



Bureau of Water Protection and Land Reuse
Remediation Division

Memorandum

To: Ray Frigon, Diane Duva
Copy: Graham Stevens, John Gallalee

From: Kevin Vanderveer, Monica Meschiatti, Lynn Olson-Teodoro, Peter Zaidel, Carl Gruszczak

Date: May 5, 2026

RE: Conflicting RBCR Immediate Action (IA) Language
Required IAs vs. IA Report and IA Transition Point in RCSA § 22a-134tt-5
Surface Water Significant Existing Release (SER)

Primary Issue

The final RBCRs have a conflict between the reporting requirements specified under the immediate action for groundwater with a substance > 10x the surface water protection criteria (SWPC) within 250 feet of surface water. The combination of cross-referenced subsections would require the following actions within 30 days of discovery:

- An IA report with a schedule for completing tier characterization
- An IA report documenting the completion of tier characterization
- Tiering the release

The issue starts with the IA requirements in subsection (f)(5):

Immediate Actions

*(f)(5) ...if a release is a significant existing release that is a release of a substance at a concentration greater than 10 times the surface-water protection criteria for such substance, or that is a non-aqueous phase liquid, that has impacted or is impacting groundwater within ~~500~~ [250] feet of surface water, **not more than 30 days after discovery of such release an immediate action report shall be prepared and submitted pursuant to subsection (k) of this section that:***

(A) Describes the nature and extent of such release, and includes the results of laboratory analysis of samples collected;

(B) Identifies each measure taken to prevent migration of such release; and

*(C) Includes a **schedule for completing tier characterization of such release.***

Notes

1. All Release Based Cleanup Regulation (RBCR) citations are in reference to RCSA § 22a-134tt-5 (Immediate Actions).
2. Regulations are in boxed italics.
3. **Red text** focuses on the conflicting language.

The above subsection requires preparing an IA report within 30 days that includes a schedule to complete tier characterization. The “pursuant to subsection (k)” creates a conflict because (k) requires the following:

IA Reports

(k)(2)(E) ...information regarding the investigation and characterization of the release sufficient to demonstrate that the transition-point or cleanup standards identified have been achieved, including confirmatory sampling of soil or groundwater, if required;

And the transition point, as defined in (h)(2)(E) is:

(h)(2)(E) ...tier characterization is complete and such release has been entered into a cleanup tier by filing a tier assignment and paying the required fee.

(k)(3) If, at the time an immediate action report is submitted, the release has not been remediated to the standards specified in the cleanup standards sections of the RBCRs, the immediate action report and a tiering assignment shall be simultaneously submitted....

The combined effect of these subsections requires the submission of an IA report that includes a schedule for completing tier characterization AND the completed tier characterization documentation as well as tiering within 30 days of discovery.

Additional Notes on Intent

Note that all the other IAs require an IA Plan after discovery. The 10x SWPC is the only one that specifies an IA Report. This was intentional and is supported by the following:

Transition Points

(h)(2)(E) For a release to groundwater near surface water, for which required actions are specified in subsection (f)(5) of this section, tier characterization is complete and such release has been entered into a cleanup tier by filing a tier assignment and paying the required fee.

There is no requirement to submit an IA Report, which all the other IA transitions require. This indicates an awareness that the IA report for this type of SER was already required by (f)(5).

IA Plans

(j)(2) Any person who created or is maintaining a significant existing release, except a release to groundwater requiring immediate action pursuant to subsection (f)(5) of this section, shall submit an immediate action plan...

This subsection clearly exempts the (f)(5)-type SER from submitting an IA Plan.

Resolution

Short Term Practical Implementation – Inform the regulated community that, given the IA requirements specified in subsection -5(f)(5) to include only a schedule to complete tier characterization in the IA Report, the requirements of subsections -5(k)(2)(E) and -5(k)(3) to include a tier characterization summary and tier at the time the report is submitted do not apply. Tiering will

occur following tier characterization per -5(h)(E). This requires minimal reinterpretation and conforms to the original intent for a slightly different pathway for this type of SER.

Long Term Resolution – When we have a chance to revise the regulations, we will clean up the language to make it clearer. We are also considering rewording the various subsections so that an IA Plan is required initially to be followed by an IA Report to make the process similar to the other IAs.

Applicability and Commissioner Authority

The policies and procedures in this document are intended solely for preliminary guidance. They do not constitute rulemaking for the Department and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Department may take an action that deviates from the policies or procedures contained in this document if the Commissioner considers it appropriate in a specific case. The ultimate decision as to the applicability of these policies in any specific situation rests within the sole discretion of the Commissioner of the Department or the Commissioner's designee.

Resolution accepted

/s/ Diane Duva, Assistant Director

Diane Duva, Assistant Director

May 8, 2026

Date

/s/ Raymond Frigon

Raymond Frigon, Director

May 20, 2026

Date