



Substitute Senate Bill No. 1258

Public Act No. 07-192

AN ACT CONCERNING UNDERGROUND STORAGE TANKS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2007*) The owner or operator of an underground storage tank system storing petroleum that is subject to section 22a-449(d)-101 et seq. of the regulations of Connecticut state agencies, who owns or operates more than ten facilities with underground storage tank systems, may store records required to be maintained under section 22a-449(d)-103(e) of the regulations of Connecticut state agencies, in a central location in the state of Connecticut, provided such owner or operator: (1) Specifies, in writing, the location of any such centrally stored records and such other information as the Commissioner of Environmental Protection may prescribe related to such storage on a form prescribed by said commissioner and submits such form to said commissioner; and (2) ensures that such records are immediately available for inspection by the Commissioner of Environmental Protection, or the commissioner's designee, at any such central location. The following records may not be stored solely at such a central location but shall be maintained at the site of the underground storage tank system: (A) A copy of all Underground Storage Tank Facility Notification Forms, or EPHM-6, submitted to the commissioner, regarding underground storage tanks

Substitute Senate Bill No. 1258

for the site; (B) for all metallic underground storage tank systems, records concerning the most recent cathodic protection test; (C) for underground storage tank systems with impressed current cathodic protection, the last six months of records regarding the inspection of the cathodic protection systems, if applicable; (D) the most recent prior twelve months of records related to repairs of the underground storage tank system required by section 22a-449(d)-103(d)(6) of the regulations of Connecticut state agencies; (E) the most recent six months of records demonstrating compliance with the release detection requirements of section 22a-449(d)-104 of the regulations of Connecticut state agencies, including, but not limited to, inventory control and reconciliation of such inventory control records; (F) records regarding the two most recent underground storage tank tightness pursuant to section 22a-449(d)-104(e)(3) of the regulations of Connecticut state agencies; and (G) any other records regarding the underground storage tank system that the commissioner specifies, in writing. Nothing in this section shall affect any requirement of chapter 446k of the general statutes other than the location of where certain records may be stored.

Sec. 2. Section 22a-449m of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Any remediation of contaminated soil or groundwater the cost of which is to be paid out of the subaccount established under subsection (b) of section 22a-449c shall be performed by or under the direct onsite supervision of a registered contractor, as defined in sections 22a-449l and 22a-449n and shall be performed in accordance with regulations adopted by the commissioner pursuant to section 22a-133k that establish direct exposure criteria for soil, pollutant mobility criteria for soil and groundwater protection criteria for GA and GAA areas. If the replacement of any such residential underground heating oil storage tank system performed pursuant to the provisions of this section involves installation of an underground petroleum storage tank, such

Substitute Senate Bill No. 1258

tank shall conform to any standards which apply to new underground petroleum storage tanks.

(b) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, setting forth the standards and criteria for residential underground heating oil storage tank systems which may include, but not be limited to, (1) standards for criteria for the design, installation, operation, maintenance and monitoring of such facilities, (2) the life expectancy after which such systems must be removed and replaced, and (3) standards and procedures for the granting of a waiver for the installation of a new residential underground heating oil storage tank system or the replacement of an existing system. The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, regarding the removal of all pipes connected to both above ground and underground residential heating oil storage tank systems, when a storage tank is removed, regardless of the storage tank's capacity.

Sec. 3. Subsection (f) of section 22a-449 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(f) The Commissioner of Environmental Protection may adopt regulations, in accordance with the provisions of chapter 54, to establish (1) requirements for the inspection of nonresidential underground storage tank systems for compliance with the requirements of this chapter, including, but not limited to, the minimum frequency, method and content of inspections, and maintenance and disclosure of results, (2) a program to authorize persons to (A) perform inspections, including, but not limited to, education and training requirements for such persons, and whether or not such persons may be employed by the owner or operator of the subject nonresidential underground storage tank system, and (B) determine whether the violations for which a nonresidential

Substitute Senate Bill No. 1258

underground storage tank system has been taken out of service pursuant to subsection (g) of this section have been corrected, which regulations may include, but not be limited to, a prohibition for an owner or operator of any such system from placing such system back into service pursuant to subsection (g) of this section after the regulations take effect or additional requirements for an owner or operator of any such system, and [(C)] (3) requirements, in addition to the requirements contained in subsection (g) of this section, relating to the prohibition of deliveries to and the use of nonresidential underground storage tank systems that are not in compliance with section 22a-449o or with the requirements of this section and any regulations adopted under this section.

Sec. 4. Subsection (a) of section 22a-449c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) There is established an account to be known as the "underground storage tank petroleum clean-up account". The underground storage tank petroleum clean-up account shall be an account of the Environmental Quality Fund. Notwithstanding any provision of the general statutes to the contrary, any moneys collected shall be deposited in the Environmental Quality Fund and credited to the underground storage tank petroleum clean-up account. Any balance remaining in said account at the end of any fiscal year shall be carried forward in said account for the fiscal year next succeeding.

(2) The account shall be used by the Commissioner of Environmental Protection to provide money for reimbursement or payment pursuant to section 22a-449f, as amended by this act, to responsible parties or parties supplying goods or services, for costs, expenses and other obligations paid or incurred, as the case may be, as a result of releases, and suspected releases, costs of investigation and remediation of releases and suspected releases, and for claims by a

Substitute Senate Bill No. 1258

person other than a responsible party for bodily injury, property damage and damage to natural resources that have been finally adjudicated or settled with the prior written consent of the board. The commissioner may also make payment from the account to an assignee who is in the business of receiving assignments of amounts approved by the board, but not yet paid from the account, provided the party making any such assignment, using a form approved by the commissioner, directs the commissioner to pay such assignee, that no cost of any assignment shall be borne by the account and that the state and its agencies shall not bear any liability with respect to any such assignment.

(3) Notwithstanding the provisions of this section regarding reimbursements of parties pursuant to section 22a-449f, as amended by this act, and regulations adopted pursuant to section 22a-449e, and regardless of when an application for payment or reimbursement from the account may have been submitted to the board, payment or reimbursement shall be made in accordance with the following: (A) After June 1, 2004, no payment or reimbursement shall be made for any costs, expenses and other obligations paid or incurred for remediation, including any monitoring to determine the effectiveness of the remediation, of a release to levels more stringent than or beyond those specified in the remediation standards established pursuant to section 22a-133k, except to the extent the applicant demonstrates that it has been directed otherwise, in writing, by the commissioner; (B) after June 1, 2005, no payment or reimbursement from the account shall be made to any person for diminution in property value or interest, provided that reimbursement for interest accrued on attorneys' fees may be permitted if an application seeking interest accrued on attorneys' fees was submitted to the commissioner on or before March 31, 2003, and such application has been tabled by the board for three or more years; and (C) after June 1, 2005, no payment or reimbursement from the account shall be made for attorneys' fees or other costs of

Substitute Senate Bill No. 1258

legal representation paid or incurred as a result of a release or suspected release (i) in excess of five thousand dollars to any responsible party, (ii) in excess of ten thousand dollars to any person other than a responsible party, and (iii) by a responsible party regarding the defense of claims brought by another person, except that applications for reimbursement filed on or before June 30, 2005, shall not be subject to the limitations for reimbursement imposed by clauses (i) and (ii) of this subparagraph. In addition, notwithstanding the provisions of this section regarding reimbursements of parties pursuant to section 22a-449f, as amended by this act, the responsible party shall bear all costs of the release that are less than ten thousand dollars and all persons shall bear all costs of the release that are more than one million dollars, except that for any such release which was reported to the department prior to December 31, 1987, and for which more than five hundred thousand dollars has been expended by the responsible party to remediate such release prior to June 19, 1991, the responsible party for the release shall bear all costs of such release which are less than ten thousand dollars or more than five million dollars, provided the portion of any reimbursement or payment in excess of three million dollars may, at the discretion of the commissioner, be made in annual payments for up to a five-year period. There shall be allocated to the department annually, for administrative costs, two million dollars.

Sec. 5. Subdivision (1) of subsection (b) of section 22a-449f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to applications filed with the underground storage tank petroleum clean-up account on or after July 1, 2005*):

(b) (1) In addition to all other applicable requirements, a person seeking payment or reimbursement from the account shall demonstrate that when the total costs, expenses or other obligations in

Substitute Senate Bill No. 1258

response to a release or suspected release (A) are two hundred fifty thousand dollars or less, that all labor, equipment and materials provided after October 1, 2005, and all services and activities undertaken after October 1, 2005, [shall be] are approved, in writing, either by the commissioner or by a licensed environmental professional with a currently valid and effective license issued pursuant to section 22a-133v; and (B) exceed two hundred fifty thousand dollars, that all labor, equipment and materials provided after October 1, 2005, and all services and activities undertaken after October 1, 2005, [shall be] are approved, in writing, by the commissioner, [or that] provided the commissioner [has authorized] may authorize, in writing, [an] a licensed environmental professional with a currently valid and effective license issued pursuant to section 22a-133v to approve, in writing, such labor, equipment, materials, services and activities, in lieu of [a written approval by] the commissioner. The provisions of this subsection shall apply to all costs, expenses or other obligations for which a person is seeking payment or reimbursement from the account and the board shall not order and the commissioner shall not make payment or reimbursement from the account for any cost, expense or other obligation, unless the person seeking such payment or reimbursement [includes with an application or with a request for payment or reimbursement all written approvals] provides the written approval required by this subdivision. Any written approval provided by a licensed environmental professional pursuant to this subdivision shall be submitted with the application for payment or reimbursement. Any written approval provided by the commissioner pursuant to this subdivision shall not constitute an approval pursuant to any other provision of the general statutes or any regulation and shall be presented to the board prior to the board making a decision regarding the application that such approval concerns.

Sec. 6. Subsection (c) of section 22a-449f of the general statutes is

Substitute Senate Bill No. 1258

repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to applications filed with the underground storage tank petroleum clean-up account either prior to or subsequent to the effective date of this section, except that the provisions of subparagraph (A) of subdivision (10) of this subsection shall be applicable only to applications filed on or after October 1, 2007*):

(c) The board shall order reimbursement or payment from the account for any cost paid or incurred, as the case may be, if, (1) such cost is or was incurred after July 5, 1989, (2) a responsible party was or would have been required to demonstrate financial responsibility under 40 CFR Part 280.90 et seq. as said regulation was published in the Federal Register of October 26, 1988, for the underground storage tank or underground storage tank system from which the release emanated, whether or not such party is required to comply with said requirements on the date any such cost is incurred, provided if the state is the responsible party, the board may order payment from the account without regard to whether the state was or would have been required to demonstrate financial responsibility under said sections 40 CFR Part 280.90 et seq., (3) after the release, if any, the responsible party incurred a cost, expense or obligation for investigation, cleanup or for claims of a person other than a responsible party resulting from the release, provided any such claim shall be required to be finally adjudicated or settled with the prior written approval of the board before an application for reimbursement or payment is made, (4) the board determines that the cost, expense or other obligation is reasonable and that there are not grounds for recovery specified in subdivision (1) or (3) of subsection (g) of this section, as amended by this act, (5) the responsible party notified [the commissioner of the release in accordance with regulations adopted pursuant to section 22a-449 or, where such regulations are not applicable, as soon as practicable, and notified] the board, as soon as practicable, of the release and of any other claim by a person other than a responsible

Substitute Senate Bill No. 1258

party, resulting from the release, in accordance with the regulations adopted pursuant to section 22a-449e, (6) the responsible party, or, if a person other than a responsible party applies for payment or reimbursement from the account, then such person demonstrates the remediation, including any monitoring to determine the effectiveness of the remediation, for which payment or reimbursement is sought is not more stringent than that required by the remediation standards established pursuant to section 22a-133k, except to the extent the responsible party or such person demonstrates that it has been directed otherwise, in writing, by the commissioner, (7) the responsible party, or, if a person other than a responsible party applies for payment or reimbursement from the account, then such person demonstrates that it does not have insurance, or a contract or other agreement to provide payment or reimbursement for any cost, expense or other obligation incurred in response to a release or suspected release, or if there is any such insurance, contract or other agreement, that any insurance coverage has been denied or is insufficient to cover the costs, expenses or other obligations, paid or incurred or that any contract or other agreement is not able to or is insufficient to cover the costs, expenses or other obligations, paid or incurred, for which payment or reimbursement is sought from the account, (8) the responsible party demonstrates and the board determines that one of the milestones noted in section 22a-449p has been completed, (9) the board determines what, if any, reductions to the amounts sought from the account should be made based upon the compliance evaluations performed pursuant to subsection (d) of this section, and (10) [if] at the time any application or request for payment or reimbursement, including any supplemental application or request, is submitted to the board, (A) for applications filed with the underground storage tank petroleum clean-up account on or after October 1, 2007, there is no underground storage tank system subject to the financial responsibility demonstration required in subdivision (2) of this subsection dispensing petroleum on the property where the release or suspected

Substitute Senate Bill No. 1258

release emanated or occurred, [then the responsible party demonstrates] and if the application is submitted by the person who owns or operates or who owned or operated the underground storage tank system at the time of the release, such person demonstrates, in addition to all other applicable requirements, that lack of compliance with provisions of the general statutes and regulations governing underground storage tank systems was not a proximate cause of the release or suspected release and that there are not grounds for recovery specified in subdivision (2) of subsection (g) of this section, as amended by this act, or (B) for applications filed with the underground storage tank petroleum clean-up account prior to October 1, 2007, there is no underground storage tank system dispensing petroleum on the property where the release or suspected release emanated or occurred, and if the application is submitted by the person who owns or operates or who owned operated the underground storage tank system at the time of the release, such person demonstrates, in addition to all other applicable requirements, that lack of compliance with provisions of the general statutes and regulations governing underground storage tank systems was not a proximate cause of the release or suspected release and that there are not grounds for recovery specified in subdivision (2) of subsection (g) of this section, as amended by this act. Subdivision (10) of this section shall not apply to any application filed with the underground storage tank petroleum clean-up account concerning a release of an underground storage tank system that was reported to the Commissioner of Environmental Protection in September, 2003 where such system was owned or operated by a municipality or other political subdivision of the state at the time of the release and such system was removed on or before April 1, 2005.

In acting on an application or a request for payment or reimbursement, the board, using funds from the account, may contract with experts, including, but not limited to, attorneys and medical professionals, to better evaluate and defend against claims and

Substitute Senate Bill No. 1258

negotiate claims by persons other than responsible parties. The costs of the board for experts shall not be charged to the amount allocated to the Department of Environmental Protection pursuant to section 22a-449c, as amended by this act. If a person other than a responsible party applies to the board claiming to have suffered bodily injury, property damage or damage to natural resources, the board shall order reimbursement or payment from the account if such person demonstrates that subdivisions (1), (2), (6) and (7) of this subsection are satisfied, the board determines that as a result of a release or suspected release such person has suffered bodily injury, property damage or damage to natural resources, that the costs, expenses or other obligations incurred are reasonable and the person submitting such claim demonstrates that it has attempted to or has provided written notice of its claim to the responsible party as required in subsection (a) of this section and that the responsible party has not applied to the board for payment or reimbursement of this claim. On or before June 30, 2005, if the board denied reimbursement or provided for only partial payment or reimbursement from the account regarding a release, pursuant to subdivision (4) of this section, such denial or partial payment or reimbursement shall remain in effect and shall apply to all subsequent applications or requests for payment or reimbursement regarding such release.

Sec. 7. Subsection (g) of section 22a-449f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to applications filed with the underground storage tank petroleum clean-up account both prior to and subsequent to the effective date of this section*):

(g) The Attorney General, upon the request of the board or the commissioner, may institute an action in the superior court for the judicial district of Hartford to recover the amounts specified in this section from any person who owns or operates an underground

Substitute Senate Bill No. 1258

storage tank system at the time a release emanates or occurs from such system or any person who owns the real property on which a release emanates or occurs, provided such person owned the real property at or any time after the release emanates or occurs until the time that a final remediation action report is submitted by a licensed environmental professional or approved by the commissioner pursuant to subdivision (7) of section 22a-449p, if: (1) Prior to the occurrence of the release, the underground storage tank or underground storage tank system from which the release emanated was required by regulations adopted under section 22a-449, as amended by this act, to [submit a notification to the commissioner but no such notification was provided] be the subject of an Underground Storage Facility Notification Form, or EPHM-6 but the person who owns or operates or who owned or operated such tank or tank system knowingly and intentionally failed to submit such notification form to the commissioner; (2) the release results from a reckless, wilful, wanton or intentional act or omission of such person or a negligent act or omission of such person that constitutes noncompliance with the general statutes or regulations governing the installation, operation and maintenance of underground storage tanks; or (3) the release occurs from an underground storage tank or system which is not in compliance with a final order issued by the commissioner pursuant to this chapter or a final judgment issued by a court concerning noncompliance with a requirement of this chapter; or (4) payment has been made from the account, including payment to the commissioner pursuant to subsection (i) of this section, to a person other than a person against whom an action may be brought pursuant to this subsection. All costs to the state relating to actions to recover such payments, including, but not limited to, reasonable attorneys' fees, shall initially be paid from the underground storage tank petroleum clean-up account. In any recovery the board or the commissioner is entitled to recover from such person (A) all payments made from the account with respect to a release or suspected release, (B) all payments

Substitute Senate Bill No. 1258

made by the commissioner pursuant to subsection (i) of this section with respect to a release or suspected release, (C) interest on such payments at a rate of ten per cent per year from the date such payments were made, and (D) all costs of the state relating to actions to recover such payments, including, but not limited to, reasonable attorneys' fees. All actions brought pursuant to this section shall have precedence in the order of trial, as provided in section 52-191. If the Attorney General has filed an action against a person seeking recovery of the amounts specified in this subsection or if the commissioner sends a person a demand letter regarding costs incurred by the state pursuant to section 22a-451, any such person against whom an action has been brought or who receives a demand letter shall not submit an application or request for payment or reimbursement to the board seeking payment or reimbursement of any such amount sought by the Attorney General or by the commissioner. If any such application or request for payment or reimbursement is submitted, the board shall not take any action regarding any such application or request.

Approved July 5, 2007