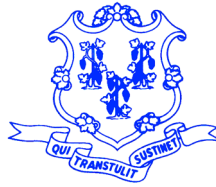


# The Connecticut General Assembly

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## Memorandum

**To:** Legislative Regulation Review Committee  
**From:** Legislative Commissioners' Office  
**Committee Meeting Date:** October 27, 2020

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

	Yes or No
<b>Mandatory</b>	Y
<b>Federal Requirement</b>	N
<b>Permissive</b>	N

### For the Committee's Information:

#### Substantive Concerns:

1. On page 10, in section 22a-133q-1(a)(4), the definition of "environmental use restriction" is not consistent with the definition for said term in section 22a-133n of the general statutes. This definition should be made consistent with that contained in the general statutes.

2. On page 11, in section 22a-133q-1(a)(29), the term "termination" is defined to mean two very different things at once. In one instance it means that a party no longer has to comply with a certain kind of an environmental use restriction and in another instance it means that a party can no longer utilize an exception to an environmental use restriction. As such, the use of such term is context dependent and unnecessarily confusing. Two separate terms should be utilized to capture the two distinct meanings.
3. On page 14, in section 22a-133q-2(e)(5)(A) and (B), and throughout the remainder of the regulation, the proposed regulation uses the term "unusual circumstances". It is not clear what is meant by this term as it is not defined. Reasonable people could differ as to what constitutes an "unusual circumstance". Accordingly, this term should be defined or otherwise clarified.
4. On page 17, in section 22a-133q-3(b)(10), on page 22 in section 22a-133q-4(b)(2)(K), on page 23 in section 22a-133q-4(c)(2)(L) and throughout the remainder of the proposed regulation, the proposed regulation requires the keeping of records that include "Any other information specified by the commissioner". It is not clear what other information would be specified by the commissioner, where the commissioner would specify such information, what method would be used by the commissioner to specify such information, when the commissioner would specify such information or how the regulated party would know that additional information specified by the commissioner should be kept as a part of such a record. The proposed regulation should include any other information that the commissioner wishes to specify be kept as part of a record.
5. On page 20, in section 22a-133q-4(a)(4), the proposed regulation uses the term "North American Datum 1983 (NAD83)" and cites to the definition for such term in section 13a-255 of the general statutes. However, said section does not contain a definition of such term. This citation should be clarified.
6. On page 27, in section 22a-133q-6(a)(8), on page 30, in section 22a-133q-7(a)(1)(C), and throughout the remainder of the proposed regulation, the proposed regulation refers to "and other applicable legal requirements". It is not clear what is meant by this phrase. In each instance, the regulation should cite to the statutory or regulatory provision containing such requirements.
7. On page 27, in section 22a-133q-6(c), and throughout the remainder of the proposed regulation, the proposed regulation uses the term "unexpected conditions". It is not known what is meant by this term as it is not defined. Reasonable people could differ as to what constitutes an "unexpected condition". Accordingly, this term should be clarified.
8. On page 27, in section 22a-133q-6(d) and throughout the remainder of the proposed regulation, the proposed regulation uses the term "all applicable laws". It is unclear what laws are intended to be included with the use of this phrase in each instance. In each such instance, the proposed regulation should cite each applicable statute or regulation section that is intended.
9. On page 27, in section 22a-133q-6(d)(1), the proposed regulation provides, in part, that soil or other excavated material or debris shall be "covered". However, the regulation does

not specify the nature of the cover that is to be used. Therefore, a cover of any nature or material could meet such requirement. For clarity in guidance, the regulation should specify the nature of the cover that should be used.

10. On page 27, in section 22a-133q-6(d)(2) the proposed regulation refers to the effect of a "violent reaction". Because this term is not defined or otherwise described, it is not clear what constitutes a "violent reaction" for purposes of this provision.

11. On page 30, in section 22a-133q-6(g)(8), and throughout the remainder of 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. The proposed regulation should cite any statute or regulation section that it intends to reference.

12. On page 30, in section 22a-133q-6(g)(10), and throughout the remainder of the proposed regulation, the proposed regulation requires the regulated party to provide "any other information prescribed by the commissioner". It is not clear what other information would be prescribed by the commissioner, where the commissioner would prescribe such information, what method would be used by the commissioner to prescribe such information, when the commissioner would prescribe such information or how the regulated party would know that additional information prescribed by the commissioner should be reported. In each such instance throughout the proposed regulation, it should include any other information that the commissioner wishes to prescribe be provided.

13. On page 30, in section 22a-133q-7(a)(2), and throughout the remainder of the proposed regulation, the proposed regulation provides, in part, that a temporary release be limited to "the minimum that is reasonably necessary to conduct the proposed activities". It is unclear what this minimum would be or who determines the minimum that is reasonably necessary. Such provisions should be clarified.

14. On page 34, in section 22a-133q-7(g)(2)(A), the proposed regulation requires the Permanent Release Termination Documentation Report to "include any documentation necessary...to demonstrate that the subject area is in compliance with the applicable provisions of the RSRs". It is not clear what other documentation would be necessary. The regulation should specify the necessary documentation.

15. On page 37, in section 22a-133q-9(c), the proposed regulation provides, in part, that certain current owners retain a copy of any record, document or report that was "required by law" to be maintained when the EUR was recorded. It is not clear what law is intended by this reference but the proposed regulation should indicate the citation to such statute or regulation.

16. On page 38, in section 22a-133q-9(d)(3), the proposed regulation requires either the transferor or transferee to provide written notice of such transfer to the commissioner. For purposes of certainty and clear direction, this provision should indicate which party has the responsibility to provide such written notice.

17. On page 40 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 Grantee", the "Commissioner's designee" and "the authorized agent for the Commissioner". However, section 22a-133o(b)(2) of the general statutes provides for "the signature of the commissioner". The applicable definition for the term "commissioner", as used in section 22a-133o, is contained in section 22a-115(11) of the general statutes and provides that the term "Commissioner" means the Commissioner of Energy and Environmental Protection". Said definition does not provide for the use of any agent or designee. Accordingly, these forms are not consistent with the requirements of said provisions of the general statutes.

18. On page 49, in section 22a-133q-app2 6., the proposed regulation provides, in part, that the commissioner shall be granted access to the property "as authorized by law". The proposed regulation should cite the statute or regulation that provides the commissioner with access to the property.

### **Technical Corrections:**

1. On page 1, in the introductory language, "Section 1." should be inserted before "Section 22a-133q-1", for proper form and "to read" should be inserted after "amended", for proper form.

2. On page 10, in section 22a-133q-1(a)(3), "interest in" should be "easement on", for accuracy.

3. On page 10, in section 22a-133q-1(a)(7), "EUR regulations" should be "Regulations of Connecticut State Agencies", for consistency with the defined term. The same change should be made throughout the proposed regulation when referring to a specific section or sections of the EUR regulations rather than the EUR regulations as a whole.

4. On page 10, in section 22a-133q-1(a)(10), an underlined comma should be inserted after "including", for proper form.

5. On page 10, in section 22a-133q-1(a)(13), each occurrence of "interest in" should be "easement on", for accuracy.

6. On page 11, in section 22a-133q-1(b), "shall have the meaning" should be "has the same meaning", for proper form.

7. On page 11, "Sec. 2." should be inserted before "The Regulations", for proper form and "sections Section" should be "sections", for proper form.

8. On page 11, in section 22a-133q-2(a), "requirements of this" should be "requirements of said sections and this", for clarity.

9. On page 12, in section 22a-133q-2(b)(6), "include" should be deleted, for proper form.

10. On page 12, in section 22a-133q-2(b)(7)(B), "this subdivision (3)" should be "subdivision (3)", for proper form.
11. On page 13, in section 22a-133q-2(c)(1) and throughout the remainder of the proposed regulation, ", in the commissioner's sole discretion," should be deleted as unnecessary.
12. On page 12, in section 22a-133q-2(c)(1)(A), a comma should be inserted after "limited to", for proper form.
13. On page 13, in section 22a-133q-2(c)(2)(A)(ii), "subparagraph (1)(B)" should be "subdivision (1)(B)", for proper form and "(b)(4)" should be "(b)(6)", for accuracy.
14. On page 13, in section 22a-133q-2(c)(3), a period should be inserted after "section", for proper form.
15. On page 13, in section 22a-133q-2(e)(1), a comma should be inserted after "ELUR", for proper form.
16. On page 14, in section 22a-133q-2(e)(2)(C)(iii), "will record" should be "shall record", in accordance with the committee's directive concerning mandates.
17. On page 14, in section 22a-133q-2(e)(4)(B) and throughout the remainder of the proposed regulation, "State of Connecticut" should be "state of Connecticut", for proper form.
18. On page 14, in section 22a-133q-2(e)(5)(B), in the fourth line, a comma should be inserted after "circumstances", for proper form and in the fifth line, "subsections (e)(3) and (e)(4) of this section" should be "subdivisions (3) and (4) of this subsection", for proper form.
19. On page 14, in section 22a-133q-2(e)(5)(C), "is now" should be "shall be", for clarity.
20. On page 15, in section 22a-133q-2(f)(1)(B)(i), "and" should be inserted after the semicolon, for proper form.
21. On page 15, in section 22a-133q-2(f)(1)(D)(i), "subdivisions (4) and (5) of subsection (b)" should be "subsections (b)(4) and (b)(5)" and "subdivision (7) of subsection (b)" should be "subsection (b)(7)", for consistency.
22. On page 15, in section 22a-133q-2(g), the catchline should be "**Determination of Invalidation for Non-Compliance**", for accuracy.
23. On page 16, in section 22a-133q-2(g)(2), commas should be inserted after "including" and "limited to", for proper form.
24. On page 16, throughout section 22a-133q-2(h) and throughout the remainder of the proposed regulation, "*{insert the effective date of the regulations}*" or "*{insert date of*

*regulations}*" should be "*{insert the effective date of this section}*" and "*{effective date of these regulations}*" should be "*{insert the effective date of this section}*", for proper form.

25. On page 16, in section 22a-133q-2(h)(1), "the" before "*{effective}*" should be deleted, for proper form.

26. On page 16, in section 22a-133q-2(h)(2), "this subdivision" should be "subdivision (1) of this subsection", for accuracy.

27. On page 16, in section 22a-133q-3(a), "requirements of this" should be "requirements of said sections and this", for clarity.

28. On page 16, in section 22a-133q-3(b), "this each" should be "each", for accuracy.

29. On page 17, in section 22a-133q-3(b)(6)(B), "affirms" should be "affirm", for proper form.

30. On page 17, in section 22a-133q-3(b)(7), and throughout the remainder of the proposed regulation when not contained in a catchline, "EUR Opinion" should be "EUR opinion", for proper form.

31. On page 18, in section 22a-133q-3(c)(1)(B), "subparagraph (a)" should be "subparagraph (A)", for proper form.

32. On page 18, in section 22a-133q-3(c)(1)(B)(ii), "such section" should be "said section", for proper form.

33. On page 18, in section 22a-133q-3(c)(1)(C), a comma should be inserted before "along", for proper form and "subdivision (1) of this subsection" should be "this subdivision", for proper form.

34. On page 18, in section 22a-133q-3(c)(2)(A)(i), a comma should be inserted after "limited to", for proper form.

35. On page 20, in section 22a-133q-3(e)(3)(C)(vi), "(b)(7)" should be "(b)(6)", for accuracy.

36. On page 20, in section 22a-133q-3(f)(2), commas should be inserted after "including" and "limited to", for proper form.

37. On page 20, in section 22a-133q-4(a)(2) and throughout the remainder of the proposed regulation, "Map Drafting Standards" should be "map drafting standards", for proper form.

38. On page 22, in section 22a-133q-4(b)(2)(F)(iii), and on page 23 in subsection (c)(2)(F)(iii) of said section, a comma should be inserted after "watercourses", for proper form.

39. On page 22, in section 22a-133q-4(b)(2)(G) and on page 23 in subsection (c)(2)(G) of said section, "22a-133k(2)" should be "22a-133k-2", for accuracy.
40. On page 23, in section 22a-133q-4(c)(2)(G), in the fourth line, a comma should be inserted after "Agencies", for proper form.
41. On page 24, in section 22a-133q-4(e), "must" should be "shall", in accordance with the committee's directive concerning mandates and "pursuant to the subsection" should be "pursuant to subsection", for proper form.
42. On page 24, in section 22a-133q-4(e)(3), "a" should be inserted before "boundary", for proper form.
43. On page 24, in section 22a-133q-4(e)(3)(A), "by" should be "in accordance with", for clarity.
44. On page 24, in section 22a-133q-4(e)(4), "20-300b-9" should be "20-300b-8", for accuracy.
45. On page 26, in section 22a-133q-5(a)(4)(B) and (C), "That" should be "Whether", for accuracy.
46. On page 26, in section 22a-133q-6, the extra line space before subsection (a) should be deleted, for proper form.
47. On page 26, in section 22a-133q-6(a)(2) and throughout the remainder of the proposed regulation, "Department" should be "department", for proper form.
48. On page 26, in section 22a-133q-6(a)(3), "and" should be inserted before "no new allowable", for clarity.
49. On page 27, in section 22a-133q-6(b)(2), "send notice" should be "a notice is sent", for consistency.
50. On page 27, in section 22a-133q-6(d)(4), "All stockpiles" should be "Any stockpile", for proper form.
51. On page 28, in section 22a-133q-6(d)(4)(B), the two references to "includes" should be "including", for proper form.
52. On page 28, in section 22a-133q-6(e)(2), "Soils, other excavated materials" should be "Any soil, other excavated material", for proper form.
53. On page 28, in section 22a-133q-6(e)(3), in the last line, a comma should be inserted after "soil", for proper form.
54. On page 29, in section 22a-133q-6(f)(3)(B), "of and" should be "of", for proper form.



55. On page 29, in section 22a-133q-6(g), in subdivisions (6) and (7), "Include an" should be "An", for proper form.

56. On page 31, in section 22a-133q-7(b)(2)(B), "LEP that" should be "LEP who", for proper form.

57. On page 31, in section 22a-133q-7(b)(2)(F), "section" should be inserted after "(c) of", for proper form.

58. On page 32, in section 22a-133q-7(c)(4), in the second and seventh lines, "documentation concerning" should be inserted before "the release"; in the fifth line, "documentation concerning" should be inserted before "the temporary release"; and in the eighth line, "documentation concerning the" should be inserted before "temporary", for clarity.

59. On page 32, in section 22a-133q-7(d)(2)(A), "can" should "shall", in accordance with the committee's directive concerning mandates, "unless:" should be "unless," for proper form and "shall submit" should be "submits", for clarity.

60. On page 33, in section 22a-133q-7(d)(3)(A)(ii), "has passed" should be "have passed", for proper form.

61. On page 33, in section 22a-133q-7(d)(4), in the second line, "the documentation concerning" should be inserted before "such"; in the third line, "documentation concerning the" should be inserted before "temporary"; in the fourth line, "documentation concerning the" should be inserted before "the release"; and in the sixth line, "documentation concerning the" should be inserted before "temporary", for clarity.

62. On page 34, in section 22a-133q-7(e)(2), in the fourth line "documentation concerning" should be inserted before "such termination"; and in the seventh line, "documentation concerning" should be inserted before "the original", for clarity.

63. On page 34, in section 22a-133q-7(g)(1), "this subdivision" should be "this subsection", for accuracy.

64. On page 35, in section 22a-133q-7(g)(3)(A), in the second line "documentation of" should be inserted after "sign"; in the third line, "documentation of" should be inserted before "such"; in the fourth line, "documentation of such" should be inserted before "such release" and in the sixth line, "documentation" should be inserted after "termination", for clarity.

65. On page 35, in section 22a-133q-7(h) the catchline "**Correction of Non-Compliance/Determination of Invalidity**" should be "**Determination of Invalidity for Non-Compliance**", for accuracy.

66. On page 35, in section 22a-133q-7(h)(2), in the seventh line, "a" should be inserted before "NAUL", for proper form.



67. On page 36, in section 22a-133q-8(a)(4)(C), and throughout the remainder of the proposed regulation, each occurrence of "Factsheet" should be "factsheet", for proper form.

68. On page 37, in section 22a-133q-8(c), in the third line, "upon notification and" should be ", upon such notification,", for clarity.

69. On page 37, throughout section 22a-133q-9, each instance of "*{insert effective date of regulations}*", "*{insert date of regulations}*", "*{insert the effective date of regulations}*" and "*{insert effective date of EUR regulations}*" should be "*{insert the effective date of this section}*", for proper form. Additionally, in said section, "*{insert date that is 60 days after the EUR regulations take effect}*" should be "*{insert date that is 60 days after the effective date of this section}*", for proper form.

70. On page 37, in section 22a-133q-9(a), in the second and third lines, the two instances of "shall be " should be "is", for proper form.

71. On page 37, in section 22a-133q-9(c), in the fifth line, a comma should be inserted after "including", for proper form.

72. On page 38, in the catchline of section 22a-133q-9(f), a space should be inserted between "**and**" and "**Exemption**", for proper form.

73. On page 38, section 22a-133q-9(f)(1) should be written as follows, for proper form: "For the period commencing on *{insert the effective date of this section}* and ending two years after *{insert the effective date of this section}*, any fee required by the EUR regulations shall be one-half the amount specified in such regulations. On and after such period, any fee required by the EUR regulations shall be the amount specified in such regulations."

74. On page 39, in section 22a-133q-9(g), "shall include" should be "includes", for proper form.

75. On page 39, before "**(NEW)**", "Sec. 3. The Regulations of Connecticut State Agencies are amended by adding sections 22a-133q-app1 and 22a-133q-app2 as follows:" should be inserted, for proper form.

76. On page 40, in the ninth line, "through" should be "to" and in the tenth line, ", inclusive," should be inserted before "of", for proper form.

77. On page 41, in section 22a-133q-app1 5., "Owner" should be "Grantor" and in 5. ii., "Commissioner" should be "Grantee", for consistency.

78. On page 42, in sections 22a-133q-app1 6. iv., 9., 12., and 14 and on page 43 in 18, each occurrence of "Owner" should be "Grantor" and in 14., "Commissioner" should be "Grantee", for consistency.

79. On page 43, in the first line of section 22a-133q-app1 15., "indicate" should be "indicates" and "grantor" should be "Grantor", for consistency.

80. On page 43, in sections 22a-133q-app1 16. and 17., each occurrence of "Commissioner" or "commissioner" should be "Grantee" and each occurrence of "Commissioner's" should be "Grantee's", for consistency.

81. On page 49, in section 22a-133q-app2 6., "the property to" should be inserted after "to", for clarity.

82. On page 50, in 22a-133q-app2 15., "indicate" should be "indicates", for accuracy.

83. On page 53, in the third, sixth and twelfth lines of section 22a-133q-app2, "133o(c)(5)(B)" should be "22a-133o(c)(5)(B)", for accuracy.

**Recommendation:**

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

**Date:** October 16, 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.