

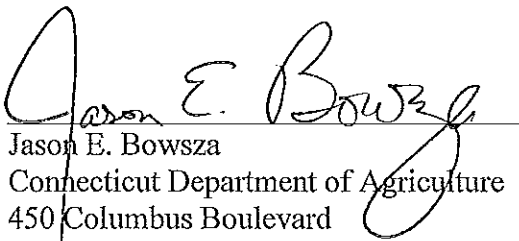
**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

DWW SOLAR II, LLC PETITION FOR	:	PETITION NO. 1313
DECLARATORY RULING THAT NO	:	
CERTIFICATE OF ENVIRONMENTAL	:	
COMPATIBILITY AND PUBLIC NEED	:	
IS REQUIRED FOR A 26.4 MEGAWATT	:	
AC SOLAR PHOTOVOLTAIC ELECTRIC	:	
GENERATING FACILITY IN SIMSBURY	:	
CONNECTICUT	:	AUGUST 29, 2017

**TAB A TO COMMENTS OF DEPARTMENT OF AGRICULTURE REGARDING  
PARTY STATUS OF DEPARTMENT OF ENERGY AND ENVIRONMENTAL  
PROTECTION**

On August 23, 2017, the Department of Agriculture ("DOA") filed its Comments of Department of Agriculture Regarding Party Status of Department of Energy and Environmental Protection. DOA inadvertently omitted from that filing "Tab A." Please find Tab A attached hereto.

STEVEN K. REVICZKY, COMMISSIONER  
CONNECTICUT DEPARTMENT OF AGRICULTURE

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Certification of Service

I, Jason E. Bowsza hereby certify that a copy of the foregoing Tab A to Comments of Department of Agriculture Regarding Party Status of Department of Energy and Environmental Protection was sent on August 29, 2017, by e-mail and by first class mail, postage prepaid to the following parties on the Service List in this matter:

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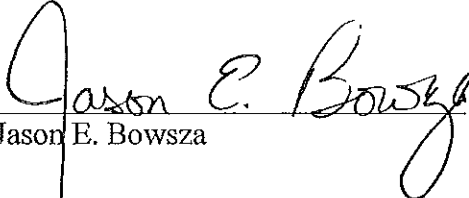
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Jason E. Bowsza

# TAB A

**CGS 22a-449a *et seq.* (2011 rev.)**

See Sec. 22a-131 et seq. re provisions concerning the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

Cited. 225 C. 912. Cited. 226 C. 358; Id., 748.

Subsec. (d):

Cited. 27 CA 353. Cited. 30 CA 204.

**Sec. 22a-449a. Definitions.** As used in this section and sections 22a-449c to 22a-449m, inclusive, and 22a-449p:

(1) "Petroleum" means crude oil, crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils and diesel fuels;

(2) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of petroleum from any underground storage tank or underground storage tank system;

(3) "Responsible party" means (A) for an application or request for payment or reimbursement received by the board before July 1, 2005, or for a determination made by the board before July 1, 2005, regarding a person's status as a responsible party or a third party with respect to a specific release or suspected release, any person who owns or operates an underground storage tank or underground storage tank system from which a release or suspected release emanates, (B) for an application or request for payment or reimbursement received by the board on or after July 1, 2005, any person who (i) at any time owns, leases, uses or has an interest in the real property on which an underground storage tank system is or was located from which there is or has been a release or suspected release, regardless of when the release or suspected release occurred, or whether such person owned, leased, used or had an interest in the real property at the time the release or suspected release occurred, or whether such person owned, operated, leased or used the underground storage tank system from which the release or suspected release occurred, (ii) at any time owns, leases, operates, uses, or has an interest in an underground storage tank system from which there is or has been a release or suspected release, regardless of when the release or suspected release occurred or whether such person owned, leased, operated, used or had an interest in the underground storage tank system at the time the release or suspected release occurred, or (iii) is affiliated with a person described in clause (i) or (ii) of this subparagraph through a direct or indirect familial relationship or any contractual, corporate or financial relationship;

(4) "Underground storage tank" means a tank or combination of tanks, including underground pipes connected thereto, used to contain an accumulation of petroleum, whose volume is ten per cent or more beneath the surface of the ground, including the volume of underground pipes connected thereto;

(5) "Underground storage tank system" means an underground storage tank and any associated ancillary equipment and containment system;

(6) "Residential underground heating oil storage tank system" means (A) an underground storage tank system used in connection with residential real property composed of four residential units or fewer, or (B) a storage tank system and any associated ancillary equipment used in connection with residential real property composed of four residential units or fewer; and

(7) "Person" means any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, municipality, agency or political or administrative subdivision of the state, or other legal entity of any kind.

(P.A. 89-373, S. 1, 10; P.A. 00-201, S. 1, 8; June Sp. Sess. P.A. 05-3, S. 90; P.A. 08-124, S. 27.)

History: P.A. 00-201 made technical changes and added Subdiv. (6) defining "residential underground heating oil storage tank system", effective June 1, 2000; June Sp. Sess. P.A. 05-3 added reference to Sec. 22a-449p, redefined "responsible party" in Subdiv. (3) and added Subdiv. (7) to define "person", effective June 30, 2005; P.A. 08-124 made technical changes in Subdiv. (3), effective June 2, 2008.

**Sec. 22a-449b. Portion of petroleum products gross earnings tax credited to underground storage tank petroleum clean-up account.** Section 22a-449b is repealed, effective October 1, 2009.

(P.A. 89-373, S. 3, 10; P.A. 92-62, S. 1, 2; P.A. 94-130, S. 5; P.A. 02-80, S. 2; June Sp. Sess. P.A. 09-3, S. 513.)

**Sec. 22a-449c. Underground storage tank petroleum clean-up program. Applications for payment or reimbursement.** (a)(1) There is established an underground storage tank petroleum clean-up program.

(2) The program shall provide money for reimbursement or payment pursuant to section 22a-449f, within available appropriations, to responsible parties or parties supplying goods or services, for costs, expenses and other obligations paid or incurred, as the case may be, as a result of releases, and suspected releases, costs of investigation and remediation of releases and suspected releases, and for claims by a person other than a responsible party for bodily injury, property damage and damage to natural resources that have been finally adjudicated or settled with the prior written consent of the board. The commissioner may also make payment to an assignee who is in the business of receiving assignments of amounts approved by the board, but not yet paid from the account, provided the party making any such assignment, using a form approved by the commissioner, directs the commissioner to pay such assignee, that no cost of any assignment shall be borne by the state and that the state and its agencies shall not bear any liability with respect to any such assignment.

(3) Notwithstanding the provisions of this section regarding reimbursements of parties pursuant to section 22a-449f and regulations adopted pursuant to section 22a-449e, and regardless of when an application for payment or reimbursement from the program may have been submitted to the board, payment or reimbursement shall be made in accordance with the following: (A) After June 1, 2004, no payment or reimbursement shall be made for any costs, expenses and other obligations paid or incurred for remediation, including any monitoring to determine the effectiveness of the remediation, of a release to levels more stringent than or beyond those specified in the remediation standards established pursuant to section 22a-133k, except to the extent the applicant demonstrates that it has been directed otherwise, in writing, by the commissioner; (B) after June 1, 2005, no payment or reimbursement shall be made to any person for diminution in property value or interest, provided that reimbursement for interest accrued on attorneys' fees may be permitted if an application seeking interest accrued on attorneys' fees was submitted to the commissioner on or before March 31, 2003, and such application has been tabled by the board for three or more years; and (C) after June 1, 2005, no payment or reimbursement shall be made for attorneys' fees or other costs of legal representation paid or incurred as a result of a release or suspected release (i) in excess of five thousand dollars to any responsible party, (ii) in excess of ten thousand dollars to any person other than a responsible party, and (iii) by a responsible party regarding the defense of claims brought by another person, except that applications for reimbursement filed on or before June 30, 2005, shall not be subject to the limitations for reimbursement imposed by clauses (i) and (ii) of this subparagraph. In addition, notwithstanding the provisions of this section regarding reimbursements of parties pursuant to section 22a-449f, the responsible party shall bear all costs of the release that are less than ten thousand dollars and all persons shall bear all costs of the release that are more than one million dollars.

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except that for any such release which was reported to the department prior to December 31, 1987, and for which more than five hundred thousand dollars has been expended by the responsible party to remediate such release prior to June 19, 1991, the responsible party for the release shall bear all costs of such release which are less than ten thousand dollars or more than five million dollars, provided the portion of any reimbursement or payment in excess of three million dollars may, at the discretion of the commissioner, be made in annual payments for up to a five-year period.

(b) (1) If an initial application or request for payment or reimbursement is received by the board before July 1, 2005, no supplemental application or request for payment or reimbursement shall be submitted to the board on or after October 1, 2009, regarding costs, expenses or other obligations paid or incurred in response to the release or suspected release noted in any such initial application or request for payment or reimbursement. The provisions of this subdivision shall apply regardless of whether the cost, expense or other obligation was paid or incurred before October 1, 2009, and no reimbursement or payment from the account shall be ordered by the board or made by the commissioner regarding any such supplemental application or request for payment or reimbursement received by the board on or after the October 1, 2009, deadline established in this subdivision.

(2) If an initial application or request for payment or reimbursement is received by the board on or after July 1, 2005, no supplemental application or request for payment or reimbursement shall be submitted to the board more than five years after the date that the initial application or request for payment or reimbursement was received by the board, regarding costs, expenses or other obligations paid or incurred in response to the release or suspected release noted in such initial application or request for payment or reimbursement. The provisions of this subdivision shall apply regardless of whether a cost, expense or other obligation was paid or incurred before the expiration of the five-year deadline established in this subdivision and no reimbursement or payment from the account shall be ordered by the board or made by the commissioner regarding any such supplemental application or request for payment or reimbursement received by the board after the five-year deadline established in this subdivision.

(3) Notwithstanding the provisions of subsection (i) of section 22a-449f, if an application or request for payment or reimbursement is not brought before the board for a decision not later than six months after having been received by the board, then six months shall be added to the deadline applicable pursuant to subdivision (1) or (2) of this subsection, provided no more than two years shall be added to the deadline established pursuant to subdivision (1) or (2) of this subsection regardless of whether one or more applications or requests for payment or reimbursement have been received by the board but have not been brought before the board for a decision not later than six months after receipt. In addition, if the commissioner determines that an application or request for payment or reimbursement is ready for decision by the board and such application or request has been placed on the agenda for the meeting of the board, but cannot be brought before the board because the board is unable to meet or cannot act on such application or request, the deadlines established pursuant to subdivision (1) or (2) of this subsection shall also be extended only for that period that the board is unable to meet or is unable to act on such application or request.

(4) The provisions of this subsection shall not apply to annual groundwater remedial actions, including the preparation of a groundwater remedial action progress report, performed pursuant to subdivision (6) of section 22a-449p. Notwithstanding the provisions of this subsection, the board may continue to receive applications or requests for

payment or reimbursement and provided all other requirements have been met, may order payment or reimbursement from the account for such activities.

(c) (1) Any person who has insurance, or a contract or other agreement to provide payment or reimbursement for any costs, expense or other obligation paid or incurred in response to a release or suspected release may submit an application or request seeking payment or reimbursement from the account to the board, provided any such application or request for payment or reimbursement shall be subject to all applicable requirements, including, but not limited to, subdivision (7) of subsection (c) of section 22a-449f.

(2) Any person who at any time receives or expects to receive payment or reimbursement from any source other than the program for any cost, expense, obligation, damage or injury for which such person has received or has applied for payment or reimbursement from the program, shall notify the board, in writing, of such supplemental or expected payment and shall, not more than thirty days after receiving such supplemental payment, repay the program all such amounts received from any other source.

(3) If the board determines that a person is seeking or has sought payment or reimbursement for any cost, expense, obligation, damage or injury from the program and that payment or reimbursement for any such cost, expense, obligation, damage or injury is actually or potentially available to any such person from any source other than the program, the board may impose any conditions it deems reasonable regarding any amount it orders to be paid from the program.

(P.A. 89-373, S. 4, 10; P.A. 90-181, S. 1; P.A. 91-254, S. 1, 7; P.A. 94-130, S. 6; P.A. 96-132, S. 1, 5; P.A. 97-241, S. 3, 5; P.A. 00-201, S. 2, 8; June Sp. Sess. P.A. 01-9, S. 37, 131; P.A. 02-80, S. 1; P.A. 04-244, S. 2; P.A. 05-288, S. 107; June Sp. Sess. P.A. 05-3, S. 91; P.A. 06-196, S. 259; P.A. 07-192, S. 4; June Sp. Sess. P.A. 09-3, S. 423.)

History: P.A. 90-181 amended Subsec. (b) to allow payments or reimbursement to parties supplying goods or services, allowed payments and reimbursements for expenses resulting from suspected releases, authorized payment of costs of defense of third party claims and costs of investigation and deleted the requirement that the responsible party be responsible for all costs which are less than \$10,000; P.A. 91-254 added the requirement that the responsible party be responsible for all costs which are less than \$10,000, added the provisions concerning releases reported prior to December 31, 1987, and for which more than \$500,000 had been expended and added provisions re funds for administrative costs which are to be allocated to the department; P.A. 94-130 changed name of fund from "Underground Storage Tank Petroleum Clean-Up Fund" to "underground storage tank petroleum clean-up account" and eliminated requirement that investment earnings credited to assets of fund shall become part of the assets of said fund; P.A. 96-132 amended Subsec. (b) to increase the allocation for administrative costs, effective July 1, 1996; P.A. 97-241 amended Subsec. (b) to increase costs of remediation to be borne by certain responsible parties under this section and to increase the allocation to the department for administrative costs, effective June 24, 1997; P.A. 00-201 redesignated existing language in Subsec. (a) as Subsec. (a)(1) and existing language in Subsec. (b) as Subsec. (a)(2) and added new Subsec. (b) establishing residential underground heating oil storage tank system clean-up subaccount, effective June 1, 2000; June Sp. Sess. P.A. 01-9 amended Subsec. (a) to add references to Sec. 22a-449f and increase amount of administrative costs from \$1,150,000 to \$2,000,000 and amended Subsec. (b) to add reference to Sec. 22a-449a, effective July 1, 2001; P.A. 02-80 amended Subsec. (a)(2) to raise limit for payments from account from \$3,000,000 to \$5,000,000 for costs or expenses incurred in connection with any release reported to the Department of Environmental Protection prior to December 31, 1987, and for which the responsible party has expended more than \$500,000 for remediation prior to June 19, 1991, and to add proviso that the portion of any reimbursement or payment in excess of \$3,000,000 may, at the discretion of the commissioner, be made in annual payments for up to a five-year period, effective July 1, 2002; P.A. 04-244 amended Subsec. (a)(2) to add prohibition against payment or reimbursement for costs incurred for remediation of a release to levels more stringent than those specified in remediation standards, except as required by the department, effective June 8, 2004; P.A. 05-288 made technical changes in Subsec. (a)(2), effective July 13, 2005; June Sp. Sess. P.A. 05-3 made technical changes, amended Subsec. (a)(2) to delete "or both, to responsible parties", to insert "and remediation", to replace "third party" with "for", to insert "by a person other than a responsible party", to require final adjudication or settlement of a claim, and to allow payment to an assignee, inserted designator for Subsec. (a)(3), amended Subsec. (a)(3) to insert "in writing", to prohibit, after June 1, 2005, payment or reimbursement for diminution in property value or interest and for certain attorneys' fees, and to insert "and all persons shall bear all costs of the release that are", added Subsec. (c) establishing pay for performance subaccount, added Subsec. (d) re submission of supplemental applications, and added Subsec. (e) re insurance and receipt of payment or reimbursement from other sources, effective June 30, 2005; P.A. 06-196 made a technical change in Subsec. (e)(2), effective June 7, 2006; P.A. 07-192 amended Subsec. (a)(3) to permit certain applicants to receive reimbursement for interest on attorney's fees and to exempt certain applications from limitations on such fees, effective July 5, 2007; June Sp. Sess. P.A. 09-3 amended Subsec. (a) by deleting references to underground storage tank petroleum clean-up account, adding references to underground storage tank petroleum clean-up program and deleting provision re allocation of \$2,000,000 to Department of Environmental Protection for administrative costs, deleted former Subsecs. (b) and (c) re residential underground heating oil storage

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tank system clean-up subaccount and pay for performance subaccount, redesignated existing Subsecs. (d) and (e) as Subsecs. (b) and (c) and made conforming changes.

**Sec. 22a-449d. Underground Storage Tank Petroleum Clean-Up Review Board.** (a) There is established an Underground Storage Tank Petroleum Clean-Up Review Board. Upon application for reimbursement or payment pursuant to section 22a-449f, the board shall determine, based on the provisions of sections 22a-449a to 22a-449i, inclusive, and all regulations adopted pursuant to said sections 22a-449a to 22a-449i, inclusive, whether or not to order payment or reimbursement from the program. The board shall have the authority to order payment within available resources to registered contractors pursuant to section 22a-449l, or to owners pursuant to section 22a-449n, for reasonable costs associated with the remediation of a residential underground heating oil storage tank system based on the guidelines established pursuant to subsection (c) of this section; hold hearings, administer oaths, subpoena witnesses and documents through its chairperson when authorized by the board; designate an agent to perform such duties of the board as it deems necessary except the duty to render a final decision to order reimbursement or payment from the account; and provide by notice, printed on any form, that any false statement made thereof or pursuant thereto is punishable pursuant to section 53a-157b.

(b) The board shall consist of the Commissioners of Environmental Protection and Revenue Services, the Secretary of the Office of Policy and Management and the State Fire Marshal, or their designees; one member representing the Connecticut Petroleum Council, appointed by the speaker of the House of Representatives; one member representing the Service Station Dealers Association, appointed by the majority leader of the Senate; one member of the public, appointed by the majority leader of the House of Representatives; one member representing the Independent Connecticut Petroleum Association, appointed by the president pro tempore of the Senate; one member representing the Gasoline and Automotive Service Dealers of America, Inc., appointed by the minority leader of the House of Representatives; one member representing a municipality with a population greater than one hundred thousand, appointed by the Governor; one member representing a municipality with a population of less than one hundred thousand, appointed by the minority leader of the Senate; one member representing a small manufacturing company which employs fewer than seventy-five persons, appointed by the speaker of the House of Representatives; one member experienced in the delivery, installation, and removal of residential underground petroleum storage tanks and remediation of contamination from such tanks, appointed by the president pro tempore of the Senate; and one member who is an environmental professional licensed under section 22a-133v and is experienced in investigating and remediating contamination attributable to underground petroleum storage tanks, appointed by the Governor. The board shall annually elect one of its members to serve as chairperson.

(c) Not later than July 1, 2000, the board shall establish guidelines for determining what costs are reasonable for payment under sections 22a-449l and 22a-449n and shall establish requirements for financial assurance, training and performance standards for registered contractors, as defined in said sections 22a-449l and 22a-449n. The board shall make payment pursuant to section 22a-449n to the owner at a rate not to exceed one hundred fifty-seven dollars per ton of contaminated soil removed which shall be considered as full payment for all eligible costs for remediation. For any claim filed pursuant to section 22a-449n where no contaminated soil is removed the board shall reimburse eligible costs in accordance with the guidelines pursuant to this section.



(d) To the extent that funds are available, the board may order payment to registered contractors for reimbursement of eligible costs for services associated with the remediation of a residential underground heating oil storage tank system prior to July 1, 2001, to owners of such systems for payment for eligible costs incurred after July 1, 2001. No such payment shall be authorized unless the board deems the costs reasonable based on the guidelines established pursuant to subsection (c) of this section. Notwithstanding the provisions of this subsection, if the board determines that the owner may not receive reimbursement payment from the contractor, the board may, if reimbursement has not been sent to the contractor, directly reimburse the owner of such system for eligible costs incurred by the owner and paid to the registered contractor for services associated with a remediation of a system prior to July 1, 2001.

(P.A. 89-373, S. 5, 10; P.A. 90-181, S. 4; P.A. 91-254, S. 2, 7; P.A. 99-269, S. 4, 6; P.A. 00-201, S. 3, 8; June Sp. Sess. P.A. 01-9, S. 38, 131; P.A. 04-172, S. 1; June Sp. Sess. P.A. 05-3, S. 92; June Sp. Sess. P.A. 09-3, S. 424.)

History: P.A. 90-181 amended Subsec. (a) to include applications for payment and amended Subsec. (b) to add to the membership of the board one person representing the service station dealers association and one person representing the public; P.A. 91-254 added language in Subsec. (a) re powers of board to hold hearings, administer oaths, etc., to designate an agent to act for it and to give notice re punishment for false statement and amended Subsec. (b) to add member representing small manufacturing company and to authorize election of chairman; (Revisor's note: In 1995 the word "fund" was replaced editorially by the Revisors with "account" in review board name to conform with Secs. 22a-449b and 22a-449c, as amended by P.A. 94-130 and in 1997 a reference in Subsec. (b) to "Commissioners of the Department of Environmental Protection and Revenue Services" was replaced editorially by the Revisors with "Commissioners of Environmental Protection and Revenue Services" for consistency with customary statutory usage); P.A. 99-269 amended Subsec. (b) to add to the board a member with experience with residential underground petroleum storage tanks, effective July 1, 1999; P.A. 00-201 amended Subsec. (a) by authorizing board to order payments from residential underground heating oil storage tank system clean-up subaccount, amended Subsec. (b) by adding licensed environmental professional appointed by the Governor as a board member and added Subsec. (c) requiring board to establish guidelines and requirements, effective June 1, 2000; June Sp. Sess. P.A. 01-9 amended Subsec. (a) to add references to Secs. 22a-449l and 22a-449n and to replace reference to Sec. 22a-449d(c) with reference to Subsec. (c) of section, amended Subsec. (c) by adding provisions re payment pursuant to Sec. 22a-449n and reimbursement in accordance with guidelines and added Subsec. (d) re payment from subaccount to registered contractors and owners for eligible costs deemed reasonable, effective July 1, 2001; P.A. 04-172 amended Subsec. (d) to add provision re direct reimbursement of owner, effective June 1, 2004; June Sp. Sess. P.A. 05-3 amended Subsec. (a) to delete language re review of applications, to delete language re damage resulting from release, and to insert reference to Secs. 22a-449 to 22a-449i, inclusive, and all regulations adopted pursuant to said sections re whether to order payment or reimbursement, and amended Subsec. (b) to replace "Connecticut Gasoline Retailers Association" with "Gasoline and Automotive Service Dealers of America, Inc.", effective June 30, 2005; June Sp. Sess. P.A. 09-3 replaced Underground Storage Tank Petroleum Clean-Up Account Review Board with Underground Storage Tank Petroleum Clean-Up Review Board and made conforming changes, amended Subsec. (a) to delete reference to residential underground heating oil storage tank system clean-up subaccount and specify that board has authority to order payment within available resources, and amended Subsec. (d) to delete references to residential underground heating oil storage tank system clean-up subaccount.

**Sec. 22a-449e. Regulations. Schedule for maximum or range of amounts to be paid from the program. Use of seal.** (a) The Commissioner of Environmental Protection, after consultation with the members of the board established by section 22a-449d, shall adopt regulations in accordance with the provisions of chapter 54 setting forth procedures for reimbursement and payment from the program established under section 22a-449c. Such regulations shall include such provisions as the commissioner deems necessary to carry out the purposes of sections 22a-449a to 22a-449h, inclusive, including, but not limited to, provisions for (1) notification of eligible parties of the existence of the account; (2) records required for submission of claims and reimbursement and payment; (3) periodic and partial reimbursement and payment to enable responsible parties to meet interim costs, expenses and obligations; and (4) reimbursement and payment for costs, expenses and obligations incurred in connection with releases or suspected releases discovered before or after July 5, 1989, provided reimbursement and payment shall not be made for costs, expenses and obligations incurred by a responsible party on or before said date.

(b) (1) The provision (2) of amounts to obligations shall not be repealed or using a regulation more than 1 the commission inclusive, or adoption of services or c lished in any costs, e schedule.

(2) The provision shall be published thereof, in a be a commissioner interested p sioner shall part thereof commission frequently a with the board revise or rev

(c) Upon this section contained in the schedule

(d) An c issued pursuant adopted pur tions 22a-44 tute an appr suant to sect shall apply t 22a-449a to

(P.A. 89-373, Sp. Sess. P.A. 05

History: P.A. 91-25 22a-449h, incl will references b P.A. 05-3 design of the maximum three bids for ser P.A. 08-124 mad "program" for "a

(b) (1) The commissioner, in accordance with the procedures set forth in subdivision (2) of this subsection, may prescribe a schedule for the maximum or range of amounts to be paid for labor, equipment, materials, services or other costs, expenses or obligations paid or incurred as a result of a release or suspected release. Such schedule shall not be a regulation, as defined in section 4-166 and the adoption, modification, repeal or use of such schedule shall not be subject to the provisions of chapter 54 concerning a regulation. The amounts in any such schedule may be less than and shall be not more than the usual, customary and reasonable amounts charged, as determined by the commissioner. Notwithstanding the provisions of sections 22a-449a to 22a-449j, inclusive, or any regulation adopted by the commissioner pursuant to this section, upon adoption of any such schedule, the amount to be paid for any labor, equipment, materials, services or other costs, expenses or other obligations, shall not exceed the amount established in any such schedule and such schedule may serve as guidance with respect to any costs, expenses or other obligations paid or incurred before the adoption of such schedule.

(2) The commissioner shall adopt, revise or revoke the schedule in accordance with the provisions of this subsection. After consultation with the board, the commissioner shall publish notice of intent to adopt, revise or revoke the schedule, or any portion thereof, in a newspaper having substantial circulation in the affected area. There shall be a comment period of thirty days following publication of such notice during which interested persons may submit written comments to the commissioner. The commissioner shall publish notice of the adoption, revision or revocation of the schedule, or part thereof, in a newspaper having substantial circulation in the affected area. The commissioner shall, upon request, review the schedule and shall make any revisions the commissioner deems necessary to such schedule once every two years or may do so more frequently as the commissioner deems necessary. The commissioner, after consultation with the board, may revise or revoke the schedule, in whole or in part, using the procedures specified in this subsection. Any person may request that the commissioner adopt, revise or revoke the schedule in accordance with this subsection.

(c) Upon adoption of a schedule by the commissioner pursuant to subsection (b) of this section, the requirements concerning obtaining three bids for services rendered contained in regulations adopted pursuant to this section shall not apply, provided that the schedule includes the subject services.

(d) An environmental professional, who has a currently valid and effective license issued pursuant to section 22a-133v, shall use a seal, as provided for in regulations adopted pursuant to section 22a-133v, to provide written approval required under sections 22a-449c, 22a-449f and 22a-449p, and any approval without a seal shall not constitute an approval of a licensed environmental professional. The regulations adopted pursuant to section 22a-133v regarding the use of a seal and the rules of professional conduct shall apply to the duties of a licensed environmental professional contained in sections 22a-449a to 22a-449i, inclusive, and 22a-449p.

(P.A. 89-373, S. 6, 10; P.A. 90-181, S. 2; P.A. 91-254, S. 3, 7; June Sp. Sess. P.A. 05-3, S. 93; P.A. 08-124, S. 28; June Sp. Sess. P.A. 09-3, S. 425.)

History: P.A. 90-181 amended Subdivs. (2), (3) and (4) to include provisions relating to payment in addition to reimbursement; P.A. 91-254 added language giving the commissioner broader authority to adopt regulations under Secs. 22a-449a to 22a-449h, inclusive; (Revisor's note: In 1995 references to clean-up "fund" were replaced editorially by the Revisors with references to clean-up "account" to conform section with Sec. 22a-449c as amended by P.A. 94-130); June Sp. Sess. P.A. 05-3 designated existing language as Subsec. (a) and made a technical change therein, added Subsec. (b) re schedule for the maximum or range of amounts to be paid from the account, added Subsec. (c) re inapplicability of requirement for three bids for services, and added Subsec. (d) re use of a seal by an environmental professional, effective June 30, 2005; P.A. 08-124 made technical changes in Subsecs. (a) and (b)(2), effective June 2, 2008; June Sp. Sess. P.A. 09-3 substituted "program" for "account" in Subsecs. (a) and (b).

**Sec. 22a-449f. Application for reimbursement for claims resulting from release of petroleum.** (a) **Application. Notice of claim.** A responsible party may apply to the Underground Storage Tank Petroleum Clean-Up Review Board established under section 22a-449d, for reimbursement for costs paid and payment of costs incurred as a result of a release, or a suspected release, including costs of investigating and remediating a release, or a suspected release, incurred or paid by such party who is determined not to have been liable for any such release. If a person other than a responsible party, claims to have suffered bodily injury, property damage or damage to natural resources from a release, the person with such claim shall make reasonable attempts to provide written notice to the responsible party of such claim and if such person cannot provide such notice or if the responsible party does not apply to the board for payment of such claim not later than sixty days after receipt of such notice or such other time as may be agreed to by the parties, the person holding such claim may apply to the board for payment for such damage or bodily injury.

(b) **Approval by commissioner or licensed environmental professional.** (1) In addition to all other applicable requirements, a person seeking payment or reimbursement from the account shall demonstrate that when the total costs, expenses or other obligations in response to a release or suspected release (A) are two hundred fifty thousand dollars or less, all labor, equipment and materials provided after October 1, 2005, and all services and activities undertaken after October 1, 2005, are approved, in writing, either by the commissioner or by a licensed environmental professional with a currently valid and effective license issued pursuant to section 22a-133v; and (B) exceed two hundred fifty thousand dollars, all labor, equipment and materials provided after October 1, 2005, and all services and activities undertaken after October 1, 2005, are approved, in writing, by the commissioner, provided the commissioner may authorize, in writing, a licensed environmental professional with a currently valid and effective license issued pursuant to section 22a-133v to approve, in writing, such labor, equipment, materials, services and activities, in lieu of the commissioner. The provisions of this subsection shall apply to all costs, expenses or other obligations for which a person is seeking payment or reimbursement from the account and the board shall not order and the commissioner shall not make payment or reimbursement from the account for any cost, expense or other obligation, unless the person seeking such payment or reimbursement provides the written approval required by this subdivision. Any written approval provided by a licensed environmental professional pursuant to this subdivision shall be submitted with the application for payment or reimbursement. Any written approval provided by the commissioner pursuant to this subdivision shall not constitute an approval pursuant to any other provision of the general statutes or any regulation and shall be presented to the board prior to the board making a decision regarding the application that such approval concerns.

(2) The fees charged by a licensed environmental professional regarding labor or services rendered in response to a release or suspected release may be included in any application or request for payment or reimbursement submitted to the board. The amount to be paid or reimbursed for such fees may also be established in the schedule adopted by the commissioner pursuant to subsection (b) of section 22a-449e.

(3) Providing it is true and accurate, a licensed environmental professional shall submit the following certification regarding any approval provided under subdivision (1) of this subsection and section 22a-449p: "I hereby agree that all of the labor, equipment, materials, services, and activities described in or covered by this certification were appropriate under the circumstances to abate an emergency or were performed as

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part of a plan specifically designed to ensure that the release or suspected release is or has been investigated in accordance with prevailing standards and guidelines and remediated consistent with and to achieve compliance with the remediation standards adopted under section 22a-133k of the general statutes.”.

(c) **Conditions for reimbursement or payment.** The board shall order reimbursement or payment for any cost paid or incurred, as the case may be, if, (1) such cost is or was incurred after July 5, 1989, (2) a responsible party was or would have been required to demonstrate financial responsibility under 40 CFR Part 280.90 et seq. as said regulation was published in the Federal Register of October 26, 1988, for the underground storage tank or underground storage tank system from which the release emanated, whether or not such party is required to comply with said requirements on the date any such cost is incurred, provided if the state is the responsible party, the board may order payment, within available resources, without regard to whether the state was or would have been required to demonstrate financial responsibility under said sections 40 CFR Part 280.90 et seq., (3) after the release, if any, the responsible party incurred a cost, expense or obligation for investigation, cleanup or for claims of a person other than a responsible party resulting from the release, provided any such claim shall be required to be finally adjudicated or settled with the prior written approval of the board before an application for reimbursement or payment is made, (4) the board determines that the cost, expense or other obligation is reasonable and that there are not grounds for recovery specified in subdivision (1) or (3) of subsection (g) of this section, (5) the responsible party notified the board, as soon as practicable, of the release and of any other claim by a person other than a responsible party, resulting from the release, in accordance with the regulations adopted pursuant to section 22a-449e, (6) the responsible party, or, if a person other than a responsible party applies for payment or reimbursement from the account, then such person demonstrates the remediation, including any monitoring to determine the effectiveness of the remediation, for which payment or reimbursement is sought is not more stringent than that required by the remediation standards established pursuant to section 22a-133k, except to the extent the responsible party or such person demonstrates that it has been directed otherwise, in writing, by the commissioner, (7) the responsible party, or, if a person other than a responsible party applies for payment or reimbursement, then such person demonstrates that it does not have insurance, or a contract or other agreement to provide payment or reimbursement for any cost, expense or other obligation incurred in response to a release or suspected release, or if there is any such insurance, contract or other agreement, that any insurance coverage has been denied or is insufficient to cover the costs, expenses or other obligations, paid or incurred or that any contract or other agreement is not able to or is insufficient to cover the costs, expenses or other obligations, paid or incurred, for which payment or reimbursement is sought, (8) the responsible party demonstrates and the board determines that one of the milestones noted in section 22a-449p has been completed, (9) the board determines what, if any, reductions to the amounts sought should be made based upon the compliance evaluations performed pursuant to subsection (d) of this section, and (10) at the time any application or request for payment or reimbursement, including any supplemental application or request, is submitted to the board, (A) for applications filed with the Underground Storage Tank Petroleum Clean-up Review Board on or after October 1, 2007, there is no underground storage tank system subject to the financial responsibility demonstration required in subdivision (2) of this subsection dispensing petroleum on the property where the release or suspected release emanated or occurred, and if the application is submitted by the person who owns or operates or who owned or operated the underground storage tank system at the time of the release, such person demonstrates, in addition to all other applicable requirements, that lack of



compliance with provisions of the general statutes and regulations governing underground storage tank systems was not a proximate cause of the release or suspected release and that there are not grounds for recovery specified in subdivision (2) of subsection (g) of this section, or (B) for applications filed with the Underground Storage Tank Petroleum Clean-Up Review Board prior to October 1, 2007, there is no underground storage tank system dispensing petroleum on the property where the release or suspected release emanated or occurred, and if the application is submitted by the person who owns or operates or who owned or operated the underground storage tank system at the time of the release, such person demonstrates, in addition to all other applicable requirements, that lack of compliance with provisions of the general statutes and regulations governing underground storage tank systems was not a proximate cause of the release or suspected release and that there are not grounds for recovery specified in subdivision (2) of subsection (g) of this section. Subdivision (10) of this subsection shall not apply to any application filed with the underground storage tank petroleum clean-up account concerning a release of an underground storage tank system that was reported to the Commissioner of Environmental Protection in September, 2003 where such system was owned or operated by a municipality or other political subdivision of the state at the time of the release and such system was removed on or before April 1, 2005. In acting on an application or a request for payment or reimbursement, the board, using funds from the account, may contract with experts, including, but not limited to, attorneys and medical professionals, to better evaluate and defend against claims and negotiate claims by persons other than responsible parties. The costs of the board for experts shall not be charged to the amount allocated to the Department of Environmental Protection pursuant to section 22a-449c. If a person other than a responsible party applies to the board claiming to have suffered bodily injury, property damage or damage to natural resources, the board shall order reimbursement or payment if such person demonstrates that subdivisions (1), (2), (6) and (7) of this subsection are satisfied, the board determines that as a result of a release or suspected release such person has suffered bodily injury, property damage or damage to natural resources, that the costs, expenses or other obligations incurred are reasonable and the person submitting such claim demonstrates that it has attempted to or has provided written notice of its claim to the responsible party as required in subsection (a) of this section and that the responsible party has not applied to the board for payment or reimbursement of this claim. On or before June 30, 2005, if the board denied reimbursement or provided for only partial payment or reimbursement from the account regarding a release, pursuant to subdivision (4) of this subsection, such denial or partial payment or reimbursement shall remain in effect and shall apply to all subsequent applications or requests for payment or reimbursement regarding such release.

(d) **Compliance status of underground storage tank systems. Applicability. Evaluation.** (1) Except as provided in this subsection, if at the time any application or request for payment or reimbursement is submitted to the board, including any supplemental application or request, there is an underground storage tank system dispensing petroleum on the property where the release or suspected release emanated or occurred, such application or request shall not be deemed complete and shall not be acted upon by the board unless such application or request includes a summary of the compliance status of all the underground storage tank systems on the subject property. Any such summary shall include an evaluation of compliance with the design, construction, installation, notification, general operating, release detecting, system upgrading, abandonment and removal date requirements of the regulations adopted pursuant to sections 22a-449 and 22a-449o and shall be prepared by an independent consultant on a form prescribed by or acceptable to the commissioner. The summary shall be based on an

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evaluation of said underground storage tank systems performed not more than one hundred eighty days before the board receives an application or a request for reimbursement or payment, except that with respect to any provision of the subject regulations regarding record keeping, periodic monitoring or testing, the summary shall be based on an evaluation of a one-year period terminating within one hundred eighty days prior to the board's receipt of an application or a request for payment or reimbursement. The summary shall also include a full description of all corrective measures that have been taken or that are being taken with regard to any noncompliance identified in the compliance evaluation performed pursuant to this subdivision.

(2) With respect to any initial application or request for payment or reimbursement regarding a release or suspected release the provisions of subdivision (1) of this subsection shall apply only to applications or requests received on or after January 1, 2006. With respect to any supplemental application or request for payment or reimbursement regarding a release or suspected release, the provisions of subdivision (1) of this subsection shall apply to each application or request submitted to the board on or after January 1, 2006, regardless of when the initial application or request was submitted, except that submission of a compliance summary shall not be required if at the time a supplemental application or request is submitted, less than one year has passed since the performance of a compliance evaluation submitted with any prior application or request.

(3) The cost of hiring an independent consultant to perform a compliance evaluation, as required by this subsection, shall be eligible for payment or reimbursement up to a maximum of one thousand dollars per compliance evaluation, provided the evaluation is in conformance with the requirements of this subsection and includes all underground storage tank systems on the property where a release or suspected release emanated or occurred. If the schedule adopted by the commissioner pursuant to subsection (b) of section 22a-449e includes an amount for performing a compliance evaluation, upon adoption of any such schedule, the amount eligible for payment or reimbursement for performing a compliance evaluation shall be the amount prescribed in any such schedule.

(4) Nothing in this subsection shall affect the continued applicability of any decision of the board to (A) deny reimbursement or payment, or (B) provide only partial payment or reimbursement regarding all applications or requests for payment or reimbursement. Any such decision shall remain in effect and shall not be subject to reconsideration or reevaluation as a result of this subsection.

(5) Except as provided for in this subdivision, if at the time any application or request for payment or reimbursement, including any supplemental application or request, is submitted, there is no underground storage tank system dispensing petroleum on the property where the release or suspected release emanated or occurred, any such application or request shall be subject to the provisions of subdivision (10) of subsection (c) of this section, even where a prior application or request was subject to the provisions of this subsection. The provisions of this subdivision shall not apply to an application or request for payment or reimbursement for annual groundwater remedial actions, including the preparation of a groundwater remedial action progress report, performed pursuant to subdivision (6) of section 22a-449p.

(e) **Reduction of payment or reimbursement. Authority of commissioner.** (1) If the compliance evaluation summary performed pursuant to subsection (d) of this section indicates that any of the violations noted in this subdivision exist with respect to any underground storage tank or underground storage tank system on the property at which a release or suspected release occurred and any such violations have not been fully

corrected by the time an application or request for reimbursement is submitted to the board, the board shall reduce any payment or amount to be reimbursed as follows: (A) A one hundred per cent reduction of the payment or amount to be reimbursed for failure to meet the tank or piping construction requirements of section 22a-449o or the regulations adopted pursuant to section 22a-449 or for failure to report the release to the commissioner as required by this section, (B) a seventy-five per cent reduction of the payment or amount to be reimbursed for failure to have properly functioning cathodic protection, spill prevention, overfill prevention, or release detection as required by the regulations adopted pursuant to section 22a-449. Notwithstanding the provisions of this subsection, the board may reduce any amount to be paid or reimbursed based on any other violation of the provisions of the general statutes or regulations of Connecticut state agencies regarding ownership or operation of an underground storage tank system.

(2) Nothing in this subsection and no determination by the board of any issue of fact or law shall affect the authority of the commissioner under any other statute or regulations, including, but not limited to, taking any enforcement action based upon the violations identified in any compliance evaluation performed pursuant to subsection (d) of this section.

(f) **Payment or reimbursement for work, services, material.** (1) For all work or services performed or materials provided before October 1, 2004, the board shall not order payment or reimbursement for any cost paid or incurred, unless when seeking payment or reimbursement, the application or any submission regarding work, services or materials that have been pre-authorized by the board is received by the board on or before April 1, 2005.

(2) For purposes of this subsection, work or services shall be deemed rendered or performed on the date such work is rendered or performed and a material shall be deemed provided on the date a material is made available for use.

(3) After June 30, 2005, the board shall not order payment or reimbursement for any cost, expense or other obligation, paid or incurred, unless the application or request for payment or reimbursement is received by the board not later than one year after the completion of all or substantially all of the work or activities necessary to prepare the plan or report required by the milestones set forth in section 22a-449p.

(g) **Civil actions.** The Attorney General, upon the request of the board or the commissioner, may institute an action in the superior court for the judicial district of Hartford to recover the amounts specified in this section from any person who owns or operates an underground storage tank system at the time a release emanates or occurs from such system or any person who owns the real property on which a release emanates or occurs, provided such person owned the real property at or any time after the release emanates or occurs until the time that a final remediation action report is submitted by a licensed environmental professional or approved by the commissioner pursuant to subdivision (7) of section 22a-449p, if: (1) Prior to the occurrence of the release, the underground storage tank or underground storage tank system from which the release emanated was required by regulations adopted under section 22a-449 to be the subject of an Underground Storage Facility Notification Form, or EPHM-6 but the person who owns or operates or who owned or operated such tank or tank system knowingly and intentionally failed to submit such notification form to the commissioner; (2) the release results from a reckless, wilful, wanton or intentional act or omission of such person or a negligent act or omission of such person that constitutes noncompliance with the general statutes or regulations governing the installation, operation and maintenance of underground

storage tank which is in this chapter require the commissioner against who relating to attorneys' board or the with respect pursuant to (C) interest payments, payments, pursuant to 52-191. If of the amount demand less such person shall not seek payment or by the commissioner is submitted quest.

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storage tanks; or (3) the release occurs from an underground storage tank or system which is not in compliance with a final order issued by the commissioner pursuant to this chapter or a final judgment issued by a court concerning noncompliance with a requirement of this chapter; or (4) payment has been made, including payment to the commissioner pursuant to subsection (i) of this section, to a person other than a person against whom an action may be brought pursuant to this subsection. All costs to the state relating to actions to recover such payments, including, but not limited to, reasonable attorneys' fees, shall initially be paid within available resources. In any recovery the board or the commissioner is entitled to recover from such person (A) all payments made with respect to a release or suspected release, (B) all payments made by the commissioner pursuant to subsection (i) of this section with respect to a release or suspected release, (C) interest on such payments at a rate of ten per cent per year from the date such payments were made, and (D) all costs of the state relating to actions to recover such payments, including, but not limited to, reasonable attorneys' fees. All actions brought pursuant to this section shall have precedence in the order of trial, as provided in section 52-191. If the Attorney General has filed an action against a person seeking recovery of the amounts specified in this subsection or if the commissioner sends a person a demand letter regarding costs incurred by the state pursuant to section 22a-451, any such person against whom an action has been brought or who receives a demand letter shall not submit an application or request for payment or reimbursement to the board seeking payment or reimbursement of any such amount sought by the Attorney General or by the commissioner. If any such application or request for payment or reimbursement is submitted, the board shall not take any action regarding any such application or request.

(h) **Rendering of decision by board. Hearings.** The board shall render its decision not more than ninety days after receipt of an application from a person, provided, in the case of a second or subsequent application, the board shall render its decision not more than forty-five days after receipt of such application. A copy of the decision shall be sent to the commissioner and the person seeking payment or reimbursement by certified mail, return receipt requested. The commissioner or any person aggrieved by the decision of the board may, within twenty days from the date of issuance of such decision, request a hearing before the board in accordance with the provisions of chapter 54. After such hearing, the board shall consider the information submitted to it and affirm or modify its decision on the application. A copy of the affirmed or modified decision shall be sent to all parties to the hearing by certified mail, return receipt requested. Once the board renders a decision regarding an application or request for payment or reimbursement and no hearing has been requested pursuant to this subsection regarding any such decision, the costs, expenses or other obligations addressed by any such decision shall not be resubmitted in any other application or request.

(i) **Use of available resources for clean-up.** Whenever the commissioner determines that as a result of a release, as defined in section 22a-449a, or a suspected release, a clean-up is necessary, including, but not limited to, actions to prevent or abate pollution or a potential source of pollution and to provide potable drinking water, the commissioner may undertake such actions using not more than one million dollars, within available resources, for each release or suspected release from an underground storage tank or an underground storage tank system for which the responsible party is the state or for which a responsible party was or would have been required to demonstrate financial responsibility under 40 CFR Part 280.90 et seq., as said regulation was published in the Federal Register of October 26, 1988.



(j) **Percentage payments.** (1) If through an initial application or request for payment or reimbursement received by the board before June 1, 2005, the board has determined that a person has paid or incurred costs, expenses or other obligations that are eligible for payment or reimbursement, with respect to any supplemental application or request for payment or reimbursement the following shall apply. The commissioner may identify a category of activities, costs, expenses, or other obligations that are less than one hundred thousand dollars for which, in lieu of full payment, the board may approve a percentage of the costs, expenses or other obligations paid or incurred. In making any such recommendation to the board, the commissioner shall consider the amounts previously paid from the account and any other information the commissioner deems relevant. Any such percentage shall be not more than, but may be less than, ninety per cent of the average amount, as determined by the commissioner, previously paid from the account for any activity, cost, expense or obligation. The board shall approve or disapprove, but shall not modify, payment of the percentage recommended by the commissioner pursuant to this subdivision. The commissioner may, using the procedures specified in this subdivision, recommend changes to any percentage previously approved by the board under this subdivision.

(2) If the board approves payment of the percentage recommended by the commissioner, a person with a supplemental application or request for payment or reimbursement may agree to accept the percentage payment approved by the board. Any such acceptance shall be in writing, signed by the person seeking payment or reimbursement and shall acknowledge that the person is agreeing to accept less than the full amount sought by such person for the costs, expenses or other obligations covered by such acceptance. If the commissioner has prescribed forms, any such acceptance shall be made using the forms prescribed by the commissioner. Once a completed written acceptance is received, the board shall, not later than ninety days after receiving such acceptance, determine whether to order payment or reimbursement from the account. Any such determination by the board shall be limited to whether the costs, expenses or other obligations are within those for which the board has approved payment pursuant to subdivision (1) of this subsection.

(3) Any amount ordered to be paid or reimbursed by the board shall be considered full payment for any such activity, expense or other obligation and a person shall not seek any additional reimbursement for any such activity, expense or other obligation. The categories or activities for which the commissioner recommends payment of a percentage pursuant to this subsection may constitute all or a portion of the amounts sought in a supplemental application or supplemental request for payment or reimbursement.

(k) **Notification to commissioner.** Notification to the commissioner pursuant to regulations adopted pursuant to section 22a-449 shall constitute compliance with any regulation adopted pursuant to section 22a-449e regarding notification to the board of a release.

(P.A. 88-230, S. 1, 12; P.A. 89-373, S. 7, 10; P.A. 90-98, S. 1, 2; 90-181, S. 3; P.A. 91-254, S. 4, 7; P.A. 93-142, S. 4, 7, 8; P.A. 94-28, S. 2, 3; P.A. 95-220, S. 4-6; P.A. 96-180, S. 81, 166; P.A. 04-244, S. 3; June Sp. Sess. P.A. 05-3, S. 94; P.A. 06-196, S. 260; P.A. 07-192, S. 5-7; P.A. 08-124, S. 29, 30; June Sp. Sess. P.A. 09-3, S. 426.)

History: P.A. 90-181 amended Subsec. (a) to allow a responsible party to apply for costs paid, to allow application for reimbursement and payment of costs for a suspected release, to allow the board to order reimbursement in addition to payment, added Subdiv. (1) re requirement that reimbursement may only be ordered if the cost is or was incurred after July 5, 1989, amended Subdiv. (2) to provide that the responsible party had to demonstrate financial responsibility under the CFR as it was published in the Federal Register of October 26, 1988, regardless of whether the owner is required to comply with said requirements on the date the cost is incurred, amended Subdiv. (3) to include expense for investigation and amended Subsec. (b) to allow the board the right of subrogation if the release occurs from a tank or system which is

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not in compliance with the general statutes and regulations governing such tanks and to allow the board an additional right for subrogation against a responsible party for the first \$10,000 of reimbursements and payments it makes in respect to a release unless the responsible party incurring the costs is determined not to have been liable for the release; P.A. 91-254 added Subsec. (a)(4) and (5) concerning a determination by the board for disbursement from the fund, amended Subsec. (b) to authorize the attorney general to institute actions to recover amounts disbursed from the fund, to set forth prerequisite factors for such action and to provide for payment of costs for such actions, and to specify what may be recovered in such action, amended Subsec. (c) to provide for a process of appeal from decisions of the board and added Subsec. (d) concerning use of the fund by the commissioner in case of a release (Revisor's note: P.A. 88-230 and P.A. 90-98 authorized substitution of "judicial district of Hartford" for "judicial district of Hartford-New Britain at Hartford" in public and special acts of the 1991 session of the general assembly, effective September 1, 1993; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 94-28 amended Subsec. (c) to extend the time for decisions by the board regarding first applications for reimbursement from 45 to 90 days, effective July 1, 1994, and applicable to applications filed with the board after said date; (Revisor's note: In 1995 the word "fund" was replaced editorially by the Revisors with "account" in references to the former underground storage tank petroleum clean-up fund and its review board to conform section with Secs. 22a-449b et seq., as amended by P.A. 94-130); P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 96-180 amended Subsec. (d) to correct a grammatical error, effective June 3, 1996; P.A. 04-244 added Subsec. (a)(6) re demonstration that the remediation is not more stringent than required by remediation standards, added new Subsec. (b) re deadlines for submission of application or preauthorization request, redesignated existing Subsecs. (b) to (d) as new Subsecs. (c) to (e), respectively, and made technical changes in said Subsec. (c), effective June 8, 2004; June Sp. Sess. P.A. 05-3 amended Subsec. (a) to add "and remediating", to delete references to "responsible" party and to "entity", to replace "damage or personal injury" with "bodily injury, property damage or damage to natural resources", to add requirement re attempt to provide written notice, to delete reference to denial of release, and to add 60-day requirement re application, designated a portion of existing Subsec. (a) as new Subsec. (c), added new Subsec. (b) re approval of services and activities that surpass certain cost thresholds and inclusion of fees and certification by licensed environmental professional, amended new Subsec. (c) to make technical changes, to change names of certain entities and notification requirement, to add new criteria for applicants in Subdivs. (7) to (10), and to specify criteria for persons other than a responsible party, added new Subsec. (d) re compliance evaluations of existing tank systems, added new Subsec. (e) re reduction of payment or amount to be reimbursed based on compliance evaluations, deleted former Subsec. (b)(1) and redesignated existing Subsecs. (b)(2) and (3) as Subsecs. (f)(1) and (2), amended Subsec. (f)(1) to rephrase language re preauthorization, added new Subsec. (f)(3) re deadline for applications, redesignated existing Subsec. (c) as Subsec. (g) and amended same to allow commissioner to request an action, to revise persons from which attorney general may attempt to recover costs, to make technical changes, to delete references to knowingly and intentionally failing to notify commissioner, to add negligent acts or omissions that constitute noncompliance with installation, operation, and maintenance requirements in Subdiv. (2), to revise Subdiv. (3) to insert reference to "a final" order, to replace reference to general statutes and regulations with "this chapter" or certain final judgments, to add Subdiv. (4) re payment made from account, and to add language re inability of person to file an application or request upon receipt of demand letter or where person is subject of an action, redesignated existing Subsec. (d) as Subsec. (h) and amended same to change names of certain entities, to make technical changes, and to prohibit resubmission of costs in application subject to board decision, redesignated existing Subsec. (e) as Subsec. (i) and amended same to make a technical change and to delete language re refusal to pay first \$10,000 of third party claims, added Subsec. (j) re identification of a category of activities and approval of a percentage of costs, and added Subsec. (k) re notification of release, effective June 30, 2005; P.A. 06-196 made technical changes in Subsec. (b)(1)(B) and (3), effective June 7, 2006; P.A. 07-192 amended Subsec. (b)(1) to make technical changes, provide differing timeframes for submission of approval by a licensed environmental professional and add provision re commissioner's approval pursuant to subdivision, effective July 5, 2007, and applicable to applications filed with the underground storage tank petroleum clean-up account on or after July 1, 2005, amended Subsec. (c)(5) to require notification concerning release and to add reference to regulations, and amended Subsec. (c)(10) to add Subpara. (A) designator, to add requirement re demonstration of financial responsibility, to require that only certain applicants do proximate cause analysis, to add new Subpara. (B) and to add provision re denial or partial payment or reimbursement on or before June 30, 2005, effective July 5, 2007, and applicable to applications filed with the underground storage tank petroleum clean-up account either prior to or subsequent to July 5, 2007, except that the provisions of Subsec. (a)(10)(A) shall be applicable only to applications filed on or after October 1, 2007, and amended Subsec. (g)(1) to add provision re knowing or intentional failure to submit Underground Storage Facility Notification Form, effective July 5, 2007, and applicable to applications filed with the underground storage tank petroleum clean-up account both prior to and subsequent to July 5, 2007; P.A. 08-124 made technical changes in Subsecs. (b)(1) and (c), effective June 2, 2008; June Sp. Sess. P.A. 09-3 deleted references to underground storage tank petroleum clean-up account and made conforming changes throughout.

**Sec. 22a-449g. Appeals.** The Commissioner of Environmental Protection or any person aggrieved by a decision of the review board established under section 22a-449d may appeal from such decision to the superior court for the judicial district of New Britain within twenty days after the issuance of such decision. Such appeal shall be in accordance with chapter 54. All such appeals shall be heard by the court without a jury, and shall have precedence in the order of trial as provided in section 52-192. If the review board orders reimbursement or payment from the account, and a party to the appeal contests any portion of the ordered reimbursement or payment, the uncontested portion of the ordered reimbursement or payment shall be made, notwithstanding the pendency of the appeal.

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(P.A. 88-230, S. 1, 12; P.A. 89-373, S. 8, 10; P.A. 90-98, S. 1, 2; P.A. 91-254, S. 5, 7; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6; P.A. 99-215, S. 24, 29.)

History: (Revisor's note: P.A. 88-230 authorized substitution of "judicial district of Hartford" for "judicial district of Hartford-New Britain" in public and special acts of the 1989 session, effective September 1, 1991); P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 91-254 authorized commissioner to make appeal and provided for appeals under this section to be in accordance with chapter 54 and that any uncontested portion of a reimbursement order shall be paid notwithstanding the pendency of any appeal; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; (Revisor's note: In 1995 a reference to clean-up "fund" was replaced editorially by the Revisors with a reference to clean-up "account" to conform section with Sec. 22a-449c as amended by P.A. 94-130); P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 99-215 replaced "judicial district of Hartford" with "judicial district of New Britain", effective June 29, 1999.

**Sec. 22a-449h. Extension of time to replace school underground storage tank systems.** Notwithstanding the provisions of regulations adopted by the Commissioner of Environmental Protection under subsection (d) of section 22a-449, (1) a town, regional school district or incorporated or endowed high school or academy approved by the State Board of Education pursuant to section 10-34 shall have until October 1, 1991, or five years after the life expectancy of an underground storage tank system, as defined in subdivision (5) of section 22a-449a, of a public school building or building of such an incorporated or endowed high school or academy, whichever is later, to replace such a system provided application for a school building project for such purpose is made on or before October 1, 1990, or October first of the year preceding the fifth year, as appropriate, to the state Department of Education pursuant to section 10-283 or section 10-285b and (2) a nonpublic elementary or secondary school shall have until October 1, 1991, or five years after the life expectancy of such an underground storage tank system of a nonpublic school, whichever is later, to replace such a system.

(P.A. 89-373, S. 9, 10; P.A. 90-181, S. 5; 90-256, S. 8, 9.)

History: P.A. 90-181 added Subdiv. (2) providing an extension of time to nonpublic schools for the replacement of underground storage tank systems; P.A. 90-256 added five years after the life expectancy of an underground storage tank system as an alternative deadline for replacement and provided that the extensions of time in the section apply to all elementary and secondary schools.

**Sec. 22a-449i. Authority of Commissioners of Environmental Protection and Public Health unaffected.** Nothing in sections 22a-449a to 22a-449h, inclusive, shall affect the authority of the Commissioner of Environmental Protection or the Commissioner of Public Health under any other statute or regulation, including, but not limited to, the authority to issue any order to prevent or abate pollution or potential sources of pollution or to provide potable drinking water.

(P.A. 91-254, S. 6, 7; P.A. 93-381, S. 9, 39; P.A. 95-257, S. 12, 21, 58; June Sp. Sess. P.A. 09-3, S. 480.)

History: P.A. 93-381 replaced commissioner of health services with commissioner of public health and addiction services, effective July 1, 1993; (Revisor's note: In 1995 the word "fund" was replaced editorially by the Revisors with "account" in review board's name to conform with Sec. 22a-449b et seq., as amended by P.A. 94-130); P.A. 95-257 replaced Commissioner and Department of Public Health and Addiction Services with Commissioner and Department of Public Health, effective July 1, 1995; June Sp. Sess. P.A. 09-3 deleted provision re determination by Underground Storage Tank Petroleum Clean-Up Account Review Board.

**Sec. 22a-449j. Immunity from liability to the state for certain residential underground heating oil storage tank systems.** (a) No person shall be liable to the state in any civil action for any cost relating to any spill, as defined in section 22a-452c, attributable to a residential underground heating oil storage tank system if (1) such person has provided for the removal or replacement of such system after July 1, 1999, and before January 1, 2002, and (2) such person has provided notice and documentation of such removal or replacement to the Commissioner of Environmental Protection in such form and containing such information as the commissioner may require. After a person has been released from potential liability pursuant to this subsection, such release as it applies to such removal or replacement shall apply to subsequent owners of property

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History: P.A. Subsec. (a), dele heating oil storag to comply with:

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(P.A. 99-269, 09-3, S. 427.)

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where such removal or replacement occurred. The provisions of this subsection shall not apply to any person who fails to discontinue the use of or to remove a residential underground heating oil storage tank system within the period specified by an order of the Commissioner of Environmental Protection. Removals and replacements shall be conducted in accordance with subsection (a) of section 22a-449m.

(b) On or before January 1, 2000, and annually thereafter until January 1, 2003, the commissioner shall report to the joint standing committee of the General Assembly having cognizance of matters relating to the environment regarding the program established under this section, the extent to which it is used and the extent of the state's liability for environmental remediation as a result of the program.

(P.A. 99-269, S. 1, 6; P.A. 00-201, S. 4, 8.)

History: P.A. 99-269 effective July 1, 1999; P.A. 00-201 designated existing language re immunity from liability as Subsec. (a), deleting provisions re underground petroleum storage tank system, adding provision re residential underground heating oil storage tank system and adding language re release applying to subsequent owners, exceptions, and requirement to comply with Sec. 22a-449m(a), and designated existing language re reports as Subsec. (b), effective June 1, 2000.

**Sec. 22a-449k. Residential underground heating oil storage tank replacement contractors. Registration. Fees.** No person shall remove or replace or subcontract for the removal or replacement of a residential underground heating oil storage tank system if the person finds such removal or replacement will involve remediation of contaminated soil or groundwater, unless the person is a registered contractor. To become a registered contractor, a person shall provide to the Commissioner of Environmental Protection, on forms prescribed by said commissioner, (1) evidence of financial assurance in the form of liability insurance coverage or liquid company assets in an amount not less than one million dollars, and (2) a written statement certifying that such person has had any training required by law for such business and that such person has (A) performed no fewer than three residential underground petroleum storage tank system removals, or (B) has contracted for at least three removals of residential underground petroleum storage tank systems. Such person shall pay a registration fee of nine hundred forty dollars to the commissioner. Each contractor holding a valid registration on July first shall, not later than August first of that year, pay a renewal fee to the commissioner of four hundred seventy dollars in order to maintain such registration. Any money collected for registration pursuant to this section shall be deposited in the General Fund. The commissioner may revoke a registration for cause and, on and after the date the review board establishes requirements for financial assurance, training and performance standards under subsection (c) of section 22a-449d, may reject any application for registration that does not meet such requirements.

(P.A. 99-269, S. 2, 6; P.A. 00-201, S. 5, 8; June 30 Sp. Sess. P.A. 03-6, S. 135; P.A. 09-122, S. 2; June Sp. Sess. P.A. 09-3, S. 427.)

History: P.A. 99-269 effective July 1, 1999; P.A. 00-201 substantially rewrote language to prohibit person from replacing or removing certain residential underground heating oil storage tank systems unless registered and added provisions re subcontracting, renewal fees, deposit of registration funds, registration revocation and registration requirements, effective June 1, 2000; June 30 Sp. Sess. P.A. 03-6 increased registration fee from \$500 to \$750 and increased renewal fee from \$250 to \$375, effective August 20, 2003; P.A. 09-122 deleted provision re surety bond and changed liability insurance coverage or liquid assets amount from \$250,000 to \$1,000,000,000 in Subdiv. (1), effective June 9, 2009; June Sp. Sess. P.A. 09-3 deleted provision re payment of costs out of residential underground heating oil storage tank system clean-up subaccount, increased fees and substituted "General Fund" for "Environmental Quality Fund".

**Sec. 22a-449l. Remediation costs of removal or replacement of certain residential underground heating oil storage tank systems. Payment for services commenced prior to July 1, 2001. Procedures.** (a) As used in this section, "registered contractor" means a person registered with the Commissioner of Environmental Protection pursuant to section 22a-449k.



(b) Prior to July 1, 2001, if, in the course of removing or replacing a residential underground heating oil storage tank system, a registered contractor finds that there has been a spill, as defined in section 22a-452c, attributable to such system and such contractor estimates that the remediation of such spill is likely to cost more than five thousand dollars, such contractor shall immediately notify the Department of Environmental Protection regarding such spill. If, after the contractor's initial estimate, the contractor subsequently determines that such cost will exceed five thousand dollars, the contractor shall upon that determination notify the Department of Environmental Protection. The department may assess the spill and confirm that the remediation proposed by the contractor is appropriate and necessary, or may authorize an environmental professional licensed under section 22a-133v to assess the spill and make such confirmation. Any such remediation shall be subject to approval by the department, except that the department may authorize an environmental professional licensed under section 22a-133v to make a recommendation regarding such approval. If a registered contractor estimates that the remediation of such spill is likely to cost more than ten thousand dollars, the commissioner or any agent of the commissioner or an environmental professional licensed under said section 22a-133v contracted by the department shall inspect the site and confirm that such remediation is reasonable. The costs of such an inspection shall be eligible for payment within available resources.

(c) (1) In order to receive reimbursement of eligible costs for services commenced after July 1, 1999, and prior to July 1, 2001, a registered contractor shall on or before December 1, 2001, submit to the Underground Storage Tank Petroleum Clean-Up Review Board established under section 22a-449d for a disbursement from available resources, all reasonable costs for work commenced prior to July 1, 2001, pursuant to a contract with the owner or the state for the remediation of a residential underground heating oil storage tank system for the purpose of providing payment for the costs of such remediation. An owner of a residential underground heating oil storage tank system shall not be responsible to the registered contractor or any subcontractor of the registered contractor for any costs that are eligible for payment from the residential underground heating oil storage tank system clean-up program over five hundred dollars. The registered contractor or any subcontractor shall not bill the owner for any costs eligible for payment from said program over five hundred dollars unless the contractor or subcontractor enters into a separate written contract with the owner, on a form prescribed by the commissioner, authorizing the contractor or subcontractor to bill the owner more than five hundred dollars and such separate contract gives the owner the right to cancel such contract up to three days after entering into it. Such owner shall provide to the review board a statement confirming the registered contractor has been engaged by such owner to remove or to replace such residential underground heating oil storage tank system and perform the remediation and shall execute an instrument which provides for payment to said account of any amounts realized by the owner, after any costs of litigation or attorney's fees have been paid, from a judgment or settlement regarding any claim for the costs of such remediation made against an insurance policy or any party. In any service contract entered into between a registered contractor and an owner for the remediation of a residential underground heating oil storage tank system, the registered contractor shall clearly identify all costs, including markup costs, that are not or may not be eligible for payment under said program.

(2) The registered contractor shall submit documentation, satisfactory to the review board, of any costs associated with such remediation. The review board may deny remediation costs of the registered contractor that the review board determines are unreasonable based on the guidelines established pursuant to subsection (c) of section 22a-449d

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on and after the date the review board establishes such guidelines, and may deny remediation costs (A) in excess of five thousand dollars if the Department of Environmental Protection was not notified in accordance with the provisions of subsection (b) of this section, and (B) in excess of ten thousand dollars if the site was not inspected in accordance with the provisions of subsection (b) of this section. The review board shall deny any such costs in excess of fifty thousand dollars unless the commissioner determines such additional costs are warranted to protect public health and the environment. If a registered contractor fails to submit to the review board documentation of costs associated with such remediation that may be eligible for payment from the residential underground heating oil storage tank system clean-up program or if the registered contractor submits documentation of such costs but the board denies payment of such costs, the registered contractor shall be liable for such costs and shall have no cause of action against the owner of the underground petroleum storage tank.

(3) A copy of the review board's decision shall be sent to the Commissioner of Environmental Protection and to the registered contractor by certified mail, return receipt requested. The commissioner or any contractor aggrieved by a decision of the review board may, not more than twenty days after the date the decision was issued, request a hearing before the review board in accordance with chapter 54. After such hearing, the board shall consider the information submitted to it and affirm or modify its decision on the reimbursement. A copy of the affirmed or modified decision shall be sent to the commissioner and any contractor by certified mail, return receipt requested.

(d) Neither the Underground Storage Tank Petroleum Clean-Up Review Board nor the Commissioner of Environmental Protection shall accept applications pursuant to this section on or after December 1, 2001, for the reimbursement of eligible costs for services completed prior to July 1, 2001, except that, notwithstanding subsection (c) of this section, prior to July 1, 2004, the board may accept applications for reimbursement from and make payments to any owner who demonstrates that the owner paid for eligible costs for services provided to the owner prior to July 1, 2001, and either (1) the registered contractor filed an application for reimbursement between December 1, 2001, and January 1, 2003, or (2) the owner, prior to May 1, 2003, filed a complaint with the board or the commissioner regarding the failure of the registered contractor to file a timely application.

(P.A. 99-269, S. 3, 6; P.A. 00-201, S. 6, 8; June Sp. Sess. P.A. 01-9, S. 39, 131; P.A. 04-172, S. 2, 3; June Sp. Sess. P.A. 09-3, S. 428.)

History: P.A. 99-269 effective July 1, 1999; P.A. 00-201 changed "contractor" to "registered contractor" throughout, amended Subsec. (a) by deleting prohibition on person replacing or removing underground petroleum storage tank unless registered, amended Subsec. (b) by adding "residential underground heating oil storage tank system", deleting description of the types of tanks provision applies to, adding requirement re immediate notification to department re spill and adding provision re spills likely to cost more than \$10,000 needing inspection, amended Subsec. (c)(1) by deleting language re person licensed under Sec. 22a-454 and re disbursement from \$2,000,000 in bond proceeds, and by adding language re disbursement from the residential underground heating oil storage tank system clean-up subaccount for remediation costs, re owner not being responsible for costs over \$500 and re contract requirements, amended Subsec. (c)(2) by adding language requiring documentation of costs, requiring costs to be reasonable based on guidelines and requiring costs over \$50,000 to be approved by commissioner, and by adding provisions re denial of remediation costs and liability of registered contractor, and added Subsec. (c)(3) re decision and hearing, effective June 1, 2000; June Sp. Sess. P.A. 01-9 amended Subsec. (b) to add reference to July 1, 2001, amended Subsec. (c) to add provisions re reimbursement for services commenced after July 1, 1999, and prior to July 1, 2001, and re submission deadline of December 1, 2001, and added Subsec. (d) prohibiting acceptance of applications pursuant to section on or after December 1, 2001, effective July 1, 2001; P.A. 04-172 amended Subsec. (c)(1) to add "or the state" and amended Subsec. (d) to add exception to allow the acceptance of applications after December 1, 2001, from certain owners who paid for eligible costs for services prior to July 1, 2001, effective June 1, 2004; June Sp. Sess. P.A. 09-3 deleted references to residential underground heating oil storage tank system clean-up subaccount in Subsecs. (b) and (c)(1), substituted "program" for "subaccount" throughout, amended Subsec. (b) to provide that costs of inspection are eligible for payment within available resources, amended Subsec. (c)(1) to provide that reimbursement of eligible costs may be disbursed from available resources, amended Subsecs. (c)(1) and (d) to delete "Account" from title of board and made a technical change.

**Sec. 22a-449m. Standards for remediation of soil and replacement of residential underground heating oil storage tank systems. Regulations.** (a) Any remediation of contaminated soil or groundwater the cost of which is to be paid out of the program established under subsection (a) of section 22a-449c shall be performed by or under the direct onsite supervision of a registered contractor, as defined in sections 22a-449l and 22a-449n, and shall be performed in accordance with regulations adopted by the commissioner pursuant to section 22a-133k that establish direct exposure criteria for soil, pollutant mobility criteria for soil and groundwater protection criteria for GA and GAA areas. If the replacement of any such residential underground heating oil storage tank system performed pursuant to the provisions of this section involves installation of an underground petroleum storage tank, such tank shall conform to any standards which apply to new underground petroleum storage tanks.

(b) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, setting forth the standards and criteria for residential underground heating oil storage tank systems which may include, but not be limited to, (1) standards for criteria for the design, installation, operation, maintenance and monitoring of such facilities, (2) the life expectancy after which such systems must be removed and replaced, and (3) standards and procedures for the granting of a waiver for the installation of a new residential underground heating oil storage tank system or the replacement of an existing system. The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, regarding the removal of all pipes connected to both above ground and underground residential heating oil storage tank systems, when a storage tank is removed, regardless of the storage tank's capacity.

(P.A. 00-201, S. 7, 8; June Sp. Sess. P.A. 01-9, S. 40, 131; P.A. 07-192, S. 2; June Sp. Sess. P.A. 09-3, S. 429.)

History: P.A. 00-201 effective June 1, 2000; June Sp. Sess. P.A. 01-9 amended Subsec. (a) to add reference to Sec. 22a-449n, effective July 1, 2001; P.A. 07-192 amended Subsec. (b) to make technical changes and require adoption of regulations re removal of pipes; June Sp. Sess. P.A. 09-3 amended Subsec. (a) by substituting "program" for "subaccount" and by replacing reference to Sec. 22a-449c(b) with reference to Sec. 22a-449c(a).

**Sec. 22a-449n. Remediation costs of removal or replacement of certain residential underground heating oil storage tank systems. Payment for services commenced on or after July 1, 2001. Procedures.** (a) As used in this section, "registered contractor" means a person registered with the Commissioner of Environmental Protection pursuant to section 22a-449k, "qualifying income" means the owner's adjusted gross income, as defined in section 12-701, for the calendar year immediately preceding the year in which costs eligible for payment were incurred under this section and "costs eligible for payment" means costs that are reasonable for payment, as determined by the guidelines established pursuant to section 22a-449d.

(b) If, in the course of removing or replacing a residential underground heating oil storage tank system, a registered contractor finds that there has been a spill, as defined in section 22a-452c, attributable to such a system, or if such contractor estimates that the remediation of such spill is likely to cost more than ten thousand dollars then such contractor shall immediately notify the Department of Environmental Protection. The commissioner may assess the spill and confirm that the remediation proposed by the contractor is appropriate and necessary, or may authorize an environmental professional licensed under section 22a-133v to assess the spill and make such confirmation. Any such remediation shall be subject to approval by the commissioner. The commissioner may authorize an environmental professional licensed under section 22a-133v to make a recommendation regarding such approval. The costs of an inspection pursuant to this section shall be eligible for payment under the residential underground heating oil storage tank system clean-up program established under subsection (a) of section 22a-449c.

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The commissioner may revoke a registration pursuant to section 22a-449k for failure of a contractor to notify the department as required by this section.

(c) On or after July 1, 2001, to be eligible for payment pursuant to this section, an owner shall submit the following information to the Commissioner of Environmental Protection, in such form as the commissioner may require, prior to entering into a contract with a registered contractor for remediation of a spill attributable to a residential underground heating oil storage tank system: (1) The name and Social Security number of the property owner; (2) a verification that such tank serves the owner's primary residence; (3) a verification of the owner's qualifying income; and (4) the name of the registered contractor who will perform the remediation. The commissioner shall, not later than thirty days following receipt of such information, send a written notice to the owner that specifies whether the owner is eligible for payment under this section, whether funds are available for the owner under this section and the amount of remediation costs for which the owner is responsible prior to receiving payment under this section.

(d) Subject to the provisions of subsection (e) of this section, an owner may be reimbursed for all reasonable costs for work commenced on or after July 1, 2001, in accordance with the following: (1) If an owner's qualifying income is less than or equal to fifty thousand dollars, the owner may be reimbursed for costs eligible for payment in excess of five hundred dollars; (2) if an owner's qualifying income is greater than fifty thousand dollars and less than or equal to one hundred thousand dollars, the owner may be reimbursed for costs eligible for payment in excess of two thousand dollars; (3) if an owner's qualifying income is greater than one hundred thousand dollars and less than or equal to one hundred fifty thousand dollars, the owner may be reimbursed for costs eligible for payment in excess of four thousand dollars; (4) if an owner's qualifying income is greater than one hundred fifty thousand dollars and less than or equal to two hundred thousand dollars, the owner may be reimbursed for costs eligible for payment in excess of five thousand dollars; (5) if an owner's qualifying income is greater than two hundred thousand dollars and less than or equal to two hundred fifty thousand dollars, the owner may be reimbursed for costs eligible for payment in excess of seven thousand five hundred dollars; (6) if an owner's qualifying income is greater than two hundred fifty thousand dollars and less than or equal to five hundred thousand dollars, the owner may be reimbursed for costs eligible for payment in excess of ten thousand dollars; (7) if an owner's qualifying income is greater than five hundred thousand dollars, the owner is not eligible for payment of costs. No registered contractor or any subcontractor of a registered contractor shall accept payment for any costs eligible for payment from said program until it has provided the owner with the information necessary to apply for a disbursement pursuant to subsection (e) of this section.

(e) (1) On or after July 1, 2001, an owner shall submit to the Underground Storage Tank Petroleum Clean-Up Review Board established under section 22a-449d an application that is postmarked no later than December 31, 2001, for a disbursement from the residential underground heating oil storage tank system clean-up program, within available resources, documentation of all costs eligible for payment for work performed pursuant to a contract with the owner for the remediation of a residential underground heating oil storage tank system for the purpose of providing payment for the costs of such remediation, provided such owner has complied with the provisions of subdivisions (1) and (2) of subsection (a) of section 22a-449j and provided such remediation was completed on or before December 1, 2001. Such payments shall be made in accordance with subsection (d) of this section. Such owner shall provide to the review board a

statement confirming that the registered contractor has been engaged by such owner to remove or to replace such residential underground heating oil storage tank system, except that a storage tank system and any associated ancillary equipment shall not be subject to such requirement and perform the remediation and shall execute an instrument which provides for payment to said account of any amounts realized by the owner, after any costs of litigation or attorney's fees have been paid, from a judgment or settlement regarding any claim for the costs of such remediation made against an insurance policy or any person.

(2) In any service contract entered into between a registered contractor and an owner for the remediation of a residential underground heating oil storage tank system, the registered contractor shall clearly identify all costs, including markup costs, that are not or may not be eligible for payment from said program.

(3) The owner shall submit documentation, satisfactory to the review board, of any costs associated with such remediation. The review board may deny payment of remediation costs that the review board determines are unreasonable based on the guidelines established pursuant to subsection (c) of section 22a-449d on and after the date the review board establishes such guidelines. The review board shall deny any such costs if the owner fails to comply with subsection (c) of this section and any such costs in excess of fifty thousand dollars unless the commissioner determines such additional costs are warranted to protect public health and the environment.

(4) A copy of the review board's decision shall be sent to the Commissioner of Environmental Protection and to the owner by certified mail, return receipt requested. The commissioner or owner aggrieved by a decision of the review board may, not more than twenty days after the date the decision was issued, request a hearing before the review board in accordance with chapter 54. After such hearing, the board shall consider the information submitted to it and affirm or modify its decision. A copy of the affirmed or modified decision shall be sent to the commissioner and owner by certified mail, return receipt requested.

(5) No owner shall be entitled to reimbursement both under this section and section 22a-449l.

(June Sp. Sess. P.A. 01-9, S. 36, 131; June Sp. Sess. P.A. 09-3, S. 430.)

History: June Sp. Sess. P.A. 01-9 effective July 1, 2001; June Sp. Sess. P.A. 09-3 substituted "program" for "subaccount" in Subsecs. (b), (d) and (e) and amended Subsec. (e)(1) to delete "Account" from title of board and provide for disbursement "within available resources" (Revisor's note: In Subsec. (b), an internal reference to Sec. 22a-449c(b) was changed editorially by the Revisors to Sec. 22a-449c(a) for accuracy).

**Sec. 22a-449o. Requirement for double-walled underground storage tanks.**

(a) As used in this section:

(1) "Double-walled underground storage tank" means an underground storage tank that is listed by Underwriters Laboratories, Incorporated and that is constructed using two complete shells to provide both primary and secondary containment, and having a continuous three-hundred-sixty degree interstitial space between the two shells which interstitial space shall be continuously monitored using inert gas or liquid, vacuum monitoring, electronic monitoring, mechanical monitoring or any other monitoring method approved in writing by the commissioner before being installed or used;

(2) "Double-walled underground storage tank system" means one or more double-walled underground storage tanks connected by double-walled piping and utilizing double-walled piping to connect the underground storage tank to any associated equipment;

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(3) "Hazardous substance" means a substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but does not include any substance regulated as a hazardous waste under subsection (c) of section 22a-449 or any mixture of such substances and petroleum;

(4) "Petroleum" means crude oil, crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils and diesel fuels;

(5) "Underground storage tank" means a tank or combination of tanks, including underground pipes connected thereto, used to contain an accumulation of petroleum or hazardous substances, whose volume is ten per cent or more beneath the surface of the ground, including the volume of underground pipes connected thereto; and

(6) "Underground storage tank system" means an underground storage tank and any associated ancillary equipment and containment system.

(b) No person or municipality shall install, on or after October 1, 2003, an underground storage tank system and no person or municipality shall operate or use, an underground storage tank system installed after October 1, 2003, unless such underground storage tank system is a double-walled underground storage tank system. This section shall not apply to a residential underground storage tank system, as defined in section 22a-449a.

(P.A. 03-218, S. 12.)

**Sec. 22a-449p. Milestones for investigation and remediation of a release.** Notwithstanding any provision of sections 22a-449a to 22a-449i, inclusive, or any regulation adopted pursuant to said sections, except as provided for in subdivision (6) of this section, with respect to the investigation and remediation of a release, the underground storage tank petroleum clean-up program established pursuant to section 22a-449c shall be used to provide payment or reimbursement only when any of the following milestones are completed:

(1) A release response report prepared by an environmental professional, as defined in section 22a-133v, has been submitted to the Commissioner of Environmental Protection which report describes: (A) All initial response actions taken that are necessary to prevent an on-going release and to mitigate an explosion, fire or other safety hazard resulting from the release; (B) the results of an initial site investigation that determines the presence and extent of free product from the release, the potential for or existence of groundwater pollution from the release which threatens the quality of drinking water well or wells, and whether the release has resulted in soil vapors or indoor air that threatens public health; and (C) all interim actions taken and proposed to remove such free product to the extent technically practicable, to provide potable water to any person whose drinking water has been polluted by a substance from the release which is above the groundwater protection criteria or above a level determined by the Commissioner of Public Health to be an unacceptable risk of injury to the health or safety of persons using such groundwater as a public or private source of water for drinking or other personal or domestic uses, whichever is more stringent, and to mitigate any risk to public health from polluted soil vapor or indoor air resulting from the release.

(2) An interim remedial action report approved, in writing, by a licensed environmental professional has been submitted to the Commissioner of Environmental Protection or an interim remedial action report has been approved, in writing, by the commissioner. Such interim remedial action report shall describe in detail all interim remedial



action taken to: (A) Remove free product to the maximum extent technically practicable; (B) ensure that all persons whose drinking water was polluted by the release have been provided potable water; and (C) ensure that soil vapors which pose a risk to public health are prevented from migrating into any overlying buildings.

(3) An investigation report and remedial action plan approved, in writing, by a licensed environmental professional has been submitted to the Commissioner of Environmental Protection, or an investigation report and remedial action plan has been approved, in writing, by the commissioner. Such investigation report and remedial action plan shall include a detailed description of an investigation which determines the existing and potential extent and degree of soil, surface water, soil vapor and groundwater pollution, on and off-site, resulting from the release and describes all actions proposed to remediate soil, surface water, air or groundwater polluted by the release in accordance with the regulations adopted pursuant to section 22a-133k.

(4) A soil remedial action report approved, in writing, by a licensed environmental professional has been submitted to the Commissioner of Environmental Protection, or a soil remedial action report has been approved, in writing, by the commissioner. Such soil remedial action report shall describe in detail the extent of soil pollution resulting from the release, all remedial actions taken to abate such soil pollution, and all documentation that demonstrates that such soil pollution has been remediated in accordance with the regulations adopted pursuant to section 22a-133k.

(5) A groundwater remedial action progress report approved, in writing, by a licensed environmental professional has been submitted to the Commissioner of Environmental Protection or a groundwater remedial action progress report has been approved, in writing, by the commissioner. Such report may only be submitted after all construction necessary to implement the approved groundwater remedial actions has been completed and the groundwater remedial actions have been operated and monitored for one year. Such report shall include a detailed description of the remedial actions, the results of groundwater or any other monitoring conducted, an analysis of whether the remedial actions are effective, and a proposal for any changes in the groundwater remedial actions and monitoring that may be necessary to achieve compliance with the regulations adopted pursuant to section 22a-133k.

(6) An annual groundwater remedial action progress report approved, in writing, by a licensed environmental professional has been submitted to the Commissioner of Environmental Protection or approved, in writing, by the commissioner. Such report shall include a detailed description of the remedial actions, the results of groundwater or any other monitoring conducted for the year covered by the report, an analysis of whether the remedial actions are effective, and a proposal for any changes in the groundwater remedial actions and monitoring that may be necessary to achieve compliance with the regulations adopted pursuant to section 22a-133k. A responsible party pursuant to section 22a-449f may submit to the board up to, but not more than, four separate applications or requests for payment or reimbursement in a calendar year regarding costs, expenses or obligations paid or incurred concerning annual groundwater monitoring or compliance with this subdivision.

(7) A final remedial action report approved by a licensed environmental professional has been submitted to the Commissioner of Environmental Protection, or a final remedial action report has been approved, in writing, by the commissioner, that documents that the release has been investigated in accordance with prevailing standards and guidelines and that the soil, surface water, groundwater and air polluted by the

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release has been remediated in accordance with the regulations adopted pursuant to section 22a-133k.

(8) The Commissioner of Environmental Protection may adopt regulations, in accordance with the provisions of chapter 54, establishing milestones for investigation and remediation of releases or suspected releases from underground storage tank systems, including milestones that differ from those set forth in this section. Upon the adoption of such regulations, the milestones for investigation and remediation for which payment or reimbursement is available from the program shall be those set forth in the regulations.

(9) This section shall apply to an application or request for reimbursement or payment received by the board on or after October 1, 2005, regardless of when the release or suspected release occurred, whether actions in response to the release or suspected release have already occurred or whether prior applications or requests seeking payment or reimbursement have already been submitted to the board.

(June Sp. Sess. P.A. 05-3, S. 95; P.A. 06-196, S. 261; June Sp. Sess. P.A. 09-3, S. 431.)

History: June Sp. Sess. P.A. 05-3 effective June 30, 2005; P.A. 06-196 made technical changes, effective June 7, 2006; June Sp. Sess. P.A. 09-3 substituted "program" for "account".

**Sec. 22a-449q. Storage of underground storage tank system records.** The owner or operator of an underground storage tank system storing petroleum that is subject to section 22a-449(d)-101 et seq. of the regulations of Connecticut state agencies, who owns or operates more than ten facilities with underground storage tank systems, may store records required to be maintained under section 22a-449(d)-103(e) of the regulations of Connecticut state agencies, in a central location in the state of Connecticut, provided such owner or operator: (1) Specifies, in writing, the location of any such centrally stored records and such other information as the Commissioner of Environmental Protection may prescribe related to such storage on a form prescribed by said commissioner and submits such form to said commissioner; and (2) ensures that such records are immediately available for inspection by the Commissioner of Environmental Protection, or the commissioner's designee, at any such central location. The following records may not be stored solely at such a central location but shall be maintained at the site of the underground storage tank system: (A) A copy of all Underground Storage Tank Facility Notification Forms, or EPHM-6, submitted to the commissioner, regarding underground storage tanks for the site; (B) for all metallic underground storage tank systems, records concerning the most recent cathodic protection test; (C) for underground storage tank systems with impressed current cathodic protection, the last six months of records regarding the inspection of the cathodic protection systems, if applicable; (D) the most recent prior twelve months of records related to repairs of the underground storage tank system required by section 22a-449(d)-103(d)(6) of the regulations of Connecticut state agencies; (E) the most recent six months of records demonstrating compliance with the release detection requirements of section 22a-449(d)-104 of the regulations of Connecticut state agencies, including, but not limited to, inventory control and reconciliation of such inventory control records; (F) records regarding the two most recent underground storage tank tightness pursuant to section 22a-449(d)-104(e)(3) of the regulations of Connecticut state agencies; and (G) any other records regarding the underground storage tank system that the commissioner specifies, in writing. Nothing in this section shall affect any requirement of this chapter other than the location of where certain records may be stored.

(P.A. 07-192, S. 1.)