

Environmental Matters Alert

CT DEEP CHANGES ENVIRONMENTAL LAND USE RESTRICTIONS PROCESS

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BACKGROUND

On February 16, 2021, the Connecticut Department of Energy and Environmental Protection (“DEEP”) passed regulations that impose new conditions on owners of real property with recorded Environmental Land Use Restrictions (“ELURs”). The February regulations revised the process for obtaining an ELUR, and more importantly adopted a new form of use restriction called a Notice of Activity and Use Limitation (“NAUL”).

THE ELUR

The environmental remediation of properties in Connecticut often uses ELURs as a means for reducing the cleanup burden. The more common ELURs prohibit residential use of property, or prohibit the exposure of contaminated soils that are under buildings and pavement. The process for preparing an ELUR and getting it approved by the DEEP has been costly and cumbersome. Once approved by the DEEP, the ELUR is recorded on the land records.

THE NAUL

The process for obtaining and recording a NAUL is less burdensome than an ELUR, largely because the NAUL can be issued by the Licensed Environmental Professional hired to do the remediation. However, NAULs can be used only for specific types of contamination. If you are considering the option of an ELUR to complete your remediation project, ask your consultant or counsel whether a NAUL might be more appropriate.

NEW OBLIGATIONS

While the new regulations are largely prospective, the regulations also impose two new obligations on owners

of real property with *pre-existing* recorded ELURs. **First**, effective April 17, 2021, these owners have to prepare an “EUR Fact Sheet” using a form provided by the DEEP to address both types of environmental use restrictions. The EUR Fact Sheet contains information that must be posted on the property informing occupants of the presence of the ELUR. The EUR Fact Sheet also must be provided to any contractors who might conduct work in the ELUR area, and must be provided to any purchaser of the property. **Second**, beginning this year, the property owner must conduct an annual inspection between April 1 and July 31 and then certify on a form provided to DEEP that the ELUR remains protective of the environment and continues to comply with the EUR Fact Sheet. Beginning in 2025, and at five year intervals thereafter, a more comprehensive inspection of the ELUR area must be performed by a Licensed Environmental Professional between April 1 and September 30.

If you own real property in Connecticut that has a recorded ELUR on it, we recommend that you prepare the EUR Fact Sheet as soon as possible and then conduct the annual inspection. If you need any assistance with this process, please do not hesitate to contact us or your environmental professional.

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