



nerej

2014 Connecticut remediation update - DEEP transformation status and assessment

July 17, 2014 - Connecticut

In 2011, under the direction of former commissioner Esty, the Connecticut Department of Energy and Environmental Protection (DEEP) embarked on an ambitious and focused process to transform Connecticut's Cleanup Programs. The transformation was initiated by then commissioner Esty and governor Malloy in an effort to speed-up remediation of contaminated properties and to facilitate and promote economic development of Brownfields. Accomplishments to date toward this goal have included an internal DEEP LEAN process review, release of a white paper assessing the existing Cleanup Programs, the convening of stakeholder workgroups in 2011 and 2012, the passage of various Brownfields legislation (Public Act (PA) 11-141 and PA 12-196) formalizing the Transformation process and establishing milestones for reform, the release of the December 2011 report "Comprehensive Evaluation of the Connecticut Cleanup Program and the Proposal for Transformation," the release of the February 2013 "Draft Proposal for Transformed Cleanup Program," the passage of more substantial regulations through Public Act 13-308, and the adoption of revisions to the Remediation Standard Regulations (RSRs) in June 2013.

These actions have resulted in the identification of the problem(s) with the existing statutes and regulations, including very specific and focused technical and regulatory issues; the identification of numerous proposed solutions from broad regulatory reform to specific technical revisions, the passage new statutes around Brownfield redevelopment, and the implementation of the Wave I revisions to the RSRs. As expected by most stakeholders, the process is taking longer than expected. The original goal of phasing out existing statutes such as the Connecticut Transfer Act, eliminating confusion and inconsistencies between various DEEP programs (Spills, Transfer Act, Voluntary Cleanup Programs, UST program to name a few), and enacting a single, comprehensive cleanup statute/program with uniform entry points and multiple tiered exits based on consistent criteria and/or risk-based decisions by the end of the 2013 legislative session has not been achieved and is still a long way off.

Of the changes enacted, the Wave I revisions to the RSRs have had the greatest impact on moving contaminated properties through the cleanup process to achieve regulatory compliance and closure.

As described on the DEEP website, the Wave I revisions include, but are not limited to:

- * Clarifications regarding when and how the RSRs apply
- * Replacement of the analytical test method and associated numerical criteria for petroleum hydrocarbons
- * Expansion of the definition of "inaccessible soil" to render inaccessible certain contaminants found in polluted fill under pavement
- * Revisions to applicability and compliance with the Pollutant Mobility Criteria (PMC), including:
 - Deletion of the PMC requirement that sites with bedrock above groundwater table in GB areas

meet the more stringent GA PMC

- Clarification of the wood/coal ash exemption allowing VOCs in polluted fill containing coal ash, wood ash, coal fragments, and/or asphalt paving fragments, if the VOCs are at concentrations below the PMC

- Provision of a new PMC exception where the groundwater meets applicable criteria under certain conditions for pollutants other than VOCs, based upon representative ground water data

- Deletion of the prohibition that the person who placed the fill cannot be the applicant for a widespread polluted fill variance

- * Revisions to the use 95% UCL Statistical Averaging including:

- Self-implementing use of all appropriate data even if over two times the applicable criteria

- Deletion of the prohibition on using a statistical compliance demonstration when remediation is completed through excavation

- * Increases the flexibility of engineered controls

- * Restructures the compliance and post-compliance ground water monitoring sections:

- to allow LEP self-implementation of these sections,

- to allow compliance monitoring only (no post-compliance monitoring needed if stable and well-understood plume),

- no groundwater monitoring needed if soil remedy was solely to meet DEC, and

- four quarters of consistent compliance data can be contained over a two year period

- * Provides exceptions for incidental sources of polluted soil or groundwater resulting from the normal use of motor vehicles, the use of asphalt pavement, and leaking water supply distribution systems.

Almost all of these revisions are having a positive, measureable impact on the ability to close sites. In particular, the ability to use asphalt to render fill contaminated with certain contaminants as inaccessible, the expanded use of statistics to demonstrate compliance with specific criteria, and the exemption from PMC compliance for impacted soil that has had no demonstrated impact on ground water quality are reducing or eliminating unnecessary soil remediation. In addition, , the revised ground water monitoring requirements are shortening time to closure at sites following soil or ground water remediation.

The impact of provisions of PA 13-308 is less immediate. There is a sliding schedule for provisions under the Act. Some sections were effective upon passage. The new Significant Environmental Hazard (SEH) criteria, which are the most controversial element of the Act, do not go into effect until July 1, 2015. The mandated evaluation of risk assessment and risk-based decision making for cleanup of contaminated sites is ongoing, with the report from the independent consultant hired by DEEP due in the fall.

The 2014 legislative session was relatively quiet regarding the Transformation Process, a result of the significant work that remains to develop details for release reporting requirements and early exit concepts proposed in the 2013 Transformation report. DEEP is currently working on the Wave 2 revisions to the RSRs, which will likely include requirements for investigating and remediating sediment, requirements for tiered cleanups based on risk, and additional criteria regarding ground water remediation. PA 14-88 - An Act Concerning Brownfields Remediation and Development - was enacted and mostly provided minor tweaks to the Voluntary Cleanup Programs and the Transfer Act. One significant provision creates the ability to provide Interim Verifications for sites where investigation and soil remediation is complete but ground water remediation is ongoing.

In summary, the Transformation process is moving and there is much work to be done. Recently

enacted RSR revisions are moving sites to closure sooner, but concern remains over the revised SEH criteria, the proposed Wave 2 revisions, and future release reporting requirements. The piecemeal manner in which changes are occurring is a long way from the unified statute sought by many and this ongoing uncertainty will continue to keep developers away from Brownfields in Connecticut. The environmental, real estate and industrial communities have to live with the Transfer Act and the uneven playing field resulting from the multitude of environmental statutes, regulations, and programs in Connecticut at least until 2015 and likely longer.

For additional information, please contact Sam Haydock at shaydock@blcompanies.com.

Samuel Haydock, PG, LEP, is director, northeast environmental operations for BL Companies, Meriden, Conn.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540