Legislative History for Connecticut Act

HB 5092 PA 53 1984

House - 183, 673-688 (17)

Senate - 159, 780-781, 807 (4)

Environment (Interim) 68-73, 86-91, 94-95, 99-101, 113-132, 141-145, 147-152, 162-168, 177-179 189 (59)

Total - 80p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

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ACTING SPEAKER GIBSON:

So ordered. Were there objections? So ordered.

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Environment. Substitute for House Bill No. 5092, AN ACT CONCERNING RECONSTRUCTION IN COASTAL AREAS AFTER A CASUALTY LOSS. The bill was then referred to the Committee on Planning and Development.

Environment. Substitute for House Bill No. 5148, AN ACT CONCERNING FOREST FIRE-FIGHTING EQUIPMENT FOR FIRE COMPANIES. The bill was then referred to the Committee on Appropriations.

Labor and Public Employees. House Bill No. 5187, AN ACT CONCERNING RETIREMENT BENEFITS FOR PART-TIME TEACHERS. The bill was then referred to the Committee on Appropriations.

Environment. House Bill No. 5247, AN ACT CONCERNING TECHNICAL ASSISTANCE FOR WOODLAND MANAGEMENT. The bill was then referred to the Committee on Appropriations.

Environment. House Bill No. 5250, AN ACT CONCERNING AN APPROPRIATION TO THE COUNCIL ON SOIL AND WATER CONSERVATION. The bill was then referred to the Committee on Appropriations.

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CLERK:

Favorable Reports. Favorable Report of the Joint Standing Committee on Executive and Legislative Nominations on House Joint Resolution No. 43, confirming the nomination of John T. Downey to the a member of the Public Utilities Control Authority.

ACTING SPEAKER GIBSON:

Tabled for the Calendar.

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There are some 40 located in Italy, and there are 10 more located in Guatemala and Colombia.

At the present time, Father D'Onofrio is here on a mission at St. Lucy's Church in Waterbury, but every year the citizens of New Britain have the opportunity to see Father D'Onofrio visit our city and in so doing make visits to many of the children who were members of his orphanage who now reside in our town. I would ask that the House give our long traditional warm standing to three very, very important priests, individuals who've done so much for the children. Father, would you please stand.

(Applause.)

DEPUTY SPEAKER FRANKEL:

Are there further announcements or points of personal privilege? If not, will the Clerk please return to the call of the Calendar.

CLERK:

Calendar No. 103, File No. 101, Substitute for House Bill No. 5092, AN ACT CONCERNING RECONSTRUCTION IN COASTAL AREAS AFTER A CASUALTY LOSS. Favorable Report of the Committee on Planning and Development.

REP. GARAVEL: (110th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Paul Garavel.

REP. GARAVEL: (110th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance and passage. Will you remark, sir?

REP. GARAVEL: (110th)

Yes, Mr. Speaker. This bill amends the Coastal Management Act to state explicitly that nothing in this act precludes reconstruction of buildings after a casualty loss. However, local agencies would retain their authority to conduct coastal site plan review of any adverse environmental impacts that may be associated with rebuilding and to require reasonable measures to mitigate these impacts.

In addition, local agencies would retain their authority to review rebuilding under their existing planning and zoning powers. Mr. Speaker, I would urge passage of the bill.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill?

REP. JAEKLE: (122nd)

Mr. Speaker.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. Mr. Speaker, a question through you to the proponent of the bill, please.

DEPUTY SPEAKER FRANKEL:

Please frame your question, sir.

REP. JAEKLE: (122nd)

Through you, Mr. Speaker, did I understand that nothing in this proposed bill would eliminate the requirement of a property owner to submit a coastal site plan for local review, through you, Mr. Speaker?

DEPUTY SPEAKER FRANKEL:

Rep. Garavel.

REP. GARAVEL: (110th)

Through you, Mr. Speaker, I don't think that's what I said. Could he please rephrase the question?

DEPUTY SPEAKER FRANKEL:

Rep. Jaekle, if you'd be so kind, sir.

REP. JAEKLE: (122nd)

Yes, through you, Mr. Speaker. If a property owner has their house destroyed by a hurricane and wishes to rebuild that house, will they have to file a coastal site plan, through you, Mr. Speaker?

REP. GARAVEL: (110th)

Will the gentleman clarify with whom such a site

plan would have to be filed?

REP. JAEKLE: (122nd)

Mr. Speaker, my question is would such a site plan have to be filed with anybody? Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Garavel.

REP. GARAVEL: (110th)

Through you, Mr. Speaker, the answer is yes.

DEPUTY SPEAKER FRANKEL:

Rep. Garavel, for purposes of clarification, would you indicate to the Chamber as to whom the plan would have to be filed with?

REP. GARAVEL: (110th)

The plan would be filed with the local agency and with the authority who conducts coastal site plan review.

DEPUTY SPEAKER FRANKEL:

Rep. Jaekle, you have the floor, sir.

REP. JAEKLE: (122nd)

And through you, Mr. Speaker, if the coastal site plan upon review by the local board, if that be the case, does not like the coastal site plan, they still would retain powers to place conditions upon their reconstruction to protect the environment in our coastal areas? Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Garavel.

REP. GARAVEL: (110th)

Through you, Mr. Speaker, yes.

REP. JAEKLE: (122nd)

Thank you.

REP. HOLBROOK: (35th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Holbrook.

REP. HOLBROOK: (35th)

Yes, I'd like to rise to support this bill. In looking back through the transcripts, I find that there was nothing said by this legislature or nothing done, no action taken that would prohibit reconstruction after a casualty loss. However, many people have been concerned and I believe their concerns are legitimate by the fact that the State may become involved and acquire their property.

I would hope that this legislature would support this bill, because it doesn't affect just districts that are on the shoreline or waterfront plans. It affects everybody in the State of Connecticut. Thank you.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill?

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. VanNorstrand.

REP. VAN NORSTRAND: (141st)

Through you, a question of Rep. Garavel.

DEPUTY SPEAKER FRANKEL:

Please frame your question, sir.

REP. VAN NORSTRAND: (141st)

I'm not an expert on coastal area management plan, but as I recall, there was some sort of exemption for single family residences in terms of initial construction or at least that local option exists. I can't remember if it's mandated. Could you inform us?

DEPUTY SPEAKER FRANKEL:

Rep. Garavel, will you respond?

REP. GARAVEL: (110th)

Through you, Mr. Speaker, it's my understanding that to build in a coastal management area, you must go before the Coastal Management Review Board and the local planning and zoning authorities.

REP. VAN NORSTRAND: (141st)

Through you, was there an exemption for single family residences?

DEPUTY SPEAKER FRANKEL:

Rep. Garavel.

REP. GARAVEL: (110th)

Through you, Mr. Speaker, not in this bill, and I'm not aware of one. There may be one in statute, however.

REP. VAN NORSTRAND: (141st)

Mr. Speaker, I suspect there was, but I would ask or at least make an observation. I think a number of members of the Chamber may have received some letters from people who have been affected by, whether it be a hurricane or other natural disaster, and have lost the opportunity by reason of destruction of premises that they want to reconstruct.

But I would just point out down the line 16, we're talking about any building here. Now, through you, Mr. Speaker, is it, am I not reading it correctly, that even they could not prevent the reconstruction of any building, even if it was a singularly inappropriate use for coastal area land?

DEPUTY SPEAKER FRANKEL:

Rep. Garavel.

REP. GARAVEL: (110th)

Through you, Mr. Speaker, that's not my understanding. They would still go before the local planning and zoning authorities, who would have the opportunity to deny reconstruction based on certain grounds, as found in Section 22A-106.

REP. VAN NORSTRAND: (141st)

Through you, Mr. Speaker, perhaps you can correct me on the language, what's being added starts on Line 14, and it says "the provisions of this chapter", not just this section, "shall not be construed to prevent the reconstruction of a building after a casualty loss." Doesn't that say you can't prevent the reconstruction of any building?

DEPUTY SPEAKER FRANKEL:

Rep. Garavel.

REP. GARAVEL: (110th)

Through you, Mr. Speaker, it would still have to go to the site plan review, as found in 22A-106. To insure that the potential adverse impact of the proposed activity on both coastal resources and future water-dependent development activities are acceptable.

REP. VAN NORSTRAND: (141st)

Through you, Mr. Speaker, you had a colloquy with

Rep. Jaekle earlier, and you indicated that same thing, that they'd have to approve the site plan, they could impose conditions.

Does there not come a point where you impose conditions that prevent the reconstruction of a building?

DEPUTY SPEAKER FRANKEL:

Rep. Garavel.

REP. GARAVEL: (110th)

Through you, Mr. Speaker, that may be possible.

DEPUTY SPEAKER FRANKEL:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Well, Mr. Speaker, it seems to me a clear mandate. I think we would have done well to have perhaps limited this to single family residences, which can in fact be a real hardship if they happen to be established many years ago along the coast. But it strikes me inimical to the purposes of coastal area management that the most blatantly unacceptable, inappropriate use could be reconstructed when the whole thrust of coastal area management is to finally reserve those areas for appropriate uses based on their relation to the shore.

REP. CASEY: (118th)

Mr. Speaker. Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. T. J. Casey.

REP. CASEY: (118th)

Mr. Speaker, there's a little bit of misunderstanding here. The coastal area management act was never to prohibit reconstruction along the coast, but it was going to have to do it with the protection of the State's valuable natural resources and the consideration by supplying the coastal site plan.

Now, Rep. VanNorstrand asked the question on whether there is an exemption for single family residences. Yes, their is an exemption if the municipality passed the ordinance. But that exemption is only for those residences, single-family residences, that do not fall within 100 feet of a State coastal resource, a beach, a mud flat, a dune. If you're within 100 feet of that natural resource, then indeed you are not exempt from submitting a coastal site plan. You must. It was the concern of such towns as the Town of Clinton that this particular requirement would prohibit reconstruction.

And that is why we have come up with this language. The intent of coastal area management was not to prohibit reconstruction, but it was to protect our State's valuable natural resources. If a local municipality decided to allow

reconstruction, they would have to continue to meet all the State and Federal and local ordinances pertaining to receiving a building permit, including fees.

If you're in a fee zone, you have to be 15 feet at the bottom of your first floor sill. There are other protections involved here, but this won't --

DEPUTY SPEAKER FRANKEL:

Excuse me, sir. Will the House please come to order. My apologies, Rep. Casey. You have the floor, sir.

REP. CASEY: (118th)

Thank you, Mr. Speaker. Just in summation, Mr. Speaker, this is clarification. It was the intent of coastal area management to allow or to offer the ability to reconstruct, by reconstruction you should take into account the potential effect that you could have on some of our state's very valuable natural resources. This is a clarification of that matter to rectify some of the intent problems that have been proposed by some of the municipalities within our state, and I urge its passage. It's a good bill. Thank you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill?

REP. EMMONS: (101st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Linda Emmons.

REP. EMMONS: (101st)

Thank you, Mr. Speaker. This language that is in here has arisen from a problem of some of the shoreline communities when they went to put together their CAM act, or municipal CAM plan. The language was drafted by the person over in DEP who heads up the CAM program, Arthur Rock, as a substitute to other language that has been suggested by legislators.

While it looks broad, I think one has to remember that you cannot really rebuild too easily in a coastal area, to begin with, because you have to get flood insurance if you want to get a mortgage. And flood insurance requires certain setbacks, certain types of foundations, certain heights, so that it will not be able to build in a sense that would be detrimental necessarily to the environment.

I think if you go back to the original CAM legislation, and I have read all the transcripts on it, there was a long debate as to whether CAM, if we passed it, would take away the right of a person to enjoy his

property and rebuild in the case of a fire or a flood or a hurricane. And I have highlighted all the individuals who have stated that yes, it would not be prohibitive, that we would not be taking away anybody's property rights.

And a number of these people are still here in the legislature. This particular amendment is to address what appeared to be the interpretation by some people in DEP that yes, DEP could preclude rebuilding. And I think in all fairness to those people who live along the shore who followed the guides of the good-minded environmentalists in the legislature, that we ought to pass this act.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill?

REP. CANDELORI: (23rd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Candelori.

REP. CANDELORI: (23rd)

Mr. Speaker, I'd like to concur with the remarks made by Rep. Holbrook and Rep. Emmons and T. J. Casey. We've all attended meetings on the shoreline, and although I don't represent any towns from that area, I can guarantee

that the concerns of the citizens who live in the coastal area have are justified. Their only concern is that should one of their homes that are located on the waterfront be destroyed by some disaster, that they do in fact have a right to rebuild that home.

I don't think any one of us here would deny that we all have that right. We spent many hours at several meetings, and I didn't want this bill to be presented as though it was a partisan bill. It's not. It's a bill that benefits all the residents of the state of Connecticut. I urge you to support it. Thank you.

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. VanNorstrand.

REP. VAN NORSTRAND: (141st)

Mr. Speaker, in that spirit of bipartisanship, I am still right, I gather, that as I read the file copy, it is every bit as broad as I thought it was. It was not limited to what would happen under other sections. But I am convinced from what I heard that that was the original intent and that's indeed what landowners and citizens of this state were told when we built it. And whether that use being appropriate or not, or when we passed it.

And whether that use being appropriate or not, that was the intent, so I would support the bill.

DEPUTY SPEAKER FRANKEL:

Will you remark further? If not, would the staff and guests please come to the well of the House. Members please be seated. All unauthorized staff and guests to the well of the House at this time, please. Clerk, please open the machine.

CLERK:

The House of Representatives is now voting by roll call. Would the members return to the Chamber immediately. The House of Representatives is now voting by roll. Would the members return to the Chamber immediately.

DEPUTY SPEAKER FRANKEL:

Have all the members voted? Have all the members voted? If so, the machine will be locked. Clerk please take a tally.

Will the Clerk please announce the tally.

CLERK:

House Bill 5092.

Total Number Voting	146
Necessary for Passage	74
Those Voting Yea	146
Those Voting Nay	0
Those Absent and Not Voting	5

DEPUTY SPEAKER FRANKEL:

The bill is passed.

CLERK:

Calendar Page 5, Calendar No. 105, File No. 104, Substitute for House Bill No. 5255, AN ACT CONCERNING THE STANDING OF THE FREEDOM OF INFORMATION COMMISSION TO PROSECUTE AND DEFEND COURT APPEALS. Favorable report of the Committee on Government Administration and Elections.

REP. GROPPO: (63rd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Groppo.

REP. GROPPO: (63rd)

May this item be passed retaining its place in the Calendar.

DEPUTY SPEAKER FRANKEL:

The motion is to pass retain this item. Is there objection? Hearing none, it is so ordered.

CLERK:

Calendar 106, File 102, Substitute for House Bill No. 5108, AN ACT CONCERNING THE CONFIDENTIALITY OF INVESTIGATIVE AND ENFORCEMENT ACTIONS OF THE STATE ETHICS COMMISSION. Favorable Report of the Committee on Government Administration and Elections.

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PUBLIC HEALTH

HB 5136. An Act Concerning the Retention Of The Confidential Portion Of Birth Certificates By The Department Of Health. Passed House With House "A" 2/29/84.

Table for the calendar.

JUDICIARY

Substitute HB 5040. An Act Concerning Arson. Passed House 2/29/84

Table for the calendar.

JUDICIARY

HB 5072. An Act Concerning Compact Administrators. Passed House 2/29/84

Table for the calendar.

HOUSE BILLS FAVORABLY REPORTED WITH A CHANGE OF REFERENCE

ENVIRONMENT

Substitute HB 5092. An Act Concerning Reconstruction In Coastal Areas After A Casualty Loss.

Refer to Planning and Development.

ENVIRONMENT

Substitute HB 5148. An Act Concerning Forest Fire-Fighting Equipment For Fire Companies.

Refer to Appropriations.

ENVIRONMENT

HB 5247. An Act Concerning Technical Assistance For Woodland Management.

Refer to Appropriations.

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THE CLERK:

Cal. 213, File 101. Substitute for House Bill No. 5092. AN ACT CONCERNING RECONSTRUCTION IN COASTAL AREAS AFTER A CASUALTY LOSS. Favorable report of the Committee on Planning and Development.

THE CHAIR:

Senator Wilber Smith.

SENATOR WILBER SMITH:

Mr. President, I move acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Will you remark?

SENATOR WILBER SMITH:

Yes, Mr. President. This bill would make it clear that the state's coastal management law does not forbid the reconstruction of buildings after a casualty loss. The effective date would be upon passage. And although the bill makes it clear that the coastal management law does not forbid reconstruction, the rebuilding of the structure could still be prevented under the coastal management site plan review process or local zoning. However, this would depend on local regulations and decisions and not our state law. This is a bill which was referred to our committee from the Environment Committee.

If there is no objection, I would move the bill to the Consent Calendar.

THE CHAIR:

Is there objection? Hearing none, The C erk wi please take the appropriate action.

THE CLERK:

Cal. 215, Files 41 and 318. Substitute for House Bill No. 5132. AN ACT CONCERNING HOSPITAL EXEMPTIONS FROM BUDGET REVIEW BY THE COMMISSION ON HOSPITALS AND HEALTH CARE, as amended by House Amendment Schedule A. Favorable report of the Committee on Public Health.

THE CHAIR:

Senator Regina Smith.

SENATOR REGINA SMITH:

I move acceptance of the Joint Committee's favorable report and passage of the bill as amended by House A, and I move adoption of House A.

THE CHAIR:

Will you remark on House A?

SENATOR REGINA SMITH:

House Amendment A actually is a good deal of the, ah, it involves the major components of the bill, and so perhaps I can just combine my remarks that would not only affect the

ROll call and then give your attention because the Consent Calendar is quite lengthy today.

THE CLERK:

An immediate roll call has been called for in the Senate. Will all senators please take their seats. An immediate roll call has been called for in the Senate. Will all senators please be seated.

THE CHAIR:

The Clerk will proceed to list the Consent Calendar for today. Mr. Clerk.

THE CLERK:

The following is today's Consent Calendar:

Page one - Cal. 59. Page two - Cal. Nos. 82, 83, 84, 85 and 86. Page three - Cal. 118. Page four - Cal. 147. Page five - Cals. 150, 153, 158. Page six - Cals. 159, 160, 161, 162 and 164. Page eight - Cals. 171, 173 and 174. Page nine - Cals. 175, 176, 178 and 179. Page ten - Cals. 180, 182, 184 and 185. Page eleven - Cals. 189, 190 and 191. Page twelve - Cals. 193 and 194. Page thirteen - Cals. 197, 198, 199, 200 and 202. Page fourteen - Cals. 203, 204, 206 and 207. Page fifteen - Cals. 210 and 212. Page sixteen - Cals. 213 and 218. Page seventeen - Cals. 219, 220, 221 and 224. Page eighteen - Cal. No. 225. Page twenty-two - Cals.

SB81 - SB 140
SB 306 - SB 316
SB 286 - SB 338
SB277 - SB 261
SB 358 - SB 410
SB 322 - SB 323
SB327 - SB 330
SB 479 - SB 328
SB 387 - SB 133
SB 509 - SB 196
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COMM. PAC: (continued)
again, what we have here is codification of executive order 18. In effect, what it would do, it would adopt a 100 year flood occurrence as a criteria, criterion, it would also, that is of course, the 1% flood, the flood that has 1% change of occuring, that would be the criteria that would guide state agencies in any activities. Now it might be an activity by a state, or it might be a loan, a grant program, etc. That would all fall under these guidelines.

It also would constrain any critical activity. This is an activity that might occur once in 500 years. The point two tenths percent flood that would also be governed, and the activities we're trying to protect here, elderly housing, a hospital that might be located in a flood plain or hazardous waste facility of some kind, where even a small chance of flooding would create a problem. So basically, this is what this bill would do. We have a process, there is a variance set up of course, in a case where a possible facility might be constructed providing it's floodproof, so you can go through the process.

The department, DOT has exempted from it in all kind of activities that involve something less than one square mile so they're exempted and I believe they'll be speaking in favor of this bill here today. And so that's about the extent of it. It sets up a guideline, but it's not so rigid as to deprive us of all flexibility.

REP. BERTINUSON: Commissioner, this would only set state agencies, or would it affect state permitted activities, where the state permits some other --

COMM. PAC: Regulatory action would come under it. Now, depending upon the situations.

REP. BERTINUSON: So, I know this is a question that's come up before, if a state permit makes it a state activity, but I'm wondering if a private operator or a town for some reason needed it, required a permit to do something in a flood plain, if this would apply.

COMM. PAC: Regulatory activity would come as it's worded right now.

SEN. SKOWRONSKI: Commissioner, we're really peppering you with questions today. Does this apply to a local, a municipal flood control project that is financed partly by the state through our ongoing flood control grant program?

COMM. PAC: It would. They are the recipients of a grant or loan as I indicated to you, so they would have to meet the guidelines. However, there are provisions as I told you, if the facility or the activity is floodproof, or whatever other means they have of avoiding the consequences of a flood of that type, or else there is also a variance process, separate from that, a variance, which is just what it means. It would be a variance from that 100 year flood requirement, or the 500.

SEN. SKOWRONSKI: Where did the variance provisions come from? Was that just created by your department?

COMM. PAC: They'll be written in there --

SEN. SKOWRONSKI: I know they're in there, I saw them.

COMM. PAC: Yes, there would be a process. You would have to go through the uniform procedures act, administrative procedures act, Chapter 54.

SEN. SKOWRONSKI: I know I ask this because I know you're aware of that Steel Brook flood control project in Seymour and they couldn't meet, the 100 year design was much too expensive for the town to do, and if they were held to that, there would be no project and you finally were able to approve a lesser standard and I hope this bill would provide for this kind of flexibility, because I'm sure the situation comes up an awful lot.

COMM. PAC: I would say any project of this type, that's a good example, Steel Brook. Any project of this type, and there are many, I would invoke the variance procedure, or some other aspects of it, because they're good projects. If they don't in effect, protect you forever, they protect you from the consequences of flooding that occurs now, and perhaps over the next 10 years, so it's better than it was, and if you wait for the ultimate, you won't get it, so you settle for half a loaf.

SEN. SKOWRONSKI: So that, you'd be able to do that.

COMM. PAC: Within the process.

SEN. SKOWRONSKI: Thank you.

COMM. PAC: Would you care to hear any more on the subject? I have with me Alan Williams who's worked very long and hard on this subject. If there's anything else you'd like to add to it, Alan.

MR. ALAN WILLIAMS: Yes, there is. I would like to clarify something just as it relates to flood control projects in general. The state has constructed a significant number of flood control projects at very large expense. Starting with the big dams when you talked about Colbrook, Mansfield Hollow, Thompson. These return a very, very high percent of cost benefit ratio. A dollar spent, brought us back $20, $30, $50 worth of benefits. After the building of the big dams, we continued our flood control project process which was initially intended to be built for a lot of local drainage projects. In fact, we are building a lot of smaller projects which maybe the state needs to look at in the long run, whether or not they should be building flood control projects that wouldn't meet the 100 year standard.

So it's something in terms of technology, state of the art, analysis, standard engineering criteria, and federal emergency management agency guidelines that we are not to abridge the 100 year standard. In several states, the federal emergency management agency, and in Colorado in particular, it's been ensued because they allowed less than a 100 year standard on a dam. Excuse me, less than maximum probable flood which was the criteria for dam safety. So that in the long run, that we may be in violation of federal emergency management agency provisions if we allow flood control projects less than 100 year standard. So that is something we do have to think of in the future.

And several communities in Louisiana are being sued for umpteen million dollars each because they didn't enforce 100 year standards for their flood management, flood zoning and flood management projects, and when the projects failed, the federal emergency management agency is attempting to recover hundreds of millions of dollars in disaster assitance they gave those communities. So it's a real problem that has to be dealt with in the future.

MR. WILLIAMS: (continued)
I just wanted to read a couple of paragraphs here, and then I'll submit some testimony into the basket here.

Again, well over $300 million of flood control projects have been built in this state and over $4 million is annually expended for maintenance of these flood control projects. Yet there are still 40,000 buildings in flood zones and the list of requests for flood control projects seems never-ending. The June 1982 flood, a relatively localized flood, caused in excess of $230 million in damage. The passage of raised committee bill No. 5142, is a necessary first step to guarantee the state does not add to these problems and in fact, seeks to cost effectively reduce them.

In August, 1983, Governor O'Neill signed an agreement with the federal emergency management agency to implement flood hazard mitigation measures. The first priority on that list is codification of executive order 18 and the creation of the 100 year flood as a standard for all state action. I repeat that was the first priority action signed by the federal emergency management agency and the Governor.

What is executive order 18? Governor Grasso issued executive order 18 in 1977 to fulfill a requirement of the national flood insurance program. It's goal was to regulate state activities within the 100 year flood zone. Its purpose was to discourage improper flood plan development. The problem with EO 18 was it did not provide standards as to what is, or what is not acceptable, nor did it mandate that DEP or other agency to develop comprehensive flood management plans.

Consequently, since the executive order was issued, flood control projects have been built at less than 100 year standards, regulatory actions have permitted less than 100 year protection, the state has issued subsidies for development in flood zones, disaster assistance has been granted to owners of flooded buildings, without requiring those owners to take further steps to see that when they're re-flooded the state doesn't have to come in and also give them more disaster assistance. And also road construction flood plains has been completed with less than 100 year flood flow capability.

MR. WILLIAMS: (continued)
Why are we concerned with the 100 year flood. Isn't it something that occurs only once every 100 years? Unfortunately, that's not true. It's only a statistical probability. There have been five 100 year floods in the last 40 years.

For the past year and a half, DEP has been drafting this bill to make these activities, state activities, consistent from agency to agency and to protect owners of property in flood zones from increases and flood risk due to state actions. I repeat, one of the things that this bill does, it provides protection to the municipality who owns land and a private property owner from any action of increased peak flows due to a state action. Passage of this act will being state actions into line with both municipal and federal programs, and failure to pass the act will mean increased disaster system costs in the future. Increased demand for flood control projects and increase damages to private property owners.

In the long run, non-passage of this act could jeopardize the state's participation in the national flood insurance program and could make the state liable for certain flood disaster damages. Attached to this testimony is a list of suggested changes to the bill. These corrections will not alter the intent of the bill, but represent slight modifications for more clearly defining the purposes and goals of this bill. Thank you.

COMM. PAC: I might add (inaudible) to litigation, if in fact we adopt the variance process. At that point we differ from the guidelines. That would insulate us from any kind of litigation. I think that's the opinion of all our legal people.

REP. BERTINUSON: Rep. Casey.

REP. CASEY: Commissioner, Gene has Steel Brook and I've got some 17-1/2 miles of coastline and how would this particular bill affect the Fairview -Burwell Beach project that the state has participated on in the local level down in Milford?

COMM. PAC: Yes, as a matter of fact, I just received a letter a week or two ago. We're ready to move ahead on it, but first of all, I believe both Steel Brook and Fairview-Burwell's

COMM. PAC: (continued)
both of them are grandfathered in at this point. We're going ahead with them. But let us say they weren't this far advanced, the affects on
I suspect, I don't really know at this moment whether they meet the 100 year guidelines, I don't know, but they're grandfathered in my opinion.

REP. CASEY: All right, but in the future, if the city came in, or to the flood and erosion board approached the state for some type of financial participation, they would have to meet these 100 year guidelines.

COMM. PAC: Yes, but we have an option there, a variance if they don't meet it, or if something can be done where you can't come up with a plan. But as in Steel Brook, it may be very expensive. At that point, we do have a variance procedure.

REP. MORDASKY: Commissioner, Rep. Mordasky, if you grant a variance and you put up a structure less than is designed for 100 year flood, and something happens, then who is liable?

COMM. PAC: Now who is the individual, is it an individual that would create this structure or put this structure up?

REP. MORDASKY: Well, a town, say a town put in monies and put a structure up that wasn't designed for 100 year flood.

COMM. PAC: Well, Representative, first they would need a permit from us.

REP. MORDASKY: Right, but you granted them a variance.

COMM. PAC: All right. That's what I just got through saying. If you adopt this bill as it is right now, the variance process is a part of it. I'm sure any court of law will recognize that as a part of the whole procedure. It would certainly insulate us from any litigation.

REP. MORDASKY: It would insulate the state, but would it insulate the people who constructed that dam, under your variance.

COMM. PAC: I don't think they would have recourse to someone who had no authority over the permit, so what I'm saying is,

MR. HYDE: (continued)
are jeopardized, yes, we believe that more stringent regulations should be passed, no doubt about it.

Just to summarize, we do support the enforcement and adherence to environmental standards. That's not the question. We just do not want to see the DEP given a broad base to enact whatever they feel is enactable, whatever they can basically get away with. I hate to say it that way, but that's, we are in support of the establishment of water, quality related effluent standards and that's what we want, we want them equal. We want everybody to be on the same level among the state. We don't want to be jeopardized for doing business in Connecticut. We want to insure that we're still here 10 years from now and 20 years from now, etc. That's my testimony.

SEN. SKOWRONSKI: Questions.

REP. BERTINUSON: Yes, I just wondered what you see in here that you see something broadens the commissioner's power, gives him the authority to do whatever he wants to do.

MR. HYDE: The technical feasability, best management approach, I'll have to get the exact verbage, but it is basically that, where he's not defined. We're not limited to say federal guidelines or anything. We're not saying, I don't know, there's not enough criteria --

REP. BERTINUSON: Do you think that's different from policy or operation that is now in place, since the present policy in enforcement, the in some to some extent I mean, commissioner's judgment, I mean that has to depend on somebody's judgment.

MR. HYDE: Let me refer this to my counsel.

MR. ALAN KOSLOFF: Thank you. Alan Kosloff, I'm the attorney for Arco Metals. I think the best way to respond, Rep. Bertinuson is the following. In response to Sen. Skowronski's question before, I think that this bill probably does attempt to embody the criteria that the DEP has been using through its guidelines, through its policies and so forth, over the last 10 or 12 years. I think the problem my client is expressing is the inherent in just that kind

MR. KOSLOFF: (continued)
of a process. When you have major decisions being made based upon guidelines, policy statements, some of which are not even written, just exist in the minds of the members of the bureaucracy, even when there are those documents, those references are applied in good faith, certainly no one questions their good faith, that process really aborts what lawmaking should be, what good government should be about. That's what my client is reacting to.

This bill contrary to previous testimony, does not require the DEP to put those guidelines and policy statements into regulations so that they may be aired at public hearings and so that they may see the light of day of the regulation review committee at the General Assembly.

What this bill does, is it attempts to keep the present system in tact. That system has been called into question whether it's legally sufficient under the Connecticut APA. The question, therefore, is whether, twofold.

One, whether the General Assembly wants to endorse and ratify those procedures that have been followed in the past, in terms of applying guidelines to very, very important decisions, rather than requiring those policies to be enacted like other laws in the State of Connecticut through the lawmaking process.

The other issue which my client is addressing and I'm sure others will address is the issue of uniformity. Whether as a baseline we should be talking about standards that are more stringent just to be more stringent than the federal requirements, or standards which are more stringent because they serve a public interest. For example, the water quality limited effluent limitation, which is a standard above and beyond best available technology where the stream requires further protection, and I believe you heard from my client categorically endorse that kind of water quality effluent limitation, so if you're going to have more stringent standards than the federal baseline, let's do it for a legitimate public purpose. Let's do it because the stream requires further control in order to protect the state and proposed water quality classification. Let's not do it just because some guidelines of a policy statement buried in someone's drawer says we ought to do it. And I think that's the essence of my client's remarks.

REP. BERTINUSON: Okay, if I may, I'd like to go back to my original question, because it seems to me you make a very good case for this piece of legislation in some form. It is indeed, to correct the fact, and makes me uncomfortable that what this does is embody something that has not been all written down clearly. I think this is the first step. If we feel that there are areas in here that should be regulation and isn't specific enough, we can do that in this kind of legislation, but we can't do it without this kind of legislation.

MR. KOSLOFF: I think characterizing it as not being specific enough is really not the point I'm getting at. I really
Cass. 4 am concerned, my client is really concerned with the entire premise on which such a piece of legislation is based. Endorsing the kind of process, whereby the bureaucracy applies unpromulgated requirements --

REP. BERTINUSON: But in fact, it doesn't endorse it, it replaces it with a statutory, regulatory system.

MR. KOSLOFF: I differ with you, Rep. Bertinuson, that is not my reading of the bill. My reading of the bill is that it endorses such policy and it supplants government of men with government of law. I say if one is to adopt strict environmental standards,then those standards either should be adopted directly by the General Assembly, or if the General Assembly cannot, and must rely on the administrators to fill in the details, and it must burden those administrators to follow the mandates of the admistrative procedures act to make sure that we do have a government of laws, and not of men.

REP. BERTINUSON: As I say, I see this as moving in that direction and we don't need to debate that here. If you have any specific areas where you feel that regulations need to be promulgated to implement this, we would be glad to hear from you. The other thing is, is that it seems to me what you're really concerned about is the, what, you would like to change what's been going on in the past in the sense of enforcement. I think that's a different question. If you think enforcement, or that our standards have been too tough, and I think you should raise that issue separately, and can address it separately, but I think the idea of codifying and regularizing the process is something that we need to do. Maybe not in exactly this form, maybe we need to look at the present situation, but I think we need to distinguish between concern

REP. BERTINUSON: (continued)
about the fact that we are more stringent than other states and we've always maintained our right to do that and the fact that we are now at least trying to put it in a statutory form.

SEN. SKOWRONSKI: Do you agree with Mr. Gray that you'd rather see this done if we're to right down standards somewhere and they're not to exist in the minds of the bureaucracy or somewhere in a drawer, and they should be written down somewhere through a rule-making process, do you agree that should be done by regulation and not by statute?

MR. KOSLOFF: I believe in the legislative process. I would rather see the legislature, who is ultimately responsible pass the laws that my clients and others have to meet. I recognize the realities that life is too complex in our society to rely on the legislature to do that in all of its detail. Again, I think that is encumbent on the legislature however, if the burden of writing that law is to be transferred to the administrator, then that administrator must be charged with the obligation to comply, in this case, with the APA through formal rule-making requirements if generically what he is doing is writing a regulation or a rule, regardless of what it's called, and this is what the APA defines,how the APA defines rule, regardless of what it's name, if it has prospective and general impact, then it is a regulation regardless whether it's called guideline, policy or whatever. The legislature charges in this bill however, the DEP with the responsibility of implementing such standards as are defined or maybe reconsidered and redefined by the General Assembly.

But to do so, through formal rule-making process, and I think you've taken a major step in the right direction toward the principle of insuring the rule of law.

SEN. SKOWRONSKI: Well, I don't think there's any doubt that we want these standards done by regulation with all the safeguards of the APA, but I guess my question was, have you had better luck, you and your client through the regulation process as opposed to the statutory process.

MR. KOSLOFF: Well, speaking to this issue alone, Senator, we haven't had that opportunity, frankly, because none of the policies, none of the guidelines have ever seen the light

MR. KOSLOFF: (continued)
of day of a public hearing.

SEN. SKOWRONSKI: But on other past issues, do you like the regulation process better?

MR. KOSLOFF: No. I would prefer to deal with the General Assembly, but again, that's a much broader issue than you're facing with this bill, and I have to admit that legislatures, have a great, you know, have a great deal of difficulty filling in their own details in major pieces of legislation. So I recognize the need for a rule-making procedure. You're right, we're not always successful. Petitioners are not always successful through the rule-making process and getting the administrators to temper their own decision making with the judgments of those who are interested in the rules. But then again, it's better than simply endorsing the present system which gives clients, my client, no recourse in terms of questioning the policy determinations and the guidelines that are relied upon in making those very critical decisions.

SEN. SKOWRONSKI: Just one other question, quickly. You said that you feel the, and I think Rep. Bertinuson correctly pointed out the other issue you reaised about the severity of the Connecticut standards viz-a-viz the federal standards. It's a different issue, but do you have, or can you develop something very brief saying how the Connecticut standards differ from the federal and why you think they are unreasonable or don't make sense on the cost of benefit analysis. Is that kind of data readily available without having to read --

MR. HYDE: I think it's readily available. We just had an engineering report done, matter of fact, to see how we comply with the 1984 copper effluent standards. As a matter of fact we comply with those standards, and as a matter of fact it was pointed out at that time that the 1984 standards were actually a little less stringent than the 1980 standards, or NPDS permit that we're presently operating under now. I don't know if I answered your question, but we do have plenty of information. I think we could provide you. Our concern of course is in the future, what could happen, or 1985 when our permit is --

SEN. SKOWRONSKI: I'd like to look at some of that data if you have it. Are there any other questions? Rep. Joyce.

REP. JOYCE: I would just ask the attorney that the commissioner is already empowered to do all these things, isn't he? Is that your reading of the bill?

MR. KOSLOFF: If you subscribe to a recent decision rendered in a case involving Pratt & Whitney Aircraft, and there may be others who will testify here before you today, the propriety of the process by which the bureaucracy reaches its determinations on the best practical technology for purposes of setting the standards in their permits has been called into question, and I believe that there has been no final decision by Comm. Pac on that decision.

REP. JOYCE: But only his use of the guidelines, not his power to do something like this, only the way he has applied the power. The power is there, he already has the power as I understand it. It's only the way he's applied the power that's been brought into question.

MR. KOSLOFF: I don't want to answer you incorrectly, I'm not sure that I understand your question. The commissioner believes that he does not have the power and that's why he's come in with this bill. I believe the hearing examiner in that case has decided that he really doesn't have that power and there is no final decision on that point, so it's really come to you to put an end to that question, rather than resort to litigation over it. Whether that's appropriate or not, may be for others to discuss.

REP. JOYCE: Well, if he doesn't have the power he couldn't do it by regulation, he'd have to do it by statute.

MR. KOSLOFF: You are correct. If it was to be so ruled, and I'm just an attorney, and not a judge, and I haven't passed on the case, but if the court were to say he didn't have the power, then he'd have to come back here for authority. The court has not ruled on this, so in a way it may be premature, but I don't want to second guess the commissioner on that.

REP. JOYCE: It would seem that if he does have the power, that it would be better to do it through regulations since it's so particularized, since there are so many exceptions, that it would seem if he does have the power to do this type of thing now.

MS. HOLLAND: (continued)
can't point to it specifically, but I think that's an inherent problem with the program as it is now, since there aren't any regulations written down anywhere, companies can go in and negotiate and get different kinds of permits.

REP. HOLBROOK: Are there many companies that operate constantly in the way of looking for a permit where they try to comply and they are told that they're not in compliance and then somebody will come back and this goes on year after year where they're not able to obtain a permit.

MS. HOLLAND: I think most companies are interest in complying with whatever limitations are set. I think most of them will end up getting a permit. They'll do what they can to get the permit. I don't think they're turned down year after year.

REP. HOLBROOK: I'm not saying turned down, but it's like an ongoing process where they're constantly being told to upgrade this, do this, --

MS. HOLLAND: Yeah, that's usually written into the permit.

SEN. SKOWRONSKI: Do you agree with the statement that Connecticut's standards are unnecessarily severe viz-a-viz the federal standards?

MS. HOLLAND: I know that they are a lot more strict and it's caused some problems with the companies. For instance, Massachusetts isn't as strict as Connecticut is, so some companies feel that they're being, you know, they're at a disadvantage because the Massachusetts companies can produce the same product at a lot less money, a lot less cost, because these pollution control devices are very expensive and it does run their costs up and a lot of them fear that they'll have to close down or go to another state.

SEN. SKOWRONSKI: But if you know and you may not have enough experience, are these tougher standards justifiable. Are we gaining something very substantial by the tougher standards.

MS. HOLLAND: I don't know that they are, because we never went through a regulation process or a public hearing to determine why we've reached the standards that we've reached. So

MS. HOLLAND: (continued)
there's no way of knowing why Connecticut picked the standards that it did.

SEN. SKOWRONSKI: And are those standards in regulations, I'm wondering, the standards themselves are in regulation?

MS. HOLLAND: No, there's nothing. There are federal regulations and I think Mr. Pac made the comment that he needed to do it on a case by case basis because the companies are so different, but the federal government has picked out each type of industry and passed a limitation for each type of metal that's finished, or type of industry, so it can be done.

SEN. SKOWRONSKI: Are there any other questions?

REP. BERTINUSON: Now just again, I don't think that this is the most favorable time to refer to the federal government's environmental actions, most people are not happy with environmental protection at the federal level and I think that Connecticut has always been proud of their attempt, so I really think again, that we should separate the process from our policy approach to protecting our environment. I think we should be very careful of process and I think that these things should be written down and if they need, if we need standards, they should be written down. You have to realize then that you do lose some flexibility when you do that, but even so, it's probably worth it. But I think, again, we should not mix the two issues of loosening our protective standards for our protection of environment in Connecticut with the process by which we do it.

SEN. GUNTHER: Well, I think the remarks you make that the federal government does have regulations that stipulate, is this true in the category that we're talking about? All right, so regardless of policies on a national or state level, they are capable of producing a regulation inwriting, so that the industries know where they have to do.

MS. HOLLAND: Yeah, that's what we --

SEN. GUNTHER: And you said there's no reason we can't do that on the state level.

MS. HOLLAND: No, I don't see why there wouldn't be.

SEN. SKOWRONSKI: Thank you.

REP. BERTINUSON: Again, I'm still confused as to what the objection is to putting in statute a direction to the commissioner to develop regulations, since apparently now he does not have, according to the attorney general who tells us what we can do and we can't do, he does not have the authority to promulgate those regulations for standards, and I'm trying to zero in on where the problem is with this bill. I would ask you, is it in the language, in the new language dealing with best management practices that you said this expands the power of the commissioner, and yet you seem to be saying that it allows him to keep on doing exactly what he has been doing. I'm not sure how that's an expansion.

MR. DE WITT: I don't know if I can answer that. The specific area of the best management practices is an example where that it can be determined with or without regulations. To go back to your original sentence, there is nothing in the bill that guarantees that regulations will be promulgated by the department into a consistent uniform regulatory set of procedures.

REP. BERTINUSON: But I think most of us have made it clear that we would certainly look at incorporating that language if its' necessary, into this bill.

MR. DE WITT: It is our understanding that the commissioner already has statutory responsibility to develop regulations. If that is not correct, then we would endorse legislation which would give him those responsibilities.

REP. BERTINUSON: Well, he's testified that the attorney general said that he did not have the statutory authority to develop regulations for discharge permits. He does for drinking water standards, which is not the same thing, but for clean water standards. So you don't object to a statute which spells out state policy in regard to pollution control and then directs the commissioner to develop regulations to implement. That's the standard way that we operate, and I don't see why you need to eliminate the statutory stuff.

MR. DE WITT: I don't think we want the statutory step eliminated.

SEN. SKOWRONSKI: Do you have any data showing that the state

SEN. SKOWRONSKI: (continued)
standards are unnecessarily severe or aren't justified in terms of what they seek to accomplish versus the cost of accomplishing.

MR. DE WITT: We've never seen any analysis.

SEN. SKOWRONSKI: Any analysis of that. Any other questions? The next speaker, thank you, is Ken Olsen, from the Nature Conservancy.

MR. KEN OLSON: Thank you. I'm Ken Olsen, Executive Director of the Nature Conservancy in Connecticut and I'm speaking in behalf of the conservancy on House Bill, on Raised Bill 5246 which is the proposal to exempt certain information concerning rare threatening endangered species from the Freedom of Information Act.

The Nature Conservancy is a national non-profit organization. We do one thing. We try to protect rare and endangered species, important deco systems and land that we think is biologically significant. And also, communities of plants and animals.

We do our job primarily by acquiring legal rights to properties, rather than advocating or being adversaries. The conservancy has 6500 members in Connecticut. Our track
Cass. 5 record over the last 30 years is that we've protected more than 14,000 acres permanently in this state. We're part of an ongoing effort that's now 190,000 members nationwide, and the total number of acres saved is something over two million, including in the U. S. and now in some of the tropical belts, again, all through private action.

The Nature Conservancy supports this bill whose intent is to protect the state's population of declining species. And we believe that DEP through it's natural resources center, who you've heard from today, and it's geological and natural history survey, has done a very good job of developing a computerized system to inventory these species. The state has put in more than nine years of research so far and the conservancy itself has contributed or pledged about $47,000 to DEP's natural resources center and supported this project which has a name, The Connecticut Natural Diversity Data Base.

MR. OLSON: (continued)
the National Audubon Society has also contributed something in the area of $10,000. The data base,this computerized system is an outgrowth of the Governor's heritage task force report which was commissioned by Gov. Grasso and who's report was heard in 1982 by Gov. O'Neill, and I think some of the people on this committee served on that task force.

The alliance that's represented by DEP in the Natural Resources Center, the Connecticut geological history, excuse me, the Geological and Natural History Survey, National Audubon and the Conservancy, is we think, a pretty good model of how the public and private sectors can work together to minimize the cost to taxpayers while maximizing the possibility of protecting the Connecticut environment.

On January 6 of this year, some colleagues and I along with Dr. Thomas and Comm. Pac of DEP and the state biologists, Les also of DEP joined the Governor in his office to make a formal announcement that this data base in fact, is up and running and has been running since July 1 of this year on a formal basis. I want to submit with my testimony a couple of related materials. I want to quote from Gov. O'Neill's statement issued that day. He said the addition of the Natural Diversity Data Base will enhance the services already provided by the state.

So that you know what we're talking about, we have so far known 275 plants in Connecticut that are of special concern, declining. Eighty-one vertebrate species, all listed so far by DEP. In the data base itself, there are about 1400 historic and present concurrences of populations of plants and animals, located, mapped and given some sort of computerized form. About a third of those 1400 are estimated to be present occurences, things that are still alive.

The reason that these things are in there is not only for the obvious business of natural beauty in Connecticut, but also that we know pretty well, scientists know pretty well, that the stuff we protect now becomes the medicines of the future, and there's good economic sense in preventing those things from disappearing. Sometimes the analogy that is given is what would happen if penicillin molds were killed before we

MR. JAMES WICKWIRE: Good afternoon. My name is Jim Wickwire and I am the plant engineer at Pratt & Whitney Aircraft's East Hartford plant. That plant employs over 20,000 people and encompasses over 6.5 million square feet of space under roof, 2/3 of which is used for production processes. There are literally thousands of machines and processes used in the manufacture of parts and assembly of aircraft engines at our East Hartford plant.

I'm here to speak against RCB No. 71. The Department of Environmental Protection already has ample authority for water quality and technology standards to control pollution of the waters of the state, that is, to control at the point where treated industrial process water enters the streams and rivers of Connecticut. The department's authority properly lies only at the point of discharge. DEP is required like all administrative agencies to subject itself to the public process, by issuing regulations adopted in order to implement its policies or standards. The Water Compliant Unit of DEP for 10 years has not complied with the process that all other administrative agencies and units are following.

The revised committee bill No. 71 proposed by DEP is designed to enable the Water Compliance Unit to intrude into all the plants of the state and to dictate requirements and to avoid promulgating regulations which would be subject to a technical review by industry, environmental groups, interested citizens and the legislative review committee. DEP would arbitrarily decide what equipment
Cass. 6 each permitttee would have to install, both in terms of treatment and process equipment, based on their current perception of what is technically feasible. This approach is extremely arbitrary and does not allow industry to plan for and control its own processes. In this situation an industry could fully comply with a DEP permit including effluent limitations and be ordered to install new treatment or process equipment at any time. Such an order could be triggered by a personnel or policy change.

The federal government, through the Environmental Protection Agency is going through the complicated task of establishing effluent guidelines for basic industry groups. These guidelines establish criteria for industrial discharges, taking into account the types of processes involved, the contaminants present and the available treatment technologies. They basically require at this time, the use of best available

MR. WICKWIRE: (continued)
technology in each treatment system. The federal government has spent millions of dollars in developing its effluent guidelines which have been challened by both industry and environmental groups. The results are generally reasonable limitations which protect the environment and balance the concerns of all interested parties.

DEP is also proposing that they be given the authority to impose "practicable water conservations methods" on discharges. The Water Compliance Unit has in the past sought to decide what water conservation methods should be employed on a case by case basis without any guidelines. Every industry must have the right to determine its water use as it relates to its processes, its product and its ability to stay competitive. Natural economic forces such as the cost of MDC water and the cost of treating industrial process water provide strong motivation to limit the amount of water used. Also, there are water conservation methods which are practical from a technology standpoint, but are often unfeasible due to quality, cost, or space limitations. I am concerned that the Water Compliance Unit would interpret practical to mean that which is technologically possible thereby forcing dischargers to make significant expenditures with little environmental benefit. The Water Compliance Unit authority should not be extended beyond the quality of effluent as it enters the waters of the state.

In conclusion, the DEP is seeking significant broadening of their authority and attempting to eliminate the need for regulations. There is a definite need for workable regulations such as have been adopted by the Federal EPA. Such regulations will protect the environment, allow for case by case decisions based on water quality and insure that state businesses are not penalized for operating in Connecticut. Pratt & Whitney Aircraft strongly recommends that DEP's proposed bill, RCB 71 be rejected and that the department seek to promulgate regulations based on the authority it already has.

SEN. SKOWRONSKI: Do you have, oh you have, are there extra copies of that, or just do you have one?

MR. WICKWIRE: I'll have to make extra copies. That's the only one that I have.

SEN. SKOWRONSKI: You might send those to the committee members, the extra copies. Are there any questions? Do you, what's your position Pratt & Whitney, are you --

MR. WICKWIRE: I'm the plant engineer.

SEN. SKOWRONSKI: The plant engineer, okay, great. And do you quarrel with the fact that Connecticut's standards are toughter than the federal standards.

MR. WICKWIRE: I don't quarrel with that, no.

SEN. SKOWRONSKI: Do you think that's legitimate?

MR. WICKWIRE: In some cases it's probably legitimate.

SEN. SKOWRONSKI: Okay. Your point is that whatever the system is, it should be done by regulations and --

MR. WICKWIRE: I think my point is that if there's a need for it to be tougher than the federal requirements, then we should have an open and above case discussion in the public arena, so that that can be recognized.

SEN. SKOWRONSKI: Okay, very good. Thank you. No other questions? The next speaker is Dr. Stadler from the Connecticut Humane Society, I believe.

DR. ROBERT STADLER: Members of the committee, I'm Dr. Robert Stadler, staff veterinarian for the Connecticut Humane Society. I'm here to favor Bill 5249 mandatory rabies vaccination. I may point out that the Humane Society feels so serious about this condition that our people themselves are being vaccinating. We are vaccinating our dogs and cats as they are placed and this is a condition that eventually is going to hit this state, and I hope this committee will report on it favorably and not wait until somebody dies from rabies.

In my opinion, this is going to happen. We have it in the state in sufficient amount. The bats are loaded with it. We have had foxes with it. There are any number of coons that have been found dead, but nobody has taken it upon themselves to have that brain examined. Who knows why they died. It may or may not be rabies. When the fox break happened down here in Rocky Hill a few years back, we held

DR. STADLER: (continued)
a clinic. The veterinarians of the state got together and they told us plenty. The agents that handled the animals, one was a former dog warden who became a policeman helped the female dog warden of the town, and in the process of removing the head, cut his hand with that same knife. He had to go through the Pasteur treatment. The female warden coming to Hartford with the sample, why God only knows, she had a book on her lap and was turning the pages. Her revealed some ulcers. She had to take the treatment, and at that time, I was a state veterinarian, and I'll never forget how both of them called and said, please can't we get away from this without the chops. They were murder.

Our people are now being protected. Our animals are being protected, and the Humane Society stands ready to help in providing a place for a clinic and I'm sure that the Connecticut Veterinarians will go right along with and provide the service so that people can have these animals vaccinated. It's important until we do it and have it under control somebody in this state is going to die from rabies. I strongly feel that way.

While I was in Hartford from 69 on, I tried and tried to get somebody to put through a bill on mandatory rabies vaccination. I ran across competition from my friend Louis Brouillet with this weak story that the dogs will not be licensed. They're having enough trouble getting a license. They will license them. Those who do it now will do it, and if they are required to have the rabies vaccine, they'll do that. We at the Humane Society will help to provide the service.

There is one bill 5245, it's calling for a licensing at three months. I would suggest that you look into changing the three months to four months because at four months of age, the animal receives the vaccine, they are protected then for three years. If they're done at three months, it will require that they have a booster.

The little state of Rhode Island has a mandatory rabies vaccination program and to the best of my knowledge, are not having a bit of a problem. I'd be happy to answer any questions.

SEN. SKOWRONSKI: I think you answered two of mine. One was that these shots are good for three years, you said, if you give the first one at four months, and thereafter it would be

SEN. SKOWRONSKI: (continued)
every three years a shot would be required, and how much does that cost, that rabies vaccination, about?

DR. STADLER: Anywhere between five and ten dollars, I would say. I can tell you for our own people, we are taking three injections, one today, one a week from today, and then we skip a week and take the third one. That's costing $150 per person. Now if somebody that's hit with rabies, a positive case, that's going to cost them between $500 and $1,000 for treatment, and that is the only thing that's going to save their life.

SEN. SKOWRONSKI: Do you know how many states have the mandatory rabies vaccination.

DR. STADLER: That I can't answer. I don't know. All I know about is --

SEN. SKOWRONSKI: Rhode Island. And how many cases have we had of rabies through dogs in the State of Connecticut in the last five years.

DR. STADLER: None that I know of. Dogs. We've had it in fox, two that I know of. But Senator, there are so many of these animals that are found dead, or hit on the highways that nobody ever follows through. Down south, the highway departments pick up all of these animals that are on highways and they have them checked, and it wouldn't be a damned bad idea if it was done here in the State of Connecticut, and we would find more of our wild animals.

SEN. SKOWRONSKI: Any questions? The next speaker is August Helburg of the Connecticut Humane Society.

MR. AUGUST HELBURG: My name is August Helburg. I'm the executive director of the Connecticut Humane Society. Just to reiterate Dr. Stadler's support of our agency of the bill 5245 and 5249, we would also like to go on record in support of bill 5139, An Increase in the Penalty for Cruelty to Animals. For many years we have voiced our opinion relative to this issue that the penalty for abusing animals in this state should be increased. States around us have taken this liberty and increased their penalties and just listening to the testimony today, it just reinforces that here's an area that we aren't keeping in step with and

MR. HELBURG: (continued)
we would ask the committee to consider the increase in this penalty to help curtail some of the activities that are out there that we come across.

A few years ago some of you I'm sure were on the committee, and I know you were when we brought some of the paraphernalia before you relative to the animal abuse that we see in the fighting area, and this has not decreased, it's continued, we can take you to areas where individuals have these animals now in training and there's no deterrent in the $250 fine. We would like to see it increased. Thank you.

SEN. SKOWRONSKI: Any questions? The next speaker is Jamie Gregg, Colonial Bronze.

MR. JAMIE GREGG: Good afternoon, my name is Jamie Gregg. I'm the vice-president of Colonial Bronze Company which is a brass cabinet hardware manufacturing company in Torrington, Connecticut. I'm here to register my company's opposition to RCB NO. 71.

By now you've heard the bulk of the objections that I have to the bill. I would just like to take an opportunity to highlight a couple that have not been touched on. With respect to the bill as presently drafted, refer you to lines 110 through lines 112. In connection with the statements that were made before concerning the definition of best management practices, the bill as presently drafted provides a two by four prong test, two of which are troublesome to me in the present form.

The first is that the treatment system, the commissioner is supposed to determine that the treatment system is consistent with treatment which is technically feasible. The term technically feasible is a totally ambiguous. I don't know whether the commissioner meant technologically feasible, but technically feasible is one prong that has to be met by any person who is seeking a permit. That standard, technically feasible does not take into account whatsoever any economic or cost benefit analysis, which might be undertaken to determine whether the more stringent standard which may be applied by the commissioner, is in fact, necessary and economically feasible.

I might point out to Sen. Skowronski that under the federal regulations, the standards are determined, at least at this

MR. GREGG: (continued)
point, its best available technology which is economical achievable. Now the regulations that they have come out with have been tested under those, under that determination. We've had industry groups which have been fighting for looser federal standards. There have been environmental groups fighting for a stricter federal standard. They have been tested in the crucible litigation and have been determined to comply with the Congressional guidelines, that the guidelines that have now been promulgated for the electroplating industry, of which I'm a part, are in fact, economically achievable.

The present bill with its four prong test, has one prong which says it's technically feasible. The second one is that the commissioner shall determine that the best management practices will be undertaken to reduce the discharge. Now that one does incorporate to a certain extent, economic and institutional feasibility, but the first portion, the technically feasible portion of that test does not.

I would suggest that the bill in its present form lacks the necessary consideration, that must, that should be given to the economic effects of a more stringent standard.

One technical matter that seems to be deficient with the bill. I refer you to lines 144 through lines 146. It presently provides that application for renewal for a permit which expires after July 1, 1984 shall have been made prior, 180 days prior. As of this point, it is now impossible, if you have a permit such as we do which expires in July, we cannot meet that 180 day deadline. So I just submit that as a technical deficiency in the bill.

As I understood the commissioner's testimony, he stated that he had the ability to promulgate regulations presently --

REP. BERTINUSON: He has not.

MR. GREGG: Then it's my misunderstanding. As I understood it, he had mentioned that he could promulgate the regulations or seek legislative authority, otherwise the State of Connecticut would forfeit its permit regulatory authority.

I would affirm what everyone else has said, that there is a total lack of regulations to date, and a company such as the size of mine, being that it's a small one, does not have

MR. GREGG: (continued)
a tremendous amount of in-house expertise, and consequently we turn to the state for guidance, and in a situation where there is no guidance beyond guidelines and not policies, not regulations which have been officially promulgated and tested under the administrative procedure act. We are someone at the mercy of the state and therefore, we would echo that there is a need for regulations to be promulgated in an open forum so that we know where we stand with the DEP. I have no other further testimony.

SEN. SKOWRONSKI: One further question. Do you quarrel with that the fact that the Connecticut standards are tougher than the federal government?

MR. GREGG: I do not quarrel with it, Sen. Skowronski. I would only say that it would seem to me that the federal standards which have been promulgated have taken into account the best available technology ecnomically achievable. If the Connecticut standards are to be stricter than there must be some consideration above and beyond those which must be given, so I cannot answer that question because I would not know what other guidelines would be relevant beyond that which has been applied to the federal government's. So I cannot answer your question as posed.

SEN. SKOWRONSKI: So you're saying, if they're tougher, they've got to obviously be based on scientific evidence, and you're saying also, best available technology economically achievable.

MR. GREGG: There is always a tension between quality of the environment and of businesses' economics. I think the federal approach has attempted to combine those two competing, often competing concerns, consequently, if the state standards are more strict, we need to know why and on what basis. What additional cost is the marginal, additional environment protection gained. Is it at a loss of jobs, is it at a loss of industry from the state. There has to be some consideration given to both sides of that coin.

REP. BERTINUSON: Yes, would you say though, well, that federal language about economically achievable has stopped short

REP. BERTINUSON: (continued)
of being of cost benefit decision?

MR. GREGG: I honestly can't answer that, Rep. Bertinuson. I just do not know the exact procedure by which the federal government has taken into account economically achievable.

REP. BERTINUSON: Because I think, it seems to me that strict cost benefit analysis for environmental protection has been pretty well rejected by the American people as a standard that is acceptable. But that does not say, of course, that you disregard the economic impact, but to say that if it costs, you know, past a certain amount, we're not going to do it, not matter what the environmental impact is, I think, would not be acceptable.

MR. GREGG: No, that is not my intent at all when I say that economic considerations must come into play. Obviously, and it's not possible these days in the realization of the environment is so much a part and parcel of everyone's day to day life, but there does have to be some concern given to, at what point do you enhance and make more strict those standards for this state's industries versus the possible detriment to the state's economy.

SEN. SKOWRONSKI: Thank you. Any other questions? The next speaker is Mary Dishaw from the Hartford Soil and Water Conservation District.

MS. MARY DISHAW: Sen. Skowronski, Rep. Bertinuson and members of the committee. My name is Mary Dishaw. I'm Secretary of Connecticut Council on Soil and Water Conservation and I chair Hartford County's Asylum Water Conservation District.

SEN. SKOWRONSKI: Mary, if you'd use that microphone.

MS. DISHAW: This one over here? How's that? Is that better?

SEN. SKOWRONSKI: Pull it right up to you.

MS. DISHAW: I'm addressing Bill 5250, An Act Concerning the Appropriation for the Council which is for staff funding.

The council took some time to come into being, for background information for you. We worked long and hard on

MS. DISHAW: (continued)
it, had many meetings and many disagreements, and it is a clearing house for soil and water conservation concerns and implementation. It unites many agencies in a communication link and that is so important today. We all realize, sometimes we lose so many things from lack of communication and it's very important in Connecticut's future in natural resource management and agriculture.

One of the counci's important accomplishments is the long range program for soil and water conservation. It contains policies and recommendations. Number one is agriculture. Number two is forest resources. Number three is soil resources. Number four is sediment and erosion which you all know we're implementing under state legislation for the towns. Number five is one you've been hearing so much about here today, it's a very important one, and is extreme concern for this state, and that's water supply and water quality.

Once we do the harm to those underground water tables we have no idea when we can turn it back. Number six is your flood plain and storm water management which DEP has addressed so much to you, and number seven is education in conservation. If we can't educate then we really don't get the message across, so I ask that this is important why we need the staff. You can have all the volunteers and all the people, but staff makes the difference and that's what this bill is for.

I leave this with you if some of you would like to review it and go over the points. Thank you very much.

SEN. SKOWRONSKI: Thank you, Mary. Any questions? The next speaker is Suzanne Wilkins from the Connecticut Land Trust and Service Bureau.

MS. SUZANNE WILKINS: My name is Suzanne Wilkins, as Director of the Connecticut Land Trust Service Bureau, I work with 82 land conservation trusts. Collectively these organizations have approximately 16,000 members, and hold over 16,000 acres. The purpose of each of these groups is to preserve natural areas in their communities.

Natural areas are important to people as places for

MS. WILKINS: (continued)
recreation, education and contemplation and they are important in and of themselves to the species that live there and as ecological resource areas that provide balance to our altered landscapes.

Bill 5246, An Act Concerning Disclosure of the Location of Rare and Threatened or Endangered Species is a necessary addition to our laws. Since all but a few mammals are unable to protect themselves, we must assist if they are to survive. Instances of species destruction due directly to the wrong persons learning their location have occurred here in Connecticut and elsewhere. The Department of Environmental Protection should be given the flexibility to deny access of location information to persons with negative intentions. I urge you to act favorably upon this bill as it will help protect Connecticut's natural resources and will assist the job of the 82 land trust. Thank you.

I'd also just like to mention that we also support all of the requests that are before you for soil and water conservation districts. The districts do provide and continue to provide increased information, educational information for those of us who are out there trying to help conserve Connecticut's resources.

Also, along with that the Bill 5247 for woodland management, same reason. Land Trust and other conservation organizations are to do their job more effectively we have to be able to have improved communication and resource base provided through efforts such as these. Thank you.

SEN. SKOWRONSKI: Thank you, Suzanne. Any questions? The next speaker is Frank Niederwerfer.

MR. FRANK NIEDERWERFER. I am Frank Niederwerfer. I'm representing the Legislative Chairman for the Connecticut Association of Soil and Water Conservation Districts.

First I'd like to speak on the Bill 5247, in support of that bill in providing extension forest through the University of Connecticut. The reason I'm interested in this is because I've been an extension leader, volunteer leader for 40 years or more and I realize the good work that the extension service does. I also volunteer my work

MR. NIEDERWERFER: (continued)
in managing three wildlife sanctuaries where there are some small areas of woodlands on in which I sure could use some help on. So I support 5247 for an extension forester.

Now into the support of the bills that our legislative committee from the Connecticut Association soil water conservation districts has on their agenda. The first bill is in support of House Bill 5047. I am here to speak on this to increase the funding to each soil and water conservation district from $9,000 to $21,000 annually. This would give us funding needed to add full-time staff person to our district workforce.

I have kept in close contact with districts across the state and it's clearly evident that their workload has steadily increasing. The reasons for this increase includes:

Individuals and towns are increasingly aware of controlling soil erosion, sedimentation and pollution and are requesting assistance. Preventative means are more important than repair and corrective actions after damages have occurred.

We discussed this about how can you assess the value of preventative work and I'm sure that this is a hard thing to assess, but we know that this is one of the important things that soil and water conservation districts are in providing services to town and individuals.

Secondly, the soil erosion and sedimentation legislation passed in the 1983 General Assembly will be fully implemented by July 1, 1985. This has already generated a great deal of positive action by towns. Districts are and will be involved in the implementation phase and will be providing assistance as the towns request.

Third, federal, state and local regulations are requiring that land users comply with erosion, sedimentaion and pollution laws. The district staff which we have in the eight soil and and water conservation districts in Connecticut are providing assistance to landowners in meeting these responsibilities.

Districts across the state are working hard to acquire funds to hire part-time help. Districts can save municipalities many dollars of costly repair work after the damage is done

MR. NIEDERWERFER: (continued)
by doing the preventative work as mandated to us in a voluntary program as well as in the legislative area. We need your support of House Bill 5047 and also as it moves along the legislative process. Soil and water resources are a very important part of our natural resources infrastructure. I use this word infrastructure because I think this is one of our basic infrastructures in the state, our soil and water. If we lose them, we cannot go ahead and replace these by appropriating a million dollars next year to replace some of the topsoil that we're losing, or when one of our aquafirs are polluted.

I thank you for this attention and if you have any questions, I'd be glad to answer them, but I'm going to be available to answer any questions as we work along the legislative process.

I would like to also, because it was in our legislative package, but you've heard some testimony already on
ss. 7 House Bill 5048, or is it 5250, either one. It's the same bill, to provide funding for an executive director for the Connecticut Council on Soil and Water Conservation. Details on this necessary funding will be given in testimony by others.

I want to say thank you again. I appreciate it. I could say good afternoon. I recall a meeting I went to and Rep. Tiffany was there and he wanted to know, and at that time I had to say good evening. Thank you very much.

REP. BERTINUSON: Thank you. Let's hope that this doesn't go quite that long. The next speaker is Phil Christenson.

MR. PHIL CHRISTENSON: Thank you. My name is Phil Christenson. I want to speak in favor of Committee Bill 5250, funding for the Connecticut Council on Soil and Water Conservation. I'm state conservationist for the soil conservation service, U. S. Department of Agriculture at Storrs, Connecticut. My agency is the USDA agency that provides technical assistance to individuals and organizations in Connecticut through the county soil and water conservation districts. Together, in cooperation with the DEP we deliver programs dealing with soil and water conservation and flood control.

MR. CHRISTENSON: (continued)
Conservation districts were created in Connecticut by state statute, to assist the commissioner of DEP in carrying out soil and water conservation programs in Connecticut.

The Connecticut Council on Soil and Water Conservation, organized by state statute, also is made up of state and federal agencies and organizations having responsibility and authority for soil and water conservation and resource management programs in Connecticut.

The Council's function is to coordinate the activities of the soil and water conservation districts with the activities of DEP, and to develop programs dealing with matters of soil and water erosion control.

The Council on Soil and Water Conservation has developed a long-range program which Marh Bishop left here, but staff assistance is greatly needed to help carry out the valid recommendations and policies that the Council developed and the State of Connecticut endorsed. Since you reorganized the Council two years ago, excellent coordination procedures have been developed by the Council and they are aggressively encouraging activities which improve the use and management of our soil and water resources.

In all states, USDA agencies and many other agencies that deal with soil and water conservation, deal with organizations like the Connecticut Council on Soil and Water Conservation. Those states were coordinating bodies of professional staff to coordinate. They have been able to secure many grants from federal agencies and private organizations, and have been able to fund programs in states far in excess of the expenses. Some examples may illustrate the potention of the Connecticut Council on Soil and Water Conservation.

The Environmental Protection Agency has provided grants of $10 million for pilot programs throughout the country which benefit water quality and soil resource protection. Private organizations like the Mellon Foundation and the Ford Foundation have provided funds to test new techniques and these funds were provided through organizations like the Council. Last year, the soil conservation services obligated $2 million through state organizations like the Connecticut Council on Soil and Water Conservation for special pilot projects.

MR. CHRISTENSON: (continued)
As you know, the new federalism expects states to pick up a significant share of the cost of planning programs like these. And the Connecticut Council on Soil and Water Conservation if staffed, could qualify for signif-cant program grants.

Last Friday I testified in favor of the development of a statewide flood warning program. I hope to be able to partially fund a demonstration project for the State of Connecticut. It would be best for me to provide these funds through the Connecticut Council on Soil and Water Conservation. However, with the limited staff assistance available to that organization, my agency would likely end up doing the coordinating that we are providing the funds to the Council to perform. Without staff it's impossible for them to do the coordination that they should do.

I urge you to consider the benefits of funding the Connecticut Council on Soil and Water Conservation and I assure you that I will do what I can within my agency's resources to minimize your cost and to maximize the benefit to the State of Connecticut.

I would also like to speak about the Bill 5142, An Act Concerning Flood Management by State Agencies. There are a couple items in this bill which I think we should take a look at. On line 66, it suggests that the commissioner be the sole initiator of a flood control project with the federal agency. And perhaps initiator is a poor choice of words. I think that the commissioner should be involved and coordinate all such activities, but I don't think we should preclude communities or other organizations from having a good idea and initiating action where it's needed. The other thing is that if the DEP is the full initiator, it also is sort of an implication that they're also going to fund the local share, and I think you might save some money if you encourage local organizations to initiate projects.

The second item is on line 89 and 90, which says that the commissioner shall require that any flood control project designed, be designed to provide protection equal to or greater than the base flood, which is this 100 year flood. I think that the word protection should be better defined, because this implies that you could not go forward with a project that did not eliminate flood damages from the 100 year flood, and in many cases that's impossible and very

MR. CHRISTENSON: (continued)
hard to define. It's also in conflict with the idea that these projects that are so approved have to have flood warning, because if you've met the 100 year flood, there's no point in flood warning, because there wouldn't be any problem left.

The federal agencies now use the criteria that we select the projects that provide the greatest net economic benefit. And in many cases you get the most benefit by solving some of the small problems that happen very frequently and you don't get a lot of benefit from this great big flood which may not cause any more, a lot more damage, so in our agency, the Soil Conservation Service, we now provide assistance on projects that do not provide the 100 year level of protection. We favor the one that provides the most return for your dollar.

I think there's a little confusion between that and the factor of safety in designing structures. Nobody wants to design a structure which might cause some risk to loss of life should it fail and we should be ultra-conservative and very safe there. But if we're making a stream channel larger to reduce flooding, every increment of increase you accomplish is accomplishing something, and I don't think we should be limited to providing 100 year flood protection in all cases.

REP. BERTINUSON: Okay, that answers, I guess, a misunderstanding that I had. There is a difference if you're talking about a flood control project, if it meets a 50 year year flood, it's better than nothing at all, even if it doesn't meet, and that's different from building a building that won't withstand.

MR. CHRISTENSON: That's right. If you have a flood control project that has great benefit at the 50 year level, and does not cause increased risk to loss of life, I think it should be accommodated.

REP. BERTINUSON: And is there any problem meeting the requirements of insurance under that?

MR. CHRISTENSON: I do not believe there is. I think that should be clarified. I think there's a confusion there between risk of loss of life from structures and the level of protection.

REP. BERTINUSON: Thank you. The next speaker is David Syme.

MR. DAVID SYME: Madame Chairman, Mr. Chairman. I'm David Syme, Chairman of the Council on Soil and Water Conservation. I'm speaking in favor of Bill 5250. The previous members from Mary Goodhouse, and the Commissioner of Agriculture told you what the council has done this year. I'd like to confine my remarks more or less to the financial aspect of the council and the appropriation of $45,000 for a council executive director.

At the present time, we are receiving a help from DEP in the form of four personnel from DEP that meet with two districts each and we also have two other people who meet with the council when we're in session, so we actually have six people that are working from DEP on a very part-time basis, working with the council and the districts.

I would say that this would probably keep the Department of Water Resources informed as to what the districts are doing, but it does nothing about informing other districts of what each one of them are doing or help with the organization or presentation of statewide programs when you're dealing with six individual people on a program. So it's, while it's a great help, it lacks in coordination of an activity. In addition to that, we also have been depending upon Mr. Christenson, the state conservation's personnel up there for helping with programs where his personnel can help maybe in public relations in the formation of materials and this type of thing.

Two things have happened, actually three things have happened. One is, we've been informed by water resources the current budget is going to show some cutback in the numbers of people that are available to us from water resources. As far as the district goes we have lost the state soil conservation service level very competent person in public relations that has many years of experience, so now we're going to be dealing with a new person, no history, unknown at this point in time, so that the people we've been working with just aren't going to be there this coming year.

The third aspect is, we've been very successful in having an objective committee and two objective, an objective task force and two objective sub-committees studying the erosion and sediment control bills. They're due to report to the council for approval with technical guidelines and model regulations for the towns. By the way, that bill calls for

MR. SYME: (continued)
the towns to have some program in effect by July 1 of 85. One of the options the towns have is to contract the district for help and assistance in developing these or putting these things into application, and we have the guidelines and we will be working with them.

Now the thing that's happening out in the countryside where the district activities are, that they are working with the towns more and more every year as evidenced by increased funding from towns. Total district funding now is in the neighborhood of $250,000 plus, that's total budget from all sources.

Their activities are with towns, planning and zoning, and other conservation, erosion, soil activities by individual towns. They are developing a solid rapport with town administrative officials in this area, because they're non-regulatory. They do offer the technical assistance on the soil conservation service for their technical problems. They are at a minimum cost to the towns as far as providing this service goes, so that we anticipate many towns especially in the rural areas that do not have professional engineers, and that's the rural towns, and urban towns, in many cases will be calling upon districts to provide them with assistance in developing model regulations and the use of technical guidelines. In addition, developers are calling on districts for help and interpretation, interpretation of specific sites, all of which require district times, and effort and technical expertise.

So what we see is, the same old story I keep telling over again. I often say that I think John Mordaski could tell this speech better than I can because we said it together so much. We see increased dependence upon the district for conservation and sediment and erosion and soil and water conservation activities, with the diminuation of help. And I think what's far more important from the state's point of view is that the relationship between DEP who at the present time is the state agency charged with the responsibility of conservation, is really minimal because they have other fields of responsibility and this particular aspect, working with agencies that are outside of the formal structure of DEP is perhaps very difficult for them to spend much time with them. That I can understand.

MR. SYME: (continued)
The other thing is at the present time there is no formal recognition for the necessity of, for the coordination of district activities, the relationship between what the districts and what the commissioner or the department's doing is fine. Apparently, there is no concern on the part of DEP as to what eight individual districts are doing and the coordination of their programs. And yet, at the same time, these districts are the ones that are working with town officials in the conservation movement in the State of Connecticut.

We feel that this person who would be a DEP employee, number one, realistically from my own observation is for $45,000 which includes his mileage and secretarial help is a lot cheaper than the process we're going through right now if you want to count man hours. That's just the way the system developed.

Number two, if you're looking at communication and coordination, a full-time man under the policy setting guidelines of the Council as it's now reorganized, would be far more productive in bringing programs from DEP in a coordinated manner throughout the state and as it relates to soil and conservation, and more in particular, the most important one coming down the pike right now which DEP is not prepared, and I say this from my own observation, is not prepared to do much about is erosion and sediment. That's going to be on the books the first of July in 85, so it looks to me like this is a good buy for the state.

Now the other thing is, it's been mentioned before, federal programs. Federal programs has helped us, there's another area we've been able to borrow from. We've got $45,000 federal grant on land preservation. That grant expires on June 30 and so does the personnel, and we've been using him for some of the council work also, so that the people we've been using have had a tremendous change. Federal programs require cost share, and this money will match the 10, or 20 or 25% that the federal government's , so we would hope that the committee would support this particular program.

It's time.

REP. BERTINUSON: Thank you, David. Are there questions? The next speaker is Frank Rothammer. Our first-selectman from East Granby.

MR. FRANK ROTHAMMER: Rep. Bertinuson, Sen. Skowronski, Members of the Committee. My name is Frank Rothammer. I'm the First Selectman of the Town of East Granby. It seems like it was ages ago we addressed the raised committee bill 131. And essentially, our concern is to the Town of East Granby, is the,perhaps the rebuttal to Comm. Pac's assertion that there's not enough money to provide the proposed revision in the section 22a-471 which essentially would extend the eligibility of grants to the municipalities who have been determined or found to be the source of one or it's a combination of sources which have contributed to the contamination of a water supply.

East Granby finds itself in that position. We have at the present time, a consent agreement presented to the municipality which at this point we have not accepted because there's some refinement that we're asking for. However, many of the provisions contained we have already implemented without the need at this point of the consent agreement.

I think in rebuttal to Comm. Pac, and incidentally he concurred with the philosophy of helping a municipality, but under contention there wasn't enough money to go around and we find ourself in that same position. We just don't have a deep pocket that we can reach into to meet the needs that are going to be required and the consequences of what's going on here.

Incidentally, the subject of land fill that has been near and dear to my heart. This bill isn't being presently HB 5588 debated or discussed here today, but East Granby, incidentially, was one of the first municipalities, I think that endorsed and by resolution in mid-Connecticut project. I have long held that the burying of garbage couldn't continue. I found it is one of the dominant problems when I first became First Selectman eleven years ago in my town and this is, of course, one of the consequences.

However, at this point, we have engaged an engineering consultant to determine just where the source is and that hasn't been definitely established. The evidence looked very strong in the directions that the landfill may be the contributor, but we're asking for your indulgence and your approval to make that modest amendment to that provision

SEN. SKOWRONSKI: Are there other nondisclosure provisions in Connecticut in other areas of the statutes beside FOI?

MR. PEARLMAN: Yes, hundreds and perhaps thousands.

SEN. SKOWRONSKI: There are thousands of examples of nondisclosure in other statutes, not under 1-19b.

MR. PEARLMAN: Correct. This summer, we've gotten from the Office of Legislative Research, a computer printout which we don't have the resources yet to analyze, but it's approximately 24 to 28 inches high of statutes that provide for confidentiality of particular kinds of records or information. Some very narrow, some very broad.

SEN. SKOWRONSKI: And those co-exist with 1-19b.

MR. PEARLMAN: Yes. If you look, this only amends sub-section b of 1-19. But subsection a of 1-19 says, except as otherwise provided by federal law or state statute.

SEN. SKOWRONSKI: Okay, great. That answer the question, fills in the missing piece.

REP. BERTINUSON: Are there any other questions? Thank you very much.

MR. PEARLMAN: Thank you.

REP. BERTINUSON: The next speaker is Julio Loureiro. I'm probably not saying this correctly.

MR. JULIO LOUREIRO: Good afternoon. My name is Julio Loureiro. I'm president of Loureiro Engineering Associates. We're an environmental consulting firm in Avon, Connecticut. I'd like to comment Bill 71,An Act Concerning Procedures for the issurance of Water Pollution Control Permits.

To start with, I have a couple of basic concerns with the state purpose of the proposal. It indicates that clarification is necessary in order to comply with updated federal regulations and to retain delegation to administer the NPDES program. I am not aware of what new regulations the department is referring to, nor am I aware that the Connecticut delegated authority is currently being threatened by EPA.

MR. LOUREIRO: (continued)
If they are, I would question on what basis they are being threatened and how did the changes that are proposed in the bill specifically address the EPA's concerns. The primary problem that exists at the present time with the DEP's operations in regard to EPA, to our knowledge is the problem of them operating without regulations, not the question of the adequacy of the statutes under which they are operating.

The purpose further states that the changes will formally establish a reissuance procedure for permits that is similar to that required for the initial permit issuance process. It's our feeling that the reissuance procedure should not be similar to the initial permitting. The applicant for reissuance of a NPDES or state permit should receive full consideration for all the data that is already on file with the agency, along with their ongoing record of performance under the state and NPDES permit under which they are performing.

In regard to the bill itself, the revisions to Section 22-a-43 b 4, the bill has, the proposal is to add working using terms such as technologically feasible, practicable water conservation methods, best management practices. These terms do not assist in clarifying the basis upon which a permit will be either issued or reissued since these terms have no consistent meaning, intent or interpretation as being used presently by the department and simply provide a broad basis upon which arbitrary denial of a permit or reissuance can be made.

An attempt has been made to define best management practices in the bill, and this simply provides the commissioner with such a broad basis of interpretation under this definition that it might as well not have been defined at all.

The DEP staff who we have dealt with on a very regular basis, have previously cited their interpretation of the term technological feasibility to mean state-of-the-art technology irrespective of cost. This has been further interpreted by the DEP staff to preclude consideration of relevant factors such as cost, environmental benefit, practicality, or suitability. It has been expressed in terms of the interpretation that that which is not technically impossible is technologically feasible. From a technical standpoint, such an approach by a

MR. LOUREIRO: (continued)
regulatory agency leaves we, as consultants, and our clients, the regulated industrial community, in the untenable position of having no technical basis upon which to evaluate whether a permit application or renewal is viable. We must instead, petition the DEP staff to share with us their latest perception of what is technnologically feasible and how they intend to apply this perception to the permit issue at hand.

I would suggest that a more meaningful clarification of this sect ion of the act would be to replace the proposed wording in items 1 and 2 which uses the terms technically feasible and practicable water conservation methods with wording that adopts the USEPA criteria under the clean water act of best available technology, economically achievable for industrial point sources.

Extensive work has been done to clarify the application of these terms under the clean water act including development of published effluent standards addressing specific categories and classes of point sources, providing a viable and consistent approach to development of new and renewable permits with the further assurance of conformity with the federal NPDES Program which is one of the goals of this bill.

We feel that application of these terms in place of the terms that have been incorporated in the bill at present, covers the concept of best management practices as it is required under Item 3 of the clarified wording and eliminates the need to include this wording related to best management practices.

Under revisions to Section 22a-431 of the bill, there is added wording that includes a broad based request for information that goes well beyond the regulated point of discharge and involves the Department of Environmental Protection in the internal manufacturing in other in-plant activities that have only a remote relationship to the discharge under consideration and will simply serve to confuse or complicate the overall goal of evaluating and regulating the discharge which has already been permitted. Sufficient authority exists within the act to obtain data relating to substantial changes of a regulated discharge without the requirement that the department go up the pike

MR. LOUREIRO: (continued)
effectively, to obtain information on manufacturing of services processes.

Manufacturing procedures, and product quality control restrictions and constraints are more properly the responsibility of the regulated industry and their relationship to the marketplace and not the legitimate target of DEP who should more reasonably, focus their efforts on the discharge itself. Thank you.

REP. BERTINUSON: Thank you. Do you have a copy of your testimony?

MR. LOUREIRO: Yes, I do.

REP. BERTINUSON: I would be grateful if you would leave it. Are there questions?

SEN. SKOWRONSKI: One question I've asked of other people. Do you quarrel with the fact that Connecticut has tougher standards than the federal government in this area?

MR. LOUREIRO: I don't quarrel with the concept of tougher standards. The fact of the matter is that Connecticut has no standards whatsoever. There are no standards in place in Connecticut relating to regulating the discharges under the present implementation by the Department of Environmental Protection. They operate exclusively on a case-by-case basis and apply the term technological feasibility to the particular cases at hand. There is nothing in writing anywhere within the department that will tell you what kind of a standard you have to deal with. So conceptually, I have no problem with that, but factually, we have a major problem with an inability to deal with known factors.

SEN. SKOWRONSKI: And if Connecticut were to go beyond the federal standard, on what grounds, or what safeguards do you think ought to be in place, or on what basis should they go beyond the federal standards?

MR. LOUREIRO; Basically, the provision exists at the present time to go well beyond the federal standards. When you get into an area of water quality related streams, water quality related discharges going into controlled areas, the provisions exist at the present time for the state to determine what levels of treatment will be necessary to protect the environment. Under those cases, going well beyond federal

MR. LOUREIRO: (continued)
standards is entirely applicable and there are many instances where that in fact, has been done. The procedures are very specific and you then end up in a situation where if an industry is located in an area, where in fact, there is a water quality problem, they know up front that they have put themselves in a position where they legitimately have to spend considerably greater funding than they otherwise would have to do under normal conditions. It's the technologically based application of more stringent standards that is the real question.

SEN. SKOWRONSKI: Last point, in other words, you're going back to your concept that it ought to be technologically, that which is technologically possible and economically achievable, you would like that sort of standard.

MR. LOUREIRO: That's correct.

SEN. SKOWRONSKI: If we're going to go beyond, you don't quarrel with the concept of tougher state standards than federal, but if that's to be the case, you want them to be technologically feasible and economically achievable.

MR. LAUREIRO: That's exactly correct.

SEN. SKOWRONSKI: If that were done, then you would feel comfortable with that approach.

MR. LAUREIRO: I would have no quarrel with that approach at all. More basically, however, as I indicated up front, the problem that we've had with the department in the past, and in the past I talk over the last 10 to 12 years, has been the idea of operating on the basis of policies and guidelines with no effort to put any of this into regulation, so that regardless of the position they take on standards, there is nothing that you can deal with specifically in terms of implementing those requirements.

SEN. SKOWRONSKI: Okay. Thank you.

REP. BERTINUSON: The next speaker is John Hibbard. Oh, I'm sorry, Rep. Joyce.

REP. JOYCE: I had asked a previous speaker that if the commissioner doesn't now have the power to do this, all these things here, and his answer implied that there's a court case ongoing

MR. HIBBARD: (continued)
people who are charged with collecting that information encounter when trying to get information on rare and endangered species including both plant and animal communities.

Prior to the assembly and refinement of that information by DEP this information existed in the heads of only a very few individuals who devoted their life to looking after a certain rare and endangered plant and animal communities and many times these plant and animal communities disappeared because very few people knew anything about them and projects occurred that changed the landscape or changed, or altered the land, destroying what was there to protect, or destroying the habitat of animals that lived in these areas, so that over a period of 15 years, a whole variety of data has been assembled, and I must again outline the fact that many people that contributed this data over this lengthy period of time were very concerned about how it would be used, would it be used in a positive or negative manner.

Now we are at a point where the data is in the public domain. Who has access to it. I think that some discretion has to be left with the commissioner on how,who is going to have access to this data on a need basis. I, as more and more information is developed and as more and more people know that this information is reposited in DEP, then there are going to be increased requests for it, and I see the problem existing more in the future than it has in the past. Conservancy, its program which Audubon also contributed to financially and worked with DEP, are developing a base of public support for these plant and animal communities and more people are going to want the data, so then you end up perhaps in an untenable situation of trying to keep information from those who perhaps need it most, and also to keep it from people who are going to use it in an inappropriate manner.

That's all I have to say on that subject. I will speak in favor of raised committee bill 5247. It's been around for a number of times concerning technical assistance for woodland management. I notice that the LCO number on this bill and the it is not the latest draft that I have seen, I believe, Dr. Jahn, the dean at the College of Agriculture and Natural Resources had some changes that incorporated suggestions that

MR. HIBBARD: (continued)
others had made over the years. I think that technical assistance is much needed to the small private woodland owners throughout the state.

I also would like to speak in favor of House Bill 5250, an appropriation to the council of soil and water conservation. I think that in bringing the council into existence, the legislature has some responsibility to see that it is properly funded. I'd be willing to answer any questions that the committee might have on any of these three bills.

REP. BERTINUSON: Are there questions? Thank you, John. The next speaker is Kate Robinson from the Connecticut Fund for the Environment.

MS. KATE ROBINSON: I will try to be fairly brief. My name is Kate Robinson. I'm an attorney with the Connecticut Fund for the Environment, which is a legal action environmental group with over 3,000 members in the State of Connecticut.

I'm here in a minority to support Bill No. 71. We particularly at CFE support, when you look at the bill there are three new sections, really. We particularly support the section that includes the renewal process in the statute. It hasn't been there before. That was one of the grounds upon which Pratt & Whitney disputed their permit the last time around. It should be in the statute, and it simply leaves the permits subject to challenge if it is not there.

If those permits are not renewed upon the basis of information that DEP can glean from the company, it's, the new permit is not going to reflect any changes that may have taken place. A lot of our permits were initially issued in 1971, 72, on information that was then available. If new information is not made available in the renewal process, you're not going to be able to update the permit to reflect any changes that have taken place. So that's really supporting of two sections, the second section being the inclusion of powers to obtain information on the existing discharge when the permit comes up for renewal. Lots of changes take place not only within the company in those five years, but lots of changes take
Cass. 9 place in the outside world as far as what is best available technology, what are toxic materials. We seem to be discovering new ones practically every day that should be included in the

MS. ROBINSON: (continued)
permitting process on a regular five year basis, so I see a real need for the ability of DEP to get additional information from the company, and I don't really see that as an infringement upon the company's prerogatives. I think there perhaps is a fine line there that can be drawn and can be identified.

We also support the section which basically insures that the state administration power over the permit process continues and I'm not sure what and if the federal government is saying, no, you're going to lose it. I'm not sure what provisions within these changes are going to enable them to do that. I think it is very important to make sure that this state can administer its own program. I don't think we want to move backwards and have it go back to federal administration which I personally feel it has been rather lax, particular in recent years.

We are concerned at CFE that if a framework has to be provided for DEP to renew and issue permits, that is the purpose of this bill. We are, however also very supportive of all of the industries that you are hearing from today, that there must be written guidelines, written regulations. I would like to just put in a word on those regulations. I think the industries would clearly like to have the specific members identified within those regulations and standards. There is a real danger in that, obviously, because once you get locked in to a number, then there's no flexibility, and I think there has to be flexibility. There has to be flexibility from the point of view of changes that take place in the technology and changes that take place in what we discovered is dangerous or not.

But there also has to be some sort of engineering judgment in there when you're dealing with a small sensitive stream versus a great big river with a lot of flow. So, I would resist regulations that pin DEP so tightly that they can't have any flexibility in issuing a tighter permit to somebody on a sensitive trout stream than somebody on the Connecticut River. I think that is a real danger.

As you may know, CFE is involved in enforcement action on some of these permits against some of the companies that you've heard from today. We're sympathetic to their concern.

MS. ROBINSON: (continued)
We are concerned about the lack of enforcement in other states, particularly those that are administered by the EPA, in some of our surrounding states. And we have ourselves testified before EPA requesting enforcement of their permits in a similar way to the State of Connecticut.

But we do feel that efforts should be made to enforce equally elsewhere, not by making our own regulations and process less stringent. We're very concerned that the whole permitting process is going to come to a standstill if we don't have some come under a bill of this sort in that every company is going to end up challenging the new permits when they are issued and that's a real danger and I hope that we can resist that. Thank you.

REP. BERTINUSON: Thank you very much. Are there questions?

SEN. SKOWRONSKI: Kate, if Connecticut were to impose a stricter standard than the federal government, on what basis should it do so. I think there seems to be a feeling that that's appropriate, legitimate and okay to go beyond the federal standards, but under what guidelines to make sure there wasn't an arbitrary decision.

MS. ROBINSON: The federal standards are based on a lot of factors and they've gone through an enormous amount of give and take at a national level. I think Connecticut, I'm not sure I can give you every document for every specific point that should be taken into consideration, but I think it should be a variety of considerations that go into establishing a standard and I think they should be updated regularly.

SEN. SKOWRONSKI: What sort of broad language could you conjure up if any, that would establish criteria or safeguards.

MS. ROBINSON: I think language of this sort is obviously going to have to be battled out at the regulatory level. I don't think it really belongs in the statute. I think the statute provides a framework for regulations to be written where there will be opportunity for the industries to be heard, for DEP engineers to be heard, for local environmental groups to be heard that will say, in determining what this permit for a given company includes, you've got to take into consideration the quality of the stream, the ability of the company to come up with best available technology. To look

MS. ROBINSON: (continued)
at what the EPA standards are, what other standards that have been developed are. I think you can put in a variety of criteria, but a certain amount of it's going to have to be left to best engineering judgment, which has been upheld by the court system, as long as it's based on some specific factors.

SEN. SKOWRONSKI: Okay, thank you, that answers my question.

REP. BERTINUSON: The next speaker is Robert Crook.

MR. ROBERT CROOK: Good morning, my name is Bob Crook, I'm the legislative director for Connecticut Sportsmen's Alliance. I have one bill I'd like to give testimony on this morning, it's this afternoon, now.

Sportsmen's Alliance supports HB 5243, An Act Concerning Penalties for the Violation of Requirements for Wearing Fluorescent Orange Clothing While Hunting.

The intent of this bill was not to minimize need for fluorescent orange clothing while huntingk but to reduce the possible penalties, which we feel are excessive. Since the violation is a part of the deer statutes, it carries a heavy possible penalty of $200 and/or 60 days in jail, plus confiscation of a hunting firearm. We think that certainly this is an excessive penalty.

This bill, although not seen in a bill form before was raised twice last year, or in the past few years on the floor of the house by Rep. A. Parker. She did have an instance where a firearm was confiscated for violation of fluorescent orange in her district. There have been other instances of this.

We would suggest that the penalty in the bill on line 29 now an infraction, to be changed to read not more than $100. This change would allow the DEP enforcement unit to continue to revoke licenses for the violation whereas the infraction would not. And we feel that this is very important. If we go to an infraction, what we're doing is going from a very, very excessive fine and confiscation of a firearm, down to a mail-in procedure. And the DEP and the Sportsmen's Alliance feel that fluorescent orange is still a safety factor, and it's still a very important

MR. CROOK: (continued)
item so therefore, we should keep it out of the infractions and make it something a little bit more, $100 is about the next step up.

We believe the bill with modified wording strikes a balance between excessive a lenient and fits the punishment to the offense. I would be glad to answer any questions.

REP. BERTINUSON: Any questions? Thank you. The next speaker is Robert Wise.

MR. ROBERT WISE: Thank you Mrs. Chairman, Madam Chairman, my name is Robert Wise. I'm an attorney from Simsbury and I would like to move very quickly but at the same time, I'd like to give you literally a case history that relates, I hope, will relate a great deal of the testimony that you've heard, and explain some that you may not have understood.

It deals with Senate Bill, with the Committee Bill No. 71. As the attorney for Pratt & Whitney Aircraft, I have become very familiar with the entire operation as a consequence of a contest with DEP and I would just like to quickly review that case history and then get into some of the questions that you've raised relative to the authority and the whole concept of this water pollution control act.

May I start by just stating a couple of facts about the law. The federal pollution control act is actually two major sections. It deals with technology standards and it deals with water quality standards. They are two separate matters.

With respect to the technology standards, this act started very early back in the seventies with best practicable control technology. That is, whatever is practicable. The act was intended to work up to best available technology economically achievable. It's a very stringent technology standard. That standard does not come into effect until July of 1984, but all of the permits that are not being written under the federal act require best available technology, which as I say, is the most stringent technology standard. On top of that there is the water quality standard aspect. Every state has the right to establish Class A, B, C,

MR. WISE: (continued)
participate in the rule making process, but also to enable the agency promulgating the rule to educate itself before establishing regulations which have a substantial impact on those regulated.

By its interpretation of section 25-54o and through the use of informal policies to reissue permits under the order provision of 25-54k and not under 25-54i, the unit has avoided the public input and scrutiny such practices would involve. And when faced with the question of citing legal authority, they come back and say, as they did say in that particular case, that the issues should not be decided by the hearing officer. That was their basic defense in that case.

The requirement of establishing regulations by which to govern, and not just by unit policy applied, the requirement of establishing regulations by which to govern and not just by unit policy applied by individual permit writers, is a procedural safeguard, and it is procedure that spells much of the difference between rule bylaw and rule by as Mr. Kosloff had said earlier.

So, where are we today? He comes out with that decision, we believe we are here before you because the water compliance unit wants you to in effect, endorse what they have previously done, that has been found wanting by that decision, with the language that they have given you in this bill.

Let me show you what really, I think is attempted. The first important thing is that under 430 line, 430c is covered in lines no. 133 through line 187 and starting at 161, or 160 is where the substance comes into this. Before 160, it basically says that the commissioner has the right to renew as he always did have, for up to five years, and let me just point out something to you. On line 140, it says that the permits, the permits shall be subject to such other requirements and restrictions as the commissioner deems necessary to comply fully with the purpose of this chapter, the federal water pollution control act and the federal safe drinking water act. So basically, he has the authority to adopt regulations to comply with the federal water pollution control act.

Now they go on to line No. 160 and say, the new language suggested is, that continuance of the existing system to treat

MR. WISE: (continued)
the discharge will protect the waters of the state from pollution. So what we're now, they're suggesting to you is, you incorporate in this renewal procedure, the requirement that the system, the treatment system would protect the waters of the state from pollution. What does that mean? Well, you have to go back to lines 108 and 109 to find out what that means.

108 says, a treatment system adequately protects the waters of the state from pollution. When the commissioner finds that one, the treatment system is consistent with treatment which is technically feasible for the discharge. What are they basically saying? They're really saying, give us this technological feasibility standards that our adjudication officer says we shouldn't be using under 25-54o, give it to us here, and we'll put it in the renewal sections. So, I would submit what they're really asking for is exactly what they have been doing improperly over the last 10 years. They're trying to apply a technical feasibility standard.

We have heard the testimony that a state-of-the-art technology without regard to cost, to in effect, force industry in the state to meet far more stringent requirements and oftentimes the requirements have no absolutely no technical foundation, nor do they have any environmental gain, without any concern for the cost involved.

So the language that they now propose is the key language that they have been using the words technical feasibility. They go on to talk then about water conservation in the same manner. So what they're basically doing here is asking you to bless what they have done in the past.

I would simply suggest that what they have done in the past is simply improper to do. What they should be doing, is what the entire act was constructed to do. The federal water pollution control act. You have given them authority in the past to adopt that act through regulations. They have failed to do that. They should now go forward and do that. We have the best available technology economically achievable guidelines. EPA has come out with those. Those are very stringent guidelines that will certainly clean the water of this state, and beyond that, you have already provided them with the authority in Section 426 which says, that to the

MR. WISE: (continued)
extent you want to go forward and establish water quality limitations on the streams. Let me just quickly read that. The commissioner of environmental protection shall adopt and may thereafter amend, standards of water quality applicable to various waters of the state or portions thereof. So he has that authority now, to the extent that they want to make the Quinnipiac River or some other river a class A stream, and thereby force the industry that is discharging on that stream to have more tight standards than the technology standards coming out of BAT would be, and certainly they have the authority now to do.

I would simply close by saying that they have sufficient authority already, both in 22a-6 and the statutes that I have referred to. If in fact the attorney general believes they don't have sufficient authority, then I think the attorney general should come forward with a letter and advise us in what manner he does not have that authority.

You have heard six or eight attorneys this morning saying he has more than enough authority. Clearly, he does have the authority. I would suggest that it's not the lack of authority to comply with the clean water act that he has, really what they're looking for is the opportunity to use standards that they have used in the past to go well beyond that and apply the arbitrary type of decision and policies that they've applied in the past.

REP. BERTINUSON: Thank you, are there questions? Rep. Joyce.

REP. JOYCE: Rep. Joyce, 25th District. As I recall, the commissioner said this is absolutely necessary to confirm with federal law. I wish you'd comment on that.

MR. WISE: Well, Rep. Joyce, we have been familiar with federal law. We have other facilities. In the State of Maine, for instance, the State of Maine does not have the so-called federal NPDES issuance authority, so if you have a plant up in the State of Maine, you have to go both to EPA and Boston to get the federal permit, then you go to the state DEP to get the state permit. I can assure you that there's been no change that I know of, and I am very familiar with the federal clean water act, no change I know of over the last two years that have forced this change in their perspective. What really has changed that they don't have

MR. WISE: (continued)
the regulations on the books that they should have adopted many, many years ago and now they're a little bit concerned about issuing these third phase renewal permits under 54k and j. I don't know of any change. And furthermore in response to another question you asked previously, there wouldn't be that great a loss if the Connecticut people had to go to EPA and get their federal permit. They would be complying with the federal standards just the way we do in the State of Maine.

REP. JOYCE: Do you know of any court case in which this is pending, whether the fact that the commissioner has the authority to do, to adopt regulations on the subject. The previous speaker said something about that.

MR. WISE: Yes, sir. I think it's our case, but if it hasn't gotten to court, it will get to court right away. Let me just finish up with what happened in that case. The hearing officer issued this decision, that literally told these people that the way they were operating was improper. And that was the way it should go, because here is a DEP fellow making the proper scrutiny and saying, go back go back with regulations and go through the renewal process in the right way. That proposed decision then goes to the commissioner. Now we waited several months, and finally the commissioner unfortunately, he didn't adopt that proposed decision. He only adopted one small aspect of that, and that aspect was, he said, that there was no authority under 25-54k or j to issue renewal permits. So what he was basically saying, and clearly there isn't any authority, they should be issuing those renewal permits under 54i, but what he was basically saying also, was that these 500 or so permits, second phase permits that had been issued since 1979, all of those under k and j, there was no authority to issue them. They had gone forward and done that, and there was no authority for them to do so.

The proper renewal statute was 54i. The final decision didn't go far enough. He didn't throw out these policies that you should have done and for that reason, the decision will be appealed.

REP. JOYCE: So is there a court case pending, I still dont --

MR. WISE: Well, it will be pending as of today. Today is the

MR. WISE: (continued)
last day for filing, so it will be pending as of today, yes, but he has recognized that the authority to renew is under 54i and that's where it should be and 54i requires the passage of regulations, and certainly now they've got to come forward and get some regulations in order for renewal permits.

REP. JOYCE: So you think the adoption of regulations would be the solution to the problem rather than --

MR. WISE: Absolutely, Mr. Joyce, that is the solution to the problem. To simply go forward, adopt the regulations, they've got all the authority in the world that you've previously given them to develop the regulations.

SEN. SKOWRONSKI: A question I've asked others, one issue you're raising is the need to do this by regulation. The other is the issue of going beyond certain established standards, or in this case, federal standards implicitly. What in your judgment, what should be the criteria that the department should use or have when it wishes to go beyond federal standards? What general language might you suggest based on your experience with this case and others that would safeguard, would give the ability of the DEP to go beyond let's say the federal standard, but yet would provide safeguards to all concerned that those standards that went beyond the federal were not arbitrary, that they were based on something.

MR. WISE: Okay. Two things. The technology standards that we've talked about, the best available technology economically achievable standard. What is the intent of that? The federal clean water act says the intent is to produce fishable and swimmable streams throughout the United States, so that is a very stringent standard. Ultimately, that will produce fishable and swimmable streams. EPA over the last year has come out with effluent limitations, for let's say the electro-plating industry. All these numbers. I don't believe the State of Connecticut should have the right as they have done in the past to have more stringent numbers than those. Those are the technology standards. In order to meet those standards, you've got to put in best available technology which will be very expensive for all industries. The State of Connecticut does have now, the right to establish stream quality, so that if you were to

MR. WISE: (continued)
take a particular stream, or clearly as Mrs. Robinson says, it's far different to discharge let's say into the Connecticut River as it would be into the Housatonic River because of the tremendous flow that you're getting in the Connecticut River.

If they would like to establish the Housatonic River as a Class A stream, then what they would in effect be doing is forcing more stringent numeric effluent limitations at the same time. But the way to go about that is the way that you've already authorized them to do, to come up with water quality standards for each of the streams in the state, and then you back that standard into the industry that's discharging into that stream so that they would then have more stringent standards to meet.

SEN. SKOWRONSKI: Okay, I'm not sure that I understood the answer to my question, if any. You're saying that you, that if they're going to go beyond the federal standards to keep the criteria the best available technology economically achievable, that's with respect to if they're going to increase the technological standard. And then if they're going to increase the water quality standard, they already have, we already have the mechanism in place.

MR. WISE: Well, let me just give you an illustration. Let's say the federal government came out with BAT. They come out with a BAT standard for the electro-plating industry. Let's say for cadnium it's 25, 25 micrograms per liter. That means that you're going to have to do so many things technologically to clean your water so that only 25 micrograms of cadnium is discharged. Now if the State of Connecticut wanted to say that discharger is discharging into the Housatonic River and the Housatonic is going to be a clean, let's say a recreational swimming river, we will therefore apply a Class A classification and we will then have the right to make that instead of 25, cut it down to 20. What they will have done, is to protect the quality the water quality of the stream, impact at the discharger by making more stringent the effluent limitation. He then is going to have to either get out of that business or get out of that stream, or find some other way to reduce his cadnium.

SEN. SKOWRONSKI: Well, how would you prent that kind of action from taking place. Well, in your judgment.

MR. WISE: I'm not trying to prevent that kind of action from taking place. I think that's a legitimate action. The question then is, do you want this stream to be Class A or Class B.

One of the things you've done by the way, and should be recognized by the water compliance people, in the policies that you've established for pollution control, you have recognized all those policies that water in the state is important. But it's important, not just for recreational purposes, you have identified that water shall be protected for agriculture, for industrial uses, for domestic uses, and for recreational uses, so there has to be a balance in there. The industrial use of water in the state, you have recognized, and improperly espoused in the past.

REP. BERTINUSON: Any other questions?

REP. TIFFANY: I follow with great interest. Am I to understand that since 1978 Pratt & Whitney has not had any discharge permit? No, have you been exceeding the levels that were

MR. WISE: The law in the state says that we have an existing license. And you apply for renewal for that license. Then your old license continues in effect until your renewal process is final. So, yes, we are operating under the old license, and yes, also, the hearing process has told us that the order that they issue as our second license was improper, and they've struck that down. It's been revoked, so we are properly issuing, or operating under the old license. Some day, we'll get the new one, we hope. We asked them again to simply renew our license, but we haven't gotten a response.

REP. TIFFANY: Do you feel that a general policy that all policies should be renewed on the same basis that the original license was granted?

MR. WISE: No, I don't, that is not the way the system is set up. As I say, it started with best practicable controlled technology, your first license, you are basically under that standard, your new license as of 1984 all dischargers after July 1, 1984 have got to meet this far more stringent standard, best available technology, so there has been that upgrading in technology and there can be the subcreating in stream quality as well over a period of time which would make a far

The plant itself is the largest Pratt & Whitney Aircraft facility, employing over 20,000 persons. Over 4.5 million square feet of floor space is devoted to production, largely of jet engines for military and commercial aircraft.

9. The UTC wastewater treatment system includes separate collection lines for chromium, cyanide, oil-bearing and acid-alkali wastewaters. Storm and cooling waters are handled separately as well. Pre-treatment is provided for chrome and cyanide inside the factory, and all separation occurs at the treatment plant located on Colt Street, about one mile from the factory building.

10. The treatment plant includes a rapid mix tank, two flocculators and two clarifiers, where metal hydroxides settle out. Effluent is discharged to Willow Brook which feeds into the nearby Connecticut River. Two sludge thickeners and two vacuum filters aid in the disposal of metal hydroxides.

11. Design capacity of the system is 6.5 million gallons per day, with an average flow of 4 mgpd. Recently, average flows were actually about 1.8 mgpd.

12. Over 1,000 laboratory analyses of effluent have been made since the permit was issued in 1974. D.E.P. Water Compliance Unit's (WCU) submitted data to indicate the plant has a perfect record of compliance with the terms of its permit. D.E.P. WCU staff is confident that the system can continue to consistently meet all 1974 standards.

13. The 1974 'permit' was also drafted as an order requiring various steps before an actual permit would issue. A required chromium study submitted in 1978 was approved by the Unit in 1980 and, but for the press of other priorities, an "equivalency letter" would have been forthcoming to transform the order into a permit.

14. Not only has the wastewater treatment system operated compliantly to date, but studies show that the effluent contains far less of the allowed limits for any pollutant or heavy metal covered by specific permit terms.

15. From 1973 to 1980, the amount of purchased water used in the plant was reduced by 32% and the Colt Street plant discharge was reduced 23%, while production levels were increasing 52%. UTC experts attributed this to water conservation techniques such as eliminating automatic fill and overflow drains; installing air agitation, timers and flow restrictors on water rinse tanks; and increased use of reclaimed water.

16. UTC officials are unable at this time, however, to delineate where such items were installed, how they affect water usage in quantitative or qualitative terms, or what processes have been effected by such measures.

17. On December 16, 1981, an internal D.E.P. WCU staff memorandum was written to explain why the permit/order had been "issued under Section 25-54k." It stated that effluent limitations now drafted as "before" limits "were arrived at by interpretation of the engineering staff of . . . the technological feasibility reference in Section 25-54o . . . at the time of original permit issuance" while the new "after" limits are "required by the current interpretation of technological feasibility . . ."

18. Federal law allows the state writing an NPDES permit to adopt pollution standards more stringent than those imposed by federal law. D.E.P. has done this by "interpreting the technological feasibility requirement . . . as follows:

Conclusions

The basic issue of law involved in this matter is whether or not a substantial basis in fact exists to support the Unit's issuance of the order/permit in question. The facts themselves are largely undisputed.

It is the function of the hearings officer to render a proposed decision which contains a "statement of the reasons therefore and of each issue of fact or law necessary to the proposed decision." Section 4-179, Connecticut General Statutes.

Since issues of fact and law are both involved in reaching a proper decision, a reference to the statutory language delineating the court's function on appeal may be helpful as a guide for the Commissioner. That is, he should see that the findings are not "in excess of the statutory authority of the agency" or "made upon unlawful procedure" or "erroneous in view of the reliable, probative and substantial evidence on the whole record" or "arbitrary or capricious or characterized by . . . clearly unwarranted exercise of discretion." Section 4-183(g) CGS.

Thus, while the Unit, in its briefs, has sought to strictly limit the function of the hearings officer to something akin to a robotic rubber stamp, in fact, even the Unit would probably concede that, for instance, had the agency attempted to revoke UTC's air emissions permit or state tax stamp based on these statutes and this set of facts, such action would be clearly "in excess of statutory authority" and would not have to be agreed to by the hearings officer merely because it was a Unit within the agency which had suggested the novel tactic. Likewise, the Unit would probably agree that if a hearing were held at which UTC's witnesses and counsel were bound and gagged and not permitted to speak, then the hearings officer might rightfully find the agency had acted upon "unlawful procedure."

There is no substantive difference between these egregious examples and the case at hand, insofar as the responsibility of the hearings officer in all cases is concerned. Issues of fact and law necessary to the decision are, by statute, within his province to decide.

Because the facts are relatively clear and not in dispute, the heart of this matter lies with the legal sufficiency of the order/permit. The question is whether the Unit has met its burden of proving, by a preponderance of the substantial evidence on the whole record, that there indeed exists a facility or condition, maintained by UTC, which reasonably can be expected to create a source of pollution.

Since the evidence on which the Unit relies is admittedly a 'lack' of information and a need to inquire of the permittee, the question then becomes: Can such lack of knowledge constitute substantial evidence? If so, then do such concerns raise themselves to the degree of "reasonable expectation" which the empowering statute requires?

And, if so, then what is 'pollution,' and who says so? Furthermore, without a change in the actual language of the laws themselves, is it legally permissible to assume the definition of pollution can so change over time such that perfect compliance with a permit which assured against pollution in 1974 now no longer does, without proving more?

And if 'pollution' is to be based not on in-stream water quality, but on treatment technology, must that definition somewhere appear in law or regulation before it is applied, across the board, to all discharges?

"1) Bypass . . . is not acceptable at any time except emergency conditions.
"2) An emergency condition is defined as threat of loss of life, personal injury, or severe property damage.
"3) It is possible to design as (sic) industrial wastewater treatment system that will meet condition (1) above.
"4) Duplicate industrial wastewater treatment units are not required because wastewater generating production operations can be closed during . . . shutdown . . ."

19. These standards are implemented generally in renewal permits issued to industrial discharges. There are other such standards which have been applied to the drafting of this permit, including:

- "the Department's goal . . . to reduce the average quantities of metal discharged to the Connecticut River to as low a level as possible." This goal is to be met through the application of technologically feasible requirements irrespective of cost or environmental considerations, according to D.E.P. staff responsible for its implementation.
- Pre-established numerical effluent concentration levels have been placed in "all reissued permits for industrial firms engaged in metal finishing" based directly on the figures found in a document entitled "State of Connecticut, D.E.P., Effluent Limitations for Point Source Discharges for Heavy Metals . . ."[1]
- Regulation of internal waste streams, "at the point of origin rather than at the property line or end-of-pipe" is "generally used for industrial wastewater" based on "administrative interpretation" of the technological feasibility requirements of Section 25-54o.
- The absolute prohibition of bypass (see above).
- The reduction of the amount of water entering the treatment system "to the greatest extent possible."

20. Unit staff contend that in regards to water conservation techniques "technological feasibility" constitutes "using the minimum amount of water possible without causing any degradation in that quality of the product . . ." irrespective of cost, determined by the permit writer "on a case by case basis." D.E.P. WCU's concern for product-quality in its definition "was an administrative staff determination based on common sense as opposed to any statutory, specific charge."[2]

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[1]When asked if the document (Exhibit 35) was where the permit's limits had come from, Mr. Winterbottom replied Exhibit 35 was just "one factor that I took into account;" however, the cadmium, nickel and zinc limits established in the 1980 draft permits for facilities of UTC in East Hartford, Middletown, Southington and North Haven were all exactly the same as Exhibit 35.

[2]Along the same lines, the Unit representative was asked about other administrative interpretations:

Question: "What about common sense with respect to cost benefit analysis, environmental benefit, social benefit, energy usages and other facts?"

Answer: "I don't see how that consideration can be taken in the statute." (Tr., p. 125)

By its interpretation of Section 25-54o and through the use of informal policies to "reissue" permits under the order provision of Section 25-54k the Unit has avoided the public input and scrutiny such practices would involve. Then, when faced with the question of citing legal authority for their positions in what seems to be the first administrative challenge to this practice, the Unit simply concludes that its reissuance practices and its interpretations are "not issues which the Hearing Officer should properly consider."

The requirement of establishing regulations by which to govern, and not just by Unit policy applied by individual permit writers, is a procedural safeguard.

As a distinguished jurist (Justice Douglas) once wrote: "It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law." Joint Anti-Fascist Refugee Com. v. McGrath, 341 U.S. 123, 179 (1951)

Recommendations

Therefore, based on these conclusions, it is respectfully recommended that the permit application of UTC be acted upon according to the renewal provisions of Section 25-54i and that the order be modified to the extent it is in contravention to this; further, that since there is no reasonable expectation that, based on the record, UTC will create pollution as required by Section 25-54k, all that part of the order requiring any response from UTC be modified so as to be eliminated entirely from consideration; further, that this decision in no way be construed as a limitation on the Unit's ability to gather information or request studies, where appropriate, pursuant to any valid law or regulation.

Date: _____

_____
William S. McGee
Director
Adjudications Unit

WSM:djs