

October 18, 2022

Graham Stevens
Connecticut Department of Energy and Environmental Protection
79 Elm St.
Hartford, CT 06106
By email: Graham.Stevens@ct.gov

RE: Comments by Environmental Attorneys on October 11, 2022 Working Group Meeting

Dear Graham,

The undersigned environmental attorneys provide the following comments on the concepts DEEP staff shared at the October 11, 2022 meeting of the Release-Based Working Group. We submit these comments in our individual capacities and not as representatives of our firms or any other groups with which we may be affiliated.

Procedural:

We thank DEEP staff for their presentation at the October 11 Working Group meeting. Given the almost two years that the Working Group has devoted to brainstorming concepts, we believe that going forward the Working Group's time would be most productively devoted to responding to DEEP's position on regulatory concepts and, when available, to DEEP's draft language. We also appreciate the opportunity to provide written comments on the concepts shared at the October 11 Working Group meeting.

We suggest that this letter, and the other written comments that DEEP receives, be timely and publicly posted on the Working Group website. By timely and publicly sharing comments, DEEP will provide enhanced transparency into the Working Group process. It will also allow Working Group members to better understand the tenor of the comments being submitted by various parties and interest groups and to calibrate their thinking accordingly.

Significant Environmental Hazards:

Based on the presentation by DEEP staff, we understand that DEEP intends to integrate the Significant Environmental Hazard (SEH) concepts presently contained in Conn. Gen. Stat. §22a-6u into the larger release-based program. We further understand that DEEP intends to propose a repeal of Conn. Gen. Stat. §22a-6u and/or propose other statutory changes to facilitate this change in approach.

As a general matter, we support the integration of the SEH framework into the larger release-based program. That said, as the regulatory concepts are further developed, we will be alert to a number of issues that have not yet been resolved. These issues include (but may not necessarily be limited to):

- How will the “discovery” and “reporting” concepts be fleshed out as the release-based program is developed? How will the SEH reporting requirements map onto those concepts?
- Further clarification is needed to understand how/whether the current SEH framework will be integrated into the release-based program in its present form or in modified form. If modified, what will the modifications look like?
- How will the “immediate removal action” concepts be developed? How will the present approach of SEH mitigation compare to the immediate removal action concepts? Will there be a defined transition from SEH mitigation to immediate removal action?
- How will the “technical environmental professional” concept in the present SEH statute map on to the new release-based program? Several subcommittees have suggested that non-LEP professionals should have the authority to perform certain tasks and sign off on certain releases under the new release-based program. What will be the category of people subject to SEH reporting requirements?
- What will happen to properties currently in the SEH program and conforming to the SEH?
- How will the release-based program, as integrated with the SEH framework, apply to residential properties? Will residential property owners be required to remediate to achieve compliance with the residential standards of the RSRs? What sort of financial assistance or simplified pathways or exemptions/exclusions will be available for homeowners?

Other Observations:

There are statutory provisions other than SEH that will benefit from integration into the release-based program. Examples include orders, covenants not to sue, liability protection, and innocent landowner defense. The ad-hoc Transition Advisory Group provided a report to DEEP staff and the Working Group (dated 10/12/2021) that had additional concepts related to integration and transition from the existing statutes and programs to a unified system.

As the regulatory concepts are further developed, we reserve the right to submit additional comments regarding the release-based program.

Respectfully Submitted:

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