



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 House Bill No. 6412 - AN ACT CONCERNING THE REGULATORY  
AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Thank you for the opportunity to present testimony regarding Raised House Bill No. 6412 - ACT CONCERNING THE REGULATORY 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 (Department). This proposal, that we strongly support, will amend and streamline many of the Department's regulatory programs.

**Sections 1-3, 7, 9-15, 17-20**

As part of the Department's on-going efforts to become more efficient, we have undertaken the "Lean" management approach to improve our productivity. With the assistance of Lean techniques, the Department is analyzing many of our regulatory programs to remove wasteful, non value-added steps. As part of our larger efficiency effort, we examined a report by the Office of Legislative Research (OLR)<sup>1</sup> that described the status of the Department's regulatory programs. Sections 1 to 3, 7, 9 to 15, and 17 to 20 of the bill would remove and replace statutory mandates to adopt regulations ("shall") with permissive authority to adopt regulations ("may"). As the OLR report summarizes, in some instances the mandate to adopt regulations was replaced by the issuance of a general permit or by development and adoption of certain federal programs.

The programs that would be impacted by the bill include:

- Sec. 1. - Discharge of sewerage from vessels (15-174)
- Sec. 2. - Establishing schedules for issuing permits (22a-6p)
- Sec. 3. - Utility pesticide management plans (22a-66k)
  
- Sec. 7. - Emissions performance standards electricity supplied to end use customers (22a-174j)
  
- Sec. 9. - Disposal or recycling of ash residue (22a-208g)
- Sec. 10. - Resources recovery plans (22a-231)
- Sec. 11. - Packaging material (22a-255d)
- Sec. 12. - Farm resource management plans (22a-354m)
- Sec. 13. - Revocation and reinstatement of municipal aquifer regulations (22a-354t)

<sup>1</sup> Office of Legislative Research Report No. 2007-R-0526 entitled DEP Regulations (11-15/07 - P. Frisman)

Sec. 14. - Residential USTs (22a-449m)

Sec. 15. - Road salt storage (22a-474)

Sec. 17. - Safety education courses for ATVs (23-26d)

Sec. 18. - ATV operating standards (23-26f)

Sec. 19. - Tree and plant appraisal guidelines (23-65)

Sec. 20. - Protect and restore eelgrass (26-316)

#### **Section 4**

Section 4 of the bill would amend the Coastal Management Act to repeal an obsolete administrative provision of CGS §22a-97(c) which requires the Department to submit an annual report to the Legislature and the Governor on the implementation of the coastal management program. This requirement, although necessary in the early days of the coastal management program, has now been made redundant by the information provided on the Department's website and other annual reports; therefore, DEP has not submitted any separate reports under 22a-97(c) for many years. At the request of the State Auditors, we propose to eliminate this reporting requirement.

#### **Sections 5 and 6**

Section 5 of the bill proposes to amend Sec. 22a-135(a) to eliminate microwave radiation from the sources of radiation that are required to be monitored by DEP. Microwaves are used in household appliances and in telecommunications. The microwave radiation use in telecommunications is regulated by the Federal Communications Commission (FCC) and Department monitoring is no longer required. When section 22a-135 was drafted in 1978, microwave ovens were just becoming available to consumers. Thirty years later, they are in almost every home and, due to advances in design and manufacture that prohibit radiation leakage, they are regarded as safe, posing little risk to public health.

Section 6 of the bill proposes to amend Sec. 22a-162 to add an exemption for cell phone towers. Cell phone towers operate within the 3 kHz to 300 GHz frequency range covered by this section, but the FCC has been delegated federal regulatory authority over cell phone towers. That being the case, cell phone towers should be specifically added to the list of exemptions in subsection (b) in a manner similar to the exemption under subdivision (3) for "scientific or medical sources operating at frequencies designated for scientific or medical purposes by the Federal Communications Commission."

#### **Section 8**

Section 8 of the bill proposes to amend Sec. 22a-198 to correct a statutory reference to a regulatory definition. Implementation of Sec. 22a-198, and corresponding air quality regulations, have reduced sulfur dioxide (SO<sub>2</sub>) emissions from large power plants and industries in Connecticut by 83% since 1999. However, the large power plants and factories subject to sulfur dioxide limitations under Section 22a-198 are defined by reference to a regulation, RCSA section 22a-174-22b, the NO<sub>x</sub> Budget Program. This program will be repealed in 2010. At the time of the regulatory repeal, the exact air pollution sources that are subject to the sulfur dioxide limitations will be unclear. To avoid any question about the applicability of the sulfur dioxide limitations, this proposal replaces the definition in question with a definition independent of a

regulatory reference, but one that accurately designates the same group of emissions units. In this way, the continuation of the sulfur dioxide emissions reductions is ensured. The independent definition will not require any operational changes for Connecticut power plants and large industries as it applies to the same group of sources. DEP also intends to update its regulatory program definitions consistent with the change recommended in this proposal.

#### **Section 16**

Section 16 of the bill proposes to amend Sec. 23-11 to clarify the ability of the Department to issue revocable "use" licenses on all Department properties not just parks and forests. The Department also controls wildlife management areas, boat ramps and other types of property. The proposed change would clarify that "use" licenses could also be issued on these types of property.

#### **Section 21**

Finally, Section 21 of this bill would require that copies of coastal permits for structures, dredging, fill and other regulated activities be filed on municipal land records at the time of issuance or prior to a transfer of the property. Although permits for the placement of structures in the tidal, coastal and navigable waters of the State have been required in some form since 1939, there are still a large number of unauthorized structures and activities along the State's coast.

As a result, the absence of permits for a dock or seawall is often not discovered until a new owner applies to undertake modifications or maintenance to the structure. At that point, the new owner realizes that he is responsible for bringing the site into compliance, entailing additional trouble and expense and occasionally, the removal of all or part of a structure that is causing environmental impacts or excessive encroachment.

To avoid this situation under current law, a prospective purchaser of coastal property would have to be fully aware of coastal regulatory programs and would need to take the initiative to contact the Department to determine if the site was in compliance. By requiring permits to be filed prospectively, property owners will protect their investments and new purchasers can readily determine whether or not a coastal property is in compliance with applicable statutes. The recording of permits will also raise awareness among environmental consultants and attorneys, and ultimately, property owners, about the existence and significance of coastal regulatory programs.

We strongly support Raised House Bill 6412 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.