



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

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

Public Hearing – February 28, 2014
Environment Committee

Testimony Submitted by Interim Commissioner Robert J. Klee
Presented By Deputy Commissioner Macky McCleary

House Bill No. 5308 (Raised) - AN ACT CONCERNING THE REGULATION OF FRACKING WASTE

Thank you for the opportunity to present testimony regarding Raised House Bill No. 5308 – AN ACT CONCERNING THE REGULATION OF FRACKING WASTE. The Department of Energy and Environmental Protection (DEEP) welcomes the opportunity to offer the following testimony.

DEEP strongly supports the bill that we requested the Environment Committee raise on our behalf. However, due to slight changes in drafting, we request that the Committee take a closer look at the language of Raised House Bill No. 5308 to make certain it is consistent with our intent.

Background:

Prompted by recent developments associated with the production of natural gas, DEEP became aware that under current law, drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy are exempt from coverage under the state's hazardous waste program. This is the case regardless of the quantity of such wastes, their nature or toxicity, or the environmental risks posed by such wastes.

Under the federal hazardous waste law, the Solid Waste Disposal Act (later amended by the Resources Conservation and Recovery Act - RCRA), EPA has adopted hazardous waste regulations. States, acting under their own state law, can also adopt hazardous waste regulations. (In Connecticut, DEEP has enacted hazardous waste regulations under 22a-449(c)). At the federal level, RCRA provides a process by which the federal government, through EPA, can review and approve a state's hazardous waste program. Provided a state's program is approved by EPA, with certain exceptions not relevant to the change under consideration, the state's hazardous waste program operates in lieu of the federal program. Connecticut's hazardous waste program was approved by EPA and has operated in lieu of the federal program for more than twenty years.

Thus, Connecticut has adopted a hazardous waste program comprised of a comprehensive set of requirements aimed at ensuring the safe management of wastes. This proposal would ensure that currently federally and state “exempt” wastes from the oil, gas and geothermal energy industries are subject to regulation under Connecticut’s program.

As a point of information, even though the language of the revision makes reference to the term “solid waste” under the state’s hazardous waste program the term solid waste includes wastes in liquid form. Solid waste is defined as “any discarded material” regardless of whether the material being discarded is liquid, solid, semi-solid or gaseous. Connecticut’s hazardous waste program could not have been approved by EPA if it did not have such coverage. Many of the wastes covered under the hazardous waste program are in liquid form (e.g., spent solvents) - and since the outset of the state’s hazardous waste program, the program has regulated wastes in liquid and other forms. In fact, there are some rules that are directed solely at liquids, including, but not limited to, the rule regarding liquids in landfills or the rules for drip pads.

Language of the Bill:

In our submittal to the Environment Committee we requested that the following language be raised.

Section 1. Section 22a-449 of the general statutes is amended by adding subsection (j) as follows
(Effective from passage):

(NEW) (j) Solid wastes identified in 40 C.F.R. Part 261.4(b)(5) shall be subject to Connecticut’s hazardous waste management regulations, sections 22a-449(c)-100 to 22a-449(c)-119, inclusive, and section 22a-449(c)-11 of the Regulations of Connecticut State Agencies. Nothing in this section shall affect or be construed to relieve any person from such person’s obligation to comply with any other state or federal requirement or regulation applicable to the solid wastes identified in 40 C.F.R. Part 261.4(b)(5).

The language of Raised House Bill 5308 is:

Section 1. Section 22a-449 of the general statutes is amended by adding subsection (j) as follows
(Effective from passage):

(NEW) (j) The Commissioner of Energy and Environmental Protection shall regulate as a hazardous waste any solid waste identified in 40 CFR Part 261.4(b)(5), in accordance with regulations adopted by the commissioner for the management of hazardous waste, pursuant to chapter 445 of the general statutes. Nothing in this subsection shall be construed to affect any person's obligation to comply with any federal or state law, rule or regulation that applies to any solid waste identified in 40 CFR Part 261.4(b)(5).

Our intent is to remove the exemption for “Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.” (This exemption at 40 CFR Part 261.4(b)(5) has been incorporated by reference into the state’s hazardous waste management regulations). As such, these wastes are not subject to regulation under the state’s hazardous waste program.

We are concerned that the language contained in Raised House Bill 5308 that reads: “. . . shall regulate as a hazardous waste . . .” might be misconstrued and require that the wastes in question be regulated as a hazardous waste, even if, for example, testing of such waste showed that it in fact was not a hazardous waste.

Given this potential for misunderstanding we suggest a better codification our intent would be to enact the following language.

Section 1. Section 22a-449 of the general statutes is amended by adding subsection (j) as follows (Effective from passage):

(New) (j) Notwithstanding section 22a-449(c)-101(a)(1) of the Regulations of Connecticut State Agencies, 40 C.F.R. Part 261.4(b)(5) shall not be incorporated by reference into Connecticut’s hazardous waste management regulations. The solid wastes identified in 40 C.F.R. Part 261.4(b)(5) shall be subject to Connecticut’s hazardous waste management regulations, Regulations of Connecticut State Agencies sections 22a-449(c)-100-119, inclusive, and section 22a-449(c)-11. Nothing in this section shall affect or be construed to relieve any person from such person’s obligation to comply with any other state or federal requirement or regulation applicable to the solid wastes identified in 40 C.F.R. Part 261.4(b)(5).

Removing this exemption for “drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy” (which include “fracking” wastes) would make these potentially hazardous materials subject to regulation under the Connecticut’s Hazardous Waste Program (CT’s “RCRA”) codified at Regulations of Connecticut State Agencies sections 22a-449(c)-100 to 22a-449(c)-119, inclusive, and section 22a-449(c)-11.

In summary, DEEP strongly supports the bill that we requested the Committee raise on our behalf. However, due to slight changes in drafting, we request that the Committee favorably report the language we suggest (***bold italics***) as a better way to codify our intention. We look forward to taking this step to ensure that wastes that qualify as being hazardous remain subject to regulation under the state’s hazardous waste program and we look forward to working with this the Committee to make certain any other wastes or by-products of the fracking process are properly regulated (including land application of waste or recycled products originating from the fracking process).

Raised Senate Bill No. 237 - AN ACT PROHIBITING THE STORAGE OR DISPOSAL OF FRACKING WASTE IN CONNECTICUT is also on the Environment Committee’s public hearing agenda. Raised Senate Bill No. 237 seeks to prohibit storage, or disposal of any material described in 40 CFR Part 641.4.(b)(5), “Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.” We believe this approach is an unnecessary burden on commerce. We believe the better view is to regulate this type of material through Connecticut’s existing hazardous waste program by enacting the language we propose for House Bill 5308.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact Robert LaFrance, DEEP’s Director of Governmental Affairs, at 860.424.3401 or Robert.LaFrance@ct.gov (or, Elizabeth McAuliffe, DEEP Legislative Liaison, at 860.424.3458 or Elizabeth.McAuliffe@ct.gov).