March 2, 2021

Connecticut RSRs and EUR Regulations, Effective as of February 16

On February 16, amendments to Connecticut's Remediation Standard Regulations (RSRs, also referred to as Wave 2) and Environmental Use Restrictions (EUR) regulations became effective. The published regulations are available at the following links: the published RSRs and the published EUR regulations. As we reviewed in our prior alert, these regulatory changes—now and moving forward—will apply to properties and businesses in a Connecticut Department of Energy and Environmental Protection (DEEP) remediation program. The 2021 revisions introduce changes and clarifications to the existing RSRs, including those dealing with polluted soils containing pesticides, potential vapor migration from groundwater into buildings, management of widespread polluted fill, and use of pollutant background concentrations. The EUR regulations replace the existing ELUR regulations, and while the revisions retain the Environmental Land Use Restriction (ELUR) mechanism, they also prescribe rules for the implementation of new Notice of Activity and Use Limitations (NAULs). As DEEP implements these changes, the regulated community should be aware of the following based on informal guidance from DEEP:

- Applications made under the 'old' RSRs and ELUR regulations may be withdrawn from DEEP and instead pursued using new LEP-implemented options when they apply.
- Verifications and ELURs finalized prior to February 16 are not affected.
- For ELUR applications submitted to DEEP before February 16 but not yet finalized, DEEP will distinguish between applications that were administratively "complete" on or before the effective date of the regulations and those either submitted after the effective date of the EUR regulations or not deemed complete prior to the effective date of the EUR regulations.
    - ELUR applications for which DEEP, on or before February 16, issued a Notice of Administrative Completeness (NOAC), or communicated to the applicant that the application is administratively complete and that DEEP will be issuing an NOAC, will be reviewed under the 'old' regulations.
    - For ELUR applications that were not 'complete' by February 16, the new regulations will apply.
- Additionally, DEEP is in the process of preparing updated ELUR forms to be used for new ELUR requests under the now-effective EUR regulations. These forms will be available on the DEEP website once they are finalized by DEEP.

Day Pitney will continue to track and report on the implementation of the revised regulations. If you have any questions regarding the amendments to the RSRs or the EUR regulations, please feel free to contact any of the attorneys listed in the sidebar.

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