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VIA E-MAIL & FIRST CLASS MAIL

Senator Gary D. LeBeau  
Representative J. Jeffrey Berger  
Co-Chairs, Commerce Committee  
Connecticut General Assembly  
State Capital  
210 Capital Avenue  
Hartford, CT 06106

Re: Testimony on S.B. 174

Dear Senator LeBeau and Representative Berger:

I am writing to provide written testimony to supplement my oral testimony at the Commerce Committee hearing yesterday on Senate Bill 174. I am an environmental lawyer with more than 30 years experience in private practice, and, previously served in the Department of Environmental Protection from 1972-79.

S.B. 174 would cure a long-standing defect in the statutes authorizing the adoption of Water Quality Standards by the Department of Environmental Protection under Section 22a-426 of the General Statutes.

The bill is simple. It would require the Commissioner to adopt the Standards under the requirements of Connecticut's version of the Uniform Administrative Procedures Act ("UAPA"), thus guaranteeing review by the Legislative Regulations Review Committee. It would also require that documentation in support of the adoption of such standards be available to the public sixty (60) days in advance of the publication of the notice of hearing to allow all parties the opportunity to understand what is being proposed and the basis for the proposals.

The Water Quality Standards provide the bedrock goals and standards applicable to all discharges in Connecticut to the "waters of the state" and the "waters of the United States" and to clean-ups of contaminated properties under the Transfer Act and other Brownfield clean-up programs. The Standards form the underlying basis for the entire clean water program in Connecticut, and apply to all applications for permits

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issued for municipal sewage treatment discharges and industrial wastewater discharges. As such they represent a policy of general applicability that impacts the rights of parties before the agency, because every discharge permit applicant must comply with their requirements.

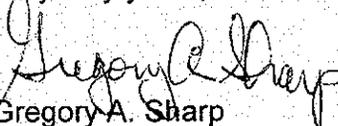
The Connecticut Supreme Court has repeatedly stated that the only lawful way for an agency to adopt such a policy is through the rulemaking process spelled out in the UAPA. (See Salmon Brook Convalescent Home, Inc. v. Commission on Hospitals and Health Care, 177 Conn. 356 (1979), holding (w)here a rule has a substantial impact on the rights and obligations of parties who may appear before the agency in the future, it is a substantive rule, i.e., a 'regulation' requiring compliance with the UAPA.", Id. at 362 (emphasis added); Sweetman v. State Elections Enforcement Comm'n, 249 Conn. 296, 317 (1999); Walker v. Commissioner, Dept. of Income Maintenance, 187 Conn. 458, 463 (1982).)

The Department does not comply with this judicial requirement. The failure to do so is apparently based on the fact that the statute authorizing the Standards does not specifically require the Department to comply with the UAPA. The statute authorizing the Standards was first adopted in 1967 prior to the adoption of the UAPA.

Despite the regulatory significance of the Standards to the regulated community and the public, the Department does not consider the Standards regulations. As a result, the agency does not submit them to the Regulations Review Committee for approval. Moreover, other important safeguards applicable to regulations in Connecticut do not apply, such as the required assessment of impacts on Small Businesses or the required fiscal note documenting the economic impact on the state or municipalities. With no oversight by the legislature and no appeal available to aggrieved parties, there is no straightforward legal recourse from the Commissioner's ultimate decision on the Standards.

For the foregoing reasons, I would urge the Commerce Committee to give the bill a joint favorable vote. Thank you.

Very truly yours,



Gregory A. Sharp

cc: Eric Brown, Esq. (CBIA)  
Robert LaFrance, Esq. (DEP)