

February 22, 2010 - Testimony before the Legislative Environment Committee

*SB 120 - An Act Authorizing Review of the Department of Environmental Protection's
Guidance Statements and Policies by the General Assembly's Regulation Review
Committee*

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*Ms. Modesty
West Hartford
- What are
science updates*

Good morning my name is Todd Berman and I have 15 years of experience in the environmental/regulatory interaction in Connecticut. I am here today in support of Senate Bill Senate Bill 120 *An act concerning a review of the Department of Environmental Protection's guidance statements and policies by the Gen. Assembly's Regulations Review Committee.*

(The RSRs)

To save time I will focus on only one example where the CTDEP has used *guidance* or other forms of policy documentation as a mechanism to establish enforceable standards without appropriate regulatory review or compliance with the ~~APA~~.

I suspect during this hearing you will hear countless other examples of CTDEPs excessive use of guidance and policy in other programs to establish standards which ultimately have the full effect of regulation.

Remedial Standards

Remedial Standard Regulations (RSRs) were originally adopted in January of 1996 (including legislative, regulatory review). At that time, they were designed to be a "very significant evolution" in terms of shifting the load of site clean-up oversight from the CTDEP and shift a major part of that review of sites to the private sector LEP program with CTDEP performing mostly an audit function. The design was modeled similar to adjacent states which have highly privatized and efficient systems.

After adoption in 1996, almost immediately, CTDEP began to adjust the RSRs without going through the ~~APA~~ processes.

The combined effects of the regulatory reach of guidance documents and the failure of CTDEP to promulgate new standards through the regulatory process has led to a situation where LEPs are unwilling and/or unable to advance environmental actions without consulting CTDEP at multiple opportunities. Essentially there is now a system where CTDEP provides more oversight in most remedial sites than was ever intended in the legislation underlying the RSRs.

The net result of this problem is:

Inefficient – for parties trying to remediate sites. Costs are higher than other states.

Inefficient – for CTDEP because LEPs are asking for more input than DEP is willing or able to commit to.

This was far from the intention where Connecticut DEP would act in an audit function to License Environmental Professionals operating in a highly privatized system.

Solutions

Enact something like SB 120 and have a hard look at this.

If the Environmental Conservation wing of the CTDEP is capable of proposing and passing regulations every year when they change the flounder length from 14" to 14.5" than they should be capable of the same practice with the RSRs.

Benefits

If the legislature chooses to address this issue, there will be three immediate benefits.

1. It will be a meaningful first step toward get site remediation's preceding ~~ff~~ more rapidly in our state.
2. Remediation costs will be lower and fall more into line with surrounding states.
3. CTDEP will expend less resources per site (as originally intended)

As we all are looking for opportunities where the legislature can serve the environment and the public more cost effectively this is one.

Thank You.

Todd Berman's Qualifications:

Todd Berman is an experienced senior environmental analyst with 15 years of practice in Connecticut.

Prior to his environmental practice, Mr. Berman had over ten years of industrial management experience in Connecticut which give him a well-grounded perspective on many of the environmental challenges faced by our states business.

He is a United States Coast Guard licensed Master Captain and has served as a member of the adjunct faculty at the Rensselaer Polytechnic Institute, Lally School of Management, teaching classes in " Environmental Law ".

EDUCATION

- M.S., Rensselaer Polytechnic Institute, Environmental Management and Policy 1999
- M.S., Rensselaer Polytechnic Institute, Management 1993
- B.S. Connecticut College Human Ecology 1985

PROFESSIONAL & TRADE ASSOCIATIONS

- Rensselaer Polytechnic Institute, 2000 to 2005, Adjunct Faculty in Environmental Law and Policy
- Connecticut Business & Industry Association, 2006 to 2007, Chair, Waste Task Force; Member, Steering Committee
- Connecticut Department of Environmental Protection, 1998 to 2000, Co-chair, Waste Advisory Committee on Special Wastes
- Connecticut Department of Environmental Protection, Advisory Committee on Mercury Reduction 2002 - 2004
- Connecticut Department of Environmental Protection, Advisory Committee on Release Reporting Regulations 2003 - 2010
- Connecticut Department of Environmental Protection, 2006, Advisory Committee on Soil Staging and Transfer
- Connecticut Environmental Forum, Treasurer and Board Member
- Killingworth Open Space Committee, Member