 20-9 Working Group/Subcommittees Concept Papers

The following is the Department of Energy and Environmental Protection's ("Department" or "DEEP") feedback on concepts papers concerning the development and implementation of a release based clean-up program pursuant Chapter 44b of the Connecticut General Statutes ("Chapter 445b"). Concept papers were prepared by five "first phase" topical subcommittees of the larger working group, convened pursuant to General Statutes § 22a-134tt. The scope of each subcommittee may be found on DEEP's release based remediation web page. The first phase comprised subcommittees that considered: the discovery of historical releases ("discovery"), reporting of newly discovered historical releases ("reporting"), characterization, immediate removal actions, and tiers.

The following generalized feedback is provided to assist the working group as it reviews the concepts presented. The feedback is intended to focus on those topics which have a significant impact on the development of regulations to implement Chapter 445b and is not intended to cover every detail provided in the concept papers. Overall, DEEP believes the concepts provide a solid foundation upon which regulations can be drafted. Some generalized concerns and possible gaps are noted as follows for the working group's consideration. Some feedback pertains to more than one subcommittee concept paper and is noted below.

➤ **Use of Massachusetts Contingency Plan as a Regulatory Framework**
(Subcommittees: Reporting, Characterization, Immediate Removal Action, Tiers)

Several subcommittees identified provisions of the Massachusetts Contingency Plan ("MCP") (310 CRM 40.00) to be used as a framework for the regulations to be adopted pursuant to Connecticut General Statutes Chapter 445b. The Department agrees that incorporating concepts (and possibly language) found in the MCP will be useful when drafting regulations. However, evaluation of MCP provisions is necessary to ensure that they consistent with both Chapter 445b and other Connecticut laws concerning releases, and the intent of the Department and the working group. Further, there are important differences between the development of the MCP and the development of Connecticut's release-based cleanup program that impact the usability of some provisions. For example, in Massachusetts, an inventory of "baseline sites" with known releases was prepared, and formed the basis for certain provisions in the MCP. Certain obligations in the MCP, including an obligation to investigate certain sites, are based on this inventory. Modifications to MCP provisions, to account for significant differences in approach, will likely be necessary. While an understanding of MCP provisions will be useful when drafting regulations, the regulations ultimately adopted will have to account for the particular requirements of Chapter 445b, other existing Connecticut law, and other differences in approaches between the two states. The Department anticipates an ongoing dialogue about how concepts used to draft regulations are similar to, and different than, MCP provisions.

➤ **Additional Specificity Regarding Criteria Will Be Necessary to Develop Regulations**
(Subcommittees: Discovery of Historical Releases, Reporting)

Several groups provided concepts that require identification of defined sets of releases, but did not suggest criteria for placing releases into those sets. For example, both the discovery and reporting

subcommittees identified a set of releases that can be discovered by someone who is not a creator or maintainer of such a release, and identified steps that a person discovering such a release must take to ensure it is reported. This framework is similar to the current Significant Environmental Hazard (“SEH”) program. While both subcommittees indicated the criteria used should be similar to the SEH criteria, no adjustments or additional criteria were suggested. The reporting subcommittee also indicated that numeric criteria should be one way to determine if a newly discovered historical release must be reported. That subcommittee provided several possible sources of criteria, but did not identify actual criteria which should be used. To fully implement the concepts suggested by the Tiers group, development of certain criteria may be necessary - including when assessing risk to aquatic life and pollution of sediments. The Tiers concept paper also makes reference to other existing criteria, the use of which must be evaluated for this purpose, including the current SEH criteria, drinking water criteria, and “site-specific surface water protection criteria.” The Department understands that the development of criteria for use in regulations is difficult, but the development of such criteria is necessary, and will be critical to the success of this program. The Department anticipates an ongoing dialogue as criteria are developed.

➤ **Reporting Redundancies**
(Subcommittee: Reporting)

The Department appreciates the reporting subcommittee’s emphasis on reducing redundant reporting of releases, and agrees that, where possible, reporting should be streamlined. The Department also acknowledges that existing State and Federal law may mean that not all releases will be reported pursuant to Chapter 445b, or that some releases may be required to be reported under two separate programs. Where possible, the Department will work to consolidate reporting under Chapter 445b. When that is not possible, the Department will consider where exemptions from the reporting requirements in Chapter 445b are appropriate.

➤ **Data Collection and Sampling Methodology**
(Subcommittees: Discovery, characterization, immediate removal actions, tiers)

In the discovery concept paper, that subcommittee indicates that if there are multiple lines of evidence that a release has occurred, it should be presumed that a release has been discovered. That presumption can only be rebutted by analytical data indicating no release has occurred. Because many releases are made up of multiple pollutants, or identified by searching for several chemical constituents of the substance released, the Department questions whether sample results for a single pollutant are sufficient to rebut such a presumption. Similarly, when characterizing a release, must the initial sampling test for only a single pollutant, or must broader sampling be conducted until such time that each pollutants present have been identified? The Department anticipates an ongoing dialogue about the type of data collection and sampling methodology that will be required.

➤ **Professional Licensing**
(Subcommittees: Immediate Removal Actions, Tiers)

The Department understands that it is necessary for contractors and consultants who are not Licensed Environmental Professionals to respond to certain types of releases, and that those contractors and consultants may perform certain activities to be required by regulation. However, the Department does

not support creating a second formal licensing program, similar to the LEP program, for another tier of licensed professionals. Instead, the Department will seek to identify those specific tasks which can be undertaken without supervision of a Licensed Environmental Professional, and the specific persons permitted to complete them, without creating a second licensing program. Consideration will be given to the scope of work to be performed by contractors and consultants who are not LEPS, and the records that must be produced and retained regarding such work. DEEP anticipates an ongoing dialogue about which tasks must be reserved for LEPS and which tasks can be completed by other contractors and consultants.

➤ **Incentives to Clean Up Quickly**
(Subcommittees: Immediate Removal Actions, Tiers)

The Department believes that it is important to incentivize the quick cleanup of newly discovered historical releases. The concepts proposed by the immediate removal action subcommittee identify certain actions which would be voluntary. This is consistent with the tiers subcommittee, which recommended that a one-year period for characterization and cleanup before a release is placed in a tier. However, if immediate removal action is voluntary, and there are not otherwise significant incentives to cleanup a release during the one-year period before it is placed in a tier, the Department is concerned that cleanups will not be undertaken with sufficient urgency. An important goal of the transition to release-based cleanup is to ensure that cleanups are both undertaken and completed more quickly. The Department believes that incentives to drive the prompt cleanup of newly discovered historical releases upon their discovery will be an important component of regulations adopted to implement Chapter 445b.