

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

**BUREAU OF WATER PROTECTION AND LAND REUSE
REMEDIATION DIVISION**

GUIDANCE DOCUMENT

**Connecticut Remediation Standard Regulations (RSRs)
EXEMPTIONS FOR INCIDENTAL SOURCES**

**RSR Sections:
22a-133k-2(b)(5)
22a-133k-2(c)(5)(D)
and 22a-133k-3(f)**



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Guidance for EXEMPTIONS FOR INCIDENTAL SOURCES pursuant to Sections 22a-133k-2(b)(5), 2(c)(5)(D), and 3(f) of the Connecticut Remediation Standard Regulations

I. INTRODUCTION

This document sets forth the Department of Energy and Environmental Protection's (the Department's) Guidance on the application of the "Incidental Sources" exceptions to Direct Exposure Criteria, Pollutant Mobility Criteria and remedial criteria for groundwater under the Remediation Standard Regulations (RSRs) Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies. The RSRs were amended by the 2021 revisions effective February 16, 2021. Among other changes, the amendments added "Incidental Sources" provisions as Sections 22a-133k-2(b)(5), 2(c)(5)(D), and 3(f).

II. PROVISIONS FOR INCIDENTAL SOURCES IN THE RSRS

The RSR provisions for Incidental Sources are set forth below:

22a-133k-2(b)(5) Conditional Exemption for Incidental Sources

"Soil at a release area polluted with metals, petroleum hydrocarbons, or semi-volatile organic substances is not required to be remediated to the direct exposure criteria for those substances, provided such pollution is the result of:

- (A) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or*
- (B) Normal paving and maintenance of a consolidated bituminous concrete surface, provided such bituminous concrete surface has been maintained for its intended purpose."*

22a-133k-2(c)(5)(D) Conditional Exemption for Incidental Sources

"Soil at a release area polluted with metals, petroleum hydrocarbons, or semi-volatile organic substances is not required to be remediated to the pollutant mobility criteria, provided such pollution is the result of:

- (i) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or*
- (ii) Normal paving and maintenance of a consolidated bituminous concrete surface provided such bituminous concrete surface has been maintained for its intended purpose."*

22a-133k-3(f) Conditional Exemption for Incidental Sources

“Compliance with the groundwater criteria specified in subsection (a) of this section is not required for the following substances in groundwater under the circumstances described in this subsection:

- (1) Trihalomethanes or any other substance within drinking water released from a public water supply distribution system; or*
- (2) Metals, petroleum hydrocarbons, or semi-volatile organic substances, provided such substances are the result of:*
 - (A) An incidental release due to the normal operation of motor vehicles, not including refueling, repair or maintenance of a motor vehicle; or*
 - (B) Normal paving and maintenance of a consolidated bituminous concrete surface provided such bituminous concrete surface has been maintained for its intended purpose.”*

III. GUIDANCE ON THE INCIDENTAL SOURCES PROVISION

The Department will administer these exceptions to criteria under Sections 22a-133k-2(b)(5), 2(c)(5)(D), and 3(f) of the RSRs, as follows:

1. All three of these exemptions are intended to be identically implemented and may apply to the same release area. They are restated in the various sections of the RSRs related to Direct Exposure Criteria, Pollutant Mobility Criteria and remedial criteria for groundwater for clarity about the applicability to each of the criteria.
2. Since these citations specifically refer to motor vehicles and paving, semi-volatile organic compounds (SVOCs) attributable to other releases such as petroleum spills or the presence of ash or coal are not applicable under this exemption. The source of the contaminants must be a *result of* vehicle use or pavement. Therefore, in order to attribute contaminants to an incidental source, there will need to be a site assessment and conceptual site model showing that the presence of contaminants is not the result of releases at any other non-exempt Area of Concern.
3. When assessing the potential for a detection of contaminants to be attributable to an incidental release, the magnitude and spatial distribution of the detection needs to be taken into account. For example, extensive soil contamination (more extensive than mere surficial contamination along the edge of a parking lot) or the presence of residual petroleum in a catch basin might be more appropriately attributed to a spill than an incidental source.
4. These subsections can be applied to contaminants detected in drainage features related to parking lots and roadways, such as catch basins, swales and stormwater retention ponds, and to soils potentially affected by such drainage features.

5. Contaminants that may have accumulated in a widespread manner along the shoulder of a road related to the historical use of leaded gasoline or dust from asphalt and tires may be included as an incidental source.
6. These exemptions are self-implementing, rather than requiring Commissioner's approval for use. Be aware, however, that a conceptual site model supported by a site assessment will be expected to be included as part of documentation in a Verification Report or site closure report for the use of these exemptions.
7. As part of normal operation of properly functioning motor vehicles, certain metals may be present in oil that may occasionally drip or from the flaking of rusting metal components. Therefore, metals have been included as a pollutant in addition to petroleum hydrocarbons and SVOCs.
8. The Department intends the term "incidental" to be interpreted in accordance with the definitions "occurring by chance or without intention" and "unimportant or occasional."
9. The Department intends the term "normal" to be interpreted in accordance with the definition "conforming to the usual standard, type or custom." The regulation language further clarifies that normal operation does not include "refueling, repair or maintenance" activities. Additionally, normal operation would not include accidents, such as vehicle crashes or tank ruptures, because those events do not constitute normal operation.
10. These provisions should not be implied to indicate that a normally functioning parking lot and the associated storm drainage system, in and of themselves, would need to be evaluated as an Area of Concern in a standard site assessment. Rather, these provisions are meant to be used in the evaluation of relatively minor detections of contaminants that are not attributable to any other conventional Area of Concern at a site.
11. In the context of these provisions, ground-up asphalt used for a sub-base to the pavement is considered to be part of the "normal paving ... of a consolidated bituminous concrete surface."
12. The presence of a public water supply water main is generally sufficient to support the use of an incidental source for the detection of trihalomethanes or any other substance within drinking water in groundwater, assuming a site's conceptual site model supports that conclusion. An Area of Concern associated with substances which may cause the presence of trihalomethanes should be addressed. Generally, concentrations of total trihalomethanes in groundwater at levels in excess of 50 µg/l are unlikely to be attributable solely to leakage from a public water main.

If you have questions, please contact the Remediation Division of the Bureau of Water Protection and Land Reuse (860) 424-3705. Also, the above referenced regulations should be consulted for further information.