



General Assembly

January Session, 2007

**Amendment**

LCO No. 8443

**\*SB0125808443SD0\***

Offered by:  
SEN. FINCH, 22<sup>nd</sup> Dist.

To: Subst. Senate Bill No. 1258      File No. 564      Cal. No. 447

**"AN ACT CONCERNING UNDERGROUND STORAGE TANKS."**

1      Strike everything after the enacting clause and substitute the  
2      following in lieu thereof:

3      "Section 1. (NEW) (*Effective October 1, 2007*) The owner or operator  
4      of an underground storage tank system storing petroleum that is  
5      subject to section 22a-449(d)-101 et seq. of the regulations of  
6      Connecticut state agencies, who owns or operates more than ten  
7      facilities with underground storage tank systems, may store records  
8      required to be maintained under section 22a-449(d)-103(e) of the  
9      regulations of Connecticut state agencies, in a central location in the  
10     state of Connecticut, provided such owner or operator: (1) Specifies, in  
11     writing, the location of any such centrally stored records and such  
12     other information as the Commissioner of Environmental Protection  
13     may prescribe related to such storage on a form prescribed by said  
14     commissioner and submits such form to said commissioner; and (2)  
15     ensures that such records are immediately available for inspection by  
16     the Commissioner of Environmental Protection, or the commissioner's  
17     designee, at any such central location. The following records may not

18 be stored solely at such a central location but shall be maintained at the  
19 site of the underground storage tank system: (A) A copy of all  
20 Underground Storage Tank Facility Notification Forms, or EPHM-6,  
21 submitted to the commissioner, regarding underground storage tanks  
22 for the site; (B) for all metallic underground storage tank systems,  
23 records concerning the most recent cathodic protection test; (C) for  
24 underground storage tank systems with impressed current cathodic  
25 protection, the last six months of records regarding the inspection of  
26 the cathodic protection systems, if applicable; (D) the most recent prior  
27 twelve months of records related to repairs of the underground storage  
28 tank system required by section 22a-449(d)-103(d)(6) of the regulations  
29 of Connecticut state agencies; (E) the most recent six months of records  
30 demonstrating compliance with the release detection requirements of  
31 section 22a-449(d)-104 of the regulations of Connecticut state agencies,  
32 including, but not limited to, inventory control and reconciliation of  
33 such inventory control records; (F) records regarding the two most  
34 recent underground storage tank tightness pursuant to section 22a-  
35 449(d)-104(e)(3) of the regulations of Connecticut state agencies; and  
36 (G) any other records regarding the underground storage tank system  
37 that the commissioner specifies, in writing. Nothing in this section  
38 shall affect any requirement of chapter 446k of the general statutes  
39 other than the location of where certain records may be stored.

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

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

52 involves installation of an underground petroleum storage tank, such  
53 tank shall conform to any standards which apply to new underground  
54 petroleum storage tanks.

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

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

72 (f) The Commissioner of Environmental Protection may adopt  
73 regulations, in accordance with the provisions of chapter 54, to  
74 establish (1) requirements for the inspection of nonresidential  
75 underground storage tank systems for compliance with the  
76 requirements of this chapter, including, but not limited to, the  
77 minimum frequency, method and content of inspections, and  
78 maintenance and disclosure of results, (2) a program to authorize  
79 persons to (A) perform inspections, including, but not limited to,  
80 education and training requirements for such persons, and whether or  
81 not such persons may be employed by the owner or operator of the  
82 subject nonresidential underground storage tank system, and (B)  
83 determine whether the violations for which a nonresidential  
84 underground storage tank system has been taken out of service

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

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

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

108 (2) The account shall be used by the Commissioner of  
109 Environmental Protection to provide money for reimbursement or  
110 payment pursuant to section 22a-449f, as amended by this act, to  
111 responsible parties or parties supplying goods or services, for costs,  
112 expenses and other obligations paid or incurred, as the case may be, as  
113 a result of releases, and suspected releases, costs of investigation and  
114 remediation of releases and suspected releases, and for claims by a  
115 person other than a responsible party for bodily injury, property  
116 damage and damage to natural resources that have been finally  
117 adjudicated or settled with the prior written consent of the board. The

118 commissioner may also make payment from the account to an assignee  
119 who is in the business of receiving assignments of amounts approved  
120 by the board, but not yet paid from the account, provided the party  
121 making any such assignment, using a form approved by the  
122 commissioner, directs the commissioner to pay such assignee, that no  
123 cost of any assignment shall be borne by the account and that the state  
124 and its agencies shall not bear any liability with respect to any such  
125 assignment.

126 (3) Notwithstanding the provisions of this section regarding  
127 reimbursements of parties pursuant to section 22a-449f, as amended by  
128 this act, and regulations adopted pursuant to section 22a-449e, and  
129 regardless of when an application for payment or reimbursement from  
130 the account may have been submitted to the board, payment or  
131 reimbursement shall be made in accordance with the following: (A)  
132 After June 1, 2004, no payment or reimbursement shall be made for  
133 any costs, expenses and other obligations paid or incurred for  
134 remediation, including any monitoring to determine the effectiveness  
135 of the remediation, of a release to levels more stringent than or beyond  
136 those specified in the remediation standards established pursuant to  
137 section 22a-133k, except to the extent the applicant demonstrates that it  
138 has been directed otherwise, in writing, by the commissioner; (B) after  
139 June 1, 2005, no payment or reimbursement from the account shall be  
140 made to any person for diminution in property value or interest,  
141 provided that reimbursement for interest accrued on attorneys' fees  
142 may be permitted if an application seeking interest accrued on  
143 attorneys' fees was submitted to the commissioner on or before March  
144 31, 2003, and such application has been tabled by the board for three or  
145 more years; and (C) after June 1, 2005, no payment or reimbursement  
146 from the account shall be made for attorneys' fees or other costs of  
147 legal representation paid or incurred as a result of a release or  
148 suspected release (i) in excess of five thousand dollars to any  
149 responsible party, (ii) in excess of ten thousand dollars to any person  
150 other than a responsible party, and (iii) by a responsible party  
151 regarding the defense of claims brought by another person, except that

152 applications for reimbursement filed on or before June 30, 2005, shall  
153 not be subject to the limitations for reimbursement imposed by clauses  
154 (i) and (ii) of this subparagraph. In addition, notwithstanding the  
155 provisions of this section regarding reimbursements of parties  
156 pursuant to section 22a-449f, as amended by this act, the responsible  
157 party shall bear all costs of the release that are less than ten thousand  
158 dollars and all persons shall bear all costs of the release that are more  
159 than one million dollars, except that for any such release which was  
160 reported to the department prior to December 31, 1987, and for which  
161 more than five hundred thousand dollars has been expended by the  
162 responsible party to remediate such release prior to June 19, 1991, the  
163 responsible party for the release shall bear all costs of such release  
164 which are less than ten thousand dollars or more than five million  
165 dollars, provided the portion of any reimbursement or payment in  
166 excess of three million dollars may, at the discretion of the  
167 commissioner, be made in annual payments for up to a five-year  
168 period. There shall be allocated to the department annually, for  
169 administrative costs, two million dollars.

170 Sec. 5. Subdivision (1) of subsection (b) of section 22a-449f of the  
171 general statutes is repealed and the following is substituted in lieu  
172 thereof (*Effective from passage and applicable to applications filed with the*  
173 *underground storage tank petroleum clean-up account on or after July 1,*  
174 *2005*):

175 (b) (1) In addition to all other applicable requirements, a person  
176 seeking payment or reimbursement from the account shall  
177 demonstrate that when the total costs, expenses or other obligations in  
178 response to a release or suspected release (A) are two hundred fifty  
179 thousand dollars or less, that all labor, equipment and materials  
180 provided after October 1, 2005, and all services and activities  
181 undertaken after October 1, 2005, [shall be] are approved, in writing,  
182 either by the commissioner or by a licensed environmental  
183 professional with a currently valid and effective license issued  
184 pursuant to section 22a-133v; and (B) exceed two hundred fifty  
185 thousand dollars, that all labor, equipment and materials provided

186 after October 1, 2005, and all services and activities undertaken after  
187 October 1, 2005, [shall be] are approved, in writing, by the  
188 commissioner, [or that] provided the commissioner [has authorized]  
189 may authorize, in writing, [an] a licensed environmental professional  
190 with a currently valid and effective license issued pursuant to section  
191 22a-133v to approve, in writing, such labor, equipment, materials,  
192 services and activities, in lieu of [a written approval by] the  
193 commissioner. The provisions of this subsection shall apply to all costs,  
194 expenses or other obligations for which a person is seeking payment or  
195 reimbursement from the account and the board shall not order and the  
196 commissioner shall not make payment or reimbursement from the  
197 account for any cost, expense or other obligation, unless the person  
198 seeking such payment or reimbursement [includes with an application  
199 or with a request for payment or reimbursement all written approvals]  
200 provides the written approval required by this subdivision. Any  
201 written approval provided by a licensed environmental professional  
202 pursuant to this subdivision shall be submitted with the application for  
203 payment or reimbursement. Any written approval provided by the  
204 commissioner pursuant to this subdivision shall not constitute an  
205 approval pursuant to any other provision of the general statutes or any  
206 regulation and shall be presented to the board prior to the board  
207 making a decision regarding the application that such approval  
208 concerns.

209 Sec. 6. Subsection (c) of section 22a-449f of the general statutes is  
210 repealed and the following is substituted in lieu thereof (*Effective from*  
211 *passage and applicable to applications filed with the underground storage tank*  
212 *petroleum clean-up account either prior to or subsequent to the effective date*  
213 *of this section, except that the provisions of subparagraph (A) of subdivision*  
214 *(10) of this subsection shall be applicable only to applications filed on or after*  
215 *October 1, 2007*):

216 (c) The board shall order reimbursement or payment from the  
217 account for any cost paid or incurred, as the case may be, if, (1) such  
218 cost is or was incurred after July 5, 1989, (2) a responsible party was or  
219 would have been required to demonstrate financial responsibility

220 under 40 CFR Part 280.90 et seq. as said regulation was published in  
221 the Federal Register of October 26, 1988, for the underground storage  
222 tank or underground storage tank system from which the release  
223 emanated, whether or not such party is required to comply with said  
224 requirements on the date any such cost is incurred, provided if the  
225 state is the responsible party, the board may order payment from the  
226 account without regard to whether the state was or would have been  
227 required to demonstrate financial responsibility under said sections 40  
228 CFR Part 280.90 et seq., (3) after the release, if any, the responsible  
229 party incurred a cost, expense or obligation for investigation, cleanup  
230 or for claims of a person other than a responsible party resulting from  
231 the release, provided any such claim shall be required to be finally  
232 adjudicated or settled with the prior written approval of the board  
233 before an application for reimbursement or payment is made, (4) the  
234 board determines that the cost, expense or other obligation is  
235 reasonable and that there are not grounds for recovery specified in  
236 subdivision (1) or (3) of subsection (g) of this section, as amended by  
237 this act, (5) the responsible party notified [the commissioner of the  
238 release in accordance with regulations adopted pursuant to section  
239 22a-449 or, where such regulations are not applicable, as soon as  
240 practicable, and notified] the board, as soon as practicable, of the  
241 release and of any other claim by a person other than a responsible  
242 party, resulting from the release, in accordance with the regulations  
243 adopted pursuant to section 22a-449e, (6) the responsible party, or, if a  
244 person other than a responsible party applies for payment or  
245 reimbursement from the account, then such person demonstrates the  
246 remediation, including any monitoring to determine the effectiveness  
247 of the remediation, for which payment or reimbursement is sought is  
248 not more stringent than that required by the remediation standards  
249 established pursuant to section 22a-133k, except to the extent the  
250 responsible party or such person demonstrates that it has been  
251 directed otherwise, in writing, by the commissioner, (7) the responsible  
252 party, or, if a person other than a responsible party applies for  
253 payment or reimbursement from the account, then such person  
254 demonstrates that it does not have insurance, or a contract or other

255 agreement to provide payment or reimbursement for any cost, expense  
256 or other obligation incurred in response to a release or suspected  
257 release, or if there is any such insurance, contract or other agreement,  
258 that any insurance coverage has been denied or is insufficient to cover  
259 the costs, expenses or other obligations, paid or incurred or that any  
260 contract or other agreement is not able to or is insufficient to cover the  
261 costs, expenses or other obligations, paid or incurred, for which  
262 payment or reimbursement is sought from the account, (8) the  
263 responsible party demonstrates and the board determines that one of  
264 the milestones noted in section 22a-449p has been completed, (9) the  
265 board determines what, if any, reductions to the amounts sought from  
266 the account should be made based upon the compliance evaluations  
267 performed pursuant to subsection (d) of this section, and (10) [if] at the  
268 time any application or request for payment or reimbursement,  
269 including any supplemental application or request, is submitted to the  
270 board, (A) for applications filed with the underground storage tank  
271 petroleum clean-up account on or after October 1, 2007, there is no  
272 underground storage tank system subject to the financial responsibility  
273 demonstration required in subdivision (2) of this subsection  
274 dispensing petroleum on the property where the release or suspected  
275 release emanated or occurred, [then the responsible party  
276 demonstrates] and if the application is submitted by the person who  
277 owns or operates or who owned or operated the underground storage  
278 tank system at the time of the release, such person demonstrates, in  
279 addition to all other applicable requirements, that lack of compliance  
280 with provisions of the general statutes and regulations governing  
281 underground storage tank systems was not a proximate cause of the  
282 release or suspected release and that there are not grounds for  
283 recovery specified in subdivision (2) of subsection (g) of this section, as  
284 amended by this act, or (B) for applications filed with the underground  
285 storage tank petroleum clean-up account prior to October 1, 2007, there  
286 is no underground storage tank system dispensing petroleum on the  
287 property where the release or suspected release emanated or occurred,  
288 and if the application is submitted by the person who owns or operates  
289 or who owned operated the underground storage tank system at the

290 time of the release, such person demonstrates, in addition to all other  
291 applicable requirements, that lack of compliance with provisions of the  
292 general statutes and regulations governing underground storage tank  
293 systems was not a proximate cause of the release or suspected release  
294 and that there are not grounds for recovery specified in subdivision (2)  
295 of subsection (g) of this section, as amended by this act. In acting on an  
296 application or a request for payment or reimbursement, the board,  
297 using funds from the account, may contract with experts, including,  
298 but not limited to, attorneys and medical professionals, to better  
299 evaluate and defend against claims and negotiate claims by persons  
300 other than responsible parties. The costs of the board for experts shall  
301 not be charged to the amount allocated to the Department of  
302 Environmental Protection pursuant to section 22a-449c, as amended by  
303 this act. If a person other than a responsible party applies to the board  
304 claiming to have suffered bodily injury, property damage or damage  
305 to natural resources, the board shall order reimbursement or payment  
306 from the account if such person demonstrates that subdivisions (1), (2),  
307 (6) and (7) of this subsection are satisfied, the board determines that as  
308 a result of a release or suspected release such person has suffered  
309 bodily injury, property damage or damage to natural resources, that  
310 the costs, expenses or other obligations incurred are reasonable and the  
311 person submitting such claim demonstrates that it has attempted to or  
312 has provided written notice of its claim to the responsible party as  
313 required in subsection (a) of this section and that the responsible party  
314 has not applied to the board for payment or reimbursement of this  
315 claim. On or before June 30, 2005, if the board denied reimbursement  
316 or provided for only partial payment or reimbursement from the  
317 account regarding a release, pursuant to subdivision (4) of this section,  
318 such denial or partial payment or reimbursement shall remain in effect  
319 and shall apply to all subsequent applications or requests for payment  
320 or reimbursement regarding such release.

321 Sec. 7. Subsection (g) of section 22a-449f of the general statutes is  
322 repealed and the following is substituted in lieu thereof (*Effective from*  
323 *passage and applicable to applications filed with the underground storage tank*

324 *petroleum clean-up account both prior to and subsequent to the effective date*  
325 *of this section):*

326 (g) The Attorney General, upon the request of the board or the  
327 commissioner, may institute an action in the superior court for the  
328 judicial district of Hartford to recover the amounts specified in this  
329 section from any person who owns or operates an underground  
330 storage tank system at the time a release emanates or occurs from such  
331 system or any person who owns the real property on which a release  
332 emanates or occurs, provided such person owned the real property at  
333 or any time after the release emanates or occurs until the time that a  
334 final remediation action report is submitted by a licensed  
335 environmental professional or approved by the commissioner  
336 pursuant to subdivision (7) of section 22a-449p, if: (1) Prior to the  
337 occurrence of the release, the underground storage tank or  
338 underground storage tank system from which the release emanated  
339 was required by regulations adopted under section 22a-449, as  
340 amended by this act, to [submit a notification to the commissioner but  
341 no such notification was provided] be the subject of an Underground  
342 Storage Facility Notification Form, or EPHM-6 but the person who  
343 owns or operates or who owned or operated such tank or tank system  
344 knowingly and intentionally failed to submit such notification form to  
345 the commissioner; (2) the release results from a reckless, wilful,  
346 wanton or intentional act or omission of such person or a negligent act  
347 or omission of such person that constitutes noncompliance with the  
348 general statutes or regulations governing the installation, operation  
349 and maintenance of underground storage tanks; or (3) the release  
350 occurs from an underground storage tank or system which is not in  
351 compliance with a final order issued by the commissioner pursuant to  
352 this chapter or a final judgment issued by a court concerning  
353 noncompliance with a requirement of this chapter; or (4) payment has  
354 been made from the account, including payment to the commissioner  
355 pursuant to subsection (i) of this section, to a person other than a  
356 person against whom an action may be brought pursuant to this  
357 subsection. All costs to the state relating to actions to recover such

358 payments, including, but not limited to, reasonable attorneys' fees,  
 359 shall initially be paid from the underground storage tank petroleum  
 360 clean-up account. In any recovery the board or the commissioner is  
 361 entitled to recover from such person (A) all payments made from the  
 362 account with respect to a release or suspected release, (B) all payments  
 363 made by the commissioner pursuant to subsection (i) of this section  
 364 with respect to a release or suspected release, (C) interest on such  
 365 payments at a rate of ten per cent per year from the date such  
 366 payments were made, and (D) all costs of the state relating to actions to  
 367 recover such payments, including, but not limited to, reasonable  
 368 attorneys' fees. All actions brought pursuant to this section shall have  
 369 precedence in the order of trial, as provided in section 52-191. If the  
 370 Attorney General has filed an action against a person seeking recovery  
 371 of the amounts specified in this subsection or if the commissioner  
 372 sends a person a demand letter regarding costs incurred by the state  
 373 pursuant to section 22a-451, any such person against whom an action  
 374 has been brought or who receives a demand letter shall not submit an  
 375 application or request for payment or reimbursement to the board  
 376 seeking payment or reimbursement of any such amount sought by the  
 377 Attorney General or by the commissioner. If any such application or  
 378 request for payment or reimbursement is submitted, the board shall  
 379 not take any action regarding any such application or request."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	22a-449m
Sec. 3	<i>from passage</i>	22a-449(f)
Sec. 4	<i>from passage</i>	22a-449c(a)
Sec. 5	<i>from passage and applicable to applications filed with the underground storage tank petroleum clean-up account on or after July 1, 2005</i>	22a-449f(b)(1)

Sec. 6	<i>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</i>	22a-449f(c)
Sec. 7	<i>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</i>	22a-449f(g)