

January 9, 2023

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

**RE: Comments by Environmental Attorneys on November and December 2022 Working Group Meetings**

Dear Graham,

The undersigned environmental attorneys provide the following comments on the concepts DEEP staff shared at the November 8, 2022 and December 13, 2022 meetings 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 thoughtful presentations at the October, November and December Working Group meetings. We also thank DEEP for the opportunity to submit comments, and for publicly posting the comments received.

We note that the last two Working Group meetings have devoted time to fairly technical topics, reportable concentrations (“RCs”) and specific tweaks to the RSRs. While these are important topics and we commend the Department’s efforts to seek input from a broad array of stakeholders, we also note that those topics are so technical that it can be difficult for non-LEPs to contribute in a meaningful way, particularly when the larger overarching program context is still evolving.

Through the course of the Working Group’s efforts the outlines of a workable program have emerged, but continuing input from a broad array of stakeholders will be required to refine the details and successfully implement the program. As the Department plans the topical areas that will be discussed in 2023, we suggest, for example, that the Department specifically invite and reserve time for input from environmental advocates and those working on environmental justice issues.

**Technical Concepts**

*Reportable Concentrations*

DEEP shared a preliminary proposal with the Working Group that would set RCs at double the applicable RSR standards. Based on what we can predict about the release-based program, a number of benefits and drawbacks come to mind with respect to the preliminary proposal shared by DEEP. On the positive side, setting RCs above the RSR levels will eliminate reporting (and

associated administrative burdens) for low-concentration releases that can be cleaned up without DEEP oversight, thereby facilitating the allocation and expenditure of limited resources, including DEEP and program-related resources, to assuring timely and proper response to releases more likely to be associated with higher risk. Further, setting the RCs using a simple and predictable formula relative to the RSRs will be easier for stakeholders to understand and implement than a complicated formula or independent set of standards with no relationship to the RSRs obvious to a layperson. We also suggest that different multipliers of the RSRs might be applied for the different soil and groundwater standards or the use of two times the applicable standards as the RCs could be a first step when determining whether a release needs to be reported, with additional specific factors to then be also considered. For example, it may be appropriate to report any exceedance of ground water protection criteria, or to report any exceedance where certain other potentially relevant risk factors are present (or providing exemptions as warranted, for example if contamination is from an upgradient source). By contrast, reporting ETPH in soil over 1,000 mg/kg (twice the default residential DEC standard) at a manufacturing facility seems to be overly burdensome given that the industrial/commercial DEC is 2,500 mg/kg.

By setting the RC higher than the RSR standard, some fraction of releases that must be remediated need not be reported. We understand that the obligation to report is distinct from the obligation to remediate. That said, if a significant proportion of the releases that must be remediated to comply with the RSRs are therefore never reported, will some such releases, including releases that may be associated with higher risk, fall through the cracks and never be remediated in compliance with the RSRs? Since the auditing/penalty regimes have not yet been developed, it is not clear what sort of accountability will be in place ensuring that releases are in fact remediated if they should be remediated. We reserve the right to comment further on RCs as additional program features come into focus.

#### *Specific Tweaks to the RSRs*

Based on the discussion in the December meeting, the proposed RSR tweaks sound promising. We look forward to reviewing the specific language once it is available and may make comments at that time. We also suggest that DEEP solicit input from LEPs and other stakeholders regarding other RSR tweaks that should be considered as part of a larger regulations package, ideally as DEEP is identifying and defining these RSR tweaks.

Respectfully Submitted:

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