



STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – February 22, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environmental Protection

Raised Senate Bill No. 120, AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL PROTECTION'S GUIDANCE STATEMENTS AND POLICIES BY THE GENERAL ASSEMBLY'S REGULATION REVIEW COMMITTEE

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 120 – AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL PROTECTION'S GUIDANCE STATEMENTS AND POLICIES BY THE GENERAL ASSEMBLY'S REGULATION REVIEW COMMITTEE.

The Department of Environmental Protection (Department) opposes this bill because it could lead to lengthy and unnecessary delays and costs for both the Department and the regulated community – to the detriment of Connecticut's environmental and economic well-being.

The bill allows twenty-five people to which a policy or guidance may apply to petition the Regulation Review Committee for a determination about whether such guidance raises to the level of regulation. Broadly allowing such claims would place significant uncertainty on the guidance and policies that many in the regulated community rely upon. It would also hamper our ability to quickly adjust such guidance when technological advances dictate.

The technical guidance that the Department develops often relates to complex scientific information that is a key component to much of the agency's work. These guidance documents and policies provide direction to permit applicants and others in the regulated community. These documents complement existing complex statutory and regulatory authorities but do not supplant them. The Department of Environmental Protection is not alone in making use of such policies and guidance, most state and federal agencies faced with similar complex regulatory programs readily rely on necessary guidance and policy. One only need envision trying to understand the complex tax code without the helpful aid of the Revenue Service's policy and guidance. In fact it is common in programs that are highly complex, and where technology is often rapidly evolving, that one is better informed through the assistance of current and plain language information.

The Department uses formal rulemaking to establish the standards necessary to protect human health and the environment. The issuance of a permit or enforcement action follows the statutory and regulatory requirements. Guidance documents point applicants to the appropriate physical and chemical test methodology or modeling technique to be used in developing application information, and assist staff in the consistent interpretation of technical information.

Federally mandated permit programs are often implemented on the state level through state regulatory authority. Detailed analyses are often required as part of this review. For example, the permitting process for new or modified air pollution sources often relies on highly technical dispersion modeling to determine what impact the proposed emissions (or emission reductions) will have on the environment. The use of guidance documents, such as the Ambient Impact Analysis Guideline¹, enables the Department to explain dispersion modeling requirements to our customers in clear and precise terms while facilitating the issuance of permits that meet changing federal requirements. The use of guidance also provides the Department a means to maintain continuity and quickly address newly identified public health issues in the face of frequent legal challenges to new federal requirements. Unless new federal requirements are stayed by the federal judiciary, the state is required to implement them even though the Environmental Protection Agency (EPA) may delay issuing federal implementation regulations and guidance. Absent the flexibility to address this all too often occurrence, environmental permitting at the state level could halt each time a new federal requirement or standard is challenged at the federal level.

There has been some confusion over actions that the Department takes in full accordance with our statutory and regulatory authority as being similar to guidance or policy. Let me dispel this confusion as it relates to Connecticut's Water Quality Standards. These standards are developed and adopted in accordance with a public process specifically laid out in Section 22a-426 CGS and are applied through our permitting programs under a process consistent with the appropriate regulatory authority and our Rules of Practice Sections 22a – 3a- 2 through 6 RCSA.

In summary, the Department opposes proposed Raised Senate Bill No. 120 because it does not assist the Department in meeting its responsibilities to protect public health and the environment more efficiently. Further, if enacted, it could add substantial and lengthy delays to the permitting process and negatively affect our ability to meet the needs of Connecticut's businesses that the Department quickly, efficiently, and consistently applies our statutory and regulatory requirements.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov.

¹ The Department's Ambient Impact Analysis Guideline, July 2009, interprets and offers guidance on 40 CFR 51, Appendix W – Guideline on Air Quality Models and policy memoranda by EPA on such guidelines.