



January 30, 2025

via eRegulations System

Senator Sujata Gadkar-Wilcox
Representative Christie Carpino
Legislative Regulation Review Committee
State Capitol Building, Room 011
Hartford, CT 06106

***Re: Legislative Regulation Review Committee Review of the Release-Based Cleanup Regulations,
Tracking No.: 2024-025***

Dear Senator Gadkar-Wilcox and Representative Carpino,

I am pleased to submit, in accordance with General Statutes § 4-170, the proposed Release-Based Cleanup Regulations (“RBCRs”) for consideration and approval.

The RBCRs are proposed to fulfill the statutory requirement created by Public Act 20-9 of the September Special Session (codified in Chapter 445b of the General Statutes). When adopted, the Release-Based Cleanup Regulations (RBCRs), sections 22a-134tt-1 to 22a-134tt-13, inclusive, will sunset the outdated Connecticut Property Transfer Act (“Transfer Act”) – the primary program for the cleanup of pollution in Connecticut – and transition the state to a release based cleanup approach. This transition will align Connecticut with 48 other states that use a release based approach and will remove long standing barriers to the redevelopment of property subject to the Transfer Act. While there is obvious economic development value to the removal of such barriers, this new regulatory system will also drive cleanup of pollution, which is vital to protecting public health and the environment.

The Transfer Act requires that certain parcels, identified as “establishments” based on their historical land use, be fully investigated for releases of pollution at the time of the sale of the parcel or the business operating thereon. It sets an onerous standard for that investigation that often disincentivizes both redevelopment and cleanup. A release based approach does not require investigation to “prove the negative” by demonstrating the complete absence of pollution on certain parcels. Instead, this proposed approach acknowledges that, today, market forces drive investigation; purchasers, developers, and lenders routinely investigate for pollution. Neither Public Act 20-9 nor the proposed regulations require parcels to be investigated to determine if a release of pollution has occurred. Instead, both set out a process for addressing known releases of pollution after that pollution is discovered. As demonstrated in 48 other states, this new approach will facilitate and expedite remediation of pollution and encourage redevelopment of property without compromising the protection of human health and the environment.

Expediting remediation and encouraging redevelopment of property comes with significant fiscal and economic benefits. In a March 2019 report, the Connecticut Economic Resource Center (“CREC,” now AdvanceCT) estimated that, between 2014 and 2018, the Transfer Act cost the state nearly 8,000 jobs

and more than \$170,000,000 in state and local revenues “not collected” because of “foregone operations.” The Department consulted with economists from the Department of Economic and Community Development (“DECD”) to update the CREC analysis using current data. This analysis, summarized in the fiscal note prepared for the RBCRs, estimates that for the five-year period beginning in 2019, sites stuck in the Transfer Act could have created more than 4,000 manufacturing jobs and more than \$100,000,000 in additional state revenues. In addition to these estimated benefits, the RBCRs also offer significant permit streamlining improvements. For example, the RBCRs will no longer require excavation of historically impacted material (commonly referred to as Urban Fill) on commercial or industrial sites. The new regulations also create a new set of cleanup standards and cleanup approaches for certain multifamily housing developments.

The proposed RBCRs are the result of an unprecedented stakeholder engagement process that began soon after Public Act 20-9 was signed by Governor Lamont, and has now been underway for more than four years. The Department and DECD have met monthly since December 2020 with a statutorily created working group. This working group consists of legislative leaders, environmental transaction attorneys, Licensed Environmental Professionals, representatives of business and environmental advocacy groups, and other interested stakeholders. This working group created ten topical subcommittees and other smaller groups to consider important issues. These subgroups met dozens of times, supported by Department staff resources. The RBCRs are based on a regulatory framework outlined in the concept papers developed by the working group and its subcommittees.

Two full drafts of the proposed regulations have been provided for public comment. An informal 62-day comment period was provided on the first draft of the regulations, beginning on December 28, 2023; a formal 90-day comment period was provided following the Department’s Notice of Intent issued July 26, 2024. The working group also weighed in on and shaped various sections of the regulations as they were developed. Comments received during these more than 150 days of stakeholder review have been seriously considered, and significant changes have been proposed in response. Of particular note, in a January 14, 2024 comment response document accompanying the draft of the regulations now proposed, the Department explained its decision to make significant changes to the proposed regulations including limiting any obligation placed on the owners of single-family homes and creating new “lower bounds” – concentrations or quantities below which releases are not subject to the RBCRs.

The RBCRs also incorporate long standing standards for the remediation of pollution known as the RSRs, currently codified at §§ 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies. The Department moved the entirety of that RSRs subtitle of the Regulations of Connecticut State Agencies into the RBCRs, largely without modification, to fully incorporate those requirements into the new regulations and ensure consistency and clarity in the state’s remediation programs. Language taken from the RSRs is found in §§ 22a-134tt-1, 22a-134tt-7, 22a-134tt-9, 22a-134tt-10, and 22a-134tt-App-2 to 22a-134tt-App10 of the proposed RBCRs. Having considered and incorporated those standards, the Department has opted to add new, risk- based approaches to remediation, but not remove any existing remediation approach in the RSRs. New, risk-based cleanup standard provisions include two “exposure scenarios” for determining criteria applicable to certain land uses, as well as the implementation of two “permit-by-rule” approaches to managing certain releases in place, including a permit-by rule approach to managing certain historical fill. Based on an analysis of the 20 recent remediation projects awarded some \$62,434,697 in loan and grant assistance since 2017, it is estimated that \$10,728,991 – or an average of \$536,450 per site – was spent to remove, dispose and replace polluted fill and prepare and record restrictions on the local land records to prevent the

disturbance of the imported soil. It is estimated that transitioning to a permit-by rule approach to managing polluted fill in place will save approximately 17% across future DECD-funded remediation projects.

The proposed regulations also include conforming changes to Regs., Conn. State Agencies §§ 22a-6b-8; 22a-133k-1 to 22a-133k-3, inclusive (“Remediation Standard Regulations” or “RSRs”); 22a-133q-1 to 22a-133q-9, inclusive (“EUR Regulations”); and 22a-450-1 to 22a-450-6, inclusive (“Release Reporting Regulations” or “RRRs”). These proposed changes are made pursuant to the directive in Public Act 20-9 “to adopt, amend or repeal regulations, in accordance with the provisions of chapter 54 of the general statutes, as are necessary and proper to carry out the” transition to a release-based cleanup program

The Department looks forward to working with the Legislative Regulation Review Committee to adopt these important regulations that will 1) streamline and encourage the cleanup of pollution; 2) remove barriers to the redevelopment of polluted property and thereby bring properties back into beneficial reuse; 3) increase economic activity and redevelopment; 4) create new jobs; and 5) generate new revenues for the state and its municipalities. In submitting these regulations for your consideration, I also want to acknowledge and express my gratitude to the members of the working group, and other public commenters, who committed an extraordinary amount of time and expertise towards this transformative effort. The hard work and collaboration between DEEP staff and working group members on the development of these regulations has been extraordinary and impactful, just as these regulations will be for the State of Connecticut if they meet your approval.

If you have any general questions regarding this submittal, please contact Deputy Chief of Staff Harrison Nantz at harrison.nantz@ct.gov. If you have any substantive or drafting questions, please contact Deputy Commissioner Emma Cimino (emma.cimino@ct.gov); Graham Stevens, Chief of the Bureau of Water Protection and Land Reuse (graham.stevens@ct.gov); or Brendan Schain, Legal Office Director for the Environmental Quality Branch (brendan.schain@ct.gov)

Sincerely,

A handwritten signature in blue ink that reads "Kath S Dykes".

Katherine S. Dykes, Commissioner