

# Underground Storage Tank Petroleum Clean-up Account – Licensed Environmental Professional's Role

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# Overview

- June Special Session P.A. 05-3, C.G.S. Sections 22a-449a-p, as amended
- LEP's Role

# Introduction

- Licensed environmental professional certification process of requested reimbursement
- Milestone fact sheet
- Site investigation
- Site access issues
- UST Clean-up Account reimbursement time limit and deadlines

# Licensed Environmental Professional

P.A. 05-3, Section 93, C.G.S. Section 22a-449e(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 section 22a-449c, as amended by this act, section 22a-449f, as amended by this act, and section 95

of this act, 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, as amended by this act, and section 95 of this act.

# LEP Certification Process of Requested Reimbursement

June Special Session, Public Act 05-3, Section 94;  
C.G.S. Section 22a-449f(b)(1)

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, that all labor, equipment and materials provided after October 1, 2005, and all services and activities undertaken after October 1, 2005, shall be 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;
- (B) exceeds two hundred fifty thousand dollars, that all labor, equipment and materials provided after October 1, 2005, and all services and activities undertaken after October 1, 2005, shall be approved, in writing, by the commissioner or

that the commissioner has authorized, in writing, an 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 a written approval by the commissioner.

# LEP Certification Process of Requested Reimbursement

June Special Session, Public Act 05-3, Section 95;  
C.G.S. 22a-449p

The underground storage tank clean-up account shall be used to provide payment or reimbursement only when any of the following milestones are completed and approved by the commissioner or such milestones are approved in writing by an LEP and submitted to the commissioner.

# Milestones

- Release response report
- Interim remedial action report
- Investigation report and remedial action plan
- Soil remedial action report
- Groundwater remedial action report
- Annual groundwater remedial action progress report
- Final remedial action report
- Commissioner may adopt regulations establishing additional milestones

# LEP Approval and Certification Statement

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 95 of this act:

"I hereby agree that all of the labor, equipment, materials, services, and activities described in or covered by this certification was appropriate under the circumstances to abate an emergency or was performed as 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."

# Forms

Reimbursement applications require  
submittal of an accompanying LEP form

Forms have been developed and vetted with  
EPOC, public and Review Board

Forms developed for LEP approval  
concerning costs as previously described

Forms and milestone fact sheet are posted on  
DEP web site

# Site Investigation

- Milestone #3 requires that an adequate investigation be done, the problem fully defined, and development of a plan to address the problem.
- Milestone #3 must precede Milestone #6. We are not telling people to go back and repeat work, but to complete whatever is lacking.

# Site Access Issues

- 1) If an applicant's neighbor refuses to allow the applicant to sample the soil and groundwater on the neighbor's property in order to delineate the plume, is the applicant barred from submitting any of its investigation costs (Milestone 3), its soil remediation costs (Milestone 4) and its groundwater remediation costs (Milestone 5)?
- 2) Does this extend the 5-year deadline for submitting all costs to the Clean-up Fund?

- *The applicant is not necessarily barred from submitting any of its costs for Milestones #'s 3-5. The Review Board and DEP would expect a documented, good faith effort by the applicant to gain access to potentially impacted properties for the purpose of completing the investigation and remediation (including properties abutting the site not providing access). Any such matter before the Review Board would be considered on a case-by-case basis.*

- *Applicant's efforts to gain access to properties impacted by a release emanating from the applicant's USTs or property does not extend any statutory deadlines for submitting all costs to the Clean-up Account.*

# Reimbursement Time Limit and Deadlines

June Special Session, Public Act 05-3, Section 91;  
C.G.S Section 22a-449c(d)(1), (2), (3) and (4)

(a) For initial claims received by the Board prior to July 1, 2005, the Board may not approve any supplemental claims filed after October 1, 2009, except for certain specific actions (e.g., long term groundwater remediation actions).

(b) For initial claims received by the Board on or after July 1, 2005, the Board may not approve any supplemental claims filed more than five years after the initial claim was received, except for certain specific actions.

For both (a) and (b) noted above, if at least six months passes with an application not being brought to the Board, six months may be added to the time frames in (a) or (b) for each application, up to a maximum of two years for any release.

# Questions and Answers Concerning June Special Session P.A. 05-3

- Does the required approval to be obtained from a LEP or DEP commissioner, pursuant June Special Session P.A. 05-3, pertain to a site that has applied prior to July 1, 2005?
- Yes, it applies to an eligible site regardless of when the site was applied for.

- Does the required approval to be obtained from a LEP or DEP commissioner pertain to cost incurred at any time?
- The approval for completed milestones applies to reimbursement applications received as of October 1, 2005 and the approval of services and activities applies to those services and activities rendered as of October 1, 2005.

- How is the \$250,000 threshold level determined concerning the required DEP commissioner approval of services and activities associated with costs over that amount that are requested for reimbursement?
- It is determined by totaling all of the incurred costs associated with labor, equipment, materials, services, and activities in responding to the release. It does not represent anticipated costs, costs not yet incurred or ineligible costs.

- Is there a separate DEP process for obtaining the Commissioner's approval for services and activities associated with costs under or over \$250,000?
- The approval process is part of the Clean-up Account application review process and is not a separate process.

- Is the process for obtaining the Commissioner's approval for services and activities associated with costs under or over \$250,000 a preauthorization process?
- The process is not a preauthorization process. Applicants and their consultants may, however, voluntarily discuss such anticipated services and activities with DEP staff for informal guidance concerning such activities prior to incurring such costs.

- Does an applicant have to obtain approval from a LEP for services and activities associated with costs under or over \$250,000?
- The new provisions require that an applicant obtain approval either from the DEP commissioner or a LEP, provided, that for costs over \$250,000 such authorization has been delegated to the LEP by the Commissioner.

- Can an applicant utilize DEP approvals obtained via the Property Transfer Program, Consent Order, Administrative Order, Stipulated Judgment, etc. concerning the remediation for the purpose of complying with the new Clean-up Account provisions?
- Although such approval may not specifically constitute compliance with a Clean-up Account provision, staff utilizes such information to facilitate their review of applications and coordinates such review with the remediation programs.

- Should an applicant stop remediation until they obtain the DEP commissioner's approval for services and activities associated with costs under or over \$250,000?
- Applicants should not stop a required remediation due to lack of such approval.
- Is there a form or standard format for obtaining the DEP commissioner's delegation of authorization to a LEP concerning the approval of services and activities associated with costs over \$250,000?
- Applicants may review approvals for submittal and procedures concerning that delegation.

- Does the LEP regulation prohibit the use of a LEP seal as required pursuant to the new Clean-up Account requirements?
- Although the LEP regulation specifies limits to the usage of a LEP seal, June Special Session P.A. 05-3 provides specific authority for the usage of the seal as required pursuant that new Clean-up Account law.

# Where to Get More Information

- To view the relevant sections of Public Act 05-3, C.G.S 22a-449a-p go to <http://www.ct.gov/dep> on the DEP website. If you have questions, you may submit an email to [jacques.gilbert@ct.gov](mailto:jacques.gilbert@ct.gov) or call 860-424-3370.

