

Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

Public Hearing – March 15, 2012
Committee on Commerce

Testimony Submitted by Commissioner Daniel Esty
Presented By Deputy Commissioner Macky McCleary

**Raised House Bill No. 5465 – AN ACT CONCERNING THE STATE’S REGULATORY AND PERMITTING
PROCESS**

Thank you for the opportunity to present testimony regarding Raised House Bill No. 5465 – AN ACT CONCERNING THE STATE’S REGULATORY AND PERMITTING PROCESS. The Department of Energy and Environmental Protection (DEEP) welcomes the opportunity to offer the following testimony.

The Department fully supports the timely processing of permit applications for those doing business in Connecticut. The Department continues to dedicate significant resources to improve the processes and speed by which permits are issued. In fact, the Department has over the past year undertaken a critical problem solving approach to transforming the way permit applications are processed. However, DEEP strongly opposes this bill.

Specifically, Section 2 modifies section 22a-6p of the General Statutes in a manner that is wholly unworkable. This modification would require the Commissioner of Energy and Environmental Protection to conduct reviews of environment permit applications and render a decision in ninety days or such applications shall be deemed approved. It is important to note that the Department administers various federal programs through delegated authority and federal grants – including hazardous waste, air, and water pollution control permitting. We are very concerned that an automatic approval requirement would jeopardize these federal dollars and delegations. In response to a similar proposal last year, the U.S. Environmental Protection Agency Deputy Regional Administrator, Ira Leighton, wrote the agency to express EPA’s concern that “Automatic approval would not ensure that applicable substantive statutory and regulatory requirements are met . . . As a result, enactment of this provision could, depending on the program, warrant EPA’s initiation of program withdrawal proceedings or of other measures that would result in federal implementation of the program.” Loss of delegation would result in unnecessary duplicative processes with applicants needing to apply to the USEPA for a federal permit as well as DEEP for a state permit.

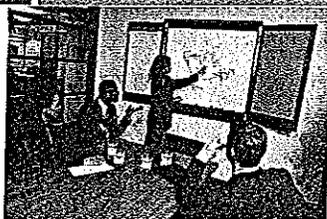
Raised House Bill No. 5465 includes two other significant provisions. Section 1 requires the Commissioner of Economic and Community Development (DECD) to conduct a cost benefit analysis of all existing state agency regulations and direct agencies to amend regulations to minimize costs. While DEEP is not in a position to comment on the burden to DECD of undertaking such a review, we can assure you that through the Department's Lean efforts and its ongoing internal transformational effort, DEEP remains focused on eliminating non-value added steps in existing regulatory processes and is committed to carefully evaluating the economic burden of all new regulations.

Sections 4 through 26 of House Bill No. 5465 would repeal the Stream Channel Encroachment Line (SCEL) program established pursuant to CGS Sections 22a-342 through 22a-350. DEEP agrees that the SCEL program be repealed. The repeal of the SCEL program is the subject of a similar bill, House Bill No. 5129 AN ACT CONCERNING THE REGULATION OF CERTAIN LOW EMISSION VEHICLES, IONIZING RADIATION AND STREAM CHANNEL ENCROACHMENT LINES BY THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION, which DEEP submitted through the Environment Committee. DEEP provided testimony on House Bill No. 5129 to the Environment Committee, and that bill was favorably reported by the Environment Committee on March 14, 2012. DEEP would be happy to work with both committees to assure that final language is reconciled to achieve the goal of fully repealing the SCEL program.

In summary, we understand the importance of providing timely responses to permit applicants, and we are dedicated to continuously improving the application processing. Significant progress has been made due in large part to process improvement efforts like LEAN and the transformational efforts currently underway at the Department, and we would be happy to share with the Committee information showing these improvements. However, we ask that you not pass any provisions of raised House Bill No. 5465 that could threaten these improvements by imperiling the Department's delegated authority from the federal government, which could ultimately result in duplicative processing of permits at both the state and federal level. Finally, DEEP supports the proposed elimination of the outdated SCEL program, which is also the subject of House Bill No. 5129.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact DEEP's legislative liaison, Robert LaFrance at 424-3401 or Robert.LaFrance@ct.gov.

Process Summary



Process Outputs:

Final Deck of slides

Data Pulls and analysis

Consistency in Data sets

Recommended list of Phase I statutory changes to facilitate permitting processes

Final

- From December 2011 through February 2012 DEEP EQ management held problem solving meetings.
- Discussion Areas Included:
 - P.A. 11-1 Requirements
 - Current DEEP Permit Mechanisms
 - Tiered Permitting
 - Backlog
 - Current Permit Process Times
 - Statutory Changes to Increase Permitting Efficiency
 - The Need for Extensive Staff Engagement in order to Successfully Implement Ideas

Narrative:

Why Tiered Permit Structure (AKA bins)

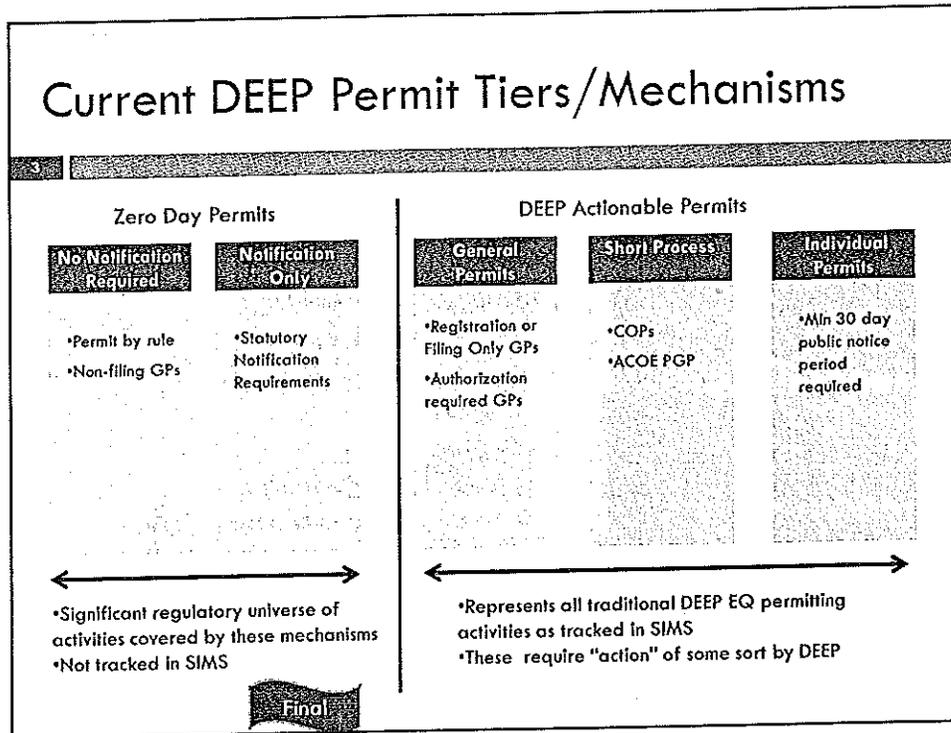
Purpose is to develop tiered permit structure and graphically show ongoing LEAN efforts



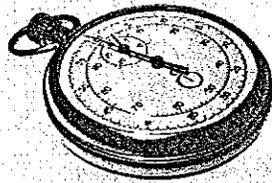
Final

- Why continued focus on permitting?
 - Core Function of the Agency
 - Main touch point for many constituents
 - New administration...new way of looking at things
- Don't we already do this? Yes, but...
 - Many tiers now – permit by rule, Statutory & Regulatory exemptions, notifications, GP's, Short process, COPs, Individual
 - Permit programs are delivering high quality and generally timely permits
 - Ongoing permit reform (2010) and LEAN have greatly improved process
 - With LEAN always room for continuous improvement
- October Special Session, Public Act No. 11-1, AN ACT PROMOTING ECONOMIC GROWTH AND JOB CREATION IN THE STATE.
 - Report due 2/1/2012 (See next slide for report requirements)

Current DEEP Permit Tiers/Mechanisms



Zero Day Permitting



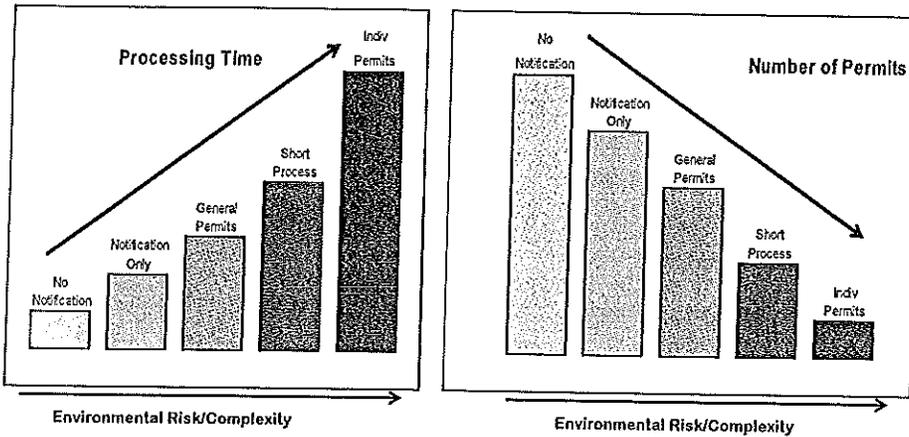
Zero day permit mechanisms include:

- Permit by rule
- Non-filing general permits
- Notification Only Filings

- DEEP currently has in place extensive and varied "zero day" permitting mechanisms that cover an estimated universe of 13,873 regulated entities.
- Zero day permitting allows a person to undertake a specific activity by:
 - Complying with specified conditions or best management practices and without filing any paperwork; or
 - Only filing notification with DEEP with no subsequent action by DEEP required.

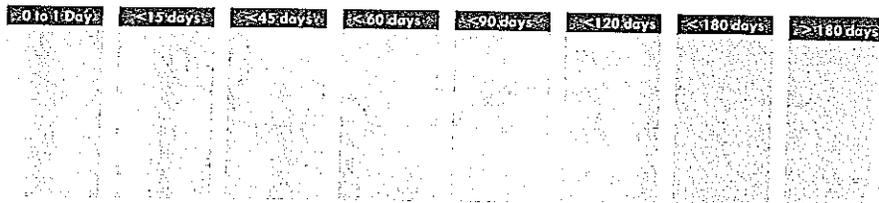
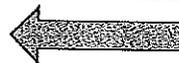
Relational View of DEEP Permit Mechanisms

CONCEPTUAL



Future Tiered Permit Structure – Standardization of bins

To extent possible move to left where applicable and compatible with environmental standards



- DEEP permit transformation items focused on ongoing /planned efforts for further LEANing
- Not all bins applicable to all permit programs

Permitting Narrative The State of DEEP Permitting 2010

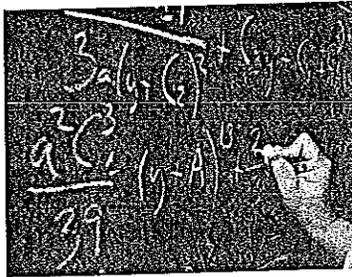
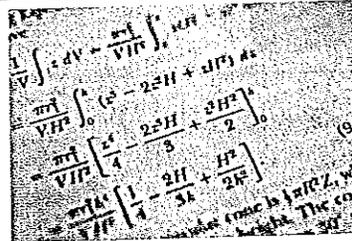
In depth analysis of current condition undertaken

Large volume of actions processed annually

Permit programs are delivering high quality and generally timely permits

Effects of LEAN readily seen in 2010 permit timeframe numbers

Significant improvement and performance by DEEP permitting programs demonstrated

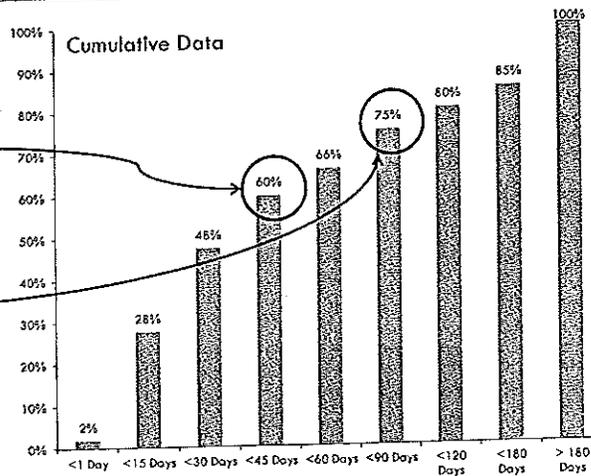


The State of DEEP Permitting Actions 2010

Over half (60%) of all applications received in 2010 were acted on in less than 45 total elapsed days

75% of applications were acted on in less than 90 total elapsed days

Data based on EQ applications received during calendar year 2010



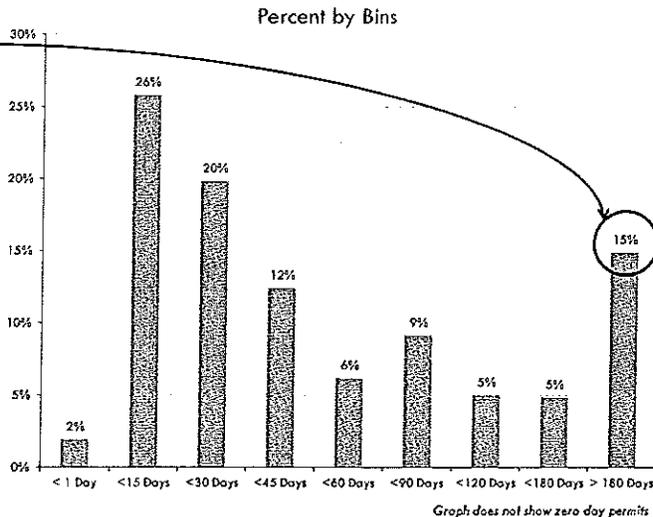
Graph does not show zero day permits

The State of DEEP Permitting Actions 2010

Only 15% are taking longer than 180 days.

These are the most complex or controversial

Demonstrates that due to General Permits and LEAN the vast majority of actions are handled promptly



Resources

- Human and technical resources needed to provide level of services desired by regulated community and the public:
- IT – provide e-filing, docket system, e-transactions
- Attorneys – provide timely legal determinations/reviews/hearing assistance
- Permitting – provide technical and expert specialists from throughout the agency to meet timeframes and address backlogs
- Compliance Assistance and Outreach – provide technical assistance, outreach and oversight
- Public Participation – provide transparency and responsiveness to public, enhanced interaction



2011 Two Storm Responsiveness:

Significant resources from all parts of agency, including permitting, diverted for over a month to respond to storm emergencies & provide assistance.

Has impact to permit timeliness and contributes to backlog, through both diverting staff for direct response and increasing the number of applications.

