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DEEP Issues First Updates To Environmental Condition Assessment Form in a Decade

For the first time in 10 years, the Connecticut Department of Energy & Environmental Protection (DEEP) revised its Environmental Condition Assessment Form (ECAF). Of most interest to the regulated community, the revised ECAF specifically asks whether consideration was given to and requires information relating to the potential presence of emerging contaminants, including per- and polyfluorinated alkyl substances (PFAS), 1,4-Dioxane and perchlorate.

The ECAF is an important initial filing for properties subject to the Connecticut Transfer Act (C.G.S. §§ 22a-134(a)-(e)), those in the Voluntary Remediation Program (C.G.S. § 22a-133x) and certain Brownfield programs. DEEP uses the ECAF to determine whether DEEP oversight of the investigation and remediation at a site are necessary or whether a licensed environmental professional may verify that a site investigation has been performed in accordance with the prevailing standards and guidelines and that site remediation has been performed in accordance with DEEP's Remediation Standard Regulations.

To address emerging contaminants, DEEP has revised Part IV: Site History, "Emerging Contaminant Consideration." The revision asks whether any of a list of business operations, land uses or incidents that may involve emerging contaminants—including dry cleaning, metal plating, chemical manufacturing, etching, antifreeze production, car washes, film production and processing, medical uses, and munitions storage or production, among others—apply to the property subject to the ECAF. It also asks the preparer to identify emerging contaminants other than PFAS, perchlorate and 1,4-Dioxane that were used on-site and to indicate the use associated with those contaminants. It then asks whether the potential presence of emerging contaminants was evaluated and whether lab analyses were done, and it requires explanations if the answer to either of those questions is "no".

According to the United States Environmental Protection Agency, an emerging contaminant is a chemical or material characterized by a perceived, potential or real threat to human health or the environment or by a lack of published health standards. A contaminant also may be "emerging" because of the discovery of a new source or a new pathway to humans. DEEP's remediation regulations do not contain specific numeric cleanup standards for emerging contaminants, but they do require remediation using DEEP's procedures for Additional Polluting Substances (R.C.S.A. § 22a133k-3(i)).

DEEP has also made a number of streamlining and editorial changes to the ECAF instructions and the ECAF itself. For example, the ECAF instructions now include links to statutes and regulations in place of references, and the applicability section of the ECAF has been supplemented to include all the programs under which the ECAF might be filed.

Use of the revised ECAF becomes mandatory after May 31. If you have any questions regarding the ECAF revisions, please feel free to contact any of the attorneys listed in the sidebar**. The revised ECAF is accessible here and the revised Instructions are accessible here.**

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