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February 23, 2009

Chairman, Co-chairman and Members
Environment Committee
Legislative Office Building, Room 3200
Hartford, CT 06106

RE: H.B. 5462. An Act Concerning the Regulation of Marine Structures

Dear Chairman, Co-chairman and Members:

There are tidal wetlands regulations; however, there are **NO REGULATIONS** governing the **DESIGN AND CONSTRUCTION OF PRIVATE OR COMMERCIAL MARINE STRUCTURES** in Connecticut. The Connecticut General Statutes, Sections 22a-359 to 22a-361 have existed since 1971 (**38 years**) without regulations.

Background

All of the following statements have been brought to the attention of the Commissioner and Office of Long Island Sound Programs' ("OLISP") staff in separate personal conversations and in comments to at least **fifty (50) applications** without success.

Please note that Notices of Tentative Determinations for residential docks state that applications may affect natural resources and that the Director of the Bureau of Aquaculture at the Department of Agriculture has reviewed the proposal and has determined that it will not significantly impact any shellfish area; however, OLISP **REFUSES** to inform the public, Bureau of Aquaculture, local shellfish commissions and the public that CCA pressure treated lumber leaches toxic pollutants from recreational piers. See **Sample Notice** in attachment. In fact, the Commissioner of Agriculture apparently has no authority to consider such toxic releases.

The Agricultural Experiment Station recommends a simple solution to prevent leaching of the toxic pollutants from pressure-treated lumber into the surrounding media, but OLISP refuses to consider the solution along with alternative materials. The OLISP **ONLY CONSIDERS ALTERNATIVE PIER SIZE AND LOCATION, BUT NOT ALTERNATIVE MATERIALS. APPLICANTS REFUSE TO PROVIDE MATERIAL ALTERNATIVES BECAUSE OLISP DOESN'T REQUIRE IT.** Obviously, the DEP is not the solution to pollution.

Next, the Environment Permit Application Package used by OLISP to process 4-foot x 40-foot General Permit applications for residential (recreational) piers does not require the applicant to identify details of the specific construction materials for debris prevention. Nor does OLISP require

proof using Material Safety Data Sheets or other documentation identifying potential release of toxic pollutants. After issuance of the permit, instead of with the application, OLISP requires applicants to submit construction plans.

Further, applicants provide conclusions about potential adverse environmental impacts without supportive facts. There are no criteria or standards for construction methods to insure structural integrity of piers to storm events. The state of Maine requires that recreational piers withstand a 100-year storm event and 80 miles per hour winds. Also, **DEP has no structural engineers on staff**. For example, an OLISP sanitary engineer approved a Structures permit for the New London Riverwalk off of Bank Street, funded by \$19 million in city issued bonds.

Recommendations

Therefore, I strongly urge the amendment of the general statutes to require that within one (1) year of passage of this bill, that the Commissioner of Environmental Protection, in consultation with the Commissioner of Public Safety, the State Building Inspector and the State Fire Marshal to adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, concerning the construction of marine structures, including, but not be limited to, alternatives to toxic construction materials, structural design, construction methods and the inspection of marine structures.

Further, I recommend a **BAN on bare Chromated-Copper-Arsenate ("CCA")** pressure treated lumber for use in any structures in marine and inland waters because there are better feasible and prudent material alternatives, such as **plastic lumber, cedar, redwood, pau lope, greenheart, and polymeric coatings**. Also, the statute should require proof by applicants that the materials used do not leach toxic contaminants. New Jersey has banned such materials as toxic pollutants in marine waters.

Additionally, I recommend amending Sections 22a-359 to 22a-361 from the "Commissioner of Environmental Protection **MAY ADOPT** regulations" to the "Commissioner of Environmental Protection **SHALL ADOPT** regulations."

Cordially,



Robert Fromer
Environmental Consultant

Attachment: Sample Notice of Tentative Determination

Published on 2/22/2009 in The Day Classifieds » Announcements » Public Notices

7425 Town of Stonington OFFICE OF LONG ISLAND SOUND PROGRAMS Notice of Tentative Determination and Notice of Intent to Waive the Requirement for Public Hearing Application No. #200601276-DL The Department of Environmental Protection hereby gives notice it has made a tentative determination to approve an application submitted by Solomon Steiner ("the applicant") under sections 22a-32 and 22a-361 of the Connecticut General Statutes for a permit to conduct work waterward of the high tide line in tidal, coastal or navigable waters of the State and in tidal wetlands. Specifically, the applicant proposes to install a raised walkway over tidal wetlands and a pier, ramp, and floating dock for private recreational boating use. The address of the permit applicant is 24 Old Wagon Rd., Mount Kisco, NY 10549. The site of the proposed activity is 3 Cove Hill Rd., Mystic, CT 06355. The proposed activity would affect coastal resources and tidal wetlands of Ram Point Cove. The application has been assigned #200601276-DL by this Department. Interested persons may obtain copies of the application from Docko, Inc., P.O. Box 421, Mystic, CT 06355 (860) 572-8939. The application is available for inspection at the Town Clerk's office in Stonington and at the Office of Long Island Sound Programs, Department of Environmental Protection, 79 Elm Street, Hartford, from 8:30 - 4:30 Monday through Friday. The Director of the Bureau of Aquaculture at the Department of Agriculture has reviewed this proposal and has determined that it will not significantly impact any shellfish area. All interested parties are invited to express their views on the tentative determination concerning this application. Written comments on the application must be submitted to the Department no later than April 3, 2009. The Commissioner hereby publishes her intent to waive the requirement for public hearing on this application provided that she shall hold a hearing if she receives a petition signed by twenty-five or more persons. Comments or petitions should indicate the application number referenced above and be directed to the Office of Long Island Sound Programs, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127. Comments regarding this application may be submitted via electronic mail to: DeAva.Lambert@ct.gov. Please note that petitions requesting a hearing may not be submitted via electronic mail. In conformance with the ADA individuals with disabilities who need information in an alternative format, to allow them to benefit and/or participate in the agency's programs and services, should call TDD (860) 424-3000 and make their request to the receptionist, or contact Marcia Z. Bonitto, ADA Coordinator, via email: Marcia.Bonitto@ct.gov.

Attachment to Robert Fromer letter
dated Feb. 23, 2009 re: H.B. 5462