



***Environmental Professionals Organization of Connecticut***

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Graham Stevens, Bureau Chief  
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CT DEEP

Sent via Email to: [DEEP.Cleanup.Transform@ct.gov](mailto:DEEP.Cleanup.Transform@ct.gov), [graham.stevens@ct.gov](mailto:graham.stevens@ct.gov)

Dear Graham,

EPOC is pleased to submit the following initial comments on the discussion of the *Tiers Checklist and Immediate Actions* as presented by CTDEEP staff during the monthly meeting of the Release-based Working Group on August 8, 2023.

### ***Release Tiering***

The EPOC Board supports the concept of tiering releases that have not been Verified prior to one year from discovery and understands that tiering meets the following objectives:

- Allows for CTDEEP, and in turn, the public, to be notified when certain milestones are reached;
- Allows CTDEEP to identify and intervene at releases that are not moving through the process, especially higher risk releases which will need to tier at the CTDEEP oversight level (Tier 1A), one year following discovery;
- Allows CTDEEP to implement a prescribed schedule for the investigation and remediation of releases that cannot be closed one year following discovery; and
- Forms the basis for a fee structure.

As you heard during the meeting on August 8, there is concern in the regulated community that the current draft Tiers Checklist will capture too many releases in Tier 1A (CTDEEP oversight) because the first page addresses the requirements to move from Tier 1A (CTDEEP oversight) to Tier 1B (LEP oversight). The EPOC Board does not share this concern because one year will have passed since the release discovery and a significant number of releases will either already be closed or have met the requirements to be able to initially tier at an LEP oversight tier (1B, 2, or 3).

We appreciate CTDEEP's willingness to form an Ad hoc committee to further evaluate the Tiers Checklist and we are encouraged by CTDEEP technical staff's open willingness to work with LEPs, environmental legal counsel, and environmental advocates to address the potential for

unintended consequences. Although not perfect, we believe that the adjustments that were made will help to address the main concern that too many releases would get captured by Tier 1A and that CTDEEP would not have the resources to address all those releases. We also appreciate CTDEEP's stated willingness to continue to work on the wording of the Tiers Checklist in the future.

With that said, we believe the following items need additional clarification and discussion:

- CTDEEP introduced the concept of tier characterization, which is the amount of characterization required to be comfortable that the impacts of a release have been sufficiently evaluated to move from Tier 1A (CTDEEP oversight) to Tier 1B, 2 or 3 (LEP oversight). The EPOC Board understands that CTDEEP is proposing that an investigation has achieved characterization for the purpose of completing the tiers evaluation when the horizontal and vertical extent of a release has been determined to one-half applicable clean-up standard, the detection limit (if that is higher than one-half the standard), or background to meet the tier characterization threshold with certain exemptions for specific cases. We understand that CTDEEP's intention with establishing numeric thresholds was to limit the subjectiveness inherent in professional judgment and the conceptual modeling process, as well as to recognize that delineation to non-detect is not required for the tiering process.

To avoid unintended consequences with the tier characterization definition, we recommend that additional discussions focus on exemptions and/or exceptions. The following possible exceptions to tier characterization were discussed:

- Presence of residual concentrations of pesticides which can be present site-wide and in some instances have extremely low clean up criteria,
- Presence of historic fill, that can be present site wide,
- PFAS in groundwater due to widespread presence and parts per trillion clean up criteria. Similar situation for some common chlorinated VOC breakdown products.

Representatives of the EPOC Board would be happy to meet with you to discuss further.

- We understand that LEPs will be required to stamp the tier form and be subject to audit. We further understand that CTDEEP does not intend to review and approve each tier form, similar to current LEP verifications, but will audit some portion of the submitted forms.
- We also understand that a tier fee structure will be developed by CTDEEP and implemented for each tier checklist submittal. We hope that the tiers fee structure will be introduced soon. On the one hand, we hope that tier fees are reasonable. On the other hand, we believe that the requirement to tier a release should be an incentive to completing cleanups and closing releases prior to the one-year anniversary from discovery.

- We understand that there was discussion regarding a formal process to correct or amend an incorrect tier classification and we encourage further discussion on this.
- There was discussion at the August 8 meeting regarding sites with multiple releases that may be going through a site-wide closure and how tiering would apply to these sites. We believe there should be further discussion on this issue.

### ***Emerging Reporting Releases (ERR) and Immediate Actions (IA)***

Thank you for your presentation on ERRs and associated IAs. We provide the following comments below, organized by presentation page and slide title:

#### ***Presentation Page 8, Slide “The World of Releases”***

The EPOC Board was surprised to see that 1,236 reports of historical releases that do not require reporting under 22a-450 are actually reported annually.

#### ***Presentation Page 9, Slide “What is Immediate Action”***

This slide indicates that it is CTDEEP’s position that removal of a release is required by a permitted spill contractor within 2 hours of reporting. The regulated community requests additional discussion on this topic. Is it two hours from discovery? Two hours from reporting? Is a permitted spill contractor required for all releases, even smaller ones?

#### ***Presentation Page 10, Slide “Types of Releases for Which IA is Required”***

The Department has developed a new term (ERR) for those spills that were referred to as “contemporaneous” in the past. As stated on the slide the term ERR means:

1. a release to the land and water of the state
2. discovered by an observed change in condition
3. that is required to be reported by the regulations adopted pursuant to Section 22a-450 of the Connecticut General Statutes.

Regarding item 2, “observed change in condition” is a broad and abstract idea and additional clarification and discussion is required. Is an “observed change in condition” just something seen visually or does it include other senses? “Change” can mean many things, as well as “condition” to different people in different settings and situations. We understand the need for a definition but want to avoid unintended consequences.

The CTDEEP has also developed a definition for Significant Existing Release (SER) as:

1. a release to the land and waters of the state
2. discovered pursuant to section 22a-134tt-2 of the Regulations of Connecticut State Agencies

3. that is present in the location identified by or creating one or more of the impacts to public health or the environment identified in, subsection [placeholder] of this section.

We understand the SERs will be a subset of what we have come to identify as historical releases over the past several years. We believe that the difference between a contemporaneous/emerging release and a historical release, including the subset of ERRs, can be better articulated for clearer understanding. In Massachusetts, what we are now referring to as an emergent release is known as a sudden, continuous or intermittent release that has or is likely to have occurred in a period of 24 consecutive hours or less. The Massachusetts Contingency Plan (MCP) requires reporting for these sudden, continuous, or intermittent releases based on the quantity of material released and, in specific circumstances, if certain receptors are impacted by the release even if the volume is smaller than reportable quantities. The MCP requires that these releases be reported to the Massachusetts Department of Environmental Protection (MassDEP) within 2 hours of discovery. What we now refer to as a historical release is reportable in Massachusetts based on the concentration present in soil or groundwater samples collected from the release area. These releases must be reported to MassDEP within 120 days of discovery. The difference between the two is based on whether the release likely occurred in a period of 24 consecutive hours or less and whether the releases impacted certain, specific receptors (such as surface water). (See the MCP at 310 CMR 40.0311 and 40.0315). This 24-hour rule is well defined, easily understood and has worked for decades. We recommend CTDEEP consider something similar.

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