



The End of the Transfer Act: Is It Too Good to be True?

June 15, 2021

2:00 p.m. – 4:00 p.m.

CT Bar Association

Webinar

CT Bar Institute, Inc.

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NY: 2.0 CLE Credits (AOP)

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The End of the Transfer Act: Is It Too Good to be True? (2021CLC-RP02)

Timed Agenda

2:00-2:05 – Introductions (Elizabeth)

2:05-2:25 – Summary of the Transfer Act (Nancy)

2:25-2:40 – Recent Changes to the Clean-up regulations and other Clean-up Programs (Sam)

2:40-2:45 – Recent Changes to the Environmental Use Restriction Regulations (Elizabeth)

2:45-3:05 – Current Proposed Changes to Sunset the Transfer Act – Release Based Program and Transition Issues (Ann)

3:05-3:25 – Status of Release Based Regulations and Practical Implications on Transactions (All Speakers)

3:25-4:00 – Questions

LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer's conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

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Faculty Biographies



Ann Catino is a partner at Halloran Sage LLP and has been practicing in the area of environmental law for over 30 years. As part of her practice she has represented numerous real estate developers, owners of manufacturing and industrial properties, multi-use and commercial properties, sellers, buyers, and financial institutions as the properties are sold and/or developed. In addition, she represents many municipalities as they navigate environmental challenges

presented by historic, abandoned, neglected and tax-delinquent properties and seek to restore such properties to productive reuse.

Equally equipped to guide clients confidently through matters involving state and federal environmental permitting and litigation, Ann provides a wide range of environmental services to unique development projects, ranging from the Meadows Music Theater—the first facility of its kind financed through the state’s urban sites program and tax increment financing in the ‘90’s, and more recently, counsel to the State during the renovation and redevelopment of 23 service plaza facilities. Ann also regularly appears before federal and state environmental and siting agencies, local regulatory boards, and all courts.

Ann is often asked to assist in the development of new environmental laws and regulatory initiatives. She has served as Co-Chair of the State’s Brownfield Working Group for approximately 15 years and currently is a member of the DEEP’s Released Based Working Group.



Samuel R. Haydock has more than 35 years of experience in environmental and land-use consulting. He is a Principal in the firm, the Director of Business Development and Client Care for the Environmental Division at BL Companies, and was previously Director of Northeast Environmental Operations. He serves as Program Manager and Senior Project Manager for complex environmental programs and projects. He has extensive experience with environmental projects for industrial clients, developers, institutions, municipalities, municipal development entities, and state agencies. His technical background includes designing and managing site characterization studies for contaminant investigations, design and management of complex site remediation and brownfields

redevelopment projects, environmental permitting, ground water exploration and development, water resource assessment, and land-use impact evaluations.

Mr. Haydock has extensive experience with environmental investigation and remediation of Brownfields, as well as that associated with construction of bridges, roadway improvements, stormwater and sanitary sewer separation projects, and utility installation projects. Mr. Haydock

has extensive experience working and negotiating with local, state, and federal regulatory agencies, and has extensive experience finding cost-effective solutions to facilitate redevelopment of complex properties.

Land-use impact studies have involved wetland studies, habitat evaluation, water budget analyses, assessment of impacts from development on natural and cultural resources, alternative and mitigation analyses, and preparation and submittal of local, state, and federal land-use permit applications. Mr. Haydock has conducted extensive groundwater exploration and permitting for water supply development, as well as mapping programs of surface and subsurface geologic/hydrogeologic resources and Aquifer Protection Areas.



Nancy Mendel is a member of Winnick Ruben Hoffnung Peabody and Mendel, LLC and has been practicing environmental law for over twenty-five years, counseling private and public sector clients in transactional, permitting, compliance and enforcement matters in all areas of environmental law.

With a focus on brownfield redevelopment, she advises clients on corporate and real estate due diligence, including permitting, environmental insurance, financing, liability and risk assessments, site investigations, remediation, RCRA Corrective Action, Superfund and federal and state environmental enforcement matters. She represents

clients regularly in front of Connecticut Department of Energy & Environmental Protection and the US Environmental Protection Agency.

Nancy is proud to have been part of the original group of drafters of Connecticut's landmark state liability relief Brownfields Revitalization and Remediation Act providing first of its kind in the nation state liability relief for Brownfield developers.



Elizabeth "Beth" Fortino is a counsel at Winnick Ruben Hoffnung Peabody and Mendel, LLC. Beth practices environmental law, counseling private and public-sector clients in transactional, permitting, compliance and enforcement matters in all areas of environmental law.

With a focus on brownfield redevelopment, she advises clients on corporate and real estate due diligence, including permitting, environmental insurance, financing, liability and risk assessments, site investigations and remediation.

Beth currently serves as Vice Chair of the Environmental Section of the Connecticut Bar Association and the Secretary for the Connecticut Society of Women Environmental Professionals. Beth is also a member of the Young Lawyers Section of the Connecticut Bar Association and the Environmental Professionals' Organization of Connecticut.

The End of the Transfer Act: Is it too good to be true?



Nancy Mendel, Esq., *Winnick Ruben Hoffnung Peabody and Mendel, LLC*

Ann Catino, Esq., *Halloran Sage*

Samuel Haydock, MS, LEP, *BL Companies*

Elizabeth Fortino, Esq., *Winnick Ruben Hoffnung Peabody and Mendel, LLC*



WINNICK RUBEN HOFFNUNG
PEABODY & MENDEL, LLC



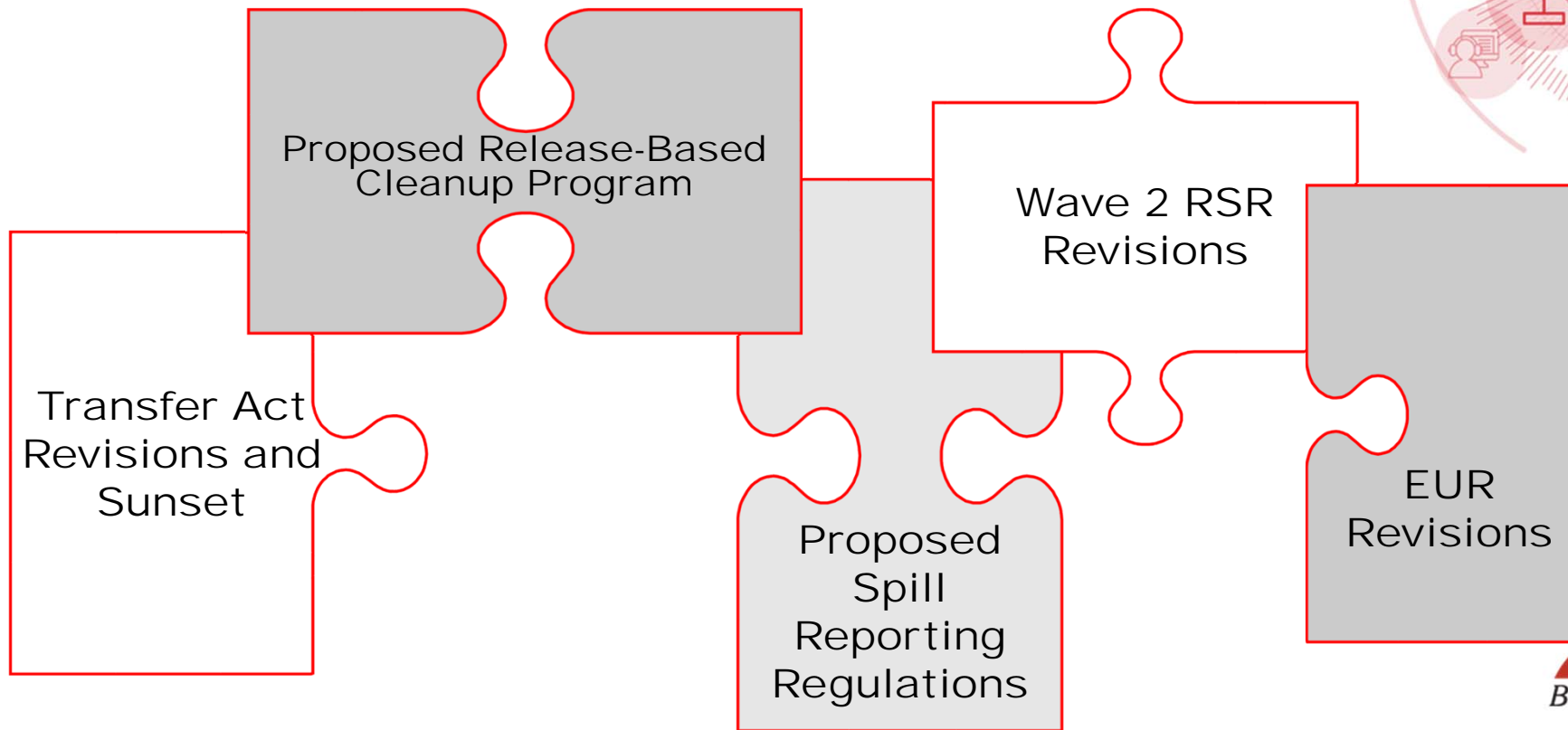
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Architecture
Engineering
Environmental
Land Surveying

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June 15, 2021

The Challenging and Evolving Puzzle of Connecticut Environmental Regulations



The Connecticut Transfer Act (CTA)

C.G.S. Sec. 22a-134 *et seq.* (as amended)

- 1985 – CTA enacted by the legislature
 - Negative Declaration – if no contamination (equivalent of Form I)
 - Site by Site DEEP review and approval of testing & clean-up if contamination
 - Created a huge backload of open CTA sites referred to as the “DEEP Black Hole”
- 1995 – Legislative initiative to address the backload
 - LEP Program (“mini” DEEPs)
 - Remediation Standard Regulations (RSRs) & Environmental Land Use Restrictions (ELURs)
 - Voluntary Clean-up Programs (oversite by LEPs)
- 2020 – PA 20-09
 - Legislature authorizes the development and implementation of a New Release Based Program to replace the CTA
- (Date Unknown)
 - CTA to sunset upon promulgation of Release Based Regulations (Section 1, PA 20-29)



- Before 10-1-2019*

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Public Act 19-75

- New exemptions from “Establishment” Definition
 - One-Time generation (over 100 kg) a.k.a. “One-time Get out of Jail Free Card”
 - Ever or Since Previous Form I, II, III or IV filed and closed out
 - Removal or abatement of building materials or removal of materials used for maintaining or operating a building
 - Removal of unused chemicals from emptying or clearing out a building (requires contemporaneous facts)
 - Waste generated by business “shut-downs,” if removed within 90 days (requires contemporaneous facts)

Public Act 20-09 (Sections 1 through 14)

- New clarifications of what constitutes an “Establishment”
 - Excludes Universal Waste from the definition of “hazardous waste” under the CTA
 - A property or business that generated >100 kgs of Universal Waste in any one month since 11/19/80
 - Industrial or commercial condos – limits the “establishment” to the unit, limited common elements under exclusive use of the unit, and portion of common elements used or occupied by the establishment unit
 - Multi-tenant properties – only need to investigate the establishment leaseholds, plus any areas of the property used or occupied by the establishment tenant.

The Connecticut Transfer Act

“Transfer” of Establishment



- Transfer of Establishment
 - Any transaction or proceeding through which an Establishment undergoes a change in ownership...**EXCEPT**...20 Plus statutory exemptions (always check the most recent version)
- Not all transactions are considered “transfers” for purposes of the Transfer Act
- For example, a transfer does not include:
 - Easements, foreclosures, mortgages, eminent domain, leases <99 years
 - Any change of ownership approved by the Probate Court
 - Any conveyance to a direct family member
 - Conveyance of a less than 50% portion of property with no establishment & no HW releases
 - Conveyance of a Service Station (as long as no other establishment uses of the property)
 - Certain acquisitions of properties by Municipalities as part of MDP
 - Etc.

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The Connecticut Transfer Act Next Steps

- If a “Transfer of Establishment” you must file one of 4 forms:
 - Form I: no contamination
 - Form II: contamination, no remediation required or remediation completed.
 - Form III: contamination exists above standards OR condition of property is not fully characterized
 - Form IV: contamination existed, and has been remediated except for monitoring and/or land use restrictions
- PLUS ECAF, Fee (\$\$\$) & Reports submitted to DEEP within 10 days of Closing
- If transferring a Business – then file a Business Only Form
- If transferring a Property – then file a Real Estate Form
- If transferring both – then file both sets of Forms

The Connecticut Transfer Act Next Steps Contd.



- Parties to a CTA Form Filing
 - Transferee – Buyer of Property or Business
 - Transferor – Seller of Property or Business – Strictly Liable for compliance
 - Certifying Party – Buyer, Seller or third party associated with the Establishment
 - ECAF – signed by LEP & Certifying Party
- Timeframes
 - 2 yrs. to complete Investigation in accordance w/ prevailing standards & guidelines
 - 3 yrs. to initiate the Remediation – public notice and submission of RAP
 - 8 yrs. to complete Remediation in accordance w/ RSRs and submit a Verification
- Audit
 - DEEP has 1 yr. from DEEP receipt of Final Verification to notice an audit
 - DEEP has 3 yrs. from same date to complete the audit (subject to exceptions)

Recent and Proposed Changes to the Clean-up Regulations

Wave II Revisions to the Remediation Standard Regulations (RSRs) – Effective February 16, 2021

Environmental Use Restrictions – Revisions Effective February 16, 2021

Spill Reporting Regulations – In Progress

Sunset the Transfer Act – In Progress (Sort of)

Release-Based Cleanup Regulations – In Progress



Wave II RSR Revisions

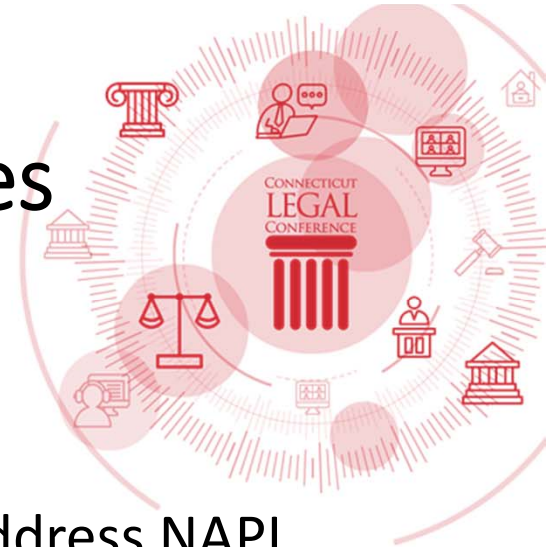
- RSRs - RCSA 22a-133k – 1 through 3
- Specify the standards for the remediation of environmental pollution in soil and groundwater at polluted properties
- Only second substantial revisions since inception in 1997
- Wave I Revisions effective June 2013
 - Shortened the post-remediation groundwater monitoring timeframes
 - Allows asphalt alone to render inaccessible (cap) soil containing certain contaminants with an ELUR and NAUL
 - PMC Exception for Infiltration
 - Exempts incidental sources of impact to soil and groundwater



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Wave II RSR Revisions – Positive Changes

- Option to Develop Alternative GWPC
- Option to Develop Alternative GB PMC
- Introduction of Concept of Immobilization/Ability to Address NAPL
- Self Implementing Engineering Controls
- Self Implementing Wide-Spread Polluted Fill
- Modification of Coal, Ash, Asphalt PMC Exception to include clinkers and slag
- Pesticide Exemptions



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Wave II Revisions - Concerns

- Revised and More Stringent Volatilization Criteria
 - Applies to groundwater to 30 feet
 - Significantly lower numbers for several VOCs
 - May be able to use old criteria in some cases
- Low Dilution Surface Water Scenarios
 - Have to meet lower of the Human Health or the Aquatic Toxicity Criteria



Wave II RSR Revisions - Concerns



- **The re-use of polluted soil below RSR criteria**

- The switch from notification to approval by DEEP is a challenge
- Requires approval from DEEP prior to regrading that move soil on the same property.
- It will be impractical to implement and cause increased cost and delays.

- **The lack of transition language.**

- For example, sites that previously conducted public notice activities to meet RSR requirements do not meet the revised RSR requirements.
- Will Sites that have already conducted public notice under the existing RSR requirements but have not yet been verified or closed out have to be public noticed again?

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Proposed Spill Reporting Regulations

Footnotes

*Exceptions – Allowed (regardless of exceedance or violation) by:

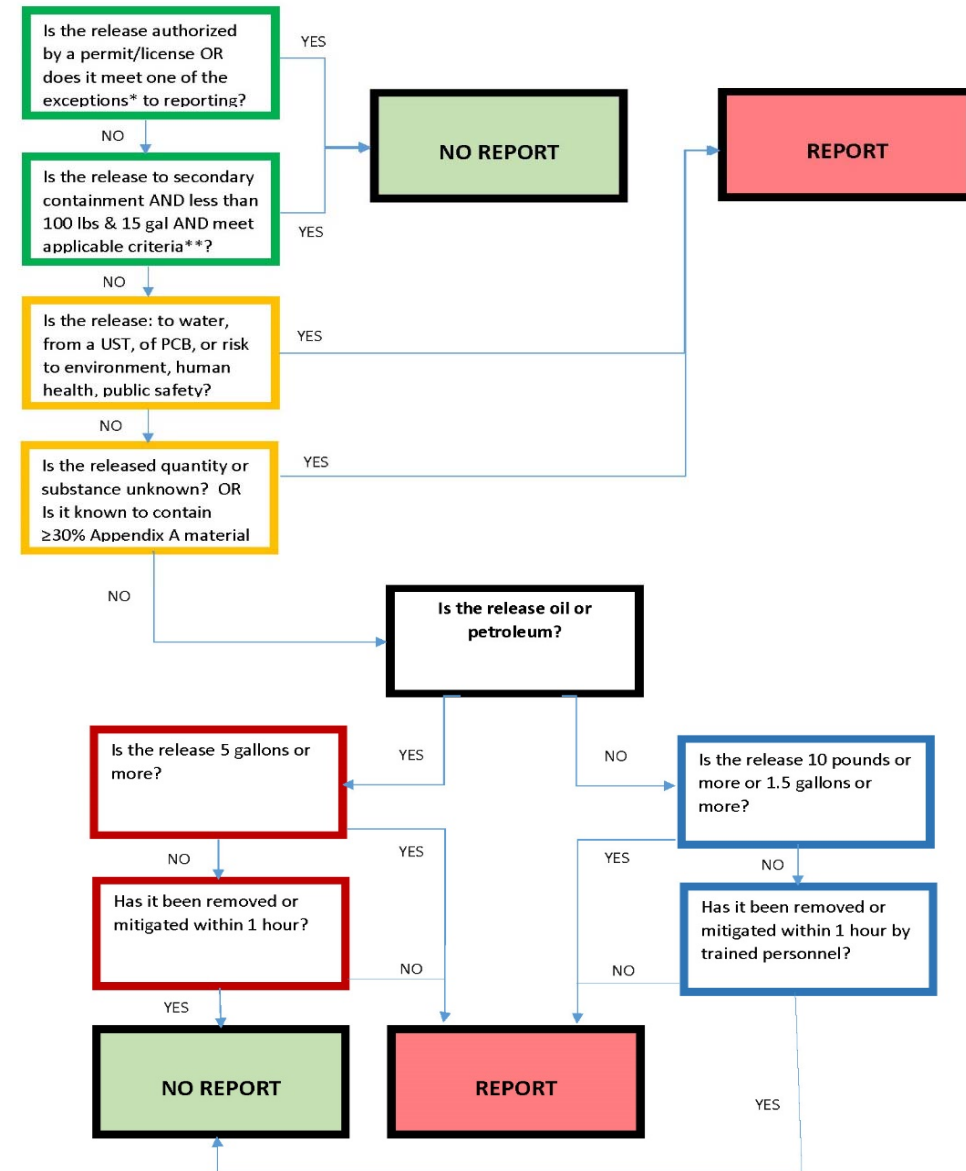
- 1) State or federal law;
- 2) Judgement or order of the court;
- 3) Under a laboratory fume hood of incidental amount;
- 4) Minor sheen from roadway, parking lot, driveway normal vehicle use;
- 5) Food products;
- 6) Domestic sewage less than 100 gallons;

** Criteria for releases to containment, must be cleaned within 1 hour AND must NOT be:

- 1) more than 100lbs or 15gal.; 2) involve a UST or PCB; 3) create an emergency

KEY

- = exceptions
- = oil or petroleum
- = non-petroleum
- = always report



Recent Changes to the Environmental Use Restriction Regulations

- What is the purpose of an EUR?
 - To minimize the risk of human exposure to pollutants and hazards to the environment by preventing specific uses or activities at a property (or portion)
 - To provide cost-effective RSR compliance options
- Two Types
 - ELURs – 22a-133q-1
 - Notice of Activity and Use Limitations (NAULs) – 22a-133q-3 – NEW!
 - Different from an ELUR because the state does not obtain an interest in the property

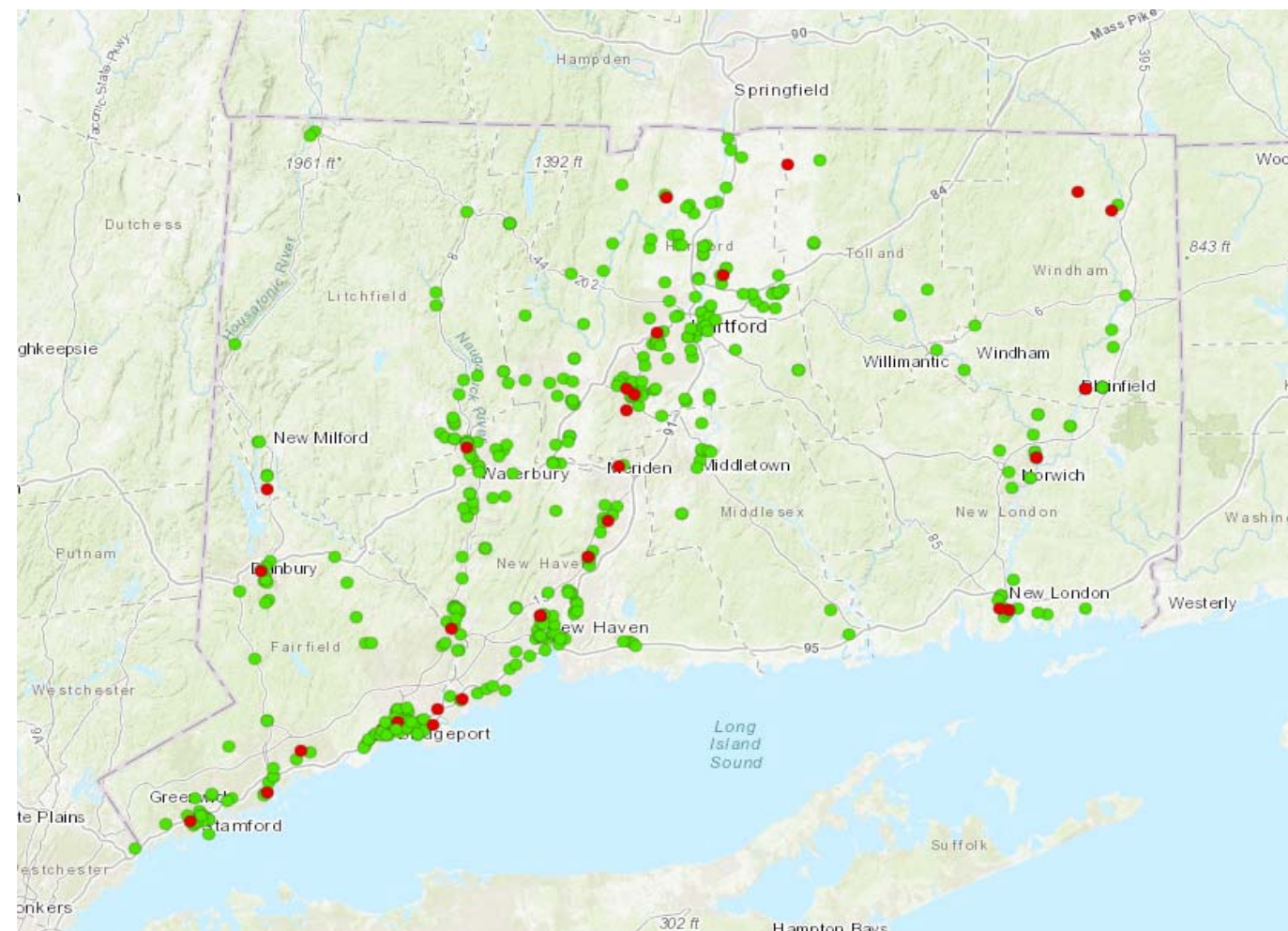


Environmental Land Use Restriction Revisions

- New Fees for ELURs and NAULs approved by DEEP
 - \$2,500 prior to 2/15/2021
 - \$5,000 after 2/15/2021
- Hard Deadlines
- New Obligations for already recorded ELURs
 - EUR Factsheet
 - Annual Inspection Requirements



Current ELURs



Green – Approved & Recorded
Red – Approved but may or may not yet be recorded

<https://ctdeep.maps.arcgis.com/apps/webappviewer/index.html?id=d37ecb2a5c3491d8f0d389a96d9a912>

As of 4/22/2021



[illegible]

- ## Sections 15 through 23

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Public Act 20-09 – Transition to Release Based Regulations

Sections 15 – Definitions

- Person – includes individuals, corporate entities, municipalities,
 - AND corporate officers
 - provided that person has the responsibility to influence corporate policies or activities,
 - there is a “nexus” between actions/inactions & the violation such that the officer influenced the action, *and*
 - the officer facilitated the violation

NB: *Commissioner of Environment Protection v. Underpass Auto Parts Co.*, 319 Conn. 80 (2015); *Celentano v. Rocque*, 282 Conn. 645 (2007); *Ventres v. Goodspeed Airport LLC*, 275 Conn. 105 (2005); *BEC Corp. v. Department of Environmental Protection*, 256 Conn. 602 (2001)

- Release – new and historical releases, separate from spills (only exclusion is auto exhaust or the application of fertilizer or pesticides consistent with their labelling)
- Remediation – includes investigation and cleanup



- creation (spill reporting regulations are proposed)
- maintaining

Vorlon Holding, LLC v. Commissioner of Energy & Environmental Protection, 161 Conn. App. 837 (Conn. App. Ct. 2015). An owner who had knowledge of the conditions is not “blameless” even if the owner did not create the condition. With knowledge of the condition, passive ownership is sufficient to establish liability for maintenance of the condition.

Public Act 20-09: Reporting, Remediating & Enforcement/Penalties

- Section 17: Requires Reporting
 - When? Trigger for compliance with NEW program and reporting will be when Regulations are adopted by DEEP
 - Whether to report will be defined further in the new regulations
- When Reporting May Not be Required
 - Reporting is NOT required for releases that were known or “discovered” based upon data that was available or generated prior to the date of the new regulations
- Remediation will be to the new regulatory standards
 - Requires a uniform standard for cleanup
- Section 18 – Enforcement (Administrative Order or AG action) and Penalties (\$25,000 per violation, per day// joint & several liability)



Previously
32-764 Liability
downer

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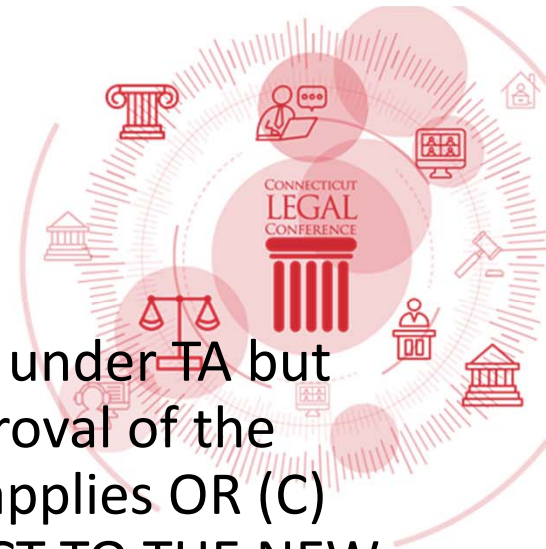
Release Based Regulations – Monumental Shift

- Applies to all Properties – commercial, industrial, municipal, residential
- Applies to any and all anthropogenic “releases” (& possibly naturally occurring)
- Triggered by “discovery”
- If you find a release, report, investigate, remediate



Transfer Act Transition

- Section 17 (c)(1): Releases that occurred prior to filing under TA but not discovered until (A) after the date of the DEEP approval of the remediation OR (B) the date to which the Verification applies OR (C) the date on which the Form I or II was filed ARE SUBJECT TO THE NEW ACT
- Section 17(c)(2): Releases that occur AFTER the filing of a TA form are subject to the Act EXCEPT when a Phase II investigation has been completed AFTER the filing of a FII or FIV, ONLY RELEASES AFTER THE PHASE II ARE SUBJECT TO THE ACT





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Transition Issues – Other Statutes Potentially Affected

Programs that Directly Refer To RSRs CGS 22a-133k	Statute	Compliance Reference
Significant Environmental Hazard	22a-6u	RSRs provide thresholds for reporting and/or further action and remediation
Clean up of hazardous waste disposal sites	22a-133a	Final remedial action for a haz waste disposal site is a remedy consistent with RSRs
Environmental Use Restrictions / NAUL	22a-133o	References compliance with RSRs
EUR invalidity	22a-133r	If EUR is void, remediation is to RSRs
LEP licensing	22a-133v	LEP test tests applicant's knowledge of investigation & remediation IAW RSRs
Voluntary site remediation program in GB & GC areas	22a-133w	Requires compliance to RSRs
Voluntary Investigation & remediation of contaminated real property	22a-133x	"Release area" is defined per 22a-133k regulations & remediation must follow RSRs
Voluntary site remediation program in GB & GC areas	22a-133y	Requires compliance to RSRs
Covenant Not to sue prospective purchasers with Commissioner's approval of remediation plan	22a-133aa	Requires compliance to RSRs
Covenant Not to sue prospective purchasers with LEP's approval of remediation plan	22a-133bb	Covenant not to sue between DEEP and prospective purchaser based upon a remediation plan "of the property" per 22a-133k regulations & entry into 22a-133x or 22a-133y program or TA or verification
New Property owner's immunity from Third Party liability for conditions that existed prior to taking title	22a-133ee	Requires compliance to RSRs
Ownership of Unpermitted Solid Waste Disposal Facility	22a-208a(c)	Requires owner to submit a closure plan and provide public notice of such plan in a manner set forth in 22a-133k or remediate such disposal area IAW a remediation plan approved by DEEP or LEP pursuant to 22a-133x, 22a-133y or TA
UST Fund & clean up program	22a-449c, 22a-449f, 22a-449m and 22a-449p	RSRs create threshold cleanup standards
Certification of activity affecting floodplain	25-68d	Provides an exemption for mills from floodplain certification if remedial activity is subject to RSRs

Released Based Regulations – the Transition

- New legislation requires new regulations – Heavy Lifting
 - Reportable Concentrations
 - Reportable Quantities
 - Tiers and Timeframes for Reporting
 - Self-Implementing Risk Based Alternatives
 - Overlap with other programs and statutes
- Timeframe: 1- 2 years?
- Workgroup and Subcommittees currently meeting
 - Five Subcommittees – Discovery of Historical Release, Reporting of Newly Discovered Historical Release, Characterization of Discovered Historical Release, Immediate Actions, and Tiers (Who oversees & Risk Level)
 - “Transition Working Group”
 - June Deadline for “White Papers”



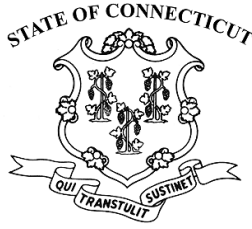
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THE FUTURE ?????



Scenarios

Discussion // Q&A



House Bill No. 7001

September Special Session, Public Act No. 20-9

**AN ACT REVISING PROVISIONS OF THE TRANSFER ACT AND
AUTHORIZING THE DEVELOPMENT AND IMPLEMENTATION OF A
RELEASE-BASED REMEDIATION PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 22a-134 of the 2020 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

For the purposes of this section and sections 22a-134a to [22a-134d] 22a-134e, inclusive, and sections 22a-134h and 22a-134i:

(1) "Transfer of establishment" means any transaction or proceeding, on or before the date regulations are adopted pursuant to section 19 of this act, through which an establishment undergoes a change in ownership, but does not mean:

(A) Conveyance or extinguishment of an easement;

(B) Conveyance of an establishment through (i) a foreclosure, as defined in subsection (b) of section 22a-452f, (ii) foreclosure of a municipal tax lien [or through] pursuant to section 12-181, (iii) a tax warrant sale pursuant to section 12-157, (iv) a transfer of title to a municipality by deed in lieu of foreclosure, (v) an exercise of eminent

House Bill No. 7001

domain by a municipality or pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or purchase pursuant to a resolution by the legislative body of a municipality authorizing the acquisition through eminent domain for establishments that also meet the definition of a brownfield, as defined in section 32-760, or (vi) a subsequent transfer by such municipality that has [foreclosed on the property, foreclosed municipal tax liens or that has acquired title to the property through section 12-157, or is within the pilot program established in subsection (c) of section 32-9cc of the general statutes, revision of 1958, revised to January 1, 2013, or] acquired the property pursuant to any mechanism described in subparagraphs (B)(i) to (B)(iii), inclusive, of this subdivision or pursuant to the remedial action and redevelopment municipal grant program established in section 32-763, [or has acquired such property through the exercise of eminent domain by a municipality or pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or a resolution adopted in accordance with this subparagraph,] provided [(i)] (I) the party acquiring the property from the municipality did not establish, create or contribute to the contamination at the establishment and is not affiliated with any person who established, created or contributed to such contamination or with any person who is or was an owner or certifying party for the establishment, and [(ii)] (II) on or before the date the party acquires the property from the municipality, such party or municipality enters and subsequently remains in the voluntary remediation program administered by the commissioner pursuant to section 22a-133x and remains in compliance with schedules and approvals issued by the commissioner. For purposes of this subparagraph, subsequent transfer by a municipality includes any transfer to, from or between a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, a

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nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, or a Connecticut brownfield land bank;

(C) Conveyance of a deed in lieu of foreclosure to a lender, as defined in and that qualifies for the secured lender exemption pursuant to subsection (b) of section 22a-452f;

(D) Conveyance of a security interest, as defined in subdivision (7) of subsection (b) of section 22a-452f;

(E) Termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years, including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold;

(F) Any change in ownership approved by the Probate Court;

(G) Devolution of title to a surviving joint tenant, or to a trustee, executor or administrator under the terms of a testamentary trust or will, or by intestate succession;

(H) Corporate reorganization not substantially affecting the ownership of the establishment;

(I) The issuance of stock or other securities of an entity which owns or operates an establishment;

(J) The transfer of stock, securities or other ownership interests representing [less than forty] fifty per cent or less of the ownership of

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the entity that owns or operates the establishment;

(K) Any conveyance of an interest in an establishment where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling or sibling of a parent of the transferee;

(L) Conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the benefit of one or more siblings, spouses, children, parents, grandchildren, children of a sibling or siblings of a parent of the transferor;

(M) Any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste, provided either the area of such portion is not greater than fifty per cent of the area of such parcel or written notice of such proposed conveyance and an environmental condition assessment form for such parcel is provided to the commissioner sixty days prior to such conveyance;

(N) Conveyance of a service station, as defined in subdivision (5) of this section;

(O) Any conveyance of an establishment which, prior to July 1, 1997, had been developed solely for residential use and such use has not changed;

(P) Any conveyance of an establishment to any entity created or operating under chapter 130 or 132, or to an urban rehabilitation agency, as defined in section 8-292, or to a municipality under section 32-224, or to Connecticut Innovations, Incorporated or any subsidiary of the corporation;

(Q) Any conveyance of a parcel in connection with the acquisition of properties to effectuate the development of the overall project, as

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defined in section 32-651;

(R) The conversion of a general or limited partnership to a limited liability company;

(S) The transfer of general partnership property held in the names of all of its general partners to a general partnership which includes as general partners immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(T) The transfer of general partnership property held in the names of all of its general partners to a limited liability company which includes as members immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(U) Acquisition of an establishment by any governmental or quasi-governmental condemning authority;

[(V) Conveyance of any real property or business operation that would qualify as an establishment solely as a result of (i) the generation of more than one hundred kilograms of universal waste in a calendar month, (ii) the storage, handling or transportation of universal waste generated at a different location, or (iii) activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at such real property or business operation;]

[(W)] (V) Conveyance of a unit in a residential common interest community; [in accordance with section 22a-134i;]

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[(X) Acquisition of an establishment that is in the abandoned brownfield cleanup program established pursuant to section 32-768 and all subsequent transfers of the establishment, provided the establishment is undergoing remediation or is remediated in accordance with subsection (f) of section 32-768;]

(W) Acquisition and all subsequent transfers of an establishment (i) that is in the abandoned brownfield cleanup program established pursuant to section 32-768 or the brownfield remediation and revitalization program established pursuant to section 32-769, provided such establishment is in compliance with any applicable provisions of the general statutes, or (ii) by a Connecticut brownfield land bank, provided such establishment was entered into a remediation or liability relief program under section 22a-133x, 22a-133y, 32-768 or 32-769 and the transferor of such establishment is in compliance with such program at the time of transfer of such establishment or has completed the requirements of such program;

[(Y)] ~~(X)~~ Any transfer of title from [a bankruptcy court or] a municipality to a nonprofit organization or from any entity to a nonprofit organization, as ordered or approved by a bankruptcy court;

[(Z) Acquisition of an establishment that is in the brownfield remediation and revitalization program and all subsequent transfers of the establishment, provided the establishment is in compliance with the brownfield investigation plan and remediation schedule, the commissioner has issued a no audit letter or successful audit closure letter in response to a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program, or a one-hundred-eighty-day period has expired since a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program without an audit decision from the Commissioner of Energy and Environmental Protection;

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(AA) Conveyance of an establishment in connection with the acquisition of properties to effectuate the development of a project certified and approved pursuant to section 32-9v, provided any such property is investigated and remediated in accordance with section 22a-133y;]

[(BB)] (Y) Conveyance from the Department of Transportation to the Connecticut Airport Authority of any properties comprising (i) Bradley International Airport and all related improvements and facilities now in existence and as hereafter acquired, added, extended, improved and equipped, including any property or facilities purchased with funds of, or revenues derived from, Bradley International Airport, and any other property or facilities allocated by the state, the Connecticut Airport Authority or otherwise to Bradley International Airport, (ii) the state-owned and operated general aviation airports, including Danielson Airport, Groton/New London Airport, Hartford Brainard Airport, Waterbury-Oxford Airport and Windham Airport and any such other airport as may be owned, operated or managed by the Connecticut Airport Authority and designated as general aviation airports, (iii) any other airport as may be owned, operated or managed by the Connecticut Airport Authority, and (iv) any airport site or any part thereof, including, but not limited to, any restricted landing areas and any air navigation facilities; or

[(CC) Conveyance of an establishment to a Connecticut brownfield land bank and all subsequent transfers of such establishment, provided (i) such establishment was entered into a remediation or liability relief program under section 22a-133x, 22a-133y, 32-768, or 32-769, and the conveyor or transferor of such establishment is in compliance with such program at the time of transfer of such establishment, and (ii) none of the activities described in subdivision (3) of this section were conducted at such establishment after the date such establishment was entered into such remediation or liability relief program;]

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(Z) The change in the name of a limited liability company as an amendment to such company's certificate of organization, pursuant to section 34-247a.

(2) "Commissioner" means the Commissioner of Energy and Environmental Protection or the designated agent of the commissioner;

(3) "Establishment" means any real property at which or any business operation from which (A) on or after November 19, 1980, there was generated more than one hundred kilograms of hazardous waste in any one month, (B) hazardous waste generated at a different location was recycled, reclaimed, reused, stored, handled, treated, transported or disposed of, (C) the process of dry cleaning was conducted on or after May 1, 1967, (D) furniture stripping was conducted on or after May 1, 1967, or (E) a vehicle body repair facility was located on or after May 1, 1967. For the purposes of subparagraph (A) of this subdivision, "hazardous waste" does not include universal waste. For the purposes of filing a Form I, Form II, Form III or Form IV after October 1, 2020, if a property or business operation is an establishment, such establishment includes the entire parcel or parcels on which any such establishment is located, except as otherwise provided in this subdivision. If a property is or has been leased to two or more tenants or is or was simultaneously occupied by the owner of such property and a tenant, "establishment" means the areas on which the business operation is or was located, including the entire portion of the property leased to such business operation and any other area of such property used or occupied by such business operation. If a property is a commercial or industrial unit in a common interest community, "establishment" means the unit, the limited common elements under exclusive use of the unit owner on which the establishment is or was operated and any portion of the common area used or occupied by such unit owner. If a business operation is an establishment, such establishment includes the real property on which such business operation is or was located and the

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entire portion of such property used or occupied by such business operation. "Establishment" does not include any real property or any business operation from which more than one hundred kilograms of hazardous waste was generated in any one month solely as a result of either:

(i) The one-time generation of hazardous waste in any one month, as a result of either the first time such waste was generated or such a one-time generation since the last time a Form I, Form II, Form III or Form IV was required to be submitted; or

(ii) One or more of the following:

(I) Remediation of polluted soil, groundwater or sediment;

(II) The removal or abatement of building materials or removal of materials used for maintaining or operating a building;

(III) The removal of unused chemicals or materials as a result of the emptying or clearing out of a building, provided such removal is supported by facts reasonably established at the time of such removal; or

(IV) The complete cessation of a business operation, provided the waste is removed not later than ninety days after such cessation and such cessation is supported by facts reasonably established at the time of such cessation. "Establishment" does not include any real property or business operation that qualifies as an establishment solely as a result of the generation of more than one hundred kilograms of universal waste in a calendar month, the storage, handling or transportation of universal waste generated at a different location, or activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a

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hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33(a)(2) or (c)(2), or disposed of at such real property or business operation. When transferring real property or a business that comprises the entire establishment, such real property or business shall not be an establishment if the conditions set forth in subdivisions (1) and (2) of subsection (l) of section 22a-134a apply to such real property or business, and the time for the commissioner to conduct an audit pursuant to subdivision (3) of subsection (g) of section 22a-134a passed without the commissioner requiring any further action or the commissioner issued a no audit letter or a successful audit closure letter pursuant to subdivision (3) of subsection (g) of section 22a-134a;

(4) "Hazardous waste" means any waste which is (A) hazardous waste identified in accordance with Section 3001 of the federal Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq., (B) hazardous waste identified by regulations adopted by the Commissioner of Energy and Environmental Protection, or (C) polychlorinated biphenyls in concentrations greater than fifty parts per million except that sewage, sewage sludge and lead paint abatement wastes shall not be considered to be hazardous waste for the purposes of this section and sections 22a-134a to 22a-134d, inclusive;

(5) "Service station" means a retail operation involving the resale of motor vehicle fuel including, but not limited to, gasoline, diesel fuel and kerosene and which operation does not otherwise meet the definition of an establishment;

(6) "Certifying party" means, in the case of a Form III or Form IV, a person associated with the transfer of an establishment who signs a Form III or Form IV and who agrees to investigate the parcel in accordance with prevailing standards and guidelines and to remediate pollution caused by any release at the establishment in accordance with

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the remediation standards and, in the case of a Form I or Form II, a transferor of an establishment who signs the certification on a Form I or II;

(7) "Party associated with the transfer of an establishment" means (A) the present or past owner or operator of the establishment, (B) the owner of the real property on which the establishment is located, (C) the transferor, transferee, lender, guarantor or indemnitor, (D) the business entity which operates or operated the establishment, or (E) the state;

(8) "Remediation standards" means regulations adopted by the commissioner pursuant to section 22a-133k;

(9) "Parcel" means piece, parcel or tract of land which constitutes an establishment, as defined in subdivision (3) of this section, or on which is or was located any business operation which constitutes an establishment;

(10) "Form I" means a written certification by the transferor of an establishment on a form prescribed and provided by the commissioner that: (A) No discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance has occurred at the establishment which certification is based on an investigation of the parcel in accordance with prevailing standards and guidelines, or (B) no discharge spillage, uncontrolled loss, seepage or filtration of hazardous waste has occurred at the establishment based upon an investigation of the parcel in accordance with the prevailing standards and guidelines and the commissioner has determined, in writing, or a licensed environmental professional has verified, in writing, that any discharge, spillage, uncontrolled loss, seepage or filtration of a hazardous substance has been remediated in accordance with the remediation standards and that since any such written approval or verification, including any approval or verification for a portion of an establishment, no discharge, spillage, uncontrolled loss, seepage or filtration of

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hazardous waste or hazardous substances has occurred at any portion of the establishment;

(11) "Form II" means a written certification by the transferor of an establishment on a form prescribed and provided by the commissioner that the parcel has been investigated in accordance with prevailing standards and guidelines and that (A) any pollution caused by a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance which has occurred from the establishment has been remediated in accordance with the remediation standards and that the remediation has been approved in writing by the commissioner or has been verified pursuant to section 22a-133x or [section] 22a-134a₂ in writing₂ attached to such form by a licensed environmental professional to have been performed in accordance with the remediation standards and that since any such written approval or verification, including any approval or verification for a portion of an establishment, no discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or hazardous substances has occurred at any portion of the establishment, (B) the commissioner has determined in writing or a licensed environmental professional has verified pursuant to section 22a-133x or [section] 22a-134a₂ in writing, attached to the form that no remediation is necessary to achieve compliance with the remediation standards, or (C) a Form IV verification was previously submitted to the commissioner and, since the date of the submission of the Form IV, no discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance has occurred at the establishment, which certification is based on an investigation of the parcel in accordance with prevailing standards and guidelines;

(12) "Form III" means a written certification signed by a certifying party on a form prescribed and provided by the commissioner, which certification states that (A) a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance has

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occurred at the establishment or the environmental conditions at the establishment are unknown, and (B) that the person signing the certification agrees to investigate the parcel in accordance with prevailing standards and guidelines and to remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment in accordance with the remediation standards;

(13) "Form IV" means a written certification signed by one or more certifying parties on a form prescribed and provided by the commissioner and which is accompanied by a written determination by the commissioner or by a verification by a licensed environmental professional pursuant to section 22a-134a or 22a-133x, which certification states and is accompanied by documentation demonstrating that the parcel has been investigated in accordance with prevailing standards and guidelines and that (A) there has been a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance on the establishment, and (B) all actions to remediate any pollution caused by any release at the establishment have been taken in accordance with the remediation standards except [postremediation] groundwater monitoring [, natural attenuation monitoring] or the recording of an environmental [land] use restriction, and (C) the person or persons signing the certification agree, in accordance with the representations made in the form, to conduct [postremediation] groundwater monitoring [or natural attenuation monitoring] in accordance with the remediation standards and if further investigation and remediation are necessary to take further action to investigate the establishment in accordance with prevailing standards and guidelines and to remediate the establishment in accordance with the remediation standards;

(14) "Person" means person, as defined in section 22a-2;

(15) "Remediate" means to contain, remove or abate pollution, potential sources of pollution and substances in soil or sediment which

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pose an unacceptable risk to human health or the environment and includes, but is not limited to, the reduction of pollution by natural attenuation;

(16) "Licensed environmental professional" means an environmental professional licensed pursuant to section 22a-133v;

(17) "Environmental condition assessment form" means a form prescribed and provided by the commissioner, prepared under the supervision of a licensed environmental professional, and executed by (A) the certifying party under sections 22a-134 to 22a-134e, inclusive, or (B) the owner of the property under section 22a-133x which form describes the environmental conditions at the parcel;

(18) "Pollution" means pollution, as defined in section 22a-423;

(19) "Verification" means the rendering of a written opinion by a licensed environmental professional on a form prescribed by the commissioner that an investigation of the parcel has been performed in accordance with prevailing standards and guidelines and that the establishment has been remediated in accordance with the remediation standards;

(20) "Vehicle" means any motorized device for conveying persons or objects except for an aircraft, boat, railroad car or engine, or farm tractor;

(21) "Business operation" means any business that has, or any series of substantially similar businesses that have, operated continuously or with only brief interruption on the same parcel, either with a single owner or successive owners;

(22) "Corporate reorganization not substantially affecting the ownership of an establishment" means implementation of a business plan to restructure a corporation through a merger, spin-off or other plan or reorganization under which the direct owner of the

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establishment does not change;

(23) "Form IV verification" means the rendering of a written opinion by a licensed environmental professional, after a Form IV has been filed, that [postremediation] groundwater monitoring [, natural attenuation] or the recording of an environmental [land] use restriction has been completed in accordance with the Form IV;

(24) "Hazardous substance" means hazardous substance, as defined in Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC 9601, or a petroleum product or by-product for which there are remediation standards adopted pursuant to section 22a-133k or for which such remediation standards have a process for calculating the numeric criteria of such substance;

(25) "Sediment" means unconsolidated material occurring in a stream, pond, wetland estuary or other water body;

(26) "Universal waste" means batteries, pesticides, thermostats, lamps and used electronics regulated as a universal waste under regulations adopted pursuant to subsection (c) of section 22a-449. "Universal waste" does not mean (A) batteries, pesticides, thermostats and lamps that are not covered under 40 CFR Part 273, or (B) used electronics that are not regulated as a universal waste under regulations adopted pursuant to subsection (c) of section 22a-449;

(27) "Universal waste transfer facility" means any facility related to transportation, including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less;

(28) "Interim verification" means a written opinion by a licensed environmental professional, on a form prescribed by the commissioner, that (A) the investigation has been performed in accordance with

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prevailing standards and guidelines, (B) the remediation has been completed in accordance with the remediation standards, except that, for remediation standards for groundwater, the selected remedy is in operation but has not achieved the remediation standards for groundwater, (C) identifies the long-term remedy being implemented to achieve groundwater standards, the estimated duration of such remedy, and the ongoing operation and maintenance requirements for continued operation of such remedy, and (D) there are no current exposure pathways to the groundwater area that have not yet met the remediation standards; [.]

(29) "Connecticut brownfield land bank" has the same meaning as provided in section 32-760.

Sec. 2. Subsections (g) to (m), inclusive, of section 22a-134a of the 2020 supplement to the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(g) (1) (A) Except as provided in subsection (h) of this section, the certifying party to a Form III shall, not later than seventy-five days after the receipt of the notice that such form is complete or such later date as may be approved in writing by the commissioner, submit a schedule for the investigation of the parcel and remediation of the establishment. Such schedule shall, unless a later date is specified in writing by the commissioner, provide that the investigation shall be completed within two years of the date of receipt of such notice, remediation shall be initiated not later than three years after the date of receipt of such notice and remediation shall be completed sufficient to support either a verification or interim verification within a time frame set forth in subparagraphs (B) and (C) of this subdivision. The schedule shall also include a schedule for providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. Not later than two years after the date of the receipt of the notice that the Form III is complete, unless the commissioner has

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specified a later day, in writing, the certifying party shall submit to the commissioner documentation, approved in writing by a licensed environmental professional and in a form prescribed by the commissioner, that the investigation has been completed in accordance with prevailing standards and guidelines. Not later than three years after the date of the receipt of the notice that the Form III is complete, unless the commissioner has specified a later day in writing, the certifying party shall notify the commissioner in a form prescribed by the commissioner that the remediation has been initiated, and shall submit to the commissioner a remedial action plan approved in writing by a licensed environmental professional in a form prescribed by the commissioner. Notwithstanding any other provision of this section, the commissioner may determine at any time that the commissioner's review and written approval is necessary and in such case shall notify the certifying party that the commissioner's review and written approval is necessary. Such certifying party shall investigate the parcel and remediate the establishment in accordance with the schedule or the schedule specified by the commissioner.

(B) For a certifying party that submitted a Form III or Form IV before October 1, 2009, when remediation of the entire establishment is complete, the certifying party shall achieve the remediation standards for the establishment sufficient to support a final verification and shall submit to the commissioner a final verification by a licensed environmental professional.

(C) For a certifying party that submits a Form III or Form IV after October 1, 2009, not later than eight years after the date of receipt of the notice that the Form III or Form IV is complete, unless the commissioner has specified a later date in writing, the certifying party shall achieve the remediation standards for the establishment sufficient to support a final or interim verification and shall submit to the commissioner such final or interim verification by a licensed environmental professional.

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Any such final verification may include and rely upon a verification for a portion of the establishment submitted pursuant to subdivision (2) of this subsection. Verifications shall be submitted on a form prescribed by the commissioner. The certifying party may request a verification or interim verification filing extension. The commissioner shall grant a reasonable extension if the certifying party demonstrates to the commissioner's satisfaction that: (i) Such certifying party has made reasonable progress toward investigation and remediation of the establishment; and (ii) despite best efforts, circumstances beyond the control of the certifying party have significantly delayed the remediation of the establishment.

(D) A certifying party who submits an interim verification shall, until the remediation standards for groundwater are achieved, operate and maintain the long-term remedy for groundwater in accordance with the remedial action plan, the interim verification and any approvals by the commissioner, prevent exposure to the groundwater plume and submit annual status reports to the commissioner.

(E) The certifying party to a Form IV shall submit with the Form IV a schedule for the groundwater monitoring and recording of an environmental [land] use restriction, as applicable.

(2) (A) Notwithstanding the date the Form III or Form IV was submitted, if a certifying party completes the remediation for a portion of an establishment, such party may submit a verification or an interim verification by a licensed environmental professional for any such portion of an establishment. The certifying party shall be deemed to have satisfied the requirements of this subsection for that portion of the establishment covered by any such verification or interim verification. If any portion of an establishment for which a verification or interim verification is submitted pursuant to this subdivision is transferred or conveyed or undergoes a change in ownership before remediation of the entire establishment is complete that would not otherwise be subject to

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the provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i, the certifying party shall provide notice to the commissioner of such transfer, conveyance or change in ownership not later than thirty days after any such transfer, conveyance or change in ownership.

(B) Any certifying party who submits an interim verification for a portion of an establishment on or before December 31, 2014, shall not be required to record any environmental [land] use restriction, in accordance with section 22a-133o, prior to submitting such interim verification, provided such certifying party shall record such environmental [land] use restriction, in accordance with section 22a-133o, on or before September 1, 2015, or a later date as approved, in writing, by the commissioner. If such environmental [land] use restriction is not recorded on or before September 1, 2015, or such later date, such interim verification shall be invalid and shall not be recognized by the commissioner.

(3) (A) The commissioner may conduct an audit of any verification or interim verification submitted pursuant to this section, but shall not conduct an audit of a final verification of an entire establishment submitted pursuant to subdivision (1) of this subsection after three years have passed since the date of the commissioner's receipt of such final verification unless an exception listed in subparagraph (D) of this subdivision applies. Upon completion of an audit, the commissioner shall send written audit findings to the certifying party and the licensed environmental professional who verified. The three-year time frame for an audit of a final verification of an entire establishment shall apply to such final verifications received by the commissioner after October 1, 2007, and before October 1, 2019.

(B) The commissioner may conduct an audit of any verification or interim verification submitted pursuant to this section, but shall not commence an audit of a final verification of an entire establishment

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submitted pursuant to subdivision (1) of this subsection if more than one year has passed since the date of the commissioner's receipt of such final verification unless an exception listed in subparagraph (D) of this subdivision applies. If the commissioner commences an audit of such final verification, the commissioner shall complete such audit not later than three years after the commissioner's receipt of such final verification subject to such audit, unless an exception listed in subparagraph (D) of this subdivision applies. Upon completion of an audit, the commissioner shall send written audit findings to the certifying party and the licensed environmental professional who verified. The one-year time frame for commencing an audit of a final verification of an entire establishment and the three-year time frame for completion of such an audit shall apply to any final verification received by the commissioner on or after October 1, 2019.

(C) The commissioner may request additional information during an audit. If such information has not been provided to the commissioner within ninety days of the commissioner's request for such information or any longer time as the commissioner may determine in writing, the commissioner may either (i) suspend the audit, which for a final verification shall suspend the running of the three-year audit time frame for completing the audit until such time as the commissioner receives all the information requested, or (ii) complete the audit based upon the information provided in the verification before the request for additional information.

(D) The commissioner may commence an audit of a final verification of an entire establishment pursuant to this subdivision after the applicable time frame established in subparagraph (A) or (B) of this subdivision, and need not complete any such audit within three years, if (i) the commissioner has reason to believe that a verification was obtained through the submittal of materially inaccurate or erroneous information, or otherwise misleading information material to the

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verification or that misrepresentations were made in connection with the submittal of the verification, (ii) a verification is submitted pursuant to an order of the commissioner pursuant to subsection (j) of this section, (iii) any post-verification monitoring, or operations and maintenance, is required as part of a verification and which has not been done, (iv) a verification that relies upon an environmental [land] use restriction was not recorded on the land records of the municipality in which such land is located in accordance with section 22a-133o and applicable regulations, (v) the commissioner determines that there has been a violation of sections 22a-134 to 22a-134e, inclusive, or sections 22a-134h and 22a-134i, or (vi) the commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment.

(h) (1) If the commissioner notifies the certifying party to a Form III or Form IV that the commissioner's review and written approval of the investigation of the parcel and remediation of the establishment is required, such certifying party shall, not later than thirty days after the receipt of such notice or such later date as may be approved in writing by the commissioner, submit for the commissioner's review and written approval a proposed schedule for: (A) Investigating the parcel and remediating the establishment; (B) submitting to the commissioner scopes of work, technical plans, technical reports and progress reports related to such investigation and remediation; and (C) providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. Upon the commissioner's approval of such schedule, such certifying party shall, in accordance with the approved schedule, submit scopes of work, technical plans, technical reports and progress reports to the commissioner for the commissioner's review and written approval. Such certifying party shall perform all actions identified in the approved scopes of work, technical plans, technical reports and progress reports in accordance with the approved schedule. The commissioner may approve in writing any

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modification proposed in writing by such certifying party to such schedule or investigation and remediation. The commissioner may, at any time, notify such certifying party in writing that the commissioner's review and written approval is not required and that a licensed environmental professional may verify that the remediation has been performed in accordance with the remediation standards.

(2) A certifying party may complete the remediation of a portion of an establishment and request that the commissioner determine that the requirements of this subsection have been satisfied for any such portion of the establishment. If the commissioner determines that any such remediation is complete, the certifying party shall be deemed to have satisfied the requirements of this subsection for any such portion of an establishment. Any determination by the commissioner that remediation at the entire establishment has been completed may include and rely upon any determination made pursuant to this subdivision that remediation is complete at a portion of an establishment. If any portion of an establishment for which the commissioner determines that remediation is complete pursuant to this subdivision is transferred or conveyed or undergoes a change in ownership before remediation of the entire establishment is complete that would not otherwise be subject to the provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i, the certifying party shall provide notice to the commissioner of such transfer, conveyance or change in ownership not later than thirty days after any such transfer, conveyance or change in ownership.

(i) The certifying party to a Form III or Form IV shall (1) publish notice of the remediation, in accordance with the schedule submitted pursuant to this section, in a newspaper having a substantial circulation in the area affected by the establishment, (2) notify the director of health of the municipality where the establishment is located of the remediation, and (3) either (A) erect and maintain for at least thirty days in a legible

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condition a sign not less than six feet by four feet on the establishment, which sign shall be clearly visible from the public highway, and shall include the words "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT:" and include a telephone number for an office from which any interested person may obtain additional information about the remediation, or (B) mail notice of the remediation to each owner of record of property which abuts the parcel, at the address for such property on the last-completed grand list of the municipality where the establishment is located.

(j) The commissioner may issue an order to any person who fails to comply with any provision of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i, including, but not limited to, any person who fails to file a form, or files an incomplete or incorrect form or to any person who fails to carry out any activities to which that person agreed in a Form III or Form IV. If no form is filed or if an incomplete or incorrect form is filed for a transfer of an establishment, the commissioner may issue an order to the transferor, the transferee, or both, requiring a filing. The commissioner may also request that the Attorney General bring an action in the superior court for the judicial district of Hartford to enjoin any person who fails to comply with any provision of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i, including, but not limited to, any person who fails to file a form, improperly files a Form I, Form II, Form III or Form IV or the certifying party to a Form III or Form IV to take any actions necessary to prevent or abate any pollution at, or emanating from, the subject establishment. Any person to whom such an order is issued may appeal such order in accordance with the procedures set forth in sections 22a-436 and 22a-437.

(k) Notwithstanding the exemptions provided in section 22a-134a, nothing contained in sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i shall be construed as creating an

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innocent landowner defense for purposes of section 22a-452d.

(l) Notwithstanding any other provisions of this section, no person shall be required to comply with the provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i when transferring real property (1) (A) for which a Form I or Form II has been filed for the transfer of the parcel on or after October 1, 1995, or (B) for which parcel a Form III or Form IV has been filed and which has been remediated and such remediation has been approved in writing by the commissioner or has been verified in writing in accordance with this section by a licensed environmental professional that an investigation has been performed in accordance with prevailing standards and guidelines and that the remediation has been performed in accordance with the remediation standards, and (2) at which no activities described in subdivision (3) of section 22a-134 have been conducted since (A) the date of [such approval or verification] the commissioner's approval of the remediation, (B) the date to which the verification applies, as designated on the form submitted to the commissioner in connection with a Form III or Form IV verification, or (C) the date on which the Form I or Form II was filed.

(m) Failure of the commissioner to notify any party in accordance with the provisions of this section in no way limits the ability of the commissioner to enforce the provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i.

Sec. 3. Section 22a-134i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) [Notwithstanding the provisions of this chapter, a conveyance of a unit in a residential common interest community shall not be subject to the requirements of sections 22a-134 to 22a-133e, inclusive, provided the declarant for the residential common interest community of which the unit is a part is a certifying party, as defined in section 22a-134, for

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purposes of remediation of any establishment, as defined in section 22a-134, within such community and provides to the Commissioner of Energy and Environmental Protection a surety bond or other form of financial assurance acceptable to the commissioner.] Prior to the conveyance of a unit in a residential common interest community that is an establishment, as defined in section 22a-134, the declarant for the residential common interest community of which the unit is a part or the declarant's immediate predecessor in title shall (1) become a certifying party, as defined in section 22a-134 for the purpose of investigation and remediation of the parcel on which such community is located; (2) provide financial assurance pursuant to subsection (b) of this section; and (3) record notice on the land records in the municipality where the common interest community is located that the parcel on which the common interest community is located is being investigated and remediated pursuant to sections 22a-134 to 22a-134e, inclusive. Such notice shall identify the volume and page number of any recorded environmental use restriction, as defined in section 22a-133o. If the declarant or the declarant's immediate predecessor in title fails to become a certifying party for the purpose of investigation and remediation of the parcel on which such community is located, or fails to provide financial assurance pursuant to subsection (b) of this section, an individual or entity authorized to act on behalf of the common interest community shall provide written notice to the commissioner of such failure prior to the conveyance of any such unit. If the declarant fails to record such notice, the commissioner may record or require an individual or entity authorized to act on behalf of the common interest community to record on the land records in the municipality where the common interest community is located a notice that contains the information required by subdivision (3) of this subsection.

(b) The [surety bond or other form of] financial assurance required pursuant to subsection (a) of this section shall (1) identify [both] the [Department] Commissioner of Energy and Environmental Protection

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[and the unit owners association for the common interest community as beneficiaries, and] as the beneficiary, (2) be in an amount and in a form approved by the commissioner that is [, at all times when the real property comprising the common interest community is an establishment,] equal to the cost of investigation and remediation of the contaminants on the subject property, [. In calculating such remediation costs, the amount of the bond or other form of financial assurance may be reduced] subject to the standards specified in sections 22a-134 to 22a-133e, inclusive, and (3) be used solely at the affected common interest community for the sole purpose of investigation and remediation of such property for the benefit of the unit owners of such community. The commissioner may reduce the amount of such financial assurance from time to time as work [covered by the bond] is completed. [, may exclude] Such financial assurance need not include the costs of any improvements to the real estate not required to remediate the contamination [, and may exclude] or the costs of remediation work already completed or on parcels of real estate that may be added to the common interest community by the exercise of development rights pursuant to section 47-229.

[(c) Each time a seller conveys to a purchaser a unit in a common interest community that is an establishment, the seller shall provide a notice to the purchaser that summarizes (1) the status of the environmental condition of the common interest community, (2) any investigation or remediation activities, and (3) any environmental land use restrictions. Such notice requirement applies to all such conveyances, including those conveyances otherwise excepted from the requirement for delivery of a public offering statement or of a resale certificate under subsection (b) of section 47-262 and section 47-270.]

Sec. 4. Subsection (a) of section 47-270 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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(a) Except in the case of a sale in which delivery of a public offering statement is required under either this chapter or chapter 825, or unless exempt under subsection (b) of section 47-262, a unit owner shall furnish to a purchaser or such purchaser's attorney, before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the declaration, other than any surveys and plans, the bylaws, the rules or regulations of the association, and a certificate containing: (1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association; (2) a statement setting forth the amount of the periodic common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner; (3) a statement of any other fees payable by the owner of the unit being sold; (4) a statement of any capital expenditures in excess of one thousand dollars approved by the executive board for the current and next succeeding fiscal year; (5) a statement of the amount of any reserves for capital expenditures; (6) the current operating budget of the association; (7) a statement of any unsatisfied judgments against the association and the existence of any pending suits or administrative proceedings in which the association is a party, including foreclosures but excluding other collection matters; (8) a statement of the insurance coverage provided for the benefit of unit owners, including any schedule of standard fixtures, improvements and betterments in the units covered by the association's insurance that the association prepared pursuant to subsection (b) of section 47-255; (9) a statement of any restrictions in the declaration affecting the amount that may be received by a unit owner on sale, condemnation, casualty loss to the unit or the common interest community or termination of the common interest community; (10) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real property taxes and interest paid by the association; (11) if the association is unincorporated, the name of the statutory agent for service of process filed with the Secretary of the

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State pursuant to section 47-244a; (12) a statement describing any pending sale or encumbrance of common elements; (13) a statement disclosing the effect on the unit to be conveyed of any restrictions on the owner's right to use or occupy the unit or to lease the unit to another person; (14) a statement disclosing the number of units whose owners are at least sixty days' delinquent in paying their common charges on a specified date within sixty days of the date of the statement; (15) a statement disclosing the number of foreclosure actions brought by the association during the past twelve months and the number of such actions pending on a specified date within sixty days of the date of the statement; (16) a statement disclosing (A) the most recent fiscal period within the five years preceding the date on which the certificate is being furnished for which an independent certified public accountant reported on a financial statement, and (B) whether such report on a financial statement was a compilation, review or audit; [and] (17) any established maintenance standards adopted by the association pursuant to subsection (e) of section 47-257; (18) a copy of any notice recorded on land records pursuant to subsection (a) of section 22a-134i; and (19) a statement that provides the volume and page number from the applicable municipal land records of any environmental use restriction, as defined in section 22a-133n, that encumbers the parcel or any portion of the parcel on which the common interest community is located.

Sec. 5. Section 47-264 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Except as provided in subsection (b) of this section, a public offering statement shall contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the common interest community, and a statement that the common interest community is either a condominium, cooperative or planned community;

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(2) A general description of the common interest community, including to the extent known, the types, number and declarant's schedule of commencement and completion of construction of buildings and amenities that the declarant anticipates including in the common interest community;

(3) The number of units in the common interest community;

(4) Copies of the declaration, including any surveys and plans, and any other recorded covenants, conditions, restrictions and reservations created by the declarant affecting the common interest community; the bylaws, and any rules or regulations of the association; any deeds, contracts and leases to be signed by or delivered to purchasers at closing, and copies of and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 47-247;

(5) A projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget shall include, without limitation: (A) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement; (B) a statement of any other reserves; (C) the projected common expense assessment by category of expenditures for the association; and (D) the projected monthly common expense assessment for each type of unit;

(6) Any services not reflected in the budget that the declarant provides, or expenses that he pays and which he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

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(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(8) A brief narrative description of any liens, defects or encumbrances on or affecting the title to the common interest community not otherwise disclosed under subdivision (4) of this subsection;

(9) A description of any financing offered or arranged by the declarant;

(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

(11) A statement that: (A) Within fifteen days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant, and (B) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten per cent of the sales price of the unit plus ten per cent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community;

(12) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common interest community of which a declarant has actual knowledge;

(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 47-269, together with the name and address of the escrow agent;

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(14) Any restraints on alienation of any portion of the common interest community and any restrictions (A) on use, occupancy and alienation of the units, and (B) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community;

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to section 47-280;

(18) A brief narrative description of any zoning and other land use requirements affecting the common interest community;

(19) All unusual and material circumstances, features and characteristics of the common interest community and the units;

(20) In a cooperative, (A) either a statement that the unit owners will be entitled, for federal, state and local income tax purposes, to a pass-through of deductions for payments made by the association for real property taxes and interest paid the holder of a security interest encumbering the cooperative, or a statement that no assurances are made in that regard, and (B) a statement as to the effect on every unit owner if the association fails to pay real property taxes or payments due the holder of a security interest encumbering the cooperative; [and]

(21) A description of any arrangement described in section 47-219a; [.] and

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(22) A statement, if it is determined that the residential common interest community, of which the unit is a part, is an establishment subject to the requirements of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i, that summarizes (A) the status of the environmental condition of the common interest community, (B) any investigation or remediation activities, and (C) any environmental use restriction placed or required to be placed on such residential common interest community as a result of such investigation and remediation. The determination under this subdivision shall be based solely upon actual knowledge, a notice on the land records or, if there is no such notice, an inquiry to the Department of Energy and Environmental Protection of whether a Form I, Form II, Form III or Form IV, as defined in section 22a-134, was submitted to the Department of Energy and Environmental Protection for the residential common interest community of which the unit is a part.

(b) A declarant promptly shall amend the public offering statement to report any material change in the information required to be included in the public offering statement.

Sec. 6. Subsection (a) of section 22a-134a of the 2020 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No person shall transfer an establishment except in accordance with the provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i. Notwithstanding any provision of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i a person appointed by the Superior Court or any other court to sell, convey or partition real property or a person appointed as a trustee in bankruptcy shall not be deemed a party associated with the transfer of an establishment and shall not be required to comply with the provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i.

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Sec. 7. Subsection (a) of section 22a-134b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Failure of the transferor to comply with any of the provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i entitles the transferee to recover damages from the transferor, and renders the transferor of the establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages.

Sec. 8. Section 22a-134c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The provisions of sections 22a-134 to 22a-134e, inclusive, and sections 22a-134h and 22a-134i shall not affect the authority of the commissioner under any other statute or regulation, including, but not limited to, the authority to issue any order to the transferor or transferee of an establishment.

Sec. 9. Section 22a-134d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Any person who violates any provision of sections 22a-134a to 22a-134e, inclusive, and sections 22a-134h and 22a-134i or regulations issued in accordance with the provisions of said sections shall be assessed a civil penalty or shall be fined in accordance with section 22a-438.

Sec. 10. Section 22a-133r of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

In the event that a court of competent jurisdiction finds for any reason that an environmental [land] use restriction or notice of activity and use limitation is void or without effect for any reason, the owner of the subject land, in accordance with a schedule prescribed by the commissioner, shall promptly abate pollution thereon consistently with

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standards adopted under section 22a-133k for remediation of land used for residential or recreational purposes.

Sec. 11. Subsection (b) of section 22a-133aa of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Any covenant entered into under this section shall release only those claims said commissioner may have which are related to pollution or contamination on or emanating from the property, which contamination resulted from a discharge, spillage, uncontrolled loss, seepage or filtration on such property prior to the effective date of the covenant. Such covenant shall provide that the commissioner will not take any action against the holder of the covenant to require remediation of the parcel or any other action against such holder related to such discharge, spillage, uncontrolled loss, seepage or filtration unless (1) prior to the commissioner's approval of a detailed written plan for remediation pursuant to a brownfields investigation plan and remediation schedule, the commissioner finds that there is substantial noncompliance with such investigation plan and remediation schedule and there has not been a good faith effort to substantially comply therewith, (2) such property is not remediated in accordance with the detailed written plan approved by the commissioner and incorporated by reference in such covenant, (3) prior to completion of remediation in accordance with such plan, the commissioner finds that there is substantial noncompliance with any such plan and there has not been a good faith effort to substantially comply therewith, (4) remediation of the parcel in accordance with any detailed written plan for remediation did not comply with standards adopted by the commissioner pursuant to section 22a-133k which were in effect as of the effective date of either the covenant or the commissioner's approval of the detailed written plan for remediation, whichever is later, (5) if required by the standards adopted by the commissioner pursuant to section 22a-133k, an

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environmental [land] use restriction has not been recorded in accordance with section 22a-133o or there has been a failure to comply with the provisions of such a restriction, (6) for a property subject to the brownfield plan and remediation schedule, the commissioner does not approve a detailed written plan for remediation, or (7) the prospective buyer or owner fails to pay the fee, including the failure to pay in accordance with any payment schedule pursuant to subsection (c) of this section.

Sec. 12. Subsection (d) of section 22a-133bb of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(d) Any covenant entered into under this section shall release claims said commissioner may have which are related to pollution or contamination on or emanating from the property, which contamination resulted from a discharge, spillage, uncontrolled loss, seepage or filtration on such property prior to the effective date of the covenant. Such covenant shall provide that the commissioner will not take any action to require remediation of the parcel or any other action related to such discharge, spillage, uncontrolled loss, seepage or filtration unless (1) such property is not remediated in accordance with the detailed written plan submitted to the commissioner and incorporated by reference in such covenant, (2) prior to completion of remediation in accordance with such plan, the commissioner finds that there is substantial noncompliance with such plan and there has not been a good faith effort to substantially comply therewith, (3) remediation of the property in accordance with such plan did not comply with standards adopted by the commissioner pursuant to section 22a-133k which were in effect as of the date of the covenant, or (4) if required by the standards adopted by the commissioner pursuant to section 22a-133k, an environmental use restriction has not been recorded in accordance with section 22a-133o or if the provisions of an environmental [land] use

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restriction were not complied with.

Sec. 13. Subsection (b) of section 22a-133ee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) This section shall not relieve any such liability where (1) an owner failed to file or comply with the provisions of an environmental [land] use restriction created pursuant to section 22a-133o for such real property or with the conditions of a variance for the real property that was approved by the commissioner in accordance with regulations adopted pursuant to section 22a-133k, or (2) the commissioner, at any time, determines that an owner provided information that the owner knew or had reason to know was false or misleading or otherwise failed to satisfy all of the requirements of subsection (a) of this section. Nothing in this section shall be construed to relieve an owner of any liability for pollution or sources of pollution on or emanating from such property that occurred or were created after the owner took title to such property. Nothing in this section shall be construed to hold an innocent landowner, as defined in section 22a-452d, who meets the requirements of this section liable to this state for costs or damages in an amount greater than the amount that an innocent landowner may be held liable pursuant to section 22a-432.

Sec. 14. Subparagraph (C) of subdivision (9) of subsection (j) of section 32-769 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(C) The Commissioner of Energy and Environmental Protection shall not conduct an audit of a verification or interim verification for the eligible property or a portion of the eligible property pursuant to this subdivision after one hundred eighty days from receipt of such verification, plus any additional time permitted pursuant to subparagraph (B) of this subdivision, unless (i) said commissioner has

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reason to believe that a verification was obtained through the submittal of materially inaccurate or erroneous information, or otherwise misleading information material to the verification or that material misrepresentations were made in connection with the submittal of the verification, (ii) any post-verification monitoring or operations and maintenance is required as part of a verification and has not been done, (iii) a verification that relies upon an environmental [land] use restriction was not recorded on the land records of the municipality in which such land is located in accordance with section 22a-133o and applicable regulations, (iv) said commissioner determines that there has been a violation of law material to the verification, or (v) said commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment for releases on the property.

Sec. 15. (NEW) (*Effective from passage*) For the purposes of this section and sections 16 to 23, inclusive, of this act:

(1) "Commissioner" means the Commissioner of Energy and Environmental Protection;

(2) "Brownfields program" means the brownfields liability relief program established pursuant to section 32-764 of the general statutes, the abandoned brownfields program authorized by section 32-769 of the general statutes, the brownfield remediation and revitalization program authorized by section 32-769 of the general statutes, or the municipal brownfield liability relief program authorized by section 22a-133ii of the general statutes;

(3) "Land and waters of the state" means all waters, as defined in section 22a-423 of the general statutes, and any land surface, including improved or unimproved surfaces, soils or subsurface strata;

(4) "Municipality" has the same meaning as provided in section 22a-

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423 of the general statutes;

(5) "Person" means any individual, partnership, association, firm, limited liability company, corporation or other entity, the federal government, the state or any instrumentality or subdivision of the state, including any municipality, and any officer or governing or managing body of any partnership, association, firm or corporation or any member or manager of a limited liability company, provided (A) any such officer, body, member or manager is in a position of responsibility that allows the person to influence corporate policies or activities; (B) there is a nexus between the officer, body, member or manager's actions or inactions in such position and the violation of sections 16 to 22, inclusive, of this act such that such officer, body, member or manager influenced the corporate actions that constituted the violation; and (C) the actions or inactions of the officer, body, member or manager facilitated such violation;

(6) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or onto the land and waters of the state, not authorized under title 22a of the general statutes, of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste as defined in section 22a-448 of the general statutes. "Release" does not include automotive exhaust or the application of fertilizer or pesticides consistent with their labeling;

(7) "Remediation" means determining the nature and extent of a release, in accordance with prevailing standards and guidelines, and the containment, removal and mitigation of such release, and includes, but is not limited to, the reduction of pollution by monitored natural attenuation;

(8) "Report" means to notify the commissioner of a release in accordance with the provisions of sections 16 to 19, inclusive, of this act

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and in the manner specified by the commissioner; and

(9) "Verification" means the written opinion of a licensed environmental professional on a form prescribed by the commissioner that the remediation of a release satisfies the standards established in regulations adopted pursuant to this act.

Sec. 16. (NEW) (*Effective from passage*) No person shall create or maintain a release to the land and waters of the state in violation of any provision of sections 17 to 21, inclusive, of this act.

Sec. 17. (NEW) (*Effective from passage*) (a) Any person who creates or maintains a release to the land and waters of the state on or after the date when regulations are first adopted pursuant to section 19 of this act shall, upon discovery of such release: (1) Report the release, if such a report is required by the regulations adopted pursuant to section 19 of this act, and (2) remediate any release to the standards identified in regulations adopted pursuant to section 19 of this act. If any person fails to comply with the provisions of this section and section 19 of this act, such person shall be liable for any costs incurred by the commissioner in accordance with section 22a-451 of the general statutes, or costs incurred by any other person who contains or removes or otherwise mitigates the effects of such release in accordance with section 22a-452 of the general statutes.

(b) A release shall not be deemed discovered if the only evidence of such release is data available or generated before the date when regulations are first adopted pursuant to section 19 of this act.

(c) On any parcel required to be investigated and remediated pursuant to sections 22a-134 to 22a-134e, inclusive, of the general statutes, and sections 22a-134h to 22a-134i, inclusive, of the general statutes:

(1) Only releases that occurred prior to the filing of a Form I, Form II,

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Form III or Form IV but that were not discovered until (A) after the date of the commissioner's approval of the remediation, or (B) the date to which the verification applies, as designated on the form submitted to the commissioner in connection with a Form III or Form IV verification, or (C) the date on which the Form I or Form II was filed shall be subject to the requirements of sections 16 to 23, inclusive, of this act;

(2) Any release that occurs after the filing of a Form I, Form II, Form III or Form IV shall be subject to the requirements of sections 16 to 23, inclusive, of this act, except that when a Phase II investigation has been completed after the filing of a Form III or Form IV, only releases which occur after the date of the Phase II investigation shall be subject to the requirements of sections 16 to 23, inclusive, of this act; and

(3) For the purposes of this subsection, "parcel", "Form I", "Form II", "Form III" and "Form IV" have the same meanings as provided in section 22a-134 of the general statutes.

(d) On any brownfield site accepted into a brownfields program:

(1) Releases that are discovered before the date on which the remediation requirements of the applicable brownfields program are fully satisfied shall continue to be subject to the applicable brownfields program and shall not be subject to sections 16 to 23, inclusive, of this act;

(2) Releases that are discovered after but which occur prior to the date on which the remediation requirements of the applicable brownfields program are fully satisfied shall continue to be subject to such program and shall not be subject to sections 16 to 23, inclusive, of this act. Nothing in sections 16 to 23, inclusive, of this act shall be construed to affect any liability protection afforded by any applicable brownfields program or a covenant not to sue entered into by the commissioner;

(3) Releases that occur after the date on which the requirements of the

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applicable brownfields program are fully satisfied shall be subject to sections 16 to 23, inclusive, of this act. Liability for any such releases shall remain subject to the provisions of section 21 of this act concerning liability protection afforded or a covenant not to sue entered into by the commissioner.

(e) Within available resources, the department shall provide a publicly accessible Internet database that contains all reports and verifications submitted as required by this section. Such database shall provide for the electronic submission of reports and verifications and search functionality. If such a system is not available at the time regulations are first adopted pursuant to section 19 of this act, the department shall file an update on its progress for publication in the Environmental Monitor.

Sec. 18. (NEW) (*Effective from passage*) (a) (1) If the commissioner finds that any person created or maintained a release to the land and waters of the state on or after the date when regulations are first adopted pursuant to section 19 of this act, the commissioner may order such person to take the necessary steps to comply with the provisions of sections 16 to 19, inclusive, of this act. Each order issued under this section shall be served by certified mail, return receipt requested, or by service by a state marshal or indifferent person. If the order is served by a state marshal or indifferent person, a true copy of the order shall be served, and the original, with a return of such service endorsed thereon, shall be filed with the commissioner. The order shall be deemed to be issued upon service or upon deposit in the mail. Any order issued pursuant to this section shall state the basis on which it is issued and shall specify a reasonable time for compliance.

(2) Any person who receives an order pursuant to this section shall have the right to a hearing. Unless a person who receives an order files a written request for a hearing before the commissioner within thirty days after the date of issuance, such order shall become final. A request

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for a hearing shall be a condition precedent to any appeal of such order.

(3) The provisions of section 22a-434 of the general statutes regarding filing an order on the land records, notice and a certificate of compliance or revocation shall apply to any order that becomes final under this subsection.

(b) If two or more persons are issued the same order pursuant to subsection (a) of this section or are responsible for a violation of any provision of sections 16 to 19, inclusive, of this act or any regulation or order adopted or issued under sections 16 to 19, inclusive, of this act, such persons shall be jointly and severally liable under this subsection.

(c) If any person violates any provision of sections 16 to 19, inclusive, of this act or any regulation or order adopted or issued under sections 16 to 19, inclusive, of this act, the commissioner may request the Attorney General to bring an action in the superior court for the judicial district of Hartford to enjoin such person from such violation and to order remedial measures to prevent, control or abate such violation. All actions brought by the Attorney General pursuant to the provisions of this section shall have precedence in the order of trial as provided in section 52-191 of the general statutes.

(d) Any person who violates any provision of sections 16 to 19, inclusive, of this act shall be liable for the penalties provided in section 22a-438 of the general statutes, provided any provisions of said section concerning a continuing violation shall not apply to a person or municipality during the time when a hearing on an order issued pursuant to this section or an appeal is pending. The Attorney General, upon complaint of the commissioner, shall institute a civil action in the superior court for the judicial district of Hartford to recover such penalty.

(e) Any person who violates any provision of sections 16 to 19,

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inclusive, of this act shall be liable for the penalties provided in subsections (b) and (c) of section 22a-438 of the general statutes.

(f) The commissioner may, pursuant to section 22a-6b of the general statutes, adopt a schedule for administrative civil penalties for violations of the provisions of sections 16 to 19, inclusive, of this act.

(g) Whenever the commissioner finds, after investigation, that any person is creating or maintaining a release to the land and waters of the state in violation of the requirements of sections 16 to 19, inclusive, of this act, and such violations are substantial and continuous and it appears prejudicial to the interest of the people of the state to delay action, the commissioner may, without prior hearing, issue a cease and desist order, in writing, to such person to discontinue creating or maintaining such release. The provisions of subsections (b) to (d), inclusive, of section 22a-7 of the general statutes shall apply to any order issued pursuant to this subsection.

Sec. 19. (NEW) (*Effective from passage*) (a) The commissioner shall adopt, amend or repeal regulations, in accordance with the provisions of chapter 54 of the general statutes, as are necessary and proper to carry out the purposes of sections 15 to 23, inclusive, of this act.

(b) The commissioner, or his or her designee, shall co-chair and convene, in conjunction with the Commissioner of Economic and Community Development, or his or her designee, a working group in the department for the purpose of providing advice and feedback for regulations to be adopted by the commissioner in accordance with the provisions of this section. The Commissioner of Economic and Community Development, or his or her designee, shall serve as co-chair of such working group. The membership of the working group shall include: (1) The chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to the environment and commerce; (2) environmental

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transaction attorneys; (3) commercial real estate brokers; (4) licensed environmental professionals; (5) representatives from the Connecticut Manufacturers' Collaborative; (6) representatives of environmental advocacy groups; (7) representatives of the Environmental Professionals Organization of Connecticut; (8) municipal representatives; (9) representatives from the brownfields working group established pursuant to section 32-770 of the general statutes; (10) representatives of the Connecticut Conference of Municipalities and the Connecticut Council of Small Towns; (11) representatives of the Council on Environmental Quality; and (12) any other interested members of the public designated by the commissioner. The commissioner shall convene monthly meetings of such working group until such time as regulations are adopted pursuant to this section.

(c) Such regulations shall include, but need not be limited to, provisions regarding (1) reporting requirements for any releases required to be reported pursuant to sections 16 to 19, inclusive, of this act, including, but not limited to, reportable quantities and concentrations above which a release shall be reported in accordance with said sections; (2) procedures and deadlines for remediation, including public participation; (3) standards for remediation for any release to the land and waters of the state, including environmental use restrictions, as defined in section 22a-133o of the general statutes; (4) verification and commissioner's audit of remediation; (5) supervision of remediation based on pollutant type, concentration or volume, or based on the imminence of harm to public health; and (6) any required fees.

(d) In any regulation adopted pursuant to subsection (a) of this section, the commissioner shall specify tiers of releases based on risk, as determined by the commissioner, and that, based on the tier to which such release is assigned, certain releases may be remediated under the supervision of a licensed environmental professional, without the supervision of the commissioner, and may be remediated without being

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verified. Tiers of releases shall be specified based on: (1) The existence, source, nature and extent of a release; (2) the nature and extent of danger to public health, safety, welfare and the environment, both immediate and over time; (3) the magnitude and complexity of the actions necessary to assess, contain or remove the release; (4) the extent to which the proposed remediation will not remove the release, in its entirety, from the land and waters of the state but will instead leave behind pollutants to be managed using a risk mitigation approach authorized by regulations adopted pursuant to this section; and (5) the extent to which the oversight of the commissioner is necessary to ensure compliance with the provisions of sections 16 to 19, inclusive, of this act.

(e) (1) In any regulation adopted pursuant to subsection (a) of this section, the commissioner shall specify the types of releases to be reported and the timeframe for such reporting. When specifying the types of releases that shall be reported and the timeframes for reporting releases, the commissioner shall consider the factors specified in subdivisions (1), (2), (3) and (5) of subsection (b) of this section.

(2) Such regulations may exempt the requirement for a report if remediation can be accomplished through containment, removal or mitigation of a release upon discovery and in a manner and by a timeframe specified in the regulations adopted pursuant to subsection (a) of this section, provided such regulations shall specify that certain records be maintained by the person performing a cleanup and a schedule for the retention of such records.

(3) Such regulations may require any such report be made in a timeframe commensurate with the severity of the risk posed by such release, with the shortest reporting time corresponding to releases that pose an imminent or substantial threat to human health or the environment, including, but not limited to, residential areas, parks and schools, or releases that exist near drinking water supplies or that present a higher risk to human health or the environment. Such

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regulations shall permit a longer timeframe for a report of a release that does not pose an imminent or significant threat to human health or the environment.

(4) Such regulations shall provide for a process to amend or retract release reports that were reported in error.

(5) No release required to be reported by regulations adopted pursuant to section 22a-450 of the general statutes shall also be required to be reported by regulations adopted pursuant to subsection (a) of this section.

(f) In establishing standards for remediation adopted pursuant to subsection (a) of this section, the commissioner shall (1) consider the standards for remediation set forth in regulations adopted pursuant to section 22a-133k of the general statutes; (2) give preference to cleanup methods that are permanent, if feasible; (3) provide flexibility, when appropriate, for licensed environmental professionals to establish and implement risk-based alternative cleanup standards developed in consideration of site use, exposure assumptions, geologic and hydrogeologic conditions and physical and chemical properties of each substance that comprise a release; (4) consider any factor the commissioner deems appropriate, including, but not limited to, groundwater classification of the site; and (5) provide for standards of remediation less stringent than those required for residential land use for polluted properties that (A) are located in areas classified as GB or GC under the standards adopted by the commissioner for classification of groundwater, (B) have historically been used for industrial or commercial purposes, and (C) are not subject to an order issued by the commissioner regarding such release, consent order or stipulated judgment regarding such release, provided an environmental use restriction is executed for any such property subsequent to the remedial action, in accordance with the provisions of section 22a-133aa of the general statutes, and such regulations specify the types of industrial or

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commercial land uses to which any such property may be put subsequent to such remedial action.

(g) The regulations adopted pursuant to subsection (a) of this section regarding audits shall:

(1) Authorize the commissioner to audit any verification;

(2) Set goals for the number of audits to be conducted. Such goals shall be consistent with the requirements of section 20 of this act and shall, at a minimum, set a goal of auditing twenty per cent of verifications rendered for releases from at least one tier and set a goal of auditing verifications rendered for releases from the other tiers at a frequency that is based on the number of verifications submitted for releases in each tier;

(3) Prioritize the auditing of higher risk releases that may jeopardize human health or the environment;

(4) Utilize multiple levels of auditing. The levels of auditing may include:

(A) Screening documents or forms submitted to the department;

(B) Conducting a thorough evaluation of the verification, including, but not limited to, inspecting a property or requesting additional supporting information regarding an investigation or remediation of a release; and

(C) Auditing focused on specific issues identified in screening documents or forms, conditions specific to a particular release or issues that present a higher risk to human health or the environment; and

(5) Provide certain timeframes for commencing audits that shall be no later than one year after verification and provide opportunities to reopen a remediation when: (A) The commissioner has reason to believe

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that a verification was obtained through the submittal of materially inaccurate or erroneous information, or otherwise misleading information material to the verification, or that misrepresentations were made in connection with the submittal of the verification, (B) a verification is submitted pursuant to an order of the commissioner, in accordance with section 18 of this act, (C) any post-verification monitoring, or operations and maintenance, is required as part of a verification and which is not completed, (D) a verification that relies upon an environmental land use restriction was not recorded on the land records of the municipality in which such land is located in accordance with section 22a-133o of the general statutes and applicable regulations, (E) the commissioner determines that there has been a violation of the provisions of sections 16 to 19, inclusive, of this act, or (F) the commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment.

(h) In adopting the regulations prescribed by this section, the commissioner shall incorporate the requirements of other cleanup provisions of the general statutes to assure consistency, clarity and efficiency in the application of remediation requirements contained in the general statutes and other applicable provisions of the regulations of Connecticut state agencies by the commissioner and members of the regulated community.

Sec. 20. (NEW) (*Effective from passage*) (a) The commissioner shall audit a sufficient number of verifications submitted pursuant to regulations adopted pursuant to section 19 of this act to ensure the protection of human health and the environment and a high frequency of compliance with the regulations adopted pursuant to section 19 of this act.

(b) Beginning two years after the date regulations are first adopted pursuant to section 19 of this act, and annually thereafter, the

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commissioner shall provide to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to the environment and commerce a report regarding the auditing of verifications submitted during the previous year pursuant to regulations adopted pursuant to section 19 of this act. Such report shall also be published on the department's Internet web site. Any such report shall include, but not be limited to, the number of releases reported, the number of verifications submitted, the number of audits conducted, the results of the audits conducted and any recommendations for improving the auditing of verifications. Such recommendations may include, but need not be limited to, staffing levels or the adequacy of such audits.

Sec. 21. (NEW) (*Effective from passage*) (a) The provisions of sections 16 to 19, inclusive, of this act shall have no effect upon nor be interpreted or construed as changing any covenant not to sue entered into pursuant to section 22a-133aa or 22a-133bb of the general statutes, any liability protection afforded under section 22a-133ee or 32-764 of the general statutes, or any liability protections granted pursuant to any brownfields program.

(b) Notwithstanding any provision of the general statutes, and except as provided in this section, no owner of real property shall be liable for any costs or damages to any person other than this state, any other state or the federal government, with respect to any release on or emanating from such owner's real property that occurred or existed prior to such owner taking title to such property, provided:

(1) Such owner did not create the release on such property and is not responsible for the creation of such release pursuant to any other provision of the general statutes;

(2) Such owner is not affiliated with any person responsible for such release through any direct or indirect familial relationship, or any

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contractual, corporate or financial relationship other than that by which such owner's interest in the property was conveyed or financed; and

(3) The release on such owner's real property has been remediated in accordance with the regulations adopted pursuant to section 19 of this act, as demonstrated in a verification prepared by a licensed environmental professional and the commissioner has approved in writing, or has determined not to audit, such verification. Remediation undertaken to meet the criteria of this section shall satisfy any requirements to provide public notice, or notice to nearby property owners, specified in regulations adopted pursuant to section 19 of this act.

(c) This section shall not relieve any such liability where (1) any owner of a parcel on which a release was remediated has failed to comply with the requirements regarding the filing of an environmental use restriction or failed to comply with the provisions of an environmental use restriction created pursuant to section 22a-133o of the general statutes for such real property or with the conditions of a variance for the real property that was approved by the commissioner in accordance with regulations adopted pursuant to section 19 of this act, or (2) the commissioner, at any time, determines that an owner provided information that the owner knew or had reason to know was false or misleading or otherwise failed to satisfy all of the requirements of subsection (a) of this section. Nothing in this section shall be construed to relieve an owner of any liability for releases on or emanating from such property that occurred or were created after the owner took title to such property. Nothing in this section shall be construed to hold an innocent landowner, as defined in section 22a-452d of the general statutes, who meets the requirements of this section liable to this state for costs or damages in an amount greater than the amount that an innocent landowner may be held liable pursuant to section 22a-432 of the general statutes.

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Sec. 22. (NEW) (*Effective from passage*) Nothing contained in sections 16 to 21, inclusive, of this act shall be construed to infringe upon or otherwise limit any liability limitations or protections for persons provided for under any provision of the general statutes. Nothing contained in this act shall be construed to authorize the use or application of the innocent landowner defense, established pursuant to section 22a-452d of the general statutes, to the provisions of sections 16 to 21, inclusive, of this act.

Sec. 23. (NEW) (*Effective from passage*) Nothing contained in sections 16 to 22, inclusive, of this act shall be construed to affect the authority of the Commissioner of Energy and Environmental Protection pursuant to any other statute or regulation.

Approved October 2, 2020

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Release-Based Clean Up Program Regulation Development

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Release-Based Clean Up Program Regulation Development

Under a release-based system, [Connecticut's cleanup framework \(/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Comprehensive-Evaluation-and-Transformation-Main-Page\)](#) will be aligned with 48 other states and will maintain environmental protections important to the state's public health, water, and natural resources. [Public Act No. 20-](#)

9  charges DEEP to work with the Department of Economic and Community Development (DECD), legislative leaders, and a variety of stakeholders to [chart a new path for Connecticut's cleanup program \(/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Cleanup-Legislative-Authorization-and-Background\)](#). DEEP and DECD will co-chair a working group to receive advice and feedback for regulations to be adopted by DEEP following our [guiding principles \(/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Guiding-Principles\)](#). Stakeholder input will be critical to ensuring that the regulations are practical and can be implemented by property owners and practitioners.



[Release-Based Working Group Meetings \(/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Working-Group-Meetings\)](#) – meeting dates, Zoom links, agenda, and other materials

[Release-Based Cleanup Program Topical Subcommittees \(/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Cleanup-Program-Topical-Subcommittees\)](#) – suggested topics and issues

[Release-Based Cleanup Topical Subcommittee Meetings \(/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Topical-Subcommittee-Meetings\)](#) – meeting dates, Zoom links, agenda, and other materials

[Release-Based Cleanup Program Stakeholder Engagement \(/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Cleanup-Program-Stakeholder-Engagement\)](#) – concept papers and requests for public comments will be posted on the stakeholder page

Release-Based Working Group

The Commissioners of DECD and DEEP have co-convened a working group, in accordance with section 19 of [Public Act No. 20-9](#) , for the purpose of receiving advice and feedback for regulations to be adopted by DEEP. [The Working Group is comprised of the following stakeholders](#)  :

- Chairpersons and ranking members of the Environment and Commerce Committees
- Environmental transaction attorneys
- Commercial real estate brokers
- Licensed Environmental Professionals
- Representatives from the Connecticut Manufacturers' Collaborative
- Representatives of environmental advocacy groups
- Representatives of the Environmental Professionals Organization of Connecticut
- Municipal representatives
- Representatives from the Brownfields Working Group

- Representatives of the Connecticut Conference of Municipalities and the Connecticut Council of Small Towns
- Representatives of the Council on Environmental Quality
- Any other interested members of the public designated by the agencies

Meetings

Monthly, one and one-half hour meetings of the Working Group will be convened by the Commissioners, with public notice of the date, time and format of such meetings being posted on **Release-Based Working Group Meetings (/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Working-Group-Meetings)**, page and the **SOTS State Agency Public Meeting Calendar (<https://egov.ct.gov/PMC/>)**. All meetings will be held virtually, and are open to the public (advance registration is required).

At its first meeting, the Working Group began the process of finalizing subcommittees to address substantive aspects of the regulations needed to implement a release-based cleanup program. DEEP and DECD will provide information and documents to the Release-based Working Group and, as needed, establish **topical subcommittees (/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Cleanup-Program-Topical-Subcommittees)** to inform the vision for the regulations necessary to adopt a release-based cleanup program for the state. Topics selected for subcommittee analysis will be guided by the topics identified in section 19 of Public Act 20-9.

Content last updated March 8, 2021

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Release-Based Cleanup Program Topical Subcommittees

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Release-Based Cleanup Program Topical Subcommittees

The Release-based Working Group has established five topical subcommittees to make concept recommendations related to the regulations.

[Release-Based Cleanup Program Topical Subcommittee Meetings \(/DEEP/Remediation--Site-Clean-](#)

Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Topical-Subcommittee-Meetings).

The subcommittees will proceed in at least two phases, with the first five subcommittees convening in the first phase. Concepts developed in the first phase will guide discussion in subsequent phases. For example, a discussion of how releases may be divided into tiers will help identify the necessary adjustments to clean-up standards for lower-risk tiers. The first phase of subcommittee topics are:

1. Discovery of Historical Releases (**Subcommittee Membership**)

This subcommittee should discuss the following:

- Based on the definition of “release” in Public Act 20-9, what constitutes a historical release? Does the presence of non-naturally occurring pollutants in the environment indicate that a release has occurred?
- When is a historical release discovered?
- How should discovery of an historical release by parties other than an owner of property be addressed, including lessees, municipalities, and other interested parties? What role will LEPs play, if any?
- How does Public Act 20-9 apply, if at all, when a release is discovered by a potential purchaser of property or similar person that did not create, or is not maintaining, the release? What if that same party subsequently purchases the property?
- What if the release involves an imminent/substantial risk to public health or the environment?
- In addition to who, what information is necessary to conclude that a release occurred? Is seeing a sheen on water enough? What about an oral report of disposal activity by a lay person?
- What if analytical results point in different directions, for example, one results shows an exceedance while multiple other results don’t?

This subcommittee should evaluate what constitutes “discovery” of a release for purposes of Public Act 20-9. This includes the various ways in which a release may be “discovered” and how, or whether, the obligations of Public Act 20-9 are triggered by such discovery.

2. Reporting Newly-Discovered Historical Releases (**Subcommittee Membership**)

This subcommittee should discuss the following:

- What is the threshold for requiring reporting of a historical release? Is this threshold quantitative, qualitative, or both?
- Within what time frame after discovery should a report be required?

- Should reporting exceptions for certain historical releases be created if timely remediation occurs? If so, what situations would qualify and what would constitute timely remediation?
- Is it necessary to address, beyond the detail provided in the statute, releases on Transfer Act or brownfield sites?
- If reporting is required, what information should be reported?
- How will that report be accessible to the public?
- If releases do not require reporting, will there be a mechanism for the public or others to become aware that a release occurred?

This subcommittee shall discuss when an historical release must be reported, what information should be reported and how that information will be accessible to the public.

3. Characterization of a Discovered Release (**Subcommittee Membership**)

This subcommittee should discuss the following:

- Should the regulations prescribe a method or methods that must be used to characterize the nature and extent of such release and its impact upon human health and the environment before undertaking clean-up?
- Should there be a process for approving a method of characterization selected by a licensed environmental professional, including standards to validate such a method?
- Should the regulations specify a process for identifying prevailing standards and guidelines to be used to characterize the nature and extent of such release?

This subcommittee shall evaluate a conceptual framework for release characterization, including the relationship to any action taken before characterization and the extent to which prescribing a method or methods within the regulation could affect the use of newer or novel forms of characterization. In addition, the subcommittee should consider whether different characterization methods or standards are necessary depending whether an urgent removal action has been performed, as well as the time that has passed since a release has occurred. While DEEP's current site characterization guidance document should inform the work of this subgroup, any methods or standards identified should be limited to characterization of a single release.

4. Immediate Removal Actions (**Subcommittee Membership**)

Under the release-based cleanup program, releases may be discovered and reported that must or may be addressed swiftly through recognized mitigation and remediation efforts. Such subcommittee shall discuss the following:

- For what types of releases should immediate action be required?
- Should releases for which immediate action is required fall into a cleanup tier or exist outside the tiered releases?
- For what types of releases should immediate action be an option? What incentives to undertake such action should be provided?
- Whether there are differences between historical and contemporaneous releases or will characteristics of discovered release control?
- Must an LEP close an immediate action?
- What is role of emergency responders/spill contractors?
- What time limit should apply to such a cleanup before it is placed in a particular tier?
- Whether Immediate Removal Action can be closed if additional monitoring is still required?
- When immediate action is needed and required, what name should be used for such action? Should there be two names: one for immediate action that is required; and another for immediate action undertaken voluntarily?
- How will immediate actions and the existing Significant Environmental Hazard program relate?

This subcommittee shall evaluate which releases require an Immediate Removal Action and examine how to incentivize swift yet comprehensive/protective action for other releases.

5. Tiers (**Subcommittee Membership**)

This subcommittee should discuss the following:

- After a release has been characterized, if an Immediate Removal Action has not fully remediated a release, such release will be placed into a tier.
- Placement into a tier should include consideration of who will supervise a clean-up (i.e., trained employee, spill contractor, LEP, or the Commissioner), the factors that will impact the applicable tier of any release, such as risks to public health and the environment, impact to groundwater and other natural resources, and degree of removal of pollution, the demonstration that remediation of that release has been complete (closure document, verification, another endpoint), the timeframe to complete clean-up and how timing impacts a tier.
- Will placement in certain tiers require clean-ups to be completed more quickly?

The subcommittee shall evaluate what factors should be used to determine into which tier a release should be placed and whether different factors need to be identified for releases discovered when they occur or later.

After the first phase of subcommittee, subsequent phases of subcommittee topics may include the following topics:

6. Modification of Clean-up Standards for Lower-Risk Tiers

Clean-up standards adopted pursuant to Public Act 20-9 will be based on the current Remediation Standards Regulations (RSRs). Certain modifications to the RSRs may be necessary, particularly additional endpoints for releases remediated at or near the time they occur. This subcommittee should discuss the following:

- Which remedies should be available without approval of the Commissioner, which remedies will continue to require the Commissioner's approval, which new remedies should be available for certain tiers, and which may require adjustment based on the tiers of releases identified?
- Other adjustments aimed at better aligning clean-up standards with the requirements of release-based cleanup may also be considered.

This subcommittee shall evaluate how clean-up standards can best align with Public Act 20-9 and the tiers or releases developed.

7. LEP-implemented, Risk-Based Alternate Cleanup Standards

The release-based program will require DEEP to focus its resources on releases that pose the greatest risk to human health and the environment. LEPs familiar with the site may be best suited to justify using alternative standards and the release-based regulations will need to accommodate additional methods and scenarios for use of alternate standards. This subcommittee should discuss the following:

How do the statutory factors (site use, exposure assumptions, geologic and hydrogeologic conditions and physical and chemical properties of each substance that comprise a release) control applicability of risk-based approach?

Should there be threshold factors (i.e., site conditions, proximity to receptors, depth to groundwater, soil type) that will permit or exclude use of certain calculated alternative standards?

Which inputs for calculating alternative standards can be modified, using what information, and in what instances?

What are contaminant thresholds that cannot be exceeded (ceiling values)

Will alternative standards be allowed for all contaminants, are any off-limits (PCBs, PFAS and other emerging contaminants)?

Are there instances where LEPs cannot independently implement such alternatives? Is this specialized group with particular qualifications?

What are scenarios and thresholds where alternate cleanup levels can be developed as part of site closure? Are any contaminants off limits (e.g., PCBs, emergent contaminants)?

This subcommittee shall evaluate under what circumstances, and with what justification, LEP-implemented alternative criteria can be used.

8. Clean-up Completion Documentation, Verifications, and Audit Frequency and Timeframes

This subcommittee should discuss the following.

- What is needed to demonstrate that the obligations under Public Act 20-9 have been discharged?
- What documents are necessary to demonstrate such compliance?
- When is verification by an LEP needed? If verification is not needed, who can determine that the clean-up meets the requirements of Public Act 20-9?
- What information must be maintained to demonstrate that a release has been remediated, including any environmental use restriction?
- Does this requirement to maintain records extend to: 1) remediation of releases that do not have to be reported; or 2) releases for which a verification is not required?
- Are the information requirements different for different types of releases?
- How long must records demonstrating compliance be maintained?
- How will such information be publically accessible – by providing to DEEP or by being maintained in a publically accessible database?
- How should the auditing of verification (screening versus thorough review) be calibrated to the different types of release?
- What oversight will be exercised for releases not subject to reporting or for remediation if a verification is not required?

This subcommittee shall evaluate the types of documents and records that must be used and maintained to demonstrate compliance with Public Act 20-9, including the Commissioner's review and audit of such documents and records.

Subcommittees will operate in the following manner:

- Subcommittees will be comprised of Working Group members and members of the public.
- Subcommittee meetings will be open to the public.
- DEEP and DECD will provide a written charge, detailing the issues on which advice should be provided for each topic.
- Each subcommittee will consider those issues identified in its charge and, over the course of a number of meetings, prepare a paper offering conceptual direction on each issue for inclusion in a concept paper to be issued by the working group. Subcommittees may prepare more than one concept paper in the event that there are multiple perspectives on how issues identified in the charge should be addressed.
- The concept papers will be presented to the Working Group and individual members of the Working Group may respond to such concept papers.

- After discussion of such concepts papers, the Working Group will assemble and issue such concept papers for public feedback.
- The public will be asked to provide comments on such concept papers.

If you are interested in staying involved and up-to-date, please ensure that you are signed up for Remediation [e-alerts \(https://portal.ct.gov/DEEP/About/Newsletters/Sign-Up-to-Receive-Updates--Newsletters-by-E-mail#e-alerts\)](https://portal.ct.gov/DEEP/About/Newsletters/Sign-Up-to-Receive-Updates--Newsletters-by-E-mail#e-alerts), so you can know when we post additional information on this topic.

Release-Based Clean Up Program Regulation Development (/DEEP/Remediation--Site-Clean-Up/Comprehensive-Evaluation-and-Transformation/Release-Based-Clean-Up-Program-Regulation-Development)

Content Last Updated February 4, 2021 (<https://portal.ct.gov/DEEP/About/Newsletters/Sign-Up-to-Receive-Updates--Newsletters-by-E-mail#e-alerts>)

CHAPTER 588gg

BROWNFIELD REMEDIATION AND DEVELOPMENT

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Sec. 32-760. Definitions. As used in this chapter:

(1) “Bona fide prospective purchaser” means a person who acquires ownership of a property after July 1, 2011, and establishes by a preponderance of the evidence that:

(A) All disposal of regulated substances at the property occurred before such person acquired the property;

(B) Such person made all appropriate inquiries, as set forth in 40 CFR Part 312, into the previous ownership and uses of the property in accordance with generally accepted good commercial and customary standards and practices, including, but not limited to, the standards and practices set forth in the ASTM Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process, in effect on the date such

person acquired the property. In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a property inspection and a title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph;

(C) Such person provides all legally required notices with respect to the discovery or release of any regulated substances at the property;

(D) Such person exercises appropriate care with respect to regulated substances found at the property by taking reasonable steps to (i) stop any continuing release, (ii) prevent any threatened future release, and (iii) prevent or limit human, environmental or natural resource exposure to any previously released regulated substance;

(E) Such person provides full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration at the property, including, but not limited to, the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial response actions or natural resource restoration at the property;

(F) Such person complies with any land use restrictions established or relied on in connection with the response action at the property and does not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response action; and

(G) Such person complies with any request for information from the Commissioner of Energy and Environmental Protection;

(2) “Brownfield” means any abandoned or underutilized site where redevelopment, reuse or expansion has not occurred due to the presence or potential presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the redevelopment, reuse or expansion of the property;

(3) “Commissioner” means the Commissioner of Economic and Community Development;

(4) “Contiguous property owner” means a person who owns real property contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a regulated substance from, real property that is not owned by that person, provided:

(A) With respect to the property owned by such person, such person takes reasonable steps to (i) stop any continuing release of any regulated substance released on or from the property, (ii) prevent any threatened future release of any regulated substance released on or from the property, and (iii) prevent or limit human, environmental or natural resource exposure to any regulated substance released on or from the property;

(B) Such person provides full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration at the property from which there has been a release or threatened release, including, but not limited to, the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial response action or natural resource restoration at the property;

(C) Such person complies with any land use restrictions established or relied on in connection with the response action at the property and does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(D) Such person complies with any request for information from the Commissioner of Energy and Environmental Protection; and

(E) Such person provides all legally required notices with respect to the discovery or release of any hazardous substances at the property;

(5) “Department” means the Department of Economic and Community Development;

(6) “Economic development agency” means (A) a municipal economic development agency or entity created or operating under chapter 130 or 132; (B) a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality or a region that is funded, either directly or through in-kind services, in part by one or more municipalities; (C) a nonstock corporation or limited liability company established or controlled by a municipality, municipal economic development agency or an entity created or operating under chapter 130 or 132; or (D) an agency, as defined in section 32-327;

(7) “Eligible costs” means the costs associated with the investigation, assessment, remediation and development of a brownfield, including, but not limited to, (A) soil, groundwater and infrastructure investigation, (B) assessment, (C) remediation, (D) abatement, (E) hazardous materials or waste disposal, (F) long-term groundwater or natural attenuation monitoring, (G) (i) environmental land use restrictions, (ii) activity and use limitations, or (iii) other forms of institutional control, (H) attorneys' fees, (I) planning, engineering and environmental consulting, and (J) building and structural issues, including demolition, asbestos abatement, polychlorinated biphenyls removal, contaminated wood or paint removal, and other infrastructure remedial activities;

(8) “Financial assistance” means grants, loans or loan guarantees, or any combination thereof;

(9) “Innocent landowner” has the same meaning as provided in section 22a-452d;

(10) “Interim verification” has the same meaning as provided in section 22a-134;

(11) “Manufacturing facility” means a business establishment classified under sector 31, 32 or 33 of the North American Industrial Classification System;

(12) “Municipality” means a town, city, consolidated town and city or consolidated town and borough. For purposes of sections 32-771 to 32-775, inclusive, “municipality” includes a district, as defined in section 7-324, a metropolitan area, as defined in section 7-333, and any political subdivision of the state that has the power to levy taxes and to issue bonds, notes or other obligations;

(13) “PCB regulations” means the polychlorinated biphenyls manufacturing, processing, distribution in commerce and use prohibitions found at 40 CFR Part 761;

(14) “Person” means any individual, firm, partnership, association, syndicate, company, trust, corporation, nonstock corporation, limited liability company, municipality, economic development agency, agency or political or administrative subdivision of the state or any other legal entity;

(15) “Real property” means land, buildings and other structures and improvements thereto, subterranean or subsurface rights, any and all easements, air rights and franchises of any kind or nature;

(16) “Regulated substance” has the same meaning as provided in section 22a-134g;

(17) “Release” means any discharge, spillage, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying or disposal of a substance;

(18) “Remediation standards” has the same meaning as provided in section 22a-134;

(19) “State” means the state of Connecticut;

(20) “UST regulations” means the regulations adopted pursuant to subsection (d) of section 22a-449;

(21) “Verification” has the same meaning as provided in section 22a-134; and

(22) “Connecticut brownfield land bank” means a Connecticut nonstock corporation, certified by the Commissioner of Economic and Community Development pursuant to section 32-771, established for the purposes of (A) acquiring, retaining, remediating and selling brownfields in the state for the benefit of

municipalities, (B) educating government officials, community leaders, economic development agencies and nonprofit organizations on best practices for redeveloping brownfields, and (C) engaging in all other activities in accordance with sections 32-771 to 32-775, inclusive.

(P.A. 13-308, S. 1; P.A. 15-193, S. 5; P.A. 17-214, S. 1.)

History: P.A. 13-308 effective July 1, 2013; P.A. 15-193 amended Subdiv. (1)(B) by replacing “E1527-05, as may be amended from time to time” with “in effect on the date such person acquired the property”, effective July 1, 2015; P.A. 17-214 replaced reference to Secs. 32-761 to 32-769 with reference to chapter, amended Subdiv. (12) by redefining “municipality”, amended Subdiv. (14) by redefining “person” to add “nonstock corporation”, added Subdiv. (22) defining “Connecticut brownfield land bank”, and made technical changes, effective July 1, 2017.

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Sec. 32-761. (Formerly Sec. 32-9cc). Office of Brownfield Remediation and Development. (a) There is established, within the Department of Economic and Community Development, an Office of Brownfield Remediation and Development. Such office shall be managed by a director, appointed by the commissioner in accordance with section 5-198. In addition to the other powers, duties and responsibilities provided for in this chapter, the office shall promote and encourage the remediation and development of brownfields in the state. The Office of Brownfield Remediation and Development shall coordinate and cooperate with state and local agencies and individuals within the state on brownfield redevelopment initiatives, including program development and administration, community outreach, regional coordination and seeking federal funding opportunities.

(b) The office shall:

(1) Develop procedures and policies for streamlining the process for brownfield remediation and development;

(2) Identify existing and potential sources of funding for brownfield remediation and develop procedures for expediting the application for and release of such funds;

(3) Establish an office and maintain an informational Internet web site to provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs for brownfield remediation and development;

(4) Provide a single point of contact for financial and technical assistance from the state and quasi-public agencies with regard to brownfield remediation and development;

(5) Develop a common application to be used by all state and quasi-public entities providing financial assistance for brownfield assessment, remediation and development;

(6) Identify and prioritize state-wide brownfield development opportunities, including, but not limited to, in consultation with the State Historic Preservation Office, municipal officials and regional planning organizations, the identification of abandoned and underutilized mills that are important assets to the municipalities or the regions in which such mills are located;

(7) Develop and administer a communication and outreach program to educate municipalities, economic development agencies, property owners, potential property owners and other organizations and individuals with regard to state programs for brownfield remediation and redevelopment;

(8) At the office's discretion, enter into cooperative agreements with economic development agencies and may, where appropriate, make grants to such organizations for the purpose of designing, implementing and

supervising brownfield assessment and cleanups, or making further subgrants, provided each subgrant is in compliance with the terms and conditions of the original grant; and

(9) Create and maintain a web site independent of the department's other web sites that is specifically dedicated to marketing and promoting state-owned brownfields, and develop and implement a marketing campaign for such brownfields and web site.

(c) The Department of Energy and Environmental Protection, Connecticut Innovations, Incorporated, the Office of Policy and Management and the Department of Public Health shall each designate one or more staff members to act as a liaison between their offices and the Office of Brownfield Remediation and Development. The Commissioners of Economic and Community Development, Energy and Environmental Protection and Public Health, the Secretary of the Office of Policy and Management and the chief executive officer of Connecticut Innovations, Incorporated shall enter into a memorandum of understanding concerning each entity's responsibilities with respect to the Office of Brownfield Remediation and Development. The Office of Brownfield Remediation and Development may recruit two volunteers from the private sector, including a person from the Connecticut chapter of the National Brownfield Association, with experience in different aspects of brownfield remediation and development. Said volunteers may assist the Office of Brownfield Remediation and Development in marketing the brownfield programs and redevelopment activities of the state.

(d) The Office of Brownfield Remediation and Development may call upon any other department, board, commission or other agency of the state to supply such reports, information and assistance as said office determines is appropriate to carry out its duties and responsibilities. Each officer or employee of such office, department, board, commission or other agency of the state is authorized and directed to cooperate with the Office of Brownfield Remediation and Development and to furnish such reports, information and assistance.

(P.A. 06-184, S. 1, 8, 13; P.A. 07-233, S. 1; P.A. 11-80, S. 87; 11-140, S. 10; 11-141, S. 1; Oct. Sp. Sess. P.A. 11-1, S. 26; P.A. 12-183, S. 13; June 12 Sp. Sess. P.A. 12-1, S. 152; P.A. 13-123, S. 9; 13-308, S. 2.)

History: P.A. 06-184 effective July 1, 2006; P.A. 07-233 amended Subsec. (a) to establish office within Department of Economic and Community Development, amended Subsec. (b)(1) to add brownfield development, amended Subsec. (b)(2) to change “identify existing and create new” to “identify existing and potential” and delete limitation that sources of funding be available to municipalities or economic development agencies, amended Subsec. (b)(3) to require establishment of office to provide assistance and information, added new Subsec. (b)(4) and (5), redesignated existing Subsec. (b)(4) as Subsec. (b)(6), deleted former Subsec. (b)(5), redesignated existing Subsec. (b)(6) as Subsec. (b)(7) and amended same to provide for communication and outreach program, amended Subsec. (c) to make pilot program subject to the availability of funds, to change number of municipalities from 4 to 5, to change population requirement for the smallest participating municipality from more than 25,000 but less than 50,000 to less than 50,000, to add a municipality chosen without regard to population size, and to designate Commissioner of Economic and Community Development as authority to assign municipalities to the pilot program, amended Subsec. (d) to add Department of Public Health, to change designation from one staff member to one or more staff members, to require Commissioners of Economic and Community Development, Environmental Protection and Public Health and the executive director of Connecticut Development Authority to enter into a memorandum of understanding, to change “shall” to “may” re develop and recruit two volunteers, to delete reference to liaisons and office's response team, and to make requirement that volunteers assist the office discretionary, and amended Subsec. (f) to require that each property funded under program be investigated in accordance with prevailing standards and guidelines, to provide that submitted report be a verification report, and to provide that Commissioner of Environmental Protection notify municipality or economic development agency, effective July 1, 2007; P.A. 11-80 amended Subsecs. (d), (f) and (h) by changing “Department of Environmental Protection” and “Commissioner of Environmental Protection” to “Department of Energy and Environmental Protection” and “Commissioner of Energy and Environmental Protection”, respectively, effective July 1, 2011; P.A. 11-140 amended Subsec. (b) by adding Subdiv. (8) re cooperative agreements with qualified implementing agencies, effective July 8, 2011; P.A. 11-141 amended Subsec. (a) to add requirements for office to promote and encourage development and redevelopment of brownfields and to coordinate and cooperate with agencies and individuals, amended Subsec. (b)(3) to require maintenance of a web site, amended Subsec. (b)(7) to provide that outreach program shall be

with regard to state programs, rather than state policies and procedures, and for remediation and redevelopment, amended Subsec. (c) by changing “state-funded pilot program” to “state-funded municipal brownfield grant program”, changing number of participating municipalities from 5 to at least 6 per round of funding and changing from 1 to 2 the number of municipalities to be chosen without regard to population, amended Subsec. (d) to include Office of Policy and Management and to allow volunteers to help with marketing programs and activities, rather than to assist with goals of section, amended Subsec. (f) to change “pilot program” to “grant program”, add references to licensed environmental professional, add references to an audit not being conducted and delete provision re recording of environmental land use restriction, amended Subsec. (g) to delete references to section 11 of public act 06-184 and to redefine “brownfields” and amended Subsec. (h) to delete reference to section 11 of public act 06-184, effective July 1, 2011; Oct. Sp. Sess. P.A. 11-1 amended Subsec. (b) by changing “may” to “at the office's discretion” in Subdiv. (8) and adding Subdiv. (9) re additional web site, effective October 27, 2011; P.A. 12-183 amended Subsec. (a) by adding provision re office to be managed by director appointed by commissioner and amended Subsec. (b)(6) by adding provision re identification of abandoned and underutilized mills, effective June 15, 2012; pursuant to June 12 Sp. Sess. P.A. 12-1, “Connecticut Development Authority” was changed editorially by the Revisors to “Connecticut Innovations, Incorporated” in Subsec. (d), effective July 1, 2012; P.A. 13-123 amended Subsec. (d) to change “executive director” to “chief executive officer”, effective June 18, 2013; P.A. 13-308 amended Subsec. (a) by changing “development and redevelopment” to “remediation and development”, amended Subsec. (b) by changing “municipality or the region” to “municipalities or the regions” in Subdiv. (6) and by changing “qualified implementing” to “economic development” in Subdiv. (8), deleted former Subsecs. (c) and (f) to (h), redesignated existing Subsecs. (d) and (e) as Subsecs. (c) and (d) and made technical and conforming changes, effective July 1, 2013; Sec. 32-9cc transferred to Sec. 32-761 in 2014.

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Sec. 32-762. Brownfield remediation and development account. (a) There is established an account to be known as the “brownfield remediation and development account”, which shall be a separate, nonlapsing account within the General Fund. There shall be deposited in the account: (1) The proceeds of bonds issued by the state for deposit into said account and used in accordance with this section; (2) repayments of assistance provided pursuant to subsection (c) of section 22a-133u; (3) interest or other income earned on the investment of moneys in the account; (4) funds recovered pursuant to sections 32-766 and 32-767; (5) any proceeds realized by the state from activities pursuant to section 32-763 or section 32-765; and (6) all funds required by law to be deposited in the account. Any balance remaining in the account at the end of any fiscal year shall be carried forward in the account for the fiscal year next succeeding.

(b) All moneys received in consideration of financial assistance, including payments of principal and interest on any loans made pursuant to section 32-765, shall be credited to the account and shall become part of the assets of the account. At the discretion of the Commissioner of Economic and Community Development and subject to the approval of the Secretary of the Office of Policy and Management, any federal, private or other moneys received by the state in connection with projects undertaken pursuant to section 32-763 or section 32-765 shall be credited to the assets of the account.

(c) Notwithstanding any provision of the general statutes, proceeds from the sale of bonds available pursuant to subdivision (1) of subsection (b) of section 4-66c may, with the approval of the Governor and the State Bond Commission, be used to capitalize the account.

(d) The commissioner may use funds in the account (1) to provide financial assistance for the remediation and development of brownfields in the state pursuant to section 32-763 or section 32-765, (2) to provide financial assistance to parcel owners required to perform mitigation actions pursuant to section 22a-6u, and (3) for administrative costs not to exceed five per cent of such funds.

(P.A. 13-308, S. 3.)

History: P.A. 13-308 effective July 1, 2013.

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Sec. 32-763. (Formerly Sec. 32-9kk). Remedial action and redevelopment municipal grant program. (a) There is established a remedial action and redevelopment municipal grant program to be administered by the Department of Economic and Community Development for the purpose of providing grants to municipalities, Connecticut brownfield land banks and economic development agencies for the eligible costs of brownfield remediation projects, brownfield assessment projects and reasonable administrative expenses not to exceed five per cent of any grant awarded. A grant awarded under this section shall not exceed four million dollars.

(b) A grant applicant shall submit an application to the Commissioner of Economic and Community Development on forms provided by the commissioner and with such information the commissioner deems necessary, including, but not limited to: (1) A description of the proposed project; (2) an explanation of the expected benefits of the project in relation to the purposes of this section; (3) information concerning the financial and technical capacity of the applicant to undertake the proposed project; (4) a project budget; and (5) with respect to a brownfield remediation project, a description of the condition of the brownfield, including the results of any environmental assessment of the brownfield in the possession of or available to the applicant.

(c) The commissioner may approve, reject or modify any application properly submitted in accordance with the provisions of this section. In reviewing an application and determining the amount of the grant, if any, to be provided, the commissioner shall consider the following criteria: (1) The availability of funds; (2) the estimated costs of assessing and remediating the brownfield, if known; (3) the relative economic condition of the municipality in which the brownfield is located; (4) the relative need of the project for financial assistance; (5) the degree to which a grant under this section is necessary to induce the applicant to undertake the project; (6) the public health and environmental benefits of the project; (7) the relative benefits of the project to the municipality, the region and the state, including, but not limited to, the extent to which the project will likely result in a contribution to the municipality's tax base, the retention and creation of jobs and the reduction of blight; (8) the time frame in which the contamination occurred; (9) the relationship of the applicant to the person or entity that caused the contamination; (10) the length of time the brownfield has been abandoned; (11) the taxes owed and the projected revenues that may be restored to the community; (12) the relative need for assessment of the brownfield within the municipality or region; and (13) such other criteria as the commissioner may establish consistent with the purposes of this section.

(d) The commissioner shall award grants on a competitive basis, based on a request for applications occurring on or before October first, annually. The commissioner may increase the frequency of requests for applications and awards depending upon the number of applicants and the availability of funding.

(e) If a grant recipient is not subject to section 22a-134a, such recipient shall enter a program for remediation of the property pursuant to either section 22a-133x, 22a-133y, 32-768 or 32-769, as determined by the commissioner, except no such recipient shall be required to enter such a program if the grant funds are used (1) for the abatement of hazardous building materials and such recipient demonstrates to the satisfaction of the Commissioners of Economic and Community Development and Energy and Environmental Protection that such hazardous building materials represent the sole or sole remaining environmental contamination on the property, (2) solely for assessment of the brownfield, or (3) as provided in subsection (g) of this section.

(f) The commissioner, in consultation with the Commissioner of Energy and Environmental Protection and following the award of a grant to a municipality, Connecticut brownfield land bank or economic development agency pursuant to subsections (c) and (d) of this section, may award an additional grant to such municipality, Connecticut brownfield land bank or economic development agency to enable the completion of a brownfield remediation or assessment project, provided such project is identified as a priority by said commissioners and such additional grant funds (1) will be used to address unexpected cost overruns or costs related to remedial activities that will provide a greater environmental benefit than originally proposed pursuant to subsection (b) of

this section, (2) do not exceed fifty per cent of the original grant, and (3) will not result in more than four million dollars in total grants being awarded for a single brownfield remediation or assessment project.

(g) The commissioner may award grants to any municipality, Connecticut brownfield land bank, economic development agency or regional council of governments organized under sections 4-124i to 4-124p, inclusive, for the eligible costs of developing a comprehensive plan for the remediation and redevelopment of multiple brownfields whenever such plan is consistent with the state plan of conservation and development, adopted pursuant to chapter 297, and the plan of conservation and development, adopted pursuant to section 8-23, for each municipality in which such brownfields are located. For purposes of this subsection, “eligible costs” shall also include expenditures associated with the development of any such plan for remediation and redevelopment.

(h) The provisions of sections 32-5a and 32-701 shall not apply to grants provided pursuant to this section.

(P.A. 07-233, S. 3–6; P.A. 08-174, S. 5; P.A. 11-80, S. 1; 11-141, S. 7; P.A. 12-183, S. 1–4; June 12 Sp. Sess. P.A. 12-1, S. 152; P.A. 13-123, S. 10; 13-308, S. 4; P.A. 15-193, S. 1; P.A. 17-214, S. 12; P.A. 18-85, S. 5.)

History: P.A. 07-233 effective July 1, 2007; P.A. 08-174 amended Subsec. (a)(7) to redefine “eligible brownfield project” to include foreclosure and investigation, added Subsec. (a)(11) to define “eligible grant recipients”, amended Subsec. (b) to include reference to Subsecs. (e) and (f), amended Subsec. (d) to include a contribution to municipality's tax base in Subdiv. (7), to insert new Subdivs. (10) re length of abandonment, (11) re taxes owed and (12) re type of financial assistance requested and to renumber existing Subdiv. (10) re other criteria as new Subdiv. (13), added new Subsec. (e) re remedial action and redevelopment municipal grant program, added new Subsec. (f) re targeted brownfield development loan program, redesignated existing Subsecs. (e) to (m) as new Subsecs. (g) to (o) and made technical changes, effective July 1, 2008; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” and “Department of Environmental Protection” were changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” and “Department of Energy and Environmental Protection”, respectively, effective July 1, 2011; P.A. 11-141 amended Subsec. (a)(1) by redefining “brownfield” to include sites where expansion has not occurred and that require investigation or remediation, effective July 1, 2011; P.A. 12-183 amended Subsec. (a) by redefining “eligible applicant” in Subdiv. (4), redefining “eligible grant recipients” in Subdiv. (11) and adding Subdiv. (12) defining “economic development agency”, amended Subsec. (f) by replacing provision re loans for developing housing to serve needs of first-time home buyers with provision re loans for developing affordable housing units, suitable for first-time home buyers, incentive housing zones, workforce housing and other residential purposes in Subdiv. (2), adding “or provide a specified number of affordable housing units” in Subdiv. (4), adding “residential” re use or reuse of property, changing “housing needs” to “affordable housing needs” and adding “for workforce housing” in Subdiv. (7), and adding Subdiv. (10) re availability of loan program to municipalities, amended Subsec. (j) by adding provision re use of funds for staffing, marketing, web site development and administration of Office of Brownfield Remediation and Development, and amended Subsec. (l)(4) by adding reference to Subsec. (k), effective July 1, 2012; pursuant to June 12 Sp. Sess. P.A. 12-1, “Connecticut Development Authority” was changed editorially by the Revisors to “Connecticut Innovations, Incorporated”, effective July 1, 2012; P.A. 13-123 made technical changes in Subsec. (a)(4), effective June 18, 2013; P.A. 13-308 made substantial revisions to section, deleted former Subsecs. (a) to (d), (e)(3) to (5), (e)(7) and (8) and (f) to (o), redesignated existing Subsec. (e)(1) as Subsec. (a), existing Subsec. (e)(2) as Subsec. (d) and existing Subsec. (e)(6) as Subsec. (e), amended redesignated Subsec. (a) by redefining purpose of grant program and limiting any grant to no more than four million dollars, added new Subsec. (b) re grant applications, added new Subsec. (c) re approval of grant applications, amended redesignated Subsec. (d) by changing annual date of request for applications from June 1 to October 1, annually, added Subsec. (f) re remediation programs for recipients of loans from grant recipients, added Subsec. (g) re applicability of Secs. 32-5a and 32-701, and made technical and conforming changes, effective July 1, 2013; Sec. 32-9kk transferred to Sec. 32-763 in 2014; P.A. 15-193 replaced former Subsecs. (e) and (f) re low-interest loans to brownfield redeveloper with new Subsecs. (e) and (f) re additional grants to municipalities and economic development agencies for brownfield remediation and assessment projects and grants to municipalities, economic development agencies and regional councils of governments for brownfield remediation and redevelopment plans, effective July 1, 2015; P.A. 17-214 amended Subsecs. (a), (e) and (f) by adding references to Connecticut brownfield land bank, effective July 1, 2017; P.A.

18-85 added new Subsec. (e) re requirements for certain grant recipients to enter certain property remediation programs, and redesignated existing Subsecs. (e) to (g) as Subsecs. (f) to (h).

See Sec. 32-22b re loan guarantee program.

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Sec. 32-764. (Formerly Sec. 32-9ee). Liability for pre-existing or existing conditions. Transfer of remediated brownfields. (a) Any recipient of a grant pursuant to section 32-763 or subsection (c) of section 32-9cc of the general statutes, revision of 1958, revised to January 1, 2013, shall not be liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 for conditions pre-existing or existing on the brownfield property as of the date of acquisition or control, provided such recipient (1) did not establish, create, cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution that is subject to remediation under section 22a-133k and funded by the Office of Brownfield Remediation and Development or the Department of Economic and Community Development; (2) does not exacerbate the conditions; and (3) complies with reporting of significant environmental hazard requirements in section 22a-6u. To the extent that any conditions are exacerbated, such recipient shall only be responsible for responding to contamination exacerbated by its negligent or reckless activities.

(b) Upon remediation (1) as approved by the Department of Energy and Environmental Protection, or (2) in accordance with section 22a-133x, 22a-134a, 32-768 or 32-769 of a brownfield property by a recipient of a grant pursuant to section 32-763, such recipient may transfer the property to any person, provided such person is not otherwise liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property. Any person who acquires title pursuant to this section shall not be liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 with respect to preexisting conditions on the property, provided such person (A) does not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste, and (B) such person is not a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property. The Commissioner of Energy and Environmental Protection shall provide such person with a covenant not to sue pursuant to section 22a-133aa and shall not require the prospective purchaser or owner to pay a fee in exchange for such covenant.

(c) No person shall acquire title to or hold, possess or maintain any interest in a property that has been remediated with grant funds awarded pursuant to section 32-763 if such person (1) is liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property, (2) is otherwise responsible, directly or indirectly, for the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste, (3) is a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property, or (4) is or was an owner, operator or tenant of the property. If such person elects to acquire title to or hold, possess or maintain any interest in the property, that person shall reimburse the state of Connecticut, the municipality and the economic development agency for any and all costs expended to perform the investigation and remediation of the property, plus interest at a rate of eighteen per cent.

(d) Notwithstanding section 22a-134a, a recipient of a grant pursuant to section 32-763 may acquire and convey its interest in the property without such recipient or the subsequent purchaser incurring liability, including any such liability incurred pursuant to section 22a-134a, provided the property (1) was remediated pursuant to section 22a-133x, 22a-133y, 32-768 or 32-769 or pursuant to an order issued by the Commissioner of Energy and Environmental Protection and such remediation was (A) performed in accordance with the standards adopted pursuant to section 22a-133k, as determined by said commissioner, or (B) if authorized by said commissioner, verified by a licensed environmental professional unless such verification has been rejected by said commissioner subsequent to an audit conducted by said commissioner and provided the subsequent

purchaser has no direct or related liability for the site conditions; and (2) is not an establishment, as defined in section 22a-134, based on business operations occurring after such recipient remediated the property.

(P.A. 06-184, S. 4, 5, 7; P.A. 07-233, S. 2; P.A. 09-235, S. 4; P.A. 11-141, S. 2; P.A. 13-308, S. 5.)

History: P.A. 06-184 effective July 1, 2006; P.A. 07-233 amended Subsec. (b) to provide that available funds are for “an eligible” brownfield remediation and that Commissioner of Economic and Community Development, rather than Office of Brownfield Remediation and Development, makes determination, added new Subdivs. (2) and (3) and redesignated existing Subdiv. (2) as Subdiv. (4), effective July 1, 2007; P.A. 09-235 amended Subsec. (a) to add entities established under Ch. 130 or 132, certain nonprofit economic corporations, nonstock corporations and limited liability companies controlled or established by a municipality, and municipal economic development agencies or entities established under Ch. 130 or 132 to list of entities to which Sec. applies, to include grants made by Department of Economic and Community Development, to provide that such entities are not liable for conditions as of date of acquisition or control, to require such entities to not have established cause for remediation to be considered an innocent party, and to require in case of exacerbated conditions that any such entity only be responsible for responding to contamination exacerbated by its own negligence or recklessness, effective July 1, 2009; P.A. 11-141 amended Subsecs. (a) and (c) to change “pilot program” to “municipal brownfield grant program”, effective July 1, 2011; P.A. 13-308 amended Subsec. (a) to replace provisions re specified entities with provisions re recipient of a grant and add reference to Sec. 22a-427, amended Subsec. (b) to replace former provisions with provisions re transfer of remediated brownfields, amended Subsec. (c) to add references to Sec. 22a-427, added Subsec. (d) re acquisition of remediated brownfields and made technical and conforming changes, effective July 1, 2013; Sec. 32-9ee transferred to Sec. 32-764 in 2014.

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Sec. 32-765. Targeted brownfield development loan program. (a) The Department of Economic and Community Development shall establish a targeted brownfield development loan program to provide low-interest loans for the eligible costs of brownfield remediation projects to potential brownfield purchasers and current brownfield owners who (1) have no direct or related liability for the conditions of the brownfield, and (2) seek to develop brownfields for purposes of reducing blight or for industrial, commercial, residential or mixed use development.

(b) Notwithstanding subsection (a) of this section, a current owner of a brownfield on which a manufacturing facility is located shall be eligible for a loan under this section, provided neither such owner nor any partner, member, officer, manager, director, shareholder, subsidiary or affiliate of such owner (1) is liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property; (2) is otherwise responsible, directly or indirectly, for the discharge, spillage, uncontrolled loss, seepage or filtration of the hazardous substance, material or waste; (3) is a member, officer, manager, director, shareholder, subsidiary, successor of, or affiliated with, directly or indirectly, the person who is otherwise liable under section 22a-427, 22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property; or (4) has been found guilty of knowingly or wilfully violating any environmental law.

(c) An applicant for a loan pursuant to this section shall submit an application to the Commissioner of Economic and Community Development on forms provided by the commissioner and with such information the commissioner deems necessary, including, but not limited to: (1) A description of the proposed project; (2) an explanation of the expected benefits of the project in relation to the purposes of this section; (3) information concerning the financial and technical capacity of the applicant to undertake the proposed project; (4) a project budget; and (5) a description of the condition of the brownfield involved, including the results of any environmental assessment of the brownfield in the possession of or available to the applicant. The commissioner shall provide loans based upon project merit and viability, the economic and community development opportunity, municipal support, contribution to the community's tax base, past experience of the applicant, compliance history and ability to pay.

(d) If a loan recipient is not subject to section 22a-134a, such recipient shall enter a program for remediation of the property pursuant to either section 22a-133x, 22a-133y, 32-768 or 32-769, as determined by the commissioner, except if the loan funds are used for the abatement of hazardous building materials and such recipient demonstrates to the satisfaction of the Commissioners of Economic and Community Development and Energy and Environmental Protection that such hazardous building materials represent the sole or sole remaining environmental contamination on the property.

(e) Loans made pursuant to this section shall have such terms and conditions and be subject to such eligibility and loan approval criteria as determined by the commissioner. Such loans shall be for a period not to exceed thirty years.

(f) If a loan recipient sells a property subject to a loan granted pursuant to this section before the loan is repaid, the loan shall be payable upon closing of such sale, according to its terms, unless the commissioner agrees otherwise. The commissioner may carry the loan forward as an encumbrance to the purchaser with the same terms and conditions as the original loan.

(g) A loan recipient may be eligible for a loan of not more than four million dollars per year, subject to agency underwriting and reasonable and customary requirements to assure performance. If additional funds are required, the commissioner may recommend that the project be funded through other programs administered by the commissioner.

(h) The commissioner may modify the terms of any loan made pursuant to this section to provide for forgiveness of interest, principal, or both, or delay in repayment of interest, principal, or both, when the commissioner determines such forgiveness or delay is in the best interest of the state from an economic or community development perspective.

(i) The provisions of sections 32-5a and 32-701 shall not apply to loans provided pursuant to this section.

(P.A. 13-308, S. 6; P.A. 14-88, S. 7; P.A. 15-193, S. 2; P.A. 18-85, S. 1.)

History: P.A. 13-308 effective July 1, 2013; P.A. 14-88 amended Subsec. (h) by deleting “to a municipality or economic development agency” re modification of loan terms and by adding “from an economic or community development perspective” re forgiveness or delay, effective June 3, 2014; P.A. 15-193 amended Subsec. (d) by adding provision re exception to property remediation program if loan recipient used loan funds for the abatement of hazardous building materials, and amended Subsec. (g) by changing maximum loan amount from \$2,000,000 per year to \$4,000,000 per year and by deleting “for not more than two years,” effective July 1, 2015; P.A. 18-85 amended Subsec. (e) by increasing maximum loan period from 20 years to 30 years, effective July 1, 2018, and applicable to loans issued on or after July 1, 2018.

See Sec. 32-22b re loan guarantee program.

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Sec. 32-766. Terms and conditions of financial assistance. The Commissioner of Economic and Community Development shall establish the terms and conditions of any financial assistance provided pursuant to section 32-763 or section 32-765. The commissioner may make any stipulation in connection with an offer of financial assistance the commissioner deems necessary to implement the policies and purposes of section 32-763 or section 32-765, including, but not limited to, (1) a requirement of assurance from a grant or loan recipient that such recipient will discharge its obligations in connection with the project, (2) a requirement that a grant or loan recipient provide the department with appropriate security for such financial assistance, including, but not limited to, a letter of credit, a lien on real property or a security interest in goods, equipment, inventory or other property of any kind, and (3) a requirement that a grant or loan recipient reimburse the state for such financial assistance in the event that it receives funds for remediation from other sources.

(P.A. 13-308, S. 7.)

History: P.A. 13-308 effective July 1, 2013.

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Sec. 32-767. Reimbursement for costs and expenses of assessment or remediation. (a) Whenever funds are used pursuant to section 32-763 or section 32-765, for purposes of environmental assessments or remediation of a brownfield, the Commissioner of Energy and Environmental Protection may seek reimbursement of the costs and expenses incurred by requesting the Attorney General to bring a civil action to recover such costs and expenses from any party responsible for such pollution, provided no such action shall be brought separately from any action to recover costs and expenses incurred by the Commissioner of Energy and Environmental Protection in pursuing action to contain, remove or mitigate any pollution on such site. The costs and expenses recovered in an action brought pursuant to this section may include, but shall not be limited to: (1) The actual cost of identifying, evaluating, planning for and undertaking the remediation of the site; (2) any administrative costs not exceeding ten per cent of the actual costs; (3) the costs of recovering the reimbursement; and (4) interest on the actual costs at a rate of ten per cent per year from the date such expenses were paid.

(b) The defendant in any civil action brought pursuant to this subsection shall have no cause of action or claim for contribution against any person with whom the Commissioner of Energy and Environmental Protection has entered into a covenant not to sue pursuant to section 22a-133aa or 22a-133bb with respect to pollution on or emanating from the property that is the subject of said civil action.

(c) Any funds recovered pursuant to this section shall be deposited in the brownfield remediation and development account established pursuant to section 32-762. The provisions of this section shall be in addition to any other remedies provided by law.

(P.A. 13-308, S. 8.)

History: P.A. 13-308 effective July 1, 2013.

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Sec. 32-768. (Formerly Sec. 32-91I). Abandoned brownfield cleanup program. (a) There is established an abandoned brownfield cleanup program. The Commissioner of Economic and Community Development shall determine, in consultation with the Commissioner of Energy and Environmental Protection, properties and persons eligible for said program.

(b) For a person or a property to be eligible, the Commissioner of Economic and Community Development shall determine if (1) the property is a brownfield, as defined in section 32-760, that has been unused or significantly underused for at least five years before an application is filed with the commissioner pursuant to subsection (h) of this section; (2) such person intends to acquire title to such property for the purpose of redeveloping such property; (3) the redevelopment of such property has a regional or municipal economic development benefit; (4) such person did not establish or create a facility or condition at or on such property that can reasonably be expected to create a source of pollution to the waters of the state for the purposes of section 22a-432 and is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than a relationship by which such owner's interest in such property is to be conveyed or financed; (5) such person is not otherwise required by law, an order or consent order issued by the Commissioner of Energy and Environmental Protection or a stipulated judgment to remediate pollution on or emanating from such property; (6) the person responsible for pollution on or emanating from the property is indeterminable, is no longer in existence, is required by law to remediate releases on and emanating from the property or is otherwise unable to perform necessary remediation

of such property; and (7) the property and the person meet any other criteria said commissioner deems necessary.

(c) Notwithstanding the provisions of subsection (b) of this section, a property owned by a municipality, a Connecticut brownfield land bank or an economic development agency shall not be subject to subdivision (6) of subsection (b) of this section.

(d) Notwithstanding the provisions of subsection (b) of this section, a municipality or a Connecticut brownfield land bank may request the Commissioner of Economic and Community Development to determine if a property is eligible regardless of the person who currently owns such property.

(e) Notwithstanding subsection (b) of this section, the Commissioner of Economic and Community Development may waive the requirement of subdivision (1) of subsection (b) of this section, if the person seeking eligibility under this section otherwise demonstrates the eligibility of the property and the value of the redevelopment of such property.

(f) Upon designation by the Commissioner of Economic and Community Development, in consultation with the Commissioner of Energy and Environmental Protection, of an eligible person who holds title to such property, such eligible person shall (1) enter and remain in the voluntary remediation program established in section 22a-133x; (2) investigate pollution on such property in accordance with prevailing standards and guidelines and remediate pollution on such property in accordance with regulations established for remediation adopted by the Commissioner of Energy and Environmental Protection and in accordance with applicable schedules; and (3) eliminate further emanation or migration of any pollution from such property.

(g) An eligible person who has been accepted by the commissioner or that holds title to an eligible property designated to be in the abandoned brownfield cleanup program shall not be responsible for investigating or remediating any pollution or source of pollution that has emanated from such property prior to such person taking title to such property, and shall not be liable to the state or any person for the release of any regulated substance at or from the eligible property prior to taking title to such eligible property except and only to the extent that such applicant caused or contributed to the release of a regulated substance that is subject to remediation or negligently or recklessly exacerbated such condition.

(h) Any applicant seeking a designation of eligibility for a person or a property under the abandoned brownfield cleanup program shall apply to the Commissioner of Economic and Community Development at such times and on such forms as the commissioner may prescribe.

(i) Not later than sixty days after receipt of the application, the Commissioner of Economic and Community Development shall determine if the application is complete and shall notify the applicant of such determination.

(j) Not later than ninety days after determining that the application is complete, the Commissioner of Economic and Community Development shall determine whether to include the property and applicant in the abandoned brownfield cleanup program.

(k) Designation of a property in the abandoned brownfield cleanup program by the Commissioner of Economic and Community Development shall not limit the applicant's or any other person's ability to seek funding for such property under any other brownfield grant or loan program administered by the Department of Economic and Community Development, Connecticut Innovations, Incorporated or the Department of Energy and Environmental Protection.

(l) Designation of a property in the abandoned brownfield cleanup program by the Commissioner of Economic and Community Development shall exempt such eligible person from filing as an establishment pursuant to sections 22a-134a to 22a-134d, inclusive, if such real property or prior business operations constitute an establishment.

(m) Upon completion of the requirements of subsection (f) of this section to the satisfaction of the Commissioner of Energy and Environmental Protection, such person shall qualify for a covenant not to sue from the Commissioner of Energy and Environmental Protection without fee, pursuant to section 22a-133aa.

(n) Any person designated as an eligible person under the abandoned brownfield cleanup program shall not be liable to the Commissioner of Energy and Environmental Protection or any person under section 22a-432, 22a-433, 22a-451 or 22a-452 or other similar statute or common law for conditions preexisting or existing on the brownfield property as of the date of acquisition or control as long as the person (1) did not establish, cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution; (2) does not exacerbate the conditions; and (3) complies with reporting of significant environmental hazard requirements in section 22a-6u. To the extent that any conditions are exacerbated, the person shall only be responsible for responding to contamination exacerbated by its negligent or reckless activities.

(o) Any person who acquires a property in the abandoned brownfield cleanup program shall apply to the Commissioner of Economic and Community Development on a form prescribed by the commissioner to determine if such person qualifies as an eligible party under the abandoned brownfield cleanup program. If the commissioner determines that such person is an eligible party, such eligible party shall be subject to the provisions of this section, and shall receive liability relief pursuant to subsections (g), (l), (m) and (n) of this section.

(P.A. 09-235, S. 7; P.A. 11-80, S. 1; 11-141, S. 9; June 12 Sp. Sess. P.A. 12-1, S. 152; P.A. 13-308, S. 9; P.A. 17-214, S. 13.)

History: Pursuant to P.A. 11-80, “Commissioner of Environmental Protection” and “Department of Environmental Protection” were changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” and “Department of Energy and Environmental Protection”, respectively, effective July 1, 2011; P.A. 11-141 redesignated existing Subsec. (a) as Subsecs. (a) and (b) and existing Subsec. (b) as Subsecs. (g) and (h), amended Subsec. (b) to add references to municipality, to change time frame the property must have been underused from “since October 1, 1999” to at least five years before the application in Subdiv. (1), and to add “is required by law to remediate releases on and emanating from the property” in Subdiv. (6), added new Subsec. (c) re definition of “municipality”, added new Subsecs. (d) to (f) re certain waivers and exceptions, amended Subsec. (g) to add provisions re consultation with Commissioner of Environmental Protection and re municipalities and to remove requirement that person not be a certifying party, amended Subsec. (h) to add provisions re municipality and re liability protection, redesignated existing Subsecs. (c) to (f) as Subsecs. (i) to (l), added Subsecs. (m) to (p) re exemptions and requirements, and made technical changes, effective July 1, 2011; pursuant to June 12 Sp. Sess. P.A. 12-1, “Connecticut Development Authority” was changed editorially by the Revisors to “Connecticut Innovations, Incorporated” in Subsec. (l), effective July 1, 2012; P.A. 13-308 deleted references to municipality, deleted former Subsec. (c) re definition of “municipality”, redesignated existing Subsecs. (d) to (p) as Subsecs. (c) to (o) and made technical and conforming changes, effective July 1, 2013; Sec. 32-9// transferred to Sec. 32-768 in 2014; P.A. 17-214 amended Subsec. (c) by adding “; a Connecticut brownfield land bank or an economic development agency” and amended Subsec. (d) by adding “or a Connecticut brownfield land bank”, effective July 1, 2017.

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Sec. 32-769. (Formerly Sec. 32-9mm). Brownfield remediation and revitalization program. Eligibility. (a) The commissioner shall, within available appropriations, establish a brownfield remediation and revitalization program to provide certain liability protections to program participants. Not more than thirty-two properties per year shall be accepted into the program. Participation in the program shall be by accepted application pursuant to this subsection or by approved nomination pursuant to subsection (c) of this section. To be considered for acceptance, an applicant shall submit to the commissioner, on a form prescribed by the commissioner, a certification that: (1) The applicant meets the definition of a bona fide prospective purchaser, innocent

landowner or contiguous property owner; (2) the property meets the definition of a brownfield and has been subject to a release of a regulated substance in an amount that is in excess of the remediation standards; (3) the applicant did not establish, create or maintain a source of pollution to the waters of the state for purposes of section 22a-432 and is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property; (4) the applicant is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such purchaser's interest in such property is to be conveyed or financed; and (5) the property is not (A) currently the subject of an enforcement action, including any consent order issued by the Department of Energy and Environmental Protection or the United States Environmental Protection Agency under any current Department of Energy and Environmental Protection or United States Environmental Protection Agency program, (B) listed on the national priorities list of hazardous waste disposal sites compiled by the United States Environmental Protection Agency pursuant to 42 USC 9605, (C) listed on the State of Connecticut Superfund Priority List, or (D) subject to corrective action as may be required by the federal Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq. The commissioner may review such certifications to ensure accuracy, in consultation with the Commissioner of Energy and Environmental Protection, and applications will not be considered if such certifications are found inaccurate.

(b) To ensure a geographic distribution and a diversity of projects and broad access to the brownfield remediation and revitalization program, the commissioner, in consultation with the Commissioner of Energy and Environmental Protection, shall review all applications received and determine admission of eligible properties into the brownfield remediation and revitalization program taking into consideration state-wide portfolio factors including: (1) Job creation and retention; (2) sustainability; (3) readiness to proceed; (4) geographic distribution of projects; (5) population of the municipality where the property is located; (6) project size; (7) project complexity; (8) duration and degree to which the property has been underused; (9) projected increase to the municipal grand list; (10) consistency of the property as remediated and developed with municipal or regional planning objectives; (11) development plan's support for and furtherance of principles of smart growth, as defined in section 1 of public act 09-230*, or transit-oriented development, as defined in section 13b-79o; and (12) other factors as may be determined by the commissioner. Admittance into the brownfield remediation and revitalization program shall not indicate approval or award of funding requested under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program.

(c) The commissioner shall accept nominations of properties for participation in the program established pursuant to subsection (a) of this section by a municipality or an economic development agency, where no bona fide prospective purchaser, contiguous property owner or innocent landowner has applied for participation in the program. For a property to be considered for approval for nomination to the program established pursuant to this section, a municipality shall submit to the commissioner, on a form prescribed by the commissioner, a certification that the property meets the eligibility requirements provided in subdivisions (2) and (5) of subsection (a) of this section and any other relevant factors, including state-wide portfolio factors provided in subsection (b) of this section, as may be determined by the commissioner. After the commissioner approves a property's nomination, any subsequent applicant shall apply in accordance with subsections (a) and (f) of this section. In any such application, the applicant shall demonstrate it satisfies the eligibility requirements provided in subdivisions (1), (3) and (4) of subsection (a) of this section and shall demonstrate satisfaction of subdivisions (2) and (5) of subsection (a) of this section for the period after the commissioner's acceptance of the municipality's or economic development agency's nomination of the property.

(d) (1) Properties otherwise eligible for the brownfield remediation and revitalization program currently being investigated and remediated in accordance with the state voluntary remediation programs under sections 22a-133x and 22a-133y, the property transfer program under section 22a-134 and the covenant not to sue programs under section 22a-133aa or 22a-133bb shall not be excluded from eligibility in said program, provided the other requirements set forth in this section are met.

(2) Properties otherwise eligible for the brownfield remediation and revitalization program that have been subject to a release requiring action pursuant to the PCB regulations or that have been subject to a release requiring action pursuant to the UST regulations shall not be deemed ineligible, but no provision of this section

shall affect any eligible party's obligation under such regulations to investigate or remediate the extent of any such release.

(e) Inclusion of a property within the brownfield remediation and revitalization program by the commissioner shall not limit any person's ability to seek funding for such property under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program. Admittance into the brownfield remediation and revitalization program shall not indicate approval or award of funding requested under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program.

(f) Any applicant seeking a designation of eligibility for a person or a property under the brownfield remediation and revitalization program shall apply to the commissioner at such times and on such forms as the commissioner may prescribe. The application shall include, but not be limited to, (1) a title search, (2) the Phase I Environmental Site Assessment conducted by or for the bona fide prospective purchaser or the contiguous property owner, which shall be prepared in accordance with prevailing standards and guidelines, (3) a current property inspection, if requested by the commissioner, (4) documentation demonstrating satisfaction of the eligibility criteria set forth in subsection (a) of this section, (5) information about the project that relates to the state-wide portfolio factors set forth in subsection (b) of this section, and (6) such other information as the commissioner may request to determine admission.

(g) Any applicant accepted into the brownfield remediation and revitalization program by the commissioner shall pay the Commissioner of Energy and Environmental Protection a fee equal to five per cent of the assessed value of the land, as stated on the last-completed grand list of the relevant town. The fee shall be paid in two installments, each equal to fifty per cent of such fee, subject to potential reductions as specified in subsection (h) of this section. The first installment shall be due not later than one hundred eighty days after the later of the date such applicant is notified that the application has been accepted by the commissioner or the date that such applicant takes title to the eligible property. The second installment shall be due not later than four years after the acceptance date. Upon request by such applicant, a municipality or an economic development agency, the commissioner may, at the commissioner's discretion, extend either or both of the installment due dates. Such fee shall be deposited into the Special Contaminated Property Remediation and Insurance Fund established pursuant to section 22a-133t and shall be available for use by the Commissioner of Energy and Environmental Protection pursuant to section 22a-133u.

(h) (1) The first installment of the fee in subsection (g) of this section shall be reduced by ten per cent for any eligible party that completes and submits to the Commissioner of Energy and Environmental Protection documentation, approved in writing by a licensed environmental professional and on a form prescribed by said commissioner, that the investigation of the property has been completed in accordance with prevailing standards and guidelines within one hundred eighty days after the date the application is accepted by the commissioner.

(2) The second installment of the fee in subsection (g) of this section shall be eliminated for any eligible party that submits the remedial action report and verification or interim verification to the Commissioner of Energy and Environmental Protection within four years after the date the application is accepted by the commissioner. In the event an eligible party submits a request for the Commissioner of Energy and Environmental Protection's approval, where such approval is required pursuant to the remediation standard and where said commissioner issues a decision on such request beyond sixty days after submittal, such four-year period shall be extended by the number of days equal to the number of days between the sixtieth day and the date a decision is issued by said commissioner, but not including the number of days that a request by said commissioner for supplemental information remains pending with the eligible party.

(3) The second installment of the fee in subsection (g) of this section shall be reduced by, or any eligible party shall receive a refund in the amount equal to, twice the reasonable environmental service costs of such investigation, as determined by the Commissioner of Energy and Environmental Protection, for any eligible party that completes and submits to the Commissioner of Energy and Environmental Protection documentation, approved in writing by a licensed environmental professional and on a form that may be prescribed by said commissioner, that the investigation of the nature and extent of any contamination that has migrated from the

property has been completed in accordance with prevailing standards and guidelines. Such refund shall not exceed the amount of the second installment of the fee in subsection (g) of this section.

(4) No municipality or economic development agency seeking designation of eligibility shall be required to pay a fee, provided, upon transfer of the eligible property from the municipality or economic development agency to an eligible person, that eligible person shall pay to the Commissioner of Energy and Environmental Protection the fee in subsection (g) of this section in accordance with the applicable requirements in this subsection.

(5) A municipality or economic development agency may submit a fee waiver request to the commissioner to waive a portion or the entire fee for an eligible property located within that municipality. The commissioner, at his or her discretion, shall consider the following factors in determining whether to approve a fee waiver or reduction: (A) Location of the brownfield within a distressed municipality, as defined in section 32-9p; (B) demonstration by the municipality or economic development agency that the project is of significant economic impact; (C) demonstration by the municipality or economic development agency that the project has a significant community benefit to the municipality; (D) demonstration that the eligible party is a governmental or nonprofit entity; and (E) demonstration that the fee required will have a detrimental effect on the overall success of the project.

(i) (1) An applicant whose application has been accepted into the brownfield remediation and revitalization program shall not be liable to the state or any person for the release of any regulated substance at or from the eligible property, except and only to the extent that such applicant (A) caused or contributed to the release of a regulated substance that is subject to remediation or exacerbated such condition, or (B) the Commissioner of Energy and Environmental Protection determines the existence of any of the conditions set forth in subdivision (4) of subsection (m) of this section.

(2) If such applicant conveys or, prior to July 1, 2017, conveyed a security interest, as defined in section 22a-452f, in the eligible property to a lender, as defined in section 22a-452f, and such lender (A) did not establish, create or maintain a source of pollution to the waters of the state for purposes of section 22a-432, (B) is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the eligible property, and (C) is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that creating the security interest in the eligible property, such lender shall not be liable to the state or any person for the release of any regulated substance at or from the eligible property.

(j) (1) An applicant whose application to the brownfield remediation and revitalization program has been accepted by the commissioner (A) shall investigate the release or threatened release of any regulated substance within the boundaries of the property in accordance with prevailing standards and guidelines and remediate such release or threatened release within the boundaries of such property in accordance with the brownfield investigation plan and remediation schedule and this section, and (B) shall not be required to characterize, abate and remediate the release of a regulated substance beyond the boundary of the eligible property, except for releases caused or contributed to by such applicant.

(2) Not later than one hundred eighty days after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (g) of this section, the eligible party shall submit to the commissioner and the Commissioner of Energy and Environmental Protection a brownfield investigation plan and remediation schedule that is signed and stamped by a licensed environmental professional. Unless otherwise approved in writing by the Commissioner of Energy and Environmental Protection, such brownfield investigation plan and remediation schedule shall provide that (A) the investigation shall be completed not later than two years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (g) of this section, (B) remediation shall be initiated not later than three years from the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (g) of this section, and (C) remediation shall be completed sufficiently to support either a verification or interim verification not later than eight years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (g) of this section. The schedule shall also include a schedule for providing public notice of the remediation prior to the initiation of

such remediation in accordance with subdivision (1) of subsection (j) of this section. Not later than two years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (g) of this section, unless the Commissioner of Energy and Environmental Protection has specified a later day, in writing, the eligible party shall submit to the Commissioner of Energy and Environmental Protection documentation, approved in writing by a licensed environmental professional and in a form prescribed by the Commissioner of Energy and Environmental Protection, that the investigation of the property has been completed in accordance with prevailing standards and guidelines. Not later than three years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (g) of this section, unless the Commissioner of Energy and Environmental Protection has specified a later day, in writing, the eligible party shall notify the Commissioner of Energy and Environmental Protection and the commissioner in a form prescribed by the Commissioner of Energy and Environmental Protection that the remediation has been initiated, and shall submit to the Commissioner of Energy and Environmental Protection a remedial action plan, approved in writing by a licensed environmental professional in a form prescribed by the Commissioner of Energy and Environmental Protection. Not later than eight years after the first installment due date, including any extension thereof by the commissioner, of the fee required pursuant to subsection (g) of this section, unless the Commissioner of Energy and Environmental Protection has specified a later day, in writing, the eligible party shall complete remediation of the property and submit the remedial action report and verification or interim verification to the Commissioner of Energy and Environmental Protection and the commissioner. The Commissioner of Energy and Environmental Protection shall grant a reasonable extension if the eligible party demonstrates to the satisfaction of the Commissioner of Energy and Environmental Protection that: (i) Such eligible party has made reasonable progress toward investigation and remediation of the eligible property; and (ii) despite best efforts, circumstances beyond the control of the eligible party have significantly delayed the remediation of the eligible property.

(3) The eligible party may complete the investigation and remediation of a portion of the eligible property and submit a verification or an interim verification for such portion to the Commissioner of Energy and Environmental Protection and the commissioner, provided the eligible party (A) is in compliance with the provisions of this section and the brownfield investigation plan and remediation schedule, and (B) has, prior to submitting such verification or interim verification for such portion: (i) Timely submitted documentation to the Commissioner of Energy and Environmental Protection that the investigation of the entire property is complete in accordance with prevailing standards and guidelines, in accordance with subdivision (2) of this subsection, (ii) timely notified the Commissioner of Energy and Environmental Protection that the remediation was initiated and submitted to said commissioner a remedial action plan for the entire property originally accepted into the brownfield remediation and revitalization program, in accordance with subdivision (2) of this subsection, and (iii) demonstrated to the satisfaction of the Commissioner of Energy and Environmental Protection and the commissioner that it will complete the remediation of the remainder of the eligible property in accordance with the remediation schedule. For any verification or interim verification of a portion of the eligible property, the remediation of releases on and from such portion shall extend to the boundaries of the eligible property as a whole.

(4) An eligible party who submits an interim verification for an eligible property or a portion of an eligible property, and any subsequent owner of such eligible property, shall, until the remediation standards for groundwater are achieved, (A) operate and maintain the long-term remedy for groundwater in accordance with the remedial action plan, the interim verification and any approvals issued by the Commissioner of Energy and Environmental Protection, (B) prevent exposure to any groundwater plume containing a regulated substance in excess of the remediation standards on the property, (C) take all reasonable action to contain any groundwater plume on the property, and (D) submit annual status reports to the Commissioner of Energy and Environmental Protection and the commissioner.

(5) Before commencement of remedial action pursuant to the plan and schedule, the eligible party shall: (A) Publish notice of the remedial action in a newspaper having a substantial circulation in the town where the property is located, (B) notify the director of health of the municipality where the property is located, and (C) either (i) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the property, which shall be clearly visible from the public highway and shall include the words

“ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT:” and include a telephone number for an office from which any interested person may obtain additional information about the remedial action, or (ii) mail notice of the remedial action to each owner of record of property which abuts such property, at the address on the last-completed grand list of the relevant town. Public comments shall be directed to the eligible party for a thirty-day period starting with the last provided public notice provision and such eligible party shall provide all comments and any responses to the Commissioner of Energy and Environmental Protection prior to commencing remedial action.

(6) The remedial action shall be conducted under the supervision of a licensed environmental professional and the remedial action report shall be submitted to the commissioner and the Commissioner of Energy and Environmental Protection signed and stamped by a licensed environmental professional. In such report, the licensed environmental professional shall include a detailed description of the remedial actions taken and issue a verification or interim verification for the eligible property or a portion of the eligible property, in which he or she shall render an opinion, in accordance with the standard of care provided in subsection (c) of section 22a-133w and the regulations adopted pursuant to subsection (c) of section 22a-133v, that the action taken to contain, remove or mitigate the release of regulated substances within the boundaries of such property is in accordance with the remediation standards.

(7) Copies of all applications for permits required to implement such plan and schedule in this section shall be submitted to the permit ombudsman within the Department of Economic and Community Development.

(8) Each eligible party participating in the brownfield remediation and revitalization program shall maintain all records related to its implementation of such plan and schedule and completion of the remedial action of the property for a period of not less than ten years and shall make such records available to the commissioner or the Commissioner of Energy and Environmental Protection at any time upon request by either.

(9) (A) Not later than sixty days after receiving a remedial action report signed and stamped by a licensed environmental professional and a verification or interim verification for the eligible property or a portion of the eligible property, the Commissioner of Energy and Environmental Protection shall notify the eligible party and the commissioner whether the Commissioner of Energy and Environmental Protection will conduct an audit of such remedial action. Any such audit shall be conducted not later than one hundred eighty days after the Commissioner of Energy and Environmental Protection receives such remedial action report and verification or interim verification, plus any additional time permitted pursuant to subparagraph (B) of this subdivision, except as provided in subparagraph (C) of this subdivision. Not later than fourteen days after completion of an audit, the Commissioner of Energy and Environmental Protection shall send written audit findings to the eligible party, the commissioner and the licensed environmental professional. The audit findings may approve or disapprove the report, provided any disapproval shall set forth the reasons for such disapproval.

(B) The Commissioner of Energy and Environmental Protection may request additional information during an audit conducted pursuant to this subdivision. If such information has not been provided to said commissioner within fourteen days of such request, the time frame for said commissioner to complete the audit shall be suspended until the information is provided to said commissioner. The Commissioner of Energy and Environmental Protection may choose to conduct such audit if and when the eligible party fails to provide a response to said commissioner's request for additional information within sixty days.

(C) The Commissioner of Energy and Environmental Protection shall not conduct an audit of a verification or interim verification for the eligible property or a portion of the eligible property pursuant to this subdivision after one hundred eighty days from receipt of such verification, plus any additional time permitted pursuant to subparagraph (B) of this subdivision, unless (i) said commissioner has reason to believe that a verification was obtained through the submittal of materially inaccurate or erroneous information, or otherwise misleading information material to the verification or that material misrepresentations were made in connection with the submittal of the verification, (ii) any post-verification monitoring or operations and maintenance is required as part of a verification and has not been done, (iii) a verification that relies upon an environmental land use restriction was not recorded on the land records of the municipality in which such land is located in accordance with section 22a-133o and applicable regulations, (iv) said commissioner determines that there has been a

violation of law material to the verification, or (v) said commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment for releases on the property.

(k) Not later than sixty days after receiving a notice of disapproval of a verification or interim verification for the eligible property or a portion of the eligible property from the Commissioner of Energy and Environmental Protection, the eligible party shall submit to said commissioner and to the commissioner a report of cure of noted deficiencies. Within sixty days after receiving such report of cure of noted deficiencies by said commissioner, said commissioner shall issue a successful audit closure letter or a written disapproval of such report of cure of noted deficiencies.

(l) Before approving a verification or interim verification for the eligible property or a portion of the eligible property, the Commissioner of Energy and Environmental Protection may enter into a memorandum of understanding with the eligible party with regard to any further remedial action or monitoring activities on or at such property that said commissioner deems necessary for the protection of human health or the environment.

(m) (1) An eligible party who has been accepted into the brownfield remediation and revitalization program shall have no obligation as part of its plan and schedule to characterize, abate and remediate any release of a regulated substance outside the boundaries of the eligible property originally accepted into the brownfield remediation and revitalization program, provided the notification requirements of section 22a-6u pertaining to significant environmental hazards shall continue to apply to the property and the eligible party shall not be required to characterize, abate or remediate any such significant environmental hazard outside the boundaries of the subject property unless such significant environmental hazard arises from the actions of the eligible party after its acquisition of or control over the property from which such significant environmental hazard has emanated outside its own boundaries. If an eligible party who has been accepted into the brownfield remediation and revitalization program conveys or otherwise transfers its ownership of the subject property and such eligible party is in compliance with the provisions of this section and the brownfield investigation plan and remediation schedule at the time of conveyance or transfer of ownership, the provisions of this section shall apply to such transferee, if such transferee meets the eligibility criteria set forth in this section, complies with the obligations undertaken by the eligible party under this section, and timely pays the greater of: (A) Any fee required by subsection (g) or (h) of this section not yet paid by such eligible party, or (B) a fee of ten thousand dollars. In such case, all references to applicant or eligible party shall mean the subsequent owner or transferee.

(2) After the Commissioner of Energy and Environmental Protection issues either a no audit letter or a successful audit closure letter, or no audit decision has been made by said commissioner within one hundred eighty days, plus any additional time permitted pursuant to subparagraph (B) of subdivision (9) of subsection (j) of this section, after the submittal of the remedial action report and verification or interim verification, for the eligible property or a portion of the eligible property, such eligible party shall not be liable to the state or any person for (A) costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in such verification or interim verification, and (B) historical impacts off the eligible property as a whole, including air deposition, waste disposal, impacts to sediments and natural resource damages. No eligible party shall be afforded any relief from liability such eligible party may have from a release requiring action pursuant to the PCB regulations or a release requiring action pursuant to the UST regulations.

(3) The provisions of this section concerning liability shall extend to any person who acquires title to all or part of the property for which a remedial action report and verification or interim verification have been submitted pursuant to this section, provided (A) there is payment of a fee of ten thousand dollars to said commissioner for each such extension, (B) such person acquiring all or part of the property meets the criteria of this section, and (C) the Commissioner of Energy and Environmental Protection has issued either a successful audit closure letter or no audit letter, or no audit decision has been made by said commissioner not later than one hundred eighty days, plus any additional time permitted pursuant to subparagraph (B) of subdivision (9) of subsection (j) of this section, after the submittal of the remedial action report and verification or interim verification. No municipality or economic development agency that acquires title to all or part of the property shall be required to pay a fee, provided the municipality or economic development agency shall collect and pay the fee upon transfer of the

property to another person for purposes of development. Such fee shall be deposited into the Special Contaminated Property Remediation and Insurance Fund established under section 22a-133t and such funds shall be for the exclusive use by the Department of Energy and Environmental Protection.

(4) Neither a successful audit closure nor no audit letter issued pursuant to this section, nor the expiration of one hundred eighty days, plus any additional time permitted pursuant to subparagraph (B) of subdivision (9) of subsection (j) of this section, after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Energy and Environmental Protection, shall preclude said commissioner from taking any appropriate action, including, but not limited to, any action to require remediation of the property by the eligible party or, as applicable, to its successor, if said commissioner determines that:

(A) The successful audit closure, no audit letter, or the expiration of one hundred eighty days, plus any additional time permitted pursuant to subparagraph (B) of subdivision (9) of subsection (j) of this section, after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Energy and Environmental Protection was based on information provided by the person submitting such remedial action report and verification or interim verification that the Commissioner of Energy and Environmental Protection can show that such person knew, or had reason to know, was false or misleading, and, in the case of the successor to an applicant, that such successor was aware or had reason to know that such information was false or misleading;

(B) New information confirms the existence of previously unknown contamination that resulted from a release that occurred before the date that an application has been accepted into the brownfield remediation and revitalization program;

(C) The eligible party who received the successful audit closure or no audit letter or where one hundred eighty days, plus any additional time permitted pursuant to subparagraph (B) of subdivision (9) of subsection (j) of this section, lapsed without an audit decision by the Commissioner of Energy and Environmental Protection has materially failed to complete the remedial action required by the brownfield investigation plan and remediation schedule or to carry out or comply with monitoring, maintenance or operating requirements pertinent to a remedial action including the requirements of any environmental land use restriction; or

(D) The threat to human health or the environment is increased beyond an acceptable level due to substantial changes in exposure conditions at such property, including, but not limited to, a change from nonresidential to residential use of such property.

(5) If an eligible party who has been accepted into the brownfield remediation and revitalization program conveys or otherwise transfers all or part of its ownership interest in the subject property at any time before the issuance of a successful audit closure or no audit letter or the expiration of one hundred eighty days, plus any additional time permitted pursuant to subparagraph (B) of subdivision (9) of subsection (j) of this section, after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Energy and Environmental Protection, the eligible party conveying or otherwise transferring its ownership interest shall not be liable to the state or any person, for the portion of the property transferred, for (A) costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in the brownfield investigation plan and remediation schedule, and (B) historical impacts off the eligible property as a whole, including air deposition, waste disposal, impacts to sediments and natural resource damages, provided the eligible party complied with its obligations under this section during the period when the eligible party held an ownership interest in the subject property. Nothing in this subsection shall provide any relief from liability such eligible party may have related to a release requiring action pursuant to the PCB regulations, or a release requiring action pursuant to the UST regulations.

(6) Upon the Commissioner of Energy and Environmental Protection's issuance of a successful audit closure letter or no audit letter for the entire eligible property originally accepted into the brownfield remediation and revitalization program, or after one hundred eighty days, plus any additional time permitted pursuant to subparagraph (B) of subdivision (9) of subsection (j) of this section, have passed since the submittal of a

verification or interim verification and said commissioner has not audited the verification or interim verification, the immediate prior owner regardless of its own eligibility to participate in the comprehensive brownfield remediation and revitalization program shall have no liability to the state or any person for any future investigation and remediation of the release of any regulated substance at the eligible property addressed in the verification or interim verification, provided the immediate prior owner has complied with any legal obligation such owner had with respect to investigation and remediation of releases at and from the property, and provided further the immediate prior owner shall retain any and all liability such immediate prior owner would otherwise have for the investigation and remediation of the release of any regulated substance beyond the boundary of the eligible property. In any event, the immediate prior owner shall remain liable for (A) penalties or fines, if any, relating to the release of any regulated substance at or from the eligible property, (B) costs and expenses, if any, recoverable or reimbursable pursuant to sections 22a-134b, 22a-451 and 22a-452, and (C) obligations of the immediate prior owner as a certifying party on a Form III or IV submitted pursuant to sections 22a-134 to 22a-134e, inclusive.

(n) A person whose application to the brownfield remediation and revitalization program has been accepted by the commissioner or any subsequent eligible party whose application to the brownfield remediation and revitalization program has been accepted by the commissioner shall be exempt for filing as an establishment pursuant to sections 22a-134a to 22a-134d, inclusive, if such real property or prior business operations constitute an establishment. Nothing in this section shall be construed to alter any existing legal requirement applicable to any certifying party at a property under sections 22a-134 and 22a-134a to 22a-134e, inclusive.

(o) Notwithstanding the provisions of this section, eligible parties shall investigate and remediate, and remain subject to all applicable statutes and requirements, the extent of any new release that occurs during their ownership of the property.

(P.A. 11-80, S. 1; 11-141, S. 17; P.A. 12-183, S. 9; P.A. 13-308, S. 10; P.A. 17-214, S. 14.)

*Note: Section 1 of public act 09-230 is special in nature and therefore has not been codified but remains in full force and effect according to its terms.

History: P.A. 11-141 effective July 1, 2011; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” and “Department of Environmental Protection” were changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” and “Department of Energy and Environmental Protection”, respectively, effective July 1, 2011; P.A. 12-183 amended Subsec. (a) by changing “five years” to “eight years” re project completion in Subdiv. (3) and redefining “municipality” in Subdiv. (10), amended Subsec. (b) by adding “approved” re nomination, amended Subsec. (c) by replacing “based on” with “taking into consideration” re admission to program, amended Subsec. (d) by adding “of properties” re nominations and adding provisions re acceptance and consideration for approval of nomination to program and re application subsequent to approval of nomination, amended Subsec. (e)(1) by adding reference to property transfer program and adding provision re properties not to be excluded from eligibility, amended Subsec. (g) by adding “or the contiguous property owner” and replacing reference to Site Characterization and Guidance Document with reference to prevailing standards and guidelines, amended Subsec. (h) by revising provisions re installment due dates and adding provisions re extension of such dates and re fee to be available for use by commissioner, amended Subsec. (i) by adding provision re eligible person to pay fee upon transfer of eligible property from municipality or economic development agency in Subdiv. (4) and deleting “not owned by the municipality” in Subdiv. (5), amended Subsec. (k)(2) by revising provisions re submission, initiation and completion dates, amended Subsec. (n)(1) by adding reference to Subsec. (h), and made technical changes, effective July 1, 2012; P.A. 13-308 deleted former Subsec. (a) re definitions, redesignated existing Subsecs. (b) to (p) as Subsecs. (a) to (o), amended redesignated Subsec. (a)(5) to designate existing provisions as Subparas. (A), (C) and (D), add Subpara. (B) re national priorities list of hazardous waste disposal sites and, in Subpara. (D), to replace “RCRA” with reference to federal Resource Conservation and Recovery Act of 1976, amended redesignated Subsec. (b) to add reference to P.A. 09-230, S. 1, and Sec. 13b-79o, amended redesignated Subsec. (h)(5) to add reference to Sec. 32-9p, and made technical and conforming changes, effective July 1, 2013; Sec. 32-9mm transferred to Sec. 32-769 in 2014; P.A. 17-214 amended Subsec. (f)(3) by adding “if requested by the commissioner”, amended Subsec. (i) by designating existing provisions re liability to state or person as Subdiv. (1) and adding Subdiv. (2)

re conveyance of security interest in eligible property, substantially amended Subsec. (j) including by adding new Subdiv. (3) re party may complete investigation and remediation of portion of eligible property and submit verification, redesignating existing Subdivs. (3) to (8) as Subdivs. (4) to (9), amending redesignated Subdiv. (4) by adding “or a portion of an eligible property”, amending redesignated Subdiv. (6) by adding “for the eligible property or a portion of the eligible property” and adding reference to regulations, amending redesignated Subdiv. (7) by replacing “All” with “Copies of all”, amending redesignated Subdiv. (9) by adding “for the eligible property or a portion of the eligible property”, deleting provision re report to be signed and stamped by licensed environmental professional, and adding provisions re additional time permitted, amended Subsecs. (k) to (m) by adding “for the eligible property or a portion of the eligible property”, further amended Subsec. (m) by replacing “plume” with “release”, replacing “subject property” with “eligible property”, adding “originally accepted into the brownfield remediation and revitalization program”, adding provisions re payment of greater of fees in Subdiv. (1), adding provisions re additional time, replacing “the brownfield investigation plan and remediation schedule” with “such verification or interim verification”, and replacing “off-site impacts” with “impacts off the eligible property as a whole” in Subdiv. (2), adding provisions re additional time in Subdivs. (3) to (5), adding reference to portion of property transferred and replacing “off-site impacts” with “impacts off the eligible property as a whole” in Subdiv. (5), and adding provision re entire eligible property originally accepted into program in Subdiv. (6), and made technical and conforming changes, effective July 1, 2017.

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Sec. 32-770. Working group to examine remediation and development of brownfields in this state. Duties. Membership. Report. (a) There is established a working group to examine the remediation and development of brownfields in this state, including, but not limited to, the remediation scheme for such properties, permitting issues and liability issues, including those set forth by sections 22a-14 to 22a-20, inclusive. The working group shall also annually review the progress of the Special Contaminated Property Remediation and Insurance Fund established under section 22a-133t and make recommendations concerning said fund.

(b) The working group shall consist of the following members, each of whom shall have expertise related to brownfield redevelopment in environmental law, engineering, finance, development, consulting, insurance or another relevant field:

(1) Four appointed by the Governor;

(2) Two appointed by the president pro tempore of the Senate, one of whom shall represent the Connecticut Conference of Municipalities;

(3) Two appointed by the speaker of the House of Representatives, one of whom shall represent an environmental organization;

(4) One appointed by the majority leader of the Senate;

(5) One appointed by the majority leader of the House of Representatives;

(6) One appointed by the minority leader of the Senate;

(7) One appointed by the minority leader of the House of Representatives;

(8) The Commissioner of Economic and Community Development, or the commissioner's designee, who shall serve ex officio;

(9) The Commissioner of Energy and Environmental Protection, or the commissioner's designee, who shall serve ex officio;

(10) The Secretary of the Office of Policy and Management, or the secretary's designee, who shall serve ex officio; and

(11) The Commissioner of Public Health, or the commissioner's designee, who shall serve ex officio.

(c) Any member of the working group as of July 8, 2011, shall continue to serve and all new appointments to the working group shall be made no later than August 7, 2011. Any vacancy shall be filled by the appointing authority.

(d) The working group shall select chairpersons of the working group.

(e) On or before January 15, 2014, and annually thereafter, the working group shall report, in accordance with the provisions of section 11-4a, on its findings and recommendations to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to commerce and the environment.

(P.A. 10-135, S. 2; P.A. 11-141, S. 15; P.A. 12-183, S. 12; P.A. 13-299, S. 27; 13-308, S. 26.)

History: P.A. 10-135 effective June 8, 2010; P.A. 11-141 amended Subsec. (b) to increase membership from 11 to 13 with 2 additional appointments for the Governor, amended Subsec. (c) to add provision re members to continue to serve, amended Subsec. (d) to delete requirement that chairpersons be selected from among the appointed members, and amended Subsec. (e) to extend reporting requirement from January 15, 2011, to January 15, 2012, and add provisions requiring report to be submitted to the Governor and environment committee, effective July 8, 2011; P.A. 12-183 amended Subsec. (b)(9) to change "Commissioner of Environmental Protection" to "Commissioner of Energy and Environmental Protection", and amended Subsec. (e) to extend reporting requirement from January 15, 2012, to January 15, 2013, effective June 15, 2012; P.A. 13-299 amended Subsec. (a) to add requirement that working group annually review and make recommendations re Special Contaminated Property Remediation and Insurance Fund, amended Subsec. (c) to make technical changes, amended Subsec. (d) to delete provision re chairpersons to schedule first meeting within 60 days, and amended Subsec. (e) to change reporting requirement from January 15, 2013, to January 15, 2014, and annually thereafter, effective July 1, 2013; P.A. 13-308 amended Subsec. (b) to delete reference to 13 members, increase the number of appointments for the Senate president pro tempore from 1 to 2, one of whom to represent the Connecticut Conference of Municipalities in Subdiv. (2), increase the number of appointments for the House speaker from 1 to 2, one of whom to represent an environmental organization in Subdiv. (3), add Subdiv. (11) re Commissioner of Public Health or designee to serve as ex-officio member and make technical changes, and amended Subsec. (e) to extend reporting requirement from January 15, 2013, to January 15, 2015, effective July 12, 2013.

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Sec. 32-771. Connecticut brownfield land banks. Application for certification. Annual report. Decertification. (a) Any Connecticut nonstock corporation may apply to the Commissioner of Economic and Community Development for certification as a Connecticut brownfield land bank by submitting to the commissioner, on forms provided by the commissioner, an application containing such information as the commissioner deems necessary, including, but not limited to:

(1) The certificate of incorporation and bylaws of the applicant;

(2) A list of the current officers and directors of the applicant;

(3) A proposed land banking agreement with one or more municipalities;

(4) Information concerning the financial and technical capability of the applicant to fulfill the purposes of a Connecticut brownfield land bank, as described in section 32-773; and

(5) A proposed business plan for such land bank.

(b) The commissioner may approve or reject any application for certification properly submitted in accordance with this section. In reviewing an application and determining whether to approve such application, the commissioner shall consider the following criteria:

(1) The financial and technical capabilities of the applicant to fulfill the purposes of a Connecticut brownfield land bank, as described in section 32-773;

(2) The relative economic condition of the municipalities the applicant intends to serve;

(3) The level of support for such applicant from municipalities;

(4) The quality of the applicant's business plan; and

(5) Such other criteria consistent with the purposes of this section and sections 32-772 to 32-775, inclusive, as the commissioner may establish.

(c) If the commissioner approves an application for certification as a Connecticut brownfield land bank, the commissioner shall issue a Connecticut brownfield land bank certificate to the successful applicant and such applicant shall be granted the rights, privileges and immunities provided under this section and sections 32-772 to 32-775, inclusive.

(d) Not later than January thirty-first, annually, each Connecticut brownfield land bank shall report to the commissioner on its activities for the preceding year and provide the commissioner any such information as the commissioner deems necessary, including, but not limited to: (1) An updated list of its current officers and directors; (2) an updated business plan; (3) a complete operating and financial statement; and (4) a copy of any land banking agreements entered into during the preceding year.

(e) The commissioner shall review the annual report of each Connecticut brownfield land bank and determine whether each land bank is in compliance with the provisions of subsection (d) of this section. If the commissioner determines that a Connecticut brownfield land bank is not in compliance with such provisions, the commissioner shall notify the officers of such land bank, in writing, that the commissioner shall decertify the land bank after the one-hundred-twentieth day after the date of mailing the notice unless such land bank submits a revised annual report that the commissioner determines is compliant with the provisions of subsection (d) of this section. The commissioner, at his or her discretion, may grant a sixty-day extension for such land bank to submit such revised annual report.

(f) Any Connecticut brownfield land bank that is decertified by the commissioner shall not enter into any additional land banking agreement. Decertification of a Connecticut brownfield land bank shall not terminate the rights or obligations of such land bank under this section and sections 32-772 to 32-775, inclusive with respect to any property acquired or land banking agreement entered into prior to the date of decertification. Any Connecticut brownfield land bank that is decertified by the commissioner may apply for re-certification under subsection (a) of this section.

(P.A. 17-214, S. 2.)

History: P.A. 17-214 effective July 1, 2017.

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Sec. 32-772. Board of directors. (a) The powers of a Connecticut brownfield land bank shall be vested in and exercised by a board of directors that shall consist of not less than five and not more than eleven members, each with knowledge and expertise in matters related to the purposes and activities of a Connecticut brownfield land

bank, as established in section 32-773. The board shall elect from its members a chairperson and such other officers as it deems necessary and shall adopt such bylaws and procedures it deems necessary to carry out its functions. The board may establish committees and subcommittees as necessary to conduct its business.

(b) Notwithstanding any provision of the general statutes, any public officer shall be eligible to serve as a member of the board of directors and the acceptance of the appointment shall neither terminate nor impair such public office. For purposes of this section, “public officer” means a person who is elected or appointed to any state or municipal office. Any state or municipal employee shall be eligible to serve as a board member.

(c) Members of the board of directors shall have the power to organize and reorganize the executive, administrative, clerical and other departments of a Connecticut brownfield land bank and to fix the duties, powers and compensation of all employees, agents and consultants of a Connecticut brownfield land bank.

(d) Board members shall serve without compensation, provided each board member shall be entitled to reimbursement for such member's actual and necessary expenses incurred during the performance of such member's official duties.

(e) Members of the board of directors shall not be liable personally on the loans or other obligations or environmental liabilities of the Connecticut brownfield land bank, and the rights of creditors shall be solely against such land bank.

(P.A. 17-214, S. 3.)

History: P.A. 17-214 effective July 1, 2017.

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Sec. 32-773. Purposes. Powers. (a) The purposes of a Connecticut brownfield land bank shall be to (1) acquire, retain, remediate and sell brownfields in the state on behalf of municipalities pursuant to land banking agreements with such municipalities, (2) educate government officials, community leaders, economic development agencies and nonprofit organizations on best practices for redeveloping brownfields, and (3) engage in all other activities in accordance with sections 32-771 to 32-775, inclusive. In addition to those powers, rights, privileges and immunities granted under chapter 602, a Connecticut brownfield land bank is authorized and empowered to do the following in furtherance of its purposes:

(A) Enter into land banking agreements with municipalities for the acquisition, retention, remediation and sale of real property within such municipalities on behalf of such municipalities.

(B) Enter into contracts and agreements with municipalities for staffing services to be provided to the Connecticut brownfield land bank by such municipalities, or agencies or departments thereof, or for a Connecticut brownfield land bank to provide such staffing services to such municipalities, or agencies or departments thereof in relation to the duties of such land bank.

(C) Obtain grant funds or borrow from private lenders, municipalities, the state or the federal government, as may be necessary, for the operation of such Connecticut brownfield land bank.

(D) Procure insurance or guarantees from the state or federal government of the payments of any debts, or parts thereof, incurred by such Connecticut brownfield land bank, and to pay premiums in connection therewith.

(E) Do all other things necessary or convenient to achieve the purposes of such Connecticut brownfield land bank and comply with any law relating to the purposes and responsibilities of such land bank.

(F) Acquire real property, as described in subsection (b) of section 32-775, by purchase contracts, lease purchase agreements, installment sales contracts, land contracts and foreclosure of municipal tax liens. A Connecticut

brownfield land bank may accept transfers of real property from municipalities upon such terms and conditions as agreed to by the brownfield land bank and the municipality. Notwithstanding any provision of the general statutes or of any special act, municipal charter or home rule ordinance, any municipality may transfer and convey to a Connecticut brownfield land bank real property and interests in real property located in the municipality on such terms and conditions and according to such procedures as determined by the municipality.

(b) A Connecticut brownfield land bank shall neither possess nor exercise the power of eminent domain.

(P.A. 17-214, S. 4.)

History: P.A. 17-214 effective July 1, 2017.

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Sec. 32-774. Tax exemption. The exercise of the powers granted by sections 32-771 to 32-775, inclusive, shall be in all respects for the benefit of the people of the state, for the increase of their commerce, welfare and prosperity, and as the exercise of such powers shall constitute the performance of an essential public function, a Connecticut brownfield land bank shall not be required to pay any taxes or assessments upon or in respect of any revenues or property received, acquired, transferred or used by such Connecticut brownfield land bank, or upon or in respect of the income from such revenues or property.

(P.A. 17-214, S. 5.)

History: P.A. 17-214 effective July 1, 2017.

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Sec. 32-775. Obligations re acquisition, ownership and transfer of real property. (a) A Connecticut brownfield land bank shall hold in its own name all real property acquired by such land bank irrespective of the identity of the transferor of such property.

(b) A Connecticut brownfield land bank shall acquire only brownfield sites and other real property, located adjacent or in close proximity to brownfield sites to be acquired, that are identified in a land banking agreement between such Connecticut brownfield land bank and the municipality in which such properties are located.

(c) A Connecticut brownfield land bank shall maintain and make available for public review and inspection an inventory of all real property held by such land bank.

(d) A Connecticut brownfield land bank shall determine and set forth in policies and procedures the general terms and conditions for consideration to be received by such land bank for the transfer to such land bank of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of such real property, contractual commitments of the transferee, and such other forms of consideration as determined by the board of directors to be in the best interest of such land bank.

(e) A Connecticut brownfield land bank may convey, exchange, sell, transfer, lease as lessee, grant, release and demise, pledge and hypothecate any and all interests in, upon or to real property of the brownfield land bank, provided such land bank may only convey, exchange, transfer or sell real property with the approval of the municipality in which such real property is located pursuant to the terms of a land banking agreement entered into with such municipality.

(P.A. 17-214, S. 6.)

History: P.A. 17-214 effective July 1, 2017.

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Sec. 32-776. 7/7 Program. Regulations. (a) As used in this section, the following terms shall have the following meanings unless the context clearly indicates another meaning:

- (1) “7/7 participant” means an eligible owner whose application submitted pursuant to subsection (c) of this section has been approved by the commissioner;
 - (2) “7/7 site” means the real property redeveloped and utilized or proposed to be redeveloped and utilized by a 7/7 participant in accordance with this section;
 - (3) “Brownfield” has the same meaning as provided in section 32-760;
 - (4) “Completion of the brownfield remediation” means the completed remediation of a 7/7 site by a 7/7 participant as evidenced by the filing of either a verification or interim verification that meets the requirements of section 22a-133x, 22a-133y or 22a-134;
 - (5) “Eligible owner” means any person, firm, limited liability company, nonprofit or for-profit corporation or other business entity that holds title to (A) a brownfield, provided such owner did not establish, create or maintain a source of pollution to the waters of the state for purposes of section 22a-432 and is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on such brownfield; or (B) real property that has been abandoned or underutilized for ten or more years; and
 - (6) “Qualified expenditures” means the expenditures associated with the investigation, assessment and remediation of a brownfield, including, but not limited to: (A) Soil, groundwater and infrastructure investigation; (B) assessment; (C) remediation of soil, sediments, groundwater or surface water; (D) abatement; (E) hazardous materials or waste removal and disposal; (F) long-term groundwater or natural attenuation monitoring; (G) (i) environmental land use restrictions, (ii) activity and use limitations, or (iii) other forms of institutional control; (H) reasonable attorneys' fees; (I) planning, engineering and environmental consulting; and (J) remedial activity to address building and structural issues, including, but not limited to, demolition, asbestos abatement, polychlorinated biphenyls removal, contaminated wood or paint removal and other infrastructure remedial activities. “Qualified expenditures” do not include expenditures funded for such investigation, assessment, remediation and development directly through other state brownfield programs administered by the commissioner.
- (b) There is established within the Department of Economic and Community Development the 7/7 program. Said program shall provide incentives to businesses for redeveloping and utilizing brownfields and real property that has been abandoned or underutilized for ten or more years. Participants in said program shall be eligible for the tax incentives provided under subsections (e) to (h), inclusive, of this section.
- (c) To be designated a 7/7 participant, an eligible owner shall submit to the Commissioner of Economic and Community Development an application, on forms provided by the commissioner, that shall include the following information: (1) A description of the real property such eligible owner seeks to utilize and the proposed use for such property; (2) a written certification (A) from such eligible owner stating that such property is a brownfield, or (B) from the municipality in which such property is located stating that such property has been abandoned or underutilized for ten or more years, as determined by such municipality; (3) a plan that such eligible owner shall submit to high schools in the area of the brownfield and the regional-community technical colleges that includes the anticipated workforce needs for the proposed use of such property and workforce training requirements in order to enable such schools and colleges to develop educational training programs to meet such workforce needs; (4) a commitment by the eligible owner to hire not less than thirty per cent of its workforce from students enrolled in any programs developed as a result of subdivision (3) of this subsection; (5) a written certification from the municipality in which such property is located that such municipality supports

the application for the designation of such property as a 7/7 site; and (6) any other information the commissioner deems necessary. The commissioner shall approve any application that satisfies the requirements of this subsection and shall notify the Commissioner of Revenue Services whenever he or she approves the application of an eligible owner.

(d) Any 7/7 participant that seeks to redevelop and utilize a brownfield shall not be eligible for any of the benefits provided under subsections (e) to (h), inclusive, of this section until the completion of the brownfield remediation and the participant's notification of such completion to the Commissioners of Revenue Services and Economic and Community Development and the municipality in which such brownfield is located.

(e) (1) If a 7/7 participant is subject to the tax imposed under chapter 208, the Commissioner of Revenue Services shall grant a credit against any tax due under the provisions of said chapter in an amount equal to the total amount of tax due under said chapter for the income year that is attributable to the operations of such participant's business located on the 7/7 site after the deduction of any other credits allowable under said chapter. The credit allowed by this subdivision shall be available in the first income year in which such participant begins business operations at such site and the succeeding six income years.

(2) If a 7/7 participant is subject to the tax imposed under chapter 229, the Commissioner of Revenue Services shall grant a credit to each member, shareholder or partner of such participant against any tax due under the provisions of said chapter, other than the liability imposed by section 12-707, in an amount equal to such member's, shareholder's or partner's amount of tax due under said chapter for the taxable year that is attributable to the operations of such participant's business located on the 7/7 site after the deduction of any other credits allowable under said chapter. The credit allowed by this subdivision shall be available in the first taxable year in which such participant begins business operations at such site and the succeeding six taxable years.

(f) (1) The taxes imposed by chapter 219 shall not apply to any item purchased by a 7/7 participant in the first seven calendar years from the date such participant initiates business operations at a 7/7 site, provided such item is purchased for use in the ordinary course of business at such site.

(2) At the time of sale, a 7/7 participant shall present to the person who makes the sale a certificate to the effect that the item is subject to such exemption. The certificate shall be signed by and bear the name and address of the purchaser. The certificate shall be substantially in such form as the Commissioner of Revenue Services prescribes.

(3) If a purchaser who presents a certificate, in accordance with subdivision (2) of this subsection, makes any use of the item other than the purpose set forth in subdivision (1) of this subsection, the use shall be deemed to be a use by the purchaser in accordance with chapter 219, as of the time the property is first used by him or her, and the item shall be taxable to such purchaser in accordance with said chapter.

(g) (1) In the case of a 7/7 participant subject to the tax imposed under chapter 208, in arriving at net income, as defined in section 12-213, in the eighth income year following such 7/7 participant's initiation of business operations at a 7/7 site that was a brownfield and the six succeeding income years, there shall be deducted from gross income, as defined in section 12-213, an amount not to exceed eight and fifty-seven-one-hundredths per cent of the qualified expenditures associated with the remediation of such site.

(2) In the case of a 7/7 participant subject to the tax imposed under chapter 229, in the eighth income year following such 7/7 participant's initiation of business operations at a 7/7 site that was a brownfield and the six succeeding income years, there shall be subtracted from Connecticut adjusted gross income, as defined in section 12-701, an amount not to exceed eight and fifty-seven-one-hundredths per cent of the qualified expenditures associated with the remediation of such site.

(h) Notwithstanding any provision of the general statutes or of any special act, municipal charter or home rule ordinance, for five assessment years following the date a 7/7 participant obtained a building permit to begin construction at a 7/7 site, the municipality in which such site is located shall continue to use the assessed value of such site as of the date such participant's application was approved under subsection (c) of this section.

(i) The Commissioner of Economic and Community Development, in consultation with the Commissioner of Revenue Services, shall adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this section.

(June Sp. Sess. P.A. 17-2, S. 168.)

History: June Sp. Sess. P.A. 17-2 effective October 31, 2017 and applicable to taxable and income years commencing on or after January 1, 2017.

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Connecticut Secretary of the State
Authenticated Electronic Legal Material

Secretary of the State File Number

6331

Regulation of the
Department of Energy and Environmental Protection
Concerning

Environmental Use Restrictions

Regulations adopted after July 1, 2013, become effective upon posting to the Connecticut eRegulations System, or at a later date if specified within the regulation.

Posted to the Connecticut eRegulations System on **February 16, 2021**

EFFECTIVE DATE

February 16, 2021

Approved by the Attorney General on

December 28, 2020

Approved by the Legislation Regulation Review Committee on

January 26, 2021

Electronic copy with agency head certification statement electronically submitted to and received by the Office of the Secretary of the State on

February 8, 2021

Form ICM-ECOPY (NEW 6/2015)
State of Connecticut
Secretary of the State



IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES

This form should be used only for regulations first noticed *on and after March 23, 2015*.

Electronic Copy Certification Statement

(Submitted in accordance with the provisions of section 4-172 of the Connecticut General Statutes)

Regulation of the
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
Concerning
ENVIRONMENTAL LAND USE RESTRICTIONS

Approved by the Legislative Regulation Review Committee: **January 26, 2021**

eRegulations System Tracking Number: **PR2017-071**

I hereby certify that the electronic copy of the above-referenced regulation submitted herewith to the Secretary of the State is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170 of the *Connecticut General Statutes*.

And I further certify that in accordance with the approval of Legislative Regulation Review Committee, all required technical corrections, page substitutions and deletions, if any, have been incorporated into said regulation.

In testimony whereof, I have hereunto
set my hand on **February 8, 2021**.

Katherine S. Dykes

Katherine S. Dykes

Commissioner

Deptment of Energy and Environmental
Protection

State of Connecticut
Regulation of
Department of Energy and Environmental Protection
Concerning
Environmental Use Restrictions

Section 1. Section 22a-133q-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-133q-1. [Environmental Land Use Restrictions] Definitions

[(a) Definitions.

For the purpose of this section, the definitions of the terms shall be the same as the definitions of terms in section 22a-133k-1 of the Regulations of Connecticut State Agencies. In addition, the following definitions shall apply:

“Class A-2 survey” means a first survey or independent re-survey which conforms to the “Recommended Standards for Surveys and Maps in the State of Connecticut Adopted on September 24, 1992, effective January 1, 1993 by the Connecticut Association of Land Surveyors, Inc. ” and which has been prepared by a land surveyor licensed in the State of Connecticut; complies with the minimum detail requirements for urban land title surveys adopted by the American Land Title Association and American Congress on Surveying and Maps (such requirements shall include all optional items on Table A thereof, exclusive of Items #1 (Monumentation), #5 (Contours in Elevation), #7b-2 (Other Data), and #12; and specifically shows (1) the boundaries of the Property by course and distance, together with the metes and bounds description corresponding to such survey; (2) the location of all improvements; (3) the location and width of all easements, utility lines, rights of way and building setback lines, with references to the book and page numbers for the instruments granting the same; (4) the location of all encroachments and restrictions, if any affecting the property; (5) the location of the portion of the parcel which is the subject of the proposed environmental land use restriction and (6) the latitude and longitude of the center of the subject property.

“Environmental land use restriction” means a declaration of environmental land use restriction in the application form set forth in Appendix 1 to section 22a-133q-1 of the Regulations of Connecticut State Agencies.

“Licensed environmental professional” means an environmental professional licensed in accordance with section 22a-133v of the General Statutes.

(b) Applicability.

This section shall govern the execution and recording of environmental land use restrictions in accordance with section 22a-133n to 22a-133s, inclusive, of the General Statutes. Except as otherwise provided by section 22a-133o of the General Statutes, no environmental land use restriction shall be effective unless and until it has (1) been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such restriction; and (2) been recorded on the land records in the municipality in which the subject parcel is located.

(c) Publishing Notice of an Environmental Land Use Restriction.

(1) The owner of the parcel which is the subject of a proposed environmental land use restriction shall, except as specified in subdivision (1) of this subsection, publish in at least one newspaper of general circulation in the area affected by the proposed environmental land use restriction, notice of intent to record an environmental land use restriction. Such notice shall include the name and address

of such owner, the address of the parcel or a brief description of its location, a brief description of the purpose of the proposed environmental land use restriction, the name and address of an individual from whom interested persons may obtain a copy of the proposed use restriction, and a statement that public comments on the proposed environmental land use restriction may be submitted in writing to the Commissioner of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106 for thirty days after the date of publication of the notice.

(2) Notice of a proposed environmental land use restriction need not be published if (A) such restriction provides solely that the use of the subject parcel or portion thereof is restricted to industrial or commercial activities, and (B) the municipal zoning of such parcel limits the parcel to such use.

(d) Proposing an Environmental Land Use Restriction.

When submitting a proposed environmental land use restriction to the Commissioner for his review and approval, the owner of the affected parcel of land shall simultaneously submit a completed application form furnished by the Commissioner and the following documents:

(1) a draft declaration of environmental land use restriction in the form set forth in Appendix 1 to section 22a-133q-1 of the Regulations of Connecticut State Agencies;

(2) a Class A-2 survey of the parcel or portion thereof which is the subject of the proposed environmental land use restriction;

(3) a proposed decision document in accordance with subsection (f) of this section; and

(4) a certified copy of the notice required by subsection (c) of this section, as such notice appeared in the newspaper or newspapers.

(e) Approval of an Environmental Land Use Restriction by the Commissioner.

After the close of the public comment period, the Commissioner shall decide whether to approve an environmental land use restriction. When making such decision the Commissioner shall consider: (1) all comments submitted; (2) whether such restriction will adequately protect human health and the environment from pollution at or emanating from the subject release area; and (3) whether such restriction conforms in all respects to the requirements of this section and sections 22a-133n through 22a-133s of the General Statutes.

(f) Decision Document.

Any environmental land use restriction approved pursuant to this section shall include a decision document prepared in accordance with this section. The decision document shall contain a detailed written description of:

(1) the type and location of pollutants present in soil or ground water on or underlying the parcel or portion thereof which is the subject of the environmental land use restriction;

(2) the provisions of the environmental land use restriction, including any limitations on the use of such parcel or portion thereof; and

(3) description of the reason for the environmental land use restriction, including an explanation why such restriction is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

The decision document shall also contain a summary of all comments on the proposed environmental land use restriction received following the publication of notice in accordance with subsection (c) of this section and a brief response to each comment. The decision document shall be signed by the Commissioner or, in the case of a restriction approved pursuant to section 22a-133y of the General Statutes, a licensed environmental professional to indicate approval of the decision document.

(g) Approval of an Environmental Land Use Restriction by a Licensed Environmental Professional.

When an environmental land use restriction is to be approved by a licensed environmental professional in accordance with section 22a-133y of the General Statutes, the licensed environmental

professional shall review the documents listed in subsection (d) of this section and evaluate the proposed environmental land use restriction in accordance with subsection (e) of this section, prepare a written approval of such restriction, and shall retain documentation of all documents reviewed by him. A licensed environmental professional shall not approve any environmental land use restriction unless it is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

(h) Subordination Agreements.

Whether the Commissioner or a licensed environmental professional approves an environmental land use restriction, not later than seven (7) days after receipt of such approval, the owner of the subject parcel shall submit to the Commissioner, as required under section 22a-133o of the General Statutes, a certificate of title indicating that each person holding an interest in such parcel or any part thereof, including without limitation, each mortgagee, lessee, lienor and encumbrancer, has irrevocably subordinated such interest to the environmental land use restriction.

(i) Recording an Environmental Land Use Restriction.

After the Commissioner or a licensed environmental professional, as applicable, has approved an environmental land use restriction in accordance with this section, the owner of the subject parcel shall record such restriction in accordance with this section and all other applicable law.

(j) Mailing Notice of an Environmental Land Use Restriction.

After an environmental land use restriction has been recorded, the owner of the subject parcel shall send, by certified mail, return receipt requested, a copy of such environmental land use restriction to (1) the chief administrative officer in the town where the parcel is located; (2) the chairman of the municipal planning, zoning or planning and zoning commission; (3) the local director of health; and (4) any person who submitted comments on such environmental use restriction.

(k) Release.

The owner of any parcel which is subject to an environmental land use restriction recorded in accordance with this section may request that the Commissioner release such parcel, in whole or in part, from the limitations of such restriction. If the Commissioner grants such request, the owner of such parcel shall, in accordance with law, record such release on the land records in the municipality where such parcel is located. No release of an environmental land use restriction shall be effective unless and until it has been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such release, and has been recorded on the land records of the municipality in which such parcel is located.

(l) Effect of Court Ruling on Environmental Land Use Restriction.

In the event that a court of competent jurisdiction rules that any portion of an environmental land use restriction recorded pursuant to this section is invalid, the owner of the subject parcel shall submit a copy of such restriction and such ruling to the Commissioner. The Commissioner shall review such restriction, and if he determines that such restriction would not have been approved without the invalid portion, he shall give notice that the environmental land use restriction is terminated as evidenced by his signature on in instrument setting forth such termination, and shall record such instrument on the land records of the municipality where such parcel is located. Promptly thereafter, the owner of the subject parcel shall take actions consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies to remediate the subject parcel or portion thereof. If the Commissioner determines in writing that the environmental land use restriction would have been approved without the invalid portion, the valid portion of the environmental land use restriction shall remain in full force and effect.

Appendix 1 to Section 22a-133q-1 of the Regulations of Connecticut State Agencies Application
Form of Environmental Land Use Restriction for Commissioner's Approval or Licensed
Environmental Professional's Approval

Instructions: Any environmental land use restriction pursuant to R.C.S.A. section 22a-133q-1 shall be in the following application form. This form shall be used for environmental land use restrictions approved by the Commissioner or a Licensed Environmental Professional pursuant to the Regulations of Connecticut State Agencies section 22a-133q-1. The appropriate information shall be inserted into the parentheses “{}”.

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION AND GRANT OF EASEMENT

This Declaration of Environmental land use restriction and Grant of Easement is made this {day} day of {month}, {year}, between {Grantor’s legal name} (the “Grantor”) and the Commissioner of Energy and Environmental Protection of the State of Connecticut (the “Grantee”).

W I T N E S S E T H:

WHEREAS, Grantor is the owner in fee simple of certain real property (the “Property”) described below:

Street address: {Street address of property} City/Town: {City and Town of property} State: Connecticut

Assessor’s Map {insert Map designation} Block {insert Block designation} Lot {insert Lot designation}

And/or Assessors’ Account Number {insert Assessors’ Account Number} Volume and Page of Deed: {Volume and Page of Deed}

A description of the property is attached hereto as Exhibit A, and which is made a part hereof; and

WHEREAS, the Grantee has the authority to enter into this declaration of environmental land use restriction pursuant to sections 22a-5, 22a-6, and 22a-133o *et seq.* of the General Statutes; and
INSTRUCTIONS - Select one of the two choices below by checking the applicable check box.

☐

If the Commissioner of Energy and Environmental Protection signs the environmental land use restriction:

WHEREAS, the Grantee has determined that the environmental land use restriction set forth below is consistent with regulations adopted pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Grantee has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

WHEREAS, the Grantee’s written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document) which is made a part hereof; and

☐

If a Licensed Environmental Professional signs the environmental land use restriction pursuant to section 22a-133y of the General Statutes:

WHEREAS, remediation of the property has been conducted in accordance with section 22a-133y of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that the environmental land use restriction set forth below is consistent with regulations adopted by the Commissioner of Energy and Environmental Protection pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document) which is made a part hereof; and

WHEREAS, the property or portion thereof identified in the class A-2 survey ("the Subject Area") which survey is attached hereto as Exhibit C which is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards to human health and the environment, and in accordance with the Decision Document, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this environmental land use restriction to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the Decision Document, the purpose of this environmental land use restriction is to assure that the use and activity at the property and the Subject Area is restricted in accordance with the requirements of the Decision Document attached hereto as Exhibit B.

2. Restrictions Applicable to the Subject Area: In furtherance of the purposes of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Subject Area are restricted in accordance with the requirements of the Decision Document, attached hereto as Exhibit B. Such restrictions shall remain in effect unless and until a release is obtained under paragraph 5 below.

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

i. Create a risk of migration of pollutants or a potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain pollutants or limit human exposure to pollutants.

4. Emergencies. In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending said Paragraphs and the Grantor:

i. Immediately notifies the Grantee of the emergency;

ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;

iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and

iv. After the emergency is abated, implements a plan approved in writing by the Grantee, on a schedule approved by the Grantee, to ensure that the Subject Area is remediated in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, or restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of the Subject Area. Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Subject Area inconsistent with this environmental land use restriction until a release has been approved by the Commissioner and such release is either recorded on the land records in the municipality where such parcel is located or the requirement to record such a release is waived by the Commissioner pursuant to section 22a-133o of the General Statutes. The Grantee shall not approve any permanent release of the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee's satisfaction that Grantor has remediated the Subject Area in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, the Grantee's agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, a non-exclusive easement (the "Easement") over the Subject Area and over such other parts of the Property as are necessary for access to the Subject Area or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Area. Pursuant to this Easement, the Grantee, the Grantee's agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the Grantee deems necessary for any one or more of the following purposes:

- i. Ensuring that use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction;
- ii. Ensuring that any remediation implemented complies with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive;
- iii. Performing any additional investigations or remediation necessary to protect human health and the environment;
- iv. Ensuring the structural integrity of any engineering controls described in Exhibit B of this environmental land use restriction and Grant of Easement and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants.

7. Notice and Time of Entry onto Property. Entry onto the Property by the Grantee pursuant to this Easement shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Grantee determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this environmental land use restriction and Grant of Easement. The failure to include such provision shall not affect the validity or applicability to the Property of this environmental land use restriction and Grant of Easement.

9. Persons Entitled to Enforce Restrictions. The restrictions in this environmental land use restriction on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the General Statutes.

10. Severability and Termination. If any court of competent jurisdiction determines that any provision of this environmental land use restriction or Grant of Easement is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the Judgment of the Court to the Grantee in accordance with R.C.S.A. section 22a-133q-1(1). This environmental land use restriction shall be terminated if the Grantee provides notification pursuant to R.C.S.A. section 22a-133q-1(l).

11. Binding Effect. All of the terms, covenants and conditions of this environmental land use restriction and grant of easement shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

12. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and 22a-133q-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this environmental land use restriction.

Signature Page Follows

In witness whereof, the undersigned has/have executed this Environmental Land Use Restriction this {Day} day of {Month}, {Year}.

{Insert Applicable Signature Block, for example:

If for an individual:

Witnessed by:

{Insert signature of witness 1}

{Insert signature of Grantor}

{Insert printed or typed name of witness 1}

{Insert printed or typed name of Grantor}

{Insert signature of witness 2}

{Insert printed or typed name of witness 2}

If for an entity:

Witnessed by:

{Insert Grantor's Name}

{Insert signature of witness 1}

By:

{Insert printed or typed name of witness 1}

{Insert printed or typed name of the authorized signatory for the entity}

Its duly authorized {insert title of the authorized signatory for the entity}

{Insert signature of witness 2}

{Insert printed or typed name of witness 2}}

MAILING Address:

Street Address: {Insert Street Address} City/Town: {Insert City or Town}

State and Zip Code {Insert State and Zip Code}

INSTRUCTIONS Notarization Language for GRANTOR Acknowledgement - select appropriate notarization language from one of the choices below by checking the applicable check box and providing the information required.

☐
If the Grantor is an individual:

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {insert date}

OR

☐
If the Grantor is a Corporation:

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself/herself to be the {insert title of officer} of {insert name of corporation}, a corporation, and that he/she, as such {insert title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as {insert title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {insert date}

OR

☐

If the Grantor is a Limited Liability Company:

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself/herself to be the {insert title of officer} of {insert name of limited liability company}, a (member managed or manager managed) limited liability company, and that he/she, as such {insert title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as {insert title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {insert date}

OR

☐

If the Grantor is any other type of entity, provide appropriate language for the Grantor Entity below:

{insert appropriate certification language for an Acknowledgement as specified in Section 1-34 of the General Statutes}

Instructions – Grantee Signature Block - Select one of the two choices below, as applicable;

☐

This choice is used for all environmental land use restrictions except those approved pursuant to section 22a-133y of the General Statutes.

Grantee: The Grantee, the Commissioner of Energy and Environmental Protection or by the Commissioner's duly designated agent, {Insert name and title.}

By: {insert signature of the Grantee or duly authorized agent for Grantee}

Date: {insert date of signature}

Name: {insert printed or typed name of duly authorized agent for Grantee}

Its Duly Authorized: {insert title of duly authorized agent for Grantee}

MAILING Address: {Bureau of Water Protection and Land Reuse

Connecticut Department of Energy and

Environmental Protection

79 Elm Street

Hartford, CT 06106}



This choice is used solely for environmental land use restrictions approved pursuant to section 22a-133y of the General Statutes.

Grantee: The Grantee, the Commissioner of Energy and Environmental Protection, by the undersigned Licensed Environmental Professional authorized as a duly designated agent pursuant to section 22a-133y of the Connecticut General Statutes.

Licensed Environmental Professional as Duly Authorized Agent for Grantee, the Commissioner of Energy and Environmental Protection:

By: {insert signature of the Licensed Environmental Professional}

Date: {insert date of signature}

Name: {insert printed or typed name of Licensed Environmental Professional}

Its Duly Authorized Agent: Licensed Environmental Professional authorized pursuant to section 22a-133y of the Connecticut General Statutes

Grantee MAILING Address: {Bureau of Water Protection and Land Reuse Connecticut
Department of Energy and
Environmental Protection

79 Elm Street

Hartford, CT 06106}

Information for Duly Authorized Agent for Grantee (Licensed Environmental Professional):

Name: {Insert name of Licensed Environmental Professional}

License Number {insert License Number}

Title, if applicable {insert title}

Company, if applicable {insert name of Company}

Mailing Address: Street Address: {insert street address}

City/Town, State, Zip Code: {insert City/Town, State, and Zip Code}

Witnesses:

{Signature }

Signature

{Printed/typed name }

Printed/typed name

{Signature }

Signature

{Printed/typed name }

Printed/typed name

INSTRUCTIONS Notarization Language for Duly Authorized Agent for Grantee (Licensed Environmental Professional):

State of {_____}

County of {_____}

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court}

Date Commission Expires {insert date}]

(a) As used in this section and sections 22a-133q-2 to 22a-133q-9, inclusive, of the Regulations of Connecticut State Agencies:

(1) “Commissioner” means the Commissioner of Energy and Environmental Protection or the commissioner’s designee;

(2) “Engineered control” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(3) “Environmental land use restriction” or “ELUR” means a type of environmental use restriction that complies with the requirements of section 22a-133o of the Connecticut General Statutes, the EUR regulations, and the RSRs, in which the commissioner acquires an easement on the parcel, or portion thereof, that is subject to such restriction;

(4) “Environmental use restriction” has the same meaning provided in section 22a-133n of the Connecticut General Statutes;

(5) “EUR” means an environmental use restriction;

(6) “EUR factsheet” means a statement that explains the restrictions and affirmative obligations imposed by an EUR, describes each subject area on a parcel, and includes the information necessary to protect the health and safety of those who may be exposed to pollution if work is conducted in each such subject area;

(7) “EUR regulations” means sections 22a-133q-1 to 22a-133q-9, inclusive, of the Regulations of Connecticut State Agencies, including Appendix 22a-133q-app1 and Appendix 22a-133q-app2 of said regulations, and when identified by a specific reference, “EUR regulations” also means any individual section or specific provision of sections 22a-133q-1 to 22a-133q-9, inclusive, of the Regulations of Connecticut State Agencies, including Appendix 22a-133q-app1 and Appendix 22a-133q-app2 of said regulations;

(8) “EUR opinion” means a document that complies with section 22a-133q-5 of the EUR regulations, signed and sealed by an LEP and recorded on the land records as part of an EUR;

(9) “Inaccessible soil” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(10) “Industrial/commercial activity” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(11) “Interest” means all or part of a legal or equitable claim to a right in a parcel, including, but not limited to, an easement, lease, life estate, mortgage, or lien;

(12) “Laboratory reporting limit” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(13) “Licensed environmental professional” or “LEP” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(14) “Notice of activity and use limitation” or “NAUL” means a type of environmental use restriction that complies with the requirements of section 22a-133o of the Connecticut General Statutes, the EUR regulations, and the RSRs, which does not create an easement on, nor require transfer to the commissioner of an easement on, the parcel, or portion thereof, that is subject to such restriction;

(15) “Owner” means the person or persons with sufficient right in the whole of a parcel, which is or which will be subject to an EUR, to convey an interest in such parcel to another.

(16) “Parcel” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(17) “PCBs” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(18) “Permanent release” means an instrument, prescribed by the commissioner and approved by the commissioner pursuant to section 22a-133q-7 of the EUR regulations, that permanently discharges the obligation to comply with the requirements of an ELUR;

(19) “Pollution” has the same meaning as provided in section 22a-423 of the Connecticut Statutes;

(20) “Polluted soil” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(21) “Record” means to commit to the clerk of the municipality in which a parcel is located a document or instrument for placement in the municipal land records, as provided for in section 7-24 of the Connecticut General Statutes;

(22) “Remediation standard regulations” or “RSRs” has the same meaning as provided in section 22a-133k-1 of the Regulations of Connecticut State Agencies;

(23) “Residential activity” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(24) “Soil” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(25) “Substance” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(26) “Subject area” has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies;

(27) “Subordination agreement” means a document, signed by persons holding an existing interest in a parcel, that irrevocably subjects that otherwise senior interest to a lower rank, class, or position in the chain of title than a later recorded ELUR recorded for the same parcel;

(28) “Temporary allowable disturbance” means an activity on, or disturbance to, a subject area that is otherwise prohibited by an EUR, but is specifically authorized by section 22a-133q-6 of the EUR regulations;

(29) “Temporary release” means an instrument recorded on the land records that provides relief from the restrictions imposed by an EUR for the purposes of conducting specific activities within a subject area, for a limited time or for recurring activity of a specific duration, as authorized by the commissioner or an LEP, pursuant to section 22a-133q-7 of the EUR regulations;

(30) “Termination” means an instrument, executed pursuant to section 22a-133q-7 of the EUR regulations and recorded on the land records, that permanently discharges a previously recorded instrument, including the obligation to comply with restrictions imposed by, or to exercise the rights provided by, such instrument; and

(31) “Transfer of an interest” means the voluntary disposition of, or involuntary separation from, any interest in a parcel or a portion of a parcel, including direct or indirect and absolute or conditional transfers.

(b) Any term not defined in the EUR regulations, that is defined in the RSRs, has the same meaning as provided in section 22a-133k-1(a) of the Regulations of Connecticut State Agencies.

Sec. 2. The Regulations of Connecticut State Agencies are amended by adding sections 22a-133q-2 to 22a-133q-9, inclusive, as follows:

(NEW) Sec. 22a-133q-2. ELURs

(a) General

No person shall execute and record an ELUR, pursuant to the RSRs and sections 22a-133n to 22a-133s, inclusive, of the Connecticut General Statutes, that does not comply with the requirements of said sections and this section.

(b) Requesting an ELUR

The owner of a parcel seeking to execute and record an ELUR shall submit a request to the commissioner. Unless otherwise specified by this section, any such request, including the items identified in each subdivision of this subsection, shall be submitted on a form prescribed by the commissioner and shall include:

- (1) A proposed declaration of ELUR as specified in section 22a-133q-app1 of the EUR regulations;
- (2) A proposed EUR factsheet;
- (3) A draft survey, with a revision date not more than 90 days prior to its submittal, that complies with section 22a-133q-4 of the EUR regulations;
- (4) A title search for the parcel on which the proposed ELUR is located, performed no more than 90 days prior to its submittal to the commissioner. This title search shall include a listing and description of all recorded interests in the chain of title;
- (5) A report by an attorney with a current and valid license to practice law in any state in the United States. The report shall:
 - (A) Be signed and certified to as accurate by the attorney undertaking it;
 - (B) Contain a description, review and evaluation of each recorded interest identified in the title search performed pursuant to subdivision (4) of this subsection and indicate whether each such interest will be:
 - (i) Subordinated to the ELUR; or
 - (ii) The subject of a waiver request, pursuant to section 22a-133o(b)(1) of the Connecticut General Statutes. For interests that will be the subject of such a waiver request, the report shall contain a detailed explanation of why the interest:
 - (I) Is so minor as to be unaffected by the ELUR; or
 - (II) When acted upon, is not capable of creating a condition contrary to the purpose of the ELUR.
 - (6) For each interest to be subordinated to the ELUR, a proposed, unexecuted, irrevocable subordination agreement, and a statement, signed by the holder of each interest to be subordinated, certifying that the holder of each interest agrees to execute the proposed subordination agreement so that it may be recorded at the same time as the ELUR. The proposed subordination agreements do not need to be prepared using a form prescribed by the commissioner;
 - (7) An affidavit executed by the owner of the parcel that:
 - (A) Identifies and describes:
 - (i) All residential activities on the parcel, and any other use of the parcel potentially in conflict with the restrictions proposed by the ELUR;
 - (ii) All unrecorded leases, licenses or other authorizations or rights regarding the parcel;
 - (iii) All unrecorded interests in the parcel;
 - (iv) All claims to the parcel, or to an interest in the parcel, by persons other than the owner; and
 - (v) Any condominium by-laws or regulations potentially in conflict with the restrictions of a proposed ELUR; and
 - (B) Attests, based on the owner's personal inquiry of the surveyor who prepared the survey required by subdivision (3) of this subsection, the attorney who prepared the title evaluation required by subdivision (5) of this subsection, and the LEP who prepared the EUR opinion required by subdivision (8) of this subsection, that the proposed ELUR does not conflict with items required to be specified in the affidavit by subparagraph (A) of this subdivision;
 - (8) A proposed EUR opinion that complies with section 22a-133q-5 of the EUR regulations;
 - (9) Documents demonstrating compliance with subsection 22a-133k-1(d) of the RSRs;
 - (10) A non-refundable fee of \$5,000 dollars, payable in a manner prescribed by the commissioner; and
 - (11) Any other information specified by the commissioner on such form.

(c) **Commissioner's Review**

 - (1) The commissioner shall not accept an ELUR, unless and until the commissioner determines that:
 - (A) All of the information necessary to make a determination of whether or not to accept the ELUR, including, but not limited to, the information required to be prepared and submitted pursuant to subsection (b) of this section, has been submitted to the commissioner on forms prescribed by the commissioner;

(B) All holders of interests in the parcel have agreed to irrevocably subordinate such interest to the ELUR, and all proposed subordination agreements have been provided to the commissioner, pursuant to subsection (b)(6) of this section, except where, pursuant to section 22a-133o(b)(1) of the Connecticut General Statutes the commissioner has determined to waive this requirement;

(C) The ELUR complies with all applicable legal requirements, including, but not limited to, the EUR regulations and the RSRs; and

(D) The ELUR is protective of human health and the environment.

(2) (A) The commissioner shall not review a request to approve an ELUR without the required fee and may, at any time, disapprove a request for an ELUR based on any determination made in accordance with subdivision (1) of this subsection. If the commissioner does not approve the request for an ELUR, the commissioner shall send written notice of such disapproval to the owner of the parcel on which the ELUR would have been placed and state the reasons for such disapproval. If the notice sent by the commissioner indicates that the request for an ELUR was not approved because:

(i) Information required by subsection (b) of this section was not provided, or that the commissioner needs additional information to review the proposed ELUR, the owner requesting the ELUR shall have 90 days from the date of the commissioner's notice to provide the commissioner with the information identified in the notice. The commissioner may grant a single 90 day extension of time to provide any such information; or

(ii) A request to waive the requirement to subordinate an interest in the parcel to the ELUR was rejected by the commissioner, pursuant to subdivision (1)(B) of this subsection, the owner requesting the ELUR shall have 180 days from the date of the commissioner's notice to obtain and submit to the commissioner a proposed subordination agreement and certification of the interest holder as required by subsection (b)(6) of this section.

(B) Any response to the notice sent by the commissioner, submitted pursuant to subparagraphs (A)(i) or (A)(ii) of this subdivision, shall along with the original request for an ELUR, be reviewed pursuant to subdivision (1) of this subsection. If the deadlines in subparagraphs (A)(i) or (A)(ii) of this subdivision are not met, the commissioner's disapproval of the request for an ELUR shall, without the need for any further action by the commissioner, be deemed final and the proposed ELUR shall not be executed or recorded.

(3) An owner whose request for an ELUR has been disapproved pursuant to this subsection may submit a new request for approval of such ELUR. Any such request shall be treated as a new request and shall be resubmitted in its entirety in compliance with the requirements of subsection (b) of this section.

(d) Changes or Omissions

If, at any time prior to acceptance of an ELUR by the commissioner, the information submitted pursuant to subsection (b) of this section has materially changed or if a material omission regarding the information submitted is discovered, the owner shall immediately notify the commissioner in writing and include any changed or omitted information.

(e) Recording an ELUR and Post-Recording Submittals

(1) If the commissioner determines to accept an ELUR, the commissioner shall send an unsigned copy of the accepted ELUR to the owner.

(2) Not more than 14 days after receiving the unsigned copy of the ELUR accepted by the commissioner, the owner shall submit to the commissioner:

(A) The accepted ELUR signed by the owner;

(B) A copy of the survey, accepted by the commissioner as it is to be recorded, revised to omit the term "proposed" where it appears, signed and sealed by the surveyor; and

(C) An affidavit, on a form prescribed by the commissioner, signed by the owner, in which the owner attests to the following:

- (i) There has been no change to the information provided in the most recent owner's affidavit submitted pursuant to subsection (b)(7) of this section;
 - (ii) The ELUR signed by the owner is identical in all respects to the ELUR sent to the owner by the commissioner pursuant to subdivision (1) of this subsection; and
 - (iii) There has been no material change to and no omission in any other information provided to the commissioner pursuant to this section, and that if the commissioner signs the ELUR, within 7 days after receipt of the signed ELUR, the owner shall ensure that no alterations of any kind are made and shall record the ELUR, the survey accepted by the commissioner, and all fully executed subordination agreements, in the form provided to and accepted by the commissioner.
- (3) Provided the commissioner finds that the information submitted pursuant to subdivision (2) of this subsection satisfactory, the commissioner shall sign the ELUR and return it to the owner for recording.
- (4) Within 7 days after receipt of the ELUR signed by the commissioner the owner shall:
- (A) Record the following on the municipal land records in the form provided to and accepted by the commissioner:
 - (i) The ELUR signed by the commissioner;
 - (ii) The survey of the parcel on which the ELUR is being placed;
 - (iii) All fully executed subordination agreements, and any approved waivers of the requirement to subordinate; and
 - (iv) Any other information sent to the owner by the commissioner for recording; and
 - (B) Submit to the commissioner, on a form prescribed by the commissioner, a certificate of title regarding the parcel on which the ELUR has been placed, prepared by an attorney with a current and valid license in the state of Connecticut.
- (5) (A) Except for the 7 day recording requirements in subparagraph (4)(A) of this subsection, if due to unforeseen circumstances an owner is not able to comply with one or more deadlines specified in this subsection, upon written request from the owner explaining such unforeseen circumstances, the commissioner may, in writing, extend the deadlines. The commissioner shall specify the length of any extension, which in no event shall exceed 30 days, unless the unforeseen circumstances require the attainment of a subordination agreement, in which case any extension shall not exceed 90 days. In connection with any request for such an extension, the commissioner may impose conditions, require that the ELUR be re-executed, or require the submission of additional information, including, but not limited to, information regarding subsections (b)(4), (b)(5), (b)(6) and (b)(7) of this section.
- (B) If due to unforeseen circumstances, an ELUR signed by the commissioner is not recorded within 7 days after receipt by the owner, as required by subparagraph (4)(A) of this subsection, upon written request from the owner explaining such unforeseen circumstances, the commissioner may provide for the ELUR to be re-executed in accordance with subdivisions (3) and (4) of this subsection. In making such determination, the commissioner may impose conditions, or require the submission of additional information, including, but not limited to, information regarding subsections (b)(4), (b)(5), (b)(6) and (b)(7) of this section. If the commissioner determines not to provide for the ELUR to be re-executed, a new request for approval of such ELUR may be submitted pursuant to subdivision (6) of this subsection.
- (C) If the ELUR sought by the owner has not yet been recorded, and the owner fails to comply with one or more deadlines specified in this subsection, including, but not limited to, an extended deadline or condition imposed by the commissioner, the ELUR shall be deemed disapproved, despite the commissioner's previous acceptance of the ELUR, and the ELUR shall not be recorded.
- (D) If the ELUR sought by the owner has been recorded notwithstanding the failure to comply with any deadlines specified in this subdivision, including, but not limited to, an extended deadline or

condition imposed by the commissioner, the ELUR recorded by such owner shall be subject to subsection (g) of this section.

(6) An owner, whose request for an ELUR is deemed disapproved pursuant to subdivision (5) of this subsection, may submit a new request for approval of such ELUR. Any such request shall be treated as a new request and shall be resubmitted in its entirety in compliance with the requirements of this section.

(f) ELUR on a Parcel Undergoing Voluntary Remediation

Notwithstanding subsection (c) of this section, the following shall apply only to an ELUR on a parcel undergoing voluntary remediation, pursuant to section 22a-133y of the Connecticut General Statutes.

(1) An ELUR shall not be approved by an LEP nor recorded on such a parcel, unless:

(A) The parcel:

(i) Is designated on a map prepared pursuant to section 22a-426 of the Connecticut General Statutes, as GB or GC for groundwater; and

(ii) Is not the subject of an order issued by the commissioner or a stipulated judgment issued by a court regarding the spill or pollution being remediated;

(B) The LEP who is to sign the ELUR affirmatively determines, in writing, that:

(i) The parcel in question satisfies the requirements of subdivision (1) of this subsection; and

(ii) The proposed ELUR:

(I) Except for waivers approved by the commissioner pursuant to subparagraph (E) of this subdivision, complies with all applicable legal requirements, including, but not limited to, the EUR regulations and the RSRs; and

(II) Is protective of human health and the environment;

(C) All materials required by subsection (b) of this section have been prepared and are complete;

(D) An attorney licensed in the state of Connecticut has prepared an opinion stating that:

(i) No recorded interest in the title search and attorney's report referred to in subsections (b)(4) and (b)(5) of this section and no item identified in the owner's affidavit referred to in subsection (b)(7) of this section allows an activity to be conducted that could or does interfere with the restrictions or obligations of the ELUR; or

(ii) The holder of any recorded interest which allows activity that could or does interfere with the ELUR has agreed to irrevocably subordinate that interest to the ELUR pursuant to subsection (b)(6) of this section; and

(E) If waivers of the requirement to obtain subordination agreements are requested, the materials prepared pursuant to subsections (b)(3), (b)(4), and (b)(5) of this section, along with a fee of \$2,500.00, have been submitted to the commissioner. If a waiver request has been submitted to the commissioner, an LEP shall not sign an ELUR, until the commissioner has approved, in writing, all such waiver requests.

(2) If the LEP who is to sign the ELUR affirmatively determines, in writing, that the requirements for an ELUR on a parcel undergoing voluntary remediation have been satisfied, including, but not limited to, the requirements of this subsection, the LEP may sign the EUR opinion and the declaration of ELUR. Any such ELUR shall be recorded pursuant to the procedure set out in subsection (e) of this section, except that the LEP's signature shall substitute for the commissioner's signature whenever mentioned in subsection (e) of this section.

(g) Determination of Invalidity for Non-Compliance

(1) If at any time the commissioner determines that any ELUR does not comply with applicable requirements or was not recorded in compliance with the requirements of this section, including, but not limited to, recordation without the commissioner's authorization, the commissioner may record, or may require the owner to record, a release of the ELUR, which release contains a statement that

the ELUR was invalidly recorded and is therefore released, and that the obligation to record an ELUR, if such an obligation exists, has not been satisfied. An invalidly recorded ELUR shall not satisfy any requirement of any statute or regulation requiring such ELUR. If the commissioner releases an ELUR pursuant to this subsection, the commissioner shall notify the owner of the parcel.

(2) Any action taken by the commissioner pursuant to this subsection shall be in addition to and shall not 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.

(h) Application to Pending ELUR Requests

Requests for ELURs submitted to the commissioner on or before February 16, 2021 shall be subject to the following requirements:

(1) If after February 16, 2021 the commissioner provides notice that:

(A) Additional Information is required to approve the ELUR or that the commissioner needs additional information to review the proposed ELUR, the owner requesting the ELUR shall have until 120 days after receipt of such notice to provide the commissioner with the information identified in the notice. The commissioner may grant a single 60 day extension of time to provide any such information; and

(B) Required subordination agreements have not been submitted, the owner requesting the ELUR shall have until 180 days after receipt of such notice to obtain and submit to the commissioner such signed subordination agreements. The commissioner may grant a single 60 day extension of time to submit any such agreements.

(2) If the deadlines in subparagraphs (A) or (B) of subdivision (1) of this subsection are not met, the request for an ELUR shall, without the need for any further action by the commissioner, be deemed disapproved and the proposed ELUR shall not be executed or recorded.

(3) An owner whose request for an ELUR has been disapproved pursuant to this subsection may submit a new request for approval of such ELUR. Any such request shall be treated as a new request and shall be resubmitted in its entirety in compliance with the requirements of subsection (b) of this section.

(NEW) Sec. 22a-133q-3. NAULs

(a) General

No person shall execute and record a NAUL, pursuant to the RSRs and sections 22a-133n to 22a-133s, inclusive, of the Connecticut General Statutes, that does not comply with the requirements of said sections and this section.

(b) Requesting a NAUL

The owner of a parcel seeking to execute and record a NAUL shall submit a request to the commissioner or LEP, as applicable. Unless otherwise specified by this section, any such request, including the items identified in each subdivision of this subsection, shall be submitted on a form prescribed by the commissioner and shall include:

(1) A proposed declaration of NAUL as specified in section 22a-133q-app2 of the EUR Regulations;

(2) A proposed EUR factsheet;

(3) A draft survey that complies with section 22a-133q-4 of the EUR regulations with a revision date not more than 90 days prior to the request to the commissioner or LEP, as applicable, for a NAUL;

(4) A title search for the parcel on which the proposed NAUL is located, completed not more than 90 days prior to the request to the commissioner or LEP, as applicable, for a NAUL. This title search shall include a listing and description of all recorded interests in the chain of title;

(5) A report by an attorney with a current and valid license to practice law in any state i

United States. The report shall:

(A) Be signed and certified to as accurate by the attorney undertaking it;
 (B) Contain a description, review and evaluation of each recorded interest identified in the title search performed pursuant to subdivision (4) of this subsection and for each such interest indicate whether:

(i) The interest does not allow for conduct of an activity that interferes with the restrictions and affirmative obligations of the NAUL; or

(ii) The owner of such interest that does allow for conduct of an activity that interferes with the restrictions and affirmative obligations of the NAUL has agreed to sign the NAUL, pursuant to section 22a-133o(c)(6) of the Connecticut General Statutes.

(6) An affidavit executed by the owner of the parcel that:

(A) Identifies and describes:

(i) All residential activities on the parcel, and any other use of the parcel potentially in conflict with the restrictions proposed by the NAUL;

(ii) All unrecorded leases, licenses or other authorizations or rights regarding the parcel;

(iii) All unrecorded interests in the parcel;

(iv) All claims to the parcel, or to an interest in the parcel, by persons other than the owner; and

(v) Any condominium by-laws or regulations potentially in conflict with the restrictions of a proposed NAUL; and

(B) Based on the owner's personal inquiry of the surveyor who prepared the survey required by subdivision (3) of this subsection, the attorney who prepared the title evaluation required by subdivision (5) of this subsection, and the LEP who prepared the EUR opinion required by subdivision (7) of this subsection, affirm that the proposed NAUL does not conflict with items required to be specified in the affidavit by subparagraph (A) of this subdivision;

(7) A proposed EUR opinion that complies with section 22a-133q-5 of the EUR Regulations;

(8) Documents demonstrating:

(A) Compliance with subsection 22a-133k-1(d) of the RSRs; and

(B) That the owner of each interest in the parcel identified in the title search contained in subdivision (4) of this subsection has been notified of the proposed NAUL in compliance with the requirements specified in section 22a-133o(c)(2) of the Connecticut General Statutes;

(9) If the NAUL is to be recorded less than 60 days after providing notice to those who hold an interest in the parcel, written waivers of the 60 day review period signed by the interest holders pursuant to section 22a-133o(c)(2) of the Connecticut General Statutes; and

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

(c) Review of a NAUL

A proposed NAUL shall be approved by the commissioner or by an LEP pursuant to this subsection.

(1) Commissioner review of a NAUL

(A) The commissioner shall not accept a NAUL, unless and until the commissioner determines that:

(i) All of the information necessary to make a determination of whether or not to accept the NAUL, including, but not limited to, the information required to be prepared and submitted pursuant to subsection (b) of this section, has been submitted to the commissioner on forms prescribed by the commissioner;

(ii) For all interests in the parcel that allow for conduct of an activity that interferes with the restrictions and affirmative obligations of the NAUL, the owner of such interests has agreed to sign the NAUL pursuant to section 22a-133o(c)(6) of the Connecticut General Statutes;

(iii) The NAUL complies with all applicable legal requirements, including, but not limited to, the

EUR regulations and the RSRs;

(iv) The NAUL is protective of human health and the environment; and

(v) A non-refundable fee of \$5,000, payable in a manner prescribed by the commissioner has been submitted with the request for the commissioner's approval of the NAUL.

(B) The commissioner shall not review a request to approve a NAUL without the required fee and may, at any time, disapprove a request for a NAUL based on any determination made in accordance with subparagraph (A) of this subdivision. If the commissioner does not approve the request for a NAUL, the commissioner shall send a written notice, to the owner of the parcel on which the NAUL would have been placed and state the reasons for such disapproval. If the notice sent by the commissioner indicates that the request for a NAUL was not approved because:

(i) Information required by subsection (b) of this section was not provided, or that the commissioner needs additional information to review the proposed NAUL, the owner requesting the NAUL shall have 90 days from the date of the commissioner's notice to provide the commissioner with the information identified in the notice. The commissioner may grant a single 90 day extension of time to provide any such information; or

(ii) For all holders of interests in the parcel with an interest that allows the conduct of an activity that interferes with the restrictions or affirmative obligations of the NAUL, if compliance with the requirements of section 22a-133o(c)(6) of the Connecticut General Statutes has not been achieved, the owner requesting the NAUL shall have 180 days from the date of the commissioner's notice to demonstrate compliance with said section.

(C) Any response to the notice sent by the commissioner, submitted pursuant to subparagraphs (B)(i) or (B)(ii) of this subdivision, shall, along with the original request for a NAUL, be reviewed pursuant to this subdivision. If the deadlines in subparagraphs (B)(i) or (B)(ii) of this subdivision are not met, the commissioner's disapproval of a request for a NAUL shall, without the need for any further action by the commissioner, be deemed final and the proposed NAUL shall not be executed or recorded.

(D) An owner whose request for a NAUL has been disapproved pursuant to this subsection may submit a new request for approval of such NAUL. Any such request shall be treated as a new request and shall be resubmitted in its entirety in compliance with the requirements of subsection (b) of this section.

(E) If the commissioner determines to approve the proposed NAUL, the commissioner shall sign the proposed NAUL and the approved NAUL shall be recorded in accordance with the requirements of subsection (e) of this section.

(2) Review of a NAUL by an LEP

(A) In order for an LEP to approve a proposed NAUL, the LEP who will sign and seal the NAUL shall, before such approval, affirmatively determine, in writing, that:

(i) All of the information necessary to make a determination of whether or not to accept the NAUL, including, but not limited to, documents demonstrating compliance with subsection (b) of this section have been prepared;

(ii) An attorney licensed in the state of Connecticut has prepared an opinion stating that each recorded interest in the parcel identified in subdivision (4) of subsection (b) of this section and each item identified in the owner's affidavit in subdivision (6) of subsection (b) of this section either:

(I) Allows only activities that do not interfere with the restrictions or affirmative obligations in the proposed NAUL; or

(II) Allows activities that do interfere with the restrictions and affirmative obligations of the proposed NAUL, but the owner of each such interest has agreed to sign the NAUL pursuant to section 22a-133o(c)(6) of the Connecticut General Statutes;

(iii) The proposed NAUL complies with all applicable legal requirements, including, but not

limited to, the EUR regulations and the RSRs; and

(iv) The proposed NAUL is protective of human health and the environment.

(B) If an LEP makes the affirmative determination required by subparagraph (A) of this subdivision, the LEP may approve and shall sign the NAUL to indicate such approval. The approved NAUL signed by the LEP shall be recorded in accordance with the requirements of subsection (e) of this section.

(C) If an LEP cannot make the affirmative determination required by subparagraph (A) of this subdivision, the LEP shall not approve and shall decline to sign the proposed NAUL.

(d) Changes or Omissions

If, at any time before the commissioner or an LEP approves a NAUL, the information prepared pursuant to subsection (b) of this section has materially changed or a material omission regarding the information submitted is discovered, the owner shall immediately notify the commissioner or LEP, as applicable, in writing, and include any changed or omitted information.

(e) Recording a NAUL and Post-Recording Submittals

(1) Not more than 7 days after receipt of the NAUL signed by the commissioner the owner shall:

(A) Sign the NAUL approved by the commissioner;

(B) Ensure that a surveyor, licensed in Connecticut, signs and seals the survey prepared pursuant to subsection (b) of this section, for recording, omitting the term “proposed” where it appears; and

(C) Record the NAUL, including the survey, the EUR opinion and other documents, if any, necessary to record the NAUL.

(2) Not more than 30 days after recording the NAUL pursuant to subdivision (1) of this subsection, the owner shall submit the following to the commissioner:

(A) A copy of the recorded NAUL, indicating the volume and page of the land records at which it was recorded;

(B) A copy of the survey recorded with the NAUL;

(C) A title search as required by subsection (b)(4) of this section, updated to include any interest in the parcel listed on the land records at the time the NAUL was recorded; and

(D) A statement by the owner of the parcel on which the NAUL has been placed, on a form prescribed by the commissioner, in which the owner attests that there has been no change to the information provided in the most recent owner’s affidavit submitted to the commissioner pursuant to subsection (b)(6) of this section.

(3) When a NAUL has been approved by an LEP:

(A) The LEP shall sign the NAUL and send or provide the signed NAUL to the owner of the parcel on which the NAUL will be placed.

(B) Not more than 7 days from the date that the LEP sends or provides the signed NAUL to the owner, the owner shall:

(i) Sign the NAUL approved by the LEP;

(ii) Ensure that a surveyor, licensed in Connecticut, signs and seals the survey prepared pursuant to subsection (b) of this section, for recording, omitting the term “proposed” where it appears; and

(iii) Record the NAUL, including the survey, and the EUR opinion and other documents, if any, necessary to record the NAUL.

(C) Not more than 30 days after recording the NAUL pursuant to subparagraph (B) of this subdivision, the owner shall submit the following to the commissioner:

(i) A copy of the NAUL request form prepared pursuant to subsection (b) of this section and submitted to the LEP;

(ii) A copy of the recorded NAUL, indicating the volume and page of the land records at which it was recorded;

(iii) A copy of the survey recorded with the NAUL;

(iv) A title search as required by subsection (b)(4) of this section, updated to include any interest in the parcel listed on the land records at the time the NAUL was recorded;

(v) A copy of the report prepared pursuant to subsection (b)(5) of this section and the attorney's opinion prepared pursuant subsection (c)(2)(A)(ii) of this section;

(vi) An executed owner's affidavit, as required by subsection (b)(6) of this section, along with a statement, on a form prescribed by the commissioner, in which the owner attests that there has been no change to the information provided in the owner's affidavit in the time between its execution and the recording of the NAUL;

(vii) The EUR opinion signed and sealed by the LEP approving the NAUL; and

(viii) The documents required by subsection (b)(8) of this section and if the NAUL is recorded less than 60 days after providing notice to those who hold an interest in the parcel, waivers of the 60 day review period signed by the interest holders, pursuant to subsection (b)(9) of this section; and

(ix) A non-refundable fee of \$1,500.00 payable in a manner prescribed by the commissioner.

(f) Correction of Non-Compliance/Determination of Invalidity

(1) If at any time the commissioner determines that any NAUL does not comply with applicable requirements or was not recorded or was not recorded in compliance with the requirements of this section, the commissioner may record, or may require the owner to record, a termination of the NAUL, which termination contains a statement that the NAUL was invalidly recorded and is therefore terminated, and that the obligation to record a NAUL, if such an obligation exists, has not been satisfied. An invalidly recorded NAUL shall not satisfy any requirement of any statute or regulation requiring such NAUL. If the commissioner terminates a NAUL pursuant to this subsection, the commissioner shall notify the owner of the parcel.

(2) Any action taken by the commissioner pursuant to this subsection shall be in addition to and shall not 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.

(NEW) Sec. 22a-133q-4. Surveys

(a) General standards and requirements for surveys

The survey of a parcel prepared pursuant to this section shall:

(1) Be performed by a surveyor with a current and effective license issued by the Commissioner of Consumer Protection;

(2) For survey maps and plans, comply with map drafting standards in section 20-300b-18 of the Regulations of Connecticut State Agencies;

(3) Include a vicinity map showing the approximate location and configuration of the parcel in reference to nearby highways or major street intersections;

(4) Depict the latitude and longitude of a point on the parcel, plotted and labeled in decimal degrees and referenced to a known datum, with an accuracy within 5 meters;

(5) Include a description of the parcel under the heading "Parcel Description" that shall be a metes and bounds description if the property boundaries are required to be surveyed pursuant to this section or, if portions of the boundary are not required to be surveyed, a metes and bounds description if found on the land records in the chain of title for the parcel;

(6) Depict adjoining properties and annotate with the most recently recorded owners' names (N/F, now or formerly) or by subdivision map and lot numbers;

(7) Depict the boundaries of each proposed subject area by metes and bounds;

(8) Fix each proposed subject area to a parcel boundary to the Horizontal Accuracy Class A-2 or the Global Relative Positional Accuracy Class G-2 standards specified in section 20-300b-11(b) of

the Regulations of Connecticut State Agencies;

(9) For each subject area with the characteristics specified in this subdivision, mark or monument such subject area pursuant to sections 20-300b-12 to 20-300b-14, inclusive, of the Regulations of Connecticut State Agencies:

(A) A subject area that does not have at least one contiguous boundary with the boundary of the parcel;

(B) A subject area that does not share a point in common with a structure or feature located on the parcel; or

(C) A subject area that an LEP, surveyor, or the commissioner, deems appropriate to be located pursuant to the method specified in this subdivision;

(10) Label each subject area as “Proposed ELUR Subject Area” or “Proposed NAUL Subject Area” as applicable, and if there is more than one subject area, identify each subject area alphabetically, e.g., as “Proposed ELUR Subject Area A”, “Proposed ELUR Subject Area B”, “Proposed ELUR Subject Area C”; or “Proposed NAUL Subject Area A”, “Proposed NAUL Subject Area B”, “Proposed NAUL Subject Area C” and indicate by note each restriction imposed by the proposed EUR for each subject area;

(11) For each subject area labeled under subdivision (10) of this subsection, include a metes and bounds description under the heading “Proposed ELUR Subject Area [insert subject area(s) label] Description” or “Proposed NAUL Subject Area [insert subject area(s) label] Description;”

(12) Indicate by note all recorded interests, including, but not limited to, easements. For all such interests, specify the volume and page in the municipal land records of the instrument granting the same, and label each as either plottable or non-plottable;

(13) Indicate by note all of the current zoning classifications of the parcel, and the revision date of the zoning regulations in effect at the time of the survey;

(14) Indicate by note the standards to which the survey was prepared. If a resurvey is conducted, identify by note each map referenced;

(15) Include in the title block: “Proposed Declaration of Environmental Land Use Restriction and Grant of Easement, Exhibit C” or “Proposed Notice of Activity and Use Limitation, Exhibit C”, the name of the parcel owner, the parcel address, the type of survey, the scale of the survey, and survey date;

(16) Be signed and sealed in accordance with section 20-300b-20 of the Regulations of Connecticut State Agencies; and

(17) Include a simplified survey prepared in accordance with subsection (e) of this section.

(b) Specific standards and requirements for surveys for certain EURs when the aggregate size of all subject areas is fifty percent to one hundred percent (50% to 100%) of the parcel

(1) This subsection shall apply to surveys for a proposed EUR:

(A) That imposes restrictions or affirmative obligations other than or in addition to a residential activity restriction; and

(B) Where the proposed subject areas in aggregate comprise fifty percent or more of the parcel on which an EUR is to be placed.

(2) In addition to the requirements of subsection (a) of this section, a survey subject to this subsection, as specified in subdivision (1), shall:

(A) Comply with the requirements for a Property Survey in section 20-300b-2 of the Regulations of Connecticut State Agencies;

(B) Depict the boundaries of the parcel by metes and bounds;

(C) Depict any conflicts with record deed descriptions and maps affecting the parcel, and indicate by note such conflicts;

- (D) Depict the location of encroachments and restrictions affecting the parcel, and indicate by note such encroachments and restrictions;
- (E) Depict parcel ingress and egress, both of record and apparent;
- (F) Depict apparent improvements and features on the parcel, including, but not limited to:
- (i) Grass, landscaped areas, fields, wooded and other undeveloped areas, structures, roadways, driveways, parking lots, sidewalks, and other bituminous concrete and concrete areas;
 - (ii) Monitoring wells and remediation equipment or facilities;
 - (iii) Fences, walls, hedges, watercourses, as defined in section 22a-38(16) of the Connecticut General Statutes; and
 - (iv) Any other evidence of repeated use of the parcel;
- (G) For subject areas where an engineered control has been implemented pursuant to section 22a-133k-2(f)(2) of the Regulations of Connecticut State Agencies or polluted soil is subject to the conditional exemption for inaccessible soil in accordance with section 22a-133k-2(b)(3) or section 22a-133k-2(b)(4) of the Regulations of Connecticut State Agencies, include spot elevations taken at the major corners of each subject area, tied to a known datum. Where an engineered control has been implemented, the spot elevations depicted on the as-built drawings submitted with the Final Engineered Control Completion Statement, prepared pursuant to section 22a-133k-2(f)(2)(D)(i) of the Regulations of Connecticut State Agencies, shall be included. Where polluted soil is subject to the conditional exemption for inaccessible soil, all spot elevations measured on the parcel shall be included. All spot elevations specified in this subdivision, shall be supplemented with contour lines for the portions of the parcel within each subject area depicted to the T-D standard of survey accuracy in section 20-300b-11(d) of the Regulations of Connecticut State Agencies. The source of the information used to prepare the contour lines shall be indicated by note. When spot elevations are indicated, a benchmark on the same datum as the spot elevations shall be depicted and appropriately noted and described;
- (H) Depict the location and width of each plottable, recorded interest and any observed evidence of use. Indicate by note whether each interest as plotted is located inside a subject area and if so, identify the subject area;
- (I) Depict any observed evidence of current earth moving work or building construction on the parcel; and
- (J) Depict the location of utilities existing on or serving the parcel. At a minimum, this shall be determined by: observations or information indicated on plans obtained from utility companies, or from the owner, user or occupant of the parcel; markings by utility companies; and any other sources. If the information, observations or sources differ, depict all and indicate by note the source of such information.
- (c) Specific standards and requirements for surveys for certain EURs when the subject area size is less than fifty percent (< 50%) of the parcel**
- (1) This subsection shall apply to surveys for a proposed EUR:
- (A) That imposes restrictions or affirmative obligations other than or in addition to a residential activity restriction; and
 - (B) Where the proposed subject areas in aggregate comprise less than fifty percent of the parcel on which an EUR is to be placed.
- (2) In addition to the requirements of subsection (a) of this section, a survey subject to this subsection, as specified in subdivision (1), shall:
- (A) Comply with the requirements in section 20-300b-2(a) of the Regulations of Connecticut State Agencies for each subject area and for 100 feet beyond such area, or to the boundary of the parcel, whichever is closer;

- (B) Depict the limits of the surveyed portion of the parcel, including any parcel boundaries;
 - (C) Depict any conflicts with record deed descriptions and maps affecting the surveyed portion of the parcel, and indicate by note such conflicts;
 - (D) Depict the location of encroachments and restrictions affecting the surveyed portion of the parcel, and indicate by note such encroachments and restrictions;
 - (E) Depict parcel ingress and egress, both of record and apparent. If located on the surveyed portion of the parcel, ingress and egress should be located and depicted to the Horizontal Accuracy Class A-2 standard. If located outside the surveyed portion of the parcel, locate and depict ingress and egress with reasonable accuracy and indicate by note that the location of such ingress and egress has not been located to the Horizontal Accuracy Class A-2 standard;
 - (F) Depict apparent improvements and features on the surveyed portion of the parcel, including, but not limited to:
 - (i) Grass, landscaped areas, fields, wooded and other undeveloped areas, structures, roadways, driveways, parking lots, sidewalks, and other bituminous concrete and concrete areas;
 - (ii) Monitoring wells and remediation equipment or facilities;
 - (iii) Fences, walls, hedges, and watercourses, as defined in section 22a-38(16) of the Connecticut General Statutes; and
 - (iv) Any other evidence of repeated use of the parcel;
 - (G) For subject areas where an engineered control has been implemented pursuant to section 22a-133k-2(f)(2) of the Regulations of Connecticut State Agencies or polluted soil is subject to the conditional exemption for inaccessible soil in accordance with section 22a-133k-2(b)(3) or section 22a-133k-2(b)(4) of the Regulations of Connecticut State Agencies, include spot elevations taken at the major corners of each subject area, tied to a known datum. Where an engineered control has been implemented, the spot elevations depicted on the as-built drawings submitted with the Final Engineered Control Completion Statement, prepared pursuant to section 22a-133k-2(f)(2)(D)(i) of the Regulations of Connecticut State Agencies, shall be included. Where polluted soil is subject to the conditional exemption for inaccessible soil, all spot elevations measured on the parcel shall be included. All spot elevations specified in this subdivision, shall be supplemented with contour lines for the portions of the parcel within each subject area depicted to the T-D standard of survey accuracy in section 20-300b-11(d) of the Regulations of Connecticut State Agencies. The source of the information used to prepare the contour lines shall be indicated by note. When spot elevations are indicated, a benchmark on the same datum as the spot elevations shall be depicted and appropriately noted and described;
 - (H) Depict the location and width of each plottable, recorded interest and any observed evidence of use in the surveyed portion of the parcel. Indicate by note whether each interest as plotted is located inside a subject area, and if so, identify the subject area;
 - (I) Depict any observed evidence of current earth moving work or building construction within the surveyed portion of the parcel;
 - (J) Depict, for the surveyed portion of the parcel, the location of utilities existing on or serving the parcel. At a minimum, this shall be determined by: observations or information indicated on plans obtained from utility companies, or from the owner, user or occupant of the parcel; markings by utility companies; and any other sources. If the information, observations or sources differ, depict all and indicate by note the source of such information; and
 - (K) Depict any boundaries of the parcel not surveyed based on deed or other available information in the format of a General Location Survey or Compilation Plan pursuant to sections 20-300b-6 and 20-300b-8, respectively, of the Regulations of Connecticut State Agencies.
- (d) **Specific standards and requirements for surveys when residential activity is the sole**

restriction

This subsection shall apply to surveys for a proposed EUR that imposes only a residential activity restriction or affirmative obligation. In addition to the requirements of subsection (a) of this section, a survey subject to this subsection shall:

(1) Comply with the requirements in section 20-300b-2(a) of the Regulations of Connecticut State Agencies for each subject area and 100 feet beyond such area, or to the boundary of the parcel, whichever is closer;

(2) Depict the limits of the surveyed portion of the parcel, including any parcel boundaries;

(3) Depict any conflicts with record deed descriptions and maps affecting the surveyed portion of the parcel, and indicate by note such conflicts;

(4) Depict the location of encroachments and restrictions affecting the surveyed portion of the parcel, and indicate by note such encroachments and restrictions;

(5) Depict parcel ingress and egress, both of record and apparent. If located on the surveyed portion of the parcel, ingress and egress should be located and depicted to the Horizontal Accuracy Class A-2 standard. If located outside the surveyed portion of the parcel, locate and depict ingress and egress with reasonable accuracy and indicate by note that the location of such ingress and egress has not been located to the Horizontal Accuracy Class A-2 standard;

(6) Depict prominent improvements and features on the surveyed portion of the parcel for informational and orientation purposes, including buildings, structures, roadways, parking lots, watercourses, as defined in section 22a-38(16) of the Connecticut General Statutes, and any other evidence of residential activity on the surveyed portion of the parcel; and

(7) Depict any boundaries of the parcel not surveyed based on deed or other available information in the format of a General Location Survey or Compilation Plan pursuant to sections 20-300b-6 and 20-300b-8, respectively, of the Regulations of Connecticut State Agencies.

(e) Simplified Survey

A simplified survey shall be prepared with each survey required to be prepared by sections 22a-133q-2 and 22a-133q-3 of the EUR regulations. A simplified survey is a summary or overview map. The information compiled and mapped pursuant to subsection (a) of this section and subsections (b), (c), and (d) of this section, as applicable, shall be used to prepare the simplified survey. A simplified survey shall:

(1) Be performed by a surveyor with a current and effective license issued by the Commissioner of Consumer Protection;

(2) For survey maps and plans, comply with the map drafting standards in section 20-300b-18 of the Regulations of Connecticut State Agencies;

(3) For a boundary or feature required to be located or depicted under this subsection:

(A) If such boundary or feature is also required to be located or depicted in accordance with subsection (a) of this section, locate such boundary or feature on the simplified survey to the standard identified therein; and

(B) Determine whether the EUR proposed on the parcel requires a survey subject to the requirements of subsection (b), (c), or (d) of this section. If such boundary or feature is also required to be located or depicted by subsection (b), (c), or (d) of this section, as applicable, locate such boundary or feature on the simplified survey to the standard identified therein;

(4) Depict, by metes and bounds, the portions of the boundary of the parcel required to be surveyed by this section. Depict any boundaries of the parcel not required to be surveyed by this section based on deed or other available information in the format of a General Location Survey or Compilation Plan, pursuant to sections 20-330b-6 and 20-300b-8, respectively, of the Regulations of Connecticut State Agencies;

- (5) If less than the entire parcel was required to be surveyed pursuant to this section, depict the limits of the portion of the parcel that was surveyed;
- (6) Depict apparent improvements and features on the parcel or surveyed portion of the parcel required to be surveyed by subsection (b)(2)(F), (c)(2)(F) or (d)(6) of this section;
- (7) Depict parcel ingress and egress, both of record and apparent;
- (8) Depict the boundaries of each proposed subject area by metes and bounds;
- (9) Fix each proposed subject area to a parcel boundary to the Horizontal Accuracy Class A-2 or the Global Relative Positional Accuracy Class G-2 standards specified in section 20-300b-11(b) of the Regulations of Connecticut State Agencies;
- (10) For each subject area with the characteristics specified in this subdivision, mark and monument such subject area pursuant to sections 20-300b-12 to 20-300b-14, inclusive, of the Regulations of Connecticut State Agencies:
 - (A) A subject area that does not have at least one contiguous boundary with the boundary of the parcel;
 - (B) A subject area that does not share a point in common with a structure or feature located on the parcel; or
 - (C) A subject area that an LEP, surveyor, or the commissioner deems appropriate to be located pursuant to the method specified in this subdivision;
- (11) Label each subject area as “Proposed ELUR Subject Area” or “Proposed NAUL Subject Area” as applicable, and if there is more than one subject area, identify each subject area alphabetically, e.g., as “Proposed ELUR Subject Area A”, “Proposed ELUR Subject Area B”, “Proposed ELUR Subject Area C”; or “Proposed NAUL Subject Area A”, “Proposed NAUL Subject Area B”, “Proposed NAUL Subject Area C” and indicate by note each restriction imposed by the proposed EUR for each subject area;
- (12) When restrictions other than a prohibition on residential activity are proposed, include spot elevations taken at the major corners of each subject area; tied to a known datum. Where an engineered control has been implemented pursuant to section 22a-133k-2(f)(2) of the Regulations of Connecticut State Agencies, the spot elevations depicted on the as-built drawings submitted with the Final Engineered Control Completion Statement, prepared pursuant to section 22a-133k-2(f)(2)(D)(i) of the Regulations of Connecticut State Agencies, shall be included. Where polluted soil is subject to the conditional exemption for inaccessible soil, in accordance with section 22a-133k-2(b)(3) or section 22a-133k-2(b)(4) of the Regulations of Connecticut State Agencies, all spot elevations measured on the parcel shall be included. When spot elevations are indicated, a benchmark on the same datum as the spot elevations shall be depicted and appropriately noted and described;
- (13) Indicate by note the standards to which the survey was prepared. If a resurvey is conducted, identify by note each map referenced;
- (14) Include in the title block: “Simplified Survey - Proposed Declaration of Environmental Land Use Restriction and Grant of Easement, Exhibit C” or “Simplified Survey - Proposed Notice of Activity and Use Limitation, Exhibit C”, the name of the parcel owner, the parcel address, the type of survey, the scale of the survey, and survey date; and
- (15) Be signed and sealed in accordance with section 20-300b-20 of the Regulations of Connecticut State Agencies.

(NEW) Sec. 22a-133q-5. EUR Opinion

(a) Preparation of the EUR Opinion

For purposes of the EUR regulations, an EUR opinion shall be prepared using a form prescribed by the commissioner and shall:

(1) Identify historic industrial/commercial activity on the parcel and include a brief narrative summarizing the type and location of pollutants in the soil, groundwater, sediments, or soil vapor at concentrations greater than the applicable criteria set forth in or approved pursuant to the RSRs and identified during the investigation and characterization of the parcel;

(2) Include a table, that lists:

(A) Each proposed ELUR or NAUL subject area identified on a survey that complies with section 22a-133q-4 of the EUR regulations;

(B) The pollutants present in soil, sediments, groundwater or soil vapor on or underlying that subject area that are present in concentrations greater than the criteria set forth in, or approved pursuant to, the RSRs, their concentration, and horizontal and vertical extent; and

(C) The restrictions or affirmative obligations to be imposed by the EUR;

(3) Describe each restriction or affirmative obligation to be imposed by the EUR and all requirements to implement such EUR;

(4) For each restriction or affirmative obligation, as applicable, to be imposed by the EUR, indicate:

(A) Why the restriction or affirmative obligation was chosen for the conditions present at the subject area;

(B) That the current condition of the subject area is in compliance with the restriction proposed;

(C) That the current condition of the subject area allows for compliance with all affirmative obligations; and

(D) How compliance with each restriction and affirmative obligation, as proposed, will ensure compliance with the RSRs;

(5) For parcels subject to a NAUL only, describe any activities and uses permitted and inconsistent with maintaining compliance with such NAUL;

(6) Include the signature and seal of an LEP, or, when the parcel upon which the EUR will be placed is in the custody and control of the department, the signature of either the commissioner or an LEP, certifying that:

(A) The contents of the EUR opinion are accurate and complete; and,

(B) Each restriction and affirmative obligation to be imposed by the EUR is consistent with the RSRs and is protective of human health and the environment; and

(7) Include any other information specified by the commissioner on such form.

(b) Compliance with Notice of Activity and Use Limitation Decision Document

An EUR opinion completed in accordance with subsection (a) of this section shall satisfy the requirement to prepare a Notice of Activity and Use Limitation Decision Document specified in section 22a-133o(c)(5)(B) of the Connecticut General Statutes.

(NEW) 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.

(NEW) Sec. 22a-133q-7. Releases and Terminations

The restrictions and affirmative obligations in an EUR shall only be temporarily or permanently released, or the restrictions and affirmative obligations in a NAUL terminated, in compliance with the requirements of this section. No person shall execute and record a temporary or permanent release of an EUR or termination of a NAUL that does not comply with the requirements of this section.

(a) Temporary Releases

(1) A temporary release approved under this section shall be recorded using a format prescribed by the commissioner and shall specify the termination date for such release.

(2) The extent and duration of a temporary release approved under this section shall be limited to the minimum that is reasonably necessary to conduct the proposed activities, as determined by the Commissioner or the LEP who approves such release at the time such release is approved.

(3) The activities undertaken pursuant to any temporary release approved under this section shall:

(A) Be supervised by an LEP, unless the subject area is on property under the custody and control the department, in which case either an LEP or the commissioner may supervise such activities;

(B) Be conducted in compliance with any restrictions or affirmative obligations of the EUR that are not in direct conflict with the activities conducted pursuant to the temporary release; and

(C) Be conducted in compliance with all other requirements of the EUR regulations.

(b) Documents Required for Approval of a Temporary Release

No temporary release under this section shall be approved, and no activities proposed under any such release shall be conducted, until the documents required by this subsection have been prepared. The following documents shall be prepared on a form prescribed by the commissioner:

- (1) A summary of the proposed activities to be conducted pursuant to the temporary release; and
- (2) A temporary release work plan which shall:
 - (A) Describe the activities to be performed and how the extent and duration of such activities is limited, in the opinion of the LEP who will sign and seal the workplan, to the minimum that is reasonably necessary to conduct the proposed activities;
 - (B) Identify by name and license number the LEP who will supervise the activities to be conducted during the proposed release or indicate that the LEP who will supervise the activities will be identified by name and license number on a notice filed each time proposed recurring activities are to be conducted;
 - (C) Include a schedule for the completion of the proposed specific activities;
 - (D) Depict, to scale, the location of the proposed activities and the location of any planned stockpiling of soil, excavated material or debris, on a copy of the most recent survey and simplified survey prepared pursuant to section 22a-133q-4 of the EUR regulations depicting the approved EUR subject area(s);
 - (E) Indicate where inaccessible soils or engineered controls are to be disturbed;
 - (F) Include provisions to notify the commissioner of unexpected conditions or pollutants during implementation of temporary release activities in accordance with subsection (c) of section 22a-133q-6 of the EUR regulations.
 - (G) When the activities involve the disturbance of soil, include a soil management plan containing provisions to manage soils, excavated materials or debris generated during the proposed activities and the restoration of the area which plan shall, at a minimum, satisfy the requirements set out in subsections (d) and (e) of section 22a-133q-6 of the EUR regulations. Provided, if the activities to be authorized by the temporary release are intended to result in a different means of complying with the RSRs, the soil management plan may explain any deviation from the requirement of subsection (e)(1) of section 22a-133q-6 of the EUR regulations;
 - (H) Include provisions to document work progress and completion in a manner that meets the requirements of subsection (f) of section 22a-133q-6 of the EUR regulations;
 - (I) Include the signature of the owner of, or holder of an interest in, the parcel for which a temporary release is being sought and be signed and sealed by an LEP; and
 - (J) Include any other information specified by the commissioner on such form.
- (c) **Review and Approval of a Temporary Release from an EUR by the Commissioner**
 - (1) The commissioner shall not approve a temporary release from the restrictions and affirmative obligations of an EUR unless and until the commissioner determines that:
 - (A) All of the information necessary to make a determination of whether or not to approve a temporary release, including, but not limited to, the documents required by subsection (b) of this section, has been submitted and contains the information necessary for the commissioner to determine whether or not to grant the requested temporary release;
 - (B) A non-refundable fee of \$1,000.00, payable in the manner prescribed by the commissioner, has been submitted to the commissioner; and
 - (C) The temporary release work plan required by subsection (b) of this section demonstrates that the proposed activities, if conducted in accordance with such plan will:
 - (i) Be protective of human health and the environment; and
 - (ii) Comply with all applicable legal requirements, including, but not limited to, the EUR regulations and the RSRs.
 - (2) (A) The commissioner shall not review a request for a temporary release of an EUR without the required fee and may, at any time, disapprove of any such request based on any determination made in accordance with subdivision (1) of this subsection. If the commissioner does not approve the request for a temporary release, the commissioner shall send written notice of such disapproval to the

person requesting the release and state the reasons for such disapproval. If the notice sent by the commissioner indicates that the request was not approved because information required by subsection (b) of this section was not provided, or that the commissioner needs additional information to review the request, the person requesting the temporary release shall have 30 days from the date of the commissioner's notice to provide the commissioner with the information identified in the notice. The commissioner may grant a single 60 day extension of time to provide any such information.

(B) Any response to the notice sent by the commissioner, submitted pursuant to subparagraph (A) of this subdivision, shall along with the original request for a temporary release, be reviewed pursuant to subdivision (1) of this subsection. If the deadlines in subparagraph (A) of this subdivision are not met, the commissioner's disapproval of the request for a temporary release shall, without the need for any further action by the commissioner, be deemed final and the proposed temporary release shall not be executed or recorded.

(3) A person whose request for a temporary release has been disapproved pursuant to this subsection may submit a new request for approval of such temporary release. Any such request shall be treated as a new request and shall be resubmitted in its entirety in compliance with the requirements of this section.

(4) If the commissioner approves a temporary release, the commissioner shall indicate such approval by signing and returning the temporary release to the person who requested such release. In connection with any approval the commissioner may impose any conditions the commissioner deems necessary, including, but not limited to, the posting of financial assurance to assure compliance with this section. Not more than 7 days after receipt of the temporary release signed by the commissioner, the person who requested such temporary release shall ensure that no alterations of any kind are made and that the temporary release is recorded in the land records of the municipality where the EUR is recorded and that the town clerk returns the original temporary release to the commissioner after recording.

(5) Any temporary release approved by the commissioner regarding recurring activities shall require that:

(A) Fourteen days before each recurring activity identified in the temporary release work plan is conducted, notice, on a form prescribed by the commissioner, shall be submitted to the commissioner; and

(B) Not more than 30 days after each time a recurring activity is completed, a completion report, containing the information required by subsection (e) of this section, shall be submitted to the commissioner.

(d) Review and approval of a Temporary Release from a NAUL by an LEP

(1) An LEP shall not and is not authorized to approve a temporary release from the restrictions and affirmative obligations of a NAUL unless:

(A) Not more than 180 days after the temporary release is recorded, any subject area disturbed by the activities authorized by the temporary release is returned to the condition described in the NAUL or if a new EUR is going to be placed on the subject area, to a condition that complies with the RSRs; and

(B) An LEP has not approved a temporary release authorizing activities within the same subject area within the previous 2 calendar years.

(2) (A) No LEP shall approve a temporary release under this subsection unless, not less than 14 days prior to any such approval, an LEP submits to the commissioner:

(i) Notice, on a form prescribed by the commissioner, that approval of a temporary release is proposed. Such release shall be prepared using a form prescribed by the commissioner; and

(ii) A statement signed by an LEP certifying that:

(I) The documents required under subsection (b) of this section have been prepared, are complete

and satisfy the requirements of subsection (b) of this section; and

(II) The proposed temporary release is eligible for LEP approval pursuant to subdivision (1) of this subsection.

(B) After receipt of the information submitted pursuant to subparagraph (A) of this subdivision, the commissioner may request in writing that the temporary release work plan be provided to the commissioner for review. If the commissioner requests the temporary release work plan for review, a temporary release may not be approved until the commissioner's review is complete.

(C) The commissioner may determine that the proposed temporary release shall be approved by the commissioner pursuant to subsection (c) of this section and not by an LEP. If the commissioner makes this determination, the commissioner shall notify, in writing, the LEP, who made the submission pursuant to subparagraph (A) of this subdivision, of this determination, stating the reasons for the decision in which case the temporary release shall not be approved by an LEP.

(3) An LEP shall not sign a temporary release from the restrictions and affirmative obligations of a NAUL, indicating approval of such release, unless and until such LEP determines that:

(A) (i) The commissioner has indicated, in writing, that approval by an LEP can proceed; or
(ii) More than 14 days have passed since the information specified in subdivision (2)(A) of this subsection was submitted to the commissioner and the commissioner has not requested that the temporary release work plan be submitted to the commissioner pursuant to subdivision (2)(B) of this subsection; and

(B) The requirements of this subsection have been satisfied, including, but not limited to, a determination that the temporary release proposed is eligible for LEP approval pursuant to subdivision (1) of this subsection; and

(C) The temporary release work plan required by subsection (b) of this section demonstrates that the proposed activities, if conducted in accordance with such plan will:

(i) Be protective of human health and the environment; and
(ii) Comply with all applicable legal requirements, including, but not limited to, the EUR regulations and the RSRs.

(4) If an LEP approves a temporary release pursuant to this subsection, the LEP shall indicate approval by signing and returning such release to the person who requested such release. Not more than 7 days after receipt of the temporary release signed by an LEP, the person who requested such release shall ensure that no alterations of any kind are made to such release and that the release is recorded in the land records of the municipality where the NAUL is recorded and that the town clerk returns the original temporary release to the commissioner after recording.

(e) Termination of a Temporary Release

(1) Not later than 60 days after activities specified in a temporary release work plan are completed or recurring activities described in a temporary release work plan are completed for the last time, a completion report shall be prepared and submitted to the commissioner. The completion report shall include:

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

(B) Time-dated photographs of the activities conducted on site while in progress and after completion, unless the taking of such photographs is prohibited by law;

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

(D) 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;

(E) 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;

(F) An explanation of how, after completion of activities authorized by the temporary release, the subject area meets the requirements of the EUR as recorded or, alternatively if the EUR is going to be replaced, or permanently released or terminated, the RSRs;

(G) An as-built plan, prepared using the survey or simplified survey required by section 22a-133q-4 of the EUR regulations as a base map, documenting site conditions after completion of the activities authorized by the temporary release; and

(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 other action regarding such non-compliance;

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

(2) If a temporary release approved by the commissioner authorizes recurring activities and the activities authorized by 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 to the commissioner after recording.

(f) Requirement to Provide Owner with Records

If the person conducting activities pursuant to a temporary release approved under this section is not the owner of the parcel, not more than 60 days after the completion of activities conducted under a temporary release, including completion reports for each recurring activity, such person shall provide the owner with a copy of all documents, records or reports, required under this section.

(g) Permanent Release of an ELUR and Termination of a NAUL

(1) An ELUR may be permanently released and a NAUL may be terminated only after the commissioner determines that the parcel has achieved compliance with the relevant standards imposed by the RSRs in such a manner that the restrictions imposed by the ELUR to be permanently released or the NAUL to be terminated, as applicable, are no longer required. No person shall record a permanent release of an ELUR or termination of a NAUL, unless such recording is authorized by the commissioner in compliance with the requirements of this subsection.

(2) An owner seeking permanent release from an ELUR or termination of a NAUL shall, on forms prescribed by the commissioner, prepare and submit to the commissioner a request and a Permanent Release/Termination Documentation Report. The Permanent Release/Termination Documentation Report shall:

(A) Include any documentation regarding the investigation, characterization, and remediation of releases necessary to demonstrate that the subject area is in compliance with the applicable provisions of the RSRs, including, but not limited to, maps and laboratory analytical results;

(B) Include a proposed permanent release or termination, as applicable, on forms prescribed by the

commissioner;

(C) Be signed and sealed by an LEP; and

(D) Include any other information specified by the commissioner on such form.

(3) (A) If the commissioner determines that the parcel complies with the RSRs without need for the restrictions imposed by the EUR, the commissioner shall sign such release or termination, as applicable, and return it to the owner for recording. Not more than 7 days after receipt of such release or termination signed by the commissioner, the owner shall record such release or termination and not more than 14 days after such recording shall send a copy of the permanent release or termination, bearing the volume and page at which it was recorded, to the commissioner.

(B) If the commissioner determines that the requirements of this subsection have not been satisfied, the commissioner shall notify the owner in writing stating the reasons that the request for a permanent release of an ELUR or termination of a NAUL, as applicable, has not been approved.

(4) If in connection with a permanent release of an ELUR or termination of a NAUL a new EUR is to be placed on a parcel, the new EUR shall:

(A) Comply with all applicable requirements of the EUR regulations, including, but not limited to, any recording requirements; and

(B) Be recorded simultaneously with any permanent release or termination.

(h) Determination of Invalidity for Non-Compliance

(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 regarding such non-compliance.

(2) If at anytime the commissioner determines that a temporary or permanent release of an EUR or termination of a NAUL was not recorded or was not recorded in compliance with the requirements of this section, the commissioner may record, or may require the owner to record, a termination of any temporary release or another temporary or permanent release of an EUR or termination of a NAUL, including a statement that any previously recorded release or termination was invalidly recorded and that the obligation to record any such release or termination has not been satisfied. An invalidly recorded temporary or permanent release of an EUR, or termination of a NAUL shall not satisfy any requirement of any statute or regulation requiring such release or termination. If the commissioner records a termination of a temporary release or a statement pursuant to this subsection, the commissioner shall notify the owner of the parcel.

(3) 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.

(NEW) Sec. 22a-133q-8. Post-recording Inspections and Corrective Actions

This section shall apply to all EURs, regardless of whether such EUR was recorded before, on, or after February 16, 2021:

(a) Inspections

The owner shall comply with the following inspection requirements;

(1) Annual Inspection

Between April 1st and July 31st of each year, an annual inspection that complies with the requirements of this section, shall be conducted. Within 30 days of any such inspection, a report of such inspection, using a form prescribed by the commissioner, shall be completed and shall be signed by the owner of the parcel. An annual inspection is not required in the year when a five-year comprehensive inspection is conducted pursuant to subdivision (2) of this subsection.

(2) Five-Year Comprehensive Inspections

Beginning in the year 2025, the owner of a parcel on which an EUR has been recorded shall ensure that an LEP is retained to conduct a comprehensive inspection that complies with the requirements of this section. The LEP shall conduct such inspection between April 1st and September 30th. Within 30 days of any such inspection, a report of such inspection, using a form prescribed by the commissioner, shall be completed by the LEP conducting the inspection and shall be signed and sealed by such LEP and signed by the owner.

(3) Commissioner Required Inspection

In addition to any inspections required by this subsection, at any time, the commissioner may require, in writing, that a comprehensive inspection that complies with the requirements of subdivision (2) of this subsection be conducted within a time period specified by the commissioner. If the commissioner fails to specify a time period, an inspection shall be conducted within 30 days of the commissioner notice that an inspection is required. Within 30 days of any such inspection, or such time specified by the commissioner, a report of such inspection, using a form prescribed by the commissioner, shall be completed by the LEP conducting the inspection and shall be signed and sealed by such LEP and signed by the owner.

(4) Inspection Requirements

Any inspection required by this subsection shall include:

(A) A physical inspection of the EUR subject areas to determine compliance with the restrictions and affirmative obligations of the EUR;

(B) A review of records, including analytical data, to verify compliance with the restrictions and affirmative obligations of an EUR, including, but not limited to, compliance with recordkeeping requirements and any monitoring required by the EUR;

(C) A review of the EUR factsheet to determine if, for each subject area, the EUR factsheet contains the restrictions and affirmative obligations and the conditions regarding such subject area. If the information contained on the EUR factsheet does not reflect the restrictions and affirmative obligations or is otherwise incorrect, or incomplete, a revised EUR factsheet shall be prepared, included in the inspection report, and the new factsheet shall replace the former factsheet for any purpose for which an EUR factsheet is required by the EUR regulations; and

(D) Any other information specified on the annual or five-year comprehensive inspection forms prescribed by the commissioner.

(b) **Corrective Action**

(1) If the owner knows, or reasonably should have known, of conditions which do not comply with any restriction or affirmative obligations of an EUR, or when the results of the inspection required by subsection (a) of this section indicate non-compliance with the restrictions or affirmative obligations of an EUR, the owner shall:

(A) Correct any non-compliance as soon as practicable, but no later than 90 days from the date the owner knew or reasonably should have known of such non-compliance; or

(B) Submit to the commissioner, on a form prescribed by the commissioner, a plan and a schedule for correction of any non-compliance, not more than 30 days after discovery of non-compliance, if the owner determines that or reasonably should have determined that correction of the non-compliance cannot be completed within 90 days. The owner shall comply with any comments or conditions from the commissioner regarding any plan or schedule submitted pursuant to this subdivision.

(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 other action regarding such non-compliance.

(3) 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.

(c) LEP Notification

If an LEP knows, or reasonably should know, of non-compliance with any requirement regarding an EUR, including, but not limited to, as a result of an inspection conducted pursuant to this subsection, the LEP shall immediately notify the owner in writing and, upon such notification, the owner shall comply with subsection (b) of this section. If requested by the commissioner, in writing, an LEP shall provide documentation of compliance with this requirement.

(NEW) Sec. 22a-133q-9. Miscellaneous Requirements

The owner of the parcel on which an EUR has been placed shall comply with the following requirements:

(a) EUR Factsheet

If the parcel on which an EUR has been placed is occupied by persons, even temporarily, the owner of such parcel shall ensure that a copy of the EUR factsheet is posted in a conspicuous location where such factsheet can be seen by the general public or is in the possession of the person responsible for maintenance or operation of the parcel. Any such factsheet shall be posted or kept at the parcel until the EUR is permanently released or terminated in whole. While this subsection shall apply to all EURs, regardless of when recorded, for EURs recorded before February 16, 2021, this subsection shall not take effect until April 17, 2021.

(b) Health and Safety Notification

Except on a parcel on which the only restriction is a residential activity restriction, effective February 16, 2021, if work is being done on a parcel subject to an EUR, regardless of when the EUR was recorded, prior to any work being performed in or on a subject area which is subject to a restriction or obligation other than, or in addition to, a residential activity restriction, a copy of the EUR and EUR factsheet shall be provided to the person responsible for overseeing the health and safety of workers who may be exposed to pollution from such work. Notice under this section shall be provided any time excavation is to occur on a parcel subject to an EUR, unless the only restriction imposed by such EUR is a restriction on residential activity.

(c) Document Retention

The current owner shall have and retain a copy of all records, documents and reports whose preparation is required by the EUR regulations. In addition, for an EUR recorded before February 16, 2021, the current owner shall have and retain a copy of all records, documents and reports in such owner's possession as of February 16, 2021 regarding an EUR, including, but not limited to, any record, document or report that was required to be maintained by sections 22a-133o to 22a-133r, inclusive, of the Connecticut General Statutes, and any regulations in effect pursuant thereto when the EUR was recorded. Any record, document, or report specified in this subsection may be reviewed by and shall be provided to the commissioner upon request, within the time specified in any such request and if no timeframe is specified, not more than 30 days after the receipt of a written request.

(d) Transfer of an interest in a parcel subject to an EUR

This section shall apply to the transfer of any interest in a parcel subject to an EUR after February 16, 2021, regardless of when any such EUR was recorded.

(1) (A) At least 30 days prior to the transfer of an interest in a parcel subject to an EUR by the owner, which is less than an ownership interest in the whole or part of a parcel, the owner shall provide to each person to whom an interest will be transferred a copy of the EUR and the EUR factsheet. Any such transferee shall retain a copy of all such documents in accordance with subsection (c) of this section.

(B) At least 30 days prior to the transfer of ownership of a parcel, or a portion of parcel subject to

an EUR, the owner shall provide to the transferee a copy of all documents whose preparation is required by the EUR regulations, including, but not limited to, a copy of the EUR, the EUR factsheet, and all annual and five-year inspection reports. Any such transferee shall retain a copy of all such documents in accordance with subsection (c) of this section.

(C) If the nature or terms of a transfer make compliance with the 30-day deadline to provide documents in subparagraphs (A) and (B) of this subdivision impractical, the owner shall ensure that such documents are provided to the transferee prior to the transfer of an interest or ownership.

(D) Any transferee provided documents pursuant to this subdivision shall retain, in accordance with subsection (c) of this section, all such documents.

(2) Notwithstanding the requirements of subdivision (1) of this subsection, if ownership of a parcel, or part of a parcel, subject to an EUR is transferred by condemnation or foreclosure,

(A) The condemning or foreclosing entity shall use reasonable efforts, documented in writing, to obtain all documents whose preparation is required by the EUR regulations, including, but not limited to, a copy of the EUR, the EUR factsheet, and all annual and five-year inspection reports; and,

(B) Each time ownership of such parcel, or part of a parcel, is subsequently transferred, all documents obtained pursuant to subparagraph (A) of this subdivision, and all other documents whose preparation is required by the EUR regulations in the time after the foreclosure or condemnation, including, but not limited to, all annual and five-year inspection reports, shall be provided to the transferee pursuant to the process and deadlines in subdivision (1) of this subsection.

(3) Not later than 30 days after the transfer of ownership of a parcel, or a portion of a parcel, subject to an EUR, the transferee shall provide written notice of such transfer to the commissioner on a form prescribed by the commissioner.

(4) Upon the transfer of an interest in, including, but not limited to, ownership of a parcel, subject to a NAUL, the transferor shall incorporate such NAUL, in full or by reference, into the instrument of transfer.

(e) Review or Inspection of Records by Commissioner

This section shall apply to all EURs, regardless of whether such EUR was recorded before, on, or after February 16, 2021:

(1) The commissioner may, at any time, request or review any record, document or report regarding an EUR, regardless of when such EUR was recorded. This includes, but is not limited to, a proposed or recorded EUR, any temporary or permanent release, termination, or any record, document or report related to a temporary allowable disturbance. The owner shall provide any such record, document or report to the commissioner upon request, within the time specified in any such request and if no timeframe is specified not more than 30 days after the receipt of a written request.

(2) The commissioner may inspect an EUR for compliance with the RSRs and this section and may also observe on-site any activities associated with a temporary release or a temporary allowable disturbance.

(3) 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 request records or information, or conduct an inspection.

(f) Temporary Reduction of Fees and Exemption From Fees

(1) For the period commencing on February 16, 2021 and ending two years after February 16, 2021, 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.

(2) Notwithstanding any provisions of the EUR regulations, the following entities are exempt from payment of any fee required by the EUR regulations:

(A) The state or any political subdivision of the state;

- (B) Any nonprofit organizations recognized under section 501(c)(3) of the Internal Revenue Code;
- (C) Any municipal economic development agency or entity created or operating under chapter 130 or 132 of the Connecticut General Statutes; or
- (D) Any person receiving federal, state, or municipal brownfields funding for investigation or remediation.

(g) Court Ruling Regarding an EUR

In the event that a court of competent jurisdiction rules that any portion of a recorded EUR is void or without effect, for any reason, no later than 45 days after any such ruling the owner of the subject parcel shall submit a copy of such restriction and such ruling to the commissioner. In this event, the owner shall comply with any schedule prescribed by the commissioner pursuant to section 22a-133r of the Connecticut General Statutes. “Ruling” for purposes of this section includes a ruling by a court, even if such ruling is the subject of an appeal.

Sec. 3. The Regulations of Connecticut State Agencies are amended by adding sections 22a-133q-app1 and 22a-133q-app2 as follows:

(NEW) Sec. 22a-133q-app1. Appendix 1

Appendix 1 to

Section 22a-133q-1 to Section 22a-133q-9 of the Regulations of Connecticut State Agencies
Application Form of Environmental Land Use Restriction (ELUR) for Commissioner Approval or
Licensed Environmental Professional’s (LEP’S) Approval

Instructions: Any ELUR pursuant to the Environmental Use Restriction Regulations (“EUR regulations”) shall be in the following form. This form shall be used for any ELUR approved by the Commissioner or a LEP pursuant to the EUR regulations. The appropriate information shall be inserted into the parentheses “{}”.

Instructions which are included in {parenthesis} and non-applicable options shall be deleted prior to signature.

After Recording Return to:

{Instructions - use current contact information -
Connecticut Department of Energy and Environmental Protection
Environmental Use Restriction Coordinator
Bureau of Water Protection and Land Reuse
Remediation Division
79 Elm Street
Hartford, Connecticut 06106-5127}
Re: {Remediation Division Identification Number}

**DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION AND GRANT OF
EASEMENT**

This Declaration of Environmental Land Use Restriction (“ELUR”) and Grant of Easement is made this {day} day of {month}, {year}, between {Grantor’s legal name} (the “Grantor”) and the Commissioner of the Department of Energy and Environmental Protection of the State of Connecticut (the “Grantee”).

W I T N E S S E T H:

WHEREAS, Grantor is the Owner in fee simple of certain real property (the “Property”) described below:

Street address: {Street address of property}

City/Town: {City or Town of property}

State: Connecticut

Assessor's Map: {map designation or not applicable}
And/or Assessors' Account Number {Assessors' Account Number or not applicable}
Volume and Page of Deed: {Volume and Page of Deed}

A description of the Property is attached hereto as Exhibit A, which is made a part hereof; and

WHEREAS, this Declaration of Environmental Land Use Restriction and Grant of Easement ("ELUR") and associated exhibits identified herein, collectively represent the ELUR for the subject property, and

WHEREAS, the Grantee has the authority to enter into this ELUR pursuant to sections 22a-5, 22a-6, and 22a-133o et seq. of the Connecticut General Statutes and Section 22a-133q-1 to 22a-133q-9, inclusive, of the Regulations of Connecticut State Agencies ("EUR regulations"); and

{Instructions: Select the language for Commissioner approval or for LEP approval, if eligible pursuant to section 22a-133y of the Connecticut General Statutes and 22a-133q-2(f) of the Regulations of Connecticut State Agencies, and delete the non-applicable option.}

{Language for Commissioner approval}

WHEREAS, the Grantee has determined that the ELUR set forth below is consistent with regulations adopted pursuant to section 22a-133k of the Connecticut General Statutes; and

WHEREAS, the Grantee has determined that this ELUR will effectively protect human health and the environment from the hazards of pollution on the property; and

WHEREAS, the Grantee's written acceptance of this ELUR is evidenced by the signature of the Commissioner or Commissioner's designee below.

{Language for LEP approval pursuant to section 22a-133y of the Connecticut General Statutes and 22a-133q-2(f) of the Regulations of Connecticut State Agencies}

WHEREAS, section 22a-133y of the Connecticut General Statutes includes provisions for the approval of an ELUR by a LEP;

WHEREAS, the LEP whose signature appears below has determined that the ELUR set forth below is consistent with the EUR regulations, section 22a-133q-1 to 22a-133q-9, inclusive, of the Regulations of Connecticut State Agencies, adopted pursuant to section 22a-133k and section 22a-133o of the Connecticut General Statutes; and

WHEREAS, the Grantee's written approval of this ELUR is evidenced by the signature and seal of the LEP below; and

WHEREAS, the LEP whose signature and seal appears below and in the EUR opinion attached hereto as Exhibit B has determined that this ELUR will effectively protect human health and the environment from the hazards of pollution.

WHEREAS, the EUR opinion attached hereto as Exhibit B which is made a part hereof, includes the information required by section 22a-133q-5 of the Regulations of Connecticut State Agencies.

WHEREAS, the Property or portion thereof that is subject to this ELUR (the "Subject Area") and identified in the survey attached hereto as Exhibit C which is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to, or migration of, such pollutants and to abate hazards to human health and the environment, and in accordance with the EUR opinion, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this ELUR to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the EUR opinion, the purpose of this ELUR is to assure that the use and activity at the Property and the Subject Area is restricted, obligations are carried out, and conditions maintained in accordance with the requirements of the EUR opinion, attached hereto as Exhibit B.

2. Restrictions and Obligations Applicable to the Subject Area. In furtherance of the purposes of this ELUR, Grantor shall assure that use, occupancy, and activity of and at the Subject Area are conducted in accordance with the EUR opinion attached hereto as Exhibit B. The Grantor shall fulfill the obligations and maintain the conditions necessary to meet the objectives of the ELUR in accordance with the requirements of the EUR opinion attached hereto as Exhibit B. Such restrictions shall remain in effect unless and until a release is obtained under paragraph 5 below.

3. Except as provided in paragraphs 4 and 5 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

- i. Create a risk of migration of pollutants or a potential hazard to human health or the environment; or
- ii. Result in a disturbance of the integrity of any engineered controls or remedies designed or utilized at the Subject Area to contain pollutants or limit human exposure to pollutants.

4. Emergencies. In the event of an unforeseen combination of circumstances or the resulting state that calls for immediate action to prevent a significant risk to human health or the environment, the destruction of property, or the disruption of public utility service, the application of paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending said paragraphs and the Grantor:

- i. Immediately notifies the Grantee of the emergency;
- ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- iv. After the emergency is abated, implements a plan approved in writing by the Grantee, on a schedule approved by the Grantee, to ensure that the Subject Area is remediated in accordance with sections 22a-133k-1 to 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies and restored to the condition described in the ELUR.

5. Release of ELUR; Temporary Allowable Disturbance. Except as provided in paragraph 4, the Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any Subject Area inconsistent with this ELUR unless and until, either:

- i. A Temporary Allowable Disturbance is implemented in accordance with section 22a-133q-6 of the Regulations of Connecticut State Agencies, or
- ii. A release has been approved by the Grantee in accordance with section 22a-133q-7 of the Regulations of Connecticut State Agencies.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, the Grantee's agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, a non-exclusive easement (the "Easement") over the Subject Area and over such other parts of the Property as are necessary for access to the Subject Area or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Area. Pursuant to this Easement, the Grantee, the Grantee's agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the Grantee deems necessary for any one or more of the following purposes:

- i. Ensuring that use, occupancy, and activities of and at the Property are consistent with this ELUR;
- ii. Ensuring that any remediation implemented complies with sections 22a-133k-1 to 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies;
- iii. Performing any additional investigations or remediation necessary to protect human health and the environment;
- iv. Ensuring that the Grantor is fulfilling the obligations of the ELUR and maintaining the conditions necessary to meet the purposes of the ELUR; and
- v. Ensuring the structural integrity of any engineered controls described in Exhibit B and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants.

7. Notice and Time of Entry onto Property. Entry onto the Property by the Grantee pursuant to this Easement shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Grantee determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this ELUR. The failure to include such provision shall not affect the enforceability, validity or applicability to the Property of this ELUR.

9. At least 30 days prior to transferring an interest in the property, the Grantor shall submit to the potential purchaser a complete copy of the EUR and copies of all documents required to be retained by the Owner pursuant to section 22a-133q-9 of the Regulations of Connecticut State Agencies.

10. Persons Entitled to Enforce Restrictions. The restrictions in this ELUR on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the Connecticut General Statutes.

11. Severability and Termination. If any court of competent jurisdiction determines that any provision of this ELUR is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the Judgment of the Court to the Grantee.

12. Binding Effect. All of the terms, covenants and conditions of this ELUR shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and any other party entitled to possession or use of the Property during such period of ownership or possession.

13. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and 22a-133q-1 of the Regulations of Connecticut State Agencies as said sections existed on the date of execution of this ELUR.

14. Burden of Proof. With respect to any claim or cause of action asserted by the Grantee against the Grantor under this ELUR, the Grantor shall bear the burden of proving that any activities at the subject area do not or will not violate the restrictions imposed by this ELUR, that the obligations of the ELUR have been carried out, and that conditions at the Subject Area have been maintained in accordance with the requirements of the EUR opinion. The Grantor, or its successors in interest, shall be responsible for demonstrating that use on the property is in conformity with the ELUR.

15. Inspections. The Grantor or its successors and assigns shall perform or cause to be performed the inspections required by section 22a-133q-8 of the Regulations of Connecticut State Agencies. If

the required inspection indicates non-compliance with the ELUR, the Grantor or its successors and assigns shall take the action required by section 22a-133q-8 of the Regulations of Connecticut State Agencies.

16. Non-Waiver. No failure on the part of the Grantee at any time to require performance of any term of this ELUR shall be taken or held to be a waiver of such term or in any way affect the Grantee's rights to enforce such term.

17. Nothing in this ELUR shall affect the Grantee's authority to institute any proceeding, or take any action to prevent or abate pollution, to recover costs and natural resource damages, and to impose penalties for violations of law or violations of this ELUR. If at any time the Grantee determines that the ELUR does not protect human health and the environment from the hazards of pollution, the Grantee may institute any proceeding, or take any action to require further investigation or further action to prevent or abate pollution. The approval of this ELUR relates only to pollution or contamination identified in the EUR opinion attached hereto as Exhibit B of this ELUR.

18. The Grantor shall retain copies of all documents related to this ELUR as required by section 22a-133q-9 of the Regulations of Connecticut State Agencies.

19. DEEP Contact Information. Any document required to be submitted to DEEP pursuant to this ELUR shall, unless otherwise specified in writing by DEEP, be directed to:

{Instructions- Use Current Contact Information}
 {Connecticut Department of Energy and Environmental Protection
 Environmental Use Restriction Coordinator
 Bureau of Water Protection and Land Reuse
 Remediation Division
 79 Elm Street
 Hartford, Connecticut 06106-5127
 Re: {Remediation Division Identification Number}}

Signature Page Follows

By signing below the undersigned certifies that:

- i. He or she is fully authorized to sign this ELUR.
- ii. The Grantor has the power and authority to enter into this ELUR, to grant the restrictions, fulfill the obligations, and maintain the conditions necessary to meet the objectives of the ELUR in accordance with the requirements of the EUR opinion attached hereto and made a part hereof as Exhibit B.

In witness whereof, the undersigned has/have executed this ELUR this {Day} day of {Month}, {Year}.

{Select Applicable Signature Block, and delete the non-applicable signature blocks}

If for an individual:

Witnessed by:	
{Signature of witness 1}	{Signature of Grantor}
{Printed or typed name of witness 1}	{Printed or typed name of Grantor}
{Signature of witness 2}	
{Printed or typed name of witness 2}	

If for an entity:

Witnessed by:	{Grantor's Name}
---------------	------------------

{Signature of witness 1}	By: _____
{Printed or typed name of witness 1}	{Printed or typed name of the authorized signatory for the entity}
	Its duly authorized {Title of the authorized signatory for the entity}
{Signature of witness 2}	
{Printed or typed name of witness 2}	

Mailing Address:

Street Address: {Street Address}

City/Town: {City or Town}

State and Zip Code: {State and Zip Code}

{Notarization Language for Grantor Acknowledgement - select appropriate notarization language from one of the choices below and delete the non-applicable notarization language.}

If the Grantor is an individual:

State of {_____}

County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

If the Grantor is a Corporation:

State of {_____}

County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself /herself to be the {title of officer} of {name of corporation}, a corporation, and that he/she, as such {title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as {title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

If the Grantor is a Limited Liability Company:

State of {_____}
 County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself/herself to be the {title of officer} of {name of limited liability company}, a (member managed or manager managed) limited liability company, and that he/she, as such {title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as {title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

If the Grantor is any other type of entity, provide appropriate language for the Grantor Entity below:

{insert appropriate certification language for an Acknowledgement as specified in Section 1-34 of the Connecticut General Statutes}

{Grantee Signature Block - select one of the two choices below, as applicable and delete the non- applicable option.}

{This choice is used for all ELURs except those approved pursuant to section 22a-133y of the Connecticut General Statutes.}

Grantee: The Grantee, the Commissioner of Energy and Environmental Protection or by the Commissioner's designee, {name and title.}

By: {signature of the Commissioner or the Commissioner's designee}

Date: {date of signature}

Name: {printed or typed name of Commissioner or Commissioner's designee}

Its Duly Authorized: {title of Commissioner or Commissioner's designee}

Mailing Address {use current contact information}:

{Connecticut Department of Energy and Environmental Protection

Environmental Use Restriction Coordinator

Bureau of Water Protection and Land Reuse

Remediation Division

79 Elm Street

Hartford, Connecticut 06106-5127

Re: {Remediation Division Identification Number}}

{This choice is used solely for ELUR approved pursuant to section 22a-133y of the Connecticut General Statutes}

Grantee: The Grantee, the Commissioner of Energy and Environmental Protection, by the undersigned LEP as authorized pursuant to section 22a-133y of the Connecticut General Statutes.

LEP, duly authorized, for Grantee, the Commissioner of Energy and Environmental Protection:

By: {Signature of the LEP}

Date: {Date of signature}

Name: {Printed or typed name of LEP}

LEP, duly authorized, pursuant to section 22a-133y of the Connecticut

General Statutes

Grantee Mailing Address {use current contact information} :
 {Connecticut Department of Energy and Environmental Protection
 Environmental Use Restriction Coordinator
 Bureau of Water Protection and Land Reuse
 Remediation Division
 79 Elm Street
 Hartford, Connecticut 06106-5127
 Re: {Remediation Division Identification Number}}
 Information for LEP, duly authorized:
 Name: {name of LEP}
 License Number: {License Number}
 Title, if applicable: {Title}
 Company, if applicable: {Name of Company}
 Mailing Address:
 Street Address, City/Town, State, Zip Code: {Street Address, City/Town, State, and Zip Code}
 Witnesses:
 {Signature }
 Signature
 {Printed/typed name }
 Printed/typed name
 {Signature }
 Signature
 {Printed/typed name }
 Printed/typed name

Instructions Notarization Language for LEP, duly authorized:

State of {_____}
 County of {_____}
 On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.
 In witness whereof I hereunto set my hand.
 {Choose Notary Public or Commissioner of the Superior Court}
 Date Commission Expires {date}

(NEW) Sec. 22a-133q-app2. Appendix 2

Appendix 2 to

Section 22a-133q-1 to Section 22a-133q-9 of the Regulations of Connecticut State Agencies
 Application Form of Notice of Activity and Land Use Restriction (NAUL)
 For Commissioner's or Licensed Environmental Professional's (LEP's) Approval

Instructions: Any NAUL pursuant to Environmental Use Restriction Regulations ("EUR regulations") shall be in the following application form. This form shall be used for any NAUL

approved by the Commissioner or a LEP pursuant to the EUR regulations. The appropriate information shall be inserted into the parentheses “{}”.

Instructions which are included in {parenthesis} and non-applicable options shall be deleted prior to signature.

After Recording Return to:

{Instructions- use current contact information -
 Connecticut Department of Energy and Environmental Protection
 Environmental Use Restriction Coordinator
 Bureau of Water Protection and Land Reuse
 Remediation Division
 79 Elm Street
 Hartford, Connecticut 06106-5127
 Re: {Remediation Division Identification Number}}

DECLARATION OF NOTICE OF ACTIVITY AND USE LIMITATION

This Declaration of Notice of Activity and Use Limitation (“NAUL”) is made this {day} day of {month}, {year}, by {Owner’s legal name} (the “Owner”).

W I T N E S S E T H:

WHEREAS, {Name of property Owner(s)}, is/are the Owner(s) in fee simple of certain real property (the “Property”) described below:

Street address: {Street address of property}
City/Town: {City or Town of property}
State: Connecticut
Assessor’s Map: {Map Designation or Not Applicable}
And/or Assessors’ Account Number {Assessors’ Account Number or Not Applicable}
Volume and Page of Deed: {Volume and Page of Deed}

A description of the Property is attached hereto as Exhibit A, and which is made a part hereof; and
 WHEREAS, the NAUL and associated exhibits identified herein, collectively represent the NAUL for the Property, and

WHEREAS, the LEP has the authority to sign and seal this NAUL pursuant to section 22a-133o of the Connecticut General Statutes and section 22a-133q-3 of the Regulations of Connecticut State Agencies; and the Commissioner of Energy and Environmental Protection (“Commissioner”) has the authority to sign this NAUL pursuant to sections 22a-5, 22a-6, and 22a-133o of the Connecticut General Statutes; and

WHEREAS, remediation of the Property has been conducted in accordance with section 22a-133k of the Connecticut General Statutes; and

{Instructions: select the language for Commissioner approval or for LEP, as applicable and delete the non-applicable option}

{Language for Commissioner approval}

WHEREAS, the Commissioner has determined that the NAUL set forth below is consistent with regulations adopted pursuant to section 22a-133k of the Connecticut General Statutes; and
 WHEREAS, the Commissioner has determined that this NAUL will effectively protect human health and the environment from the hazards of pollution on the property; and

WHEREAS, the Commissioner's written approval of this NAUL is evidenced by the signature of the Commissioner or the Commissioner's designee below.

{Language for LEP approval}

WHEREAS, the LEP whose signature appears below has determined that the NAUL set forth below is consistent with the EUR regulations, sections 22a-133a-1 to 22a-133q-9, inclusive, of the Regulations of Connecticut State Agencies adopted pursuant to section 22a-133k and section 22a-133o of the Connecticut General Statutes; and

WHEREAS, the written approval of this NAUL is evidenced by the signature and seal of the LEP below; and

WHEREAS, the LEP whose signature and seal appears below and in the EUR opinion attached hereto as Exhibit B has determined that this NAUL will effectively protect human health and the environment from the hazards of pollution.

WHEREAS, the EUR opinion attached hereto as Exhibit B which is made a part hereof, includes the information required by section 22a-133q-5 of the Regulations of Connecticut State Agencies.

WHEREAS, the Property or portion thereof that is subject to this NAUL ("the Subject Area") and identified in the survey attached hereto as Exhibit C which is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to, or migration of, such pollutants and to abate hazards to human health and the environment, and in accordance with the EUR opinion, the Owner desires to implement a NAUL to provide notice of the presence of pollution at the Subject Areas; and

WHEREAS, as required by section 22a-133o of the Connecticut General Statutes, the Owner and subsequent Owners of interests in the property or those Owners of interests who have signed the NAUL, such Owners' successors and assigns, and any person who has a license to use such Property or to conduct remediation on any portion of such Property shall adhere to the NAUL; and

NOW, THEREFORE, the Owner desires to implement this NAUL as follows:

1. Purpose. The provisions of this NAUL are set forth in the EUR opinion, attached hereto as Exhibit B.
2. Restrictions and Obligations Applicable to the Subject Area. In furtherance of the purposes of this NAUL, the Owner shall assure that use, occupancy, and activity of and at the Subject Area are conducted in accordance with the requirements of the EUR opinion, attached hereto as Exhibit B. The Owner shall fulfill the obligations and maintain the conditions necessary to meet the objectives of the NAUL in accordance with the requirements of the EUR opinion, attached hereto as Exhibit B. Such restrictions shall remain in effect unless and until a release is obtained under paragraph 5 below.
3. Except as provided in paragraphs 4 and 5 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:
 - i. Create a risk of migration of pollutants or potential hazard to human health or the environment; or
 - ii. Result in a disturbance of the integrity of any engineered controls or remedies designed or utilized at the Subject Area to contain pollutants or limit human exposure to pollutants.
4. Emergencies. In the event of an unforeseen combination of circumstances or the resulting state that calls for immediate action to prevent a significant risk to human health or the environment, the destruction of property, or the disruption of public utility service, the application of paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending said paragraphs and the Owner:
 - i. Immediately notifies the Department of Energy and Environmental Protection ("DEEP") of

the emergency;

- ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- iv. After the emergency is abated, implements a plan approved in writing by a LEP or the Commissioner, on a schedule approved by the LEP or the Commissioner, to ensure that the Subject Area is remediated in accordance with sections 22a-133k-1 to 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies and restored to the condition described in the NAUL.

5. Release of NAUL; Temporary Allowable Disturbance. Except as provided in paragraph 4, the Owner shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any Subject Area inconsistent with this NAUL unless and until, either:

- i. A temporary allowable disturbance is implemented in accordance with section 22a-133q-6 of the Regulations of Connecticut State Agencies, or
- ii. A release has been approved in accordance with section 22a-133q-7 of the Regulations of Connecticut State Agencies.

6. Commissioner's Right of Access. The Owner shall grant access to the property to the Commissioner as required by section 22a-133q-9(e) of the Regulations of Connecticut State Agencies.

7. Notice and Time of Entry onto Property. Entry onto the Property by the Commissioner shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Commissioner determines that immediate entry is necessary to protect human health or the environment.

8. Incorporation of NAUL in Other Documents. As required by section 22a-133o of the Connecticut General Statutes, upon transfer of any interest in or a right to use property, or a portion of property that is subject to a NAUL, the Owner of such land, any lessee of such land and any person who has the right to subdivide or sublease such property, shall incorporate such notice in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements and any other instrument of transfer provided the failure to incorporate such notice shall not affect the enforceability, validity or applicability of any such NAUL. Within 30 days of transfer of any interest in, or right to use the Property, or portion of property subject to a NAUL, the Owner shall submit notice to the Commissioner on a form prescribed by the Commissioner.

9. At least 30 days prior to transferring an interest in the property, the Owner shall submit to the potential purchaser a complete copy of the EUR and copies of all documents required to be retained by the Owner pursuant to section 22a-133q-9 of the Regulations of Connecticut State Agencies.

10. Persons Entitled to Enforce Restrictions. The restrictions in this NAUL on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the Connecticut General Statutes.

11. Severability and Termination. If any court of competent jurisdiction determines that any provision of this NAUL is invalid or unenforceable, the provisions of section 22a-133q-3 of the Regulations of Connecticut State Agencies and section 22a-133r of the Connecticut General Statutes shall apply.

12. Binding Effect. All of the terms, covenants and conditions of this NAUL shall be binding on those who are bound by the operation of section 22a-133o of the Connecticut General Statutes.

13. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and 22a-133q-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this NAUL.

14. Burden of Proof. With respect to any claim or cause of action asserted by the Commissioner

against the Owner under this NAUL, the Owner shall bear the burden of proving that any activities at the Subject Area do not or will not violate the restrictions imposed by this NAUL, that the obligations of the NAUL have been carried out, and that conditions at the Subject Area have been maintained in accordance with the requirements of the EUR opinion. The Owner, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the NAUL.

15. Inspections. The Owner or its successors and assigns shall perform or cause to be performed the inspections required by section 22a-133q-8 of the Regulations of Connecticut State Agencies. If the required inspection indicates non-compliance with the NAUL, the Owner or his successors and assigns shall take the action required by section 22a-133q-8 of the Regulations of Connecticut State Agencies.

16. Non-Waiver. No failure on the part of the Commissioner at any time to require performance of any term of this NAUL shall be taken or held to be a waiver of such term or in any way affect the Commissioner's rights to enforce such term.

17. Foreclosure of a Mortgage, Lien, or other Encumbrance. If a NAUL is extinguished by foreclosure of a mortgage, lien or other encumbrance, the requirement of section 22a-133o(c)(8) of the Connecticut General Statutes shall apply.

18. Nothing in this NAUL shall affect the Commissioner's authority to institute any proceeding, or take any action to prevent or abate pollution, to recover costs and natural resource damages, and to impose penalties for violations of law or violations of this NAUL. If at any time the Commissioner determines that the NAUL does not protect human health and the environment from the hazards of pollution, the Commissioner may institute any proceeding, or take any action to require further investigation or further action to prevent or abate pollution. The approval of this NAUL relates only to pollution or contamination identified in the EUR opinion attached hereto as Exhibit B of this NAUL.

19. The Owner shall retain copies of all documents required by section 22a-133q-9 of the Regulations of Connecticut State Agencies.

20. DEEP Contact Information: Any document required to be submitted to DEEP pursuant to this NAUL shall, unless otherwise specified in writing by DEEP, be directed to:

{Instructions- use current contact information}

{Connecticut Department of Energy and Environmental Protection

Environmental Use Restriction Coordinator

Bureau of Water Protection and Land Reuse

Remediation Division

79 Elm Street

Hartford, Connecticut 06106-5127

Re: {Remediation Division Identification Number}

By signing below, the undersigned certifies that:

a. He or she is fully authorized to sign this NAUL;

b. The Owner has the power and authority to enter into this NAUL to grant the restrictions, fulfill the obligations, and maintain the conditions necessary to meet the objectives of the NAUL in accordance with the requirements of the EUR opinion attached hereto and made a part as Exhibit B;

c. The Owner has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Owner's intention to enter into this NAUL in accordance with section 22a-133o of the Connecticut General Statutes;

In witness whereof, I/we, {Owner's name}, have hereunto set my/our hands this {day} day of {month}, {year}.

{Select Applicable Signature Block, and delete the non-applicable signature blocks}

If for an individual:

Witnessed by:	
{Signature of Witness 1}	{Signature of Owner}
{Printed or Typed Name of Witness 1}	{Printed or Typed Name of Owner}
{Signature of Witness 2}	
{Printed or Typed Name of Witness 2}	

If for an entity:

Witnessed by:	{Owner's Name}
	By: _____
{Signature of Witness 1}	{Printed or Typed Name of the Authorized Signatory for the Entity}
{Printed or Typed Name of Witness 1}	Its duly authorized {Title of the Authorized Signatory for the Entity}
{Signature of Witness 2}	
{Printed or Typed Name of Witness 2}	

Mailing Address:

Street Address: {Street Address}

City/Town: {City or Town}

State and Zip Code {State and Zip Code}

{Notarization Language for Owner Acknowledgement - select appropriate notarization language from one of the choices below and delete the non-applicable notarization language.}

If the Owner is an individual:

State of {_____}

County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

If the Owner is a Corporation:

State of {_____}

County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself /herself to be the {title of officer} of {name of corporation}, a corporation, and that he/she, as such {title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as {title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

If the Owner is a Limited Liability Company:

State of {_____}

County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself/herself to be the {title of officer} of {name of limited liability company}, a (member managed or manager managed) limited liability company, and that he/she, as such {title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as {title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

{If the Owner is any other type of entity, provide appropriate language for the Owner Entity below} {insert appropriate certification language for an Acknowledgement as specified in Section 1-34 of the Connecticut General Statutes}

{Instructions – DEEP Signature Block - Select one of the two choices below, as applicable and delete the non-applicable option.}

{This choice is used for NAULs approved by the Commissioner}

DEEP: The Commissioner of Energy and Environmental Protection or by the Commissioner's designee

By: {signature of the Commissioner or Commissioner's designee}

Date: {date of signature}

Name: {printed or typed name of Commissioner or Commissioner's designee}

Its Duly Authorized: {title of Commissioner or Commissioner's designee}

Mailing Address {use current contact information}:

{Connecticut Department of Energy and Environmental Protection

Environmental Use Restriction Coordinator

Bureau of Water Protection and Land Reuse

Remediation Division

79 Elm Street

Hartford, Connecticut 06106-5127

Re: {Remediation Division Identification Number}}

{This choice is used solely for NAULs approved by a LEP pursuant to section 22a-133o(c)(5)(B) of the Connecticut General Statutes and 22a-133q-3 of the Regulations of Connecticut State Agencies.}

DEEP: The Commissioner of Energy and Environmental Protection, by the undersigned LEP pursuant to section 22a-133o(c)(5)(B) of the Connecticut General Statutes and 22a-133q-3 of the Regulations of Connecticut State Agencies.

LEP, duly authorized, for the Commissioner of Energy and Environmental Protection: By:

{signature of the LEP}

Date: {date of signature}

Name: {printed or typed name of LEP}

LEP, duly authorized, pursuant to section 22a-133o(c)(5)(B) of the Connecticut General Statutes and 22a-133q-3 of the Regulations of Connecticut State Agencies.

DEEP Mailing Address:

{Connecticut Department of Energy and Environmental Protection

Environmental Use Restriction Coordinator

Bureau of Water Protection and Land Reuse

Remediation Division

79 Elm Street

Hartford, Connecticut 06106-5127

Re: {Remediation Division Identification Number}}

Information for LEP, duly authorized:

Name: {name of LEP}

License Number: {License Number}

Title, if applicable: {title}

Company, if applicable: {name of Company}

Mailing Address:

Street Address, City/Town, State, Zip Code: {Street Address, City/Town, State, and Zip Code}

Witnesses:

{Signature }

Signature

{Printed/typed name }

Printed/typed name

{Signature }

Signature

{Printed/typed name }

Printed/typed name

Instructions Notarization Language for LEP, duly authorized:

State of {_____}

County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court}
 Date Commission Expires {insert date}

Owner of an Interest:

{Select the following signature block when an Owner of an interest signs a NAUL pursuant to section 22a-133o of the Connecticut General Statutes and section 22a-133q-3 of the Regulations of Connecticut State Agencies and delete the non-applicable signature blocks.}

{Name of Owner} is the Owner of an interest which conflicts with the conditions or purposes of this notice, executed on {date} and recorded at {volume and page} of the {name of municipality} land records. By signing this NAUL, {Name of Owner} hereby agrees to subject such interest to the conditions or purposes described herein, pursuant to Conn. Gen. Stat. § 22a-133o(6).

By signing below, the undersigned certifies that he or she is fully authorized to sign this NAUL.

If for an individual:

Witnessed by:	
{Signature of Witness 1}	{Signature of Owner}
{Printed or Typed Name of Witness 1}	{Printed or Typed Name of Owner}
{Signature of Witness 2}	
{Printed or Typed Name of Witness 2}	

OR

If for an entity:

Witnessed by:	{Owner's Name}
{Signature of Witness 1}	By:
{Printed or Typed Name of Witness 1}	{Printed or Typed name of the Authorized Signatory for the Entity}
	Its Duly Authorized {Title of the Authorized Signatory for the Entity}
{Signature of Witness 2}	
{Printed or Typed Name of Witness 2}	

Mailing Address:

Street Address: {Street Address}

City/Town: {City or Town}

State and Zip Code: {State and Zip Code}

{Notarization Language for Owner Acknowledgement - select appropriate notarization language from one of the choices below and delete the non-applicable notarization language.}

If the Owner is an individual:

State of {_____}
 County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) {choose is or are} subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

If the Owner is a Corporation:

State of {_____}
 County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself /herself to be the {title of officer} of {name of corporation}, a corporation, and that he/she, as such {title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as {title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court}
 Date Commission Expires {date}

OR

If the Owner is a Limited Liability Company:

State of {_____}
 County of {_____}

On this {date} day of {month}, {year} before me, {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself/herself to be the {title of officer} of {name of limited liability company}, a (member managed or manager managed) limited liability company, and that he/she, as such {title of officer}, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as {title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date Commission Expires {date}

OR

{If the Owner is any other type of entity, provide appropriate language for the Owner Entity}

below:

{insert appropriate certification language for an Acknowledgement as specified in Section 1-34 of the Connecticut General Statutes}



79 Elm Street • Hartford, CT 06106-5127

www.ct.gov/deep

Affirmative Action/Equal Opportunity Employer

Statement of Purpose

The Environmental Use Restriction Regulations Regs., Conn. State Agencies §§ 22a-133q-1 to 22a-133q-9

The EUR Regulations set out the process for obtaining and managing an Environmental Use Restriction (“EUR”). Authorized by section 22a-133o of the Connecticut General Statutes, EURs are a statutorily created mechanism to permanently restrict use of, or activity on, a remediated parcel of land and in some cases, can require that affirmative actions be taken to maintain remedial measures on a parcel.

An EUR is required to implement certain remedies or exemptions identified in the Remediation Standards Regulations, R.C.S.A. § 22a-133k-1 et seq. (the “RSRs”). The EUR Regulations prescribe rules for the two types of EURs, Environmental Land Use Restrictions (“ELURs”) and Notice of Activity and Use Limitations (“NAULs”). The proposed EUR Regulations update and streamline the process for approving EURs and, in conjunction with the proposed amendments to the RSRs, allow, for the first time, use of NAULs. The EUR Regulations provide new tools implement and manage an EUR which can be used without Department approval on certain parcels undergoing remediation.

The EUR Regulations set out the process for obtaining an EUR, including standards for associated title work. The proposed rules provide for approval of an NAUL by a Licensed Environmental Professional (“LEP”). The proposed regulations also contain detailed standards for property surveys to be prepared when proposing an EUR and specify the format and content of an EUR Opinion, a document prepared by an LEP and recorded as part of an EUR, which describes the substances remaining on the parcel and the restrictions or obligations imposed by the EUR. The proposed regulations also codify tools for authorizing work on a parcel that is the subject of an EUR when such work would otherwise be prohibited by the EUR. Two tools are identified: Temporary Allowable Disturbances, which allow digging into restricted soil in a limited area and for a limited time, permitted without approval of the Commissioner, and Temporary Releases which allow longer and larger disturbances after receiving approval from the Commissioner. LEPs will also be able to approve some temporary releases on parcels where an NAUL is in effect. Requirements for record keeping; notice to future owners of a parcel, or of an interest in a parcel, subject to an EUR at the time of transfer; ongoing inspections, and other administrative measures associated with use of an EUR are also set out.

The EUR Regulations replace the existing regulations limited only to ELURs and provide greater certainty for EURs as noted above. Certain provisions of the EUR Regulations are necessary to implement concurrently proposed amendments to the RSRs. Other than the RSR which are being promulgated in conjunction with the EUR Regulations, the proposed amendments will not affect any other existing regulations or law.

IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES

This form is to be used for proposed permanent and technical amendment regulations only and must be completed in full.

AGENCY CERTIFICATION

Department of Energy and Environmental Protection

Proposed Regulation Concerning

Environmental Use Restrictions

eRegulations System Tracking Number **PR2017-071**

I hereby certify the following:

(1) The above-referenced **regulation** is proposed pursuant to the following statutory authority or authorities: **Section 22a-133q**

For technical amendment regulations proposed without a comment period, complete #2 below, then skip to #8.

(2) As permitted by Section 4-168(h) of the *Connecticut General Statutes*, the agency elected to proceed without prior notice or hearing and posted the text of the proposed technical amendment regulation on eRegulations System website on **<<select and enter the date of posting>>**.

For all other non-emergency proposed regulations, complete #3 - #7 below, then complete #8)

(3) The agency posted notice of intent with a specified comment period of not less than 30 days to the eRegulations System website on **September 27, 2019**.

(4) *(Complete one)* ☐ No public hearing held or was required to be held. **OR** ☒ One or more public hearings were held on: **November 4, 2019**.

(5) The agency posted notice of decision to move forward with the proposed regulation to the eRegulations System website on **July 20, 2020**.

(6) *(Complete one)* ☐ No comments were received. **OR** ☒ Comments were received and the agency posted the statements specified in subdivisions (1) and (2) of CGS Section 4-168(e) to the eRegulations System website on **July 20, 2020**.

(7) The final wording of the proposed regulation was posted to the eRegulations System website on **August 14, 2020 and the updated final version for resubmittal to the Legislative Regulation Review Committee was posted on December 17, 2020**.

(8) Subsequent to approval for legal sufficiency by the Attorney General and approval by the Legislative Regulation Review Committee, **the final regulation shall be effective**

(Check one and complete as applicable)

☒ When posted to the eRegulations System website by the Secretary of the State.

OR ☐ On _____

(Date must be a specific calendar date not less than 11 days after submission to the Secretary of the State)

Katherine S. Dykes
SIGNED
 (Head of Board, Agency or Commission,
 or duly authorized deputy)

Commissioner

OFFICIAL TITLE

12/17/2020

DATE


OFFICE OF THE ATTORNEY GENERAL REGULATION CERTIFICATION

Agency: Connecticut Department of Energy and
Environmental Protection

REGULATION NUMBER PR2017-071

**This Regulation is hereby APPROVED by the Attorney
General as to legal sufficiency in accordance with Connecticut
General Statutes Section 4-169.**

DATE: December 28, 2020

Signed: Joseph Rubin,  Digitally signed by Joseph
Rubin, Asst. Dep. A.G.
Asst. Dep. A.G. Date: 2020.12.28 17:49:10
-05'00'

***Joseph Rubin, Assistant Deputy Attorney General
Duly Authorized***

The Connecticut General Assembly

Legislative Regulation Review Committee

Senator James Maroney
Senate Chair



Representative Nicole Klarides-Ditria
House Chair

Official Record of Committee Action

January 26, 2021

Agency: Department of Energy & Environmental Protection
Description: Environmental Use Restrictions
LRRC Regulation Number: 2020-016B
eRegulation Tracking Number: PR2017-071

The above-referenced regulation has been

Approved with Technical Corrections

by the Legislative Regulation Review Committee in accordance
with CGS Section 4-170.

Kirstin L. Breiner
Committee Administrator



State of Connecticut
Office of the Secretary of the State

Confirmation of Electronic Submission

Re: Regulation of the Department of Energy and Environmental Protection
concerning Environmental Use Restrictions
eRegulations System Tracking Number PR2017-071
Legislative Regulation Review Committee Docket Number 2020-016B

The above-referenced regulation was electronically submitted to the Office of the Secretary of the State in accordance with Connecticut General Statutes Section 4-172 on February 8, 2021.

Said regulation is assigned Secretary of the State File Number 6331.

The effective date of this regulation is February 16, 2021.

A handwritten signature in black ink, reading "Denise W. Merrill".

Denise W. Merrill
Secretary of the State
February 16, 2021

By:

/s/ Kristin M. Karr

Kristin M. Karr
Administrative Law
Information Systems Manager