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Written Testimony of Christopher Phelps
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Before the Connecticut General Assembly Environment Committee

Monday, February 22, 2010

Opposing Raised Senate Bill 120

An Act Authorizing Review of the Department of Environmental Protection's Guidance Statements And Policies By The General Assembly's Regulations Review Committee

Opposing Raised House Bill 5125

An Act Concerning The Identification of Sources of Pollution Outside Of The State That Contribute To The Pollution Of The State's Air, Water And Land

Opposing Raised House Bill 5127

An Act Concerning The Implementation Of The Proposals Of The Ozone Transport Commission

Senator Meyer, Representative Roy, and members of the Committee:

On behalf of Environment Connecticut, I am submitting this testimony **Opposing Raised Senate Bill 120 and Raised House Bills 5125 and 5127**. These bills would severely undermine the Department of Environmental Protection's ability to do its job protecting our state's air, water and landscape from pollution.

SB 120:

Guidance statements are important methods for an agency such as DEP to use in providing limited direction without going through the full-blown regulatory process. This is particularly critical given the reality that DEP has experienced extreme delays and difficulty completing the full rule making process for important regulations such as streamflow and aquifer protection regulations. In some cases, such regulations have taken over a decade to be implemented. The state's decades-long underfunding of DEP has been a significant element in this failure to enact such regulations in a timely manner.

By diverting agency resources and adding further burdens to the already over-stretched DEP, this bill would exacerbate a problem that has already resulted in significant hindrance to the agency's ability to enact and enforce regulations protecting our state's air and water. Additionally, there is a very real question as to whether SB 120 is not just improper, but also unconstitutional. Review of regulations is delegated to the legislature by the state constitution. If outside stakeholders believe that DEP guidance or policy statements actually constitute a regulation, then the Administrative Procedure Act

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provides the process for challenging such guidance or policy statement in court if necessary. SB 120 improperly inserts the legislature into a function that is properly the role of the judicial branch.

HB 5125:

This bill would force the DEP to divert funds received from court settlements against polluters. Rather than use such funds for their intended purpose of implementing efforts to reduce pollution, this bill unnecessarily and nonsensically diverts those funds to pay for the study of out of state sources of pollution. There is already a significant amount of effort at the state, regional and federal level devoted to this purpose. Diverting Supplementary Environmental Project funds from their intended use of pollution reduction to a task more properly handled through inter-state, regional and federal initiatives would be a waste of already scarce state resources.

HB 5127:

This bill creates an unnecessary mandatory process delaying implementation of proposals of the Ozone Transport Commission. This would further divert already stretched DEP resources and (considering the text of HB 5125, rather ironically,) impede efforts to mitigate out of state sources of air pollution.

The mandatory review and comment period established by HB 5127 prior to implementation of OTC proposals is duplicative and unnecessary. If such proposals require DEP to adopt regulations, then such notice and comment periods are already required under the Uniform Administrative Procedures Act. Additionally, the regulated community already has the ability to comment on any EPA action directly.

Thank you for the opportunity to offer this testimony commenting on SB 120, HB 5125, and HB 5127. Environment Connecticut urges the committee to reject these bills, as they would divert scarce agency resources away from functions that reduce air and water pollution and burden already over-stretched agency staff with duplicative and unnecessary tasks.

Sincerely,

Christopher Phelps
Program Director
Environment Connecticut