

“The ink from my signature on House Bill 5208 has hardly dried, but DEP has a game plan in place to take a good, hard look at how it reviews and makes decisions on permit applications.”

“Our goal is to meet tighter deadlines for action on projects that are important to our state and its economy – **keeping and growing jobs while maintaining our environmental standards.** I believe DEP’s review of its permitting processes and recommendations for improvements will help us meet this goal.”

- *Governor M. Jodi Rell*

Executive Order 39

- E.O. 39 established a Permitting Task Force:
 - “to examine the processes by which permits are issued by various state agencies and develop recommendations”
 - “reduce unnecessary burdens, costs and inefficiencies while maintaining appropriate protections for the public health, safety and welfare and the orderly conduct of business.”
- Chaired by CEO of CT company and included representatives of:
 - business and industry, the construction industry, labor and municipalities
- Issued recommendations early April



Public Act 10-158

- Pilot expedited permitting process: "proposes a plan to establish a pilot expedited permitting process for not less than two hundred representative manufacturing or other industrial facilities"
- Permit timeframe review: "prescribes changes to be made to the department's review schedules for individual permits, including reducing the timeframes for identifying deficiencies in permit applications and issuing tentative determinations" (60 days/180days)
"identifies the process improvements, additional resources, staffing and programmatic changes necessary to meet such timeframes"



Public Act 10-158 cont.

- CEPA study of: "the impact of Connecticut's Environmental Protection Act on (A) the business community, (B) the timeliness and certainty of the permitting process under such act, and(C) the efficacy of the permitting process under such act in protecting and preserving the environment"
- Implement process to allow for withdrawal of petition for a hearing under listed permitting programs
- Analyze hearing process and implement procedures to: "increase the use of settlement conferences, enforce the requirement for submittal of prehearing evidence and require the filing of prehearing written testimony"



Public Act 10-158 cont.

- General permit (GP) study of: "existing procedures regarding the issuance of general permits"
- Permit ombudsman/expedited permitting MOUs with DECD
- General permit extensions: allows the agency to continue a GP in effect for up to 12 months provided we publish notice of intent to renew at least 180 days prior to expiration. (A modified version of our SB121)
- Establish categories of wastewater discharges which may be exempted from the requirement to submit plans and specifications



Public Act 10-158 cont.

- Negotiate with EPA to create/allow for a “consulting services Program”
- Water Quality Standards adoption via regulation (SB174)
- Regulatory flexibility analysis language adjustment
- Track our progress
 - <http://www.ct.gov/dep/permitassessments>



Section 2(a) of Public Act 10-158 states that this study shall consider: “(1) the impact of Connecticut’s Environmental Protection Act on (A) the business community; (B) the timeliness and certainty of the permitting process under such act, and (C) the efficacy of the permitting process under in protecting and preserving the environment....”

Office of Adjudications

LEAN/P.A. 10-158

- LEAN
 - Reviewed hearing process and procedures to identify opportunities for increased efficiencies.
 - Implementing plan to put efficiencies into practice.
- P.A. 10-158
 - New procedures in place to streamline hearing process (settlement, pre-filed testimony and evidence).
 - Petitions for hearing may be withdrawn under certain conditions; new information on web to notify public.
 - **This meeting on impact of CEPA intervention on DEP hearing process.**

What is a “CEPA Intervention”?

- **Section 22a-19(a)** provides for intervention as a party “in any...proceeding...on the filing of a verified pleading asserting that the proceeding ...involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing, or destroying the public trust in air, water or other natural resources of the state”.
- CT Environmental Protection Act (CEPA), General Statutes §§ 22a-14 through 22a-20

DEP Rules of Practice

- **Status as an intervening party granted if a statute confers the right** and the conditions in that statute for such status are met. Regs., Conn. State Agencies § 22a-2a-6(k)(1)(A).
 - Request for status as a party shall be filed no later than 5 days before the date of the hearing...such 5-day requirement may be waived by the hearing officer or the Commissioner, as appropriate, at any time before or after the commencement of the hearing for “good cause” shown. (k)(3)
 - A request under this subsection shall be construed liberally so as to further the policies and purposes of CEPA and the statutes and regulations administered by the DEP. (k)(6)

Process

- Request to Office of Adjudications
- 7-10 days for objections from parties
- Director or hearing officer determines
 - Form requirements met? (e.g., copies)
 - Allegations supported by specific facts?
- Intervening party takes the record as he or she finds it
- Notice to all parties, intervenors

Nizzardo/Fact Pleading

- Intervention request **“must contain specific factual allegations setting forth the environmental issue that the intervenor intends to raise.”** *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 164-165 (2002).
 - “reasonably likely to result in unreasonable pollution” not enough
 - Intervening parties **limited to raising environmental claims within the agency jurisdiction.**
 - Facts alleged **should be sufficient to allow agency to determine whether the intervention implicates an issue within its jurisdiction.**
 - Allegations enough to be granted party status (BUT...)

Intervening Parties

- *Same rights/obligations of **all** other parties.*
 - Must actively participate.
 - Must establish prima facie case of unreasonable pollution in order to have alternatives to proposed permitted activity/ties considered.
 - Even if do not meet burden regarding unreasonable pollution, still a party, can participate in hearing and able to file post-hearing motions, including appeal of final decision.

Intervention

Benefits

- New issues/concerns brought to hearing.
- Additional testing, new considerations by DEP.
- New or revised permit terms and conditions.
- Greater public awareness/public participation.
- Permit more protective of environment.

Burdens

- Use of CEPA intervention to delay unwanted project.
- Complications, confusion regarding “real” issues.
- Unwarranted expense, time for applicants, DEP.
- Perceptions become reality.
- Accommodations become unenforceable permit conditions.

TOTAL PERMITS ISSUED/ADJUDICATED (FIVE YEAR PERIOD)

- PERMITS ISSUED 11,000
- PERMITS ADJUDICATED 70
- % ADJUDICATED V. PERMITS ISSUED <0.7%
- % CEPA INTERVENTION V. PERMITS ISSUED <0.4%

Conclusions

- CEPA intervention can enhance hearing process and result in permits providing increased environmental protections.
- CEPA process can lead to delays and unfounded and unnecessary public concerns and opposition.
- Hearing process must allow for benefits of CEPA intervention while also managing its burdens.

Section 2(a) of Public Act 10-158 directs the Commissioner to examine “(2) existing procedures regarding the issuance of general permits . . .” and to make recommendations designed to improve the process for issuing such permits.

Types of permit processes

- Individual
 - A permit issued to an individual applicant's specific situation, typically includes an opportunity for notice and comment, e.g., NPDES water discharge permits
- **General permit**
 - A single permit that many can register under, which covers similar minor activities throughout a prescribed geographic area with common BMPs, terms and conditions, e.g., transfer station GP, storm water GP
- Other short processes
 - e.g., Certificate of Permission (COP), special waste, temporary and emergency authorizations



DEP's permitting programs

- 25 permitting “programs”
- 56 general permit categories
- The number of activities covered by GP registrations exceeds those covered by and individual permit.



Wide Range of Activities Covered by General Permits

- Siting and construction activities
 - e.g., land use activities, stormwater
- Discharges and emissions of air and water pollutants
 - e.g., limit potential to emit, domestic sewage
- Facilities, operations and management
 - e.g., municipal transfer stations
- Remedial Activities
 - e.g., in-situ groundwater remediation



General Permits for Wastewater Discharges

- Boiler Blowdown
- Domestic Sewage
- Food Preparation Establishment Wastewater
- Food Processing Wastewater
- Groundwater Remediation Wastewater to a Sanitary Sewer
- Groundwater Remediation Wastewater to a Surface Water
- Hydrostatic Pressure Testing Wastewater Natural Gas Pipelines
- Minor Non-Contact Cooling and Heat Pump Water
- Minor Photographic Processing
- Minor Printing & Publishing Wastewater
- Minor Tumbling or Cleaning of Parts Wastewater
- Miscellaneous Discharges of Sewer Compatible Wastewater Flow < 5,000 gpd and Flow > 5,000 gpd
- Nitrogen Discharges
- Stormwater Associated with Commercial Activities
- Stormwater Associated with Industrial Activities
- Stormwater & Dewatering Wastewaters- Construction Activities 5 – 10 acres and > 10 acres
- Stormwater from Small Municipal Separate Storm Sewer Systems (MS4)
- Swimming Pool Wastewater - Public Pools and Contractors
- Vehicle Maintenance Wastewater
- Approval of Registration by DEP
- Water Treatment Wastewater
- Emergency/Temporary Authorization - Discharge to POTW
- Emergency/Temporary Authorization - Discharge to Surface Water
- Emergency/Temporary Authorization - Discharge to Groundwater



IWRD General Permits

- Minor Grading – 5 Categories
- Minor Structures – 11 Categories
- Habitat Conservation – 5 Categories
- Utilities and Drainage – 11 Categories
- Lakes, Ponds & Basin Dredging -2 Categories
- Dam Safety – 3 Categories
- Diversion of Remediation Groundwater
- Consumptive Diversion –Authorization Required 3 Categories
- Consumptive Diversion – Filing Only 4 Categories
- Consumptive Diversion - Non-filing 3 Categories
- Consumptive Diversion – Reauthorization 6 Categories
- ACOE - Programmatic General Permit



Why General Permits?

- Assures consistent and efficient regulation of similar types of operations or activities
- General permits are typically quicker and more cost effective for both the Department and the applicant
- Put the applicant in greater control of schedule



Typical General Permit Issuance Process

- Analysis of need for a new category of general permit
 - Addresses broad based regulatory or environmental need;
 - Involves the same or substantially similar types of operations, involves the same type of wastes, require the same limitations, operating conditions or standards, and require the same or similar monitoring;
- Stakeholder input
- State wide notice of intent to issue with opportunity for public comment
- Public hearing as needed
- Notice of permit issuance



Obtaining coverage under a GP

There are three basic types of general permits or ways of authorizing activities using a general permit. Each general permit describes the necessary level of approval needed to initiate an activity, which can include one or more of the following:

- a person conducting an activity described in a general permit may initiate the activity without prior registration (some of these permits may require later registration);
- registration is required prior to initiation of the activity (this registration frequently requires certification of a professional engineer); or
- CT DEP approval is required prior to initiation of the activity. In some cases, this approval will contain site-specific conditions in addition to those already contained in the general permit.



Recent and proposed improvements to General Permits

- Linked coverage between regulatory programs e.g., diversion and groundwater remediation
- Extended some GPs duration from 5 to 10 years
- Creating new categories e.g., pretreatment reform
- Consolidating general permit categories
- Created a streamlined renewal application for previous authorized activities
- Providing for previous authorized activities to continue uninterrupted



DEP's Online Information Regarding General Permits

- [Description of current general permits](#)
- [General permits and registration forms](#)

- Track our progress
 - <http://www.ct.gov/dep/permitassessments>

