

COUNCIL ON ENVIRONMENTAL QUALITY



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TESTIMONY

DATE: March 10, 2010

PRESENTED TO: Transportation Committee
Connecticut General Assembly

PRESENTED BY: Karl J. Wagener
Executive Director

SUBJECT: Raised Bill No. 412, AAC Environmental Impact Evaluations
for a Development Project Located at a State-owned Airport

The Council on Environmental Quality recommends adoption of Raised Bill 412, with the addition of language that has been worked on by Senator Kane and others.

Environmental and airport advocates and other parties have come together to solve a serious problem with the Connecticut Environmental Policy Act (CEPA) that we did not know existed until a few weeks ago. The problem surfaced in connection with the Waterbury-Oxford Airport – which explains the title of this bill – but the new suggested language (see below) is generic and will solve the problem for all projects.

The problem is this: The Environmental Impact Evaluation (EIE) for the proposed hangar project at the Waterbury-Oxford Airport was circulated for public comment by the DOT, but the document had been prepared by a consultant paid by the private company that proposes to build the hangar. In a November 6, 2009 letter to the DOT, the Office of Policy and Management (OPM) called into question the legal authority for the DOT to delegate the task of preparing an EIE. CEPA regulations say that an agency may delegate the task of preparing an EIE. The CEPA statute, however, is silent on the matter. OPM concluded, in its letter, that “OPM does not believe that DOT has any statutory power to delegate its authority to conduct an EIE to any second party or third party as described above.” As a result, the EIE for the project was pulled from the public review process. The proposed bill will provide needed clarification of the DOT’s legal authority.

Section One of the proposed language applies to any public-private project where the private party proposes to build a facility on state land. These are uncommon projects that are subject to CEPA. **The language will clarify that the sponsoring agency (probably the DOT in most cases) shall be in charge of hiring and guid-**

ing the consultant that prepares the EIE, and may collect a fee from the private party sufficient to pay for it. This clarifies the agency's authority to delegate the EIE preparation, but also allows the private party to move the process along because the agency won't have to wait for funds to materialize from elsewhere. It's a win-win.

Section Two of the recommended language will allow **previously prepared EIEs to go through the review and approval process** even if they were prepared by a consultant paid by the private party, as long as the sponsoring agency is satisfied with its thoroughness and quality. This would allow the EIE for the airport hangar project to go through the approval process. For the record, CEQ staff reviewed the hangar project EIE in November and found it satisfactory (with minor technical reservations). The EIE provides the Commissioner of Transportation with sufficient information to make his decisions regarding the hangar project. The provision of such information is, of course, the purpose of CEPA.

The CEQ's primary interest in this matter really isn't in airport hangars, but in trying to improve CEPA. The Council has stated repeatedly that EIEs should be less costly and take less time to complete. CEPA is supposed to be a useful planning tool for state agencies, not a bureaucratic impediment to private development, but the Waterbury-Oxford Airport experience turned out to be just the opposite. With Raised Bill 412, you have a chance to fix the problem for all agencies.

Recommended Language:

Section 1. (New) The sponsoring agency responsible for conducting an environmental impact evaluation may enter into contracts with outside consultants to assist in the preparation of such evaluation so long as the sponsoring agency furnishes guidance, participates in the preparation and independently evaluates the document prior to its general circulation. Where the actions which are the subject of the environmental impact evaluation pursuant to section 22a-1c are being undertaken by private non state entities, the sponsoring agency may not delegate the task of preparing an environmental impact evaluation to the private non state entity but may require such entity to pay a fee sufficient to cover the reasonable cost of hiring any outside consultants.

Section 2. (New) (Effective upon passage) Notwithstanding the above, for any environmental impact evaluation performed prior to the effective date of this statute by a contractor retained by a private non state entity and independently evaluated by the sponsoring agency, (1) the sponsoring agency shall review, circulate, publish and hold a public hearing on such evaluation as required by section 22a-1d of the general statutes and shall submit all comments and responses thereto to the Office of Policy and Management, and (2) the Office of Policy and Management shall review such evaluation together with the comments and responses thereto and make a determination as required by section 22a-1e of the general statutes. For any such environmental impact evaluation, the fact that it was performed by a contractor retained by a private non state entity shall not be grounds for a determination by the Office of Policy and Management that it does not satisfy the requirements of Chapter 439, Part I and the regulations adopted pursuant thereto.