DISCLAIMER

This is an unofficial version of Section 22a-471 of the Connecticut General Statutes showing the ~~deletions~~ and additions made by Section 37 of Public Act 13-247, effective 7/1/2013. This document has been prepared by DEEP for informational use until the 2014 Supplement to the General Statutes is published in January, 2014. Until that time, the official version of the revised statute is only available electronically in Section 37 of Public Act 13-247, which was signed by the Governor on 6/19/2013. The electronic version of the Public Act is available through the General Assembly web site at: http://www.cga.ct.gov/2013/ACT/pa/pdf/2013PA-00247-R00HB-06706-PA.pdf .

Sec. 37. Section 22a-471 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2013*):

(a) (1) If the [~~commissioner~~] Commissioner of Energy and Environmental Protection determines that pollution of the groundwaters has occurred or can reasonably be expected to occur and the Commissioner of Public Health determines that the extent of pollution creates or can reasonably be expected to create an unacceptable risk of injury to the health or safety of persons using such groundwaters as a public or private source of water for drinking or other personal or domestic uses, the Commissioner of Energy and Environmental Protection [~~shall, within available appropriations, arrange for the short-term provision of potable drinking water to those residential buildings and elementary and secondary schools affected by such pollution until either he issues an order pursuant to this section requiring the provision of such short-term supply and the recipient complies with such order or a long-term supply of potable drinking water has been provided, whichever is earlier. In determining if pollution creates an unacceptable risk of injury, the Commissioner of Public Health shall balance all relevant and substantive facts and inferences and shall not be limited to a consideration of available statistical analysis but shall consider all of the evidence presented and any factor related to human health risks. The commissioner~~] may issue an order to the person or municipality responsible for such pollution requiring that potable drinking water be provided to all persons affected by such pollution. In determining if pollution creates an unacceptable risk of injury, the Commissioner of Public Health shall balance all relevant and substantive facts and inferences and shall not be limited to a consideration of available statistical analysis but shall consider all of the evidence presented and any factor related to human health risks. If the [~~commissioner~~] Commissioner of Energy and Environmental Protection finds that more than one person or municipality is responsible for such pollution, [~~he~~] the commissioner shall attempt to apportion responsibility if [~~he~~] the commissioner determines that apportionment is appropriate. If [~~he~~] the commissioner does not apportion responsibility, all persons and municipalities

responsible for the pollution of the groundwaters shall be jointly and severally responsible for the providing of potable drinking water to persons affected by such pollution. If the commissioner determines that the state or an agency or department of the state is responsible in whole or in part for the pollution of the groundwaters, such agency or department shall prepare or arrange for the preparation of an engineering report and shall provide or arrange for the provision of a long-term potable drinking water supply. If the commissioner is unable to determine the person or municipality responsible or if [~~he~~] the commissioner determines that the responsible persons have no assets other than land, buildings, business machinery or livestock and are unable to secure a loan at a reasonable rate of interest to provide potable drinking water, [~~he~~] the commissioner may prepare or arrange for the preparation of an engineering report and provide or arrange for the provision of a long-term potable drinking water supply or [~~he~~] the commissioner may issue an order to the municipality wherein groundwaters unusable for potable drinking water are located requiring that short-term provision of potable drinking water be made to those existing residential buildings and elementary and secondary schools affected by such pollution and that long-term provision of potable drinking water be made to all persons affected by such pollution. For purposes of this section, "residential building" means any house, apartment, trailer, mobile manufactured home or other structure occupied by individuals as a dwelling, except a non-owner-occupied hotel or motel or a correctional institution.

(2) Any order issued pursuant to this section may require the provision of potable drinking water in such quantities as the commissioner determines are necessary for drinking and other personal and domestic uses and may require the maintenance and monitoring of potable water supply facilities for any period which the commissioner determines is necessary. In making such determinations, the commissioner shall consider the short-term and long-term needs for potable drinking water and the health and safety of those persons whose water supply is unusable. Any order may require the submission of an engineering report which shall be subject to the approval of the commissioner and the Commissioner of Public Health and include, but not be limited to, a description in detail of the problem, area and population affected by pollution of the groundwaters; the expected duration of and extent of the pollution; alternate solutions including relative cost of construction or installation, operation and maintenance; design criteria on all alternate solutions; and any other information which the commissioner deems necessary. Upon review of such report, the commissioner and the Commissioner of Public Health shall consider the nature of the pollution, the expected duration and extent of the pollution, the health and safety of the persons affected, the initial and ongoing cost-effectiveness and reliability of each alternative and any other factors which they deem relevant, and shall approve a system or method to provide potable drinking water pursuant to the order. Each order shall include a time schedule for the accomplishment of the steps leading to the provision of potable drinking water. Notwithstanding the fact that a responsible party has been or may be identified or a request for a hearing on or a pending appeal from an order issued

pursuant to this section, when pollution of the groundwaters has occurred or may reasonably be expected to occur, the commissioner may prepare or arrange for the preparation of an engineering report as described in this subdivision and may provide or arrange for the provision of a long-term potable drinking water supply. In any case where the state or an agency or department of the state is responsible in whole or in part for the pollution of the groundwaters, such agency or department shall prepare or arrange for the preparation of an engineering report and shall provide or arrange for the provision of a long-term potable drinking water supply, and if the state is not the sole responsible party, the commissioner shall seek reimbursement under subdivision (4) of subsection (b) of this section for the costs of such report and for the provision of potable water. The cost of the report and of the provision of a long-term potable drinking water supply, as funds allow, shall be paid from the proceeds of any bonds authorized for the provision of potable drinking water.

(3) The provisions of this section shall not affect the rights of any municipality to institute suit to recover all damages, expenses and costs incurred by the municipality from any responsible party, including, but not limited to, the costs specified in subparagraph (B)(i) and (ii) of subdivision (4) of subsection (b) of this section and, in the case of any municipality which is not responsible for the pollution of the groundwaters, the additional amounts specified in subparagraph (B)(iii) and (iv) of subdivision (4) of subsection (b) of this section.

(4) No provision of this section shall limit the liability of any person who or municipality which renders the groundwaters unusable for potable drinking water from a suit for damages by a person who or municipality which relied on said groundwaters for potable drinking water prior to the determination by the commissioner that the groundwaters are polluted.

(5) The commissioner may issue any order pursuant to this section if the pollution of the groundwaters occurred before or after July 1, 1982.

(6) The commissioner may at any time require further action by any person to whom or municipality to which an order is issued pursuant to this section if **[~~he~~]** the commissioner determines that such action is necessary to protect the health and safety of those persons whose water supply was rendered unusable.

(b) (1) (A) Any municipality not responsible for the pollution of the groundwaters which is ordered to provide potable drinking water in accordance with subsection (a) of this section may apply to the commissioner for a grant as provided by this subsection. Except as provided in subparagraph (C) of subdivision (1) of this subsection and in subdivision (2) of this subsection, the commissioner shall make grants for the short-term provision of potable drinking water and the construction or installation of individual wells or individual water treatment systems, including, but not limited to, carbon

absorption filters and shall make grants for other capital improvements for the long-term provision of potable drinking water from any bond authorization established for that purpose.

(B) The amount distributed to a municipality shall, as funds allow, equal one hundred per cent of the cost of short-term provision of potable drinking water, one hundred per cent of the cost of the engineering report required by this section, one hundred per cent of the cost of capital improvements for the most cost-effective long-term method of providing potable drinking water as determined by the commissioner and the Commissioner of Public Health upon consideration of such engineering report, and one hundred per cent of the cost during the first five years of installation of monitoring and maintaining individual water treatment systems and monitoring drinking water wells located in an area where the commissioner determines that pollution of the groundwater is reasonably likely to occur. No state funds shall be distributed to a municipality for the cost of operating or maintaining any potable water supply facilities other than as specified in this subsection.

(C) Notwithstanding any provision of this subsection to the contrary, the commissioner may advance to a municipality, from the proceeds of any bonds authorized for the provision of potable drinking water, any percentage of the cost of short-term and long-term provision of potable drinking water which he deems necessary.

(2) (A) If the commissioner is unable to determine the person or municipality responsible for rendering the groundwaters unusable for potable drinking water or if [~~he~~] the commissioner determines that the responsible persons have no assets other than land, buildings, business machinery or livestock and are unable to secure a loan at a reasonable rate of interest to provide potable drinking water, a water company which has less than ten thousand customers and which owns, maintains, operates, manages, controls or employs a water supply well which is rendered unusable for potable drinking water, may apply to the commissioner for a grant from funds established pursuant to section 22a-451 or from the proceeds of any bonds authorized for the provision of potable drinking water. If, upon review of the engineering report required by this subsection to be submitted with an application for such a grant, the commissioner determines that a grant to a water company from available appropriations or from the proceeds of any bonds authorized for the provision of potable drinking water is appropriate, [~~he~~] the commissioner may make such a grant in accordance with regulations adopted by [~~him~~] the commissioner pursuant to subsection (e) of this section.

(B) The total amount distributed to a water company pursuant to this subsection shall, as funds allow, equal fifty per cent of the cost of the engineering report required by this subsection and fifty per cent of the cost of the most cost-effective long-term method of rendering the water supply in question usable for potable drinking water, as

determined by the commissioner and the Commissioner of Public Health upon consideration of the required engineering report.

(C) For purposes of this section, "water company" and "customer" shall have the same meaning as specified in section 25-32a.

(D) Any water company applying for a grant pursuant to this section shall prepare or have prepared an engineering report which shall be subject to the approval of the commissioner and the Commissioner of Public Health and include, but not be limited to, a description in detail of the problem, area and population affected by pollution of the groundwaters; alternate solutions including relative cost of construction or installation, operation and maintenance; design criteria on all alternate solutions and any other information the commissioner deems necessary.

(3) (A) If a municipality or water company receives funding from a private source, a federal grant or another state grant for any cost for which a grant may be awarded pursuant to this section, the grant under this section shall equal the specified percentage of the costs specified in this subsection minus the amount of the other funding.

(B) If a municipality or water company receives a grant under this section and is compensated by a person who or municipality which is responsible for rendering the groundwaters unusable for potable drinking water, the municipality or water company shall reimburse the account from which the funds were made available for the grant as follows: If the compensation from the responsible party equals or exceeds the costs toward which the grant was to be applied, the municipality or water company shall reimburse the total amount of the grant; if the compensation is less than the cost toward which the grant was to be applied, the municipality or water company shall reimburse a percentage of the compensation equal to the percentage of such costs paid by the grant.

(4) (A) Notwithstanding any request for a hearing or a pending appeal therefrom, if a person or municipality responsible for pollution of the groundwaters fails to comply with an order of the commissioner issued pursuant to this section, the municipality wherein such pollution is located may, after giving written notice of its intent to the commissioner and the responsible person or municipality, undertake the actions required by the order and seek reimbursement for the cost of such actions from the responsible person or municipality. If at any time after receipt of such a notice, the responsible party intends to comply with a step of the order which the municipality has not yet completed, the responsible party may do so with the written approval of the commissioner and municipality, provided the actions which the responsible party takes are consistent with those taken by the municipality.

(B) The commissioner may order any person or municipality responsible for pollution of the groundwaters to reimburse the state, a water company, and any municipality

which is not responsible for pollution but received an order pursuant to this section or which did not receive such an order but voluntarily provided potable drinking water, for (i) the expenses each incurred in providing potable drinking water to any person affected by such pollution, provided the required reimbursement for such expenses shall not exceed the actual cost of short-term provision of potable drinking water and an amount equal to the reasonable cost of planning and implementing the most cost-effective long-term method of providing potable drinking water as determined by the commissioner and the Commissioner of Public Health; (ii) costs for recovering such reimbursement; (iii) interest on the expenses specified in (i) at a rate of ten per cent a year from the date such expenses were paid; and (iv) reasonable attorney's fees. The commissioner may request the Attorney General to bring a civil action to recover any costs or expenses incurred by the commissioner pursuant to this subsection provided no such action may be brought later than ten years after the date of discovery of the pollution of public or private sources of water for drinking or other personal or domestic use.

(C) If a municipality fails to recover all expenses specified in subparagraph (B)(i) of subdivision (4) of this subsection from the responsible party, the municipality may apply to the commissioner for a grant in accordance with this subsection, provided the total amount of funds received from the commissioner and the responsible party shall not exceed the amounts specified in subparagraph (B) of subdivision (1) of subsection (b) of this section.

(5) For purposes of this section except subdivision (3) of subsection (a) and subparagraph (B)(ii) of subdivision (4) of this subsection, "cost" includes only those costs which the commissioner determines are necessary and reasonable, including, but not limited to, the cost of plans and specifications, construction or installation and supervision thereof.

(6) If any grant application is pending on June 7, 1994, and is approved by the commissioner, the percentage of costs to be paid by the grant shall be determined in accordance with this section. Any order pending on May 31, 1985, shall be construed in accordance with this section.

(7) Any person who or municipality which provides potable drinking water pursuant to this section may, with the approval of the commissioner, construct or install facilities beyond the areas included in the order or facilities which are more costly than those which are determined to be most cost-effective, provided any request for a grant or reimbursement shall be limited to the amounts specified in this section.

(c) Any order issued under the provisions of this section shall be subject to the rights of any aggrieved person or municipality to a hearing before the commissioner as provided in section 22a-436, and appeal from the final determination of the commissioner to the

Superior Court as provided in section 22a-437. The request for a hearing or pending appeal therefrom shall not constitute a condition which shall stay the commissioner from requesting that an injunction under the provisions of section 22a-6 or 22a-435, or a civil action to recover a forfeiture under the provisions of section 22a-438, be initiated by the Attorney General. The court shall issue an injunction requiring the recipient of the order to take the steps required by the order for short-term and long-term provision of potable drinking water unless such court determines that the issuance of the order was arbitrary. Notwithstanding any provision of the general statutes, a court shall not grant a stay from any order issued pursuant to this section on the grounds that an administrative appeal is pending. If it is thereafter determined by the Superior Court as the result of an appeal under the provisions of section 22a-437 that the commissioner acted arbitrarily, unreasonably or contrary to law in requiring a person or municipality to comply with an order the commissioner shall reimburse the person or municipality for the total costs which have been incurred from the funds established under section 22a-446.

(d) The commissioner shall not issue an order to any person pursuant to this section if the sole basis for the order is that such person is the owner of the land from which the source of pollution or potential source of pollution emanates.

(e) The commissioner may, in accordance with chapter 54, adopt such regulations as [~~he~~] the commissioner deems necessary to carry out the provisions of this section, and shall adopt regulations for the provision of grants pursuant to this section which shall include criteria for eligibility for funds.

(f) (1) Notwithstanding the provisions of subsection (a) of this section, if the commissioner determines that a person whose actions have caused or can reasonably be expected to cause pollution of the groundwaters by the application of a pesticide (A) has properly applied the pesticide or arranged for a pesticide application which was properly performed, (B) was engaged in agriculture at the time the pesticide was applied and used the pesticide solely in the production of agricultural commodities, (C) has agreed to implement the plans specified in subdivision (2) of this subsection, and (D) maintained the records of the application of the pesticide as required by section 22a-58 and the records and plan identified in section 22a-471a, the commissioner shall not issue an order under subsection (a) of this section to the person engaged in agriculture, but may issue an order under said subsection (a) to another responsible person, including, but not limited to, the producer of the pesticide, requiring the short-term and long-term provision of potable drinking water in accordance with said subsection (a). The commissioner shall not issue an order under said subsection (a) to a person engaged in agriculture who did not maintain the records identified under section 22a-471a if said commissioner finds such records are not relevant to a determination of the party responsible for pollution of the groundwaters. If the commissioner is unable to

determine the responsible person, [~~he~~] the commissioner may issue such order to the municipality wherein groundwaters unusable for potable drinking water are located.

(2) If the commissioner determines that a person engaged in agriculture has caused or can reasonably be expected to cause pollution of the groundwaters by pesticides, [~~he~~] the commissioner may cause such person to submit to the commissioner and, upon approval by the commissioner, implement a plan to minimize the potential for groundwater contamination from the storage, handling and disposal of pesticides at the locations where such person engaged in agriculture.

(3) For the purposes of this subsection, a pesticide is properly applied if at the time of the application the pesticide was licensed by or registered with the state and federal government and was applied in a manner consistent with (A) the labeling of the pesticide, as defined in section 22a-47, (B) applicable state and federal statutes and regulations at the time of the application, (C) any approvals or recommendations of the federal, state or local government, including any limitations, warnings or conditions of such approvals or recommendations, and (D) generally accepted agricultural management practices at the time of application, considering any special geological, hydrological or soil conditions of which the farmer was aware or reasonably should have been aware.

(4) Any municipality which receives an order pursuant to subdivision (1) of this subsection shall be eligible for a grant from the state in accordance with subparagraph (1) of subsection (b) of this section.

(5) The provisions of this subsection shall apply to pollution of the groundwaters by pesticides discovered on or after May 26, 1988. All orders issued pursuant to this section by the commissioner prior to May 26, 1988, shall remain in effect unless the orders are otherwise revoked, amended or modified by said commissioner.

(6) Nothing in this subsection, section 22a-471a or section 22a-471b shall affect or limit any right of action of an individual against any person engaged in agriculture for injury to person or property resulting from the use of a pesticide.

(7) For purposes of this subsection, "pesticide" shall have the same meaning as specified in section 22a-47.