

Subcommittee 10 Concept Paper
ADDENDUM AND RESPONSE TO COMMENTS
Roles and Qualifications of Non-LEP Environmental Professionals

May 3, 2023

This Addendum to the March 3, 2023 Subcommittee 10 Concept Paper (“Concept Paper”) responds to comments by DEEP and members of the public and the Working Group’s discussions in the March 14, 2023 and April 10, 2023 Working Group Meetings.

I. Response to Comments

A. *Leveraging Conn. Gen. Stat. § 22a-454 Permit Program*

In its Concept Paper, Subcommittee 10 acknowledged a continuing role for Permitted Spill Response Contractors (“PSRCs,” i.e., those licensed under Conn. Gen. Stat. § 22a-454) and assumed that PSRCs would handle emergency response and immediate removal actions rather than certifying compliance with the RSRs. Concept Paper, at 4. Subcommittee 10 further acknowledged that DEEP had indicated that it did not intend to stand up a new licensing program for Technical Environmental Professionals (“TEPs”). Concept Paper, at 5.

In its April 6, 2023 Feedback on Subcommittee 9 and 10 Concept Papers (“DEEP Feedback”), DEEP indicated that “with some adjustment” permits issued pursuant to Conn. Gen. Stat. § 22a-454 “can be used to achieve many of the subcommittee’s goals.” DEEP Feedback, at 6. Specifically, Conn. Gen. Stat. § 22a-454(a) provides:

No person shall engage in the business of collecting, storing or treating waste oil or petroleum or chemical liquids or hazardous wastes or of acting as a contractor to contain or remove or otherwise mitigate the effects of discharge, spillage, uncontrolled loss, seepage or filtration of such substance or material or waste nor shall any person, municipality or regional authority dispose of waste oil or petroleum or chemical liquids or waste solid, liquid or gaseous products or hazardous wastes without a permit from the commissioner.

This section provides the basis for the current PSRC regime.

Subcommittee 10 agrees that the existing authority under Conn. Gen. Stat. § 22a-454 can be leveraged to provide the permitting and oversight structure envisioned for TEPs. Application forms can be reworked to require documentation of the training and credentials required. By leveraging existing statutory authority, DEEP will be able to more nimbly stand up the new program and tweak it as needed during the implementation phase. To the extent that DEEP sees value in designating different types of TEPs, or maintaining a distinction between TEPs and PSRCs, permit subtypes can be developed to distinguish different categories. DEEP could even develop general permits under Conn. Gen. Stat. § 22a-454(e) to streamline procedures for certain types of TEPs (e.g., municipal emergency response personnel).

Subcommittee 10, and its individual members, reserve the right to comment further as the regulations take shape. In particular, as discussed in the Concept Paper, the questions of “WHO are TEPs?” and “WHAT sorts of releases will TEPs handle?” are tightly interconnected. In addition, as EPOC noted in its March 31 comments, DEEP will need to develop endpoints under the RSRs and/or spill regulations for “lower volume, lower toxicity releases that don’t reach the environment.” EPOC comments, at 3. Subcommittee 10 suggests that DEEP come to an internal conclusion as to the “WHAT” question, and develop proposed endpoints for such lower-risk releases, and then solicit feedback from the Working Group on the “WHO” question. It would also be helpful for DEEP to provide additional context on the projected future role of the DEEP spill response team and whether they will be certifying closure of releases under the new program.

B. *Conflicts of Interest, LEP Code of Conduct, and Ensuring a Level Playing Field*

DEEP and Subcommittee 10 have each acknowledged the importance of creating a “level playing field” and allowing LEPs equal access to TEP activities. See, e.g. Concept Paper at 1. As EPOC discussed in its comments, LEPs and PRSCs presently operate under very different endpoints and standards of care. Further, discussions in the April 10 Working Group meeting touched on the LEP Code of Conduct, specifically conflict of interest provisions applicable to LEPs. R.C.S.A. §22a-133v-6(e).

Subcommittee 10 reemphasizes its commitment to a level playing field between LEPs and TEPs. Tensions between the standards applicable to LEPs and the standards applicable to TEPs should be thoughtfully addressed. Solutions may include:

- Including in the certification form applicable to lower risk releases a disclosure of any financial interest the TEP or his/her employer might have in the release at issue (for example, if the TEP is a plant employee or works for a utility) and an attestation that the financial interest did not impact decision-making.
- A revision to the LEP Code of Conduct that would permit LEPs to certify lower-risk releases on the same terms as TEPs even if there is a financial interest at play as long as such financial interest is disclosed and did not impact decision-making (for example, LEPs employed by utilities).

The specific blend of solutions that will be most appropriate will depend upon the answers to the “WHAT” question.