



June 11, 2015

Update on Environmental Issues Affecting Real Estate Transactions in Connecticut



Transformation of CT DEEP's Environmental Cleanup Program



- Why change it?
- What changes have occurred?
- What is left to do?

Why change it?

2011 – CT DEEP “White Paper”

- 15 laws that govern releases and pollution
- Too many sites stuck in regulatory process
- Very few sites getting out
 - 4000 sites in Transfer Act; only 400 closed out
 - 8000 spills reported each year

What We Need To Change

From

- Multiple and Overlapping Programs
- Property-based and Release-based System
- Few Exits from Cleanup Program
- Command and Control System



To

- Unified Program
- Primarily a Release-based System
- Earlier and Multiple Exits
- Self-Implementation and Clearer Obligations

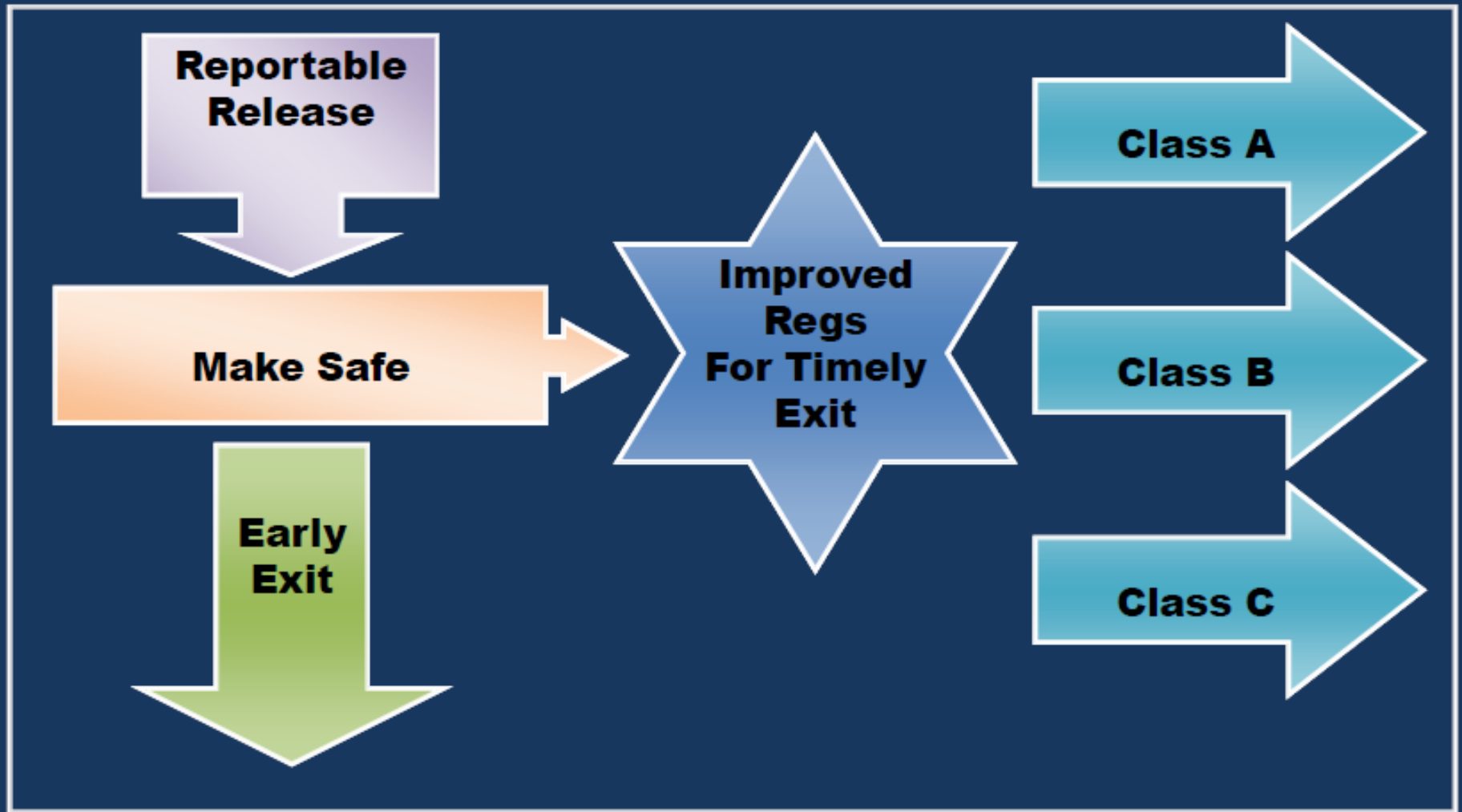
HIGH ENVIRONMENTAL STANDARDS PRESERVED

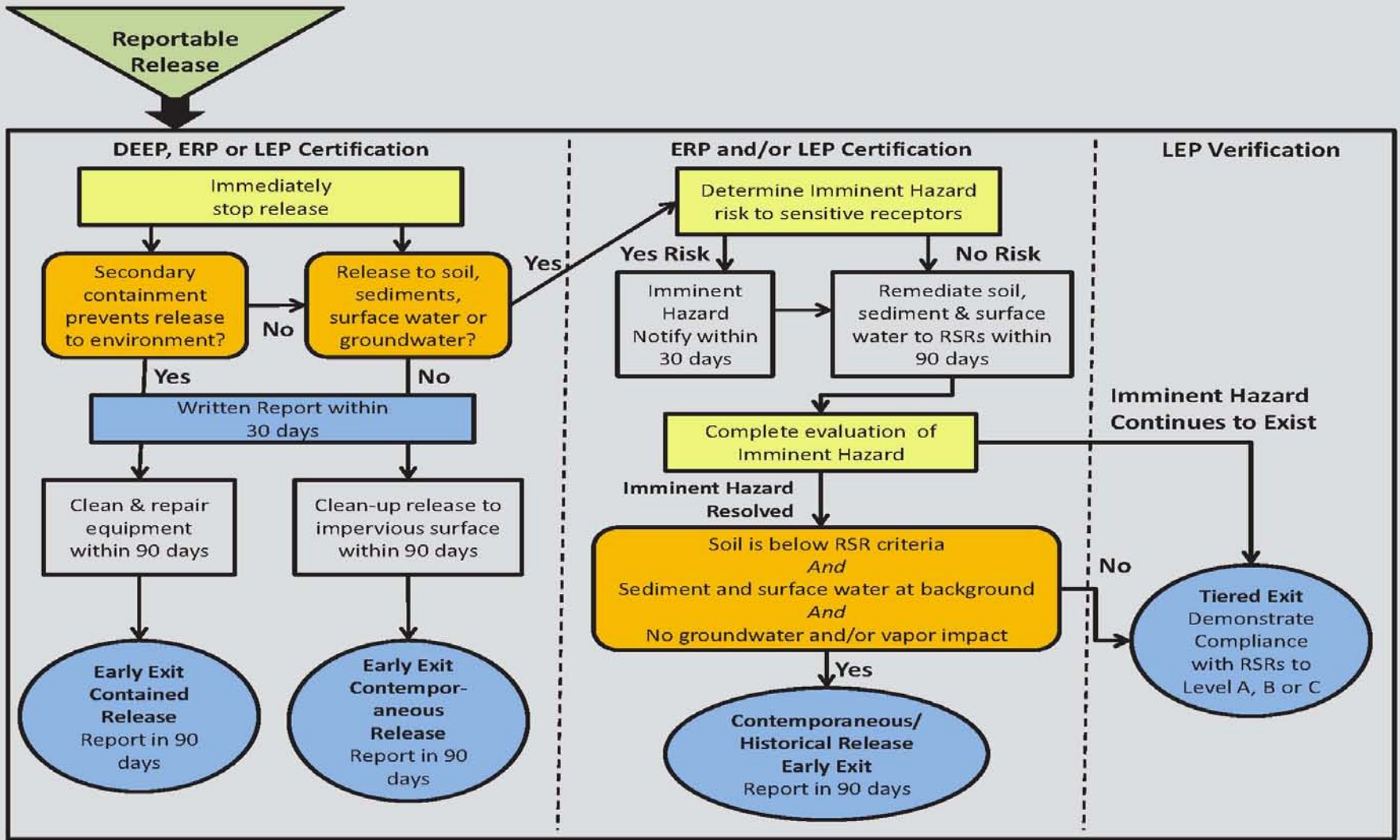
Then what happened?



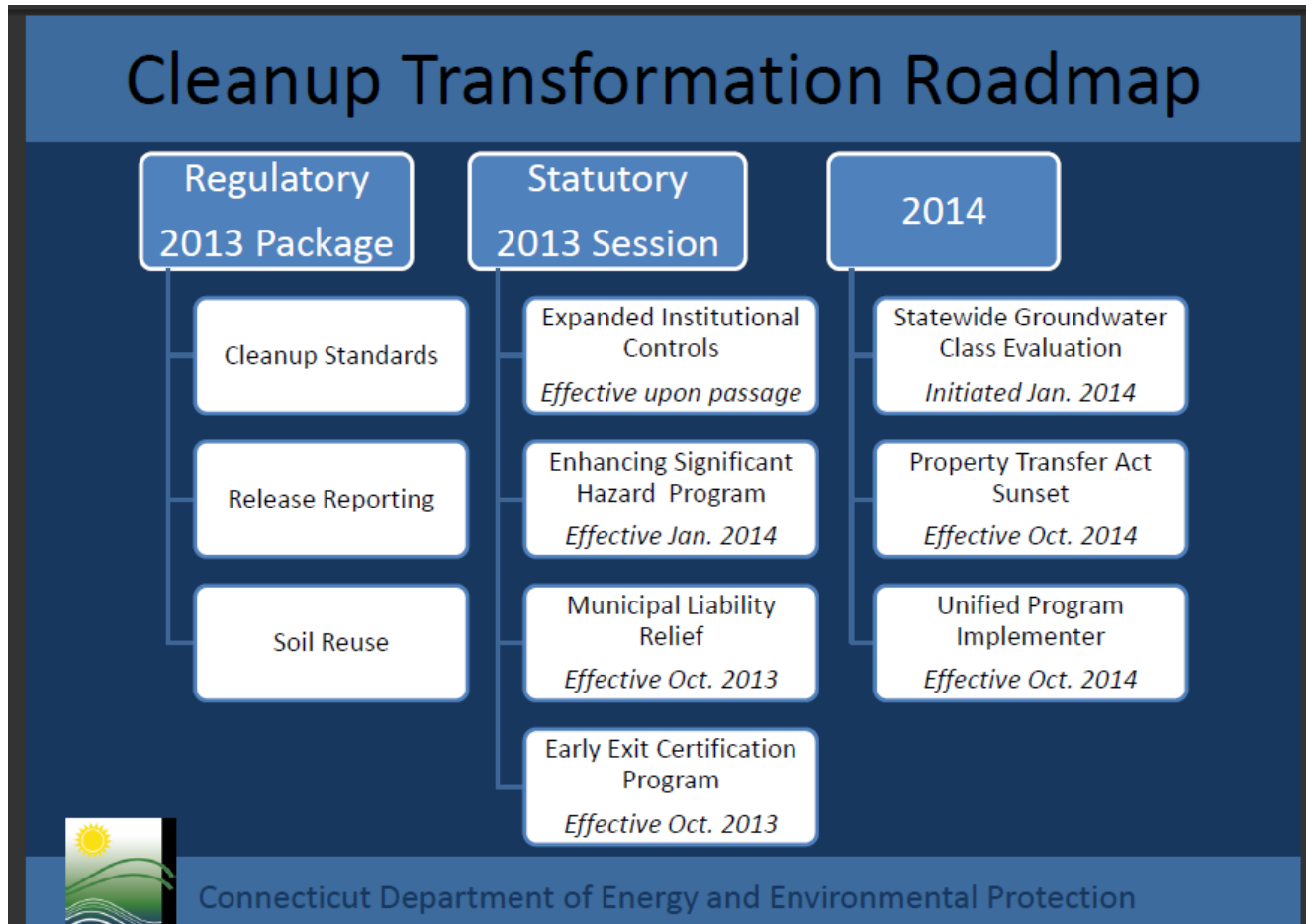
- 2011 – 2013
 - Brownfields Bills
 - Stakeholder outreach - workgroups
 - Feb. 2013 CT DEEP's "Draft Proposal for a Transformed Cleanup Program"

Cleanup Program Concept





Original Roadmap



What changes have occurred?




- 2013 RSR Amendments (Wave 1)
 - Many new provisions, exemptions, allowances to provide more flexibility, judgment, and self-implementation while not affecting risk reduction.
 - Developed through experience in dealing with RSRs.

Effect



No-Audit Letter Metrics						
	Total	2010	2011	2012	2013	Through 3 qtrs. of 2014
# Verifications Received	335	39	58	68	89	81
# No-Audit Letters issued (of annual verifications)	236	28	48	53	71	36
	78%	72%	83%	78%	80%	(44%)
# Notice of Audits issued after issuance of "Letter of No-Audit"	0%	0	0	0	0	0


 Connecticut Department of Energy and Environmental Protection

SEHN (22a-6u)



- 2013 Changes to Significant Environmental Hazard Notification law (delayed effective date – July 2015)
 - Lowered threshold for certain sites in proximity to residential areas
 - Requirement for 3rd party review of how risk-based decisions are made in CT
- 2015 Senate bill to delay implementation of the SEHN statute for one year (2016)
 - Did not come up for vote.
 - 2013 changes go into effect July 2015

SEHN (22a-6u)



- Changes to definition of “significant hazard”
 - 15 x multiplier of DEC for metals and PCBs in exposed surficial soil within 300 ft. of residential area; 30 x if paved or fenced
 - Residential sites: 15 x multiplier
 - ETPH exempted
 - Water supply well 200 ft. side gradient of plume; still 500 ft. downgradient
 - No notice to legislators
 - Mitigated hazard sites removed from DEEP website
- New self-implementing typical response actions – no need to wait for DEEP
- Report to DEEP within 7 days of knowledge

Risk Evaluation – CDM Smith Report



"Evaluation of Risk-Based Decision Making" report - CDM Smith, August 2014

- Amend law to place risk-assessment within DEEP.
- Non-standard solutions to brownfields.
- Document all default criteria in RSRs. Adopt standards for soil invertebrates and plants (BC). Allow DEEP to change the criteria without legislative approval process.
- Adopt MA/BC ERA process.
- DEEP encourage use of site-specific risk assessment where default RSR criteria are inappropriate.
- Use 10^{-5} for individuals and 10^{-4} cancer risk for site.

DEEP Risk Evaluation Report



"Risk-Based Decision Making Recommendation Report" -
CT DEEP, April 2015.

- DPH will continue to perform human health risk assessments;
DEEP will perform ecological risk assessments
- Backup for RSR standards posted on website
- Establish independent Science Advisory Board to review remedial
criteria, then seek public input
- Multi-tiered Ecological Risk Assessment
- Site-specific Human Health Risk Assessments allowed under RSR
 - guidance, more flexibility under RSRs
- Keep cancer risk at current level

What is left to do?



Wave 2 changes to Remediation Standard Regulation

- Alternative Groundwater Protection Criteria Concept (August 2013)
- Monitored Natural Attenuation Concept (August 2013)
- Self-Implementing Engineered Controls (August 2013)
- Environmental Use Restriction Regulations (November 2013)
- Sediment (November 2013)
- Alternative Pollution Mobility Criteria Options (February 2014)
- Direct Exposure Criteria for Passive Recreation (April 2014)
- Notice of Activity and Use Limitation Regulations and Additions to ELUR Regulations (January 2015)
- Urban Soil (March 2015)

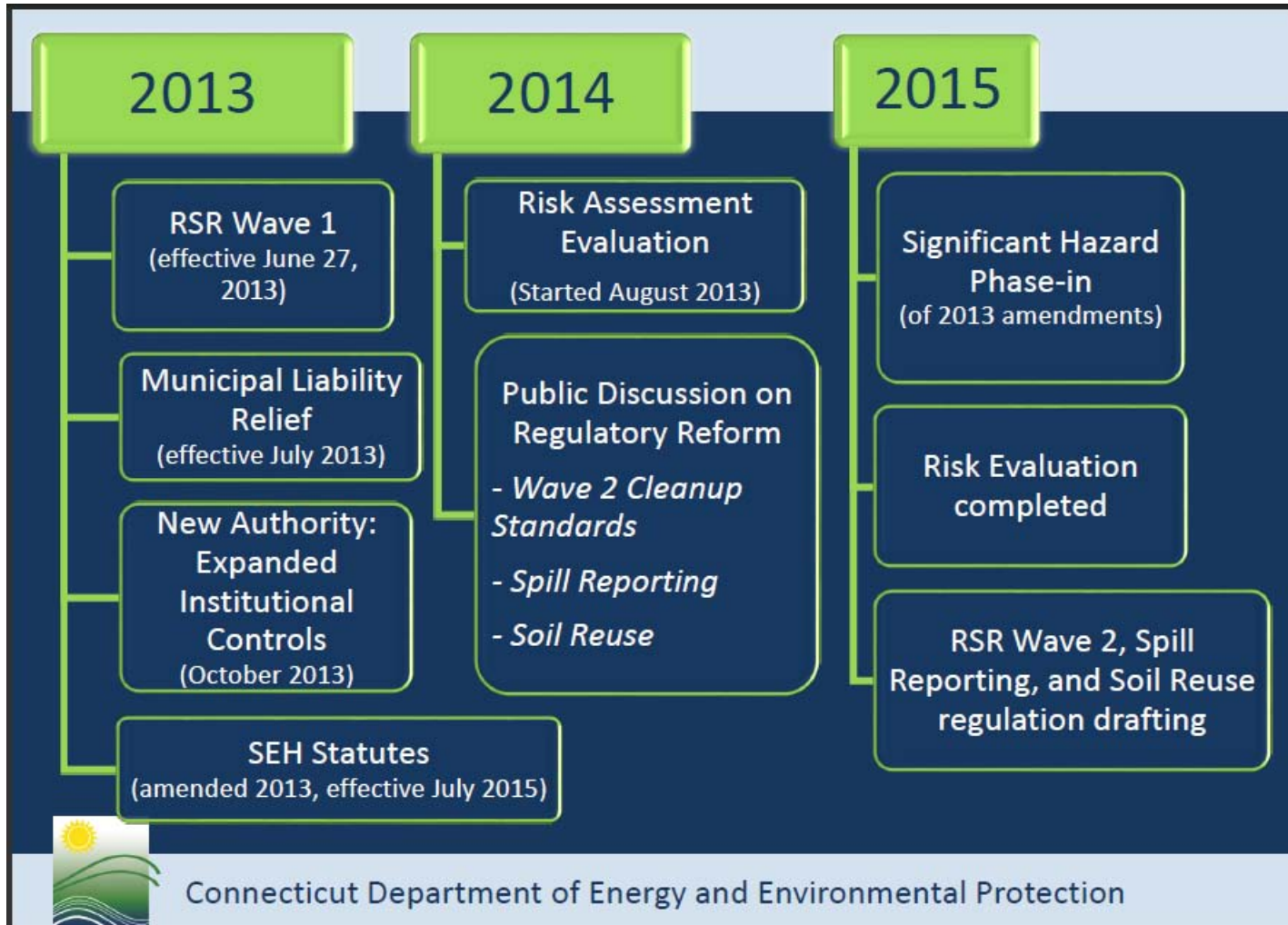
What is left to do?

State-wide ground water reclassification effort

Regulatory Package

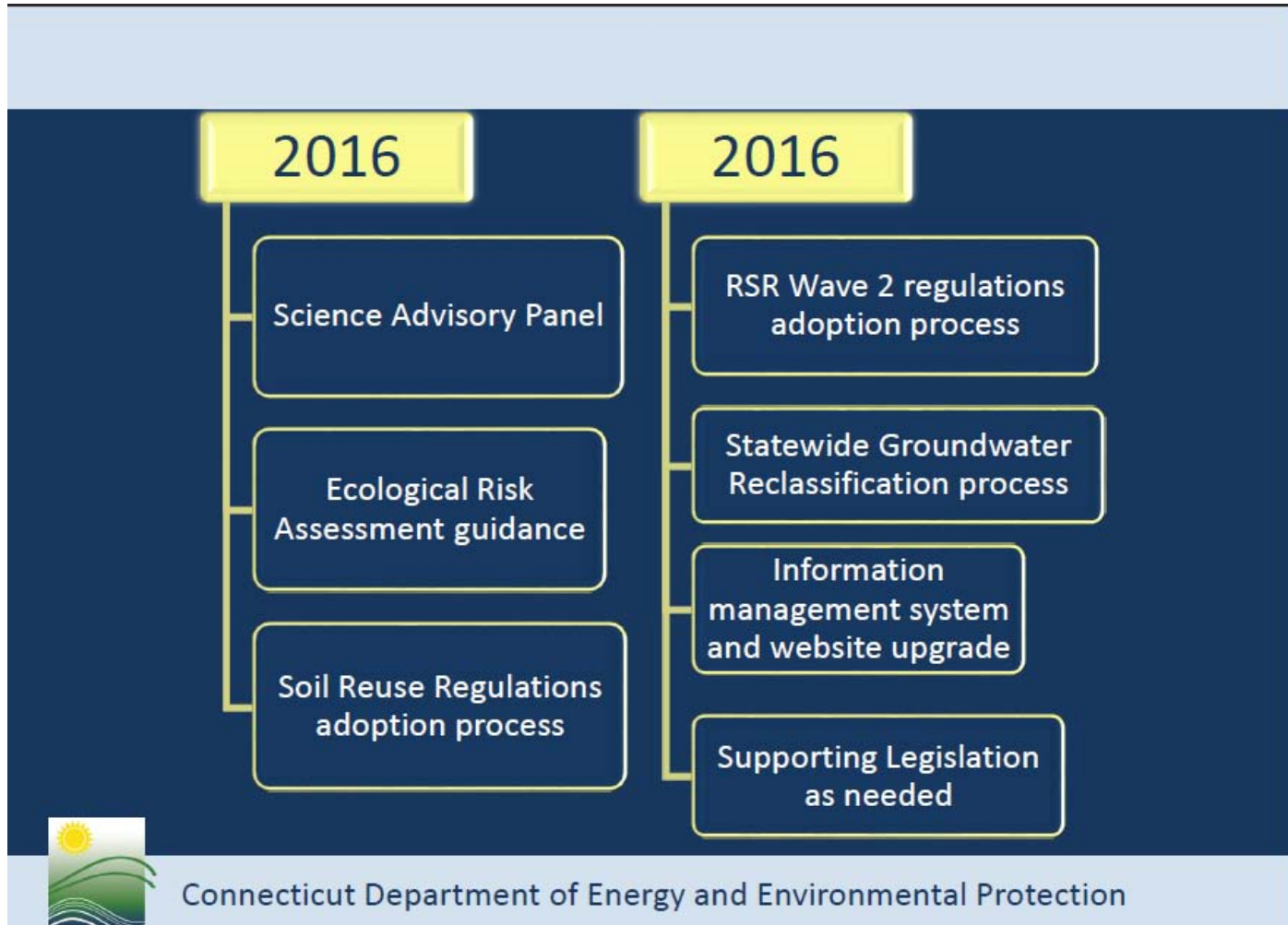
- RSR Cleanup Standards
- Release Reporting
- Soil Reuse

2015 Roadmap



Connecticut Department of Energy and Environmental Protection

2015 Roadmap (cont'd)



Key Points

- Historical release reporting
- Simplified Deed Notices
- Ecological Risk Assessment guidance and requirements
- Risk Evaluation Report
- Revised RSR criteria
- Environmental Release Professionals (ERPs)
- Transfer Act sunset (?)

Questions to Ponder



- How will these concepts affect real estate transactions?
 - Release-based cleanup program
 - Historical releases
 - Multi-tiered exits
 - Transfer Act sunset
- Due diligence?
- How are ELURs and Deed Notices perceived in the marketplace?



THANK YOU.

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