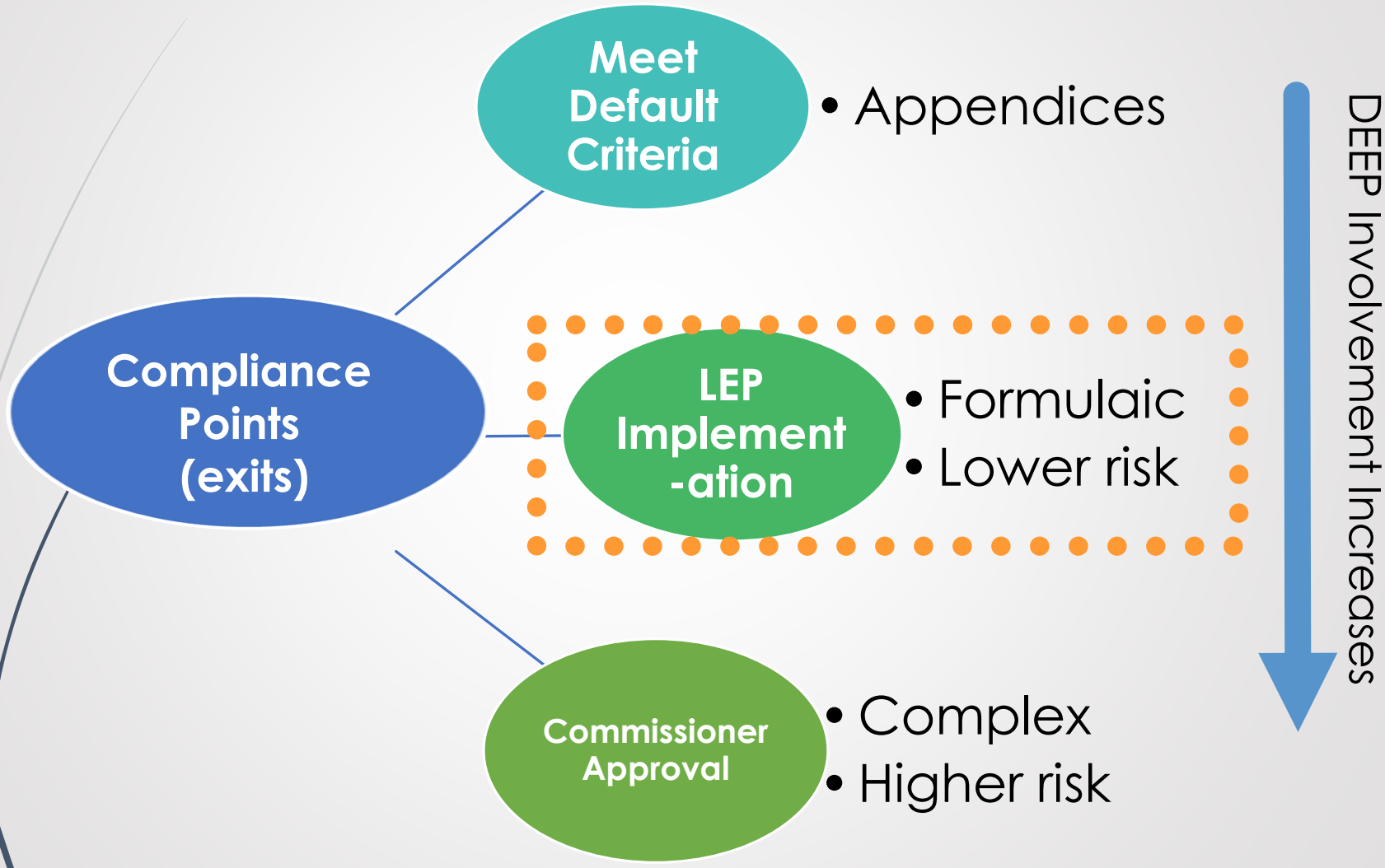
Proposed Amendments to the Connecticut Remediation Standard Regulations

CEF Meeting
September 4, 2019

DISCLAIMER: This presentation will not become part of the regulation-making record. The materials contained in this presentation are for informational purposes only. If the information presented herein is in conflict with the formal proposed amendments to the RSRs on the eRegulations website, the eRegulations version shall take precedence.

RSRs – Compliance Structure



Big Picture – Goals for Revisions

- **Greater certainty**
  - Clearer requirement details help build certainty for planning and redevelopment
- **Enhance economic growth**
  - Lower remedial cost while maintaining protection
  - Increase brownfield redevelopment
- **Limit Business impact**
  - Little to no negative impact on large or small businesses

Since 2012 CT Brownfield Program has:

- Invested **206 million** in grants and loans
- Funded **234 projects**
- Remediated **3,062 acres**

Big Picture – Goals for Revisions

- **Promote faster cleanups**
  - Increased compliance exits
  - Allow for more release-specific remedies
- **Optimize resources**
  - Less DEEP involvement on lower-risk scenarios
  - New LEP-implemented options
  - Conduct remediation appropriate for site conditions
- **Continue to protect** public health and the environment

Total Number of Affected Businesses

- Approximately 7,400 properties currently subject to the RSRs
- About 4,300 of those properties are in the Property Transfer Program
  - Approximately 40% of those properties are Small Businesses
- On average, 230 filings for the Property Transfer Program each year
  - Average 109 verifications/year with 2013 revisions
  - Reminder: Multiple filings on one property, typically addressed through one verification

Business Impact

- Little to no negative impacts on large or small businesses
- Lowers costs associated with site remediation
- Gives more flexibility when deciding best remedial options (increasing exit choices)
- Clearer requirement details help build certainty for planning and redevelopment

Public Process

Communication with Businesses

WORKGROUPS - regulated community and other constituent groups assisted DEEP in crafting the revision ideas

DISCUSSION PAPERS - posted online for public feedback

ITERATIONS OF DETAILED CONCEPTUAL LANGUAGE - posted online for public feedback (April and August 2016)

PUBLIC INFORMATION SESSIONS - April 2016 concept draft discussed in Hartford and Derby

REMEDIATION ROUNDTABLES – presented and discussed proposed RSR revision concepts

CONSTITUENT GROUPS – 2015 and 2016 presentations on proposed RSR changes to stakeholder organizations with direct connections to the small business community (CBIA, CEF, EPOC, CBA)

STATE AGENCIES - briefed during drafting (DECD, DPH, DOT, AG)

eRegulations System

- Official Proposed RSR amendments
- Table of Contents
- Notice of Intent
- Fiscal Note
- Regulatory Flexibility Analysis

eRegulations System

Remediation Website Materials

- Additional information on the RSR webpage to assist in your review:

  www.ct.gov/deep/rsr

  - Red-Line/[Blue-Line] version of Proposed Revised Remediation Standard Regulations
  - Summary Document
    - Companion to Red-Line/[Blue-Line]
    - Outlines modifications, new provisions, and reorganization
  - Schedule and locations of Remediation outreach events
    - Link to Remediation Division Presentations

Public Comment Period

- 90-day public comment period from July 8th to 5:00 pm on October 7th, 2019
- Comments may be provided:
  - Written:
    - Submitted through the eRegulations System
  - Verbal:
    - Public Hearing on **September 25, 2019** at **1:00 p.m.** at DEEP, 5th Floor, Gina McCarthy Auditorium, 79 Elm Street, Hartford, CT

Comment Procedure

The Office of
Secretary of the State Denise W. Merrill

Connecticut eRegulations System: Portal to Connecticut Regulations

Home | Search | Browse | Information

Browse > Proposed Regulations

Browse Proposed and Regulations in Progress

About Proposed Regulations: State agencies propose regulations in order to make changes to the *Regulations of Connecticut State Agencies*-Connecticut's version of a state administrative code.

In order to become law, proposed regulations must complete an adoption process that includes approval by the Legislative Regulation Review Committee of the Connecticut General Assembly and posting to the eRegulations System. Learn more about the Regulation-Making Process in Connecticut.

The regulations listed on this page are in various stages of the adoption process. To view the progress of and documents for a specific proposed regulation, select its **Tracking Number** link.

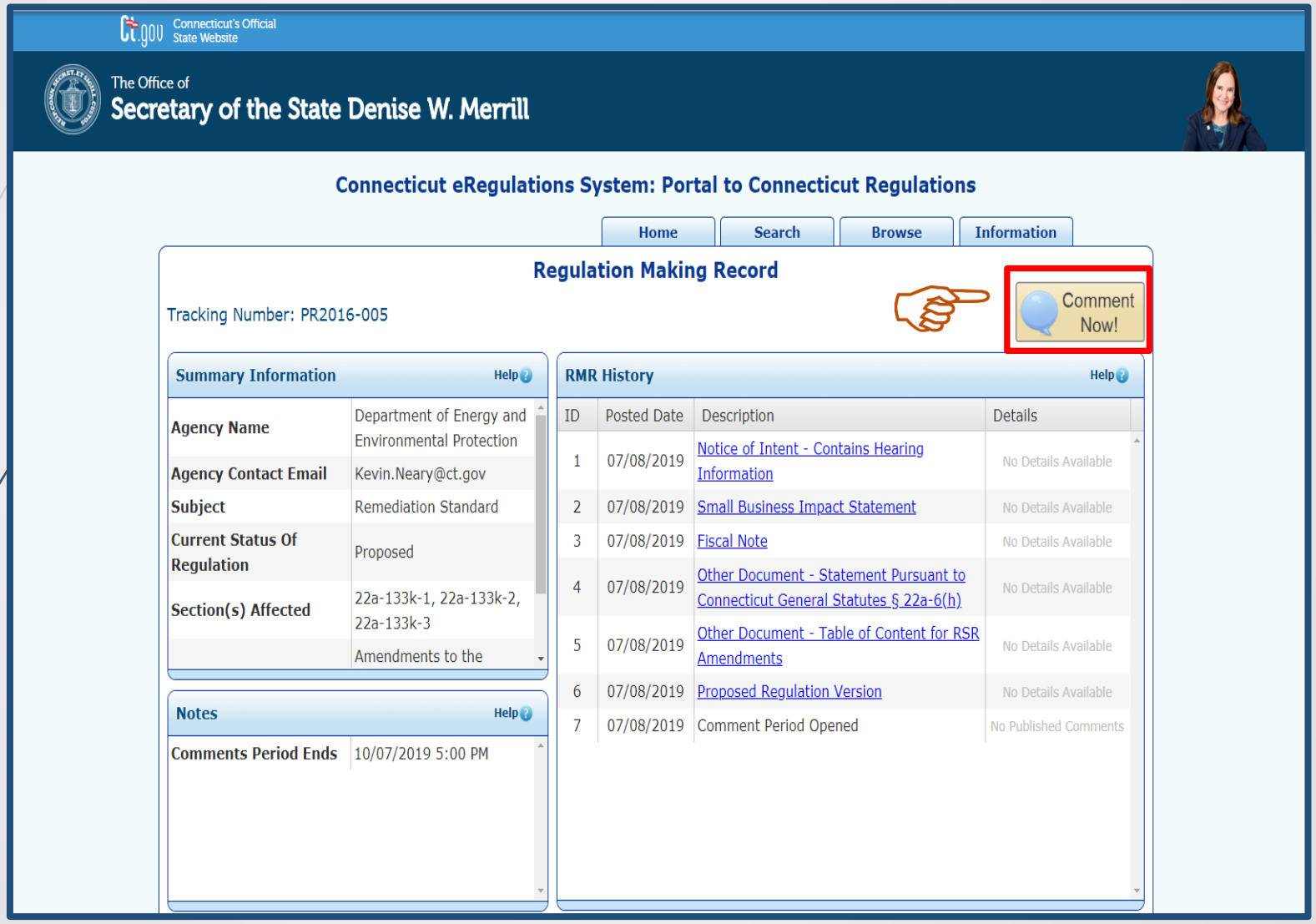
To view regulations that have become law, select this link to Final Approved Regulations.

Proposed regulations started prior to March 23, 2015: The text of proposed regulations that started the regulation-making process after July 1, 2013 but before March 23, 2015 can be found on the Public Notices (2013-2016) page.

Browse Proposed Regulations Help

Agency Name	Subject	Section(s) Affected	Status	Last Action Date	Tracking Number
and Environmental Protection	emergency/emergency engine	22a-174-3b, 22a-174-2...	Internal Error	07/10/2019	PR2018-001
Department of Energy and Environmental Protection	Remediation Standard	22a-133k-1, 22a-133k-...	Open For Public Comments	07/08/2019	PR2016-005
Department of Energy and Environmental Protection	Control of carbon dioxide emissions	22a-174-31	LRRC Rejected Without Prejudice	05/28/2019	PR2018-020
Department of Motor Vehicles	Standards and Procedures for Commercial Driving	14-78-32, 14-78-33,14...	AG Approved	02/26/2019	PR2015-195

Comment Procedure



Comment Procedure

Comment Submission Form

Proposed Regulation Concerning: Remediation Standard
Tracking Number: PR2016-005

Already have an account for commenting and/or receiving email notice updates? Log In.

Please note: The agency proposing this regulation will review comments submitted through this page. Under Public Act 14-187, Section 3, agencies may decline to publish comments and attachments deemed impractical or inappropriate for display. Examples of such content may include, but are not limited to, comments that contain offensive language, are off-topic and advertisements.

To submit comments without creating an account complete, the Information section below. Then complete the Comment section and the Attachments section if you wish to include attachments.

If you want to create an account to expedite future commenting select this link to create a new account.

Information Help

First Name*
John

Last Name*
Doe

Email Address*
email@example.com

Re-enter Email Address*

City/Town
Hartford

Association/Organization
Association of Realtors

Title
President

Already have an account? Log In.
Or
Create a new account.

Comment

Add your comments in the text box below and additional files in the attachments window below. A text comment is required for successful submission.

Your comment here...

Attachments Help

Select Files

Note: Must be in PDF Format, and less than 10MB in total.

Disclaimer Submitted comments and personal information may be published into the Regulation-Making Record. Submitted comments become public information upon submission and may be fully disclosed to third parties.

Submit

Formal Regulation Adoption Process

- ☑ Public Notice of Intent to Secretary of State, beginning the formal public comment period: **July 8, 2019**
- Public Hearing: **September 25, 2019**
- Close of public comment period: **5:00 pm, October 7, 2019**
- Hearing Officer's Report
- DEEP notification to all interested parties of availability of final wording
- Final proposed regulations to Attorney General for Legal Sufficiency approval
- Final proposed regulations to Office of Fiscal Analysis and Environment Committee
- Legislative Regulation Review Committee (LRRC) holds meeting on regulatory amendments per CGS section 4-170
- After approval of LRRC, regulations filed with Secretary of State per CGS section 4-172 (regulations become final upon filing)
- Publication of regulations on the Connecticut eRegulations System

3 Question & Answer Sessions

- **July 30, 2019** from 9:30 a.m. to 11:30 a.m. (ZOOM)

  Gina McCarthy Auditorium, 5th Floor, Department of Energy and Environmental Protection
  79 Elm Street, Hartford, CT

- **August 6, 2019** from 1:30 p.m. to 3:30 p.m.

  Kellogg Environmental Center
  500 Hawthorne Avenue, Derby, CT

- **September 11, 2019** from 5:00 p.m. to 7:00 p.m.

  Sheraton Hartford South Hotel
  100 Capital Boulevard, Rocky Hill, CT

- **Other Outreach Events** – EBC (6/11/19), CBIA (7/18/19), SWEP (8/27/19), CEF (9/4/19)

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RSR Amendments Technical Highlights

Definitions

- **Background Concentration**
  - Combines background for soil and groundwater into one definition
  - Allows flexibility for substances that are naturally occurring or minimally affected by human influences
- **Residential Activity**
  - Removed hospitals (for DEC only)
  - Specifies that the only part of colleges/universities that are considered residential are dormitories. Other areas could be considered industrial/commercial with an EUR
- **Water Quality Criteria**
  - Establishes a term for lower of the human health or aquatic life criteria in Table 3 of the Water Quality Standards

Section 1 Enhancements

- Added EUR subsection identifying when a NAUL can be used and when an EUR needs to be in effect [22a-133k-1(e)]
- Simplified & Organized Financial Assurance and Public Notice Requirements [22a-133k-1(d) and 22a-133k-1(f)]
- Expanded language on forms prescribed by the Commissioner to consolidate generic information pertaining to all submittals [22a-133k-1(g)]
- Added Laboratory Analytical Detection subsection [22a-133k-1(h)]
- Included transition language for changes to Volatilization [22a-133k-1(i)]

Soil Concepts
Section 2

Pesticides - Conditional Exemptions

- **Exempts compliance with DEC, provided:**
  - Soil was polluted through the "application of pesticides";
  - Human exposure to pesticide-impacted soil is prevented; and
  - Protective measures based on land use (residential or industrial/commercial) are implemented.
- **Exempts compliance with the groundwater criteria, provided:**
  - Pesticides present as a result of "application of pesticides";
  - Soil complies with section 22a-133k-2;
  - On-site receptors protected;
  - Notice put on land record of pesticide exceedance in groundwater; and
  - Notice submitted to DEEP and local health.
- **Exempts compliance with the PMC, provided:**
  - Pesticides in soil and groundwater comply with DEC and groundwater criteria or exemptions.

Reuse of Polluted Soil

- **Three reuse types:**
  - On-site (LEP-implemented)
  - On-site or Off-site Adjacent Property (Commissioner Approval)
    - EUR needed for DEC/PMC exemption
    - Added flexibility for large releases or adjacent properties with similar releases
  - Off-site (Commissioner Approval)

- **Placement still:**
  - Can't be placed below the water table
  - Can't be placed in an area subject to erosion
  - Can't be placed to be inconsistent with anti-degradation policy

Reuse of Pesticide-Impacted Soil

- New exemption for polluted soil containing pesticides:
  - Eliminates removal of high-quality agricultural top soil off-site
  - Allows reuse of pesticide-impacted top soil on agricultural land
  - Requires Commissioner approval
- The soil must comply with the DEC or PMC for all other contaminants, as reflected in the polluted soil reuse provision.

Public Roadways Variance

- The Commissioner may approve a variance from DEC or PMC under an existing "public roadway" (new definition) without the need to record an EUR, where:
  - The removal of the soil under the road is not feasible nor prudent; and
  - The soil does not pose a public health concern.

LEP-Implemented Soil Compliance Options

- **Alternative PMC**
  - Option allows an LEP to calculate a release-specific alternative based on site-specific conditions.
- **DEC Engineered Control**
  - LEP can certify an EC for DEC based on a set engineered control types
- **Widespread Polluted Fill Variance**
  - Allows LEP to approve a WSPF variance if the fill is located in a coastal area, in a GB groundwater classification area, and extends over 10 acres

EUR Revisions (to be proposed in RCSA section 22a-133q)

- New usage of Notice Activity Use Limitations (NAULs) allowed by 2013 statutory change for LEP-implementation
- Cost savings (process improvements)
  - More efficient preparation of EUR Surveys through clarification of requirements
  - Survey allowed for portions of properties
  - Allow LEP oversight of limited disturbances of protective measures without need for release and reinstatement of EUR
  - Owner-implemented release of NAULs with LEP approval, oversight, and notification to DEEP

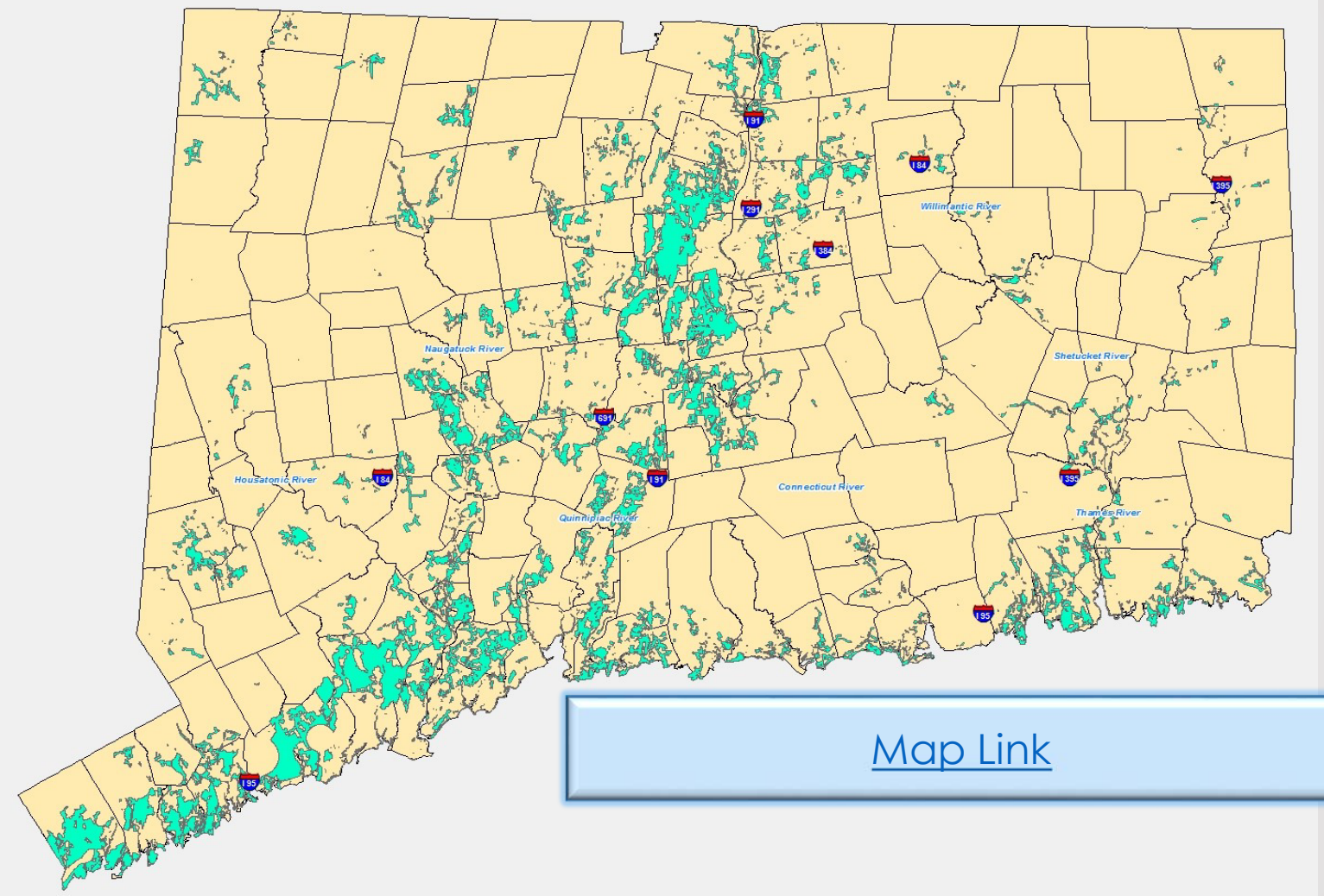
Groundwater Concepts
Section 3

Alternative GWPC

- Both an LEP Implemented and Commissioner Approval Options
- Provides more flexibility in achieving groundwater compliance in areas with no current or future drinking water use
- Decreases time and monitoring cost associated with achieving groundwater compliance

Big potential impact
- Alt GWPC Area covers **8%** of CT
- **15%** of Property Transfer sites

Potential Alternative GWPC Map



Map Link

Alt. SWPC – Discharge Dilution

- **Inland watercourse option** (LEP-Implemented):
  - Modified calculation - 7Q10 was replaced with Q99 for a groundwater plume discharging to an inland watercourse
- **Tidal option** (LEP-Implemented):
  - Added calculation for a groundwater plume discharging to tidally influenced water body
- For both options, a maximum allowable alternative SWPC has been established:
  - Cap on the multiplier that can be applied to the Water Quality Criteria
  - Based on the distance from the compliance point to the nearest downgradient surface water body

Alt. SWPC – Aquifer Dilution

- LEP-implemented calculation to account for aquifer dilution prior to discharge point:
  - Surface water discharge must be 500 ft. or greater from the groundwater plume compliance point
  - Groundwater data must show significant on-site dilution within 50 ft. of the release area
  - Multiplier applies to the SWPC or Water Quality Criteria, whichever is applicable.

Volatilization Criteria

- Modified the volatilization criteria for Chlorinated VOCs based on newer scientific understanding of fate and transport
  - Same as 2003 proposed criteria
- Continued Protections:
  - Establishes long-term variance obligations in regulation
  - Adds Environmental Use Restrictions to certain provisions

Upgradient Source of Contamination

- Added upgradient policy into the regulations, while clarifying the requirements for use of this provision
- All onsite exposure pathways must be eliminated to protect human health (vapor and drinking)
- If there is a co-mingled plume of the same substance:
  - The portion of that plume emanating from the subject property must be remediated
  - All downgradient exposure pathways must be eliminated

Questions or Comments?