STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Hearing – March 4, 2009
Environment Committee

Testimony Submitted by Commissioner Gina McCarthy
Department of Environment Protection

House Bill H.B. No. 6346 (RAISED) AN ACT CONCERNING THE REGULATION OF MARINE STRUCTURES

Thank you for the opportunity to present testimony regarding Raised House Bill No. 6595 - AN ACT CONCERNING THE REGULATION OF MARINE STRUCTURES. While this bill is no doubt well-intentioned, the Department has significant concerns regarding its usefulness and practicality.

The Department's Office of Long Island Sound Programs has consistently and successfully carried out its coastal structures permitting mandates pursuant to sections 22a-359 through 22a-363(f), inclusive, of the Connecticut General Statutes for many years. These statutes as well as the specific policies and standards of the Connecticut Coastal Management Act provide both resource protection and coastal use criteria sufficient to guide the public and program staff in the administration and application of the Structures and Dredging permit program. Under 22a-361, Department staff are required to consider the environmental and navigational impacts of the structures, NOT to evaluate the engineering efficacy of a particular design or materials, which remains the responsibility of the applicant/permittee. This division of responsibility has worked well over the years, and we are unaware of any widespread or significant problems with inadequately designed or built structures.

Nonetheless, the proposed bill would require the Department to develop regulations for marine structures that are based, in part, on consultation with the State Fire Marshal, the Commissioner of Public Safety, and the State Building Inspector. This would create a significant investment of staff time from four agencies to mandate new requirements that, as far as we are aware, would add little public benefit to the standard practices of the marine engineering and construction industry.

Moreover, even if we believed that marine construction standards were warranted, the Department lacks the staff resources and structural engineering expertise to evaluate alternative building materials and structural designs, much less to undertake such a specific level of inspection for all marine structures. Evaluating alternative building materials and structural designs is a complicated task, one requiring the consideration of a number of factors, including the differences in the aquatic environments in which structures may be built, the availability of materials, and the application and design requirements for particular structures. For example, while ammonical copper quat (ACQ) has effectively replaced chromated copper arsenic (CCA) in residential and fresh-water applications, ACQ is not an effective preservative in saltwater applications. In addition, composite lumber products are often not acceptable structural replacements for wood framing members.

We understand the concerns raised by the proponent of this legislation regarding "toxic construction materials," which appears to refer to the common use of pressure treated lumber in dock construction. For some time, the Department's Office of Long Island Sound Programs has been closely monitoring the state of the art science regarding the use of pressure treated lumber and other treated construction materials in the marine environment. In fact, the Department undertook a comprehensive review of the existing scientific research examining the ecological effects of pressure-treated lumber in the marine environment (copy available on request). This study report revealed that, while the chemical constituents of pressure-treated lumber act as an effective pesticide protecting in-water structures from borer-attack, the research does not support a conclusion that the use of pressure-treated lumber poses an unacceptable or significant impact to the environment, specifically to water quality, habitat, or the functions of coastal resources.

In addition, during a contested case hearing on a dock permit (See Final Decision: Braish & Smolarek, #200102561-MG), in which the proponent had intervened to present evidence on the adverse environmental effects of pressure-treated wood, the Hearing Officer found that there was no reasonable likelihood of unreasonable pollution caused by the materials to be used during construction, and then Commissioner Rocque upheld this finding. In any event, as the state of the science moves forward, we will continue to closely monitor any new research that may become available.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert La France, at 424-3401.