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## Connecticut DEEP seeks to Overhaul Remediation Standards– Widespread Polluted Fill

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*On July 8, 2019 the Connecticut Department of Energy and Environmental Protection (“DEEP”) proposed an overhaul to its Remediation Standard Regulations (“RSRs”). These proposed amendments, often referred to as “Wave 2,” will significantly alter Connecticut’s remediation programs if they are approved. DEEP is seeking public comments on these proposed regulatory changes through October 7, 2019, and will be hosting public information sessions in July, August and September.*

*Because DEEP’s regulatory changes are so sweeping, their scope cannot be captured in a single Alert. Therefore, for the next several weeks, Pullman & Comley’s Environmental Practice Group will be issuing a series of Alerts, each one focusing on one aspect of the changes to the RSRs. Today’s Alert focuses on the regulatory changes associated with Widespread Polluted Fill.*

As with many of the issues confronted by the proposed changes to the RSRs, widespread polluted fill has often challenged property developers. Connecticut communities have the redevelopment of significant acreage hindered by fill placed on properties long ago when the content of that fill was either unknown or misunderstood or regulatory standards for the fill were nonexistent. The DEEP’s proposed changes to the RSRs may ease the challenges of dealing with this problem.

First, it should be made clear that the definition of polluted fill now includes sediment, and that the definition notes that the polluting substances must have been contained in the fill at the time it was placed.

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A variance from the pollutant mobility criteria may be granted for “extensive polluted fill” if:

- The fill does not contain volatile organic substances above the pollutant mobility criteria;
- The fill does not affect a drinking water resource;
- Compliance with the direct exposure criteria has been achieved;
- Any additions to the fill after its original placement are remediated to the level of the pre-existing materials;
- The fill was not illegally placed originally;
- The area affected by the fill remains constant; and
- The owner consents to the variance and to an environmental land use restriction (“ELUR”) on the property.

The variance may be certified by an LEP if a list of requirements are satisfied, including that the site is larger than 10 acres, is in a GB area, is within the coastal boundary and not within the drainage basin of a Class A stream, groundwater standards have been met, the fill is not hazardous as defined in CGS 22a-448, and the owner of the site did not put the fill there. Variances are granted by the Commissioner after review of all the criteria, including the cost of achieving compliance without the variance.

In order to maintain a Widespread Polluted Fill Variance, an ELUR must be submitted that prohibits any movement or reuse of the fill in a manner that violates the RSRs and specifies any conditions imposed by the DEEP in approving the variance.

Also included in the proposed changes is an Engineered Control Variance, exempting a site from the direct exposure criteria, the pollutant mobility criteria, or both if:

- The Commissioner authorized the disposal of solid waste or polluted soil at the subject release area;
- Remediation at the area is technically impracticable;
- The Commissioner determines that removal of the polluting substances would create an unacceptable health risk; or
- Analysis by either an LEP or the Commissioner shows that the cost of remediation otherwise required would be greater than the cost of engineered controls.

The variance may then be available if engineered controls are designed, built, and maintained to standards that guarantee the protection of human health and the environment. Detailed standards for the engineered controls are found in Section 22a-133k-2(f)(2)(B). An Environmental Use Restriction (EUR) is required for all such sites, as is public notice and financial assurance.

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For more information on DEEP's changes to the Remediation Standard Regulations, please contact any member of our Environmental Practice Group, your responsible Pullman Attorney or send a message to [brownfields@pullcom.com](mailto:brownfields@pullcom.com). If you prefer, you may investigate this initiative further on DEEP's website.

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