

Good afternoon,

When Brendan was presenting on who can close IAs it sounded like he said the contractor had to be a 454 contractor. I know that's the way the current regulations read but the new spill regs allow for "trained personnel" to cleanup a spill. Will we have to register staff under 454 or will having a PEP sign off on work done by staff be sufficient? Also, will emergency or exigent circumstances be defined. I've come across the thinking that if you call 911 it's considered an emergency even if that's standard practice for spills to containment.

Thank you

Amy

*Amy Velasquez, CHMM*

Since the “historically impacted material exemption” will only apply to industrial or commercial properties, can you expand on how the Department will define “residential” (as opposed to “commercial”) under the “permit by rule”. How, and/or will, the permit by rule be applied to the following:

1. Multi-family properties with 2 to 4 (or 6, or 8) units;
2. Dormitories at academic, or other, institutions that are situated on separate properties (or are part of a campus for that matter);
3. Apartment properties with many units, but no other commercial enterprises on-site; and/or,
4. Apartment or multi-family properties which also have retail establishments on-site.

It will be important to define the term residential in the regulations. And can the Department also clarify any “gray areas” for multi-family and multi-use properties?

Jim Hutton  
University of Connecticut

Good morning,

Thank you for the presentations this past Tuesday. The proposed “permit by rule” sounds like a promising and fair approach for addressing historic fill issues. A few questions I had about the presentation materials on this topic follow:

- Will “prudent” (relative to whether removal of historically impacted material is prudent) be defined or elaborated upon in guidance? This would facilitate more objective / standard decision-making across the regulated community.
- I understand only notification is required to obtain coverage, with no approval required; does DEEP plan to “audit” all such notices to confirm if the determination about coverage was appropriate?
- Is the “Affidavit of Facts” pursuant to CGS 47-12a (which doesn’t appear to contemplate this type of information); if not, will statutory change be required/advisable to memorialize scope/effect of such an affidavit?

Thanks,

Deborah

**Deborah R. Brancato**

Please see the below questions following the October 10, 2023 Working Group meeting:

#### Immediate Actions

- What is the thinking behind the “immediate action endpoint” terminology? Isn’t it more like a checkpoint or tollgate on a much longer road? Wouldn’t this potentially lead to the same confusion we see today if a spill is called closed?
  - For example, see slide 7 discussing ERRs impacting groundwater within 500 feet of a drinking water well and not remediated to the cleanup standards within one year. It will cause confusion to say that that situation has reached any kind of “endpoint” if the release is still subject to Tier 1A oversight.
- In slide 5 of the Immediate Actions Part 3 presentation, it says that the IA reports will “demonstrate that all specified actions have been taken” and “tell us what’s next.” How will the IA report and the Tier Checklist be integrated for sites that have had IAs completed but where ongoing efforts (subject to tiering) remain?

#### Historically Impacted Material

- How will it be evaluated whether removal of the historically impacted material is “prudent?” Will there be consideration of climate, etc. impacts associated with excavating material and trucking it potentially long distances?
- How will it be determined whether there are any SERs associated with the historically impacted material? Will we be back in a Transfer Act-like posture of trying to prove a negative (i.e., trying to prove that there are not SERs associated with the material)?
- How will this work for sites that do not neatly fit into commercial/industrial or residential? For example, roadways, land used for passive recreation.
- See slide 8 “historically impacted material cannot be relocated to a different parcel.” Not even adjacent parcels owned by same owner and affected by same historical conditions?
- Are there other states that use the “affidavit of facts” option? Which are they?
- Have environmental justice implications been considered? It seems that a large area of Hartford and other urban areas could be covered.
- Has DEEP given any thought to opening this pathway to other DEC exceedances on industrial/commercial land?

Thank you!

**Emilee Mooney Scott**

DEEP Transformation Team;

Thank you for your very thought-provoking presentation to the Working Groups last Tuesday 10/10/23. It did provoke much thought in my brain, leading to the questions set forth below. Some are specific to the 10/10/10 presentation. Others speak more broadly to whether the current path that the Transformation Team is following considers the original purpose of sunseting the Transfer Act through Public Act 20-9, namely to eliminate the Transfer Act because it was seen as an obstacle to business and real estate development in Connecticut. I am wondering whether that goal has been somewhat lost, as the enthusiasm and internal consensus of the DEEP Transformation Team builds toward developing a totally new approach to environmental remediation in CT, and releasing regulations to implement that new approach. Hence, these questions:

- The focus As to “historically impacted material” that has been previously identified as an AOC in a Transfer Act filing, once a verification has been accepted by DEEP for that filing, indicating that the property is in compliance with the RSRs, including the AOC which was the “historically impacted material” (“HIM”), once the Release-based Program replaces the Transfer Act, will that HIM have to be re-investigated and re-characterized if identified in an area where a new “release” takes place that has been reported and now must be fully characterized? Or does the prior closing of the Transfer Act filing, including the AOC which was the HIM, mean that, absent new activity that contributes new contaminated fill, no further investigation/characterization/remediation of the HIM must take place? More simply stated, will the accepted verification of compliance of an AOC under the Transfer Act, which AOC meets the definition of “historically impacted material,” mean that no further action regarding that material will be required if “historically impacted material” is found when investigating a new release that occurred after the implementation of the release-based remediation program?
- On Slide 5 of DEEP’s 10/10/23 presentation, when discussing a “Characterization Extension,” the first bullet states that characterization must be completed within the first year to show why removal of the fill would not be “prudent”. Is this language intended to indicate that removal will be the default remedy, including for “historically impacted material”? Could compliance be achieved within the first year by a remedy other than removal?
- Another question: to what extent has DEEP considered and compared the cost of compliance under the release-based remediation program with the cost of compliance under the Transfer Act?
- Has DEEP done any analysis that examines cost of compliance under the release-based remediation program against the extent and nature of the risk posed by any particular release?

- Has DEEP considered whether and, if so, in what specific ways, the requirements of the release-based remediation program will advance economic development in Connecticut by lowering the cost of compliance and making it easier to comply with environmental laws than under the Transfer Act? If so, could you please explain that analysis and the findings?
- Has DEEP compared the MA release-based program with the CT program that it is developing? Has DEEP explored what has made the MA release-based program function for so many years, and whether DEEP should adopt a similar approach? What are the differences? Why did DEEP choose a different path?

I look forward to hearing your responses at the next Transformation Team presentation to the Working Groups. Thanks so much.

Holly Winger



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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?



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**EPOC Questions/Clarifications on  
*IMMEDIATE ACTIONS III: ENDPOINTS*  
as presented by CT DEEP staff on October 10, 2023**

1. Slide 2: EPOC has previously commented that the definition of an emergent reportable release based on an “observed change in condition” is subjective and is difficult to implement. Can the Department provide more information on how they see this being implemented?
2. Slide 4: if you reach a year and need to tier why do you need an Immediate Action Endpoint report?
3. Slide 5: There are many areas of the state where public water service is not available, why would you replace the well in all these instances?
4. Slide 6: For threatened groundwater, in most cases remediating groundwater is not possible in one year. If nearby potable wells are sampled and clean why would you tier in at Tier 1A DEEP lead if the release has not been remediated to cleanup standards in one year?  
Does the Tiers checklist need to be modified to account for this?
5. Slide 7: In the Departments opinion what does maximum extent practicable mean, tear down buildings to access contamination, remove roadways to access contamination,...?
6. Slide 9: For soil vapor SERs, why was nine consecutive months selected? You will miss a season.
7. How do you propose to address background conditions associated with VOCs from everyday products used in buildings and residences?

Similar questions for all the SER slides (11-14)

8. Slide 19: Please confirm that there are no volume restrictions on releases that PEPs can certify.
9. Does requiring an LEP to verify releases discovered through laboratory analysis of samples provide an incentive to not sample?
10. There are many complicated alternatives to the baseline numeric clean-up criteria in the RSRs that do not specifically require an LEP, will PEPs be able to use all of these?



**Apologies for late edit. I see that my first question is probably off target. Most probably the text means that a site either has SERs or it doesn't. I read it to mean that a site might not have SERs in one place but might have them in another. (Either way, I don't know why there are different time requirements for one situation versus the other. But that's a comment.)**

**Again, thanks for patience. Margaret (Miner)**

**Subject:** Questions re Historically Impacted Material

**Thank you for the chance to ask questions.**

**In the Section on Historically Impacted Material, the permit by rule option (see text below),**

**I am not clear on sequence. At the end of year one is the determination that remediation is not prudent meant to apply the whole site or part of it?**

**What would remain to be done?**

**By end of year two, identify SERs (Would this be on a location different from the no-remediation-needed area studied in year one? )**

**Then remediate/mitigate the SERs. At this stage is everything done with a permit by rule?**

Adds Permit by Rule option for industrial/ commercial sites (based on current land use) ↑ Identify and report historically impacted material ↑ By end of year 1 – Complete characterization to the extent necessary to determine that remediation is not prudent, and enter a tier ↑ By end of year 2 - Identify SERs ↑ Remediate/mitigate SERs ↑ Implement Permit by Rule

**The DEEP website says that permit by rule is for relatively minor problems. Do these sites need to be further assessed re major/minor issues?**

**What is the reasoning for including commercial and industrial sites but not residential? Is residential by its nature a more major problem?**

**Is there a different underlying statute?**

**What would be the criteria for adding residential here? Would it also be handled through permit by rule?**

**What if a town wants to allow rental units in a commercial district? Is this change of use? What are the implications?**

**Is there any difference in the end-point remediation and quality standards under permit by rule from an individual permit.**

**From DEEP's perspective, how does permit by rule lighten its regulatory and enforcement obligations?**

**I have the feeling I should have figured out some of this for myself. But I didn't. Thanks for your patience.**

**Margaret Miner**