

OLR Bill Analysis

SB 1258 (File 564, as amended by Senate "A")*

AN ACT CONCERNING UNDERGROUND STORAGE TANKS.

SUMMARY:

This bill makes several changes to the Underground Storage Tank (UST) Petroleum Clean-Up program. Among other things, it

1. allows certain owners and operators of USTs to store certain records off-site;
2. broadens eligibility for reimbursement from the account;
3. limits the attorney general's ability to sue in certain cases;
4. changes requirements for obtaining payment or reimbursement from the UST Clean-Up Petroleum Account Review Board (board);
5. modifies the requirements for written approvals accompanying reimbursement and payment applications; and
6. makes technical and conforming changes.

*Senate Amendment A expands the record storage provision, adds provisions on reimbursement eligibility and requirements, written approvals, and limiting the attorney general's ability to sue in certain cases, and makes other, minor changes.

EFFECTIVE DATE: Various. See below.

UST PETROLEUM CLEAN-UP ACCOUNT

The UST Petroleum Clean-up Account reimburses UST owners and operators for remediation costs they incur because of leaking commercial USTs. The account is funded by a portion of the Petroleum Products Gross Earnings tax. The board decides which claims to reimburse and directs the Department of Environmental Protection (DEP) commissioner to make payment.

§ 1 — RECORD STORAGE

By law, UST owners and operators must store most information on-site (see BACKGROUND). The bill allows UST owners and operators with more than 10 UST facilities to store certain records at a central state location as long as they can immediately provide them to DEP for inspection. They must specify, in writing, the central location and any other information the DEP commissioner requires. They must submit the information to DEP on a form DEP prescribes.

But the bill requires such owners and operators to keep the following records on-site:

1. a copy of all UST facility notification forms (Form EPHM-6) submitted to the commissioner;
2. the most recent cathodic protection tests for all metallic USTs;

3. the previous six months of inspection records of USTs with impressed current cathodic protection, if applicable;
4. the most recent 12 months of UST repair records required by regulation;
5. the most recent six months of records showing compliance with release detection regulations, including inventory control and reconciliation of inventory control records;
6. records of the two most recent UST tightness tests; and
7. any other UST records the commissioner specifies in writing.

These provisions do not affect any water pollution control laws other than those concerning record storage.

EFFECTIVE DATE: October 1, 2007

§ 2 — RESIDENTIAL UST REGULATIONS

It requires the DEP commissioner to adopt regulations on the removal of all pipes connected to both underground and above-ground residential heating oil storage tank systems when the tank is removed, regardless of the tank's capacity.

EFFECTIVE DATE: October 1, 2007

§ 3 — TECHNICAL

EFFECTIVE DATE: Upon passage

§ 4 — UST CLEAN-UP ACCOUNT REIMBURSEMENT ELIGIBILITY

The bill broadens eligibility for reimbursement from the UST Clean-Up Account for costs incurred because of leaking USTs. Current law bars the environmental protection commissioner from reimbursing claims for reduced property value or for interest. The bill authorizes the commissioner to reimburse these claims for interest on attorneys' fees filed on or before March 31, 2003 that have been tabled for at least three years.

Current law also bars the commissioner from reimbursing claims for attorneys' fees or other legal costs of more than (1) \$ 5,000 to a responsible party (see BACKGROUND), and (2) \$ 10,000 to anyone who is not a responsible party. The bill allows the commissioner to reimburse larger claims if they were filed on or before June 30, 2005.

EFFECTIVE DATE: Upon passage

§ 5 — WRITTEN APPROVAL OF REIMBURSEMENT REQUESTS

Under current law, an applicant seeking payment or reimbursement from the Clean-Up Account of more than \$ 250,000 must include all necessary written approvals with his application. The approval must be from the commissioner, or if the commissioner so authorizes, a licensed environmental professional (LEP). The bill allows an applicant to submit the commissioner's

written approval (but not the LEP's) separately. It specifies that the commissioner's written approval for this purpose (1) does not constitute an approval for any other purpose, and (2) must be presented to the board before it decides on the application.

EFFECTIVE DATE: Upon passage, and applicable to applications filed on or after July 1, 2005.

§ 6 — REIMBURSEMENT REQUIREMENTS

Under current law, the board must reimburse or pay certain people from the account if certain conditions are met. To receive payment, a responsible party must, among other things, have notified (1) the commissioner of a release according to regulation, or as soon as practicable, and (2) the board of a claim, made by someone other than a responsible party, as the result of a leak. The bill requires that the responsible party notify the board, and not the commissioner, of the release.

By law, if, when a responsible party applies for reimbursement there is no UST dispensing petroleum on the property where the release occurred, he must show, among other things, that his failure to comply with the law or regulation was not directly responsible for the leak. The bill limits this requirement to cases where an application is made by a UST owner or operator, or someone who owned and operated the UST at the time of the release. It distinguishes between applications filed before October 1, 2007, and those filed on or after that date. Generally, in either case the owner or operator must show that the release was neither caused by his failure to comply with the law or regulation, or from his reckless, willful, wanton or intentional acts or omissions, and there must not be a UST dispensing petroleum on the property. But the bill exempts from this requirement owners and operators who file applications on or after October 1, 2007 who do not have a UST subject to federal financial requirements. Under the bill, this provision does not apply to an application filed with the board concerning a leak from a UST owned or operated by a municipality or political subdivision of the state, if the leak was reported to DEP in September, 2003 and the UST was removed on or before April 1, 2005.

The bill specifies that if the board denied reimbursement or made only partial payment or reimbursement to an applicant on or before June 30, 2005 because it found the costs were not reasonable or otherwise recoverable, the denial, partial payment, or reimbursement remains in effect and applies to all subsequent applications concerning that release.

EFFECTIVE DATE: Upon passage and applicable to applications filed either before or after the act's passage, but the provision concerning financial responsibility requirement applies only to applications filed on or after October 1, 2007

§ 7 — FAILURE TO NOTIFY OF A RELEASE

The law authorizes the attorney general to sue to recover damages from UST owners and operators or others in certain instances. For example, he may sue an owner or operator who failed to notify the commissioner of a UST leak when required to do so. The bill eliminates this provision, instead authorizing him to sue in those cases where the UST is subject to facility notification form EPHM-6 and the owner or operator knowingly and intentionally fails to submit that form to the commissioner. (By law, unchanged by the bill, the attorney general may also sue when the leak results from a reckless, willful, wanton or intentional act or omission and in other cases.)

EFFECTIVE DATE: Upon passage, and applying to applications filed with the account before and after passage.

BACKGROUND

UST Record Keeping

By regulation, owners and operators of UST systems must maintain records of the operation of corrosion protection equipment, system repairs, compliance with release detection requirements, and other information. They also must maintain up-to-date records of significant construction or installation, monitoring, substantial modifications, and other activities.

Federal Underground Storage Tank Program

In 1984, Congress amended Subtitle I of the Resource Conservation and Recovery Act (42 USC 6901 *et seq.*) requiring the Environmental Protection Agency (EPA) to develop regulations to protect human health and the environment from damage caused by USTs. EPA developed regulations designed to prevent leaks and to locate and correct leaking systems. The regulations also require states to develop UST programs at least as strict as EPA's (40 CFR 281. 11). DEP adopted regulations in 1985, which EPA approved in 1988. Federal regulations require UST owners and operators to keep records (a) on-site and immediately available for inspection or (b) at a readily available alternative site, to be provided for inspection upon request (40 CFR 280. 34).

Responsible Party

The law (CGS § 22a-449a (3)) creates two definitions of responsible party, depending on when the board received a claim for payment. For claims received before July 1, 2005, a responsible party is anyone who owns or operates a UST from which a release or suspected release takes place.

For claims received after July 1, 2005, a responsible party is anyone who, at any time (1) owns, leases, uses, operates, or has an interest in a UST from which a leak or suspected leak occurred or (2) owns, leases, uses, or has an interest in property where there is a UST. These people are responsible parties regardless of whether they had an interest in the UST or the property when the leak occurred. A responsible party also includes anyone related to someone in the first two groups through a family, contractual, corporate, or financial relationship.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference

Yea 30 Nay 0 (03/23/2007)

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 51 Nay 0 (04/10/2007)