February 2, 2021

# Coming Soon: Significant Changes to Connecticut's RSR and EUR Regulations

The Connecticut Department of Energy and Environmental Protection (DEEP) is poised to implement important changes at Connecticut sites requiring remediation through revisions to DEEP's Remediation Standard Regulations (RSRs) and Environmental Use Restriction Regulations (EUR Regulations). Once in effect, the revised regulations will impact how sites are cleaned up in Connecticut in a number of ways—some large and some small. Properties and businesses in a DEEP remediation program—now and moving forward—will be subject to these regulatory changes.

On January 26, the Connecticut General Assembly's Legislative Regulation Review Committee accepted the recommendations of the Legislative Commissioner's Office (LCO) and approved, with technical corrections, the revised amendments to the RSRs and the EUR Regulations proposed by DEEP. DEEP has until February 9 to implement the LCO's requested technical corrections. These corrections are set forth in the LCO's January 26 RSRs Memorandum and January 26 EUR Regulations Memorandum. On or before February 9, DEEP will send the final versions of the amended regulations to the Office of Secretary of the State for publication on the eRegulations System. The adopted amendments to the RSRs and EUR Regulations are effective upon publication by the Office of Secretary of the State.

The RSRs specify the standards for the remediation of environmental pollution in soil and groundwater at Connecticut properties, including but not limited to parcels eligible to become revitalized and redeveloped brownfields. The RSRs were first adopted by DEEP in 1996 and were then revised in 2013. The soon-to-be-effective revisions to the RSRs are referred to as "Wave 2." DEEP's existing EUR Regulations provide the requirements for obtaining and managing Environmental Land Use Restrictions (ELURs). ELURs are statutorily created mechanisms that impose restrictions on the use of a remediated property. While the soon-to-be-effective EUR Regulations will replace the existing ELUR regulations, they retain the ELUR mechanism and prescribe rules for the implementation of the new Notice of Activity and Use Limitations (NAULs).

The approved amendments to the RSRs and the EUR Regulations will significantly impact the remediation process at Connecticut properties. Within the amendments are additional compliance tools, including tools that a Licensed Environmental Professional (LEP) can implement without DEEP's prior approval. These tools may include the use of NAULs. The amendments extend LEP authority to approve the following decisions leading up to verification under certain circumstances: (1) new alternative surface water protection criteria; (2) alternative groundwater protection criteria; (3) alternative pollutant mobility criteria; (4) widespread polluted fill variance for coastal boundary areas; and (5) predesigned engineered controls for direct exposure criteria exceedances. Approval authority regarding site-specific residential volatilization criteria remains with DEEP.

In a targeted effort to reduce potential vapor migration from groundwater into buildings, the amendments revise the existing 15-foot proximity factor to ground surface or a building for volatile organic substances (VOSs). A VOS is defined as "an organic substance that has a high vapor pressure and low boiling point at room temperature." With the amendments, the proximity factor will be 10 feet for a new subcategory of volatile petroleum substances (VPSs), defined as VOSs "found in gasoline, diesel fuel, fuel oil, heating oil, kerosene, jet fuel, or similar fuels" and also VOSs "that may have been used as fuel additives." For any VOS that is not a VPS, the proximity factor increases from 15 feet to 30 feet. The amendments provide more stringent volatilization criteria for groundwater contaminated with certain VOSs. There will be a transition period for properties with VOS-contaminated groundwater that meet certain prerequisites. During this transition period, compliance may be measured using a combination of the new and current volatilization criteria and proximity factors.

Another important change is the addition of exemptions for polluted soil containing pesticides. This change affects the need to remove high-quality agricultural soil offsite and the reuse of pesticide-impacted, high-quality topsoil on agricultural land. The amendments revise how background concentrations are defined and used, as well as related public notice requirements.

Once published by the Office of Secretary of the State, you will find the final approved amendments here.

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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