

# COUNCIL ON ENVIRONMENTAL QUALITY



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## The importance of a CEPA\* review for state sponsored forestry, forest management and tree maintenance in Connecticut.

### \*Connecticut Environmental Policy Act

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#### 1. What is the CEPA process?

The [Connecticut Environmental Policy Act](#) (CEPA) was [passed](#) in 1973 and requires state agencies to identify and evaluate the impacts of proposed actions within the state that have the potential to “significantly affect the environment”. The phrase “significantly affect the environment” is key to a determination of whether a proposed state action will require a CEPA review. The CEPA process has multiple “exit ramps” and, consequently can be brief or extensive depending on the decisions made by the sponsoring agency. In brief, it looks like this:

- A state agency identifies a need.
- The agency develops an action to address the need.
- The agency reviews the possible adverse consequences of the action.
- The agency decides, based on its Environmental Classification Document (ECD), whether the action warrants a “Scoping Notice”, if yes it:
  - posts a “notice of public scoping” to the state’s Environmental Monitor and other outlets,
  - receives input from experts and potentially effected citizens,
  - responds to input received,
  - modifies the action, as needed, to consider the input received.
- The agency decides whether the project warrants a comprehensive Environmental Impact Evaluation (EIE), if yes
  - the agency conducts the EIE,
  - the agency posts the EIE in the Environmental Monitor and other outlets,
  - the agency modifies the action, as needed, to consider information collected and announces the conclusions and responds to all comments received.
- The agency proceeds, or not, with the action.

## **2. State actions that affect the state’s forests and park lands are “actions which may significantly affect the environment”.**

CEPA’s definition ([CGS Sec. 22a-1c](#)) of “actions which may significantly affect the environment” specifies a number of factors that apply to tree removals. These are listed below with added emphasis.

“As used in sections 22a-1 to 22a-1i, inclusive, ‘actions which may significantly affect the environment’ means individual activities or a sequence of planned activities proposed to be undertaken by state departments, institutions or agencies, or funded in whole or in part by the state, which *could have a major impact on the state's land, water, air, historic structures and landmarks as defined in section 10-410, existing housing, or other environmental resources, or could serve short term to the disadvantage of long term environmental goals.*”

The Department of Energy and Environmental Protection (DEEP) is aware that tree removal operations on a significant scale can affect the land and water and requires that forestry plans include consideration of wetlands, erosion, invasive species, endangered species and many other factors that are normally considered in most environmental impact evaluations.

Forestry and forest management operations could “*serve short term to the disadvantage of long-term environmental goals*” such as retention of trees for their value as carbon sinks, retaining wildlife habitat, providing water purification for associated water bodies and protecting wetlands and riparian areas.

The removal of the trees themselves is an environmental loss. CT law has long identified trees as a resource worthy of protecting. CGA sections [52-560](#) and [52-560a](#) established damages for cutting trees, timber or shrubbery. If the removal was on land owned by the state, a political subdivision of the state or a nonprofit land conservation organization the court shall require the violator to restore the land to its condition as it existed prior to such violation or shall award the landowner the costs of such restoration, including reasonable management costs necessary to achieve such restoration. In addition, the court may award reasonable attorney's fees and costs and such injunctive or equitable relief as the court deems appropriate.

## **3. State actions that affect the state’s forests and park lands are subject to CEPA**

The Regulations of Connecticut State Agencies (RCSA) governing actions that are subject to CEPA enumerate factors, listed below with added emphasis, that logically apply to tree removal and forest maintenance.

(RCSA Sec. 22a-1a-3) “(a) To determine whether an action is an action which may significantly affect the environment, an agency shall: (1) Consider the direct, indirect, and cumulative effects of an action as those effects are described in subsection (b) and (c) of this section, and

(2) Assess the setting, duration, irreversibility, controllability, geographic scope, and magnitude of those effects as the potential or actual consequences of an action.” The regulations add “... *an agency shall consider direct and indirect effects of an action, including but not limited to... (5) Effect on natural communities and upon critical plant and animal species and their habitat; interference with the movement of any resident or migratory fish or wildlife species;... (7) Substantial aesthetic or visual effects... (16) Effect on existing land resources and landscapes... (19) Effect on greenhouse gas emissions as a direct or indirect result of the action; (20) Effect of a changing climate on the action, including any resiliency measures incorporated into the action; and (21) Any other substantial effect on natural, cultural, recreational, or scenic resources.*”

DEEP’s ECD of 1992, that was replaced by the state’s “Generic ECD, included “Harvesting of commercial forest products in a developed state park resulting in a total harvest in excess of 100,000 board-feet”, as actions that would be subject to a CEPA review.

The state’s current Generic ECD describes what actions of the Department of Energy and Environmental Protection (DEEP) would be subject to a CEPA review. It explicitly mentions core forests as “II Typical Actions That Require Public Scoping To Determine Whether An Environmental Impact Evaluation Is Required.

“... k. Any action, other than maintenance or repair of an existing facility, which may significantly affect core forest, defined in CGS 16a-3k as unfragmented forest land that is three hundred feet or greater from the boundary between forest land and nonforest land;”

It is important to note that the explicit mention of “core forests” in the Generic ECD does not exclude actions in other forest types that qualify under section “II o” of the ECD.

“... o. Any other action that may *significantly affect the environment in an adverse manner*, including consideration of the direct, indirect, and cumulative impacts of those factors identified in RCSA Section 22a-1a-3, and in connection with the proposed action’s setting, its probability of occurring, its duration, *its irreversibility*, its controllability, its geographic scope, *its magnitude*, and regulatory requirements.

Proof that CEPA applies to DEEP’s management of its lands and forests lies in the fact that DEEP is already submitting its “prescribed burns” to a CEPA review and is posting Scoping Notices for them in the Environmental Monitor.

#### **4. Current DEEP policy**

Despite its policy for prescribed burns, historically, DEEP has not done the same for its forestry operations. As mentioned previously, forestry plans are already required to consider multiple potential environmental impacts. The addition of public notice through the CEPA process would add very little time

to the process but would increase transparency and allow for public analysis and public input that might improve the design or implementation of planned actions.

DEEP does not develop Scoping Notices for actions like removal of trees that pose a public risk, which is in accord with CEPA's exemption for those activities. CGS Sec. 22a-1c states "actions which may significantly affect the environment" shall not include "(1) emergency measures undertaken in response to an immediate threat to public health or safety".

## **5. Needed changes**

To bring its practices closer to the intent of the state's CEPA law, DEEP needs to do two things:

1. It must develop its own ECD. This is allowed under CEPA regulations. An ECD that is more specific to DEEP's operations would be useful and permit clarity about what actions should go to scoping. The draft ECD will need to be approved by the Office of Policy and Management after consultation with the Council on Environmental Quality.

2. Until the agency has its own ECD, the Commissioner can establish at what scale the agency's forestry and land management activities will be subject to CEPA review. This action by the Commissioner is important because,

- it is likely to initiate an analysis within the agency of its projects, their potential environmental risks and corresponding mitigations,
- it will be a useful foundation for the development of its agency-specific ECD,
- it will add a level of transparency about the agency's actions,
- it will allow for public analysis and public input to DEEP about proposed actions that might improve the action's design or implementation,
- it will reduce the likelihood of a legal challenge to DEEP's actions premised on the allegation that they are not in compliance with the CEPA law.