

## **AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION**

**Agency Submitting Regulation:** Department of Energy and Environmental Protection **Date:** 03/30/12

**Subject Matter of Regulation:** Proposed Amendments to the Remediation Standard Regulations and the Environmental Land Use Restriction Regulations.

**Regulation Section No.:** R.C.S.A. §§ 22a-133k-1 through 22a-133k-3, inclusive and 22a-133q-1.

**Statutory Authority:** C.G.S. §§ 4-168, 22a-6, 22a-133k, and 22a-133q \_\_\_\_\_

**Other Agencies Effected:** No other Agencies are effected \_\_\_\_\_

**Effective Date Used In Cost Estimate:** June 1, 2012 \_\_\_\_\_

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## **ESTIMATE OF COST OR REVENUE IMPACT OF PROPOSED REGULATION**

**Agency:** Department of Energy and Environmental Protection **Fund Effected:** None \_\_\_\_\_

	<b>First Year- 2012</b>	<b>Second Year- 2013</b>	<b>Full Operation</b>
<b>Number of Positions</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Other Expenses</b>	0	0	0
<b>Equipment</b>	0	0	0
<b>Grants</b>	0	0	0
<b>Total State Cost or (Savings)</b>	0*	0*	0*
<b>Estimated Revenue Gain or (Loss)</b>	0	0	0
<b>Total Net State Cost or (Savings)</b>	0	0	0

\* Note: It is anticipated that the impact of processing approvals, compliance verification and enforcement will be accomplished by existing staff levels.

### **Explanation of State Impact of Regulation:**

#### Remediation Standard Regulations

The proposed amendments to the Remediation Standard Regulations (RSRs) will have little to no overall fiscal impact on the state should Connecticut have to remediate its properties. The state, if subject to the RSRs, must already comply with the existing regulations. The Department of Energy and Environmental Protection (DEEP) believes the proposed amendments will result in reduced remedial costs as a result of the inclusion of: more self-implementing provisions; additional exceptions for certain types of contamination; the identification of updated analytical test methodology and criteria for petroleum hydrocarbons; updated criteria for the constituent lead; and through additional provisions of alternative approaches for compliance demonstrations. Lastly, the amendments provide for a more streamlined program administration.

The RSRs specify standards for the remediation of environmental pollution at Brownfield sites and other polluted properties. The Regulations of Connecticut State Agencies (RCSA) § 22a-133k-1 through § 22a-133k-3, do not impose any responsibility to clean up property; such responsibility for remediation is established pursuant to the Connecticut General Statutes. In the event that a person is required pursuant to the Connecticut General Statutes to remediate a property, these regulations clarify the degree to which the property shall be remediated.

The proposed amendments to the RSRs reflect necessary technical and policy updates based on information gathered and lessons learned through the implementation of the existing regulations. Proposed technical amendments to the RSRs include, but are not limited to: new analytical methodology and criteria for petroleum hydrocarbons; an expanded definition for “inaccessible soil” to allow the same level of environmental protection at a lower cost option; updating criteria to be equivalent to the federal standard; correcting some risk-based formulas; and updating and providing new exceptions for pollutant criteria and alternatives for compliance demonstrations. Proposed policy amendments to the RSRs include, but are not limited to: clarification of regulatory applicability; prescribed application clarity and standardization to increase review efficiencies; the inclusion of more self-implementing provisions; providing exceptions for certain types of pollution in soil and groundwater; and lastly, clarifying the requirements of, and providing more flexibility in, demonstrating compliance. The “Statement of Purpose” provided with the proposed amended Regulations more specifically identifies all the technical and policy amendments.

#### Environmental Land Use Restriction Regulations

The proposed amendments to the Environmental Land Use Restriction or (ELUR) Regulations will have little to no overall fiscal impact on the state should it utilize the ELUR Regulations as a remedy in the course of remediation of real property. The state, if subject to the Remediation Standard Regulations, must already comply with the existing regulations. Amendments to the ELUR Regulations would allow for minor savings due to streamlined program administration while maintaining the appropriate environmental protections.

The existing ELUR Regulations identify the procedures and standards for the use and recording of an ELUR thereby preventing the use of polluted real property for certain purposes or prohibiting certain activities on such property. Amendments to these regulations clarify requirements and incorporate procedural changes that streamline the process of utilizing an ELUR on polluted real property.

The proposed amendments provide additional clarification of the regulations and provide a streamlined standardized procedure for implementation of the more flexible additional compliance alternatives while maintaining the Agency’s high standard for public health and environmental quality. The DEEP does not anticipate any significant additional resources to be incurred to implement the amendments to these regulations.

#### **Explanation of Municipal Impact of Regulation:**

The proposed amendments to the RSRs specify standards for the remediation of environmental pollution at polluted sites. In the event that a municipality is required pursuant to the Connecticut General Statutes to remediate a property, the proposed Regulation amendments clarify the degree to which the property must be remediated, provides additional options for the municipality to demonstrate compliance and allows the municipality to begin, with the services of a Licensed Environmental

Professional, a more affirmative self-implementing program. The DEEP believes the proposed amendments will result in reduced remedial costs as a result of the inclusion of: more self-implementing provisions; additional exceptions for certain types of contamination; the identification updated analytical test methodology and criteria; the provisions of alternative approaches for compliance demonstrations, and the removal of some unintended barriers to remediation. As identified above, the Statement of Purpose provides all of the specific provisions which may result in reduced remedial costs.

The proposed amendments to the ELUR Regulations identify the procedures and standards for the use and recording of environmental land use restrictions for polluted real property consistent with the site risks. Should a municipality be subject to the RSRs and chose this remedial alternative, it is anticipated that proposed amendments to the ELUR Regulations would allow for cost savings as the result of the more streamlined state program administration.

### **Explanation of Small Business Impact of Regulation:**

The RSRs specify standards for the remediation of environmental pollution at Brownfield sites and other polluted properties. As identified above, the regulations, RCSA § 22a-133k-1 through § 22a-133k-3, do not impose any responsibility to clean up property and such responsibility for remediation is established pursuant to the Connecticut General Statutes. Small businesses are already subject to the Connecticut General Statutes. In the event that a small or large business is required pursuant to the Connecticut General Statutes to remediate a property, these regulations clarify the degree to which the property shall be remediated.

The proposed amendments to the RSRs and ELURs are anticipated to not have a significant impact on small business should such business have to remediate a release or its' property. Both small and large business may be subject to one or more environmental regulations that would require the remediation of releases to the environment. Such businesses, if subject to the RSRs, must already comply with the existing regulations. The DEEP believes the proposed amendments to the RSR and ELURs may result in reduced remedial costs as a result of the inclusion of: more self-implementing provisions; additional exceptions for certain types of contamination; the identification of updated analytical test methodology and criteria for petroleum hydrocarbons; and the removal of some unintended barriers to remediation. Finally, the amendments provide for the regulated community with a broader range of options to attain compliance with the regulatory standards and a more streamlined approach to demonstrate compliance.

The proposed amended regulations should allow all businesses, municipalities and non-profits to more easily identify the applicability, criteria, standards, procedures and other essential information in order to demonstrate compliance with the RSRs and ELURs. Subsequently, it is anticipated that there should not be any significant increase, and most likely be a decrease, in both remedial and administrative costs for any entity regulated pursuant to the proposed amended regulations. By adopting the proposed amended regulations any decrease in small businesses' remedial costs may also be further enhanced by the promotion of more timely intervention and mitigation of releases and the reduction of the impact of any release on human health, public safety and the environment.

In summary, the proposed amendments to the regulations reduce any adverse impacts of the regulations on small business to the extent possible through:

- 1) Establishment of more self-implementing provisions;

- 2) Establishment of additional exceptions for certain types of contamination;
- 3) Establishment of updated analytical test methodology and criteria for petroleum hydrocarbons and updated criteria for the pollutant lead;
- 4) Establishment of prescribed forms for application clarity, standardized work product and review efficiency;
- 5) Corrections to certain risk-based formulas; and
- 6) Incorporation of many technical and policy provisions for more flexible alternative approaches of compliance demonstrations.

The proposed amendments provide additional clarification of the regulations and allow the regulated community additional flexible compliance alternatives while maintaining the Agency's high standards for public health and environmental quality. As identified above, the Statement of Purpose provides all of the specific provisions which may result in reduced remedial costs. These amendments should facilitate "Brownfield" redevelopment, as well as facilitating other remediation activities and projects. The reduction in remediation costs due to these amendments will be site specific, be dependent upon the nature and extent of contamination at the site, and dependent upon the number of available compliance options chosen by the remediating party.

**Is a regulatory flexibility analysis required pursuant to C.G.S. 4-168a?**

The regulatory flexibility analysis is required pursuant to C.G.S. 4-168a. The DEEP believes that the proposed amendments will not increase the costs to small business and, in fact, should reduce overall remediation costs. However, DEEP cannot determine the specific reduction in remediation expenditures because such costs are site specific, shall be dependent upon the nature and extent of contamination at the site and dependent upon the number of available compliance options chosen by the remediating party.

## Small Business Impact Statement

Prior to adopting a new section or amendment, Section 4-168a of the Connecticut General Statutes (C.G.S.) requires that each state agency consider the effect of such action on small businesses as defined in C.G.S. Section 4-168a. When such regulatory action may have an adverse effect on small businesses, C.G.S. Section 4-168a directs the agency to consider regulatory requirements that will minimize the adverse impacts on small businesses if the addition of such requirements (1) will not interfere with the intended objectives of the regulatory action and (2) will allow the new section or amendment to remain consistent with public health, safety and welfare.

State Agency submitting proposed regulations: Department of Energy and Environmental Protection

Subject matter of Regulation: Proposed Amendments to the Remediation Standard Regulations and the Environmental Land Use Restriction Regulations.

In accordance with C.G.S. Section 4-168a, staff analyzed the effect on small businesses of the proposed regulations and determined the following:

Check all appropriate boxes:

- The regulatory action will not have an effect on small businesses.
- The regulatory action will have an effect on small businesses, but will not have an adverse effect on such small businesses.
- The regulatory action may have an adverse effect on small businesses, and no alternative considered would be both as effective in achieving the purpose of the action and less burdensome to potentially effected small business. Alternatives considered include the following:
  - (1) The establishment of less stringent compliance or reporting requirements for small businesses;
  - (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
  - (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
  - (4) The establishment of performance standards for small businesses to replace design or operational standards required in the new section or amendment; and
  - (5) The exemption of small businesses from all or any part of the requirements contained in the new section or amendment.
- The regulatory action will have an adverse effect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare.

Has the State agency listed above notified the Department of Economic and Community Development of its intent to take the proposed action and completed the Agency Fiscal Estimate of Proposed Regulations?

The Department completed Agency Fiscal Estimate of Proposed Regulations and has notified the Department of Economic and Community Development of its intent to take the proposed action although such action will not have an adverse impact on small businesses.