

The Connecticut General Assembly

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Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: May 22, 2012

Regulation No:	2012-12
Agency:	Connecticut Siting Council
Subject Matter:	Rules of Practice of the Council
Statutory Authority: (copy attached)	16-50j(g), 16-50kk, 22-116

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

For the Committee's Information:

Substantive Concerns:

1. On page 5, in section 16a-50j-2a(18), the council defines person as having the same meaning as provided in two sections of the general statutes, sections 16-50i and 22a-115. The two definitions although similar are not identical, and it is unclear how "person" is defined for purposes of the regulation. In section 22a-115, "Person" means any individual, corporation, limited liability company, joint venture, public benefit corporation, partnership, association, trust or estate, the state and its agencies and political subdivisions, the federal government and its agencies, and any other entity, public or private, however

organized'; In section 16-50i, "Person" means any individual, corporation, limited liability company, joint venture, public benefit corporation, political subdivision, governmental agency or authority, municipality, partnership, association, trust or estate and any other entity, public or private, however organized'. Section 22a-115 specifically references the federal government whereas section 16-50i uses the term "governmental agency" which may or may not include the federal government. Additionally, if the definitions are changed further by act of the General Assembly, further conflicts could develop. The agency should select and cite to one definition.

2. On page 9, in section 16-50j-15b(a), the regulation conflicts with section 16-50n of the general statutes and exceeds the council's statutory authority. Section 16-50n of the general statutes states that anyone may make a limited appearance and that it is within the discretion of the council whether that appearance is oral and under oath or not, whereas the regulation provides that whether someone is permitted to make a limited appearance is within the council's discretion.

3. On page 11, in section 16-50j-21(a)(1), the existing regulation states that the written notice of a hearing shall be sent not later than one week after the fixing of the date and the council has added "or not less than 30 days prior to a hearing date". It is unclear what the actual deadline is for notice under this section, and the council should indicate what the actual deadline is by adding "whichever is later" or "whichever is earlier" depending on the council's intent.

4. On page 13, in section 16-50j-22a(d)(1) the council refers to "Proprietary information as defined under Section 1-210(b) of the Connecticut General Statutes". The term "proprietary information" is neither referenced nor defined in said section. The council should substitute whatever term is actually used in said statutory section, and since section 1-210(b) is not a definitional section, "described" rather than "defined" should be used.

5. On page 24, in section 16-50j-60 it is unclear what effect the new language "or if the Council act to approve, modify or disapprove the plan or a section within thereof within 60 days after receipt of it" has. If the council intends that any plan that the council has not acted upon within 60 days be deemed approved, the regulation should state that. The same change should be made on page 32 to section 16-50j-75(d).

6. On page 26, in section 16-50j-629(a) the council is changing "The company shall inform the council" to "The Council shall receive" and by changing from active to passive voice makes it unclear who is required to inform the council. If the council's intent was to require the certificate holder or facility owner or operator to inform the council it should specify as such.

7. On page 34, in section 16-50j-76(3)(E), states "watercourse bank restoration as defined in Chapter 440 of the Connecticut General Statutes". The term "watercourse bank restoration" is not referenced in said chapter or defined so the meaning of this provision is unclear.

8. On page 34, in section 16-50j-77(b)(4) there is one instance where the council has retained reference to "certificate holder" and has not added "facility owner or operator" and it is unclear whether that was an oversight or intentional.

9. On page 39, section 16-50v-4 paraphrases section 16-50bb of the general statutes and should be rewritten to cite to and not repeat the provisions to avoid any potential conflict if the statute is subsequently amended. Also in said section, on page 40, subsection (b)(4) provides that any funds remaining after payments made to the municipalities shall be refunded to the applicant, which is not provided for in the statute which mentions the carrying forward of balances. The provision does not appear to be authorized by the statute.

10. On page 41, in section 16-50z-4(c), the council requires notice to be published in accordance with section 16-50m of the general statutes, but said section only references the mailing of notices, not the publishing of them so the effect of this provision is unclear.

11. On page 44, in section 22a-116-B-5(b), the existing regulation refers to a certificate described in section 22a-115, but section 22a-115 is a definitional section which does not mention a certificate and it is possible the council meant to refer to section 22a-117 which describes a certificate of public safety and necessity.

Technical Corrections:

1. Throughout the proposed regulation, the council should verify that newly added language added to an existing regulation is underlined and that the text of the regulation accurately reflects the text of the existing regulation since in many cases the council underlined existing periods, left out words and at times changed words of the existing regulation without the appropriate bracketing and underlining. (See comment 6) The instances of this are too numerous to note completely in this report. For example, on page 2 in section 16-50j-2a(1)(B), in the last line, the period is existing and should not be underlined.

2. Throughout the proposed regulation, the council has been inconsistent in its capitalization of "council" and at times capitalizes such term without indicating that this is a change from the existing regulation, which often does not capitalize "council". For example, on page 2, in section 16-50j-2a(3), in the last line, "Council" is shown capitalized whereas it is not capitalized within the existing regulation. If the council wishes to change the capitalization, it should bracket "council" and insert "Council" following the closing bracket. The capitalization of the term is inconsistent throughout the existing and the new regulation, and while neither way is incorrect, the council should choose whether it will be capitalized or not and change existing and new references to conform to that decision. Similarly, in said subdivision "Certificate of Environmental Compatibility and Public Need" is not capitalized within the existing regulation and to make this change the council should bracket the existing reference and underline the newly capitalized reference. As another example, on page 23, "d & m" is not capitalized within the existing regulation and

if the council wishes to change that phrase to be capitalized, any references should be "[d & m] D & M" for proper form.

3. Throughout the proposed regulation, if the council is amending an existing regulation and has pulled in the text of the existing regulation, newly added language should be indicated by underlining, and not by prefacing the newly added language by "(NEW)". For example, on page 3 in section 16-50j-2a, newly added subdivisions (5) and (6) should be underlined and the references to "(NEW)" deleted. Similarly, throughout the proposed regulation the introductory language of an existing regulation should not reference the subsections of the section being amended unless only the subsections referenced are set forth in the proposed regulation. For example, on page 6, in section 16-50j-12, the introductory language should read "Section 16-50j-12 of the Regulations of Connecticut State Agencies is amended to read as follows" and on page 7, the newly added subsections (b) to (f), inclusive should be underlined and the references to "(NEW)" deleted.

4. Throughout the proposed regulation, the council is inconsistent in its capitalization of "section" in its references to the Connecticut General Statutes. The council should decide which it prefers and either modify its new provisions or the existing provisions to conform to its decision. For example, on page 4, in section 16-50j-2a(11), "section" is used whereas in subdivision (13) of said section "Section" is used.

5. Throughout the proposed regulation, subsections should be located under rather than after the catchline containing the section reference to conform to the existing regulation and the indenting of the regulation should be corrected to allow the subsections to line up. For example, on pages 13 to 14, in section 16-50j-26, the text of (a) should be located under "**Sec. 16-50j-26. Record.**" and (b) and (c) should be moved further into the left margin.

6. Throughout the proposed regulation, if the council wishes to make a change in a word such as changing singular to plural, capitalizing a term or changing a noun to a verb, it should bracket the existing word and after the closing brackets place the underlined word in the form desired by the council. For example, on page 32, in section 16-50j-75(c), "[in consult[ation]" should be "[in consultation] consult" for proper form.

7. Throughout the proposed regulation, new text should be placed after the closing bracket for proper form. For example, on page 24, in section 16-50j-61(b)(2), "site [right-of-way]" should be "[right-of-way] site" for proper form.

8. Throughout the proposed regulation, catchlines of subsections should be in bold for consistency with the existing regulation. For example, on page 35, in section 16-50j-77(d), "Final Report." should be "**Final Report.**"

9. On page 1, the first section of the regulation is adding a new section 16-50j-1, but there is already an existing section 16-50j-1, which on page 2 of the regulation in section 2 of the regulation the Council is attempting to redesignate as section 16-50j-1a. To accomplish this, the Council should in the introductory language of section 1 state that "Section 16-50j-1 of the Regulations of Connecticut State Agencies is amended to read as follows" and should show the existing provisions bracketed, with the newly added language underlined

and following the closing bracket, and in section 2 state that "Section 16-50j-1a of the Regulations of Connecticut State Agencies are amended by adding section 16-50j-1a as follows:" and set forth the text of existing section 16-50j-1 as new.

10. On page 1, in section 16-50j-1(a), in the fourth line, "Chapter 277A" should be "Chapter 277a" for proper form and should be followed by a reference to the Connecticut General Statutes for clarity.

11. On page 2, in section 16-50j-1a, in the last line "Title 22a" should be substituted for "Section 22a" for accuracy.

12. On page 2, in section 16-50j-2a(1), subparagraph references (A) and (B) should be underlined for proper form as new language and in said subparagraph (A), in the third line, "an integral part to" within the brackets should be "an integral part of" to conform to the text of the existing regulation. Also in said subparagraph, "tower; or" should be "tower; or" to conform to the text of the existing regulation.

13. On page 2, in section 16-50j-2a(3), the references to the two types of certificates should be followed by "as described by" rather than "as defined by" for accuracy and clarity.

14. On page 3, in section 16a-50j-2a(4), the reference to "16-50j(d)" should be "16-50j(e)" for accuracy, so either the subsection reference should be deleted because it will become inaccurate whenever the statute is amended, or the reference should be changed to "(e)".

15. On page 3, in section 16a-50j-2a(7), the definition of "contested case" cites to section 4-166 of the general statutes while also paraphrasing said section. The agency should merely cite to said section and delete any paraphrased language for clarity and proper form.

16. On page 3, in section 16a-50j-2a(8), in the third line "inclusive" should be inserted prior to the closing bracket to accurately reflect the text of the existing regulation.

17. On page 4, in section 16a-50j-2a(15), subdivisions "(1)" and "(2)" should be "(i)" and "(ii)" for proper form. Also in said subdivision, "Commissioner of the Department of Energy" should be "Commissioner of Energy" for proper form.

18. On page 4, in section 16a-50j-2a(15)(B), in the fifth line, "Waste Compact" should be "Waste Management Compact" for accuracy.

19. On page 5, in section 16a-50j-2a(18), "[sic]" should be deleted for proper form.

20. On page 5, in section 16a-50j-2a(22), "is located, shall be located or is" should be "are located, will be located, or are" for proper grammar.

21. On page 7, in section 16-50j-12(e), in the second line, "shall elect" should be "may elect" for proper form.

22. On page 7, in section 16-50j-13, in the second line, "subsections (1) to" should be

"[subsections] subdivisions (1) to" for accuracy.

23. On page 8, in section 16-50j-14(c), "their intent" should be "his or her intent" for proper grammar. The same change should be made on page 9, in the last line of section 16-50j-15(c).

24. On page 10, in section 16-50j-18, the fourth line of the regulation should be moved to the third line after "ruling that" for proper form.

25. On page 14, in section 16-50j-28(d)(1) the text of the subdivision paraphrases the text of section 4-178 of the general statutes, and it should be modified to merely cite to the applicable section to avoid a potential conflict if the statutory section is amended in the future. Similarly, in subsection (b) and (f), the new language also repeats the language of section 4-178 and should be modified to merely cite to said section.

26. On page 15, in section 16-50j-32, in the first line, the council has deleted "herein" which is located after "manner" in the existing regulation. If it is the council's intention to delete the term, it should bracket the term and replace it with a specific reference to the applicable sections of the regulation.

27. On page 15, in section 16-50j-37, in the first line "shall] Within [60]" should be "shall within 60] not later than" for clarity and proper form.

28. On page 17, in section 16-50j-40(a), in the eleventh line, "shall mean" should be "means" for proper form and clarity.

29. On page 18, the department is adding new sections 16-50j-44 and 16j-50j-56 and the existing regulations has sections 16-50j-44 to 16-50j-59 as reserved, so the agency should modify the reference to reserved sections to bracket the existing references and to indicate that sections 16-50j-45 to 16-50j-55 are reserved for proper form.

30. On page 19, in sections 16-50j-56 and 16-0j-57, in the catchlines the underlining should be removed. For example, "**Sec. 16-50j-56**" should be "**Sec. 16-50j-56**" for proper form.

31. On page 21, in section 16-50j-58, in the seventh line, "its intent" should be "such owner or operator's intent" for clarity and proper grammar.

32. On page 22, in section 16-50j-59, subsections (a) to (s), inclusive should be subdivisions (1) to (19), inclusive for proper form, and subdivisions within said subsections should be subparagraphs for proper form.

33. On page 22 and 23, in section 16-50j-59, subsections (d)(2) and (q)(2) use different methods to refer to feet and inches and should use the same format for proper form.

34. On page 24, in section 16-50j-61, throughout the section the council is bracketing references to "in." and "ft." but as said references do not appear within the existing regulation, such references should be deleted.

35. On page 24, in section 16-50j-61(b)(6), the list of trees or shrubs should be in two columns for ease of reading, clarity and to conform to the format of the existing regulation.
36. On page 25, in section 16-50j-61(c), the catchline should be **[Subsequent Supplemental information.]** to conform with the existing regulation.
37. On page 25, in section 16-50j-61(c)(2), the language beginning with "[special steps]" should be moved to the previous line for proper form, "[sub]section" should be "[subsection] section" for proper form and in subparagraph (A) of said subdivision, "techniques at wetland and watercourse[s to be crossed by construction vehicles] crossings" should be "techniques at [watercourses to be crossed by construction vehicles] wetland and watercourses crossings" for proper form.
38. On page 25, in section 16-50j-61(c)(2)(C), "adverse modifications or impacts of such actions" should be "adverse impacts of such actions or modifications" for accuracy.
39. On page 25, in section 16-50j-61(c)(2)(F) "archaeological" should be "[archaeologic] archaeological" for proper form and references to the "Connecticut Commission on Culture and Tourism or its successor agency" should be "the Department of Economic and Community Development or its successor agency" since DECD is the successor agency to the Connecticut Commission on Culture and Tourism pursuant to section 32-1s of the general statutes. The same change should be made on page 34, in section 16-50j-76(3)(F).
40. On page 26, in section 16-50j-61(d), all of the language should be underlined as new language and in the second line, "or any section thereof" is repeated twice and one of the phrases should be deleted.
41. On page 26, in section 16-50j-62(b)(2)(D), "[,]" should be "[.]" to accurately reflect the text of the existing regulation.
42. On page 27, in section 16-50j-629d), in the second line, "a" should be inserted before "protective order" for proper grammar.
43. On page 29, in section 16-50j-72(d)(2), "30 day advance written notice prior" should be "advance written notice not less than 30 days prior" for clarity.
44. On page 29, in section 16-50j-72(d)(2), the prefatory language "Such notice shall state:" should be "Such notice shall include:" because it does not make sense when read with the new subparagraph (B) "A letter..." ; since a notice does not state a letter. Similarly, in subdivision (3) of said subsection "deployment stating" should be "deployment including" for clarity.
45. On page 30, in section 16-50j-72(3)(F), in the last line, "grant approval for an extension." should be "[grants] grant approval for an extension." to conform with the text of the existing regulation.

46. On page 30, in section 16-50j-73, "Except" should be "[The] Except", in the second line "the owner" should be "the owner" to conform with the text of the existing regulation and in the fifth line, "property owner" should be "the property owner" for proper grammar.

47. On page 31, in section 16-50j-74(q), in the first line, "if applicable," should be moved to after "proposed tower" and the extra bracket after "equipment" should be deleted for proper form. In subdivision (1) of said subsection, "in." should be ' ' and "ft" should be ' ' to conform with the text of the existing regulation.

48. On page 32, in section 16-50j-74(s), "additional" should be "Additional" for consistency with the rest of the section.

49. On page 32, in section 16-50j-75, before "**Part 2**", should be "**[Cable Antenna Television Tower and Telecommunications Tower and Associated Equipment Development and Management Plan]**" to conform with the text of the existing regulation.

50. On page 32, in section 16-50j-75(b), in the second line, "[Secs.] Sections 16-50j-76[--]" should be "[Section] Sections 16-50j-76 [through]" to conform with the text of the existing regulation.

51. On page 33, in section 16-50j-76(b)(1) "contiguous" should be "contiguous to" and in subsection (b)(5) "probably" should be "probable" to conform with the text of the existing regulation.

52. On page 34, in section 16-50j-76(6), "for the" should be inserted before "periodic" for proper grammar.

53. On page 35, in section 16-50j-77(c), subdivisions (1) to (5) of the existing regulation are missing and if it is the council's intent to delete those provisions, they should be set forth within brackets.

54. On page 35, in section 16-50j-89(a)(3), "a licensed engineer in" should be "an engineer licensed in" for clarity and subdivision (5), "on" should be inserted before "visibility" for proper grammar.

55. On page 36, in section 16-50j-89 (7) and (8), "such" should be capitalized for consistency with the other subdivisions.

56. On page 39, in section 16-50v-1a(b), under the "**Fee**" column, the two references to "Whichever" should not be capitalized and "[\$25,000]" should be "[\$25,000.00]" to conform with the text of the existing regulation.

57. On page 40, in section 16-50z-1, in the fourth line, "therefore" should be "therefor" for proper grammar and to conform with the text of the existing regulation.

58. On page 40, in section 16-50z-2, in the eighth line, "administrative] Regulations of Connecticut State Agencies and section 16-50/" should be "administrative regulations]"

Regulations of Connecticut State Agencies and section 16-50/(b)" to conform with the text of the existing regulation.

59. On page 41, in section 22a-116-B-1, the existing regulation refers to provisions of the general statutes "as amended" which exceeds the council's statutory authority and should be bracketed. The same change should be made in section 22a-116-B-3(b) and (c), section 22a-116-B-6 and 22a-116-B-7(b)(1).

60. On page 41, in section 22a-116-B-1, "Section 22a-122" should be "Section [22a-122] 22a-122-1" for accuracy.

61. On page 42, in section 22a-116-B-2(13), subsections (a) to (c), inclusive, should be subparagraphs (A) to (C), inclusive, for proper form.

62. On page 45, in section 22a-116-B-7, "4-185" should be "[185] 4-185" for proper form.

63. On page 46, in section 22a-116-B-7, adding "alternative" is duplicative of "other" so the council should either delete "alternative" or bracket "other".

64. On page 47, in section 22a-116-B-7(c)(5), "set for" should be "set forth" to conform with the text of the existing regulation and "of the Regulations of Connecticut State Agencies" should be added after "22a-116-B-11" for clarity and consistency.

65. On page 48, in section 22a-116-B-9(6), "and" should be added after "experience;" and in subsection (e), "with" should be inserted before "a minimum" and the opening parenthesis inserted before "B)" to conform with the text of the existing regulation.

66. On page 48, in section 22a-116-B-9(e)(1)(B)(iii), "status" should be "the status" for proper grammar and in (B)(vi) "the decision and order" within the brackets should be deleted to conform with the text of the existing regulation.

Recommendation:

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part X Rejection without prejudice</p>

Reviewed by: Shannon McCarthy /

Date: April 27, 2012

Section 16-50j(g) From 2012 Supplement

(g) The council shall, in addition to its other duties prescribed in this chapter, adopt, amend, or rescind suitable regulations to carry out the provisions of this chapter and the policies and practices of the council in connection therewith, and appoint and prescribe the duties of such staff as may be necessary to carry out the provisions of this chapter. The chairman of the council, with the consent of five or more other members of the council, may appoint an executive director, who shall be the chief administrative officer of the Connecticut Siting Council. The executive director shall be exempt from classified service.

From 2012 Supplement

Sec. 16-50kk. Regulations re wind-powered generation. (a) On or before July 1, 2012, the Connecticut Siting Council, in consultation with the Department of Energy and Environmental Protection, shall adopt regulations, in accordance with the provisions of chapter 54, concerning the siting of wind turbines. Such regulations shall include, but not be limited to, (1) a consideration of (A) setbacks, including considerations of tower height and distance from neighboring properties; (B) flicker; (C) a requirement for the developer to decommission the facility at the end of its useful life; (D) different requirements for projects of different sizes; (E) ice throw; (F) blade shear; (G) noise; and (H) impact on natural resources; and (2) a requirement for a public hearing for wind turbine projects.

(b) The Connecticut Siting Council shall not act on any application or petition for siting of a wind turbine until after the adoption of regulations pursuant to subsection (a) of this section.

Sec. 16-50t. Regulations and standards. Hearing. Certain expenditures excluded in computation of fair net return. (a) The council shall prescribe and establish such reasonable regulations and standards in accordance with the provisions of chapter 54 as it deems necessary and in the public interest with respect to application fees, siting of facilities and environmental standards applicable to facilities, including, but not limited to, regulations or standards relating to: (1) Reliability, effluents, thermal effects, air and water emissions, protection of fish and wildlife and other environmental factors; (2) the methodical upgrading or elimination of facilities over appropriate periods of time to meet the standards established pursuant to this subsection or other applicable laws, standards or regulations; and (3) the elimination of overhead electric transmission and distribution lines over appropriate periods of time in accordance with existing applicable technology and the need to provide electric service at the lowest reasonable cost to consumers.