

Dear Stakeholders, Working Group and Regulated Community Members:

This special path for releases from residential heating oil tanks aims to codify current practices.

**Using this special path, homeowners can work with a PEP or LEP to cleanup a release to the maximum extent prudent, so long as the release is shown to have not impacted groundwater.**

Comment: This seems like an option geared toward homeowners who learn of an oil exclusion in their homeowner's policy after a release on their property has been discovered and reported. Most homeowners will discover some form of pollution exclusion buried in their policy which they never knew existed. The exclusions will vary but policy owners should look for words like 'absolute pollution exclusion', 'sudden and accidental pollution exclusion', and 'qualified or conditional pollution exclusion'.

Current practices:

- ❖ **Is the release 5 gallons or more?** I see maybe 5 gallons on the floor. I throw speedi-dry on it. I leave it for a day. Sweep it into a big dustpan, dump the contents of the dustpan into a black plastic contractor bag, tie the bag ends in a knot, haul it upstairs to the garage, and chuck that mother f\*\*ker into the big unmarked black receptacle indicating it goes out to the curb on GARBAGE ( not RECYCLING) DAY. That's one scenario.
- ❖ **Is the release 5 gallons or more?** I don't know. Where did it come from? How long has it been here? Was it here this morning? Was it here yesterday morning? Was I here this morning? Was I here yesterday morning? Did I smell anything when I was here? If I smelled something, did I know what I was smelling? I can try to clean this up but should I be handling this substance and breathing these vapors? Am I qualified to make these determinations? No. I'm calling someone.
- ❖ **Is the release 5 gallons or more?** I don't know the exact quantity released but I know what it is I have discovered. I have constructive knowledge. I suspect this came from my UST, that some failure of the storage unit or heating system has occurred which resulted in the release of a reportable substance out onto the concrete slab of a home. I know this substance to be petroleum or fuel oil #2. I know the concrete slab is not a secondary containment unit. I know concrete. I know it contains pores. Liquid can escape through pores. Liquid can escape through cracks and seams. Can I be certain liquid has not escaped through pores, cracks or seams in the concrete slab? No, I cannot. No one can with limited information. I must report.
- ❖ **Is the release 5 gallons or more?** It looks like it could be more than 5 gallons of oil. Maybe more like 20 gallons from the change in condition I am currently observing on my basement floor. I have 2 hours to figure it out. I need learn some important things in the next two hours: 1) How much oil do I think was released (I need to check the current level of the oil in the tank against historical usage data held by heating fuel provider in order to determine estimated loss. I need to call fuel company, have records generated and forwarded)? 2) Do I have coverage for this? 3) Is there a potential for this release, which occurred on my property, to hurt or kill something?

The special path will apply to homeowner's policies with limited liability pollution coverage. If the policy covers potential environmental damage due to a home heating oil spill, the category max limit/liability will be low while the insurers due diligence high. Pollution to groundwater is excluded regardless. If anyone has a homeowner's policy which covers releases of petroleum to the waters of the state, please feel free to correct me.

Here are the "pros" I see with the special path.

- ❖ In most cases, homeowners will find they have little or no pollution coverage after the fact. The maximum extent prudent is another way of stating there is no money available to clean up the pollution on a residential property and therefore no reason to keep investigating. The Immediate Action Endpoint is a moment of realization. It is the insurer's denial of coverage. It is the realization of a pollution exclusion, the financial hardship or limited resources of a property owner, or the result of some cost vs benefit analysis. Of the 68 reported UST failures or releases for the month of October, how many responses required activation of a CT Homeowner's Insurance Policy. Because that is what matters.

Here are the "cons" I see with the special path.

- ❖ Brendan mentioned there is a Connecticut Insurance requirement to carry 40K or 50K worth of environmental pollution? Let's say for argument's sake this is true. Every homeowner has been offered and purchased 50k of environmental pollution coverage in their policy. It covers the language being written into the special path. Every emergency spill response now has a 50K price tag attached to it. The Immediate Action Endpoint is \$50,000.00. The maximum extent prudent is the point between \$49,000.00 - \$50,000.00. It is the total sum of all invoices not to exceed \$50,000.00
- ❖ It's cheaper to see a Physician's Assistant (PA) than it is Doctor. Their certificates look quite different. When it comes to brain surgery, I want the certificate on the wall of the operating room to read "Brain Surgeon". When it comes to re-filling a prescription, I don't care. If the PA is cheaper, I'll take the PA. I want a signature not advice. How often do environmental attorneys offer their services and expertise to clients at a paralegal rate in a paralegal role? Not too often I imagine, although I could be mistaken.
- ❖ What is it that a PEP will be able to do in the future that spill contractors were not authorized to perform in the past? To take it a step further, what specific duties were spill contractors authorized to perform in the past that they are no longer authorized to perform currently? Spill Contractors can test and sample soil and groundwater. CT DEEP's Site Assessment and Support Unit (SASU) can also test and sample soil and groundwater. Some Spill Contractors may be scientists, some scientists may be spill contractors, but not all spill contractors are scientists and not all scientists are spill contractors. The same might be said for DEEP and The Emergency Response Unit. SASU supports The Emergency Response Unit with scientific tools and methodologies: sampling, testing, site characterization, sensitive receptor and significant hazard assessment, etc, etc. Some Emergency Response Coordinators and Supervisors may have backgrounds in laboratory science and site analytics, but these backgrounds are not prerequisite qualifications for Emergency Response Coordinator and Supervisor positions. The primary responsibility of the On-Site Coordinator is to investigate, determine, assign, and supervise: "The Department's primary focus is to relieve the cost recovery fund from incurring costs completely

by identifying responsible parties at spill incidents and aligning clean-up costs directly with their insurance providers.”

- ❖ There is a Roundtable Remediation Working Group and Stakeholder Holiday Gala. What table does the PEP sit at? He’s not sitting at the LEP table. The Environmental Attorneys? I don’t see it. DEEP? No way. He drinks too much or says the wrong thing and next thing you know he’s facing the first PEP audit. He can sit at my table but I’m thinking he’d rather spend the evening alone in the men’s restroom handing out hand towels, breath mints and splashes of Drakkar than listen to me give it to him straight all night. He goes to the Spill Contractor table because that’s where he’s always sat. He blends in well. Look closer.

I missed the first 30 minutes of today’s meeting. To be honest, I haven’t even looked at the slides. That’s my comment on a single line of text.

**For the record, I am not against the spill contractors nor I am for the Licensed Environmental Professionals. I am only commenting on the first line of text I read this evening when I opened up the “thirty-eighth” email.**

“This special path for releases from residential heating oil tanks aims to codify current practices.”

This special path for releases from residential heating oil tanks aims to codify current practices evidenced in Spill Case #2018-05078. I do not know these people. I have never spoken to these people.

Tell me what is missing? Where does the extracted oil go? Where does the Manifest go? There are hundreds of cases in that Spill Portal just like Spill Case #2018-05078. There is no oversight, no enforcement, and ultimately, no control. It’s the Wild West.

I don’t know Shannon Coolbeth but I know her story. It’s tragic.

Do better.