March 25, 2021

Proposed Connecticut Regulations on Spill Reporting Available for Public Comment

On March 11, the Connecticut Department of Energy and Environmental Protection (DEEP) issued a Notice of Intent for long-awaited regulations on spill reporting, referred to as the Release Reporting Regulations. The draft regulations propose thresholds for the reporting of certain releases and specify when, how and what to report.

Connecticut General Statutes section 22a-450 addresses the reporting of any spill or discharge of oil, petroleum or chemical liquids; solid, liquid or gaseous products; or hazardous wastes that pose a potential threat to human health or the environment. Section 22a-450 does not further define a reportable release and does not set forth the procedures for reporting a release. The statute's broad language, and absence of specificity, has left open for debate what releases must be reported. DEEP's previous efforts to promulgate regulations to address these concerns were unsuccessful.

The 2021 draft regulations identify thresholds for releases of reportable materials that will trigger reporting requirements. The reporting obligations are generally tied to reportable quantities; however, there are certain circumstances where the regulations require reporting regardless of the quantity of the material released, including when the amount released is not known. The reportable thresholds under the draft regulations are in many instances not aligned with, and more stringent than, the reportable thresholds under federal law. Compliance with the draft regulations will not affect any obligations under federal law.

Under the draft regulations, nearly every release that must be reported is to be reported within one hour of discovery. There is a two-hour reporting deadline for known reportable materials released in specified quantities that are not contained and removed or otherwise properly mitigated within two hours of discovery. The draft regulations also specify the information that is to be included in the reports. As drafted, these reporting obligations will apply to releases that occur after the date the Release Reporting Regulations are effective and will not apply to releases that occurred before the regulations take effect. In addition, the draft regulations are not intended to apply to "historical releases."

Exceptions to the reporting obligations under the draft regulations include certain releases of known reportable materials that are contained and removed within a specified period of time, food products, and untreated domestic sewage; and releases from certain agricultural land activities. The draft regulations also have exemptions for specified authorized air emissions and water discharges, pesticide applications, and various incidental releases. Generally, when an exemption applies, a release does not need to be reported. However, reporting obligations triggered by imminent or actual releases of reportable materials that pose specified hazards cannot be discharged by an exemption.

A formal public hearing to receive comments on the proposed regulations will take place through Zoom on April 27 beginning at 1:30 p.m. Written comments may be submitted to DEEP any time prior to 5:00 p.m. on May 10. The link to register for the virtual April 27 public hearing and the instructions for submission of written comments are provided in the Notice of Intent. A copy of the draft regulations subject to comment and public hearing can be found here.

If you have any questions regarding the above, please feel free to contact any of the attorneys listed in the sidebar.

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