July 30, 2024

Update: Proposed Connecticut Release Based Cleanup Regulations Available for Public Notice and Comment

Note: This Day Pitney Alert is a follow-up to our original Alert on the development of these regulations, which can be found here. On July 26, 2024, the Connecticut Department of Energy & Environmental Protection (DEEP) published for public notice its proposed regulations for a new release-based cleanup program, to be codified as the Release-Based Cleanup Regulations (RBCRs). The RBCRs, if enacted, would significantly change the way site cleanup is handled in Connecticut, from one triggered when contaminated property or a business that has generated hazardous waste is transferred from one party to another to one triggered on a release-by-release (or discovery of release) basis. Once adopted as final regulations, the RBCRs will apply to regulated releases that are not then otherwise being investigated and remediated pursuant to the Connecticut Transfer Act (C.G.S. §§ 22a-134 et seq.) (the Transfer Act) or one of Connecticut's statutorily created brownfields programs. Enacted in 1985, there have been actual and perceived unintended or undesirable consequences associated with the implementation of the Transfer Act. Connecticut is one of only two states where, regardless of identified environmental conditions at the time, a sale or other transfer of interest in property or operations with certain types or volumes of hazardous waste triggers regulatory notification, followed by environmental investigation and, potentially, environmental remediation. Among Connecticut's goals in transitioning from transaction-based investigation and remediation obligations under the Transfer Act to a new release-based reporting and remediation program are the continued protection of human health and the environment; the alignment of Connecticut's statutory cleanup provisions with those of other states; and benefits to the Connecticut economy as a result of hoped-for increases in property transfers, property development and redevelopment, and potential expansion of existing businesses. Sites currently undergoing investigation and remediation under Transfer Act filings made prior to the RBCRs going into effect will be required to complete the Transfer Act process. Pursuant to DEEP's Notice of Intent accompanying the proposed regulations, the public comment period on the draft regulations will run from July 26, 2024, until October 24, 2024 (90 days). A public hearing on the proposed regulations will be held on October 10 at 9:30 AM in the Gina McCarthy Auditorium at 79 Elm St. in Hartford. During the public comment period, DEEP intends to hold, at a minimum, the following workshops, which are open to the public and will occur both at DEEP's 79 Elm St., Hartford, headquarters and concurrently on Zoom:

1. August 6, 2024, at 10:30 AM: "Introduction to the RBCRs";
2. August 15, 2024, at 1 PM: "Discovery and Reporting";
3. September 9, 2024, at 9:30 AM: "Immediate Actions and Emergent Reportable Releases"; and
4. September 16, 2024, at 9:30 AM: "Cleanup Standards, Closure, Audits."

DEEP will also co-convene, with the Department of Economic and Community Development, two regular meetings of the Release Based Working Group (a group created by statute and composed of various stakeholders to provide advice and feedback on the regulations to be adopted by DEEP) during the public comment period. These meetings will be held on August 13 and September 10, 2024, both at 1 PM. The Notice of Intent also indicated that DEEP will work with stakeholders to conduct additional question-and-answer sessions, and that any such sessions will be posted on DEEP's website when scheduled. Following the close of the public comment period, DEEP's publicly stated goals are to issue a hearing officer's report by the end of 2024 and to submit the proposed RBCRs to the General Assembly's Legislative Regulatory Review Committee by February 2025. A link to the RBCRs as published for public notice on the Connecticut Secretary of State's website on July 26, 2024, can be found here. A link to DEEP's webpage on the RBCR's formal adoption process can be

found here. A link to the Working Group website, which contains PowerPoint slides and recordings of the working group meetings, can be found here. Connecticut Public Act 20-9, the legislation which provides the broad framework for the planned transition from remediation under the Transfer Act program to a release-based reporting and remediation program. See Sections 15-23. If you or your organization have questions about the RBCRs, the Transfer Act or other Connecticut-specific environmental questions, please reach out to one of the attorneys in the sidebar.

Authors



Harold M. Blinderman
Partner

Hartford, CT | (860) 275-0357

hmblinderman@daypitney.com



Elizabeth C. Barton
Of Counsel

Hartford, CT | (860) 275-0371

ecbarton@daypitney.com