

Senate, April 1, 1998. The Committee on Environment reported through SEN. DAILY, 33rd DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE SITING OF ASPHALT BATCHING FACILITIES.

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

1 Section 22a-174 of the general statutes is
2 amended by adding subsection (n) as follows:
3 (NEW) (n) The commissioner shall not issue a
4 permit for an asphalt batch plant or continuous
5 mix facility under the provisions of this section
6 until July 1, 2000. The provisions of this section
7 shall apply to any application pending on the
8 effective date of this act.

9 ENV COMMITTEE VOTE: YEA 21 NAY 1 JFS

EFFECTIVE DATE: October 1, 1998

BACKGROUND

Asphalt Facility Permits

Asphalt making facilities require two DEP permits. First a construction permit to build the facility and then an operating permit before it can produce asphalt. After issuing a construction permit, the DEP may issue an operating permit if it determines the facility (1) was built in accordance with the construction permit, (2) will operate in accordance with applicable requirements, and (3) satisfactorily completed its performance test.

Permits-Property Interests

A moratorium on permits may raise issues related to the due process clause of the 14th Amendment of the Constitution with respect to facilities issued a construction permit but not an operating permit. The 14th amendment protects citizens against deprivation of life, liberty or property, without due process of law. The courts have found expected permits to be protectable property rights in some circumstances (Sullivan v. Salem, 805 F.2d 81 (2nd Cir. 1986)). The affected parties would have to establish that they have a clear entitlement to the permit not just a unilateral expectation (Board of Regents v. Roth, 408 U.S. 564, 577 (1972)). Clear entitlement means a virtual assurance because of the lack of discretion of the issuing authority (Yale Auto Body Parts, Inc. v. Johnson, 758 F.2d 54, 59 (2nd Cir. 1985); Red Maple Properties v. Zoning Commission, 222 Conn. 730, 738 (1992)). If they can establish a property interest, they would have to show arbitrary or oppressive conduct in its denial. Generally, states have broad discretion in matters involving the public health and safety. The success of such a challenge would depend on the precise facts and circumstances involved.

Related Bill

SSB 414, favorably reported by the Environment Committee, prohibits asphalt facilities from locating within one-third of a mile of certain properties such as hospitals, schools, residential housing, and

important environmental areas.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 21 Nay 1