

EURs –Response to Key Comments

The EUR regulations will allow for the use of NAULs for the first time and provide for more clarity on what DEEP needs and expects for ELURs and NAULs. EUR public comments were weighted toward fees, the level of prescription for NAULs, and the process for ELUR subordination agreements.

Fees

Many commenters indicated that the fees proposed should be reduced or eliminated. These fees for requesting an ELUR, a NAUL, and a temporary release of an EUR are a necessary component of the Regulations and serve several important purposes. The proposed fees will ensure that those seeking an EUR are responsive to requests for additional information, and are commensurate with DEEP's resources spent reviewing proposed EURs and releases. EURs are often required when using remedies which allow some pollution to be left behind. Even with the proposed fee, on many sites, it will be significantly less expensive to use a remedy that requires an EUR than it will be to ensure that a more stringent remediation standard has been met.

However, DEEP also recognizes that the COVID-19 public health emergency has exacted a toll on the State's economy and on the business operating here. The expeditious remediation and redevelopment of polluted parcels will aid in the recovery of the State's economy. To encourage businesses to prioritize remediation, and in recognition of the challenges all businesses – including those that own polluted properties – will face in the coming years, the Department has reduced, by half, these fees for two years.

NAULs

Commenters indicated that the process of implementing a NAUL was more complex and stringent than anticipated. DEEP believes that the Regulations must set out a process for implementing NAULs that ensures approved and recorded NAULs will comply with relevant statutory requirements. This requires title work, a survey, and cooperation between an LEP, real estate attorney, and property owner. NAULs still represent an important shift. On lower risk sites where NAULs can be used, an LEP may approve the NAUL with no review by the Department.

ELUR Subordination Agreements and Surveys

Similar to the comments on NAULs, commenters indicated that the process set out in the regulations for ELUR subordination agreements was unnecessary and burdensome and the cost of the survey would be excessive. For both of these items, it is important to have the right level of detail in regulation, as it makes clear the DEEP's expectations and does not result in back-and-forth review and comment. DEEP needs to know that subordination agreements can be obtained, as without a subordination agreement additional remediation and a new ELUR is likely needed. For the proposed survey standards, this information is necessary to ensure that future

owners of a property are able to comply with the restrictions and obligations imposed by an EUR. The current regulations do not specify what is required for a survey. As a result, surveys are often submitted which require time consuming review and costly additional field work before all the necessary information is supplied.