



STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – 25 February 2010
Committee on Commerce

Testimony Submitted by Commissioner Amey Marrella
Department of Environment Protection

Raised Senate Bill No. 174 - An Act Concerning the Standards of Water Quality

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 174 AN ACT CONCERNING THE STANDARDS OF WATER QUALITY. The Department of Environmental Protection (Department) opposes Senate Bill No. 174.

Currently, the Water Quality Standards (WQS) are adopted and revised using the decades old procedures contained in Section 22a-426 of the Connecticut General Statutes. Section 22a-426 was approved by the federal government as being consistent with the federal Clean Water Act. By way of history, federal law requires that the maps, standards and criteria contained in the surface WQS be reviewed by the Department and approved by the federal Environmental Protection Agency (EPA). The WQS must also be periodically reviewed and possibly amended. Any change to the existing WQS is considered a revision thus requiring public notice and an opportunity for comment and participation.

At the state level, the “due process” procedures contained in 22a-426 include: notification of all chief elected officials, notice in the Connecticut Law Journal, an open public hearing, certification by the Attorney General’s office, a hearing report addressing all public comments, and a public notice of the final decision. Then, the federal Environmental Protection Agency (“EPA”) conducts an initial 60-day review of the state’s proposed amendments to the WQS. This review is designed to determine whether the proposed revisions meet the statutory and regulatory requirements of the federal Clean Water Act (CWA). In essence, the EPA review is very much like what takes place during the state-level regulations review process.

In the event that the proposed WQS do not meet the federal requirements, EPA will advise the state that their standards are insufficient, and what changes need to be made. The state must then make revisions that address EPA concerns and meet their final approval. If the state does not make those revisions to EPA’s satisfaction in a timely manner, i.e., within 90 days of being notified, EPA has the authority to promulgate standards, which become the basis for related state management programs under the CWA. This unique aspect of federal law is one of the main reasons the WQS are not state regulations.

Needless to say, Connecticut does not want to abdicate our state responsibility by allowing federal promulgation of WQS that may not be as suitable for meeting our local needs to protect water quality and the public health, and as importantly, accommodating our economic, social and political interests. Thus, section 22a-426 provides for a viable and time-tested mechanism that accommodates, and facilitates, this interplay of state and federal authority.

The Department is currently engaged in the public notice period for proposed revisions to our surface WQS. We initiated public review of our proposed changes informally on April 16, 2009, and then with due consideration for the public comments received published our formal proposal for revisions to the WQS on December 22, 2009. We held a public informational session and public hearing on February 4, 2010 and based upon the comments received we decided to extend the public comment period through March 17, 2010.

After March 17, 2010, we will consider all public comments received in making any final revisions to the Water Quality Standards and we will discuss the response to the public comments in the report from the Hearing Officer for the WQS hearing. Our final proposal, copies of public comments and our responses to those comments will be provided to all those who commented (and will be posted on the Department's website). This same package of information will be provided to EPA for EPA's final review and approval. While we fully expect EPA to provide comments during the public comment period, we equally expect EPA to comment on our final revised proposal, which may necessitate some further changes in order to obtain federal approval of the Water Quality Standards.

The current proposed revisions to the WQS are controversial because the issue of nutrients (notably phosphorus) in the environment is receiving national scrutiny. The standards established for nutrients within the state WQS and the subsequent implementation of these standards into our permitting and regulatory actions is fueling this controversy.

As part of our proposed revisions to the WQS, we are addressing nutrients and have identified implementation strategies for these standards. The proposal that we have made is Connecticut-specific, based on our knowledge and scientific understanding of the unique resources within our state. There is a current nutrient criteria proposal from EPA that is substantially different than the approach that we have proposed. It is our preference to follow a Connecticut-specific approach. However, this is a clear case where federal promulgation, if it were to happen, could substantially affect the management of nutrients within the State.

The EPA proposal provides for less flexibility in application of standards to different types of water bodies and would result in more stringent limitation, beyond what we currently believe is necessary, for control of nutrients in the environment. The concern for federal promulgation of state standards is real, as evidenced by the current federal action to adopt water quality standards for nutrients in the State of Florida. Once adopted, these federal standards will form the basis for any regulatory action regarding nutrients to be taken by the State of Florida. This would not be a positive outcome for our state.

Finally, like states and agencies across the nation, we have to learn to do more with less. Our Department is no exception, and the resources required to promulgate WQS regulations would be much more cumbersome, and time consuming than the current statute allows, with no definable improvement in outcome. We have promoted LEAN procedures throughout the Department to ensure that we produce better quality products, at a lower cost, a concept which both my staff and the public embrace. SB 174 proposes a step in the wrong direction by requiring added steps unnecessary to effective WQS, and likely difficulties in meeting federal review and adoption requirements in a timely manner.

In sum, the current procedure for Connecticut's WQS under Sec. 22a-426 is a transparent and viable process that has served the public and the environment well for many years. A change to a regulation process would not only be inefficient, but disruptive to the federal-state interplay that could lead to federal EPA promulgation of standards if CWA deadlines are not met.

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 or Robert.LaFrance@CT.gov.

