STATE OF CONNECTICUT

COUNCIL ON ENVIRONMENTAL QUALITY

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Chair

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Janet P. Brooks

Liz Clark

Bruce R. Fernandez

Karyl Lee Hall

Richard Sherman

Norman VanCor

Karl J. Wagener
Executive Director

TESTIMONY

DATE: March 14, 2011

PRESENTED TO: Environment Committee
Connecticut General Assembly

PRESENTED BY: Barbara C. Wagner
Chair

SUBJECT: H.B. 6386, An Act Establishing the Department of Energy and Environmental Protection

My name is Barbara Wagner. I am here today as the chair of the Council on Environmental Quality (CEQ) to speak about the sections of H.B. 6386 that would affect the CEQ.

The Proposal

H.B. 6386 puts the Council within the proposed Department of Energy and Environmental Protection (DEEP). **Section 36** provides that the Council would still exist with all of its mandatory duties and responsibilities. However, it proposes keeping the Council within the new DEEP but without protecting its independence and without enabling the Council to retain its own staff. The CEQ has always existed within the Department of Environmental Protection (DEP) but it has always been for administrative purposes only. It is the conclusion of the Council that, without its independence and without staff, the CEQ would be unable to function in any meaningful way.

The Council spent considerable time discussing how the proposed consolidation might work, and asked me to speak today on the necessity of **independence** and **staff**. If consolidation is inevitable, the Council does not feel that it is important where it ends up administratively as long as the Council's functions and communications are independent of any Commissioner and are supported by qualified staff.

Independence and Objectivity

The Council was created in 1971 (CGS Sections 22a-11 through 22a-13) alongside the DEP to report objectively and without bias on the status of Connecticut's air, water, land, wildlife and other resources. Our widely-read annual reports are used as

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reliable references by other agencies (including the DEP), legislators and legislative staff, municipal officials, journalists, professors, and individual citizens.

There is absolutely no duplication of work between the CEQ and the DEP. People sometimes assume that the DEP reports to you on the condition of our air, our rivers, our lobsters and shellfish beds, our drinking water, our wildlife and our land. It does not. If you know if Connecticut's air has gotten better or worse since you were first elected to the legislature, you probably know that from reading *Environmental Quality in Connecticut*, our annual reports on the condition of Connecticut's environment. **You cannot find that information anywhere else.**

The CEQ's reports are 100% accurate and 100% objective. As legislators, you pass new laws and appropriate more than 100 million dollars each year for environmental protection. How do you know if the air, water and wildlife are actually improving as a result? You could ask the other agencies – DEP, Agriculture, Transportation, Public Health and others – for reports. Of course, you would not get all of the trends and analysis in one brief, readable report. More importantly, would you be confident that failures would receive equal billing with successes? Our reports are factual, and give equal attention to successes and failures. The Council must be independent of any other agency's editorial control to be of value to the citizens of Connecticut.

CEQ Reports are Focused on Outcomes

Acting Commissioner of Environmental Protection Dan Esty said during his nomination hearing on Thursday that he has met with many legislators and they all wanted to talk about the DEP's permit processes. An efficient permit process is a necessity, but isn't the ultimate purpose of any permitting process to protect and improve the environment? How do you know if the DEP's regulatory programs actually are improving our air, water and wildlife? If our environmental goals are not being reached – and many are not – what needs to be done? The *outcome* of environmental protection programs is the information you find in the CEQ reports and nowhere else.

The CEQ Investigates the Difficult Complaints

The Council has received and investigated hundreds of citizen complaints with an excellent success rate of solving seemingly intractable problems. The common theme is that there was an identifiable problem but the relevant agency did not have the authority to act or was otherwise unable or unwilling to act.

For example, in 2010 we spent considerable time investigating why many residents of Haddam have lived with contaminated groundwater for 30 years. We wrote a detailed letter to Governor Rell in July 2010 that communicated some of the problems and inefficiencies in the state's remediation and potable water programs, and offered several recommendations for consolidating programs related to

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remediation and provision of potable water. We held public forums in Haddam. Furthermore, our involvement as resulted in several corrective actions by the DEP and DPH that might not have occurred if the CEQ had not been involved; the CEQ was brought into the situation when the citizens found that there was nowhere else that they could turn.

As another example, the CEQ receives frequent complaints about the siting of cell towers. The CEQ recommended to the Siting Council that it should revise its application requirements to include visual impact analyses from public waterways such as coastal Long Island Sound. The Siting Council concurred, and the change was made.

More recently, the Council received citizens' complaints about a potential violation of the Connecticut Environmental Policy Act (CEPA) by a state agency. The Council investigated and found an obvious oversight in direct contradiction to state regulations, and two weeks ago sent a letter to OPM concluding that the agency in question needs to comply with CEPA and complete an environmental review of the proposed project. The agency in question is the DEP.

I am attaching a list (Attachment A) of other examples where the CEQ's investigation of complaints led to permanent improvements to state environmental policies and practices.

But the role of the Council is much broader than reviewing DEP actions. We collect data from and review projects for the DPW, DOT, Agriculture, DPH, the Siting Council and others. This important function would be seriously impaired if each of these agencies viewed us as just another office of the DEP. Our independence is critical if we are to be effective in dealing with all of these State agencies.

Staff

The Council has, and would continue to have under this bill, substantial statutory responsibilities which are not duplicated by any other agency. By itself, the annual report on the condition of Connecticut's environment consumes more than 600 hours of staff time, from collection of data to analysis of the environmental indicators to publication on our website. Our Council members contribute considerable knowledge and expertise at no expense but absolutely could not produce the annual report on their own time, nor could they fulfill the other duties that require detailed work and technical analysis. If the CEQ were to rely on staff of another agency, would you be confident that our reports would be as objective and as critical of failures as they now are?

Other Sections of H.B. 6386 that would affect CEQ

Section 5 would transfer to DEEP the CEQ's responsibility to approve the form all

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agencies use to provide public notice of proposed land transfers. This is a minor responsibility, and the Council has no concerns either way.

Section 33 would transfer to DEEP the CEQ's responsibility to publish the Environmental Monitor. The General Assembly gave the Council this responsibility in 2002. The Monitor is the online publication where all state agencies must post notices of Environmental Impact Evaluations, land transfers, and certain other documents. It has proven to be a highly superior place to publish these notices when compared to the Law Journal, which is where they appeared previously. The CEQ has no position on transferring this responsibility to the DEEP, but I will note that while CGS Section 22a-1b requires the *Monitor* to be published monthly, the CEQ publishes it twice a month because the other state agencies requested us to do so. Under a monthly schedule, state construction projects could be delayed unnecessarily.

Section 42 would remove the requirement that the Commissioner consult with the CEQ if and when it revises the comprehensive open space strategy. No comment.

Section 43 would delete the provision that the Connecticut Greenways Council may share personnel and resources of the CEQ. This provision, adopted in 1995, has never been implemented. No comment.

Conclusion

Sometimes the Council is referred to as a watchdog agency, and the Council certainly has not been reluctant to criticize the failings of the DEP. But it would be a mistake, we believe, to characterize the CEQ as the DEP's watchdog. If anything, the CEQ is a watchdog of the state as a whole with regard to environmental performance. We state again that no other agency performs this important function, and it is one worth protecting. The proposed changes serve only to shift this important responsibility to DEP's overworked staff, eliminating our critical independence while not serving either to streamline government or to effect cost savings. The Council has functioned effectively over the last 40 years, under the administrative arm of the DEP, with a very small budget. It has as its only goal the protection of Connecticut's environment by providing you with accurate data, responding to citizen's complaints and insuring that all State agencies abide by the environmental rules and regulations that you have enacted.

I will be happy to answer any questions you have, either now or at any time.

[Attachments]

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ATTACHMENT A to CEQ Testimony on HB 6386 March 14, 2011

EXAMPLES OF CITIZEN COMPLAINTS AND INVESTIGATIONS THAT RESULTED IN BENEFICIAL CHANGES TO STATE POLICY

1. Contamination in Tylerville (Haddam). Citizens and local officials spoke to the Council about contamination of their wells by industrial chemicals and the lack of action by state government for decades. CEQ involvement resulted in several actions (including enforcement against a potential source), and the CEQ's analysis should lead to changes to potable water and remediation programs.

2. **State subsidies of commercial development on prime farmland (money-saving).** In reviewing Environmental Impact Evaluations (EIEs) from other state agencies, the Council discovered two state-subsidized projects in 2007 that would destroy, in total, more than 100 acres of prime farmland and two active farms. We discussed the problem with the Commissioner of Agriculture and OPM officials at public meetings, and administrative changes were made to prevent future occurrences.

3. Land Swaps (No-Cost/Low-Cost). In 2008, Commissioner McCarthy issued a new directive on handling proposed land exchanges. This was the direct result of a Council investigation of a citizen complaint about a swap that was completed with no public notice and no appraisals. The swap provided a landowner with access across state park land to private property where a large and controversial development was subsequently proposed. Now, there will be appraisals, public notice, municipal consultation and other safeguards on all future land swaps.

4. Tree removal on DOT rights-of-way (No-Cost/Low-Cost). A recurring problem. The DOT gave a permit to a developer to remove a large number of trees along the Housatonic River. Regrettably, the developer did not obtain the required local permits, and cut the trees on a weekend. The CEQ investigated and wrote to the DOT Commissioner, recommending a mechanism for greater DOT-municipal coordination, and the Commissioner agreed. Future problems should be avoided.

5. Encroachments (No-Cost/Low-Cost). The DEP (and land trusts and towns) were regularly losing trees and preserved land itself to illegal encroachments. Our special report (*Preserved But Not Protected*) led to major administrative and legislative changes. The state and land trusts are benefiting tremendously.

6. Wetlands Training (No-Cost/Low-Cost). The Council found through statistical analysis that many acres of wetlands would be conserved if all municipal wetlands commissions complied with the statutory requirement to have at least one member or staff complete the DEP training program. Wetlands would be conserved at no additional cost. Our recommendation for online reporting will save money over the current system.

7. The "Forgotten Scenic Lands." The CEQ discovered in 2009 that the DOT had purchased hundreds of acres of scenic land along roads and highways in the 1960s and 1970s, and they were largely forgotten. We notified Governor Rell, and through multi-agency cooperation the lands now are mapped and digitized, and their locations are available to the public and land-use regulators.

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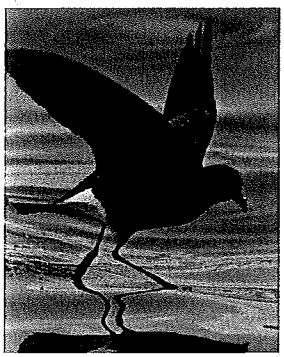


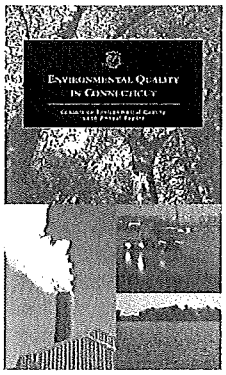
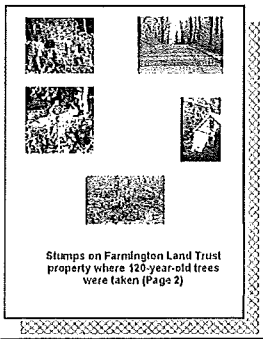
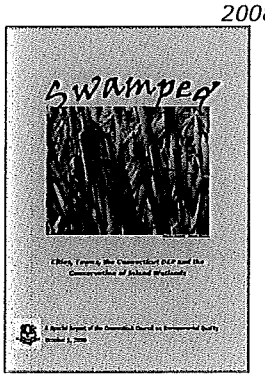
February 2011

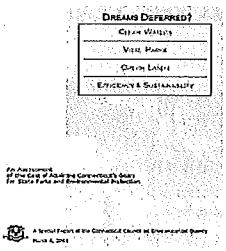
STATE OF CONNECTICUT

COUNCIL ON ENVIRONMENTAL QUALITY

Summary of Council Actions That Have Improved Connecticut, 2005 – 2011

Established in 1971 alongside the Department of Environmental Protection (DEP), the CEQ has published dozens of reports and resolved thousands of complaints. Many reports have resulted in major changes to state policy that continue to yield dividends years after publication. For example, 1997's *The New Race for Open Space* showed that Connecticut's land conservation program was moribund; it had no funding, no goals, and was entangled in red tape. The report was widely acknowledged as having helped move the state toward what is now a streamlined and effective land conservation program. Every year since, we report on the progress toward the goals the Governor and General Assembly established. The table below summarizes more recent examples.

REPORTS /ACTIONS	COUNCIL ACTION	OUTCOMES / IMPROVEMENTS
Environmental Quality in Connecticut" *Every year since 1972* 	Annual report on condition of Connecticut's environment. Comprehensive, accurate and unbiased. The only such report produced. Foundation of report is consistent set of 32 indicators, updated annually. Report focuses evenly on successes and failures. Report focuses on state as a whole, not just on DEP activities or jurisdiction. Includes agriculture, energy, public health, transportation and land use, and includes municipal performance. In 2009 the Council began to publish its required recommendations as a separate "Checklist of Recommended Legislation to Remedy Connecticut's Biggest Environmental Deficiencies"	This report is read widely and is considered the authoritative source for information on the condition of Connecticut's environment. It is cited frequently year-round by other agencies, the news media and researchers. The Council has completed a transition away from paper copies to an interactive web version that debuted in 2007. This has resulted in greater circulation and lower costs. The Council's reports have led to countless improvements in Connecticut's environmental laws and programs, in turn improving air quality, wetlands, parks and forests, releases of toxic materials such as mercury and MTBE, and compliance. Additional specific improvements are detailed below.
"Preserved But Not Protected" *2005* 	Prompted by citizen complaints of illegal felling of trees in protected conservation lands by trespassers, the CEQ conducted a year-long investigation of such problems. Encroachments were found to be widespread on state, municipal and land trust lands. The CEQ found that the DEP had no surveyors on staff and was unprepared to defend its parks and forests. Penalties for encroachments were found to be woefully inadequate. This CEQ Special Report led directly to legislation.	P.A. 06-89, An Act Concerning Encroachment on Open Space Land, comprehensively updated statutes pertaining to encroachments, and was put to use immediately in defense of parks, forests and preserves. The DEP was able to hire a surveying team and has begun to reclaim public land that had been taken over illegally by private parties.
"Swamped" *2008* 	Special 2008 CEQ Report found that many towns do not comply with statutory requirements for training and for reporting to the DEP. Report found through statistical analysis that training is highly effective, and that lack of training results in more wetlands lost. The same report found evidence that combined wetlands/zoning commissions are less protective of wetlands than separate wetlands commissions. The Council's two-year investigation grew out of a citizen complaint about illegal activity in wetlands.	Council's recommendations regarding training requirements and separation of commissions have been proposed in legislation. The CEQ sponsored a roundtable where representatives of numerous organizations and agencies outlined future improvements that could be achieved to make wetlands training more widespread and convenient for municipal wetlands agency members.

REPORTS /ACTIONS	COUNCIL ACTION	OUTCOMES / IMPROVEMENTS
COMPLAINTS AND INVESTIGATIONS 	The Council continually receives and investigates citizen complaints (CGS 22a-13). These complaints often lead to discovery of problems that have no simple solution because of inadequate laws or uncertain jurisdiction. Since its inception, the Council has received thousands of complaints and has spent much time resolving problems. The Council also holds public forums in different parts of the state, and gathers the views and comments of citizens and municipal officials on deficiencies in state environmental programs. The Council reviews and comments on Environmental Impact Evaluations published by other state agencies for proposed projects. As many of the EIEs are written by the DEP for DEP projects, the Council is the only environmental agency that gives them an objective review. In 2007, during such review, the Council discovered two state-funded projects that, combined, would subsidize commercial development on more than 100 acres of prime farmland on two active farms. Please see above and below for more special reports that were prompted by citizen complaints.	Some examples of improvements to state laws or programs that resulted from complaints to the CEQ: • The transfer of surplus state lands out of state ownership without benefit of environmental review led to P.A. 07-213, which requires public notice in the *Environmental Monitor* (see below) and, if warranted, a natural resource review before transfer. The first transfer of surplus land to the DEP as a result of this law was made final in December 2010. • The DEP's trade of state park land to a private landowner without appraisals or public notice led to a Council recommendation for a new DEP policy, which the DEP adopted in 2008. • A 2006 complaint about illegal tree clearing on DOT property along a river led to recommendations (adopted) for more efficient permitting procedures with more municipal input. • Questions raised about the state's policy for protection of scenic areas led to conclusion that such a policy does not exist; topic of ongoing CEQ review. • Public CEQ meetings on numerous problems at the University of Connecticut, including water supplies, the dehydrated Fenton River, and woodland clear-cutting led to changes in University procedures and infrastructure. • In response to CEQ comments, The Office of Policy and Management has modified its procedures for reviewing state grants that would destroy prime farmland.
Connecticut Environmental Policy Act 	A 2002 CEQ Special Report became the basis of legislation that overhauled the Connecticut Environmental Policy Act (CEPA) for the first time since 1972. In 2009, the CEQ launched an effort to modernize CEPA with the twin goals of 1) reducing the time and money agencies spend on environmental impact evaluations and 2) maximizing public notice.	P.A. 02-121 overhauled CEPA by adding early opportunities for public participation, eliminating Findings of No Significant Impact, and adopting related recommendations for streamlining. It also requires the CEQ to publish the Environmental Monitor online. The Monitor replaced the Connecticut Law Journal as the official place for state agencies to publish CEPA notices, and provides the public with direct links to maps, documents, and other information. The ongoing CEPA modernization efforts will save state agencies considerable funds: up to several hundred thousand dollars in some years. P.A. 10-120, adopted with the Council's support, will speed public-private partnerships.
"Preserved and Forgotten" *2009*	The Council discovered that the State of Connecticut had purchased hundreds of acres of "scenic lands" decades ago, but their existence had been largely forgotten.	Agencies collaborated to locate these lands and map them in a digital format so that their locations are now available online.
"Dreams Deferred" *2008* 	This Special Report assessed for the first time the total cost of attaining Connecticut's environmental goals. Many goals, such as cleaner rivers and Long Island Sound, were found to be within reach, but some such as agricultural land preservation were found to be in danger of never being met. Recommended funding state parks from the General Fund as a state service inherently different from the regulation and protection of air, water and wildlife.	Report has been used in numerous ways in budget planning and deliberations, and will be for many years.

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