



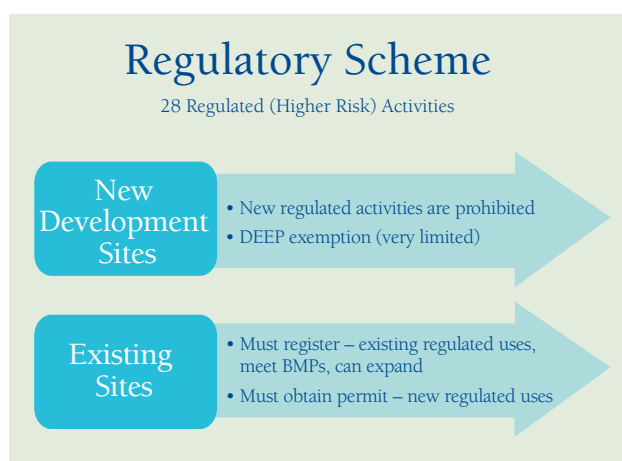
Regulations

4 | Regulations

4.1 | Overview

To regulate aquifer protection areas, the Aquifer Protection Agency must adopt aquifer protection regulations as required by CGS § 22a-354p. Since the APA program is a pollution prevention program, it is focused on minimizing the contaminant threats from land use activities that use hazardous materials in critical public water supply aquifer areas. The regulations only apply in the land areas that feed groundwater to the public supply wells in the program. Twenty-eight land use activities fall under the program, ranging from gas stations to metal finishers. These are land use activities that pose the greatest risk of contamination from accidental spills, leaks or mismanagement of the hazardous materials used as part of their operation. The table of regulated activities in the program can be found in the Land Use Inventory section of the manual. For these twenty-eight land use activities, new uses are prohibited from locating in the Aquifer Protection Areas. Existing land uses activities are required to register under the program and adhere to best management practices to minimize the threat of contamination. The Department was required to develop land use regulations at the state level to regulate these activities. The affected municipalities must then each adopt local regulations which are at least as stringent as the state regulations. The municipal process and requirements are discussed below.

It is important to note that aquifer protection regulations are not zoning regulations. The two programs regulate existing uses and future uses quite differently. Aquifer Protection Area authority and regulations are separate and distinct from zoning and are enacted as stand-alone regulations to protect state-identified aquifer areas.



Aquifer Protection Area regulations must provide for:

1. the manner in which the boundaries of aquifer protection areas shall be established and amended or changed;
2. the form for an application to conduct regulated activities within the area;
3. notice and publication requirements;
4. criteria and procedures for the review of applications; and
5. administration and enforcement.

Conducting a public hearing is a required step in the adoption of the local Aquifer Protection regulations. The regulations must be consistent with the state regulations, and the adopted regulations must be approved by the DEEP before they become effective.

4.2 | The Adoption Process

The adoption process must be completed within 180 days from DEEP's notice to the municipality that Level A (final) Aquifer Protection Area mapping has been completed. Care should be taken to ensure that proper notices are provided to the public, DEEP, and the water company/companies. The Aquifer Protection Area Regulations Adoption Flow Chart found at the end of this section indicates the required actions and timeframes necessary to complete the regulation adoption process.

The process includes:

- Drafting the proposed Aquifer Protection Area regulations;
- Scheduling the public hearing;
- Sending the proposed regulations to DEEP, the water company and the town clerk, along with notice of the public hearing;
- Conducting the public hearing, considering public comment and voting on the regulation adoption;
- Submitting the final regulation to DEEP for approval; and
- Establishing an effective date once DEEP approval is received.

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4.3 | Drafting the Proposed Regulations

4.3.1 Model Regulations

CGS § 22a-354l required DEEP to prepare a model municipal aquifer protection ordinance¹, consistent with regulations adopted under CGS § 22a-354i. The “Model Municipal Regulations for Aquifer Protection Areas” (Model) was prepared by DEEP to help municipal agencies adopt regulations consistent with the statutory requirements and state regulations. A copy of the Model is in the Model Documents section of this manual, and a customizable version is available online at www.ct.gov/deep/aquiferprotection. DEEP strongly encourages use of the Model to ensure consistency with the state regulations.

DEEP has developed a reference document to provide the reader with a quick annotated reference to the statutory and regulatory citations used in the Model, and provides explanations and clarifications as needed. The reference document is arranged by section of the model regulations in which the citation occurs. Municipalities may use this document as a companion to the regulations and modify the section numbers to coincide with their local regulations. DEEP will revise the document if there are changes to the statutory and regulatory language of the citations or other references. Some municipalities have asked about adopting the language in the reference document as part of their local regulations since the “plain language” is easier to understand. However, if something in the referenced citations is changed by the legislature, it would necessitate going through the formal process to revise the local regulations. DEEP therefore encourages municipalities to adopt the model regulations with the statutory and regulatory citations instead of incorporating the language of the reference document. The reference document can be found in the Model Documents section of this manual.

4.3.2 Consistency with State Regulations

The municipal regulations must be consistent with and at least as stringent as state regulations. Although CGS § 22a-354p(f) allows local aquifer protection regulations to provide a greater level of protection than the state regulations, such authority is limited in scope and must be related to the purpose of groundwater protection. The municipality’s ability to change the model regulation is limited to those matters specified in CGS § 22a-354p(a):

1. the manner in which the boundaries of Aquifer Protection Areas shall be established and amended or changed;
2. the form for an application to conduct regulated activities within the area;
3. notice and publication requirements;
4. criteria and procedures for the review of applications; and
5. administration and enforcement.

The Aquifer Protection Act does not authorize municipalities to alter the scope of regulated activities. The authority rests solely with the DEEP Commissioner under CGS § 22a-354i. The Commissioner determines the scope of regulated activities, exceptions or conditions for non-regulated activities, exemptions, and best management practices. When considering more stringent local regulations, care must be taken to ensure they are limited to matters specified in CGS § 22a-354p(a) and are reasonably related to the protection of groundwater. Any municipality considering a greater level of protection than provided in the DEEP Model is advised to discuss those with the DEEP staff first before formally proposing regulations.

Note: Many towns currently have zoning regulations in place for the protection of aquifers. Often, these local aquifer zones are much more extensive than the areas falling under the state Aquifer Protection Program because they cover areas that may be used for future water supply development. Some municipalities are opting to keep the aquifer zones in place; others may opt to replace the aquifer zone with the Aquifer Protection Area. DEEP recommends coordinating zoning with Aquifer Protection Area regulations as necessary for interim aquifer protection or future supply aquifers. DEEP can provide further assistance on this topic.

Coordinating Zoning

Many towns currently have zoning regulations in place for the protection of aquifers. These zones may include areas not covered by the APA program.

DEEP recommends coordinating zoning with Aquifer Protection Area regulations as necessary to provide protection for future supply aquifers.

DEEP can provide further assistance on this topic.

¹DEEP recognizes the ordinance as regulations.

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4.3.3 Setting Fee Schedules

The Agency has the authority to set a fee schedule to help with costs associated with administering the program. Fees may include registration and permit application fees, fees for reviewing materials management and stormwater management plans, and fees for holding public hearings. The amount of the fee may be sufficient to cover the reasonable cost of reviewing and acting on applications and petitions, including, but not limited to, the costs of certified mailings, publications of notices and decisions, and a monitoring compliance with permit conditions. The Agency may include the fee schedule in the proposed regulations or may cite an ordinance or regulation that sets the fees. Examples of fee schedules for several towns are provided on the following pages.

When setting a fee schedule, the Agency may want to consider the following list of associated costs of implementing the aquifer protection program. These include:

1. Notice and public hearing to appoint APA agency
2. Notice and public hearing of delineation of map boundary
3. Notice and public hearing of municipal regulations
4. Notification and confirmation of mailings to registrants
5. Process and review of registrations
6. Verification of registration information (site visits)
7. Review of stormwater plans and materials management plans, if required
8. Collection and processing of fees
9. Processing and review of permits (may be costly due to review of stormwater and materials management plans; infrequent and few expected per year)
10. Notice and public hearing of permits
11. Collection and processing of fees
12. Training – staff time to attend/travel/out of office
13. Enforcement

An additional optional cost may be the extension of map boundary.

Note: The costs listed above are highly dependent on the size of the area and the number of regulated activities in the area (the inventory).

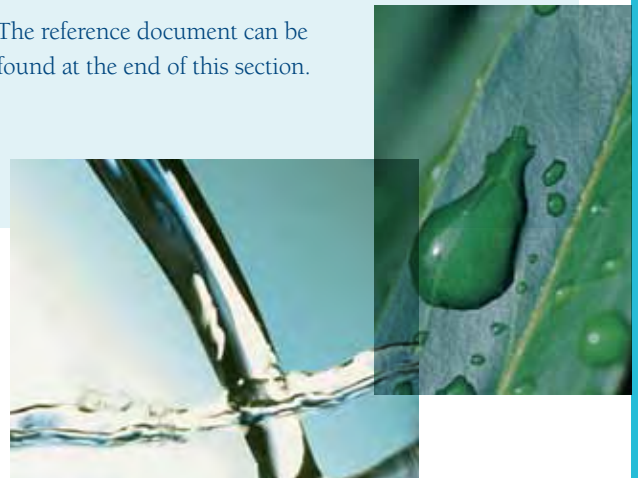
Reference Document for Model Municipal Aquifer Protection Area Regulations

The DEEP has developed a reference document to provide the reader with a quick annotated reference to the statutory and regulatory citations used in the Model Municipal Aquifer Protection Area Regulations. Additionally, the document provides explanations and clarifications to other citations and references in the regulations. The reference document is arranged by the section of the model regulations in which the citation occurs.

Municipalities can use the document as a companion to the regulations and modify the section numbers to coincide with their local regulations, if necessary. DEEP will revise the reference document if there are changes to the statutory and regulatory language of the citations or other references.

Municipalities are encouraged to adopt the model regulations with the statutory and regulatory citations and use the document as reference, thereby allowing revisions to the reference document if changes are made to the citations, without going through the formal process to revise local regulations.

The reference document can be found at the end of this section.



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4.4 | Examples of Fee Schedules

Figure 10. Example of a fee schedule.

TOWN OF BOLTON'S FEE SCHEDULE			
FACILITY SIZE			
	Small (< 1 acre)	Medium (1-5 acres)	Large (> 5 acres)
Registrations:			
Industrial	\$100	\$200	\$300
Commercial	\$100	\$200	\$300
Other	\$100	\$200	\$300
Permits:			
Industrial	\$100	\$200	\$300
Commercial	\$100	\$200	\$300
Other	\$100	\$200	\$300
Materials Management Plan Reviews	\$100	\$200	\$300
Stormwater Management Plan Reviews	\$100	\$200	\$300
Public Hearing	\$200	\$200	\$200
Facility Inspection/Monitoring	\$150	\$150	\$150
Regulation Petition	\$100	\$100	\$100
Transfer Fee	\$50	\$50	\$50

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4.4 | Examples of Fee Schedules (continued)

Figure 11. Example of a fee schedule.

TOWN OF KILLINGLY'S FEE SCHEDULE			
FACILITY SIZE			
	Small (< 1 acre)	Medium (1-5 acres)	Large (> 5 acres)
Registrations:			
Industrial	\$250	\$375	\$550
Commercial	\$250	\$375	\$550
Other	\$250	\$375	\$550
Permits:			
Industrial	\$300	\$550	\$800
Commercial	\$300	\$550	\$800
Other	\$300	\$550	\$800
Materials Management Plan Reviews	\$150	\$200	\$250
Stormwater Management Plan Reviews	\$200	\$300	\$350
Combined SMP and MMP Reviews	\$200	\$300	\$350
Public Hearing	\$250	\$250	\$250
Facility Inspection/Monitoring	\$5.00 per each % of impervious surface	\$10.00 per each % of impervious surface	\$15.00 per each % of impervious surface
Regulation Petition	\$250	\$250	\$250
Transfer of Registration or Permit	\$75	\$75	\$75

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4.4 | Examples of Fee Schedules (continued)

Figure 12. Example of a fee schedule.

TOWN OF SOUTHBURY'S FEE SCHEDULE			
FACILITY SIZE			
	Small (< 1 acre)	Medium (1-5 acres)	Large (> 5 acres)
Registrations:			
Industrial	\$100	\$200	\$300
Commercial	\$100	\$200	\$300
Other (e.g., Institutional)	\$100	\$200	\$300
Permits:			
Industrial	\$500	\$750	\$1,000
Commercial	\$500	\$750	\$1,000
Other (e.g., Institutional)	\$500	\$750	\$1,000
Materials Management Plan Reviews	\$250	\$350	\$450
Stormwater Management Plan Reviews	\$250	\$450	\$650
Public Hearing	Cost of Notice	Cost of Notice	Cost of Notice
Facility Inspection/Monitoring	\$200	\$300	\$400
Regulation Petition	\$100	\$150	\$200
Transfer of Registration or Permit	\$100	\$100	\$100

Examples of ordinance citations:

City of Bristol's Fee Schedule

The Agency shall adopt a schedule of fees for the administration of its activities under these Regulations, including registrations, permit applications, inspections, reviews, and transfers.

Town of Hamden's Fee Schedule

Registration or permit application fees shall be as set forth in Section 33.67A of the Town of Hamden Code of Ordinances.

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4.5 | Public Hearing Notice

It is essential that public hearing notices be published properly. The Aquifer Protection Agency must publish notice of the time and place of the hearing in the form of a legal advertisement in a newspaper having substantial circulation in the municipality. The notice must appear at least twice, with at least 2 days intervening between appearances. The first publishing must be not more than twenty-five (25) days nor less than fifteen (15) days before the hearing. The second publishing must be not less than 2 days before the hearing. Example notices can be found at the end of this section.

The Agency must file a copy of the proposed regulation in the town clerk's office for public inspection at least ten (10) days before the hearing. The Agency may also publish the proposed regulations in full in the newspaper.

The Agency must provide a copy of the notice and the proposed regulations or amendments to the town clerk, the DEEP Commissioner, and any affected water company at least 35 days before the hearing. DEEP will provide initial comments on the regulations prior to the public hearing.

Send DEEP copies to:

Aquifer Protection Area Program
Connecticut Department of Energy and Environmental Protection
Bureau of Water Protection and Land Reuse
79 Elm Street
Hartford, CT 06106-5127

Water company contact information can be found on the DEEP website at www.ct.gov/deep/aquiferprotection.

4.6 | Conducting a Public Hearing

4.6.1 Format

When conducting a public hearing on the Municipal Aquifer Protection Area Regulations, the agency proceedings may be informal, as strict rules of evidence do not apply. However, the agency must comply with "rules of fundamental fairness" (term from court decision), essentially:

1. Adequate notice of the public hearing must be provided;
2. Parties have a right to produce relevant evidence, to cross-examine witnesses and to offer rebuttal testimony;

3. Parties must have an opportunity to know all the facts on which the agency is going to rely;
4. The decision must be made by an impartial, unbiased agency; and
5. No receipt of evidence should take place outside of the hearing process ("ex parte" receipt of evidence is prohibited).

The Zoning Commission or Inland Wetlands Commission in town likely has a format for holding public hearings, and the format for the Agency should be similar. Your town attorney may also have some suggestions on hearing conduct.

4.6.2 Making the Record

The "record" is generally the only thing a judge will review if an appeal is brought from an agency decision. The record consists of:

1. the regulations;
2. all maps and documentation related to the regulations;
3. all evidence received by the agency at the hearing;
4. all correspondence, reports, notes and emails related to the regulations;
5. the notice of the hearing;
6. the decision of the agency on the regulations;
7. the minutes of the hearing and site walk(s); and
8. the transcripts of the hearing, if any.

The Attorney General's Office strongly urges that all public hearings be taped.

It is important to disclose if an individual commissioner has expertise on which the rest of the agency will rely (engineer, geologist, soil scientist, etc.). This must be disclosed on the record for each hearing and other relevant agency proceedings. It is also important to deliberate out loud, discussing what facts are crucial to the decision of the Agency. Finally, it is good practice and always correct to issue all decisions in writing.

Any comments received during the hearing should be specifically addressed in making the decision.

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4.7 | Formal Approval by DEEP

After the public hearing, the Agency must send the adopted regulations to DEEP for formal approval. DEEP will review the adopted regulations for consistency and either formally approve them or reject them with a timeframe for re-submission. DEEP is required to provide the Agency with written notice of approval or the reasons the adopted municipal regulations cannot be approved within sixty (60) days of receipt in accordance with Connecticut General Statutes (CGS) § 22a-354p(f).

Send DEEP copies to:

Aquifer Protection Area Program
Connecticut Department of Energy and Environmental
Protection
Bureau of Water Protection and Land Reuse
79 Elm Street
Hartford, CT 06106-5127

4.8 | Effective Date of Regulations

The adopted regulations are not effective unless the Commissioner of DEEP determines that they are reasonably related to the purpose of groundwater protection and are not inconsistent with the state regulations. Once DEEP approves the regulations, the Agency sets the effective date of the regulations and files them in the office of the Agency or the town clerk. The Agency may also choose to set the effective date at the time the regulations are adopted, but keeping with the timeframes, must set the effective date sixty (60) days later so as to allow DEEP the time to formally approve the regulations.

4.9 | Amendments to Regulations

Municipal Aquifer Protection Area Regulations may be amended, changed or repealed (CGS § 22a-354p). It may be necessary to amend the regulations if:

1. State statute or regulations are amended such that the law affects the municipal regulations. DEEP will notify the municipality if this occurs; or
2. If the Agency is petitioned to change the regulations. All petitions must be submitted in writing on a form from the Agency. The Agency must consider the petition at a public hearing within ninety (90) days after receipt of the petition and act upon the changes requested in the petition within sixty (60) days after the hearing. The petitioner may consent to extension of the periods provided for a hearing and for adoption or denial or may withdraw such petition. It is important to note that an amendment in response to a statutory change under (a) above is not a petition.

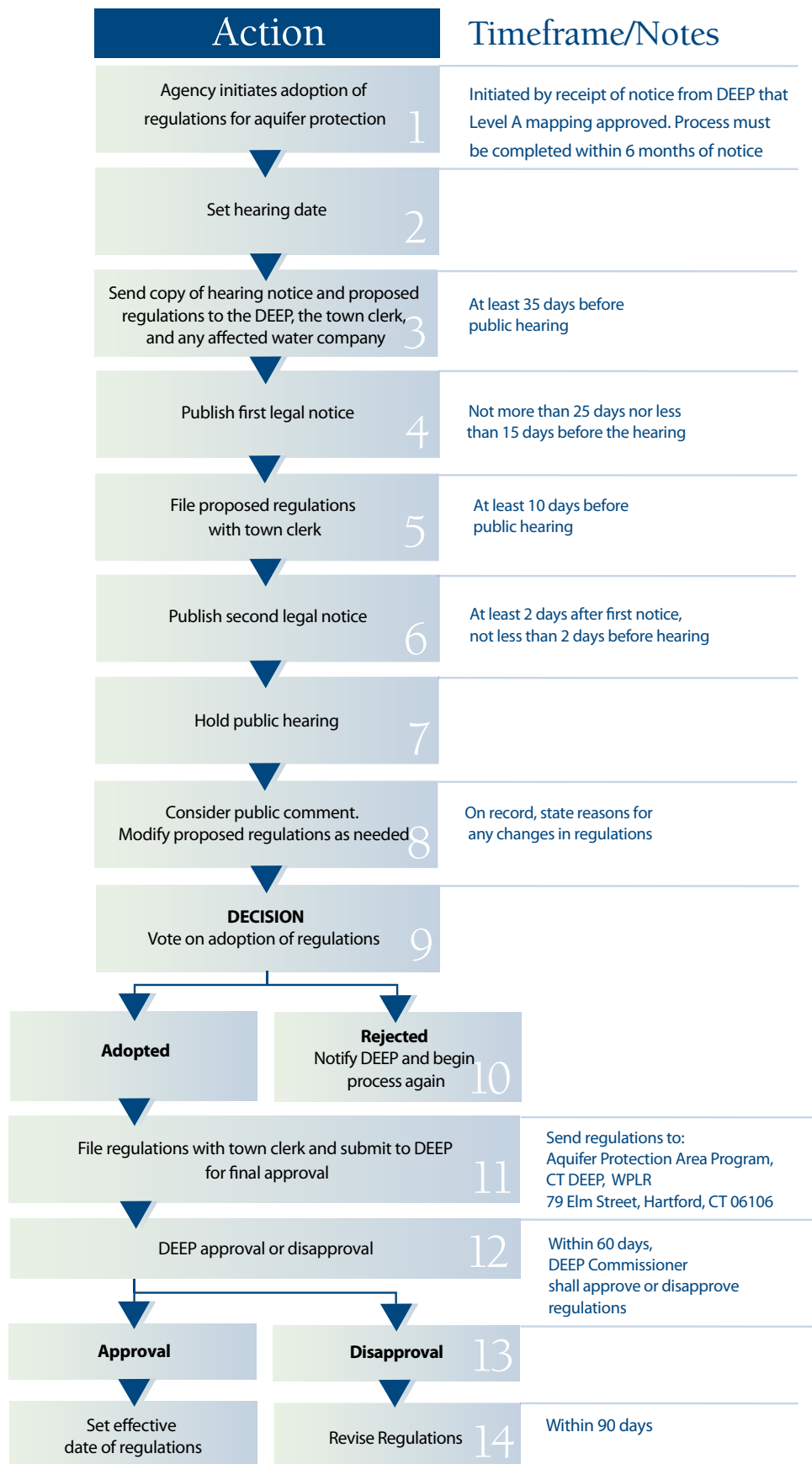
Changes to the Municipal Aquifer Protection Regulations must follow the same process as that for adopting regulations, including holding a public hearing, following the same notification process, and receiving the approval of DEEP. Changes to the regulations become effective as established by the Agency and they must file a copy of the regulation or change in the office of the town clerk. Whenever an Agency makes a change in regulations, it must state upon its records the reason why the change was made.

A flow chart for the amendment process is provided at the end of this section.

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4.10 | Regulation Adoption Flow Chart

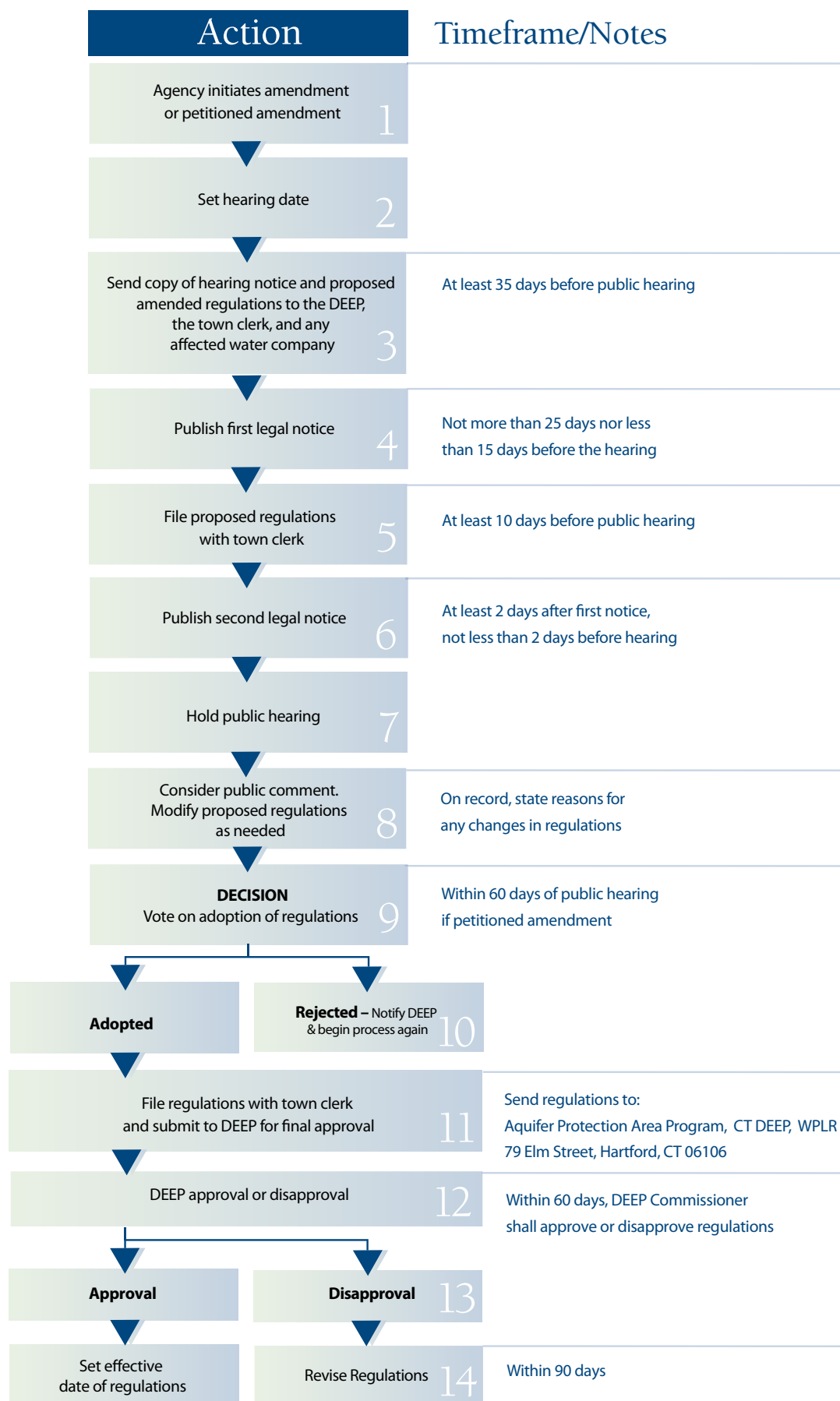
[CGS § 22a-354p and RCSA Sec. 22a-354i-3]



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4.11 | Regulation Amendment Flow Chart

[CGS § 22a-354p and RCSA Sec.22a-354i-3]



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4.12 | Examples of Public Notices for Aquifer Protection Area Regulations Adoption

The Aquifer Protection Agency must carry out the proper public notice requirements for the adoption of Aquifer Protection Area regulations. The notices should be published with the time and place of the hearing in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality. The notice must appear at least twice, with at least 2 days intervening between appearances. The first publishing must be not more than twenty-five (25) days nor less than fifteen (15) days before the hearing. The last publishing must be not less than 2 days before the hearing.

Examples of public hearing notices:

Norwalk

Putnam

Example of public notice of an Agency's action:

Bolton

Figure 13. Example of a public hearing notice.

CITY OF NORWALK
AQUIFER PROTECTION AGENCY
125 EAST AVE. NORWALK CT 06856
203-854-7744 phone 203-854-7962 fax

* LEGAL NOTICE *
PUBLISH TWICE

AQUIFER PROTECTION AREA
REGULATION ADOPTION

In accordance with provisions of Connecticut General Statutes [CGS] Section 22a-354p, notice is hereby given that the Norwalk Aquifer Protection Agency will hold a **public hearing at 7:00 PM on Wednesday, May 27, 2009, in Room A300, 3rd Floor, Norwalk City Hall, 125 East Ave., Norwalk, CT.**

The Agency will hear comments on its proposed Action (#APAR1-09) to adopt the City of Norwalk Aquifer Protection Area Regulations.

At this meeting interested persons may appear and be heard and written communications may be received regarding the proposed adoption of these Regulations.

Copies of the proposed Regulations are available for inspection on-line (www.norwalkct.org) and at the Conservation Office (Room 215), City Hall, 125 East Avenue, Norwalk, CT.

Jackie Lightfield, Chairman

Publish twice in the *Norwalk Hour*
Wednesday, May 6, 2009 and Wednesday, May 13, 2009

Figure 14. Example of a public hearing notice.

**Town of Putnam
126 Church Street
Putnam, CT 06260**

**Aquifer Protection Agency
AGENDA**

Public Hearing

The Aquifer Protection Agency will hold a public hearing on Wednesday, January 21, 2009 at 6:30 pm in the Daniel Rovero Chambers, 126 Church Street, Putnam, CT 06260

1. Adoption of the “Aquifer Protection Area Regulations of the Town of Putnam, CT” in accordance with Connecticut General Statutes [CGS] 22 a-354p and regulations of Connecticut State Agencies [RCSA] 22a-354i-3. Full text is available in the Town Clerk’s Office and Land Use Office at 126 Church Street.

All interested parties are urged to attend and be heard.

Dated this date December 17, 2008

Figure 15. Example of a public notice of an Agency's action.

