



CCM 2012 Testimony

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ENVIRONMENT COMMITTEE

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The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 90% of Connecticut's population. We appreciate the opportunity to testify on bills of interest to towns and cities.

CCM opposes SB 265 "An Act Concerning the Taxation of Refuse Exported from Connecticut."

This bill would increase the solid waste assessment fee, from \$1.00 to \$1.50 per ton, for any "Connecticut-generated" solid waste deposited out-of-state for processing – *a 50% increase in this fee.*

It is an unconstitutional and costly unfunded state mandate.

PROPOSAL IS UNCONSTITUTIONAL

This proposal in violation of the Commerce Clause of the United State's Constitution - under which the United States Supreme Court, in United Haulers Association, Inc., et al., v. Oneida-Herkimer Solid Waste Management Authority, 550 US 330 (2007), ruled that any ordinance, statute or other exercise of regulatory authority that directs solid waste to a facility that is not publicly owned and publicly operated, is a violation of the dormant Commerce Clause of the United States Constitution. It would also create a situation under which in-state repositories would not have to be competitive in their rates, as they would have a captive audience.

Municipalities should continue to retain their rights to search for, and select, the most cost-efficient and effective means to dispose of their waste.

NEW REQUIREMENTS FOR SOLID WASTE DISPOSAL PROPOSED BY DEEP

It has been brought to our attention that, as transfer station permits are being renewed, the Connecticut Department of Environmental Protection (DEEP) is taking steps to place requirements on permittees that will mandate adherence to the priority hierarchy for disposal of waste, as recommended in the state's Solid Waste Management Plan (SWMP). While this is a laudable goal, the hierarchy is not always the most cost effective and efficient manner for each and every situation.

The SWMP is meant to act as guidance and is not codified in regulation or statute. CCM is concerned about DEEP unilaterally imposing such potentially costly requirements on new permits. (The City of Danbury is estimating the rule will cost the City \$6 million.) A new mandate such as this, which could have huge fiscal implications, should follow through either the regulatory or legislative process. The UAPA defines "regulation" as "each agency statement of general applicability, without regard to its designation, *that implements, interprets, or prescribes law or policy.*" (emphasis added) § 4-166 (13).

Failure to follow the procedures for adoption of proposed regulations bypasses three important statutory directives for rulemaking:

- a. Review of the proposed regulation by the Attorney General, in accordance with §4-169, C.G.S., as to legal sufficiency.
- b. Review of the proposed regulation by the standing Legislative Regulation Review Committee, as required by §4-170, C.G.S.
- c. Preparation of “a fiscal note, including an estimate of the cost or of the revenue impact on the state and any municipality,” also required by §4-170, which is to be appended to the submission of the proposed regulation to the Legislative Regulation Review Committee.



In closing, **CCM urges this committee to (1) *require that DEEP utilize the proper regulatory process*** if they chose to proceed with any new mandates on permits, and ensure that all parties, including the Legislative Branch, are able to participate in the discussion; and **(2) *take no action on the underlying proposal in this bill.***



If you have any questions, please contact Kachina Walsh-Weaver, Senior Legislative Associate of CCM via email kweaver@ccm-ct.org or via phone (203) 710-9525.