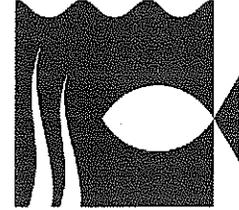


**Connecticut Fund  
for the Environment**



**Save the Sound®**  
A program of  
Connecticut Fund for the Environment

**Testimony of Connecticut Fund for the Environment  
Before the Commerce Committee**

**STRONGLY OPPOSING Raised Bill 5359 AN ACT REQUIRING PERMITS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION BE ADOPTED IN ACCORDANCE WITH THE UNIFORM ADMINISTRATIVE PROCEDURE ACT**

Eric Annes, Legal Fellow

March 2, 2010

*Connecticut Fund for the Environment ("CFE") is a non-profit environmental organization with over 6,500 members statewide. For thirty years, CFE has used law, science, and education to protect and preserve Connecticut's natural resources.*

Connecticut Fund for the Environment **STRONGLY OPPOSES Raised Bill 5359**. The bill would place additional and unnecessary burdens on an already overburdened and underfunded environmental agency and would cripple the agency's already severely limited ability to act in a timely manner.

The state has severely underfunded the Department of Environmental Protection for decades. As a result, the agency has had to continually do more with less. This has meant that enforcement is weakened and the permitting and regulation making process can routinely take more than a decade. The aquifer protection regulations took 14 years to pass and although the streamflow statute was passed in 2005, the regulatory process is still incomplete. Proposed bill 5359 adds additional and unnecessary burdens on the agency and does nothing to protect the environment. Forcing general permits through the UAPA process will delay their creation and frustrate their intended purpose of expediting the permitting process.

Robust public participation in the regulatory process is essential to Connecticut Fund for the Environment's mission. We depend on it. The notion that DEP's general permitting process excludes public participation is false. General Permits in Connecticut are subject to the public participation and review. They can be challenged in court if they are in violation of applicable law.

Further, House Bill 5359 would improperly (and most likely unconstitutionally) create a legislative veto for the issuance of permits. The constitutional doctrine of separation of powers prohibits the use of legislative vetoes over delegated powers. The only exception this doctrine is that the general assembly is permitted to disapprove of administrative regulations. *See Conn.*

Const. Amend. Art. XVIII. Permits are distinct from regulations. Regulations are rules of general applicability unbounded by time. Permits, on the other hand, are a granting of permission to conduct certain activities otherwise prohibited for defined period of time. Significantly, the most prominent general permits are creatures of delegated federal law whose standards for issuance are controlled by federal regulations.

The argument that general permits should be considered regulation under the UAPA is without basis. A general permit is standardized permit that an applicant can obtain if it qualifies under the parameters established by the permitting agency. A general permit, however, is not generally applicable. Under the Clean Water Act, the permitting authority must retain the right to require an individualized permit under certain conditions.

In the absence of general permits, all activities that would have been covered by a general permit would have to go through the individualized permitting process that the regulated community has consistently complained is too burdensome. General permits are a relatively new system created to allow for a streamlined mechanism for the regulated community to obtain a permit for common and/or minor activities. That is, general permits were created for the benefit of the regulated community at the request of the regulated community. They were created to afford an efficient permitting mechanism. General permits, however, remain a granting of permission to conduct certain activity to a single entity. A general permit is not a generally applicable set of rules. It is incorrect to argue that the general permits are backdoor regulations.

Making it more difficult to issue general permits would be contrary to their original purpose which was to speed up the process of permitting common or small projects. This bill in no way would expedite the permitting process or reduce the costs of obtaining a permit. It would, on the other hand, reduce the ability of the DEP to timely update general permits. The net effect of this bill would be a reduction in environmental standards in the state of Connecticut without any corresponding increase in permitting efficiency.

For the above reasons, we **STRONGLY OPPOSE House Bill 5359.**