



## SMALL SPILLS COULD TRIGGER NEW REPORTING RULES

Homeowner with motor oil in driveway may have to call DEP

By **BONNIE L. HEIPLE**

Connecticut business owners and residents may be in for a surprise if new regulations for spills of hazardous substances take effect as proposed by the state Department of Environmental Protection. What began as an effort by the DEP to clarify the applicability and extent of some requirements has resulted in draft regulations that go beyond requiring simple reporting of accidental releases. If the new regulations are adopted as written, they will likely have startling consequences for businesses and homeowners alike.

The proposed “Release Reporting Regulations,” to be adopted as Regs. Conn. State Agencies §22a-450-1 *et seq.*, define releases considered to be reportable under Conn. Gen. Stat. §22a-450. Current law requires the person in charge of any “establishment” to report to the DEP any discharge of oil or petroleum, chemical liquids or solid, liquid or gaseous products or hazardous wastes which pose a potential threat to human health or the environment. Under current law, the definition of what constitutes a “reportable release” is somewhat hazy, as are specific reporting requirements.

The proposed regulations require reporting in the following circumstances: (1) if the amount of reportable material released is equivalent to 10 pounds (or is likely to be equivalent to 10 pounds if the amount is unknown); (2) for any release of certain highly hazardous materials, regardless of quantity; and (3) for any release of reportable materials in particular locations (i.e. watershed areas), regardless of quantity.

Initial reporting to the DEP via telephone must occur immediately. A more thorough written report is required to be submitted to the DEP within 30 days of the discovery of the release.

Although the proposed revisions provide more certainty, it seems to come at the cost of common sense. As proposed, the regulations would require reporting of any spill or discharge in excess of 10 pounds — approximately 1.5 gallons.

For some extremely hazardous materials, it is entirely reasonable to require reporting of a spill which equates in volume to roughly a gallon and a half of milk. For other substances, however, a spill that small is so unlikely to have an adverse impact on the environment — and is indeed, so commonplace — that to require reporting will inundate the DEP with reports that provide very little, if any, commensurate benefit to the environment.

This 10-pound “reportable quantity” threshold, already low, is applicable only if the spill is cleaned up within two hours. In other words, a spill of *any* quantity must be reported to the DEP if it is not contained and removed within two hours of discovery. This makes the state’s regulations far more restrictive than similar regulations under federal programs.

### Oil On Driveway

Both surprising and potentially problematic is the proposed new definition of “establishment.” The definition is surprising in that it includes *residences* under the ambit of the regulations, subjecting ordinary homeowners to complex requirements —

requirements of which they will likely be unaware. The detailed follow-up written report is a lot to ask from a homeowner who spilled some oil on his driveway.

The use of the term “establishment” is also potentially problematic, as most environmental practitioners are familiar with the term in the context of the Transfer Act. Under the Transfer Act, any property at which or any business operation from which more than 100 kilograms of hazardous waste has been generated in any one month since Nov. 19, 1980, qualifies as an “establishment.” The proposed reporting regulations define “establishment” more broadly to include any business, facility, operation firm, club, institution, or residence. Use of the same term, defined differently, in two programs both addressing hazardous materials will likely lead to confusion (not to mention an abundance of footnotes).

The proposed regulations also require reporting of releases “determined by the observation of surface soil staining or soil discoloration from a material of unknown origin or an unknown quantity or of a known origin where the reportable material is equal to or greater than the reportable quantity.” Put another way, if you don’t know what it is or where it



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came from, you had better report it. It is unclear how much this requirement will benefit the environment, or how the DEP will address the influx of reporting it seems to mandate.

One final issue is the lack of finality in the proposed regulations. If the reporting individual fulfills his initial obligation (the telephone call) and his follow-up obligation (the written report), there is no “seal of approval” provided to close the matter. The regulations should provide some mechanism for DEP to certify that a release has been reported but is no longer of concern.

### Common Sense Needed

Although the release reporting regulations were certainly in need of clarification, the proposed revisions seem to sacrifice common sense for the sake of “clarity” in numerous ways. It is admittedly useful to have a threshold reportable quantity, but



that quantity should either (1) be larger, so as to avoid reporting of *de minimis* discharges or (2) be material specific, i.e., different reportable threshold quantities for each material, or at the very least, a different reportable threshold quantity for extremely hazardous materials as opposed to reportable materials.

The DEP provides no justification for why it cannot simply adopt the federal requirements relating to reportable quantities — a system that has been functioning well and protecting the environment for more than 20 years. In addition, requiring reporting from residences and for un-

identifiable “historical” spills will result in a deluge of reports to the DEP with very little foreseeable environmental benefit.

Fortunately, there is still time to provide DEP with comments to these proposed regulations. Many hope that the written comments submitted before the Oct. 5 deadline and concerns raised at the public hearing on the same day will result in substantial revisions to the proposed regulations. Such revisions should require a responsible level of reporting — a level that will result in DEP notification where necessary to protect the environment, without being overly broad and onerous. ■