STATE OF CONNECTICUT

COUNCIL ON ENVIRONMENTAL QUALITY

DATE: July 29, 2009

TO: Daniel Morley
Policy Development Coordinator
Office of Policy and Management

FROM: Karl J. Wagener
Executive Director

RE: Proposed Generic Environmental Classification Document (ECD)

The Council has reviewed and discussed the proposed Generic ECD, and offers several recommendations. However, these specific recommendations will not fix the underlying problem: this ECD does not fulfill the intent of the CEPA regulations, which are antiquated, and probably cannot fulfill them until the regulations are amended. The Council knows that this problem was not created by the authors of the proposed ECD; the mismatches between the statute and regulations and between the regulations and the ECD are due largely to the Department of Environmental Protection's failure to update the CEPA regulations in the seven years since the statute was amended. There are several CEPA-related problems that need to be fixed, and the ECD probably should be the last element to be changed, not the first.

In the Council's view, one of the biggest problems with CEPA is that state agencies can spend large sums of money, often in the hundreds of thousands of dollars, on voluminous Environmental Impact Evaluations (EIEs) and get little value in return. Some EIEs have been of very limited usefulness for subsequent decision-making by the sponsoring agencies, even though the documents might have fulfilled the technical requirements of the CEPA regulations. This wasteful expense, combined with the length of time required to develop a final document, probably cause some agencies to seek a path that avoids the EIE requirement where possible.

The Council recommends a wholly different approach: Agencies should be encouraged to complete EIEs for all projects that meet the thresholds of the ECD. If all or most impacts are projected to be insignificant, then the agency should produce a short document of five to twenty pages. This concept is supported clearly by the existing regulations:

> **Sec. 22a-1a-7(e) An** environmental impact evaluation shall be clear, concise, and to the point, and written in plain language so that it may be understood by the general public. Impacts shall be discussed in proportion to their significance and the magnitude of the action.

The Department of Environmental Protection has shown that this can be accomplished in-house at minimal expense.

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Agencies might consider collaborating on a template for short EIEs, an effort in which this Council will be very willing to assist.

Specific Recommendations

1. **Category II.** The proposed language reads,

> "When any of the following actions are proposed…an environmental assessment…shall be undertaken to determine whether an environmental impact evaluation shall be prepared:…"

This language does not have the same meaning as the regulations, which clearly state that each environmental assessment will result in a public document for review and comment:

> "For each of these listed actions, when one is proposed, the sponsoring agency shall undertake an environmental assessment…to determine whether it shall prepare an environmental impact evaluation or a finding of no significant impact." (RCSA Section 22a-1a-4(b)(2))

If the reader finds some ambiguity in the language of the above regulation as to whether or not an environmental assessment *must* lead to either an environmental impact evaluation or a finding of no significant impact, that question is settled in a subsequent section:

> If an agency, in the course of an environmental assessment, finds that a proposed action listed in its environmental classification document would not have a significant environmental impact, it shall prepare a finding of no significant impact. (RCSA Section 22a-1a-10(a))

As the sponsoring agency's choice in the quoted regulations is between an EIE and a finding of no significant impact, and the statute no longer allows for findings of no significant impact, the choice is a moot one: the agency must prepare an EIE.

The proposed language probably is intended to help agencies avoid the need for a costly and time-consuming EIE when no significant impacts are anticipated. Again, the preferred solution is to prepare and circulate a short, inexpensive EIE.

The proposed language also does little to clarify the need for an EIE, especially to private parties who might be involved in public-private partnerships, and it might even reduce clarity. The proposed language blends precise criteria (i.e., 200 parking spaces, water level changes of four inches, etc.) with imprecise instructions to assess whether or not an EIE is needed. A private party constructing a project with state assistance that includes 210 parking spaces still will be unable to predict whether or not the requirement for an EIE will kick in.

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The Council recommends putting everything currently in Category II into Category I. This will have the important benefits of ensuring public notice on all projects and enhancing clarity. In the Council's view, it should also lead to considerable cost savings and improved decision-making by overhauling the expectations of agencies and consultants regarding the bulk, cost and timeframes of EIEs.

2. Language re: state facilities. There are numerous references to state facilities, state-owned dams, etc. The Council recommends that these references be deleted. By definition, a state action is one undertaken or funded by a state agency. CEPA applies to an action even if the property, dam, parking lot, etc. is not state-owned. The proposed language could lead a reader to conclude incorrectly that CEPA would not apply.

3. Category IV: After considerable discussion, the Council concluded that "demolition of state structures" should be deleted from this category. Further review of the regulations reveals that this category is not mentioned in the regulations and therefore should be deleted.

4. Property transfers: The proposed ECD is not clear about the need to prepare an EIE when an agency proposes to dispose of a large property such as Seaside. This requirement should be made clear.

The reduction of the Generic ECD to a single category might lead the reader to ask why it is called a "classification" document when there is only one class. The answer lies, again, in the fact that the ECD does not mesh with the concept of classification as defined in the regulations adopted in 1978 when different types of documents were possible. The regulations truly need to be amended, and it is probable that ECDs should be replaced by another tool to define project thresholds that would trigger environmental evaluations.

Thank you for your consideration of these comments. The Council looks forward to discussing its recommendations with you.

CC: Amey Marrella, Acting Commissioner of Environmental Protection

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