

Good afternoon,

Thank you for your willingness to provide your input and expertise to aid the state's efforts to develop regulations for a release-based cleanup program. It was great that so many of you (and so many members of the public) attended our inaugural meeting of the Public Act No. 20-9 Working Group earlier this month. This email covers:

1. Subcommittee topics, based on our December 8 Working Group meeting
2. Process for joining the first five subcommittees, which will meet on January 27 & 28, 2021
3. Next meeting of the Working Group on January 12, 2021

Subcommittee Topics

Following the feedback provided at the P.A. 20-9 Working Group meeting on December 8, 2020, DEEP and DECD have made certain adjustments to the scope of issues to be considered by the topical subcommittees on the discovery of historical releases, reporting of newly discovered historical releases, characterization of releases, immediate actions, and tiers. The adjusted descriptions of the work to be done by each subcommittee are show below.

An opportunity for additional discussion of the scope of issues to be considered by the remaining topical subcommittees – modification of clean-up standards for lower-risk tiers, LEP-implemented, risk based alternative clean-up standards, and clean-up completion documentation, verifications, and audit frequency and time frames – will be provided at the January 12, 2020 Working Group meeting, as will an opportunity to discuss if any additional subcommittees may be necessary. It is also possible that upon the continued efforts of the subcommittees and Working Group, new issues will arise that can be addressed at that time.

The subcommittees will proceed in at least two phases – with the first five subcommittees convening in the first phase. Concepts developed in the first phase will guide discussion in subsequent phases. For example, a discussion of how releases may be divided into tiers will help identify the necessary adjustments to clean-up standards for lower-risk tiers. The subcommittee topics generally move chronologically – a release is discovered, reported, and characterized; clean-up to a certain standard is undertaken; and documentation evidencing the clean-up is prepared, and in some instances, submitted to DEEP for review or audit. The five subcommittees comprising the first phase include: 1) those concerning discovery of historical releases; 2) reporting of newly discovered historical releases; 3) characterization of releases; 4) immediate actions; and 5) tiers.

We will kick off the second phase subcommittees when considerable progress has been made by the first phase subcommittees and after consultation with the Working Group.

Topical Subcommittees – First Phase

Please see the revised topical subcommittee scopes and charges attached. We will announce the creation of these subcommittees shortly, with the first meetings for these first phase subcommittees anticipated on January 27 and January 28, 2021.

Topical Subcommittee Membership

At our January Working Group meeting, DEEP and DECD will summarize volunteer responses from the public who wish to serve as members of these topical subcommittees. Membership on these subcommittees can also include a small number of Working Group members. These subcommittees will

need to be sized appropriately, so they can function efficiently. However, meetings of the subcommittees will be open to the public, so all who desire can participate at some level. Further, at each of our Working Group meetings, a member of the Working Group on each subcommittee will be asked to report out to the Working Group.

If you are interested in being a member of one of the five subcommittees, please complete the survey below. DEEP and DECD will select subcommittee membership with the goal of creating a balanced and efficient discussion.

<https://www.surveymonkey.com/r/NXCQS8Z>

Working Group Meetings

A meeting invitation for the January 12th meeting will be sent out the first week of January. Dates for future Working Group meetings can be found [here](#).

Thank you for your continued efforts to assist the State in developing a balanced and practical cleanup program. We look forward to our next meeting.

If you wish to provide feedback on this process, written comments before the meeting are helpful and should be directed to: DEEP.Cleanup.Transform@ct.gov.

Sincerely,
Katie & David

1. Discovery of Historical Releases

This subcommittee should discuss the following.

- Based on the definition of “release” in Public Act 20-9, what constitutes a historical release? Does the presence of non-naturally occurring pollutants in the environment a release has occurred?
- When is a historical release discovered?
- How should discovery of an historical release by parties other than an owner of property be addressed, including lessees, municipalities, and other interested parties? What role will LEPs play, if any?
- How does Public Act 20-9 apply, if at all, when a release is discovered by a potential purchaser of property or similar person that did not create, or is not maintaining, the release? What if that same party subsequently purchases the property?
- What if the release involves an imminent/substantial risk to public health or the environment?
- In addition to who, what information is necessary to conclude that a release occurred? Is seeing a sheen on water enough? What about an oral report of disposal activity by a lay person?
- What if analytical results point in different directions? For example, one results shows an exceedance while other results don't?

This subcommittee should evaluate what constitutes a historical release and when such a release should be considered “discovered” for purposes of Public Act 20-9. This includes the various ways in which a release may be “discovered” and how, or whether, the obligations of Public Act 20-9 are triggered by such discovery.

2. Reporting Newly-Discovered Historical Releases

This subcommittee should discuss the following.

- What is the threshold for requiring reporting of a historical release after such a release has been discovered? Is this threshold quantitative, qualitative, or both?
- Within what time frame after discovery should a report be required?
- Should reporting exceptions for certain historical releases be created if timely remediation occurs? If so, what situations would qualify and what would constitute timely remediation?
- Is it necessary to address, beyond the detail provided in the statute, reporting of releases on Transfer Act or brownfield sites?
- If reporting is required, what information should be reported?
- How will that report be accessible to the public?
- If releases do not require reporting, will there be a mechanism for the public or others to become aware that a release occurred?

This subcommittee shall discuss when an historical release must be reported, what information should be reported and how that information will be accessible to the public.

3. Characterization of a Discovered Release

This subcommittee should discuss the following.

- Should the regulations prescribe a method or methods that must be used to characterize the nature and extent of such release and its impact upon human health and the environment before undertaking clean-up?
- Should there be a process for DEEP to approve a method of characterization selected by a licensed environmental professional, including standards to validate such a method?
- Should the regulations specify a process for identifying prevailing standards and guidelines to be used to characterize the nature and extent of such release?

This subcommittee shall evaluate a conceptual framework for release characterization, including the relationship to any action taken before characterization and the extent to which prescribing a method or methods within the regulation could affect the use of newer or novel forms of characterization. In addition, the subcommittee should consider whether different characterization methods or standards are necessary depending whether immediate action has been performed, as well as the time that has passed since a release has occurred. While DEEP's current site characterization guidance document should inform the work of this subgroup, any methods or standards identified should be limited to characterization of a single release.

4. Immediate Action

Under the release-based cleanup program, releases may be discovered and reported that must or may be addressed swiftly through recognized mitigation and remediation efforts. Such subcommittee shall discuss the following:

- For what types of releases should immediate action be required?
- Should releases for which immediate action is required fall into a cleanup tier or exist outside the tiered releases?
- For what types of releases should immediate action be an option? What incentives to undertake such action should be provided?
- Whether there are differences between historical and contemporaneous releases or will characteristics of discovered release control?
- Must an LEP close an immediate action?
- What is role of emergency responders/spill contractors?
- What time limit should apply to such an immediate action before a release is placed in a particular tier?
- Whether an immediate action can be closed if additional monitoring is still required?
- How will immediate actions and the existing Significant Environmental Hazard program will relate?
- When immediate action is needed and required, what name should be used for such action? Should there be two names: one for immediate action that is required; and another for immediate action undertaken voluntarily?

This subcommittee shall evaluate which releases require immediate action and examine how to incentivize swift yet comprehensive/protective action for other releases.

5. Tiers

This subcommittee should discuss the following.

- After a release has been characterized, if immediate action has not fully remediated a release, such release will be placed into a tier.
- Placement into a tier should include consideration of who will supervise a clean-up (i.e., trained employee, spill contractor, LEP, or the Commissioner), the factors that will impact the applicable tier of any release, such as risks to public health and the environment, impact to groundwater and other natural resources, and degree of removal of pollution, the demonstration that remediation of that release has been complete (closure document, verification, another endpoint), the timeframe to complete clean-up and how timing impacts a tier.
- Will placement in a certain tiers require clean-ups to be completed more quickly?

The subcommittee shall evaluate what factors should be used to determine into which tier a release should be placed and whether different factors need to be identified for releases discovered when they occur or later.