File No. 624

Substitute House Bill No. 5296

House of Representatives, April 27, 1998. The Committee on Planning and Development reported through REP. DAVIS, 50th 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2 22a-430 of the general statutes are repealed and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-342 of the general
264 statutes is repealed and the following is
265 substituted in lieu thereof:
266 The commissioner shall establish, along any
267 tidal or inland waterway or flood-prone area
268 considered for stream clearance, channel
269 improvement or any form of flood control or flood
270 alleviation measure, lines beyond which, in the
271 direction of the waterway or flood-prone area, no
272 obstruction, [or] encroachment OR HINDRANCE shall
273 be placed by any person, [firm or corporation,
274 public or private] AND NO SUCH OBSTRUCTION,
275 ENCROACHMENT OR HINDRANCE SHALL BE MAINTAINED BY
276 ANY PERSON unless authorized by said commissioner.
277 The commissioner shall issue or deny permits upon
278 applications for establishing such encroachments
279 based upon his findings of the effect of such
280 proposed encroachments upon the flood-carrying and
281 water storage capacity of the waterways and flood
282 plains, flood heights, hazards to life and
283 property, and the protection and preservation of
284 the natural resources and ecosystems of the state,
285 including but not limited to ground and surface
286 water, animal, plant and aquatic life, nutrient
287 exchange, and energy flow, with due consideration
288 given to the results of similar encroachments
289 constructed along the reach of waterway. Each
290 application for a permit shall be accompanied by a
291 fee as follows: (1) No change in grades and no
292 construction of above-ground structures, two
293 hundred fifty dollars; (2) a change in grade and
294 no construction of above-ground structures, five
295 hundred dollars; and (3) a change in grade and
296 above-ground structures or buildings, two thousand
297 five hundred dollars. The commissioner may adopt
298 regulations, in accordance with the provisions of
299 chapter 54, to prescribe the amount of the fees
300 required pursuant to this section. Upon the
301 adoption of such regulations, the fees required by
302 this section shall be as prescribed in such
303 regulations.
304 Sec. 6. Section 22a-342a of the general
305 statutes is repealed and the following is
306 substituted in lieu thereof:
307 Any person who places any obstruction,
308 encroachment or hindrance within any stream
309 channel encroachment line established by the
310 Commissioner of Environmental Protection pursuant

311 to section 22a-342 without a permit issued under
312 said section, OR IS MAINTAINING ANY SUCH
313 OBSTRUCTION, ENCROACHMENT OR HINDRANCE PLACED
314 WITHOUT SUCH A PERMIT, or in violation of the
315 terms and conditions of such permit shall be
316 liable for a civil penalty of not more than one
317 thousand dollars for each offense. Each violation
318 shall be a separate and distinct offense and in
319 the case of a continuing violation, each day's
320 continuance thereof shall be deemed to be a
321 separate and distinct offense. The Commissioner of
322 Environmental Protection may request the Attorney
323 General to bring a civil action in the superior
324 court for the judicial district of Hartford-New
325 Britain at Hartford* to seek imposition and
326 recovery of such civil penalty.
327 Sec. 7. Subsections (a) and (b) of section
328 22a-6a of the general statutes are repealed and
329 the following is substituted in lieu thereof:
330 (a) Any person who knowingly or negligently
331 violates any provision of section 14-100b or
332 14-164c, subdivision (3) of subsection (b) of
333 section 15-121, section 15-171, 15-172, 15-175,
334 22a-5, 22a-6 [,] OR 22a-7, [22a-32 or 22a-39]
335 CHAPTER 440, chapter 441, section 22a-69 or
336 22a-74, subsection (b) of section 22a-134p,
337 section 22a-162, 22a-171, 22a-174, 22a-175,
338 22a-177, 22a-178, 22a-181, 22a-183, 22a-184,
339 22a-190, 22a-208, 22a-208a, 22a-209, 22a-213,
340 22a-220, 22a-225, 22a-231, 22a-336, 22a-342,
341 22a-345, 22a-346, 22a-347, 22a-349a, 22a-358,
342 22a-359, 22a-361, 22a-362, 22a-365 TO 22a-379,
343 INCLUSIVE, 22a-401 to [22a-405] 22a-411,
344 inclusive, 22a-416, 22a-417, 22a-424 to 22a-433,
345 inclusive, 22a-447, 22a-449, 22a-450, 22a-451,
346 22a-454, 22a-458, 22a-461, 22a-462 or 22a-471, AS
347 AMENDED, or any regulation, order or permit
348 adopted or issued thereunder by the Commissioner
349 of Environmental Protection shall be liable to the
350 state for the reasonable costs and expenses of the
351 state in detecting, investigating, controlling and
352 abating such violation. Such person shall also be
353 liable to the state for the reasonable costs and
354 expenses of the state in restoring the air,
355 waters, lands and other natural resources of the
356 state, including plant, wild animal and aquatic
357 life to their former condition insofar as
358 practicable and reasonable, or, if restoration is

359 not practicable or reasonable, for any damage,
360 temporary or permanent, caused by such violation
361 to the air, waters, lands or other natural
362 resources of the state, including plant, wild
363 animal and aquatic life and to the public trust
364 therein. Institution of a suit to recover for such
365 damage, costs and expenses shall not preclude the
366 application of any other remedies.
367 (b) Whenever two or more persons knowingly or
368 negligently violate any provision of section
369 14-100b or 14-164c, subdivision (3) of subsection
370 (b) of section 15-121, section 15-171, 15-172,
371 15-175, 22a-5, 22a-6 [,] OR 22a-7, [22a-32 or
372 22a-39] CHAPTER 440, chapter 441, subsection (b)
373 of section 22a-134p, section 22a-162, 22a-171,
374 22a-174, 22a-175, 22a-177, 22a-178, 22a-181,
375 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a,
376 22a-209, 22a-213, 22a-220, 22a-225, 22a-231,
377 22a-336, 22a-342, 22a-345, 22a-346, 22a-347,
378 22a-349a, 22a-358, 22a-359, 22a-361, 22a-362,
379 22a-365 TO 22a-379, INCLUSIVE, 22a-401 to
380 [22a-405] 22a-411, inclusive, 22a-416, 22a-417,
381 22a-424 to 22a-433, inclusive, 22a-447, 22a-449,
382 22a-450, 22a-451, 22a-454, 22a-458, 22a-461,
383 22a-462 or 22a-471, AS AMENDED, or any regulation,
384 order or permit adopted or issued thereunder by
385 the commissioner and responsibility for the damage
386 caused thereby is not reasonably apportionable,
387 such persons shall, subject to a right of equal
388 contribution, be jointly and severally liable
389 under this section.
390 Sec. 8. Subsection (a) of section 22a-6k of
391 the general statutes, as amended by section 3 of
392 public act 97-289, is repealed and the following
393 is substituted in lieu thereof:
394 (a) The Commissioner of Environmental
395 Protection may issue an emergency authorization
396 for any activity regulated by the commissioner
397 under section 22a-32, SUBSECTION (h) OF SECTION
398 22a-39, 22a-54, 22a-66, 22a-174, 22a-208a,
399 22a-342, 22a-368, 22a-403, 22a-430, 22a-449 or
400 22a-454, AS AMENDED, provided he finds that (1)
401 such authorization is necessary to prevent, abate
402 or mitigate an imminent threat to human health or
403 the environment; and (2) such authorization is not
404 inconsistent with the federal Water Pollution
405 Control Act, the federal Rivers and Harbors Act,
406 the federal Clean Air Act or the federal Resource

407 Conservation and Recovery Act. Such emergency
408 authorization shall be limited by any conditions
409 the commissioner deems necessary to adequately
410 protect human health and the environment. Summary
411 suspension of an emergency authorization may be
412 ordered in accordance with subsection (c) of
413 section 4-182. The commissioner may assess a fee
414 for an emergency authorization issued pursuant to
415 this subsection. Such fee shall be of an amount
416 equal to the equivalent existing permit fee for
417 the activity authorized. The commissioner may
418 reduce or waive the fee required pursuant to this
419 subsection if good cause is shown. The fee
420 required pursuant to this subsection shall be paid
421 no later than ten days after the issuance of the
422 emergency authorization.
423 Sec. 9. Subsection (a) of section 22a-354i of
424 the general statutes is repealed and the following
425 is substituted in lieu thereof:
426 (a) On or before July 1, 1991, the
427 Commissioner of Environmental Protection shall
428 publish notice of intent to adopt regulations in
429 accordance with chapter 54 for land use controls
430 in aquifer protection areas. The regulations shall
431 establish (1) best management practice standards
432 for existing regulated activities located entirely
433 or in part within aquifer protection areas and a
434 schedule for compliance of nonconforming regulated
435 activities with such standards, (2) best
436 management practice standards for and prohibitions
437 of regulated activities proposed to be located
438 entirely or in part within aquifer protection
439 areas, (3) procedures for exempting regulated
440 activities in aquifer protection areas upon
441 determination solely by the commissioner that such
442 regulated activities do not pose a threat to any
443 existing or potential drinking water supply and
444 (4) requirements for design and installation of
445 groundwater monitoring within aquifer protection
446 areas. In addition, the commissioner may adopt
447 such other regulations as deemed necessary to
448 carry out the purposes of sections 22a-354b,
449 22a-354c, 22a-354h, this section, sections
450 22a-354m, 22a-354n, subsection (e) of section
451 22a-354p and subsection (d) of section 22a-451,
452 including but not limited to regulations which
453 provide for the manner in which the boundaries of
454 aquifer protection areas shall be established and

455 amended; criteria and procedures for submission
456 and review of applications to construct or begin
457 regulated activities; procedures for granting,
458 denying, limiting, revoking, suspending,
459 transferring and modifying permits for regulated
460 activities; controls regarding the expansion of
461 nonconforming regulated activities, INCLUDING
462 PROCEDURES FOR OFFSETTING IMPACTS FROM THE
463 EXPANSION OR MODIFICATION OF NONCONFORMING
464 REGULATED ACTIVITIES OR PROCEDURES FOR MODIFYING
465 PERMITS OF REGULATED ACTIVITIES BY THE REMOVAL OF
466 OTHER POTENTIAL POLLUTION SOURCES WITHIN THE
467 SUBJECT WELL FIELD, PROCEDURES FOR THE GRANTING OF
468 PERMITS FOR SUCH EXPANSION OR MODIFICATION BASED
469 ON THE CERTIFICATION OF A QUALIFIED PERSON THAT
470 SUCH EXPANSION MEETS CRITERIA ESTABLISHED BY THE
471 COMMISSIONER; registration requirements for
472 existing regulated activities and procedures for
473 transferring registrations; procedures for
474 landowners to notify a municipality or the
475 commissioner of a change in use and other
476 provisions for administration of the aquifer
477 protection program.
478 Sec. 10. Section 22a-354m of the general
479 statutes is repealed and the following is
480 substituted in lieu thereof:
481 (a) [Each] THE COMMISSIONER OF ENVIRONMENTAL
482 PROTECTION MAY, IN ACCORDANCE WITH REGULATIONS
483 ADOPTED PURSUANT TO SUBSECTION (d) OF THIS
484 SECTION, REQUIRE ANY person engaged in agriculture
485 on land located within an aquifer protection area
486 and whose annual gross sales from agricultural
487 products during the preceding calendar year were
488 two thousand five hundred dollars or more [shall]
489 TO submit a farm resources management plan. [for
490 such land to the Commissioner of Environmental
491 Protection for his approval.]
492 (b) The soil and water conservation district
493 where the aquifer protection area is located shall
494 establish and coordinate a technical team to
495 develop each plan. Such team shall include a
496 representative of the municipality in which the
497 land is located and a representative of any
498 affected water company upon request of such
499 municipality or water company. For the purposes of
500 developing the plan required pursuant to this
501 section, if a farm is located in two or more soil
502 and water conservation districts, the district in

503 which the greater part of such farm is located
504 shall be deemed to be the district in which the
505 entire farm is located. In developing a plan, a
506 district shall consult with the Commissioners of
507 Environmental Protection and Agriculture, the
508 College of Agriculture and Natural Resources at
509 The University of Connecticut, the Connecticut
510 Agricultural Experiment Station, the Soil
511 Conservation Service, the state Agricultural and
512 Conservation Committee and any other person or
513 agency the district deems appropriate.
514 (c) The plan shall include a schedule for
515 implementation and shall be periodically updated
516 as required by the commissioner. In developing a
517 schedule for implementation, the technical team
518 shall consider technical and economic factors
519 including, but not limited to, the availability of
520 state and federal funds. Any person engaged in
521 agriculture in substantial compliance with a plan
522 approved under this section shall be exempt from
523 regulations adopted under section 22a-354o by a
524 municipality in which the land is located. No plan
525 shall be required to be submitted to the
526 commissioner before July 1, 1992, or six months
527 after completion of level B mapping where the farm
528 is located, whichever is later.
529 (d) On or before July 1, [1991] 1999, the
530 Commissioner of Environmental Protection, in
531 consultation with the Commissioner of Agriculture,
532 the United States Soil Conservation Service, the
533 Cooperative Extension Service at The University of
534 Connecticut and the Council for Soil and Water
535 Conservation, shall publish notice of intent to
536 adopt regulations in accordance with chapter 54
537 for farm resources management plans. Such
538 regulations shall include, but not be limited to,
539 A PRIORITY SYSTEM AND PROCEDURES FOR DETERMINING
540 IF A FARM MANAGEMENT PLAN IS REQUIRED AND THE
541 PRIORITY THAT IS ASSIGNED TO THE PREPARATION OF
542 SUCH A PLAN, best management practices,
543 restrictions and prohibitions for manure
544 management, storage and handling of pesticides,
545 reduced use of pesticides through pest management
546 practices, integrated pest management, fertilizer
547 management and underground and above-ground
548 storage tanks and criteria and procedures for
549 submission and review of farm resources management
550 plans and amendments of such plans. In adopting

551 such best management practices, restrictions and
552 prohibitions, the commissioner shall consider
553 existing state and federal guidelines or
554 regulations affecting aquifers and agricultural
555 resources management.
556 Sec. 11. Section 22a-402 of the general
557 statutes is repealed and the following is
558 substituted in lieu thereof:
559 The Commissioner of Environmental Protection
560 shall investigate and inspect or cause to be
561 investigated and inspected all dams or other
562 structures which, in his judgment, would, by
563 breaking away, cause loss of life or property
564 damage. Said commissioner may require any person
565 owning or having the care and control of any such
566 structure to furnish him with such surveys, plans,
567 descriptions, drawings and other data relating
568 thereto and in such form and to such reasonable
569 extent as he directs. Any person in possession of
570 such pertinent information shall afford the owner
571 and the commissioner access thereto. The
572 commissioner shall make or cause to be made such
573 periodic inspections of all such structures as may
574 be necessary to reasonably insure that they are
575 maintained in a safe condition. If, after any
576 inspection described herein, the commissioner
577 finds any such structure to be in an unsafe
578 condition, he shall order the person owning or
579 having control thereof to place it in a safe
580 condition or to remove it and shall fix the time
581 within which such order shall be carried out. The
582 respondent to such an order shall not be required
583 to obtain a permit under chapter 440 OR 446j OR
584 SECTION 22a-342 OR 22a-368 for any action
585 necessary to comply with such order. If such order
586 is not carried out within the time specified, the
587 commissioner may carry out the actions required by
588 the order provided the commissioner has determined
589 that an emergency exists which presents a clear
590 and present danger to the public safety and said
591 commissioner shall assess the costs of such action
592 against the person [, firm or corporation] owning
593 or having care and control of the structure. When
594 the commissioner in his investigation finds that a
595 dam or other structure should be inspected
596 periodically in order to reduce a potential hazard
597 to life and property, the owner of such structure
598 shall cause such inspection to be made by a

599 registered engineer at such intervals as are
600 deemed necessary by the commissioner and shall
601 submit a copy of the engineer's finding and report
602 to the commissioner for his action. As used in
603 this chapter, "person" shall have the same meaning
604 as defined in subsection (c) of section 22a-2. THE
605 COMMISSIONER SHALL CAUSE A CERTIFIED COPY OF A
606 FINAL ORDER ISSUED UNDER THIS SECTION TO BE
607 RECORDED ON THE LAND RECORDS IN THE TOWN OR TOWNS
608 WHEREIN THE DAM OR SUCH STRUCTURE IS LOCATED.
609 Sec. 12. Subsection (b) of section 22a-403 of
610 the general statutes is repealed and the following
611 is substituted in lieu thereof:
612 (b) The commissioner or his representative,
613 engineer or consultant shall determine the impact
614 of the construction work on the environment, on
615 the safety of persons and property and on the
616 inland wetlands and watercourses of the state in
617 accordance with the provisions of sections 22a-36
618 to 22a-45, inclusive, AS AMENDED, and shall
619 further determine the need for a fishway in
620 accordance with the provisions of section 26-136,
621 and shall examine the documents and inspect the
622 site, and, upon approval thereof, the commissioner
623 shall issue a permit authorizing the proposed
624 construction work under such conditions as the
625 commissioner may direct. The commissioner shall
626 send a copy of the permit to the town clerk in any
627 municipality in which the structure is located or
628 any municipality which will be affected by the
629 structure. AN APPLICANT FOR A PERMIT ISSUED UNDER
630 THIS SECTION TO ALTER, REBUILD, REPAIR OR REMOVE
631 AN EXISTING DAM SHALL NOT BE REQUIRED TO OBTAIN A
632 PERMIT UNDER SECTIONS 22a-36 TO 22a-45a,
633 INCLUSIVE, AS AMENDED, OR SECTION 22a-342 OR
634 22a-368. AN APPLICANT FOR A PERMIT ISSUED UNDER
635 THIS SECTION TO CONSTRUCT A NEW DAM SHALL NOT BE
636 REQUIRED TO OBTAIN A PERMIT UNDER SECTIONS 22a-36
637 TO 22a-45a, INCLUSIVE, AS AMENDED, FOR SUCH
638 CONSTRUCTION.
639 Sec. 13. Section 22a-408 of the general
640 statutes is repealed and the following is
641 substituted in lieu thereof:
642 Upon written request, any person [, firm or
643 corporation] aggrieved by any decision of the
644 commissioner under this chapter, other than a
645 decision under section 22a-403, shall be given a
646 hearing by the commissioner. Any person [, firm or

647 corporation] aggrieved by any decision or order of
648 the commissioner pursuant to the provisions of
649 section 22a-402, 22a-405 or 22a-409 may request a
650 hearing before the commissioner. Such request
651 shall be submitted to the commissioner within
652 thirty days of receipt of notice of such decision
653 or order. The commissioner shall conduct such
654 hearing promptly in accordance with the provisions
655 of chapter 54. An appeal may be taken from any
656 decision of the commissioner in accordance with
657 the provisions of section 4-183, except such
658 appeal shall be made returnable to the judicial
659 district of Hartford-New Britain at Hartford*.
660 Sec. 14. Section 22a-411 of the general
661 statutes is repealed and the following is
662 substituted in lieu thereof:
663 (a) The commissioner may issue a general
664 permit for any minor activity regulated under
665 sections 22a-401 to 22a-410, inclusive, except for
666 any activity covered by an individual permit, if
667 the commissioner determines that such activity
668 would cause minimal environmental effects when
669 conducted separately and would cause only minimal
670 cumulative environmental effects. Such activities
671 may include routine maintenance and routine repair
672 of any dam, dike, reservoir or other similar
673 structure and the construction if any such
674 structure presents low or negligible safety
675 hazards. Any person [, firm or corporation]
676 conducting an activity for which a general permit
677 has been issued shall not be required to obtain an
678 individual permit under [any other provision of
679 said sections 22a-401 to 22a-410, inclusive]
680 SECTIONS 22a-36 TO 22a-45a, INCLUSIVE, AS AMENDED,
681 OR SECTION 22a-342, 22a-368 OR 22a-403, except as
682 provided in subsection (c) of this section. A
683 general permit shall clearly define the activity
684 covered thereby and may include such conditions
685 and requirements as the commissioner deems
686 appropriate, including but not limited to,
687 management practices and verification and
688 reporting requirements. The general permit may
689 require any person [, firm or corporation]
690 conducting any activity under the general permit
691 to report, on a form prescribed by the
692 commissioner, such activity to the commissioner
693 before it shall be covered by the general permit.
694 The commissioner shall prepare, and shall annually

695 amend, a list of holders of general permits under
696 this section, which list shall be made available
697 to the public.
698 (b) Notwithstanding any other procedures
699 specified in said sections 22a-401 to 22a-410,
700 inclusive, any regulation adopted thereunder, and
701 chapter 54, the commissioner may issue, revoke,
702 suspend or modify a general permit in accordance
703 with the following procedures: (1) The
704 commissioner shall publish in a newspaper having a
705 substantial circulation in the affected area or
706 areas notice of intent to issue a general permit;
707 (2) the commissioner shall allow a comment period
708 of thirty days following publication of such
709 notice during which interested persons may submit
710 written comments to the commissioner and the
711 commissioner shall hold a public hearing if,
712 within said comment period, he receives a petition
713 signed by at least twenty-five persons; (3) the
714 commissioner may not issue the general permit
715 until after the comment period; and (4) the
716 commissioner shall publish notice of any issued
717 permit in a newspaper having substantial
718 circulation in the affected area or areas. Any
719 person may request that the commissioner issue,
720 modify or revoke a general permit in accordance
721 with the provisions of this subsection.
722 (c) Subsequent to the issuance of a general
723 permit, the commissioner may require any person [,
724 firm or corporation] to obtain an individual
725 permit under the provisions of said sections
726 22a-401 to 22a-410, inclusive, for all or any
727 portion of the activities covered by the general
728 permit, if in the commissioner's judgment the
729 purposes and policies of said sections would be
730 best served by requiring an application for an
731 individual permit. The commissioner may require an
732 individual permit under this subsection only if
733 the affected person [, firm or corporation] has
734 been notified in writing that an individual permit
735 is required. The notice shall include a brief
736 statement of the reasons for the decision and a
737 statement that upon the date of issuance of such
738 notice the general permit as it applies to the
739 individual activity will terminate.
740 (d) Any general permit issued under this
741 section shall require that any person [, firm or
742 corporation] intending to conduct an activity

743 covered by such general permit shall, at least
744 sixty days before initiating such activity, give
745 written notice of such intention to the inland
746 wetlands agency, zoning commission, planning
747 commission or combined planning and zoning
748 commission, and conservation commission of any
749 municipality which will or may be affected by such
750 activity, and to the department which shall make
751 such notices available to the public. The general
752 permit shall specify the information which must be
753 contained in the notice. An inland wetlands
754 agency, planning and zoning commission,
755 conservation commission or any person may submit
756 written comments to the commissioner concerning
757 such activity no later than twenty-five days
758 before the date that the activity is proposed to
759 begin.
760 (e) The commissioner may adopt regulations in
761 accordance with the provisions of chapter 54 to
762 carry out the purposes of this section.
763 Sec. 15. Subsection (a) of section 22a-7 of
764 the general statutes is repealed and the following
765 is substituted in lieu thereof:
766 (a) The commissioner, whenever he finds after
767 investigation that any person is causing, engaging
768 in or maintaining, or is about to cause, engage in
769 or maintain, any condition or activity which, in
770 his judgment, will result in or is likely to
771 result in imminent and substantial damage to the
772 environment, or to public health within the
773 jurisdiction of the commissioner under the
774 provisions of chapters 440, 441, 442, 445, 446a,
775 446c, 446d, 446j and 446k, or whenever he finds
776 after investigation that there is a violation of
777 the terms and conditions of a permit issued by him
778 that is in his judgment substantial and continuous
779 and it appears prejudicial to the interests of the
780 people of the state to delay action until an
781 opportunity for a hearing can be provided, or
782 whenever he finds after investigation that any
783 person is conducting, has conducted, or is about
784 to conduct an activity which will result in or is
785 likely to result in imminent and substantial
786 damage to the environment, or to public health
787 within the jurisdiction of the commissioner under
788 the provisions of chapters 440, 441, 442, 445,
789 446a, 446c, 446d, 446j and 446k for which a
790 license, as defined in section 4-166, is required

791 under the provisions of chapter 440, 441, 442,
792 445, 446a, 446c, 446d, 446j or 446k without
793 obtaining such license, may, without prior
794 hearing, issue a cease and desist order in writing
795 to such person to discontinue, abate or alleviate
796 such condition or activity.
797 Sec. 16. Subdivision (2) of subsection (c) of
798 section 22a-42a of the general statutes, as
799 amended by section 10 of public act 97-124, is
800 repealed and the following is substituted in lieu
801 thereof:
802 (2) An inland wetlands agency may delegate to
803 its duly authorized agent the authority to approve
804 or extend, WITHOUT A PUBLIC HEARING, an activity
805 that is not located in a wetland or watercourse
806 when such agent finds that the conduct of such
807 activity would result in no greater than a minimal
808 impact on any wetland or watercourse provided such
809 agent has completed the comprehensive training
810 program developed by the commissioner pursuant to
811 section 22a-39. Notwithstanding the provisions for
812 receipt and processing applications prescribed in
813 subdivision (1) of this subsection, such agent may
814 approve or extend such an activity at any time.
815 Any person receiving such approval from such agent
816 shall, within ten days of the date of such
817 approval, publish, at the applicant's expense,
818 notice of the approval in a newspaper having a
819 general circulation in the town wherein the
820 activity is located or will have an effect. Any
821 person may appeal such decision of such agent to
822 the inland wetlands agency within fifteen days
823 after the publication date of the notice and the
824 inland wetlands agency shall consider such appeal
825 at its next regularly scheduled meeting provided
826 such meeting is no earlier than three business
827 days after receipt by such agency or its agent of
828 such appeal. The inland wetlands agency shall, at
829 its discretion, sustain, alter or reject the
830 decision of its agent or require an application
831 for a permit in accordance with subdivision (1) of
832 subsection (c) of this section.
833 Sec. 17. Subsection (f) of section 23-65 of
834 the general statutes is repealed and the following
835 is substituted in lieu thereof:
836 (f) Any person, firm or corporation, other
837 than a tree warden or his deputy, who desires the
838 cutting or removal, in whole or in part, of any

839 tree or shrub or part thereof within the limits of
840 any public road or grounds, may apply in writing
841 to the town tree warden, the borough tree warden
842 or the Commissioner of Transportation or other
843 authority having jurisdiction thereof for a permit
844 so to do. Upon receipt of such permit, but not
845 before, he may proceed with such cutting or
846 removal. Before granting or denying such permit,
847 such authority may hold a public hearing as
848 provided in section 23-59, and when the applicant
849 is a public utility corporation, the party
850 aggrieved by such decision may, within ten days,
851 appeal therefrom to the Department of Public
852 Utility Control, which shall have the power to
853 review, confirm, change or set aside the decision
854 appealed from and its decision shall be final.
855 This shall be in addition to the powers granted to
856 it under section 16-234, provided, if an
857 application for such permit has been made to
858 either a tree warden or the Commissioner of
859 Transportation or other authority and denied by
860 him, an application for a permit for the same
861 relief shall not be made to any other such
862 authority. UPON ANY APPROVAL OF SUCH A PERMIT BY
863 THE COMMISSIONER OF TRANSPORTATION, HE SHALL
864 NOTIFY THE TREE WARDEN FOR THE TOWN IN WHICH THE
865 TREE IS LOCATED.

866 PD COMMITTEE VOTE: YEA 17 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. In addition, allowing agents of inland wetlands commissions to approve minor activities without public hearings is also anticipated to minimally decrease costs.

* * * * *

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. requires an agent of an inland wetlands commission to approve minor activities without a public hearing;

7. allows the DEP to issue emergency authorizations for inland wetland activities of state agencies;

8. 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;

9. adds to the regulations the DEP may adopt under the aquifer protection program ones setting procedures for offsetting nonconforming uses; and

10. 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 (1) fees and (2) 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

The 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 a certified copy of his final order on the town land records where the dam is located.

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.

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 begin 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. 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.

BACKGROUND

Legislative History

The bill (File 264) was referred by the House (1) on April 8 to the Public Health Committee which reported it unchanged and (2) on April 17 to the Planning and Development Committee which eliminated the bill's expansion of the waters subject to the structures and dredging law.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 23 Nay 0

Public Health Committee

Joint Favorable Report
Yea 20 Nay 0

Planning and Development Committee

Joint Favorable Substitute
Yea 17 Nay 0