
CGS 22a-6(h) Statement Regarding the Proposed Release Reporting Regulations

This document has been prepared to satisfy Connecticut General Statutes (CGS), Section 22a-6(h), which provides that when the Commissioner adopts regulations:

“pertaining to activities for which the federal government has adopted standards or procedures. All provisions of such regulations which differ from federal standards or procedures shall be clearly distinguishable from such standards or procedures either on the face of the proposed regulation or through supplemental documentation accompanying the proposed regulation at the time of the notice concerning such regulation required under section 4-168. An explanation for all such provisions shall be included in the regulation-making record required under chapter 54 and shall be publicly available at the time of the notice concerning the regulation required under section 4-168.”

The Department of Energy and Environmental Protection (“DEEP”) is proposing regulations that require the reporting of releases. The regulations identify thresholds to trigger the reporting requirements and specify when, how and what to report. As is discussed below, there are federal standards and procedures that also address the reporting of releases. This statement explains the differences between the federal requirements and the proposed state regulations.

Federal Reporting Requirements

The United States Environmental Protection Agency (EPA) has four primary statutes regarding the reporting of release incidents. These federal statutes include: 42 USC § 9601 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC § 11001 et seq., the Emergency Planning and Community Right-to-Know Act (EPCRA), 49 USC § 5101 et seq., the Hazardous Material Transportation Act (HMTA), and 33 USC § 1251 et seq., the Clean Water Act (CWA).

Part or all of the information from these reports may be collected in the Incident Reporting Information System (IRIS) of the federal National Response Center (NRC). The four primary statutes and their resulting regulations, citations, and relationship to the NRC are shown below.

- * CERCLA requires that the release of a CERCLA hazardous substance that meets or exceeds the reportable quantity (RQ) set forth in 40 CFR 302.4 must be reported to the NRC.
- * EPCRA requires that the release of an RQ or more of an EPCRA extremely hazardous substance or a CERCLA hazardous substance (one pound or more if a reporting trigger is

not established by regulation) that results in exposure of people outside the facility boundary be reported to state and local authorities.

- * HMTA requires that the release of a DOT hazardous material during transportation be reported to the NRC under certain circumstances such as death, injury, significant property damage, evacuation, highway closure, etc.
- * CWA requires that the release of oil be reported to the NRC if the release: (1) violates applicable water quality standards; (2) causes a film, sheen or discoloration of the water or adjoining shoreline; or (3) causes a sludge or an emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

Taken together the federal rules cover an enormous array of materials and wastes, including virtually anything in transportation to waste purposefully or accidentally released. The reporting thresholds or “reportable quantities” under these federal laws vary depending upon the material or waste in question. Similarly, the timing of when a release must be reported and the information required to be in a report varies depending upon the federal law implicated. Each law, requires, however, that the report be submitted to the NRC.

Federal Response Structure

The federal reporting system is a multi-tiered approach based upon the assumption that when a release occurs, the entity responsible for the release, including any release contractors, the local fire and police departments, and the state or local emergency response personnel will act as first responders and provide the first line of defense. Only in cases where the local and state responses cannot adequately address the incident and the incident exceeds the federal thresholds will the federal government assess the need to respond to a release.

As such, the federal reporting thresholds are not necessarily the threshold level that is protective of public health or the environment. Rather, the federal reporting thresholds were developed so that the federal government can assess the need to respond to a release that is beyond the capabilities of the local and state responders. This difference in the level of the reporting threshold is perhaps the key difference between the federal and the proposed state requirements.

Existing State Requirements

Conn. Gen. Stat. §22a-450 requires that the

“master of any ship, boat, barge, or other vessel, or any person in charge of any terminal for the loading or unloading of any oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes, or any person in charge of any establishment, or any operator of any vehicle, trailer or other machine to immediately report any release of material which poses a potential threat to human health or the environment from such vessel, terminal, establishment or machine, regardless of cause, to the Commissioner, including such facts as the Commissioner by regulations may require.”

Unlike the federal provisions discussed above, section 22a-450 contains no minimum threshold and contains no exceptions. DEEP receives thousands of reports each year under this law, in 2019 there were over 6,000. The differences, then, between the existing federal and state standards or procedures include differences in what releases must be reported, differences in reporting thresholds, differences in when a report must be submitted, and differences in the information that must be reported. These existing differences derive directly from section 22a-450 and have been in effect for decades.

The primary reason for these differences is the different roles played by the federal government and DEEP with respect to responding to a release. DEEP serves as “the first line of defense.” When a release report is submitted, unlike the federal government whose thresholds reflect whether a release that is beyond the capabilities of the local and state responders, DEEP serves as a first responder and must determine in all cases whether the response to a release is adequate.

Explanation of Differences between the Proposed Regulations and federal Standards or Procedures

Section 22a-450(c) provides that:

[t]he commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to define the threshold amounts for discharges, spillages, uncontrolled losses, seepages or filtrations that shall be reported to the commissioner pursuant to this section. Such regulations may include the specification of any facts, in addition to those specified in subsection (a) of this section, that shall be included in any report submitted under this section.

DEEP is proposing regulations pursuant to this provision with multiple objectives in mind. A critical objective is reducing the number of releases that need to be reported to DEEP. Using reports from 2019, the DEEP estimates that by establishing reporting thresholds the number of releases that would have to be reported to DEEP would be reduced by as much as fifty (50) per cent. In contrast to current law, small, less serious releases will not need to be reported to DEEP. Another objective of the proposed regulations is make clear when releases need to be reported to DEEP, ending any need to consult attorneys or other professionals concerning this issue. A third objective is to specify what information needs to be reported to DEEP, again ending any need to consult attorneys or other professionals concerning this issue.

The overall objective of the proposed regulations is to promote a more timely intervention and mitigation of releases, improve the quality of information reported as well as enhance DEEP’s Emergency Response Program by allowing the DEEP to concentrate its limited resources to releases of materials that may pose a serious and immediate threat to human health, public safety and environmentally sensitive areas.

Under the proposed regulations the differences between the federal and state standards or procedures will remain. Each specific difference between the state and federal standards or procedures would be too varied and numerous to catalogue, but as mentioned above, these include differences in what releases must be reported, differences in reporting thresholds, differences in when a report must be submitted, and differences in the information that must be reported.

The primary reason for these differences is that through the reporting of releases DEEP monitors the response actions taken by other or becomes the primary actor responding to a release. The threshold set in the proposed regulations is set, not only to accomplish the objectives mentioned above, but at levels intended to protect human health and the environment and unlike the federal rules, does not assume that there will be some other first line of defense. The different roles played by the state and federal responders is a primary driver for the differences between the federal and state standards and procedures.