

**State of Connecticut
Department of Energy and Environmental Protection**

**Hearing Officer's Report
Statement of Reasons Pursuant to
Connecticut General Statutes Section 4-168(e)**

COMMENT AND RESPONSE DOCUMENT

July 1, 2021

**Minor Revision to Underground Storage Tank Regulations
Proposed Adoption of the Regulations of Connecticut State Agencies,
Sections 22a-449(d)-100 through 22a-449(d)-113, inclusive
PR2020-027**

**Hearing Officer:
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**Hearing Date:
June 3, 2021**

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I. INTRODUCTION & STATEMENT OF SUPPORT

This Hearing Officer's Report concerns the proposed adoption of a Minor Revision to the Underground Storage Tank ("UST") Regulations, §§ 22a-449(d)-101 to 22a-449(d)-113, inclusive ("Regulations"). The Commissioner of Energy and Environmental Protection ("Commissioner") is proposing such Regulations pursuant to General Statutes §§ 22a-6, 22a-422, 22a-424, 44a-449.

The minor revisions to the state's UST regulations being proposed originate in changes enacted by Congress in the UST Compliance Act ("the Act"), an Act amending certain sections of 42 USC § 6901 et seq. (see sections 1521 to 1533 of the Energy Policy Act of 2005). The Act changed requirements regarding inspections, operator training, delivery prohibition, secondary containment, financial responsibility and cleanup of certain releases. Although the Department completed a number of regulatory revisions in response to the Act in August 2012, the U.S. Environmental Protection Agency ("USEPA") published a final rule making further revisions to the federal UST regulations on July 15, 2015 (80 Fed. Reg. 41566). These July 2015 revisions made changes similar to key portions of the Act as well as other updates to the federal UST regulations that require Connecticut to make additional changes to its regulations to ensure that the Connecticut's UST program is no less stringent than the federal program in order to maintain continued federal funding for the Connecticut UST Program.

The federal UST requirements include provisions that allow USEPA to approve state programs. Connecticut received approval of its UST Program from USEPA effective August 4, 1995. Connecticut's approved UST program avoids dual federal and state regulation. The proposed revisions that are the subject of this notice are required to ensure that Connecticut's UST Program can maintain state program approval from USEPA.

II. RULE-MAKING PROCESS

On May 5, 2021, pursuant to General Statutes § 4-168(a) the Commissioner provided notice of intent ("Public Notice") to adopt the Regulations. The public had an opportunity to submit comments on the Regulations from May 5, 2021 until June 7, 2021. In addition, a formal public hearing was held on June 3, 2021. The public comment period for the Regulations closed on June 7, 2021, at 5:00p.m. In accordance with General Statutes § 4-186(e), this report contains the principal reasons in support of and principal reasons in opposition to the Regulations and where considerations have been rejected, the reasons for such rejection.

III. PUBLIC COMMENTS

A. SPECIFIC COMMENTS

This section contains the Department's response to specific comments. There were three comments received during the public comment period. All comments received through the eRegulations system were automatically assigned a comment number by the eRegulations system. The comment number, which is assigned to the commenter, is in parentheses with the individual comments. This identifies if the comment was made by one commenter or was made by multiple commenters. Any revisions to the regulations as a result of the comments are shown in red.

Comment ID#1: Various comments regarding the who and what is responsible for cleanup of spills posing a threat to the environment, provided by Ms. Kelley Abbott (Posted 5/8/21).

Response:

Following our review and careful consideration of Ms. Abbott's comments, the Department believes that the comments received are not relevant to the minor revisions to the UST regulations, and may have been misfiled and intended for another set of regulations (Release Reporting Regulations) that were proposed around the same time. The Department plans to address Ms. Abbott's comments, in its response to comments under the Release Reporting Regulations ("RRR as comment similar to Ms. Abbott's were received during the public comment period for the RRR).

No revisions have been made in response to this comment.

Comment ID#2: ATC Eclipse's questions and comments pertaining to overfill preventing, testing requirements, exemptions from testing requirements and overfill device verification, provided by Ms. Megan Kazmierczak. (Posted 6/4/21).

Response:

Following our review and careful consideration of the questions and comments provided by Ms. Kazmierczak, the Department plans to make additional revisions to the regulations. The Department will address each of the 4 items below consistent with the format of the comments provided.

1. Comment - Subdivision (5) of section 22a-449(c)-102(a) prohibits the use of flow restrictors for overfill prevention. ATC Eclipse recognizes that the Department has elected a more stringent approach than the federal regulations but feels that a 90-day deadline for removal of existing ball floats may be difficult for owners and operators to achieve. Based upon ATC Eclipse's experience in other states where UST regulations have been amended to incorporate the additional testing requirements from 2015 federal regulations, we expect that there may be challenges with availability of contractors and supplies necessary for owners and operators to meet this deadline.

In response, the Department has made a revision to the timeframe for owners/operators to replace existing flow restrictors in vent lines (ball floats) from 90 days to 180 days after the effective date of the regulations.

Final Language: 22a-449(d)-102(a)(5)(A)(ii)(II)

(II) Alerts the transfer operator when the tank is no more than ninety (90) percent full by triggering a high level alarm or restricting the flow into the tank, provided that on or after {insert date **one hundred eighty (180) days** after the effective date of this subclause} flow restrictors in vent lines cannot be used to comply with this subclause.

2. Comment - Subdivision (15) of section 22a-449(d)-102(a) amends the testing requirements for UST systems.
 - a. Subparagraph D states that *Owners and operators of an UST system equipped with secondary containment systems with continuous monitoring that automatically monitors the integrity of both*

primary and secondary containment, such as systems that are hydrostatically monitored or under constant vacuum, are exempt from the testing required by subparagraphs (A) and (B) of this subdivision. We feel the exemption needs clarification because it is not clear if owners and operators of such systems are exempt from testing only when the entire system is continuously monitored as described, or when only a portion of the UST system is continuously monitored as described, if only that specific portion of the UST system is exempt from testing.

In response, the Department clarifies the exemption from testing is applicable to any portion of a UST system equipped with secondary containment systems with continuous monitoring equipment installed. This is existing language that was moved without change. No revisions have been made in response to this comment.

b. Comment - Subparagraph F includes the testing requirement, stating the test must be *capable of determining if there is a release or any loss of liquids from any part of the UST system, including, but not limited to, any part of a new piping containment sump and a new under-dispenser containment sump.*

i. We feel that it would be beneficial to owners and operators to better clarify the expected testing scope, as it relates to existing and new USTs and piping.

In response, the Department has revised the regulation and clarifies that the regulations allow for new methods of testing regarding the type of tests that are capable of determining if there is a release or loss of liquids from any part of a UST system, including existing and new USTs and piping. The Department also intends to post on its website any test methods that are unacceptable with a rationale for each and a description of the type of equipment that such test method is unacceptable.

Final Language: 22a-449(d)-102(a)(5)(A)(ii)(II)

(F) Except as is specified in this subdivision for UST systems installed before August 8, 2012, any [Any] test conducted to satisfy the requirements of this subdivision shall be capable of determining if there is a release or any loss of liquids from any part of the [double-walled underground storage tank] UST system, including, but not limited to, any part of a new piping containment sump and a new under-dispenser containment sump. The owner or operator shall use a qualified individual or company who has the expertise to perform and document the results of the testing required by this subdivision and [The owner or operator of an underground storage tank system] shall [perform] ensure that the tests required by this subdivision [using] use the best available technology or that such tests are conducted in accordance with the manufacturer's guidelines and standards. If there are no manufacturer's guidelines or standards, the owner or operator shall [perform] ensure that such tests are conducted in accordance with an applicable method specified in an industry code or engineering standard. If there are no applicable manufacturer's guidelines or standards, industry codes, or engineering standards, the owner or operator shall [perform] ensure that such tests are conducted using a test method that, before use, is approved by a registered professional engineer licensed in the state of Connecticut. **If the commissioner deems any of the forgoing test methods**

to be unacceptable, the commissioner will post on the department's internet website a list of such unacceptable test methods.

- ii. Comment - Does the Department allow for low level sump testing?

In response, the regulations do not allow for low level sump testing. The Department does not believe that such tests are adequate to prevent releases. No revisions have been made in response to this comment.

3. Comment - USEPA allows an exemption from periodic spill bucket and containment sump testing for double-walled spill buckets and containment sumps that are periodically monitored at a frequency not less than the frequency of walkthrough inspections (monthly manual interstitial monitoring). Our interpretation of the proposed regulation is that the Department does not allow for this exemption and that the testing would be required for all double-walled spill buckets and containment sumps unless the integrity of both walls is continuously monitored hydrostatically or by vacuum. Is this a correct interpretation?

In response, the commentor's interpretation is correct. The regulations do not allow for the USEPA exemption and testing is required for all double-walled spill buckets and containment sumps, unless the integrity of both walls is continuously monitored hydrostatically or by vacuum. No revisions have been made in response to this comment.

4. Comment - ATC Eclipse did not see an addition for overfill device verification, to meet the federal requirement to test devices every 3 years. The Department's current UST regulations include a requirement to *Inspect annually overfill prevention devices (22a-449(d)-108(c)(2)(C)(ix))*. Can you please clarify what this annual inspection is meant to entail? Is this intended to meet the federal requirement to *ensure that overfill prevention equipment is set to activate at the correct level specified in §280.20(c) and will activate when regulated substance reaches that level?*

In response, the Department believes that this comment is outside of the scope since it addresses 22a-449(d)-108 which is not included in the proposed revision to the UST regulations. However, the Department clarifies that testing for the functionality of overfill devices is currently required by the existing regulations and shall be verified annually in accordance with section 22a-449(d)-108. No revisions have been made in response to this comment.

Comment ID#3: Question of whether the term “Field Constructed Tank” as applied in subsection 102(b) includes UST systems connected to aboveground field constructed tanks or just underground field-constructed tanks, provided by Ms. Ann Tolson. (Posted 6/7/21).

Response:

The term “Field-Constructed Tank” (“FCT”) is defined as any “tank” (i.e., an underground storage tank) that is constructed in the field as defined in RCSA section 22a-449(d)-100. Therefore, the Department understands that the proposed amendment to the UST Regulations which prohibits FCTs only applies to field-constructed USTs only. These regulations do not regulate Aboveground Storage Tanks (“ASTs”) - neither field constructed ASTs, nor factory constructed ASTs.

By definition, to be regulated as an "UST", ten (10) percent of the volumetric capacity of the UST system must be below ground, including the volume of regulated substance stored in integral piping. Therefore, unless more than ten (10) percent of regulated substance is stored in the underground piping associated with an AST (either a field constructed AST or a factory constructed AST) the tank system is not regulated as an "UST".

No revisions have been made in response to this comment.

B. DEPARTMENT EDITORIAL REVIEW

During its review of the regulations when responding to the comments submitted, the Department identified additional minor revisions required to correct cross references and certain parts of the proposal to meet technical formatting standards for proposed regulations identified by the Legislative Commissioner's Office. It is incumbent on the Department to try and meet these standards at the time the regulations are submitted for approval to the Office of the Attorney General rather than wait for any errors to be identified by the Legislative Regulation Review Committee. As a result, the following minor changes were made, none of which alters the substance of the proposed amendments to the regulations:

Section 1 - In subsection (b), the language to be deleted as shown in brackets was moved before the new language replacing it. The drafting manual requires that deletions be shown before additions.

Section 4 - Existing subdivisions (1) to (3) are now shown above the new subdivision (4) to show proposed new subdivision (4) language alongside the existing language in subsection (a).

Section 5 - In subsection (c) and subdivision (1) of subsection (c) deleted language was moved before the new language. The drafting manual requires that deletions be shown before additions. Language being moved from subdivision (6) of subsection (c) to the new subdivision (9) is shown as deleted from subsection (6) and as new language in subdivision (9) to comply with drafting manual requirements.

IV. CONCLUSION

Based upon the comments addressed in this Hearing Report, I recommend the proposed amendments to the UST Regulations, public noticed on May 5, 2021, be revised as recommended herein, and that the recommended final proposal be submitted to the Commissioner for approval and submittal to the Attorney General and subsequently to the Legislative Regulations Review Committee of the Connecticut General Assembly.

Mark Latham

July 1, 2021

Mark Latham
Supervising Environmental Analyst
Bureau of Materials Management & Compliance Assurance
Emergency Response & Spill Prevention Division

Appendix I: Notice of Intent

In accordance with section 4-168(a) of the Connecticut General Statutes, the Commissioner of Energy and Environmental Protection (the “Commissioner”) hereby gives notice of intent to adopt minor revisions to sections 22a-449(d)-101 to 22a-449(d)-113, inclusive, of the Regulations of Connecticut State Agencies (“RCSA”), commonly referred to as the Underground Storage Tank Regulations.

The Underground Storage Tank (“UST”) Regulations are adopted pursuant to 22a-6, 22a-422, 22a-424, 22a-449 of the Connecticut General Statutes.

Comment Period

The comment period shall begin upon the posting of this notice to the eRegulations System website (<https://eregulations.ct.gov>) and shall end at 5:00 p.m. on June 7, 2021.

Statement of Purpose

Minor revisions to the state’s UST regulations being proposed originate in changes enacted by Congress in the UST Compliance Act (“the Act”), an Act amending certain sections of 42 USC § 6901 et seq. (see sections 1521 to 1533 of the Energy Policy Act of 2005). The Act changed requirements regarding inspections, operator training, delivery prohibition, secondary containment, financial responsibility and cleanup of certain releases. Although the Department completed a number of regulatory revisions in response to the Act in August 2012, U.S. Environmental Protection Agency (“EPA”) published a final rule making further revisions to the federal UST regulations on July 15, 2015 (80 Fed. Reg. 41566). These July 2015 revisions made changes similar to key portions of the Act as well as other updates to the federal UST regulations that require Connecticut to make additional changes to its regulations to ensure that the Connecticut’s UST program is no less stringent than the federal program.

The federal UST requirements include provisions that allow EPA to approve state programs. Connecticut received approval of its UST Program from EPA effective August 4, 1995. Connecticut’s approved UST program avoids dual federal and state regulation. The proposed revisions that are the subject of this notice are required to ensure that Connecticut’s UST Program can maintain program approval from USEPA.

Detailed Description of the Proposed Regulation

The proposed regulations are intended to modify the following seven sections:

- 22a-449(d)-101(a)&(b) – Applicability and Purpose
- 22a-449(c)-102(a)(5) – Spill and Overfill Prevention Equipment

- 22a-449(d)-102(a)(15) – Testing Requirements for UST Systems
- 22a-449(d)-103(a)(4) – Spill Prevention Equipment
- 22a-449(d)-103(c) – Compatibility of UST Systems with Regulated Substances
- 22a-449(d)-103(d)(6)-(8) – Repairs to Spill/Overfill Prevention Equipment & Testing
- 22a-449(d)-103(e)(2) – Record keeping

In addition to editorial revisions, these proposed regulations:

- Eliminate an outdated reference to USTs subject to section 22a-449 (d)-1 of the RCSA.
- Clarify that the partial exemption from full regulation for certain USTs includes an exemption from section 108 of the UST Regulations.
- Update references to the federal regulations for certain USTs that are not regulated under the UST Program but are subject to licensure by the Nuclear Regulatory Commission.
- Remove the partial exemption for USTs storing fuel for use by emergency power generators. Also, remove the partial exemption for airport fuel hydrant systems and field constructed USTs and prohibit the use of such USTs.
- Prohibit use of a flow restrictor in vent lines as a means to restrict flow into a UST to prevent overfilling.
- Transition from testing every five (5) years to every three (3) years, the testing of double-walled USTs to ensure that there is no release for loss of liquids from such tanks. The proposed rules also ensure that the testing of all USTs is required, not just those USTs installed after August 8, 2012.
- Require that spill prevention equipment satisfy certain requirements, ensure that such equipment is tested at least once every three (3) years and ensure that records of compliance with these requirements is maintained.
- Require a demonstration of compatibility for USTs storing greater than ten (10) percent ethanol or greater than twenty (20) percent biodiesel.
- Require testing of repaired spill prevention and overfill prevention equipment.
- Move a provision regarding the repair of under-dispenser-containment sumps and piping containment sumps from the performance standard section (section 22a-449(d)-102(a)(15) of the RCSA) to the section regarding the repair of USTs (section 22a-449(d)-103(d) of the RCSA).

Availability of Information

The proposed regulations, Regulatory Flexibility Analysis/Small Business Impact Statement, Fiscal Note and the statement required by section 22a-6(h) of the CGS are all posted and available on the eRegulations System website (<https://eregulations.ct.gov>), Tracking Number PR2020-027, or can be obtained by contacting the Department of Energy and Environmental Protection's Underground Storage Tank program by email (DEEP.USTenforcement@ct.gov). PR2020-027 Notice of Intent Page 3 of 3

Public Hearing

In addition to accepting written comments, a public hearing has been scheduled to obtain public comment on the proposed regulations. This hearing will be held through Zoom, a remote online hearing platform. All interested persons can register to attend the public hearing and express their views on the proposed regulations using the following link:

Date: Thursday, June 3, 2021

Time: 1:30 p.m.

Zoom Link: <https://ctdeep.zoom.us/meeting/register/tJUduuuqTgoGtzYdTpUxx1Co3WR8Kj6zhMC>

Speakers are requested, although not required, to submit a written copy of their comments as instructed below. The hearing will adjourn when the last speaker present and signed in has provided comment.

Written Comments

Interested persons are invited to comment upon the proposed regulations, in writing, during the public comment period. The public comment period shall begin upon posting of this notice to the eRegulations System website and shall end at 5:00 p.m. on June 7, 2021.

Comments may be submitted using one of the following methods:

- Online via the [eRegulations System](#) (Tracking Number PR2020-027).
- By email to DEEP.USTEnforcement@ct.gov

The Department is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Any person with a disability who may need a communication aid or service may contact the Department's ADA Coordinator at 860-424-3194 or at deep.hrmed@ct.gov. Any person needing a hearing accommodation may call the State of Connecticut relay number - 711. Any person with limited proficiency in English, who may need information in another language, may contact the Department's Title VI Coordinator at 860-424-3035 or at deep.aoffice@ct.gov. ADA or Title VI discrimination complaints may be filed with the Department's EEO Manager at 860-424-3035 or at deep.aoffice@ct.gov. Requests for accommodations must be made at least two weeks prior to any agency hearing, program or event.



Katherine S. Dykes
Commissioner

**Appendix II:
State of Connecticut
Regulation of
Department of Energy and Environmental Protection
Concerning
Underground Storage Tanks**