September 21, 2021

2021 Update on New and Pending Environmental Regulation and Legislation in Connecticut

2021 has been a busy year in Connecticut for environmental initiatives. Below is an update on some key 2021 Connecticut regulatory and legislative developments of general interest to the regulated community, including upcoming deadlines and meetings.

Release-Based Cleanup Program

Since December 8, 2020, per Public Act 20-9, the Connecticut Department of Energy and Environmental Protection (DEEP), the Department of Economic and Community Development (DECD), and the Release-Based Working Group (a legislatively created group composed of licensed environmental professionals, real estate professionals, environmental attorneys, municipal representatives, environmental advocacy group representatives and others) have met regularly and frequently as part of the effort to advance the development of regulations implementing a new release-based cleanup program in Connecticut. This program will replace the Connecticut Transfer Act. Our prior alert reviews the framework for the release-based cleanup program provided for in Public Act 20-9.

As part of an initial phase, with the assistance of DEEP and DECD, the Release-Based Working Group created five topical subcommittees, each of which met to dialogue on substantive aspects of the implementing regulations. There is also a Transition Advisory Group, which is looking into overarching issues related to the transitioning from the current Transfer Act program to the new release-based program, including the identification of potential conflicts and inconsistencies between the new release-based program and existing cleanup programs along with potentially necessary statutory changes.

In June, the first-phase topical subcommittees completed their work and shared concept papers with the Working Group. The Working Group is presently reviewing these concept papers. On August 16, DEEP announced two ad hoc teams that are taking a closer look at (1) historical fill and anthropogenic background and (2) releases on residential properties, two of the recurring issues in the subcommittees' concept papers. In addition, a Drafting Team is working on a draft summary by the Working Group reflecting feedback on the referenced concept papers and public comments on those papers. The Working Group's final summary will be shared with DEEP and DECD. The concept papers, the public comments received and DEEP's initial response to the same have been posted on DEEP's Release-Based Cleanup Program Stakeholder Engagement webpage.

The ad hoc teams' reports are due by September 21. The Release-Based Working Group will discuss the Drafting Team's work product on October 26.

Environmental Use Restrictions

The DEEP amendments to the Environmental Use Restriction (EUR) regulations effective February 16, 2021, provide that an owner of property encumbered by an EUR is required to comply with new post-recording obligations. As of April 17, the property owner must ensure a complete EUR Factsheet is either posted where it will be seen by the general public or maintained by the person responsible for maintenance or operation of the property that is subject to the EUR. The forms for the annual inspection and the EUR Factsheet can be found at DEEP's EUR webpage. Other DEEP forms include those

addressing allowable disturbance, release or termination from EUR, the temporary release for recurring activities template and the EUR fee form.

As reviewed in our prior alert, as of February 16, 2021, DEEP no longer accepts Environmental Land Use Restriction (ELUR) application submissions using DEEP's old forms. ELUR applications submitted on or before February 16 for which DEEP had not issued a Notice of Administrative Completeness are subject to the new EUR regulations and must be updated using the new EUR application forms. As of September 8, these new EUR forms are available on DEEP's EUR webpage. DEEP has advised that there will be a presentation on the new EUR forms at its October 5 Remediation Roundtable meeting.

Now that the new EUR application forms have been finalized, new EUR application submissions can be made. Also, applicants with presently pending EUR applications using the old forms may assess their properties' eligibility for benefits under the new EUR regulations—e.g., Notice of Activity Use Limitations.

Remediation Standard Regulations

During the public comment period for the 2020 amendments to the Remediation Standard Regulations (RSRs, also referred to as Wave 2), commenters raised concerns about DEEP's proposed revisions to the applicability section of the RSRs, noting that as proposed, this section expands the application of the RSRs, potentially impacting all remediation, whether or not it were being implemented in the context of a statutory program or an enforcement action. DEEP responded in its RSRs—Response to Key Comments that it "interprets the RSRs to apply to all remediation of polluted soil and groundwater in Connecticut." On September 7, about seven months after the effective date of the Wave 2 amendments, DEEP posted a document on its website addressing the affirmative responsibility to clean up pollution. This document sets forth DEEP's position regarding "when one's liability to the state for pollution is fully discharged." DEEP concludes that under the Water Pollution Control Act, in Chapter 446k of the General Statutes, "any obligation and potential liability to the state is completely discharged" for those who are aware of pollution "only once standards in the RSRs are satisfied." This document can be found here.

Spill Reporting Regulations

In a prior alert, we reviewed DEEP's proposed Release Reporting Regulations, sections 22a-450-1 through 22a-450-6 of the Regulations of Connecticut State Agencies (the Spill Reporting Regulations). The comment period for the Spill Reporting Regulations ended on May 10, 2021. These revisions propose thresholds and time frames for reporting certain contemporaneous releases and specify how and what to report. The DEEP hearing officer received comments on various aspects of the proposed Spill Reporting Regulations, including those raising concerns about the proposed one-hour reporting requirement, the reporting thresholds and the interplay among multiple reporting provisions for oil and petroleum releases. Comments received within the comment period can be found here. The next step is for the DEEP hearing officer to issue his report with his response to these comments.

PFAS and Ban on Firefighting Foam

On July 20, Governor Ned Lamont signed Public Act 21-191 into law. Public Act 21-191 bans the use of per- and polyfluoroalkyl substances (PFAS) in Class B firefighting foams and phases out PFAS-containing food packaging. By October 1, firefighting foams with intentionally added PFAS will no longer be permitted for vapor suppression or firefighting training or testing activities except by anyone required by federal law to use these firefighting foams, airport-related entities that have mitigation measures to prevent the release of such foams into the environment and certain facility operators that obtain an extension of time for compliance. Additionally, Public Act 21-191 mandates that DEEP develop a takeback program by October 1, 2021, for municipality-owned Class B firefighting foams containing PFAS. Beginning in January 2024, manufacturers and distributers are prohibited from offering for sale or promotional purposes any food packaging to which PFAS compounds have been intentionally introduced. Further, Public Act 21-191 prohibits the use of substitute chemicals in food packaging to replace PFAS, or any other chemical regulated by the state packaging and packaging components law, in an amount or way that creates a hazard equal to or greater than that of the regulated chemical being replaced.

Underground Storage Tank Regulations

On May 5, DEEP issued a Notice of Intent to adopt minor revisions to the Underground Storage Tank (UST) Regulations, sections 22a-449(d)-101 through 22a-449(d)-113 of the Regulations of Connecticut State Agencies (the UST Regulation Revisions). The proposed UST Regulation Revisions are in response to a final rule published by the United States Environmental Protection Agency, which requires that Connecticut make changes to its UST Regulations to ensure that they are no less stringent than the federal program. The comment period for these minor revisions closed on June 7. On July 1, DEEP published the Hearing Officer's Report, which addressed the public comments received. On August 3, following receipt of the Attorney General's Certification of Legal Sufficiency, DEEP submitted the UST Regulation Revisions to the Connecticut General Assembly's Legislative Regulation Review Committee (LRRC). The UST Regulation Revisions will be on the LRRC's September 28 meeting agenda, and the LRRC will have until October 7 to act on the proposed UST Regulation Revisions. A copy of DEEP's submission letter to the LRRC can be found here.

General Permit for the Discharge of Stormwater Associated with Industrial Activity

On June 22, DEEP noticed the reissuance without modification of the current General Permit for the Discharge of Stormwater Associated with Industrial Activity (industrial general permit) that was otherwise set to expire on September 30. Effective October 1, this reissuance without modification will continue the current industrial general permit authorization until September 30, 2024, and current registrants will not be required to reregister. The industrial general permit authorizes discharges from certain industrial activities based on the facilities Standard Industrial Classification (SIC) Code. Under the current industrial general permit, covered industrial facilities must develop and implement a stormwater pollution prevention plan. DEEP has indicated that it intends to issue a new industrial general permit with modifications prior to the expiration of the reissued industrial general permit in 2024.

If you have any questions regarding the above, please feel free to contact any of the attorneys listed in the sidebar.

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