



RELEASE-BASED CLEANUP REGULATIONS WORKSHOP 1 - INTRODUCTION TO THE RBCRS

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[Brendan Schain](#), Legal Director for Environmental Quality Branch

RELEASE-BASED CLEANUP REGULATIONS (RBCRs)

101 Overview

1. Background / How Did We Get Here?
2. Key Terms and Organization
 - a) First Year
 - b) Longer Term
 - c) Cleanup Standards
 - d) Administrative
3. Next Steps

TRANSFER ACT	RELEASE-BASED SYSTEM
Ties up property transfers in red tape	48 states do it this way
Unfairly picks winners and losers	Same standards apply to everyone, creating more certainty and more equitable outcomes
Stalls real estate transactions for decades	Faster, less expensive clean ups
Deters investment	Spurs redevelopment and reinvestment in our communities
Puts CT at an economic disadvantage	Better outcomes for the environment, businesses, local economies, and CT's economy
Incentivizes owners to abandon properties	Fewer blighted properties
Leaves hazardous holes in our communities	Protects human health and the environment
3,150 CT properties sitting underdeveloped in our communities since the 1980s	Healthier, safer communities

A stylized, colorful landscape illustration. At the top right, a bright yellow sun is partially visible. Below it, a large green hill with a dark blue outline dominates the middle ground. To the left, a smaller, lighter green hill is partially visible. At the bottom, a light blue area represents water, also outlined in dark blue. The overall style is simple and graphic.

Background /
How Did We Get Here?

WHY TRANSITION TO A RELEASE BASED PROGRAM?

It is now common practice for lenders and buyers to make sure that environmental investigations are completed as part of land transactions.

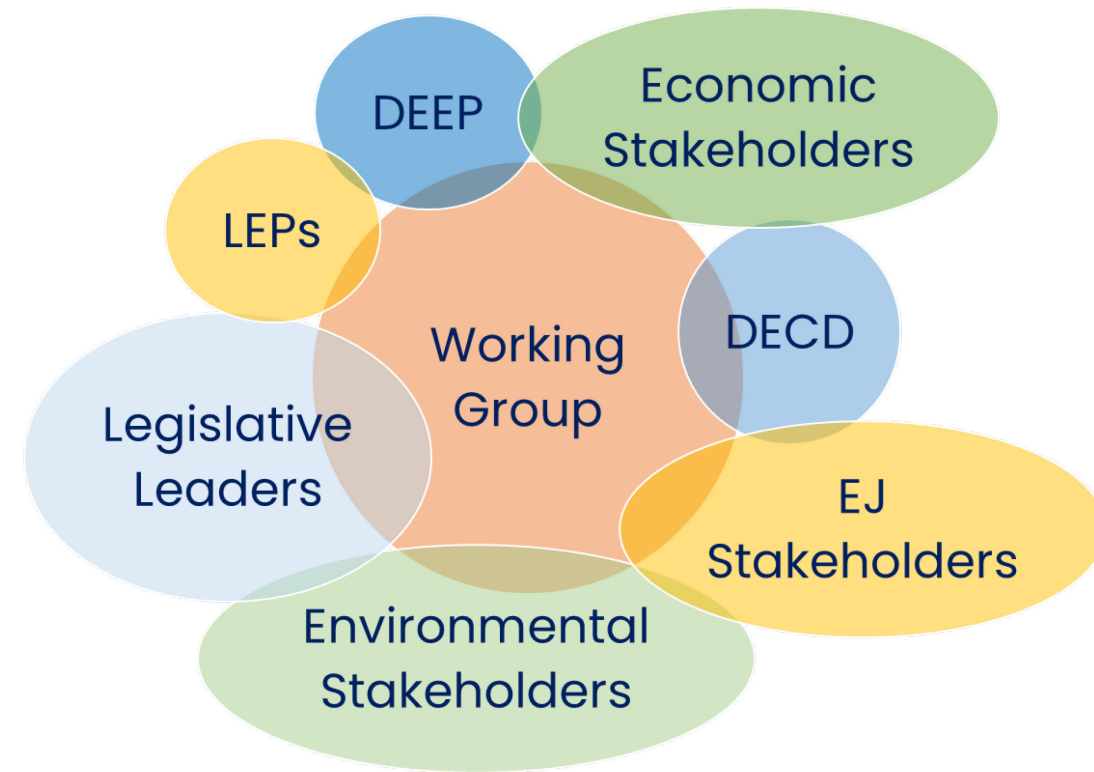
Because of this, Connecticut is looking to shift its focus to establishing clear standards to facilitate cleanups.

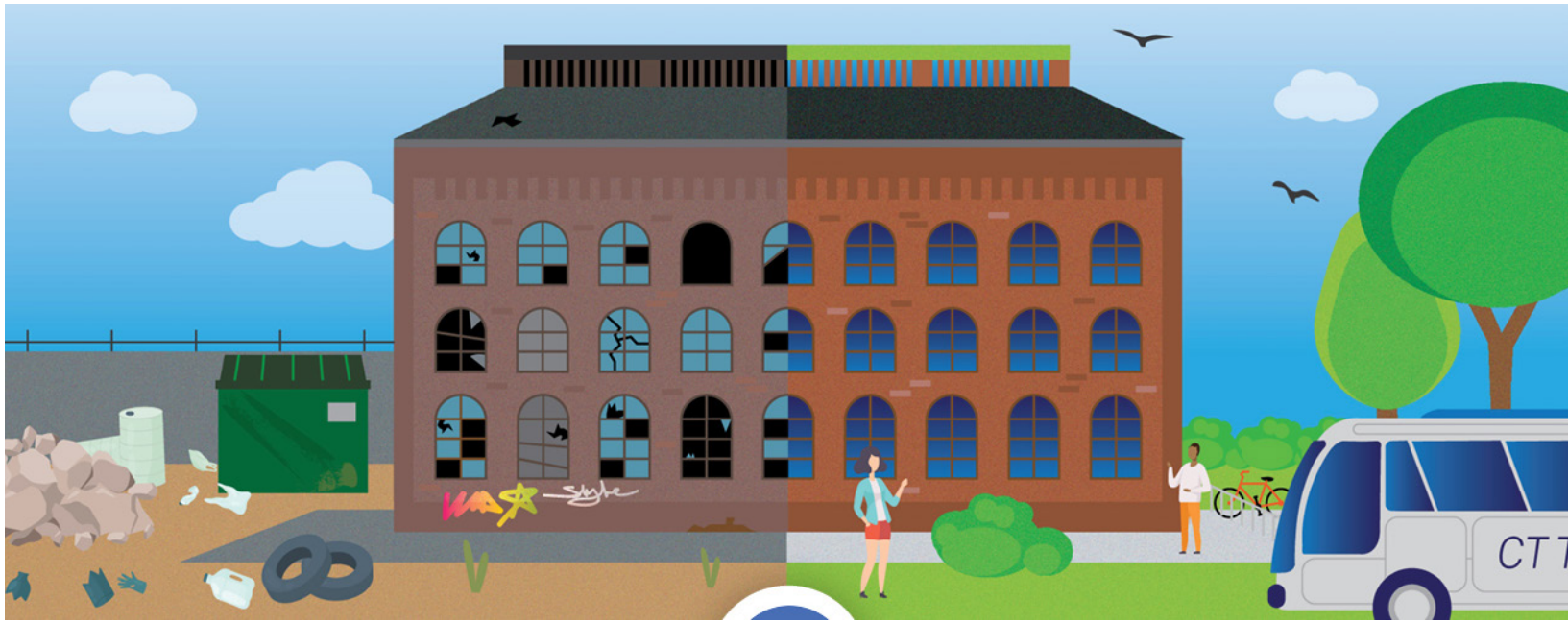
The new cleanup program will:

- replace the outdated Transfer Act;
- align CT's cleanup program with 48 other states that have release-based systems;
- facilitate redevelopment;
- incorporate risk-based decision-making &
- maintain environmental protections

Release-Based Regulations Working Group

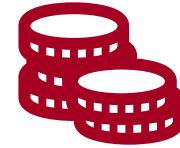
- DEEP and DECD Co-chairs of a Working Group
 - Started to meet in December 2020
 - Monthly meetings - advice and feedback
 - 10 Subcommittees & Concept Papers
- Meetings will continue until regulations are adopted
- Future Advice and feedback needed on:
 1. Guidance documents
 2. Forms
 3. Statutory changes
 4. Factsheets





Current state - Property Transfer Act	Future state - Release-Based Clean Up Program	Why we like it
Exempts certain properties from oversight	You spill it, you clean it	More equitable & consistent
Complicates real estate transactions	Match approach of 48 other States and speed clean ups	Encourages business growth
Slow framework deters investment	Spurs redevelopment in our communities	Increased economic and environmental value
Abandoned properties and hazardous gaps in our communities	Fewer blighted properties and cleanup tailored to risk level	More flexible and comprehensive with more pollution addressed

Benefits of Replacing The Transfer Act



- **Private Market Drives Investigations**
- Banks and buyers want to know environmental conditions of properties



- **Reduce the Number of DEEP controlled cleanups**
- DEEP will empower LEPs far more than before to clean up releases



- **Multi-Tier Cleanup System**
- Lower risk releases addressed quickly, without DEEP touchpoints

Transfer Act – Stalled Cleanups and Redevelopments

Transfer Act Universe:

# of sites (approx)	# cleanup completed (approx)	Avg yrs to cleanup (approx)	Avg <i>new</i> sites/yr (approx)
3,000	300	completed sites: 7 yrs; otherwise unlimited	200

Transfer Act stigma has left many properties behind

Department of Economic and Community Development

- Proud to partner with DEEP and support the rollout of the new release-based regulations
- DECD has partnered with DEEP in coordinating the Release-Based Regulations Working Group that was instrumental to help arrive at this juncture. The work of the Group has resulted in the proposed language for the regulations
- Co-hosted DECD/DEEP Developers Forum on June 21, 2024 to share overview of draft regulations with development community and impact on completed projects under the Transfer Act.



ALIGNMENT WITH STATE DEVELOPMENT GOALS

- CT does not have large tracts of previously undeveloped available land
- Release-Based Regulations will help re-use and redevelop older, idle properties and preserve green space
- Increase economic competitiveness by bringing CT into regulatory parity with our neighboring states
- Makes it easier to do business in CT – to redevelop and build



ESTIMATED ECONOMIC IMPACT

- DECD economists estimate that over 5 years, these reforms could lead to approximately:
 - **2,100 new construction jobs**
 - **\$3.78 billion in new GDP growth**
 - **\$115 million in new revenue for the State of Connecticut**



Release-Based Cleanup Regulations (RBCRs)



The RBCRs combine process and administrative steps necessary to build a program with the substantive standards to which pollution must be remediated.



Development of the regulation took into consideration the “Concept Papers” that were proposed by the members of the Working Group.

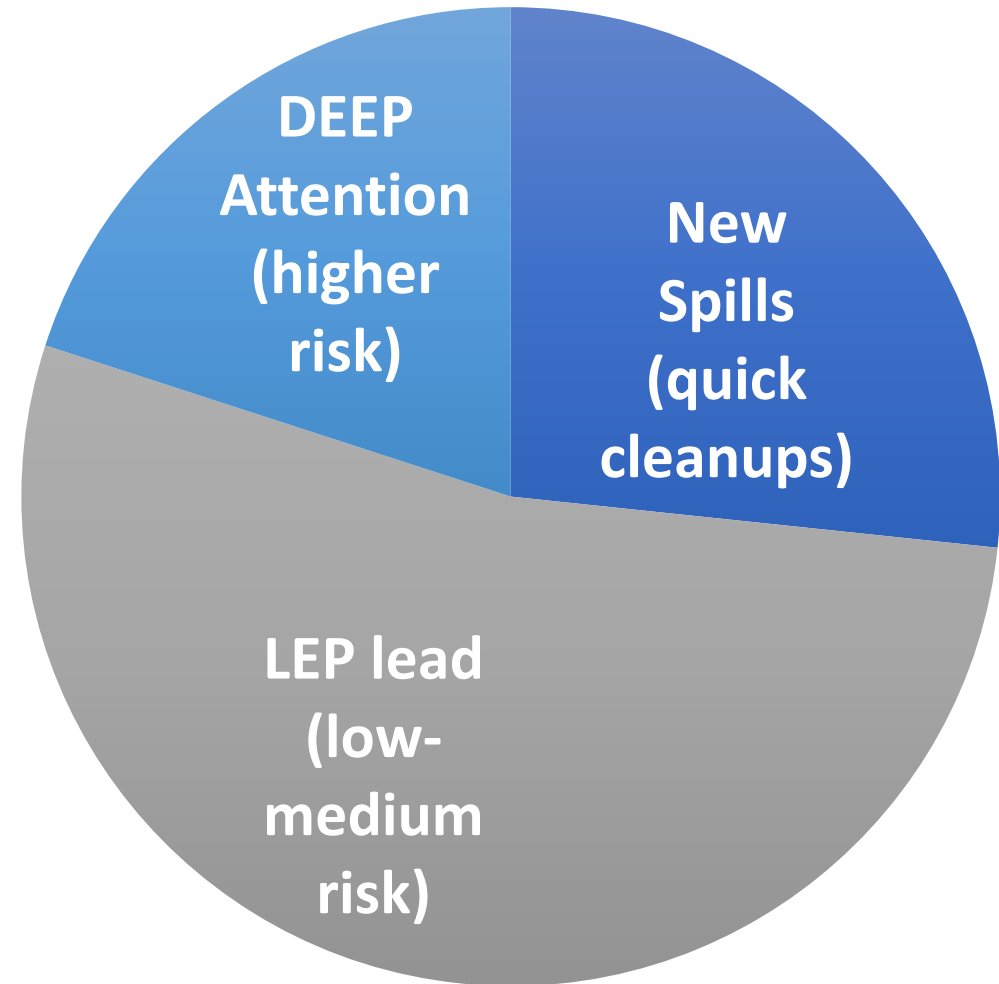
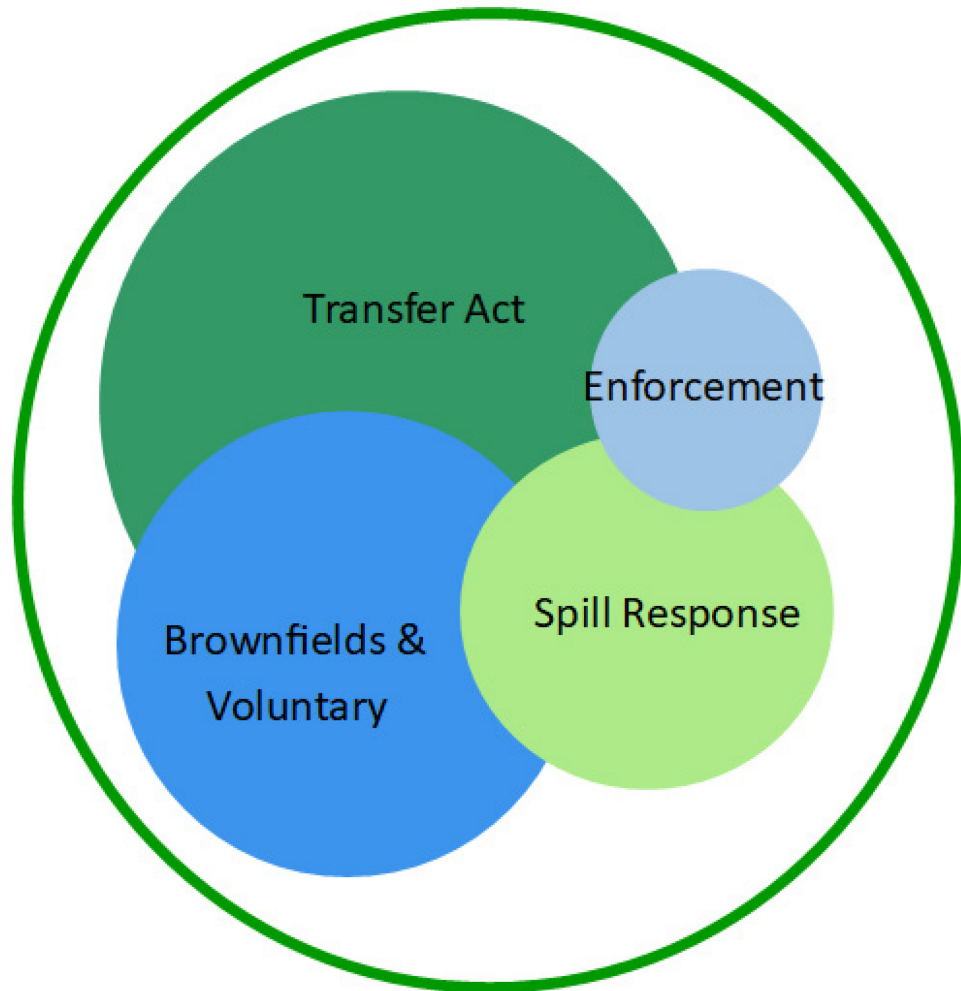


Many of these concepts are drawn from Massachusetts’s Contingency Plan



Cleanup Standards pulled from Remediation Standards Regulations (State’s existing cleanup standards) with a few modifications.

Scope of Cleanup Universe – Before and After



The background features a stylized landscape with a yellow sun in the top right, green hills in the middle, and blue water at the bottom. The elements are separated by thick, dark blue wavy lines.

Key Terms And Organization Of the Regulations

General Statutes section 22a-134ss(a)

Any **person** who **creates** or **maintains** a **release** to the **land and waters of the state** on or after the date when regulations are first adopted pursuant to section 22a-134tt shall, upon **discovery** of such release: (1) **report** the release, if such a report is required by the regulations adopted pursuant to section 22a-134tt, and (2) **remediate** any release to the **standards** identified in regulations adopted pursuant to section 22a-134tt....

Key Terms

- “**Person** means any individual, partnership, association, firm, limited liability company, corporation or other entity, the federal government, the state or any instrumentality or subdivision of the state, including any municipality,” and any responsible corporate officer, as defined.

2 Types of persons subjected to the requirements of the regulations:

- **Creator**; or
- **Maintainer**
 - Person who, regardless of fault for the creation a release owns a parcel of land on or under which such release, or a portion of such release, is located (or in limited circumstances, has possession of the land)

Key Terms (continued)

- **Release** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or onto the land and waters of the state, not authorized under this title, of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste as defined in section 22a-448. “Release” does not include automotive exhaust or the application of fertilizer or pesticides consistent with their labeling
- **Land and waters of the state** means all waters, as defined in section 22a-423, and any land surface, including improved or unimproved surfaces, soils or subsurface strata

Key Terms Continued

- **Discovery** for purposes of the RBCRs, a release is discovered when:
 - it is an **existing release**, and the creator or maintainer obtains “knowledge”;
or
 - It is an **emergent reportable release** reported pursuant to the Release Reporting Regulations
- A **report** is a notification to the Department pursuant to:
 - Section 22a-134tt-3; or
 - The Release Reporting Regulations

Key Terms (continued)

- **Remediation** means determining the nature and extent of a release, in accordance with prevailing standards and guidelines, and the containment, removal and mitigation of such release, and includes, but is not limited to, the reduction of pollution by monitored natural attenuation;
- **Cleanup standards** means sections 22a-134tt-7 to 22a-134tt-10 of the RBCRs
 - The state's existing remediation standards
 - New cleanup approaches
 - New provisions for emergent reportable releases

General Statutes section 22a-134ss(a)

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HOW ARE THE RELEASE-BASED CLEANUP REGULATIONS ORGANIZED?

Sections fit into 4 general categories:

First Year

- Discovery
- Reporting
- Characterization
- Immediate Action

Longer Term

- Tiers

Cleanup Standards

- General
- PEPs & Home Heating Fuel
- Soil
- Groundwater

Administrative

- Verifications & Certifications
- Closure documents
- Audits

A stylized landscape illustration. The top right corner features a bright yellow sun. Below it is a large, vibrant green hill with a dark blue outline. To the left, a smaller, light green hill is partially visible. The bottom of the image is a light blue area representing water, also outlined in dark blue. The text "First Year" is centered on the green hill.

First Year

DISCOVERY OF EXISTING RELEASES

Discovery of an existing release to the land and waters of the state occurs when a person who created or is maintaining an existing release has **knowledge** of such release



DISCOVERY OF EXISTING RELEASES

A person has knowledge of a release if becomes aware

- of the results of laboratory analysis of soil, groundwater, sediment, or soil vapor – above laboratory reporting limit, OR
- observed presence of non-aqueous phase liquid, OR
- Multiple lines of evidence



EXAMPLES OF LINES OF EVIDENCE:



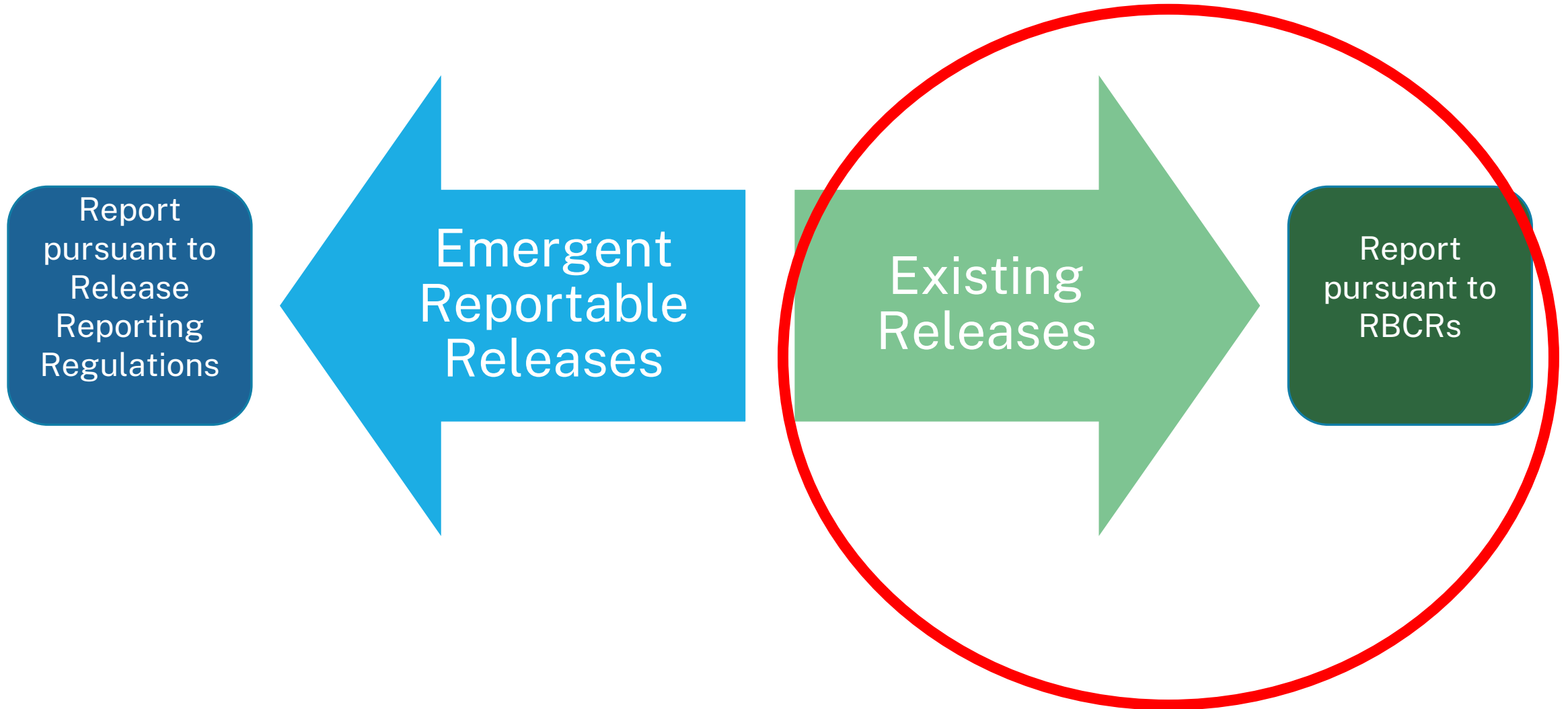
- ❖ information about the use of a particular geographic area, including anecdotal reports of historical disposal or releases, aerial photographs, and maps
- ❖ the results of field screening indicating the presence of volatile organic compounds, petroleum hydrocarbons, or metals
- ❖ observed staining of soil, concrete floors, or pits
- ❖ organoleptic evidence, including odors
- ❖ indoor air samples indicating the intrusion of soil vapors
- ❖ the observed presence of asphalt, coal slag, solid waste, ash, or other non-native materials in or on the land and waters of the state

FILING CABINET EXEMPTION

- “A release shall not be deemed discovered if the only evidence of such release is data available or generated before the date when regulations are first adopted . . .”
- Releases must be remediated if they are found during the investigation of piece of property, not an investigation of **filing cabinets**.



Reporting Requirements



REPORTING TIMELINES FOR EXISTING RELEASES

Within 72 hours of discovery

- All SERs
- Unless impacting supply well (within 24 hours)

Within 120 days of discovery

- **Not a Significant Existing Release**
- substance in soil or groundwater at a concentration ≥ 2 times the applicable cleanup standards
- For oil or petroleum – volume is ≥ 2 cubic yards
- NAPL measured thickness $\geq 1/8$ inch
- AND is not remediated to standards within 120 days

Within 365 days

- Pollution exists at < 2 times cleanup standards
- and is not remediated to standards within 365 days

IMMEDIATE ACTIONS



- Required for all Emergent Reportable Releases (ERRs) and some existing releases identified as "Significant" ("SERs")
- Required actions for ERRs based on long-standing Spill Response actions required by DEEP and DPH
- Required actions for SERs based on experience with existing Significant Environmental Hazard statute (CGS section 22a-6u)

WHAT IS AN IMMEDIATE ACTION?

An Immediate Action is the immediate response upon discovery of a release, including:

- Removing the release from the land and waters of the state
- Implementing measures to prevent migration of the release, such as active remediation techniques, the use of physical barriers, or appropriate treatment systems
- Identifying the source of the release and eliminating it
- Preventing human exposure to release

Immediate means no later than 2 hours after the release is reported for ERRs.



CHARACTERIZATION

“Tier Characterization” means the nature and extent (...) at a concentration that exceeds 50% of the applicable cleanup standard, (...), has been delineated, or (...) at a level less than or equal to the background concentration (...),

except that:

(A) Pesticides shall be characterized to the extent needed to determine that pesticides discovered are present due to the application of pesticides. (...); and

(B) A release of polluted material that is discovered on a parcel currently used only for industrial/commercial activity may be characterized only to the extent needed to determine that it is prudent (...), pursuant to section 22a-134tt-9(j) of the RBCRs;

COMPLETE WITHIN 1 YEAR OF DISCOVERY

“Closure characterization” means characterization of a release such that the horizontal and vertical extent of such release is delineated to the points at which it is no longer detected or that the extent of such release has otherwise been determined in a manner consistent with prevailing standards and guidelines provided such standards and guidelines shall not specify delineation to the point at which a release is no longer detected for all releases or in all circumstances;

COMPLETE AT TIME OF CLOSURE

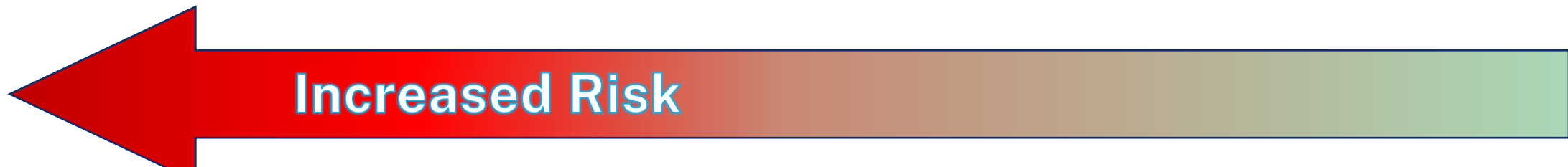


Longer Term

TIERS



Tier 1A. DEEP Oversight	Tier 1B. LEP Oversight Receptor Risk	Tier 2. LEP Oversight Controlled Risk	Tier 3. Monitoring Oversight
<p>Highest-risk releases. DEEP lead. FEWEST cases. Unknown risks to receptors; programmatic noncompliance. Complete closure or re-tier 2 years after Discovery.</p>	<p>Known risk to receptors (drinking water, vapor) must still be addressed or scoping/screening eco not completed RAP not completed Complete closure or re-tier 3 years after Discovery</p>	<p>Controlled risk, no receptor pathways Complete closure or re-tier 5 years after Discovery</p>	<p>Monitored Natural Attenuation (MNA) only Complete closure or reevaluate effective- ness of MNA 6 years after Discovery</p>



TIERS CHECKLIST

Part III: Tier Determination

Tier 1A

Answer the following questions. Any box checked in the Tier 1A Indicator column at right designates the release as Tier 1A.

		Tier 1A Indicator
1. Receptors are known and documented		
1a. A scoping level ecological risk assessment has been completed.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1b. A drinking water receptor survey has been completed.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1c. A vapor intrusion receptor survey has been completed.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Does/did the release require Immediate Action under [ref. TBD]	<input type="checkbox"/> No (Skip to line 3) <input type="checkbox"/> Yes (Proceed to 2a)	
2a. Immediate Action requirements have been met	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Tier characterization is complete.	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If any boxes in this column are checked, stop here. This release is Tier 1A. Otherwise proceed to Tier 1B determination.

Tier Determination is performed by an LEP completing a form with yes/no questions

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Cleanup Standards

MODIFICATION TO THE CURRENT CLEANUP STANDARDS



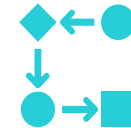
Changes to the Remediation Standard Regulations will be made to incorporate policy objectives and quick and complete release cleanup



Certain new releases/spills require new cleanup approaches by permitted spill response contractors



Certain new releases/spills requires new cleanup pathways

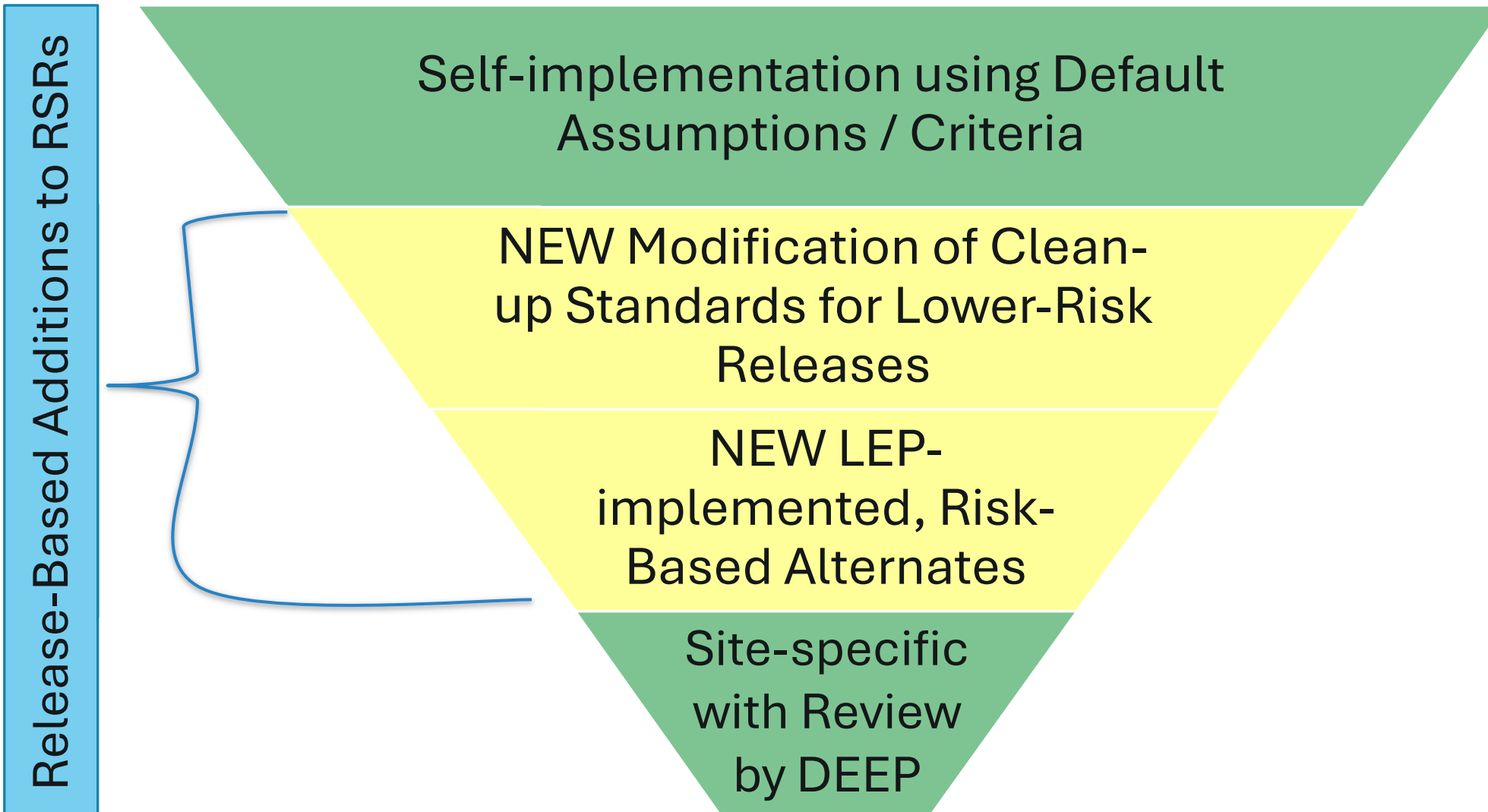


Additional risk-based cleanup approaches are needed

Some will be simple risk-based approaches, self-implemented by LEPs

Others will be approved by DEEP and DPH with clearer requirements and timeframes for approval

UPDATES TO CLEANUP REGULATIONS



PERMIT BY RULE FOR HISTORICALLY IMPACTED MATERIALS



Affidavit of facts be recorded on land records by parcel owner



Every 5 years parcel owner must certify to DEEP that polluted fill has not been relocated and what the current land use is



Parcel owner must notify DEEP if land use changes to residential activity (RSR definition) and responsible for cleanup to residential criteria



Permit transferable to new owners

PERMIT BY RULE FOR SOIL LOCATED BENEATH CONCRETE OR BITUMINOUS CONCRETE



Affidavit of facts be recorded on land records by parcel owner



Inspect condition of concrete or bituminous concrete every 5 years



Permit transferable to new owners



If concrete or bituminous concrete is removed, additional remediation is required

CONDITIONAL EXEMPTION FOR EXISTING RELEASES THAT HAVE MIGRATED

Creating/ maintaining because portion of a release has migrated onto a parcel owned or in the possession of such person, such person may satisfy all RBCRs obligations **IF**:

- **Demonstrates**: not be the creator, not in possession of the parcel where the release is migrating from
- **Reports**: in accordance with timeframes, take Immediate Action if needed;
- **Prepares and submits** release remediation closure report, including characterization to demonstrate that substances in the area characterized are present as a result of a release on a parcel not owned or in possession of such person;
- **Provides access**

SPECIAL PATH FOR HOME HEATING OIL

- Can be used on properties with 4 or fewer residential units
- Only used if no impact to drinking water well or indoor air, or if such impacts have been addressed
- Soil must be excavated until clean or until further excavation may undermine structural integrity of residence
- Closure report identifying pollution that remains and that remediation was performed to the maximum extent prudent



SPECIAL PATHS FOR ROAD SALTS

Discovery in drinking water supply:

- not a SER, Immediate Action not required
- Report within 72 hours
- Commissioner may investigate to identify source
- If source is identified, may issue order requiring potable drinking water to be provided



SPECIAL PATHS FOR PFAS

Discovered in land & waters of the state:

RBCRs only applies for discovered PFAS when:

- Concentrations indicate PFAS presence is not solely from atmospheric deposition or intended use of consumer products
- Where discovery and the source are the same property, or the parcel is owned/operated by the creator of release
- Where I/C purposes are known or suspected of use, expect source of release was the parcel





Administrative

Licensed Environmental Professional (LEP)

Can verify compliance with the cleanup standards for:

- **ALL RELEASES**

Licensed pursuant to section 22a-133v of the General Statutes

Permitted Environmental Professional (PEP)

Can certify compliance with the cleanup standards for:

- **CERTAIN EMERGENT REPORTABLE RELEASES**
- **RELEASES OF HOME HEATING FUEL (section 22a-134tt-8)**

Permitted pursuant to section 22a-454 of the General Statutes

VERIFICATION AND CERTIFICATION

LEPs can verify

- Immediate Action reports
- Tier assignment
- Changes in tier assignment
- Release remediation closure reports

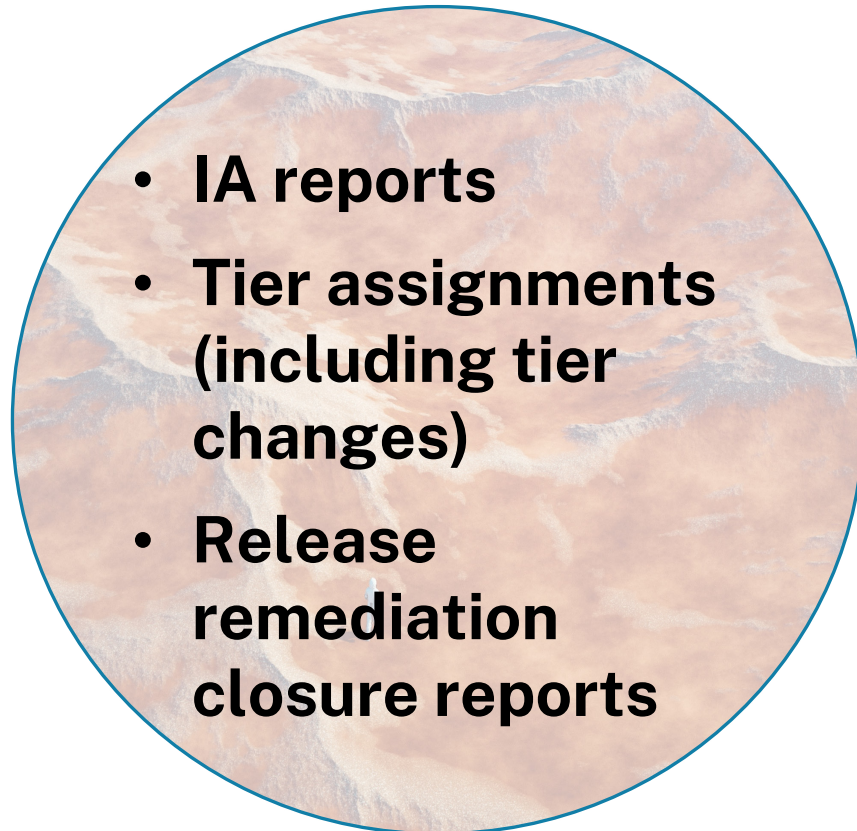
PEP can certify or LEP can verify

- Immediate Action reports generated as a result of an immediate action where certification is specified (RCSA § 22a-134tt-5(g))
- Release remediation closure report where certification is specified (RCSA § 22a-134tt-8)

WHAT CAN BE AUDITED?

Any "release record" can be audited

LEP Verified Records



PEP Certified Records



TYPES OF AUDITS AND PROCESS

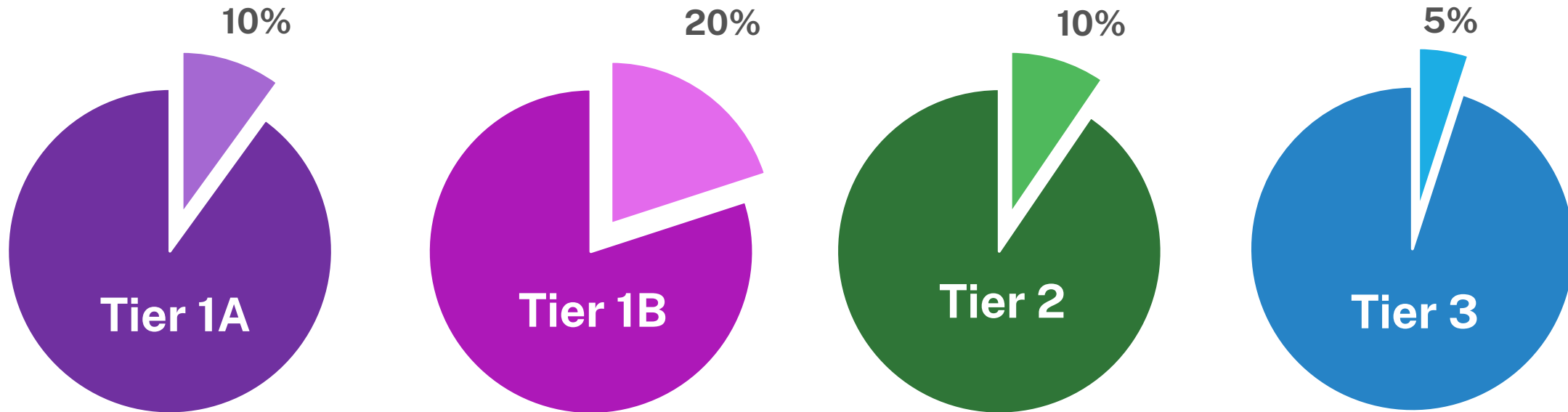
Type	What	Notice of Audit	Possible Outcomes	Timeline
Screening	Review of one release record	⊘	Accept (no written notice) Reject ↔ Focused audit ↔ Full audit*	Complete: 180 days
Focused	Review of one release record or issue identified during screening audit	☑	Accept Reject ↔ Full audit*	Initiate: 180 days Complete: 18 months
Full	Review of any or all release records AFTER submission of a closure report	☑	Accept Reject	Initiate: 180 days ** Complete: 2 years

**A full audit may be initiated only after closure documentation has been received*

***Unless continued from a focused audit*

FREQUENCY OF AUDITS

Goal is to conduct audits on a percentage of releases from each tier based on the initial tier assignment:





Next Steps



90 Day Comment Period

July 26th to October 24th

Comments submitted directly to eRegulations

WORKSHOPS

1

- August 6, 2024, 10:30 AM
- “Introduction to the RBCRs”

2

- August 15, 2024, 1:00 PM
- “Discovery and Reporting”

3

- September 9, 2024, 9:30 AM
- “Immediate Actions and Emergent Reportable Releases”

4

- September 16, 2024, 9:30 AM
- “Cleanup Standards, Closure, Audits”

Venue

- Workshops will be hybrid meetings
- 79 Elm St., Hartford and Zoom

Agenda

- Introduction to terms and concepts
- Walk through process steps
- Discussion of scenarios

Q&As

- Working with stakeholders to provide for additional Q&A sessions
- Will be posted on website when scheduled

HEARING



9:30 AM

Gina McCarthy

Auditorium

79 Elm St., Hartford, CT

06106