
**CT DEEP RELEASE-BASED REMEDIATION OF HAZARDOUS WASTE PROGRAM REGULATIONS
TRANSITION GROUP RECOMMENDATIONS
JUNE 2021**

The members of the Transition Group include Beth Barton, Ann Catino, Franca DeRosa, Nancy Mendel and Tim Whiting. Tim is a CT LEP and the remaining members are environmental attorneys.

The Transition Group has been meeting twice a month with Graham Stevens of CT DEEP since February 2021 to discuss transition issues related to the new proposed Release-Based Remediation of Hazardous Waste Program Regulations, as required by Public Act 20-9, which has been codified at C.G.S. Section 22a-133pp, et seq. Brendan Schain, Esq. of CT DEEP participated on one of our video conferences and we understand he will continue to be involved with our group. We are not a formal Working Group or Working Group Subcommittee created by CT DEEP; we were formed in response to the identification of a void or gap regarding transition from and integration with existing programs, including the statutes and regulations relating to those programs (as well as, in some respects, reporting and remediation in general).

Our primary goal is to identify the potential impacts the new release-based program and regulations will have on the existing CT DEEP programs and make suggestions on how to properly and practically integrate them to: (i) minimize uncertainty and provide clarity when and/or where overlap of programs may exist; (ii) support consistency and predictability; and (iii) provide clear guidelines to achieve finality and closure with no unintended consequences. Accordingly, to date, our focus has been on the Transfer Act and the RSRs, particularly since there are approximately 4,500 sites currently in the Transfer Act program (with others still being added daily) that need to achieve closure. We recognize that we will also need to look at other state and federal programs and statutes, including but not limited to, Brownfields, the Voluntary Program, Underground Storage Tanks, Significant Environmental Hazard reporting, RCRA Closures, USEPA Brownfield Funding Programs, and Municipal Liability statutes, and also review certain categories of regulatory documentation, such as Covenants Not to Sue and Stewardship Permits.

We believe it is important to document our recommendations to guide CT DEEP's development of the Release-Based Remediation of Hazardous Waste Program. We recognize that some of our recommendations may require statutory or regulatory changes. This is necessarily a dynamic document and the Transition Group will continue to update its recommendations as appropriate.

Recommendations:

1. Maintain the RSRs. We believe it is critical for the RSRs to remain in place and not be replaced or eliminated by the Release-Based Remediation of Hazardous Waste

Program Regulations. Everyone agrees that the RSRs are “released-based” and “risk-based” standards. The RSRs are referenced either directly or indirectly in 30 existing environmental statutes, which involve 26 legislatively created programs. The attached table shows the various statutory programs that refer to the RSRs as the basis for the remedial activities and/or liability relief. The RSRs set the standards for each of these programs and have provided the roadmap to closure relied upon by the regulated community and other constituents.

If the RSRs are eliminated or replaced, the impact on each of these programs needs to be considered. Each program either needs thoughtful modification through legislation to reflect integration with the new release-based remediation program or the statutory program may need to be repealed to eliminate confusion and/or dual or duplicative regulation.

For the Transfer Act, the RSRs (as amended) are the standards that used and relied on since 1996 to assess and remediate properties; they have formed the basis for legal documents and negotiations allocating environmental obligations, liabilities, and risk. Certainly, for the 4500 sites in the Transfer Act or the numerous sites in any of the Brownfields Programs, the Voluntary Program, RCRA Closures, USEPA Brownfield Funding Programs (or other statutes or programs that comprise the list of 30), we cannot change the requirements mid-stream without creating chaos, negatively impacting the path to regulatory closure, and adversely impacting various immunities and liability protections that currently exist and may have been relied upon by property owners, municipalities, and lenders, among others.

The vision is that whenever a site or a release area needs to be investigated and remediated, the RSRs should be the standards used for assessment and remediation to achieve closure of the site or the release area. The point of entry may be the Transfer Act, the Voluntary Programs, Brownfields, UST, or the Remediation of Hazardous Waste Program Program Regulations, but once you are in one of the programs, the release or the site (as applicable) should use the RSRs for assessment, remediation, monitoring, and closure.

2. Allow use of the Alternatives in the Release-Based Remediation Program Regulations. Although the RSRs should remain in place, the options and compliance mechanisms under the Release-Based Remediation of Hazardous Waste Program Regulations should be accessible to those in other programs. So, for example, if the Release-Based Remediation of Hazardous Waste Program Regulations allow for the use of risk assessments to close out a release area, that option should be available to close out releases on Transfer Act or other programs sites.
3. Standard of Care. Currently, the regulated community uses the Site Characterization Guidance Document (SCGD), dated September 1, 2007 and revised December 2010, as the standard of care for characterization of sites. It is necessary to either supplement and update this technical guidance document for future use for the Release-Based Remediation of Hazardous Waste Program Regulations or incorporate new standards

of care directly into the Release-Based Remediation of Hazardous Waste Program Regulations.

4. Assessment of Incorporating Existing Programs into the Release-Based Remediation of Hazardous Waste Program Regulations. As part of any transition, existing regulations and programs should be assessed to determine whether it is appropriate/necessary to integrate them into the new regulations. The attached table identifies the existing statutory programs that rely upon the RSRs and each statutory program should be assessed to determine affirmatively how it fits - or whether it fits - into the Release-Based Remediation of Hazardous Waste Program Regulations Release-Based Remediation Program. For example, we believe the Significant Environmental Hazard (“SEH”) statute should be incorporated into the new regulations. This would ensure consistency in reporting requirements and help the regulated community determine next steps that may be required for a SEH site. We are, however, interested in the perspectives of the various subgroups. Thereafter, we may be in a better position to provide recommendations as to statutory integration.
5. Overlap with Release Reporting Regulations. CT DEEP is in the process of finalizing the proposed Release Reporting Regulations (C.G.S. §§22a-450-1 to 22a-450-6). There is a concern that there is not consistency with, or clear integration between, those proposed regulations and the “yet to be drafted” Release-Based Remediation of Hazardous Waste Program Regulations, which will include regulatory provisions relating to the reporting of releases. Without clear integration, once a release is reported, owners and responsible parties will be left with uncertainty as to what steps to take or which program will govern further compliance.
6. Staffing and Resources. A thorough review and evaluation of CT DEEP staff resources (present and future) are critical with the addition of new release locations/sites under the Release-Based Remediation of Hazardous Waste Program to the already 4500+ sites that CT DEEP staff is currently overseeing under the Transfer Act (not to mention the current and continuing commitment of CT DEEP staff resources to, for example, auditing and the review and approval of Environmental Use Restrictions).

This analysis is especially needed against the backdrop of the reality of many recent and additional projected CT DEEP staff retirements and the greater demand for CT DEEP staff with risk-assessment experience. As noted in the June 9, 2021 Connecticut Law Tribune article:

“By 2022, retirements at the Department of Energy and Environmental Protection (DEEP) will result in the loss of 44% of the staff in its Environmental Quality Division, and more than 30% department wide.”

“DEEP has been struggling to find ways to mitigate the effects of this impending loss of human resources, but it has not been—and will not be—easy. The CREATES report identified, for example, that DEEP has an extremely high attrition rate with younger

employees, many staying less than five years and making successional planning a ‘pain-point.’”

“The immense human resources problem at DEEP is the imminent challenge and our sustainability and resiliency as a state is dependent upon our success in solving it.”

Based on this reduction in staff, it is important to understand what happens to all the Transfer Act sites if limited existing remediation staff is reassigned to dealing with the new Release-Based Remediation of Hazardous Waste Program releases and/or sites? The Transfer Act sites will still need CT DEEP staff attention to close them out and make each of these sites marketable. With the Transfer Act sites, CT DEEP staff is typically dealing with one entire site and releases at that entire site at one time, under one remediation ID number. When the Release-Based Remediation Program begins, will the same CT DEEP staff be dealing with individual releases under that program, which could mean there will now be multiple releases, each assigned a remediation ID number, at a site, not just (although perhaps in some instances in addition to) the entire site being handled under the Transfer Act approach? All stakeholders want the Release-Based Remediation Program to be successful, but it will only be successful if there are appropriate staffing and resources.

7. Transition Group as Facilitators. The Transition Group intends to continue to make recommendations relating to the integration of the Release-Based Remediation Program and the programs identified on the attached table, including when and where legislative changes are needed and/or recommended. We also understand that there is concern that the new program may be overly broad, with potential to impact all residential properties in the State, which may be overwhelming and economically detrimental to the State and its citizens. To be most effective, the Transition Group proposes to review the concept papers submitted by each of the formal Working Group Subcommittees. After that review, we would plan to meet with representatives of each Working Group Subcommittee to discuss transition issues, with a focus on a comprehensive, deliberate, and effective strategy to handle the transition issues, and to identify where gaps may exist that would not serve the State’s economic development interests, while also being protective of human health and the environment.

Programs that Directly Refer To RSRs CGS 22a-133k	Statute	Compliance Reference
Significant Environmental Hazard	22a-6u	RSRs provide thresholds for reporting and/or further action and remediation
Clean up of hazardous waste disposal sites	22a-133a	Final remedial action for a haz waste disposal site is a remedy consistent with RSRs
Environmental Use Restrictions / NAUL	22a-133o	References compliance with RSRs
EUR invalidity	22a-133r	If EUR is void, remediation is to RSRs
LEP licensing	22a-133v	LEP test tests applicant's knowledge of investigation & remediation IAW RSRs
Voluntary site remediation program in GB & GC areas	22a-133w	Requires compliance to RSRs
Voluntary Investigation & remediation of contaminated real property	22a-133x	"Release area" is defined per 22a-133k regulations & remediation must follow RSRs
Voluntary site remediation program in GB & GC areas	22a-133y	Requires compliance to RSRs
Covenant Not to sue prospective purchasers with Commissioner's approval of remediation plan	22a-133aa	Requires compliance to RSRs
Covenant Not to sue prospective purchasers with LEP's approval of remediation plan	22a-133bb	Covenant not to sue between DEEP and prospective purchaser based upon a remediation plan "of the property" per 22a-133k regulations & entry into 22a-133x or 22a-133y program or TA or verification
New Property owner's immunity from Third Party liability for conditions that existed prior to taking title	22a-133ee	Requires compliance to RSRs
Transfer Act	22a-134	Requires compliance to RSRs
Ownership of Unpermitted Solid Waste Disposal Facility	22a-208a(c)	Requires owner to submit a closure plan and provide public notice of such plan in a manner set forth in 22a-133k or remediate such disposal area IAW a remediation plan approved by DEEP or LEP pursuant to 22a-133x, 22a-133y or TA
UST Fund & clean up program	22a-449c, 22a-449f, 22a-449m and 22a-449p	RSRs create threshold cleanup standards
Certification of activity affecting floodplain	25-68d	Provides an exemption for mills from floodplain certification if remedial activity is subject to RSRs
<p>DECD Brownfield Programs (Chapter 588gg) that rely upon applicants entering into a program, e.g., 22a-133x, which ultimately directs them to the RSRs either directly or through definition of remediation found in 22a-134, which refers to 22a-133k</p>		
Brownfield Grant Program	32-763	Grant recipient must be in TA or enter into 22a-133x, 22a-133y, 32-768 or 32-769
Brownfield Loan Program	32-765	Loan recipient must be in TA or enter into 22a-133x, 22a-133y, 32-768 or 32-769
ABC Program	32-768	ABC requires entry into 22a-133x; note that it requires investigation of such property in accordance with prevailing standards and guidelines & remediation in accordance with regs "established for remediation" adopted by DEEP)
BRRP Program	32-769	Investigation of release or threatened release is to "prevailing standards and guidelines", remediation is for entire property; reference is to "remediation standards" as defined in 22a-134, which refers to 22a-133k; and LEP must provide a verification/interim verification
Municipal Tax Abatement for Brownfields	12-81r	Munie & prospective owner enter into an agreement for tax abatement, provided owner enters into 22a-133x, 22a-133y, 32-768 or 32-769 or be in Transfer Act
CT Brownfield Redevelopment Authority	32-11e	CBRDA (or its subsidiary) authority relating to funds necessary property acquisition & disposition, property improvement and compliance with 12-81r, 22a-133m(h), 22a-133x(b), 22a-133aa, 22a-133bb, 22a-133dd, the TA, 22a-452f, 32-7e, & 32-23pp to 32-23rr
Liability Waiver for Pre-Existing Conditions	32-764	Provides grant recipients with liability relief provided recipient is in TA or enter into 22a-133x, 22a-133y, 32-768 or 32-769 (& includes successors) & provided remediation is per 22a-133k
<p>Other Statutes / Concepts for Transition Discussion</p>		
Innocent Landowner Defense	22a-452d & 22a-452e	Innocent landowners not liable for pre-existing conditions
Lender Liability	22a-452f	Lender exemption from liability
Role of LEP v. Non LEP	22a-133v	LEP licensing & responsibility to protect human health & the environment
Municipal Brownfield Liability Relief program	22a-133ii	Provides liability relief for pre-existing conditions to Municipalities, other municipal entities and land banks