

January 25, 2021

Resubmitted Proposed Wave 2 RSRs and EUR Regulations on January 26 LRRC agenda

On Tuesday, January 26, the Connecticut General Assembly's Legislative Regulation Review Committee (LRRC) will meet a third time to consider proposed amendments to the Remediation Standards Regulations (RSRs) and the Environmental Use Restriction (EUR) Regulations as resubmitted by the Connecticut Department of Energy and Environmental Protection (DEEP) on January 4. These submittals—the [January 2021 RSRs resubmittal](#) and the [January 2021 EUR Regulations resubmittal](#)—were filed following the LRRC's second rejection of the DEEP's proposed amendments.

After our prior [Alert](#) on this topic and the LRRC's initial rejection without prejudice of both sets of proposed regulations on October 27, 2020, the LRRC met on November 24, 2020, to consider revisions submitted by the DEEP. At the November meeting, the LRRC again rejected both sets of proposed regulations without prejudice because of concerns set forth in the [November RSRs Memorandum](#) and the [November EUR Regulations Memorandum](#) from the Legislative Commissioner's Office (LCO).

The DEEP's January 2021 RSRs resubmittal is in response to the LCO's five substantive concerns and 75 technical concerns regarding the DEEP's 2020 RSRs resubmittal. The DEEP's January 2021 EUR Regulations resubmittal is in response to the LCO's three substantive concerns and 33 technical corrections regarding the DEEP's 2020 EUR Regulations resubmittal.

Notably, the LCO expressed continued concerns with the language in the "other requirements" subsection of the applicability section, 22a-133k-1(b)(3), despite efforts by the DEEP to address these concerns in its 2020 RSRs resubmittal. As reported in our previous Alert, the LCO previously commented on the following original language, unchanged since the RSRs' adoption in 1996: "In the event that any provision of sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies conflicts with any provision of any other statute or regulation, the more stringent provision shall prevail." The LCO observed that the DEEP does not have authority to direct that a more stringent provision of a regulation "override a different standard set forth in a provision of the general statutes." In its 2020 RSRs resubmittal, the DEEP revised the proposed regulation to state that in the event any provision of the RSRs "augments or supplements any provision of any other statute or regulation, both shall apply[.]" Following its review of this revision, the LCO listed various reasons in its November RSRs Memorandum why this proposed language is problematic, noting that a "regulation cannot expand the meaning or intent of a statute," and questioned the need for the statement. In response to the LCO's continued concerns, the DEEP in its January 2021 RSRs resubmittal dropped the proposed revision and deleted the original sentence from the proposed RSRs. The revised section 22a-133k-1(b)(3), as proposed in the January 2021 RSRs resubmittal, reads: "All remediation undertaken to satisfy the RSRs shall be conducted in accordance with all federal, state, and local requirements, including, but not limited to, 40 CFR Part 761, all permits, and other required authorizations. Nothing in this subsection shall be construed as requiring any further remediation of any release which has been remediated and which remediation has been approved in writing by the commissioner, unless the commissioner takes action to require such remediation pursuant to any section of Chapter 446k of the Connecticut General Statutes."

If you have any questions regarding the proposed regulations, please contact any of the attorneys listed in the sidebar.

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