

State of Connecticut
Department of Energy and Environmental Protection

Statement of Reasons Pursuant to Connecticut General Statutes Section 4-168d

HEARING REPORT
March 11, 2013

**Proposed Amendments to the Regulations of Connecticut State Agencies,
Sections 22a-133k-1 through 22a-133k-3, known as the Remediation Standard Regulations,
inclusive, and section 22a-133q-1, known as the Environmental Land Use Restriction
Regulations**

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**Hearing Date:
October 25, 2012**

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I. INTRODUCTION

On August 21, 2012, the Commissioner of Energy and Environmental Protection (“Department” or “DEEP”) published a notice of intent (Appendix I) to amend sections 22a-133k-1 through 22a-133k-3, inclusive, and section 22a-133q-1 of the Regulations of Connecticut State Agencies (“RCSA”) known as the Remediation Standard Regulations and the Environmental Land Use Restriction Regulations, respectively (the “Public Notice”). These regulations are being amended under the authority of 4-168, 22a-6, 22a-133k and 22a-133q of the Connecticut General Statutes. Pursuant to such notice, informational meetings were held on September 20 and 26, 2012 in the Phoenix Auditorium and a public hearing was held on October 25, 2012 in the Phoenix Auditorium at 79 Elm Street in Hartford from 1:00 p.m. to 6:00 p.m. and until all the comments have been heard. A copy of this Public Notice is provided as Appendix I. Three individuals provided oral comments at the hearing. The public comment period for the proposed regulations closed on October 25, 2012 at 6:30 p.m. Sixteen written comment letters were received, one of which was received after the close of the hearing.

II. ADMINISTRATIVE REQUIREMENTS

As required by the Connecticut General Statutes (“CGS”) Sec. 4-168(d), this report describes: (1) The final wording of the proposed regulation; (2) a statement of the principal reasons in support of its intended action; and (3) a statement of the principal considerations in opposition to its intended action as urged in written or oral comments on the proposed regulations and the reasons for accepting or rejecting such considerations in revisions of the regulations. For the benefit of the reader, a summary of proposed Amendments to the Regulations as Proposed for Public Hearing has been included in Section IV of this report and the specific comments received and responses thereto are outlined in Section VI of this report. The list of individuals and organizations who submitted comments on the proposed regulations is included in Appendix II (Exhibit List).

III. REGULATORY BACKGROUND

Revisions to RCSA sections 22a-133k-1 through 22a-133k-3, inclusive – commonly referred to as the Remediation Standard Regulations or “RSRs” – are authorized under sections 22a-6 and 22a-133k of the CGS. The existing RSRs identify the technical standards for the remediation of environmental pollution at hazardous waste sites and other properties that have been subject to a spill, release or discharge. They also identify numeric standards for remediation of specific pollutants and the procedures and standards for variances and alternatives to such standards.

Revisions to RCSA section 22a-133q-1, the Environmental Land Use Restriction or “ELUR” regulations are authorized under sections 22a-6 and 22a-133q of the CGS. The existing ELUR regulations identify the procedures and standards for the use and recording of environmental land use restrictions thereby preventing the use of polluted real property for certain purposes or prohibiting certain activities on such property consistent with site risks. The purpose of the amendments to these regulations is to clarify requirements and incorporate procedural changes that streamline the process of utilizing an ELUR on polluted real property.

IV. SUMMARY OF PROPOSED AMENDMENTS TO REGULATIONS AS PROPOSED FOR PUBLIC HEARING

The purpose of the proposed amendments to the Remediation Standard Regulations (RSRs) is to aid site cleanup and redevelopment without compromising the protection of public health and environmental quality. The proposed amendments seek to remove unintended barriers to remediating sites by providing creative new directions and opportunities, clarifying regulatory language, and addressing concerns expressed by the regulated community.

Amendments include, but are not limited to:

- Replacing an obsolete analytical test method for petroleum hydrocarbons by identifying a definition, test methodology and criteria that provides better characterization of the nature of the contamination;
- Expanding, in specific settings, the definition of “inaccessible soil” to render inaccessible certain substances found in polluted fill that are normally found in asphalt;
- Updating the numeric direct exposure criteria for the constituent lead to be equivalent to the federal standard;
- Deleting the pollutant mobility criteria (PMC) exception to comply with the more stringent GA PMC in certain GB areas;
- Clarifying the requirement that polluted fill containing any combination of coal ash, wood ash, coal fragments, or asphalt paving fragments may contain volatile organic substances not exceeding the PMC for such substances;
- Providing a PMC exception, under certain conditions, for pollutants, other than volatile substances, based upon representative ground water sampling;
- Providing an alternative in applying the direct exposure criteria (DEC) and PMC should single sample results exceed two times the criterion by demonstrating site conditions warrant a higher multiplier and requesting such approval of the Commissioner;
- Increasing the flexibility of engineered controls by tailoring such controls to the applicable DEC or PMC demonstration;
- Changes to the applicability section to clarify when and how the regulations apply;
- Identification that approvals must be requested on forms prescribed by the commissioner;
- Correcting the risk-based formula for calculating the residential DEC for any additional polluting substance, correcting the risk-based formula used to derive the ground-water protection criteria for non-carcinogenic additional polluting substances and updating the conversion factor used in such formula;
- Providing exceptions for the following: certain incidental sources of polluted soil resulting from the normal use of motor vehicles; certain incidental sources of polluted soil resulting from the use of asphalt paving; and releases of certain pollutants in ground water from leaking water supply distribution systems;
- Deletion of the prohibition on using a statistical compliance demonstration when excavation is the remedy and deletion of the prohibition for a person requesting a widespread polluted fill variance if such person was authorized to legally dispose of such fill; and
- Restructuring the compliance and post-compliance ground water monitoring sections to allow LEP self-implementation of these sections.

Revisions to RCSA section 22a-133q-1, the Environmental Land Use Restriction or “ELUR” regulations are authorized under sections 22a-6 and 22a-133q of the CGS. The existing ELUR regulations identify the procedures and standards for the use and recording of environmental land use restrictions thereby preventing the use of polluted real property for certain purposes or prohibiting certain activities on such property consistent with site risks. The purpose of the amendments to these regulations is to clarify requirements and incorporate procedural changes that streamline the process of utilizing an ELUR on polluted real property.

V. STATEMENT OF PRINCIPAL REASONS IN SUPPORT OF THE REGULATIONS PROPOSED FOR PUBLIC HEARING

This proposal amends the Remediation Standard Regulations, sections 22a-133k-1 through 22a-133k-3, inclusive, and the Environmental Land Use Restriction Regulations, section 22a-133q-1 of the Regulations of Connecticut State Agencies (“RCSA”). The comments received generally support the proposed amendments (with narrow exceptions identified in Section VI below) as beneficial to assisting site remediation and redevelopment efforts.

Comments indicated the proposed amendments to the RSRs would aid site cleanup and redevelopment without compromising the protection of public health and environmental quality. The proposed amendments would remove unintended barriers to remediating sites by providing creative new directions and opportunities, clarifying regulatory language and addressing concerns expressed by the regulated community.

Proposed amendments to the RSRs that are particularly supported include, but are not limited to: an expanded definition for “inaccessible soil” to allow the same level of environmental protection at a lower cost option; updating and providing new exceptions for pollutant criteria; clarification of regulatory applicability; the inclusion of more self-implementation provisions; providing exceptions for certain types of pollution in soil and groundwater; and lastly, clarifying the requirements for demonstrating compliance.

The existing Environmental Land Use Restriction or “ELUR” regulations identify the procedures and standards for the use and recording of environmental land use restrictions thereby preventing the use of polluted real property for certain purposes or prohibiting certain activities on such property. The comments on the amendments to these ELUR regulations endorse the Department’s proposal to consolidate the application forms into a single form, and to improve the clarity of the Declaration form.

**VI. STATEMENT OF PRINCIPAL REASONS IN OPPOSITION OF THE
REGULATIONS PROPOSED FOR PUBLIC HEARING AND THE
DEPARTMENT’S RESPONSE TO SUCH REASONS**

The Comments received by the Hearing Officer were generally in favor of the vast majority of the proposed amendments. The Hearing Officer did not receive any comments opposed overall to the Department’s intent to seek final adoption of the proposed amendments to the RSRs and ELUR regulations. There were some comments that favored not proceeding with a few specific, narrow provisions, and such comments are more specifically addressed below.

A. GENERAL COMMENTS.

The comments were generally in favor of adopting this proposal. No comments opposed overall the Department’s intent to seek final adoption of this proposal. On a few provisions, some comments recommended proceeding but with modification to the amendment as proposed by the Department. There were some comments that favored not proceeding with a few specific provisions. Comments were received by the list of people and entities set forth in the Exhibit List in Appendix II.

B. SPECIFIC COMMENTS

The specific comments are summarized, grouped together by subject matter and are paraphrased for clarity or brevity purposes. Specific concerns/comments are addressed below. Where multiple comments were received on the same subject or provision, a number in parenthesis is supplied to the comment to correspond with the same number in parenthesis supplied to the DEEP Response, unless otherwise noted or unless the comments were generally similar in which case the comments are grouped together. The source of a comment is identified by the associated Exhibit number of each commenter as listed in Appendix II. Where there is more than one comment set forth, the commenters’ Exhibit numbers are listed in the same order as the comments.

**REMEDICATION STANDARD REGULATIONS, SECTION 22a-133k-1 through -3 of the
RSCA; HEARING COMMENTS AND RESPONSES**

Provision:

22a-133k-1(a)(29); “Inaccessible soil” definition

Comment:

Comments generally agree with the proposal except as indicated in the following comments: (1) add metals to the types of pollutants that can be in the polluted fill due to historic fill often containing elevated metal concentrations; (2) resolve discrepancies with this definition, RSR section 22a-133k-2(h) and CGS 22a-209, regarding how fill is regulated; (3) delete or modify the proposed amendment so as to say soil that is otherwise clean except for asphalt content is clean fill, and thus should be a Solid Waste issue only; and there are environmental impacts of using asphalt as a cap that outweigh the benefits of encouraging greater use of asphalt as a remedy; (4) include the sub-base of the bituminous concrete as part of polluted fill.

Comments 19, 14, 25 and 18.

DEEP Response (corresponds with the numerical comment):

- (1) The Department agrees with the comment that metals are often components of historic fill, and agrees that to the extent that metals are in the fill that metals should be added to the Semi-Volatile Organic Compounds (SVOCs) and petroleum hydrocarbons as constituents that can be rendered inaccessible by a bituminous pavement. However, as the purpose of this amendment is to address pollutants in fill that mirror pollutants in bituminous pavement – essentially SVOCs and hydrocarbons – the application of this provision to metals in polluted fill is for instances where metals do not exceed two times the applicable direct exposure criteria (DEC). Concentrations of metals that exceed two times the applicable DEC may indicate a pollution issue and associated risks that go beyond the pollution associated with bituminous pavement.
- (2) The Department agrees with the comment that it is beneficial to resolve any discrepancies between this definition, the soil reuse provision in the RSRs at 22a-133k-2(h), and the solid waste regulations. The Department will further evaluate those opportunities. However, any amendment to those other sections are beyond the scope of what the Department proposed for amendment in the Public Notice, thus will not be addressed in this package of amendments.
- (3) The Department will keep the amendment to this definition as proposed, to address situations where there are hazardous substances in fill - SVOCs and hydrocarbons that may have derived from asphalt materials (and as stated above, metals). The Department acknowledges that there are environmental impacts associated with asphalt (as well as many products), and further believes that the exposure to contaminants in fill and soil is greater than the exposure to contaminants bound in paved surfaces.
- (4) If sub-base construction material is polluted, then for this new provision for inaccessible soil, it would need to meet the limitations on what can be in the polluted fill being paved.

Outcome: revision to proposed amendment; this portion of the definition now allows polluted fill which contains metals up to twice the DEC in addition to SVOCs and petroleum hydrocarbons.

Provision:

22a-133k-1(e); periodic review

Comment:

“Grandfather” the criteria for remedial actions that are completed (for soil or groundwater) or in compliance monitoring (for groundwater). Also, revise the RSRs to include substances that are currently Additional Polluting Substances thus do not have numeric criteria in the Appendices. Comment 17.

DEEP Response:

The Department’s amendments include a transition mechanism for the direct exposure criteria

for lead for remediation that is already underway. With respect to adding numeric default numbers for Extractable Total Petroleum Hydrocarbons (ETPH) by ETPH Analysis, the Department believes that transition will be practical and appropriate without a need to add another transition provision to the regulations. In this set of amendments, the Department is adding numeric criteria for ETPH for direct exposure criteria (DEC), pollutant mobility criteria (PMC) and groundwater protection criteria (GWPC). Prior to the effective date of these amendments, a person either had to apply to the Department to obtain a site-specific approval for criteria for total petroleum hydrocarbons (for ETPH or vph/eph methods and associated criteria) or could use the numeric criteria in the RSRs for results from EPA Method 418.1 for samples collected prior to June 30, 2009. The Department ceased accepting analytical data derived by Method 418.1 for samples collected after June 30, 2009 in an effort to end Freon use and maintain consistency with EPA. Any person that had previously applied for and received a Department written approval of criteria prior to the effective date of these amendments, or used Method 418.1 for samples collected prior to June 30, 2009, may continue to use such criteria to satisfy the RSRs. If by the date these amendments become effective, a person had not received a written approval for such criteria, or had not collected samples prior to June 30, 2009 for which analytical Method 418.1 was used, such person will be able to use the numeric criteria for ETPH upon the effective date of the amendment or may submit a request for alternative criteria.

The Department did not propose in the public notice in August 2012 to add any other criteria other than the proposals on lead and ETPH. Therefore, the Department will not propose to further amend the regulations at this time to add additional polluting substances and associated criteria.

Outcome: no change.

Provision:

22a-133k-1(f); forms

Comment:

Forms should be consistent with requirements in regulations and not impose new requirements. There should be an opportunity to comment on future forms.

Comment 21.

DEEP Response:

The Department agrees that forms should be consistent with requirements in regulations (as well as statutes) and not impose new requirements. The Department typically provides opportunity for public feedback on draft forms before finalizing them and will continue to do so.

Outcome: no change.

Provision:

22a-133k-1(g); new provision for a “grandfathering” mechanism for applying revised direct exposure criteria for lead

Comment:

Modify to grandfather the prior criteria (of 500 part per million (ppm) of lead) for remediation activity that is completed within two years of the effective date of these amended regulations, on a release by release basis.

Comment 14.

DEEP Response:

The Department concurs that a mechanism is needed for cleanup work that is midstream or nearing completion at the time the revised DEC for lead goes into effect. That is the purpose of this new provision. The essential principle is to accept use of the 500 ppm lead DEC for sites where remedial action plan (RAP) remedy decisions and remedial actions were made based on the DEC in effect, thus were formally relied upon. This provision is intended to allow continued use of the 500 ppm criteria for parties that relied upon the DEC in effect when the remedy decisions were made and/or implemented. Therefore, in response to this comment, the Department has further amended the provision to expand the “grandfather” use of the 500 ppm DEC for parties that formally relied upon it as evidenced by either initiation of remediation of the relevant release area, or the release area was part of a RAP approved by the Department or part of final RAP (for at least the release are in question) prepared by an environmental professional (for instance, a CT Licensed Environmental Professional (LEP)), as of the effective date of the RSR amendment that revises DEC for lead. Also, remediation must be completed within two years of the effective date of the amended RSRs.

Outcome: revision to amendment; “grandfathering” provision expanded.

Provision:

22a-133k-2(b)(4)(A); Incidental Sources of pollutants

Comment:

There is general agreement for adding this provision, with the following additional comments. (1) Add metals found in used oil that can drip from vehicles. (2) Define “incidental release” and “normal operation”. (3) Add “incidental release” to definitions; indicate quantity; clarification sought on whether a gas tank rupture is “normal operation”; add definition for “incidental source”. (4) Include pesticides and fertilizers as additional category.

Comments 19, 17, 20 and 18.

DEEP Response (corresponds with the numerical comment):

- (1) DEEP agrees that sometimes certain metals may be found in oil that may occasionally drip from a properly functioning motor vehicle as part of normal operation. Therefore, metals will be added as a pollutant in addition to petroleum hydrocarbons and SVOCs in 22a-133k-2(b)(4).

(2) DEEP uses the term “incidental” in accordance with the dictionary definition, which is “related to or accompanying something more important” (in this case, the normal operation of the vehicle is the more important activity), “occurring by chance or without intention”, and “unimportant or occasional” (Encarta Dictionary). Also, “Normal” is used in the dictionary definition of “conforming to the usual standard, type or custom” (Encarta Dictionary). For normal operation, the amendment includes additional terms for further definition: normal operation does not include “refueling, repair or maintenance” activities. Also, normal operation would not include accidents, such as vehicle crashes or tank ruptures, as those situations would not be normal operation. Given common usage, a formal definition is not necessary.

(3) See above.

(4) The Department has decided to not include additional exemptions for pesticides and fertilizers in this amendment. While the comment makes good points for consideration, the public hearing proposal did not include an exemption for pesticides and fertilizers, and adding such may be beyond the scope of the public notice. The Department will further evaluate the comment for a future round of proposed amendments to the RSRs.

Outcome: amendment revised to add metals.

Provision:

22a-133k-2(b)(4)(B); Incidental Sources of pollutants

Comment:

(1) Modify to add other road surfaces. The terms “immediately” and “adjacent” are too limiting. (2) It is not necessary to indicate clean fill is compliant with direct exposure criteria (DEC). (3) Agrees with DEEP’s proposal. (4) Expand to include asphalt paving fragments as clean fill. (5) Concur with EPOC’s comment. Comments 14, 25, 16, 21 and 20.

DEEP Response (corresponds with the numerical comment)

(1) The comment recommends adding additional road surfaces. The intent of this provision is for pollutants that stem from the paving and maintenance of consolidated bituminous concrete. The pollutants that stem from normal operation of motor vehicles are addressed in the provision immediately preceding it. Therefore, the Department agrees in concept with the comment, but since it is addressed in another provision it does not need to be added here in terms of additional road surfaces. On the second point, the Department agrees with the comment and will strike the terms “immediately” and “adjacent”, as they may actually add less clarity not more. As a result, the language that had been proposed in 22a-133k-2(b)(4)(B)(ii) is removed, and the remaining language is reformatted appropriately.

- (2) The Department believes the addition of this provision adds clarity and certainty for some situations, thus will keep the provision. Even if it only clarifies what already exists, then that has value.
- (3) Commenter agrees with the Department's proposal.
- (4) Expanding the provision to include asphalt paving fragments may require supplemental amendments to other sections that have not been proposed for amendment in the Public Notice, such as solid waste regulations. However, the comment is worth further consideration for potential future amendment to regulations, and the Department will further evaluate the comment for a future round of proposed regulatory amendments.

Outcome: amendment revised to strike terms “immediately” and “adjacent”.

Provision:

22a-133k-2(c)(4)(A); GA PMC in GB area of bedrock above watertable

Comment:

Retain original language of the provision, or limit the amendment to account for supply wells within 500’.

Comment 26.

DEEP Response:

The Department believes the protection afforded by meeting GB PMC in areas of the state where groundwater is classified as GB is sufficient. In GB areas, groundwater is not expected to be consumed for drinking water absent treatment; nonetheless, the GB PMC standard is set in consideration of drinking water and is established to allow for ultimately meeting drinking water standards after some dilution. Accounting for supply wells within 500’, in this limited scenario of the high water table above bedrock in GB areas, while theoretically may have some value, does not appear to be necessary, given that the regulations do not otherwise differentiate GB areas for PMC purposes based on distance from supply wells. To the extent there are drinking supply wells within GB areas, the RSR standards for groundwater require that the groundwater protection criteria (which is set for drinking absent dilution) be met.

Outcome: no change.

Provision:

22a-133k-2(c)(4)(B)(ii); PMC exemption for ash containing Volatile Organic Compounds (VOCs) below standards.

Comment:

Modify to address potential vapor from soil.

Comment 26.

DEEP Response:

The amendment affects the applicability of soil leaching criteria, not soil vapor. PMC is set as a leaching criterion. The RSRs currently exempt non-volatile substances in wood ash and coal ash from needing to meet the PMC; the amendment says that such PMC exemption would also apply where VOCs are below PMC. The commenter's recommended change would not result in any different outcome, because VOCs below PMC in any polluted soil or polluted fill, regardless of whether it is coal or wood ash, requires no further action with respect to PMC for such VOC.

Outcome: no change.

Provision:

22a-133k-2(c)(4)(C); PMC exception if groundwater is below standards

Comment:

The comments generally agree with amendment, but also recommend the following: (1) Expand the new provision to soil that has been below a paved surface for at least ten years, as many paved surfaces are somewhat permeable. Also, don't exclude volatile organic compounds (VOCs). (2) Define "unobstructed infiltration". (3) Add to (ii)(aa) "source water protection area for groundwater-source public water supplies". (4) Unclear what "provided application of (c)(1)-(3) has failed to demonstrate compliance" means in the lead sentence. (5) Clarify "unobstructed infiltration". Clarify if five years of filtration is related to four consecutive quarterly samples. (6) Same as (4) above. (7) Agrees with proposal.

Comments: 19, 14, 26, 17, 13, 20, 16.

DEEP Response (corresponds with the numerical comment):

(1) The essential element of this amendment, allowing a self-implementing waiver of PMC, is that the release has been subject to normal and routine precipitation so that leaching of pollution from soil to groundwater could have occurred. Direct and open precipitation is the intent of the amendment. Paved surfaces vary significantly in their porosity, depending on the specific details of the paved surface's materials, design, engineering, construction-technique, age and other factors. Given such variation, and the Department's interest to make this amendment self-implementing, the Department has decided to go forward with the amendment as proposed.

VOCs are excluded in the amendment because of the additional risks associated with VOCs with respect to potential volatilization. The Department has decided to go forward with the amendment as proposed.

(2) "Unobstructed infiltration" means absence of human-created obstruction between precipitation and the soil. The purpose is to ensure the groundwater conditions are fully representative of the leaching of all the precipitation for the release area. Natural features such as grass, trees, and rocks are not considered obstructions to infiltration. The phrase has been further clarified in the amendment to make this clearer, by adding the term "anthropogenic".

- (3) The comment recommends, for purposes of this provision, that groundwater used as a source of drinking water supply, even if in a GB area, be compared to RSR criteria applicable to GA areas (Ground Water Protection Criteria). The Department concurs with this comment, because the intent of this new waiver provision is that if a pollutant has not leached into groundwater at levels above groundwater standards, then such groundwater condition is a reliable indicator of leaching from soil for the release. Groundwater used as a source for drinking water, even if in an area designated as GB, is protected under the RSRs as a drinking water source. Hence, the Ground Water Protection Criteria is the applicable criteria for such situations. The Department will use different terminology than the specific terms suggested in the comment; the terms added are “other ground-water area used as a source of public drinking water supply located in a GB area”.
- (4) The Department concurs that the phrase, “provided application of subdivisions (1) through (3) of subsection (c) of this section, as applicable, has failed to demonstrate compliance with the requirements of this section and”, is unclear. The Department also upon review has decided that the phrase does not add significant enough value to keep in the amendment, because it would not affect the outcome in terms of which release areas have conditions that need a remedial action to achieve pollutant mobility criteria. Therefore, the phrase quoted above is deleted from the amendment.
- (5) Four consecutive quarterly samples would need to have begun after the release area had been subject to five years or more of unobstructed infiltration. There may be instances where the release was covered over for a period of time within the first five years after the release occurred, then subsequently uncovered; in such case, after the release has been subject to unobstructed infiltration for a total of five years, then the four quarters of groundwater monitoring can commence for purposes of applying this provision. The essential element here is that the sufficient opportunity for the release to leach into the groundwater (five years of unobstructed infiltration) must have occurred in order for the groundwater monitoring to be representative of the potential effects of the release on the groundwater.
- (6) See response to (4) above.
- (7) No response required.

Outcome: amendment revised to clarify terms, and delete superfluous language.

Provision:

22a-133k-2(c)(4)(D); Incidental sources for PMC

Comment:

Same as 22a-133k-2(b)(4)(B).

Comment 14.

DEEP Response:

Same response as 22a-133k-2(b)(4)(B) above.

Outcome: amendment revised to strike terms “immediately” and “adjacent”.

Provision:

22a-133k-2(e)(1); demonstrating compliance using 95% UCL statistical method - use of data that is greater than two times the DEC

Comment:

Comments generally agree with the amendment, plus the following additional comments: (1) Allow self-implementation up to ten times the direct exposure criteria (DEC). (2) No limit; the statistical method is inherently self-limiting. (3) No limit, the statistical method is inherently self-limiting.

Comments 19, 22, and 16.

DEEP Response:

The Department generally agrees with the comments on this provision. The statistical method of estimating 95% Upper Confidence Limit of the arithmetic mean (95% UCL) provides for a valid method to compare site data representative of the specific release area to applicable RSR criteria. The statistical method is accepted by EPA as well as DEEP and other states. The amendment to this provision as originally proposed was intended to clarify the RSRs on allowing self-implementation use of data that is up to two times the applicable RSR criteria, and allow – subject to Commissioner review and approval – use of data that is more than two times the applicable RSR criteria.

The statistical method is self-limiting in terms of how high any single data point can be, yet still result in a 95% UCL that is less than the RSR criteria. Generally, for a specific release area, if a single data point exceeds the criteria by three or four times, a significant amount of data outside such area of higher concentrations (but still within and representative of the release area) would be required to achieve compliance with the applicable criteria using the 95% UCL. Direct exposure is based on exposure to the whole area subject to the release, not just a single point. Pollutant mobility is a function of a release area’s ability to leach into and impair groundwater quality. The result of having a significant amount of data representative of the release area, and still being able to meet the criteria, would be that the area likely containing the higher concentration levels would continue to shrink as more data is collected.

The Department is persuaded that there is little value-added in having a review and approval process for data over two times the applicable RSR criteria, because the 95% UCL is a commonly-accepted statistical method, and more importantly it is self-limiting as to how high any single concentration in a dataset can be while still calculating a 95% UCL that is below criteria. The Department has generally approved these requests in the past when the party and its environmental professional has shown that the data set is representative of the release area and has been adequately characterized. For these reasons, the Department will make this provision, for the use of data that exceeds two times the applicable RSR criteria, self-implementing. The

Department retains the authority to audit submittals indicating that RSR compliance is achieved (such as a Verification), and may screen submittals that use this provision as appropriate. The data set that is used for the 95% UCL must be representative of the release area being evaluated.

Outcome: the 95% statistical method is revised to be fully self-implementing.

Provision:

22a-133k-2(e)(2); exclusion of excavation for use of 95%UCL for PMC

Comment:

Comments generally agree with the amendment, plus have the following comments: (1) Reduce the twenty samples to “representative sampling program not less than 10”. Also, allow self-implementation up to ten times PMC. (2) No limit needed for self-implementing use of 95% UCL. Change 20 samples to “not less than 10 samples” above water table or other if Commissioner approves (for both (2)(A) and (B)). Drop excavation restriction in (B)(ii) and (C)(ii). (3) No limit needed for self-implementation because the 95% UCL statistical method is self-limiting.

Comment: 19, 22 and 16.

DEEP Response:

On having a self-implementing data concentration limit for use of the 95% UCL, the Department agrees to a change for the same reasons as set forth in the response to provision 22a-133k-2(e)(1) above. The Department will remove the self-implementing limit of two times the RSRs, and replace it with a fully self-implementing process. The Department will be able to audit use of this provision as appropriate through its audit authority.

Further, as identified in comment (2) on clarifying 22a-133k-2(e)(2)(B) and (C), the Department agrees that additional amendments are needed to make clear the amendment that was originally proposed with respect to eliminating the excavation restriction. Therefore, 22a-133k-2(e)(2)(B)(ii) and (C) will be deleted, because they become superfluous and are no longer needed given the other amendments in this subsection. The end result is to keep the meaning of the original proposed amendment in allowing use of the 95% UCL where excavation has occurred.

On comments (1) and (2), on use of a representative sampling program consisting of not less than twenty samples, the Department believes there is merit to further consideration of the recommendation to change the self-implementing allowance to not less than ten samples. However, the Department did not originally propose to amend that portion of the provision affecting a minimum number of samples, so the Department does not propose such amendment at this time. The Department will continue to consider this comment for a future round of RSR amendments. In any event, a party may currently request Commissioner approval of a representative data set consisting of less than twenty samples, pursuant to the language that begins this section of the RSRs, “[u]nless an alternative method for determining compliance with a pollutant mobility criterion for a particular substance has been approved by the Commissioner”

Outcome: the amendment is revised to allow the 95% UCL statistical method to be fully self-implementing, and superfluous language is deleted to improve clarity.

Provision:

22a-133k-2(f)(2)(B)(i); Engineered Controls

Comment:

(1) Modify language of the provision to clarify that design and construction requirements continue to apply to engineered controls for pollutant mobility (PMC). (2) Apply 10-6 permeability only to PMC that meets toxicity characteristics of federal RCRA hazardous waste at 40 CFR 261.24; all other pollutants that exceed PMC should be allowed to have an engineered control that minimizes infiltration.

Comments 26 and 12.

DEEP Response (corresponds with the numerical comment):

(1) The Department concurs with this comment. The regulation is clarified to make clear that an engineered control for purposes of PMC must be designed and constructed to minimize migration of liquids through soil, and that all engineered controls must be designed and constructed properly.

(2) The Department is continuing to consider this comment. The Department will not adopt this recommendation for the current set of amendments, in part because the Department did not propose in the August 2012 Public Notice to amend the engineered control section of the regulations with respect to differentiating which PMC exceedances require an engineered control with a permeability of 10-6. The comment will be further considered for a future round of proposed RSR amendments.

Outcome: the amendment is revised to make more accurate.

Provision:

22a-133k-3(f); incidental sources in groundwater

Comment:

This provision should also include the incidental sources provision (for vehicles and paving) that is being added in the soil section of the RSRs.

Comment 20.

DEEP Response:

The Department concurs with the recommendation. The Department proposed that substances in soil from the normal operation of motor vehicles, and the normal paving and maintenance of consolidated bituminous concrete surfaces, would be subject to neither the direct exposure criteria (DEC) nor the pollutant mobility criteria (PMC). The reason is that these activities are

routine, ubiquitous, and ongoing throughout society. These substances are not limited to certain types of properties or to commercial or industrial activities, and will continue to occur on a regular basis even after any remediation that might be performed. Given that the PMC is designed to identify what substances might leach from soil into groundwater, the Department concurs that extending the Incidental Substance provision in the groundwater section of the RSRs to the same situation as soil is appropriate.

Outcome: amendment is revised so that the Incident Substance provision for the groundwater section includes the Incidental Substances being added to the soil section of the RSRs.

Provision:

22a-133k-3(g)(2); Compliance and post-remediation monitoring

Comment:

The comments generally agree with the proposed amendment, and have the following comments in addition. (1) Clarify that compliance monitoring is ok any time prior to remediation for determining if there is an exceedance. (2) Clarify to say compliance monitoring starts after active remediation is completed. (3) Separate compliance demonstration for groundwater from soil. (4) Agrees that no post-remediation groundwater monitoring is needed if DEC and/or an ELUR is the only remediation. Also, concurs w/ EPOC's comment. (5) Agrees with proposal to delete monitoring for DEC-only remediation, as well as fewer years of post-remediation monitoring. (6) Clarify if requirements in 22a-133k-(2)(A)(i)(aa)-(dd) apply only if remediation has been conducted.

Comments 19, 14, 26, 20, 16 and 21.

DEEP Response (corresponds with the numerical comment):

- (1) Compliance monitoring in this provision is for purposes of determining compliance with groundwater criteria. The Department has made further clarifications to this provision to make clear those situations where monitoring data must be collected after remediation as well as where monitoring data can be obtained prior to remediation. Where remediation is for purposes of achieving compliance with pollutant mobility or groundwater criteria, the monitoring data must be obtained after such remediation is complete, subject to three exceptions. The three exceptions are: direct exposure-only soil remediation, natural attenuation monitoring for groundwater, and recording of an Environmental Land Use Restriction.
- (2) The comment recommends that distinction be made between an Environmental Land Use Restriction component of a remedy, and other active components of a remedy. Clarification has been added in response to this comment. The term Environmental Land Use Restriction has been added to 22a-133k-3(g)(2)(A)(i)(aa) as an exception to the term "remedial action".
- (3) The comment recommends clarification that groundwater that is subject to the RSRs must meet the criteria applicable to groundwater. The Department believes that this meaning is achieved by the language of the RSRs including the amendments.
- (4) Comment agrees with the amendment. Also, the Department concurs with the additional

comment regarding Environmental Land Use Restriction. See responses to comments 1 and 2 above.

(5) Comment agrees with the amendment.

(6) The requirements in 22a-133k-(2)(A)(i)(aa)-(dd) apply to demonstrating compliance with criteria for groundwater where there is a groundwater plume, whether or not active remediation is required to meet the criteria for groundwater.

Outcome: the amendment is revised to add language to improve clarity.

Provision:

22a-133k-3(g)(2)(A)(ii); Compliance and post-remediation monitoring

Comment:

Clarify by adding “consecutive not required” to the allowance for seasonal variability over a two year period.

Comment 17.

DEEP Response:

Four seasonal quarters over a period of two years is required, but the four quarters do not need to be consecutive. The comment is addressed in the language of the amendment. The relevant portion of the amendment reads “provided that all sampling events used to demonstrate compliance were performed within two years prior to the most current sampling event used to determine compliance”.

Outcome: no change.

Provision:

22a-133k-3(g)(2)(B); Compliance and post-remediation monitoring for Ground-water Protection Criteria (GWPC)

Comment:

(1) Background is unclear. (2) Keep the current RSR allowance for using 95% UCL. Also, modify sample collection frequency. (3) Keep the current RSR allowance for using 95% UCL. Also, allow sampling less frequent, over a greater time period, and a minimum of 10 samples. Comments 17, 22 and 20.

DEEP Response (corresponds with the numerical comment):

(1) The comment appears to seek clarification with regard to the term and use of “background”. This provision of the regulations addresses determining when background or the GWPC has been achieved. The comment appears to say that in instances of natural attenuation monitoring, where background concentrations are achieved, then concentrations are at background. The Department believes that is what the provision

says and means. The reference at the end to subsection (d) is for determining whether background or GWPC is applicable. No further amendment is needed.

- (2) The Department is persuaded by comments to retain the existing regulation allowing use of 95% UCL where there are twelve consecutive monthly samples. The Department had proposed to delete this option of using the 95% UCL because it appeared that it was not being used. However, comments indicate that it might be used in the future or is being used at sites where the remedial activities remain in progress. Therefore, the proposed amendment to delete this option will be withdrawn and the current option will remain in the RSRs.

The comment also recommends amending the sampling frequency and allowable timeframe, for instance to allow ten samples representative of seasonal variation collected over a three-year period. This issue was not proposed for amendment in the Public Notice. This comment will be further evaluated for future proposals to amend regulations, but will not be an amendment at this time.

- (3) See response to (2) above.

Outcome: the proposed amendment to strike the option of using 95% UCL for demonstrating compliance with GWPC is no longer proposed, thus the current allowance for it will remain in the RSRs

Provision:

22a-133k-3(g)(2)(C)(i); Compliance with Surface Water Protection Criteria (SWPC)

Comment:

(1) Retain existing regulation language, plus supports the amendment if it allows statistics over multiple rounds. Averaging, as used in the existing regulation, is ok because there is no hotspot exposure with surface water. (2) Clarify in 22a-133k-3(g)(2)(C)(i)(aa) the meaning of “all sample results”; data set should be a minimum of ten samples, be representative of current conditions, and account for seasonal variation. Also, remove the multiplier limit for self-implementation because the 95% UCL is already self-limiting. (3) Clarify that 95% UCL can use samples that show current conditions, not all samples over time. Add a minimum of ten samples for use of 95% UCL. (4) Allow self-implementing use of data that is over two times the RSR criteria when using 95% UCL, up to data that is ten times the SWPC, because there is no long-term exposure to a single data point. (5) The proposal is too strict for metals. Comments 14, 22, 20, 19 and 17.

DEEP Response:

The comments on this subsection were very similar to each other. Therefore, the Department will address them below as a group. In response to comments, the Department has revised the amendment as follows.

The 95% UCL is an inherently self-limiting method, as described in comments above, therefore is also appropriate for demonstrating compliance with SWPC. Therefore, the proposed provision at 22a-133k-3(g)(2)(C)(i)(bb), which proposed that use of data over two times applicable criteria first requires Commissioner approval, will be deleted, and the use of the 95% UCL will be fully self-implementing. Thus, the 95% UCL will be allowed, a party may use all representative data, and Commissioner review and approval will not be required to use data that is more than two times the SWPC. This addresses the comments that recommended self-implementation for use of all data, as well as comment (5) that the proposed amendment is too strict for metals. The 95% UCL can be applied to multiple rounds of sampling – to all four quarters that reflect seasonal variability, thus addresses comment (1).

The phrase in 22a-133k-3(g)(2)(C)(i)(aa) “all sample results of laboratory analysis of groundwater from the subject plume” will be modified, and will instead read as “all sample results representative of the subject ground-water plume”. This addresses the comments that identified that the proposed wording was not clear and could be interpreted to require use of very old data that is no longer representative of plume conditions. The intent is to use data representative of current conditions.

The Department will not add a requirement for a minimum of ten samples, at this time in this set of amendments. The number of samples was not proposed for amendment in the Public Notice. The Department will continue to consider language for a minimum number of samples for future proposed amendments to the RSRs.

Outcome: the proposed amendment is revised to allow full self-implementation of the 95% UCL statistical method, and to clarify that data representative of the plume is to be used – not all analytical data over time.

Provision:

22a-133k-3(g)(2)(D)(i) and (ii); Compliance with Volatilization Criteria

Comment:

(1)Disagrees with proposed amendment to remove option of using 95% UCL for demonstrating compliance with volatilization criteria, and recommends allowing 95%UCL and self-implementation using data up to ten times the volatilization criteria because of the dynamic nature of water and vapor. (2)Keep existing regulation allowing use of 95% UCL including the requirement to obtain Commissioner approval to use data that is two times or greater above the criteria.

Comments 19 and 14.

DEEP Response:

The Department will keep the amendment as proposed. Both comments received on this provision raise good issues. It is sometimes true that the dynamic nature of air and water would not necessarily create levels of concern for volatile organic compounds in the air inside structures. However, to properly make this determination on a case-by-case basis, it would

require site-specific air handling analysis, along with some form of institutional control to ensure that the conditions used in the analysis would not change over time. Such an institutional control to restrict activities inside a building may not be possible or practical. Also, volatiles can continue to concentrate until equilibrium is reached, potentially creating a higher risk to the building occupants over time if the documented conditions are not yet at a state of equilibrium. Finally, a relatively easy and cost-effective option exists, which is to install a mitigation system beneath a building, where vapor intrusion is a concern. Thus, the removal of the option to use the 95% UCL, due to concerns over the risk to human health for occupants of a building if conditions were to change over time, will not likely have a significant adverse affect on the ability to achieve the RSRs based on the Department's experience with remediation sites.

Outcome: no change.

Provision:

Appendices A through E of 22a-133k-1 through 3; criteria for Extractable Total Petroleum Hydrocarbons (ETPH) by ETPH Analysis

Comment:

Comments on the proposed amendments to the numeric criteria in Appendices A through E focused on two criteria for ETPH in groundwater: the surface water protection criteria (SWPC) and the volatilization criteria (VC). The comments on these two criteria for ETPH include questions and comments on many issues, including but not limited to the derivation of the criteria, exposure assumptions and toxicity values used to derive the criteria, and comparison to criteria adopted in other states. The comments recommend that SWPC and VC criteria for ETPH either not be adopted, be adopted at different concentration levels, or be evaluated further prior to any decision whether to propose criteria.

Additionally, one comment (15) discussed that the ETPH analytical method is not sufficiently reliable. This comment also expressed that adoption of ETPH criteria would require a reset of the post-remediation monitoring timeline. Another commenter (see (16) below) stated that they agree that the use of ETPH analysis is more appropriate than total petroleum hydrocarbon (TPH) analysis, though also recommended adding allowance for the use of the volatile petroleum hydrocarbons/extractable petroleum hydrocarbons (VPH/EPH) methods. Comments 14, 15, 16, 19, 20, 21, 23, 27, 28 and 29.

DEEP Response:

Comments generally concern SWPC and VC for petroleum hydrocarbons using the ETPH laboratory method (ETPH), and this response addresses the comments as a group except as otherwise noted.

The Department will take under further advisement the ETPH criteria for volatilization criteria (VC) and for surface water protection criteria (SWPC), and will not amend the RSRs to add such criteria at this time. The comments on these two criteria were extensive and deserve additional

consideration before the Department will respond to the substance of the comments. The Department will further evaluate the comments received on SWPC and VC for ETPH, and will determine whether to propose such criteria in future regulation amendment efforts. Some of the comments addressed the Fiscal Note, and said that the proposed addition of SWPC and VC for ETPH would increase costs of investigation and cleanup. Because the proposed amendment to add SWPC and VC for ETPH is being withdrawn at this time, the Fiscal Note comments do not need to be addressed.

The Department will continue with the amendments that add DEC, PMC and GWPC for ETPH; no comments specifically urged that they not be added.

Comment 16: On the specific issue of adding allowance for VPH/EPH methods, a party may use those methods now as long as the party receives Commissioner approval of criteria for site-specific use. The Department is not proposing default criteria for the Appendices at this time for VPH/EPH as it continues to evaluate appropriate derivation of criteria for these methods.

Commenter 15: On the specific issue of the reliability of the ETPH method, the Department does not agree with the comment that the method is unreliable and that reliance on it is inappropriate. The ETPH method has found widespread acceptance by the environmental community. When selecting analytical methods to characterize a potential release, it is the responsibility of the environmental professional to understand the nature of the release, and the limitations of the analytical method when evaluating the results.

Like many other analytical methods, the ETPH Method may detect substances which are not related to the potential release being investigated. The ETPH method will measure extractable non-polar organic compounds which elute in the C9 to C36 range. Depending on the site, this may include non-petroleum compounds, but the method is called for when investigating a site where there has been a suspected petroleum spill. When in doubt regarding the validity of an ETPH, a fingerprint of the chromatogram can be used to qualitatively identify the type of release (for example, diesel or lube oil). Alternatively results could also be confirmed by analysis of the extract using Gas Chromatography–Mass Spectrometry to verify the results are related to petroleum.

This comment also stated that new criteria may cause a reset of post-remediation monitoring timeline. However, the promulgation of the DEC, PMC and GWPC criteria for ETPH does not create an obligation to revisit releases which are characterized by other approved methods such as EPA Method 418.1 or other methods approved in writing by the Commissioner. For example, the RSRs will continue to contain criteria for TPH that was analyzed by EPA Method 418.1 for samples collected before June 30, 2009. Also, any prior, Department written approval of site specific criteria remains valid for the site even after adoption of new criteria.

Outcome: proposed amendment revised so that it does not add numeric surface water protection criteria and volatilization criteria for petroleum hydrocarbons analyzed by ETPH Method.

Provision: generally, where reference is made to “95% UCL” in various provisions.

Comment:

References to 95% UCL should be stated as “95% UCL or higher”, to allow for use of 97.5% UCL or 99% UCL as valid statistical methods.

Comment 22.

DEEP Response:

The Department concurs. The Department will add a new definition for 95% UCL which will mean either 95%, 97.5% or 99% UCL.

Outcome: a definition will be added for 95% UCL to reflect the options.

Provision:

22a-133k-2(e)(2)(A)(ii)

Comment:

Erroneous reference to direct exposure criteria, in a provision where “pollutant mobility criteria” is the correct and intended phrase.

Comment 14.

DEEP Response:

Comment correctly points out a typographical error that should be corrected to say “pollutant mobility criteria”.

Outcome: typographical error is corrected.

Provision:

Appendix D – surface water protection criteria (SWPC) for phenanthrene

Comment:

A numerical, typographical error that occurred during adoption of the RSRs in 1996 should be corrected at this time.

Comments 19, 14 and 21.

DEEP Response:

Adoption of the RSRs in 1996 with respect to the SWPC for phenanthrene listed the numeric criteria printed in Appendix D as 0.077 ppb. It is true that it is the same number as for the substance immediately preceding it in the Appendix D list. Also, the Department has been approving alternative criteria requests for SWPC for this substance. However, the Department did not identify this criteria for amendment in the August 2012 public notice, and the record in 1996 of it being a typographical error for a different number is not extremely clear; therefore, the Department will not at this time amend Appendix D for this substance. A person may request an

alternative criteria by submitting an alternative criteria request for phenanthrene for the Commissioner's review and approval as appropriate. The Department will evaluate amending the SWPC for this substance in a future proposal to amend the RSRs.

Outcome: no change.

Provision:

Appendix C – Arsenic ground water protection criteria (GWPC)

Comment:

Amend the GWPC to match the federal drinking water standard for public water supplies.
Comment 21.

DEEP Response:

This comment recommends a new amendment that was not one of the provisions proposed for amendment in the August 2012 public notice of intent to amend regulations. The Department will take this comment under advisement for a future proposed amendment, but will not adopt it at this time.

Outcome: no change.

Provision:

General – Transition process - no specific RSR provision.

Comment:

(1) Establish a work group to assist with implementation issues related to the amendments after adoption. (2) Allow the retroactive use of amended regulations.
Comments 25 and 16.

DEEP Response (corresponds with the numerical comment):

(1) The Department routinely sets up workgroups for many remediation-related issues. The Department may set up work groups to facilitate education on and implementation of regulation amendments. No additional change to the regulations is requested or needed to address this comment.
(2) Parties can apply any of the amended regulations to any release area where appropriate. No additional change to the regulations is needed to address this comment.

Outcome: no change.

Provision:

General

Comment:

Investigations should be limited to site history and processes; grants should be made available for historical widespread impacts.

Comment 16.

DEEP Response:

Both recommendations are beyond the scope of the enabling statute. Investigations are not specifically regulated in the RSRs. Also, the RSRs do not contain a grant program.

Outcome: no change.

Provision:

Criteria generally

Comment:

Update all criteria. Also establish background for metals

Comment 16.

DEEP Response:

These are recommendations for additional amendments beyond the amendments proposed in the August 2012 Public Notice of Intent to Amend Regulations. As such, the Department will take these comments under advisement for potential future amendments, and will not make amendments based on these comments at this time.

Outcome: no change.

Provision:

Criteria generally

Comment:

Adopt criteria for additional polycyclic aromatic hydrocarbons (PAHs)

Comment 28.

DEEP Response:

These are recommendations for additional amendments beyond the amendments proposed in the August 2012 Public Notice of Intent to Amend Regulations. As such, the Department will take these comments under advisement for potential future amendments, and will not make amendments based on these comments at this time.

Outcome: no change.

Environmental Land Use Restriction (ELUR) Regulation Amendments – Section 22a-133q-1 of RCSA – Hearing Comments and Responses

Provision: 22a-133q-1(h)

No public comment was received on the proposed amendment in this provision. However, the Department has determined that an adjustment of the proposed amendment is necessary to be consistent with the associated statutory provision at 22a-133o, which requires that the certificate of title be submitted within seven days after receiving the ELUR signed by the Commissioner.

Outcome: The Department’s proposed amendment is adjusted so that 22a-133q-1 reads as, “Whether the Commissioner or a licensed environmental professional approves an environmental land use restriction, within seven (7) days after receiving on the environmental land use restriction the signature of the Commissioner or licensed environmental professional, the owner of the subject parcel shall submit to the Commissioner a certificate of title indicating that each person holding an interest in such parcel or any part thereof, including without limitation, each mortgagee, lessee, lienor, and encumbrancer, has irrevocably subordinated such interest to the environmental land use restriction.”

Provision: Appendix 1, second “Whereas” clause

No public comment was received on the proposed amendment in this provision. However, the Department has determined that an adjustment of the proposed amendment is necessary to provide additional accuracy. The Whereas clause references the authority to enter into an ELUR, and additional statutes that contain authority are added as additional citations.

Outcome: The Department’s proposed amendment is adjusted so that 22a-133q-1, Appendix 1, second “Whereas” clause reads as, “the grantee has the authority to enter into this declaration of environmental land use restriction pursuant to sections 22a-5, 22a-6, and 22a-133o et seq, of the General Statutes;”.

Provision: Appendix 1, paragraph number 5, last sentence

No public comment was received on the proposed amendment in this paragraph. However, the Department has determined that an adjustment of the proposed amendment in the last sentence is necessary to be more accurate and provide better consistency with statutory authority. The proposed amendment would have struck the last sentence of the paragraph, and add a new sentence in its place. The Department has determined to not add the proposed new last sentence.

Instead the Department will keep the original last sentence (not strike it as proposed), and amend it slightly so it says that the Grantee (Commissioner) will not approve a permanent release of the property from the ELUR unless a cleanup pursuant to the RSRs is completed. This will make the sentence more accurate and flexible for temporary releases approved by the Grantee.

Outcome: The Department's proposed amendment is adjusted so that 22a-133q-1, Appendix 1, paragraph number 5, last sentence, reads as, "The Grantee shall not approve any permanent release of the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee's satisfaction that grantor has remediated the Subject Area in accordance with R.S.C.A. sections 22a-133k-1 through 22a-133k-3, inclusive."

All comments below are from Comment 24 (see Appendix II) as well as Comment 23 that concurred with the comments.

Provision for the remainder of Comments: Appendix to Section 22a-133q-1 of RCSA

Comment:

Endorses the Department's proposal to consolidate the Department and LEP forms in Appendices 1 and 2 into a single form. Most of the amendments will improve clarity.

DEEP Response:

The Department agrees.

Outcome: no change.

Comment:

The reference to the "name of property" should be deleted. While DEEP has assigned "names" to parcels in order to identify sites in DEEP files, such "names" have no meaning in context of land records. Such identification could cause misfiling to be recorded on the Town Clerk's land records.

DEEP Response:

The Department agrees with the comment and has amended the Appendix 1 to delete the requirement to identify the "Name of the Property".

Outcome: amendment revised.

Comment:

There is no need to list the state in which the property is located because it must be located in CT. This block appears at the top of page on Appendix 1.

DEEP Response:

A complete address is needed to avoid potential confusion. We do not concur with this comment and do not believe that identifying CT will cause any hardship.

Outcome: no change.

Comment:

The “Municipal Identification for the Property” is not clear. Correction has been proposed.

DEEP Response:

DEEP concurs with the proposed correction and have included the suggested revisions in the amendments.

Outcome: amendment revised.

Comment:

The reference to the volume and page is confusing.

DEEP Response:

The goal of this language was to cross reference the ELUR with the recorded instrument which establishes ownership. We do not concur with this comment.

Outcome: no change.

Comment:

DEEP should require recordation of a Mylar instead of a smaller-sized survey.

DEEP Response:

This comment provides a practical suggestion though is beyond the scope of the proposed amendments. The size of the A-2 survey which must be recorded with the ELUR is not specified in the ELUR Regulations. The Department encourages Grantors to record appropriately sized surveys.

Outcome: no change.

Comment:

Clarify signature Grantor’s signature block to ensure the ELUR is indexed under name of the

entity granting ELUR, and not indexed under the name of the authorized representative signing the ELUR.

DEEP Response:

The Department concurs with the proposed correction and made the appropriate changes to the regulations amendments.

Outcome: amendment revised.

Comment:

Clarify signature Grantee's (DEEP's) signature block to ensure the ELUR is properly indexed.

DEEP Response:

The Department concurs with the proposed correction and made the appropriate changes to the regulations amendments.

Outcome: amendment revised.

Comment:

Licensed Environmental Professionals (LEPs) should not be the Grantee under section 22a-133y of the CGS. Should the Department be the Grantee under section 133o of the CGS? There is no need for the Department to sign an ELUR pursuant to section 22a-133o of the CGS because it has the ability to enforce the ELUR.

DEEP Response:

The Department has clarified the Grantee's signature block to ensure the ELUR is indexed under the Department as the name of the entity granted the ELUR. The ELUR should not be indexed under the name of the authorized representative signing the ELUR.

Outcome: amendment revised.

Comment:

The certification to indicate that the signatory is duly authorized is superfluous and should be deleted since this information is part of the information submitted with the application for an ELUR.

DEEP Response:

Since the ELUR application information is not recorded on the land records, it is important to note in the Declaration that the signatory for the Grantor is duly authorized. We do not concur with this comment and have not made the recommended changes.

Outcome: no change.

Comment:

In the acknowledgement block for an entity, add an option for Notarization by an entity.

DEEP Response:

The Department concurs with the proposed correction and made the appropriate changes to the regulations amendments.

Outcome: amendment revised.

Comment - The term "Property" is used interchangeably with "Subject Area". One term should be used consistently.

DEEP Response - This comment is beyond the scope of the proposed revisions, as it would involve amendments to provisions not identified for amendment in the August 2012 public notice. The comment is a practical recommendation, and will be considered for potential future amendments at a later time.

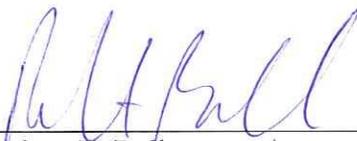
Outcome: no change.

VII. FINAL WORDING OF THE PROPOSED REGULATIONS

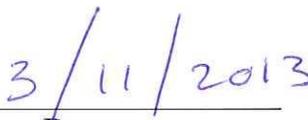
The final revised amendments to the Remediation Standard and Environmental Land Use Restriction regulations are presented in Appendix IV of this document.

VIII. CONCLUSION

Based upon the comments addressed in this Hearing Report, I recommend the proposed amendments to the Remediation Standard Regulations and the Environmental Land Use Restriction Regulations, public noticed in the Connecticut Law Journal on August 21, 2012, be revised as recommended herein, and that the recommended final proposal, included as Appendix IV to this report, be submitted to the Commissioner for approval and submittal to the Attorney General and subsequently to the Legislative Regulations Review Committee of the Connecticut General Assembly.



Robert E. Bell
Hearing Officer



Date

NOTICE OF INTENT TO ADOPT REGULATIONS AND TO HOLD A PUBLIC HEARING

Pursuant to sections 4-168, 22a-6, 22a-133k and 22a-133q of the Connecticut General Statutes (“CGS”), the Commissioner of Energy and Environmental Protection hereby gives notice of the commissioner’s intent to amend sections 22a-133k-1 through 22a-133k-3, inclusive, and section 22a-133q-1 of the Regulations of Connecticut State Agencies (“RCSA”).

Remediation Standard Regulations - Revisions to RCSA sections 22a-133k-1 through 22a-133k-3, inclusive – commonly referred to as the Remediation Standard Regulations or “RSRs” – are authorized under sections 22a-6 and 22a-133k of the CGS. The existing RSRs identify the technical standards for the remediation of environmental pollution at hazardous waste sites and other properties that have been subject to a spill, release or discharge. They also identify numeric standards for remediation of specific pollutants and the procedures and standards for variances and alternatives to such standards.

The purpose of the proposed amendments to the RSRs is to aid site cleanup and redevelopment without compromising the protection of public health and environmental quality. The proposed amendments seek to remove unintended barriers to remediating sites by providing creative new directions and opportunities, clarifying regulatory language, and addressing concerns expressed by the regulated community.

Amendments include, but are not limited to:

- Identifying a definition, test methodology and criteria for petroleum hydrocarbons that provides better characterization of the nature of the contamination;
- Expanding, in specific settings, the definition of “inaccessible soil” to render inaccessible certain substances found in polluted fill that are normally found in asphalt;
- Updating the numeric direct exposure criteria for the constituent lead to be equivalent to the federal standard;
- Deleting the pollutant mobility criteria (PMC) exception to comply with the more stringent GA PMC in certain GB areas;
- Clarifying the requirement that polluted fill containing any combination of coal ash, wood ash, coal fragments, or asphalt paving fragments may contain volatile organic substances not exceeding the PMC for such substances;
- Providing a PMC exception, under certain conditions, for pollutants, other than volatile substances, based upon representative ground water sampling;
- Providing an alternative in applying the direct exposure criteria (DEC) and PMC should single sample results exceed two times the criterion by demonstrating site conditions warrant a higher multiplier and requesting such approval of the Commissioner; and
- Increasing the flexibility of engineered controls by tailoring such controls to the applicable DEC or PMC demonstration.
- Changes to the applicability section to clarify when and how the regulations apply;
- Identification that approvals must be requested on forms prescribed by the commissioner;
- Correcting the risk-based formula for calculating the residential DEC for any additional polluting substance, correcting the risk-based formula used to derive the ground-water protection criteria for non-carcinogenic additional polluting substances and updating the conversion factor used in such formula;

- Providing exceptions for the following: certain incidental sources of polluted soil resulting from the normal use of motor vehicles; certain incidental sources of polluted soil resulting from the use of asphalt paving; and releases of certain pollutants in ground water from leaking water supply distribution systems;
- Deletion of the prohibition on using a statistical compliance demonstration when excavation is the remedy and deletion of the prohibition for a person requesting a widespread polluted fill variance if such person was authorized to legally dispose of such fill; and
- Restructuring the compliance and post-compliance ground water monitoring sections to allow LEP self-implementation of these sections.

Environmental Land Use Restriction Regulations - Revisions to RCSA section 22a-133q-1, the Environmental Land Use Restriction or "ELUR" regulations are authorized under sections 22a-6 and 22a-133q of the CGS. The existing ELUR regulations identify the procedures and standards for the use and recording of environmental land use restrictions thereby preventing the use of polluted real property for certain purposes or prohibiting certain activities on such property consistent with site risks. The purpose of the amendments to these regulations is to clarify requirements and incorporate procedural changes that streamline the process of utilizing an ELUR on polluted real property.

Copies of the proposed amended regulations, small business impact statement and regulatory flexibility analysis, and other related material are available for public inspection during normal business hours at the Department of Energy and Environmental Protection's Bureau of Water Protection and Land Reuse, Remediation Division, 2th Floor, 79 Elm Street, Hartford, Connecticut. A link to the proposed regulations is available at the Department's website at: www.ct.gov/dep/publicnotices or may be obtained from Rose Quinones at the above address, or by phone at (860) 424-3705. With this notice the Department seeks comment on the provisions in the proposed amendments.

Public Hearing and Comments - All interested parties are invited to present their views on the proposed amended regulations at a hearing to be held at the following place and time:

October 25, 2012

1:00 p.m. – 6:00 p.m. until all the comments have been heard or until the last person present has testified.

Phoenix Auditorium, 5th Floor

Department of Energy and Environmental Protection

79 Elm Street, Hartford, Connecticut

The hearing officer may close the hearing at that time, adjourn to a later date if needed or hold the record open for the submission of additional written testimony.

Speakers are requested, although not required, to submit a written copy of their comments.

Written comments may be submitted to Robert E. Bell, Department of Energy and Environmental Protection, Bureau of Water Protection and Land Reuse, 79 Elm Street, Hartford, Connecticut, 06106 – 5127 at any time prior to the close of the public hearing. All comments must be received by the close of the public hearing and will not be accepted or considered if received after the close of the public hearing.

In addition, the Department provides notice of an informational session which will be held:

September 26, 2012

1:30 p.m. - 3:30 p.m.

Phoenix Auditorium, 5th Floor,

Department of Energy and Environmental Protection
79 Elm Street, Hartford, Connecticut

Interested persons are advised, however, that the informational session is not a substitute for submitting comments in the manner described above in this notice and that the Department will not be receiving public comments during the informational session. Any person seeking to comment on the proposed regulations will need to submit a comment in writing or at the public hearing, even if the same matter is discussed during the informational session.

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action and Equal Opportunity Employer that is committed to requirements of the Americans with Disabilities Act. To request an accommodation, call 860-424-3194, or deep.hrmed@ct.gov.

8/9/12
Date


Macky McCleary
Deputy Commissioner

Appendix II

Proposed Amendments to the Remediation Standard Regulations and Environmental Land Use Restriction Regulations	
Exhibit #	Exhibits and Comments Received From:
1a & 1b	<u>CT DEEP's Public Notice of Intent to Adopt Regulations and to Hold a Public Hearing</u> Signed August 9, 2012 and published in the CT Law Journal on August 21, 2012
2	CT DEEP's <u>Proposed Amendments to the Remediation Standard Regulations and Environmental Land Use Restriction Regulations</u> (PDF), which were the subject of a Public Hearing on October 25, 2012
3	CT DEEP's <u>Small Business Impact Statement</u> for the Proposed Regulation Amendments
4	CT DEEP's <u>Agency Fiscal Estimate of Proposed Regulations Amendments</u>
5a & 5b	CT DEEP's <u>Statement pursuant to Section 22a-6(h) of the CT General Statutes</u>
6	CT <u>Office of Policy and Management Approval</u> to Public Notice the Proposed Amendments
7	CT <u>Office of the Governor's Approval</u> to Public Notice Proposed Amendments
8	CT DEEP's <u>Authorization to Hold a Public Hearing (Delegation of Hearing Officer)</u>
9a-9f	CT DEEP's <u>Notification to CT Legislative Environment Committee</u> of Notice of Intent to Adopt Regulations and Hold a Public Hearing
10 a-c	CT DEEP's <u>Advance Notice of Public Rulemaking</u> regarding the Proposed Regulations
11	CT DEEP's <u>Notification to CT Department of Economic and Community Development</u>
12	<u>Matthew E. Hackman, P.E., CHMM, Inc.</u> – Warwick, RI (09/05/12 and 09/06/12 electronic mail)
13	<u>Dominion Nuclear Connecticut, Inc.</u> – Waterford, CT / <u>Dominion Resources Services, Inc.</u> - Glen Allen, VA
14	<u>Environment Professionals' Organization of Connecticut (EPOC)</u> – Amston, CT
15	<u>Carriage House Consulting, Inc. (CHCI)</u> – South Natick, MA
16	<u>Connecticut Owner's Group (CTOG)</u> , RCRA Corrective Action program - Cheshire, CT
17	<u>Chester Environmental Associates, Inc.</u> – Hebron, CT
18	<u>Zuvic - Carr and Associates, Consulting Engineers</u> - Rocky Hill, CT.
19	<u>AECOM</u> - Chelmsford, MA
20	<u>Loureiro Engineering Associates (LEA)</u> – Plainville, CT
21	<u>Leggette, Brashears & Graham, Inc., (LBG)</u> - Farmington, CT
22	<u>Kathy Lehnus on behalf of The 95% UCL Workgroup</u> - Hartford, CT
23	<u>Shipman & Goodwin, LLP</u> - Hartford, CT
24	<u>Carmody and Torrance LLP, Attorneys at Law</u> - Waterbury, CT
25	<u>Evan J. Glass</u> - Colchester, CT
26	<u>Kenneth Feathers</u> – Storrs, CT

27	<u>Independent CT Petroleum Assoc.</u> - Cromwell, CT
28	<u>Mark Gottlieb</u> (live oral testimony only, no written submittal)
29	<u>Greg Sharpe</u> (live oral testimony only, no written submittal)
30	<u>Dept of Public Health</u> – State of CT (filed after close of Public Hearing)

Appendix III

Text of Regulations as Proposed for Hearing

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Concerning
REMEDATION STANDARD

[Section 1.] Sections 22a-133k-1 to 22a-133k-3, inclusive, of [The]the Regulations of Connecticut State Agencies are amended [by adding a new section 22a-133k-1]to read as follows:

Section 22a-133k-1

(a) Definitions.

For the purposes of sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies, the following definitions apply:

(1) "Analytical detection limit" means the minimum concentration of a substance that can be quantified consistently and reliably using methods approved by EPA and which concentration shall be (A) for a substance in ground water, equal to or less than the ground-water protection criterion for such substance determined (i) for a sample of ground water in a GA area using analytical methods specified in subpart C of 40 CFR part 141 or (ii) for a sample of ground water in a GB area using methods established pursuant to "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460; or (B) for a substance in soil, equal to or less than the residential direct exposure criteria or the applicable pollutant mobility criteria, whichever is lower using methods established pursuant to "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460.

(2) "Aquifer protection area" means an aquifer protection area as defined in section 22a-354h of the General Statutes.

(3) "Area of influence" means as "area of influence" as defined in section 22a-354b-1(a) of the Regulations of Connecticut State Agencies.

(4) "Areal extent of a ground-water plume" means the surface area beneath which ground water has been or may be polluted by a release and in which ground water one or more substances from such release is or may be present at a concentration above the analytical detection limit.

(5) "Background concentration for ground water" with respect to a particular release means the concentration of a substance in ground water (A) at the nearest location upgradient of and unaffected by the release; or (B) if such release occurred at or created a ground-water divide, at the nearest location representative of ground water quality unaffected by any release.

(6) "Background concentration for soil" means the representative concentration of a substance in soil of similar texture and composition outside the subject release area and in the general geographic vicinity of such release area, but not within any other release area.

(7) "Carcinogenic substance" means a substance defined as a "carcinogen" by federal or state agencies and for which a quantitative health risk extrapolation is available.

(8) "CFR" means the Code of Federal Regulations.

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(9) "Commissioner" means the Commissioner of Energy and Environmental Protection or his designee.

(10) "Dense non-aqueous phase liquid" means a non-aqueous phase liquid that has a density greater than water at 20 degrees Celsius.

(11) "Direct Exposure Criteria" means the concentrations identified in Appendix A to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or any alternative direct exposure criteria approved by the Commissioner pursuant to section 22a-133k-2(d) of the Regulations of Connecticut State Agencies.

(12) "Downgradient" means in the direction of the maximum rate of decrease of hydraulic head.

(13) "Downgradient area" with respect to a release of a substance means the area bounded by (A) the width of the release area of such substance perpendicular to the direction of ground-water flow, (B) two side boundary lines parallel to the downgradient direction of ground water flow extending from the two endpoints of said width to the downgradient parcel boundary, and (C) the downgradient parcel boundary extending between the two side boundary lines; excluding any portion of such downgradient area that is (i) affected by any other release of such substance or (ii) beneath an existing permanent structure.

(14) "Environmental land use restriction" means an environmental land use restriction as defined in section 22a-133q-1 of the Regulations of Connecticut State Agencies.

(15) "Environmentally isolated soil" means polluted soil which is: (A)(i) beneath an existing building or (ii) beneath another existing and permanent structure which the Commissioner has determined in writing would prevent the migration of pollutants; (B) not a continuing source of pollution; (C) not polluted with volatile organic substances or, if it is polluted with such substances, the concentration of such substances has been reduced in concentration to the maximum extent prudent; and (D) above the seasonal high water table.

(16) "EPA" means the United States Environmental Protection Agency.

(NEW)(17) "ETPH" means the analytical results obtained using the "State of Connecticut, Department of Environmental Protection, Recommended Reasonable Confidence Protocols, Quality Assurance and Quality Control Requirements For Extractable Total Petroleum Hydrocarbons by the State of Connecticut, Department of Public Health ETPH Method," unless a different method is approved in writing by the Commissioner.

[(17)](18) "Excess lifetime cancer risk" means the estimated probability that an individual's exposure to a substance could result in cancer.

[(18)](19) "GA area" means an area where the ground-water classification is GA or GAA, respectively.

[(19)](20) "GB area" means an area where the ground-water classification is GB.

[(20)](21) "Ground water" means that portion of waters as defined in section 22a-423 of the General Statutes which portion is at or below the water table.

[(21)](22) "Ground-water classification" means the ground-water classification goal or the ground-water classification, whichever is more stringent, established in the Water Quality Standards.

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[(22)](23) "Ground-water divide" means a line on the water table from which the water table slopes downward in both directions away from such line.

[(23)](24) "Ground-water protection criteria" means the concentrations identified in Appendix C to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(24)](25) "Ground-water plume" means ground water which has been polluted by a release and in which ground water one or more substances from such release is present at a concentration above the analytical detection limit.

[(25)](26) "Hazard index" means the calculation of the potential for non-cancer health effects as a result of exposure to one or more substances with the same or similar modes of toxic action or toxic endpoints.

[(26)](27) "Hydraulic gradient" means the change in hydraulic head per unit distance.

[(27)](28) "Hydraulic head" means the elevation to which water rises in a piezometer or a well.

[(28)](29) "Inaccessible soil" means polluted soil which is: (A) more than four feet below the ground surface; (B) more than two feet below a paved surface comprised of a minimum of three inches of bituminous concrete or concrete, which two feet may include the depth of any material used as sub-base for the pavement; (C) polluted fill beneath a bituminous concrete or concrete surface comprised of a minimum of three inches of bituminous concrete or concrete if such fill is polluted in excess of applicable direct exposure criteria only by semi-volatile substances or petroleum hydrocarbons, or any combination thereof, that are normal constituents of bituminous concrete; or [(C)](D)(i) beneath an existing building or (ii) beneath another existing permanent structure provided written notice that such structure will be used to prevent human contact with such soil has been provided to the Commissioner.

[(29)](30) "Industrial or commercial activity" means any activity related to the commercial production, distribution, manufacture or sale of goods or services, or any other activity which is not a residential activity as defined in subdivision [(53)](54) of this subsection.

[(30)](31) "Industrial/commercial direct exposure criteria" means the concentrations identified as industrial/commercial direct exposure criteria in Appendix A to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(31)](32) "Industrial/commercial volatilization criteria" means the concentrations identified as industrial/commercial volatilization criteria in Appendices E and F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(32)](33) "Intermittent watercourse" means "intermittent watercourse" as defined in section 22a-38 of the General Statutes.

[(33)](34) "Light non-aqueous phase liquid" means a non-aqueous phase liquid that has a density equal to or less than water at 20 degrees Celsius.

[(34)](35) "Matrix interference effect" means the inability to measure the concentration of a substance in a sample at the analytical detection limit due to chemical interferences within the sample which interferences cannot be compensated for using methods approved by EPA.

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[(35)](36) "Natural attenuation" means a decrease in concentration of a substance in ground water through operation of natural physical or chemical processes, including but not limited to adsorption, absorption, dilution, phase transfer, oxidation, organic complexation, biodegradation, dispersion and diffusion.

[(36)](37) "Non-aqueous phase liquid" means a liquid that is not dissolved in water.

[(37)](38) "Organoleptic" means the capability to produce a detectable sensory stimulus such as odor or taste.

[(38)](39) "Parcel" means a piece, tract or lot of land, together with the buildings and other improvements situated thereon, a legal description of which piece, parcel, tract or lot is contained in a deed or other instrument of conveyance.

[(39)](40) "PCB" means polychlorinated biphenyls.

[(40)](41) "PPB" means parts per billion.

[(41)](42) "PPM" means parts per million.

[(42)](43) "Person" means person as defined in section 22a-2(c) of the General Statutes.

[(43)](44) "Pollutant mobility criteria" means the concentrations identified in Appendix B to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or any alternative pollutant mobility criteria approved by the Commissioner pursuant to subsection 22a-133k-2(d) of the Regulations of Connecticut State Agencies.

[(44)](45) "Polluted fill" means soil or sediment which contained polluting substances at the time such soil or sediment was deposited as fill material.

[(45)](46) "Polluted soil" means soil affected by a release of a substance at a concentration above the analytical detection limit for such substance.

[(46)](47) "Pollution" means pollution as defined in section 22a-423 of the General Statutes.

[(47)](48) "Potable water" means potable water as defined in section 22a-423 of the General Statutes.

[(48)](49) "Potential public water supply resource" means (A) any "potential well field" as defined in section 22a-354a of the General Statutes, or (B) any area identified by the Commissioner pursuant to section 22a-354c(b) of the General Statutes.

[(49)](50) "Prudent" means reasonable, after taking into consideration cost, in light of the social and environmental benefits.

[(50)](51) "Release" means any discharge, spillage, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying, or disposal of a substance.

[(51)](52) "Release area" means the land area at and beneath which polluted soil is located as a result of a release.

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[(52)](53) "Remediation" means the containment, removal, mitigation, or abatement of pollution, a potential source of pollution, or a substance which poses a risk to human health or the environment, and includes but is not limited to the reduction of pollution by natural attenuation.

[(53)](54) "Residential activity" means any activity related to a (A) residence or dwelling, including but not limited to a house, apartment, or condominium, or (B) school, hospital, day care center, playground, or outdoor recreational area.

[(54)](55) "Residential direct exposure criteria" means the concentrations identified as residential direct exposure criteria in Appendix A to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(55)](56) "Residential volatilization criteria" means the concentrations identified as residential volatilization criteria in Appendices E and F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(56)](57) "Seasonal high water table" means, on an annual basis, the highest plane in the ground at which plane all pore spaces are filled with water atmospheric pressure.

[(57)](58) "Seasonal low water table" means, on an annual basis, the lowest plane in the ground at which plane all pore spaces are filled with water atmospheric pressure.

[(58)](59) "Sediment" means unconsolidated material occurring in a stream channel, estuarine waters, or marine waters.

[(59)](60) "Seven day, ten year low flow" or "7Q10" means the lowest seven consecutive day mean stream discharge rate with a recurrence interval of ten (10) years.

[(60)](61) "Soil" means unconsolidated geologic material overlying bedrock, but not including sediment.

[(61)](62) "Soil water" means that portion of waters as defined in section 22a-423 of the General Statutes which portion is above the water table.

[(62)](63) "SPLP" means Synthetic Precipitation Leaching Procedure EPA Method 1312 as set forth in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460.

[(63)](64) "Substance" means an element, compound or material which, when added to air, water, soil or sediment, may alter the physical, chemical, biological or other characteristic of such air, water, soil or sediment.

[(64)](65) "Surface-water protection criteria" means the concentrations identified in Appendix D to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or any alternative surface-water protection criteria calculated or approved by the Commissioner in accordance with subdivision 22a-133k-3(b)(3) of the Regulations of Connecticut State Agencies.

[(65)](66) "TCLP" means Toxicity Characteristic Leaching Procedure EPA Method 1311 as set forth in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460.

[(66)](67) "Technically practicable" means, with respect to remediation, the greatest degree of remediation that can be achieved using sound engineering and hydrogeologic practices.

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[(67)](68) "Upgradient" means in the direction of maximum rate of increase of hydraulic head.

[(68)](69) "Upgradient area" with respect to a release area of a substance means the area bounded by (A) the width of the release area of such substance perpendicular to the direction of ground-water flow, (B) two side boundary lines parallel to the upgradient direction of ground-water flow extending from the two endpoints of said width to the upgradient parcel boundary, and (C) the upgradient parcel boundary extending between the two side boundary lines; excluding any portion of such upgradient area that is (i) affected by any other release of such substance or (ii) beneath an existing permanent structure.

[(69)](70) "Volatilization criteria" means the concentrations identified in Appendix E and Appendix F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or alternative criteria approved by the Commissioner pursuant to subdivision 22a-133k-3(c)(4) of the Regulations of Connecticut State Agencies.

[(70)](71) "Volatilization criteria for ground water" means the concentrations identified in Appendix E to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(71)](72) "Volatilization criteria for soil vapor" means the concentrations identified in Appendix F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(72)](73) "Water table" means the plane in the ground at which plane all pore spaces are filled with water at atmospheric pressure.

[(73)](74) "Water Quality Standards" means the latest adopted Connecticut Water Quality Standards and Criteria adopted by the Commissioner pursuant to section 22a-426 of the General Statutes.

[(74)](75) "Wetland" means "wetlands" as defined in sections 22a-38(15) and section 22a-29(2) of the General Statutes.

[(75)](76) "Zone of influence" means zone of influence as defined in section 22a-430-3(a) of the Regulations of Connecticut State Agencies.

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(b) Applicability.

Sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies apply to any action taken to remediate polluted soil, surface water or a ground-water plume at or emanating from a release area which action is:

(1) required pursuant to Chapter 445, [or]446k or section 22a-208a(c)(2) of the General Statutes, [or

(2) taken pursuant to Public Act 95-183 or Public Act 95-190]including but not limited to any such action required to be taken or verified by a licensed environmental professional[pursuant to such Public Acts].

Sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies do not apply within the zone of influence of a ground-water discharge permitted by the Commissioner under section 22a-430 of the General Statutes. Any person conducting a remediation in accordance with said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies shall obtain all permits and other authorizations required by state, federal and local law and shall comply with all applicable state, federal and local laws, including without limitation the requirements of 40 CFR Part 761. 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. 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 General Statutes.

(c) Time frames for Issuance of Approvals by the Commissioner.

The Commissioner shall, no later than thirty days after the date of receipt of a request for his approval of any variance from or alternative criteria pursuant to sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, provide to the requester in writing estimated time frames for the Commissioner to (1) determine whether additional information is needed for him to evaluate the request; and (2) approve or deny a complete request. In addition, no later than one hundred and eighty days following adoption of said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner shall make available general estimated written time frames for the Commissioner to approve any variance or alternative criterion pursuant to these regulations, including estimated time frames for the Commissioner to (1) determine whether additional information is needed to evaluate the request; and (2) approve or deny a complete request. In establishing estimated time frames pursuant to this subsection, the Commissioner shall take into account the complexity of the request, and the environmental and economic significance of the remediation, and shall expedite any request associated with any voluntary remediation pursuant to [Public Acts 95-183 or 95-190]section 22a-133x, 22a-133y or 134a of the General Statutes.

(d) Public Participation.

(1) Public Hearing on Remediation. If the Commissioner determines that there is substantial public interest in any remediation proposed pursuant to [section 2 of P.A. 95-190 or section 2 or 3 of P.A. 95-183]Chapter 445, Chapter 446k or section 22a-208a(c), he may hold a public hearing on such proposed remediation, and he shall hold a hearing upon receipt of a petition signed by twenty-five or more persons. Notice of any such hearing shall be published in a newspaper of substantial circulation in the area of the proposed remediation at least thirty days prior to such hearing. Such hearing need not be conducted pursuant to the provisions of Chapter 54 of the General Statutes.

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(2) Comment Procedures. Any public notice published or mailed pursuant to [section 2 of P.A. 95-190 or section 2 or 3 of P.A. 95-183]sections 22a-133x, 22a-133y or 22a-134a of the General Statutes shall provide that comments on the proposed remediation may be submitted to the Commissioner within forty-five days of the publication or mailing of such notice. The Commissioner shall forward a copy of all comments received by the date specified in the public notice and all comments made at a public hearing to the owner of the subject parcel and, if different, the person undertaking remediation at such parcel. The person undertaking remediation at the subject parcel shall, within sixty days of receiving such comments, submit to the Commissioner a written summary of all such comments and a written response to each such comment. The Commissioner shall review such summary and responses and shall adopt it as his own, adopt it with modifications, or reject it and prepare a response to each such comment. The Commissioner shall send a copy of the initial summary and responses and of his action with respect thereto to each person who submitted comments on the remediation proposal.

(e) Periodic review.

The Commissioner shall periodically review sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies to determine whether the implementation of such regulations is successfully protecting public health and the environment from the hazards of pollution. The Commissioner shall also evaluate whether the implementation of the regulations streamlines the process of conducting remediation projects in Connecticut, based upon, among other things, his review of the number of remediation projects completed in accordance with said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the number of such projects reviewed by the Commissioner pursuant to [sections 2 or 3 of P.A. 95-183]sections 22a-133x or 22a-134a of the General Statutes, the length of time required for the Commissioner's review of complete requests for approval of alternative criteria or variances, and the number of remediation projects conducted pursuant to [P.A. 95-190 or sections 2 or 3 of P.A. 95-183]sections 22a-133x, 22a-133y and 22a-134a of the General Statutes, which projects were verified by a licensed environmental professional. Such reviews shall be conducted at intervals of no more than five years, provided that nothing in this subsection shall preclude the Commissioner, at his discretion, from conducting such a review at any time and further provided that the first such review shall be conducted no later than eighteen months after the effective date of sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies. As a result of such a periodic review, the Commissioner may conclude that the goals of this subsection and section 22a-133k of the General Statute are being met, or he may conclude that revisions to such regulations are necessary to ensure that the implementation of said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies achieves such goals, in which case he may revise such Regulations as he deems necessary to achieve those goals.

(NEW)(f) Use of Form Prescribed by the Commissioner.

Any person requesting a variance or any other approval by the Commissioner, or submitting any required notice to the Commissioner, pursuant to sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, shall submit such request or notice on a form as may be prescribed by the Commissioner.

(NEW)(g) Remediation of Soils Polluted with Lead.

Soil polluted with lead may be remediated to a concentration of 500 milligrams per kilogram in compliance with Section 22a-133k-2(b) provided:

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(1) Prior to the effective date of the 2012 amendments to Sections 22a-133k-1 through 22a-133k-3:

(A) Such remediation has been initiated; and

(B) A notice of such remediation has been published if required pursuant to Chapter 445 or any other applicable chapter of the General Statutes; and

(2) On or before twenty-four months after the effective date of the 2012 amendments to Sections 22a-133k-1 through 22a-133k-3 such remediation has been completed.

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[Section 2. The Regulations of Connecticut State Agencies are amended by adding a new section 22a-133k-2 as follows:]

22a-133k-2 Standards for Soil Remediation

(a) General.

Unless otherwise specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, polluted soil at a release area shall be remediated to a concentration which meets (1) (A) the direct exposure criteria set forth in subsection (b) of this section or alternative direct exposure criteria established in accordance with subdivision (2) or subdivision (7) of subsection (d) of this section; and (B) the pollutant mobility criteria set forth in subsection (c) of this section or alternative pollutant mobility criteria established in accordance with subdivision (3) or (5) of subsection (d) of this section; or (2) the background concentration for soil provided notice has been submitted to the Commissioner which notice shall be submitted on a form furnished by the Commissioner and shall include a brief description of the subject release area and of the general characteristics of soils in the vicinity of such release area; a map showing the location of such release area, and based on reasonable inquiry of other release areas in the vicinity thereof, and of all soil samples taken for the purpose of characterizing background concentration for soil; and the results of all laboratory analyses of such samples.

(b) Direct Exposure Criteria.

(1) Except as otherwise provided in this paragraph, polluted soil at a release area shall be remediated to at least that concentration at which the residential direct exposure criteria for each substance is met.

(2) (A) Polluted soil at a release area may be remediated to a concentration at which the industrial/commercial direct exposure criteria for each substance except PCB is met if (i) access to the parcel containing such release area is limited to individuals working at or people temporarily visiting the subject parcel; and (ii) an environmental land use restriction is in effect with respect to such parcel, or to the portion of such parcel containing such release area, which environmental land use restriction ensures that the parcel or restricted portion thereof is not used for any residential activity in the future and that any future use of such parcel or restricted portion thereof is limited to an industrial or commercial activity.

(B) Soil polluted with PCB at a release area may be remediated to a concentration at which the industrial/commercial direct exposure criteria for PCB is met if the parcel upon which such release area is located is (i) an outdoor electrical substation as defined in 40 CFR 761.123; or (ii) an other restricted access location as defined in said section 40 CFR 761.123 and an environmental land use restriction is in effect with respect to such parcel, or to the portion of such parcel containing such release area, which environmental land use restriction ensures that the parcel or restricted portion thereof is not used for any residential activity in the future and that any future use of such parcel or restricted portion thereof is limited to an industrial or commercial activity.

(3) The direct exposure criteria for substances other than PCB do not apply to inaccessible soil at a release area provided that if such inaccessible soil is less than 15 feet below the ground surface an environmental land use restriction is in effect with respect to the subject parcel or to the portion of such parcel containing such release area,

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which environmental land use restriction ensures that such soils will not be exposed as a result of excavation, demolition or other activities and that any pavement which is necessary to render such soil inaccessible is maintained in good condition unless and until such restriction is released in accordance with said section 22a-133q-1. Unless an alternative criterion has been approved in accordance with subsection 22a-133k-2(d)(7), inaccessible soil polluted with PCB may be remediated to a concentration of 10 ppm PCB by weight provided that (A) if such inaccessible soil is located on a parcel which is an other restricted access location as defined in said section 40 CFR 761.123, such soil may be remediated to a concentration of 25 ppm PCB by weight, or (B) if such inaccessible soil is located on a parcel which is an outdoor electrical substation as defined in 40 CFR 761.123, such soil may be remediated to a concentration of 25 ppm PCB by weight, or if a label or notice is visibly placed in the area in accordance with 40 CFR Part 761, to a concentration of 50 ppm PCB by weight.

(NEW)(4) Incidental Sources

The direct exposure criteria do not apply to petroleum hydrocarbons or semi-volatile substances in soil provided such pollution is the result of:

(A) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or

(B) Normal paving and maintenance of a consolidated bituminous concrete surface provided:

(i) Such bituminous concrete surface has been maintained for its intended purpose; and

(ii) Such pollution is immediately beneath or adjacent to such bituminous concrete surface or in soil immediately adjacent to and affected by stormwater runoff from such bituminous concrete surface.

[(4)](5) Additional Polluting Substances

(A) With respect to a substance at a release area for which a direct exposure criterion is not specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may, after consultation with the Commissioner of Public Health, approve in writing a direct exposure criterion to apply to such substance at a particular release area. Any person requesting approval of a direct exposure criterion for such substance shall submit to the commissioner (i) a proposed risk-based direct exposure concentration for such substance calculated in accordance with subparagraph (B) or (C) of this subdivision as applicable, and (ii) the analytical detection limit for such substance. Before approving a direct exposure criterion the Commissioner shall consider the proposed risk-based direct exposure concentration for such substance, the analytical detection limit for such substance, any information about the health effects such substance may cause due to exposure pathways not accounted for in the proposed risk-based direct exposure, and any other information that the Commissioner reasonably deems necessary.

(B) The proposed residential risk-based direct exposure concentration shall be calculated using the following equations:

(i) For carcinogenic substances:

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$$[DEC_{RB} = \left[\frac{\text{Risk}}{\text{CSF}} \right] \times \left[\frac{BW_C \times AT}{IR_C \times ED_C \times EF \times CF} + \frac{BW_A \times AT}{IR_A \times ED_A \times EF \times CF} \right]]$$

(NEW) $DEC_{RB} = \left[\frac{\text{Risk}}{\text{CSF}} \right] \div \left[\frac{(IR_C \times ED_C \times EF \times CF)}{(BW_C \times AT)} \right] + \left[\frac{(IR_A \times ED_A \times EF \times CF)}{(BW_A \times AT)} \right]$

(ii) For non-carcinogenic substances:

$$[DEC_{RB} = \left[\text{RFD} \times \text{HI} \right] \times \left[\frac{BW_C \times AT_C}{IR_C \times ED_C \times EF \times CF} + \frac{BW_A \times AT}{IR_A \times ED_A \times EF \times CF} \right]]$$

(NEW) $DEC_{RB} = \left[\text{RFD} \times \text{HI} \right] \div \left[\frac{(IR_C \times ED_C \times EF \times CF)}{(BW_C \times AT_C)} \right] + \left[\frac{(IR_A \times ED_A \times EF \times CF)}{(BW_A \times AT_A)} \right]$

(iii) The abbreviations used in subparagraphs (i) and (ii) shall be interpreted in accordance with the following table and shall be assigned the values specified therein:

Term	Description	Units	Value
DEC _{RB}	Risk-based Direct Exposure Criterion	mg/kg	calculated
Risk	Target Cancer Risk Level	Unitless	1.0E-06
HI	Hazard Index	Unitless	1.0
CSF	Cancer slope Factor	(mg/kg-day) ⁻¹	substance-specific
RFD	Reference Dose	mg/kg-day	substance-specific
IR _C	Ingestion Rate, Child	mg/day	200
IR _A	Ingestion Rate, Adult	mg/day	100
EF	Exposure Frequency	days/year	365
ED _C	Exposure Duration, Child	Years	6
ED _A	Exposure Duration, Adult	Years	24
CF	Conversion Factor	kg/mg	0.000001
BW _C	Body Weight, Child	Kg	15
BW _A	Body Weight, Adult	Kg	70
AT	Averaging Time, for carcinogens	Days	25550
AT _C	Averaging Time, Child for non-carcinogens	Days	2190
AT _A	Averaging Time, Adult for non-carcinogens	Days	8760

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(C) The proposed industrial/commercial risk-based direct exposure concentration shall be calculated using the following equations:

(i) For carcinogenic substances:

$$DEC_{RB} = \left[\frac{\text{Risk}}{\text{CSF}} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{ED} \times \text{EF} \times \text{CF}} \right]$$

(ii) For non-carcinogenic substances:

$$DEC_{RB} = \left[\text{RFD} \times \text{HI} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{EF} \times \text{ED} \times \text{CF}} \right]$$

(iii) The abbreviations used in subparagraphs (i) and (ii) shall be interpreted in accordance with the following table and shall be assigned the values specified therein:

Term	Description	Units	Value
DEC _{RB}	Risk-based Direct Exposure Criterion	mg/kg	calculated
Risk	Target Cancer Risk Level	Unitless	1.0E-06
HI	Hazard Index	Unitless	1.0
CSF	Cancer slope Factor	(mg/kg-day) ⁻¹	substance-specific
RFD	Reference Dose	mg/kg-day	substance-specific
IR	Ingestion Rate	mg/day	50
EF	Exposure Frequency	days/year	250
ED	Exposure Duration	Years	25
CF	Conversion Factor	kg/mg	0.000001
BW	Body Weight	Kg	70
AT	Averaging Time, for carcinogens	Days	25550
AT _A	Averaging Time, Adult for non-carcinogens	Days	9125

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(c) Pollutant Mobility Criteria.

(1) General.

(A) A substance, other than an inorganic substance or PCB, in soil above the seasonal low water table, or above the seasonal high water table if (i) remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution or (ii) the subject soil is located in a GB area, shall be remediated to at least that concentration at which the results of a mass analysis of such soil for such substance does not exceed the pollutant mobility criterion applicable to the ground-water classification of the area at which such soil is located, except that in the circumstances identified in subdivision (2) of this subsection, remediation to achieve compliance with the pollutant mobility criteria may be conducted in accordance with the requirements established in said subdivision (2).

(B) An inorganic substance or PCB in soil above the seasonal low water table, or above the seasonal high water table if (i) remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution or (ii) the subject soil is located in a GB area, shall be remediated to at least that concentration at which the results of a TCLP or SPLP analysis of such soil for such substance does not exceed the pollutant mobility criterion applicable to the ground-water classification of the area at which such soil is located, except that in the circumstances identified in subdivision (2) of this subsection, remediation to achieve compliance with the pollutant mobility criteria may be conducted in accordance with the requirements established in said subdivision (2).

(2) Specific Circumstances

(A) Polluted Soils in a GA Area.

A soil in a GA area and polluted with a substance[, other than 1,2 dichlorobenzene, ethyl benzene, toluene, xylenes or total petroleum hydrocarbons,] which soil is at or above the seasonal low water table, or at or above the seasonal high water table if remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution, may be remediated to at least that concentration at which the results of a TCLP or SPLP analysis of such soil for such substance do not exceed the ground-water protection criterion for such substance.

(B) Soils Polluted with Volatile Organic Substances in a GA area.

A soil in a GA area polluted with a volatile organic substance[, other than 1,2 dichlorobenzene, ethyl benzene, toluene, or xylenes] which soil is at or above the seasonal low water table, or at or above the seasonal high water table if remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution, may be remediated to at least that concentration at which the results of a TCLP or SPLP analysis of such soil for such substance do not exceed the ground-water protection criterion for such substance multiplied by ten or the results of a mass analysis of such soil for such substance do not exceed the pollutant mobility criterion for such substance multiplied by ten or by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision (4) of subsection (d) of this section, provided no non-aqueous phase liquids are

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present in the subject release area as determined in accordance with subdivision (3) of this subsection, the water table is at least fifteen feet above the surface of the bedrock and the downward vertical flow velocity is not greater than the horizontal flow velocity, and:

(i) (aa) a public water supply distribution system is available within 200 feet of the subject parcel, all adjacent parcels, and any parcel within the areal extent of the ground-water plume caused by the subject release area, (bb) the ground water within the areal extent of such ground-water plume is not used for drinking water, (cc) no public or private water supply wells exist within 500 feet of the subject release area, and (dd) the ground water affected by the subject release area is not a potential public water supply resource; or

(ii) (aa) the concentration of any volatile organic substance in a ground-water plume and within seventy-five feet of the nearest downgradient parcel boundary does not exceed the ground-water protection criterion, (bb) except for seasonal variation, the areal extent of volatile organic substances in the ground-water plume is not increasing over time and the concentration of any volatile organic substance in the ground-water plume is not increasing, except as a result of natural attenuation, at any point over time and (cc) notice of such condition is provided to the Commissioner on a form furnished by the Commissioner, which notice shall include: a brief description of the release area; a brief description of the distribution and concentration of volatile organic substances in soil and ground water; a map showing the location of the release area, and based on reasonable inquiry all other volatile organic substance release areas in the vicinity of the subject release area, all ground-water and soil monitoring points, and the areal extent of the volatile organic substance ground-water plume; and the results of all laboratory analyses conducted to determine whether the requirements of this subparagraph have been met; or

(iii) (aa) the concentration of any volatile organic substance within such ground-water plume does not exceed the ground-water protection criterion for such substance at a location downgradient of the release area, on the subject parcel, and within 25 feet of such release area, and (bb) notice of such condition is provided to the Commissioner on a form furnished by the Commissioner, which notice shall include: a brief description of the release area; a brief description of the distribution and concentration of volatile organic substances in soil and ground water; a map showing the location of the release area, and based on reasonable inquiry all other volatile organic substance release areas in the vicinity of the subject release area, and all ground-water and soil monitoring points; and the results of all laboratory analyses conducted to determine whether the requirements of this subparagraph have been met.

(C) Inorganic, semi-volatile, PCB or pesticide contamination in a GA area.

A soil in a GA area and polluted with inorganic substances, semi-volatile substances, PCB or pesticides, which soil is at or above the seasonal low water table, or at or above the seasonal high water table if remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution, may be remediated to a level at which (i)(aa) the results of a TCLP or SPLP analysis of such soil for such substance do not exceed the ground-water protection criterion for such substance multiplied by ten

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or by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision (4) of subsection (d) of this section or (bb) the results of a mass analysis of such soil for a substance do not exceed the pollutant mobility criterion for such substance multiplied by ten or by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision (4) of subsection (d) of this section; provided (ii) (aa) the release area and any portion thereof is located at least twenty-five feet from the nearest legal boundary of the parcel in the downgradient direction, (bb) no non-aqueous phase liquids are present in the release area as determined in accordance with subdivision (3) of this subsection, and (cc) the water table is at least fifteen feet above the surface of the bedrock.

(D) Polluted Soils in a GB area.

A substance[[other than total petroleum hydrocarbons](#)] in soil above the seasonal high water table in a GB area may be remediated to a level at which the results of a TCLP or SPLP analysis of such soil does not exceed the ground-water protection criterion for any such substance (i) (aa) multiplied by 10, (bb) multiplied by the ratio of the summation of the areas downgradient and upgradient of the release area to the release area, provided that such ratio does not exceed 500, or (cc) or multiplied by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision (5) of subsection (d) of this section; (ii) provided non-aqueous phase liquids are not present in such soil as determined in accordance with subdivision (3) of this subsection.

(E) Site specific dilution in a GB area.

(i) A substance[[other than total petroleum hydrocarbons,](#)] in a soil at or above the seasonal high water table in a GB area where the background concentration for ground water for such substance is less than the applicable ground-water protection criterion, may be remediated to a level at which the results of a mass analysis of such soil for a substance do not exceed the pollutant mobility criterion applicable to such substance in a GA area multiplied by a site-specific dilution factor calculated in accordance with clause (ii) of this subparagraph, or the results of a TCLP or SPLP analysis of such soil for a substance do not exceed the ground-water protection criterion for such substance multiplied by a site-specific dilution factor calculated in accordance with clause (ii) of this subparagraph, provided (aa) no non-aqueous phase liquids are present in such soil as determined in accordance with subdivision (3) of this subsection; (bb) notice has been submitted to the Commissioner in accordance with clause (iii) of this subparagraph; and (cc) the water table in the release area is at least fifteen feet above the surface of the bedrock and the downward ground water vertical flow velocity is not greater than the ground water horizontal flow velocity.

(ii) For the purpose of clause (i) of this subparagraph, the site-specific dilution factor shall be calculated using the following formula: $DF = (1 + (Kd/iL))(1-F_{adj})$, where:

DF = site-specific dilution factor
K = hydraulic conductivity, in feet per year, of the unconsolidated aquifer underlying the release area
i = horizontal hydraulic gradient in feet per feet

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- d = 15 feet
- I = infiltration rate in feet per year as specified in subparagraph (iv) of this subparagraph
- L = length in feet of the release area parallel to the direction of ground-water flow
- F_{adj} = background concentration for ground water divided by the ground-water protection criterion for the subject substance, or, where the background concentration for ground water can not be quantified, 1/2 the minimum detection limit for the subject substance divided by the ground-water protection criterion for the subject substance.

(iii) A notice submitted pursuant to clause (i) of this subparagraph shall be submitted on a form prescribed and provided by the Commissioner and shall include: a brief description of the release area and the general characteristics of soils in the vicinity of the release area; a map showing the location of the release area, and based on reasonable inquiry other release areas in the vicinity containing the substance for which the site-specific dilution factor is calculated, and all monitoring points; if applicable, justification for use of a till infiltration rate other than 0.5 feet per year, and the results of all the laboratory analyses and field analyses used to determine the (aa) parameters of the equation in clause (ii) of this subparagraph and (bb) identification of geologic material for the purposes of choosing an infiltration rate in accordance with clause (iv) of this subparagraph.

(iv)

Geologic Material	Infiltration Rate (feet/year)
Stratified Drift	2.0
Till	0.5 - 1.0
Lacustrine Deposits	0.4

(3) Determining the Presence of Non-aqueous Phase Liquids in Soil.

For the purpose of this subsection, the presence of non-aqueous phase liquids in soil shall be determined using the following equation: $C_{nap} = (S/2\rho_b)(K_d \rho_b + \theta_w + H^2\theta_a)$, where:

- C_{nap} = the concentration of an organic substance at which or above which such substance may be present in a non-aqueous phase
- S = the effective solubility
- ρ_b = dry soil bulk density
- K_d = soil-water partition coefficient, which may be approximated by K_{OC} · f_{OC}
- K_{OC} = soil organic carbon-water partition coefficient
- f_{OC} = fraction organic carbon of soil
- θ_w = water-filled soil porosity (L_{water}/L_{soil})
- θ_a = air-filled soil porosity (L_{air}/L_{soil})
- H' = Henry's law constant (dimensionless)
- H = Henry's law constant (atm·m³/mol)

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The terms defined above shall be assigned the following values:

Term	Units	Value
C_{NAP}	mg/kg	calculated
S	mg/L	chemical-specific
ρ_b	kg/L	1.5 or the lowest value measured at the subject release area
K_d	L/kg	calculated
K_{OC}	L/kg	chemical-specific
f_{OC}	g/g	0.006 or the lowest value measured at the subject release area
θ_w	L_{water}/L_{soil}	0.15
θ_a	L_{air}/L_{soil}	0.28
H'	unitless	$H \times 41$ where 41 is a conversion factor
H	atm-m ³ /mol	chemical-specific

(4) Exceptions.

(A) [If at a release area (i) the ground-water classification is GB and (ii) the elevation of the water table is below the elevation of the top of bedrock, such release area shall be remediated to a concentration which meets the pollutant mobility criteria applicable to any location at which the ground-water classification is GA or GAA.

(B) The pollutant mobility criteria do not apply to environmentally isolated soil provided an environmental land use restriction is in effect with respect to the parcel, or portion thereof, containing such soil which environmental land use restriction ensures that such soil will not be exposed to infiltration of soil water due to, among other things, demolition of the building.

(C)(B) The pollutant mobility criteria do not apply to polluted fill on a parcel if: (aa)(i) such fill is polluted only with coal ash, wood ash, coal fragments, asphalt paving fragments, or any combination thereof; (bb)(ii) such fill is not polluted with any volatile organic substance which exceeds an applicable pollutant mobility criterion; (cc)(iii) the concentration of each substance in any such fill is consistent with the requirements established in subsection (b) of this section; (dd)(iv) such substance is not affecting and will not affect the quality of an existing or potential public water supply resource or an existing private drinking water supply; (ee)(v) a public water supply distribution system is available within 200 feet of such parcel and all parcels adjacent thereto; and (ff)(vi) the placement of the fill was not prohibited by law at the time of placement.

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(NEW) (C) The pollutant mobility criteria do not apply to substances, other than volatile substances, in soil at a release area provided application of subdivisions (1) through (3) of subsection (c) of this section, as applicable, has failed to demonstrate compliance with the requirements of this section and:

(i) Such release area

(aa) is located in an area which at least eighty percent of the release area has been subject to unobstructed infiltration of precipitation for a minimum of five years; or

(bb) has been determined by the Commissioner in writing to have been subject to sufficient infiltration of precipitation such that the concentration of the substance and the areal extent of the ground-water plume will not likely increase if any obstruction to infiltration is removed in the future; and

(ii) The analytical results of four consecutive quarterly samples of ground water for such substance:

(aa) for a GA area or for an aquifer protection area located in a GB area are all less than the surface-water protection criterion and the ground-water protection criterion; or

(bb) for a GB area, are all less than the surface-water protection criterion; and

(iii) (aa) the ground-water sampling locations are representative of the areal extent of the ground-water plume and the areal extent of such ground-water plume which exceeds an applicable remedial criterion is not increasing over time and that, except for seasonal variations, the concentration of the subject substance is not increasing at any point over time; and

(bb) the ground-water samples are collected at locations where ground water is most likely to have been impacted by such substance from the release area.

(NEW) (D) Incidental Sources.

The pollutant mobility criteria do not apply to petroleum hydrocarbons or semi-volatile substances in soil provided such pollution is the result of:

(i) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or

(ii) Normal paving and maintenance of a consolidated bituminous concrete surface provided:

(aa) such bituminous concrete surface has been maintained for its intended purpose; and

(bb) such pollution is immediately beneath or adjacent to such bituminous concrete surface or in soil immediately adjacent to and affected by stormwater runoff from such bituminous concrete

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surface.

(5) Additional Polluting Substances.

With respect to a substance for which a pollutant mobility criterion is not specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve a pollutant mobility criterion, a dilution or dilution and attenuation factor, and a method for determining compliance with such criterion to apply to such substance at a particular release area, provided he finds that such criterion will ensure that soil water at such release area does not exceed, in a GA area, the ground-water protection criterion, or in a GB area the ground-water protection criterion multiplied by a dilution factor of 10.

(d) Alternative Soil Criteria.

(1) Requests for Approval of Alternative Soil Criteria.

(A) Any person requesting that the Commissioner approve an alternative criterion applicable to a particular release area shall submit: the name and address of the owner of the parcel at which such release area is located; the address of such release area and a brief description of its location; a detailed description of such release area; and a map at a scale of not less than 1:1200 showing the location of all release areas on such parcel, the subject release area, and describing the concentration and distribution of all substances in the soil of the subject release area, including but not limited to the substance for which an alternative criterion is sought; a detailed written report describing the justification for the proposed alternative criterion; and any other information the Commissioner reasonably deems necessary to evaluate such request.

(B) Any person requesting that the Commissioner approve an alternative pollutant mobility criterion or an alternative dilution or dilution attenuation factor shall submit, in addition to the information required by subparagraph (A) of this subdivision, a detailed description of any other release area located on the same parcel as the subject release area and which other release area (i) is affected or potentially affected by the subject release area or (ii) is affecting or potentially may affect the subject release area;

(C) Any person requesting that the Commissioner approve an alternative direct exposure criterion shall submit, in addition to the information required by subparagraph (A) of this subdivision, a detailed description of any other release area located on the same parcel as the subject release area.

(2) Alternative Direct Exposure Criteria.

With respect to a substance except PCB for which a direct exposure criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative direct exposure criterion and an alternative method for determining compliance with such criterion provided it is demonstrated to the satisfaction of the Commissioner, after consultation with the Commissioner of Public Health that the application of such alternative criterion at the subject release area will protect human health and the environment from the risks associated with direct exposure to polluted soil by ensuring that (A) the concentration of each carcinogenic substance in such soil does not exceed a 1×10^{-6} excess lifetime cancer risk level and the concentration of each non-carcinogenic substance in such soil does not exceed a hazard index of 1; or (B) for a release area polluted with multiple

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substances, the cumulative excess lifetime cancer risk for all carcinogenic substances in such soil does not exceed 1×10^{-5} , and the cumulative hazard index does not exceed 1 for non-carcinogenic substances in such soil with the same target organ. Any person requesting approval of an alternative direct exposure criterion shall submit to the Commissioner and the Commissioner of Public Health a risk assessment prepared in accordance with the most recent EPA Risk Assessment Guidance for Superfund or other risk assessment method approved by the Commissioner in consultation with the Commissioner of Public Health, and shall submit any additional information specified by the Commissioner or the Commissioner of Public Health.

(3) Alternative Pollutant Mobility Criteria for GA Areas.

With respect to a substance occurring at a release area located in a GA area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative pollutant mobility criterion and an alternative method for determining compliance with such criterion, provided it is demonstrated to the Commissioner's satisfaction that the application of such alternative criterion at the subject release area will ensure that soil water at such release area will not exceed the ground-water protection criterion for such substance.

(4) Alternative Dilution or Dilution Attenuation Factor for GA Areas.

With respect to a substance occurring at a release area located in a GA area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative dilution or dilution attenuation factor, provided that it is demonstrated to the Commissioner's satisfaction that application of such dilution factor will ensure that such release area will not degrade ground-water quality and thereby prevent the achievement of the applicable ground-water remediation standards.

(5) Alternative Pollutant Mobility Criteria for GB Areas.

With respect to a substance occurring at a release area located in a GB area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative pollutant mobility criterion and an alternative method for determining compliance with such criterion at such release area, provided it is demonstrated to the Commissioner's satisfaction that the application of such criterion will ensure that soil water at the release area, after dilution with ground water derived from infiltration on the parcel, will not exceed the ground-water protection criterion for such substance.

(6) Alternative Dilution or Dilution Attenuation Factor for GB Areas.

With respect to a substance occurring at a release area located in a GB area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative dilution or dilution attenuation factor, provided that it is demonstrated to the Commissioner's satisfaction that application of such alternative dilution or dilution attenuation factor will ensure that the soil water at such release area will not cause the ground water at the nearest downgradient property boundary to exceed the ground-water protection criterion for such substance.

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(7) Alternative Direct Exposure Criterion for PCB.

The Commissioner may approve an alternative direct exposure criterion for PCB including an alternative direct exposure criterion for an inaccessible soil polluted with PCB, and an alternative method for determining compliance with such criterion, provided it is demonstrated to the satisfaction of the Commissioner after consultation with the Commissioner of Public Health that the application of such alternative criterion at the subject release area will protect human health and the environment from the risks associated with direct exposure to soil polluted with PCB and is consistent with 40 CFR Part 761 and with the "Guide on Remedial Actions at Superfund Sites with PCB Contamination" (EPA Directive 9355.4-01, August 1990).

(e) Applying the Direct Exposure and Pollutant Mobility Criteria

(1) Unless an alternative method for determining compliance with a direct exposure criterion has been approved by the Commissioner in writing, compliance with a direct exposure criterion is achieved when (A) the ninety-five percent upper confidence level of the arithmetic mean of all sample results of laboratory analyses of soil from the subject release area is equal to or less than such criterion, provided that the results of no single sample exceeds two times the applicable direct exposure criterion unless an alternative multiplier has been approved by the Commissioner in writing or (B) the results of all laboratory analyses of samples from the subject release area are equal to or less than the applicable direct exposure criterion.

(2) Unless an alternative method for determining compliance with a pollutant mobility criterion for a particular substance has been approved by the Commissioner in writing, compliance with a pollutant mobility criterion for such substance is achieved when:

(A) (i) a representative sampling program consisting of not less than twenty samples of soil located above the water table has been used to characterize the distribution and concentration of such substance at the subject release area or remaining at the subject release area following remediation, [(ii) the release area has not been remediated by means of excavation and removal of polluted soil, (iii)](ii) the ninety-five percent upper confidence level of the arithmetic mean of all the sample results of laboratory analyses of soil from the subject release area for such substance is equal to or less than the applicable pollutant mobility criterion or the results of all laboratory analyses of samples from the subject release area are equal to or less than the applicable direct exposure criterion, and [(iv)](iii) no single sample result exceeds two times the applicable pollutant mobility criterion unless an alternative multiplier has been approved by the Commissioner in writing;

(B) (i) a representative sampling program consisting of less than twenty samples of soil located above the water table has been used to characterize the distribution and concentration of substances remaining at the subject release area following remediation, (ii) the release area has not been remediated by means of excavation and removal of polluted soil, and (iii) the results of all laboratory analysis of samples from the subject release area for such substances are equal to or less than such pollutant mobility criterion; or

(C) (i) the subject release area has been remediated by means of excavation and removal of polluted soil, (ii) a representative sampling program consisting of samples of soil located above the water table has been used to characterize the distribution and concentration of substances remaining at the subject release area following excavation and removal, and (iii) the results of all laboratory analyses

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of samples from the subject release area for such substances are equal to or less than such pollutant mobility criterion.

(3) Matrix interference effects.

If any applicable criterion for a substance in soil is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, the following actions shall be taken:

(A) (i) “Test Methods for Evaluating Solid Waste : Physical/Chemical Methods,” SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460 shall be consulted to determine if an analytical method sufficiently sensitive to achieve the applicable analytical detection limit was used to conduct the analysis of the subject substance. If there is available an alternative analytical method which is sufficient to achieve the required analytical detection limit, appropriate for the sample matrix, and has been approved by EPA or approved in writing by the Commissioner, the subject soil shall be re-analyzed for the subject substance using such alternative method.

(ii) If a sample has been analyzed by one or more analytical methods in accordance with subparagraph (A)(i) of this subdivision and the applicable analytical detection limit has not been achieved due to matrix interference effects, such method(s) shall be modified in order to compensate for such interferences, in accordance with analytical procedures specified by EPA within the scope of the analytical method.

(B) If, after re-analyzing the subject soil and attempting to compensate for matrix interference effects in accordance with to subparagraph (A) of this subdivision, any applicable criterion for a substance in soil is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, compliance with such criterion shall be achieved when such soil has been remediated to the lowest concentration for such substance which can be consistently and accurately quantified without matrix interference effects.

(C) A detailed summary of all measures taken to overcome matrix interference effects and a determination of the lowest alternative quantification level applicable to the analysis of such substance shall be prepared and, if requested by the Commissioner in writing, shall be submitted to the Commissioner for his review and approval.

(f) Variances.

(1) Widespread Polluted Fill.

The Commissioner may grant a variance from any of the requirements of subsection (c) of this section upon the written request of the owner of the subject parcel if the Commissioner determines that (A) geographically extensive polluted fill is present at such parcel and at other parcels in the vicinity of the subject parcel; (B) such fill is not polluted with volatile organic substances; (C) such fill is not affecting and will not affect the quality of an existing or potential public water supply resource or an existing private drinking water supply; (D) the concentration of each substance in such fill is consistent with subsection (b) of this section; **and** (E) the placement of such fill was not prohibited by law at the time of placement[; **and (F) the person requesting the variance did not place the fill on the subject parcel**]. In determining whether to grant or deny such a variance, the Commissioner may consider the relative cost of compliance with subsection (c) of

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this section, how extensive the polluted fill is, what relative proportion of such fill occurs on the subject parcel, and whether the person requesting the variance is affiliated with any person responsible for such placement through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such person's interest in such parcel is to be conveyed or financed.

(2) Engineered Control of Polluted Soils.

(A) Provided that an engineered control of polluted soils is implemented pursuant to subparagraphs (B) and (C) of this subsection, the requirements of subsections (a) through (e) of this section do not apply if:

(i) the Commissioner authorized the disposal of solid waste or polluted soil at the subject release area;

(ii) the soil at such release area is polluted with a substance for which remediation is not technically practicable;

(iii) the Commissioner, in consultation with the Commissioner of Public Health, has determined that the removal of such substance or substances from such release area would create an unacceptable risk to human health; or

(iv) the Commissioner has determined, after providing notice and an opportunity for a public hearing, that a proposal by the owner of the subject parcel to use an engineered control is acceptable because (aa) the cost of remediating the polluted soil at such release area is significantly greater than the cost of installing and maintaining an engineered control for such soil and conducting ground-water monitoring at such release area in accordance with subsection (g) of section 22a-133k-3, and (bb) that the significantly greater cost outweighs the risk to the environment and human health if the engineered control fails to prevent the mobilization of a substance in the soil or human exposure to such substance. The Commissioner may hold a public hearing pursuant to this section if in his discretion the public interest will be best served thereby, and he shall hold a hearing upon receipt of a petition signed by at least twenty-five persons. Notice of the subject proposal shall be provided by the owner of the subject parcel in two of the three following manners: (i) by publication in a newspaper of substantial circulation in the affected area; (ii) by placing and maintaining on the subject parcel, for at least thirty days, in a legible condition a sign which shall be not less than six feet by four feet which sign shall be clearly visible from the public highway; or (iii) by mailing notice to the owner of record of each property abutting the subject parcel at his address on the most recent grand tax list of the municipality or municipalities in which such properties are located. When notice is published or mailed, it shall include the name and address of owner of the subject parcel; the location address and/or a description of the location such parcel; a brief description of the nature of the pollution on the subject parcel; a brief description of the proposed engineered control; and a brief description of the procedures for requesting a hearing. When notice is provided by posting a sign, the sign shall include the words "Environmental remediation is proposed for this site. For further information contact..." and shall include the name and telephone number of an individual from whom any interested person may obtain information about the remediation. The owner of the subject parcel shall verify to the

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Commissioner in writing on a form furnished by him that notice has been given in accordance with this subsection.

(B) A request to use an engineered control shall be submitted to the Commissioner in writing and shall be accompanied by a detailed written report and plan which demonstrates that:

- (i) (aa) if the engineered control is to address exceedances of the direct exposure criteria, the proposed engineered control [is]has been designed and will be constructed to physically isolate polluted soil, [and to minimize migration of liquids through soil,] to function with minimum maintenance, to promote drainage and minimize erosion of or other damage to such control, and to accommodate settling and subsidence of the underlying soil so as to maintain the control's structural integrity[and permeability]; [and] (bb) [with respect to]if the engineered control is to address exceedances of the pollutant mobility criteria, [an]the proposed engineered [cap, such cap]control has been designed and will be constructed to minimize migration of liquids through soil and have a permeability of less than 10^{-6} cm/sec or, unless otherwise specified by the Commissioner in writing, to have the permeability specified in a closure plan implemented under sections 22a-209-1 et seq of the Regulations of Connecticut State Agencies for a release area which is a lawfully authorized solid waste disposal area;
- (ii) plans for ground-water monitoring at the subject release area are adequate to ensure that any substance migrating therefrom will be detected;
- (iii) plans for maintenance of the subject release area are adequate to ensure that the structural integrity, design permeability, and effectiveness of the engineered control will be maintained; such plans shall include without limitation measures to prevent run-on and run-off of storm water from eroding or otherwise damaging the engineered control and measures to repair such control to correct the effects of any settling, subsidence, erosion or other damaging events or conditions;
- (iv) an environmental land use restriction is or will be in effect with respect to the parcel at which the subject release area is located, which restriction ensures that such parcel will not be used in a manner that could disturb the engineered control or the polluted soil;
- (v) any other information that the Commissioner reasonably deems necessary; and
- (vi) with respect to any release area subject to any of the requirements of section 22a-209-4(i) or section 22a-449(c)-100 through 110 of the Regulations of Connecticut State Agencies, all such requirements are or will be satisfied. With respect to a release area which is not subject to any such regulations, the owner of the subject parcel shall demonstrate that he or she has posted or will post a surety in a form and amount approved in writing by the Commissioner, which surety during the first year after installation of the engineered control shall be equal to the cost of one year's maintenance and monitoring of the engineered control, and which in each subsequent year shall be increased in amount by adding an amount equal to the cost of one year's maintenance and monitoring, until the total amount of such surety is equal to the cost of five year's of maintenance and monitoring, which amount shall be maintained in effect for the next twenty-five years or for such other period as may be required by the Commissioner.

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(C) When the Commissioner approves a request pursuant to this subsection to use an engineered control he may require that such control incorporate any measures which he deems necessary to protect human health and the environment. Any person implementing an engineered control under this subsection shall perform all actions specified in the approved engineered control proposal including the recordation of the environmental land use restriction and posting of the surety, and any additional measures specified by the Commissioner in his approval of such plan. Nothing in this subdivision shall preclude the Commissioner from taking any action he deems necessary to protect human health or the environment if an approved engineered control fails to prevent the migration of pollutants from the release area or human exposure to such pollutants.

(g) Removal of Non-aqueous Phase Liquids.

Removal of light non-aqueous phase liquids from soil and ground water shall be conducted in accordance with section 22a-449(d)-106(f) of the Regulations of Connecticut State Agencies. Any other non-aqueous phase liquid shall be contained or removed from soil and ground water to the maximum extent prudent.

(h) Use of Polluted Soil and Reuse of Treated Soil.

Any soil excavated from and/or treated at a release area during remediation shall be managed as follows:

(1) Hazardous Waste.

Treatment, storage, disposal and transportation of soil which is hazardous waste as defined pursuant to section 22a-449(c) of the General Statutes shall be carried out in conformance with the provisions of sections 22a-449(c)-101 through 110 of the Regulations of Connecticut State Agencies, and any other applicable law;

(2) Special Wastes.

In accordance with section 22a-209-8 of the Regulations of Connecticut State Agencies, the Commissioner may authorize polluted soil, which is not hazardous waste as defined pursuant to subsection 22a-449(c) of the General Statutes, to be disposed of as special wastes as defined in said section 22a-209-1.

(3) Polluted soil.

Polluted soil from a release area may be treated to achieve concentrations of substances that do not exceed either the applicable direct exposure criteria or pollutant mobility criteria. After such treatment, such soil may be reused on the parcel from which it was excavated or on another parcel approved by the Commissioner, provided that such reuse is consistent with all other provisions of sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies and:

- (A) Prior to reuse, a map showing the location and depth of proposed placement of such soil is submitted to the Commissioner;
- (B) Such soil is not placed below the water table;
- (C) Such soil is not placed in an area subject to erosion; and
- (D) Any such soil in which the concentration of any substance exceeds the pollutant mobility criteria applicable to a GA area is not placed over soil and ground water which have not been affected by a release at the parcel at which placement is proposed; and

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(E) For soils polluted with PCB, the Commissioner has issued a written approval in accordance with by section 22a-467 of the General Statutes.

(4) Natural Soil.

Polluted soil may be used at any parcel of land if after treatment of such soil to reduce or remove substances: (A) any naturally-occurring substance is present therein in concentrations not exceeding background concentration for soil of such substance at the release area from which such soil is removed; and (B) no other substance is detectable in such soil at a concentration greater than its analytical detection limit.

(i) Additional remediation of soil.

Nothing in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies shall preclude the Commissioner from taking any action necessary to prevent or abate pollution or to prevent or abate any threat to human health or the environment, including without limitation:

(1) at any location at which, despite remediation in accordance with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner determines that there is a potential ecological risk he may require that an ecological risk assessment be conducted in accordance with EPA/630/R-92/001, February 1992, "Framework For Ecological Risk Assessment" and that additional remediation be conducted to mitigate any risks identified in such assessment;

(2) at any location at which polluted soil has eroded into a surface-water body, the Commissioner may require that the effect of such polluted soil on aquatic life be assessed and that remediation to protect or restore aquatic life and surface water quality from the effects of such polluted soils be undertaken; or

(3) at any release area or parcel at which there is polluted soil containing multiple polluting substances, the Commissioner may require additional remediation to ensure that the risk posed by such substances does not exceed (A) a cumulative excess lifetime cancer risk of 10^{-5} for carcinogenic substances and (B) a cumulative hazard index of 1 for non-carcinogenic substances with the same target organ.

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[Section 3. The Regulations of Connecticut State Agencies are amended by adding a new section 22a-133k-3 as follows:]

22a-133k-3 Ground-water Remediation Standards

(a) General.

(1) Remediation of a ground-water plume shall result in the attainment of: (A) the requirements concerning surface water protection set forth in subsection (b) of this section and the requirements concerning volatilization set forth in subsection (c) of this section; or (B) the background concentration for ground water for each substance in such plume.

(2) Remediation of a ground-water plume in a GA area shall also result in the reduction of each substance therein to a concentration equal to or less than the background concentration for ground water of such substance, except as provided in subsection (d) of this section.

(3) Remediation of a ground-water plume in a GB area shall also result in the reduction of each substance therein to a concentration such that such ground-water plume does not interfere with any existing use of the ground water.

(b) Surface-water protection criteria.

(1) Except as provided in subdivision (2) of this subsection, remediation of a ground-water plume which discharges to a surface water body shall result in the reduction of each substance therein to a concentration which is consistent with subdivision (2)(C) of subsection [(f)](g) of this section and which is equal to or less than the surface-water protection criterion or an alternative surface-water protection criterion established in accordance with subdivision (3) of this subsection.

(2) If a ground-water plume (A) discharges to a wetland or an intermittent stream, or (B) the areal extent of such ground-water plume occupies more than 0.5%, or other percentage which is approved in writing by the Commissioner, of the upstream drainage basin of the stream to which such plume discharges measured from the intersection of stream and such ground-water plume, each substance therein shall be remediated to a concentration equal to or less than the applicable aquatic life criteria contained in Appendix D to the most recent Water Quality Standards, or equal to or less than an alternative water quality criterion adopted by the Commissioner in accordance with section 22a-426 of the General Statutes and paragraph 12b of the Water Quality Standards effective May 15, 1992.

(3) Alternative surface-water protection criteria.

Alternative surface-water criteria may be calculated in accordance with subparagraph (A) of this subdivision or may be approved in writing by the Commissioner in accordance with subparagraph (B) of this subdivision.

(A) An alternative surface-water protection criterion may be calculated for a substance in Appendix D of the most recent Water Quality Standards by multiplying the lower of the human health or aquatic life criterion for such substance in said Appendix D by $[(0.25 \times 7Q_{10})/Q_{\text{plume}}]$ where Q_{plume} is equal to the average daily discharge of polluted ground water from the subject ground-water plume.

(B) The Commissioner may approve an alternative surface-water protection

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criterion to be applied to a particular substance at a particular release area. Any person requesting such approval shall submit to the Commissioner: (i) a report on the flow rate, under seven day ten year low flow conditions, of the surface water body into which the subject ground water plume discharges (ii) a report on other surface water or ground water discharges to the surface water body within one-half mile upstream of the areal extent of the ground-water plume, (iii) a report on the instream water quality, (iv) a report on the flow rate of the ground-water discharge from such release area to the surface water body and the extent and degree of mixing of such discharge in such surface water, and (v) and any other information the Commissioner reasonably deems necessary to evaluate such request. The Commissioner shall not approve an alternative surface-water protection criterion under this subparagraph unless the requester demonstrates that such criterion will protect all existing and proposed uses of such surface water.

(c) Volatilization criteria.

(1) Except as specified in subdivisions (2), (3), (4) and (5) of this subsection, all ground water polluted with a volatile organic substance within 15 feet of the ground surface or a building, shall be remediated such that the concentration of each such substance is equal to or less than the applicable residential volatilization criterion for ground water.

(2) If ground water polluted with a volatile organic substance is below a building used solely for industrial or commercial activity, such ground water shall be remediated such that the concentration of such substance is equal to or less than the applicable industrial/commercial volatilization criterion for ground water, provided that an environmental land use restriction is in effect with respect to the parcel or portion thereof upon which such building is located, which restriction ensures that the parcel or portion thereof will not be used for any residential purpose in the future and that any future use of the parcel or portion thereof is limited to industrial or commercial activity;

(3) (A) Remediation of a volatile organic substance to the volatilization criterion for ground water shall not be required if the concentration of such substance in soil vapors below a building is equal to or less than (i) the residential volatilization criterion for soil vapor or (ii) the industrial/commercial volatilization criterion for soil vapor, if such building is solely used for industrial or commercial activity and, an environmental land use restriction is in effect with respect to the parcel or portion thereof upon which such building is located, which restriction ensures that the parcel or portion thereof will not be used for any residential purpose in the future and that any future use of the parcel or portion thereof is limited to industrial or commercial activity.

(B) The requirements of subdivision (1), (2), and (3) of this subsection do not apply if: (i) measures acceptable to the Commissioner have been taken to prevent the migration of such substance into any overlying building, (ii) a program is implemented to maintain and monitor all such measures, and (iii) notice of such measures has been submitted to the Commissioner on a form furnished by him which notice includes (aa) a brief description of the areal extent of the ground-water plume and of the area which exceeds any such volatilization or soil vapor criterion; (bb) a brief description of the method of controlling the migration of such substance into any overlying building; (cc) a plan for the monitoring and maintenance of such control method; and (dd) a map showing all existing buildings, the areal extent of the ground-water plume, and the location of such control method.

(4) Site-specific and alternative volatilization criteria.

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(A) Site-specific residential volatilization criteria for ground water or soil vapor may be calculated using the equations in Appendix G to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

(B) The Commissioner may approve an alternative volatilization criterion for ground water or for soil vapor to be applied to a substance at a particular release area. The Commissioner shall not approve any alternative criterion under this subparagraph unless it has been demonstrated that such criterion will ensure that volatile organic substances from such ground water or soil do not accumulate in the air of any structure used for residential activities at a concentration which, (i) for any carcinogenic substance creates a risk to human health in excess of a 10^{-6} excess lifetime cancer risk level, and for any non-carcinogenic substance does not exceed a hazard index of 1, or (ii) for a ground-water plume polluted with multiple volatile organic substances does not exceed a cumulative excess cancer risk level of 10^{-5} for carcinogenic substances, and for non-carcinogenic substances with the same target organ, the cumulative hazard index does not exceed 1.

(5) Exemption from volatilization criteria.

(A) The volatilization criteria do not apply to ground water polluted with volatile organic substances, where the water table is less than fifteen feet below the ground surface, if no building exists over the ground water polluted with volatile organic substances at a concentration above the applicable volatilization criteria, and (i) it has been documented that best efforts have been made to ensure that each owner of any parcel of land or portion thereof overlying such polluted ground water records an environmental land use restriction which ensures that no building is constructed over such polluted ground water; or (ii) the Commissioner has approved in writing a request demonstrating that no building can reasonably be expected to be constructed over the subject ground water or that natural attenuation or other methods of remediation will, within five years, reduce the concentration of volatile organic substances in such ground water to a concentration equal to or less than the applicable volatilization criteria.

(B) The volatilization criteria for ground water underlying an existing building do not apply to ground water polluted with volatile organic substances where the Commissioner has approved in writing and there have been implemented an indoor air monitoring program and measures to control the level of any such volatile organic substances in the air of the subject building.

(i) Any person seeking the Commissioner's approval of an indoor air monitoring program shall submit to him: a detailed written plan describing the proposed indoor air monitoring program, including but not limited to a description of the distribution and concentration of volatile organic compounds beneath the building, the location of proposed monitoring points, the proposed frequency of monitoring, the parameters to be monitored, and a description of proposed actions to be taken in the event such monitoring indicates that the monitored parameters exceed proposed specified concentrations and a proposed schedule for reporting to the Commissioner on the results of such monitoring for as long as monitoring is conducted at the site.

(ii) In approving any indoor air monitoring program pursuant to this subdivision, the Commissioner may impose any additional conditions he

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deems necessary to ensure that the program adequately protects human health. In the event that the Commissioner approves an indoor air monitoring program pursuant to this subparagraph, any person implementing such program shall perform all actions specified in the approved plan, and any additional measures specified by the Commissioner in his approval of such plan.

(d) Applicability of Ground-water Protection Criteria.

(1) Ground water in a GA area may be remediated to a concentration for each substance therein equal to or less than the ground-water protection criterion for each such substance if, with respect to the subject ground-water plume: (A) the background concentration for ground water is equal to or less than such ground-water protection criterion; (B) a public water supply distribution system is available within 200 feet of the subject parcel, parcels adjacent thereto, and any parcel within the areal extent of such plume; (C) such ground-water plume is not located in an aquifer protection area; and (D) such ground-water plume is not located within the area of influence of any public water supply well.

(2) If prior to any ground-water remediation the maximum concentration of a substance in a ground-water plume in a GA area is equal to or less than the ground-water protection criteria, remediation of ground water to achieve background ground-water concentration is not required, provided that the extent of the ground-water plume is not increasing over time and, except for seasonal variations, the concentration of the subject substance in such ground-water plume is not increasing at any point over time.

(3) Any ground water in a GB area and which is used for drinking or other domestic purposes shall be remediated to reduce the concentration of each substance therein to a concentration equal to or less than the applicable ground-water protection criterion until such time as the use of such ground water for drinking or other domestic purposes is permanently discontinued.

(e) Technical Impracticability of Ground-water Remediation.

(1) Exemption from Background Due to Technical Impracticability

If remediation of a ground-water plume in a GA area to achieve compliance with subdivision (2) of subsection (a) of this section has reduced the concentration of a polluting substance to less than the ground-water protection criterion, and if further reduction of such concentration is technically impracticable, no further remediation of such ground-water plume for such substance shall be required.

(2) Variance Due to Technical Impracticability of Ground-water Remediation

The Commissioner may grant a variance from any of the requirements of this section if he finds that: non-aqueous phase liquids that cannot be contained or removed in accordance with R.C.S.A. section 22a-133k-2(g) are present; remediation to the extent technically practicable has reduced the concentration of pollutants in ground water to steady-state concentrations that exceed any applicable criteria; or achieving compliance with the applicable criteria is technically impracticable as determined using Directive No. 9234.2-25 issued September 1993 by the U.S. Environmental Protection Agency's Office of Solid Waste and Emergency Response.

(A) Any person requesting a variance pursuant to this subsection from any ground-water protection criterion shall submit: (i) information concerning the concentration of each substance in the ground-water plume with respect to which

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a variance is sought; (ii) information demonstrating that (aa) the extent of the ground-water plume which exceeds such ground-water protection criterion has been reduced to the extent technically practicable, or (bb) it is not technically practicable to reduce the extent of the ground-water plume; (iii) the results of a study conducted to determine the risks to human health posed by the polluted ground water remaining after such reduction; (iv) if such study shows a risk or a potential risk to human health, a plan to eliminate such risk or potential risk; (v) an application to change the ground-water classification of such polluted ground water to GB in accordance with section 22a-426 of the General Statutes; and (vi) any other information the Commissioner reasonably deems necessary to evaluate such request.

(B) Any person requesting a variance pursuant to this subsection from the requirement to remediate ground water to a concentration which does not exceed the applicable surface-water protection criteria shall submit information concerning the concentration of each substance in the ground-water plume with respect to which a variance is sought. If such information demonstrates that any such concentration exceeds any applicable surface-water protection criterion, such person shall also submit: (i) a map showing the areal extent of the ground-water plume that exceeds such surface-water protection criterion, and (ii) a plan for controlling the migration of such substance to the receiving surface water body.

(C) If the Commissioner grants a variance pursuant to this subsection from any ground-water protection criterion, the person receiving the variance shall, no later than thirty days after the date of granting of such variance, submit to the Commissioner on a form prescribed and provided by him: (i) certification that written notice of the extent and degree of such pollution has been provided to each owner of property overlying the subject ground-water plume at which it is not technically practicable to remediate a substance to a concentration equal to or less than the ground-water protection criterion; (ii) certification that written notice of the presence of pollution on each such parcel and a description of the extent and degree of such pollution has been sent to the Director of Health of the municipality or municipalities in which the ground-water plume is located; and (iii) certification that best efforts have been made to ensure that each owner of property overlying the subject ground-water plume records an environmental land use restriction which ensures that the subject ground-water plume is not used for drinking or other domestic purposes;

(D) If the Commissioner grants a variance pursuant to this subsection from the requirement to remediate ground water to a concentration which does not exceed the applicable surface-water protection criteria, the person receiving the variance shall perform all actions specified in the plan submitted with the request for such variance, and any additional actions required by the Commissioner in his approval of such plan or granting of such variance.

(NEW)(f) Exception for Incidental Sources.

Remediation criteria for ground water do not apply to trihalomethanes resulting from releases of drinking water from a public water supply system.

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(NEW)(f)(g) Applying the Criteria for Ground Water.

Ground-water monitoring shall be conducted in accordance with this subsection for any ground-water plume and for any release area remediated in accordance with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, except for those release areas remediated solely in accordance with section 22a-133k-2(b).

(NEW)(1) Ground-water Monitoring.

Monitoring shall be designed to determine:

- (A) The effectiveness of any soil remediation to prevent the pollution of ground water by substances from the release area;
- (B) The effectiveness of any measures to render soil environmentally isolated;
- (C) The effectiveness of any remediation taken to eliminate or minimize health or safety risks associated with such release or identified in any risk assessment conducted in accordance with subsection (e)(2) of this section or otherwise identified;
- (D) Whether a substance in ground water in a GA area or an aquifer protection area meets the background concentration or ground-water protection criteria, as applicable, in accordance with the provisions of subdivision (2) of this subsection;
- (E) Whether a substance in ground water meets the surface-water protection criteria and the applicable volatilization criteria in accordance with the provisions of subdivision (2) of this subsection; and
- (F) Whether a ground-water plume in a GB area interferes with any existing use of the ground water for a drinking water supply or with any other existing use of the ground water, including but not limited to industrial, agricultural or commercial purposes.

(NEW)(2) Compliance with Criteria for Ground Water.

(A) General.

(i) Analytical results of samples used for determining compliance with an applicable remedial criterion for a substance shall be collected after:

(aa) All remedial actions for such substance have been concluded, other than natural attenuation of a ground-water plume;

(bb) The aquifer is no longer subject to the transient effects on hydraulic head attributable to withdrawal from, or injection to, ground water for the purpose of remediation, or other effects due to site redevelopment or remediation;

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(cc) Any changes to the geochemistry, induced by remedial actions or monitoring well construction methods which might influence the concentration of such substance, have stabilized and equilibrium geochemical conditions are established; and

(dd) The concentration of such substance at each sampling location that represents the extent and degree of the ground-water plume is not increasing over time, except as a result of either natural attenuation or seasonal variations.

(ii) For determining compliance with an applicable remedial criterion for a substance, a minimum of four sampling events shall be performed which reflect seasonal variability on a quarterly basis, provided that all sampling events used to demonstrate compliance were performed within two years prior to the most current sampling event used to determine compliance, with the exception of monitoring conducted in accordance with subdivision (D)(ii) of this subsection.

(iii) The Commissioner may approve in writing an alternative method of determining compliance with an applicable remedial criterion for a substance utilizing emerging technologies for which guidance, standard or industrial code has been published by a regulatory agency, governmental advisory group, or other recognized professional organization, at the time of the approval.

[(1)](B) Compliance with Ground-water Protection Criteria or Background.

Compliance with the ground-water protection criterion for a substance in ground water or background concentration for ground water for such substance is achieved when the sampling locations are representative of the subject ground-water plume, and [(A)]the analytical results for such substance at all such sampling locations are equal to or less than either the ground-water protection criterion for such substance or the background concentration for ground water, [therfor,] whichever is applicable, [for at least four consecutive quarterly sampling periods, or (B) a representative sampling program consisting of not less than twelve consecutive monthly samples from each such sampling location has been used to characterize the ground-water plume and the ninety-five percent upper confidence level of the arithmetic mean of all results of laboratory analyses of such samples for such substance are equal to or less than the criterion for such substance and that no single sample exceeds two times the applicable criterion for such substance.]as determined by subsection (d) of this section.

[(2)](C) Compliance with Surface-water Protection Criteria.

Compliance with a surface-water protection criterion for a substance in ground water is achieved when the sampling locations are representative of the subject ground-water plume and [(A) the average concentration of such substance in such plume is equal to or less than the applicable surface-water protection criterion for at least four consecutive quarterly sampling periods, or]the requirements of either subdivision (2)(C)(i) or (2)(C)(ii) of this subsection are met:

(i) (aa) The ninety-five percent upper confidence level of the arithmetic mean of all sample results of laboratory analyses of ground water from the subject plume is equal to or less than such criterion; and

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(bb) The result of no single sample exceeds two times the applicable surface-water protection criterion, unless an alternative multiplier has been approved by the commissioner in writing.

[(B)](ii) the concentration of such substance in that portion of such plume which is immediately upgradient of the point at which such ground-water discharges to the receiving surface-water body is equal to or less than the applicable surface-water protection criterion[provided that the areal extent of such ground-water plume is not increasing over time; and that, except for seasonal variations, the concentration of the subject substance in such ground-water plume is not increasing, except as a result of natural attenuation, at any point over time].

[(3)](D) Compliance with Volatilization Criteria.

A volatile substance may be remediated to a concentration as specified in either subdivision (2)(D)(i) or subdivision (2)(D)(ii) of this subsection.

(i) Compliance with volatilization criteria in ground water.

Compliance with a volatilization criterion for a substance in ground water[or soil vapor] is achieved when the sampling locations are representative of the subject ground-water plume[or soil vapor] and [(A) the ninety-five percent upper confidence level of the arithmetic mean of all sample results from such locations is equal to or less than the applicable volatilization criterion for at least four consecutive quarterly sampling periods and that the result of no single sample exceeds two times the applicable volatilization criterion, or (B)] the results of all laboratory analyses of samples for such substance are equal to or less than the applicable volatilization criterion [therefor] as determined by subsection (c) of this section.

[(3)](ii) Compliance with volatilization criteria in soil vapor.

Compliance with a volatilization criterion for a substance in [ground water or] soil vapor is achieved when the sampling locations and frequency are representative of the subject [ground-water plume or] soil vapor, including seasonal variability, and [(A) the ninety-five percent upper confidence level of the arithmetic mean of all sample results from such locations is equal to or less than the applicable volatilization criterion for at least four consecutive quarterly sampling periods and that the result of no single sample exceeds two times the applicable volatilization criterion, or (B)] the results of all laboratory analyses of samples for such substance are equal to or less than the applicable volatilization criterion [therefor].

[(4)](3) Matrix interference effects.

If any applicable criterion for a substance in ground water is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, the following action shall be taken:

- (A) (i)“Test Methods for Evaluating Solid Waste : Physical/Chemical Methods,” SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460 shall be consulted to determine if an

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analytical method sufficiently sensitive to achieve the applicable analytical detection limit was used to conduct the analysis of the subject substance. If there is available an alternative analytical method which is sufficient to achieve the required analytical detection limit, appropriate for the sample matrix, and has been approved by EPA or approved in writing by the Commissioner, the subject ground water shall be re-analyzed for the subject substance using such alternative method.

(ii) If a sample has been analyzed by one or more analytical methods in accordance with subparagraph (A)(i) of this subdivision and the applicable analytical detection limit has not been achieved due to matrix interference effects, such method(s) shall be modified in order to compensate for such interferences, in accordance with analytical procedures specified by EPA within the scope of the analytical method.

- (B) If, after re-analyzing the subject ground water and attempting to compensate for matrix interference effects in accordance with subparagraph (A) of this subdivision, any applicable criterion for a substance in ground water is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, compliance with such criterion shall be achieved when such ground water has been remediated to the lowest concentration for such substance which can be consistently and accurately quantified without matrix interference effects.
- (C) A detailed summary of all measures taken to overcome matrix interference effects and a determination of the lowest alternative quantification level applicable to the analysis of such substance shall be prepared and, if requested by the Commissioner in writing, shall be submitted to the Commissioner for his review and approval.

[\[\(g\) Ground-water Monitoring.](#)

[For any remediation which is conducted to achieve compliance with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, ground-water monitoring shall be conducted in accordance with this subsection.](#)

[\(1\) Ground-water Monitoring at GA Areas.](#)

[With respect to remediation of a release area or a ground-water plume in a GA area, a ground-water monitoring plan shall be prepared and implemented. Ground-water monitoring under such plan shall be designed to determine:](#)

- [\(A\) the effectiveness of soil remediation in preventing the pollution of ground water by substances from the release area;](#)
- [\(B\) the effectiveness of any remediation taken to eliminate or minimize health or safety risks identified in any risk assessment conducted in accordance with subdivision \(2\) of subsection \(e\) of this section or otherwise identified; and](#)
- [\(C\) whether applicable requirements identified in subsection \(a\) of this section have been met.](#)

[\(2\) Ground-water Monitoring at GB Areas.](#)

[With respect to remediation of a release area or a ground-water plume in a GB area, a ground-water monitoring plan shall be prepared and implemented. Ground-water monitoring under such plan shall be designed to determine:](#)

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- (A) the effectiveness of soil remediation in preventing further pollution of ground water by substances from the release area;
- (B) the effectiveness of any remediation taken to eliminate or minimize identified health or safety risks associated with such release;
- (C) whether applicable ground-water protection criteria, surface-water protection criteria, and volatilization criteria have been met; and
- (D) whether the ground-water plume interferes with any existing use of the ground water for a drinking water supply or with any other existing use of the ground water, including but not limited to industrial, agricultural or commercial purposes.

(3) Discontinuation of Ground-water Monitoring.

(A) Unless otherwise specified in writing by the Commissioner, ground-water monitoring in a GA area may be discontinued in accordance with the following:

(i) a minimum of one year after compliance with the background concentration for ground water has been achieved in accordance with subsection (f) of this section if the background concentration for ground water of all substances in the subject ground-water plume has been maintained in all sampling events and ground-water monitoring data demonstrate that the soil remediation was effective in preventing the pollution of ground water by any substance from the subject release area; or

(ii) a minimum of three years after compliance with the ground-water protection criteria has been achieved in accordance with subsection (f) of this section if (aa) all applicable ground-water protection criteria for all subject substances or the background concentration for ground water for all substances in the subject ground-water plume, which ever is higher, is maintained in all sampling events; (bb) ground-water monitoring data demonstrate that the soil remediation was effective in preventing the pollution of ground water by substances from the subject release area; and (cc) the volatilization and surface-water protection criteria have been met in accordance with subsection (f) of this section.

(B) Unless otherwise specified in writing by the Commissioner, ground-water monitoring in a GB area may be discontinued two years after the cessation of all remediation of such ground water or soil if the applicable surface-water protection and volatilization criteria have been met in accordance with subsection (f) of this section, and such ground water is suitable for all existing uses.]

(h) Additional Polluting Substances

(1) With respect to a substance in ground water for which a ground- water protection criterion is not specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve in writing a ground-water protection criterion to apply to such substance. Any person requesting approval of a ground-water protection criterion for such substance shall submit to the commissioner (A) a risk-based ground-water protection criterion for such substance calculated in accordance with subdivision (2) of this subsection, (B) the analytical detection limit for such substance, (C) a description of the organoleptic properties of such substance. Before approving a ground-water protection criterion the Commissioner shall consider the proposed risk-based ground-water protection criterion for such substance, the analytical detection limit for such substance, the organoleptic effects of such

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substance, any information about the health effects such substance may cause due to exposure pathways not accounted for in the proposed risk-based ground-water protection criterion, and any other information that the Commissioner reasonably deems necessary.

(2) The risk-based ground-water protection criterion shall be calculated using the following equations:

(A) For carcinogenic substances;

$$GWPC = \left[\frac{\text{Risk}}{\text{CSF}} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{EF} \times \text{ED} \times \text{CF}} \right]$$

(B) For non-carcinogenic substances:

$$[GWPC = \left[\text{Rfd} \times \text{HI} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{EF} \times \text{ED} \times \text{CF} \times \text{SA}} \right]]$$

(NEW)

$$GWPC = \left[\text{Rfd} \times \text{HI} \right] \times \left[\frac{(\text{BW} \times \text{AT} \times \text{SA})}{(\text{IR} \times \text{EF} \times \text{ED} \times \text{CF})} \right]$$

(C) The abbreviations used in subparagraphs (A) and (B) of this subdivision shall be interpreted in accordance with the following table and shall be assigned the values specified therein:

Term	Description	Units	Value
GWPC _{RB}	Risk-based Ground-water protection Criterion	ug/l	calculated
Risk	Target Cancer Risk Level	unitless	1.0E-06
HI	Hazard Index	unitless	1.0
CSF	Cancer slope Factor	(mg/kg-day) ⁻¹	substance-specific
RFD	Reference Dose	mg/kg-day	substance-specific
IR	Ingestion Rate	l/day	2
EF	Exposure Frequency	days/year	365
ED	Exposure Duration	years	70
CF	Conversion Factor	[unitless] mg/ug	[1000]0.001
BW	Body Weight	kg	70
AT	Averaging Time,	days	25550
SA	Source Allocation	unitless	0.2

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(i) Additional Remediation of Ground Water.

Nothing in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies shall preclude the Commissioner from taking any action necessary to prevent or abate pollution, or to prevent or abate any threat to human health or the environment. If the presence of any substance impairs the aesthetic quality of any ground water which is or can reasonably be expected to be a source of water for drinking or other domestic use, additional remediation shall be conducted in order to reduce the concentration of such substance to a concentration appropriate for such use.

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Appendix A to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Direct Exposure Criteria for Soil

Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial Criteria in mg/kg (ppm)
Volatile Organic Substances		
Acetone	500	1000
Acrylonitrile	1.1	11
Benzene	21	200
Bromoform	78	720
2-Butanone(MEK)	500	1000
Carbon tetrachloride	4.7	44
Chlorobenzene	500	1000
Chloroform	100	940
Dibromochloromethane	7.3	68
1,2-Dichlorobenzene	500	1000
1,3-Dichlorobenzene	500	1000
1,4-Dichlorobenzene	26	240
1,1-Dichloroethane	500	1000
1,2-Dichloroethane	6.7	63
1,1-Dichloroethylene	1	9.5
cis-1,2-Dichloroethylene	500	1000
trans-1,2-Dichloroethylene	500	1000
1,2-Dichloropropane	9	84
1,3-Dichloropropene	3.4	32
Ethylbenzene	500	1000

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial Criteria in mg/kg (ppm)
Ethylene dibromide (EDB)	0.007	0.067
Methyl-tert-butyl-ether	500	1000
Methyl isobutyl ketone	500	1000
Methylene chloride	82	760
Styrene	500	1000
1,1,1,2-Tetrachloroethane	24	220
1,1,2,2-Tetrachloroethane	3.1	29
Tetrachloroethylene	12	110
Toluene	500	1000
1,1,1-Trichloroethane	500	1000
1,1,2-Trichloroethane	11	100
Trichloroethylene	56	520
Vinyl chloride	0.32	3
Xylenes	500	1000
Semivolatile Substances		
Acenaphthylene	1000	2500
Anthracene	1000	2500
Benzo(a)anthracene	1	7.8
Benzo(b)fluoranthene	1	7.8
Benzo(k)fluoranthene	8.4	78
Benzo(a)pyrene	1	1

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial Criteria in mg/kg (ppm)
Bis(2-chloroethyl)ether	1	5.2
Bis(2-chloroisopropyl) ether	8.8	82
Bis(2-ethyl hexyl) phthalate	44	410
Butyl benzl phthalate	1000	2500
2-chlorophenol	340	2500
Di-n-butyl phthalate	1000	2500
Di-n-octyl phthalate	1000	2500
2,4-Dichlorophenol	200	2500
Fluoranthene	1000	2500
Fluorene	1000	2500
Hexachloroethane	44	410
Hexachlorobenzene	1	3.6
Naphthalene	1000	2500
Pentachlorophenol	5.1	48
Phenanthrene	1000	2500
Phenol	1000	2500
Pyrene	1000	2500
Inorganic Substances		
Antimony	27	8200
Arsenic	10	10
Barium	4700	140000

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial in mg/kg (ppm)
Beryllium	2	2
Cadmium	34	1000
Chromium, trivalent	3900	51000
Chromium, hexavalent	100	100
Copper	2500	76000
Cyanide	1400	41000
Lead	[500]400	1000
Mercury	20	610
Nickel	1400	7500
Selenium	340	10000
Silver	340	10000
Thallium	5.4	160
Vanadium	470	14000
Zinc	20000	610000
Pesticides, PCB's and Total Petroleum Hydrocarbons (TPH)		
Alachlor	7.7	72
Aldicarb	14	410
Atrazine	2.8	26
Chlordane	0.49	2.2
Dieldrin	0.038	0.36
Endrin	20	610
2-4 D	680	20000

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial in mg/kg (ppm)
Heptachlor epoxide	0.067	0.63
Heptachlor	0.14	1.3
Lindane	20	610
Methoxychlor	340	10000
Toxaphene	0.56	5.2
PCB's	1	10
<u>TPH -Total Petroleum Hydrocarbons by EPA Method 418.1</u> <u>(This method shall not be used for the analysis of samples collected after June 30, 2009)</u>	500	2500
<u>Extractable Total Petroleum Hydrocarbons by ETPH Analysis</u>	<u>500</u>	<u>2500</u>

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Appendix B to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Pollutant Mobility Criteria for Soil

Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
Volatile Organic Substances		
Acetone	14	140
Acrylonitrile	0.01	0.1
Benzene	0.02	0.2
Bromoform	0.08	0.8
2-Butanone(MEK)	8	80
Carbon tetrachloride	0.1	1
Chlorobenzene	2	20
Chloroform	0.12	1.2
Dibromochloromethane	0.01	0.1
1,2-Dichlorobenzene	3.1	3.1
1,3-Dichlorobenzene	12	120
1,4-Dichlorobenzene	1.5	15
1,1-Dichloroethane	1.4	14
1,2-Dichloroethane	0.02	0.2
1,1-Dichloroethylene	0.14	1.4
cis-1,2-Dichloroethylene	1.4	14
trans-1,2-Dichloroethylene	2	20
1,2-Dichloropropane	0.1	1.0
1,3-Dichloropropene	0.01	0.1
Ethyl benzene	10.1	10.1
Ethylene dibromide (EDB)	0.01	0.1
Methyl-tert-butyl-ether	2	20
Methyl isobutyl ketone	7	14
Methylene chloride	0.1	1.0
Styrene	2	20
1,1,1,2-Tetrachloroethane	0.02	0.2

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Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
1,1,2,2-Tetrachloroethane	0.01	0.1
Tetrachloroethylene	0.1	1
Toluene	20	67
1,1,1-Trichloroethane	4	40
1,1,2-Trichloroethane	0.1	1
Trichloroethylene	0.1	1.0
Vinyl chloride	0.04	0.40
Xylenes	19.5	19.5
Semivolatile Substances		
Acenaphthylene	8.4	84
Anthracene	40	400
Benzo(a)anthracene	1	1
Benzo(b)fluoranthene	1	1
Benzo(k)fluoranthene	1	1
Benzo(a)pyrene	1	1
Bis(2-chloroethyl)ether	1	2.4
Bis(2-chloroisopropyl)ether	1	2.4
Bis(2-ethyl hexyl)phthalate	1	11
Butyl benzl phthalate	20	200
2-chlorophenol	1	7.2
Di-n-butyl phthalate	14	140
Di-n-octyl phthalate	2	20
2,4-Dichlorophenol	1	4
Fluoranthene	5.6	56
Fluorene	5.6	56
Hexachloroethane	1	1
Hexachlorobenzene	1	1
Naphthalene	5.6	56
Pentachlorophenol	1	1

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Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
Phenanthrene	4	40
Phenol	80	800
Pyrene	4	40
Pesticides and TPH		
Alachlor	0.230	0.4
Aldicarb	1	1
Atrazine	0.2	0.2
Chlordane	0.066	0.066
Dieldrin	0.007	0.007
2-4 D	1.4	14
Heptachlor epoxide	0.02	0.02
Heptachlor	0.013	0.013
Lindane	0.02	0.04
Methoxychlor	0.8	8
Simazine	0.8	8
Toxaphene	0.33	0.6
Total Petroleum Hydrocarbon By EPA Method 418.1 or another EPA-approved method acceptable to the Commissioner <u>(This method shall not be used for the analysis of samples collected after June 30, 2009)</u>	500	2500
<u>Extractable Total Petroleum Hydrocarbons by ETPH Analysis</u>	<u>500</u>	<u>2500</u>

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Inorganic Substances and PCB	GA, GAA Mobility Criteria By TCLP or by SPLP in mg/l (ppm)	GB Mobility Criteria By TCLP or by SPLP in mg/l (ppm)
Antimony	0.006	0.06
Arsenic	0.05	0.5
Barium	1	10.0
Beryllium	0.004	0.04
Cadmium	0.005	0.05
Chromium, total	0.05	0.5
Copper	1.3	13
Cyanide (by SPLP only)	0.2	2
Lead	0.015	0.15
Mercury	0.002	0.02
Nickel	0.1	1.0
Selenium	0.05	0.5
Silver	0.036	0.36
Thallium	0.005	0.05
Vanadium	0.05	0.50
Zinc	5	50
PCB	0.0005	0.005

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Appendix C to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Ground-Water Protection Criteria for GA and GAA Areas

Substance	Ground-water Protection Criteria in ug/l (ppb)
Volatile Organic Substances	
Acetone	700
Acrylonitrile	0.5
Benzene	1
Bromoform	4
2-Butanone(MEK)	400
Carbon tetrachloride	5
Chlorobenzene	100
Chloroform	6
Dibromochloromethane	0.5
1,2-Dichlorobenzene	600
1,3-Dichlorobenzene	600
1,4-Dichlorobenzene	75
1,1-Dichloroethane	70
1,2-Dichloroethane	1
1,1-Dichloroethylene	7
cis-1,2-Dichloroethylene	70
trans-1,2-Dichloroethylene	100
1,2-Dichloropropane	5
1,3-Dichloropropene	0.5
Ethyl benzene	700
Ethylene dibromide (EDB)	0.05
Methyl-tert-butyl-ether	100
Methyl isobutyl ketone	350
Methylene chloride	5
Styrene	100
1,1,1,2-Tetrachloroethane	1

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Substance	Ground-water Protection Criteria in ug/l (ppb)
1,1,2,2-Tetrachloroethane	0.5
Tetrachloroethylene	5
Toluene	1000
1,1,1-Trichloroethane	200
1,1,2-Trichloroethane	5
Trichloroethylene	5
Vinyl chloride	2
Xylenes	530
Semivolatile Substances	
Acenaphthylene	420
Anthracene	2000
Benzo(a)anthracene	0.06
Benzo(b)fluoranthene	0.08
Benzo(k)fluoranthene	0.5
Benzo(a)pyrene	0.2
Bis(2-chloroethyl)ether	12
Bis(2-chloroisopropyl)ether	12
Bis(2-ethyl hexyl)phthalate	2
Butyl benzl phthalate	1000
2-chlorophenol	36
Di-n-butyl phthalate	700
Di-n-octyl phthalate	100
2,4-Dichlorophenol	20
Fluoranthene	280
Fluorene	280
Hexachloroethane	3
Hexachlorobenzene	1
Naphthalene	280

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Substance	Ground-water Protection Criteria in ug/l (ppb)
Pentachlorophenol	1
Phenanthrene	200
Phenol	4000
Pyrene	200
Inorganic Substances	
Antimony	6
Arsenic	50
Asbestos in mfl	7 (mfl)
Barium	1000
Beryllium	4
Cadmium	5
Chromium (total)	50
Copper	1300
Cyanide	200
Lead	15
Mercury	2
Nickel	100
Selenium	50
Silver	36
Thallium	5
Vanadium	50
Zinc	5000
Pesticides, PCB and Total Petroleum Hydrocarbons	
Alachlor	2
Aldicarb	3
Atrazine	3
Chlordane	0.3
Dieldrin	0.002
2-4 D	70

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Substance	Ground-water Protection Criteria in ug/l (ppb)
Heptachlor epoxide	0.2
Heptachlor	0.4
Lindane	0.2
Methoxychlor	40
Simazine	4
Toxaphene	3
PCB's	0.5
Total Petroleum Hydrocarbon By EPA Method 418.1 or another EPA-approved method acceptable to the Commissioner <u>(This method shall not be used for the analysis of samples collected after June 30, 2009)</u>	500
<u>Extractable Total Petroleum Hydrocarbons by ETPH Analysis</u>	<u>250</u>

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Appendix D to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Surface-water Protection Criteria
 for Substances in Ground Water

Substance	Surface-Water Protection Criteria in ug/l (ppb)
Volatile Organic Substances	
Acrylonitrile	20
Benzene	710
Bromoform	10800
Carbon tetrachloride	132
Chlorobenzene	420000
Chloroform	14100
Dibromochloromethane	1020
1,2-Dichlorobenzene	170000
1,3-Dichlorobenzene	26000
1,4-Dichlorobenzene	26000
1,2-Dichloroethane	2970
1,1-Dichloroethylene	96
1,3-Dichloropropene	34000
Ethylbenzene	580000
Methylene chloride	48000
1,1,2,2-Tetrachloroethane	110
Tetrachloroethylene	88
Toluene	4000000
1,1,1-Trichloroethane	62000
1,1,2-Trichloroethane	1260
Trichloroethylene	2340
Vinyl chloride	15750
Semivolatile Substances	
Acenaphthylene	0.3
Anthracene	1100000

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Substance	Surface-Water Protection Criteria in ug/l (ppb)
Benzo(a)anthracene	0.3
Benzo(b)fluoranthene	0.3
Benzo(k)fluoranthene	0.3
Benzo(a)pyrene	0.3
Bis(2-chloroethyl) ether	42
Bis(2-chloroisopropyl) ether	3400000
Bis(2-ethyl hexyl)phthalate	59
Di-n-butyl phthalate	120000
2,4-Dichlorophenol	15800
Fluoranthene	3700
Fluorene	140000
Hexachloroethane	89
Hexachlorobenzene	0.077
Phenanthrene	0.077
Phenol	92000000
Pyrene	110000
Inorganic Substances	
Antimony	86000
Arsenic	4
Asbestos (in mfl)	7 mfl
Beryllium	4
Cadmium	6
Chromium, trivalent	1200
Chromium, hexavalent	110
Copper	48
Cyanide	52
Lead	13
Mercury	0.4

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Substance	Surface-Water Protection Criteria in ug/l (ppb)
Nickel	880
Selenium	50
Silver	12
Thallium	63
Zinc	123
Pesticides and PCB	
Chlordane	0.3
Dieldrin	0.1
Endrin	0.1
Heptachlor epoxide	0.05
Heptachlor	0.05
Toxaphene	1
PCB's	0.5

(NEW)

Petroleum Hydrocarbons	
Extractable Total Petroleum Hydrocarbons by ETPH Analysis	250

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Appendix E to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Volatilization Criteria for Ground Water

Volatile Substance	Residential Volatilization Criteria for Ground water in parts per billion	Industrial/Commercial Volatilization Criteria for Ground water in parts per billion
Acetone	50000	50000
Benzene	215	530
Bromoform	920	3800
2-Butanone (MEK)	50000	50000
Carbon Tetrachloride	16	40
Chlorobenzene	1800	6150
Chloroform	287	710
1,2-Dichlorobenzene	30500	50000
1,3-Dichlorobenzene	24200	50000
1,4-Dichlorobenzene	50000	50000
1,1-Dichloroethane	34600	50000
1,2-Dichloroethane	21	90
1,1-Dichloroethylene	1	6
1,2-Dichloropropane	14	60
1,3-Dichloropropene	6	25
Ethyl benzene	50000	50000
Ethylene dibromide (EDB)	4	16
Methyl-tert-butyl-ether	50000	50000
Methyl isobutyl ketone	50000	50000
Methylene chloride	50000	50000
Styrene	580	2065
1,1,1,2-Tetrachloroethane	12	50
1,1,2,2-Tetrachloroethane	23	100
Tetrachloroethylene	1500	3820
Toluene	23500	50000
1,1,1-Trichloroethane	20400	50000

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Volatile Substance	Residential Volatilization Criteria for Ground water in parts per billion	Industrial/Commercial Volatilization Criteria for Ground water in parts per billion
1,1,2-Trichloroethane	8000	19600
Trichloroethylene	219	540
Vinyl chloride	2	2
Xylenes	21300	50000

(NEW)

Volatile Substance Petroleum Hydrocarbons	Residential Volatilization Criteria for Ground water in micrograms per liter	Industrial/Commercial Volatilization Criteria for Ground water in micrograms per liter
Extractable Total Petroleum Hydrocarbons by ETPH Analysis	250	250

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Appendix F to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Volatilization Criteria for Soil Vapor

Volatile Substance	Residential Volatilization Criteria for Soil Vapor in parts per million	<u>Residential Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>	Industrial/ Commercial Volatilization Criteria for Soil Vapor in parts per million	<u>Industrial/ Commercial Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>
Acetone	2400	<u>5701</u>	8250	<u>19597</u>
Benzene	1	<u>3</u>	113	<u>361</u>
Bromoform	1.5	<u>16</u>	6	<u>62</u>
2-Butanone (MEK)	2400	<u>7078</u>	8285	<u>24434</u>
Carbon Tetrachloride	1	<u>6</u>	2.7	<u>17</u>
Chlorobenzene	31	<u>143</u>	106	<u>488</u>
Chloroform	4.5	<u>22</u>	10.4	<u>51</u>
1,2-Dichlorobenzene	240	<u>1443</u>	818	<u>4918</u>
1,3-Dichlorobenzene	240	<u>1443</u>	818	<u>4918</u>
1,4-Dichlorobenzene	950	<u>5712</u>	3270	<u>19661</u>
1,1-Dichloroethane	850	<u>3440</u>	3037	<u>12292</u>
1,2-Dichloroethane	1	<u>4</u>	1	<u>4</u>
1,1-Dichloroethylene	1	<u>4</u>	1	<u>4</u>
1,2-Dichloropropane	1	<u>5</u>	1	<u>5</u>

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Volatile Substance	Residential Volatilization Criteria for Soil Vapor in parts per million	<u>Residential Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>	Industrial/ Commercial Volatilization Criteria for Soil Vapor in parts per million	<u>Industrial/ Commercial Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>
1,3-Dichloropropene	1	<u>5</u>	1	<u>5</u>
Ethyl benzene	1650	<u>7165</u>	5672	<u>24629</u>
Ethylene dibromide (EDB)	1	<u>8</u>	1	<u>8</u>
Methyl-tert-butyl-ether	1000	<u>3605</u>	3415	<u>12312</u>
Methyl isobutyl ketone	140	<u>574</u>	480	<u>1966</u>
Methylene chloride	1200	<u>4168</u>	2907	<u>10098</u>
Styrene	8	<u>34</u>	28	<u>119</u>
1,1,1,2-Tetrachloroethane	1	<u>7</u>	1.5	<u>10</u>
1,1,2,2- Tetrachloroethane	1	<u>7</u>	1	<u>7</u>
Tetrachloroethylene	11	<u>75</u>	27	<u>183</u>
Toluene	760	<u>2864</u>	2615	<u>9855</u>
1,1,1-Trichloroethane	1310	<u>7148</u>	4520	<u>24662</u>
1,1,2-Trichloroethane	40	<u>218</u>	93	<u>507</u>
Trichloroethylene	7	<u>38</u>	16	<u>86</u>
Vinyl chloride	1	<u>3</u>	1	<u>3</u>
Xylenes	500	<u>2192</u>	1702	<u>7461</u>

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Appendix G to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Equations, Terms and Values for Calculating Site-specific Volatilization Criteria
 for Ground Water and Soil Vapor

Volatilization Criteria for Ground Water

Site-Specific Volatilization Criteria for Ground Water may be calculated using the following equations:

$$GWC = TAC / (1000 \cdot VF_{GW})$$

$$VF_{GW} = \frac{H \cdot [(D_{EFFWS}/L_{GW}) / (ER \cdot L_B)] \cdot 1000}{1 + [(D_{EFF-WS}/L_{GW}) / (ER \cdot L_B)] + [(D_{EFF-WS}/L_{GW}) / ((D_{EFF-CRACK}/L_{CRACK}) \cdot \eta)]}$$

$$D_{EFFWS} = (h_{cap} + h_v) / [(h_{cap} / D_{EFF-CAP}) + (h_v / D_{EFF-S})]$$

$$D_{EFF-CAP} = D_{AIR} \cdot (\theta_{ACAP}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WCAP}^{3.33} / \theta_T^2)$$

$$D_{EFF-S} = D_{AIR} \cdot (\theta_{AS}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WS}^{3.33} / \theta_T^2)$$

$$D_{EFF-CRACK} = D_{AIR} \cdot (\theta_{ACRACK}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WCRACK}^{3.33} / \theta_T^2)$$

Where:

Term	Description	Units	Value
GWC	Ground Water Volatilization Criteria	ug/kg	calculated
TAC	Target Indoor Air Concentration	ug/m ³	**
VF _{GW}	Ground Water Volatilization Factor	mg/m ³	calculated
H	Henry's Law Constant	unitless	substance-specific
D _{EFF WS}	Effective Diffusion-Ground Water to Soil Surface	cm ² /s	calculated
L _{GW}	Depth to Ground Water (= h _{CAP} + h _V)	cm	site-specific
h _{CAP}	Thickness of Capillary Fringe	cm	site-specific
h _V	Thickness of Vadose Zone	cm	site-specific
ER _R	Residential Enclosed Space Air Exchange Rate	1/s	.00014
ER _I	Industrial Enclosed Space Air Exchange Rate	1/s	.00023

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Term	Description	Units	Value
L_{BR}	Residential Enclosed Space Volume/Infiltration Area Ratio	cm	site-specific
L_{BI}	Industrial Enclosed Space Volume/Infiltration Area Ratio	cm	site-specific
$D_{EFF-CRACK}$	Effective Diffusion through Foundation Cracks	cm^2/s	calculated
L_{CRACK}	Enclosed Space Foundation or Wall Thickness	cm	site-specific
η	Areal Fraction of Cracks in Foundations / Walls	unitless	.01
$D_{EFF-CAP}$	Effective Diffusion through Capillary Fringe	cm^2/s	calculated
D_{EFF-S}	Effective Diffusion through Soil (In Vapor Phase)	cm^2/s	calculated
D_{AIR}	Diffusion Coefficient in Air	cm^2/s	8.40E-02 or chemical specific
D_{WATER}	Diffusion Coefficient in Water	cm^2/s	1.00E-05 or chemical specific
θ_{ACAP}	Volumetric Air Content in Capillary Fringe	unitless	site-specific
θ_{AS}	Volumetric Air Content in Vadose Zone	unitless	site-specific
$\theta_{ACRACKK}$	Volumetric Air Content in Foundation/Wall Cracks	unitless	site-specific
θ_{WCAP}	Volumetric Water Content in Capillary Fringe	unitless	site-specific
θ_{WS}	Volumetric Water Content in Vadose Zone	unitless	site-specific
$\theta_{WCRACKK}$	Volumetric Water Content in Foundation/Wall Cracks	unitless	site-specific
θ_T	Total Soil Porosity	unitless	site-specific

**See attached "Table of Target Air Concentrations"

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Volatilization Criteria for Soil Vapor

Site-Specific Volatilization Criteria for Soil Vapor may be calculated using the following equations:

$$SSVC = TAC / (1000 \cdot VF_{SSV})$$

$$VF_{SSV} = \frac{[(D_{EFF-S}/L_S)/(ER \cdot L_B)]}{1 + [(D_{EFF-S}/L_S)/(ER \cdot L_B)] + [(D_{EFF-S}/L_S)/(D_{EFF-CRACK}/L_{CRACK}) \cdot \eta]}$$

$$D_{EFF-S} = D_{AIR} \cdot (\theta_{AS}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WS}^{3.33} / \theta_T^2)$$

$$D_{EFF-CRACK} = D_{AIR} \cdot (\theta_{ACRACK}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WCRACK}^{3.33} / \theta_T^2)$$

Where:

Terms	Description	Units	Value
SSVC	Volatilization Criteria for Soil Vapor	mg/m ³ -air	calculated
TAC	Target Indoor Air Concentration	ug/m ³ -air	**
VF _{SSV}	Volatilization Factor for Subsurface Vapors	unitless	calculated
H	Henry's Law Constant	unitless	substance-specific
D _{EFF-S}	Effective Diffusion through Soil (in Vapor Phase)	cm ² /s	calculated
L _S	Depth to Soil Vapor Sample	cm	site-specific
ER _R	Residential Enclosed Space Air Exchange Rate	1/s	.00014
ER _I	Industrial Enclosed Space Air Exchange Rate	1/s	.00023
L _{B R}	Residential Enclosed Space Volume/Infiltration Area Ratio	cm	site-specific
L _{B I}	Industrial Enclosed Space Volume/Infiltration Area Ratio	cm	site-specific
D _{EFF-CRACK}	Effective Diffusion through Foundation Cracks	cm ² /s	calculated
L _{CRACK}	Enclosed Space Foundation or Wall Thickness	cm	site-specific
η	Areal Fraction of Cracks in Foundations / Walls	unitless	calculated
θ _{AS}	Volumetric Air Content in Vadose Zone	unitless	site-specific
θ _{ACRACK}	Volumetric Air Content in Foundation/Wall Cracks	unitless	site-specific

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Terms	Description	Units	Value
θ_{WS}	Volumetric Water Content in Vadose Zone	unitless	site-specific
θ_{WCRACK}	Volumetric Water Content in Foundation/Wall Cracks	unitless	site-specific
θ_T	Total Soil Porosity	unitless	site-specific

** See attached "Table of Target Air Concentrations"

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Table of Target Air Concentrations

Volatile Substance	Residential Target Indoor Air Concentration in micrograms per cubic meter	Industrial/Commercial Target Indoor Air Concentration in micrograms per cubic meter
Acetone	8.34 E02	1.17 E03
Benzene	3.25 E00	2.15 E01
Bromoform	2.21 E00	3.72 E00
2-Butanone (MEK)	1.04 E03	1.46 E03
Carbon Tetrachloride	1.00 E00	1.00 E00
Chlorobenzene	2.09 E01	2.92 E01
Chloroform	3.00 E00	3.00 E00
1,2-Dichlorobenzene	2.09 E02	2.92 E02
1,3-Dichlorobenzene	2.09 E02	2.92 E02
1,4-Dichlorobenzene	8.34 E02	1.17 E03
1,1-Dichloroethane	5.21 E02	7.30 E02
1,2-Dichloroethane	9.36 E-02	1.57 E-01
1,1-Dichloroethylene	4.87 E-02	8.18 E-02
1,2-Dichloropropane	1.28 E-01	2.15 E-01
1,3-Dichloropropene	6.58 E-02	1.10 E-01
Ethyl benzene	1.04 E03	1.46 E03
Ethylene dibromide (EDB)	1.11 E-02	1.86 E-02
Methyl-tert-butyl-ether	5.21 E02	7.30 E02
Methyl isobutyl ketone	8.34 E01	1.17 E02
Methylene chloride	6.00 E02	6.00 E02
Styrene	5.00 E00	7.17 E00
1,1,1,2-Tetrachloroethane	3.29 E-01	5.52 E-01
1,1,2,2-Tetrachloroethane	4.20 E-02	7.05 E-02
Tetrachloroethylene	1.10 E01	1.10 E01
Toluene	4.17 E02	5.84 E02

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Volatile Substance	Residential Target Indoor Air Concentration in micrograms per cubic meter	Industrial/Commercial Target Indoor Air Concentration in micrograms per cubic meter
1,1,1-Trichloroethane	1.04 E03	1.46 E03
1,1,2-Trichloroethane	3.00 E01	3.00 E01
Trichloroethylene	5.00 E00	5.00 E00
Vinyl chloride	2.90 E-02	4.87 E-02
Xylenes	3.13 E02	4.38 E02

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[Section 4.] Section 22a-133q-1 of [The]the Regulations of Connecticut State Agencies are amended [by adding a new section 22a-133q-1] to read as follows:

22a-133q-1 Environmental [land use restrictions] Land Use Restrictions

(a) Definitions.

For the purpose of this section, the definitions of the terms shall be the same as the definitions of terms in section 22a-133k-1 of the Regulations of Connecticut State Agencies. In addition, the following definitions shall apply:

[“]Class A-2 survey[”] means a first survey or independent re-survey which conforms to the “Recommended Standards for Surveys and Maps in the State of Connecticut Adopted on September 24, 1992, effective January 1, 1993 by the Connecticut Association of Land Surveyors, Inc. ” and which has been prepared by a land surveyor licensed in the State of Connecticut; complies with the minimum detail requirements for urban land title surveys adopted by the American Land Title Association and American Congress on Surveying and Maps (such requirements shall include all optional items on Table A thereof, exclusive of Items #1 (Monumentation), #5 (Contours in Elevation), #7b-2 (Other Data), and #12; and specifically shows (1) the boundaries of the Property by course and distance, together with the metes and bounds description corresponding to such survey; (2) the location of all improvements; (3) the location and width of all easements, utility lines, rights of way and building setback lines, with references to the book and page numbers for the instruments granting the same; (4) the location of all encroachments and restrictions, if any affecting the property; (5) the location of the portion of the parcel which is the subject of the proposed environmental land use restriction and (6) the latitude and longitude of the center of the subject property.

[“]Environmental land use restriction[”] means [(1) a declaration of environmental land use restriction in the application form set forth in Appendix 1 to section 22a-133q-1 of the Regulations of Connecticut State Agencies[, or, in the case of an environmental land use restriction approved by a licensed environmental professional pursuant to P.A. 95-190, a declaration of environmental land use restriction in the form set forth in Appendix 2 to section 22a-133q-1 of the Regulations of Connecticut State Agencies; (2) a class A-2 survey of the subject parcel or portion thereof; (3) a certificate of title demonstrating that the subordination agreement(s) required under section 22a-133o of the General Statutes as amended by P.A. 95-190 has been recorded; and (4) a copy of the decision document prepared in accordance with subsection (f) of this section].

"Licensed environmental professional" means an environmental professional licensed in accordance with section [4 of P.A. 95-183.] 22a-133v of the General Statutes.

(b) Applicability.

This section shall govern the execution and recording of environmental land use restrictions in accordance with section 22a-133n to 22a-133s, inclusive, of the General Statutes. Except as otherwise provided by section 22a-133o of the General Statutes, no environmental land use restriction shall be effective unless and until it has (1) been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such restriction; and (2) been recorded on the land records in the municipality in which the subject parcel is located.

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(c) Publishing Notice of an Environmental Land Use Restriction.

(1) The owner of the parcel which is the subject of a proposed environmental land use restriction shall, except as specified in subdivision (1) of this subsection, publish in at least one newspaper of general circulation in the area affected by the proposed environmental land use restriction, notice of intent to record an environmental land use restriction. Such notice shall include the name and address of such owner, the address of the parcel or a brief description of its location, a brief description of the purpose of the proposed environmental land use restriction, the name and address of an individual from whom interested persons may obtain a copy of the proposed use restriction, and a statement that public comments on the proposed environmental land use restriction may be submitted in writing to the Commissioner of **Energy and Environmental Protection**, 79 Elm Street, Hartford, CT 06106 for thirty days after the date of publication of the notice.

(2) Notice of a proposed environmental land use restriction need not be published if (A) such restriction provides solely that the use of the subject parcel or portion thereof is restricted to industrial or commercial activities, and (B) the municipal zoning of such parcel limits the parcel to such use.

(d) Proposing an Environmental Land Use Restriction.

When submitting a proposed environmental land use restriction to the Commissioner for his review and approval, the owner of the affected parcel of land shall simultaneously submit [a completed application form furnished by the Commissioner and the following documents:](#)

- (1) a draft declaration of environmental land use restriction in the form set forth in Appendix 1[or 2] to section 22a-133q-1 of the Regulations of Connecticut State Agencies, as applicable;
- (2) a Class A-2 survey of the parcel or portion thereof which is the subject of the proposed environmental land use restriction;
- (3) a proposed decision document in accordance with subsection (f) of this section; and
- (4) a certified copy of the notice required by subsection (c) of this section, as such notice appeared in the newspaper or newspapers.

(e) Approval of an Environmental Land Use Restriction by the Commissioner.

After the close of the public comment period, the Commissioner shall decide whether to approve an environmental land use restriction. When making such decision the Commissioner shall consider: (1) all comments submitted; (2) whether such restriction will adequately protect human health and the environment from pollution at or emanating from the subject release area; and (3) whether such restriction conforms in all respects to the requirements of this section and sections 22a-133n through 22a-133s of the General Statutes.

(f) Decision Document.

Any environmental land use restriction approved pursuant to this section shall include a decision document prepared in accordance with this section. The decision document shall contain a detailed written description of:

- (1) the type and location of pollutants present in soil or ground water on or underlying the parcel or portion thereof which is the subject of the environmental land use restriction;
- (2) the provisions of the environmental land use restriction, including any limitations

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on the use of such parcel or portion thereof; and

- (3) description of the reason for the environmental land use restriction, including an explanation why such restriction is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

The decision document shall also contain a summary of all comments on the proposed environmental land use restriction received following the publication of notice in accordance with subsection (c) of this section and a brief response to each comment. The decision document shall be signed by the Commissioner or, in the case of a restriction approved pursuant to [\[P.A. 95-190\]section 22a-133y of the General Statutes](#), a licensed environmental professional to indicate approval of the decision document.

- (g) Approval of an Environmental Land Use Restriction by a Licensed Environmental Professional.

When an environmental land use restriction is to be approved by a licensed environmental professional in accordance with [\[P.A. 95-190\]section 22a-133y of the General Statutes](#), the licensed environmental professional shall review the documents listed in subsection (d) and [evaluate the proposed environmental land use restriction in accordance with subsection \(e\)](#), [\[shall\]](#) prepare a written approval of such restriction, and shall retain documentation of all documents reviewed by him. A licensed environmental professional shall not approve any environmental land use restriction unless it is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

- (h) Subordination Agreements.

Whether the Commissioner or a licensed environmental professional approves an environmental land use restriction, [\[prior to\]within seven \(7\) days after](#) recording such environmental land use restriction on the municipal land records, the owner of the subject parcel shall submit to the Commissioner, [\[for his review and written approval: \(1\) copies of each subordination agreement, properly executed,\]as](#) required under section 22a-133o of the General Statutes, [\[; or \(2\)\]](#) a certificate of title indicating that each person holding an interest in such parcel or any part thereof, including without limitation, each mortgagee, lessee, lienor and encumbrancer, has irrevocably subordinated such interest to the environmental land use restriction.

- (i) Recording an Environmental Land Use Restriction.

After the Commissioner or a licensed environmental professional, as applicable, has approved an environmental land use restriction in accordance with this section, the owner of the subject parcel shall record such restriction in accordance with this section and all other applicable law.

- (j) Mailing Notice of an Environmental Land Use Restriction.

After an environmental land use restriction has been recorded, the owner of the subject parcel shall send, by certified mail, return receipt requested, a copy of such environmental land use restriction to (1) the chief administrative officer in the town where the parcel is located; (2) the chairman of the municipal planning, zoning or planning and zoning commission; (3) the local director of health; and (4) any person who submitted comments on such environmental use restriction.

- (k) Release.

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The owner of any parcel which is subject to an environmental land use restriction recorded in accordance with this section may request that the Commissioner release such parcel, in whole or in part, from the limitations of such restriction. If the Commissioner grants such request, the owner of such parcel shall, in accordance with law, record such release on the land records in the municipality where such parcel is located. No release of an environmental land use restriction shall be effective unless and until it has been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such release, and has been recorded on the land records of the municipality in which such parcel is located.

(l) Effect of Court Ruling on Environmental Land Use Restriction.

In the event that a court of competent jurisdiction rules that any portion of an environmental land use restriction recorded pursuant to this section is invalid, the owner of the subject parcel shall submit a copy of such restriction and such ruling to the Commissioner. The Commissioner shall review such restriction, and if he determines that such restriction would not have been approved without the invalid portion, he shall give notice that the environmental land use restriction is terminated as evidenced by his signature on an instrument setting forth such termination, and shall record such instrument on the land records of the municipality where such parcel is located. Promptly thereafter, the owner of the subject parcel shall take actions consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies to remediate the subject parcel or portion thereof. If the Commissioner determines in writing that the environmental land use restriction would have been approved without the invalid portion, the valid portion of the environmental land use restriction shall remain in full force and effect.

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Appendix 1 to
 Section 22a-133q-1 of the Regulations of Connecticut State Agencies
Application Form of Environmental Land Use Restriction for Commissioner's Approval
 or Licensed Environmental Professional's Approval

Instructions: Any environmental land use restriction pursuant to R.C.S.A. section 22a-133q-1 shall be in the following [form. The appropriate information shall be inserted in the blanks shown, and the appropriate language shall be selected from the choices shown in brackets, or if none of the choices addresses the specific circumstance, substitute language shall be inserted.] application form. This form shall be used for environmental land use restrictions approved by the Commissioner or Licensed Environmental Professional pursuant to the Regulations of Connecticut State Agencies section 22a-133q-1. The appropriate information shall be inserted into the parentheses "{}".

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION
 AND GRANT OF EASEMENT

This Declaration of Environmental land use restriction and Grant of Easement [is made this day of , 1995 , between (“the Grantor”) and the Commissioner of Environmental Protection of the State of Connecticut (“the Grantee”]. is made this {day} day of {month}, {year}, between {Grantor's legal name} (the "Grantor") and the Commissioner of the Department of Energy and Environmental Protection of the State of Connecticut (the "Grantee").

W I T N E S S E T H:

WHEREAS, Grantor is the owner in fee simple of certain real property (the [“Property”]) [known as [Address/Location located in the Town of in County] [designated as Lot , Block on the tax map of the Town of in County], more particularly described on Exhibit A which is attached hereto and made a part hereof; and] described below:

(NEW)

Name of Property: {Name of property}
Street address: {Street address of property}
City/Town: {City and Town of property}

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State: Connecticut

Municipal identification for property: {Municipal identification for property, if used}

Volume and Page of Deed: {Volume and Page of Deed, if used}

A description of the property is attached hereto as Exhibit A, and which is made a part hereof; and

WHEREAS, the Grantee has the authority to enter into this declaration of environmental land use restriction pursuant to section 22a-133o of the General Statutes; and

[WHEREAS, the Grantee has determined that the environmental land use restriction set forth below is consistent with regulations adopted by him pursuant to Section 22a-133k of the Connecticut General Statutes; and

WHEREAS, the Grantee has determined that this environmental land use restriction will effectively protect public health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this Environmental land use restriction is contained in the document attached hereto as Exhibit B (the "Decision Document") which is made a part hereof; and]

(NEW) Instructions - Select one of the two choices below by checking the applicable check box.

If the Commissioner of Department of Energy and Environmental Protection signs the environmental land use restriction:

WHEREAS, the Grantee has determined that the environmental land use restriction set forth below is consistent with regulations adopted pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Grantee has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document) which is made a part hereof; and

If a Licensed Environmental Professional signs the environmental land use restriction pursuant to section 22a-133y of the General Statutes:

WHEREAS, remediation of the property has been conducted in accordance with section 22a-133y of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that the environmental land use restriction set forth below is consistent with regulations adopted by the Commissioner of Energy and Environmental Protection pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

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WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document) which is made a part hereof; and

WHEREAS, the property or portion thereof identified in the class A-2 survey (["the Subject Area"]) which survey is attached hereto as Exhibit C which is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards to human health and the environment, and in accordance with the Decision Document, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this environmental land use restriction to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the Decision Document, the purpose of this [Environmental]environmental land use restriction is to [assure [that the Subject Area is not used for residential activities], [that ground water at the Subject Area is not utilized for drinking purposes], [that humans are not exposed to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive] [that buildings are not constructed over soils or ground water at the Subject Area polluted with substances in concentrations exceeding the volatilization criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that the engineered control described in Exhibit D attached hereto is not disturbed and is properly maintained to prevent human exposure to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, and/or that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.]]assure that the use and activity at the property and the Subject Area is restricted in accordance with the requirements of the Decision Document attached hereto as Exhibit B.

[]2. Restrictions Applicable to the Subject Area: In furtherance of the purposes of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Subject Area are restricted [as follows:

- [A. Use. No residential use of the Subject Area shall be permitted.
- B. Ground water. Ground water at the Subject Area shall not be used for drinking or other domestic purposes.
- C. Disturbances. Soil at the Subject Area shall not be disturbed in any manner, including without limitation,
- D. Construction. No building shall be constructed on the Subject Area.]]

in accordance with the requirements of the Decision Document, attached hereto as Exhibit B. Such restrictions shall remain in effect unless and until a release is obtained under paragraph 5 below.

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed,

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suffered, or omitted if such action or omission is reasonably likely to:

- i. Create a risk of migration of pollutants or a potential hazard to human health or the environment; or
- ii. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain pollutants or limit human exposure to pollutants.

4. Emergencies. In the event of an emergency which presents a significant risk to human health or the environment, the application of [Paragraph] Paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending such [Paragraph] Paragraphs and the Grantor:

- i. Immediately notifies the Grantee of the emergency;
- ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- iv. After the emergency is abated, [Implements] implements a plan approved in writing by the Grantee, on a schedule approved by the Grantee, to ensure that the Subject Area is remediated in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, or restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of the Subject Area. Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of [any of]the Subject Area inconsistent with this [Environmental land use restriction unless the Grantor has first recorded the Grantee's written approval of such alteration upon the land records of [name of municipality where Subject Area is located]environmental land use restriction until a release has been approved by the Commissioner and such release is either recorded on the land records in the municipality where such parcel is located or the requirement to record such a release is waived by the Commissioner pursuant to section 22a-133o of the General Statutes. [The Grantee shall not approve any such alteration and shall not release the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee's satisfaction that Grantor has remediated the Subject Area in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.]The Grantee shall not approve any such alteration and shall not release the property from the provisions of this environmental land use restriction unless the Grantor submits a request for a release in accordance with subsection (k) of section 22a-133q-1 of the Regulations of Connecticut State Agencies.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, [his]the Grantee's agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, a non-exclusive easement (the ["Easement[""]) over the Subject Area and over such other parts of the Property as are necessary for access to the Subject Area or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Area. Pursuant to this Easement, the Grantee, [his]the Grantee's agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the Grantee deems necessary for any one or more of the following purposes:

- i. Ensuring that use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction;
- ii. Ensuring that any remediation implemented complies with R.C.S.A.

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sections 22a-133k-1 through 22a-133k-3, inclusive;

iii. Performing any additional investigations or remediation necessary to protect human health and the environment;

iv. Ensuring the structural integrity of any engineering controls described in Exhibit B of this [Environmental]environmental land use restriction and Grant of Easement and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants.

7. Notice and Time of Entry onto Property. Entry onto the Property by the Grantee pursuant to this Easement shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Grantee determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this environmental land use restriction and Grant of Easement. The failure to include such provision shall not affect the validity or applicability to the Property of this environmental land use restriction and Grant of Easement.

9. Persons Entitled to Enforce Restrictions. The restrictions in this environmental land use restriction on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the General Statutes.

10. Severability and Termination. If any court of competent jurisdiction determines that any provision of this environmental land use restriction [or]and Grant of Easement is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the [judgement]Judgment of the Court to the Grantee in accordance with R.C.S.A. section 22a-133q-1(1). This environmental land use restriction shall be terminated if the Grantee provides notification pursuant to R.C.S.A. section 22a-133q-1(l).

11. Binding Effect. All of the terms, covenants and conditions of this environmental land use restriction and grant of easement shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

12. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and [22a-133o-1]22a-133q-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this environmental land use restriction.[.]

(NEW)

Signature Page Follows

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(NEW)The undersigned certifies that he/she is fully authorized to sign this environmental land use restriction on behalf of the Grantor.

In witness whereof, I/We, {Insert Grantor's name}, have hereunto set our hands this {Day} day of {Month}, {Year}.

Grantor:

{Date _____}
Date

{Grantor's signature _____}
{Grantor's name
Name
Title, if applicable
Company, if applicable
Mailing Address
City/Town, State, Zip Code}

Witnesses:

{Signature _____}
Signature

{Printed/typed name _____}
Printed/typed name

{Signature _____}
Signature

{Printed/typed name _____}
Printed/typed name

Instructions - Insert appropriate notarization language within the brackets below

[State of {_____} County of {_____}]

Personally appeared, {Name} Signer{s} of the foregoing instrument, and acknowledged the same to be {his/her} free act and deed, before me.

{Commissioner of the Superior Court} {Notary Public}]

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Instructions - Select one of the two choices below, as applicable;

This choice is used for all environmental land use restrictions except those approved pursuant to section 22a-133y of the General Statutes.

Grantee: The Grantee, the Commissioner of the Department of Energy and Environmental Protection or by the Commissioner's duly designated agent, {Insert name and title.}

{Date _____} {Grantee's signature _____}
Date {Commissioner's duly authorized agent
Bureau of Water Protection & Land Reuse
Connecticut Department of Energy &
Environmental Protection
79 Elm Street
Hartford, CT 06106}

This choice is used solely for environmental land use restrictions approved pursuant to section 22a-133y of the General Statutes.

Grantee: Grantee, the Commissioner of Energy and Environmental Protection, by undersigned Licensed Environmental Professional pursuant to section 22a-133y of the General Statutes.

{Date _____} {Licensed Environmental Professional's signature _____}
Date {Insert name of Licensed Environmental Professional
License Number
Title, if applicable
Company, if applicable
Mailing Address
City/Town, State, Zip Code}

Witnesses:

{Signature _____}
Signature

{Printed/typed name _____}
Printed/typed name

{Signature _____}
Signature

{Printed/typed name _____}
Printed/typed name

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Instructions - Insert appropriate notarization language within the brackets below

[State of {_____} County of {_____}]

Personally appeared, {Name} Signer{s} of the foregoing instrument, and acknowledged the same to be {his/her} free act and deed, before me.

{Commissioner of the Superior Court} {Notary Public}]

DRAFT

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Appendix 2 to Section 22a-133q-1 of the Regulations of Connecticut State Agencies Form of Environmental Land Use Restriction for Licensed Environmental Professional's Approval is repealed.

[Appendix 2 to
Section 22a-133q-1 of the Regulations of Connecticut State Agencies
Form of Environmental Land Use Restriction for Licensed Environmental Professional's
Approval

Instructions: Any environmental land use restriction pursuant to R.C.S.A. section 22a-133q-1 shall be in the following form. The appropriate information shall be inserted in the blanks shown, and the appropriate language shall be selected from the choices shown in brackets, or if none of the choices addresses the specific circumstance, substitute language shall be inserted.

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION
AND GRANT OF EASEMENT

This Declaration of environmental land use restriction and Grant of Easement is made this _____ day of _____, 1995, between _____ (“the Grantor”) and the Commissioner of Environmental Protection of the State of Connecticut (the Grantee”).

W I T N E S S E T H:

WHEREAS, Grantor is the owner in fee simple of certain real property (the “Property”) known as [Address/Location located in the Town of _____ in _____ County] [designated as Lot _____, Block _____ on the tax map of the Town of _____ in _____ County], more particularly described on Exhibit A which is attached hereto and made a part hereof; and

WHEREAS, remediation of the Property has been conducted in accordance with Public Act 95-190; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that the environmental land use restriction set forth below is consistent with regulations adopted by the Commissioner of Environmental Protection pursuant to Section 22a-133k of the Connecticut General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that this environmental land use restriction will effectively protect public health and the environment from the hazards of pollution; and

WHEREAS, the written approval of this Environmental land use restriction by the Licensed Environmental Professional whose signature appears below is contained in the document attached hereto as Exhibit B (the “Decision Document”) which is made a part hereof; and

WHEREAS, the property or portion thereof identified in the class A-2 survey (“the Subject Area”) which survey is attached hereto as Exhibit C which is made a part

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hereof, contains pollutants; and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards to human health and the environment, and in accordance with the Decision Document, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this environmental land use restriction to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the Decision Document, the purpose of this Environmental land use restriction is to assure [that the Subject Area is not used for residential activities], [that ground water at the Subject Area is not utilized for drinking purposes], [that humans are not exposed to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive] [that buildings are not constructed over soils or ground water at the Subject Area polluted with substances in concentrations exceeding the volatilization criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that the engineered control described in Exhibit D attached hereto is not disturbed and is properly maintained to prevent human exposure to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, and/or that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive].

2. Restrictions Applicable to the Subject Area: In furtherance of the purposes of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Subject Area are restricted as follows:

- A. Use. No residential use of the Subject Area shall be permitted.
- B. Ground water. Ground water at the Subject Area shall not be used for drinking or other domestic purposes.
- C. Disturbances. Soil at the Subject Area shall not be disturbed in any manner, including without limitation,
- D. Construction. No building shall be constructed on the Subject Area.]

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

- i. Cause migration of pollutants or create a potential hazard to human health or the environment; or
- ii. Result in a disturbance of the structural integrity of any engineering controls or other structures designed or utilized at the Property to contain pollutants or limit human exposure to pollutants.

4. Emergencies. In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraph 3 above may be suspended, provided such risk cannot be abated without suspending such Paragraph and the Grantor:

- i. Immediately notifies the Grantee of the emergency;

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- ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- iv. Implements a plan approved in writing by the Grantee, on a schedule approved by the Grantee, to ensure that the Subject Area is remediated in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, or restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of Subject Area. Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Subject Area inconsistent with this Environmental land use restriction unless the Grantor has first recorded the Grantee's written approval of such alteration upon the land records of [name of municipality where Subject Area is located]. The Grantee shall not approve any such alteration and shall not release the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee's satisfaction that Grantor has remediated the Subject Area in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, his agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, a non-exclusive easement (the "Easement") over the Subject Area and over such other parts of the Property as are necessary for access to the Subject Area or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Area. Pursuant to this Easement, the Grantee, his agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the Grantee deems necessary for any one or more of the following purposes:

- I. Ensuring that use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction;
- ii. Ensuring that any remediation implemented complies with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive;
- iii. Performing any additional investigations or remediation necessary to protect human health and the environment;
- [iv. Ensuring the structural integrity of any engineering controls described in this Environmental land use restriction and Grant of Easement and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants.]

7. Notice and Time of Entry onto Property. Entry onto the Property by the Grantee pursuant to this Easement shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Grantee determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this environmental land use restriction and Grant of Easement. The failure to include such provision shall not affect the validity or applicability to the Property of this environmental land use restriction and Grant of Easement.

9. Persons Entitled to Enforce Restrictions. The restrictions in this environmental land use restriction on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the General Statutes.

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10. Severability and Termination. If any court of competent jurisdiction determines that any provision of this environmental land use restriction or Grant of Easement is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the judgement of the Court to the Grantee in accordance with R.C.S. A. section 22a-133q-1(1). This environmental land use restriction shall be terminated if the Grantee provides notification pursuant to R.C.S.A. section 22a-133q-1(l).

11. Binding Effect. All of the terms, covenants and conditions of this environmental land use restriction and grant of easement shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

12. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and 22a-133o-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this environmental land use restriction.]

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Statement of Purpose

Statement of Purpose: This proposal amends the Remediation Standard Regulations, sections 22a-133k-1 through 22a-133k-3, inclusive, and the Environmental Land Use Restriction Regulations, section 22a-133q-1 of the Regulations of Connecticut State Agencies (“RCSA”). The proposed amendments should assist site remediation and redevelopment efforts and will not affect any other existing regulations or law.

The existing Remediation Standard Regulations or “RSRs” identify the technical standards for the remediation of environmental pollution at hazardous waste sites and other properties that have been subject to a spill, release or discharge of hazardous wastes or hazardous substances. They also identify numeric standards for remediation of specific pollutants and the procedures and standards for variances and alternatives to such standards.

The purpose of the proposed amendments to the RSRs is to aid site cleanup and redevelopment without compromising the protection of public health and environmental quality. As a result, these amendments identify necessary technical and policy updates based on information gathered and lessons learned through the implementation of the existing regulations. The proposed amendments seek to remove unintended barriers to remediating sites by providing creative new directions and opportunities, clarifying regulatory language and addressing concerns expressed by the regulated community. At this time, we have chosen not to comprehensively revise the RSRs but rather propose selective amendments that are responsive to the requests of the regulated community. The proposed amendments will work synergistically with other statutory and regulatory site-related changes and proposals that are either now or soon to be promulgated and/or otherwise implemented.

Technical amendments to these regulations include:

- Identifying a definition, test methodology and criteria for petroleum hydrocarbons that provides better characterization of the nature of the contamination;
- Expanding, in specific settings, the definition of “inaccessible soil” to render inaccessible certain substances found in polluted fill that are normally found in asphalt, to be covered with three inches of asphalt or concrete, thereby allowing the same level of environmental protection at a lower cost option;
- Updating the numeric direct exposure criteria for the constituent lead to be equivalent to the federal standard based on updated toxicological data;
- Deleting the pollutant mobility criteria (PMC) exception to comply with the more stringent GA PMC in certain GB areas;
- Clarifying the requirement that polluted fill containing any combination of coal ash, wood ash, coal fragments, or asphalt paving fragments may contain volatile organic substances not exceeding the PMC for such substances;
- Providing a PMC exception for pollutants, other than volatile substances, based upon representative ground water sampling using licensed environmental professional (LEP) self-implementing procedures under certain conditions or approvable by the Commissioner if such self-implementing conditions have not been demonstrated (thereby increasing compliance flexibility);

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- Providing an alternative in applying the direct exposure criteria (DEC) and PMC should single sample results exceed two times the criterion by demonstrating site conditions warrant a higher multiplier and requesting such approval of the Commissioner; and
- Increasing the flexibility of engineered controls by tailoring such controls to the applicable DEC or PMC demonstration.

Policy amendments to the RSRs include:

- Changes to the applicability section to clarify when and how the regulations apply by replacing references to public acts with the applicable statutory citation;
- Identification that approvals must be requested on forms prescribed by the commissioner (thereby providing application clarity and a standardized work product to increase review efficiency);
- Correcting the risk-based formula for calculating the residential DEC for any additional polluting substance, correcting the risk-based formula used to derive the ground-water protection criteria for non-carcinogenic additional polluting substances and updating the conversion factor used in such formula;
- Providing exceptions for: certain incidental sources of polluted soil resulting from the normal use of motor vehicles; certain incidental sources of polluted soil resulting from the use of asphalt paving; and releases of certain pollutants in ground water from leaking water supply distribution systems;
- Deletion of the prohibition on using a statistical compliance demonstration when excavation is the remedy and deletion of the prohibition for a person requesting a widespread polluted fill variance if such person was authorized to legally dispose of such fill; and
- Restructuring the compliance and post-compliance ground water monitoring sections to allow LEP self-implementation of these sections.

The existing Environmental Land Use Restriction or “ELUR” regulations identify the procedures and standards for the use and recording of environmental land use restrictions thereby preventing the use of polluted real property for certain purposes or prohibiting certain activities on such property. The purpose of the amendments to these regulations is to clarify requirements and incorporate procedural changes that streamline the process of utilizing an ELUR on polluted real property.

The proposed RSR and ELUR amendments have no legal effects or legal impact on other existing regulations or laws.

Appendix IV

Final Text of Regulations

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Concerning
REMEDIATION STANDARD

[Section 1.] Sections 22a-133k-1 to 22a-133k-3, inclusive, of [The]the Regulations of Connecticut State Agencies are amended [by adding a new section 22a-133k-1]to read as follows:

Section 22a-133k-1

(a) Definitions.

For the purposes of sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies, the following definitions apply:

(1) "Analytical detection limit" means the minimum concentration of a substance that can be quantified consistently and reliably using methods approved by EPA and which concentration shall be (A) for a substance in ground water, equal to or less than the ground-water protection criterion for such substance determined (i) for a sample of ground water in a GA area using analytical methods specified in subpart C of 40 CFR part 141 or (ii) for a sample of ground water in a GB area using methods established pursuant to "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460; or (B) for a substance in soil, equal to or less than the residential direct exposure criteria or the applicable pollutant mobility criteria, whichever is lower using methods established pursuant to "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460.

(2) "Aquifer protection area" means an aquifer protection area as defined in section 22a-354h of the General Statutes.

(3) "Area of influence" means as "area of influence" as defined in section 22a-354b-1(a) of the Regulations of Connecticut State Agencies.

(4) "Areal extent of a ground-water plume" means the surface area beneath which ground water has been or may be polluted by a release and in which ground water one or more substances from such release is or may be present at a concentration above the analytical detection limit.

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(5) "Background concentration for ground water" with respect to a particular release means the concentration of a substance in ground water (A) at the nearest location upgradient of and unaffected by the release; or (B) if such release occurred at or created a ground-water divide, at the nearest location representative of ground water quality unaffected by any release.

(6) "Background concentration for soil" means the representative concentration of a substance in soil of similar texture and composition outside the subject release area and in the general geographic vicinity of such release area, but not within any other release area.

(7) "Carcinogenic substance" means a substance defined as a "carcinogen" by federal or state agencies and for which a quantitative health risk extrapolation is available.

(8) "CFR" means the Code of Federal Regulations.

(9) "Commissioner" means the Commissioner of Energy and Environmental Protection or his designee.

(10) "Dense non-aqueous phase liquid" means a non-aqueous phase liquid that has a density greater than water at 20 degrees Celsius.

(11) "Direct Exposure Criteria" means the concentrations identified in Appendix A to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or any alternative direct exposure criteria approved by the Commissioner pursuant to section 22a-133k-2(d) of the Regulations of Connecticut State Agencies.

(12) "Downgradient" means in the direction of the maximum rate of decrease of hydraulic head.

(13) "Downgradient area" with respect to a release of a substance means the area bounded by (A) the width of the release area of such substance perpendicular to the direction of ground-water flow, (B) two side boundary lines parallel to the downgradient direction of ground water flow extending from the two endpoints of said width to the downgradient parcel boundary, and (C) the downgradient parcel boundary extending between the two side boundary lines; excluding any portion of such downgradient area that is (i) affected by any other release of such substance or (ii) beneath an existing permanent structure.

(14) "Environmental land use restriction" means an environmental land use restriction as defined in section 22a-133q-1 of the Regulations of Connecticut State Agencies.

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(15) "Environmentally isolated soil" means polluted soil which is: (A)(i) beneath an existing building or (ii) beneath another existing and permanent structure which the Commissioner has determined in writing would prevent the migration of pollutants; (B) not a continuing source of pollution; (C) not polluted with volatile organic substances or, if it is polluted with such substances, the concentration of such substances has been reduced in concentration to the maximum extent prudent; and (D) above the seasonal high water table.

(16) "EPA" means the United States Environmental Protection Agency.

(NEW)(17) "ETPH" means the analytical results obtained using the "State of Connecticut, Department of Environmental Protection, Recommended Reasonable Confidence Protocols, Quality Assurance and Quality Control Requirements For Extractable Total Petroleum Hydrocarbons by the State of Connecticut, Department of Public Health ETPH Method," unless a different method is approved in writing by the Commissioner.

[(17)](18) "Excess lifetime cancer risk" means the estimated probability that an individual's exposure to a substance could result in cancer.

[(18)](19) "GA area" means an area where the ground-water classification is GA or GAA, respectively.

[(19)](20) "GB area" means an area where the ground-water classification is GB.

[(20)](21) "Ground water" means that portion of waters as defined in section 22a-423 of the General Statutes which portion is at or below the water table.

[(21)](22) "Ground-water classification" means the ground-water classification goal or the ground-water classification, whichever is more stringent, established in the Water Quality Standards.

[(22)](23) "Ground-water divide" means a line on the water table from which the water table slopes downward in both directions away from such line.

[(23)](24) "Ground-water protection criteria" means the concentrations identified in Appendix C to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(24)](25) "Ground-water plume" means ground water which has been polluted by a release and in which ground water one or more substances from such release is present at a concentration

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above the analytical detection limit.

[(25)](26) "Hazard index" means the calculation of the potential for non-cancer health effects as a result of exposure to one or more substances with the same or similar modes of toxic action or toxic endpoints.

[(26)](27) "Hydraulic gradient" means the change in hydraulic head per unit distance.

[(27)](28) "Hydraulic head" means the elevation to which water rises in a piezometer or a well.

[(28)](29) "Inaccessible soil" means polluted soil which is: (A) more than four feet below the ground surface; (B) more than two feet below a paved surface comprised of a minimum of three inches of bituminous concrete or concrete, which two feet may include the depth of any material used as sub-base for the pavement; (C) polluted fill beneath a bituminous concrete or concrete surface comprised of a minimum of three inches of bituminous concrete or concrete if such fill is (i) polluted in excess of applicable direct exposure criteria only by semi-volatile substances or petroleum hydrocarbons that are normal constituents of bituminous concrete, or (ii) polluted by metals in concentrations not to exceed of two times the applicable direct exposure criteria, or (iii) any combination of the substances and limits identified herein subparagraph 22a-133k-1(29)(C)(i) or (ii); or [(C)](D)(i) beneath an existing building or (ii) beneath another existing permanent structure provided written notice that such structure will be used to prevent human contact with such soil has been provided to the Commissioner.

[(29)](30) "Industrial or commercial activity" means any activity related to the commercial production, distribution, manufacture or sale of goods or services, or any other activity which is not a residential activity as defined in subdivision [(53)](55) of this subsection.

[(30)](31) "Industrial/commercial direct exposure criteria" means the concentrations identified as industrial/commercial direct exposure criteria in Appendix A to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(31)](32) "Industrial/commercial volatilization criteria" means the concentrations identified as industrial/commercial volatilization criteria in Appendices E and F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(32)](33) "Intermittent watercourse" means "intermittent watercourse" as defined in section 22a-38 of the General Statutes.

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[(33)](34) "Light non-aqueous phase liquid" means a non-aqueous phase liquid that has a density equal to or less than water at 20 degrees Celsius.

[(34)](35) "Matrix interference effect" means the inability to measure the concentration of a substance in a sample at the analytical detection limit due to chemical interferences within the sample which interferences cannot be compensated for using methods approved by EPA.

[(35)](36) "Natural attenuation" means a decrease in concentration of a substance in ground water through operation of natural physical or chemical processes, including but not limited to adsorption, absorption, dilution, phase transfer, oxidation, organic complexation, biodegradation, dispersion and diffusion.

(37) "Ninety-five percent upper confidence level of the arithmetic mean" is defined as a value that, when repeatedly calculated for randomly drawn subsets of size n from a population, equals or exceeds the population arithmetic mean ninety-five percent of the time. The ninety-five percent upper confidence level identified in these Regulations means using, at the minimum, ninety-five percent as the confidence level.

[(36)](38) "Non-aqueous phase liquid" means a liquid that is not dissolved in water.

[(37)](39) "Organoleptic" means the capability to produce a detectable sensory stimulus such as odor or taste.

[(38)](40) "Parcel" means a piece, tract or lot of land, together with the buildings and other improvements situated thereon, a legal description of which piece, parcel, tract or lot is contained in a deed or other instrument of conveyance.

[(39)](41) "PCB" means polychlorinated biphenyls.

[(40)](42) "PPB" means parts per billion.

[(41)](43) "PPM" means parts per million.

[(42)](44) "Person" means person as defined in section 22a-2(c) of the General Statutes.

[(43)](45) "Pollutant mobility criteria" means the concentrations identified in Appendix B to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or any alternative pollutant mobility criteria approved by the Commissioner pursuant to subsection

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22a-133k-2(d) of the Regulations of Connecticut State Agencies.

[(44)](46) "Polluted fill" means soil or sediment which contained polluting substances at the time such soil or sediment was deposited as fill material.

[(45)](47) "Polluted soil" means soil affected by a release of a substance at a concentration above the analytical detection limit for such substance.

[(46)](48) "Pollution" means pollution as defined in section 22a-423 of the General Statutes.

[(47)](49) "Potable water" means potable water as defined in section 22a-423 of the General Statutes.

[(48)](50) "Potential public water supply resource" means (A) any "potential well field" as defined in section 22a-354a of the General Statutes, or (B) any area identified by the Commissioner pursuant to section 22a-354c(b) of the General Statutes.

[(49)](51) "Prudent" means reasonable, after taking into consideration cost, in light of the social and environmental benefits.

[(50)](52) "Release" means any discharge, spillage, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying, or disposal of a substance.

[(51)](53) "Release area" means the land area at and beneath which polluted soil is located as a result of a release.

[(52)](54) "Remediation" means the containment, removal, mitigation, or abatement of pollution, a potential source of pollution, or a substance which poses a risk to human health or the environment, and includes but is not limited to the reduction of pollution by natural attenuation.

[(53)](55) "Residential activity" means any activity related to a (A) residence or dwelling, including but not limited to a house, apartment, or condominium, or (B) school, hospital, day care center, playground, or outdoor recreational area.

[(54)](56) "Residential direct exposure criteria" means the concentrations identified as residential direct exposure criteria in Appendix A to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

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[(55)](57) "Residential volatilization criteria" means the concentrations identified as residential volatilization criteria in Appendices E and F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(56)](58) "Seasonal high water table" means, on an annual basis, the highest plane in the ground at which plane all pore spaces are filled with water atmospheric pressure.

[(57)](59) "Seasonal low water table" means, on an annual basis, the lowest plane in the ground at which plane all pore spaces are filled with water atmospheric pressure.

[(58)](60) "Sediment" means unconsolidated material occurring in a stream channel, estuarine waters, or marine waters.

[(59)](61) "Seven day, ten year low flow" or "7Q10" means the lowest seven consecutive day mean stream discharge rate with a recurrence interval of ten (10) years.

[(60)](62) "Soil" means unconsolidated geologic material overlying bedrock, but not including sediment.

[(61)](63) "Soil water" means that portion of waters as defined in section 22a-423 of the General Statutes which portion is above the water table.

[(62)](64) "SPLP" means Synthetic Precipitation Leaching Procedure EPA Method 1312 as set forth in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460.

[(63)](65) "Substance" means an element, compound or material which, when added to air, water, soil or sediment, may alter the physical, chemical, biological or other characteristic of such air, water, soil or sediment.

[(64)](66) "Surface-water protection criteria" means the concentrations identified in Appendix D to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or any alternative surface-water protection criteria calculated or approved by the Commissioner in accordance with subdivision 22a-133k-3(b)(3) of the Regulations of Connecticut State Agencies.

[(65)](67) "TCLP" means Toxicity Characteristic Leaching Procedure EPA Method 1311 as set forth in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW-846, U.S.

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Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460.

[(66)](68) “Technically practicable” means, with respect to remediation, the greatest degree of remediation that can be achieved using sound engineering and hydrogeologic practices.

[(67)](69) "Upgradient" means in the direction of maximum rate of increase of hydraulic head.

[(68)](70) “Upgradient area” with respect to a release area of a substance means the area bounded by (A) the width of the release area of such substance perpendicular to the direction of ground-water flow, (B) two side boundary lines parallel to the upgradient direction of ground-water flow extending from the two endpoints of said width to the upgradient parcel boundary, and (C) the upgradient parcel boundary extending between the two side boundary lines; excluding any portion of such upgradient area that is (i) affected by any other release of such substance or (ii) beneath an existing permanent structure.

[(69)](71) “Volatilization criteria” means the concentrations identified in Appendix E and Appendix F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies or alternative criteria approved by the Commissioner pursuant to subdivision 22a-133k-3(c)(4) of the Regulations of Connecticut State Agencies.

[(70)](72) "Volatilization criteria for ground water" means the concentrations identified in Appendix E to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(71)](73) "Volatilization criteria for soil vapor" means the concentrations identified in Appendix F to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

[(72)](74) "Water table" means the plane in the ground at which plane all pore spaces are filled with water at atmospheric pressure.

[(73)](75) "Water Quality Standards" means the latest adopted Connecticut Water Quality Standards and Criteria adopted by the Commissioner pursuant to section 22a-426 of the General Statutes.

[(74)](76) “Wetland” means “wetlands” as defined in sections 22a-38(15) and section 22a-29(2) of the General Statutes.

[(75)](77) "Zone of influence" means zone of influence as defined in section 22a-430-3(a) of the

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Regulations of Connecticut State Agencies.

(b) Applicability.

Sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies apply to any action taken to remediate polluted soil, surface water or a ground-water plume at or emanating from a release area which action is[:

(1)]required pursuant to Chapter 445, [or]446k or section 22a-208a(c)(2) of the General Statutes, [or

(2) taken pursuant to Public Act 95-183 or Public Act 95-190]including but not limited to any such action required to be taken or verified by a licensed environmental professional[pursuant to such Public Acts].

Sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies do not apply within the zone of influence of a ground-water discharge permitted by the Commissioner under section 22a-430 of the General Statutes. Any person conducting a remediation in accordance with said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies shall obtain all permits and other authorizations required by state, federal and local law and shall comply with all applicable state, federal and local laws, including without limitation the requirements of 40 CFR Part 761. 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. 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 General Statutes.

(c) Time frames for Issuance of Approvals by the Commissioner.

The Commissioner shall, no later than thirty days after the date of receipt of a request for his approval of any variance from or alternative criteria pursuant to sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, provide to the requester in writing estimated time frames for the Commissioner to (1) determine whether additional information is needed for him to evaluate the request; and (2) approve or deny a complete request. In addition, no later than one hundred and eighty days following adoption of said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner shall make available general estimated written time frames for the

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Commissioner to approve any variance or alternative criterion pursuant to these regulations, including estimated time frames for the Commissioner to (1) determine whether additional information is needed to evaluate the request; and (2) approve or deny a complete request. In establishing estimated time frames pursuant to this subsection, the Commissioner shall take into account the complexity of the request, and the environmental and economic significance of the remediation, and shall expedite any request associated with any voluntary remediation pursuant to [\[Public Acts 95-183 or 95-190\]section 22a-133x, 22a-133y or 134a of the General Statutes](#).

(d) Public Participation.

(1) Public Hearing on Remediation. If the Commissioner determines that there is substantial public interest in any remediation proposed pursuant to [\[section 2 of P.A. 95-190 or section 2 or 3 of P.A. 95-183\]Chapter 445, Chapter 446k or section 22a-208a\(c\)](#), he may hold a public hearing on such proposed remediation, and he shall hold a hearing upon receipt of a petition signed by twenty-five or more persons. Notice of any such hearing shall be published in a newspaper of substantial circulation in the area of the proposed remediation at least thirty days prior to such hearing. Such hearing need not be conducted pursuant to the provisions of Chapter 54 of the General Statutes.

(2) Comment Procedures. Any public notice published or mailed pursuant to [\[section 2 of P.A. 95-190 or section 2 or 3 of P.A. 95-183\]sections 22a-133x, 22a-133y or 22a-134a of the General Statutes](#) shall provide that comments on the proposed remediation may be submitted to the Commissioner within forty-five days of the publication or mailing of such notice. The Commissioner shall forward a copy of all comments received by the date specified in the public notice and all comments made at a public hearing to the owner of the subject parcel and, if different, the person undertaking remediation at such parcel. The person undertaking remediation at the subject parcel shall, within sixty days of receiving such comments, submit to the Commissioner a written summary of all such comments and a written response to each such comment. The Commissioner shall review such summary and responses and shall adopt it as his own, adopt it with modifications, or reject it and prepare a response to each such comment. The Commissioner shall send a copy of the initial summary and responses and of his action with respect thereto to each person who submitted comments on the remediation proposal.

(e) Periodic review.

The Commissioner shall periodically review sections 22a-133k-1 through 22a-133k-3, inclusive,

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of the Regulations of Connecticut State Agencies to determine whether the implementation of such regulations is successfully protecting public health and the environment from the hazards of pollution. The Commissioner shall also evaluate whether the implementation of the regulations streamlines the process of conducting remediation projects in Connecticut, based upon, among other things, his review of the number of remediation projects completed in accordance with said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the number of such projects reviewed by the Commissioner pursuant to [sections 2 or 3 of P.A. 95-183]sections 22a-133x or 22a-134a of the General Statutes, the length of time required for the Commissioner's review of complete requests for approval of alternative criteria or variances, and the number of remediation projects conducted pursuant to [P.A. 95-190 or sections 2 or 3 of P.A. 95-183]sections 22a-133x, 22a-133y and 22a-134a of the General Statutes, which projects were verified by a licensed environmental professional. Such reviews shall be conducted at intervals of no more than five years, provided that nothing in this subsection shall preclude the Commissioner, at his discretion, from conducting such a review at any time and further provided that the first such review shall be conducted no later than eighteen months after the effective date of sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies. As a result of such a periodic review, the Commissioner may conclude that the goals of this subsection and section 22a-133k of the General Statute are being met, or he may conclude that revisions to such regulations are necessary to ensure that the implementation of said sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies achieves such goals, in which case he may revise such Regulations as he deems necessary to achieve those goals.

(NEW)(f) Use of Form Prescribed by the Commissioner.

Any person requesting a variance or any other approval by the Commissioner, or submitting any required notice to the Commissioner, pursuant to sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, shall submit such request or notice on a form as may be prescribed by the Commissioner.

(NEW)(g) Remediation of Soils Polluted with Lead.

Soil polluted with lead may be remediated to a concentration of 500 milligrams per kilogram in compliance with Section 22a-133k-2(b) provided:

- (1) Prior to the effective date of the 2013 amendments to Sections 22a-133k-1 through 22a-133k-3:

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- (A) Such remediation has been initiated; or
 - (B) a remedial action plan has been completed for such release area; and
- (2) On or before twenty-four months after the effective date of the 2013 amendments to Sections 22a-133k-1 through 22a-133k-3 such remediation has been completed.

[Section 2. The Regulations of Connecticut State Agencies are amended by adding a new section 22a-133k-2 as follows:]

22a-133k-2 Standards for Soil Remediation

(a) General.

Unless otherwise specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, polluted soil at a release area shall be remediated to a concentration which meets (1) (A) the direct exposure criteria set forth in subsection (b) of this section or alternative direct exposure criteria established in accordance with subdivision (2) or subdivision (7) of subsection (d) of this section; and (B) the pollutant mobility criteria set forth in subsection (c) of this section or alternative pollutant mobility criteria established in accordance with subdivision (3) or (5) of subsection (d) of this section; or (2) the background concentration for soil provided notice has been submitted to the Commissioner which notice shall be submitted on a form furnished by the Commissioner and shall include a brief description of the subject release area and of the general characteristics of soils in the vicinity of such release area; a map showing the location of such release area, and based on reasonable inquiry of other release areas in the vicinity thereof, and of all soil samples taken for the purpose of characterizing background concentration for soil; and the results of all laboratory analyses of such samples.

(b) Direct Exposure Criteria.

- (1) Except as otherwise provided in this paragraph, polluted soil at a release area shall be remediated to at least that concentration at which the residential direct exposure criteria for each substance is met.
- (2) (A) Polluted soil at a release area may be remediated to a concentration at which the industrial/commercial direct exposure criteria for each substance except PCB is met if (i) access to the parcel containing such release area is limited to

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individuals working at or people temporarily visiting the subject parcel; and (ii) an environmental land use restriction is in effect with respect to such parcel, or to the portion of such parcel containing such release area, which environmental land use restriction ensures that the parcel or restricted portion thereof is not used for any residential activity in the future and that any future use of such parcel or restricted portion thereof is limited to an industrial or commercial activity.

(B) Soil polluted with PCB at a release area may be remediated to a concentration at which the industrial/commercial direct exposure criteria for PCB is met if the parcel upon which such release area is located is (i) an outdoor electrical substation as defined in 40 CFR 761.123; or (ii) an other restricted access location as defined in said section 40 CFR 761.123 and an environmental land use restriction is in effect with respect to such parcel, or to the portion of such parcel containing such release area, which environmental land use restriction ensures that the parcel or restricted portion thereof is not used for any residential activity in the future and that any future use of such parcel or restricted portion thereof is limited to an industrial or commercial activity.

(3) The direct exposure criteria for substances other than PCB do not apply to inaccessible soil at a release area provided that if such inaccessible soil is less than 15 feet below the ground surface an environmental land use restriction is in effect with respect to the subject parcel or to the portion of such parcel containing such release area, which environmental land use restriction ensures that such soils will not be exposed as a result of excavation, demolition or other activities and that any pavement which is necessary to render such soil inaccessible is maintained in good condition unless and until such restriction is released in accordance with said section 22a-133q-1. Unless an alternative criterion has been approved in accordance with subsection 22a-133k-2(d)(7), inaccessible soil polluted with PCB may be remediated to a concentration of 10 ppm PCB by weight provided that (A) if such inaccessible soil is located on a parcel which is an other restricted access location as defined in said section 40 CFR 761.123, such soil may be remediated to a concentration of 25 ppm PCB by weight, or (B) if such inaccessible soil is located on a parcel which is an outdoor electrical substation as defined in 40 CFR 761.123, such soil may be remediated to a concentration of 25 ppm PCB by weight, or if a label or notice is visibly placed in the area in accordance with 40 CFR Part 761, to a concentration of 50 ppm PCB by weight.

(NEW)(4) Incidental Sources

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The direct exposure criteria do not apply to metals, petroleum hydrocarbons or semi-volatile substances in soil provided such pollution is the result of:

(A) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or

(B) Normal paving and maintenance of a consolidated bituminous concrete surface provided such bituminous concrete surface has been maintained for its intended purpose.

~~[(4)]~~(5) Additional Polluting Substances

(A) With respect to a substance at a release area for which a direct exposure criterion is not specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may, after consultation with the Commissioner of Public Health, approve in writing a direct exposure criterion to apply to such substance at a particular release area. Any person requesting approval of a direct exposure criterion for such substance shall submit to the commissioner (i) a proposed risk-based direct exposure concentration for such substance calculated in accordance with subparagraph (B) or (C) of this subdivision as applicable, and (ii) the analytical detection limit for such substance. Before approving a direct exposure criterion the Commissioner shall consider the proposed risk-based direct exposure concentration for such substance, the analytical detection limit for such substance, any information about the health effects such substance may cause due to exposure pathways not accounted for in the proposed risk-based direct exposure, and any other information that the Commissioner reasonably deems necessary.

(B) The proposed residential risk-based direct exposure concentration shall be calculated using the following equations:

(i) For carcinogenic substances:

$$[DEC_{RB} = \left[\frac{\text{Risk}}{\text{CSF}} \right] \times \left[\frac{BW_C \times AT}{IR_C \times ED_C \times EF \times CF} + \frac{BW_A \times AT}{IR_A \times ED_A \times EF \times CF} \right]]$$

(NEW)

$$DEC_{RB} = \left[\frac{\text{Risk}}{\text{CSF}} \right] \div \left[\frac{(IR_C \times ED_C \times EF \times CF)}{(BW_C \times AT)} \right] + \left[\frac{(IR_A \times ED_A \times EF \times CF)}{(BW_A \times AT)} \right]$$

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(ii) For non-carcinogenic substances:

$$[DEC_{RB} = RFD \times HI] \times \left[\frac{BW_C \times AT_C}{IR_C \times ED_C \times EF \times CF} + \frac{BW_A \times AT_A}{IR_A \times ED_A \times EF \times CF} \right]$$

(NEW)
$$DEC_{RB} = [RFD \times HI] \div \left[\frac{(IR_C \times ED_C \times EF \times CF)}{(BW_C \times AT_C)} + \frac{(IR_A \times ED_A \times EF \times CF)}{(BW_A \times AT_A)} \right]$$

(iii) The abbreviations used in subparagraphs (i) and (ii) shall be interpreted in accordance with the following table and shall be assigned the values specified therein:

Term	Description	Units	Value
DEC _{RB}	Risk-based Direct Exposure Criterion	mg/kg	calculated
Risk	Target Cancer Risk Level	Unitless	1.0E-06
HI	Hazard Index	Unitless	1.0
CSF	Cancer slope Factor	(mg/kg-day) ⁻¹	substance-specific
RFD	Reference Dose	mg/kg-day	substance-specific
IR _C	Ingestion Rate, Child	mg/day	200
IR _A	Ingestion Rate, Adult	mg/day	100
EF	Exposure Frequency	days/year	365
ED _C	Exposure Duration, Child	Years	6
ED _A	Exposure Duration, Adult	Years	24
CF	Conversion Factor	kg/mg	0.000001

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Term	Description	Units	Value
BW _C	Body Weight, Child	Kg	15
BW _A	Body Weight, Adult	Kg	70
AT	Averaging Time, for carcinogens	Days	25550
AT _C	Averaging Time, Child for non-carcinogens	Days	2190
AT _A	Averaging Time, Adult for non-carcinogens	Days	8760

(C) The proposed industrial/commercial risk-based direct exposure concentration shall be calculated using the following equations:

(i) For carcinogenic substances:

$$DEC_{RB} = \left[\frac{\text{Risk}}{\text{CSF}} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{ED} \times \text{EF} \times \text{CF}} \right]$$

(ii) For non-carcinogenic substances:

$$DEC_{RB} = \left[\text{RFD} \times \text{HI} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{EF} \times \text{ED} \times \text{CF}} \right]$$

(iii) The abbreviations used in subparagraphs (i) and (ii) shall be interpreted in accordance with the following table and shall be assigned the values specified therein:

Term	Description	Units	Value
DEC _{RB}	Risk-based Direct Exposure Criterion	mg/kg	calculated
Risk	Target Cancer Risk Level	Unitless	1.0E-06
HI	Hazard Index	Unitless	1.0

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Term	Description	Units	Value
CSF	Cancer slope Factor	(mg/kg-day) ⁻¹	substance-specific
RFD	Reference Dose	mg/kg-day	substance-specific
IR	Ingestion Rate	mg/day	50
EF	Exposure Frequency	days/year	250
ED	Exposure Duration	Years	25
CF	Conversion Factor	kg/mg	0.000001
BW	Body Weight	Kg	70
AT	Averaging Time, for carcinogens	Days	25550
AT _A	Averaging Time, Adult for non-carcinogens	Days	9125

(c) Pollutant Mobility Criteria.

(1) General.

(A) A substance, other than an inorganic substance or PCB, in soil above the seasonal low water table, or above the seasonal high water table if (i) remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution or (ii) the subject soil is located in a GB area, shall be remediated to at least that concentration at which the results of a mass analysis of such soil for such substance does not exceed the pollutant mobility criterion applicable to the ground-water classification of the area at which such soil is located, except that in the circumstances identified in subdivision (2) of this subsection, remediation to achieve compliance with the pollutant mobility criteria may be conducted in accordance with the requirements established in said subdivision (2).

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(B) An inorganic substance or PCB in soil above the seasonal low water table, or above the seasonal high water table if (i) remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution or (ii) the subject soil is located in a GB area, shall be remediated to at least that concentration at which the results of a TCLP or SPLP analysis of such soil for such substance does not exceed the pollutant mobility criterion applicable to the ground-water classification of the area at which such soil is located, except that in the circumstances identified in subdivision (2) of this subsection, remediation to achieve compliance with the pollutant mobility criteria may be conducted in accordance with the requirements established in said subdivision (2).

(2) Specific Circumstances

(A) Polluted Soils in a GA Area.

A soil in a GA area and polluted with a substance[, other than 1,2 dichlorobenzene, ethyl benzene, toluene, xylenes or total petroleum hydrocarbons,] which soil is at or above the seasonal low water table, or at or above the seasonal high water table if remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution, may be remediated to at least that concentration at which the results of a TCLP or SPLP analysis of such soil for such substance do not exceed the ground-water protection criterion for such substance.

(B) Soils Polluted with Volatile Organic Substances in a GA area.

A soil in a GA area polluted with a volatile organic substance[, other than 1,2 dichlorobenzene, ethyl benzene, toluene, or xylenes] which soil is at or above the seasonal low water table, or at or above the seasonal high water table if remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution, may be remediated to at least that concentration at which the results of a TCLP or SPLP analysis of such soil for such substance do not exceed the ground-water protection criterion for such substance multiplied by ten or the results of a mass analysis of such soil for such substance do not exceed the pollutant mobility criterion for such substance multiplied by ten or by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision

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(4) of subsection (d) of this section, provided no non-aqueous phase liquids are present in the subject release area as determined in accordance with subdivision (3) of this subsection, the water table is at least fifteen feet above the surface of the bedrock and the downward vertical flow velocity is not greater than the horizontal flow velocity, and:

(i) (aa) a public water supply distribution system is available within 200 feet of the subject parcel, all adjacent parcels, and any parcel within the areal extent of the ground-water plume caused by the subject release area, (bb) the ground water within the areal extent of such ground-water plume is not used for drinking water, (cc) no public or private water supply wells exist within 500 feet of the subject release area, and (dd) the ground water affected by the subject release area is not a potential public water supply resource; or

(ii) (aa) the concentration of any volatile organic substance in a ground-water plume and within seventy-five feet of the nearest downgradient parcel boundary does not exceed the ground-water protection criterion, (bb) except for seasonal variation, the areal extent of volatile organic substances in the ground-water plume is not increasing over time and the concentration of any volatile organic substance in the ground-water plume is not increasing, except as a result of natural attenuation, at any point over time and (cc) notice of such condition is provided to the Commissioner on a form furnished by the Commissioner, which notice shall include: a brief description of the release area; a brief description of the distribution and concentration of volatile organic substances in soil and ground water; a map showing the location of the release area, and based on reasonable inquiry all other volatile organic substance release areas in the vicinity of the subject release area, all ground-water and soil monitoring points, and the areal extent of the volatile organic substance ground-water plume; and the results of all laboratory analyses conducted to determine whether the requirements of this subparagraph have been met; or

(iii) (aa) the concentration of any volatile organic substance within such ground-water plume does not exceed the ground-water protection criterion for such substance at a location downgradient of the release area, on the subject parcel, and within 25 feet of such release area, and (bb) notice of such condition is provided to the Commissioner on a form furnished by

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the Commissioner, which notice shall include: a brief description of the release area; a brief description of the distribution and concentration of volatile organic substances in soil and ground water; a map showing the location of the release area, and based on reasonable inquiry all other volatile organic substance release areas in the vicinity of the subject release area, and all ground-water and soil monitoring points; and the results of all laboratory analyses conducted to determine whether the requirements of this subparagraph have been met.

(C) Inorganic, semi-volatile, PCB or pesticide contamination in a GA area.

A soil in a GA area and polluted with inorganic substances, semi-volatile substances, PCB or pesticides, which soil is at or above the seasonal low water table, or at or above the seasonal high water table if remediation to the seasonal low water table is not technically practicable or would not result in the permanent elimination of a source of pollution, may be remediated to a level at which (i)(aa) the results of a TCLP or SPLP analysis of such soil for such substance do not exceed the ground-water protection criterion for such substance multiplied by ten or by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision (4) of subsection (d) of this section or (bb) the results of a mass analysis of such soil for a substance do not exceed the pollutant mobility criterion for such substance multiplied by ten or by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision (4) of subsection (d) of this section; provided (ii) (aa) the release area and any portion thereof is located at least twenty-five feet from the nearest legal boundary of the parcel in the downgradient direction, (bb) no non-aqueous phase liquids are present in the release area as determined in accordance with subdivision (3) of this subsection, and (cc) the water table is at least fifteen feet above the surface of the bedrock.

(D) Polluted Soils in a GB area.

A substance [other than total petroleum hydrocarbons] in soil above the seasonal high water table in a GB area may be remediated to a level at which the results of a TCLP or SPLP analysis of such soil does not exceed the ground-water protection criterion for any such substance (i) (aa) multiplied by 10, (bb) multiplied by the ratio of the summation of the areas downgradient and upgradient of the release area to the release area, provided that such ratio does not exceed

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500, or (cc) or multiplied by an alternative dilution or dilution and attenuation factor approved by the Commissioner in accordance with subdivision (5) of subsection (d) of this section; (ii) provided non-aqueous phase liquids are not present in such soil as determined in accordance with subdivision (3) of this subsection.

(E) Site specific dilution in a GB area.

(i) A substance[, other than total petroleum hydrocarbons,] in a soil at or above the seasonal high water table in a GB area where the background concentration for ground water for such substance is less than the applicable ground-water protection criterion, may be remediated to a level at which the results of a mass analysis of such soil for a substance do not exceed the pollutant mobility criterion applicable to such substance in a GA area multiplied by a site-specific dilution factor calculated in accordance with clause (ii) of this subparagraph, or the results of a TCLP or SPLP analysis of such soil for a substance do not exceed the ground-water protection criterion for such substance multiplied by a site-specific dilution factor calculated in accordance with clause (ii) of this subparagraph, provided (aa) no non-aqueous phase liquids are present in such soil as determined in accordance with subdivision (3) of this subsection; (bb) notice has been submitted to the Commissioner in accordance with clause (iii) of this subparagraph; and (cc) the water table in the release area is at least fifteen feet above the surface of the bedrock and the downward ground water vertical flow velocity is not greater than the ground water horizontal flow velocity.

(ii) For the purpose of clause (i) of this subparagraph, the site-specific dilution factor shall be calculated using the following formula: $DF = (1 + (Kd/iL))(1 - F_{adj})$, where:

DF = site-specific dilution factor
K = hydraulic conductivity, in feet per year, of the unconsolidated aquifer underlying the release area
i = horizontal hydraulic gradient in feet per foot
d = 15 feet
I = infiltration rate in feet per year as specified in subparagraph (iv) of this subparagraph

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L = length in feet of the release area parallel to the direction of ground-water flow

F_{adj}= background concentration for ground water divided by the ground-water protection criterion for the subject substance, or, where the background concentration for ground water can not be quantified, 1/2 the minimum detection limit for the subject substance divided by the ground-water protection criterion for the subject substance.

(iii) A notice submitted pursuant to clause (i) of this subparagraph shall be submitted on a form prescribed and provided by the Commissioner and shall include: a brief description of the release area and the general characteristics of soils in the vicinity of the release area; a map showing the location of the release area, and based on reasonable inquiry other release areas in the vicinity containing the substance for which the site-specific dilution factor is calculated, and all monitoring points; if applicable, justification for use of a till infiltration rate other than 0.5 feet per year, and the results of all the laboratory analyses and field analyses used to determine the (aa) parameters of the equation in clause (ii) of this subparagraph and (bb) identification of geologic material for the purposes of choosing an infiltration rate in accordance with clause (iv) of this subparagraph.

(iv)

Geologic Material	Infiltration Rate (feet/year)
Stratified Drift	2.0
Till	0.5 - 1.0
Lacustrine Deposits	0.4

(3) Determining the Presence of Non-aqueous Phase Liquids in Soil.

For the purpose of this subsection, the presence of non-aqueous phase liquids in soil shall be determined using the following equation: $C_{nap} = (S/2\rho_b)(K_d \rho_b + \theta_w + H'\theta_a)$, where:

C_{nap} = the concentration of an organic substance at which or above which such

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- substance may be present in a non-aqueous phase
- S = the effective solubility
- ρ_b = dry soil bulk density
- K_d = soil-water partition coefficient, which may be approximated by $K_{OC} \cdot f_{OC}$
- K_{OC} = soil organic carbon-water partition coefficient
- f_{OC} = fraction organic carbon of soil
- θ_w = water-filled soil porosity (L_{water}/L_{soil})
- θ_a = air-filled soil porosity (L_{air}/L_{soil})
- H' = Henry's law constant (dimensionless)
- H = Henry's law constant ($atm \cdot m^3/mol$)

The terms defined above shall be assigned the following values:

Term	Units	Value
C_{NAP}	mg/kg	calculated
S	mg/L	chemical-specific
ρ_b	kg/L	1.5 or the lowest value measured at the subject release area
K_d	L/kg	calculated
K_{OC}	L/kg	chemical-specific
f_{OC}	g/g	0.006 or the lowest value measured at the subject release area
θ_w	L_{water}/L_{soil}	0.15
θ_a	L_{air}/L_{soil}	0.28
H'	unitless	$H \times 41$ where 41 is a conversion factor
H	$atm \cdot m^3/mol$	chemical-specific

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(4) Exceptions.

(A) [If at a release area (i) the ground-water classification is GB and (ii) the elevation of the water table is below the elevation of the top of bedrock, such release area shall be remediated to a concentration which meets the pollutant mobility criteria applicable to any location at which the ground-water classification is GA or GAA.

(B) The pollutant mobility criteria do not apply to environmentally isolated soil provided an environmental land use restriction is in effect with respect to the parcel, or portion thereof, containing such soil which environmental land use restriction ensures that such soil will not be exposed to infiltration of soil water due to, among other things, demolition of the building.

~~[(C)]~~(B) The pollutant mobility criteria do not apply to polluted fill on a parcel if: ~~[(aa)]~~(i) such fill is polluted only with coal ash, wood ash, coal fragments, asphalt paving fragments, or any combination thereof; ~~[(bb)]~~(ii) such fill is not polluted with any volatile organic substance which exceeds an applicable pollutant mobility criterion; ~~[(cc)]~~(iii) the concentration of each substance in any such fill is consistent with the requirements established in subsection (b) of this section; ~~[(dd)]~~(iv) such substance is not affecting and will not affect the quality of an existing or potential public water supply resource or an existing private drinking water supply; ~~[(ee)]~~(v) a public water supply distribution system is available within 200 feet of such parcel and all parcels adjacent thereto; and ~~[(ff)]~~(vi) the placement of the fill was not prohibited by law at the time of placement.

(NEW) (C) The pollutant mobility criteria do not apply to substances, other than volatile substances, in soil at a release area provided:

(i) Such release area

(aa) is located in an area which at least eighty percent of the release area has been subject to infiltration, not obstructed by anthropogenic features, for a minimum of five years; or

(bb) has been determined by the Commissioner in writing to have been subject to sufficient infiltration of precipitation such that the

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concentration of the substance and the areal extent of the ground-water plume will not likely increase if any obstruction to infiltration is removed in the future; and

(ii) The analytical results of four consecutive quarterly samples of ground water for such substance:

(aa) for a GA area or for an aquifer protection area or other ground-water area used as a source of public drinking water supply located in a GB area are all less than the surface-water protection criterion and the ground-water protection criterion; or

(bb) for a GB area, are all less than the surface-water protection criterion; and

(iii) (aa) the ground-water sampling locations are representative of the areal extent of the ground-water plume and the areal extent of such ground-water plume which exceeds an applicable remedial criterion is not increasing over time and that, except for seasonal variations, the concentration of the subject substance is not increasing at any point over time; and

(bb) the ground-water samples are collected at locations where ground water is most likely to have been impacted by such substance from the release area.

(NEW)(5) Incidental Sources

The pollutant mobility criteria do not apply to metals, petroleum hydrocarbons or semi-volatile substances in soil provided such pollution is the result of:

(A) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or

(B) Normal paving and maintenance of a consolidated bituminous concrete surface provided such bituminous concrete surface has been maintained for its intended purpose.

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(6) Additional Polluting Substances.

With respect to a substance for which a pollutant mobility criterion is not specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve a pollutant mobility criterion, a dilution or dilution and attenuation factor, and a method for determining compliance with such criterion to apply to such substance at a particular release area, provided he finds that such criterion will ensure that soil water at such release area does not exceed, in a GA area, the ground-water protection criterion, or in a GB area the ground-water protection criterion multiplied by a dilution factor of 10.

(d) Alternative Soil Criteria.

(1) Requests for Approval of Alternative Soil Criteria.

(A) Any person requesting that the Commissioner approve an alternative criterion applicable to a particular release area shall submit: the name and address of the owner of the parcel at which such release area is located; the address of such release area and a brief description of its location; a detailed description of such release area; and a map at a scale of not less than 1:1200 showing the location of all release areas on such parcel, the subject release area, and describing the concentration and distribution of all substances in the soil of the subject release area, including but not limited to the substance for which an alternative criterion is sought; a detailed written report describing the justification for the proposed alternative criterion; and any other information the Commissioner reasonably deems necessary to evaluate such request.

(B) Any person requesting that the Commissioner approve an alternative pollutant mobility criterion or an alternative dilution or dilution attenuation factor shall submit, in addition to the information required by subparagraph (A) of this subdivision, a detailed description of any other release area located on the same parcel as the subject release area and which other release area (i) is affected or potentially affected by the subject release area or (ii) is affecting or potentially may affect the subject release area;

(C) Any person requesting that the Commissioner approve an alternative direct exposure criterion shall submit, in addition to the information required by subparagraph (A) of this subdivision, a detailed description of any other release

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area located on the same parcel as the subject release area.

(2) Alternative Direct Exposure Criteria.

With respect to a substance except PCB for which a direct exposure criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative direct exposure criterion and an alternative method for determining compliance with such criterion provided it is demonstrated to the satisfaction of the Commissioner, after consultation with the Commissioner of Public Health that the application of such alternative criterion at the subject release area will protect human health and the environment from the risks associated with direct exposure to polluted soil by ensuring that (A) the concentration of each carcinogenic substance in such soil does not exceed a 1×10^{-6} excess lifetime cancer risk level and the concentration of each non-carcinogenic substance in such soil does not exceed a hazard index of 1; or (B) for a release area polluted with multiple substances, the cumulative excess lifetime cancer risk for all carcinogenic substances in such soil does not exceed 1×10^{-5} , and the cumulative hazard index does not exceed 1 for non-carcinogenic substances in such soil with the same target organ. Any person requesting approval of an alternative direct exposure criterion shall submit to the Commissioner and the Commissioner of Public Health a risk assessment prepared in accordance with the most recent EPA Risk Assessment Guidance for Superfund or other risk assessment method approved by the Commissioner in consultation with the Commissioner of Public Health, and shall submit any additional information specified by the Commissioner or the Commissioner of Public Health.

(3) Alternative Pollutant Mobility Criteria for GA Areas.

With respect to a substance occurring at a release area located in a GA area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative pollutant mobility criterion and an alternative method for determining compliance with such criterion, provided it is demonstrated to the Commissioner's satisfaction that the application of such alternative criterion at the subject release area will ensure that soil water at such release area will not exceed the ground-water protection criterion for such substance.

(4) Alternative Dilution or Dilution Attenuation Factor for GA Areas.

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With respect to a substance occurring at a release area located in a GA area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative dilution or dilution attenuation factor, provided that it is demonstrated to the Commissioner's satisfaction that application of such dilution factor will ensure that such release area will not degrade ground-water quality and thereby prevent the achievement of the applicable ground-water remediation standards.

(5) Alternative Pollutant Mobility Criteria for GB Areas.

With respect to a substance occurring at a release area located in a GB area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative pollutant mobility criterion and an alternative method for determining compliance with such criterion at such release area, provided it is demonstrated to the Commissioner's satisfaction that the application of such criterion will ensure that soil water at the release area, after dilution with ground water derived from infiltration on the parcel, will not exceed the ground-water protection criterion for such substance.

(6) Alternative Dilution or Dilution Attenuation Factor for GB Areas.

With respect to a substance occurring at a release area located in a GB area, and for which substance a pollutant mobility criterion is specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve an alternative dilution or dilution attenuation factor, provided that it is demonstrated to the Commissioner's satisfaction that application of such alternative dilution or dilution attenuation factor will ensure that the soil water at such release area will not cause the ground water at the nearest downgradient property boundary to exceed the ground-water protection criterion for such substance.

(7) Alternative Direct Exposure Criterion for PCB.

The Commissioner may approve an alternative direct exposure criterion for PCB including an alternative direct exposure criterion for an inaccessible soil polluted with PCB, and an alternative method for determining compliance with such criterion, provided it is demonstrated to the satisfaction of the Commissioner after consultation with the

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Commissioner of Public Health that the application of such alternative criterion at the subject release area will protect human health and the environment from the risks associated with direct exposure to soil polluted with PCB and is consistent with 40 CFR Part 761 and with the "Guide on Remedial Actions at Superfund Sites with PCB Contamination" (EPA Directive 9355.4-01, August 1990).

(e) Applying the Direct Exposure and Pollutant Mobility Criteria

(1) Unless an alternative method for determining compliance with a direct exposure criterion has been approved by the Commissioner in writing, compliance with a direct exposure criterion is achieved when (A) the ninety-five percent upper confidence level of the arithmetic mean of all sample results of laboratory analyses of soil from the subject release area is equal to or less than such criterion[, provided that the results of no single sample exceeds two times the applicable direct exposure criterion] or (B) the results of all laboratory analyses of samples from the subject release area are equal to or less than the applicable direct exposure criterion.

(2) Unless an alternative method for determining compliance with a pollutant mobility criterion for a particular substance has been approved by the Commissioner in writing, compliance with a pollutant mobility criterion for such substance is achieved when:

(A) (i) a representative sampling program consisting of not less than twenty samples of soil located above the water table has been used to characterize the distribution and concentration of such substance at the subject release area or remaining at the subject release area following remediation, and (ii) [the release area has not been remediated by means of excavation and removal of polluted soil, (iii)] the ninety-five percent upper confidence level of the arithmetic mean of all the sample results of laboratory analyses of soil from the subject release area for such substance is equal to or less than the applicable pollutant mobility criterion or the results of all laboratory analyses of samples from the subject release area are equal to or less than the applicable direct exposure criterion; [and [(iv)] no single sample result exceeds two times the applicable pollutant mobility criterion;] or

(B) (i) a representative sampling program consisting of less than twenty samples of soil located above the water table has been used to characterize the distribution and concentration of substances remaining at the subject release area following remediation[, and (ii) [the release area has not been remediated by means of excavation and removal of polluted soil, and (iii)]the results of all laboratory

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analysis of samples from the subject release area for such substances are equal to or less than such pollutant mobility criterion.]; or

(C) (i) the subject release area has been remediated by means of excavation and removal of polluted soil, (ii) a representative sampling program consisting of samples of soil located above the water table has been used to characterize the distribution and concentration of substances remaining at the subject release area following excavation and removal, and (iii) the results of all laboratory analyses of samples from the subject release area for such substances are equal to or less than such pollutant mobility criterion.]

(3) Matrix interference effects.

If any applicable criterion for a substance in soil is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, the following actions shall be taken:

(A) (i) “Test Methods for Evaluating Solid Waste : Physical/Chemical Methods,” SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460 shall be consulted to determine if an analytical method sufficiently sensitive to achieve the applicable analytical detection limit was used to conduct the analysis of the subject substance. If there is available an alternative analytical method which is sufficient to achieve the required analytical detection limit, appropriate for the sample matrix, and has been approved by EPA or approved in writing by the Commissioner, the subject soil shall be re-analyzed for the subject substance using such alternative method.

(ii) If a sample has been analyzed by one or more analytical methods in accordance with subparagraph (A)(i) of this subdivision and the applicable analytical detection limit has not been achieved due to matrix interference effects, such method(s) shall be modified in order to compensate for such interferences, in accordance with analytical procedures specified by EPA within the scope of the analytical method.

(B) If, after re-analyzing the subject soil and attempting to compensate for matrix interference effects in accordance with to subparagraph (A) of this subdivision, any applicable criterion for a substance in soil is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, compliance with such criterion shall be

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achieved when such soil has been remediated to the lowest concentration for such substance which can be consistently and accurately quantified without matrix interference effects.

(C) A detailed summary of all measures taken to overcome matrix interference effects and a determination of the lowest alternative quantification level applicable to the analysis of such substance shall be prepared and, if requested by the Commissioner in writing, shall be submitted to the Commissioner for his review and approval.

(f) Variances.

(1) Widespread Polluted Fill.

The Commissioner may grant a variance from any of the requirements of subsection (c) of this section upon the written request of the owner of the subject parcel if the Commissioner determines that (A) geographically extensive polluted fill is present at such parcel and at other parcels in the vicinity of the subject parcel; (B) such fill is not polluted with volatile organic substances; (C) such fill is not affecting and will not affect the quality of an existing or potential public water supply resource or an existing private drinking water supply; (D) the concentration of each substance in such fill is consistent with subsection (b) of this section; **and** (E) the placement of such fill was not prohibited by law at the time of placement[; **and (F) the person requesting the variance did not place the fill on the subject parcel**]. In determining whether to grant or deny such a variance, the Commissioner may consider the relative cost of compliance with subsection (c) of this section, how extensive the polluted fill is, what relative proportion of such fill occurs on the subject parcel, and whether the person requesting the variance is affiliated with any person responsible for such placement through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such person's interest in such parcel is to be conveyed or financed.

(2) Engineered Control of Polluted Soils.

(A) Provided that an engineered control of polluted soils is implemented pursuant to subparagraphs (B) and (C) of this subsection, the requirements of subsections (a) through (e) of this section do not apply if:

(i) the Commissioner authorized the disposal of solid waste or polluted

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soil at the subject release area;

(ii) the soil at such release area is polluted with a substance for which remediation is not technically practicable;

(iii) the Commissioner, in consultation with the Commissioner of Public Health, has determined that the removal of such substance or substances from such release area would create an unacceptable risk to human health; or

(iv) the Commissioner has determined, after providing notice and an opportunity for a public hearing, that a proposal by the owner of the subject parcel to use an engineered control is acceptable because (aa) the cost of remediating the polluted soil at such release area is significantly greater than the cost of installing and maintaining an engineered control for such soil and conducting ground-water monitoring at such release area in accordance with subsection (g) of section 22a-133k-3, and (bb) that the significantly greater cost outweighs the risk to the environment and human health if the engineered control fails to prevent the mobilization of a substance in the soil or human exposure to such substance. The Commissioner may hold a public hearing pursuant to this section if in his discretion the public interest will be best served thereby, and he shall hold a hearing upon receipt of a petition signed by at least twenty-five persons. Notice of the subject proposal shall be provided by the owner of the subject parcel in two of the three following manners: (i) by publication in a newspaper of substantial circulation in the affected area; (ii) by placing and maintaining on the subject parcel, for at least thirty days, in a legible condition a sign which shall be not less than six feet by four feet which sign shall be clearly visible from the public highway; or (iii) by mailing notice to the owner of record of each property abutting the subject parcel at his address on the most recent grand tax list of the municipality or municipalities in which such properties are located. When notice is published or mailed, it shall include the name and address of owner of the subject parcel; the location address and/or a description of the location such parcel; a brief description of the nature of the pollution on the subject parcel; a brief description of the proposed engineered control; and a brief description of the procedures for requesting a hearing. When notice is provided by posting a sign, the sign shall include the words

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“Environmental remediation is proposed for this site. For further information contact... ” and shall include the name and telephone number of an individual from whom any interested person may obtain information about the remediation. The owner of the subject parcel shall verify to the Commissioner in writing on a form furnished by him that notice has been given in accordance with this subsection.

(B) A request to use an engineered control shall be submitted to the Commissioner in writing and shall be accompanied by a detailed written report and plan which demonstrates that:

(i) (aa) if the engineered control is to address exceedances of the direct exposure criteria, the proposed engineered control [is]has been designed and will be constructed to physically isolate polluted soil; [and to minimize migration of liquids through soil, to function with minimum maintenance, to promote drainage and minimize erosion of or other damage to such control, and to accommodate settling and subsidence of the underlying soil so as to maintain the control's structural integrity and permeability; and](bb) [with respect to]if the engineered control is to address exceedances of the pollutant mobility criteria, [an]the proposed engineered [cap, such cap]control has been designed and will be constructed to minimize migration of liquids through soil and have a permeability of less than 10^{-6} cm/sec or, unless otherwise specified by the Commissioner in writing, to have the permeability specified in a closure plan implemented under sections 22a-209-1 et seq of the Regulations of Connecticut State Agencies for a release area which is a lawfully authorized solid waste disposal area; and (cc) for all engineered controls, the proposed engineered control has been designed and will be constructed to function with minimum maintenance, to promote drainage and minimize erosion of or other damage to such control, and to accommodate settling and subsidence of the underlying soil so as to maintain the control's functional integrity;

(ii) plans for ground-water monitoring at the subject release area are adequate to ensure that any substance migrating therefrom will be detected;

(iii) plans for maintenance of the subject release area are adequate to ensure that the structural integrity, design permeability, and effectiveness of the engineered control will be maintained; such plans shall include

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without limitation measures to prevent run-on and run-off of storm water from eroding or otherwise damaging the engineered control and measures to repair such control to correct the effects of any settling, subsidence, erosion or other damaging events or conditions;

(iv) an environmental land use restriction is or will be in effect with respect to the parcel at which the subject release area is located, which restriction ensures that such parcel will not be used in a manner that could disturb the engineered control or the polluted soil;

(v) any other information that the Commissioner reasonably deems necessary; and

(vi) with respect to any release area subject to any of the requirements of section 22a-209-4(i) or section 22a-449(c)-100 through 110 of the Regulations of Connecticut State Agencies, all such requirements are or will be satisfied. With respect to a release area which is not subject to any such regulations, the owner of the subject parcel shall demonstrate that he or she has posted or will post a surety in a form and amount approved in writing by the Commissioner, which surety during the first year after installation of the engineered control shall be equal to the cost of one year's maintenance and monitoring of the engineered control, and which in each subsequent year shall be increased in amount by adding an amount equal to the cost of one year's maintenance and monitoring, until the total amount of such surety is equal to the cost of five year's of maintenance and monitoring, which amount shall be maintained in effect for the next twenty-five years or for such other period as may be required by the Commissioner.

(C) When the Commissioner approves a request pursuant to this subsection to use an engineered control he may require that such control incorporate any measures which he deems necessary to protect human health and the environment. Any person implementing an engineered control under this subsection shall perform all actions specified in the approved engineered control proposal including the recordation of the environmental land use restriction and posting of the surety, and any additional measures specified by the Commissioner in his approval of such plan. Nothing in this subdivision shall preclude the Commissioner from taking any action he deems necessary to protect human health or the environment if an approved engineered control fails to prevent the migration of pollutants from the release area or human exposure to such pollutants.

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(g) Removal of Non-aqueous Phase Liquids.

Removal of light non-aqueous phase liquids from soil and ground water shall be conducted in accordance with section 22a-449(d)-106(f) of the Regulations of Connecticut State Agencies. Any other non-aqueous phase liquid shall be contained or removed from soil and ground water to the maximum extent prudent.

(h) Use of Polluted Soil and Reuse of Treated Soil.

Any soil excavated from and/or treated at a release area during remediation shall be managed as follows:

(1) Hazardous Waste.

Treatment, storage, disposal and transportation of soil which is hazardous waste as defined pursuant to section 22a-449(c) of the General Statutes shall be carried out in conformance with the provisions of sections 22a-449(c)-101 through 110 of the Regulations of Connecticut State Agencies, and any other applicable law;

(2) Special Wastes.

In accordance with section 22a-209-8 of the Regulations of Connecticut State Agencies, the Commissioner may authorize polluted soil, which is not hazardous waste as defined pursuant to subsection 22a-449(c) of the General Statutes, to be disposed of as special wastes as defined in said section 22a-209-1.

(3) Polluted soil.

Polluted soil from a release area may be treated to achieve concentrations of substances that do not exceed either the applicable direct exposure criteria or pollutant mobility criteria. After such treatment, such soil may be reused on the parcel from which it was excavated or on another parcel approved by the Commissioner, provided that such reuse is consistent with all other provisions of sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies and:

- (A) Prior to reuse, a map showing the location and depth of proposed placement of such soil is submitted to the Commissioner;
- (B) Such soil is not placed below the water table;

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- (C) Such soil is not placed in an area subject to erosion; and
- (D) Any such soil in which the concentration of any substance exceeds the pollutant mobility criteria applicable to a GA area is not placed over soil and ground water which have not been affected by a release at the parcel at which placement is proposed; and
- (E) For soils polluted with PCB, the Commissioner has issued a written approval in accordance with by section 22a-467 of the General Statutes.

(4) Natural Soil.

Polluted soil may be used at any parcel of land if after treatment of such soil to reduce or remove substances: (A) any naturally-occurring substance is present therein in concentrations not exceeding background concentration for soil of such substance at the release area from which such soil is removed; and (B) no other substance is detectable in such soil at a concentration greater than its analytical detection limit.

(i) Additional remediation of soil.

Nothing in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies shall preclude the Commissioner from taking any action necessary to prevent or abate pollution or to prevent or abate any threat to human health or the environment, including without limitation:

(1) at any location at which, despite remediation in accordance with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner determines that there is a potential ecological risk he may require that an ecological risk assessment be conducted in accordance with EPA/630/R-92/001, February 1992, "Framework For Ecological Risk Assessment" and that additional remediation be conducted to mitigate any risks identified in such assessment;

(2) at any location at which polluted soil has eroded into a surface-water body, the Commissioner may require that the effect of such polluted soil on aquatic life be assessed and that remediation to protect or restore aquatic life and surface water quality from the effects of such polluted soils be undertaken; or

(3) at any release area or parcel at which there is polluted soil containing multiple polluting substances, the Commissioner may require additional remediation to ensure that the risk posed by such substances does not exceed (A) a cumulative excess lifetime

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cancer risk of 10^{-5} for carcinogenic substances and (B) a cumulative hazard index of 1 for non-carcinogenic substances with the same target organ.

[Section 3. The Regulations of Connecticut State Agencies are amended by adding a new section 22a-133k-3 as follows:]

22a-133k-3 Ground-water Remediation Standards

(a) General.

(1) Remediation of a ground-water plume shall result in the attainment of: (A) the requirements concerning surface water protection set forth in subsection (b) of this section and the requirements concerning volatilization set forth in subsection (c) of this section; or (B) the background concentration for ground water for each substance in such plume.

(2) Remediation of a ground-water plume in a GA area shall also result in the reduction of each substance therein to a concentration equal to or less than the background concentration for ground water of such substance, except as provided in subsection (d) of this section.

(3) Remediation of a ground-water plume in a GB area shall also result in the reduction of each substance therein to a concentration such that such ground-water plume does not interfere with any existing use of the ground water.

(b) Surface-water protection criteria.

(1) Except as provided in subdivision (2) of this subsection, remediation of a ground-water plume which discharges to a surface water body shall result in the reduction of each substance therein to a concentration which is consistent with subdivision (2)(C) of subsection [(f)](g) of this section and which is equal to or less than the surface-water protection criterion or an alternative surface-water protection criterion established in accordance with subdivision (3) of this subsection.

(2) If a ground-water plume (A) discharges to a wetland or an intermittent stream, or (B) the areal extent of such ground-water plume occupies more than 0.5%, or other percentage which is approved in writing by the Commissioner, of the upstream drainage basin of the stream to which such plume discharges measured from the intersection of

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stream and such ground-water plume, each substance therein shall be remediated to a concentration equal to or less than the applicable aquatic life criteria contained in Appendix D to the most recent Water Quality Standards, or equal to or less than an alternative water quality criterion adopted by the Commissioner in accordance with section 22a-426 of the General Statutes and paragraph 12b of the Water Quality Standards effective May 15, 1992.

(3) Alternative surface-water protection criteria.

Alternative surface-water criteria may be calculated in accordance with subparagraph (A) of this subdivision or may be approved in writing by the Commissioner in accordance with subparagraph (B) of this subdivision.

(A) An alternative surface-water protection criterion may be calculated for a substance in Appendix D of the most recent Water Quality Standards by multiplying the lower of the human health or aquatic life criterion for such substance in said Appendix D by $[(0.25 \times 7Q_{10})/Q_{\text{plume}}]$ where Q_{plume} is equal to the average daily discharge of polluted ground water from the subject ground-water plume.

(B) The Commissioner may approve an alternative surface-water protection criterion to be applied to a particular substance at a particular release area. Any person requesting such approval shall submit to the Commissioner: (i) a report on the flow rate, under seven day ten year low flow conditions, of the surface water body into which the subject ground water plume discharges (ii) a report on other surface water or ground water discharges to the surface water body within one-half mile upstream of the areal extent of the ground-water plume, (iii) a report on the instream water quality, (iv) a report on the flow rate of the ground-water discharge from such release area to the surface water body and the extent and degree of mixing of such discharge in such surface water, and (v) and any other information the Commissioner reasonably deems necessary to evaluate such request. The Commissioner shall not approve an alternative surface-water protection criterion under this subparagraph unless the requester demonstrates that such criterion will protect all existing and proposed uses of such surface water.

(c) Volatilization criteria.

(1) Except as specified in subdivisions (2), (3), (4) and (5) of this subsection, all ground water polluted with a volatile organic substance within 15 feet of the ground surface or a

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building, shall be remediated such that the concentration of each such substance is equal to or less than the applicable residential volatilization criterion for ground water.

(2) If ground water polluted with a volatile organic substance is below a building used solely for industrial or commercial activity, such ground water shall be remediated such that the concentration of such substance is equal to or less than the applicable industrial/commercial volatilization criterion for ground water, provided that an environmental land use restriction is in effect with respect to the parcel or portion thereof upon which such building is located, which restriction ensures that the parcel or portion thereof will not be used for any residential purpose in the future and that any future use of the parcel or portion thereof is limited to industrial or commercial activity;

(3) (A) Remediation of a volatile organic substance to the volatilization criterion for ground water shall not be required if the concentration of such substance in soil vapors below a building is equal to or less than (i) the residential volatilization criterion for soil vapor or (ii) the industrial/commercial volatilization criterion for soil vapor, if such building is solely used for industrial or commercial activity and, an environmental land use restriction is in effect with respect to the parcel or portion thereof upon which such building is located, which restriction ensures that the parcel or portion thereof will not be used for any residential purpose in the future and that any future use of the parcel or portion thereof is limited to industrial or commercial activity.

(B) The requirements of subdivision (1), (2), and (3) of this subsection do not apply if: (i) measures acceptable to the Commissioner have been taken to prevent the migration of such substance into any overlying building, (ii) a program is implemented to maintain and monitor all such measures, and (iii) notice of such measures has been submitted to the Commissioner on a form furnished by him which notice includes (aa) a brief description of the areal extent of the ground-water plume and of the area which exceeds any such volatilization or soil vapor criterion; (bb) a brief description of the method of controlling the migration of such substance into any overlying building; (cc) a plan for the monitoring and maintenance of such control method; and (dd) a map showing all existing buildings, the areal extent of the ground-water plume, and the location of such control method.

(4) Site-specific and alternative volatilization criteria.

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(A) Site-specific residential volatilization criteria for ground water or soil vapor may be calculated using the equations in Appendix G to sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies.

(B) The Commissioner may approve an alternative volatilization criterion for ground water or for soil vapor to be applied to a substance at a particular release area. The Commissioner shall not approve any alternative criterion under this subparagraph unless it has been demonstrated that such criterion will ensure that volatile organic substances from such ground water or soil do not accumulate in the air of any structure used for residential activities at a concentration which, (i) for any carcinogenic substance creates a risk to human health in excess of a 10^{-6} excess lifetime cancer risk level, and for any non-carcinogenic substance does not exceed a hazard index of 1, or (ii) for a ground-water plume polluted with multiple volatile organic substances does not exceed a cumulative excess cancer risk level of 10^{-5} for carcinogenic substances, and for non-carcinogenic substances with the same target organ, the cumulative hazard index does not exceed 1.

(5) Exemption from volatilization criteria.

(A) The volatilization criteria do not apply to ground water polluted with volatile organic substances, where the water table is less than fifteen feet below the ground surface, if no building exists over the ground water polluted with volatile organic substances at a concentration above the applicable volatilization criteria, and (i) it has been documented that best efforts have been made to ensure that each owner of any parcel of land or portion thereof overlying such polluted ground water records an environmental land use restriction which ensures that no building is constructed over such polluted ground water; or (ii) the Commissioner has approved in writing a request demonstrating that no building can reasonably be expected to be constructed over the subject ground water or that natural attenuation or other methods of remediation will, within five years, reduce the concentration of volatile organic substances in such ground water to a concentration equal to or less than the applicable volatilization criteria.

(B) The volatilization criteria for ground water underlying an existing building do not apply to ground water polluted with volatile organic substances where the Commissioner has approved in writing and there have been implemented an indoor air monitoring program and measures to control the level of any such

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volatile organic substances in the air of the subject building.

(i) Any person seeking the Commissioner's approval of an indoor air monitoring program shall submit to him: a detailed written plan describing the proposed indoor air monitoring program, including but not limited to a description of the distribution and concentration of volatile organic compounds beneath the building, the location of proposed monitoring points, the proposed frequency of monitoring, the parameters to be monitored, and a description of proposed actions to be taken in the event such monitoring indicates that the monitored parameters exceed proposed specified concentrations and a proposed schedule for reporting to the Commissioner on the results of such monitoring for as long as monitoring is conducted at the site.

(ii) In approving any indoor air monitoring program pursuant to this subdivision, the Commissioner may impose any additional conditions he deems necessary to ensure that the program adequately protects human health. In the event that the Commissioner approves an indoor air monitoring program pursuant to this subparagraph, any person implementing such program shall perform all actions specified in the approved plan, and any additional measures specified by the Commissioner in his approval of such plan.

(d) Applicability of Ground-water Protection Criteria.

(1) Ground water in a GA area may be remediated to a concentration for each substance therein equal to or less than the ground-water protection criterion for each such substance if, with respect to the subject ground-water plume: (A) the background concentration for ground water is equal to or less than such ground-water protection criterion; (B) a public water supply distribution system is available within 200 feet of the subject parcel, parcels adjacent thereto, and any parcel within the areal extent of such plume; (C) such ground-water plume is not located in an aquifer protection area; and (D) such ground-water plume is not located within the area of influence of any public water supply well.

(2) If prior to any ground-water remediation the maximum concentration of a substance in a ground-water plume in a GA area is equal to or less than the ground-water protection criteria, remediation of ground water to achieve background ground-water concentration is not required, provided that the extent of the ground-water plume is not increasing over

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time and, except for seasonal variations, the concentration of the subject substance in such ground-water plume is not increasing at any point over time.

(3) Any ground water in a GB area and which is used for drinking or other domestic purposes shall be remediated to reduce the concentration of each substance therein to a concentration equal to or less than the applicable ground-water protection criterion until such time as the use of such ground water for drinking or other domestic purposes is permanently discontinued.

(e) Technical Impracticability of Ground-water Remediation.

(1) Exemption from Background Due to Technical Impracticability

If remediation of a ground-water plume in a GA area to achieve compliance with subdivision (2) of subsection (a) of this section has reduced the concentration of a polluting substance to less than the ground-water protection criterion, and if further reduction of such concentration is technically impracticable, no further remediation of such ground-water plume for such substance shall be required.

(2) Variance Due to Technical Impracticability of Ground-water Remediation

The Commissioner may grant a variance from any of the requirements of this section if he finds that: non-aqueous phase liquids that cannot be contained or removed in accordance with R.C.S.A. section 22a-133k-2(g) are present; remediation to the extent technically practicable has reduced the concentration of pollutants in ground water to steady-state concentrations that exceed any applicable criteria; or achieving compliance with the applicable criteria is technically impracticable as determined using Directive No. 9234.2-25 issued September 1993 by the U.S. Environmental Protection Agency's Office of Solid Waste and Emergency Response.

(A) Any person requesting a variance pursuant to this subsection from any ground-water protection criterion shall submit: (i) information concerning the concentration of each substance in the ground-water plume with respect to which a variance is sought; (ii) information demonstrating that (aa) the extent of the ground-water plume which exceeds such ground-water protection criterion has been reduced to the extent technically practicable, or (bb) it is not technically practicable to reduce the extent of the ground-water plume; (iii) the results of a study conducted to determine the risks to human health posed by the polluted

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ground water remaining after such reduction; (iv) if such study shows a risk or a potential risk to human health, a plan to eliminate such risk or potential risk; (v) an application to change the ground-water classification of such polluted ground water to GB in accordance with section 22a-426 of the General Statutes; and (vi) any other information the Commissioner reasonably deems necessary to evaluate such request.

(B) Any person requesting a variance pursuant to this subsection from the requirement to remediate ground water to a concentration which does not exceed the applicable surface-water protection criteria shall submit information concerning the concentration of each substance in the ground-water plume with respect to which a variance is sought. If such information demonstrates that any such concentration exceeds any applicable surface-water protection criterion, such person shall also submit: (i) a map showing the areal extent of the ground-water plume that exceeds such surface-water protection criterion, and (ii) a plan for controlling the migration of such substance to the receiving surface water body.

(C) If the Commissioner grants a variance pursuant to this subsection from any ground-water protection criterion, the person receiving the variance shall, no later than thirty days after the date of granting of such variance, submit to the Commissioner on a form prescribed and provided by him: (i) certification that written notice of the extent and degree of such pollution has been provided to each owner of property overlying the subject ground-water plume at which it is not technically practicable to remediate a substance to a concentration equal to or less than the ground-water protection criterion; (ii) certification that written notice of the presence of pollution on each such parcel and a description of the extent and degree of such pollution has been sent to the Director of Health of the municipality or municipalities in which the ground-water plume is located; and (iii) certification that best efforts have been made to ensure that each owner of property overlying the subject ground-water plume records an environmental land use restriction which ensures that the subject ground-water plume is not used for drinking or other domestic purposes;

(D) If the Commissioner grants a variance pursuant to this subsection from the requirement to remediate ground water to a concentration which does not exceed the applicable surface-water protection criteria, the person receiving the variance shall perform all actions specified in the plan submitted with the request for such variance, and any additional actions required by the Commissioner in his approval

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of such plan or granting of such variance.

(NEW)(f) Incidental Sources.

Remediation criteria for ground water do not apply to:

- (1) trihalomethanes resulting from releases of drinking water from a public water supply system; or
- (2) metals, petroleum hydrocarbons or semi-volatile substances provided such pollution is the result of:
 - (A) an incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or
 - (B) normal paving and maintenance of a consolidated bituminous concrete surface provided such bituminous concrete surface has been maintained for its intended purpose.

(NEW)(f)(g) Applying the Criteria for Ground Water.

Ground-water monitoring shall be conducted in accordance with this subsection for any ground-water plume and for any release area remediated in accordance with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, except for those release areas remediated solely to address exceedances of direct exposure criteria in accordance with section 22a-133k-2(b).

(NEW)(l) Ground-water Monitoring.

Monitoring shall be designed to determine:

- (A) The effectiveness of any soil remediation to prevent the pollution of ground water by substances from the release area;
- (B) The effectiveness of any measures to render soil environmentally isolated;
- (C) The effectiveness of any remediation taken to eliminate or minimize health or safety risks associated with such release or identified in any risk assessment

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conducted in accordance with subsection (e)(2) of this section or otherwise identified;

(D) Whether a substance in ground water in a GA area or an aquifer protection area meets the background concentration or ground-water protection criteria, as applicable, in accordance with the provisions of subdivision (2) of this subsection;

(E) Whether a substance in ground water meets the surface-water protection criteria and the applicable volatilization criteria in accordance with the provisions of subdivision (2) of this subsection; and

(F) Whether a ground-water plume in a GB area interferes with any existing use of the ground water for a drinking water supply or with any other existing use of the ground water, including but not limited to industrial, agricultural or commercial purposes.

(NEW)(2) Compliance with Criteria for Ground Water.

(A) General.

(i) Analytical results of samples used for determining compliance with an applicable remedial criterion for a substance shall be collected after:

(aa) All remedial actions conducted to achieve compliance with pollutant mobility and ground-water criteria for such substance have been concluded, other than natural attenuation of a ground-water plume or the recording of an Environmental Land Use Restriction;

(bb) The aquifer is no longer subject to the transient effects on hydraulic head attributable to withdrawal from, or injection to, ground water for the purpose of remediation, or other effects due to site redevelopment or remediation;

(cc) Any changes to the geochemistry, induced by remedial actions or monitoring well construction methods which might influence the concentration of such substance, have stabilized and equilibrium geochemical conditions are established; and

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(dd) The concentration of such substance at each sampling location that represents the extent and degree of the ground-water plume is not increasing over time, except as a result of either natural attenuation or seasonal variations.

(ii) For determining compliance with an applicable remedial criterion for a substance, a minimum of four sampling events shall be performed which reflect seasonal variability on a quarterly basis, provided that all sampling events used to demonstrate compliance were performed within two years prior to the most current sampling event used to determine compliance, with the exception of monitoring conducted in accordance with subdivision (D)(ii) of this subsection.

(iii) The Commissioner may approve in writing an alternative method of determining compliance with an applicable remedial criterion for a substance utilizing emerging technologies for which guidance, standard or industrial code has been published by a regulatory agency, governmental advisory group, or other recognized professional organization, at the time of the approval.

[(1)](B) Compliance with Ground-water Protection Criteria or Background.

Compliance with the ground-water protection criterion for a substance in ground water or background concentration for ground water for such substance is achieved when the sampling locations are representative of the subject ground-water plume and [(A)](i) the analytical results for such substance at all such sampling locations are equal to or less than either the ground-water protection criterion for such substance or the background concentration for ground water, [therfor,]whichever is applicable, as determined by subsection (d) of this section [for at least four consecutive quarterly sampling periods,]or [(B)](ii) a representative sampling program consisting of not less than twelve consecutive monthly samples from each such sampling location has been used to characterize the ground-water plume and the ninety-five percent upper confidence level of the arithmetic mean of all results of laboratory analyses of such samples for such substance are equal to or less than the criterion for such substance[and that no single sample exceeds two times the applicable criterion for such substance].

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[(2)](C) Compliance with Surface-water Protection Criteria.

Compliance with a surface-water protection criterion for a substance in ground water is achieved when the sampling locations are representative of the subject ground-water plume and [(A) the average concentration of such substance in such plume is equal to or less than the applicable surface-water protection criterion for at least four consecutive quarterly sampling periods,] (i) the ninety-five percent upper confidence level of the arithmetic mean of all sample results representative of the subject ground water plume is equal to or less than such criterion; or [(B)](ii) the concentration of such substance in that portion of such plume which is immediately upgradient of the point at which such ground-water discharges to the receiving surface-water body is equal to or less than the applicable surface-water protection criterion[, provided that the areal extent of such ground-water plume is not increasing over time; and that, except for seasonal variations, the concentration of the subject substance in such ground-water plume is not increasing, except as a result of natural attenuation, at any point over time].

[(3)](D) Compliance with Volatilization Criteria.

A volatile substance may be remediated to a concentration as specified in either subdivision (2)(D)(i) or subdivision (2)(D)(ii) of this subsection.

(i) Compliance with volatilization criteria in ground water.

Compliance with a volatilization criterion for a substance in ground water [or soil vapor] is achieved when the sampling locations are representative of the subject ground-water plume [or soil vapor] and [(A) the ninety-five percent upper confidence level of the arithmetic mean of all sample results from such locations is equal to or less than the applicable volatilization criterion for at least four consecutive quarterly sampling periods and that the result of no single sample exceeds two times the applicable volatilization criterion, or (B)] the results of all laboratory analyses of samples for such substance are equal to or less than the applicable volatilization criterion [therefor.] as determined by subsection (c) of this section.

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[(3)](ii) Compliance with volatilization criteria in soil vapor.

Compliance with a volatilization criterion for a substance in soil vapor is achieved when the sampling locations and frequency are representative of the subject soil vapor, including seasonal variability, and the results of all laboratory analyses of samples for such substance are equal to or less than the applicable volatilization criterion.

[(4)](3) Matrix interference effects.

If any applicable criterion for a substance in ground water is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, the following action shall be taken:

- (A) (i) “Test Methods for Evaluating Solid Waste : Physical/Chemical Methods,” SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington D.C. 20460 shall be consulted to determine if an analytical method sufficiently sensitive to achieve the applicable analytical detection limit was used to conduct the analysis of the subject substance. If there is available an alternative analytical method which is sufficient to achieve the required analytical detection limit, appropriate for the sample matrix, and has been approved by EPA or approved in writing by the Commissioner, the subject ground water shall be re-analyzed for the subject substance using such alternative method.
- (ii) If a sample has been analyzed by one or more analytical methods in accordance with subparagraph (A)(i) of this subdivision and the applicable analytical detection limit has not been achieved due to matrix interference effects, such method(s) shall be modified in order to compensate for such interferences, in accordance with analytical procedures specified by EPA within the scope of the analytical method.
- (B) If, after re-analyzing the subject ground water and attempting to compensate for matrix interference effects in accordance with subparagraph (A) of this subdivision, any applicable criterion for a substance in ground water is less than the concentration for such substance that can be consistently and accurately quantified in a specific sample due to matrix interference effects, compliance with such criterion shall be

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achieved when such ground water has been remediated to the lowest concentration for such substance which can be consistently and accurately quantified without matrix interference effects.

- (C) A detailed summary of all measures taken to overcome matrix interference effects and a determination of the lowest alternative quantification level applicable to the analysis of such substance shall be prepared and, if requested by the Commissioner in writing, shall be submitted to the Commissioner for his review and approval.

[(g) Ground-water Monitoring.

For any remediation which is conducted to achieve compliance with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, ground-water monitoring shall be conducted in accordance with this subsection.

(1) Ground-water Monitoring at GA Areas.

With respect to remediation of a release area or a ground-water plume in a GA area, a ground-water monitoring plan shall be prepared and implemented. Ground-water monitoring under such plan shall be designed to determine:

- (A) the effectiveness of soil remediation in preventing the pollution of ground water by substances from the release area;
- (B) the effectiveness of any remediation taken to eliminate or minimize health or safety risks identified in any risk assessment conducted in accordance with subdivision (2) of subsection (e) of this section or otherwise identified; and
- (C) whether applicable requirements identified in subsection (a) of this section have been met.

(2) Ground-water Monitoring at GB Areas.

With respect to remediation of a release area or a ground-water plume in a GB area, a ground-water monitoring plan shall be prepared and implemented. Ground-water monitoring under such plan shall be designed to determine:

- (A) the effectiveness of soil remediation in preventing further pollution of ground water by substances from the release area;
- (B) the effectiveness of any remediation taken to eliminate or minimize identified health or safety risks associated with such release;

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(C) whether applicable ground-water protection criteria, surface-water protection criteria, and volatilization criteria have been met; and

(D) whether the ground-water plume interferes with any existing use of the ground water for a drinking water supply or with any other existing use of the ground water, including but not limited to industrial, agricultural or commercial purposes.

(3) Discontinuation of Ground-water Monitoring.

(A) Unless otherwise specified in writing by the Commissioner, ground-water monitoring in a GA area may be discontinued in accordance with the following:

(i) a minimum of one year after compliance with the background concentration for ground water has been achieved in accordance with subsection (f) of this section if the background concentration for ground water of all substances in the subject ground-water plume has been maintained in all sampling events and ground-water monitoring data demonstrate that the soil remediation was effective in preventing the pollution of ground water by any substance from the subject release area; or

(ii) a minimum of three years after compliance with the ground-water protection criteria has been achieved in accordance with subsection (f) of this section if (aa) all applicable ground-water protection criteria for all subject substances or the background concentration for ground water for all substances in the subject ground-water plume, which ever is higher, is maintained in all sampling events; (bb) ground-water monitoring data demonstrate that the soil remediation was effective in preventing the pollution of ground water by substances from the subject release area; and (cc) the volatilization and surface-water protection criteria have been met in accordance with subsection (f) of this section.

(B) Unless otherwise specified in writing by the Commissioner, ground-water monitoring in a GB area may be discontinued two years after the cessation of all remediation of such ground water or soil if the applicable surface-water protection and volatilization criteria have been met in accordance with subsection (f) of this section, and such ground water is suitable for all existing uses.]

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(h) Additional Polluting Substances

(1) With respect to a substance in ground water for which a ground-water protection criterion is not specified in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies, the Commissioner may approve in writing a ground-water protection criterion to apply to such substance. Any person requesting approval of a ground-water protection criterion for such substance shall submit to the commissioner (A) a risk-based ground-water protection criterion for such substance calculated in accordance with subdivision (2) of this subsection, (B) the analytical detection limit for such substance, (C) a description of the organoleptic properties of such substance. Before approving a ground-water protection criterion the Commissioner shall consider the proposed risk-based ground-water protection criterion for such substance, the analytical detection limit for such substance, the organoleptic effects of such substance, any information about the health effects such substance may cause due to exposure pathways not accounted for in the proposed risk-based ground-water protection criterion, and any other information that the Commissioner reasonably deems necessary.

(2) The risk-based ground-water protection criterion shall be calculated using the following equations:

(A) For carcinogenic substances;

$$GWPC = \left[\frac{\text{Risk}}{\text{CSF}} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{EF} \times \text{ED} \times \text{CF}} \right]$$

(B) For non-carcinogenic substances:

$$[GWPC = \left[\text{Rfd} \times \text{HI} \right] \times \left[\frac{\text{BW} \times \text{AT}}{\text{IR} \times \text{EF} \times \text{ED} \times \text{CF} \times \text{SA}} \right]$$

(NEW)

$$GWPC = \left[\text{Rfd} \times \text{HI} \right] \times \left[\frac{(\text{BW} \times \text{AT} \times \text{SA})}{(\text{IR} \times \text{EF} \times \text{ED} \times \text{CF})} \right]$$

(C) The abbreviations used in subparagraphs (A) and (B) of this subdivision shall be interpreted in accordance with the following table and shall be assigned the

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values specified therein:

Term	Description	Units	Value
GWPC _{RB}	Risk-based Ground-water protection Criterion	ug/l	calculated
Risk	Target Cancer Risk Level	unitless	1.0E-06
HI	Hazard Index	unitless	1.0
CSF	Cancer slope Factor	(mg/kg-day) ⁻¹	substance-specific
RFD	Reference Dose	mg/kg-day	substance-specific
IR	Ingestion Rate	l/day	2
EF	Exposure Frequency	days/year	365
ED	Exposure Duration	years	70
CF	Conversion Factor	[unitless] mg/ug	[1000]0.001
BW	Body Weight	kg	70
AT	Averaging Time,	days	25550
SA	Source Allocation	unitless	0.2

(i) Additional Remediation of Ground Water.

Nothing in sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies shall preclude the Commissioner from taking any action necessary to prevent or abate pollution, or to prevent or abate any threat to human health or the environment. If the presence of any substance impairs the aesthetic quality of any ground water which is or can reasonably be expected to be a source of water for drinking or other domestic use, additional remediation shall be conducted in order to reduce the concentration of such substance to a

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concentration appropriate for such use.

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Appendix A to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Direct Exposure Criteria for Soil

Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial Criteria in mg/kg (ppm)
Volatile Organic Substances		
Acetone	500	1000
Acrylonitrile	1.1	11
Benzene	21	200
Bromoform	78	720
2-Butanone(MEK)	500	1000
Carbon tetrachloride	4.7	44
Chlorobenzene	500	1000
Chloroform	100	940
Dibromochloromethane	7.3	68
1,2-Dichlorobenzene	500	1000
1,3-Dichlorobenzene	500	1000
1,4-Dichlorobenzene	26	240
1,1-Dichloroethane	500	1000
1,2-Dichloroethane	6.7	63

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial Criteria in mg/kg (ppm)
1,1-Dichloroethylene	1	9.5
cis-1,2-Dichloroethylene	500	1000
trans-1,2-Dichloroethylene	500	1000
1,2-Dichloropropane	9	84
1,3-Dichloropropene	3.4	32
Ethylbenzene	500	1000
Ethylene dibromide (EDB)	0.007	0.067
Methyl-tert-butyl-ether	500	1000
Methyl isobutyl ketone	500	1000
Methylene chloride	82	760
Styrene	500	1000
1,1,1,2-Tetrachloroethane	24	220
1,1,2,2-Tetrachloroethane	3.1	29
Tetrachloroethylene	12	110
Toluene	500	1000
1,1,1-Trichloroethane	500	1000
1,1,2-Trichloroethane	11	100
Trichloroethylene	56	520

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial Criteria in mg/kg (ppm)
Vinyl chloride	0.32	3
Xylenes	500	1000
Semivolatile Substances		
Acenaphthylene	1000	2500
Anthracene	1000	2500
Benzo(a)anthracene	1	7.8
Benzo(b)fluoranthene	1	7.8
Benzo(k)fluoranthene	8.4	78
Benzo(a)pyrene	1	1
Bis(2-chloroethyl)ether	1	5.2
Bis(2-chloroisopropyl) ether	8.8	82
Bis(2-ethyl hexyl) phthalate	44	410
Butyl benzl phthalate	1000	2500
2-chlorophenol	340	2500
Di-n-butyl phthalate	1000	2500

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial Criteria in mg/kg (ppm)
Di-n-octyl phthalate	1000	2500
2,4-Dichlorophenol	200	2500
Fluoranthene	1000	2500
Fluorene	1000	2500
Hexachloroethane	44	410
Hexachlorobenzene	1	3.6
Naphthalene	1000	2500
Pentachlorophenol	5.1	48
Phenanthrene	1000	2500
Phenol	1000	2500
Pyrene	1000	2500
Inorganic Substances		
Antimony	27	8200
Arsenic	10	10
Barium	4700	140000

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial in mg/kg (ppm)
Beryllium	2	2
Cadmium	34	1000
Chromium, trivalent	3900	51000
Chromium, hexavalent	100	100
Copper	2500	76000
Cyanide	1400	41000
Lead	500 400	1000
Mercury	20	610
Nickel	1400	7500
Selenium	340	10000
Silver	340	10000
Thallium	5.4	160
Vanadium	470	14000
Zinc	20000	610000
Pesticides, PCB's and Total Petroleum Hydrocarbons (TPH)		
Alachlor	7.7	72
Aldicarb	14	410

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Substance	Residential Criteria in mg/kg (ppm)	Industrial/ Commercial in mg/kg (ppm)
Atrazine	2.8	26
Chlordane	0.49	2.2
Dieldrin	0.038	0.36
Endrin	20	610
2-4 D	680	20000
Heptachlor epoxide	0.067	0.63
Heptachlor	0.14	1.3
Lindane	20	610
Methoxychlor	340	10000
Toxaphene	0.56	5.2
PCB's	1	10
TPH - <u>Total Petroleum Hydrocarbons by EPA Method 418.1</u> <u>(This method shall not be used for the analysis of samples collected after June 30, 2009)</u>	500	2500
<u>Extractable Total Petroleum Hydrocarbons by ETPH Analysis</u>	<u>500</u>	<u>2500</u>

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Appendix B to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Pollutant Mobility Criteria for Soil

Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
Volatile Organic Substances		
Acetone	14	140
Acrylonitrile	0.01	0.1
Benzene	0.02	0.2
Bromoform	0.08	0.8
2-Butanone(MEK)	8	80
Carbon tetrachloride	0.1	1
Chlorobenzene	2	20
Chloroform	0.12	1.2
Dibromochloromethane	0.01	0.1
1,2-Dichlorobenzene	3.1	3.1
1,3-Dichlorobenzene	12	120
1,4-Dichlorobenzene	1.5	15
1,1-Dichloroethane	1.4	14
1,2-Dichloroethane	0.02	0.2
1,1-Dichloroethylene	0.14	1.4

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Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
cis-1,2-Dichloroethylene	1.4	14
trans-1,2-Dichloroethylene	2	20
1,2-Dichloropropane	0.1	1.0
1,3-Dichloropropene	0.01	0.1
Ethyl benzene	10.1	10.1
Ethylene dibromide (EDB)	0.01	0.1
Methyl-tert-butyl-ether	2	20
Methyl isobutyl ketone	7	14
Methylene chloride	0.1	1.0
Styrene	2	20
1,1,1,2-Tetrachloroethane	0.02	0.2
1,1,2,2-Tetrachloroethane	0.01	0.1
Tetrachloroethylene	0.1	1
Toluene	20	67
1,1,1-Trichloroethane	4	40
1,1,2-Trichloroethane	0.1	1
Trichloroethylene	0.1	1.0
Vinyl chloride	0.04	0.40
Xylenes	19.5	19.5

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Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
Semivolatile Substances		
Acenaphthylene	8.4	84
Anthracene	40	400
Benzo(a)anthracene	1	1
Benzo(b)fluoranthene	1	1
Benzo(k)fluoranthene	1	1
Benzo(a)pyrene	1	1
Bis(2-chloroethyl)ether	1	2.4
Bis(2-chloroisopropyl)ether	1	2.4
Bis(2-ethyl hexyl)phthalate	1	11
Butyl benzl phthalate	20	200
2-chlorophenol	1	7.2
Di-n-butyl phthalate	14	140
Di-n-octyl phthalate	2	20
2,4-Dichlorophenol	1	4
Fluoranthene	5.6	56
Fluorene	5.6	56
Hexachloroethane	1	1
Hexachlorobenzene	1	1

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Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
Naphthalene	5.6	56
Pentachlorophenol	1	1
Phenanthrene	4	40
Phenol	80	800
Pyrene	4	40
Pesticides and TPH		
Alachlor	0.230	0.4
Aldicarb	1	1
Atrazine	0.2	0.2
Chlordane	0.066	0.066
Dieldrin	0.007	0.007
2-4 D	1.4	14
Heptachlor epoxide	0.02	0.02
Heptachlor	0.013	0.013
Lindane	0.02	0.04
Methoxychlor	0.8	8
Simazine	0.8	8
Toxaphene	0.33	0.6

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Substance	GA, GAA Mobility Criteria in mg/kg (ppm)	GB Mobility Criteria in mg/kg (ppm)
Total Petroleum Hydrocarbon By EPA Method 418.1 or another EPA-approved method acceptable to the Commissioner <u>(This method shall not be used for the analysis of samples collected after June 30, 2009)</u>	500	2500
<u>Extractable Total Petroleum Hydrocarbons by ETPH Analysis</u>	<u>500</u>	<u>2500</u>

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Inorganic Substances and PCB	GA, GAA Mobility Criteria By TCLP or by SPLP in mg/l (ppm)	GB Mobility Criteria By TCLP or by SPLP in mg/l (ppm)
Antimony	0.006	0.06
Arsenic	0.05	0.5
Barium	1	10.0
Beryllium	0.004	0.04
Cadmium	0.005	0.05
Chromium, total	0.05	0.5
Copper	1.3	13
Cyanide (by SPLP only)	0.2	2
Lead	0.015	0.15
Mercury	0.002	0.02
Nickel	0.1	1.0
Selenium	0.05	0.5
Silver	0.036	0.36
Thallium	0.005	0.05
Vanadium	0.05	0.50
Zinc	5	50
PCB	0.0005	0.005

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Appendix C to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Ground-Water Protection Criteria for GA and GAA Areas

Substance	Ground-water Protection Criteria in ug/l (ppb)
Volatile Organic Substances	
Acetone	700
Acrylonitrile	0.5
Benzene	1
Bromoform	4
2-Butanone(MEK)	400
Carbon tetrachloride	5
Chlorobenzene	100
Chloroform	6
Dibromochloromethane	0.5
1,2-Dichlorobenzene	600
1,3-Dichlorobenzene	600
1,4-Dichlorobenzene	75
1,1-Dichloroethane	70
1,2-Dichloroethane	1
1,1-Dichloroethylene	7
cis-1,2-Dichloroethylene	70

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Substance	Ground-water Protection Criteria in ug/l (ppb)
trans-1,2-Dichloroethylene	100
1,2-Dichloropropane	5
1,3-Dichloropropene	0.5
Ethyl benzene	700
Ethylene dibromide (EDB)	0.05
Methyl-tert-butyl-ether	100
Methyl isobutyl ketone	350
Methylene chloride	5
Styrene	100
1,1,1,2-Tetrachloroethane	1
1,1,2,2-Tetrachloroethane	0.5
Tetrachloroethylene	5
Toluene	1000
1,1,1-Trichloroethane	200
1,1,2-Trichloroethane	5
Trichloroethylene	5
Vinyl chloride	2
Xylenes	530

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Substance	Ground-water Protection Criteria in ug/l (ppb)
Semivolatile Substances	
Acenaphthylene	420
Anthracene	2000
Benzo(a)anthracene	0.06
Benzo(b)fluoranthene	0.08
Benzo(k)fluoranthene	0.5
Benzo(a)pyrene	0.2
Bis(2-chloroethyl)ether	12
Bis(2-chloroisopropyl)ether	12
Bis(2-ethyl hexyl)phthalate	2
Butyl benzl phthalate	1000
2-chlorophenol	36
Di-n-butyl phthalate	700
Di-n-octyl phthalate	100
2,4-Dichlorophenol	20
Fluoranthene	280
Fluorene	280
Hexachloroethane	3
Hexachlorobenzene	1
Naphthalene	280

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Substance	Ground-water Protection Criteria in ug/l (ppb)
Pentachlorophenol	1
Phenanthrene	200
Phenol	4000
Pyrene	200
Inorganic Substances	
Antimony	6
Arsenic	50
Asbestos in mfl	7 (mfl)
Barium	1000
Beryllium	4
Cadmium	5
Chromium (total)	50
Copper	1300
Cyanide	200
Lead	15
Mercury	2
Nickel	100
Selenium	50
Silver	36

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Substance	Ground-water Protection Criteria in ug/l (ppb)
Thallium	5
Vanadium	50
Zinc	5000
Pesticides, PCB and Total Petroleum Hydrocarbons	
Aalachlor	2
Aldicarb	3
Atrazine	3
Chlordane	0.3
Dieldrin	0.002
2-4 D	70
Heptachlor epoxide	0.2
Heptachlor	0.4
Lindane	0.2
Methoxychlor	40
Simazine	4
Toxaphene	3
PCB's	0.5
Total Petroleum Hydrocarbon By EPA Method 418.1 or another EPA-	500

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Substance	Ground-water Protection Criteria in ug/l (ppb)
approved method acceptable to the Commissioner <u>(This method shall not be used for the analysis of samples collected after June 30, 2009)</u>	
<u>Extractable Total Petroleum Hydrocarbons by ETPH Analysis</u>	<u>250</u>

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Appendix D to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Surface-water Protection Criteria
 for Substances in Ground Water

Substance	Surface-Water Protection Criteria in ug/l (ppb)
Volatile Organic Substances	
Acrylonitrile	20
Benzene	710
Bromoform	10800
Carbon tetrachloride	132
Chlorobenzene	420000
Chloroform	14100
Dibromochloromethane	1020
1,2-Dichlorobenzene	170000
1,3-Dichlorobenzene	26000
1,4-Dichlorobenzene	26000
1,2-Dichloroethane	2970
1,1-Dichloroethylene	96
1,3-Dichloropropene	34000
Ethylbenzene	580000
Methylene chloride	48000

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Substance	Surface-Water Protection Criteria in ug/l (ppb)
1,1,2,2-Tetrachloroethane	110
Tetrachloroethylene	88
Toluene	4000000
1,1,1-Trichloroethane	62000
1,1,2-Trichloroethane	1260
Trichloroethylene	2340
Vinyl chloride	15750
Semivolatile Substances	
Acenaphthylene	0.3
Anthracene	1100000
Benzo(a)anthracene	0.3
Benzo(b)fluoranthene	0.3
Benzo(k)fluoranthene	0.3
Benzo(a)pyrene	0.3
Bis(2-chloroethyl) ether	42
Bis(2-chloroisopropyl) ether	3400000
Bis(2-ethyl hexyl)phthalate	59
Di-n-butyl phthalate	120000

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Substance	Surface-Water Protection Criteria in ug/l (ppb)
2,4-Dichlorophenol	15800
Fluoranthene	3700
Fluorene	140000
Hexachloroethane	89
Hexachlorobenzene	0.077
Phenanthrene	0.077
Phenol	92000000
Pyrene	110000
Inorganic Substances	
Antimony	86000
Arsenic	4
Asbestos (in mfl)	7 mfl
Beryllium	4
Cadmium	6
Chromium, trivalent	1200
Chromium, hexavalent	110
Copper	48
Cyanide	52
Lead	13

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Substance	Surface-Water Protection Criteria in ug/l (ppb)
Mercury	0.4
Nickel	880
Selenium	50
Silver	12
Thallium	63
Zinc	123
Pesticides and PCB	
Chlordane	0.3
Dieldrin	0.1
Endrin	0.1
Heptachlor epoxide	0.05
Heptachlor	0.05
Toxaphene	1
PCB's	0.5

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Appendix E to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Volatilization Criteria for Ground Water

Volatile Substance	Residential Volatilization Criteria for Ground water in parts per billion	Industrial/Commercial Volatilization Criteria for Ground water in parts per billion
Acetone	50000	50000
Benzene	215	530
Bromoform	920	3800
2-Butanone (MEK)	50000	50000
Carbon Tetrachloride	16	40
Chlorobenzene	1800	6150
Chloroform	287	710
1,2-Dichlorobenzene	30500	50000
1,3-Dichlorobenzene	24200	50000
1,4-Dichlorobenzene	50000	50000
1,1-Dichloroethane	34600	50000
1,2-Dichloroethane	21	90
1,1-Dichloroethylene	1	6
1,2-Dichloropropane	14	60
1,3-Dichloropropene	6	25
Ethyl benzene	50000	50000

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Volatile Substance	Residential Volatilization Criteria for Ground water in parts per billion	Industrial/Commercial Volatilization Criteria for Ground water in parts per billion
Ethylene dibromide (EDB)	4	16
Methyl-tert-butyl-ether	50000	50000
Methyl isobutyl ketone	50000	50000
Methylene chloride	50000	50000
Styrene	580	2065
1,1,1,2-Tetrachloroethane	12	50
1,1,2,2-Tetrachloroethane	23	100
Tetrachloroethylene	1500	3820
Toluene	23500	50000
1,1,1-Trichloroethane	20400	50000
1,1,2-Trichloroethane	8000	19600
Trichloroethylene	219	540
Vinyl chloride	2	2
Xylenes	21300	50000

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Appendix F to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Volatilization Criteria for Soil Vapor

Volatile Substance	Residential Volatilization Criteria for Soil Vapor in parts per million	<u>Residential Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>	Industrial/ Commercial Volatilization Criteria for Soil Vapor in parts per million	<u>Industrial/ Commercial Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>
Acetone	2400	<u>5701</u>	8250	<u>19597</u>
Benzene	1	<u>3</u>	113	<u>361</u>
Bromoform	1.5	<u>16</u>	6	<u>62</u>
2-Butanone (MEK)	2400	<u>7078</u>	8285	<u>24434</u>
Carbon Tetrachloride	1	<u>6</u>	2.7	<u>17</u>
Chlorobenzene	31	<u>143</u>	106	<u>488</u>
Chloroform	4.5	<u>22</u>	10.4	<u>51</u>
1,2-Dichlorobenzene	240	<u>1443</u>	818	<u>4918</u>

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Volatile Substance	Residential Volatilization Criteria for Soil Vapor in parts per million	<u>Residential Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>	Industrial/ Commercial Volatilization Criteria for Soil Vapor in parts per million	<u>Industrial/ Commercial Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>
1,3-Dichlorobenzene	240	<u>1443</u>	818	<u>4918</u>
1,4-Dichlorobenzene	950	<u>5712</u>	3270	<u>19661</u>
1,1-Dichloroethane	850	<u>3440</u>	3037	<u>12292</u>
1,2-Dichloroethane	1	<u>4</u>	1	<u>4</u>
1,1-Dichloroethylene	1	<u>4</u>	1	<u>4</u>
1,2-Dichloropropane	1	<u>5</u>	1	<u>5</u>
1,3-Dichloropropene	1	<u>5</u>	1	<u>5</u>
Ethyl benzene	1650	<u>7165</u>	5672	<u>24629</u>
Ethylene dibromide (EDB)	1	<u>8</u>	1	<u>8</u>
Methyl-tert-butyl-ether	1000	<u>3605</u>	3415	<u>12312</u>

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Volatile Substance	Residential Volatilization Criteria for Soil Vapor in parts per million	<u>Residential Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>	Industrial/ Commercial Volatilization Criteria for Soil Vapor in parts per million	<u>Industrial/ Commercial Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>
Methyl isobutyl ketone	140	<u>574</u>	480	<u>1966</u>
Methylene chloride	1200	<u>4168</u>	2907	<u>10098</u>
Styrene	8	<u>34</u>	28	<u>119</u>
1,1,1,2-Tetrachloroethane	1	<u>7</u>	1.5	<u>10</u>
1,1,2,2- Tetrachloroethane	1	<u>7</u>	1	<u>7</u>
Tetrachloroethylene	11	<u>75</u>	27	<u>183</u>
Toluene	760	<u>2864</u>	2615	<u>9855</u>
1,1,1-Trichloroethane	1310	<u>7148</u>	4520	<u>24662</u>
1,1,2-Trichloroethane	40	<u>218</u>	93	<u>507</u>
Trichloroethylene	7	<u>38</u>	16	<u>86</u>

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Volatile Substance	Residential Volatilization Criteria for Soil Vapor in parts per million	<u>Residential Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>	Industrial/ Commercial Volatilization Criteria for Soil Vapor in parts per million	<u>Industrial/ Commercial Volatilization Criteria for Soil Vapor in milligrams per cubic meter</u>
Vinyl chloride	1	<u>3</u>	1	<u>3</u>
Xylenes	500	<u>2192</u>	1702	<u>7461</u>

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Appendix G to
 Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies
 Equations, Terms and Values for Calculating Site-specific Volatilization Criteria
 for Ground Water and Soil Vapor

Volatilization Criteria for Ground Water

Site-Specific Volatilization Criteria for Ground Water may be calculated using the following equations:

$$GWC = TAC / (1000 \cdot VF_{GW})$$

$$VF_{GW} = \frac{H \cdot [(D_{EFFWS}/L_{GW}) / (ER \cdot L_B)] \cdot 1000}{1 + [(D_{EFF-WS}/L_{GW}) / (ER \cdot L_B)] + [(D_{EFF-WS}/L_{GW}) / ((D_{EFF-CRACK}/L_{CRACK}) \cdot \eta)]}$$

$$D_{EFFWS} = (h_{cap} + h_v) / [(h_{cap} / D_{EFF-CAP}) + (h_v / D_{EFF-S})]$$

$$D_{EFF-CAP} = D_{AIR} \cdot (\theta_{ACAP}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WCAP}^{3.33} / \theta_T^2)$$

$$D_{EFF-S} = D_{AIR} \cdot (\theta_{AS}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WS}^{3.33} / \theta_T^2)$$

$$D_{EFF-CRACK} = D_{AIR} \cdot (\theta_{ACRACK}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WCRACK}^{3.33} / \theta_T^2)$$

Where:

Term	Description	Units	Value
GWC	Ground Water Volatilization Criteria	ug/kg	calculated
TAC	Target Indoor Air Concentration	ug/m ³	**
VF _{GW}	Ground Water Volatilization Factor	mg/m ³	calculated
H	Henry's Law Constant	unitless	substance-specific
D _{EFFWS}	Effective Diffusion-Ground Water to Soil Surface	cm ² /s	calculated

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L_{GW}	Depth to Ground Water ($= h_{CAP} + h_V$)	cm	site-specific
h_{CAP}	Thickness of Capillary Fringe	cm	site-specific
h_V	Thickness of Vadose Zone	cm	site-specific
ER_R	Residential Enclosed Space Air Exchange Rate	1/s	.00014
ER_I	Industrial Enclosed Space Air Exchange Rate	1/s	.00023
$L_{B R}$	Residential Enclosed Space Volume/Infiltration Area Ratio	cm	site-specific
$L_{B I}$	Industrial Enclosed Space Volume/Infiltration Area Ratio	cm	site-specific
$D_{EFF-CRACK}$	Effective Diffusion through Foundation Cracks	cm^2/s	calculated
L_{CRACK}	Enclosed Space Foundation or Wall Thickness	cm	site-specific
η	Areal Fraction of Cracks in Foundations / Walls	unitless	.01
$D_{EFF-CAP}$	Effective Diffusion through Capillary Fringe	cm^2/s	calculated
D_{EFF-S}	Effective Diffusion through Soil (In Vapor Phase)	cm^2/s	calculated
D_{AIR}	Diffusion Coefficient in Air	cm^2/s	8.40E-02 or chemical specific
D_{WATER}	Diffusion Coefficient in Water	cm^2/s	1.00E-05 or chemical specific
θ_{ACAP}	Volumetric Air Content in Capillary Fringe	unitless	site-specific
θ_{AS}	Volumetric Air Content in Vadose Zone	unitless	site-specific

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Term	Description	Units	Value
θ_{ACRAC} K	Volumetric Air Content in Foundation/Wall Cracks	unitless	site-specific
θ_{WCAP}	Volumetric Water Content in Capillary Fringe	unitless	site-specific
θ_{WS}	Volumetric Water Content in Vadose Zone	unitless	site-specific
θ_{WCRAC} K	Volumetric Water Content in Foundation/Wall Cracks	unitless	site-specific
θ_T	Total Soil Porosity	unitless	site-specific

**See attached “Table of Target Air Concentrations”

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Volatilization Criteria for Soil Vapor

Site-Specific Volatilization Criteria for Soil Vapor may be calculated using the following equations:

$$SSVC = TAC / (1000 \cdot VF_{SSV})$$

$$VF_{SSV} = \frac{[(D_{EFF-S}/L_S)/(ER \cdot L_B)]}{1 + [(D_{EFF-S}/L_S)/(ER \cdot L_B)] + [(D_{EFF-S}/L_S)/(D_{EFF-CRACK}/L_{CRACK}) \cdot \eta]}$$

$$D_{EFF-S} = D_{AIR} \cdot (\theta_{AS}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WS}^{3.33} / \theta_T^2)$$

$$D_{EFF-CRACK} = D_{AIR} \cdot (\theta_{ACRACK}^{3.33} / \theta_T^2) + D_{WATER}/H \cdot (\theta_{WCRACK}^{3.33} / \theta_T^2)$$

Where:

Terms	Description	Units	Value
SSVC	Volatilization Criteria for Soil Vapor	mg/m ³ -air	calculated
TAC	Target Indoor Air Concentration	ug/m ³ -air	**
VF _{SSV}	Volatilization Factor for Subsurface Vapors	unitless	calculated
H	Henry's Law Constant	unitless	substance-specific
D _{EFF S}	Effective Diffusion through Soil (in Vapor Phase)	cm ² /s	calculated
L _S	Depth to Soil Vapor Sample	cm	site-specific
ER _R	Residential Enclosed Space Air Exchange Rate	1/s	.00014
ER _I	Industrial Enclosed Space Air Exchange Rate	1/s	.00023
L _{B R}	Residential Enclosed Space	cm	site-specific

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Terms	Description	Units	Value
	Volume/Infiltration Area Ratio		
L_{BI}	Industrial Enclosed Space Volume/Infiltration Area Ratio	cm	site-specific
$D_{EFF-CRACK}$	Effective Diffusion through Foundation Cracks	cm ² /s	calculated
L_{CRACK}	Enclosed Space Foundation or Wall Thickness	cm	site-specific
η	Areal Fraction of Cracks in Foundations / Walls	unitless	calculated
θ_{AS}	Volumetric Air Content in Vadose Zone	unitless	site-specific
θ_{ACRACK}	Volumetric Air Content in Foundation/Wall Cracks	unitless	site-specific
θ_{WS}	Volumetric Water Content in Vadose Zone	unitless	site-specific
θ_{WCRACK}	Volumetric Water Content in Foundation/Wall Cracks	unitless	site-specific
θ_T	Total Soil Porosity	unitless	site-specific

** See attached “Table of Target Air Concentrations”

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Table of Target Air Concentrations

Volatile Substance	Residential Target Indoor Air Concentration in micrograms per cubic meter	Industrial/Commercial Target Indoor Air Concentration in micrograms per cubic meter
Acetone	8.34 E02	1.17 E03
Benzene	3.25 E00	2.15 E01
Bromoform	2.21 E00	3.72 E00
2-Butanone (MEK)	1.04 E03	1.46 E03
Carbon Tetrachloride	1.00 E00	1.00 E00
Chlorobenzene	2.09 E01	2.92 E01
Chloroform	3.00 E00	3.00 E00
1,2-Dichlorobenzene	2.09 E02	2.92 E02
1,3-Dichlorobenzene	2.09 E02	2.92 E02
1,4-Dichlorobenzene	8.34 E02	1.17 E03
1,1-Dichloroethane	5.21 E02	7.30 E02
1,2-Dichloroethane	9.36 E-02	1.57 E-01
1,1-Dichloroethylene	4.87 E-02	8.18 E-02
1,2-Dichloropropane	1.28 E-01	2.15 E-01
1,3-Dichloropropene	6.58 E-02	1.10 E-01
Ethyl benzene	1.04 E03	1.46 E03

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Volatile Substance	Residential Target Indoor Air Concentration in micrograms per cubic meter	Industrial/Commercial Target Indoor Air Concentration in micrograms per cubic meter
Ethylene dibromide (EDB)	1.11 E-02	1.86 E-02
Methyl-tert-butyl-ether	5.21 E02	7.30 E02
Methyl isobutyl ketone	8.34 E01	1.17 E02
Methylene chloride	6.00 E02	6.00 E02
Styrene	5.00 E00	7.17 E00
1,1,1,2-Tetrachloroethane	3.29 E-01	5.52 E-01
1,1,2,2-Tetrachloroethane	4.20 E-02	7.05 E-02
Tetrachloroethylene	1.10 E01	1.10 E01
Toluene	4.17 E02	5.84 E02
1,1,1-Trichloroethane	1.04 E03	1.46 E03
1,1,2-Trichloroethane	3.00 E01	3.00 E01
Trichloroethylene	5.00 E00	5.00 E00
Vinyl chloride	2.90 E-02	4.87 E-02
Xylenes	3.13 E02	4.38 E02

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[Section 4.]Section 22a-133q-1 of [The]the Regulations of Connecticut State Agencies are amended [by adding a new section 22a-133q-1]to read as follows:

22a-133q-1 Environmental [land use restrictions]Land Use Restrictions

(a) Definitions.

For the purpose of this section, the definitions of the terms shall be the same as the definitions of terms in section 22a-133k-1 of the Regulations of Connecticut State Agencies. In addition, the following definitions shall apply:

[“]Class A-2 survey[”] means a first survey or independent re-survey which conforms to the “Recommended Standards for Surveys and Maps in the State of Connecticut Adopted on September 24, 1992, effective January 1, 1993 by the Connecticut Association of Land Surveyors, Inc. ” and which has been prepared by a land surveyor licensed in the State of Connecticut; complies with the minimum detail requirements for urban land title surveys adopted by the American Land Title Association and American Congress on Surveying and Maps (such requirements shall include all optional items on Table A thereof, exclusive of Items #1 (Monumentation), #5 (Contours in Elevation), #7b-2 (Other Data), and #12; and specifically shows (1) the boundaries of the Property by course and distance, together with the metes and bounds description corresponding to such survey; (2) the location of all improvements; (3) the location and width of all easements, utility lines, rights of way and building setback lines, with references to the book and page numbers for the instruments granting the same; (4) the location of all encroachments and restrictions, if any affecting the property; (5) the location of the portion of the parcel which is the subject of the proposed environmental land use restriction and (6) the latitude and longitude of the center of the subject property.

[“]Environmental land use restriction[”] means [(1)] a declaration of environmental land use restriction in the application form set forth in Appendix 1 to section 22a-133q-1 of the Regulations of Connecticut State Agencies[, or, in the case of an environmental land use restriction approved by a licensed environmental professional pursuant to P.A. 95-190, a declaration of environmental land use restriction in the form set forth in Appendix 2 to section 22a-133q-1 of the Regulations of Connecticut State Agencies; (2) a class A-2 survey of the subject parcel or portion thereof; (3) a certificate of title demonstrating that the subordination agreement(s) required under section 22a-133o of the General Statutes as amended by P.A. 95-190 has been

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recorded; and (4) a copy of the decision document prepared in accordance with subsection (f) of this section].

"Licensed environmental professional" means an environmental professional licensed in accordance with section [4 of P.A. 95-183.][22a-133v of the General Statutes](#).

(b) Applicability.

This section shall govern the execution and recording of environmental land use restrictions in accordance with section 22a-133n to 22a-133s, inclusive, of the General Statutes. Except as otherwise provided by section 22a-133o of the General Statutes, no environmental land use restriction shall be effective unless and until it has (1) been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such restriction; and (2) been recorded on the land records in the municipality in which the subject parcel is located.

(c) Publishing Notice of an Environmental Land Use Restriction.

(1) The owner of the parcel which is the subject of a proposed environmental land use restriction shall, except as specified in subdivision (1) of this subsection, publish in at least one newspaper of general circulation in the area affected by the proposed environmental land use restriction, notice of intent to record an environmental land use restriction. Such notice shall include the name and address of such owner, the address of the parcel or a brief description of its location, a brief description of the purpose of the proposed environmental land use restriction, the name and address of an individual from whom interested persons may obtain a copy of the proposed use restriction, and a statement that public comments on the proposed environmental land use restriction may be submitted in writing to the Commissioner of [Energy and Environmental Protection](#), 79 Elm Street, Hartford, CT 06106 for thirty days after the date of publication of the notice.

(2) Notice of a proposed environmental land use restriction need not be published if (A) such restriction provides solely that the use of the subject parcel or portion thereof is restricted to industrial or commercial activities, and (B) the municipal zoning of such parcel limits the parcel to such use.

(d) Proposing an Environmental Land Use Restriction.

When submitting a proposed environmental land use restriction to the Commissioner for his

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review and approval, the owner of the affected parcel of land shall simultaneously submit a completed application form furnished by the Commissioner and the following documents:

- (1) a draft declaration of environmental land use restriction in the form set forth in Appendix 1[or 2] to section 22a-133q-1 of the Regulations of Connecticut State Agencies, as applicable;
- (2) a Class A-2 survey of the parcel or portion thereof which is the subject of the proposed environmental land use restriction;
- (3) a proposed decision document in accordance with subsection (f) of this section; and
- (4) a certified copy of the notice required by subsection (c) of this section, as such notice appeared in the newspaper or newspapers.

(e) Approval of an Environmental Land Use Restriction by the Commissioner.

After the close of the public comment period, the Commissioner shall decide whether to approve an environmental land use restriction. When making such decision the Commissioner shall consider: (1) all comments submitted; (2) whether such restriction will adequately protect human health and the environment from pollution at or emanating from the subject release area; and (3) whether such restriction conforms in all respects to the requirements of this section and sections 22a-133n through 22a-133s of the General Statutes.

(f) Decision Document.

Any environmental land use restriction approved pursuant to this section shall include a decision document prepared in accordance with this section. The decision document shall contain a detailed written description of:

- (1) the type and location of pollutants present in soil or ground water on or underlying the parcel or portion thereof which is the subject of the environmental land use restriction;
- (2) the provisions of the environmental land use restriction, including any limitations on the use of such parcel or portion thereof; and
- (3) description of the reason for the environmental land use restriction, including an explanation why such restriction is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

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The decision document shall also contain a summary of all comments on the proposed environmental land use restriction received following the publication of notice in accordance with subsection (c) of this section and a brief response to each comment. The decision document shall be signed by the Commissioner or, in the case of a restriction approved pursuant to [\[P.A. 95-190\]section 22a-133y of the General Statutes](#), a licensed environmental professional to indicate approval of the decision document.

(g) Approval of an Environmental Land Use Restriction by a Licensed Environmental Professional.

When an environmental land use restriction is to be approved by a licensed environmental professional in accordance with [\[P.A. 95-190\]section 22a-133y of the General Statutes](#), the licensed environmental professional shall review the documents listed in subsection [\(d\) and evaluate the proposed environmental land use restriction in accordance with subsection \(e\)](#), [\[shall\]](#) prepare a written approval of such restriction, and shall retain documentation of all documents reviewed by him. A licensed environmental professional shall not approve any environmental land use restriction unless it is consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies.

(h) Subordination Agreements.

Whether the Commissioner or a licensed environmental professional approves an environmental land use restriction, [\[prior to\] within seven \(7\) days after receiving on the environmental land use restriction the signature of the Commissioner or licensed environmental professional, \[recording such environmental land use restriction on the municipal land records,\]](#) the owner of the subject parcel shall submit to the Commissioner, [\[for his review and written approval: \(1\) copies of each subordination agreement, properly executed,\]as](#) required under section 22a-133o of the General Statutes, [\[; or \(2\)\]](#) a certificate of title indicating that each person holding an interest in such parcel or any part thereof, including without limitation, each mortgagee, lessee, lienor and encumbrancer, has irrevocably subordinated such interest to the environmental land use restriction.

(i) Recording an Environmental Land Use Restriction.

After the Commissioner or a licensed environmental professional, as applicable, has approved an environmental land use restriction in accordance with this section, the owner of the subject parcel shall record such restriction in accordance with this section and all other applicable law.

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(j) Mailing Notice of an Environmental Land Use Restriction.

After an environmental land use restriction has been recorded, the owner of the subject parcel shall send, by certified mail, return receipt requested, a copy of such environmental land use restriction to (1) the chief administrative officer in the town where the parcel is located; (2) the chairman of the municipal planning, zoning or planning and zoning commission; (3) the local director of health; and (4) any person who submitted comments on such environmental use restriction.

(k) Release.

The owner of any parcel which is subject to an environmental land use restriction recorded in accordance with this section may request that the Commissioner release such parcel, in whole or in part, from the limitations of such restriction. If the Commissioner grants such request, the owner of such parcel shall, in accordance with law, record such release on the land records in the municipality where such parcel is located. No release of an environmental land use restriction shall be effective unless and until it has been submitted to the Commissioner for his review and approved by him as evidenced by his signature on the original of the instrument setting forth such release, and has been recorded on the land records of the municipality in which such parcel is located.

(l) Effect of Court Ruling on Environmental Land Use Restriction.

In the event that a court of competent jurisdiction rules that any portion of an environmental land use restriction recorded pursuant to this section is invalid, the owner of the subject parcel shall submit a copy of such restriction and such ruling to the Commissioner. The Commissioner shall review such restriction, and if he determines that such restriction would not have been approved without the invalid portion, he shall give notice that the environmental land use restriction is terminated as evidenced by his signature on in instrument setting forth such termination, and shall record such instrument on the land records of the municipality where such parcel is located. Promptly thereafter, the owner of the subject parcel shall take actions consistent with sections 22a-133k-1 through 22a-133k-3, inclusive, of the Regulations of Connecticut State Agencies to remediate the subject parcel or portion thereof. If the Commissioner determines in writing that the environmental land use restriction would have been approved without the invalid portion, the valid portion of the environmental land use restriction shall remain in full force and effect.

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Appendix 1 to
Section 22a-133q-1 of the Regulations of Connecticut State Agencies
Application Form of Environmental Land Use Restriction for Commissioner's Approval
or Licensed Environmental Professional's Approval

Instructions: Any environmental land use restriction pursuant to R.C.S.A. section 22a-133q-1 shall be in the following [form. The appropriate information shall be inserted in the blanks shown, and the appropriate language shall be selected from the choices shown in brackets, or if none of the choices addresses the specific circumstance, substitute language shall be inserted.]application form. This form shall be used for environmental land use restrictions approved by the Commissioner or Licensed Environmental Professional pursuant to the Regulations of Connecticut State Agencies section 22a-133q-1. The appropriate information shall be inserted into the parentheses "{}".

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION
AND GRANT OF EASEMENT

This Declaration of Environmental land use restriction and Grant of Easement [is made this day of , 1995 , between (“the Grantor”) and the

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Commissioner of Environmental Protection of the State of Connecticut ("the Grantee").]is made this {day} day of {month}, {year}, between {Grantor's legal name} (the "Grantor") and the Commissioner of the Department of Energy and Environmental Protection of the State of Connecticut (the "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the ["Property"]) [known as [Address/Location located in the Town of in County] [designated as Lot , Block on the tax map of the Town of in County], more particularly described on Exhibit A which is attached hereto and made a part hereof; and]described below:

(NEW)

Street address: {Street address of property}
City/Town: {City and Town of property}
State: Connecticut
Assessor's Map{insert Map designation} Block {insert Block designation} Lot {insert Lot designation} And/or Assessors' Account Number {insert Assessors' Account Number}
Volume and Page of Deed: {Volume and Page of Deed }

A description of the property is attached hereto as Exhibit A, and which is made a part hereof; and

WHEREAS, the Grantee has the authority to enter into this declaration of environmental land use restriction pursuant to sections 22a-5, 22a-6, and 22a-133o et seq. of the General Statutes; and

[WHEREAS, the Grantee has determined that the environmental land use restriction set forth below is consistent with regulations adopted by him pursuant to Section 22a-133k of the Connecticut General Statutes; and

WHEREAS, the Grantee has determined that this environmental land use restriction will effectively protect public health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this Environmental land use restriction is contained in the document attached hereto as Exhibit B (the "Decision

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Document”) which is made a part hereof; and]

(NEW) Instructions - Select one of the two choices below by checking the applicable check box.

If the Commissioner of Department of Energy and Environmental Protection signs the environmental land use restriction:

WHEREAS, the Grantee has determined that the environmental land use restriction set forth below is consistent with regulations adopted pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Grantee has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document) which is made a part hereof; and

If a Licensed Environmental Professional signs the environmental land use restriction pursuant to section 22a-133y of the General Statutes:

WHEREAS, remediation of the property has been conducted in accordance with section 22a-133y of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that the environmental land use restriction set forth below is consistent with regulations adopted by the Commissioner of Energy and Environmental Protection pursuant to section 22a-133k of the General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that this environmental land use restriction will effectively protect human health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction is contained in the document attached hereto as Exhibit B (the Decision Document)

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which is made a part hereof; and

WHEREAS, the property or portion thereof identified in the class A-2 survey ([“the Subject Area”]) which survey is attached hereto as Exhibit C which is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards to human health and the environment, and in accordance with the Decision Document, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this environmental land use restriction to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor’s successors and assigns;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the Decision Document, the purpose of this [Environmental]environmental land use restriction is to [assure [that the Subject Area is not used for residential activities], [that ground water at the Subject Area is not utilized for drinking purposes], [that humans are not exposed to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive] [that buildings are not constructed over soils or ground water at the Subject Area polluted with substances in concentrations exceeding the volatilization criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that the engineered control described in Exhibit D attached hereto is not disturbed and is properly maintained to prevent human exposure to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, and/or that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.]]assure that the use and activity at the property and the Subject Area is restricted in accordance with the requirements of the Decision Document attached hereto as Exhibit B.

2. Restrictions Applicable to the Subject Area: In furtherance of the purposes

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of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Subject Area are restricted [as follows:

[A. Use. No residential use of the Subject Area shall be permitted.

B. Ground water. Ground water at the Subject Area shall not be used for drinking or other domestic purposes.

C. Disturbances. Soil at the Subject Area shall not be disturbed in any manner, including without limitation,

D. Construction. No building shall be constructed on the Subject Area.]]

in accordance with the requirements of the Decision Document, attached hereto as Exhibit B. Such restrictions shall remain in effect unless and until a release is obtained under paragraph 5 below.

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

i. Create a risk of migration of pollutants or a potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain pollutants or limit human exposure to pollutants.

4. Emergencies. In the event of an emergency which presents a significant risk to human health or the environment, the application of [Paragraph]Paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending such [Paragraph]Paragraphs and the Grantor:

i. Immediately notifies the Grantee of the emergency;

ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;

iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and

iv. After the emergency is abated, [Implements]implements a plan approved in writing by the Grantee, on a schedule approved by the Grantee, to ensure that the Subject Area is remediated in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, or restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of the Subject Area. Grantor shall not

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make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of [any of]the Subject Area inconsistent with this [Environmental land use restriction unless the Grantor has first recorded the Grantee’s written approval of such alteration upon the land records of [name of municipality where Subject Area is located]environmental land use restriction until a release has been approved by the Commissioner and such release is either recorded on the land records in the municipality where such parcel is located or the requirement to record such a release is waived by the Commissioner pursuant to section 22a-133o of the General Statutes. The Grantee shall not approve any[such alteration and shall not] permanent release of the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee’s satisfaction that Grantor has remediated the Subject Area in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, [his]the Grantee’s agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, a non-exclusive easement (the [“]Easement[”]) over the Subject Area and over such other parts of the Property as are necessary for access to the Subject Area or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Area. Pursuant to this Easement, the Grantee, [his]the Grantee’s agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the Grantee deems necessary for any one or more of the following purposes:

- i. Ensuring that use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction;
- ii. Ensuring that any remediation implemented complies with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive;
- iii. Performing any additional investigations or remediation necessary to protect human health and the environment;
- iv. Ensuring the structural integrity of any engineering controls described in Exhibit B of this [Environmental]environmental land use restriction and Grant of Easement and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants.

7. Notice and Time of Entry onto Property. Entry onto the Property by the Grantee pursuant to this Easement shall be upon reasonable notice and at reasonable times,

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provided that entry shall not be subject to these limitations if the Grantee determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this environmental land use restriction and Grant of Easement. The failure to include such provision shall not affect the validity or applicability to the Property of this environmental land use restriction and Grant of Easement.

9. Persons Entitled to Enforce Restrictions. The restrictions in this environmental land use restriction on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the General Statutes.

10. Severability and Termination. If any court of competent jurisdiction determines that any provision of this environmental land use restriction [or]and Grant of Easement is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the [judgment]Judgment of the Court to the Grantee in accordance with R.C.S.A. section 22a-133q-1(1). This environmental land use restriction shall be terminated if the Grantee provides notification pursuant to R.C.S.A. section 22a-133q-1(l).

11. Binding Effect. All of the terms, covenants and conditions of this environmental land use restriction and grant of easement shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

12. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and [22a-133o-1]22a-133q-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this environmental land use restriction.[.]

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(NEW)

Signature Page Follows

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(NEW)The undersigned certifies that he/she is fully authorized to sign this environmental land use restriction on behalf of the Grantor.

In witness whereof, I/We, {Insert Grantor's name}, have hereunto set our hands this {Day} day of {Month}, {Year}.

Grantor:

Name: {insert name of individual or entity, as applicable}

By:{insert signature of Grantor or duly authorized agent for Grantor}

Date: {insert date of signature}

Name: {insert printed or typed name of Grantor or duly authorized agent for Grantor}

Its Duly Authorized: {insert title of duly authorized agent for Grantor, if applicable}

Mailing Address:

Street Address:{insert Street Address}

City/Town: {insert City or Town}

State and Zip Code {insert State and Zip Code}

Witnesses:

{Signature _____}
Signature

{Printed/typed name _____}
Printed/typed name

{Signature _____}
Signature

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{Printed/typed name _____}
Printed/typed name

Instructions Notarization Language for Grantor Acknowledgement - select appropriate notarization language from one of the choices below by checking the applicable check box and providing the information required.

If the Grantor is an individual:

State of { _____ }
County of { _____ }

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) [choose is or are] subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date
Commission Expires {insert date}

OR

If the Grantor is a Corporation:

State of { _____ }
County of { _____ }

On this {insert date} day of {insert month}, {insert year} before me {name of notary or

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Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself /herself to be the {insert title of officer} of {insert name of corporation}, a corporation, and that he/she, as such {insert title of officer}, being authorized to do so, executed the forgoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as {insert title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date
Commission Expires {insert date}

If the Grantor is a Limited Liability Company:

State of {_____}
County of {_____}

On this {insert date} day of {insert month}, {insert year} before me {name of notary or Commissioner of the Superior Court}, the undersigned officer, personally appeared {name of officer}, who acknowledged himself/herself to be the {insert title of officer} of {insert name of limited liability company}, a (member managed or manager managed) limited liability company, and that he/she, as such {insert title of officer}, being authorized to do so, executed the forgoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as {insert title of officer}.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court} Date
Commission Expires {insert date}

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If the choices above are not appropriate, provide appropriate language below:

{insert appropriate notarization language for an Acknowledgement}

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Instructions – Grantee Signature Block - Select one of the two choices below, as applicable;

This choice is used for all environmental land use restrictions except those approved pursuant to section 22a-133y of the General Statutes.

Grantee: The Grantee, the Commissioner of Energy & Environmental Protection or by the Commissioner's duly designated agent, {Insert name and title.}

By: {insert signature of the Grantee or duly authorized agent for Grantee}

Date: {insert date of signature}

Name: {insert printed or typed name of duly authorized agent for Grantee}

Its Duly Authorized: {insert title of duly authorized agent for Grantee}

Mailing Address: {Bureau of Water Protection & Land Reuse
Connecticut Department of Energy &
Environmental Protection
79 Elm Street
Hartford, CT 06106}

This choice is used solely for environmental land use restrictions approved pursuant to section 22a-133y of the General Statutes.

Grantee: The Grantee, the Commissioner of Energy and Environmental Protection, by the undersigned Licensed Environmental Professional authorized as a duly designated agent pursuant to section 22a-133y of the Connecticut General Statutes.

Licensed Environmental Professional as Duly Authorized Agent for Grantee, the Commissioner of Energy & Environmental Protection:

By: {insert signature of the Licensed Environmental Professional}

Date: {insert date of signature}

Name: {insert printed or typed name of Licensed Environmental Professional }

Its Duly Authorized Agent: Licensed Environmental Professional authorized pursuant to section 22a-133y of the Connecticut General

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Grantee Mailing Address: {Bureau of Water Protection & Land Reuse
Connecticut Department of Energy &
Environmental Protection
79 Elm Street
Hartford, CT 06106}

Information for Duly Authorized Agent for Grantee (Licensed Environmental Professional): Name: {Insert name of Licensed Environmental Professional
License Number {insert License Number}
Title, if applicable {insert title}
Company, if applicable {insert name of Company}
Mailing Address [insert mailing address]
City/Town, State, Zip Code}{insert City/Town, State, and Zip Code}

Witnesses:

{Signature _____}
Signature

{Printed/typed name _____}
Printed/typed name

{Signature _____}
Signature

{Printed/typed name _____}
Printed/typed name

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Instructions Notarization Language for Duly Authorized Agent for Grantee (Licensed Environmental Professional):-

State of { _____ }
County of { _____ }

On this {insert date} day of {insert month}, {insert year} before me, {name of notary or Commissioner of the Superior Court} the undersigned officer, personally appeared {name of individual or individuals}, known to me (or satisfactorily proven) to be the person(s) whose name(s) [choose is or are] subscribed to the within instrument and acknowledged that {he/she/they} executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

{Choose Notary Public or Commissioner of the Superior Court}
Date Commission Expires {insert date}

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Appendix 2 to Section 22a-133q-1 of the Regulations of Connecticut State Agencies Form of Environmental Land Use Restriction for Licensed Environmental Professional's Approval is repealed.

[Appendix 2 to
Section 22a-133q-1 of the Regulations of Connecticut State Agencies
Form of Environmental Land Use Restriction for Licensed Environmental Professional's
Approval

Instructions: Any environmental land use restriction pursuant to R.C.S.A. section 22a-133q-1 shall be in the following form. The appropriate information shall be inserted in the blanks shown, and the appropriate language shall be selected from the choices shown in brackets, or if none of the choices addresses the specific circumstance, substitute language shall be inserted.

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION
AND GRANT OF EASEMENT

This Declaration of environmental land use restriction and Grant of Easement is made this day of , 1995 , between (“the Grantor”) and the Commissioner of Environmental Protection of the State of Connecticut (the Grantee”).

W I T N E S S E T H:

WHEREAS, Grantor is the owner in fee simple of certain real property (the “Property”) known as [Address/Location located in the Town of in County] [designated as Lot , Block on the tax map of the Town of in

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County], more particularly described on Exhibit A which is attached hereto and made a part hereof; and

WHEREAS, remediation of the Property has been conducted in accordance with Public Act 95-190; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that the environmental land use restriction set forth below is consistent with regulations adopted by the Commissioner of Environmental Protection pursuant to Section 22a-133k of the Connecticut General Statutes; and

WHEREAS, the Licensed Environmental Professional whose signature appears below has determined that this environmental land use restriction will effectively protect public health and the environment from the hazards of pollution; and

WHEREAS, the written approval of this Environmental land use restriction by the Licensed Environmental Professional whose signature appears below is contained in the document attached hereto as Exhibit B (the "Decision Document") which is made a part hereof; and

WHEREAS, the property or portion thereof identified in the class A-2 survey ("the Subject Area") which survey is attached hereto as Exhibit C which is made a part hereof, contains pollutants; and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards to human health and the environment, and in accordance with the Decision Document, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this environmental land use restriction to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the Decision Document, the purpose of this Environmental land use restriction is to assure [that the Subject Area is not used for residential activities], [that ground water at the Subject Area is not utilized for drinking purposes], [that humans are not exposed to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive] [that buildings are not constructed over soils or ground water at the Subject Area

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polluted with substances in concentrations exceeding the volatilization criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive], [that the engineered control described in Exhibit D attached hereto is not disturbed and is properly maintained to prevent human exposure to soils at the Subject Area polluted with substances in concentrations exceeding the direct exposure criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, and/or that water does not infiltrate soils at the Subject Area polluted with substances in concentrations exceeding the pollutant mobility criteria established in R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive].

2. Restrictions Applicable to the Subject Area: In furtherance of the purposes of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Subject Area are restricted as follows:

[A. Use. No residential use of the Subject Area shall be permitted.

B. Ground water. Ground water at the Subject Area shall not be used for drinking or other domestic purposes.

C. Disturbances. Soil at the Subject Area shall not be disturbed in any manner, including without limitation,

D. Construction. No building shall be constructed on the Subject Area.]

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

i. Cause migration of pollutants or create a potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any engineering controls or other structures designed or utilized at the Property to contain pollutants or limit human exposure to pollutants.

4. Emergencies. In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraph 3 above may be suspended, provided such risk cannot be abated without suspending such Paragraph and the Grantor:

i. Immediately notifies the Grantee of the emergency;

ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;

iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and

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iv. Implements a plan approved in writing by the Grantee, on a schedule approved by the Grantee, to ensure that the Subject Area is remediated in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive, or restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of Subject Area. Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Subject Area inconsistent with this Environmental land use restriction unless the Grantor has first recorded the Grantee's written approval of such alteration upon the land records of [name of municipality where Subject Area is located]. The Grantee shall not approve any such alteration and shall not release the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee's satisfaction that Grantor has remediated the Subject Area in accordance with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, his agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, a non-exclusive easement (the "Easement") over the Subject Area and over such other parts of the Property as are necessary for access to the Subject Area or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Area. Pursuant to this Easement, the Grantee, his agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the Grantee deems necessary for any one or more of the following purposes:

I. Ensuring that use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction;

ii. Ensuring that any remediation implemented complies with R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive;

iii. Performing any additional investigations or remediation necessary to protect human health and the environment;

[iv. Ensuring the structural integrity of any engineering controls described in this Environmental land use restriction and Grant of Easement and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants.]

7. Notice and Time of Entry onto Property. Entry onto the Property by the Grantee pursuant to this Easement shall be upon reasonable notice and at reasonable times,

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provided that entry shall not be subject to these limitations if the Grantee determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this environmental land use restriction and Grant of Easement. The failure to include such provision shall not affect the validity or applicability to the Property of this environmental land use restriction and Grant of Easement.

9. Persons Entitled to Enforce Restrictions. The restrictions in this environmental land use restriction on use, occupancy, and activity of and at the Property shall be enforceable in accordance with section 22a-133p of the General Statutes.

10. Severability and Termination. If any court of competent jurisdiction determines that any provision of this environmental land use restriction or Grant of Easement is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the judgement of the Court to the Grantee in accordance with R.C.S. A. section 22a-133q-1(1). This environmental land use restriction shall be terminated if the Grantee provides notification pursuant to R.C.S.A. section 22a-133q-1(l).

11. Binding Effect. All of the terms, covenants and conditions of this environmental land use restriction and grant of easement shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

12. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and 22a-133o-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this environmental land use restriction.]

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Statement of Purpose

Statement of Purpose: This proposal amends the Remediation Standard Regulations, sections 22a-133k-1 through 22a-133k-3, inclusive, and the Environmental Land Use Restriction Regulations, section 22a-133q-1 of the Regulations of Connecticut State Agencies (“RCSA”). The proposed amendments should assist site remediation and redevelopment efforts and will not affect any other existing regulations or law.

The existing Remediation Standard Regulations or “RSRs” identify the technical standards for the remediation of environmental pollution at hazardous waste sites and other properties that have been subject to a spill, release or discharge of hazardous wastes or hazardous substances. They also identify numeric standards for remediation of specific pollutants and the procedures and standards for variances and alternatives to such standards.

The purpose of the proposed amendments to the RSRs is to aid site cleanup and redevelopment without compromising the protection of public health and environmental quality. As a result, these amendments identify necessary technical and policy updates based on information gathered and lessons learned through the implementation of the existing regulations. The proposed amendments seek to remove unintended barriers to remediating sites by providing creative new directions and opportunities, clarifying regulatory language and addressing concerns expressed by the regulated community. At this time, we have chosen not to comprehensively revise the RSRs but rather propose selective amendments that are responsive to the requests of the regulated community. The proposed amendments will work synergistically with other statutory and regulatory site-related changes and proposals that are either now or soon to be promulgated and/or otherwise implemented.

Technical amendments to these regulations include:

- Identifying a definition, test methodology and criteria for petroleum hydrocarbons that provides better characterization of the nature of the contamination;
- Expanding, in specific settings, the definition of “inaccessible soil” to render inaccessible certain substances found in polluted fill that are normally found in asphalt, to be covered with three inches of asphalt or

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concrete, thereby allowing the same level of environmental protection at a lower cost option;

- Updating the numeric direct exposure criteria for the constituent lead to be equivalent to the federal standard based on updated toxicological data;
- Deleting the pollutant mobility criteria (PMC) exception to comply with the more stringent GA PMC in certain GB areas;
- Clarifying the requirement that polluted fill containing any combination of coal ash, wood ash, coal fragments, or asphalt paving fragments may contain volatile organic substances not exceeding the PMC for such substances;
- Providing a PMC exception, under certain conditions, for pollutants, other than volatile substances, based upon representative ground water sampling;
- Providing an alternative in applying the direct exposure criteria (DEC) and PMC by deleting the criterion should single sample results exceed two times the criteria and relying on use of acceptable statistical methods; and
- Increasing the flexibility of engineered controls by tailoring such controls to the applicable DEC or PMC demonstration.

Policy amendments to the RSRs include:

- Changes to the applicability section to clarify when and how the regulations apply by replacing references to public acts with the applicable statutory citation;
- Identification that approvals must be requested on forms prescribed by the commissioner (thereby providing application clarity and a standardized work product to increase review efficiency);
- Correcting the risk-based formula for calculating the residential DEC for any additional polluting substance, correcting the risk-based formula used to derive the ground-water protection criteria for non-carcinogenic additional polluting substances and updating the conversion factor used in such formula;
- Providing exceptions for the following: certain incidental sources of polluted soil resulting from the normal use of motor vehicles; certain incidental sources of polluted soil resulting from the use of asphalt paving; and releases of certain pollutants in ground water from leaking water supply distribution systems;
- Deletion of the prohibition on using a statistical compliance demonstration when excavation is the remedy, and deletion of the prohibition on who may

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request a widespread polluted fill variance as long as the applicant did not illegally dispose of such fill; and

- Restructuring the compliance and post-compliance ground water monitoring sections to allow LEP self-implementation of these sections.

The existing Environmental Land Use Restriction or “ELUR” regulations identify the procedures and standards for the use and recording of environmental land use restrictions thereby preventing the use of polluted real property for certain purposes or prohibiting certain activities on such property. The purpose of the amendments to these regulations is to clarify requirements and incorporate procedural changes that streamline the process of utilizing an ELUR on polluted real property.

The proposed RSR and ELUR amendments have no legal effects or legal impact on other existing regulations or laws.