



79 Elm Street • Hartford, CT 06106-5127

www.ct.gov/deep

Affirmative Action/Equal Opportunity Employer

VIA eREGULATIONS SYSTEM

January 4, 2021

Senator Craig Miner
Senator James Maroney
Representative Susan M. Johnson
Representative Nicole Klarides-Ditria
Legislative Regulation Review Committee
State Capitol, Room 011
Hartford, Connecticut 06106

Re: Legislative Regulation Review Committee Review of Proposal to Adopt Regulations Concerning Environmental Land Use Restrictions, PR2017-071

Dear Senators Miner and Maroney and Representatives Johnson and Klarides-Ditria:

Pursuant to section 4-170 of the Connecticut General Statutes, I am pleased to resubmit for your consideration and approval the proposed Environmental Use Restriction Regulations (“Regulations”). The Regulations replace existing regulations concerning Environmental Land Use Restrictions found in § 22a-133q-1 of the Regulations of Connecticut State Agencies. An Environmental Use Restriction (“EUR”) restricts future use of a parcel of polluted real property undergoing remediation, or requires the owner of such a parcel to satisfy certain ongoing obligations associated with the remediation.

This resubmission addresses substantive concerns and technical corrections identified by the Legislative Commissioner’s Office in its memorandum dated November 20, 2020 as accepted by the LRRC at its meeting on November 24, 2020. The attached response document explains the Department’s response to those concerns and shows the language that was updated since the last submission to the LRRC. The Office of the Attorney General approved the updated version of the regulation as legally sufficient on December 29, 2020.

The Remediation Standards Regulations, §§ 22a-133k-1 to 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies (“RSRs”), require EURs when certain approaches to cleanup of pollution are selected. The EUR regulations detail the process for obtaining an EUR, for authorizing necessary work on a parcel that would otherwise be prohibited by an EUR, and other requirements concerning records retention, inspection, and notice to interest holders. Of particular note, the Regulations implement, for the first time, a new type of EUR - the Notice of Activity and Use Limitation or NAUL. When appropriate, NAULs can be approved and recorded by an owner and their consultants; no approval from DEEP is required. The Regulations also

authorize “temporary allowable disturbances,” creating flexibility for the owners of parcels subject to an EUR to perform minor excavations without approval from DEEP.

These regulations are a key component of Goal 5 of DEEP’s 20 By 20 initiative aimed at increasing predictability, efficiency, and transparency of DEEP’s environmental permitting and regulatory processes. These regulations will make the process of implementing an EUR, and thereby achieving a cleanup, more efficient and predictable, while still protecting human health and the environment. Adoption of this proposal, together with the complimentary Remediation Standard Regulations that are being submitted under separate cover for your review, will result in increased certainty and additional options when utilizing EURs, which are critical tools for the parties responsible for cleaning up environmental pollution. In addition, similar to revisions the Remediation Standard Regulations, these regulations will focus DEEP’s efforts on higher-risk pollution issues.

If there are any general questions regarding this submission, please contact James Albis, Senior Advisor to the Commissioner, Office of the Commissioner, by electronic mail at James.Albis@ct.gov or at 860-424-3136. If you have any substantive or rule drafting questions, please contact Brendan Schain by electronic mail at Brendan.Schain@ct.gov or at 860-424-3172.

Thank you for your assistance with this matter.

Sincerely,

Betsy Wingfield
Katherine S. Dykes for
Commissioner

Responses to the Legislative Commissioners' Office (LCO) Report on

LRRC Regulation No. 2020-016a

eRegulations Tracking No. 2017-071

All of the concerns identified in the LCO Report dated November 20, 2020 are addressed as specified. All the changes are reflected in the proposed regulation version in eRegulations.

Substantive Concerns

#	Substantive Concern	Response
1	<p>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.</p>	<p>In response to the comment, the language has been adjusted to remove the phrase "authorized by law." In each instance, the language now reads as follows:</p> <p>§ 22a-133q-6(g)(8) (p. 30):</p> <p>(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 <u>other action regarding such non-compliance</u> authorized by law;</p> <p>§ 22a-133q-6(i)(1) (p. 30):</p> <p>(1) If at anytime 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 <u>regarding such non-compliance</u> authorized by law.</p> <p>§ 22a-133q-7(e)(1)(H) (p.34)</p>

		<p>(H) A statement signed and sealed by the LEP supervising the activities conducted under the temporary release 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 <u>other</u> action authorized by law regarding such non-compliance;</p> <p>§ 22a-133q-7(i)(1) (p.35):</p> <p>(1) If at anytime the commissioner determines that work or activities conducted do not comply with the requirements of this section, including, but not limited to, the conduct of activities not authorized by a temporary release, the commissioner shall consider any such work or activity unauthorized and may immediately terminate any such release, require that the parcel be restored to the conditions described by the EUR by a date certain, and take any other action <u>regarding such non-compliance</u> authorized by law.</p> <p>§ 22a-133q-8(b)(2) (p.36):</p> <p>(2) The commissioner's receipt of any plan or schedule under this subsection shall not excuse any non-compliance and shall not prevent the commissioner from taking any <u>other</u> action authorized by law regarding such non-compliance.</p>
2	<p>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</p>	<p>This provision refers to the recording of a termination of a temporary release authorizing recurring activities after such activities have been performed for the last time. After recording, it is the original termination that should be returned by the Town Clerk. The term "Temporary release" has been replaced with "termination" in this provision, so that it now reads:</p> <p>(2) If a temporary release approved by the commissioner authorizes recurring activities and the activities authorized by</p>

	<p>"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.</p>	<p>such release have been conducted for the last time, following the receipt of a completion report as required by subdivision (1) of this subsection, the commissioner may prepare a termination of such temporary release. Not more than 7 days after receipt of such termination signed by the commissioner, the owner shall ensure that no alterations of any kind are made and that the termination of temporary release is recorded in the land records of the municipality where the EUR is recorded and that the town clerk returns the original termination temporary release to the commissioner after recording.</p>
3	<p>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.</p>	<p>The Department appreciates the need to use terms consistently to avoid confusion. When an EUR is to be signed by a Department official other than the Commissioner, such official will be referred to as the "Commissioner's designee." Use of this term is consistent with the definition of Commissioner found in § 22a-133q-1. When an EUR is to be signed by a Licensed Environmental Professional, such person will be referred to as an "Licensed Environmental Professional, duly authorized" or an "LEP, duly authorized." These changes have been made in each instance where the terms identified in the LCO comment appear in §§ 22a-133q-app1 and 22a-133q-app2.</p> <p>Changes were made to pages 45, 46, 48, 52, and 53 of the Regulations. Note that, although the LCO comment identifies terms needing review on page 49, the terms in question were not found on that page.</p> <p>Also note that, on page 41, at paragraph 6 of 22a-133q-app1, references to the Commissioner's agent remain. This section does not concern who will execute the document, but instead who may access the property using the easement conveyed by the document. This is intended to capture a broader class of persons than those Department officials who may be designated to execute EURs. No change was made in this paragraph.</p>

Technical Corrections

All technical corrections identified in the LCO report have been made as described in the LCO report. Actions taken to address technical correction 1, and additional changes made in response to technical correction 2, are identified and explained below.

#	Technical Correction	Response
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.	The document that the Department uploads into the eRegulations system does not have the "eRegulations ct.gov logo" noted in this comment and DEEP has no way to control why, where and how this logo appears. DEEP has brought his issue to the attention of the SOTS who noted that it might be a software issue that will require modification to the eregs system.
2	On page 10, in section 22a-133q-1(a)(4), " <u>environmental use restriction</u> " should be " <u>provided</u> ", for consistency.	<p>The suggested technical correction was implemented. However, because General Statutes §22a-133n does not provide a definition for "EUR" that term was removed from the definition of "environmental use restriction" and a new definition – of "EUR" – was inserted as definition 22a-133q-1(a)(5) for clarity. Remaining definitions were renumbered to reflect the insertion. Definitions 22a-133q-1(a)(4) and 22a-133q-1(a)(5) now read:</p> <p>(4) "Environmental use restriction" or "EUR" has the same meaning <u>provided</u> as "environmental use restriction" in section 22a-133n of the Connecticut General Statutes;</p> <p>(5) "<u>EUR</u>" means an environmental use restriction;</p> <p>(remaining definitions re-numbered to reflect insertion)</p>