



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – February 18, 2009
Environment Committee

Testimony Submitted by Commissioner Gina McCarthy
Department of Environmental Protection

Raised Senate Bill 871 - AN ACT INCREASING THE ENFORCEMENT OF THE ENVIRONMENTAL PROTECTION PROGRAMS

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 871, AN ACT INCREASING THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION. We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (DEP). This proposal, that we strongly support, would provide additional tools to help strengthen the DEP's ability to enforce its programs.

One of my major agenda items since coming to Connecticut has been to gain improved environmental results. We believe that almost everybody we regulate wants to comply and we have tried to foster new, flexible approaches so that all those that wish to can follow the "path of least resistance". At the same time, for business to compete fairly in Connecticut we must assure a level playing field. To keep that parity on the environmental front, DEP must provide a clear disincentive to cutting environmental corners. Strong and swift enforcement is necessary to achieve and maintain that disincentive. We are here today to ask that you support Raised Senate Bill 871 and give us additional tools to help DEP's efforts to maintain strong enforcement programs.

Sections 1, 2, 3 and 4

It is important that we respond to noncompliance quickly and meaningfully. Section 1 of this bill seeks changes to the civil penalty authority in section 22a-6b to allow the Commissioner to issue administrative orders with penalties not to exceed \$100,000 on a case-by-case basis for the three primary environmental protection programs in air, water and waste. The authority to be granted to the Department through this legislation will not change our existing enforcement and civil penalty policies that have been in existence for some time and guide us in determining appropriate penalties for violations of Connecticut's environmental laws. This proposal will also provide the opportunity for an alleged violator to contest the issuance of a proposed civil penalty in an administrative hearing. The proposed authority, which is similar to USEPA's administrative penalty authority, would provide an additional tool to assist the Department in swiftly returning a non-compliant company to compliance.

While existing legislation already authorizes the Commissioner to establish regulations to assess civil penalties for classes of violations, this proposed change would allow for the inclusion of

civil penalties in individual administrative actions that may be unique or of limited occurrence where the development of regulations may not be warranted or not yet finalized. The same considerations regarding a due process right of appeal, penalty amounts, ability to pay, etc., would apply whether the Commissioner assessed a penalty pursuant to regulation or the proposed administrative order authority. The proposal to issue administrative orders with penalties not to exceed \$100,000 on a case-by-case basis is a cap. Depending upon the extent of the violations, other existing statutory provisions authorize the Commissioner to consider up to \$25,000 or \$10,000 per day per violation in an enforcement proceeding. It is not the department's intent to utilize the proposed authority to expand the number of enforcement actions, but rather to add another option that would help to expedite quicker resolution to actions.

Sections 5, 6 and 8

As the department increasingly relies on the use of self-certification in environmental compliance, it is important to ensure that there is a strong deterrent and sufficient authority in place to address false statements, false reporting, and the alteration and concealment of records. Sections 5, 6 and 8 of this bill would provide the Chief States Attorney's Office with authority to penalize and take action *consistently* for false statements and false reporting across DEP's air, water and solid and hazardous waste statutes. The proposed amendments are intended to revise the false statement statutory language for Water (22a-438(d)) and Air (22a-175(b)) to include willful violation language for knowingly altering or concealing records and to increase the penalties for criminal violations, and to add a new section for Solid Waste (22a-226a) to include false statement statutory language to make them consistent with the current Hazardous Waste statute (22a-131a). Similar activities should be penalized consistently across the air, water and waste programs.

Section 7

Section 7 of this proposal creates an additional disincentive not to construct structures subject to our coastal programs without receiving prior permit approval in accordance with the law. This section would impose an enhanced permit fee where the applicant seeks a permit after the fact.

Sections 9

Section 9 of this proposal will allow sworn law enforcement officers of the department to administer oaths in all affidavits, statements, depositions, complaints or reports made to or by any sworn law enforcement officer without being required to become notaries. This will place the department's law enforcement officers in the same position as other sworn police officers in CT and will save the state money by not requiring payment of an annual fee to maintain status as a notary.

We strongly support Bill 871 and thank you for the opportunity to present the Department's views on the bill. If you require any additional information, please contact the DEP legislative liaison, Robert La France, at 424-3401.