



Environmental Professionals Organization of Connecticut

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August 8, 2023

Graham Stevens, Bureau Chief
Bureau of Water Protection and Land Reuse
CT DEEP

Sent via Email to: DEEP.Cleanup.Transform@ct.gov, graham.stevens@ct.gov

Dear Graham,

EPOC is pleased to submit the following initial comments on the discussion of *Certifications by Non-LEP Professionals* as presented by DEEP staff during the monthly meeting of the Release-Based Working Group on July 11, 2023. We appreciate the Department's efforts in crafting and providing proposed regulatory language for the Working Group's review and comment, and we encourage continued use of this format with notes explaining the Department's thoughts on the proposed regulatory language on the side.

EPOC recognizes the importance of this issue to our membership, and as such has recently surveyed our LEP members on the substance presented by DEEP and the potential role and qualifications for a non-LEP Professional or Permitted Environmental Professionals (PEPs) as termed by the Department. Given the short timeframe to respond (30 days), we will be taking further time to review and plan to submit more detailed comments soon. We are submitting the following comments for your consideration at this time:

- EPOC, and a large majority of our LEP members who responded to the survey, believe that a new category of non-LEP Professionals is not necessary. There are significant challenges that will need to be addressed for any new permitted professional program which include training, licensing, administration, oversight/auditing, disciplinary action authority, and acceptance in the marketplace by all parties. EPOC is of the opinion that the LEP community already has the proper training/expertise, and licensure, and is overseen by DEEP's auditing program and a licensing board (LEP Board) with disciplinary authority.
- EPOC believes that efforts by the Department should be focused on establishing the appropriate thresholds to determine if a spill could potentially cause a significant impact to the environment, and in such cases, should require further delineation and potential remediation under the oversight of LEPs. In EPOC's opinion, any spill that likely involves surface water or groundwater impacts should be addressed by LEPs. Furthermore, spills that pose a low risk to the environment (e.g., below newly established thresholds) may be managed by spill cleanup professionals without the need for a new license or permit category and potentially without reporting requirements. This approach is similar to what is required under the Massachusetts Waste Site Cleanup Program where only LSPs are permitted to provide Opinions, including Permanent Solution Statement Opinions (colloquially known as site closure) for releases of oil and/or hazardous materials (OHM) in excess of the



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Massachusetts Reportable Quantities. One of the reasons that this strategy works in Massachusetts is because the Massachusetts Department of Environmental Protection (MassDEP) has established a Reportable Quantity of 10 gallons for petroleum and 25 gallons of non-polychlorinated biphenyl (non-PCB) mineral oil dielectric fluid (MODF). Releases of less than 10 gallons of petroleum and 25 gallons of MODF are not considered a reportable release unless the release encounters a sensitive receptor such as a surface water body. These non-reportable releases are generally addressed using best management practices (BMPs) by facility personnel, utility personnel, or as directed by public safety officials responding to the incident.

- The requirements of the Massachusetts Waste Site Cleanup Program are codified in the Massachusetts Contingency Plan (MCP). The MCP provides very specific, detailed language regarding reportable releases (and exemptions from reporting), based on the severity of the threat to receptors, physical evidence of a release, reportable quantities, and/or reportable concentrations, and calls out specific reporting timeframes in response thereto. The current MCP has been in effect for 30 years and has been accepted to be protective of human health and the environment. The MCP auditing program is robust and provides essential safeguards. The MCP is rigorous and in no way gives polluters a pass. The Commonwealth of Massachusetts is roughly twice the size of Connecticut with roughly twice the population, yet only has approximately 25% more licensed professionals. There is no need for a second class of permitted professionals to close releases in Massachusetts and we do not believe that a second class will be needed in Connecticut if the reporting guidelines and thresholds are properly established. Of equal importance, the regulated community accepts the certainty associated with LSP Opinions and there is little to no concern that releases that do not require reporting are causing unacceptable harm to the environment or creating unacceptable liability in the marketplace.

As we have routinely stated over the course of the last thirty-two months, it has been challenging for us to provide comments on isolated sections and/or concepts for the proposed Release-Based Remediation Regulations without the knowledge of how the parts of the proposed regulations will fit together in their entirety. That being said, our review of the proposed PEP criteria combined with the strong response from our LEP members is such that we cannot support the proposed PEP concept at this time. We would be happy to discuss this in more detail in person or via additional written comments.

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