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Connecticut Department of Energy and Environmental Protection issues draft proposal for transformed cleanup program

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Last year I wrote about the proposed Transformation of Connecticut's Site Cleanup Programs that are currently implemented by the Connecticut Department of Energy and Environmental Protection (CTDEEP). In February, CTDEEP issued the long-awaited draft proposal for the transformed program. The draft proposal has been issued in accordance with the requirements of Public Act 12-196, An Act Concerning Economic Development through Streamlined and Improved Brownfield Remediation Programs. If implemented, the proposal will transform the manner in which responsible parties must address new spills and impacts to soil and ground water from historical releases.

According to the draft proposal, the first step in the transformation will be a 2013 regulatory package to implement 1) changes to the existing clean-up standards, 2) new soil re-use regulations, and 3) new release reporting requirements. The goal of refining the existing cleanup standards, currently known as the Remediation Standard Regulations, is to facilitate the path to site closure with more self-implementing options available to Licensed Environmental Professionals (LEPs) and less site-specific approvals from CTDEEP. Changes to the numerical criteria upon which closure/compliance is based are not proposed, much to the disappointment of many stakeholders who feel that the numbers themselves are too stringent and are a deterrent to both cleanup and economic development. The draft proposal lists several potential new self-implementing options specific to direct exposure to polluted soil, mobility of contaminants associated with polluted soil, and pollution affecting sediment, surface water and ground water.

The goal of revised Soil Re-use Regulations is to eliminate the costly disposal of excess soil from construction projects and/or the unnecessary excavation and disposal of soil with very low levels of regulated compounds that does not pose a risk to human health or the environment. While the exact details of the proposed Re-use Regulations have not been released, the concept is well received by most stakeholders; most of whom recognize that mildly polluted soil due to the history of development in Connecticut can greatly complicate and increase the cost of cleanup and development. The goal is to create a consistent grading/classification system to allow for self-implementing, beneficial re-use of these soils.

The goal of new Release Reporting requirements appears to be to capture more sites in the program and clean-up more pollution. The Release Reporting regulations will cover Threatened Releases, Contemporaneous Releases, and Historical Releases. Threatened Releases would be those that, if not immediately addressed, would become Contemporaneous Releases with potential unacceptable risk to public health or the environment. Contemporaneous Releases would include spills or new releases of more than 20 pounds or 3 gallons of a reportable material, which includes hazardous substances and hazardous wastes. Historical Releases include remnants of historic spills

discovered primarily in the form of polluted soil or ground water during construction projects, real estate due diligence, or as adverse impacts to sensitive receptors such as drinking water supplies. While these reporting requirements have the potential to capture and regulate many more sites than the current regulatory framework, CTDEEP is proposing a system of Early Exits that they maintain will allow most sites to get out of the program quickly and cost-effectively. They are proposing Tiered Exits for sites that do not qualify for an Early Exit, with the tier classification based on the proposed site use and potential use restrictions. Sites with known Historical Environmental Conditions below the reporting requirements will still be required to achieve compliance with the cleanup standards, even though reporting to CTDEEP is not required.

While the draft proposal contains many elements that appear favorable for creating a more efficient and streamlined cleanup program, the devil will be in the details of future statutes and regulations. There is already a strong reaction to the proposal, with many stakeholders convinced that CTDEEP will not be able to handle the thousands of new sites entering the program through reporting requirements and that in effect every site will become a mini Transfer Act site. That would certainly not help spur economic development in Connecticut.

The draft proposal can be found on the CTDEEP website (www.ct.gov/DEEP).

The regulated community has until March 18, to submit written comments to DEEP.cleanup.transform@ct.gov. BL Companies strongly recommends that landowners, developers, and the business community review the draft proposal and submit comments.

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