Statement of Reasons in Support of Adoption of Amendments to Regulations of Connecticut State Agencies, Sections 22a-449(d)-1, 22a-449(d)-101, 22a-449(d)-102, and 22a-449(d)-108

Introduction

This Statement of Reasons concerns proposed amendments to the regulations regarding underground storage tanks (USTs). These regulations are adopted pursuant to Connecticut General Statutes §§ 22a-6 and 22a-449(d).

In 2005, Congress enacted the federal Energy Policy Act of 2005 (EPAct). This legislation put in place certain requirements that states must meet in order to be eligible for certain federal funding. As part of those conditions, states must institute requirements for Secondary Containment for UST systems and Operator Training for those who own and operate those systems. The UST regulations are intended to be preventative in nature. The goal is to minimize the risk of spills and leaks and their potential impact to human health and the environment. Nationwide, releases from underground storage tanks represent a major source of contamination to groundwater.[1] Groundwater is the primary source of drinking water for more than 1 million Connecticut residents, through nearly 260,000 public and private wells.[2] Beyond the risks posed to human health and the environment, the cleanup of contamination from releases such as spills and leaks from UST systems is extremely costly, significantly more so than prevention measures.[3] Much of this cost is borne by the taxpayers of Connecticut in the form of reimbursements from the Underground Storage Tank Petroleum Cleanup Account (see Table 1). This account, in addition to addressing costs associated with cleanup of UST releases, provides millions of dollars worth of bottled water each year to those whose drinking water wells have been impacted by releases from leaking USTs.[4] Therefore, in addition to the environmental benefit of the proposal, there is a cost saving element in that the expense incurred in cleaning releases typically far exceeds the cost of instituting the operator training and secondary containment that can prevent environmental impacts.

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[1]Source: U.S. Environmental Protection Agency
[2]Source: Ground Water Protection Council
[3]Source: New England Interstate Water Pollution Control Commission
[4]Source: DEEP Underground Storage Tank Petroleum Cleanup Account

Table 1

Expenditures from Underground Storage Tank Petroleum Cleanup Account for 18 Towns[5]
(from Account inception to present)

TOWN	AMT. AWARDED	AMT. PENDING	TOTAL	# OF SITES
Bridgeport	$2,104,839.26	$638,890.08	$2,743,729.34	22
Branford	$3,086,776.50	$1,661,106.98	$4,747,883.48	19
Brookfield	$3,031,743.19	$741,632.07	$3,773,375.26	11
Canaan	$287,314.25	$351,172.56	$638,486.81	1
Colchester	$1,234,618.95	$958,013.54	$2,192,632.49	8
Cromwell	$383,485.80	$115,518.63	$499,004.43	6
Hartford	$9,717,214.26	$1,632,099.91	$11,349,314.17	67
Litchfield	$707,295.02	$0.00	$707,295.02	8
Monroe	$3,146,329.25	$129,926.56	$3,276,255.81	9
Montville	$101,444.03	$259,565.97	$361,010.00	4
New Britain	$2,987,669.95	$183,618.89	$3,171,288.84	17
New Milford	$1,460,995.06	$610,083.81	$2,071,078.87	8
Newington	$4,353,432.54	$99,400.55	$4,452,833.09	17
Stonington	$1,110,291.81	$1,309,820.46	$2,420,112.27	5
Tolland	$964,558.92	$1,140,953.80	$2,105,512.72	9
Trumbull	$0.00	$1,356,325.46	$1,356,325.46	3
Wallingford	$923,235.18	$13,810.54	$937,045.72	9
Woodstock	$165,224.75	$0.00	$165,224.75	3
TOTAL	**$35,766,468.72**	**$11,201,939.81**	**$46,968,408.53**	**226**

[5]Source: DEEP [While data is available for the entire state, Table 1 shows a sampling of expenses for 18 Connecticut towns.]

Currently, there are no requirements for owners and operators of UST systems to be trained in the proper operation or maintenance of UST systems, or the appropriate responses should an emergency occur. The goal of operator training is release prevention through awareness, inspection, and maintenance of UST systems. Operator error can result in very small problems becoming very large problems and very small releases becoming very large releases. The Operator Training provisions provide for training and certification for UST operators at different levels. The person behind the counter must have at least an awareness level of what to do in the event of a problem with the UST system. The next levels of training would require compliance assurance through detailed monitoring and regular inspection of system components to assure that problems can be avoided through maintaining the systems in good working order and enhancing the ability to detect problems early. The EPAct set deadlines that states have

Operator Training, or at least a schedule for implementing Operator Training in place by August 8, 2009 with operators trained by August 8, 2012.

The EPAct also set a deadline for states to implement Secondary Containment requirements by February 8, 2007. The Department of Energy and Environmental Protection (DEEP) twice proposed legislation to put these requirements in place. In both cases, the bills did not get called before the session ended. EPA proposed that the DEEP use the regulatory revision process in order to comply with the Secondary Containment provisions of the EPAct in order to avoid jeopardizing future federal funding. As with the other provisions of the UST requirements, the goal of Secondary Containment is preventative in nature, designed to avoid releases from UST systems to the greatest extent possible. Secondary Containment requirements further that goal through the use of existing requirements for double-walled tanks and piping combined with the proposed requirement for containment sumps at the tank-top and under-the-dispenser. With this combination of containment systems, the potential risks of releases of petroleum and hazardous materials to the environment are mitigated to a large degree. Through the monitoring of these systems, leaks or spills can be contained and detected before they ever reach the environment, preventing not only the hazards associated with releases but also the costs.

To assist in drafting the regulations, the Department convened a stakeholder group consisting of UST owners/operators, trade organizations, environmental attorneys, environmental consultants, UST equipment contractors, and the U.S. EPA. The stakeholder process provided the Department with valuable information and was important to the development of these regulations. The Department takes this opportunity to thank those who provided input during this stakeholder process. Notice of the Department's proposed regulations was published in the Connecticut Law Journal on June 22, 2010. Notice was also provided to members of the stakeholder group. The Department accepted public comment on the proposed regulations during the public comment period from June 22, 2010 to July 28, 2010 and held a public hearing for receipt of comments on July 28, 2010. This document summarizes the principal comments received by the Department during the comment period, including those in support of and in opposition to the proposed revisions to the regulations concerning USTs, the Department's response to these comments, as well as revisions being made by the Department

and the rationale for any such revisions. This document follows the order of the proposed revisions.

I. General Comments

A. Timing of this Proposal

Commenters –
1. Anne Peters, Carmody & Torrence
2. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
3. Dan Horton, ExxonMobil
4. Eric Brown, Connecticut Business and Industry Association (CBIA)
5. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
6. Michael J. Fox, Gasoline & Automotive Service Dealers of America (GASDA)
7. Brian Freeman, Robinson & Cole

Summary of Comments: EPA is revising federal regulations, DEEP should adopt the bare minimum requirements of the grant guidance, review other state regulations provided to DEEP and wait for the EPA regulations which will be out within 4 months. They may change requirements. Strip down proposal and defer the remainder to see what EPA will do.

It makes sense to wait for EPA regulations to come out, before moving forward with this proposal.

CBIA indicates that DEEP should pursue 1 of 2 options: (1) withdraw and prepare revised, narrow version or (2) withdraw and wait for EPA regulations which will have had intense legal and technical review.

The UST regulations are very complicated and confusing making it difficult to comply with them.

Response: DEEP cannot wait for EPA. CT is already 3 years behind on secondary containment and looks to be significantly behind on operator training. To delay puts CT federal funding at risk. The State is required to submit a certification signed by the Commissioner every 6 months as to Connecticut's progress toward meeting these conditions in order to continue to receive funding. It has been more than 8 months, since public notice of these regulations and EPA has yet to notice such regulations and has indicated they do not expect to finalize them until Summer 2012. DEEP did look to other states in developing these regulations. The various state models provided were not northeastern states and may not face the same issues that Connecticut does with weather, reliance on groundwater for drinking, etc. Regulations from northeastern states were heavily relied upon when drafting the regulations. The Operator Training proposal was modeled closely after a draft prepared by the State of New Hampshire.

CBIA's options to withdraw and revise the proposal or withdraw and await EPA's regulations the proposal are unnecessary. DEEP has provided ample opportunity to be heard through both an informal process well in advance of the public notice and through the public notice process itself. To withdraw the proposal would be to make the decision to risk more than $1million in federal funding.

A future, more holistic revision is planned to clarify and make the regulations that currently exist more user-friendly and easier to follow. However, due to the time-critical nature of the need to implement Secondary Containment and Operator Training, those changes will not be made during this effort.

B. <u>Supportive</u>

<u>Commenters –</u>
1. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
2. Dan Horton, ExxonMobil
3. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
4. Michael J. Fox, Gasoline & Automotive Service Dealers of America (GASDA)
5. Peter A. Reinhardt, Office of Environmental Health & Safety, Yale University
6. Charlene A. Casamento, Bureau Chief, Bureau of Finance and Administration, CT Department of Transportation (CT DOT)
7. David M. Leiper, Environmental Compliance Analyst, South Central Connecticut Regional Water Authority

<u>Summary of Comments:</u> Mr. Guyveyan supports most of the proposal, per oral testimony.

Mr. Horton believes that Operator Training has a deadline and must be done now. CT proposal is among the best he has seen.

ICPA and GASDA indicate that with the adoption of their suggested changes to the proposed language, the proposed UST regulations "will go a long way in improving environmental protection while controlling costs and protecting local businesses."

Yale University supports revisions to (d)-1 of the UST regulations regarding applicability and corrosion protection. They also proposed further revision to this language to narrow corrosion protection provisions to only components which are in contact with the ground.

CT DOT supports the spirit and intent of the proposed revisions but raised several concerns about specific language of the proposal as described in the sections which follow.

The Regional Water Authority has 20 member towns, operates 10 reservoirs, four surface water treatment plants, and seven groundwater treatment plants, with a watershed and aquifer area of 120 square miles. They serve 430,000 water consumers an average of 51 million gallons of water per day. Upon review of the proposed revisions to the UST regulations, they

feel that these additional requirements will support their ongoing public water supply source water protection efforts.

C. Public Comment Period/Stakeholder Process

Commenters-
1. Eric Brown, Connecticut Business and Industry Association (CBIA)
2. Anne Peters, Carmody & Torrence

Summary of Comments: The regulated community has been scrambling 25 work days to obtain, draft and assemble comments. DEEP has had a history of working informally with stakeholders and the Department has gotten away from it, resulting in over 100 pages of comments, that could have been avoided by dialog.

The public notice does not discuss the cost of the proposal. It also does not discuss the frequency or other details regarding releases from dispensers and piping sumps. It further fails to discuss the numbers and types of facilities, previously not regulated by the UST regulations, which now would become so.

Response: DEEP complied with all public notice requirements. DEEP had an extensive stakeholder process which began a full 18 months prior to the public notice during which stakeholders had a chance to review and comment on the proposal, meet for a full presentation on the proposal, and had an opportunity to comment on the proposal which led to substantial revisions to the draft proposal based on stakeholder input. Prior to this proposed regulatory revision, the Department attempted to comply with federal Secondary Containment through the legislative process. This legislation was unsuccessful as part of a larger omnibus bill containing unrelated items. However, in preparing that legislative proposal, the Department worked extensively with the American Petroleum Institute (API), to which the Independent Connecticut Petroleum Association (ICPA) deferred, and negotiated and mutually agreed to the statutory language which was proposed. That proposed language was used to prepare and is very similar to the regulatory revisions now being proposed. In addition, Mr. Brown and approximately 125 members and invitees of CBIA and other interested parties attended a conference about a variety of UST issues at which the proposed revisions were presented and discussed extensively 4 months prior to the public notice.

The public notice indicates that other documents are available regarding the proposal by writing, calling, or e-mailing DEEP, as well as being posted on the DEEP website. Both the fiscal statement/small business impact statement as well as the federally required report outlining the number and sources of UST releases are available on the DEEP website. According to the information regarding UST releases posted on the DEEP website, in fiscal year 2010, 28% of all UST releases reported to the Department were from either dispensers or submersible turbine pumps/sumps. With regard to the addition of a larger universe of facilities falling within the proposed regulatory changes, this is not the Department's intent and this will be clarified in revised language.

D. Purpose and the 22a-6(h) Statement

Commenters:
1. Eric Brown, Connecticut Business and Industry Association (CBIA)

Summary of Comments: DEEP stated the purpose of the proposal as fulfilling the requirements of the EPAct. But, the proposal goes far beyond and DEEP should narrow the proposal.

The statement required by 22a-6(h) regarding clearly distinguishing provisions of this regulation from federal standards/requirements is wholly inadequate. There are a range of differences between state and federal requirements.

Response: DEEP's 22a-6h statement is not only adequate but, goes beyond that which is required. EPA does not have regulatory requirements for either Secondary Containment or Operator Training. Therefore, the 22a-6h statement would not be required. However, one was prepared to alleviate any confusion in thinking that there are, in fact, federal requirements. The rationale was to point out that the requirements set forth in the Energy Policy Act of 2005 passed by the U.S. Congress requires EPA to limit federal funding to states which do not put such requirements in place. Therefore, while EPA does not have such requirements, it is mandated to require states to have them in order to receive certain federal funding and for states to meet certain minimum standards for what amounts to grant conditions imposed on the states and not federal requirements on UST owners or operators. The Department is required to submit a certification signed by the Commissioner as to Connecticut's progress toward meeting these conditions in order to continue to receive funding. It is through these proposed regulatory revisions that requirements would be imposed on UST owners and operators. CT has included EPA in the stakeholder group and receiving their concurrence that the CT proposal meets the EPAct requirements for continued funding.

E. Cost to the Regulated Community

Commenters:
1. Eric Brown, Connecticut Business and Industry Association (CBIA)

Summary of Comments: The proposal is too burdensome on the regulated community as well as to DEEP. One CBIA member indicated that the cost of under-dispenser containment is $30,000-45,000.

Response: DEEP provided a Fiscal Estimate and Small Business Impact Statement which were based on price information solicited from companies which currently perform these system upgrades at between $750-2,000. In addition, these technologies have been demonstrated to prevent or minimize (by catching them quickly) leaks to the environment, even the smallest of which frequently cost many times the price of upgrade in order to remediate and restore the site, adjacent properties, drinking water sources, and the environment in general.

F. Definitions

Commenters –
1. Anne Peters, Carmody & Torrence
2. Eric Brown, Connecticut Business and Industry Association (CBIA)
3. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
4. Brian Freeman, Robinson & Cole

Summary of Comments: The definition in (d)-1 of

a. 'Residential underground heating oil storage tank system' in (d)-1 has two parts, A and B which appear to be identical except for one phrase, the meaning of which is not clear. In addition, the language of the definition does not refer to the contents of the tank which would make it applicable to UST with any contents potentially. Also, the commenter wanted to know if the residential real property mentioned in the definition, but undefined, is the same as a residential building, which is defined.

b. 'UST System' as it appears in (d)-1 is not the same as the definition of the same term in (d)-101 which is confusing. In addition, it refers to the term 'regulated substances' which is not defined in (d)-1.

The definition in (d)-101 of

c. 'Class A operator', 'Class B operator', and 'Class C operator' definitions have language added that such designation shall not be deemed an 'operator' as defined in (d)-101 solely by virtue of such designation. In addition, the definition of 'Operator' should also have a statement added that such designation shall not mean any person designated as a Class A, Class B or Class C operator solely by virtue of such designation. In other words, the commenter is concerned that the existing definition of 'Operator' could be confused with the new definitions for 'Class A operator', 'Class B operator, and 'Class C operator' and wanted language inserted into each that makes it clear they are not interchangeable.

d. 'Double-walled underground storage tank' and 'Double-walled underground storage tank system' are new terms which will cause ambiguity and confusion because other parts of the existing regulation, as well as the federal regulation, use the term 'secondary containment' to mean double-walled systems.

   One commenter said that the new definition of "Double-walled underground storage tank", which requires the use of interstitial monitoring for release detection in order to meet the definition, is too limiting from a record-keeping standpoint. There are numerous owners/operators throughout Connecticut that have double-walled tanks, but that don't use interstitial monitoring as their means of meeting the release detection requirements. In addition, it will create confusion as to how to properly identify systems on the UST notification form if they are double-walled but do not use interstitial monitoring.

e. 'New piping containment sump' definition goes beyond the requirements of the EPAct, and while allowed, creates a risk of inconsistency with pending updates to the federal regulation. The proposal requires the use of a sump sensor which are only one of a number of available technologies. It would preclude operators from using other technologies. The commenter had similar concerns regarding 'New under-dispenser containment sump' as well as pointing out that the word 'device' was misspelled 'devise'.

f. 'New under-dispenser containment sump' definition indicates that an alarm or other device that notifies the owner or operator immediately whenever a liquid accumulates in the containment sump is required. Some under-dispenser containment sensors alert the owner/operator to a liquid condition by disabling power to the dispenser. The commenter wants to know whether such a device would meet the requirement of the definition.

g. 'Underground storage facility' definition should be removed because the regulation applies to owner and operators of USTs, not the real property on which they are located, which is how this term is defined. Also, it is confusing because the term 'facility' is defined in (d)-1.

h. 'UST system or underground storage tank system' should not be changed as proposed because it would create the need for major revisions to (d)-102 through 113 in order to make the existing provisions consistent with the new language of the definition as it pertains to such above ground components as dispensers and hoses.

Some of the issues raised with definitions of critical terms having different meanings in different sections or different definitions of similar terms potentially create inconsistencies which threaten the legal sufficiency of the proposal on the grounds of 'void for vagueness'.

Response:

a. *This definition matches the definition in the implementing statute, CGS 22a-449(a). The two parts, A and B, are both included in the statute and presumed to mean that it refers to a UST at a residential property or a UST and any associated ancillary equipment used in connection with the UST whichever happens to be present. The language of the definition does not need to refer to the contents of the UST because the term itself does, "residential underground* ***heating oil*** *storage tank system". Further, the meaning of real property as used would defer to the common meaning of the term, a subset of land that has been legally defined and the improvements to it such as buildings, wells, and dams to name a few. This would therefore include a residential building with, as the definition specifies, "four residential units or fewer". For these reasons, the definition in the proposal remains unchanged.*

b. *The regulations at (d)-1 and (d)-101 through 113 are two different sets of requirements which apply to different universes of USTs with different purposes and requirements. The commenter even points this out by saying that the term 'regulated*

substances' which is defined in (d)-101 needs to be defined again in (d)-1. Therefore, it should not be confusing to have different definitions of similar terms. Differences between (d)-1 and (d)-101 will be further clarified by the addition of a purpose statement for each. However, in reviewing this comment, it was determined that this definition is not necessary within (d)-1. Therefore, this definition will be removed from (d)-1.

c. *Clarifying language will be added to these definitions.*

d. *'Double-walled' equipment is a form of secondary containment but is not synonymous with it. Certain requirements of the regulation pertain only to 'double-walled' equipment while others pertain to the larger universe of 'secondary containment'. In addition, the requirement for certain USTs and UST systems to specifically be double-walled USTs and UST systems comes from the statutory language found in CGS 22a-449o. Therefore, 'double-walled' is not used in the proposal where it is meant to describe 'secondary containment' in general. As such, it would not be appropriate to change or remove this definition.*

   A definition of 'Double-walled underground storage tank' has not appeared in the regulation before. However, it has been defined in statute (22a-449o) since 2003. This definition is identical to the statutory definition. In addition, the statute has required new systems installed after October 1, 2003 to be double-walled systems with interstitial monitoring. Double-walled USTs installed prior to the date of the statute are not required to use interstitial monitoring for release detection. The newly designed and implemented UST notification form available on the DEEP website provides for such systems to be specified.

e. *The EPAct requires that states implement certain minimum requirements for containment sumps and secondary containment in general which EPA has confirmed that this proposal meets. EPA has urged states to develop their regulations and not wait for revised federal regulations. In addition, the definition of 'New piping containment sump' does not require the use of a sump sensor per se. It says that a 'new piping containment sump' means a sump housing a turbine pump or piping that does several things one of which is "contains leak detection equipment,* ***such as*** *a sensor, that at all times is capable of detecting any liquid that may accumulate in such containment sump, including but not limited to, leaks from the turbine pump or piping; and… contains an alarm or other device that notifies the owner or operator immediately whenever a liquid accumulates in the sump". There is nothing that precludes an operator from utilizing other technologies which meet the same conditions or in conjunction with a technology that does. Again, Connecticut relies heavily on groundwater for the State's drinking water supply. It is imperative that this resource be protected from releases from underground storage tanks. The Department is adopting the provisions as proposed and will correct the misspelling of 'device'.*

f. This definition specifies only that the owner/operator be immediately notified. If a system is capable of doing that, it would meet this definition.

g. This definition is not meant to define the regulated entities, UST owners and operators, but rather its purpose is limited to the narrow context of the proposed operator training requirements at (d)-108. This new term stemmed from comments during the initial stakeholder process while the amendments were being drafted, to address the concern that for a gas station with six USTs, they would have to submit six copies of the same statement identifying the Class A and B Operators for that gas station. This new term was meant to distinguish that one such submittal for the gas station regardless of how many USTs they actually have was all that the Department means to require. Similarly, on the posting requirement, the purpose was to distinguish that Class A,B, and C Operator information did not have to be posted six times for a station with six tanks, but only once. However, the term appears to be used in a confusing way within the language of the proposed (d)-108 so, that the term will remain but, the language within the paragraphs in which it is used will be revised for clarification purposes. As far as conflict with the separate term 'facility' which appears in (d)-1, this should not be an issue once the statements of purpose are added to clarify that (d)-1 and its requirements apply to one universe of USTs while (d)-101 through 113 apply to a totally separate set of USTs. Therefore, the use of different but similar terms should not cause confusion going forward.

h. The revisions to the 'UST system or underground storage tank system' definition will potentially have unintended consequences which do not further the purpose of these revisions. Therefore, the proposed definition will be eliminated and the existing definition will remain.

The modifications addressed above will address any confusion about definitions and terminology and thereby avoid any vagueness.

II. Comments regarding RCSA 22a-449(d)-1 Applicability

A. Intent and Scope of Change

Commenters –

1. Anne Peters, Carmody & Torrence
2. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
3. Dan Horton, ExxonMobil
4. Ruthanne Calabrese, Northeast Utilities Service Company (NUSCO)
5. Eric Brown, Connecticut Business and Industry Association (CBIA)
6. Charlene A. Casamento, Bureau Chief, Bureau of Finance and Administration, CT Department of Transportation (CT DOT)
7. Brian Freeman, Robinson & Cole
8. Peter A. Reinhardt, Office of Environmental Health & Safety, Yale University

Summary of Comments: A number of commenters raised concerns about the revisions to the 'Applicability Section' and that such changes would bring more types of systems into the program than the original language, and it is not clear why such an expansion is needed. Commenters felt that the change made the regulations more complicated not less and would warrant an additional comment period and new public notice.

Yale University supports the revisions to the (d)-1 applicability, noting that the revised language is more straightforward and easier to read and eliminates the cross-referencing previously required.

Response: The (d)-1 revisions to the applicability appear to have been confusing for many, based on numerous comments. The intention was to clarify the existing meaning by removing references to other parts of the regulation and replace them with the actual language in those references. The meaning of the language was intended to remain unchanged. This was done in response to many comments by the Stakeholder Group that assisted in the development of the proposal that the existing language was too confusing. Therefore, even though this subsection did not have to be revised to meet the EPAct requirements, DEEP attempted to address what was portrayed by Stakeholders as a significant source of confusion. However, the revision does not appear to provide the intended clarity. In addition, DEEP agrees that some of the types of facilities and equipment currently included in 449(d)-1and should be removed. Therefore, to further limit the types of USTs included in the applicability section of 449(d)-1 and address the conflicting terms that have served to increase confusion, the DEEP would revise the (d)-1 applicability in response to comments.

Specifically, the applicability language of (d)-1 should be revised by removing the list of facilities that fall under the regulation in order to limit it to only farm tanks and non-residential heating oil tanks. Both of these are already covered by the current regulation. Heating oil tanks have been regulated under (d)-1 since it was promulgated in 1985 and thousands of these are currently registered with the Department. When, in 1994, the Department incorporated the federal regulatory requirements by promulgating R.C.S.A 22a-449(d)-101 through 113, the applicability in (d)-1 was revised but the regulation of such heating oil USTs was maintained. The term 'regulated substances' will be replaced and the term 'facilities' will be restored.

It is noted that Yale University favored the proposed language. However, there was overwhelming concern by other commenters that the proposed language complicated, rather than simplified the section, as intended. Therefore, the Department will further simply the language of this section.

B. Addition of a Purpose Statement

Commenters-
1. Anne Peters, Carmody & Torrence

Summary of Comments: A statement of purpose should be submitted at both the beginning of RSCA 22a-449(d)-1 and another at the beginning of RSCA 22a-449(d)-101 to explain the scope of the regulations and what they are intended to cover and to regulate. For (d)-1, it should make clear that USTs regulated by (d)-101, et.al. are not included. Likewise, for (d)-101, it should make clear that it is limited to USTs regulated by Subtitle I of the federal Resource Conservation and Recovery Act (RCRA).

Response: This suggestion would potentially aid in making the regulation clearer to the regulated community. Therefore, such statements of purpose will be added to the proposal.

III. Comments regarding Secondary Containment

A. General

Commenters-
1. Anne Peters, Carmody & Torrence
2. Peter A. Reinhardt, Office of Environmental Health & Safety, Yale University

Summary of Comments: The proposed provision at (d)-102(a)(16) regarding the appropriate response to a sump alarm should be moved from subsection (d)-102 to subsections (d)-104, 105, and 106 because such provision deals with release detection and response which is the subject of those three subsections, and not subsection (d)-102 which deals with design and construction.

The proposed paragraph (d)-102(a)(18) which excludes residential heating oil USTs from (d)-102(a)(11), (12), (13), (14), (15), (16), and (17) is unnecessary because the definition of a UST in (d)-101 already excludes such USTs.

One commenter suggested that (d)-102(a)(16) which required product which accumulates in a containment sump to be removed within 24 hours and water to be removed with 72 hours be revised to allow 5 days for removal of liquids from sumps. This is to allow for repair contractors to have time to correct any leaks which are causing the accumulation.

Response: Proposed paragraph (d)-102(a)(16) fits equally well both in section 102 with the secondary containment requirements as well as sections 104 through 106 which deal with release detection. Which is a better fit is not an issue that will effect the substance of the requirement or compliance with the EPAct, which is the objective of this proposal, getting Connecticut compliant with the EPAct and preserving federal funding which is extremely time-critical. Once EPA comes out with their proposed changes, this may clarify EPA's view of where this provision best fits. The department may need to revisit this in the future, but for now is not making any revisions in response to this comment.

Portions of the proposed paragraph (d)-102(a)(18) are somewhat redundant, but were added for clarification purposes. However, if they are creating confusion rather than serving to clarify, the paragraph should be revised. Therefore, this paragraph will be revised to address comments received.

The comment regarding increasing the timeframe for removal of liquids from sumps from 72 hours to 5 days seems inconsistent with the objective of reducing the potential for releases and acting promptly if leaks are discovered. A containment sump is only able to contain a release if it is not already full of liquid. A full sump is tantamount to not having a sump. In addition, leaking components must be corrected immediately and not allowed to leak for up to 5 days. For this reason, the Department is not making a change to address this comment.

B. Effective Date

Commenters –
1. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
2. Dan Horton, ExxonMobil
3. Anne Peters, Carmody & Torrence
4. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
5. Michael J. Fox, Gasoline & Automotive Service Dealers of America (GASDA)

Summary of Comments: Effective date should be changed to 8/10/2011 in order to give people time to comply and make the effective date later than the date of the revisions.

Effective date needs to be pushed back at least a year.

Response: The effective date for secondary containment issues will be adjusted and provide ten to twelve months of lead time before they become effective.

C. Under-dispenser Containment Proposed Trigger

Commenters –
1. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
2. Dan Horton, ExxonMobil
3. Anne Peters, Carmody & Torrence
4. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
5. Michael J. Fox, Gasoline & Automotive Service Dealers of America (GASDA)
6. Eric Brown, Connecticut Business and Industry Association (CBIA)

Summary of Comments: The proposal mandates under-dispenser sumps (UD sumps) when 25% of piping is replaced which encourages a delay in maintenance and is not justified. Also, it mandates UD sumps when 25% of dispensers are being replaced, which should be eliminated.

The 25% of dispensers replaced as trigger for adding pans to all dispensers is too difficult and will make operators delay repairs and maintenance. The requirement that when 25% of dispensers are replaced all UD sumps be replaced is too burdensome. For small stations, this trigger would be only 1 dispenser.

Flex piping is routinely replaced and takes less than 1 hour but this requirement would mandate removing the dispenser and possibly excavating a trench with great time and expense. Making routine maintenance a trigger for significant work would discourage routine maintenance.

The proposed changes for secondary containment go far beyond the EPAct and far beyond those of other states. Specifically, Connecticut is not including the limitation that secondary containment only be applicable to sites within 1000 feet of a public water supply well or other potable well.

One commenter suggested that possibly the term 'dispenser' may need to be defined so that it is clear as to what this requirement pertains.

Response: In response to numerous comments, the proposal will be adjusted to remove the 25% piping trigger entirely and increase the trigger regarding replacement of '25% of dispensers' to 'more than 50% of dispensers'. With regard to flex piping, it seems that the commenter may have misread or misunderstood the proposed language. Routine maintenance or even replacement of flex piping would not trigger the requirement for new under-dispenser containment sumps, but rather it says replacement of "a dispenser and more than 50% of the transitional components, such as a flex-joint and flexible piping…." Therefore, routine maintenance and/or replacement of flex piping would not trigger the requirement, but rather replacement of the dispenser and replacement of more than 50% of the transitional components such as flex piping would be the trigger. Since the dispenser is already removed necessitating substantial work and cost already, it is opportune to provide under-dispenser containment at the same time, rather than later when it will require more disturbance and additional cost.

The requirements of the EPAct are minimum requirements for the states with the intention that states will develop regulations that account for particular state factors and concerns. The proposed requirement is crafted to protect drinking water sources as well as human health and the environment in a state which relies heavily on groundwater resources for drinking. Hundreds of thousands of dollars are spent annually in Connecticut to address petroleum releases from USTs which impact groundwater, infiltrate dwellings or other buildings with hazardous and explosive vapors, and impact off-site properties and their owners. In some cases, the owner or operator of the UST system which leaked does not have the resources to address such contamination necessitating that DEEP use state funds to perform corrective actions. In addition, while EPA is still working on their rulemaking, indications from EPA are that their regulations will apply across the board and not be limited to areas within 1000 feet of a potable well. The Department is not making any revisions to the regulations in response to this comment.

The term 'dispenser' is simply that which is in common usage. Addition of such a definition seems like it could become overly technical and unnecessarily confusing.

D. General Testing Requirement

Commenters-
1. Anne Peters, Carmody & Torrence

Summary of Comments: The concept of testing is a good one, but is premature because neither EPA nor the State has set standards for such tests and testing technology is currently limited to testing recommended by the containment sump manufacturers.

Response: Testing is the only way to assure that a containment sump actually contains liquid as it is designed to do. It is recommended by manufacturers of such sumps. While this is a technology that is still developing, this issue can be resolved by adding language that requires the use of 'best available technology'. The proposed language will be changed to specify such technology.

E. Six-month Testing Requirement

Commenters –
1. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
2. Dan Horton, ExxonMobil
3. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
4. Michael J. Fox, Gasoline & Automotive Service Dealers of America (GASDA)
5. Stephanie Marks, UCONN Office of Environmental Policy

Summary of Comments: Integrity testing 6 months after installation of new containment sumps should be dropped from the proposal. The only testing required should be at the time of installation and every 5 years thereafter.

Massachusetts had a six-month requirement and found it not to be useful and removed it. Connecticut should not include such a requirement.

Due to the proven performance of new UST systems, the requirement to test 6 months after installation and every 5 years thereafter should be removed.

Response: In response to numerous comments, the proposal will be revised by striking the requirement for integrity testing of sumps 6 months after installation. The integrity testing upon installation and every 5 years thereafter would remain unchanged in order to assure continued proper operation and integrity of sumps and monitors. It was pointed out that other northeast states had such six-month requirement and eliminated it due to finding that it did not result in a significant number of leaking sumps being identified and it was deemed unnecessary.

F. System Shut-down for Sump Testing

Commenters –

1. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
2. Dan Horton, ExxonMobil
3. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
4. Michael J. Fox, Gasoline & Automotive Service Dealers of America (GASDA)

Summary of Comments: Requirement to shut down to test sumps after a repair should be dropped. Should only have to shut down affected equipment, not entire station[102(15)(B)].

Don't shut down entire station for just testing on a portion.

Response: In response to numerous comments, the proposal will be revised by changing the requirement to shut down an entire UST system for testing of a single repaired under dispenser containment sump, to requiring only the dispenser associated with the repaired sump to be shut down until tested.

IV. Comments regarding Operator Training

A. General

Commenters:
1. Anne Peters, Carmody & Torrence
2. Eric Brown, Connecticut Business and Industry Association (CBIA)
3. Charlene A. Casamento, Bureau Chief, Bureau of Finance and Administration, CT Department of Transportation (CT DOT)
4. Stephanie Marks, UCONN Office of Environmental Policy
5. Brian Freeman, Robinson & Cole
6. Peter A. Reinhardt, Office of Environmental Health & Safety, Yale University
7. Valerie C. Joyner, Bureau of Finance and Administration, CT DOT on behalf of Amtrak

Summary of Comments: Proposed paragraph (d)-108(a)(1) puts the responsibility of identifying Class A, B, and C operators on the owners or operators of underground storage facilities, when it really should lie with the owners or operators of USTs.

Proposed paragraph (d)-108(a)(2) uses the term 'owners' where it should say 'owners or operators' and it uses the term 'facility' where it should say 'UST'.

Proposed paragraph (d)-108(c)(D)(4) is not necessary since the UST regulations apply jointly and severally to UST owners and operators.

Proposed changes in operator training do not comply with the federal requirement that they be developed in cooperation with tank owners and operators and take into consideration training programs implemented by owners and operators.

Commenter currently inspects 70 facilities once per year using 3 existing staff and anticipates that if the inspections are once per month, they will need 2 additional staff at a cost of nearly

$100,000. They would like DEEP to consider cutting back the inspection frequency to every 6 months. Also, they have 20 staff they anticipate will need Class A and/or B Operator training. They estimate this as an additional cost of $3,000 per inspection cycle. In addition, they question whether UST sites would be required to be manned or to have staffing on-site daily.

It will be difficult for facilities, particularly state facilities contracting through DAS, using contractors for their Class A and B Operators to maintain and post training records and updates within 30 days of a change because they do not have control over those employees and records.

One commenter expressed concern that the terms Owner and Operator may be confused with the new terms Class A Operator, Class B Operator, and Class C Operator. Language was suggested to clarify this issue through revised language in the proposed new definitions of the 3 classes of operators.

Another commenter felt that rather than having a statement of designated operators for each location with regulated USTs, owners/operators of multiple locations with USTs should be allowed to have one statement which can apply to all of their stations.

Amtrak is not opposed to more stringent requirements for UST operators but, indicates that they will need to use the services of an outside operator at a cost of up to $6,000 for which CT DOT will be responsible.

Response: The changes suggested above regarding the use of the terms 'owner' and 'owners or operators' as well as 'underground storage tank facility', 'facility', and 'UST system' in (d)-108, are necessary for clarity and accuracy and the proposal will be revised. In paragraphs (d)-108(a)(1)and(2), the term 'underground storage tank facility' will be replaced with 'UST and/or UST system', in (d)-108(b) 'facility' will be replaced with 'underground storage facility', and throughout subsection (d)-108 the term 'owner' will be changed to 'owner or operator'. In addition, paragraph (d)-108(c)(D)(4) will be clarified to distinguish between responsibilities of the Class, A, B, and C Operators and the liability of the owner or operator of the USTs which may or may not be the same individual(s).

The comment regarding non-compliance by DEEP with the federal requirement to develop operator training requirements in cooperation with UST owners and operators and to take into account their training programs is without basis. As described above in section I.C., DEEP had an extensive stakeholder process which began a full 18months prior to the public notice during which stakeholders had a chance to review and comment on the proposal, meet for a full presentation on the proposal, and had an opportunity to provide written comments on the proposal which led to substantial revisions to the draft proposal based on stakeholder input. That stakeholder group included UST owner/operators as well as trade organizations which represent those owner/operators, among others within the UST industry. In addition, the proposal allows for in-house operator training by UST owners and operators. In section, I.B. above, there are supportive comments which include owner/operators and trade

organizations to the proposal in general and below in section IV.B. an owner/operator comments that Connecticut's Operator Training proposal is among the best he has seen.

With respect to the comment about the need to hire and train additional staff, it is unclear why they would need to hire additional staff to perform monthly inspections instead of the annual inspections that they are currently performing. According to their comment, they anticipate training 20 existing staff who, based upon the proposal, would all be able to conduct the monthly inspections. In addition, it is unclear why they anticipate additional costs for training 20 people when the proposal allows for in-house training to be conducted. There is nothing in the revisions proposed by DEEP that requires facilities to be manned. However, response guidelines must be posted which include contact phone numbers and those contacts are expected to be reachable.

State agencies contracting through DAS, as well as other facilities using contractors as their Class A and B Operators can include training records and information updates as a contract condition. It is important to, and a part of the federal requirements, to provide the identity of Class A and B Operators in the event of an emergency, so that the correct personnel can be contacted.

The concern regarding confusion of terms owner and operator with the new Class A, B, and C Operators will be addressed through changes to the definitions in order to clarify the differences in roles and responsibilities.

Owners/operators of multiple locations which have regulated USTs should submit a separate statement of operator designations for each location. Each location will have a separate identification number and may have different designated operators.

It is up to the individual UST owners/operators if they choose to use the services of an outside contractor. Many companies have indicated that they would prefer to use existing personnel to provide these services. That is entirely up to the individual owner/operator.

B. Supportive

Commenters:
1. Dan Horton, ExxonMobil

Summary of Comments: Mr. Horton believes that Operator Training has a deadline and must be done now. The CT proposal is among the best he has seen.

C. Posting of Operator Response Guidelines

Commenters:
1. Richard Pease, Connecticut Department of Corrections

Summary of Comments: The proposed requirement for an operator response plan should be expanded to allow plans already in existence at a facility to be sufficient to meet this requirement.

Response: The intent of this part of the proposal is to post basic emergency information for the use of a Class C operator (i.e. cashier), not someone with technical knowledge of the system. As long as the required information is posted (i.e. spill reporting procedure, contact phone numbers, shut-off info. for malfunctioning equipment, and initial mitigation steps for emergencies), the proposal does not preclude taking it from another plan.

D. Exclusions

Commenters:
1. Richard Pease, Connecticut Department of Corrections

Summary of Comments: Proposal should be revised to exclude UST systems installed prior to October 1, 2003 that store fuel solely for use by emergency power generators and UST systems installed prior to October 1, 2003 that store heating oil for consumptive use on the premises where stored.

Response: The existing language of the proposal already addresses this issue and no revision is necessary.

E. Approved Training Programs

Commenters:
1. Anne Peters, Carmody & Torrence
2. Eric Brown, Connecticut Business and Industry Association (CBIA)
3. Charlene A. Casamento, Bureau Chief, Bureau of Finance and Administration, CT Department of Transportation (CT DOT)

Summary of Comments: With regard to proposed (d)-108(b), a commenter asks a series of questions, none appear meant for revision of the proposed language: What are the identities of any approved training programs? If none, what is the timetable and procedure for approving? How long will review and approval of the programs take? How many DEEP staff have been assigned to review and approve programs? What kind of training do those staff have with respect to UST management and operator training? What expenses are involved? Another asks: What is an approved training programs? Can companies use their own or a consultant? Is retraining required every 2 years? and What is involved in the requirement for a "test"?

Proposed (d)-108(c) puts in place requirements which are not required under the EPAct. These should be deferred until EPA has adopted revised regulations. In addition, proposed (d)-108(c)(2)(C), which refers to the Petroleum Institute Standard, RP 900-08, does not need to go on to itemize provisions of that standard since the reference to the standard should be adequate.

Training programs deemed approved under the proposal should include the ICC Class A UST System Operator (National Exam) and the Class B UST System Operator (National Exam).

Response: *The questions about the training programs primarily deal with how DEEP will implement these regulations, rather than with the proposed regulatory amendments themselves. DEEP will have in place staff who receive the trainer qualifications and training curricula, review the information, and either approve or reject the programs and/or personnel involved in the training programs. With regard to timing, approved programs or deemed approved programs must be in place in time for operators to be trained by the deadline set in the proposal. Currently, 1 staff person is projected to be necessary for this activity at this time. Potentially assigned staff have extensive knowledge in regard to UST matters, both technical and regulatory. Cost and type of training currently available vary by type from classroom training to on-line and can cost about $100 - $200 per year, but individual trainers would need to be consulted for their particular cost information.*

In the proposal, "approved training program" is defined. It is a training program meeting the requirements set forth in subparagraph (d)-108(b) of the proposal. The proposal allows in-house training and consultants. It specifies only that the trainers and the training program meet the requirements in the proposal. The proposal provides for either retraining or refresher training every 2 years. A certification test is part of an approved training program.

The provisions of (d)-108(c) are specifying the means and methods for complying with the provisions of (d)-108(a) and (b) and address what to do in the event of a UST emergency and that the extent of inspection necessary to determine that the UST system is functioning as it should. These specifications are designed to provide the steps necessary to protect drinking water sources as well as human health and the environment in a state which relies heavily on groundwater resources for drinking. In addition, EPA has indicated that federal regulations are not expected until Summer 2012 and Connecticut is already behind other states in providing for operator training as required by the EPAct. Further, with regard to reference of RP 900-08 and re-stating some of the provisions contained therein, the basis for this is two-fold, 1) it helps to clarify which provisions of the standard are applicable, and 2) there are provisions in the standard which go beyond the scope of the these regulations i.e. UST equipment such as air emission controls. These are addressed by other DEEP programs and are beyond the scope of these revisions. Therefore, it further assists to clarify which provisions of the standard this proposal means to apply by itemizing them. As such, the proposed paragraph will not be revised.

DEEP will explore approving the ICC Exam and/or requesting a state-specific exam like other states do.

F. Monthly Inspections

Commenters –

1. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)

Summary of Comments: Commenter disagrees with the requirement for operators to inspect the functionality of overfill prevention devices because improper removal and inspection of these devices could result in damage to these devices.

Response: The functionality of overfill prevention is of critical importance in preventing releases. In addition, it is a federal requirement to have functioning overfill equipment. Class B Operator training would cover the proper technique for such inspection. However, because of the concern of possible damage to such equipment, the DEEP will decrease the inspection frequency from monthly to annually. This reduced frequency will minimize the opportunity for the equipment to become damaged and allow for the use of a contractor, if the owner/operator prefers, while still assuring the functionality of the equipment.

V. Comments regarding Issues Beyond the Scope of this Proposal

A. Chemical Compatibility

Commenters -

1. Steve Guveyan, American Petroleum Institute (API), Connecticut Petroleum Council (CPC)
2. Dan Horton, ExxonMobil
3. Christian A. Herb, Independent Connecticut Petroleum Association (ICPA)
4. Michael J. Fox, Gasoline & Automotive Service Dealers of America (GASDA)

Summary of Comments: Chemical compatibility is not an issue being addressed in the proposed revisions, however, it is covered within the existing rule. Specifically, the concern is about UST equipment and materials which may not be compatible with or certified for use with ethanol blended fuel at greater than 10% ethanol (E-10+). EPA is doing testing on this issue to determine exactly what the issues are and DEEP should either wait to see what that testing shows or revise the existing regulatory language to provide for the use of E-10+ fuels.

Chemical compatibility testing is ongoing within the industry and federal government regarding existing infrastructure and new fuels, E-10+. A report should be released soon. It is expected that the federal limit for ethanol in motor fuel is going to be raised. Equipment in use currently is only certified for up to 10% ethanol. If the limit for ethanol in fuel is raised by the federal government, no gasoline station in U.S. would be certified for their UST equipment to contain it at present. It should be written into the UST regulation that if equipment is certified for only E-10, it should give UST owners/operators a certain amount of time to come into compliance, rather than put them out of business. OSHA, PEI, and other groups working on the issue of compatibility of UST equipment and fuel it contains as well.

Response: This matter is not within the scope of the revisions which are aimed at being compliant with the EPAct. Another round of revisions to the UST regulations is planned

once Connecticut meets EPAct requirements. This proposal is not addressing other aspects of the regulation at this time because of the deadlines imposed by EPAct. The benefit to taking this issue up at a later time is that the EPA examination of the compatibility issue may be complete and can be considered and incorporated at that time.

B. Expand Revisions to UST Regulation

Commenters-
1. Dan Horton, ExxonMobil
2. Richard Pease, Connecticut Department of Corrections
3. Robert J. Ross, Connecticut Department of Public Safety
4. Peter A. Reinhardt, Office of Environmental Health & Safety, Yale University

Summary of Comments: These revisions should cleanup of other parts of the regulations not included in proposal, such as deadlines that have passed.

Statutory requirements not currently in the body of the regulation should be added, particularly the requirement for only double-walled USTs to be installed on or after October 1, 2003. This should also include a clarification in the deferrals regarding emergency generator USTs installed after that date.

Several references exist in the current regulations which refer to incorrect or outdated fire codes, specifically NFPA 329 and certain sections of NFPA 30. In addition, reference to Underwriters Laboratories should be expanded with broader language such as 'nationally recognized testing lab'. Further, revised UST requirements promulgated by DEEP will need to be incorporated into the Connecticut Flammable and Combustible Liquids Code.

Response: Such changes are not within the scope of this proposal which is aimed at Connecticut becoming compliant with the EPAct. However, DEEP fully intends to address these issues in a future, more holistic review of the UST regulations which will include an effort to address statutory requirements in future regulatory revisions.

8/12/2011
Date

/s/ Lori Saliby
Lori Saliby
Supervising Environmental Analyst