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Connecticut Department of Environmental Protection Proposes New Spill Regulations

On August 24, 2010, the Connecticut Department of Environmental Protection (DEP) proposed new regulations on the reporting of releases. The intent of the proposed regulations is to clarify when and how certain types of releases (spills) must be reported to the DEP.

Connecticut General Statutes Section 22a-450 requires that any spill or discharge of "oil or petroleum or chemical liquids or solid, liquid or gaseous products, or hazardous wastes which pose a potential threat to human health or the environment, shall immediately [be] report[ed]." However, the very broad language of, and the absence of specificity in, section 22a-450 has left some struggling to determine what events should not be reported. While there have been previous attempts to promulgate regulations on spill reporting, none have been adopted.

The draft regulations provide release reporting criteria, including a list of the threshold quantities and types of releases that should be reported. First, the draft regulations define "reportable materials" to mean "any chemical liquid, solid, liquid or gaseous products, including but not limited to hazardous substances, hazardous waste, waste oil, used oil, petroleum constituents, asbestos, radioactive material, pesticide, prohibited pesticide, restricted use pesticide, or polychlorinated biphenyls." Further, under the draft regulations, reporting obligations are triggered (1) when the amount of reportable material released is equal to or greater than ten pounds; (2) when the quantity of reportable material is unknown, but is likely to be equal to or greater than 10 pounds; (3) for any release of certain specified materials (including friable asbestos, certain pesticides, PCBs, chlorinated solvents, or certain radioactive materials), regardless of the amount of the reported material; and (4) for reportable materials released in certain locations (including releases in public water supply watershed land, aquifer protection areas, watercourses or wetlands, or storm, sanitary, or combined sewers and releases from underground storage tanks), regardless of the amount of the reported material. Imminent hazards, imminent threats of a release, observable releases from abandoned containers, and surface soil stains also trigger reporting obligations. Finally, the proposed regulations list the information that must be included in a report and the deadlines for reporting (within one hour of a spill).

The draft regulations contain exceptions for certain releases of known reportable materials contained and removed within two hours¹ and for certain releases of food products and untreated

domestic sewage. The draft regulations also contain exemptions for certain air emissions, water discharges, restricted use pesticide applications subject to other regulations, and various incidental releases.

There will be a formal public hearing on the proposed regulations:

Date: October 5, 2010

Time: 10:00 a.m. to noon; 1:30 p.m. to 4:00 p.m.; and 6:00 p.m. until all comments are heard

Place: Phoenix Auditorium
Department of Environmental Protection
79 Elm Street, Hartford, Connecticut

Written comments may be submitted to DEP anytime prior to the close of the public hearing. The Connecticut Business and Industry Association (CBIA) and other interested parties, including environmental attorneys at Robinson and Cole, will provide comments to the DEP. These comments generally are focused on (1) the definition of the term "release"; (2) spill containment and mitigation, and how information is documented and classified at DEP; and (3) threshold reporting quantities.

¹ It is unclear, however, how this two-hour exception comports with the requirement to report a spill within one hour.

FOR MORE INFORMATION

The DEP's proposed Regulations Concerning the Reporting of Releases can be accessed at <http://www.ct.gov/dep/cwp/view.asp?A=2586&Q=464556>.

Robinson and Cole regularly assists large and small public companies in connection with regulatory and spill reporting. For more information, please contact [Pamela Elkow](mailto:pelkow@rc.com) in our Metro-New York office at (203) 462-7548 or pelkow@rc.com, or [Earl Phillips](mailto:ephillips@rc.com) in our Hartford office at (860) 275-8220 or ephillips@rc.com.

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