



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

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

Public Hearing – March 7, 2015
Government Administration and Elections Committee

Testimony Submitted by Commissioner Robert J. Klee

Raised Bill No. 5500 – AN ACT REQUIRING THE SUSPENSION OF ADMINISTRATIVE PENALTIES IMPOSED ON CERTAIN BUSINESS ENTITIES

Thank you for the opportunity to present testimony regarding Raised Bill No. 5500 – An Act Requiring the Suspension of Administrative Penalties Imposed on Certain Business Entities. The Department of Energy and Environmental Protection (DEEP) has serious concerns about the proposal and welcomes the opportunity to offer the following testimony.

This bill proposes to suspend penalties for first time violators for violations of any regulations of a state agency that are corrected within thirty days after the assessment of such penalty. DEEP opposes this proposed bill for several reasons. First, DEEP is obligated to operate its enforcement programs across our air, water and waste programs in accordance with certain federal delegations of authority. This proposal is inconsistent with portions of the federal delegation and, as a result, may jeopardize our ability to uphold these requirements which are tied to the receipt of significant federal funding.

Second, the two primary policies DEEP employs to assure consistent enforcement are the Enforcement Response Policy (ERP) and the Civil Penalty Policy. The ERP provides DEEP the flexibility necessary to prioritize its enforcement resources by focusing on the most significant environmental, human health and noncompliance problems. For businesses to compete fairly in Connecticut, we must also assure a level playing field including the removal of any economic advantage or savings realized by noncompliance. DEEP's Civil Penalty Policy sets forth a process for calculating civil penalties in cases where a penalty is warranted.

The proposed bill does not provide an exception for violations that pose a significant environmental or human health risk or noncompliance problem, creating an inconsistency with portions of DEEP's federal delegation and agency policies as well as creating a potential imbalance in assuring a level playing field for businesses to compete fairly in Connecticut. Additionally, corrective actions need to be done as soon after discovery and notice of the violations as possible. Allowing the conduct of remedial action thirty days after the assessment of the penalty allows the violation to go unaddressed for too long and

undermines the objectives of enforcement programs: prompt return to compliance, prompt and proper cleanup of pollution and its sources, and the environment and public health are protected.

In accordance with the ERP, two categories of violators deserve and get the most attention from enforcement staff. The first category of violators are those whose violations pose the greatest risk to public health and the environment within the State. These may be either criminal or civil violations or both. The second category of violators subject to heightened enforcement is the chronic or recalcitrant violator. The ERP, however, also provides DEEP with the flexibility to resolve, for instance, a minor violation with compliance achieved within thirty days of discovery of the violation through an informal action without a penalty. The minor violation would not be a significant threat to public health or the environment nor provide the regulated entity any economic benefit. Presently, DEEP finds the use of an informal action without a penalty an effective tool to achieve quick compliance. For every formal administrative action with a penalty issued, there are approximately ten informal actions issued.

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.