



# INSIGHTS

Father's Day, 1998

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## Historical Release Reporting: Complying with a New Public Act

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- Site investigation
- Remediation
- Permits
- Compliance audits
- Hydrogeology
- Risk assessment
- Property transfers
- Underground tanks
- Air quality
  
- Litigation support
- Management systems
- Hazardous wastes
- Emergency planning
- Bioreclamation
- Regulation tracking
- Constructed wetlands
- Process qualification

*INSIGHTS is published on an as-needed basis to inform our clients and friends in the industrial community about environmental topics of high current interest.*

This issue of *Insights* outlines the requirements to report discovered releases of hazardous substances under Public Act 98-134 recently enacted by the Connecticut General Assembly.

It becomes effective on October 1, 1998, and will be codified as a Connecticut General Statute (CGS). As is our tradition (publishing *Insights* on holidays or other festive occasions), this one is issued on Father's Day.

Fathers protect children, and certain kinds of release conditions addressed by the Act could endanger kids, so the timing seems appropriate. In the past, hazardous substance releases were reported to the DEP based on CGS

22a-450, generally known as the "spills statute". Release reporting requirements were nebulously defined in that statute, and could be (and frequently were) interpreted to mean any amount of any chemical spilled was reportable. That statute also was sometimes interpreted to include the reporting of historical releases that had just been discovered, but that was also very nebulous. This led to general industry dissatisfaction with the reporting process, because of inconsistencies and lack of specifics defining: What is a release? What is a reportable quantity? What type of substances are reportable? In what situations? Under what conditions? And who has the obligation to report?

The Environment Committee of the General Assembly considered several bills during the 1997 session, but was unable to get sufficient consensus to proceed. During the 1998 session, however, the Committee made some significant changes to the previous attempts, and PA 98-134 was enacted. The diagram on the inside pages is a user-oriented interpretation of the reporting



requirements under the new Act. There are a variety of environmental conditions that may be encountered upon discovery of historical releases, but only six conditions require reporting. Each of the six conditions represents some clearly defined danger to human health or the environment, either in the present or the near future; these are:

1. Explosion Hazard. Levels of vapors in a subsurface structure (basement, vault, utility manhole) built up to a level that could cause an explosion in that space.
2. Present Drinking Water Well Contamination. Levels of contamination in a public or private drinking water well that are above the groundwater protection criteria (i.e., the water is not safe to drink).
3. Imminent Well Contamination. Levels of contamination in groundwater above the groundwater protection criteria and close enough (within 500 ft) to a drinking water well that they might affect it, making the water unsafe to drink.
4. Impact on Stream. Levels of contamination in groundwater draining into a surface water body that are more than 10 times the aquatic life criteria, which could harm the ecological balance in that area of the stream.
5. Offgassing Contaminant Plume. Groundwater contamination levels (by volatile compounds) more than 30 times higher than the groundwater volatilization criteria; sufficiently high to pose a risk of offgassing from the groundwater into a structure or habitable space, with human exposures to vapors that could be harmful.
6. Direct Exposure to Shallow Soil Contamination. Contamination levels in shallow soils more than 30 times higher than the direct exposure criteria (i.e., high enough to be a hazard to children playing in the area).

All six conditions represent hazards with a certain imminence of harm (or possible harm). The responsibility for notifying the DEP of these conditions is placed primarily on the owner of the property. Secondly it is placed on the person discovering the problem, such as a potential buyer (or a bank or other party) funding an environmental investigation of the property.

The Act's concept is that a technical environmental professional acting on behalf of a client is generally the person who initially becomes aware of one of the six conditions. He or she is required to notify both their client and the owner of the property that the condition exists. The owner then has an obligation to notify the DEP. In the two most serious conditions (explosion hazard and present drinking water well contamination), the client has an obligation to notify the DEP if the owner doesn't. How this envisioned notification scheme would work in practice is not clear; the language doesn't spell it out. Also, the Act applies only to historical releases -- if a chemical tanker rolls over on the highway, that still gets reported under the present statute, CGS 22a-450.

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Please note that although we believe this material is a reasonable and accurate representation of the new Act, it is abbreviated and some detail may be lost. As always, we advise reading the language of the Act if you have a specific information need or decision to make. Call us if you would like a copy of the full text of the Act, or download it from the Web at <http://www.cga.state.us/House.htm> (then hit the site [Search](#) button or [List of Bills](#) button, and look for HB 5712 or PA 98-134).

