January 4, 2024

Connecticut DEEP Releases Proposed Release-Based Cleanup Regulations for Working Group Review

On Friday, December 29, 2023, the Connecticut Department of Energy & Environmental Protection (DEEP) released its long-anticipated draft of proposed regulations for a new release-based cleanup program, to be codified as the Release-Based Cleanup Regulations (RBCRs). 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, the Transfer Act had at least two broad goals: provide for the disclosure of environmental conditions prior to the transfer of an Establishment and create a framework and time frame for the post-transfer investigation and cleanup of environmental conditions associated with activities at (or of) the Establishment. Over the years, there have been actual and perceived unintended or undesirable consequences associated with the implementation of the Transfer Act. These consequences have included adverse impacts on the transfer and—even when there is a transfer—development or redevelopment of environmentally challenged properties. Characteristically, development or redevelopment is integral to the return of these properties to productive reuse. 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 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. DEEP's draft of its proposed regulations and supporting documents can be found here, and are listed below:

- The draft text of DEEP's proposed RBCRs;
- A number of supplemental changes proposed by DEEP to the Release Reporting Regulations, Remediation Standards Regulations, and administrative civil penalty schedule for adoption pursuant to Conn. Gen. Stat. § 22a-6b;
- Technical descriptions of the calculators DEEP proposes to make available, including a calculator for risk-based direct exposure criteria needed to implement language in § 22a-134tt-9 of the RBCRs;
- A draft of a technical support document with background on how equations and criteria for DEEP's proposed new exposure scenarios were derived (for managed multifamily residential and passive recreation, found at §§ 22a-134tt-App11 and 22a-134tt-App12 of the RBCRs).

The provisions of the current Remediation Standards Regulations, which govern the cleanup standards for polluted soil and groundwater, have been incorporated into DEEP's draft of the proposed RBCRs. Pursuant to Conn. Gen. Stat. § 22a-134tt(b)(12), DEEP is required to provide this draft of the proposed RBCRs to the statutorily created and multidisciplinary Release-Based Working Group not less than 60 days prior to DEEP's posting of a public notice of intent to adopt the RBCRs (the Notice of Intent), to accept written feedback on the draft of the RBCRs for 30 days after providing this draft, to hold at least one monthly working group meeting not less than 15 days before DEEP's posting of the Notice of Intent, and to provide the working group with a revised draft prior to DEEP's posting of the Notice of Intent. DEEP's stated plan is to:

- Accept written comments until February 6;
- Discuss the comments at two working group meetings, held on February 13 and March 12; and
- Post the Notice of Intent "no earlier than April 1."

Connecticut Public Act 20-9, the legislation which governs the sun-setting of the Transfer Act and requires the promulgation of the RBCRs, can be found here. Conn. Gen. Stat. § 22a-134tt, which addresses actions required of DEEP prior to DEEP's posting of the Notice of Intent, 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. 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.

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