

Sec. 22a-133q-6. Allowable Disturbances

Notwithstanding the restrictions in an EUR regarding digging, excavating, disturbing or exposing soil, a person may temporarily conduct activities otherwise prohibited by such restrictions, provided such person complies with the requirements of this section.

(a) Temporary Allowable Disturbances

A temporary allowable disturbance authorized under this section shall:

- (1) Comprise a discrete singular project, minimized to the greatest extent practicable and not be one phase of a multi-phased project or a continuous or on-going project;
- (2) Be supervised by an LEP. If the subject area is on property under the custody and control of the department, either an LEP or the commissioner may supervise such activities;
- (3) Not exceed 90 days, and no new allowable disturbance in the same subject area may commence until 90 days has passed since the completion of activities performed pursuant to a previous allowable disturbance;
- (4) Not result in the excavation of more than 250 cubic yards of soil, other excavated material or debris;
- (5) Not exceed 1000 square feet of disturbance at any one time;
- (6) Not result in the disturbance of any subject area containing PCBs;
- (7) Be conducted in compliance with any restrictions or affirmative obligations of the EUR other than restrictions regarding digging, excavating, disturbing or exposing soil; and
- (8) Be conducted in compliance with all other requirements of the EUR regulations.

(b) Temporary Allowable Disturbance Plan and Initial Notification

Prior to commencing any activities authorized under subsection (a) of this section, any person seeking to conduct such activities shall ensure that:

- (1) A plan is prepared using a form prescribed by the commissioner and signed and sealed by an LEP, that describes the activities associated with the proposed allowable disturbance, the conditions expected to be encountered during the work performed, and how such activities will be completed in accordance with this section; and
- (2) Not less than 14 days prior to commencing any allowable disturbance pursuant to this subsection, a notice is sent of the proposed allowable disturbance to the commissioner on a form prescribed by the commissioner.

(c) Unexpected Conditions or Pollutants Notification

In the event that during implementation of allowable disturbance activities, conditions or pollutants other than those identified or described in the EUR are encountered, the person authorized to conduct activities under this subsection shall notify the commissioner of such unexpected conditions or pollutants, in writing, on a form prescribed by the commissioner, within 72 hours of discovering such conditions or pollutants. The person authorized to conduct activities pursuant to this section shall comply with any comments or conditions from the commissioner regarding any notification submitted under this subsection, including, but limited to, any action to take in response to unexpected conditions or pollutants.

(d) Excavated soils and stockpiles

Soils, other excavated material, or debris excavated as part of an allowable disturbance shall be managed in accordance with the following:

- (1) Stockpiles of soil, other excavated material, or debris shall be either located on

polyethylene or similar sheeting material, stored in drums or roll-off containers or stored on concrete or bituminous concrete. Where such soil, other excavated material, or debris has been placed in drums or roll-off containers, such drums or containers shall be in good condition (i.e., not rusting, no apparent structural defects or not incapable of holding the stored materials) that shall always remain closed, except when soil, other excavated material, or debris is being added or removed. Soil, other excavated material, or debris stored on polyethylene or similar sheeting material, or on concrete or bituminous concrete, shall be covered, at all times other than when soil, other excavated materials, or debris is being added or removed from such storage, using a cover of a nature and material sufficient to prevent the infiltration of water and displacement of soil, other excavated material, or debris through erosion.

(2) All soil, other excavated material, or debris stored shall be compatible with anything stored with such soil, other excavated material, or debris so as to not produce any the following effects: heat or pressure; fire or explosion; violent chemical reactions; toxic dusts, mists, fumes or gases; or flammable fumes or gases;

(3) Soil, other excavated material, or debris subject to section 22a-133k-2(b)(3), section 22a-133k-2(b)(4) or section 22a-133k-2(f)(2) of the Regulations of Connecticut State Agencies shall be sorted, separated, and stockpiled in isolation from all other soil, other excavated material, and debris;

(4) Polluted soils, other excavated materials, or debris shall be separated from soil, excavated material or debris that is not polluted. Any stockpiles of soil, other excavated material, or debris that is polluted shall be managed in a stockpile storage area that:

(A) Prevents access by the general public through fencing or other similar means; and

(B) Is identified by a sign that is visible from a distance of at least 25 feet, posted at each stockpile storage area entrance, identifying, at a minimum, the name of the person authorized to conduct activities under this subsection, a contact name and phone number, the hours of operation, including the phrase "Keep Out" and, in text visible for a distance of 5 feet, including the phrase "Polluted Soil;"

(5) Dust controls shall be implemented and maintained according to best practices. Wind erosion and dust transport from the stockpiles and the travel areas of the staging, transfer and temporary storage area shall be minimized. Anti-tracking measures, including, but not limited to, vehicle skid pads, shall be implemented to prevent tracking outside of the parcel; and

(6) Soil, other excavated material, or debris that is or contains hazardous waste, as defined by section 22a-448 of the Connecticut General Statutes, shall be sorted, separated, and stockpiled in isolation from all other soil, other excavated material, and debris and shall be managed in compliance with the requirements of sections 22a-449(c)-100 to 22a-449(c)-119, inclusive, of the Regulations of Connecticut State Agencies.

(7) For the purposes of this subsection, soil, other excavated material, or debris is considered to be stockpiled when such soil, excavated material, or debris has been accumulated, consolidated for storage, and will have to be removed from the stockpile for replacement or disposal.

(e) Restoration

Restoration of impacts from allowable disturbance activities, including, but not limited

to, restoration of the area where allowable disturbance activities were conducted, shall be conducted in accordance with the following requirements:

(1) The area where allowable disturbance activities were conducted shall be restored to the condition described in the EUR;

(2) Any soils, other excavated materials, or debris, excavated as part of an allowable disturbance:

(A) Provided it is returned to the location and depth from which it was excavated, may be returned without the need for analytical testing;

(B) Not returned to the location and depth from which it was excavated shall be tested to determine the concentration of pollutants in such soil, other excavated materials, or debris. The analytical results of testing, shall be taken into account and such soil, other excavated material, or debris shall be either reused in compliance with section 22a-133k-2(h) of the Regulations of Connecticut State Agencies, or disposed of at a facility authorized to accept such soil, other excavated material, or debris; or

(C) That constitutes or contains a hazardous waste, as defined by section 22a-448 of the Connecticut General Statutes, shall, in addition to subparagraphs (A) and (B) of this subdivision, be managed in compliance with the requirements of sections 22a-449(c)-100 to 22a-449(c)-119, inclusive, of the Regulations of Connecticut State Agencies;

(3) If soil, other excavated material, or debris is stockpiled on concrete or bituminous concrete, following the removal of the stockpile, the area below the stockpile shall be swept to remove any remaining stockpiled soil, excavated material or debris;

(4) (A) Soil sampling shall be conducted in the area below and in the vicinity of where soil, other excavated material, or debris was stored whenever:

(i) Soil, other excavated material, or debris is removed from polyethylene or similar sheeting material; or

(ii) The commissioner or an LEP determines that soil, other excavated material, or debris was not managed pursuant to the requirements of this subsection following the removal of such soil, other excavated material, or debris;

(B) An LEP shall oversee the collection of soil samples required by this subdivision. Such samples shall be analyzed for each of the pollutants known or reasonably expected to be present in the excavated soil, other excavated material, or debris and all pollutants identified in the EUR. All laboratory analysis shall be performed by a laboratory certified by the Department of Public Health for the chemical testing performed. When such analytical results are greater than the applicable RSR criteria, the soil, other excavated material, or debris below and in the vicinity of the soil stockpile shall be subject to the requirements of the RSRs; and

(5) Any pollution resulting from a temporary allowable disturbance shall be remediated to the satisfaction of the commissioner.

(f) Record of Activities

The person authorized to conduct activities under this subsection shall maintain an up-to-date record of operating activities on the parcel, as they are occurring, for the duration of the allowable disturbance activities. At a minimum, such record shall include:

(1) A summary of the contaminants of concern;

(2) The depth and location from which soil, excavated materials, or debris were

excavated;

(3) For each stockpile storage area:

(A) The date soil, excavated materials, or debris were received at such area(s);

(B) Each date soil, excavated materials, or debris were transported from the area, and the date of final disposition of such soil, excavated materials, or debris; and

(C) An accounting of the total volume of soil, excavated material and debris managed at such area;

(4) The total volume of soil, excavated material, or debris that were returned to the location where it was originally excavated;

(5) Each receiving site where excavated soil, excavated materials, or debris were reused or disposed of, including the facility name, location, and address and the amount of soil, excavated material, or debris brought to such facility, with copies of the accompanying bills of lading or waste manifests; and

(6) If soil samples were collected and analyzed, all laboratory analytical results and results tables, with a map showing where the samples were collected.

(g) Completion report

Not more than 60 days after the completion of allowable disturbance activities authorized pursuant to this section, a completion report, on a form prescribed by the commissioner, shall be prepared and submitted to the commissioner. The completion report shall include:

(1) A summary of the work performed, including the dates activities were initiated and completed;

(2) Time dated photographs of the activities conducted under this section while in progress and after completion, unless the taking of such photographs is prohibited by law;

(3) Records or waste manifests documenting the final disposition of excavated soils, materials and debris;

(4) Where there has been disturbance of inaccessible soils or an engineered control, records documenting, as applicable, how post-restoration polluted soils meet the requirements for inaccessible soils, or how an engineered control and warning layers, if any, were repaired or replaced;

(5) The results of any laboratory analysis conducted, and an explanation of the need for such analysis, as well as a laboratory data quality assessment and usability evaluation that complies with the requirements in section 22a-133k-1(h)(1) of the Regulations of Connecticut State Agencies;

(6) An explanation of how, after completion of the allowable disturbance, the subject area meets the requirements of the EUR as recorded;

(7) An as-built map, prepared using the survey or simplified survey required by section 22a-133q-4 of the EUR regulations as a base map, documenting conditions in the subject area after completion of the work authorized by the allowable disturbance;

(8) A statement signed and sealed by the LEP supervising the allowable disturbance indicating that the area upon which the work was performed is in compliance with the EUR and the RSRs, or that additional work is necessary for the area upon which the work was performed to comply with the EUR and the RSRs, in which case the statement shall include a detailed description of the work to be performed, an explanation of why such additional work is needed and a schedule to perform such activities. The commissioner's receipt of

any such report noting that additional work is necessary shall not excuse any non-compliance with this section and shall not prevent the commissioner from taking any other action regarding such non-compliance;

(9) A statement, signed and sealed by an LEP, certifying that the completion report is true and accurate; and

(10) Any other information specified by the commissioner on such form.

(h) Requirement to Provide Owner with Records

If the person authorized to conduct activities under this section is not the owner of the parcel, not more than 60 days after the completion of allowable disturbance activities, such person shall provide the owner with a copy of all documents, records or reports, required under this section.

(i) Correction of Non-Compliance

(1) If at any time the commissioner determines that temporary allowable disturbance activities were conducted in manner that does not comply with the requirements of this section, including, but not limited to, activities not authorized by this section, or that the area where work was performed is in violation of the EUR and the RSRs, the commissioner may require that the parcel be restored to the conditions described by the EUR by a date certain, or may take any other action regarding such non-compliance.

(2) Nothing in this section shall affect the authority of the commissioner under any other statute or regulation, including, but not limited to, the authority to seek civil or criminal penalties or issue any order to prevent or abate pollution.

(Effective February 16, 2021)