

November 14, 2023

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 2023 Working Group Meetings

Dear Graham,

The undersigned environmental transactional attorneys, acting in their individual capacities and not on behalf of any firm or organization with which they might be affiliated, submit the below comments in response to the October 2023 meetings of the Working Group convened pursuant to Public Act 20-09.

As we have noted in the past, the Working Group has only heard the Department's thinking on a fraction of the topics that have been discussed by the Working Group and its subcommittees and ad hoc groups and has only seen proposed regulatory language on an even smaller subset of topics. As the Department spends the next several weeks finalizing the draft regulatory text that it will share with the Working Group, we hope that the Department prioritizes ease of use, cost-effectiveness and certainty in addition to its mission to protect human health and the environment.

Only a few days ago, news broke that Alexandra Daum, Commissioner of the Department of Economic and Community Development (DECD), will leave government service for a post at Yale University. We wish Commissioner Daum the very best in her future endeavors. We also hope that present and future DECD leadership remain engaged in the Working Group process to ensure that the regulatory text fully reflects the economic development goals that were central to the adoption of Public Act 20-09 in the first place.

In that context, we have the following specific comments on the topics discussed at the Working Group meetings held on October 10 and October 31, 2023.

Immediate Action Endpoints

We are particularly concerned regarding the "immediate action endpoint" terminology. For one thing, using the word "endpoint" when the end of the process has not actually been reached has the potential to send a confusing and misleading signal. Stakeholders less familiar with the terminology and process could easily interpret "immediate action endpoint" as a regulatory "endpoint" achieved through the use of "immediate actions." Apparently, it will be possible for a release to achieve an "immediate action endpoint" while still being tiered in Tier 1A (see slide 12 of October 10, 2023 presentation). Indicating that a release subject to Tier 1A oversight has reached any kind of "endpoint" renders the word meaningless. It would also cause just the same

confusion we see today when the word “closed” is used to describe spills that have been subject to some level of cleanup, but have not necessarily achieved compliance with the RSRs.

More significantly, we are concerned that the word “endpoint” for an intermediate step in the process reflects a continued, and unfortunate, separation between the world of spills and the world of remediation. As we understand, one of the goals of the release-based system is to unite all spills and releases under the same program, subject to the same endpoints and cleanup standards. Calling out an “endpoint” before the end of the process further entrenches an artificial separation between the DEEP staff members (and outside professionals) who handle spills from those who handle remediation in compliance with the RSRs.

There are many other words that could be used to define what we acknowledge to be important milestones. It would even be an improvement to refer to a category of “immediate actions” and document that such immediate actions are “complete” because it would be clearer that the word “complete” applies only to the “immediate actions” (and that some other set of long-term actions might be incomplete).

We might have further comments on the specific milestones that signal the completion of the “immediate actions” phase, but we reserve those comments until we see the regulatory text in its entirety and those milestones can be evaluated in context.

Historically Impacted Material

We commend the Department for thinking creatively to identify novel means of achieving cost-effective and protective remedial strategies. This novel concept will only have value if it can be implemented in a way that will actually save stakeholders money and encourage economic development, while being appropriately protective of human health and the environment. We suspect that we will have comments on the regulatory language once it is available. In particular, we intend to share it with real estate practitioners and title companies to gauge the impact that an “affidavit of facts” might have on marketability of title.

We thank the Department for accepting these comments and look forward to continued productive discussion.

Respectfully Submitted:

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