

Working Group Members,

First, thank you again for your continued efforts and engagement, as we continue our process to create a new release-based cleanup program in Connecticut. We are looking forward to seeing you next week. In advance of this meeting, please find some updates and items for review.

Draft Schedule/Process for Subcommittee Concept Papers

At the last Working Group meeting, DEEP offered to suggest a process for receiving the Subcommittee concept papers, offering the concept paper for public comment, and formulating Working Group recommendations and advice to DEEP. Below is a schedule for your consideration that I suggest we discuss at our May 11th meeting.

Key Dates	Tasks/Objectives
May 11th – Working Group Meeting	<ul style="list-style-type: none">• Finalize plans for subcommittee concept papers• Subcommittee report outs and discussion
June 8th – Working Group Meeting	<ul style="list-style-type: none">• Identify scope of 2nd Phase Subcommittees and volunteer solicitation process• Finalize timeline for 2nd Phase Subcommittees
June 11th	<ul style="list-style-type: none">• Subcommittee Concept Papers due to Working Group• DEEP to post on its webpage and alert stakeholder of 30-day comment period
June 15th	<ul style="list-style-type: none">• DEEP to call for volunteers for 2nd Phase Subcommittees (21 day call for volunteers) for first meeting on the week of July 19th
July 13th – Working Group Meeting	<ul style="list-style-type: none">• DEEP to distribute written comments received on Subcommittee concept papers• Working Group to host Q&A session with co-chairs of Subcommittees 1 and 2
August 10th – Working Group Meeting	<ul style="list-style-type: none">• Working Group to host Q&A session with co-chairs of Subcommittees 3, 4, and 5
September 10th	<ul style="list-style-type: none">• Written questions due to DEEP for upcoming panel
September 14th – Working Group Meeting	<ul style="list-style-type: none">• Working Group to host Q&A session with DEEP• 2nd Phase Subcommittee Report Out
October 12th – Working Group Meeting	<ul style="list-style-type: none">• 2nd Phase Subcommittee Report Out
October 15th	<ul style="list-style-type: none">• Working Group to transmit Concept Papers with recommendations and advice on key components of such concepts, and questions or suggestions for DEEP

Subcommittee Notes Forms

Please find attached the monthly forms adopted by the Working Group as a mechanism to update all members of the Working Group on each Subcommittee's progress toward concepts relevant to their charge. The monthly form is being used to facilitate questions by the Working Group

members during the Subcommittee report outs. Each Working Group member should review these forms in advance of the May 11th meeting, so we can have a productive discussion during the Subcommittee report out process. Not all Subcommittees submitted their monthly forms.

Transition Issues

The Transition Advisory Group is focusing on issues that would effect the operation of other important cleanup programs and processes, as opposed to the release-based regulations. During a recent meeting, this group posed a question to DEEP about the future status of the Remediation Standards Regulations (“RSRs”). Sites that will remain in the Transfer Act or that elect to or elected to enroll in a Brownfield program must clean up their sites to the RSRs.

DEEP recognizes that those undertaking such cleanups benefit from the predictability of cleaning up to a known and predictable standard. While the RSRs can, and have been, amended from time to time, the underlying approach to cleanup provided by those standards has remained consistent and will remain consistent. For those sites cleaning up under an existing Transfer Act obligation or Brownfields program, the endpoint for such cleanup will remain compliance with the RSRs.

Changes to the RSRs may occur, especially to adopt additional provisions and remedies that are being considered for and will ultimately be adopted under the release-based regulations process. It is also a goal of DEEP to promote consistency in cleanup standards. However, changes to the RSRs will only be made following a public process that invites the input of stakeholders. When adopting Regulations pursuant to PA 20-9, DEEP will not propose a regulatory change that eliminates the RSRs.

Feedback on Working Group Operation

DECD and DEEP are open to feedback on the Working Group operation. These meetings are your opportunity to provide feedback to the agencies and to have active discussions between subcommittees, as we develop a release-based cleanup program. Do you have ideas of topics you would like to see on a future agenda? Do you have ideas on how the Working Group could be operated more effectively? Please reach out to us or to Betsey Wingfield or Graham Stevens with your thoughts.

We are looking forward to seeing you at our next Working Group meeting on May 11th. Please remember to use the link sent to you on May 4th for the correct Zoom meeting. Each participant has a unique sign on web address.

Respectfully,

Katie and David

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Release-Based Regulation Topical Subcommittee Notes

Discovery of Historical Releases 5/4/2021

Assumptions Used (running list):

- Definition of “release” is the definition in PA 20-9 (section 15(6)) (which specifically calls out 2 types of anthropogenic background as not a “release”)
- The presence of naturally occurring substances is not a release.
- All releases are either “historical” or “new”
- Not all discovered historical releases will be reportable
- Not all discovered historical releases will require remediation
- Some historical releases may require reporting, but not remediation (e.g., downgradient property owner)
- Some historical releases may require remediation, but not reporting (e.g., immediate removal actions, low risk sites)
- Additional information/investigation may be needed after discovery to determine if a release is “reportable” or requires remediation
- A report of a release may be withdrawn, based on obtaining additional information
- Some historical releases will pose a threat to human health/environment that requires reporting by others if creator/maintainer does not (akin to the current “significant environmental hazard” reporting obligations, which we suggest be incorporated into this new program)
- Placement of historical fill may meet the definition of “historical release” but should be treated differently under the reporting and cleanup obligations. In particular, we are concerned that discovery of historical fill not require extensive characterization/investigation.
- Releases at residential properties (1-4 family) should be treated differently under the reporting and cleanup obligations.
- LEP program will still be in effect - but will require need revisions so as to not discourage due diligence using LEPs
- SCGD and RSRs will be supplemented/replaced by these regulations or other regulations/guidance specific to release-based program
- All releases (both historical and new) will subject to these new Release-based regulations for purposes of remediation (if not reporting)

Identify issues that intersect with other subcommittees:

Subcommittee: Reporting Newly-Discovered Historical Releases

Anthropogenic background and historical fill should be specifically addressed

Subcommittee: Characterization of a Discovered Release

The relationship between potential harm and how much characterization should occur before reporting....?

And anthropogenic background and historical fill should be specifically addressed/defined

Subcommittee: Tiers

Anthropogenic background and historical fill should be specifically addressed/defined

Questions for Working Group, other subcommittees, DEEP, or DECD:

Question for: Reporting Newly-Discovered Historical Releases

Is the only trigger for reporting numerical, or will other circumstances be taken into account?

Question for: Characterization of a Discovered Release

Is this group only dealing with characterization after reporting, or to determine whether reporting thresholds have been achieved?

Question for: Working Group

Can there be a “release” without understanding the release mechanism (e.g., how it got there)?

Question for: DEEP

Will DEEP address historical fill separately from this regulation?

Will DEEP numerically define naturally occurring?

Aspects of other state programs to be considered (include statutory references):

- Definition of “clean fill” in SW regs and RSRs, and implications for discovery of a historical fill
- LEP regulations and implications for LEPs who perform investigations and “discover” releases – LEP regulations may need amendment
- Significant environmental hazard statute may not capture the right circumstances to require reporting by others
- Are on-going leaks from USTs historical releases, or new spills? Coordinate with the UST regulations

Parking Lot for out of scope topics, including transition issues:

Will DEEP address historical fill separately from this regulation?

Will DEEP numerically define naturally occurring?

Will there still be a utility exemption?

Release-Based Regulation Topical Subcommittee Notes

Reporting Newly-Discovered Historical Releases 5/3/2021

Assumptions Used (running list):

- Our recommendations apply to historical releases rather than to new releases or spills, although our Subcommittee likely will make certain recommendations that apply to both new/contemporaneous and historical releases.
- A newly discovered historical “Release” (as defined in P.A. 20-9) has been identified.
- The person (as defined in P.A. 20-9, e.g., client, owner, operator) who *may* have an obligation to report has been identified and notified of the newly discovered historic release (the “Release”).
- Such notice includes some minimum of quantitative and/or qualitative information, such as an analytical result and proximity to sensitive receptors. That is, the person who may be responsible for reporting the Release has at least the essential facts needed to file a report.
- Part of our subcommittee’s charge is to recommend thresholds (either quantitative and/or qualitative) for requiring reporting of the Release
- We also will consider/recommend requirements with respect to the timing and contents of any required release reports.
- There may be situations in which a Release is discovered that does not require reporting under the contemplated release-based reporting program. For example, Releases that must be reported under other federal or state programs need not also be reported under the to-be-established program per PA 20-9. There may also be Releases that do not trigger the quantitative or qualitative threshold for reporting and/or if no further investigation/remediation is required.
- Some Releases will not require reporting but, because creators and maintainers as defined in PA 20-09, are liable for pollution whether a Release is reportable or not, they may elect to report such Releases and avail themselves of the end points established by the contemplated release-based program
- The new Release reporting program will replace certain current regulatory and statutory requirements. In particular, the Significant Environmental Hazard program (CGS 22a-6u) and other programs, as appropriate (e.g., the spill reporting regulations being developed per CGS 22a-450, the UST spill requirements) will be incorporated into this new program to limit reporting overlaps, inconsistent response requirements and inconsistent program end-points.
- There will be an opportunity/mechanism for following up on initial reports, including, for example correcting/withdrawing release reports and being able to review (and possibly correct) them online.
- There will be some amount of flexibility to address certain situations, including, for example, an immediate removal action conducted prior to a reporting deadline.
- The information reported will be publicly available.
- Information regarding Releases that do not require reporting will not be publicly available. There is no mechanism to accomplish this and the marketplace provides an incentive for

typical property owners and lenders to retain records.

- We are not addressing additional reporting (or investigation/remediation, etc.) that may be required after the initial report of the newly discovered historic release.

Identify issues that intersect with other subcommittees:

Subcommittee: Discovery of Historical Releases When someone other than the creator or maintainer “discovers” a newly discovered historic release, would disclosure to the owner of the property (e.g., via an e-mail notice) of the relevant “discovery” result in discovery by the creator or maintainer? For example, if a buyer doing due diligence provides the results of sampling to the owner/seller that indicates a reportable release, are there any situations in which you would see that as potentially not triggering a “discovery” by or reporting requirement for the owner?

Subcommittee: Characterization of a Discovered Release How much information are you assuming already has been obtained in connection with a reported release?

Subcommittee: Immediate Removal Actions What information/documentation, if any, are you anticipating a person would need to maintain in its files to support an IRA and for how long?

Questions for Working Group, DEEP, or DECD (Questions facilitate consideration by Working Group. Subcommittees may and should independently proceed with recommendations based on their distinct charge without need to obtain responses):

Question for: DEEP Is DEEP anticipating (or willing) to incorporate the proposed new spill regulations into the to-be-developed release based reporting program? We note that the MCP addresses both historic and contemporaneous releases, which provides for a more comprehensive program. Having two separate reporting programs may result in confusion/inconsistencies.

Question for: Question

Question for: Question

Aspects of other state programs to be considered later in process (include statutory references):

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Parking Lot for out of scope topics, including transition issues:

How to deal with historic contaminated fill.

Release-Based Regulation Topical Subcommittee Notes

Characterization of a Discovered Release 5/3/2021

Assumptions Used (running list):

Listed assumptions are, in some cases, general statements supported by the subcommittee that will be developed in more detail in the concept paper. They are listed in no specific order of importance.

Confirmatory sampling of a release area following remediation is a form of characterization.

The regulations will provide, to a greater or lesser degree, identification of various characterization elements or activities in order to establish a framework for a minimum set of standards or expectations for characterization of releases. Establishing expectations for some level of characterization requirements provides a degree of consistency for all persons conducting characterization, and a level of certainty to the regulated community with respect to level of effort that is required at various stages of the characterization and remediation processes.

Notwithstanding identification of characterization requirements identified in the regulations, guidance will be necessary to provide additional information on such items as approach to characterization efforts, techniques for how to conduct various types of investigations, and expected or standard practices for investigation and remediation in various situations. Applicable guidance should be provided at the same time the regulations become effective.

In all situations, whether in regulation or guidance, there should be allowances for alternative methodologies or approaches to those directly identified in regulation or guidance, as long as the alternative methodology or approach can be demonstrated to be scientifically defensible and will meet the characterization objectives. The regulations and guidance must be flexible enough to incorporate evolving scientific understanding and future developments in investigative approach and remedial techniques.

Self-implementation of characterization approaches and techniques should be the rule rather than the exception, but it is understood that there may be specific circumstances related to risk or newly developed methodologies for which commissioner approval would be necessary.

Characterization will be a less linear process than what is currently set forth in the Site Characterization Guidance Document (SCGD) because that guidance document was written with the assumption that the purposes of Phase I and Phase II activities are to identify areas where there is a potential for a release to have occurred (Phase I) and whether there is evidence that a release has occurred (Phase II). Neither of those objectives is applicable to a release-based program for which characterization activities would be focused on characterization of an already identified release. While elements of a Phase I assessment (for example, the environmental setting or potential historical activities that could have resulted in the release of the discovered contamination) may be part of necessary characterization activities, the selection of which elements are relevant to characterization of the discovered release will be based on the conceptual site model for the individual release. Elements of Phase III investigations, as described in the SCGD, will definitely be incorporated into characterization of a discovered release, but may not be as detailed, and some elements of delineation of the nature and extent of a release may occur very early in the process. A revised guidance document will be necessary to address such changes in approach to characterization of a discovered release.

However the list of expected characterization elements or activities are identified in regulation or guidance, there should also be language indicating that not all elements of characterization described are

applicable to all types of releases or release scenarios and that the default situation should not be the need for the person performing the characterization to expend undue effort explaining why certain elements are not necessary or appropriate for the specific release scenario they are tasked with characterizing. Such language could indicate the expectation that any report or documentation of characterization would focus on demonstrating why the characterization performed is appropriate and adequate to meet characterization objectives for the specific release scenario for which such characterization is being performed. Nevertheless, it is reasonable to include some language in the regulation (and guidance) to indicate certain minimum criteria for what elements or activities must at least be considered during the characterization process.

Identify issues that intersect with other subcommittees:

Subcommittee: Tiers Sorting into Tiers will not happen until some time after initial discovery of a release (perhaps one year?); therefore, characterization activities will generally be performed without regard to the Tier system. However, depending on the structure of the Tier classification system, the level of characterization expected may vary depending on risk associated with a particular tier

Subcommittee: Reporting Newly-Discovered Historical Releases How and when to report upgradient contamination.

Subcommittee: Tiers Whether the credentials of the person doing the characterization will depend on the Tier the release is in.

Questions for Working Group, DEEP, or DECD (Questions facilitate consideration by Working Group. Subcommittees may and should independently proceed with recommendations based on their distinct charge without need to obtain responses):

Question for: DEEP

Question for: [Select one](#) [Question](#)

Question for: [Select one](#) [Question](#)

Aspects of other state programs to be considered later in process (include statutory references):

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Parking Lot for out of scope topics, including transition issues:

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Release-Based Regulation Topical Subcommittee Notes

Immediate Removal Actions 3/22/2021

Assumptions Used (running list):

- a. Immediate Removal Actions are only applicable for active spills and releases (“contemporaneous”) or historic releases that impact environmental media including soil, groundwater, and surface water (i.e., IRAs are applicable to “Sites” and not “spills”). Spills and releases that do not impact environmental media would be addressed by first responders and permitted emergency contractors in accordance with current, amended, or proposed spill regulations. (**Note – still under consideration by group and also posed as a question below**)
- b. Based on considerations for risk-based tiering of releases specified in P.A. 20-9, the associated release-based regulations will require immediate response actions in situations where a release poses an immediate risk to sensitive receptors or public safety. The regulations will also allow for expedited clean-ups with reduced regulatory requirements in certain situations where releases are of limited extent and can be readily characterized and/or remediated.
- c. The Site Characterization Guidance Document and certain statutes and regulations including but not limited to the RSRs and those governing the LEP program will potentially be amended as recommended by this and other subcommittees.
- d. The DEEP is willing to issue “no further action” or other end point notifications under certain circumstances and authorize LEPs and DEEP Permitted Spill Cleanup Contractors under certain other circumstances to do the same.
- e. The current structure of LEPs and DEEP Permitted Spill Cleanup Contractors will remain with modifications to allow LEPs to undertake additional actions.

Identify issues that intersect with other subcommittees:

Subcommittee: Discovery of Historical Releases Issue that intersects

Subcommittee: Reporting Newly-Discovered Historical Releases Issue that intersects

Subcommittee: Reporting Newly-Discovered Historical Releases Issue that intersects

Questions for Working Group, other subcommittees, DEEP, or DECD:

Question for: DEEP **Question for all groups and stakeholders:** To what extent should the Release-Based Remediation Program include requirements for spills and releases that do not impact environmental media, and which are currently addressed by first responders and permitted emergency contractors in accordance with current spill regulations?

Question for: Characterization of a Discovered Release Are you considering spills and releases that do not impact environmental media and which are currently addressed by first responders and permitted emergency contractors in accordance with current spill regulations, as part of your mandate?

Question for: Tiers Question

Aspects of other state programs to be considered (include statutory references):

MassDEP’s MCP and NJDEP’s Tech Regs

Release-Based Regulation Topical Subcommittee Notes

Tiers 5/3/2021

Assumptions Used (running list):

1. We assume that there is some “release” that has been “discovered.”
 - a. This may be either a contemporaneous release or a release that has been “discovered” as defined in the release-based regulations that will be developed.
2. We assume that some discovered releases must be reported to DEEP and others need not be.
 - a. We assume that when there are no constituents of concern detected above regulatory levels at an area, no action will need to be taken.
 - b. We are uncertain as to whether a de minimis spill (e.g., tablespoon of gasoline while filling lawnmower) will constitute a “release” but we assume that such event need not be reported.
 - c. We are uncertain as to whether releases that can be fully remediated before the reporting deadline will be reportable, though we note that in Massachusetts certain otherwise-reportable releases are not reportable if cleaned up before the reporting deadline.
3. We assume that some period of time will elapse between discovery and reporting.
 - a. We assume that some discovered releases will not need to be reported. This may be because the release does not meet one of the to-be-determined thresholds for reporting, or potentially because the release has been sufficiently addressed before the relevant reporting deadline.
 - b. We assume that the interval between discovery and reporting will allow for preliminary evaluation that would inform whether or not the release is even reportable.
4. We assume/suggest that some period of time should elapse between reporting and placement into one of the core tiers.
 - a. Releases will be assigned to tiers based on risk, and some amount of time and level of characterization is required to develop the knowledge necessary to support tier classification. The absence of reasonable assessment may affect Tier assignment.
5. We assume that there will be an opportunity for early exits – without entry into a tier – when the release can be fully remediated before the tier deadline.
6. Some of these assumptions are captured visually in the attached Conceptual Timeline.

Identify issues that intersect with other subcommittees:

Subcommittee: *Select one* ***See assumptions above – please let us know if your group with cognizance over a particular topic disagrees with our assumptions.***

Questions for Working Group, DEEP, or DECD (Questions facilitate consideration by Working Group. Subcommittees may and should independently proceed with recommendations based on their distinct charge without need to obtain responses):

Question for: Working Group We have been discussing deadlines in the context of deadlines varying by tier. Does the larger group agree that there should be deadlines?

Question for: Select one Question

Question for: Select one Question

Aspects of other state programs to be considered later in process (include statutory references):

Click or tap here to enter text.

Parking Lot for out-of-scope topics, including transition issues:

Liability for past “maintainers” came up as an out-of-scope discussion topic. As we discuss who is responsible for remediation generally and assignment of tiers specifically, it occurs to us that liability (if any) for past owners is not clearly defined.

One subgroup member recommends that Legislators / CTDEEP consider developing a grant / low-interest loan program to remediate historical releases not caused by the current owner and available to private individuals / small business owners.

Tiers Subcommittee
Conceptual Timeline

