

The Connecticut General Assembly

Legislative Commissioners' Office

Edwin J. Maley, Jr.
Commissioner
William A. Hamzy
Commissioner

Larry G. J. Shapiro
Director



Legislative Office Building
Suite 5500
Hartford, Connecticut
06106-1591
(860) 240-8410
fax (860) 240-8414
e-mail: lco@cga.ct.gov

Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: April 24, 2012

Regulation No:	2012-7
Agency:	Department of Energy and Environmental Protection
Subject Matter:	Underground Storage Tanks
Statutory Authority: (copy attached)	22a-449(d)

	Yes or No
Mandatory	N
Federal Requirement	Y
Permissive	Y

For the Committee's Information:

As the department's Statement of Purpose indicates, the proposed regulation, which requires secondary containment for underground storage tanks, has twice been the subject of legislation that did not pass the General Assembly.

Substantive Concerns:

1. On pages 19, 21 and 29, the term "dispenser" is used but not defined. Accordingly, the meaning of this term is unclear.

2. On page 27, in section 22a-449(d)-102(a)(12), it is unclear what is meant by "the requirements of a new piping containment sump". It would seem that, by definition, a piping containment sump that met the requirements of a new piping containment sump would be a new piping containment sump for purposes of the regulation. If this is the case, the department should require that the sump be a new piping containment sump and not just meet the requirements of one.

3. On page 27, in section 22a-449(d)-102(a) (13), it is unclear what is meant by "the requirements of a new under-dispenser containment sump". It would seem that, by definition, an under-dispenser containment sump that met the requirements of a new under-dispenser containment sump would be a new under-dispenser containment sump for purposes of the regulation. If this is the case, the department should require that the sump be a new under-dispenser containment sump and not just meet the requirements of one.

4. On page 27, in section 22a-449(d)-102(a)(14), the term "transitional component" is defined for purposes of the subdivision but the term is not actually used in the subdivision. Therefore, either the definition should be deleted or the term should be used substantively within the subdivision.

5. On page 28, in section 22a-449(d)-102(a)(15)(C), it is unclear in what manner and location and for what length of time results of such testing shall be kept by owners and operators of underground storage tanks systems since the proposed regulation requires the same manner, location and length of time "as may be required for similar or comparable tests performed for underground storage tank systems".

6. On page 35, in section 22a-449(d)-108(d)(1) and (e), it is not clear what constitutes "significant operational compliance".

Technical Corrections:

1. On page 2, in section 22a-449(d)-1(a)(2), the definition of "Farm", "or raising animals, including fish" should be "or raising of animals, including, but not limited to, fish", and "includes fish hatcheries" should be "including fish hatcheries", for clarity and proper form.

2. On page 3, in section 22a-449(d)-1(a)(2), in the definition of "Residential underground heating oil storage tank system" the department has repeated the language of section 22a-449a(6) of the general statutes. The department should cite to said section and not repeat the language of the statute for proper form.

3. On page 4, in section 22a-449(d)-1(a)(3) in "Purpose", "Sections 22a-449(d)-101 through 113" should be "sections 22a-449(d)-101 to 22a-449(d)-113, inclusive, of the Regulations of Connecticut State Agencies", for proper form.

4. On page 5, in section 22a-449(d)-1(e)(1)(A)(i), "as" should not be in bold type for proper form.

5. On page 12, in section 22a-449(d)-101(a)(5), "Sections 22a-449(d)-101 through 113" should be "sections 22a-449(d)-101 to 22a-449(d)-113 of the Regulations of Connecticut State Agencies", for proper form.
6. On page 14, in section 22a-449(d)-101(d)(5), "meeting" should be "that meets", for clarity.
7. On page 15, in section 22a-449(d)-101(d)(12), (13), and (14), "Sections" should be "sections", for proper form and "must" should be "shall" in accordance with the committee's directive regarding mandates.
8. On page 16, in section 22a-449(d)-101(d)(24), in the third line, "having" should be "has" for proper grammar.
9. On page 17, in section 22a-449(d)-101(d)(34), "(NEW)" should be deleted, the subdivision indicator and definition should be underlined for proper form and "of the General Statutes" should be inserted after "22a-449" for clarity.
10. On page 19, in section 22a-449(d)-101(d)(50), "to, designation" should be "to designation", "Class C operator as defined in this section" should be "Class C operator, as defined in this section," "Section" should be "section", and "of the Regulations of Connecticut State Agencies" should be inserted after "22a-449(d)-108" for proper form.
11. On page 19, in section 22a-449(d)-101(d)(51), "which shall be in written form and include" should be "that are in written form, including", for proper form.
12. On page 22, in section 22a-449(d)-101(d)(74), "[(63)]" should be deleted, for proper form.
13. On page 27, in section 22a-449(d)-102(a)(11) to (14), inclusive, "On or after August 8, 2012," should be "On and after August 8, 2012,", for clarity.
14. On page 27, in section 22a-449(d)-102(a)(11) and (12), "installed after August 8, 2012" should be "installed on or after August 8, 2012,", for accuracy.
15. On page 27, in section 22a-449(d)-102(a)(14), "as defined herein" should be deleted and "must be replaced" should be "is replaced", for proper form.
16. On page 28, in section 22a-449(d)-102(a)(15)(A) and (B), "installed after August 8, 2012," should be "installed on or after August 8, 2012,", for clarity.
17. On page 28, in section 22a-449(d)-102(a)(15)(A), "periodic secondary containment testing" should be "the testing every 5 years", for clarity.
18. On page 28, in section 22a-449(d)-102(a)(15)(C), "and provided it complies" should be "and, provided it complies", for clarity.

19. On page 29, in the last line of section 22a-449(d)-102(a)(15), "State" should be "state", for proper form.
20. On page 29, in section 22a-449(d)-102(a)(16), subdivision designators (1) to (4), inclusive, should be subparagraphs (A) to (D), inclusive and the two references to "device indicating" should be "device indicates", for proper form.
21. On page 31, in section 22a-449(d)-108(a)(3), "subparagraph (c)(1)" should be "subsection (c)(1)", for accuracy.
22. On page 32, in section 22a-449(d)-108(a)(5), "the information required in paragraph (b)" should be "the information required in subsection (b) of this section", for accuracy and "30-days" should be "30 days", for proper form.
23. On page 32, in section 22a-449(d)-108(a) (7), subdivisions (1) and (2) should be subparagraphs (A) and (B), for proper form.
24. On page 32, in section 22a-449(d)-108 (b), "An operator training program" should be "Any operator training program", "subsection (b)(1) or (b)(3) of this section" should be "subdivision (1) or (3) of this subsection", "subsection (b)(2) of this section" should be "subdivision (2) of this subsection" and "Section" should be "section", for clarity and proper form.
25. On page 32, in section 22a-449(d)-108(b)(1) "will approve a program" should be "shall approve a program", in accordance with the committee's directive regarding mandates.
26. On page 32, in section 22a-449(d)-108(b)(1)(A)(ii), "subsection (b)(1)(A)(i) above" should be "subparagraph (A)(i) of this subdivision", for proper form.
27. On page 33, in section 22a-449(d)-108(b)(2)(C), "training must be completed" should be "training shall be completed", in accordance with the committee's directive regarding mandates.
28. On page 34, in section 22a-449(d)-108(b)(3), "States" should be "states", for proper form.
29. On page 34, in section 22a-449(d)-108(c)(1)(C), "within" should be "not later than" for clarity and throughout subparagraph (C), "insure" should be "ensure", for accuracy.
30. On page 34, in section 22a-449(d)-108(c)(2)(C), "subsections (i) through (ix)" should be "subclauses (i) to (ix), inclusive, of this subparagraph" and "as required by this paragraph" should be "as required by this subparagraph", for proper form.
31. On page 35, in section 22a-449(d)-108(c)(4), references to "this section" should be "this subsection", for proper form.
32. On page 35, in section 22a-449(d)-108(e), "subparagraph" should be "subsection", for proper form.

Recommendation:

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part X Rejection without prejudice</p>

Reviewed by: Bradford M. Towson / Shannon McCarthy

Date: April 12, 2012

Sec. 22a-449. (Formerly Sec. 25-54cc). Duties and powers of commissioner re sources of potential pollution or damage. Licenses. Regulations. Nonresidential underground storage tank systems. (a) The Commissioner of Energy and Environmental Protection shall, to the extent possible, immediately, whenever there is discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes upon any land or into any of the waters of the state or into any offshore or coastal waters, which may result in pollution of the waters of the state, damage to beaches, wetlands, stream banks or coastal areas, or damage to sewers or utility conduits or other public or private property or which may create an emergency, cause such discharge, spillage, uncontrolled loss, seepage or filtration to be contained and removed or otherwise mitigated by whatever method said commissioner considers best and most expedient under the circumstances. The commissioner shall also (1) determine the person, firm or corporation responsible for causing such discharge, spillage, uncontrolled loss, seepage or filtration, and (2) send notice, in writing, to the chief executive officer and the local director of health of the municipality in which such discharge, spillage, uncontrolled loss, seepage or filtration occurs of such occurrence. Such notification shall be sent not later than twenty-four hours after the commissioner becomes aware of the contamination.

(b) The commissioner may: (1) License terminals in the state for the loading or unloading of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes and shall adopt, in accordance with chapter 54, reasonable regulations in connection therewith for the purposes of identifying terminals subject to licensure and protecting the public health and safety and for preventing the discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes. Each license issued under this section shall be valid for a period of not more than ten years from the date of issuance, unless sooner revoked by the commissioner, and there shall be charged for each such license or renewal thereof fees established by regulation sufficient to cover the reasonable cost to the state of inspecting and licensing such terminals; (2) provide by regulations for the establishment and maintenance in operating condition and position of suitable equipment to contain as far as possible the discharge, spillage, uncontrolled loss, seepage or filtration of any oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes; (3) inspect periodically all hoses, gaskets, tanks, pipelines and other equipment used in connection with the transfer, transportation or storage of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes to make certain that they are in good operating condition, and order the renewal of any such equipment found unfit for further use. No person shall commence operation of any such terminal in this state on or after July 1, 1993, without a license issued by the commissioner. Any person who operates any such terminal without a license issued by the commissioner shall be fined not

more than five thousand dollars per day during any period of unlicensed operation.

(c) The commissioner may establish such programs and adopt, in accordance with chapter 54, and enforce such regulations as he deems necessary to carry out the intent of sections 22a-133a to 22a-133j, inclusive, sections 22a-448 to 22a-454, inclusive, and Subtitle C of the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.), as amended from time to time, except that actions pursuant to the state's hazardous waste program shall be brought under the provisions of sections 22a-131 and 22a-131a.

(d) The Commissioner of Energy and Environmental Protection, in consultation with the Commissioner of Public Safety, may establish by regulations adopted in accordance with the provisions of chapter 54 standards and criteria for the nonresidential underground storage of oil, petroleum and chemical liquids, which may include but not be limited to standards and criteria for the design, installation, operation, maintenance and monitoring of facilities for the underground storage and handling of such liquids. The Commissioner of Energy and Environmental Protection may establish such programs and adopt, in accordance with chapter 54, and enforce such regulations as he deems necessary to carry out the intent of Subtitle I of the Resource Conservation and Recovery Act of 1976 (42 USC 6901, et seq.), as amended from time to time.

(e) On and after October 10, 2009, the fee for the notification of each nonresidential underground storage facility submitted to the commissioner shall be one hundred dollars per tank. Such notification shall be submitted annually on a form prescribed by the commissioner on or before October tenth and shall be accompanied by such fee. Such fee shall not apply to any of the following: A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes; a tank used for storing heating oil for consumptive use on the premises where stored; a septic tank; a pipeline facility; a surface impoundment; a stormwater or wastewater collection system; a flow-through process tank; a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; a storage tank situated in an underground area, including, but not limited to, a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated above the surface on the floor.

(f) The Commissioner of Energy and 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 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 against an owner or operator of any such system 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 (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.

(g) (1) If the commissioner determines that there is a release from a nonresidential underground storage tank system or that such system (A) is not designed, constructed, installed and operated in accordance with section 22a-449o or regulations adopted pursuant to this section, (B) fails to have or operate proper release detection equipment in accordance with regulations adopted pursuant to this section, or (C) fails to have or operate proper overfill and spill protection measures or equipment in accordance with regulations adopted pursuant to this section, then the commissioner may require the owner or operator of the nonresidential underground storage tank system to pump out the contents of its system, and the commissioner may place a notice on a system that is plainly visible, indicating that the system is not in compliance with the requirements applicable to nonresidential underground storage tank systems and that such system cannot be used and deliveries to such system cannot be accepted, or the commissioner may disable the use of such system by placing a disabling device on the system that prohibits deliveries to such system. Any action pursuant to this subdivision shall not be based solely on requirements relating to reporting or recordkeeping. No person shall make deliveries to any nonresidential underground storage tank system bearing the notice described in this subdivision or on which the commissioner has placed a disabling device. The owner or operator of such system shall ensure that any such system is not used for dispensing a product or receiving deliveries while any notice or disabling device has been placed upon such system. Except as provided in subdivision (3) of this subsection, no person or municipality shall remove, alter, deface or tamper with any notice or disabling device placed by the commissioner pursuant to this subdivision.

(2) Not later than two business days after placing a notice or disabling device on a nonresidential underground storage tank system pursuant to subdivision (1) of this subsection, the commissioner shall provide the owner or operator of the affected underground storage tank system with an opportunity for a hearing. Any such hearing shall be limited to whether the violation upon which the commissioner took action under subdivision (1) of this subsection occurred and whether such violation is continuing.

(3) A nonresidential underground storage tank system upon which a notice or disabling device has been placed pursuant to subdivision (1) of this subsection shall not be put back into service and shall not be used for dispensing a product or receiving deliveries until the violations that caused the notice or disabling device to be placed have been corrected to the satisfaction of (A) the commissioner, or (B) a person who, pursuant to regulations adopted pursuant to subsection (f) of this section, has been authorized by the commissioner to determine whether such violations have been corrected. The commissioner shall determine whether any applicable violation has been corrected not later than twenty-four hours after being contacted by the owner or operator of the underground storage tank system that any such violation has been fully corrected. Notwithstanding the provisions of this subdivision, until the commissioner authorizes persons to determine whether violations have been corrected pursuant to regulations adopted pursuant to subsection (f) of this section, the owner or operator of an underground storage tank system upon which a notice or a disabling device has been placed by the commissioner may place such system back into service, where, not later than twenty-four hours after being contacted by the owner or operator, the commissioner has not determined whether any applicable violation has been corrected and on the day any such system is returned to service or the next business day in the event such day is a Saturday, Sunday or legal holiday, the owner or operator provides the commissioner with a written affidavit fully describing all actions taken to correct the violations that caused a notice or disabling device to be placed upon such system and certifying that all such violations were fully corrected before any such system was returned to service.

(4) Nothing in this subsection shall affect the authority of the commissioner under any other statute or regulation.

(h) The person submitting a notification of installation for a nonresidential underground storage tank or underground storage tank system pursuant to regulations adopted pursuant to this section shall submit with such notification a notification fee of one hundred dollars per tank.

(i) Any moneys collected for the issuance or renewal of a license, pursuant to subsection (b) of this section or regulations adopted pursuant to said subsection, shall be deposited in the General Fund.