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VIA eREGULATIONS SYSTEM

January 26, 2022

Senator James J. Maroney
Rep. Nicole Klarides-Ditria
Senator John A. Kissel
Rep. Tom Arnone
Legislative Regulation Review Committee
State Capitol, Room 011
Hartford, Connecticut 06106

Re: Legislative Regulation Review Committee Review of Proposal to Adopt Regulations Concerning Release Reporting, (Regulation 2021-19, E-Regulations Tracking #PR2017-058)

Dear Senators Maroney and Kissel and Representatives Klarides-Ditria and Arnone:

Pursuant to section 4-170 of the Connecticut General Statutes, I am pleased to resubmit for your consideration and approval the proposed Release Reporting Regulations (“Regulations”). As you may recall, the proposed Release Reporting Regulations specify those releases that must be reported to the Department, pursuant to Conn. Gen. Stat § 22a-450. Because regulations have not previously been adopted, all releases must currently be reported. The proposed regulations specify certain reportable quantities. Releases smaller than these quantities are not required to be reported in most circumstances. The proposed regulations also specify the time in which a report must be provided and the content of such a report. The adoption of these regulations will allow the Department to more efficiently receive and process reports of releases, and enable the Department’s Emergency Response and Spill Prevention Division to concentrate its limited resources on releases of greatest concern.

This resubmission addresses substantive concerns and technical corrections identified by the Legislative Commissioner’s Office in its memorandum dated December 21, 2021 as accepted by the LRRC at its December meeting. The attached response document explains the Department’s response to those concerns and shows the language that was updated since the last submission to the LRRC. The Office of the Attorney General approved the updated version of the regulation as legally sufficient on January 24, 2024.

These regulations are a key component of Goal 5 of DEEP’s 20 By 20 initiative aimed at increasing predictability, efficiency, and transparency of DEEP’s environmental permitting and regulatory processes. These regulations will reduce the number of releases required to be reported, allowing the Department to better focus its resources while still protecting human health and the environment.

If there are any general questions regarding this submission, please contact Harrison Nantz of the Office of Government Affairs by electronic mail to Harrison.Nantz@ct.gov or at 203-722-4941. If you have any substantive or rule drafting questions, please contact Brendan Schain by electronic mail to Brendan.Schain@ct.gov or at 860-424-3172. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in blue ink that reads "Katie S. Dykes". The signature is written in a cursive style.

Katie S. Dykes
Commissioner

**Responses to the Legislative Commissioners' Office (LCO) Report on
LRRC Regulation No. 2021-19
eRegulations Tracking No. 2017-058**

All of the concerns identified in the LCO Report dated December 21, 2021 are addressed as specified. All the changes are reflected in the proposed regulation version in eRegulations.ⁱ

Substantive Concern	Explanation	Modified Language
<p>1. On page 2, in section 22a-450-1(c)(27)(D), the proposed regulation designates "any person who...indirectly caused a release or an imminent release" as a person required to report a release. It is unclear who may constitute a person who indirectly causes a release or an imminent release. Moreover, it is unclear how someone who indirectly causes such a release or imminent release would necessarily know that they indirectly caused such release or imminent release in order to be able to effectively report it in accordance with the proposed regulations. Accordingly, the inclusion of "indirect causation" should be clarified.</p>	<p>Section 22a-450-1(c)(27)(D) (now § 22a-450-1(c)(28)(D), due to renumbering required to alphabetize definitions as per the "technical corrections" section of the LCO memorandum) will be deleted, and the remaining provision renumbered accordingly.</p>	<p><u>22a-450-1(c)(28):</u> (28) "Person required to report a release" means any of the following: (A) An operator; (B) Any person whose act or omission results, or has resulted in, a release or an imminent release; (C) Any person who owns or controls any reportable material which is released or which is creating an imminent release; or (D) Any person who has directly or indirectly caused a release or an imminent release; or (E)(D) Any person who transports, or is responsible for the transportation of, the reportable material released or an imminent release;</p>
<p>2. On page 5, in section 22a-450-2(a)(1)(D), the proposed regulation exempts from reporting requirements "minor incidental drips from a dispenser nozzle during fuel dispensing". This exception is subjective by its terms. Accordingly, reasonable persons may differ as to what constitutes "minor incidental drips from a dispenser nozzle during fuel dispensing". The purpose of the proposed regulations is to establish the threshold for the reporting of certain releases. Any such threshold should be made clear</p>	<p>The Department agrees that use of the phrase "minor incidental" created a subjective standard. The language has been modified to remove that phrase. As updated, the language exempts only drips, provided such drips are from a dispenser nozzle while such dispenser is being used for fueling. This exemption would not, and is not intended to cover fuel released in a steady stream, from some part of the dispenser other than the nozzle, or a nozzle that is dripping fuel while not in use for fuel dispensing.</p>	<p><u>§ 22a-450-2(a)(1)(D):</u> ". . . <u>except drips from a dispenser nozzle during use for fuel dispensing</u> minor incidental drips from a dispenser nozzle during fuel dispensing;"</p>

<p>so that there is a uniform understanding of when a release is required to be reported. Therefore, the term "minor incidental drips from a dispenser nozzle during fuel dispensing" should be clarified, defined or not utilized.</p>		
<p>3. On page 5, in section 22a-450-2(b)(1)(A), the proposed regulation exempts from reporting requirements a "release that is of an inconsequential amount that occurs beneath a laboratory fume hood". This exception is subjective by its terms. Accordingly, reasonable persons may differ as to what constitutes an "inconsequential amount". The purpose of the proposed regulations is to establish the threshold for the reporting of certain releases. Any such threshold should be made clear so that there is a uniform understanding of when a release is required to be reported. Therefore, the term "inconsequential amount" should be clarified, defined or not utilized.</p>	<p>The Department agrees that use of the phrase "inconsequential amount" created a subjective standard. Rather than specify a reportable quantity – which may vary depending on the substance and particular laboratory fume hood in use – the exemption has been amended so that eligibility can be determined based on whether the release remains physically contained by the laboratory fume hood, and whether such hood is capable of venting all fumes or vapors generated by the release.</p>	<p>§ 22a-450-2(b)(1)(A): ". . . unless such release occurs beneath a laboratory fume hood, remains fully contained by such hood, and any fumes or vapors generated by such release are fully vented by such hood is of an inconsequential amount and occurs beneath a laboratory fume hood;"</p>
<p>4. On page 6, in section 22a-450-3(a)(2)(A), the proposed regulation exempts from reporting requirements a "release of small inconsequential quantities" that occur under a laboratory fume hood while performing laboratory functions. This exception is subjective by its terms. Accordingly, reasonable persons may differ as to what constitutes "small inconsequential quantities". Moreover, this standard appears to be slightly different</p>	<p>The Department agrees that use of the phrase "small inconsequential quantities" created a subjective standard. Rather than specify a reportable quantity – which may vary depending on the substance and particular laboratory fume hood in use – the exemption has been amended so that eligibility can be determined based on whether the release remains physically contained by the laboratory fume hood, and whether such hood is capable of venting all fumes or vapors</p>	<p>§ 22a-450-3(a)(2)(A): ". . . provided that such release occurs beneath a laboratory fume hood, remains fully contained by such hood, and any fumes or vapors generated by such release are fully vented by such hood this exemption shall apply only to the release of small inconsequential quantities; or</p>

<p>from the wording of the standard described in section 22a-450-2(b)(1)(A). The purpose of the proposed regulations is to establish the threshold for the reporting of certain releases. Any such threshold should be made clear so that there is a uniform understanding of when a release is required to be reported. Therefore, the term "small inconsequential quantities" should be clarified, defined or not utilized.</p>	<p>generated by the release. As suggested, language that parallels the language of § 22a-450-2(b)(1)(A) has been used to avoid confusion.</p>	
<p>5. On page 7, in section 22a-450-3(a)(4)(A), the proposed regulation exempts from reporting requirements "a release that consists wholly of a small or inconsequential petroleum sheen from roadways, driveways or parking lots due to vehicular use". This exception is subjective by its terms. Accordingly, reasonable persons may differ as to what constitutes a "small or inconsequential petroleum sheen". The purpose of the proposed regulations is to establish the threshold for the reporting of certain releases. Any such threshold should be made clear so that there is a uniform understanding of when a release is required to be reported. Therefore, the term "small or inconsequential petroleum sheen" should be clarified, defined or not utilized.</p>	<p>The Department agrees that use of the phrase "small or inconsequential" created a subjective standard. As updated, eligibility for this exemption is now determined whether the sheen has been caused by regular vehicular travel or use (which may cause small amounts of oil or petroleum to drip onto surfaces used for travel or parking and create a small sheen during precipitation events) rather than some other release mechanism, including but not limited to an accident rupturing a fuel tank or fuel spilling from a tanker truck.</p>	<p>§ 22a-450-3(a)(4)(A): "(A) A small or inconsequential petroleum sheen from roadways, driveways or parking lots due to normal vehicular travel or parking vehicular use;"</p>

ⁱ The Department also notes that the LCO memorandum indicates that there is a “Federal Requirement” to adopt the Regulations. While § 22a-450 is mandatory, there is no accompanying federal requirement.