

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Agency

Department of Energy and Environmental Protection

Subject

Remediation Standard

Section

§ 22a-133q-1

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Sec. 22a-133q-1. Environmental Land Use Restrictions

Remediation Standard

Sec. 22a-133q-1. Environmental Land Use Restrictions

(a) Definitions.

For the purpose of this section, the definitions of the terms shall be the same as the definitions of terms in section 22a-133k-1 of the Regulations of Connecticut State Agencies. In addition, the following definitions shall apply:

“Class A-2 survey” means a first survey or independent re-survey which conforms to the “Recommended Standards for Surveys and Maps in the State of Connecticut Adopted on September 24, 1992, effective January 1, 1993 by the Connecticut Association of Land Surveyors, Inc. ” and which has been prepared by a land surveyor licensed in the State of Connecticut; complies with the minimum detail requirements for urban land title surveys adopted by the American Land Title Association and American Congress on Surveying and Maps (such requirements shall include all optional items on Table A thereof, exclusive of Items #1 (Monumentation), #5 (Contours in Elevation), #7b-2 (Other Data), and #12; and specifically shows (1) the boundaries of the Property by course and distance, together with the metes and bounds description corresponding to such survey; (2) the location of all improvements; (3) the location and width of all easements, utility lines, rights of way and building setback lines, with references to the book and page numbers for the instruments granting the same; (4) the location of all encroachments and restrictions, if any affecting the property; (5) the location of the portion of the parcel which is the subject of the proposed environmental land use restriction and (6) the latitude and longitude of the center of the subject property.

“Environmental land use restriction” means a declaration of environmental land use restriction in the application form set forth in Appendix 1 to section 22a-133q-1 of the Regulations of Connecticut State Agencies.

“Licensed environmental professional” means an environmental professional licensed in accordance with section 22a-133v of the General Statutes.

(b) Applicability.

This section shall govern the execution and recording of environmental land use restrictions in accordance with section 22a-133n to 22a-133s, inclusive, of the General Statutes. Except as otherwise provided by section 22a-133o of the General Statutes, no environmental land use restriction shall be effective unless and until it has (1) been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such restriction; and (2) been recorded on the land records in the municipality in which the subject parcel is located.

(c) Publishing Notice of an Environmental Land Use Restriction.

(1) The owner of the parcel which is the subject of a proposed environmental land use restriction shall, except as specified in subdivision (1) of this subsection, publish in at least one newspaper of general circulation in the area affected by the proposed environmental land use restriction, notice of intent to record an environmental land use restriction. Such notice shall include the name and address of such owner, the address of the parcel or a brief

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description of its location, a brief description of the purpose of the proposed environmental land use restriction, the name and address of an individual from whom interested persons may obtain a copy of the proposed use restriction, and a statement that public comments on the proposed environmental land use restriction may be submitted in writing to the Commissioner of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106 for thirty days after the date of publication of the notice.

(2) Notice of a proposed environmental land use restriction need not be published if (A) such restriction provides solely that the use of the subject parcel or portion thereof is restricted to industrial or commercial activities, and (B) the municipal zoning of such parcel limits the parcel to such use.

(d) Proposing an Environmental Land Use Restriction.

When submitting a proposed environmental land use restriction to the Commissioner for his review and approval, the owner of the affected parcel of land shall simultaneously submit a completed application form furnished by the Commissioner and the following documents:

(1) a draft declaration of environmental land use restriction in the form set forth in Appendix 1 to section 22a-133q-1 of the Regulations of Connecticut State Agencies;

(2) a Class A-2 survey of the parcel or portion thereof which is the subject of the proposed environmental land use restriction;

(3) a proposed decision document in accordance with subsection (f) of this section; and

(4) a certified copy of the notice required by subsection (c) of this section, as such notice appeared in the newspaper or newspapers.

(e) Approval of an Environmental Land Use Restriction by the Commissioner.

After the close of the public comment period, the Commissioner shall decide whether to approve an environmental land use restriction. When making such decision the Commissioner shall consider: (1) all comments submitted; (2) whether such restriction will adequately protect human health and the environment from pollution at or emanating from the subject release area; and (3) whether such restriction conforms in all respects to the requirements of this section and sections 22a-133n through 22a-133s of the General Statutes.

(f) Decision Document.

Any environmental land use restriction approved pursuant to this section shall include a decision document prepared in accordance with this section. The decision document shall contain a detailed written description of:

(1) the type and location of pollutants present in soil or ground water on or underlying the parcel or portion thereof which is the subject of the environmental land use restriction;

(2) the provisions of the environmental land use restriction, including any limitations on the use of such parcel or portion thereof; and

(3) description of the reason for the environmental land use restriction, including an explanation why such restriction is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

The decision document shall also contain a summary of all comments on the proposed environmental land use restriction received following the publication of notice in accordance

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with subsection (c) of this section and a brief response to each comment. The decision document shall be signed by the Commissioner or, in the case of a restriction approved pursuant to section 22a-133y of the General Statutes, a licensed environmental professional to indicate approval of the decision document.

(g) Approval of an Environmental Land Use Restriction by a Licensed Environmental Professional.

When an environmental land use restriction is to be approved by a licensed environmental professional in accordance with section 22a-133y of the General Statutes, the licensed environmental professional shall review the documents listed in subsection (d) of this section and evaluate the proposed environmental land use restriction in accordance with subsection (e) of this section, prepare a written approval of such restriction, and shall retain documentation of all documents reviewed by him. A licensed environmental professional shall not approve any environmental land use restriction unless it is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

(h) Subordination Agreements.

Whether the Commissioner or a licensed environmental professional approves an environmental land use restriction, not later than seven (7) days after receipt of such approval, the owner of the subject parcel shall submit to the Commissioner, as required under section 22a-133o of the General Statutes, a certificate of title indicating that each person holding an interest in such parcel or any part thereof, including without limitation, each mortgagee, lessee, lienor and encumbrancer, has irrevocably subordinated such interest to the environmental land use restriction.

(i) Recording an Environmental Land Use Restriction.

After the Commissioner or a licensed environmental professional, as applicable, has approved an environmental land use restriction in accordance with this section, the owner of the subject parcel shall record such restriction in accordance with this section and all other applicable law.

(j) Mailing Notice of an Environmental Land Use Restriction.

After an environmental land use restriction has been recorded, the owner of the subject parcel shall send, by certified mail, return receipt requested, a copy of such environmental land use restriction to (1) the chief administrative officer in the town where the parcel is located; (2) the chairman of the municipal planning, zoning or planning and zoning commission; (3) the local director of health; and (4) any person who submitted comments on such environmental use restriction.

(k) Release.

The owner of any parcel which is subject to an environmental land use restriction recorded in accordance with this section may request that the Commissioner release such parcel, in whole or in part, from the limitations of such restriction. If the Commissioner grants such request, the owner of such parcel shall, in accordance with law, record such release on the land records in the municipality where such parcel is located. No release of

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an environmental land use restriction shall be effective unless and until it has been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such release, and has been recorded on the land records of the municipality in which such parcel is located.

(l) Effect of Court Ruling on Environmental Land Use Restriction.

In the event that a court of competent jurisdiction rules that any portion of an environmental land use restriction recorded pursuant to this section is invalid, the owner of the subject parcel shall submit a copy of such restriction and such ruling to the Commissioner. The Commissioner shall review such restriction, and if he determines that such restriction would not have been approved without the invalid portion, he shall give notice that the environmental land use restriction is terminated as evidenced by his signature on in instrument setting forth such termination, and shall record such instrument on the land records of the municipality where such parcel is located. Promptly thereafter, the owner of the subject parcel shall take actions consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies to remediate the subject parcel or portion thereof. If the Commissioner determines in writing that the environmental land use restriction would have been approved without the invalid portion, the valid portion of the environmental land use restriction shall remain in full force and effect.

Appendix 1 to Section 22a-133q-1 of the Regulations of Connecticut State Agencies
Application Form of Environmental Land Use Restriction for Commissioner's Approval
or Licensed Environmental Professional's Approval

Instructions: Any environmental land use restriction pursuant to R.C.S.A. section 22a-133q-1 shall be in the following application form. This form shall be used for environmental land use restrictions approved by the Commissioner or a Licensed Environmental Professional pursuant to the Regulations of Connecticut State Agencies section 22a-133q-1. The appropriate information shall be inserted into the parentheses “{}”.

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION AND GRANT
OF EASEMENT

This Declaration of Environmental land use restriction and Grant of Easement is made this {day} day of {month}, {year}, between {Grantor's legal name} (the “Grantor”) and the Commissioner of Energy and Environmental Protection of the State of Connecticut (the “Grantee”).

W I T N E S S E T H:

WHEREAS, Grantor is the owner in fee simple of certain real property (the “Property”) described below:

Street address: {Street address of property}

City/Town: {City and Town of property}

State: Connecticut

Assessor's Map {insert Map designation} Block {insert Block designation} Lot {insert

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Lot designation}

And/or Assessors' Account Number {insert Assessors' Account Number}

Volume and Page of Deed: {Volume and Page of Deed }

A description of the property is attached hereto as Exhibit A, and which is made a part hereof; and

WHEREAS, the Grantee has the authority to enter into this declaration of environmental land use restriction pursuant to sections 22a-5, 22a-6, and 22a-133o *et seq.* of the General Statutes; and

INSTRUCTIONS - Select one of the two choices below by checking the applicable check box.

If the Commissioner of Energy and Environmental Protection signs the environmental land use restriction:

WHEREAS, the Grantee has determined that the environmental land use restriction set forth below is consistent with regulations adopted pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Grantee has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document) which is made a part hereof; and

If a Licensed Environmental Professional signs the environmental land use restriction pursuant to section 22a-133y of the General Statutes:

WHEREAS, remediation of the property has been conducted in accordance with section 22a-133y of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that the environmental land use restriction set forth below is consistent with regulations adopted by the Commissioner of Energy and Environmental Protection pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document) which is made a part hereof; and

WHEREAS, the property or portion thereof identified in the class A-2 survey ("the Subject Area") which survey is attached hereto as Exhibit C which is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards

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to human health and the environment, and in accordance with the Decision Document, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this environmental land use restriction to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the Decision Document, the purpose of this environmental land use restriction is to assure that the use and activity at the property and the Subject Area is restricted in accordance with the requirements of the Decision Document attached hereto as Exhibit B.

2. Restrictions Applicable to the Subject Area: In furtherance of the purposes of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Subject Area are restricted in accordance with the requirements of the Decision Document, attached hereto as Exhibit B. Such restrictions shall remain in effect unless and until a release is obtained under paragraph 5 below.

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

i. Create a risk of migration of pollutants or a potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain pollutants or limit human exposure to pollutants.

4. Emergencies. In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending said Paragraphs and the Grantor:

i. Immediately notifies the Grantee of the emergency;

ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;

iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and

iv. After the emergency is abated, implements a plan approved in writing by the Grantee, on a schedule approved by the Grantee, to ensure that the Subject Area is remediated in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, or restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of the Subject Area. Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Subject Area inconsistent with this environmental land use restriction until a release has been approved by the Commissioner and such release is either recorded on the land records in the municipality where such parcel is located or the requirement to record such a release is waived by the Commissioner pursuant to section 22a-133o of the General Statutes. The Grantee shall not approve any permanent release of the Property from the provisions of this

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environmental land use restriction unless the Grantor demonstrates to the Grantee's satisfaction that Grantor has remediated the Subject Area in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, the Grantee's agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, a non-exclusive easement (the "Easement") over the Subject Area and over such other parts of the Property as are necessary for access to the Subject Area or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Area. Pursuant to this Easement, the Grantee, the Grantee's agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the Grantee deems necessary for any one or more of the following purposes:

- i. Ensuring that use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction;
- ii. Ensuring that any remediation implemented complies with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive;
- iii. Performing any additional investigations or remediation necessary to protect human health and the environment;
- iv. Ensuring the structural integrity of any engineering controls described in Exhibit B of this environmental land use restriction and Grant of Easement and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants.

7. Notice and Time of Entry onto Property. Entry onto the Property by the Grantee pursuant to this Easement shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Grantee determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this environmental land use restriction and Grant of Easement. The failure to include such provision shall not affect the validity or applicability to the Property of this environmental land use restriction and Grant of Easement.

9. Persons Entitled to Enforce Restrictions. The restrictions in this environmental land use restriction on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the General Statutes.

10. Severability and Termination. If any court of competent jurisdiction determines that any provision of this environmental land use restriction or Grant of Easement is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included

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State and Zip Code {Insert State and Zip Code}

INSTRUCTIONS Notarization Language for GRANTOR Acknowledgement - select appropriate notarization language from one of the choices below by checking the applicable check box and providing the information required.

If the Grantor is an individual:

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {insert date}

OR

If the Grantor is a Corporation:

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself /herself to be the {insert title of officer} of {insert name of corporation}, a corporation, and that he/she, as such {insert title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as {insert title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {insert date}

OR

If the Grantor is a Limited Liability Company:

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself/herself to be the {insert title of officer} of {insert

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name of limited liability company}, a (member managed or manager managed) limited liability company, and that he/she, as such {insert title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as {insert title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {insert date}

OR

If the Grantor is any other type of entity, provide appropriate language for the Grantor Entity below:

{insert appropriate certification language for an Acknowledgement as specified in Section 1-34 of the General Statutes}

Instructions – Grantee Signature Block - Select one of the two choices below, as applicable;

This choice is used for all environmental land use restrictions except those approved pursuant to section 22a-133y of the General Statutes.

Grantee: The Grantee, the Commissioner of Energy and Environmental Protection or by the Commissioner's duly designated agent, {Insert name and title.}

By: {insert signature of the Grantee or duly authorized agent for Grantee}

Date: {insert date of signature}

Name: {insert printed or typed name of duly authorized agent for Grantee}

Its Duly Authorized: {insert title of duly authorized agent for Grantee}

MAILING Address: {Bureau of Water Protection and Land Reuse

Connecticut Department of Energy and

Environmental Protection

79 Elm Street

Hartford, CT 06106}

This choice is used solely for environmental land use restrictions approved pursuant to section 22a-133y of the General Statutes.

Grantee: The Grantee, the Commissioner of Energy and Environmental Protection, by the undersigned Licensed Environmental Professional authorized as a duly designated agent pursuant to section 22a-133y of the Connecticut General Statutes.

Licensed Environmental Professional as Duly Authorized Agent for Grantee, the Commissioner of Energy and Environmental Protection:

By: {insert signature of the Licensed Environmental Professional

Date: {insert date of signature}

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Name: {insert printed or typed name of Licensed Environmental Professional }

Its Duly Authorized Agent: Licensed Environmental Professional authorized pursuant to section 22a-133y of the Connecticut General Statutes

Grantee MAILING Address: {Bureau of Water Protection and Land Reuse
Connecticut Department of Energy and
Environmental Protection

79 Elm Street

Hartford, CT 06106}

Information for Duly Authorized Agent for Grantee (Licensed Environmental Professional): Name: {Insert name of Licensed Environmental Professional

License Number {insert License Number}

Title, if applicable {insert title}

Company, if applicable {insert name of Company}

Mailing Address: Street Address: {insert street address}

City/Town, State, Zip Code: {insert City/Town, State, and Zip Code}

Witnesses:

{Signature }

Signature

{Printed/typed name }

Printed/typed name

{Signature }

Signature

{Printed/typed name }

Printed/typed name

INSTRUCTIONS Notarization Language for Duly Authorized Agent for Grantee
(Licensed Environmental Professional):

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court}

Date Commission Expires {insert date}

(Effective January 30, 1996; Amended June 27, 2013)