



CCM 2015 Testimony

900 CHAPEL STREET, 9th FLOOR, NEW HAVEN, CT 06510-2807 PHONE (203) 498-3000 FAX (203) 562-6314

Your source for local government management information www.ccm-ct.org

ENVIRONMENT COMMITTEE

February 27, 2015

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 156 towns and cities and over 96% of Connecticut's population. We appreciate the opportunity to testify on bills of interest to towns and cities.

HB 5709 "An Act Concerning the Department of Energy and Environmental Protection's Authority to Designate Additional Stormwater Sewer Systems Outside of Urban Areas"

CCM supports HB 5709.

HB 5709, would prohibit the Department of Energy and Environmental Protection (DEEP) from designating municipalities outside of the EPA defined urbanized area from being required to comply the General Permit for Small Municipal Separate Storm Sewer Systems (MS4).

This proposal would provide needed protection for 49 municipalities from a massive unfunded state mandate currently under consideration by DEEP. CCM urges the Committee to expand the scope of HB 5709 to provide protection to all towns and cities by (1) prohibiting DEEP from requiring any requirements within the proposed MS4 permit that would exceed EPA guidelines; (2) requiring that any general permit that would impose an unfunded mandate on towns and cities exceeding one million dollars to receive legislative approval and; (3) requiring DEEP to conduct a cost-benefit analysis of a proposed general permit.

The addition of these measures would provide needed municipal protections to prevent state agencies from imposing costly unfunded mandates, usurping local and legislative authority and failing to provide a needed cost-benefit analysis.

The MS4 permit as currently proposed by DEEP is the perfect example of why additional legislative protections are needed to prevent towns and cities from being subjected to agency permits well in excess of federal requirements and beyond the ability of municipalities to pay for their implementation.

There are over 1,200 state mandates imposed on towns and cities. The vast majority are unfunded, the proposed permit would be another one – and a hugely significant one. The MS4 permit would impose millions of dollars in new and unfunded state mandates on municipalities and their residential and business property taxpayers. These mandates would impose significant expenses that Connecticut's municipalities would be hard-pressed to meet and, if adopted, would likely result in towns and cities raising taxes, reducing key services or employee layoffs.

Beyond EPA guidelines and additional requirements:

The MS4 permit exceeds EPA guideline by creating a two-tier system that will require every town and city meet the requirements of the MS4 permit. The permit would also require towns and cities to apply MS4 requirements to an entire municipality not just the urbanized area. In addition the permit would add 16 additional requirements and adds 26 additional reporting requirements.

The current MS4 Permit which remains compliant with current EPA standards was issued in 2004 and reauthorized in 2009 has a compliance rate of less than 25%, this is not through a lack of municipal effort. Many municipalities have submitted stormwater management plans, various required reports, water samples, etc. to DEEP yet often receive no response. Given this fact it would seem illogical to expand the scope and requirements of the current permit and that efforts instead should be taken to assist towns and cities currently under the permit gain compliance before expanding the program.

CCM and member towns also question the exclusion of the State Department of Transportation from the requirements of the proposed permit. As many of the expanded aspects of the permit deal with street sweeping, snow management, and catch basin cleaning, how can an agency that maintains more 4,000 miles of roads throughout every town and city not be held to the same standards as our local communities? This permit as proposed would cover other state agencies and facilities, universities and Federal institutions and for this permit to be effective as written, DOT should be compliant as well.

Legislative oversight:

HB 5709 should be amended to (a) provide for legislative oversight of general permits, (b) establish clear standards for agencies and (c) prohibit DEEP from using permits to circumvent the regulatory process and the oversight provided by that process.

The current proposed MS4 permit is a clear example of DEEP attempting to regulate by permit. Several of the measures within the proposed permit would impose requirements that each municipality, in order to comply, would need to adopt new zoning requirements, legal authority, ordinances and regulations. If a permit intends to establish uniform requirements and standards in some or all instances, an agency such as DEEP should explain why it is choosing to set in motion the legislative process at the local level and rather than seeking approval for the desired legal authority statewide, through the General Assembly's legislative regulatory process.

Local zoning authority is delegated from the state to each municipality by statute or special act. The Department cannot usurp the zoning authority of towns or the Legislature by imposing zoning requirements through a general permit or convert various guidance manuals into regulations through the permit process. If the Department's goal is to create land use rules of general applicability that implement a law or policy, then it should do so at the state level through regulations or statute.

The need for fiscal analysis:

The current proposed MS4 permit would impose new or expanded mandates upon every town and city and, as originally proposed, would have cost municipalities more than \$100 million in capital, and operating expenses.

The MS4 permit as proposed by DEEP did not provide for an estimate on the cost to municipalities, or a cost benefit analysis for a permit that that would impose an unprecedented unfunded mandate on towns and cities. DEEP staff indicated upon the issuing the draft permit that there was no fiscal analysis, nor was there any

indication that they intended to determine the statewide cost of the proposed permit or that they would conduct what many would consider proper due diligence to determine the cost.

When a regulation or permit will require a significant investment of taxpayer money, we should expect at the least that the proposing agency would stop and ask these simple and fundamental questions: How much does it cost? Can we afford it? Who will pay for it?

Agencies should provide information on any efforts made to identify the true extent of those costs and staffing requirements, the ability of municipalities to pay for them and conduct a comprehensive cost-benefit analysis of proposed regulations and permits to ensure that costs will result in the desired and measurable improvements at a reasonable cost to local taxpayers.

Furthermore, CCM requests that agencies such as DEEP establish a collaborative process with towns and cities to fully vet the issues and costs associated with regulations and permits related to municipalities. A collaborative process between the State and municipalities would lead to a more efficient and cost effective process for the adoption of regulations and permits.

CCM urges the Committee to favorably report HB 5709 with recommended changes.



If you have any questions, please contact Randy Collins, Senior Legislative Associate, at rcollins@ccm-ct.org or (860) 707-6446