

**REGULATORY FLEXIBILITY ANALYSIS**  
**(FORMERLY SMALL BUSINESS IMPACT STATEMENT)**

**SECTION A**

**Date:**

**Agency Submitting Proposed Regulation:** Department of Energy and Environmental Protection

**Proposed Regulation Title:** Environmental Use Restriction Regulations

Prior to or concomitant with the posting of a notice pursuant to C.G.S. § 4-168a, as amended by Public Act 16-32, each agency shall prepare a regulatory flexibility analysis. Agencies must complete this document and upload it into the eRegulations System prior to posting the Notice of Intent described in C.G.S. § 4-168(a)(1). This document will automatically publish to eregulations.ct.gov at the time the filing agency posts the Notice of Intent.

Reminder: Pursuant to C.G.S. § 4-168a(c), prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the Department of Economic and Community Development and the joint standing committee of the General Assembly having cognizance of matters relating to commerce of its intent to adopt the proposed regulation.

**Scope and Objectives of the Proposed Regulation (mandatory for all filers):**

The Environmental Use Restriction (“EUR”) Regulations expand the existing regulations concerning Environmental Land Use Restrictions (“ELURs”) to allow the use of Notice of Activity and Use Limitations (“NAULs”), another type of restriction that, in some instances can be implemented by parties performing remediation and their consultants without need of Department approval. The EUR Regulations also detail the process of requesting temporary authorizations to perform required work that may contradict a restriction placed on a parcel and inspection and record keeping requirements for owners of contaminated parcels who have chosen to remediate using a remedy requiring an EUR. The Remediation Standards Regulations require the use of an EUR when certain options for remediating contaminated parcels are selected – the EUR Regulations specify the documents that must be prepared to obtain an EUR, the process for approving and recording an EUR, and what is required of an owner of a parcel on which an EUR has been recorded going forward. The process described for ELUR review and approval in the EUR Regulations largely codifies the existing process currently used for ELURs, with certain improvements.

Please check the appropriate box:

- The regulatory action will not have an effect on small businesses. *If you check this box, do not complete SECTION B.*
- The regulatory action will have an effect on small businesses, but will not have an adverse effect on such small businesses. *If you check this box, complete SECTION B.*
- The regulatory action may have an adverse effect on small businesses, but no alternatives considered would be both as effective in achieving the purpose of the action and less

burdensome to potentially effected small business. *Note: alternatives considered may include those listed in C.G.S. § 4-168a(b)(6). If you check this box, complete SECTION B.*

- The regulatory action will have an adverse effect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare. *If you check this box, complete SECTION B.*

## **SECTION B**

For regulatory actions which effect or may effect small businesses, please provide responses to the following:

### **Types of Businesses Potentially Affected by the Proposed Regulation:**

Businesses may be impacted by the EUR Regulations if they are required to remediate a site in accordance with the RSRs. Various business types could be subject to the RSRs if they are required to remediate a site in accordance with a remedial program as determined by regulation or statute or as required by an order of the Commissioner. The state remedial programs that are subject to the RSRs include, but are not limited to, the Property Transfer Program under Conn. Gen. Stat. §§ 22a-134 through 22a-134e, Voluntary Remediation Programs under Conn. Gen. Stat. §§ 22a-133x and -133y, the Brownfield Remediation and Revitalization Program under Conn. Gen. Stat. § 32-769, Leaking Underground Storage Tanks Program under § 22a-449(d)-101 of the RCSA, Resources Conservation and Recovery Act under 40 CFR 239-282, and the PCB Program under Conn. Gen. Stat. § 22a-463 through 22a-469. There are a wide variety of business types that are required to comply with these state remedial programs. For example, the Transfer Act may require businesses to remediate sites at which: more than 100 kilograms of hazardous waste was or is generated in any one month; hazardous waste generated at a different location was recycled, reclaimed, reused, stored, handled, treated, transported, or disposed of; or, since May 1, 1967, dry cleaning, furniture stripping, or vehicle body repair was conducted.

However, not all business subject to the RSRs will be affected by the EUR Regulations. Instead, when remediating a parcel, the RSRs provide a number of options, which allow use of different clean-up standards. Many of the options that allow less stringent standards for the clean-up of a parcel require an EUR to be recorded, limiting the future use of that parcel in some way or requiring certain obligations to be met. Essentially, business subject to the requirements of the RSRs will choose to subject themselves to the requirements of the EUR regulations because, although it is possible to remediate a site without using an EUR, remediation options which require compliance with the EUR Regulations are typically less expensive or more efficient.

### **Total Number of Small Businesses Potentially Subject to the Proposed Regulation:**

The EUR Regulations do not determine which small business are subject to them. Some portion of the small businesses subject to the RSRs will select a remediation option which requires compliance with the EUR Regulations. Generally, statutes and other regulations prescribe the environmental conditions (releases of pollution) that are subject to the RSRs. Also, the number of small businesses potentially subject to these regulations is unknown because the businesses do not self-identify the necessary facts to make such determination.

Overall, there are currently approximately 7,400 sites (parcels) subject to the RSRs, under DEEP oversight. The largest of these state remedial programs is the Property Transfer Program with over 4,300 sites. On average, 230 sites enter the Property Transfer program – one statutory program which subjects business to the requirements of the RSRs - every year and approximately 40% are small businesses.

Currently, ELURs are an option for those remediating parcels. To date, more than 390 ELURs have been recorded. Since 2013, approximately 35 ELURs per year have been executed. It is not known how many of these ELURs were executed by small businesses. It is expected that the adoption of the EUR Regulations will somewhat increase this number, largely due to the availability of NAULs, which should be less expensive and more efficient to implement, making them a more attractive option for those conducting remediation requiring placement of an EUR. Pending revisions to the RSRs may also increase the number of EURs executed as the options available for remediation have been expanded or modified.

**Will small businesses, in order to comply with the proposed regulation, have additional requirements as listed in C.G.S. § 4-168a(b)(4)? If so, identify the requirements and provide an explanation for each.**

The EUR Regulations made a significant number of changes regarding EURs. The EUR Regulations do require that the owners of parcels on which EURs have been implemented prepare annual inspection reports and maintain certain records. It is unlikely that additional employees or professionals will be necessary – the same consultants, attorneys and other professionals used to oversee remediation and execute an ELUR under existing regulations can be used to satisfy the requirements of the new regulations and there is no requirement that any work be done by “employees.” No products are required to be purchased. The EUR regulations do impose fees for execution of an ELUR, NAUL, and for temporary release to conduct work otherwise prohibited by an ELUR and NAUL. These fees, and any other costs associated with use of an EUR, however, will almost certainly be less than the cost to remediate the site using a different option specified by the RSRs – this is the reason a remediation option requiring use of an EUR is selected.

**Has the agency communicated with small businesses or small business organizations in developing the proposed regulation and the regulatory flexibility analysis, if applicable? If so, to what extent?**

The EUR Regulations are a companion set of regulations to the proposed RSR revisions. Changes to the RSRs were the result of an intensive public involvement process over the past seven (7) years.

- Public discussion papers were posted online for twenty-four (24) potential major RSR changes, and provided any interested party with opportunity to submit feedback to DEEP.
- Members of the regulated community and other constituent groups were involved in seven (7) workgroups during this time to assist DEEP in structuring the major and minor revisions. Public feedback was received on the discussion papers and the comments assisted in the revision drafting process.
- Two iterations of detailed conceptual language were published online for public discussion in April and August of 2016. DEEP invited written feedback on the April 2016 concept

- draft, reviewed the feedback received and posted information online in August to show how the feedback was considered/incorporated.
- DEEP held 2 public information and discussion sessions on the April 2016 concept draft, in Hartford and Derby.
  - The ideas for the RSR changes were presented and discussed publicly at 13 public “Remediation Roundtable” informational forums (average attendance is about 80 people per session, and typically represents agents for the business community (technical consultants and attorneys)).
  - During 2015 and 2016, the proposals were presented to four (4) constituent groups who have a direct connection with the small business community (Connecticut Business & Industry Association - CBIA, Connecticut Environmental Forum – CEF, Environmental Professionals’ Organization of Connecticut - EPOC, and the Connecticut Bar Association - CBA).
  - DEEP has worked closely with its sister agency, the Department of Economic and Community Development, to ensure brownfields will benefit from the proposed additional remedial options.
  - A workgroup made up of land surveyors, attorneys and LEPs provided important guidance on the survey section of the EUR Regulations, and a workgroup of attorneys and LEPs provided similar guidance on the temporary allowable disturbances section. An additional workgroup of attorneys and LEPs provided guidance on questions concerning EURs and public roadways.

**Does the proposed regulation provide alternative compliance methods for small businesses that will accomplish the objectives of applicable statutes while minimizing the adverse impact on small businesses? If so, to what extent?**

An EUR, implemented pursuant to the EUR Regulations, is itself an alternative method of compliance. If an EUR is sought, it is because the owner of a parcel undergoing remediation has selected a remediation option which requires an EUR. These options are selected because they are less expensive or more efficient than other methods of complying with the RSRs.

There are also alternatives created by the proposed EUR Regulations. The proposed EUR Regulations allow for the use of NAULs as an alternative to ELURs where statute and the RSRs indicate that an NAUL is appropriate. Many NAULs can be implemented without Department review, and do not result in a transfer of an interest in property to the State of Connecticut. NAULs are expected to be less expensive and more efficient to implement, minimizing the adverse impact on small business in many circumstances.

The EUR Regulations also allow for the conduct of Temporary Allowable Disturbances – minor work on a site on which an EUR restriction has been recorded that would otherwise conflict with the restrictions of an EUR. This provision allows small business to perform minor repair or maintenance without approval of the Department. This is expected to be a less expensive alternative to obtaining a temporary release of the restrictions of an EUR which is a more expensive and time consuming process. Although a Temporary Release is still required for larger activities on a parcel that are not permitted by the restrictions of an EUR, in many instances where an NAUL has been approved by a licensed environmental professional (“LEP”), an LEP will also be authorized to approve the temporary release. These options provide flexibility to owners of remediated parcels once EUR restrictions have been

recorded and, in many instances, limit the need for Department review of certain types of activities on a parcel.