December 1, 2025

Preparing for Connecticut's Release-Based Cleanup Regulations, Effective March 1, 2026

Connecticut has finalized a major reform to its cleanup laws. On May 16, the Connecticut Department of Energy and Environmental Protection (DEEP) adopted the Release-Based Cleanup Regulations (RBCRs), which will take effect March 1, 2026. These regulations replace the Connecticut Property Transfer Act (C.G.S. §§ 22a-134 et seq.) (Transfer Act) with a release-based system—a fundamental change in how environmental obligations are triggered, managed, and closed.

As discussed in a prior alert titled "2020 Transfer Act Revisions and Connecticut's Transition to a Release-Based Remediation Program - An Extended Goodbye to the Transfer Act," the Release-Based Cleanup Program will fundamentally reshape how environmental cleanup is addressed in Connecticut. With the adoption of the RBCRs, the Transfer Act will sunset, transitioning the state to a release-based reporting and remediation approach. This article is the first in a Day Pitney series on the rollout and implementation of the RBCRs.

Summary

Key Points:

- **Effective Date:** RBCRs become effective March 1, 2026.
- **Program Shift:** Cleanup obligations will now arise from the discovery or occurrence of a release, not from the transfer of real property or a business.
- **Scope:** RBCRs apply to releases not already subject to the Transfer Act, Voluntary Remediation, or Brownfield Remediation programs.
- **Responsible Persons:** Obligations extend to both creators and maintainers (e.g., owners and tenants) of releases.
- **Reporting Triggers:** Reporting timelines and triggers vary depending on the severity of the release and the risks involved.
- **Tiering System:** Four risk-based tiers determine the level of DEEP or licensed environmental professional (LEP) oversight and applicable deadlines.
- **Revised Cleanup Standards:** RBCRs modify the Remediation Standard Regulations through the introduction of risk-based alternatives, new standards for multifamily properties, and permits by rule.
- **New Professional Class:** Establishes Permitted Environmental Professionals (PEPs) to handle defined categories of cleanups.
- **Fees and Notices:** Creates new tiering fees, annual fees, and public notice requirements for remediation activities.
- **Legislative Updates:** Companion legislation (Public Acts 25-6 and 25-54) provides transition mechanisms, extends the term of the Release-Based Working Group, and mandates ongoing DEEP reporting to the legislature.

Implications for Stakeholders:

- Developers and property owners should review how the "discovery" trigger affects due diligence and transaction timing.
- Municipalities and lenders must understand reporting roles and potential liability as "maintainers."
- Current Transfer Act sites may remain in that program until closed or transitioned via forthcoming "off-ramp" procedures.
- All regulated parties should monitor DEEP's forthcoming guidance on tiering, PEP licensure, and risk-based cleanup standards.

RBCRs' Development and Adoption History

Effective October 2, 2020, Public Act 20-9 (codified as CGS §§ 22a-134pp through 22a-134xx), titled "An Act Revising Provisions of the Transfer Act and Authorizing the Development and Implementation of a Release-Based Remediation Program," set forth the framework for the Release-Based Cleanup Program, including the concepts the RBCRs must address, which we reviewed in our prior alert "2020 Transfer Act Revisions and Connecticut's Transition to a Release-Based Remediation Program - An Extended Goodbye to the Transfer Act." The RBCRs were developed in conjunction with the Release-Based (RB) Working Group, as required by a directive in Public Act 20-9. The RB Working Group (composed of LEPs, real estate professionals, environmental attorneys, municipal representatives, environmental advocacy group representatives, and others) met on at least a monthly basis with DEEP, the Department of Economic and Community Development, and the public beginning December 8, 2020.

On December 29, 2023, the first draft of the RBCRs was released to the RB Working Group for review and comment (which we reviewed in our alert titled "Connecticut DEEP Releases Proposed Release-Based Cleanup Regulations for Working Group Review"). The monthly RB Working Group meetings that followed resulted in a further-refined regulatory package, which DEEP formally noticed on July 26, 2024, marking the start of the formal public participation component of the regulation development process for the proposed RBCRs (as discussed in our earlier alert titled "Update: Proposed Connecticut Release Based Cleanup Regulations Available for Public Notice and Comment." On January 14, following the conclusion of the public participation component, DEEP issued its response to the comments received.

On January 30, DEEP submitted the proposed RBCRs to the Connecticut General Assembly's Legislative Regulatory Review Committee (LRRC). On March 25, the LRRC rejected DEEP's January 30 RBCRs submittal without prejudice, based on concerns set forth in the Legislative Commissioners' Office (LCO) RBCRs Memorandum, which lists nine substantive and numerous technical concerns. On March 31, DEEP submitted its response to the LCO's RBCRs Memorandum to the LRRC (Final RBCRs Submittal), addressing the LCO's substantive and technical concerns and including a provision that had been inadvertently omitted from DEEP's January RBCRs submittal. On April 22, consistent with the LCO's recommendation, the LRRC approved, with technical corrections, the RBCRs as proposed in the Final RBCRs Submittal.

DEEP quickly turned around a final version of the RBCRs and, on May 8, filed this version with the Office of the Secretary of State. The RBCRs were deemed adopted as of May 16, and the published RBCRs are available. The effective date of the RBCRs is March 1, 2026.

Release-Based Cleanup Program Overview

Responsible Persons

Persons who are creators or maintainers of an existing release are generally responsible for complying with reporting and cleanup obligations under the Release-Based Cleanup Program. A person is considered to be "maintaining" a release if such person (a) is an owner of property where a release occurred or (b) has rights to use property (e.g., a tenant) where a release has occurred, unless they learn of the release, notify the property owner, and ensure the release is reported to DEEP if required.

The RBCRs also require persons other than creators or maintainers who discover significant existing releases (SERs) to notify the creator and/or maintainer of such discovery and, in some instances, to report such discovery to DEEP.

Discovery of a Release

The RBCRs are triggered upon the discovery or occurrence of a release by a creator or maintainer. A creator or maintainer has "discovered" a release when they have knowledge of the release, which is evidenced by their awareness of:

- laboratory analytic indicating concentrations of a substance above the laboratory reporting limit in soil, groundwater, sediment, or soil vapor;
- observed presence of nonaqueous phase liquid; or
- multiple lines of evidence indicating the presence of a release (e.g., observed staining, odors).

Notably, a release is not deemed discovered if the only evidence of the release is environmental data generated before March 16, 2025, a carve-out DEEP has dubbed the "filing cabinet exemption." For example, DEEP has explained that an environmental investigation report prepared in the 1980s cannot by itself serve as the basis for a discovery under the RBCRs. However, such data may be considered one line of evidence that if combined with another line of evidence may support a finding of discovery.

The filing cabinet exemption creates potential dilemmas for both parties and the environmental professionals performing due diligence. For example, an LEP, in performing initial due diligence for a Phase I Environmental Site Assessment (ESA), notes that a previous Phase I ESA for the same property reported that during the site walk for that Phase I, some staining on the warehouse floor of the on-site building was observed. A Phase II ESA was conducted and identified concentrations of soil vapor for certain solvents below the applicable criteria at the time but is today above the applicable criteria. Back in the present, when the LEP performs the new Phase I ESA, she observes no such staining. This constitutes a single line of evidence that a spill might have occurred, and the LEP now needs to consider carefully whether any other lines of evidence (either in records or observable on-site) might take the aforementioned staining from the 'filing cabinet' to a Recognized Environmental Condition (or an "Area of Concern" under Connecticut's Site Characterization Guidance) requiring investigation and possibly remediation and reporting.

The RBCRs currently do not rule out the possibility that a Phase I ESA could satisfy the "multiple lines of evidence" threshold for discovery. Absent guidance from DEEP, the regulated community and their environmental professionals must draw their own conclusions as to where exactly that threshold lies. This absence of clear guidance could have unforeseen consequences, including transactional delays or complications due to disagreement over whether a release has been "discovered," overly conservative follow-up investigation decisions, or inadvertent noncompliance.

Release Reporting

The RBCRs establish the reporting requirements for the discovery of existing releases, whereas the existing Release Reporting Regulations (R.S.C.A. §§ 22a-450-1 et seq.) govern the reporting of emergent new releases (aka emergent reportable releases, or ERRs). Existing releases are those discovered via laboratory analysis, whereas ERRs are those discovered through direct observation of changing site conditions that suggest a new or active release (e.g., a visible spill).

Under the RBCRs, reporting time frames differ depending on the type and risk level of the release. Specifically, the RBCRs require reporting for:

- SERs, which must be reported within 72 hours (unless impacting a drinking water supply well, which requires a report within 24 hours);
- releases that are ≥ 2x the cleanup criteria are to be reported within 120 days of discovery; and
- releases that are ≤ 2x the cleanup criteria are to be reported within 365 days of discovery.

Importantly, releases falling into the 120-day and 365-day reporting categories do not need to be reported if they are remediated to the applicable cleanup standard before the respective reporting deadline. The RBCRs also impose immediate action requirements for both SERs and ERRs.

Characterization and Tiering

If a release is not fully remediated to the applicable cleanup standard within one year of discovery, it must be assigned to one of four "Tiers" based on the potential risk posed by the release. The release's risk level is determined by the degree of characterization completed and whether certain RBCR milestones have been achieved. Environmental professionals will characterize releases using a conceptual site model developed in accordance with a DEEP-issued release characterization guidance document, which has not yet been published.

The level of regulatory oversight for each release corresponds to the level of risk. In descending order of risk, the four Tiers are:

- Tier 1A, representing the highest level of risk, which requires direct oversight by DEEP
- Tier 1B, releases with known risk receptors (e.g., drinking water, direct contact with soil), which requires oversight by an LEP
- Tier 2, releases with no risks to receptors (as demonstrated by investigation or elimination of the risk), which requires LEP oversight; and
- Tier 3, which requires only monitoring, with no other active remediation obligations.
- Higher-risk tiers require more aggressive timeframes are applicable to higher-risk Tiers. The RBCRs permit releases to move through the Tiers as remediation progresses.

Cleanup Standards

The applicable cleanup standards under the RBCRs are the Remediation Standard Regulations (the RSRs), as modified by the RBCRs. To highlight a few noteworthy additions to the RSRs, the RBCRs:

- provide for managed multifamily and passive recreation scenarios in the soil cleanup provisions, which are less stringent than the residential soil cleanup provisions but more stringent than commercial/industrial requirements;
- introduce LEP-implemented risk-based alternatives, which allow LEPs to calculate alternative, less-stringent soil remediation standards (aka direct exposure criteria, or DEC) based on the total risk at a site where certain conditions are met; and
- establish permits by rule to allow the management of certain conditions in place if certain criteria are met, including historically impacted soils and soil located beneath impervious surfaces (e.g., buildings, roads, concrete).

Significantly, these changes to the RSRs will not be limited to sites governed by the new release-based framework. As of the RBCRs' effective date, these revisions to the RSRs apply to properties being investigated and remediated under existing programs such as the Transfer Act, Voluntary Remediation, and Brownfield Remediation Programs. For example, a site already subject to an Environmental Use Restriction (EUR) establishing an inaccessible soil restriction—previously determined an appropriate method to demonstrate compliance with cleanup standards—may, if it meets the eligibility criteria, qualify for the less burdensome permit-by-rule for inaccessible soil. In such cases, the permit-by-rule could be a basis to obtain a permanent release of the EUR.

Permits by rule contained in the RBCRs have the significant advantage of not requiring the assent of other interest holders in the property in question, whereas EURs require either subordinations or signatures from conflicting interest holders, which can be difficult, time-consuming, and costly to obtain.

For example, an environmental land use restriction (ELUR) would require a conflicting interest holder, like a mortgagee, to subordinate their interest to the ELUR.

The modifications to the RSRs present an opportunity to parties currently undertaking remediation, or those that have completed remediation using an EUR to reevaluate their remedial approach and determine whether any of the new cleanup mechanisms can help achieve their cleanup objectives more efficiently and in a minimally-restrictive manner.

Public Notice

The RBCRs contain their own public notice provisions for remediation (R.C.S.A. § 22a-134tt-7(d)), which apply in addition to the notice provisions in the preexisting RSRs (codified at RCSA § 22a-133k-1(d)). For example, under the RBCRs, the creator or maintainer of a release must now erect a sign whenever active remediation of an existing release is underway. Under the RSRs, the erection of a sign is an optional alternative to sending out notices of the remediation to abutting property owners following the investigation of a release and the preparation of a Remedial Action Plan. The RBCRs also require public notice be published in a local newspaper and sent to the chief municipal official and chief public health official for the town in which each release is tiered. Notably, the contents of the public notice under the RBCRs are the same as those under the RSRs, so it may be possible to publish and send just one notice complying with both requirements, depending on the timing of the remedial actions involved. The RBCRs also clarify that one notice can serve multiple releases on a single parcel of land.

Special Treatment Under the RBCRs

The RBCRs provide special treatment for a number of releases, such as the following:

- **Releases at Residential Property:** There are no reporting or cleanup requirements for existing releases at residential properties if certain criteria are satisfied, and the cleanup approaches for heating oil spills are less stringent for homeowners (see further discussion in the next section).
    - If an existing release is on a single-family residential property, is not known to impact any other parcel under different ownership, the person who obtains knowledge of the release is an occupant of the single-family home on the property, and the release does not meet the definition of an SER, the release is not deemed to have been discovered.
    - Single-family homeowners are exempted from tiering fees, and owners of residential properties with four or fewer dwelling units are subject to tiering fees at a 50 percent discount.
- **Releases That Have Migrated:** Upon the discovery of a release to soil or water that has migrated to an adjacent property, the adjacent property owner who discovers that release may avoid liability for remediating it by taking the following actions:
    - Demonstrating that
        - They did not create it, and are not in possession of the parcel from which it is emanating;
        - The contamination was not preexisting in that location; and
        - All exposure risks to drinking water supply wells, direct human exposure to polluted soil, and from volatilization of polluted soil or groundwater has been broken or mitigated to the extent "reasonably necessary to protect human health."
    - Reporting the release to DEEP and taking any immediate action required by the RBCRs for the portion of the release on their parcel of land.
    - Preparing and submitting a Release Remediation Closure Report that includes only the characterization information needed to make the requisite demonstration about ownership, background concentrations, and exposure outlined above.
    - Agreeing to allow reasonable access to the maintainer or creator of the release for their own RBCR compliance.

- **Releases of Road Salts into a Drinking Water Supply:** The discovery of road salt impacts to drinking water supply will generally only require such condition be reported.
- **PFAS Releases:** At present, not all PFAS releases are regulated under the RBCRs; where they are regulated, PFAS releases do not receive uniform treatment. DEEP has explained that this is to reflect the reality that persons who discover PFAS releases are often not the creator or maintainer of the source, that the source is often from the ubiquitous use of PFAS, and that there is limited scientific understanding of PFAS-related risks.
- **Incidental Releases:** Certain specific existing releases, including naturally-occurring trihalomethanes, residential or recreational wood ash, leachate from asphalt and pressure/creosote-treated utility poles and landscaping timbers, and explicitly-authorized substance applications or pesticides and fertilizers are exempt from the requirements of the RBCRs. Likewise, in general, soil containing contaminants other than PFAS and volatile organic compounds at concentrations less than or equal to 25 percent of the applicable cleanup criterion under the RSRs are also exempt from the requirements of the RBCRs.

Residential Home Heating Oil (HHO) Spills

The RBCRs give special treatment to spills of HHO that is used (or stored for future use) on residential property with fewer than four dwelling units, where the owner or occupant caused or created the spill (as opposed to, for example, the HHO distributor). HHO spills under those circumstances qualify for a cleanup standard whereby an LEP or permitted environmental professional (PEP, defined in the next section on Release Records) may certify that:

- all the impacted soil that does not undermine the structural integrity of the dwelling units has been removed;
- any remaining impacted soil is not impacting groundwater; and
- any remaining impacted soil is not impacting indoor air.

The certifying LEP or PEP must also prepare a closure report that identifies any remaining impacted soil, demonstrates that impacted soils were removed "to the maximum extent prudent," and indicates that groundwater either was not impacted by the release or that any impacted groundwater was remediated and has been verified by an LEP.

Release Records

For all releases remediated to the applicable cleanup standards—including those addressed before the reporting deadlines—an environmental professional must prepare and maintain a Release Remediation Closure Report. This report, along with other required release documents (e.g., immediate action reports, tier assignments), generally must be verified by an LEP, except in limited circumstances where a PEP, a new class of environmental professional, is authorized by the RBCRs to certify these documents or when the DEEP commissioner signs them. These documents—whether verified by an LEP or certified by a PEP—are collectively referred to in the RBCRs as "Release Records," which DEEP may audit to assess compliance with Chapter 445b of the Connecticut General Statutes and the RBCRs.

As noted above, PEPs will, in limited circumstances, be authorized to verify cleanups of defined subsets of releases. As of this writing, DEEP has not yet proposed licensing standards for the PEP program, and it now has only a few months to establish and implement those standards before the RBCRs take effect. DEEP did release a solicitation for submissions for new PEP training courses, but did not indicate in that document what qualifications a PEP candidate will be required to hold in order to sit for a licensing exam. On April 8, during the RB Working Group meeting where the now-adopted RBCRs were under discussion, members expressed ongoing concerns about the pace and substance of the PEP program's development, particularly the qualifications to become a PEP.

Audits

The three types of audits that DEEP may perform under the RBCRs are:

- screening audits;

- focused audits; and
- full audits (only applicable where a Release Remediation Closure Report has been prepared).

Screening audits must be completed within 180 days of the date a Release Record is submitted to DEEP. Focused and full audits generally must be initiated within the same 180-day time frame. Notwithstanding these deadlines, several "reopener" scenarios, if met, allow DEEP to initiate a focused or full audit at any time after the submittal of a Release Record. These reopener scenarios mirror those under the Transfer Act.

An important distinction from current practice: Under the RBCRs, DEEP will no longer automatically issue "no audit" letters. Instead, these will only be issued upon request and for a $500 fee.

Fees

The RBCRs require payment of a Tier assignment fee at the time a release is tiered. The amount of this fee depends on the assigned Tier—i.e., $500 for Tier 3, $1,000 for Tier 2, $1,500 for Tier 1B, and $3,000 for Tier 1A. In addition, under the RBCRs there are annual fees for tiered releases due each year following the year of Tier assignment until the release is verified. The annual fee is calculated as follows:

> Base annual fee (based on tier) + (10% of the base annual fee x the number of years since tier assignment)

Example: For a release assigned to Tier 2 that has been undergoing remediation for two years, the annual fee would be as follows:

> 1,000 [base annual fee for Tier 2] + (10% of $1,000 [base annual fee for Tier 2] x 2 [years since tier assignment]) = $1,200

The RBCRs also allow, under certain conditions, grouping of multiple releases at a single site for tiering purposes. When grouping is permitted, only one Tier assignment fee and one annual fee (for each year an annual fee is required) is required for the entire group. However, if releases at a site do not qualify for grouping, each release must be individually tiered, and separate Tier assignment and annual fees will apply for each release.

Payment of fees is also required for extension requests of applicable remediation deadlines.

Anticipated Opportunities and Potential Impacts

At a very high level, as of March 1, 2026, key implications resulting from the RBCRs include the following:

- **No New Transfer Act Filings:** No new sites will enter the Transfer Act Program as of the RBCRs' effective date.
- **Legacy Transfer Act Sites Remain in the Transfer Act Program for the Foreseeable Future:** Sites already in the Transfer Act Program will continue to be managed under that program—unless they are transitioned to the Released-Based Cleanup Program using an off-ramp, as further discussed below. A future article will cover how this process might play out in practice, but as noted below, the legislation creating these off-ramps only just passed, and time will tell whether the off-ramps are employed in practice.
- **Newly Discovered Releases Governed by RBCRs:** Newly discovered existing releases (except in certain limited circumstances) will be subject to the RBCRs.
- **Changes to Transactional Due Diligence Protocols:** The "discovery of a release" trigger is expected to influence how environmental due diligence is conducted throughout Connecticut. Buyers' and sellers' motivations to discover releases in the context of a transaction will be influenced by the possibility that a reportable release that must be remediated upon discovery, which will affect allocation of risk, costs, closing dates, financing options, and the availability of suitable insurance products.

Notwithstanding the significant effort invested in developing the RBCRs, concerns persist. For instance, various stakeholder groups have expressed concern that implementing the RBCRs could substantially increase the number of filings made to DEEP, thereby increasing DEEP's administrative burdens and, in turn, potentially creating a backlog that could cause delays. In addition, stakeholders have queried whether the Release-Based Cleanup Program will be more complex than the Transfer Act Program. These concerns stem primarily from a fundamental shift in approach—from comprehensive sitewide cleanups under the Transfer Act Program to the RBCRs' release-based model, which requires action each time a qualifying release occurs or is discovered.

Next Steps

The work of the RB Working Group is not over.

There are two companion pieces of legislation to the Release-Based Cleanup Program:

- SB 1404, signed into law on March 13, provides statutory updates to support the transition to the Release-Based Cleanup Program, including creating an exemption to compliance with Connecticut's environmental hazard notification law for releases that are subject to the RBCRs, amending C.G.S. section 22a-133y to provide for the transition from the existing Voluntary Remediation Program to a new voluntary parcel-wide remediation program that incorporates the requirements of the RBCRs, and clarifying that the Release-Based Cleanup Program will be effective and the Transfer Act Program will sunset upon the RBCRs' effective date (i.e., March 1, 2026), as opposed to the date the RBCRs were adopted.
- HB 7085, passed by the House and Senate as Public Act 25-54:
    - mandates that the RB Working Group continue to meet "at least quarterly until February 1, 2030";
    - clarifies that the "filing cabinet" exemption applies to data discovered before March 1, 2026;
    - provides an off-ramp for establishments with remaining Transfer Act obligations to transition to the Release Based Program; and
    - requires that DEEP, "not later than February 1, 2028 and February 1, 2030," submit reports to the General Assembly (joint sessions of the Environment and Commerce Committees) regarding the findings of the RB Working Group concerning the rollout and implementation of the RBCRs.

Additional Resources

DEEP has a dedicated webpage that provides links to video recordings of the RB Working Group meetings, including the PowerPoint presentations of such meetings, and other materials prepared by or at the request of the RB Working Group.

DEEP has published various technical support documents on its RBCRs webpage.

A link to the regulation-making record for the RBCRs can be found here.

As noted at the beginning of this article, Day Pitney will continue to track and report on the implementation of the RBCRs. If you have any questions regarding RBCRs, please contact any of the attorneys listed in the sidebar.

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