



General Assembly

January Session, 2007

Raised Bill No. 7125

LCO No. 4135

04135_____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

**AN ACT CONCERNING UNDERGROUND STORAGE TANKS,
DEMONSTRATION PROJECTS, INLAND WETLANDS AGENCIES,
AQUACULTURE STRUCTURES AND SAND REMOVAL.**

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

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 Section 22a-449o of the general statutes is repealed and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

3 (a) As used in this section:

4 (1) "Double-walled underground storage tank" means an
5 underground storage tank that is listed by Underwriters Laboratories,
6 Incorporated and that is constructed using two complete shells to
7 provide both primary and secondary containment, and having a
8 continuous three-hundred-sixty degree interstitial space between the
9 two shells which interstitial space shall be continuously monitored
10 using inert gas or liquid, vacuum monitoring, electronic monitoring,
11 mechanical monitoring or any other monitoring method approved in
12 writing by the commissioner before being installed or used;

13 (2) "Double-walled underground storage tank system" means one or
14 more double-walled underground storage tanks connected by double-

15 walled piping and utilizing double-walled piping to connect the
16 underground storage tank to any associated equipment;

17 (3) "Hazardous substance" means a substance defined in Section
18 101(14) of the Comprehensive Environmental Response,
19 Compensation and Liability Act of 1980, but does not include any
20 substance regulated as a hazardous waste under subsection (c) of
21 section 22a-449 or any mixture of such substances and petroleum;

22 (4) "Petroleum" means crude oil, crude oil fractions and refined
23 petroleum fractions, including gasoline, kerosene, heating oils and
24 diesel fuels;

25 (5) "Underground storage tank" means a tank or combination of
26 tanks, including underground pipes connected thereto, used to contain
27 an accumulation of petroleum or hazardous substances, whose volume
28 is ten per cent or more beneath the surface of the ground, including the
29 volume of underground pipes connected thereto; and

30 (6) "Underground storage tank system" means an underground
31 storage tank and any associated ancillary equipment and containment
32 system, including, but not limited to, satellite piping, containment
33 sumps, dispensers and dispenser pans or other comparable
34 underdispenser spill containment.

35 (b) No person or municipality shall install, on or after October 1,
36 2003, an underground storage tank system and no person or
37 municipality shall operate or use, an underground storage tank system
38 installed after October 1, 2003, unless such underground storage tank
39 system is a double-walled underground storage tank system. This
40 section shall not apply to a residential underground storage tank
41 system, as defined in section 22a-449a. On or after January 1, 2008, no
42 person or municipality shall (1) install an underground storage tank
43 system, or (2) operate or use an underground storage tank system
44 installed after January 1, 2008, unless such underground storage tank
45 system is equipped with liquid-tight and vapor-tight sumps with

46 electronic leak detectors and dispenser pans or other comparable
47 underdispenser spill containment with electronic leak detectors. No
48 person or municipality shall have an underground storage tank
49 system's containment sump, dispenser or underdispenser spill
50 containment repaired on or after January 1, 2008, to restore said
51 components to operating condition without equipping said
52 underground storage tank system with liquid-tight and vapor-tight
53 sumps with electronic leak detectors and dispenser pans or other
54 comparable underdispenser spill containment with electronic leak
55 detectors.

56 Sec. 2. (NEW) (*Effective October 1, 2007*) The Commissioner of
57 Environmental Protection may issue a license for a demonstration
58 project for any activity regulated by the commissioner under chapter
59 446d of the general statutes provided the commissioner determines
60 that such demonstration project (1) is necessary to research, develop or
61 promote methods and technologies of solid waste management which
62 are consistent with the goals of the state solid waste management plan;
63 (2) does not pose a significant risk to human health or the
64 environment; and (3) is consistent with the federal Water Pollution
65 Control Act, the federal Rivers and Harbors Act, the federal Clean Air
66 Act or the federal Resource Conservation and Recovery Act. An
67 application for such license shall be on a form prescribed by the
68 commissioner, accompanied by a fee of one thousand dollars and shall
69 provide such information as the commissioner deems necessary. Any
70 person applying for such license shall not commence the project prior
71 to the commissioner's written approval. The commissioner may
72 impose conditions upon such license as deemed necessary to
73 adequately protect human health and the environment or to ensure
74 project success and shall be valid for a period of not more than two
75 years, provided the commissioner may renew such license. The
76 commissioner may order summary suspension of any such license in
77 accordance with subsection (c) of section 4-182 of the general statutes.
78 Notwithstanding the renewal process, any person may seek, or the
79 commissioner may require, that the project be sanctioned under a

80 permit pursuant to chapter 446d of the general statutes.

81 Sec. 3. Subdivision (1) of subsection (a) of section 22a-471 of the
82 general statutes is repealed and the following is substituted in lieu
83 thereof (*Effective from passage*):

84 (a) (1) If the commissioner determines that pollution of the
85 groundwaters has occurred or can reasonably be expected to occur and
86 the Commissioner of Public Health determines that the extent of
87 pollution creates or can reasonably be expected to create an
88 unacceptable risk of injury to the health or safety of persons using such
89 groundwaters as a public or private source of water for drinking or
90 other personal or domestic uses, the Commissioner of Environmental
91 Protection shall, as funds from the emergency spill response account
92 established by section 22a-451 allow, arrange for the short-term
93 provision of potable drinking water to those residential buildings and
94 elementary and secondary schools affected by such pollution, or at the
95 commissioner's discretion, to health care, child care or elder care
96 facilities or institutions affected by such pollution until either [he] the
97 commissioner issues an order pursuant to this section requiring the
98 provision of such short-term supply and the recipient complies with
99 such order or a long-term supply of potable drinking water has been
100 provided, whichever is earlier. In determining if pollution creates an
101 unacceptable risk of injury, the Commissioner of Public Health shall
102 balance all relevant and substantive facts and inferences and shall not
103 be limited to a consideration of available statistical analysis but shall
104 consider all of the evidence presented and any factor related to human
105 health risks. The commissioner may issue an order to the person or
106 municipality responsible for such pollution requiring that potable
107 drinking water be provided to all persons affected by such pollution. If
108 the commissioner finds that more than one person or municipality is
109 responsible for such pollution, [he] the commissioner shall attempt to
110 apportion responsibility if [he] the commissioner determines that
111 apportionment is appropriate. If [he] the commissioner does not
112 apportion responsibility, all persons and municipalities responsible for

113 the pollution of the groundwaters shall be jointly and severally
114 responsible for the providing of potable drinking water to persons
115 affected by such pollution. If the commissioner determines that the
116 state or an agency or department of the state is responsible in whole or
117 in part for the pollution of the groundwaters, such agency or
118 department shall prepare or arrange for the preparation of an
119 engineering report and shall provide or arrange for the provision of a
120 long-term potable drinking water supply. If the commissioner is
121 unable to determine the person or municipality responsible or [if he]
122 determines that the responsible persons have no assets other than land,
123 buildings, business machinery or livestock and are unable to secure a
124 loan at a reasonable rate of interest to provide potable drinking water,
125 [he] the commissioner may prepare or arrange for the preparation of
126 an engineering report and provide or arrange for the provision of a
127 long-term potable drinking water supply or [he] may issue an order to
128 the municipality wherein groundwaters unusable for potable drinking
129 water are located requiring that short-term provision of potable
130 drinking water be made to those existing residential buildings and
131 elementary and secondary schools affected by such pollution, or at the
132 commissioner's discretion, to health care, child care or elder care
133 facilities or institutions affected by such pollution and that long-term
134 provision of potable drinking water be made to all persons affected by
135 such pollution. For purposes of this section, "residential building"
136 means any house, apartment, trailer, mobile manufactured home or
137 other structure occupied by individuals as a dwelling, except a non-
138 owner-occupied hotel or motel or a correctional institution.

139 Sec. 4. Section 22a-42 of the general statutes is repealed and the
140 following is substituted in lieu thereof (*Effective October 1, 2007*):

141 (a) To carry out and effectuate the purposes and policies of sections
142 22a-36 to 22a-45a, inclusive, it is hereby declared to be the public policy
143 of the state to require municipal regulation of activities affecting the
144 wetlands and watercourses within the territorial limits of the various
145 municipalities or districts.

146 (b) Any municipality may acquire wetlands and watercourses
147 within its territorial limits by gift or purchase, in fee or lesser interest
148 including, but not limited to, lease, easement or covenant, subject to
149 such reservations and exceptions as it deems advisable.

150 (c) On or before July 1, 1988, each municipality shall establish an
151 inland wetlands agency or authorize an existing board or commission
152 to carry out the provisions of sections 22a-36 to 22a-45, inclusive,
153 except that, on or after October 1, 2007, no municipality may authorize
154 a municipal planning, municipal zoning or municipal planning and
155 zoning commission to carry out the provisions of sections 22a-36 to
156 22a-45, inclusive. Any such commission so authorized prior to October
157 1, 2007, may continue to carry out the provisions of sections 22a-36 to
158 22a-45, inclusive. Each municipality, acting through its legislative
159 body, may authorize any board or commission, as may be by law
160 authorized to act, or may establish a new board or commission to
161 promulgate such regulations, in conformity with the regulations
162 adopted by the commissioner pursuant to section 22a-39, as are
163 necessary to protect the wetlands and watercourses within its
164 territorial limits. The ordinance establishing the new board or
165 commission shall determine the number of members and alternate
166 members, the length of their terms, the method of selection and
167 removal and the manner for filling vacancies in the new board or
168 commission. No member or alternate member of such board or
169 commission shall participate in the hearing or decision of such board
170 or commission of which he is a member upon any matter in which he
171 is directly or indirectly interested in a personal or financial sense. In
172 the event of such disqualification, such fact shall be entered on the
173 records of such board or commission and replacement shall be made
174 from alternate members of an alternate to act as a member of such
175 commission in the hearing and determination of the particular matter
176 or matters in which the disqualification arose. For the purposes of this
177 section, the board or commission authorized by the municipality or
178 district, as the case may be, shall serve as the sole agent for the
179 licensing of regulated activities.

180 (d) At least one member of the inland wetlands agency or staff of
181 the agency shall be a person who has completed the comprehensive
182 training program developed by the commissioner pursuant to section
183 22a-39. Failure to have a member of the agency or staff with training
184 shall not affect the validity of any action of the agency. The
185 commissioner shall annually make such program available to one
186 person from each town without cost to that person or the town. Each
187 inland wetlands agency shall hold a meeting at least once annually at
188 which information is presented to the members of the agency which
189 summarizes the provisions of the training program. The commissioner
190 shall develop such information in consultation with interested persons
191 affected by the regulation of inland wetlands and shall provide for
192 distribution of video presentations and related written materials which
193 convey such information to inland wetlands agencies. In addition to
194 such materials, the commissioner, in consultation with such persons,
195 shall prepare materials which provide guidance to municipalities in
196 carrying out the provisions of subsection (f) of section 22a-42a.

197 (e) Any municipality, pursuant to ordinance, may act through the
198 board or commission authorized in subsection (c) of this section to join
199 with any other municipalities in the formation of a district for the
200 regulation of activities affecting the wetlands and watercourses within
201 such district. Any city or borough may delegate its authority to
202 regulate inland wetlands under this section to the town in which it is
203 located.

204 (f) Municipal or district ordinances or regulations may embody any
205 regulations promulgated hereunder, in whole or in part, or may
206 consist of other ordinances or regulations in conformity with
207 regulations promulgated hereunder. Any ordinances or regulations
208 shall be for the purpose of effectuating the purposes of sections 22a-36
209 to 22a-45, inclusive, and, a municipality or district, in acting upon
210 ordinances and regulations shall incorporate the factors set forth in
211 section 22a-41.

212 (g) Nothing contained in this section shall be construed to limit the
213 existing authority of a municipality or any boards or commissions of
214 the municipality, provided the commissioner shall retain authority to
215 act on any application filed with said commissioner prior to the
216 establishment or designation of an inland wetlands agency by a
217 municipality.

218 Sec. 5. Subsection (d) of section 22a-361 of the general statutes is
219 repealed and the following is substituted in lieu thereof (*Effective*
220 *October 1, 2007*):

221 (d) (1) The Commissioner of Environmental Protection may issue a
222 general permit for any minor activity regulated under sections 22a-28
223 to 22a-35, inclusive, or sections 22a-359 to 22a-363f, inclusive, if the
224 commissioner determines that such activity would (A) cause minimal
225 environmental effects when conducted separately, (B) cause only
226 minimal cumulative environmental effects, (C) not be inconsistent with
227 the considerations and the public policy set forth in sections 22a-28 to
228 22a-35, inclusive, and section 22a-359, as applicable, (D) be consistent
229 with the policies of the Coastal Management Act, and (E) constitute an
230 acceptable encroachment into public lands and waters. Such activities
231 may include routine minor maintenance and routine minor repair of
232 existing structures, fill, obstructions, encroachments or excavations;
233 substantial maintenance consisting of rebuilding, reconstructing or
234 reestablishing to a preexisting condition and dimension any structure,
235 fill, obstruction, encroachment or excavation; maintenance dredging of
236 areas which have been dredged and continuously maintained as
237 serviceable; activities allowed pursuant to a perimeter permit; the
238 removal of structures, derelict vessels, debris, rubbish or similar
239 discarded material or unauthorized fill material; minor alterations or
240 amendments to authorized activities consistent with the authorization
241 for such activities; activities which have been required or allowed by
242 an order of the commissioner; open water marsh management by or
243 under the supervision of the Department of Public Health or
244 Department of Environmental Protection; conservation activities of or

245 under the supervision or direction of the Department of
246 Environmental Protection; construction of individual residential docks
247 which do not create littoral or riparian conflicts, navigational
248 interference, or adverse impacts to coastal resources as defined by
249 section 22a-93, which are not located in tidal wetlands as defined by
250 section 22a-29 and which extend no further than forty feet waterward
251 of mean high water or to a depth of minus four feet mean low water,
252 whichever point is more landward; installation of scientific measuring
253 or monitoring devices; survey activities including excavation of test
254 pits and core sampling and driving of test pilings; construction of
255 utility lines; aquacultural activities; and installation and removal of
256 small seasonal structures including floats and moorings. Any person
257 conducting an activity for which a general permit has been issued shall
258 not be required to obtain an individual permit or certificate under any
259 other provision of sections 22a-28 to 22a-35, inclusive, or sections 22a-
260 359 to 22a-363f, inclusive, for that activity except as provided in
261 subdivision (3) of this subsection. A general permit shall clearly define
262 the activity covered thereby and may include such conditions and
263 requirements as the commissioner deems appropriate, including, but
264 not limited to, construction timing, methodologies and durations,
265 resource protection practices, management practices, and verification
266 and reporting requirements. The general permit may require any
267 person proposing to conduct any activity under the general permit to
268 register such activity, including obtaining approval from the
269 commissioner, before the general permit becomes effective as to such
270 activity. Registrations and applications for approval under the general
271 permit shall be submitted on forms prescribed by the commissioner.
272 Any approval by the commissioner under a general permit may
273 include conditions specific to the proposed activity to ensure
274 consistency with the requirements for issuance of the general permit.
275 The commissioner shall prepare, and annually amend, a list of holders
276 of general permits under this section, which list shall be made
277 available to the public.

278 (2) Notwithstanding any other procedures specified in sections 22a-

279 28 to 22a-35, inclusive, and sections 22a-359 to 22a-363f, inclusive, any
280 regulations adopted thereunder, and chapter 54, the commissioner
281 may issue a general permit in accordance with the following
282 procedures: (A) The commissioner shall publish in a newspaper
283 having a substantial circulation in the affected area or areas notice of
284 intent to issue a general permit; (B) the commissioner shall allow a
285 comment period of thirty days following publication of such notice
286 during which interested persons may submit written comments
287 concerning the permit to the commissioner and the commissioner shall
288 hold a public hearing if, within said comment period, he receives a
289 petition signed by at least twenty-five persons; (C) the commissioner
290 may not issue the general permit until after the comment period; (D)
291 the commissioner shall publish notice of any permit issued in a
292 newspaper having substantial circulation in the affected area or areas;
293 and (E) summary suspension may be ordered in accordance with
294 subsection (c) of section 4-182. Any person may request that the
295 commissioner issue, modify or revoke a general permit in accordance
296 with this subsection.

297 (3) Subsequent to the issuance of a general permit, the commissioner
298 may require any person whose activity is or may be covered by the
299 general permit to apply for and obtain an individual permit or
300 certificate under the provisions of sections 22a-28 to 22a-35, inclusive,
301 or sections 22a-359 to 22a-363f, inclusive, for all or any portion of the
302 activities covered by the general permit, if the commissioner
303 determines that an individual permit is necessary to assure consistency
304 with purposes and policies of such sections, and the Coastal
305 Management Act. The commissioner may require an individual permit
306 under this subdivision in cases including, but not limited to, the
307 following: (A) The permittee is not in compliance with the conditions
308 of the general permit; (B) an individual permit or certificate is
309 appropriate because of circumstances specific to the site; (C)
310 circumstances have changed since the time the general permit was
311 issued so that the permitted activity is no longer acceptable under the
312 general permit; or (D) a change has occurred in relevant law. The

313 commissioner may require an individual permit or certificate under
314 this section only if the affected person has been notified in writing that
315 an individual permit or certificate is required. The notice shall include
316 a brief statement of the reasons for the decision.

317 (4) The commissioner may adopt regulations, in accordance with the
318 provisions of chapter 54, to carry out the purposes of this section.

319 [(5) Notwithstanding any provision of sections 22a-359 to 22a-363f,
320 inclusive, pending issuance of a general permit for aquaculture
321 activities by the commissioner in accordance with this section, no
322 permit or certificate shall be required for the placement, maintenance
323 or removal of (A) individual structures used for aquaculture, as
324 defined in section 22-416, including, but not limited to, cages or bags,
325 which are located on designated state or municipal shellfish beds
326 which structures create no adverse impacts on coastal resources or
327 navigation over their location or (B) any buoys used to mark such
328 structures. Upon issuance of a general permit for aquaculture activities
329 in accordance with this section, any aquaculture activities shall comply
330 with the terms of such general permit or other applicable provisions of
331 sections 22a-359 to 22a-363f, inclusive.]

332 Sec. 6. Subsection (e) of section 22a-361 of the general statutes is
333 repealed and the following is substituted in lieu thereof (*Effective*
334 *October 1, 2007*):

335 (e) No person, firm or corporation, public, municipal or private,
336 who removes sand, gravel or other material lying waterward of the
337 mean high water mark of the tidal, coastal or navigable waters of the
338 state pursuant to a permit issued under this section on or after October
339 1, 1996, shall make any beneficial or commercial use of such sand,
340 gravel or other material except upon payment to the state of a fee of
341 four dollars per cubic yard of such sand, gravel and other materials
342 unless otherwise exempted from payment under this section. Such
343 payment shall be made at times and under conditions specified by the
344 commissioner in such permit. No fee shall be assessed for (1) the

345 performance of such activities on land which is not owned by the state,
 346 (2) the use of sand, gravel or other materials for beach restoration
 347 projects, or (3) ultimate disposal of such sand, gravel or other materials
 348 which does not result in an economic benefit to any person, and the
 349 commissioner may waive the fee for the beneficial or commercial use
 350 of sand, gravel or other materials that have been decontaminated or
 351 processed to meet applicable environmental standards for reuse. For
 352 the purposes of this section, "beneficial or commercial use" includes,
 353 but is not limited to, sale or use of sand, gravel or other materials for
 354 construction, aggregate, fill or landscaping.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	22a-449o
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>from passage</i>	22a-471(a)(1)
Sec. 4	<i>October 1, 2007</i>	22a-42
Sec. 5	<i>October 1, 2007</i>	22a-361(d)
Sec. 6	<i>October 1, 2007</i>	22a-361(e)

Statement of Purpose:

To make new requirements for the installation or repair of underground storage tanks, to create a demonstration project license, to permit the commissioner to provide potable water to child care, health care or elder care facilities, to prohibit any new authorization for a planning and zoning board to serve as a municipal inland wetlands agency, to allow the commissioner to waive payment for the removal of state-owned sand and gravel, and to repeal the exemption for certain aquaculture structures from the coastal structures, dredging and fill permit program.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]