



SWAC QUESTION & ANSWER RELEASE-BASED CLEANUP REGS

Presented by: [Graham Stevens](#), Water Protection and Land Reuse Bureau Chief & [Brendan Schain](#), Environmental Quality Legal Office Director

OUTREACH TO DATE

Organization	Location	Date	Time
<u>Workshop 1: Introduction to the RBCRs Zoom recording</u>	Gina McCarthy Auditorium, 79 Elm St., Hartford and Zoom	August 6, 2024	10:30 a.m.
<u>Workshop 2: Discovery & Reporting Zoom recording</u>	Gina McCarthy Auditorium, 79 Elm St., Hartford and Zoom	August 15, 2024	1:00 p.m.
<u>Workshop 3: New Releases, Significant Existing Releases, & Immediate Actions Zoom recording</u>	Gina McCarthy Auditorium, 79 Elm St., Hartford and Zoom	September 9, 2024	9:30 a.m.

OUTREACH TO DATE (CONT.)

**Workshop 4:
Cleanup Standards, Clo
sure Documentation,
& Audits
Zoom recording**

Gina McCarthy
Auditorium, 79 Elm St.,
Hartford and Zoom

September 16, 2024

9:30 a.m.

Connecticut Business
& Industry
Association Question &
Answer Session

Teams Meeting Link

September 19, 2024

9:00 a.m.

Connecticut
Bar Association
Question & Answer
Session

Zoom Registration Link

September 23, 2024

Public Hearing

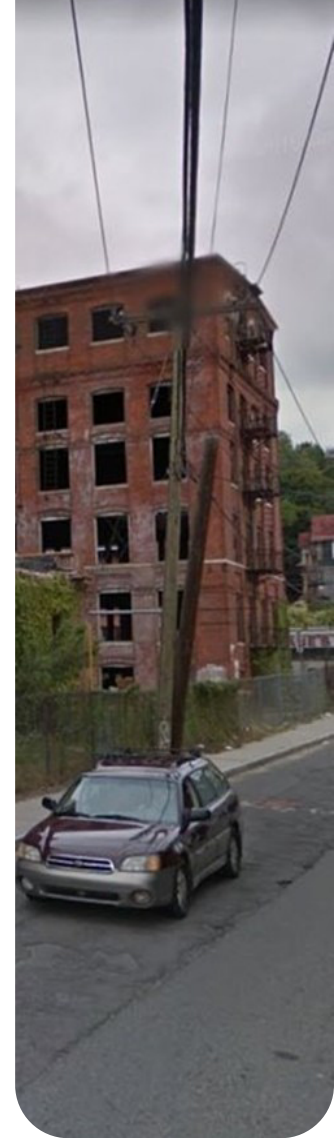
Gina McCarthy
Auditorium, 79 Elm St.,
Hartford

October 10, 2024

9:30

QUESTION 1

An unexpected detection, other than incidental public roadway release, is identified in a waste classification sample collected from a soil stockpile during a public roadway project. The concentration is high enough to count as a reportable release but is not a significant existing release. Can you please walk us through the requirements under the RBCRs and the expectation for closure within a high traffic roadway?



- QUESTION 2: Residential Scenario
- An elderly lady owns a home off a busy commercial road where many gas stations and business are located. After a significant rainstorm, she noticed oily water pooling on her patio. A few months later, after another rain event, she once again noticed oily water pooling on her patio, and she also noticed an odor. She was hoping to sell her home because it is her most valuable asset, but now she is concerned that there may be pollution coming onto her property. She does not have an underground storage tank. What are her obligations under the RCBRs to investigate?



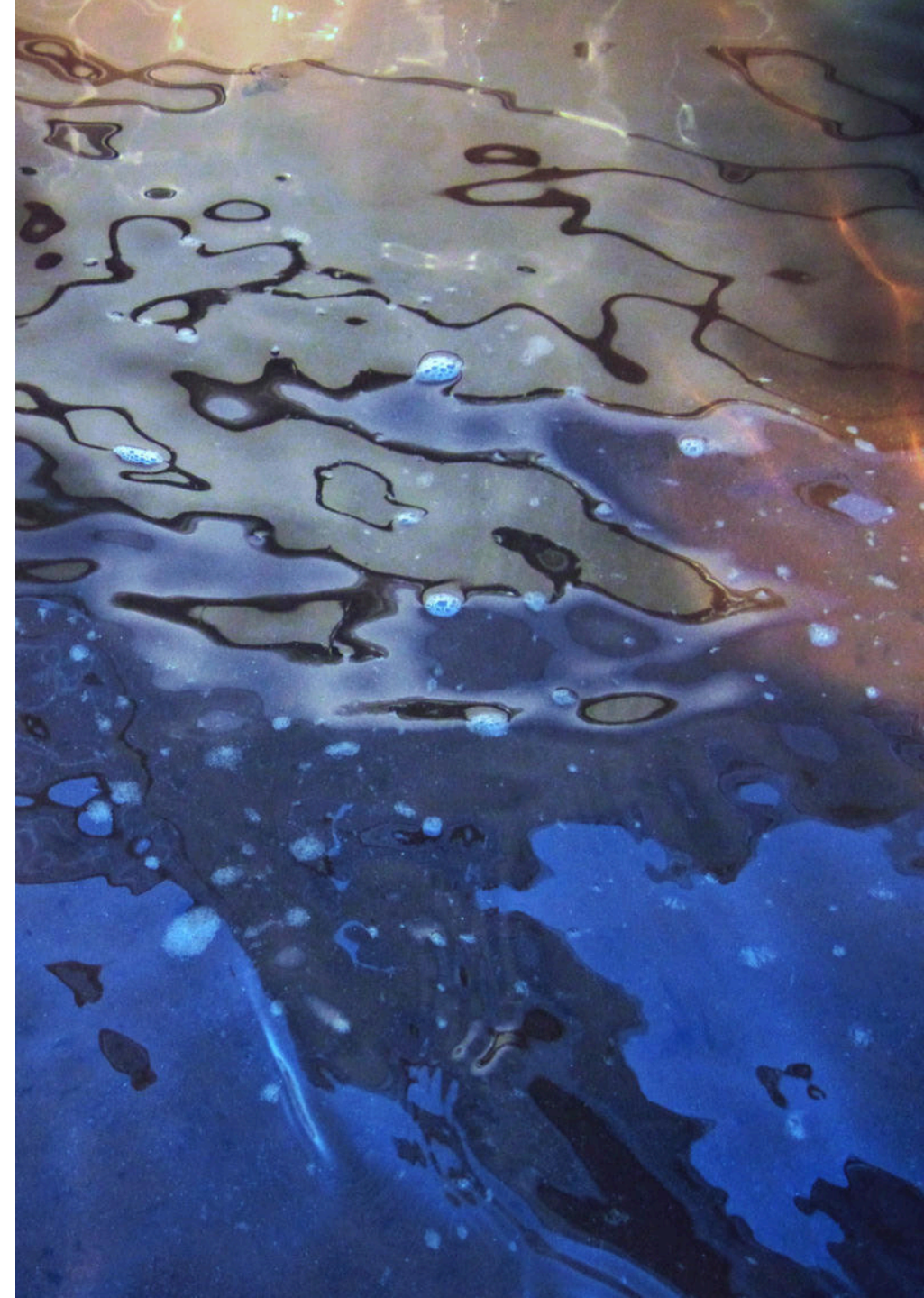
- A friend recommends to the elderly lady that she should have her soil tested because maybe that way she can find out where the contamination is coming from. She engages a local environmental firm to perform limited soil sampling, and they find exceedances of petroleum hydrocarbons in excess of residential direct exposure criteria. What are her obligations under the RBCR now?



The elderly lady learns that one of the three gas stations in the vicinity of her house had a release and is under an order to clean it up. She believes that contamination must be from this gas station. She approaches the owner of the gas station for help, explaining that she needs to sell her house and she cannot because she now knows there is contamination and she believes it from his station. He tells her to pound sand. Now what are her obligations?



- Is there a difference in obligations if the RBCRs go into effect in between the time of her initial discovery of oily water pooling, and the second time that it occurred?



- QUESTION 3

- There are thousands, if not tens of thousands, of residential properties in Connecticut cities and towns that have elevated concentrations of metals and PAHs in shallow soils due to atmospheric deposition from Connecticut's industrial past and/or historical fill on the property. There is an "easy off-ramp" for industrial/commercial properties (e.g., permit-by-rule for historically-impacted material), but none for residential properties. Does this not have the potential to create an unfair burden on residential properties that get pulled into the program (for example, fill is identified during excavation to address a spill of home heating oil), when neighboring properties which likely also have the same conditions are not required to do anything because the "release" has not been "discovered" on their property? Has the Department considered any "easy off-ramps" for residential properties?

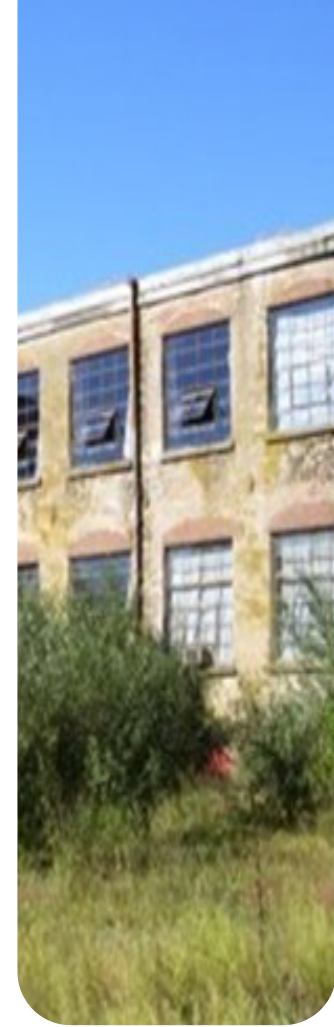
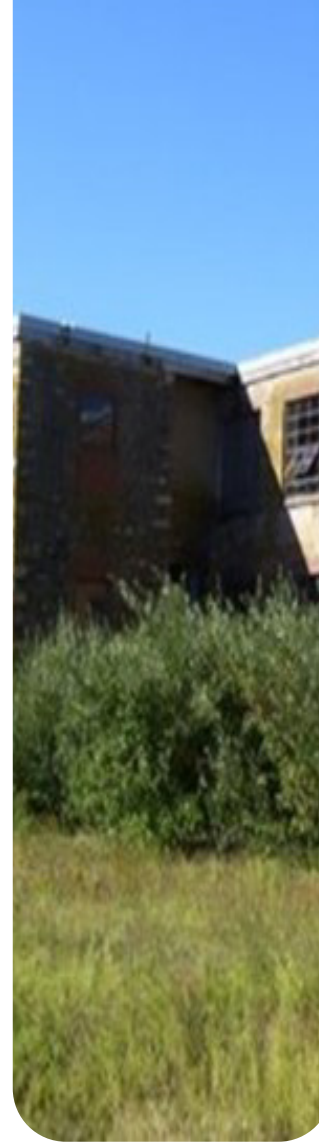


QUESTION 4: Scenario

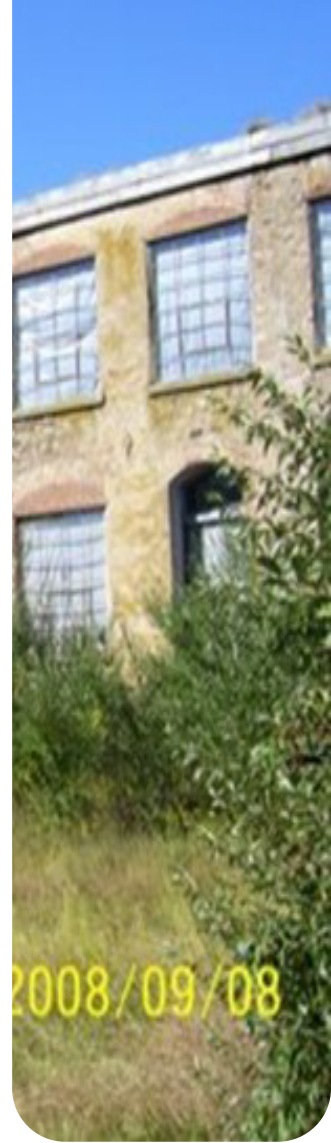
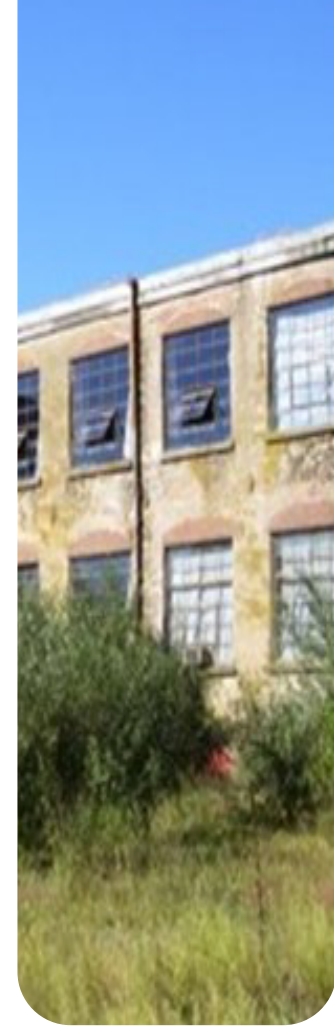
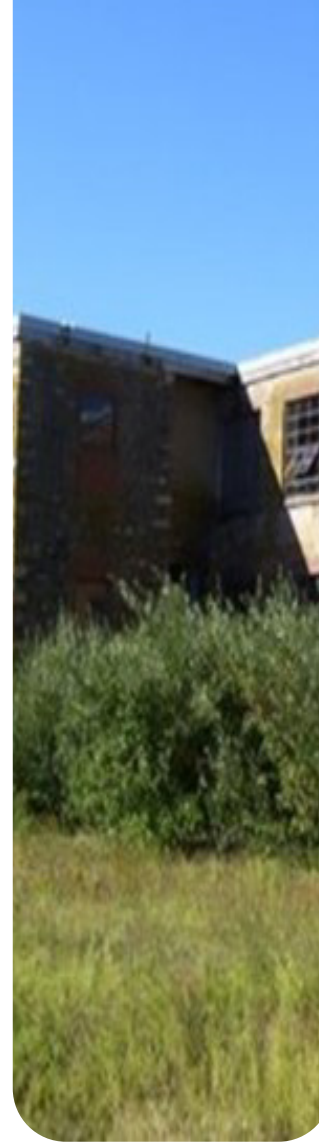
An industrial property is in the Transfer Act due to hazardous waste generation of over 100kg per month. The property was historically wetlands and through the course of investigation, it was determined that historically impacted material was used to fill in the wetlands. Besides the fill, there were no other releases found at the property. The fill material is located below bituminous concrete used for parking. All but one of the samples is below 15x the criteria.



Can a Transfer Act site take advantage of the “permit by rule”? It would appear that a current TA site would be barred due to the notification requirement of discovery of a release as well as a closure report being required and not a Verification report.



In the language for “permit by rule” it states that “it is not prudent to remove such material”. What does that mean? Is this a financial calculation? A logistical determination? Who decides what is prudent or not prudent?



- QUESTION 5
- What will happen when DEEP is delayed in responding to a submitted document and the trigger for another year's fee payment is due?





- **QUESTION 6**

- **Has any thought been given to fee discounts or waivers for entities such as: the state, non-profit entities, low-income individuals, etc.?**

QUESTION 7

- How does one “become aware of the results of laboratory analysis . . . above the laboratory reporting limit”? Does this refer to information in a filing cabinet from before the date the regulations are adopted?

Total Metals

Method: EPA 200.7

Analyst: S

Matrix: Water

Analyte	Result (mg/L)	RL (mg/L)	Dilution	Prep Method	Batch	Prepared	Date/Time Analyzed	Notes
Lead	ND	0.013	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	
Selenium	ND	0.010	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	
Cadmium	ND	0.0050	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	
Chromium	ND	0.050	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	
Arsenic	ND	0.0040	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	
Barium	0.066	0.050	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	
Silver	ND	0.012	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	
Aluminum	5.8	0.10	1	EPA 200.7	B300115	09/01/2023	09/01/2023 18:27	

Conn. Extractable TPH

Method: CT-ETPH

Analyst: AC

Matrix: Water

Analyte	Result (mg/L)	RL (mg/L)	Dilution	Prep Method	Batch	Prepared	Date/Time Analyzed	Notes
ETPH	ND	0.10	1	EPA 3510C	B310203	09/02/2023	09/08/2023 11:04	
Surrogate: Octacosane	104 %		50 - 150		B310203	09/02/2023	09/08/2023 11:04	

Volatile Organics

Method: EPA 8260C

Analyst: GE

Matrix: Water

Analyte	Result (ug/L)	RL (ug/L)	Dilution	Prep Method	Batch	Prepared	Date/Time Analyzed	Notes
Dichlorodifluoromethane	ND	10	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	*F1
Chloromethane	ND	2.7	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	*F1
Vinyl Chloride	ND	1.6	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	*F1
Bromomethane	ND	1.0	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	*F1
Chloroethane	ND	5.0	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	
Trichlorofluoromethane	ND	25	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	
Acetone	ND	50	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	
Acrylonitrile	ND	0.50	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	
Trichlorotrifluoroethane	ND	25	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	
1,1-Dichloroethene	ND	1.0	1	EPA 5030C	B310638	09/06/2023	09/06/2023 22:00	

Volatile Organics, EPA TO15 CT RCP List

Log-in Notes:

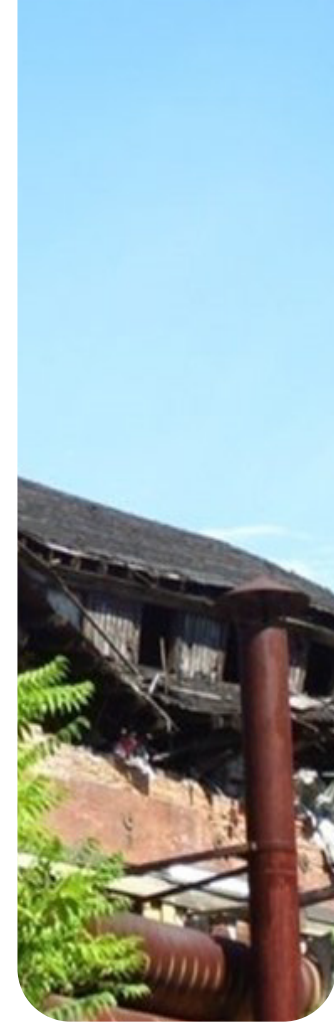
Sample Notes:

Sample Prepared by Method: EPA TO15 PREP

CAS No.	Parameter	Result	Flag	Units	Reported to LOQ	Dilution	Reference Method	Date/Time Prepared	Date/Time Analyzed	Analyst
71-55-6	1,1,1-Trichloroethane	0.41		ug/m ³	0.41	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
79-34-5	1,1,2,2-Tetrachloroethane	ND		ug/m ³	0.51	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
79-00-5	1,1,2-Trichloroethane	ND		ug/m ³	0.41	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
75-34-3	1,1-Dichloroethane	ND		ug/m ³	0.30	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
75-35-4	1,1-Dichloroethylene	0.27		ug/m ³	0.074	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
95-63-6	1,2,4-Trimethylbenzene	25		ug/m ³	0.37	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
106-93-4	1,2-Dibromoethane	0.57		ug/m ³	0.57	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
95-50-1	1,2-Dichlorobenzene	ND		ug/m ³	0.45	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
107-06-2	1,2-Dichloroethane	1.9		ug/m ³	0.30	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
78-87-5	1,2-Dichloropropane	ND		ug/m ³	0.35	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
108-67-8	1,3,5-Trimethylbenzene	6.7		ug/m ³	0.37	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
541-73-1	1,3-Dichlorobenzene	ND		ug/m ³	0.45	0.747	EPA TO-15 Certifications: NELAC-NY12058,NJDEP-NY037	10/07/2024 10:00	10/10/2024 19:05	LT
142-28-9	1,3-Dichloropropane	0.35		ug/m ³	0.35	0.747	EPA TO-15 Certifications:	10/07/2024 10:00	10/10/2024 19:05	LT

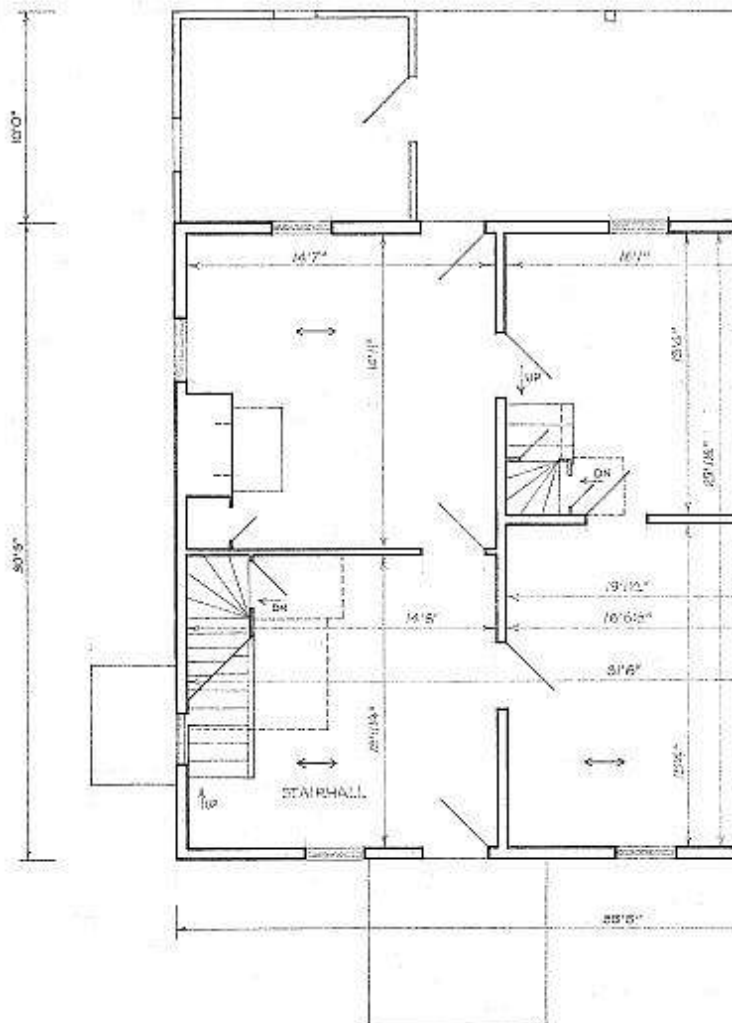
QUESTION 8: Multiple Lines of Evidence Per Section 22a-133tt-1(a)((86)

The definition states “...two or more SETS of observable evidence...”. What is a SET of evidence? Is it two or more distinct observations? If yes, then that would mean that a minimum of four distinct observations would be required to meet the definition of “multiple lines of evidence”. Is this DEEP’s intention?

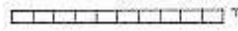




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- Are the following facts deemed enough to constitute “multiple lines of evidence” demonstrating knowledge of release:
 - A home in New Haven in an area that is known to have previously been marshland and non-native materials noted in an excavation for a concrete pad for a shed?
 - A Phase I indicating historical hazardous waste generation and staining in a loading dock area?
 - A Phase I indicating historical hazardous waste generation, staining in a loading dock area and slight oil smell in the loading dock area?
 - Hits on a PID and an employee saying that oil was spilled in the same area?



FIRST FLOOR PLAN
1/4" = 1'-0"



ROBERT COOPER (1961)

EASTERN OFFICE - PHILADELPHIA
UNDER DIRECTION OF UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE, BRANCH OF PLANS AND DESIGN

NAME OF STREET
THE BAYNARD
LEWIS ROAD HARRINGTON VICINITY

- QUESTION 9
- How will multiple ELURs be dealt with? Can they be combined on one map or will multiple maps be recorded on the land records for multiple releases?

- QUESTION 10
- Thinking about Existing Releases Discovered by the Commissioner (Section 22a-133tt-2((b), how might the Commissioner discover a release?
- Do you envision that this provision will be used for existing SEHs?



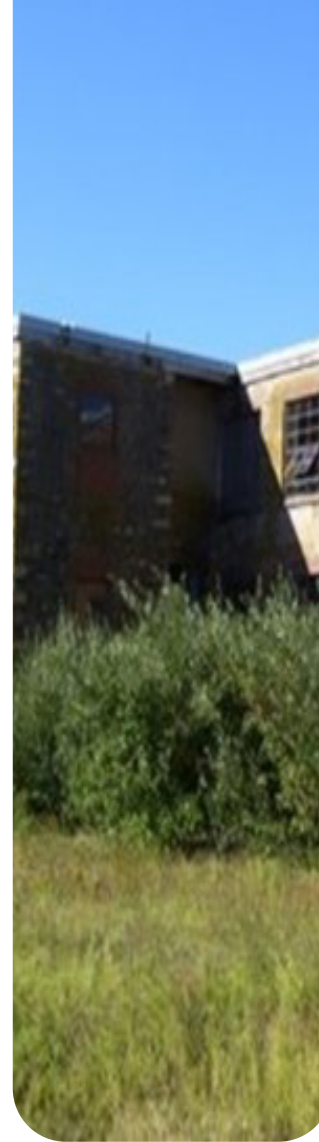
- QUESTION 11

- From an LEP with 30+ years of site investigations in CT: the low and high values for naturally occurring metals applicable to arsenic, copper and lead are too low. How were low and high values for naturally occurring metals derived?

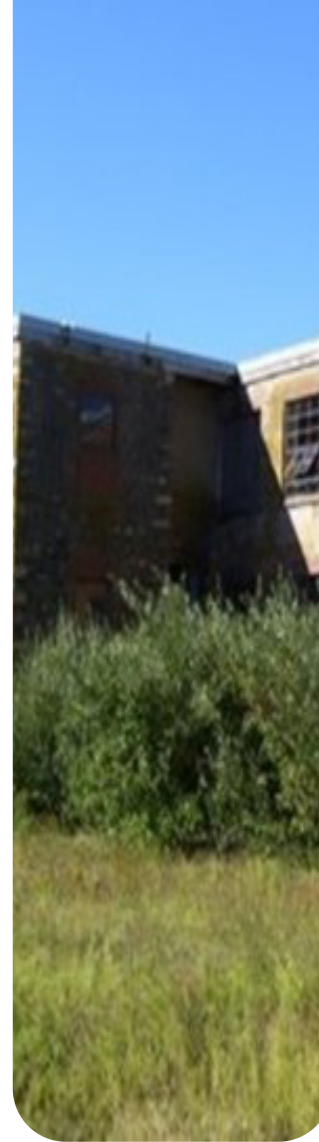


QUESTION 12: Transfer Act

Per Section 22a-133tt-3(d), “...Transfer Act Sites”, the RBCR require notification of discovery of an existing release to DEEP for sites currently regulated under the Transfer Act. Does this mean that the release is subject to the Transfer Act AND to the RBCRs?



Please confirm that that the creator or maintainer may decide to pursue investigation, remediation and verification under the RBCRs or the Transfer Act, at his/her sole discretion. This scenario would apply to an existing release discovered by the creator or maintainer when an initial Form filing has not yet been completed.



- QUESTION 13
- Substances present as a result of automotive exhaust or the application of pesticides consistent with their labeling are two items excluded from being a "release" by the authorizing statute {§22a-134pp(6)}. These exclusions are also noted in the regulations {§22a-134tt-2(a)(2)}.





- Neither the regulations nor the draft Release Characterization Guidance address how to demonstrate that substances detected in soil are due to automotive exhaust. Does the Department intend to include a framework for this so that it is applied consistently by the regulated community?

- Based on the definition of pesticides in §22a-47(w), it appears that this exclusion would apply to inorganic pesticides, including lead-arsenate pesticides. If investigation concludes that the source of arsenic is from pesticide application (and not a spill of pesticides), would it be excluded from the requirements of the RBCRs even if there are concentrations of arsenic above the RDEC?





- QUESTION 14
- The proposed RBCRs include managed multifamily and passive recreation DEC for substances with promulgated RDEC in the RSRs. Does the Department intend to update the "fast-track" APS form to include these new DEC exposure scenarios for substances with RDEC on the form?



- QUESTION 15: Scenario
- As part of property refinancing application with a local bank that holds a commercial mortgage on a property, the bank requires the property owner to complete a Phase I ESA. The property is occupied by six tenants. A dry cleaner is present on the property and handles dry cleaning solvent. The dry cleaning area has a dry cleaning machine (REC-1), waste storage area (REC-2) and refuse dumpster (REC-3) outside the rear door. Staining of the concrete floor is observed at the rear of the machine. The worker indicated that the staining has been present for as long as he has worked there, when the current owner purchased the business 5 years ago. A chemical odor is also evident in this area. No staining or other evidence of a release is observed at the interior waste storage area or around the dumpster. The report is provided to the bank who is the client of the environmental consultant.



- Please confirm that the identification of the waste storage area and dumpster as RECs due to the potential for releases does not constitute multiple lines of evidence or knowledge of a release?

-
- At the machine area, please confirm that there are multiple lines of evidence including: known use of solvents, staining and odors.





- Who is a creator? Is it the former owner of the dry clearer, current owner, both? Could the current business owner be a maintainer if they are not the creator?



Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process¹

This standard is issued under the fixed designation E1527; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or reapproval.

1.1.1 *Recognized Environmental Conditions*
...cesses established by this practice is to
...ditions. The term rec

- Neither of these parties are present at the time of the site inspection and will not receive a copy of the Phase I ESA, so they would not have knowledge, correct? If the worker (who was asked about staining during the Phase I ESA) points the staining out to the owner, does the owner now have knowledge?



Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process¹

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1.1.1 *Recognized Environmental Conditions*
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- Or does the phrase “when taking into account any specialized knowledge or training, becomes aware of multiple lines of evidence that would indicate to a reasonable person with similar knowledge, experience or training, exercising a reasonable degree of care that a reasonable person would exercise in the same or similar circumstances” support that the owner does not have knowledge if the staining has always been there and is not out of the ordinary?

- Who is a maintainer besides the property owner? The owner of the dry cleaner? Any of the five other tenants at the site? The Bank who has the existing mortgage and “has the right to possess a parcel of land” through foreclosure?



- Does the environmental consultant have any duty to tell any of the potential creator/maintainers that there are multiple lines of evidence that constitute knowledge of a release?
- Does the LEP, who reviewed the report, and has a duty to hold human health and the environment paramount, have any obligation to notify any of the creators or maintainers?



- Does the Bank that retained the consultant have any obligation to notify any of the creators or maintainers? If they are considered a maintainer and they report the condition to the owner and the owner reports it, have they discharged their liability to the State and the RBCRs?



QUESTION 16

22a-134tt-5(a) states: “the commissioner may take any action authorized by section 22a-134rr or 22a-134ss of the Connecticut General Statutes, including issuing a cease and desist order pursuant to section 22a-134ss(g) of the Connecticut General Statutes. Nothing herein shall affect the commissioner’s ability to take enforcement action under any other provision of statute or regulation.” This sounds like unnamed/specified enforcement power? Can you specify, what, beyond those authorized / listed in CGS 22a-134rr or 22a-134ss, DEEP is referring to?

QUESTION 17

22a-6b-8(c)(5) lays out administrative penalties. Can you walk through an enforcement/penalty scenario, e.g., under what circumstances would DEEP anticipate holding persons accountable for multiple penalties due to the failure to initiate the process?



We are happy to take questions. More information on how to submit comments and for links to past info sessions, see here:

<https://portal.ct.gov/deep/remediation--site-clean-up/comprehensive-evaluation-and-transformation/release-based-cleanup-regulations-formal-regulation-adoption>

Question can be directed here:

DEEP.cleanup.transform@ct.gov