



COUNCIL ON ENVIRONMENTAL QUALITY

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October 1, 2019

Brian Thompson
Department of Energy and Environmental Protection,
Bureau of Water Protection and Land Reuse,
Remediation Division
79 Elm Street
Hartford, Connecticut 06106-5127

RE: Draft Revisions to the Remediation Standard Regulations (RSR)

Dear Mr. Thompson:

Firstly, the Council on Environmental Quality (the Council) wishes to commend the Department of Energy and Environmental Protection (DEEP) and to acknowledge the many months of analysis and revision that went into completion of the Draft RSR. The Draft accomplishes both comprehensiveness and clarity. Provided below are suggestions to improve or modify some of the procedures described in the Draft RSR. The page numbers listed in these comments refer to the "RED-Blue" version from DEEP's website.

Section 22a-133k-1(d) Public Participation

The Draft RSR, on p.14, (section 22a-133k-1(d)(1)(A)) requires notice of a remedial action in an appropriate newspaper, to the municipal director of health and to either a) erect and maintain a sign for at least thirty days at the site or b) to mail notice of the remedial action to each owner of record of property which abuts such property.

There are many parties who may have an interest in knowing of the remediation. The newspaper notice serves the purpose of informing local residents who may not be abutters. Unfortunately, those notices often appear in the pages that are least read. A sign on the property for only 30 days in the case of a project that might run for years can also miss the attention of many who might have an interest in the remediation. The Council recommends that DEEP assure the property is also listed in an online, searchable database, such as DEEP's "list of Contaminated or Potentially Contaminated Sites". This list is easily searchable by municipality and a valuable contribution to public awareness.

Given the limitations of public notice in the Draft RSR (in a newspaper, 30 days of signage or informing abutting property owners), the proposed reduction (p.15) in the time allowed for public comment from 45 days to 30 days does not serve the interested public who might not learn of the

proposed remediation in time to comment. The public interest in an expedited cleanup should not outweigh the public interest in transparency and public input to the process.

With regard to public comment in the Draft RSR, the DEEP Commissioner is no longer (p.15) the required party to whom comments on a proposed remediation must be sent. The party to be informed could be the would-be developer or the project consultant. Though most developers and consultants can be presumed to be of good intention, the absence of DEEP control over the receipt of comments leaves no independent check on their tracking and reporting. This proposed change should be reconsidered in the interest of upholding public confidence in the process.

Section 22a-133k-1(h)(4) Laboratory Reporting Limits

The Section on Instrument Reporting Limits (p. 24) begs the question of the option of an analysis being done by a different lab when the lab contracted for the site analysis cannot analyze to the needed refinement. The fact that an RSR limit was established implies that there are labs that can test to that limit. There is no suggestion in the Draft RSR that, when appropriate, a lab with the capability to conduct those tests be utilized. The concern is that this creates a loophole by which rigorous site analysis can be skirted.

Section 22a-133k-2 Remediation Standards for Soil

Implicit in this section is the necessity for handling and transport of soils with varying degrees of pollutants. Currently, the General Permit for Contaminated Soil and/or Sediment Management (Staging and Transfer) has expired. Soil handling is consequently unregulated at this time. The Council has been apprised of incidents where this lapse has left compliance with the expired permit's reasonable and prudent practices entirely up to the good will of the transporter. The Council urges expedited renewal of this General Permit.

22a-133k-2(c)(5)(D) Conditional Exemptions for Incidental Sources

The Draft RSR (p.30 and p.44) makes a distinction between incidental releases due to the operation of a motor vehicle and incidental releases due to refueling, repair or maintenance.

"Soil at a release area polluted with metals, petroleum hydrocarbons, or semi-volatile organic substances [in soil] is not required to be remediated to the direct exposure criteria for those substances, provided such pollution is the result of: (A) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle..."

Because, by definition, an incidental release is one that poses no threat to the environment, this distinction seems an unnecessary penalty to

businesses involved in fueling or repair. Re-wording to better express the intent of the provision is recommended.

22a-133k-3(e) Technical Impracticability (TI) Variance

There is a requirement (p.84) for preparation of a report every five years for sites with exemption from an RSR. The report is to review the implementation and effectiveness of a TI variance. The report is to include the impact of the variance on the use of groundwater on parcels adjacent to the TI zone. Such reports shall be maintained by the parcel owner who is requesting such variance and provided to the Commissioner upon request.

The Council questions whether, and under what circumstances, the Commissioner would ask for those reports and what sanction would be applied to a facility that has been in operation for five years if the reports are not available. The Council has discovered numerous instances of permit holders who were out of compliance with their permit conditions and DEEP only learned of that status at the time of permit renewal. There needs to be a commitment by DEEP to follow up on TI exemptions based on percentage of exemptions issued or time elapsed since issuance. Otherwise, this provision is only an illusion of regulation with little practical effect.

Again, after reviewing the Draft RSR it is evident that much has changed and most revisions are intended to expedite and simplify site remediation. The Council supports that effort and urges consideration of its comments.

Sincerely,

A handwritten signature in cursive script that reads "Peter Hearn". The signature is written in black ink and is positioned above the typed name.

Peter Hearn
Executive Director

cc. Katie Dykes, Commissioner Department of Energy and Environmental Protection.