

October 18, 2022

VIA EMAIL (Graham.Stevens@ct.gov)

Graham J. Stevens
Connecticut Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Re: TAG Comments on October 11, 2022 Working Group Meeting

Dear Graham,

The Transition Advisory Group (“TAG”)¹ hereby submits general feedback on CT DEEP’s presentation at the Release-Based Working Group Meeting on October 11, 2022.

We appreciate CT DEEP’s intent to provide its conceptual approach on various issues to the Working Group prior to when CT DEEP shares draft provisions of the regulations. This format provides an opportunity for the Working Group and other interested stakeholders to consider the issues and provide preliminary and helpful feedback. Comments from various parties will certainly enhance the process and aid in the drafting of regulations so that a smooth adoption process may be possible.

As emphasized in our previous submittals to CT DEEP on June, 2021, October, 2021 and February 27, 2022, TAG has identified numerous existing environmental statutes, regulations and programs that will need to be modified or integrated into the proposed release-based regulations (or somehow otherwise addressed). One of the statutes on our list was the Significant Environmental Hazard (“SEH”) statute. We were encouraged by CT DEEP’s proposal during the October 11, 2022 meeting to integrate the SEH program into the proposed release-based regulations. Certainly, having dual and potentially competing or inconsistent programs is not in the interest of any affected party. It also presents challenges for the CT DEEP to administer dual programs.

However, we urge CT DEEP to provide greater clarity on the actual process for accomplishing this integration and on the consequences or import of the integration. For example, will legislation be proposed to revoke the SEH statute? What is CT DEEP planning for the legislation – a simple straight strike all? Or is CT DEEP considering a more substantive legislative modification? When will the SEH sunset? Will the integration of the SEH into the release-based regulations require further legislative action? It is certainly important to understand how the transition of SEH into the release-based regulations will

¹ The Transition Advisory Group includes Attorneys Beth Barton, Ann Catino, Franca DeRosa, and Nancy Mendel, and LEP Tim Whiting.

impact sites that are currently in compliance with SEH and what regulatory obligations, if any, will be imposed on those sites.

Dual programs present challenges, so consolidating SEH into the release-based program is an appropriate course of action; however, it does beg the question – what will be the path forward for old SEH sites and for new ones, given the goals of the former SEH program.

We ask that CT DEEP also consider the other statutes that TAG previously identified as likely to need legislative change and integration into the release-based regulations. In addition, and critical to the development of a unified program as discussed in our previous submittals, the “Release Reporting Regulations” (R.C.S.A. Sections 22a-450-1 to 22a-450-6) currently only apply to “spill” releases, but are anticipated to include “newly discovered historical” releases via the use of reportable concentrations or some other yet to be determined mechanism. This concept is confusing and potentially creates a duality of regulation, and certainly is a critical change that warrants additional upfront discussion.

Clarity is paramount to the development of a robust, unified, and successful comprehensive release-based program. The drafting of comprehensive, intentional changes, with an opportunity to review, will facilitate the transition and ensure certainty and consistency. However, CT DEEP providing answers to our questions at this time is also an important step forward so that we can all understand and proceed with a collective understanding.

Thank you for CT DEEP’s consideration of our comments.

Respectfully,
The Transition Advisory Group