

The Connecticut General Assembly

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Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: November 24, 2020

Regulation No:	2020-16A
Agency:	Department of Energy and Environmental Protection
Subject Matter:	Environmental Use Restrictions
Statutory Authority: (copy attached)	22a-133q

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

For the Committee's Information:

This is a resubmittal of regulations that were rejected without prejudice at the committee's meeting on October 27, 2020. The resubmittal addresses the substantive concerns and technical corrections noted in the October 27, 2020 report, except as noted below. Changes in the proposed regulation have resulted in an additional substantive concern and additional technical corrections.

Substantive Concerns:

1. On page 30, in section 22a-133q-6(g)(8), and throughout the proposed regulation, the proposed regulation provides that any such report received by the commissioner shall not "prevent the commissioner from taking any action authorized by law". It is not clear what is meant by this phrase and its inclusion is unnecessary, since a regulation cannot alter or affect a statutory provision.
2. On page 34, in section 22a-133q-7(e)(2), the proposed regulation provides, in part, that "the owner shall ensure that...the town clerk returns the original temporary release to the commissioner". It is unclear if the term "temporary release" is intended or if the intended phrase is "termination of temporary release". This provision should be reviewed and clarified to utilize the correct term or phrase, as appropriate.
3. On page 49 and throughout the forms contained in sections 22a-133q-app1 and 22a-133q-app2, the proposed regulation provides for the signature of the "authorized agent for the Grantee", the "Commissioner's designee" and "the authorized agent for the Commissioner". The use of such varying terms may be confusing and should be simplified and clarified to indicate when the Commissioner or his or her agency designee may execute such a form and when an LEP may execute such a form.

Technical Corrections:

1. Throughout the proposed regulation, text appears to be covered by the "eRegulations ct.gov logo" and the agency should ensure that the text is part of the final regulation. This issue appears on pages 16, 27 and 37.
2. On page 10, in section 22a-133q-1(a)(4), ' "environmental use restriction" ' should be "provided", for consistency.
3. On page 11, in section 22a-133q-1(a)(29), "and" should be inserted after the semicolon and in subsection (a)(30) of said section, "; and" should be ".", for proper form.
4. On page 12, in section 22a-133q-2(b)(11), "on such form" should be inserted after "commissioner", for clarity. This same change should be made in the following sections: on page 17, in section 22a-133q-3(b)(10), on page 26, in section 22a-133q-5(a)(7), on page 30, in section 22a-133q-6(g)(10), on page 31, in section 22a-133q-7(b)(2)(J) and on page 35, in section 22a-133q-7(g)(2)(D).
5. On page 15, in section 22a-133q-2(f)(1)(D)(i), "subsections (b)(7)" should be "subsection (b)(7)", for proper form.
6. On page 16, in section 22a-133q-3, subsection designator "**(a)**" should not be bolded, for consistency, and subsections (a) and (b) should be aligned, for proper form.

7. On page 17, in section 22a-133q-3(b)(6)(B), "this subdivision (3)" should be "subdivision (3)", for proper form.
8. On page 21, in section 22a-133q-4(a)(16), "and" should be inserted after "Agencies;" and in subsection (a)(17) of said section, "section; and" should be "section.", for proper form.
9. On page 22, in section 22a-133q-4(b)(2)(G), in the fourth line, a comma should be inserted after "Agencies", for proper form.
10. On page 22, in section 22a-133q-4(b)(2)(I), "and" should be inserted after "parcel;" and in subsection (b)(2)(J) of said section, "information; and" should be "information.", for proper form.
11. On page 23, in section 22a-133q-4(c)(2)(J), "and" should be inserted after "information;" and in subsection (c)(2)(K) of said section, "Agencies; and" should be "Agencies.", for proper form.
12. On page 24, in section 22a-133q-4(d)(6), a comma should be inserted after "watercourses" and "and" should be inserted after "parcel;" and in subsection (d)(7) of said section, "Agencies; and" should be "Agencies.", for proper form.
13. On page 25, in section 22a-133q-4(e)(14), "and" should be inserted after "date;" and in subsection (e)(15) of said section, "Agencies; and" should be "Agencies.", for proper form.
14. On pages 26 and 27, in section 22a-133q-6, a line space should be inserted between the catchline and the first paragraph, for consistency, and in subsection (a)(3), "disturbance;" should be moved to page 26 after "allowable", for proper form.
15. On page 27, in section 22a-133q-6(b)(2), "notice is sent notice" should be "notice is sent", for proper form.
16. On page 27, in section 22a-133q-6(d), the line space above this subsection should be deleted, for consistency, and in subdivision (1), in the second line, "stored" should be inserted before "on concrete", for clarity.
17. On page 28, in section 22a-133q-6(d)(6), a comma should be inserted after "Statutes", for proper form.
18. On page 28, in section 22a-133q-6(e)(2)(B), ", provided any such reuse of disposal complies with all other applicable requirements" should be deleted, in accordance with the agency's intent expressed in its letter concerning the proposed resubmittal.
19. On page 29, in section 22a-133q-6(f)(5), "and" should be inserted after "manifests;" and in subsection (f)(6) of said section, "collected; and" should be "collected.", for proper form.

20. On page 30, in section 22a-133q-6(g)(10), "Commissioner" should be "commissioner", for proper form.
21. On page 32, in section 22a-133q-7(c)(4), "temporary" should be inserted before "release", in the first reference in the second line and in the references in the sixth and seventh lines of said subdivision, for clarity.
22. On page 32, in section 22a-133q-7(d)(1)(A), "shall be" should be "is", for proper form.
23. On page 32, in section 22a-133q-7(d)(1)(B), "two" should be "2", for consistency.
24. On page 32, in section 22a-133q-7(d)(2), "subsection, unless" should be "subsection unless," for proper form.
25. On page 33, in section 22a-133q-7(d)(3)(A)(i), a comma should be inserted after "writing", for proper form.
26. On page 33, in section 22a-133q-7(d)(4), a comma should be inserted after "subsection", for proper form.
27. On page 37, in section 22a-133q-8(c), in the second line, "a" should be inserted before "result" and in the third line, "upon such notification" should be ", upon such notification," for proper form.
28. On page 37, in section 22a-133q-9, the extra line spacing before subsection (a) should be deleted, for proper form.
29. On page 37, in section 22a-133q-9(c), in the next to last line, a comma should be inserted after the second "specified", for proper form.
30. On page 38, in section 22a-133q-9(d)(3), "Not less than" should be "Not later than", for accuracy.
31. On page 38, in section 22a-133q-9(f)(1), in the second line, "insert the effective date of this section" should be italicized, for consistency.
32. On page 42, in section 22a-133q-app1, in 13., "such sections" should be "said sections", for proper form.
33. On page 49, in section 22a-133q-app2, in 6., a period should be inserted after "Agencies", for proper form.

Recommendation:

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part X Rejection without prejudice</p>
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Reviewed by: Bradford M. Towson / Shannon McCarthy

Date: November 20, 2020

Sec. 22a-133q. Environmental use restrictions: Regulations re environmental land use restrictions and notices of activity and use limitation. The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the purposes of sections 22a-133n to 22a-133r, inclusive. Such regulations may include, but not be limited to, provisions regarding the form, contents, fees, financial surety, monitoring and reporting, filing procedure for, and release from, environmental land use restrictions and notice of activity and use limitations.