



Testimony
Elizabeth Gara
Connecticut Water Works Association (CWWA)
Before the
Commerce Committee
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HB-5359 AN ACT REQUIRING PERMITS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION BE ADOPTED IN ACCORDANCE WITH THE UNIFORM ADMINISTRATIVE PROCEDURES ACT.

The Connecticut Water Works Association (CWWA), a trade association of municipal, private and regional water companies, would like to comment **in support of the intent of HB-5359**, which is aimed at addressing concerns with the various permitting processes of the state Department of Environmental Protection (DEP).

The water industry has considerable experience with DEP's permitting processes, which create costly, inordinate delays in moving forward with critical projects that are needed to meet our obligation to provide Connecticut residents with a safe, supply of quality water. While we understand that DEP has to review the application to ensure that the proposed activities do not undermine protections for the state's environment or ecology, clearly, the permitting process needs to be fixed. To address concerns with DEP's permitting process, there needs to be 1) greater certainty regarding whether a permit will be issued; 2) more efficient timeframes for processing permits; 3) consistent consideration of the input of the industries and other stakeholders affected by the issuance of a permit; and 4) assurances that DEP will not exceed the scope of its authority in adopting permit conditions.

1. Greater Certainty Regarding Permit Issuance

The lack of certainty in whether or not a permit will be issued or whether it will include conditions that make the issuance problematic makes it difficult to move forward with needed projects. Obtaining a permit requires considerable time and expense and because of the uncertainty in whether or not a permit will be issued, it may not be prudent to pursue a permit even though the proposed activities may be beneficial to the community. DEP should provide greater guidance regarding the criteria for obtaining a permit and ensure that such guidance is consistently applied.

2. More Efficient Permit Processing Timeframes

According to a report by the Office of Legislative Research, water companies and others may incur several hundred thousand dollars to obtain a permit from DEP. In addition, the process can drag on for years, causing significant delays in moving forward with needed water projects, such as interconnections or diversion permits.

For example, the Town of Colchester initiated the process to obtain a diversion permit in 2000. The permit application was reviewed and revised and eventually approved in January 2003, three years later. The costs for the initial applications, performing the pumping tests, lab tests, modeling and the eventual full application and subsequent revisions exceeded \$300,000. This was solely to obtain an approval to withdraw water from three existing production wells.

In some cases, DEP has improved its intake process so if an application is incomplete, the applicant receives notice of this in a timely manner and can provide the additional information. However, many permit applications sit in DEP – and other agencies – for considerable time before an applicant is notified regarding any deficiencies. DEP should be required to adhere to strict timeframes for processing permits.

To its credit, DEP has worked with the water industry to build more flexibility and certainty into the general permit process in certain areas. It has done this by moving forward with the following initiatives: 1) Filing-only Permits – A filing only permit eliminates unnecessary delays experienced by water utilities for activities that have no or minimal environmental impact; 2) Duration of General Permit – Extending the duration of the general permit from five years to ten reduced costs associated with filing general permit applications; 3) Renewal Application – Changes to the renewal application process included a streamlined, short-form process, which helped to provide certainty that previously authorized activities may continue without interruption; 4) New Categories of General Permits – DEP developed new categories of general permits which will greatly improve efficiency, such as the 1) Interconnection and Transfer of up to 100,000 gpd and 500,000 gpd; 2) Withdrawal of up to 100,000 gpd – Bedrock Aquifer; 3) Withdrawal of up to 250,000 gpd – Surface Water/Stratified Drift.

We would support legislation that directed DEP to continue to develop new categories of general permits, which are helpful in making the process more flexible while still maintaining protections for the environment and natural resources.

3. Consideration of the Input of Stakeholders

For several years, CWWA's sister organization, the CT Section of the American Water Works Association (AWWA), worked with DEP to modify the general permit for water treatment wastewater discharges to create a reasonable, workable general permit. Specifically, the water industry wanted to address the following: 1) expanding the definition of water treatment facility to include potable water storage tanks; 2) clarifying that certain discharges are exempt from monitoring and record-keeping requirements; 3) increasing the maximum daily flow of all discharges on one site; 4) raising or eliminating the maximum groundwater discharge limits for iron and manganese; 5) deletion of monitoring requirement. Despite apparent agreement among DEP staff to move forward with these modifications, the permit was renewed without addressing any of these issues. We believe that additional oversight, such as review by the legislature's Regulations Review Committee, may bring some balance and accountability to the permit process. However, we do not believe that the Regulation Review process would be appropriate for the issuance of individual permits because it would only add to the already lengthy process.

4. Scope of Authority

DEP appears to be exceeding its statutory authority in reviewing and approving permits. For example, the applicant for a permit to divert water for a new consumptive use must provide information regarding the effect of the diversion on stream flows, aquatic habitat needs, water conservation, and alternative sources of new supply. It does not, however, authorize DEP to obtain information that is not impacted by the diversion, such as business operation on the property or the property itself. In addition, DEP should not be using water diversion permit applications to regulate activities that are not physically or hydraulically related to the regulated diversion. Rather, DEP's jurisdiction should be limited to the hydraulic and related impacts resulting from a diversion of water.

Allowing DEP to exceed its regulatory authority pursuant to the water diversion policy act simply exacerbates lengthy delays in processing permit applications, drives up costs for businesses and customers, and undermines much-needed economic development projects in this state. Given the state's current fiscal crisis, it is imperative that the permitting process be limited in scope, consistent with the intent of the law.

Again, thank you for the opportunity to comment. We look forward to working with lawmakers to enhance the general permit process in ways that will improve efficiency, expand permit flexibility, streamline the process and provide greater certainty in the process.