



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

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

Public Hearing – Wednesday February 22, 2012
Environment Committee

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

Raised Bill No. 87 – An Act Concerning Water Quality Certification Applications

Thank you for the opportunity to present testimony regarding Raised Bill No. 87 – AN ACT CONCERNING WATER QUALITY CERTIFICATION APPLICATIONS. The Department of Energy and Environmental Protection (DEEP) welcomes the opportunity to offer the following testimony.

The proposed bill will allow applicants for a Water Quality Certificate under section 401 of the federal Clean Water Act to request that the Commissioner of DEEP conduct a full contested case hearing, with a further opportunity to appeal the Commissioner's decision to Superior Court. Section 401 requires applicants for certain federal permits to obtain a certificate from the appropriate state agency assuring that the state's Water Quality Standards will not be violated by the proposed activity.

We appreciate the Committee's interest in providing applicants with the opportunity for a hearing. However, the language of the raised bill will have negative implications for permitting efficiency. Contested case hearings are often lengthy and time-consuming for both DEEP staff and the applicant, and enactment of this bill will lengthen processing times and reduce permitting efficiency not just for those applications that go to hearing, but also for other applications as staff resources are shifted from the permitting process to the hearing process. We estimate that each hearing requires 480 to 640 hours of staff time for a hearing officer and program staff. Our rough calculation suggests that the likely six to ten additional hearings per year engendered by this bill and by Senate Bill No. 86 would necessitate between 1.5 and three additional FTEs between the Department's Office of Adjudications, Office of Long Island Sound Programs, and Inland Water Resources Division.

In addition, we believe that the general public, and not just permit applicants, have an interest in projects requiring Water Quality Certifications. Fairness in the regulatory process should also extend to neighbors, municipalities, and other stakeholders that may be concerned with such

projects. If applicants are to obtain a full contested case hearing upon request, the bill should be amended to provide that other interested parties also have the opportunity for hearings.

Moreover, with regard to providing applicants a right to appeal, it is important to note that applicants who disagree with DEEP's decision regarding a Water Quality Certificate are not without recourse under current law. A section 401 Water Quality Certificate is never considered in isolation, rather it is always associated with an underlying federal permit application, and often with another state DEEP permit application or a municipal inland wetlands permit application. Thus, applicants already can avail themselves of the full range of comment, hearing and appeal opportunities provided by the primary federal, state and/or local permit processes, including the opportunity to appeal the decision to state or federal court. This bill will allow the applicant an auxiliary hearing opportunity on water quality issues, with the inevitable delays and diversions of staff resources involved in a contested case hearing at the state level.

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