

**Testimony of Ann M. Catino**  
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Public Hearing, February 13, 2015  
Environment Committee

Proposed Bill No. 5405  
An Act Concerning Applications for New or Expanded Solid Waste Facilities

My name is Ann Catino and I am Chair of the Environmental and Land Use Practice Group at the law firm of Halloran & Sage. I am here today to testify *in opposition* to Bill No. 5405, An Act Concerning Applications for New or Expanded Solid Waste Facilities. Thank you for the opportunity to provide the Committee with comments.

I have been representing clients for over 25 years in the area of environmental law, including those owners of solid waste facilities who seek to obtain permits from Connecticut Department of Energy and Environmental Protection in order to construct, expand and operate these facilities.

First, I want to let you know that this bill is largely an attempt to derail my client, MSW Associates, as it is seeking a solid waste permit from the Connecticut Department of Energy and Environmental Protection. MSW Associates is a small, Danbury-based business whose owners grew up in Danbury. They are seeking to develop a new business in our state to provide another option in the Danbury area for the processing and recovery of materials from the solid waste stream. Specifically, MSW Associates is proposing a volume reduction plant to handle recyclables, C&D waste, scrap tires, metal, appliances, bulky waste and municipal solid waste on Plumtrees Road in Danbury. It is located in an industrial zone, on the site of an existing autobody repair shop and right across the street from the former landfill, adjacent to the municipal waste water treatment facility, and next to an auto wrecking business and a large wood processing facility that is also considered a solid waste facility. MSW Associates has a terrific location for this type of facility and, when permitted, it will add jobs and be an economic driver for further investment in materials recovery in the region.

MSW Associates is proposing a state-of-the-art facility that will recover more from the state's waste stream than existing plants, given the new technology. Once operational, it will assist the

state to achieve the goal set by you, the legislators, in 2014 (Public Act 14-94) of achieving a 60% diversion rate through source reduction, reuse and recycling by 2024. In addition, last session, you set a strategy that includes “modernization of solid waste management infrastructure throughout the state through the efforts of private, public and quasi-public entities... [and] the recycling of construction and demolition debris.” MSW Associates will help meet the state’s goal of modernizing our solid waste infrastructure, diverting wastes from landfills and recovering valuable products from C&D and the other waste streams it will process.

MSW Associates’ permitting path is in progress and is far from easy. During 2007, it first filed an application with the City of Danbury’s Planning Commission for a transfer station on another parcel, which was denied. An appeal was taken and was recently decided by the court. The City also modified its zoning regulations in the interim to prohibit such facilities, which is not allowed under state law (CGS § 22a-208b). MSW Associates thereafter modified its facility and on May 3, 2011, the applicant filed an application to construct and operate this facility with DEEP. The DEEP then performed its review of the application and the draft permit was issued on November 19, 2013, almost 2 ½ years after the application was filed. Thereafter, the City and others intervened, opposing the application and an adjudicatory proceeding before a DEEP hearing officer commenced. This proceeding involves a discovery process and hearings (like a trial). *This occurred throughout 2014.* Specifically, following discovery and prehearing exchanges of documents, witness lists, exhibits, and prefiled testimony, the Hearing Officer convened 9 days of hearings over the course of 5 months. MSW Associates hired attorneys and consultants to present its case. Right now, the primary briefs have been filed with the hearing officer, and a decision is still several months away. Then there is a potential of another process before the Commissioner.

Should DEEP defer further consideration of its application, MSW Associates would suffer tremendously and it would be an injustice if this bill applied to MSW Associates’ pending proceeding. Significant resources have been expended by the applicant to get this far; DEEP staff also have spent considerable time and resources to review this application and to conduct this proceeding. To stop it now after almost four years not only wastes resources and staff time,

it is completely inequitable and amounts to a serious denial of due process. Moreover it sends the wrongheaded message to any applicant.

This bill creates unnecessary intervention in an ongoing administrative process and does more harm than good to applicants seeking DEEP permits. First, MSW Associates' draft permit, like all solid waste permits, provides as a condition that: "Nothing in this permit shall relieve the Permittee of other obligations under applicable federal, state and local laws." The permittee is to comply with local laws regardless of whether the DEEP permit is issued first. Therefore, this bill does nothing substantive that isn't already provided in the permit or in the law; but it wreaks havoc on the process and places the applicant in a disadvantageous position by creating further delay.

Second, although it clearly disenfranchises applications that are in the pipeline, it also provides a disincentive to new applicants. Because of administrative delays and other uncertainties that may be inherent in a DEEP process as opposed to a local proceeding (where time frames are more well established), applicants typically will carefully sequence or "dual track" applications. In other words, applicants will submit the various applications in a manner designed to achieve their goals of timely and efficient processing. Sometimes, state applications may go first, sometimes second and sometimes all applications are filed around the same time. To legislatively mandate an order would mean that an applicant could wait 10 years or more until it receives all its permits, which is not commercially reasonable or financeable.

Third, a workable permitting system is needed particularly when more recycling and volume reduction facilities like this are being promoted by the state so as to reduce the state's amount of waste. If these types of plants are needed from a solid waste management perspective in order to meet the state's goals, then such facilities should be put on a faster track as opposed to a lengthier one and it should be controlled more so by the state. This bill will result in very long permitting time frames that will discourage development and the state will likely not achieve its goals of enhanced material recovery with a 60 % diversion rate by 2024.

New processing facilities are needed, and they should be encouraged, with permitting streamlined. In the broad sense, this bill would have a far-reaching and chilling effect on solid waste facility development in this state. In the immediate situation of MSW Associates, this bill would stop a proceeding that has already taken almost 4 years and is not yet completed. MSW Associates is a small operation, with limited resources, whose investment to this date would be lost. They saw a business opportunity that advances a state interest. To pull the rug out from under them at this stage is not good public policy. Let the process continue. There is no need for this bill that can only cause more delay in an already overly lengthy process; moreover it essentially places considerable power in the hands of the municipality who could thwart the project and derail the state's objectives. Delaying this process through this bill is not justified, is inequitable and serves an extreme hardship on this applicant and any applicant seeking to locate or expand a solid waste facility in our state.

Thank you.