



STATE OF CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing - March 12, 2010
Public Health Committee

Testimony Submitted by Amey W. Marrella
Department of Environmental Protection

Raised House Bill No. 5477- AN ACT CONCERNING THE CLEAN WATER ACT AND STREAM FLOW REGULATIONS

Thank you for the opportunity to present testimony regarding Raised House Bill No. 5477, AN ACT CONCERNING THE CLEAN WATER ACT AND STREAM FLOW REGULATIONS. The Department of Environmental Protection (DEP) opposes this bill. The primary reason for our opposition to the bill is the fact that DEP is working through the regulatory adoption process set out in Public Act 05-142 and chapter 54 of the general statutes.

For decades the Department of Public Health (DPH) and the DEP have shared oversight of what is arguably our most important natural resource: water. Each Department has a separate mission with regard to the water resource, yet we strive to work cooperatively through our respective statutory and regulatory structures to insure high standards for the water resource and for the quality of life in Connecticut. One example of a statutory and regulatory scheme that involves the sister agencies of Public Health and Environmental Protection is Public Act 05-142 - AN ACT CONCERNING THE MINIMUM WATER FLOW REGULATIONS. (The regulations currently proposed by the Department of Environmental Protection under the authority of this law are known as the "Stream Flow Regulations.").

In 2005, the General Assembly unanimously passed and the Governor signed into law Public Act 05-142. As a regulatory agency, we were tasked with executing the policy directions set forth by this Act. One of the ways we do this is through the regulation-making process set out in Chapter 54 of the general statutes: Connecticut's Uniform Administrative Procedures Act. In addition, Public Act 05-142 gave specific guidance on how to proceed. According to the act know codified at 26-141b of the general statutes:

The Commissioner of Environmental Protection shall, on or before December 31, 2006, and after consultation and cooperation with the Department of Public Health, the Department of Public Utility Control, an advisory group convened by the Commissioner of Environmental Protection, and any other agency, board or commission of the state with which said commissioner shall deem it advisable to consult and after recognizing and providing for the needs and requirements of public health, flood control, industry, public utilities, water supply, public safety, agriculture and other lawful uses of such waters and further recognizing and providing for stream and river ecology, the requirements of natural aquatic life, natural wildlife and public recreation, and after considering the natural flow of water into an impoundment or diversion, and being

reasonably consistent therewith, shall adopt regulations, in accordance with the provisions of chapter 54, establishing flow regulations for all river and stream systems.”

DEP’s process for adoption of regulations establishing flow standards has been under way for several years now, involving hundreds of meetings with numerous stakeholders, including other state agencies. We have conducted technical and water policy workgroup meetings and reviewed scientific approaches. Stakeholders in the process included water utilities, water scientists and engineers, academics, and environmental, recreational, agricultural, and fishing interests.

DPH and DEP have spent considerable time and effort to accomplish the mandate of section 26-141b and DEP recently held a public hearing on the proposed regulations. Unfortunately, DEP did not meet the timeframe of the adoption of regulations by December 31, 2006. The DEP held a well attended public hearing on January 21, 2010, allowed an extended comment period until February 4, 2010 and is currently prepared to carry on with this process and looks forward to reviewing all relevant comments and action by the legislative Regulations Review Committee on these regulations.

Should House Bill No. 5477 become law, then the adoption of the regulations establishing flow standards for rivers and streams could be delayed for several more years and impede and stall the current process.

Section 2 of this bill sets out a new study requirement for all basins in the state (more than 300 basins when considered at the subregional level) and a new process for approval and adoption. The current proposed regulation already includes a basin classification system and refined criteria which considered the methodology referenced in section 2(a) of the bill. The bill sets out a schedule for such study that is impossible to accomplish; the DEP cannot complete the study by January 1, 2011. Our initial estimate is that such study could take several years and added cost and staff commitments. We question the need for any new study as the DEP has developed the proposed regulations consistent with the requirements of section 26-141b of the general statutes and these requirements are essentially the same as noted in proposed section 2 of the bill. In short, this bill would delay and thwart our efforts to establish flow standards.

As a matter of fundamental fairness to all who have worked hard and participated in the process set out by the General Assembly to adopt these stream flow regulations, we should be allowed to finish the process and present a regulation package to the General Assembly before new, restrictive legislation is enacted to change the rules of the game.

Both DPH and DEP recommend that the current regulatory adoption process for establishing stream flow standards be allowed to continue to move forward on its current path.

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