



Connecticut Business & Industry Association

**TESTIMONY OF
ERIC J. BROWN
BEFORE THE ENVIRONMENT COMMITTEE
FEBRUARY 18, 2009**

Good morning. My name is Eric Brown and I am associate counsel with the Connecticut Business and Industry Association (CBIA). CBIA represents approximately 10,000 Connecticut businesses, both small and large companies throughout Connecticut. Approximately 90% of our member companies have fewer than 50 employees.

**CBIA APPRECIATES THIS OPPORTUNITY TO EXPRESS OUR
STRONG OPPOSITION TO SECTION 1 OF**

**SB-871, AN ACT INCREASING THE ENFORCEMENT
AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION.**

Much of this bill focuses on expanding DEP's authority to address non-compliance associated with willful misconduct. CBIA supports using strong enforcement measures, including stiff penalties, for violations that reflect a reckless disregard for the environment, a demonstrated disregard for environmental requirements, and any form of criminal activity.

However section 1 of SB-871 seeks to expand DEP's discretionary authority with respect to civil violations, including first-time and minor paperwork violations and other such violations that pose no direct threat to human health or the environment, by giving them sweeping authority to unilaterally issue penalty notices of up to \$100,000. Our experience is that DEP is not appropriately exercising its current enforcement discretion under existing laws – coming down hard on even small businesses struggling to understand and comply with complex environmental regulations for the most minor and innocuous infractions.

Providing DEP with even greater discretionary authority to further advance their current misguided priority of severely penalizing businesses – especially small businesses, for minor and first-time violations is unacceptable in our view.

Under current law, the DEP can issue financial “civil penalties” for certain violations. But the department can do this only if it follows the public process of adopting regulations to establish the specific violations for which the penalties can be assessed, the allowable penalty amounts and other aspects of the program.

If enacted, Sec. 1 of SB-871 would allow the DEP to bypass the requirement to adopt regulations and unilaterally issue penalties for up to \$100,000 simply by ordering a company to do so.

DEP argues that companies would be able to appeal the penalties, but doing so would be very costly in terms of time, personnel resources and legal fees. In fact, the DEP bluntly reasons this hardship would be a good thing in that it would put pressure on the accused companies to simply pay the fine. So while DEP argues that the bill contains procedural safeguards that provide companies with the option to appeal the penalty notices, they blatantly admit that these “safeguards” only serve to push companies to admit to violations and pay fines for alleged violations they wouldn’t otherwise agree to. In short, DEP is trying to take advantage of the financial frailties of businesses in these hard economic times to strong-arm them into paying more fines. Unfortunately, this disturbing mentality of how businesses should be treated in Connecticut is typical under the current DEP enforcement administration.

DEP argues that they have a “penalty matrix” that they follow and so we can be comforted that they will not go out and assess “unreasonable” penalties for minor violations. However, DEP’s concept of “reasonable” is astonishingly out-of-touch with reality. When they contend that a penalty of \$5,000 is reasonable for initialing entries in a logbook rather than writing out the full name of the person making the log entry, their bureaucratic detachment from reality becomes obvious. That is why it is critical that DEP’s penalty policies become LESS discretionary – NOT MORE as would be the case under section 1 of this bill.

CBIA strongly urges the Environment Committee to delete Section 1 from SB-871 and allow the rest of the bill to move forward.