



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

Amendments to Regulations Regarding the State Board of Examiners of Environmental Professionals

Hearing Officer's Report Statement of Reasons

David A. Sattler
Supervising Sanitary Engineer
Inland Water Resource Division
Bureau of Water Protection and Land Reuse
January 7, 2015

Table of Contents

I.	Introduction to the Hearing Officer’s Report.....	3
II.	State Board of Examiners of Environmental Professionals (LEP Board)	4
III.	Administrative Requirements	4
IV.	Compliance with Section 22a-6(h) of the Connecticut General Statutes.....	5
V.	Summary of Regulations as Proposed for Public Hearing.....	5
VI.	Statement of Principal Reasons in Support of the Regulations Proposed for Public Hearing.....	7
VII.	Statement of Principal Reasons in Opposition of the Regulations Proposed for Public Hearing and the Department's Response to Such Reasons.....	8
IX.	Final Wording of the Proposed Regulations.....	9
IX.	Conclusion	10
	Appendices	
A.	Notice of Intent to Amend Connecticut Regulations concerning the State Board of Examiners of Environmental Professionals and to Hold a Hearing	
B.	Comments submitted pursuant to Public Hearing and Notice	
C.	Revised text for the Regulations concerning the State Board of Examiners of Environmental Professionals	

I. Introduction to the Hearing Officer's Report

On June 12, 2014, the Commissioner of the Department of Energy and Environmental Protection (DEEP) published a notice pursuant to sections 4-168, 22a-6 and 22a-133v of the Connecticut General Statutes ("C.G.S.") and section 22a-3a-3 of the Regulations of Connecticut State Agencies ("RCSA") of his intention to amend various sections of the Regulations of Connecticut State Agencies 22a-133v-1 through 7 inclusive, to adopt new RCSA subsections 22a-133v-2(e)(7) and 133v-2(e)(8) and to hold a public hearing as part of the rulemaking process. Pursuant to such notice, a public hearing to obtain public comment on the proposed amendments to the Regulations was held on July 23, 2014, with the public comment period closing at the end of such business day.

As required by section 4-168(d) of the C.G.S., this Hearing Officer's Report for the Proposed Amendments to the Regulations concerning the State Board of Examiners of Environmental Professionals is the culmination of the public process that the Connecticut Department of Energy and Environmental Protection (CT DEEP) undertook to revise and update the relevant regulations. The purpose of the Hearing Officer's Report is to provide recommendations to the Commissioner of the Department of Energy and Environmental Protection for the final revisions to RCSA sections 22a-133v-1 through 7 inclusive, and the addition of new subsections 22a-133v-2(e)(7) and 133v-2(e)(8). In support of the Commissioner's review and as required by C.G.S. section 4-168(d), this report provides background information on the State Board of Examiners of Environmental Professionals, more commonly known as the Licensed Environmental Professional (LEP) Board, the statutory underpinnings and the regulatory changes proposed, the state processes for proposing revisions to the regulations, as well as summarizes and responds to public comments received. A final recommended version of the amended text is also provided.

The Hearing Officer's Report is intended to be a fair representation of revisions and updates to the LEP Regulations as the result of the public review and hearing process. In the case of any errors or omissions, the official RCSA sections 22a-133v-1 through 7 inclusive, are as approved by the Regulations Review Committee of the Connecticut State Legislature and as published on the Secretary of the State's web site. (Appendix C of this report.)

II. State Board of Examiners of Environmental Professionals

The State Board of Examiners of Environmental Professionals ("LEP Board") administers the provisions of the LEP Program¹ concerning licensure and issuance; reissuance; suspension or revocation of licenses; and sanctions and other disciplinary actions. Pursuant to Section 22a-133v(b) of the C.G.S., the State Board of Examiners of Environmental Professionals was established within CT DEEP. The Chairman of the LEP Board is a designee of the Commissioner of CT DEEP. Ten (10) other members are appointed by the Governor and shall consist of six (6) LEPs; two (2) active members of an organization that promotes protection of the environment; and one member each from organizations representing business and lending institutions. C.G.S. section 22a-133v(c) authorized the Commissioner, with advice and assistance from the LEP Board, to adopt regulations concerning the professional ethics and conduct appropriate to establish and maintain a high standard of integrity and dignity in the practice of an LEP. The LEP Regulations were adopted on June 2, 1997.

III. Administrative Requirements

The Uniform Administrative Procedure Act (UAPA) codified in the C.G.S. as Chapter 54 (Sections 4-166 et. seq.), establishes procedures that state agencies must follow when performing listed administrative functions. One of the administrative functions that a state agency (like CT DEEP) performs is the development of regulations that are codified into the Regulations of Connecticut State Agencies. The Connecticut UAPA sets out the procedures that state agencies must follow to adopt regulations. In Connecticut, a standing committee of the General Assembly (Regulations Review Committee) must ultimately approve a regulation before it becomes law. Regulations are given the same weight as statutes once the regulations have been properly enacted.

In addition Chapter 54 of the C.G.S. requires that each state agency "adopt as a regulation Rules of Practice". CT DEEP adopted Rules of Practice that are codified in RCSA Sections 22a-3a-2 through 22a-3a-6. RCSA Section 22-3a-3 entitled Regulation-Making describes the procedures the Department must follow. These regulations must be read in conjunction with C.G.S. Section 4-167 through 4-174 and as specifically required pursuant to section 4-168(d), this report shall describe the amendments as proposed for hearing; the principal reasons in support of the Department's proposed amendments; the principal considerations presented in oral and written comments in opposition to the Department's proposed amendments; and the final

¹ The Licensed Environmental Professional (LEP) Program was established by Public Act 95-183 on October 1, 1995, and subsequently codified as section 22a-133v of the Connecticut General Statutes (CGS).

wording of the proposed amendments. Commenters at the public hearing are identified in Appendix B.

IV. Compliance with Section 22a-6(h) of the Connecticut General Statutes.

Section 22a-6(h) of the C.G.S. requires the Commissioner of the Department to distinguish clearly, at the time of public hearing, all provisions of the proposed regulations or amendments which differ from the adopted federal standards and procedures either on the face of the proposed regulation or through supplemental documentation accompanying the proposed regulation at the time of the notice concerning such amendments to the regulation required under section 4-168. Therefore, at the time of the public hearing, the Commissioner, through the Hearing Officer, made a written statement available and incorporated such statement into the administrative record for this matter that the Commissioner is not aware of any federal standards or procedures adopted by the federal government for the Licensure of Environmental Professionals that pertain to activities covered by the proposed amendments nor apply to persons subject to the provisions of such proposed amendments. As such, the Commissioner has provided an explanation for all such provisions in the regulation-making record required under Title 4, Chapter 54 of the C.G.S. No comments were received regarding this statement of compliance with Section 22a-6h.

V. Summary of Regulations as Proposed for Public Hearing

The Connecticut Department of Energy and Environmental Protection (CT DEEP) proposed various amendments to the regulations regarding the State Board of Examiners of Environmental Professionals. In addition, several technical revisions were also proposed. Specifically, amendments are proposed to sections 22a-133v-1 through 7 of the Regulations of Connecticut State Agencies ("RCSA") inclusive and to adopt new subsections 22a-133v-2(e)(7) and 133v-2(e)(8) of the RCSA.

The regulations proposed for amendment would allow greater diversity with respect to the continuing education requirements in the regulations with the inclusion of distance learning courses. These amendments allow the State Board of Examiners of Environmental Professionals (LEP Board) the flexibility within the regulations to approve distance learning courses and provide the structure that such courses would need to maintain in order to be

approved by the LEP Board, thus ensuring the continued integrity and accountability of the continuing education requirements for licensure. Several technical revisions are also included in these proposed changes.

Highlights of the proposed amendments to the regulations regarding the LEP Board include:

- The addition of definitions for the following terms: course, distance learning, distance learning provider and distance learning sponsor.
- Providing the LEP Board the flexibility to consider distance learning courses to comply with the continuing education requirements in the LEP regulations.
- The addition of new subsections to define the requirements and the process that distance learning course providers and sponsors must follow to apply for continuing education credit and to ensure the structure of the course provides for accountability and maintains the integrity of the continuing education course approval process.

In summary, the proposed amendments contain the following regulatory provisions:

Section 22a-133v-1

Amendments to subsection 22a-133v-1 define the terms "Course", "Distance learning", "Distance learning provider" or "Provider" and "Distance learning sponsor" or "Sponsor".

Section 22a-133v-2(e)(C)

Amendments to subparagraph 22a-133v-2(e)(C) allow the LEP board to require appropriate documentation of completion of distance learning courses, identify the maximum continuation education credits by distance learning courses during a biennial period, and allow the LEP Board to approve a waiver to allow an LEP to apply to the LEP Board for additional distance learning credits during a biennial period based upon significant circumstances.

(NEW) Subsection 22a-133v-2(e)(7)

The purpose of the addition of subsection 22a-133v-2(e)(7) is to define the requirements and the process that the LEP Board shall utilize to approve Sponsors of distance learning who in turn approve the number of continuing education credits a Provider or Providers shall receive for a defined distance learning course. This subsection also identifies the process, standards and records that an approved Sponsor shall apply to approve a Provider's continuing education credits.

(NEW) Subsection 22a-133v-2(e)(8)

The purpose of the addition of subsection 22a-133v-2(e)(8) is to define the requirements and the process that the LEP Board shall utilize in the approval of an application or applications of a distance learning course or courses from an LEP or Provider. This subsection also identifies the maximum number of courses a Sponsor or Provider may apply for in a given year, provides the

LEP Board with the ability to audit such Sponsors and Providers of distance learning courses, identifies the information that may be required by a Sponsor and Provider for an LEP Board audit and lastly allows the LEP Board to terminate the approved status of such Sponsor or Provider for not meeting the standards as identified by this section.

VI. Statement of Principal Reasons Support of the Regulations Proposed for Public Hearing

CT DEEP LEP Board staff have reported to this Hearing Officer that the proposed amendments to the Regulations concerning the State Board of Examiners of Environmental Professionals ("LEP Regulations") were developed with numerous meetings that included the input from LEP stakeholders.

On July 18, 2014, the Environmental Professionals' Organization of Connecticut (EPOC) submitted comments on the Proposed Revisions to the Regulations concerning The State Board of Examiners of Environmental Professionals ("LEP Regulations"). In the submittal, EPOC states that they are supportive of the proposed amendments which provide a procedure for distance learning courses to be approved by the LEP Board, and will allow a greater diversity of educational opportunities for Licensed Environmental Professionals (LEPs).

In a letter dated July 14, 2014, and received by CT DEEP on July 21, 2014, Gary Robbins of Ram's Horn Educational, LLC submitted comments on the proposed regulations. It must be noted that Ram's Horn Educational, LLC provides distance learning courses and in fact, in his comments, Mr. Robbins identifies that Ram's Horn Educational, LLC is the first entity to have distance learning courses approved by the LEP Board. They welcome the proposed revisions to the regulations that clarify the viability of distance learning for LEP continuing education credit. Mr. Robbins also states that they have reviewed the proposed regulations and fully endorses the material proposed. Mr. Robbins continues that Ram's Horn Educational, LLC currently has courses approved in five (5) States for continuing education credits and in his judgment the proposed distance learning regulation revisions are equal or exceed requirements in other States.

VII. Statement of Principal Reasons in Opposition of the Regulations Proposed for Public Hearing and the Department's Response to Such Reasons

No comments opposed CT DEEP's intent to seek final adoption of this proposal. Two written sets of comments were received. One dated July 18, 2014 from the Environmental Professionals' Organization of Connecticut (EPOC) and one dated July 14, 2014 from Ram's Horn Educational, LLC (Ram's Horn). The specific comments are summarized and may be paraphrased for clarity or brevity purposes. EPOC's and Ram's Horn specific concerns/comments are addressed below:

Comment:

Environmental Professionals' Organization of Connecticut's, concern was in reviewing the procedure to obtain approvals for distance learning courses in subsection 22a-133v-2(e)(8)(A) – Distance Learning Course Approval/Disapproval. The proposed amendment language is:

“For distance learning courses that have a Sponsor approved credit hours, a licensed environmental professional or the Provider may submit an application to the Board for approval of the content if such course meets the criteria in section 22a-133v-2(e)(8)(A) of the Regulations of Connecticut State Agencies,”

EPOC states that this subsection should identify that a Sponsor may also submit an application for approval of content and they suggest adding that to this section.

CT DEEP Response:

The proposed amendments in Subsection 22a-133v-2(e)(7) were written to have the LEP Board approve Sponsors which will in turn approve Providers of distance learning courses who develop the course content for the Board or Sponsor evaluation and subsequent determination and assignment of the number of continuing education credits for such course content. In this case, the Sponsor will be assuming the role of the LEP Board. If an approved Sponsor designs the course content pursuant to 22a-133v-2(e)(8)(A) and submits such material to the LEP Board for approval, such Sponsor would not be acting in the capacity as a Sponsor but in the capacity of a Provider, pursuant to the definition of “Provider” in these Regulations. It must be noted that any person, LEP, or organization may apply for and obtain the LEP Board approval as a Sponsor or a Provider or both. Therefore, no change is necessary to section 22a-133v-2(e)(8)(A) at this time.

Comment:

Ram's Horn Educational, LLC had two questions concerning courses; The first question, “When the LEP Board approves a course, how long is the approval active - perhaps some statement related to both distance learning and brick and mortar courses should be included in the regulation”. The second question, “What happens to courses already approved by the LEP Board; do such courses have to get reapproved?”

CT DEEP Response:

With regard to the first question: “When the LEP Board approves a course, how long is the approval active - perhaps some statement related to both distance learning and brick and mortar courses should be included in the regulation”. It is the LEP Board's policy to approve courses on a case by case basis with such approved course specifically named and issued a corresponding course number (i.e., CTLEP-378). In approving such courses, the LEP Board does not identify an active timeframe for such course approval provided all information regarding such course remains unchanged. In addition, in each course approval the LEP Board reserves the right to reconsider the approval if there is a substantial change to the syllabus of the

course, the instructional materials used, or the course instructor(s) previously approved by the Board. Subsequently, there are no recommended revisions to these proposed Regulations as a result of the first question.

With regard to the second question: "What happens to courses already approved by the LEP Board; do such courses have to get reapproved?" Based upon the LEP Board policy, any course already approved by the Board would not have to be reapproved by the Board provided all information regarding such course remains unchanged. Subsequently, there are no recommended revisions to these proposed Regulations as a result of the second question.

VIII. Final Wording of the Proposed Regulations

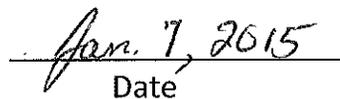
The final recommended LEP Board regulation is presented in Appendix C of this document.

IX. Conclusion

Based upon the comments addressed in this Hearing Report, I recommend the proposed Regulations be incorporated as recommended herein and that the recommended final proposal, included as Appendix C to this report, shall be submitted by the Commissioner for approval by the Attorney General and the Legislative Regulations Review Committee of the Connecticut General Assembly.



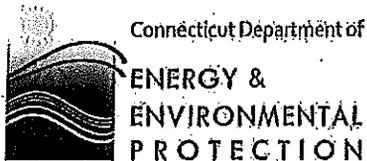
David A. Sattler
Hearing Officer



Date

Appendices

- A. Notice of Intent to Amend the Regulations Concerning the State Board of Examiners of Environmental Professionals and to Hold a Public Hearing**
- B. Comments Received In Response to the Notice of Public Hearing**
- C. Recommend text for the Regulations Concerning the State Board of Examiners of Environmental Professionals**



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Notice Of Intent To Amend Regulations And To Hold A Public Hearing

The Commissioner of Energy and Environmental Protection hereby gives notice of a public hearing as part of a rulemaking process. Pursuant to sections 4-168 and 22a-6 of the Connecticut General Statutes ("CGS"), and section 22a-3a-3 of the Regulations of Connecticut State Agencies ("RCSA"), the Commissioner hereby gives notice of his intention to amend RCSA sections 22a-133v-1 through 7 inclusive and to adopt new subsection 22a-133v-2(e)(7) and 133v-2(e)(8) of the RCSA. These regulations are being proposed under the authority of CGS sections 22a-6 and 22a-133v.

The purpose of these proposed amendments to the regulations regarding the State Board of Examiners of Environmental Professionals (LEP Board), is to allow greater diversity with respect to the continuing education requirements of the regulations with regard to distance learning courses. This provides definitions and allows the Board the flexibility with the regulations to approve distance learning courses and provide the structure such courses would need to maintain in order to be approved by the Board, thus ensuring the continued integrity and accountability of the continuing education requirements for licensure. Several technical revisions are also included in these proposed changes.

In developing these amendments to the regulations DEEP consulted closely with the LEP Board and received positive input from the Environmental Professionals' Organization of Connecticut.

The proposed regulations include, but are not limited to, provisions regarding:

(1) Adding several definitions; defined course, distance learning, distance learning provider and distance learning sponsor; (2) Giving the LEP Board the flexibility to consider distance learning courses to comply with the continuing education requirements in the LEP regulations; (3) Add new subsections to define the requirements and the process that distance learning course providers and sponsors must follow to apply for continuing education credit and to ensure the structure of the course provides for accountability and maintains the integrity of the continuing education course approval process.

The proposed regulations and statement of purpose can be found attached to this notice. Copies of the proposed regulations, statement of purpose, small business impact statement and a fiscal note indicating no additional expense to the state or municipal governments are available for public inspection during normal business hours at the Department of Energy and Environmental Protection's Bureau of Water Protection and Land Reuse, Remediation Division, 2nd Floor, 79 Elm Street, Hartford, CT. A link to the proposed regulations is available on the Department's web site at <http://www.ct.gov/dep/publicnotices>. These documents can also be obtained by contacting Kim Maiorano at the above address, by email Kim.Maiorano@ct.gov or by phone at (860) 424-3788.

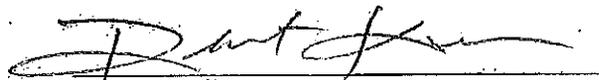
One public hearing has been scheduled to obtain public comment on the proposed regulations at the following place and time:

DATE: July 23, 2014
TIME: 2:00pm – 3:00pm or until all comments have been heard
LOCATION: Russell Hearing Room, Third Floor
Department of Energy and Environmental Protection
79 Elm Street, Hartford, Connecticut

Speakers are requested, although not required, to submit a written copy of their comments.

Written comments on the proposed regulations may also be submitted to David Sattler, Department of Energy and Environmental Protection, Bureau of Water Protection and Land Reuse, Inland Water Resources Division, 79 Elm Street, Hartford, Connecticut, 06106-5127 by July 23, 2014.

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act ("ADA"). Please contact us at (860) 418-5910 or deep.accomodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint. Any person needing a hearing accommodation may call the State of Connecticut relay number (711). Requests for accommodations must be made at least two weeks prior to any agency hearing, program or event.



Robert J. Klee
Commissioner

Date

6/12/14



STATEMENT REGARDING SECTION 22a-6(h) OF THE CONNECTICUT GENERAL
STATUTES CONCERNING THE PROPOSED AMENDMENTS TO THE REGULATIONS

Pursuant to sections 4-168, 22a-6, and 22a-133v of the Connecticut General Statutes (“C.G.S.”), and section 22a-3a-3 of the Regulations of Connecticut State Agencies (“RCSA”), the Commissioner of Energy and Environmental Protection (“the Commissioner”) previously published notice of the Commissioner’s intent to amend sections 22a-133v-1 through 7 inclusive and to adopt new subsection 22a-133v-2(e)(7) and 133v-2(e)(8) of the RCSA. The proposed amendments to the Regulations concerning the State Board of Examiners of Environmental Professionals (also known as the LEP Board), is to allow greater diversity with respect to the continuing education requirements of the regulations with regard to distance learning courses. These proposed amendments provides definitions and allows the LEP Board the flexibility within the regulations to approve distance learning courses and provide the structure such courses would need to maintain in order to be approved by the LEP Board, thus ensuring the continued integrity and accountability of the continuing education requirements for licensure. Several technical revisions were also included in these proposed changes.

Such prior Notice of Intent was public noticed on June 12, 2014 and, pursuant to that notice, on July 23, 2014 the Commissioner held a public hearing on the proposed amendments.

Under Section 22a-6(h) of the C.G.S. the Commissioner of the Department must identify any regulation amendments which differ from any federal standards or procedures adopted by the federal government either on the face of the proposed regulation or through supplemental documentation accompanying the proposed regulation at the time of the notice concerning such amendments to the regulation required under section 4-168. Therefore, at the time of the public hearing, the Commissioner, through the Hearing Officer, provides this written statement available, and incorporates such statement into the administrative record for this matter, that the Commissioner is not aware of any federal standards or procedures adopted by the federal government for the Licensure of Environmental Professionals that pertain to activities covered by the proposed amendments nor apply to persons subject to the provisions of such proposed amendments. The Commissioner is also providing notice that comments on this understanding of the relationship between the proposed amendments referenced above and the federal standards and procedures will be accepted by the Hearing Officer, David A. Sattler, Supervising Sanitary Engineer, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127, until the close of business day on August 22, 2014, thirty (30) days from the date of the inclusion of this statement as part of this Administrative Record. The comment period on the substance of the proposed amendments to the regulations closed at the end of the business day on July 23, 2014. As such, the Commissioner has provided an explanation for all such provisions in the regulation-making record required under Title 4, Chapter 54 of the C.G.S.

July 23, 2015
Date

David A. Sattler
David A. Sattler
Hearing Officer

LIST OF PUBLIC HEARING EXHIBITS INCLUDING HEARING COMMENTS

Proposed Amendments to the Regulations Regarding the State Board of Examiners of Environmental Professionals	
Exhibit #	Exhibits and Comments Received From:
1a & 1b	<u>CT DEEP's Public Notice of Intent to Adopt Regulations and to Hold a Public Hearing Signed June 12, 2014 and published in on the Office of the Secretary of State's Website on June 18, 2014.</u>
2	<u>CT DEEP's Proposed Amendments to the Regulations Regarding the State Board of Examiners of Environmental Professionals, which were the subject of a Public Hearing on July 23, 2014</u>
3	<u>CT DEEP's Small Business Impact Statement for the Proposed Regulation Amendments</u>
4	<u>CT DEEP's Agency Fiscal Estimate of Proposed Regulations Amendments</u>
5	<u>CT DEEP's Statement pursuant to Section 22a-6(h) of the CT General Statutes</u>
6	<u>Seth Molofsky, Executive Director, Environmental Professionals' organization of Connecticut, - Amston, CT dated 07/18/14</u>
7	<u>Gary Robbins, Manager or Ram's Horn Educational, LLC - Manchester, CT. dated 7/14/14 and Received by CT DEEP on 07/21/2014</u>



Environmental Professionals' Organization of Connecticut

P.O. Box 176

Amston, Connecticut 06231-0176

Phone: (860) 537-0337, Fax: (860) 603-2075

July 18, 2014

David Sattler
CT Department of Energy and Environmental Protection, Bureau of Water Protection and Land Reuse,
Inland Water Resources Division
79 Elm Street
Hartford, CT, 06106-5127

Re: EPOC Comments on Proposed Revisions to the Regulations Regarding the State Board of Examiners of Environmental Professionals ("LEP Regulations") – Hearing date: July 23, 2014

Dear Mr. Sattler:

The Environmental Professionals' of Connecticut (EPOC) has been following the proposed amendments to the "LEP Regulations" regarding the clarification of distance learning course approvals and we appreciate the opportunity to provide the following comments. EPOC is supportive of the proposed amendments, which provide a procedure for distance learning courses to be approved by the "LEP Board", and will allow a greater diversity of educational opportunities for Licensed Environmental Professionals (LEPs) to choose from. In reviewing the procedure to obtain approvals for distance learning courses, we have the following comment:

- Sec. 22a-133v-2(e)(8)(A) - Distance Learning Course Approval/Disapproval
The proposed amendment language is:

For distance learning courses that have Sponsor approved credit hours, a licensed environmental professional or the Provider may submit an application to the Board for approval of the content if such course meets the criteria in section 22a-133v-2(e)(1)(A) of the Regulations of Connecticut State Agencies.

This section fails to mention that a **Sponsor** may also submit an application for approval of content and we suggest adding that to the section.

Please contact me if you have any questions about our comments and thank you for your efforts to improve the LEP regulations.

Sincerely,

Seth Molofsky
Executive Director



Ram's Horn Educational, LLC

HANDS-ON EDUCATION THROUGH SIMULATION

July 14, 2014

David Sattler
Department of Energy and Environmental Protection
Bureau of Water Protection and Land Reuse,
Inland Water Resources Division,
79 Elm Street,
Hartford, Connecticut, 06106-5127

RECEIVED

JUL 21 2014

Inland Water Resource Div

Comments on Distance Learning Revisions to Section 1. Sections 22a-133v-1 to 22a-133v-7, inclusive, of the Regulations of Connecticut State Agencies

As the first entity to have distance learning courses approved by the LEP Board, I welcome the revisions to the regulations that's clarifies the viability of distance learning for LEP continuing education credits. As a provider of both distance learning and brick and mortar courses, I can vouch for the effectiveness of active distance learning when compared to day long lecture courses.

I have reviewed the proposed regulation and fully endorse the material being proposed. I currently have courses approved in 5 states for continuing education credits. In my judgment the proposed distance learning revisions are equal to or exceed requirements in other states. I have but two questions I would like DEEP to clarify. When you approve a course, how long is the approval active—perhaps some statement related to both distance learning and brick and mortar courses should be included in the regulation. Secondly, what happens to courses already approved. Do I have to get the courses reapproved?

Respectfully submitted,

Gary Robbins

Gary A. Robbins, Ph.D., Manager
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Producers of Virtual Ground Water Academy (www.vgwacademy.com)

<http://www.ramshorneducational.com>