



CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION

Important Changes to Connecticut's Underground Storage Tank Programs, including:

The Clean-Up Account Program The Enforcement Program The Remediation Program

On July 1, 2005, Governor M. Jodi Rell signed June Special Session, Public Act 05-3, which established many important changes to the Underground Storage Tank (USTs) programs in Connecticut. Most of the changes became effective when Governor Rell signed the legislation, however certain provisions are not effective until later dates as indicated below.

NOTE: This is a brief summary of the significant provisions of PA 05-3 to provide the public with a overview of those changes, *but it is not a complete listing or description of all changes. This notice should not be used as a substitute to any existing local, state and federal requirements and laws.* [View the relevant sections of Public Act 05-3.](#) If you have questions, please email the [Program Coordinator](#), or call 860-424-3370.

Clean-Up Account Program

Unless otherwise noted, the following provisions were effective on July 1, 2005.

1. a. For initial claims received by the Board prior to July 1, 2005, the Board may not approve any supplemental claims filed after October 1, 2009, except for certain specific actions (e.g., long term O&M).
- b. For initial claims received by the Board on or after July 1, 2005, the Board may not approve any supplemental claims filed more than five years after the initial claim was received, except for certain specific actions.
- c. In the case of both (a) and (b) above, if at least six months passes with an application not being brought to the Board, six months may be added to the time frames in (a) or (b) for each application, up to a maximum of two years for any release.

[22a-449c(d)(1), (2), (3) and (4); §91, June Special Session, Public Act 05-3]

2. For any initial applications and subsequent supplemental applications submitted on or after July 1, 2005, anyone who at any time owns, operates, leases, uses or has an interest in the UST system, or who owns, leases, uses or has an interest in the property after the release occurs, **is now considered a responsible party.**

[22a-449a, §90, June Special Session, Public Act 05-3]

3. Licensed Environmental Professionals (LEPs) are now authorized to approve certain actions in lieu of the Commissioner.
 - a. For releases with total costs less than or equal to \$250,000, either an LEP or the

Commissioner may approve the work, and for costs greater than \$250,000, the Commissioner may approve the work or elect to defer to an LEP.

- b. LEP approval must be accompanied by a specific certification, and must refer to specific completed remediation milestones that have been achieved. Such milestones include the release response report, interim remedial action report, investigation report and remedial action report, annual groundwater remedial action report, annual groundwater remedial action report, and the final remedial action report.
- c. In doing this work, LEPs are also bound by the rules prescribing their activities under the general LEP statutes and regulations (Sec. 22a-133v), including a code of conduct.

[22a-449f(b)(1)-(3); §94 and new §95, June Special Session, Public Act 05-3]

4. Applicants may now designate other parties to whom payments may be assigned. This will allow such parties to "purchase" the claim at a slightly reduced amount once the Board has made an award, thus speeding up the actual receipt of payment by the applicant. The party who purchased the claim will then be reimbursed directly by the Department at a later date when funds are available. The ability to purchase claims is granted only to businesses established at least in part for that purpose.

[22a-449c(a)(2); §91, June Special Session, Public Act 05-3]

5. The Board may no longer make payments for diminution of property value or interest.

5, 6 and 7 [22a-449c(a)(3); §91, June Special Session, Public Act 05-3]

6. Attorney's fees may only be reimbursed up to the following amounts:
 - \$5,000 for a responsible party
 - \$10,000 for an applicant who is not a responsible party
7. Attorney's fees may not be reimbursed to a responsible party regarding the defense of claims brought by another person.
8. Anyone who receives reimbursement from a party other than the Board is not entitled to receive payment from the Board for those costs. If a person has received payment from the Board, and also receives payment from another party for the same work, that person shall reimburse the Board for those costs.

[22a-449c(e)(1)-(3); §91, June Special Session, Public Act 05-3]

9. Third party (anyone **not** a responsible party) procedures have been revised.
 - a. Third parties must make reasonable attempts to provide written notice of their claim to the responsible party.
 - b. The burden is on the third parties to show that the damage they suffered was from a release from an eligible UST, any remediation was consistent with the RSRs, and that insurance or other similar instrument is either not available or is insufficient to cover the claim.
 - c. The following requirement is eliminated: (i) that a responsible party must first refuse to pay the first \$10,000, and must not already have paid \$10,000 of costs, before a third party could be reimbursed the initial \$10,000

[22a-449f(a); §94, June Special Session, Public Act 05-3]

10. If a timely notice of a release required under Section 22a-449(d)-103 of the USTEP regulations is not submitted, the Board may not reimburse costs for the release.

[22a-449f(c)(5); §94, June Special Session, Public Act 05-3]

11. Several significant changes have been made to the process for determining how violations affect an award.
 - a. For all applications submitted after January 1, 2006 (exception noted in (c) below), compliance audits must be performed no earlier than approximately 180 days prior to the application, and submitted as part of the application. Awards will be reduced by certain specific amounts based on violations noted in the audit provided such violations have not been fully corrected by time an application is submitted to the board, not if those violations existed at the time of the release (the proximate cause provision). Audits are required at least on an annual basis thereafter if supplemental applications are submitted.
 - b. The Board can still reduce an award for other violations, and even if the Board does not reduce an award, any identified violations may be referred to the UST Enforcement Program for follow up action.
 - c. If no UST exists at the time of an application, the proximate cause provision still applies.

[22a-449f(d)(1)-(5) and (e)(1)-(2); §94, June Special Session, Public Act 05-3]

12. Several changes were made to the cost recovery process.
 - a. The Attorney General (AG) may now seek cost recovery:
 - i. From anyone who owned or operated a UST system at the time of a release, or anyone who owned the property after the release occurred, up to the time a final remedial action report is approved by the Commissioner or submitted by an LEP.
 - ii. If the UST was required to be the subject of a registration form but no such form was submitted (under the old rules this failure to submit the form had to be knowing and intentional to justify a cost recovery action).
 - iii. For certain reckless, willful, wanton, omission
 - iv. For an omission or negligent act that constitute noncompliance with the general statutes or regulations governing the installation, operation and maintenance of USTs
 - v. If the UST is not in compliance with a final order of the Commissioner or a court order.
 - vi. If payment is made by the Board to a third party
 - b. If the AG has filed a cost recovery action, or if the Commissioner has sent a demand letter to the responsible party, the Board may not make any payment for such costs sought by the cost recovery action.

[22a-449f(g); §94, June Special Session, Public Act 05-3]

13. Once the Board makes a decision, costs that were the subject of that decision may not be resubmitted to the Board. This includes Board decisions to reject an application as incomplete.

[22a-449f(h); §94, June Special Session, Public Act 05-3]

14. Notification under Section 22a-449(d)-103 of the USTEP regulations is sufficient to comply with the notification requirements under Section 22a-449e regarding notification to the Board of a release.

[22a-449f(k); §94, June Special Session, Public Act 05-3]

15. By January 1, 2006, the Department will implement a plan to reduce the backlog of applications presently before the Board.

[New §96, June Special Session, Public Act 05-3]

16. The Department will adopt a schedule of maximum prices, which will be the basis for determining "reasonable" costs to be reimbursed in the future. There is no specific date or deadline associated with this provision.

[22a-449e(b); §93, June Special Session, Public Act 05-3]

17. Deletion of the former requirement that for all work or services or material provided after October 1, 2004, that an application seeking reimbursement for such work, services or materials must be submitted within 180 days of the date such work or services were rendered or materials provided. Applications submitted after October 1, 2005 required to demonstrate completion of a specified investigation and remediation milestone. Cost required to be submitted within one year of completion of the work to achieve the milestone.

[formerly 22a-449f(b)(1); §94 and new §95, June Special Session, Public Act 05-3]

Enforcement Program

1. A "Red Tag" program is established. Under this program, if the Commissioner determines that one or more of the following violations exist at a UST system, she may place a notice on or disable the system and require the tank contents to be pumped out until the violations are corrected:
 - a. There is a release from a UST
 - b. Improper design, construction, installation or operation of UST system components
 - c. Failure to have or operate proper leak detection, overfill or spill protection measures

1, 2, 3 and 4 [22a-449(g)(1)-(4); §89, June Special Session, Public Act 05-3]

2. Deliveries to a "red tagged" UST are prohibited.
3. Within two business days of red tagging a system, the Commissioner must provide the owner or operator an opportunity for a hearing.
4. A red tagged UST may not be put back into service until the violations have been corrected to the satisfaction of the Commissioner or a person certified by the Commissioner (see No. 5 below). Until the Commissioner implements the program certifying persons under this section, the owner or operator may put the system back in operation at least twenty four hours after the system was red tagged, if they submit an affidavit to the Commissioner indicating that all violations were corrected, and the steps that were taken to achieve compliance.
5. The Commissioner now has the authority to adopt regulations under which individuals can be certified to perform compliance inspections and audits, and she can also adopt regulations establishing the frequency, method and content of inspections and audits.

[22a-449(f); §89, June Special Session, Public Act 05-3]

Remediation Program

1. Section 22a-449(d)-106 of the USTEP regulations is being modified to clarify the obligation of a UST owner or operator to clean up the contamination caused by a release. The Department expects these changes to be adopted Spring 2006.
2. These changes will require that the following steps be taken once an owner or operator becomes

aware that a release has occurred. These steps will be almost the same as the milestones referenced in No. 3 above under the Clean Up Account Program

- a. Stop the release
- b. Notify DEP
- c. Take short term steps to address immediate issues
- d. Perform a comprehensive investigation
- e. Remediate the release consistent with the RSRs

[Underground Storage Tank Program](#)

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