

# The Draft Proposed Program Outline for a Transformed Cleanup Program



Liability Workgroup  
Status Report  
November 7, 2012

# Members



Adam Duskocy

Chandler, Jeff

Dave Hurley

Dot Kelly

Gregory Hencir

Jean Perry Philips

John Albrecht

John Wertam

Lauren Savidge

Lorella Struzzi

Lucas Meyer

Mitch Wiest

Pam Elkow

Rob Robinson

# Overall Approach and Issues



- Identify “responsibility”, not just liability
  - Who must report
  - Who must investigate
  - Who must remediate
  - Should those “responsible” necessarily be “liable” to third parties?
- Issues/Struggles:
  - Determining “who” affected by “what” – what is a “reportable release?” – **Release Reporting Workgroup**
  - Concern that without easy way out, disincentive to get in - **Early Exits Workgroup**
  - Retroactivity – how far back can obligation to report reach? – **Transition Period Workgroup**

# Who must report? And to Whom?



Who	To Whom
Owner of real property	DEEP
Operator of real property/facility	DEEP Owner of real property
Owner of equipment (e.g., transformer, motor vehicle)	DEEP
Operator of equipment	DEEP Owner of real property
LEP/TEP <ul style="list-style-type: none"><li>• investigate or take samples</li><li>• conduct release response</li><li>• tank removal contractors</li></ul>	Client – notify of obligation to report (form) Owner of real property? DEEP for imminent hazard (regardless of whether owner does?)
Prospective Seller of real property	Prospective Buyer - Disclosure of known conditions – form?

# Additional Thoughts on Who Reports



- Once a release has been reported, others who had obligation to report are not obligated (i.e., tenant reports, landlord does not need to report)
- EP liability protection –
  - does not incur liability for condition or release by reporting
  - protected from suits by property owners, etc. for good faith reporting

# Who must remediate? To what extent?



## Historic releases (reportable concentrations)

- “Responsible Party,” i.e., Polluter – investigate release, remediate to meet several exit strategies
- Property owner - investigate release, remediate to meet one of several exit strategies
- Innocent property owner – investigate release, remediate to a risk benchmark? With limited liability for condition of release
- Preserve limits on off-site investigation/remediation for “white knights” (BRRP) ? (question whether and how Brownfields are being dealt with in the Transformation)

# Who must remediate? To what extent?



## New releases (reportable quantities)

- “Responsible Party,” i.e., Polluter – investigate release, remediate to meet several exit strategies
- Property owner - investigate release, remediate to meet one of several exit strategies
- Innocent property owner (other party caused release) –investigate release, remediate to a risk benchmark? With limited liability for condition of release

# Open Issues - Retroactivity



- For reportable concentrations “known” prior to effective date of statute, how far back does it reach, if at all?
- Who is subject to reporting of previously “known” reportable concentrations? Just the RP? Property owner?
- Definition of knowledge is critical (who in the company? Obligation to review old reports?)
- Can the results of a more recent investigation eliminate the need to report (conditions have improved since original results)?



# Open Issues – Addressed by other groups?



- Is SEH statute to be subsumed into new program?
- Need to preserve incentives for “white knights” to take on brownfields? Or will quick outs be enough? (question as to how and whether brownfields are considered as part of the transformation)
- Retroactivity discussion should focus on “reportable concentrations” – change in statutes should make it clear that historic failure to report a “release” under 22a-450 is still a failure to report