



Environmental Professionals Organization of Connecticut

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EPOC would like to thank the Department for addressing our questions on *Historically Impacted Material* at the October 31, 2023, Release-Based Working Group Meeting.

As we presented in our Questions document, which is attached, historically impacted fill is ubiquitously present in both residential and industrial/commercial settings because in many cases it is not the result of industrial/commercial activities rather our history as a society of burning wood and coal for heat and power, using asphalt paving for roadways and the subsequent use of materials generated from these processes for fill. It is likely that 90% or more of the parcels present in our urban areas and suburban centers will ultimately have to address historically impacted fill at some point in the future as routine maintenance and redevelopment requires excavation of soils.

One central question that we have is what constitutes discovery, is it visual observation of fill materials with ash, coal, asphalt, analytical testing that shows typical historical fill impacts in absence of evidence of petroleum or chemical contamination, or both independent of each other? From the follow up presentation on October 31st, it appeared that it will be both, independent of each other, with the caveat that analytical data could be used to refute visual observation. If an excavation contractor identifies historically impacted material, they are not responsible to report it, but do they have an obligation to tell the property owner that does?

Another outstanding question is how do you propose to address historically impacted materials on residential properties? Applying EURs to residential parcels is costly and the number that could be required would be significant. We look forward to hearing and commenting on your proposed approaches to residential properties.

Lastly, transportation corridors, especially active and current rail corridors, like many inactive ones owned by DEEP, were constructed with historically impacted fill materials. An understanding of how the Department plans to address transportation corridors is needed for a complete evaluation.

In summary, from an implementation standpoint, requiring historically impacted material to be reported and addressed will impact a large number of properties, both industrial/commercial and residential, as it is common to find historically impacted materials on all parcels in our urban and suburban centers that have been developed for 100s of years with multiple generations of development. The potential impact to the real estate market, especially residential parcels in urban settings is a concern as evaluation for historically impacted materials will likely become common as part of due diligence activities for purchase or refinancing with historically impacted material being identified routinely.

We welcome the opportunity to continue to participate in the development of the Release-Based Remediation Program.



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**EPOC Questions/Clarifications on
HISTORICALLY IMPACTED MATERIAL
as presented by CT DEEP staff on October 10, 2023**

1. Historically impacted fill, known in the marketplace as historic or urban fill, is commonplace in areas where multiple generations of development have occurred including all the State's urban areas and suburban centers. Historically impacted fill is ubiquitously present at both residential and industrial/commercial settings because in many cases it is not the result of industrial/commercial activities rather our history as a society of burning wood and coal for heat and power and using asphalt paving for roadways and the subsequent use of materials generated from these processes for fill. It is likely that 90% or more of the parcels present in our urban areas and suburban centers will ultimately have to address historically impacted fill at some point in the future as routine maintenance and redevelopment requires excavation of soils. Is the Department prepared to handle and manage the number of notifications that it will receive?
2. How will historically impacted fill be handled in transportation rights of way or other State and municipal owned properties where the filing of an affidavit on the land records is not possible?
3. What constitutes discovery?, observation?, or laboratory analysis?
4. If just laboratory analysis, are you providing an incentive to not sample and not find SERs?
5. How will the Tier Checklist address historically impacted fill and the proposed exemption from characterization in one year?
6. Can the Department provide an exemption in Tier Characterization Definition?
7. Can the Department provide an updated Tier checklist and updated definition of tier characterization for evaluation?
8. More detail is required to evaluate the permit by rule concept, can the Department provide:
 - a. The permit text that will be part of the regulations?
 - b. The Department's opinion of what "not prudent to remediate means"?
 - c. The type of information the notification will require?
 - d. The type of information the Affidavit of Facts will require?
 - e. Will a title search and notice to interest holders be required?
 - f. Will there be a fee for notification?
 - g. Will the five-year inspection require reporting to DEEP?
 - h. How will the Department police compliance with the permit.
9. What level of characterization will the Department require to confirm SERs do not exist?
10. Has the Department considered how historically impacted fill is addressed in other New England states and whether this approach is consistent with those?