
OLR Bill Analysis

SB 1404

AN ACT CONCERNING CONFORMING ADJUSTMENTS TO SUPPORT THE TRANSITION TO A RELEASE-BASED CLEANUP PROGRAM.

SUMMARY

This bill makes changes related to the state's transition from its transfer-based approach to property remediation (the Transfer Act) to a release-based approach.

Under current law, the release-based approach becomes effective when the Department of Energy and Environmental Protection (DEEP) commissioner adopts regulations for the program (release-based clean-up regulations or RBCRs; see BACKGROUND). The bill makes the release-based approach effective when the RBCRs take effect, rather than on their adoption date. It also exempts releases that are subject to the release-based cleanup law from having to meet the environmental hazards notification law's requirements once the RBCRs take effect.

Additionally, on the date the RBCRs take effect, the bill replaces the state's voluntary remediation program with a new "voluntary parcel-wide remediation program." The current voluntary remediation program is a way for property owners to expedite the remediation of eligible contaminated properties. The bill's program is similar, but incorporates specified requirements of the released-based cleanup laws and RBCRs. Among other things, it allows eligible properties to qualify for (1) additional time to complete certain investigation activities, (2) reduced fees under the RBCRs, and (3) increased liability protections.

EFFECTIVE DATE: Upon passage, except the environmental hazard notification provisions take effect October 1, 2025.

ENVIRONMENTAL HAZARD NOTIFICATION LAW

By law, Connecticut's environmental hazard notification law requires

property owners to notify DEEP when they become aware of significant environmental hazards that pose a potential health risk to exposed individuals or the environment. It also requires technical environmental professionals to notify their clients and the property owners if they find contamination while investigating or remediating pollution. The law sets specific thresholds that trigger its notification requirements based on the nature and severity of the potential risk.

The bill exempts from this law's notification requirements releases that are subject to the release-based cleanup law, as of the date the RBCRs take effect. Under the bill, releases at properties that are exempt from the release-based cleanup law continue to be subject to the environmental hazard notification law. These include certain releases at properties that are part of an existing DEEP or Department of Economic and Community Development brownfields program (specifically, releases (1) discovered before the applicable brownfields program's remediation requirements are fully met or (2) that occurred before, but are discovered after, satisfying the brownfields program's remediation requirements).

The requirements also continue to apply to municipalities and Connecticut brownfield land banks that must report significant environmental hazards when performing an environmental site assessment or investigation under a specified liability protection program (the municipal access liability relief law).

VOLUNTARY PARCEL-WIDE CLEANUP PROGRAM

LEPs

Similar to the current voluntary remediation program, the bill authorizes state-licensed environmental professionals (LEPs) to conduct certain activities on property that was, or may have been, subject to a "release" under the release-based clean-up laws to enter the site into the voluntary parcel-wide cleanup program. (A release is generally an unauthorized spill or discharge of oil, petroleum, chemicals, or hazardous waste into water or on land.) Specifically, the bill allows LEPs, according to prevailing standards and guidelines, to conduct a parcel-wide investigation to determine the:

1. presence or absence of a petroleum product, chemical, or hazardous waste spill at the parcel, including sampling soil and groundwater (“Phase II environmental site assessment”), and
2. extent of a spill on the parcel, including making a reasonable estimate of the remediation costs (“Phase III investigation”).

As under the current voluntary remediation program, LEPs employed by municipalities may, without liability, enter property to perform an environmental site assessment or investigation if the property owner is unknown or the property is subject to a tax lien. The bill additionally allows them to do so as the existing law on State Superfund Program remediation allows (however, it is unclear what authority LEPs have under the statute referenced).

The bill does not affect the ability of anyone to provide services similar to LEP services on property that is not being remediated under the voluntary parcel-wide remediation program.

Eligible Properties

Under the bill, starting on the date the RBCRs take effect, a parcel is eligible for this program if:

1. it is not subject to the Transfer Act;
2. it is not subject to any DEEP order, consent order, or stipulated judgment regarding the parcel’s contamination; and
3. a parcel-wide Phase II environmental site assessment started either before the release’s discovery or within 60 days after its discovery, and a “release remediation closure report” (required under the proposed RBCRs) was not previously prepared for the parcel.

Additionally, the bill requires that any immediate actions the RBCRs require be completed within the manner and timeframe specified for the parcel to be eligible.

Timeline and Procedure for Entering the Program

Under the bill, the releases identified by these parcel-wide Phase II assessments, either through “multiple lines of evidence” or laboratory analysis of land and water samples, are considered discovered for purposes of the release-based cleanup law and the RBCRs. (Under the proposed RBCRs, “multiple lines of evidence” means two or more types of observable facts which tend to show the truth of a matter asserted.)

The LEP must notify the commissioner about the intent to enter the voluntary parcel-wide cleanup program, on a DEEP-prescribed form, by the earliest deadline the RBCRs set for reporting these releases. The form must at least (1) include the date the Phase II assessment started, (2) describe the investigation involved, and (3) identify each release discovered.

Exceptions to the Release-Based Cleanup Law and RBCRs

Eligible releases that enter the voluntary parcel-wide remediation program qualify for specified exceptions to the release-based cleanup law and the RBCRs.

Cleanup Tier Characterization. The proposed RBCRs generally require releases to be assigned to a cleanup tier within one year after their discovery, with assignments based on the risk the releases pose to human health and the environment (§ 22a-134tt-6(a)). Under the bill, for the releases identified by the Phase II assessments described above, any investigation or characterization that must be done to assign them to a tier must be completed and submitted to the DEEP commissioner within two years after the assessment began.

The bill allows the commissioner to audit this submission and set a schedule for completing additional investigation or characterization if she determines the first was inadequate. She may subject releases to the release-based cleanup laws if the further investigation or characterization is not timely completed.

Grouping Releases for Tier Assignment. Under the bill, after this tier characterization ends, releases must be grouped and assigned to the

environmental professional supervised cleanup tier with the longest remediation timeline. (Under the proposed RBCRs, only specified cleanup tiers are supervised by LEPs or other qualified professionals, as applicable.)

Fees. If releases are grouped, they must be considered a single release when calculating any fee assessed under the RBCRs. (The proposed RBCRs set (1) tier assignment fees and (2) annual fees that apply until a release is verified, with certain exceptions for specified properties.)

Remediation Deadlines. The bill extends by one year any remediation deadline set under the RBCRs for these grouped releases.

Covenant Not to Sue

The bill makes parcels remediated under this program eligible for a “covenant not to sue” allowed under existing law (CGS § 22a-133aa) if the DEEP commissioner approved a detailed written remediation plan for the property that meets the release-based cleanup law’s remediation standards.

This law establishes conditions under which DEEP and a prospective purchaser or owner of a contaminated property may enter into an agreement that DEEP will not require remediation of previously unknown contamination from a release that predates the covenant’s effective date and is found to exist after DEEP deems the remediation complete.

Expedited Permits

As under the current voluntary remediation program, the DEEP commissioner must expedite the process for issuing any permits required to remediate parcels under this program.

BACKGROUND

RBCRs

The proposed RBCRs are currently pending. The Regulations Review Committee rejected them without prejudice on March 25, 2025. Once

approved, the regulations are scheduled to take effect on March 1, 2026.

Related Bill

sHB 7085, favorably reported by the Commerce Committee, requires the working group established to give advice and feedback on the proposed RBCRs to continue meeting after their adoption to (1) evaluate the program's implementation and efficacy and (2) offer related advice, feedback, and recommendations.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 20 Nay 0 (03/20/2025)