

House of Representatives, April 1, 1998. The Committee on Environment reported through REP. STRATTON, 17th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING WATER RESOURCE PROGRAMS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (b) and (c) of section  
2 22a-430 of the general statutes are repealed and  
3 the following is substituted in lieu thereof:

4 (b) The commissioner, at least thirty days  
5 before approving or denying a permit application  
6 for a discharge, shall publish once in a newspaper  
7 having a substantial circulation in the affected  
8 area notice of (1) the name of the applicant; (2)  
9 the location, volume, frequency and nature of the  
10 discharge; (3) the tentative decision on the  
11 application, and (4) additional information the  
12 commissioner deems necessary to comply with the  
13 federal Clean Water Act (33 USC 1251 et seq.).  
14 There shall be a comment period following the  
15 public notice during which period interested  
16 persons and municipalities may submit written  
17 comments. After the comment period, the  
18 commissioner shall make a final determination  
19 either that (A) such discharge would not cause  
20 pollution of any of the waters of the state, in  
21 which case he shall issue a permit for such  
22 discharge, or (B) after giving due regard to any

23 proposed system to treat the discharge, that such  
24 discharge would cause pollution of any of the  
25 waters of the state, in which case he shall deny  
26 the application and notify the applicant of such  
27 denial and the reasons therefor, or (C) the  
28 proposed system to treat such discharge will  
29 protect the waters of the state from pollution, in  
30 which case he shall, except as provided pursuant  
31 to subsection (j) of this section, require the  
32 applicant to submit plans and specifications and  
33 such other information as he may require and shall  
34 impose such additional conditions as may be  
35 required to protect such water, and if the  
36 commissioner finds that the proposed system to  
37 treat the discharge, as described by the plans and  
38 specifications or such other information as may be  
39 required by the commissioner pursuant to  
40 subsection (j) of this section, will protect the  
41 waters of the state from pollution, he shall  
42 notify the applicant of his approval and, when  
43 such applicant has installed such system, in full  
44 compliance with the approval thereof, the  
45 commissioner shall issue a permit for such  
46 discharge, or (D) the proposed system to treat  
47 such discharge, as described by the plans and  
48 specifications, will not protect the waters of the  
49 state, in which case he shall promptly notify the  
50 applicant that its application is denied and the  
51 reasons therefor. The commissioner shall, by  
52 regulations adopted in accordance with the  
53 provisions of chapter 54, establish procedures,  
54 criteria and standards as appropriate for  
55 determining if (i) a discharge would cause  
56 pollution to the waters of the state and (ii) a  
57 treatment system is adequate to protect the waters  
58 of the state from pollution. Such procedures,  
59 criteria and standards may include schedules of  
60 activities, prohibitions of practices, operating  
61 and maintenance procedures, management practices  
62 and other measures to prevent or reduce pollution  
63 of the waters of the state, provided the  
64 commissioner in adopting such procedures, criteria  
65 and standards shall consider best management  
66 practices. The regulations shall specify the  
67 circumstances under which procedures, criteria and  
68 standards for activities other than treatment will  
69 be required. For the purposes of this section,  
70 "best management practices" means those practices

71 which reduce the discharge of waste into the  
72 waters of the state and which have been determined  
73 by the commissioner to be acceptable based on, but  
74 not limited to, technical, economic and  
75 institutional feasibility. Any person who or  
76 municipality which is aggrieved by a decision of  
77 the commissioner [and whose] WHERE AN application  
78 has not been given a public hearing shall have the  
79 right to a hearing and an appeal therefrom in the  
80 same manner as provided in sections 22a-436 and  
81 22a-437. Any person who or municipality which is  
82 aggrieved by a decision of the commissioner [and  
83 whose] WHERE AN application has been given a  
84 public hearing shall have the right to appeal as  
85 provided in section 22a-437. The commissioner may,  
86 by regulation, exempt certain categories, types or  
87 sizes of discharge from the requirement for notice  
88 prior to approving or denying the application if  
89 such category, type or size of discharge is not  
90 likely to cause substantial pollution. The  
91 commissioner may hold a public hearing prior to  
92 approving or denying any application if in his  
93 discretion the public interest will be best served  
94 thereby, and he shall hold a hearing upon receipt  
95 of a petition signed by at least twenty-five  
96 persons. Notice of such hearing shall be published  
97 at least thirty days before the hearing in a  
98 newspaper having a substantial circulation in the  
99 area affected.

100 (c) The permits issued pursuant to this  
101 section shall be for a period not to exceed five  
102 years, except that any such permit shall be  
103 subject to the provisions of section 22a-431. Such  
104 permits: (1) Shall specify the manner, nature and  
105 volume of discharge; (2) shall require proper  
106 operation and maintenance of any pollution  
107 abatement facility required by such permit; (3)  
108 may be renewable for periods not to exceed five  
109 years each in accordance with procedures and  
110 requirements established by the commissioner; and  
111 (4) shall be subject to such other requirements  
112 and restrictions as the commissioner deems  
113 necessary to comply fully with the purposes of  
114 this chapter, the federal Water Pollution Control  
115 Act and the federal Safe Drinking Water Act. An  
116 application for a renewal of a permit which  
117 expires after January 1, 1985, shall be filed with  
118 the commissioner at least one hundred eighty days

119 before the expiration of such permit. The  
120 commissioner, at least thirty days before  
121 approving or denying an application for renewal of  
122 a permit, shall publish once in a newspaper having  
123 substantial circulation in the area affected,  
124 notice of (A) the name of the applicant; (B) the  
125 location, volume, frequency and nature of the  
126 discharge; (C) the tentative decision on the  
127 application, and (D) such additional information  
128 the commissioner deems necessary to comply with  
129 the federal Clean Water Act (33 USC 1251 et seq.).  
130 There shall be a comment period following the  
131 public notice during which period interested  
132 persons and municipalities may submit written  
133 comments. After the comment period, the  
134 commissioner shall make a final determination that  
135 (i) continuance of the existing discharge would  
136 not cause pollution of the waters of the state, in  
137 which case he shall renew the permit for such  
138 discharge, or (ii) continuance of the existing  
139 system to treat the discharge would protect the  
140 waters of the state from pollution, in which case  
141 he shall renew a permit for such discharge, (iii)  
142 the continuance of the existing system to treat  
143 the discharge, even with modifications, would not  
144 protect the waters of the state from pollution, in  
145 which case he shall promptly notify the applicant  
146 that its application is denied and the reasons  
147 therefor, or (iv) modification of the existing  
148 system or installation of a new system would  
149 protect the waters of the state from pollution, in  
150 which case he shall renew the permit for such  
151 discharge. Such renewed permit may include a  
152 schedule for the completion of the modification or  
153 installation to allow additional time for  
154 compliance with the final effluent limitations in  
155 the renewed permit provided (I) continuance of the  
156 activity producing the discharge is in the public  
157 interest; (II) the interim effluent limitations in  
158 the renewed permit are no less stringent than the  
159 effluent limitations in the previous permit; and  
160 (III) the schedule would not be inconsistent with  
161 the federal Water Pollution Control Act. No permit  
162 shall be renewed unless the commissioner  
163 determines that the treatment system adequately  
164 protects the waters of the state from pollution.  
165 Any person who or municipality which is aggrieved  
166 by a decision of the commissioner [and whose]

167 WHERE AN application for a renewal has not been  
168 given a public hearing shall have the right to a  
169 hearing and an appeal therefrom in the same manner  
170 as provided in sections 22a-436 and 22a-437. Any  
171 person who or municipality which is aggrieved by a  
172 decision of the commissioner [and whose] WHERE AN  
173 application for a renewal has been given a public  
174 hearing shall have the right to appeal as provided  
175 in section 22a-437. Any category, type or size of  
176 discharge that is exempt from the requirement of  
177 notice pursuant to subsection (b) of this section  
178 for the approval or denial of a permit shall be  
179 exempt from notice for approval or denial of a  
180 renewal of such permit. The commissioner may hold  
181 a public hearing prior to approving or denying an  
182 application for a renewal if in his discretion the  
183 public interest will be best served thereby, and  
184 he shall hold a hearing upon receipt of a petition  
185 signed by at least twenty-five persons. Notice of  
186 such hearing shall be published at least thirty  
187 days before the hearing in a newspaper having a  
188 substantial circulation in the area affected.

189 Sec. 2. Section 22a-436 of the general  
190 statutes is repealed and the following is  
191 substituted in lieu thereof:

192 Each order to abate pollution issued under  
193 section 22a-428 or 22a-431 or decision [to deny]  
194 under subsection (b) or (c) of section 22a-430  
195 shall be sent by certified mail, return receipt  
196 requested, to the subject of such order or  
197 decision [to deny] and shall be deemed issued upon  
198 deposit in the mail. Any person who or  
199 municipality which is aggrieved by any such order  
200 or decision [to deny an application] without prior  
201 hearing under subsection (b) OR (c) of section  
202 22a-430, AS AMENDED BY SECTION 1 OF THIS ACT, may,  
203 within thirty days from the date such order or  
204 decision is sent, request a hearing before the  
205 commissioner. The commissioner shall not grant any  
206 request for a hearing at any time thereafter.  
207 After such hearing, the commissioner shall  
208 consider the facts presented to him by the person  
209 or municipality, including, but not limited to,  
210 technological feasibility, shall consider the  
211 rebuttal or other evidence presented to or by him,  
212 and shall then revise and resubmit the order to  
213 the person or municipality, or inform the person  
214 or municipality that the previous order has been

215 affirmed and remains in effect. The request for a  
216 hearing as provided for in this section or a  
217 decision under subsection (b) OR (c) of section  
218 22a-430, AS AMENDED BY SECTION 1 OF THIS ACT, made  
219 after a public hearing shall be a condition  
220 precedent to the taking of an appeal by the person  
221 or municipality under the provisions of section  
222 22a-437, AS AMENDED BY SECTION 3 OF THIS ACT. The  
223 commissioner may, after the hearing provided for  
224 in this section, or at any time after the issuance  
225 of his order, modify such order by agreement or  
226 extend the time schedule therefor if he deems such  
227 modification or extension advisable or necessary,  
228 and any such modification or extension shall be  
229 deemed to be a revision of an existing order and  
230 shall not constitute a new order. There shall be  
231 no hearing subsequent to or any appeal from any  
232 such modification or extension.

233 Sec. 3. Subsection (a) of section 22a-437 of  
234 the general statutes is repealed and the following  
235 is substituted in lieu thereof:

236 (a) Any person who or municipality which is  
237 aggrieved by a decision under subsection (b) OR  
238 (c) of section 22a-430, AS AMENDED BY SECTION 1 OF  
239 THIS ACT, or by any order of the commissioner  
240 other than an order under section 22a-6b, to abate  
241 pollution may, after a hearing by the commissioner  
242 as provided for in section 22a-436 or subsection  
243 (b) OR (c) of section 22a-430, AS AMENDED BY  
244 SECTION 1 OF THIS ACT, appeal from the final  
245 determination of the commissioner based on such  
246 hearing to the Superior Court as provided in  
247 chapter 54. Such appeal shall have precedence in  
248 the order of trial as provided in section 52-192.

249 Sec. 4. Section 22a-40 of the general  
250 statutes, as amended by section 5 of public act  
251 97-289, is amended by adding subsection (c) as  
252 follows:

253 (NEW) (c) Any dredging or any erection,  
254 placement, retention or maintenance of any  
255 structure, fill, obstruction or encroachment, or  
256 any work incidental to such activities, conducted  
257 by a state agency, which activity is regulated  
258 under sections 22a-28 to 22a-35, inclusive, as  
259 amended, or sections 22a-359b to 22a-363f,  
260 inclusive, as amended, shall not require any  
261 permit or approval under sections 22a-36 to  
262 22a-45, inclusive, as amended.

263 Sec. 5. Section 22a-359 of the general  
264 statutes is repealed and the following is  
265 substituted in lieu thereof:

266 (a) The Commissioner of Environmental  
267 Protection shall regulate dredging and the  
268 erection of structures and the placement of fill,  
269 and work incidental thereto, in the tidal, coastal  
270 or navigable waters of the state waterward of the  
271 high tide line OR IN NONTIDAL NAVIGABLE WATERS,  
272 WATERWARD OF THE ORDINARY HIGH WATER MARK. Any  
273 decisions made by the commissioner pursuant to  
274 this section shall be made with due regard for  
275 indigenous aquatic life, fish and wildlife, the  
276 prevention or alleviation of shore erosion and  
277 coastal flooding, the use and development of  
278 adjoining uplands, the improvement of coastal and  
279 inland navigation for all vessels, including small  
280 craft for recreational purposes, the use and  
281 development of adjacent lands and properties and  
282 the interests of the state, including pollution  
283 control, water quality, recreational use of public  
284 water and management of coastal resources, with  
285 proper regard for the rights and interests of all  
286 persons concerned.

287 (b) After consultation with the Commissioner  
288 of Transportation, the Commissioner of  
289 Environmental Protection may consider any sunken  
290 or grounded vessel, scow, lighter or similar  
291 structure lying within the tidal, coastal or  
292 navigable waters of the state to be an  
293 encroachment subject to the provisions of this  
294 section and sections 22a-360 to [22a-363]  
295 22a-363f, inclusive, AS AMENDED.

296 (c) As used in this section and sections  
297 22a-360 to [22a-363] 22a-363f, inclusive, AS  
298 AMENDED, "high tide line" means a line or mark  
299 left upon tide flats, beaches, or along shore  
300 objects that indicates the intersection of the  
301 land with the water's surface at the maximum  
302 height reached by a rising tide. The mark may be  
303 determined by (1) a line of oil or scum along  
304 shore objects, (2) a more or less continuous  
305 deposit of fine shell or debris on the foreshore  
306 or berm, (3) physical markings or characteristics,  
307 vegetation lines, tidal gauge, or (4) by any other  
308 suitable means delineating the general height  
309 reached by a rising tide. The term includes spring  
310 high tides and other high tides that occur with

311 periodic frequency but does not include storm  
312 surges in which there is a departure from the  
313 normal or predicted reach of the tide due to the  
314 piling up of water against a coast by strong winds  
315 such as those accompanying a hurricane or other  
316 intense storm. AS USED IN THIS SECTION AND  
317 SECTIONS 22a-360 TO 22a-363f, INCLUSIVE, AS  
318 AMENDED, "NAVIGABLE WATERS" MEANS RIVERS, STREAMS,  
319 COVES AND WATERCOURSES WITH A DIRECT SURFACE  
320 CONNECTION FROM LONG ISLAND SOUND TO THE FIRST  
321 MANMADE OR PERMANENT OBSTRUCTION TO UPSTREAM  
322 NAVIGATION AND WHICH ARE PHYSICALLY CAPABLE OF  
323 SUPPORTING WATER-BORNE TRAFFIC, AND "ORDINARY HIGH  
324 WATER MARK" WITH RESPECT TO NONTIDAL WATERS, MEANS  
325 A LINE ON SHORE ESTABLISHED BY THE FLUCTUATIONS OF  
326 WATER AND INDICATED BY PHYSICAL CHARACTERISTICS  
327 SUCH AS A CLEAR, NATURAL LINE IMPRESSED ON THE  
328 BANK, SHELVEING, CHANGES IN THE CHARACTER OF SOIL,  
329 DESTRUCTION OF TERRESTRIAL VEGETATION, THE  
330 PRESENCE OF LITTER AND DEBRIS, OR OTHER  
331 APPROPRIATE MEANS THAT CONSIDER THE  
332 CHARACTERISTICS OF THE SURROUNDING AREAS.

333 Sec. 6. Section 22a-342 of the general  
334 statutes is repealed and the following is  
335 substituted in lieu thereof:

336 The commissioner shall establish, along any  
337 tidal or inland waterway or flood-prone area  
338 considered for stream clearance, channel  
339 improvement or any form of flood control or flood  
340 alleviation measure, lines beyond which, in the  
341 direction of the waterway or flood-prone area, no  
342 obstruction, [or] encroachment OR HINDRANCE shall  
343 be placed by any person, [firm or corporation,  
344 public or private] AND NO SUCH OBSTRUCTION,  
345 ENCROACHMENT OR HINDRANCE SHALL BE MAINTAINED BY  
346 ANY PERSON unless authorized by said commissioner.  
347 The commissioner shall issue or deny permits upon  
348 applications for establishing such encroachments  
349 based upon his findings of the effect of such  
350 proposed encroachments upon the flood-carrying and  
351 water storage capacity of the waterways and flood  
352 plains, flood heights, hazards to life and  
353 property, and the protection and preservation of  
354 the natural resources and ecosystems of the state,  
355 including but not limited to ground and surface  
356 water, animal, plant and aquatic life, nutrient  
357 exchange, and energy flow, with due consideration  
358 given to the results of similar encroachments

359 constructed along the reach of waterway. Each  
360 application for a permit shall be accompanied by a  
361 fee as follows: (1) No change in grades and no  
362 construction of above-ground structures, two  
363 hundred fifty dollars; (2) a change in grade and  
364 no construction of above-ground structures, five  
365 hundred dollars; and (3) a change in grade and  
366 above-ground structures or buildings, two thousand  
367 five hundred dollars. The commissioner may adopt  
368 regulations, in accordance with the provisions of  
369 chapter 54, to prescribe the amount of the fees  
370 required pursuant to this section. Upon the  
371 adoption of such regulations, the fees required by  
372 this section shall be as prescribed in such  
373 regulations.

374 Sec. 7. Section 22a-342a of the general  
375 statutes is repealed and the following is  
376 substituted in lieu thereof:

377 Any person who places any obstruction,  
378 encroachment or hindrance within any stream  
379 channel encroachment line established by the  
380 Commissioner of Environmental Protection pursuant  
381 to section 22a-342 without a permit issued under  
382 said section, OR IS MAINTAINING ANY SUCH  
383 OBSTRUCTION, ENCROACHMENT OR HINDRANCE PLACED  
384 WITHOUT SUCH A PERMIT, or in violation of the  
385 terms and conditions of such permit shall be  
386 liable for a civil penalty of not more than one  
387 thousand dollars for each offense. Each violation  
388 shall be a separate and distinct offense and in  
389 the case of a continuing violation, each day's  
390 continuance thereof shall be deemed to be a  
391 separate and distinct offense. The Commissioner of  
392 Environmental Protection may request the Attorney  
393 General to bring a civil action in the superior  
394 court for the judicial district of Hartford-New  
395 Britain at Hartford\* to seek imposition and  
396 recovery of such civil penalty.

397 Sec. 8. Subsections (a) and (b) of section  
398 22a-6a of the general statutes are repealed and  
399 the following is substituted in lieu thereof:

400 (a) Any person who knowingly or negligently  
401 violates any provision of section 14-100b or  
402 14-164c, subdivision (3) of subsection (b) of  
403 section 15-121, section 15-171, 15-172, 15-175,  
404 22a-5, 22a-6 [,] OR 22a-7, [22a-32 or 22a-39]  
405 CHAPTER 440, chapter 441, section 22a-69 or  
406 22a-74, subsection (b) of section 22a-134p,

407 section 22a-162, 22a-171, 22a-174, 22a-175,  
 408 22a-177, 22a-178, 22a-181, 22a-183, 22a-184,  
 409 22a-190, 22a-208, 22a-208a, 22a-209, 22a-213,  
 410 22a-220, 22a-225, 22a-231, 22a-336, 22a-342,  
 411 22a-345, 22a-346, 22a-347, 22a-349a, 22a-358,  
 412 22a-359, 22a-361, 22a-362, 22a-365 TO 22a-379,  
 413 INCLUSIVE, 22a-401 to [22a-405] 22a-411,  
 414 inclusive, 22a-416, 22a-417, 22a-424 to 22a-433,  
 415 inclusive, 22a-447, 22a-449, 22a-450, 22a-451,  
 416 22a-454, 22a-458, 22a-461, 22a-462 or 22a-471, AS  
 417 AMENDED, or any regulation, order or permit  
 418 adopted or issued thereunder by the Commissioner  
 419 of Environmental Protection shall be liable to the  
 420 state for the reasonable costs and expenses of the  
 421 state in detecting, investigating, controlling and  
 422 abating such violation. Such person shall also be  
 423 liable to the state for the reasonable costs and  
 424 expenses of the state in restoring the air,  
 425 waters, lands and other natural resources of the  
 426 state, including plant, wild animal and aquatic  
 427 life to their former condition insofar as  
 428 practicable and reasonable, or, if restoration is  
 429 not practicable or reasonable, for any damage,  
 430 temporary or permanent, caused by such violation  
 431 to the air, waters, lands or other natural  
 432 resources of the state, including plant, wild  
 433 animal and aquatic life and to the public trust  
 434 therein. Institution of a suit to recover for such  
 435 damage, costs and expenses shall not preclude the  
 436 application of any other remedies.  
 437 (b) Whenever two or more persons knowingly or  
 438 negligently violate any provision of section  
 439 14-100b or 14-164c, subdivision (3) of subsection  
 440 (b) of section 15-121, section 15-171, 15-172,  
 441 15-175, 22a-5, 22a-6 [,] OR 22a-7, [22a-32 or  
 442 22a-39] CHAPTER 440, chapter 441, subsection (b)  
 443 of section 22a-134p, section 22a-162, 22a-171,  
 444 22a-174, 22a-175, 22a-177, 22a-178, 22a-181,  
 445 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a,  
 446 22a-209, 22a-213, 22a-220, 22a-225, 22a-231,  
 447 22a-336, 22a-342, 22a-345, 22a-346, 22a-347,  
 448 22a-349a, 22a-358, 22a-359, 22a-361, 22a-362,  
 449 22a-365 TO 22a-379, INCLUSIVE, 22a-401 to  
 450 [22a-405] 22a-411, inclusive, 22a-416, 22a-417,  
 451 22a-424 to 22a-433, inclusive, 22a-447, 22a-449,  
 452 22a-450, 22a-451, 22a-454, 22a-458, 22a-461,  
 453 22a-462 or 22a-471, AS AMENDED, or any regulation,  
 454 order or permit adopted or issued thereunder by

455 the commissioner and responsibility for the damage  
456 caused thereby is not reasonably apportionable,  
457 such persons shall, subject to a right of equal  
458 contribution, be jointly and severally liable  
459 under this section.

460 Sec. 9. Subsection (a) of section 22a-6k of  
461 the general statutes, as amended by section 3 of  
462 public act 97-289, is repealed and the following  
463 is substituted in lieu thereof:

464 (a) The Commissioner of Environmental  
465 Protection may issue an emergency authorization  
466 for any activity regulated by the commissioner  
467 under section 22a-32, SUBSECTION (h) OF SECTION  
468 22a-39, 22a-54, 22a-66, 22a-174, 22a-208a,  
469 22a-342, 22a-368, 22a-403, 22a-430, 22a-449 or  
470 22a-454, AS AMENDED, provided he finds that (1)  
471 such authorization is necessary to prevent, abate  
472 or mitigate an imminent threat to human health or  
473 the environment; and (2) such authorization is not  
474 inconsistent with the federal Water Pollution  
475 Control Act, the federal Rivers and Harbors Act,  
476 the federal Clean Air Act or the federal Resource  
477 Conservation and Recovery Act. Such emergency  
478 authorization shall be limited by any conditions  
479 the commissioner deems necessary to adequately  
480 protect human health and the environment. Summary  
481 suspension of an emergency authorization may be  
482 ordered in accordance with subsection (c) of  
483 section 4-182. The commissioner may assess a fee  
484 for an emergency authorization issued pursuant to  
485 this subsection. Such fee shall be of an amount  
486 equal to the equivalent existing permit fee for  
487 the activity authorized. The commissioner may  
488 reduce or waive the fee required pursuant to this  
489 subsection if good cause is shown. The fee  
490 required pursuant to this subsection shall be paid  
491 no later than ten days after the issuance of the  
492 emergency authorization.

493 Sec. 10. Subsection (a) of section 22a-354i  
494 of the general statutes is repealed and the  
495 following is substituted in lieu thereof:

496 (a) On or before July 1, 1991, the  
497 Commissioner of Environmental Protection shall  
498 publish notice of intent to adopt regulations in  
499 accordance with chapter 54 for land use controls  
500 in aquifer protection areas. The regulations shall  
501 establish (1) best management practice standards  
502 for existing regulated activities located entirely

503 or in part within aquifer protection areas and a  
504 schedule for compliance of nonconforming regulated  
505 activities with such standards, (2) best  
506 management practice standards for and prohibitions  
507 of regulated activities proposed to be located  
508 entirely or in part within aquifer protection  
509 areas, (3) procedures for exempting regulated  
510 activities in aquifer protection areas upon  
511 determination solely by the commissioner that such  
512 regulated activities do not pose a threat to any  
513 existing or potential drinking water supply and  
514 (4) requirements for design and installation of  
515 groundwater monitoring within aquifer protection  
516 areas. In addition, the commissioner may adopt  
517 such other regulations as deemed necessary to  
518 carry out the purposes of sections 22a-354b,  
519 22a-354c, 22a-354h, this section, sections  
520 22a-354m, 22a-354n, subsection (e) of section  
521 22a-354p and subsection (d) of section 22a-451,  
522 including but not limited to regulations which  
523 provide for the manner in which the boundaries of  
524 aquifer protection areas shall be established and  
525 amended; criteria and procedures for submission  
526 and review of applications to construct or begin  
527 regulated activities; procedures for granting,  
528 denying, limiting, revoking, suspending,  
529 transferring and modifying permits for regulated  
530 activities; controls regarding the expansion of  
531 nonconforming regulated activities, INCLUDING  
532 PROCEDURES FOR OFFSETTING IMPACTS FROM THE  
533 EXPANSION OR MODIFICATION OF NONCONFORMING  
534 REGULATED ACTIVITIES OR PROCEDURES FOR MODIFYING  
535 PERMITS OF REGULATED ACTIVITIES BY THE REMOVAL OF  
536 OTHER POTENTIAL POLLUTION SOURCES WITHIN THE  
537 SUBJECT WELL FIELD, PROCEDURES FOR THE GRANTING OF  
538 PERMITS FOR SUCH EXPANSION OR MODIFICATION BASED  
539 ON THE CERTIFICATION OF A QUALIFIED PERSON THAT  
540 SUCH EXPANSION MEETS CRITERIA ESTABLISHED BY THE  
541 COMMISSIONER; registration requirements for  
542 existing regulated activities and procedures for  
543 transferring registrations; procedures for  
544 landowners to notify a municipality or the  
545 commissioner of a change in use and other  
546 provisions for administration of the aquifer  
547 protection program.

548 Sec. 11. Section 22a-354m of the general  
549 statutes is repealed and the following is  
550 substituted in lieu thereof:

551 (a) [Each] THE COMMISSIONER OF ENVIRONMENTAL  
552 PROTECTION MAY, IN ACCORDANCE WITH REGULATIONS  
553 ADOPTED PURSUANT TO SUBSECTION (d) OF THIS  
554 SECTION, REQUIRE ANY person engaged in agriculture  
555 on land located within an aquifer protection area  
556 and whose annual gross sales from agricultural  
557 products during the preceding calendar year were  
558 two thousand five hundred dollars or more [shall]  
559 TO submit a farm resources management plan. [for  
560 such land to the Commissioner of Environmental  
561 Protection for his approval.]

562 (b) The soil and water conservation district  
563 where the aquifer protection area is located shall  
564 establish and coordinate a technical team to  
565 develop each plan. Such team shall include a  
566 representative of the municipality in which the  
567 land is located and a representative of any  
568 affected water company upon request of such  
569 municipality or water company. For the purposes of  
570 developing the plan required pursuant to this  
571 section, if a farm is located in two or more soil  
572 and water conservation districts, the district in  
573 which the greater part of such farm is located  
574 shall be deemed to be the district in which the  
575 entire farm is located. In developing a plan, a  
576 district shall consult with the Commissioners of  
577 Environmental Protection and Agriculture, the  
578 College of Agriculture and Natural Resources at  
579 The University of Connecticut, the Connecticut  
580 Agricultural Experiment Station, the Soil  
581 Conservation Service, the state Agricultural and  
582 Conservation Committee and any other person or  
583 agency the district deems appropriate.

584 (c) The plan shall include a schedule for  
585 implementation and shall be periodically updated  
586 as required by the commissioner. In developing a  
587 schedule for implementation, the technical team  
588 shall consider technical and economic factors  
589 including, but not limited to, the availability of  
590 state and federal funds. Any person engaged in  
591 agriculture in substantial compliance with a plan  
592 approved under this section shall be exempt from  
593 regulations adopted under section 22a-354o by a  
594 municipality in which the land is located. No plan  
595 shall be required to be submitted to the  
596 commissioner before July 1, 1992, or six months  
597 after completion of level B mapping where the farm  
598 is located, whichever is later.

599 (d) On or before July 1, [1991] 1999, the  
600 Commissioner of Environmental Protection, in  
601 consultation with the Commissioner of Agriculture,  
602 the United States Soil Conservation Service, the  
603 Cooperative Extension Service at The University of  
604 Connecticut and the Council for Soil and Water  
605 Conservation, shall publish notice of intent to  
606 adopt regulations in accordance with chapter 54  
607 for farm resources management plans. Such  
608 regulations shall include, but not be limited to,  
609 A PRIORITY SYSTEM AND PROCEDURES FOR DETERMINING  
610 IF A FARM MANAGEMENT PLAN IS REQUIRED AND THE  
611 PRIORITY THAT IS ASSIGNED TO THE PREPARATION OF  
612 SUCH A PLAN, best management practices,  
613 restrictions and prohibitions for manure  
614 management, storage and handling of pesticides,  
615 reduced use of pesticides through pest management  
616 practices, integrated pest management, fertilizer  
617 management and underground and above-ground  
618 storage tanks and criteria and procedures for  
619 submission and review of farm resources management  
620 plans and amendments of such plans. In adopting  
621 such best management practices, restrictions and  
622 prohibitions, the commissioner shall consider  
623 existing state and federal guidelines or  
624 regulations affecting aquifers and agricultural  
625 resources management.

626 Sec. 12. Section 22a-402 of the general  
627 statutes is repealed and the following is  
628 substituted in lieu thereof:

629 The Commissioner of Environmental Protection  
630 shall investigate and inspect or cause to be  
631 investigated and inspected all dams or other  
632 structures which, in his judgment, would, by  
633 breaking away, cause loss of life or property  
634 damage. Said commissioner may require any person  
635 owning or having the care and control of any such  
636 structure to furnish him with such surveys, plans,  
637 descriptions, drawings and other data relating  
638 thereto and in such form and to such reasonable  
639 extent as he directs. Any person in possession of  
640 such pertinent information shall afford the owner  
641 and the commissioner access thereto. The  
642 commissioner shall make or cause to be made such  
643 periodic inspections of all such structures as may  
644 be necessary to reasonably insure that they are  
645 maintained in a safe condition. If, after any  
646 inspection described herein, the commissioner

647 finds any such structure to be in an unsafe  
648 condition, he shall order the person owning or  
649 having control thereof to place it in a safe  
650 condition or to remove it and shall fix the time  
651 within which such order shall be carried out. The  
652 respondent to such an order shall not be required  
653 to obtain a permit under chapter 440 OR 446j OR  
654 SECTION 22a-342 OR 22a-368 for any action  
655 necessary to comply with such order. If such order  
656 is not carried out within the time specified, the  
657 commissioner may carry out the actions required by  
658 the order provided the commissioner has determined  
659 that an emergency exists which presents a clear  
660 and present danger to the public safety and said  
661 commissioner shall assess the costs of such action  
662 against the person [, firm or corporation] owning  
663 or having care and control of the structure. When  
664 the commissioner in his investigation finds that a  
665 dam or other structure should be inspected  
666 periodically in order to reduce a potential hazard  
667 to life and property, the owner of such structure  
668 shall cause such inspection to be made by a  
669 registered engineer at such intervals as are  
670 deemed necessary by the commissioner and shall  
671 submit a copy of the engineer's finding and report  
672 to the commissioner for his action. As used in  
673 this chapter, "person" shall have the same meaning  
674 as defined in subsection (c) of section 22a-2. THE  
675 COMMISSIONER SHALL CAUSE A CERTIFIED COPY OF A  
676 FINAL ORDER ISSUED UNDER THIS SECTION TO BE  
677 RECORDED ON THE LAND RECORDS IN THE TOWN OR TOWNS  
678 WHEREIN THE DAM OR SUCH STRUCTURE IS LOCATED.

679 Sec. 13. Subsection (b) of section 22a-403 of  
680 the general statutes is repealed and the following  
681 is substituted in lieu thereof:

682 (b) The commissioner or his representative,  
683 engineer or consultant shall determine the impact  
684 of the construction work on the environment, on  
685 the safety of persons and property and on the  
686 inland wetlands and watercourses of the state in  
687 accordance with the provisions of sections 22a-36  
688 to 22a-45, inclusive, AS AMENDED, and shall  
689 further determine the need for a fishway in  
690 accordance with the provisions of section 26-136,  
691 and shall examine the documents and inspect the  
692 site, and, upon approval thereof, the commissioner  
693 shall issue a permit authorizing the proposed  
694 construction work under such conditions as the

695 commissioner may direct. The commissioner shall  
696 send a copy of the permit to the town clerk in any  
697 municipality in which the structure is located or  
698 any municipality which will be affected by the  
699 structure. AN APPLICANT FOR A PERMIT ISSUED UNDER  
700 THIS SECTION TO ALTER, REBUILD, REPAIR OR REMOVE  
701 AN EXISTING DAM SHALL NOT BE REQUIRED TO OBTAIN A  
702 PERMIT UNDER SECTIONS 22a-36 TO 22a-45a,  
703 INCLUSIVE, AS AMENDED, OR SECTION 22a-342 OR  
704 22a-368. AN APPLICANT FOR A PERMIT ISSUED UNDER  
705 THIS SECTION TO CONSTRUCT A NEW DAM SHALL NOT BE  
706 REQUIRED TO OBTAIN A PERMIT UNDER SECTIONS 22a-36  
707 TO 22a-45a, INCLUSIVE, AS AMENDED, FOR SUCH  
708 CONSTRUCTION.

709 Sec. 14. Section 22a-408 of the general  
710 statutes is repealed and the following is  
711 substituted in lieu thereof:

712 Upon written request, any person [, firm or  
713 corporation] aggrieved by any decision of the  
714 commissioner under this chapter, other than a  
715 decision under section 22a-403, shall be given a  
716 hearing by the commissioner. Any person [, firm or  
717 corporation] aggrieved by any decision or order of  
718 the commissioner pursuant to the provisions of  
719 section 22a-402, 22a-405 or 22a-409 may request a  
720 hearing before the commissioner. Such request  
721 shall be submitted to the commissioner within  
722 thirty days of receipt of notice of such decision  
723 or order. The commissioner shall conduct such  
724 hearing promptly in accordance with the provisions  
725 of chapter 54. An appeal may be taken from any  
726 decision of the commissioner in accordance with  
727 the provisions of section 4-183, except such  
728 appeal shall be made returnable to the judicial  
729 district of Hartford-New Britain at Hartford\*.

730 Sec. 15. Section 22a-411 of the general  
731 statutes is repealed and the following is  
732 substituted in lieu thereof:

733 (a) The commissioner may issue a general  
734 permit for any minor activity regulated under  
735 sections 22a-401 to 22a-410, inclusive, except for  
736 any activity covered by an individual permit, if  
737 the commissioner determines that such activity  
738 would cause minimal environmental effects when  
739 conducted separately and would cause only minimal  
740 cumulative environmental effects. Such activities  
741 may include routine maintenance and routine repair  
742 of any dam, dike, reservoir or other similar

743 structure and the construction if any such  
744 structure presents low or negligible safety  
745 hazards. Any person [, firm or corporation]  
746 conducting an activity for which a general permit  
747 has been issued shall not be required to obtain an  
748 individual permit under [any other provision of  
749 said sections 22a-401 to 22a-410, inclusive]  
750 SECTIONS 22a-36 TO 22a-45a, INCLUSIVE, AS AMENDED,  
751 OR SECTION 22a-342, 22a-368 OR 22a-403, except as  
752 provided in subsection (c) of this section. A  
753 general permit shall clearly define the activity  
754 covered thereby and may include such conditions  
755 and requirements as the commissioner deems  
756 appropriate, including but not limited to,  
757 management practices and verification and  
758 reporting requirements. The general permit may  
759 require any person [, firm or corporation]  
760 conducting any activity under the general permit  
761 to report, on a form prescribed by the  
762 commissioner, such activity to the commissioner  
763 before it shall be covered by the general permit.  
764 The commissioner shall prepare, and shall annually  
765 amend, a list of holders of general permits under  
766 this section, which list shall be made available  
767 to the public.

768 (b) Notwithstanding any other procedures  
769 specified in said sections 22a-401 to 22a-410,  
770 inclusive, any regulation adopted thereunder, and  
771 chapter 54, the commissioner may issue, revoke,  
772 suspend or modify a general permit in accordance  
773 with the following procedures: (1) The  
774 commissioner shall publish in a newspaper having a  
775 substantial circulation in the affected area or  
776 areas notice of intent to issue a general permit;  
777 (2) the commissioner shall allow a comment period  
778 of thirty days following publication of such  
779 notice during which interested persons may submit  
780 written comments to the commissioner and the  
781 commissioner shall hold a public hearing if,  
782 within said comment period, he receives a petition  
783 signed by at least twenty-five persons; (3) the  
784 commissioner may not issue the general permit  
785 until after the comment period; and (4) the  
786 commissioner shall publish notice of any issued  
787 permit in a newspaper having substantial  
788 circulation in the affected area or areas. Any  
789 person may request that the commissioner issue,

790 modify or revoke a general permit in accordance  
791 with the provisions of this subsection.

792 (c) Subsequent to the issuance of a general  
793 permit, the commissioner may require any person [,  
794 firm or corporation] to obtain an individual  
795 permit under the provisions of said sections  
796 22a-401 to 22a-410, inclusive, for all or any  
797 portion of the activities covered by the general  
798 permit, if in the commissioner's judgment the  
799 purposes and policies of said sections would be  
800 best served by requiring an application for an  
801 individual permit. The commissioner may require an  
802 individual permit under this subsection only if  
803 the affected person [, firm or corporation] has  
804 been notified in writing that an individual permit  
805 is required. The notice shall include a brief  
806 statement of the reasons for the decision and a  
807 statement that upon the date of issuance of such  
808 notice the general permit as it applies to the  
809 individual activity will terminate.

810 (d) Any general permit issued under this  
811 section shall require that any person [, firm or  
812 corporation] intending to conduct an activity  
813 covered by such general permit shall, at least  
814 sixty days before initiating such activity, give  
815 written notice of such intention to the inland  
816 wetlands agency, zoning commission, planning  
817 commission or combined planning and zoning  
818 commission, and conservation commission of any  
819 municipality which will or may be affected by such  
820 activity, and to the department which shall make  
821 such notices available to the public. The general  
822 permit shall specify the information which must be  
823 contained in the notice. An inland wetlands  
824 agency, planning and zoning commission,  
825 conservation commission or any person may submit  
826 written comments to the commissioner concerning  
827 such activity no later than twenty-five days  
828 before the date that the activity is proposed to  
829 begin.

830 (e) The commissioner may adopt regulations in  
831 accordance with the provisions of chapter 54 to  
832 carry out the purposes of this section.

833 Sec. 16. Subsection (a) of section 22a-7 of  
834 the general statutes is repealed and the following  
835 is substituted in lieu thereof:

836 (a) The commissioner, whenever he finds after  
837 investigation that any person is causing, engaging

838 in or maintaining, or is about to cause, engage in  
839 or maintain, any condition or activity which, in  
840 his judgment, will result in or is likely to  
841 result in imminent and substantial damage to the  
842 environment, or to public health within the  
843 jurisdiction of the commissioner under the  
844 provisions of chapters 440, 441, 442, 445, 446a,  
845 446c, 446d, 446j and 446k, or whenever he finds  
846 after investigation that there is a violation of  
847 the terms and conditions of a permit issued by him  
848 that is in his judgment substantial and continuous  
849 and it appears prejudicial to the interests of the  
850 people of the state to delay action until an  
851 opportunity for a hearing can be provided, or  
852 whenever he finds after investigation that any  
853 person is conducting, has conducted, or is about  
854 to conduct an activity which will result in or is  
855 likely to result in imminent and substantial  
856 damage to the environment, or to public health  
857 within the jurisdiction of the commissioner under  
858 the provisions of chapters 440, 441, 442, 445,  
859 446a, 446c, 446d, 446j and 446k for which a  
860 license, as defined in section 4-166, is required  
861 under the provisions of chapter 440, 441, 442,  
862 445, 446a, 446c, 446d, 446j or 446k without  
863 obtaining such license, may, without prior  
864 hearing, issue a cease and desist order in writing  
865 to such person to discontinue, abate or alleviate  
866 such condition or activity.

867 Sec. 17. Subdivision (2) of subsection (c) of  
868 section 22a-42a of the general statutes, as  
869 amended by section 10 of public act 97-124, is  
870 repealed and the following is substituted in lieu  
871 thereof:

872 (2) An inland wetlands agency may delegate to  
873 its duly authorized agent the authority to approve  
874 or extend, WITHOUT A PUBLIC HEARING, an activity  
875 that is not located in a wetland or watercourse  
876 when such agent finds that the conduct of such  
877 activity would result in no greater than a minimal  
878 impact on any wetland or watercourse provided such  
879 agent has completed the comprehensive training  
880 program developed by the commissioner pursuant to  
881 section 22a-39. Notwithstanding the provisions for  
882 receipt and processing applications prescribed in  
883 subdivision (1) of this subsection, such agent may  
884 approve or extend such an activity at any time.  
885 Any person receiving such approval from such agent

886 shall, within ten days of the date of such  
887 approval, publish, at the applicant's expense,  
888 notice of the approval in a newspaper having a  
889 general circulation in the town wherein the  
890 activity is located or will have an effect. Any  
891 person may appeal such decision of such agent to  
892 the inland wetlands agency within fifteen days  
893 after the publication date of the notice and the  
894 inland wetlands agency shall consider such appeal  
895 at its next regularly scheduled meeting provided  
896 such meeting is no earlier than three business  
897 days after receipt by such agency or its agent of  
898 such appeal. The inland wetlands agency shall, at  
899 its discretion, sustain, alter or reject the  
900 decision of its agent or require an application  
901 for a permit in accordance with subdivision (1) of  
902 subsection (c) of this section.

903 Sec. 18. Subsection (f) of section 23-65 of  
904 the general statutes is repealed and the following  
905 is substituted in lieu thereof:

906 (f) Any person, firm or corporation, other  
907 than a tree warden or his deputy, who desires the  
908 cutting or removal, in whole or in part, of any  
909 tree or shrub or part thereof within the limits of  
910 any public road or grounds, may apply in writing  
911 to the town tree warden, the borough tree warden  
912 or the Commissioner of Transportation or other  
913 authority having jurisdiction thereof for a permit  
914 so to do. Upon receipt of such permit, but not  
915 before, he may proceed with such cutting or  
916 removal. Before granting or denying such permit,  
917 such authority may hold a public hearing as  
918 provided in section 23-59, and when the applicant  
919 is a public utility corporation, the party  
920 aggrieved by such decision may, within ten days,  
921 appeal therefrom to the Department of Public  
922 Utility Control, which shall have the power to  
923 review, confirm, change or set aside the decision  
924 appealed from and its decision shall be final.  
925 This shall be in addition to the powers granted to  
926 it under section 16-234, provided, if an  
927 application for such permit has been made to  
928 either a tree warden or the Commissioner of  
929 Transportation or other authority and denied by  
930 him, an application for a permit for the same  
931 relief shall not be made to any other such  
932 authority. UPON ANY APPROVAL OF SUCH A PERMIT BY  
933 THE COMMISSIONER OF TRANSPORTATION, HE SHALL

934 NOTIFY THE TREE WARDEN FOR THE TOWN IN WHICH THE  
935 TREE IS LOCATED.

936 ENV COMMITTEE VOTE: YEA 23 NAY 0 JFS

\* \* \* \* \*

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

\* \* \* \* \*

**FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5296**

STATE IMPACT	Potential Minimal Revenue Gain (General Fund and Environmental Quality Fund), Minimal Cost, Within Budgetary Resources, Minimal Savings, see explanation below
MUNICIPAL IMPACT	Savings, see explanation below
STATE AGENCY(S)	Department of Environmental Protection, Department of Transportation, Various

**EXPLANATION OF ESTIMATES:**

STATE IMPACT: This bill makes various changes, both decreasing and increasing duties and activities to the Department of Environmental Protection (DEP) concerning water permit laws. The changes are anticipated to have a minimal fiscal impact.

The changes include allowing the commissioner to recover costs of abating violations under water diversion permits or under general permits for dam construction and repair of stream channel encroachments. This is anticipated to cover costs and would make this program consistent with other DEP programs. In addition, any increase in revenue due to increased fines is anticipated to be minimal. Expanding those entitled to appeal a new or renewed water discharge permit and requiring all permit decisions to be sent by certified mail is anticipated to minimally increase costs to the agency, and is within budgetary resources.

Provisions of the bill allowing DEP to issue emergency authorizations for inland wetland activities of State agencies and exempting State agencies from obtaining inland wetland permits under certain conditions changes the procedure, but is not anticipated to impact costs.

In addition, eliminating the requirement that each farmer in an aquifer protection area submit a management plan and changes made in DEP's responsibility with regard to permitting expansions of non-conforming regulated activities in aquifer protection areas will decrease DEP's workload.

Lastly, the DOT could incur costs of approximately \$20,000 for notifying tree wardens of the estimated 2,000 permits that are processed by the district permits section each year. It is anticipated that these costs would be absorbed by the Department.

MUNICIPAL IMPACT: Passage of this bill would reduce costs to municipal aquifer protection agencies due to a reduction in administrative responsibilities associated with permitting expansions of non-conforming regulated activities. The exact impact would vary from town to town.

\* \* \* \* \*

#### OLR BILL ANALYSIS

sHB 5296

#### AN ACT CONCERNING WATER RESOURCE PROGRAMS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

**SUMMARY:** This bill makes a number of changes to the Department of Environmental Protection (DEP) laws regarding water permits. It:

1. expands those entitled to appeal a decision on a water discharge permit;
2. expands the type of activities covered under a stream channel encroachment permit;
3. allows the commissioner to recover the costs of abating violations under a water diversion permit or under a general permit for dam

- construction and repair or stream channel encroachment;
4. authorizes the commissioner to issue cease and desist orders under the pesticide control and dam construction and repair laws;
  5. exempts anyone (a) complying with a DEP dam repair order, (b) applying for a dam construction or repair permit, or (c) covered under a general permit to repair or construct a dam from also obtaining certain other permits;
  6. expands the waters subject to the structures and dredging law;
  7. requires an agent of an inland wetlands commission to approve minor activities without a public hearing;
  8. allows the DEP to issue emergency authorizations for inland wetland activities of state agencies;
  9. eliminates the requirement that each farmer in an aquifer protection area submit a farm management plan and instead gives the commissioner discretion in requiring the plans;
  10. adds to the regulations the DEP may adopt under the aquifer protection program ones setting procedures for offsetting nonconforming uses; and
  11. exempts activities of state agencies covered under the tidal wetlands or structures and dredging law from obtaining an inland wetlands permit.

The bill requires the Department of Transportation commissioner to notify a town's tree warden when he approves a tree cutting permit.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 1998

**FURTHER EXPLANATION****Water Discharge Permits**

The law requires anyone who discharges into the state's waters to obtain a water discharge permit from the DEP. The bill expands those entitled to appeal the commissioner's decision regarding a new or renewed permit to any aggrieved party, not just the person or town whose application is the subject of the decision. By law the appeal is first to the commissioner and then to Superior Court.

The bill allows all decisions of the commissioner regarding a new or renewed permit to be appealed, not just decisions to deny an application for a new permit. It also requires the commissioner to send all permit decisions by certified mail to the applicant, not just decisions to deny an application.

**Stream Channel Encroachment**

By law the commissioner must establish stream channel encroachment lines along watercourses. Under current law, no obstruction or encroachment can be placed beyond these lines without a permit from DEP. The bill expands the type of activities needing a permit to include (1) any hindrance placed by anyone and (2) the maintenance of any obstruction, encroachment, or hindrance by anyone.

The bill applies the current penalties for violating the law to the maintenance of any obstruction, encroachment, or hindrance. The penalty is a fine of up to \$1,000 for each offense and for each day the offense continues.

**Recovering Costs**

The bill allows the commissioner, when a violation of a water diversion permit or a general permit under the dam construction and repair or stream channel encroachment law has been knowing and negligent, to recover the state's reasonable costs of investigating, controlling, and abating the violation; restoring the environment; or compensating for damages. In situations when several people are involved and responsibility cannot be reasonably apportioned, one party may be

required to pay the full cost and then collect proportionate shares from the others involved. Under current law the commissioner already has broad authority to recover costs for damages for activities occurring under a number of laws.

### Cease and Desist Orders

This bill expands the commissioner's authority to issue cease and desist orders to actions occurring under the pesticide control and dam and reservoir safety laws that may result in substantial damage to the environment or public health or are occurring without or in violation of any required permit. He may already issue such orders for such actions occurring under the wetlands, noise pollution, hazardous waste, radiation, air pollution, solid waste, and water pollution laws.

### Dams

The bill exempts anyone complying with a DEP order to repair a dam from obtaining a dam, stream channel encroachment, or water diversion permit. By law they are already exempt from obtaining a wetlands permit. The bill also requires the commissioner to record on the town land records where the dam is located a certified copy of his final order.

The bill exempts anyone applying for a permit to alter, rebuild, repair, or remove an existing dam from obtaining an inland wetlands, stream channel encroachment, or water diversion permit. It exempts applicants for a permit to build a new dam from obtaining an inland wetlands permit.

The bill exempts anyone conducting activities covered under a dam construction and repair general permit from obtaining an inland wetlands, stream channel encroachment, or water diversion permit. The law allows the DEP commissioner to issue a dam construction or repair general permit for minor activities not covered by an individual permit if he determines the activity would cause minimal environmental effects. These activities include routine maintenance and repair of dams, dikes, reservoirs, or similar structures, and their construction if it presents low or negligible safety hazards. Applicants conducting an activity under a general permit need not obtain an individual

permit unless required to do so by the commissioner.

### **Structures and Dredging**

The bill expands the waters subject to the structures and dredging law from tidal, coastal, or navigable water waterward of the high tide line to also include non-tidal navigable waters waterward of the ordinary high water mark. It defines navigable waters to mean rivers, streams, coves, and watercourses, which are capable of bearing water-borne traffic with a direct surface connection from Long Island Sound to the first manmade or permanent obstruction to upstream navigation. Ordinary high water mark is defined for non-tidal waters as a line on the shore established by water fluctuations and indicated by physical characteristics such as a clear, natural line on the bank; shelving; changes in soil character; destruction of land vegetation; the presence of litter and debris; or other means appropriate to the area.

### **Inland Wetlands**

**Delegate to Agent.** The law allows an inland wetlands agency to delegate to an agent its authority to approve or extend an activity not located in a wetlands or watercourse which would have no more than a minimal effect on any wetland or watercourse. This bill specifies that the agent may make this determination without holding a public hearing.

**Emergency Authorizations.** The bill allows DEP to issue emergency authorizations for inland wetland activities of state agencies if the commissioner finds they are necessary to deal with imminent threats to human health or the environment. Under current law he already has broad authority to issue emergency authorizations for activities under a number of laws, including the tidal wetland law.

**State Agencies.** The bill exempts state agencies from obtaining an inland wetlands permit if the work they are doing is also regulated under the tidal wetlands or structures and dredging law.

### **Aquifer Protection**

**Farm Management Plans.** The bill eliminates the

requirement that each farmer within an aquifer protection area submit a farm resources management plan to the DEP for approval. It instead gives the commissioner discretion in requiring the submission of these plans. The bill requires him by July 1, 1999 to adopt regulations establishing a priority system and procedures for determining when a farm management plan is required and the priority assigned to its preparation.

**Offsets.** The law allows the commissioner to adopt various regulations to implement the aquifer protection law. The bill adds to the regulations he may adopt, those setting procedures for:

1. offsetting the effect of expanding or modifying a nonconforming use,
2. modifying permits or regulated activities by removing other potential pollution sources within the well field, and
3. for granting permits for the expansion or modification based on certification by a qualified person that the expansion meets the commissioner's criteria.

### **Tree Cutting**

By law anyone, other than a tree warden or his deputy, who wants to cut or remove all or part of a tree or shrub within the limits of any public road or grounds may apply in writing for a permit to do so to the town tree warden, the Department of Transportation (DOT) commissioner, or any other entity having jurisdiction. After receiving the permit he may proceed with the cutting or removal. The bill requires the DOT commissioner to notify the tree warden when he approves a permit.

### **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute  
Yea 23      Nay 0