

Environmental Compliance History Policy

Purpose

This document is designed to guide the Department's review of an applicant's environmental compliance history as staff considers initial or renewal applications for environmental permits, registrations, and other licenses, transfer, modification or revocation of such licenses, and occupational certifications. It will assist staff in identifying and obtaining the information needed to evaluate an applicant's compliance history, in assessing the relevance of such history to the activity for which a permit is being sought, in considering the nature and severity of past violations, and ultimately in determining if the record shows a pattern or practice of noncompliance which warrants either the inclusion of additional permit conditions to help insure compliance or the revocation or denial of the permit. This policy does not address compliance history in relation to enforcement actions.

Policy

Department staff is expected to take into account a permit applicant's compliance record in determining whether or under what conditions to grant, renew, modify, transfer, revoke or deny a permit. When considering an applicant with a history of non-compliance, the Department will generally issue the authorization sought, but with conditions specifically designed to provide additional assurance that compliance is achieved and maintained. Staff should recommend such conditions for the draft permit. Conditions that may be appropriately incorporated into a permit include but are not limited to: additional monitoring requirements; additional reporting requirements; a permit duration that is shorter than customary; surety requirements; contingency plans; equipment enhancements/improvements; environmental management systems; routine systematic compliance auditing; specific training requirements. Staff will recommend to the Program Director that the Department deny the application when a compliance record evidences a pattern or practice of noncompliance that demonstrates to the Department the applicant's unwillingness or inability to achieve and maintain compliance with the terms and conditions of the permit, including but not limited to: (a) indifference to or obvious disregard for legal requirements; (b) an unwillingness or inability to devote the resources necessary to comply; or (c) instances of noncompliance that have led to serious environmental harm or harm to human health or safety, or a substantial risk of such harm. The Program Director shall make the final program recommendation to the Bureau Chief to issue the permit, issue with conditions, revoke, or deny the permit.

Permit Applications and Compliance History Review

The Department's permit application process package contains a two-page Applicant Compliance Information form (DEP-APP-002). This form requests information covering the five years immediately preceding submission of an application regarding violations of any environmental law, civil penalties imposed, and issuance of orders or judgments. If there have been violations, the applicant is also required to complete the Table of Enforcement Actions form. Following a

determination that an application is complete, staff will next review the applicant's compliance

history. Staff will review compliance history in all permit programs on the Table of Enforcement Actions form submitted as part of the permit application for a period of not less than five years¹ prior to the date the application is received. Staff may consider compliance history information in addition to or beyond that submitted by the applicant with its application.

When Compliance History Is Reviewed

Applications for individual permits, permit modifications, and permit reissuances or renewals are subject to the compliance history review process.

Applications for temporary authorizations under Conn. Gen. Stat. Section 22a-6k are subject to the compliance history review process.

Applicants for transfer of permits under Conn. Gen. Stat. Section 22a-6o are subject to the compliance history review process.

Applications for emergency authorizations under Conn. Gen. Stat. Section 22a-6k are subject to the compliance history review process. If the application must be acted upon so quickly as to preclude a complete compliance history review, staff, with management concurrence, may forego or postpone the review. However, whenever staff has knowledge that an applicant has a poor compliance history, the emergency authorization should be appropriately conditioned or denied.

An applicant for a permit to operate or for approval of plans and specifications under Conn. Gen. Stat. Section 22a-430 and who previously applied for and received a construction permit or such approval and who was subjected to compliance history review at that time, should be evaluated for compliance only from the date of the earlier compliance review.

Applications for authorization under general permits and for other similar forms of approval are not subject to compliance history review unless the staff has reason to believe that the applicant has a poor compliance history. However, a Bureau or program may identify particular categories of general permit approvals and other forms of approvals for which compliance history reviews will be required on a routine basis.

Determining The Appropriate Applicant

Before beginning a compliance review, staff should determine whether the applicant is the appropriate person to be applying for the authorization at issue. One purpose of making this determination is to assure the Department evaluates the compliance history of the person(s) who will

¹ Conn. Gen. Stat. Section 22a-6m (b)(1) and (b)(2) limit the compliance history information the Department may require from an applicant on a new application, or on an application to transfer a permit, to a period of five years immediately preceding the date of the application. It does not prohibit the Department from obtaining or considering additional compliance information, not obtained from the applicant, in any licensing or enforcement case or other proceeding within the Commissioner's authority.

have the greatest degree of control over compliance.

If the applicant is a business, staff should determine the relationship among the applicant, its parent and subsidiary corporations², directors, officers, and stockholders or those owning more than 5% of the business. If the applicant is a business which has undergone a merger, consolidation, transfer of assets or other business change, the compliance history of the "old" business is attributable in certain circumstances to the "new" business; staff should therefore consult with counsel if the applicant appears to have undergone such a change. When the applicant seeks authorization to conduct an activity at the site of a single-family home and the applicant is the homeowner, the staff should not consider the compliance history of any business of which the homeowner is a owner, director, or officer unless the business is going to serve as the contractor conducting the activity for which the homeowner seeks authorization; the compliance history of any proposed contractor should be considered in order to determine whether the authorization, if issued, should impose a condition prohibiting the applicant from retaining that contractor.

Scope of Review

In evaluating compliance history, staff should review all reasonably available evidence of violations of the environmental statutes, regulations, permits and other authorizations, final orders, and final judgments of Connecticut, other states, and the United States. The review will typically include information beyond that provided by the applicant and should include all violations. The review must encompass the applicant, its parent and subsidiary corporations, directors, officers, and, as appropriate, stockholders or those owning more than 5% of the business.

Final administrative orders, administrative consent orders, civil judgments, stipulated judgments, consent decrees and criminal verdicts, even those in which the respondent or defendant does not admit that any violations occurred, form part of the applicant's compliance history. Informal warnings, formal warning letters (excluding notices of minor violations issued pursuant to Conn. Gen. Stat. 22a-6s where action taken to correct the minor violation is satisfactory), notices of violation issued by the Department and violations noted in inspection reports also form part of the applicant's compliance history. If staff plan to recommend denial or revocation of the permit, or that special conditions be imposed, staff must be prepared to provide information regarding the applicant's compliance history in support of such recommendation. The applicant may have the opportunity to rebut the information relied upon by staff. While a hearing regarding the disposition of an application will not always be held, if there is a hearing, evidence of noncompliance may be presented by, e.g., entering documents into the record, by having staff testify or through other means. The hearing officer may consider any such evidence in deciding on the appropriate permit action.

Determining Severity of Noncompliance

In determining the severity of noncompliance, the following factors are considered:

² "Parent and subsidiary corporations" include businesses which, though perhaps not parents or subsidiaries in the strictest sense of those terms, are closely related through shared management, directors, stockholders or assets.

- The nature and extent of the harm caused or threatened;
- The impact on the integrity of regulatory programs;
- Duration of noncompliance;
- Number of violations of a similar nature;
- Total number of violations of all types;
- Economic benefit attributable to violations;
- Relationship/relevance of violations to activity for which permit is sought; and
- Whether any or all of the violations were willful or grossly negligent.

While not all - inclusive, the following types of violations represent noncompliance the nature of which indicates the need for special permit conditions or permit denial:

- Violations that cause or genuinely threaten harm to the environment or to public health or safety;
- Violations resulting in criminal convictions;
- Tampering with monitoring or sampling equipment or interfering with samples or analytical results;
- Filing false reports or inaccurate, conflicting or misleading information;
- Failing to maintain or use required pollution control equipment, structures or practices;
- Repeatedly failing to submit required reports of regulated activity such as Discharge Monitoring Reports;
- Conducting a regulated activity without a required permit or other authorization.

The policies and procedures in this document are intended solely for the guidance of staff of the Department. They are not intended to, nor do they, constitute rulemaking for the agency, and they may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Department may take an action that is at variance with the policies or procedures contained in this document if it is appropriate in a specific case.

Adopted October 16, 2000, revised April 9, 2001 and August 1, 2002.

Appendix - Applicable Compliance History Statutory Language

CGS Section 22a-6m. Compliance history of permit applicants. (a) In exercising any authority to issue, renew, transfer, modify or revoke any permit, registration, certificate or other license under any of the provisions of this title, the Commissioner of Environmental Protection may consider the record of the applicant for, or holder of, such permit, registration, certificate or other license, the principals, and any parent company or subsidiary, of the applicant or holder, regarding compliance with environmental protection laws of this state, all other states and the federal government. If the Commissioner finds that such record evidences a pattern or practice of noncompliance which demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the terms and conditions of the permit, registration, certificate or other license for which application is being made; or which is held, the Commissioner, in accordance with the procedures for exercising any such authority under this title, may (1) include such conditions as he deems necessary in any such permit, registration, certificate or other license, (2) deny any application for the issuance renewal, modification or transfer of any such permit, registration, certificate or other license, or (3) revoke any such permit, registration, certificate or other license.

(b) For the issuance of a new permit, registration, certificate or other license or for the transfer of any permit, registration, certificate or other license, the Commissioner may require the applicant to submit, on forms to be provided by the Commissioner, the following information regarding enforcement proceedings involving the applicant: (1) any criminal conviction involving a violation of any environmental protection law if such violation occurred within the five years immediately preceding the date of the application, (2) any civil penalty imposed in any state or federal judicial proceeding, or any civil penalty exceeding five thousand dollars imposed in any administrative proceeding, for a violation of any environmental protection law if such violation occurred within the five years immediately preceding the date of the application, and (3) any judicial or administrative orders issued to the applicant regarding any such violation. For any such proceeding initiated by the Commissioner or the Attorney General, the Commissioner may require the applicant to provide dates, case or docket numbers or other information which identifies the proceeding. For any such proceeding initiated by an agency of another state or the federal government, the Commissioner may require the applicant to provide a copy of any official document which initiated the proceeding, the final judgment or order and a description of any violation which was found. The Commissioner may not deem such an application incomplete as to information regarding the compliance of the applicant with any laws if the applicant has provided all of the information specified in this subsection.

(c) Nothing in this section shall affect any other provisions of law regarding information which is required to be provided by an applicant for any permit, registration, certificate or other license issued under any of the provisions of this title.

(d) In reviewing the application for a permit, registration, certificate or other license under the provisions of this title, the Commissioner may require the applicant or, if the applicant is a business entity, any director, officer, partner or owner of more than five per cent of the total outstanding stock of any class of the applicant's business to submit to state and national criminal history records check. The Commissioner may request a state criminal history records check for each such applicant, director, officer, partner or stockholder from the State Police Bureau of Identification. The Commissioner may arrange for each such applicant, director, officer, partner or stockholder to provide the information necessary to conduct such criminal history records check to the State Police Bureau of Identification which shall submit such information to the Federal Bureau of

Investigation for a national criminal history records check. The Commissioner may charge each such applicant, director, officer, partner or stockholder a fee for the state criminal history records check which shall not exceed the fee the State Police Bureau of Identification is authorized to charge an individual for performing the check and a fee for the national criminal history records check which shall not exceed the fee charged by the Federal Bureau of Investigation for performing the check. The Commissioner shall collect such fees and forward such fees to the Department of Public Safety. The review by the Commissioner of the criminal history of each such applicant, director, officer, partner or stockholder shall be limited to information regarding criminal convictions related to activities regulated under the environmental protection laws of this state, any other state or the federal government.

CGS Section 22a-60 (c) If the Commissioner finds that the information submitted for a registration of license transfer under this section is insufficient for purposes of determining whether the proposed transferee is able to comply with the terms and conditions of the license, the Commissioner may require such transferee to submit such additional information as the Commissioner deems necessary to make such determination, including, but not limited to, any information necessary to complete a criminal history records check under such Section (d) of section 22a-6m.

CGS Section 46a-80 Denial of employment based on prior conviction of crime. Dissemination of arrest record prohibited. (a) Except as provided in subsection (b) of this section and subsection (b) of Section 46a-81, and notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the State of Connecticut or any of its agencies, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit, certificate or registration is required to be issued by the State of Connecticut or any of its agencies solely because of a prior conviction of a crime.

(b) A person may be denied employment by the state or any of its agencies, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, profession or business by reason of the prior conviction of a crime if after considering (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release, the state, or any of its agencies determine that the applicant is not suitable for the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration is sought.

(c) If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant.

(d) In no case may records of arrest, which are not followed by a conviction, or records of convictions, which have been erased, be used, distributed or disseminated by the state or any of its agencies in connection with an application for employment or for a permit, license, certificate registration.

CGS Section 46a-81. (a) The provisions of Sections 46a-79 to 46a-81, inclusive, shall prevail over any other provisions of law which purport to govern the denial of licenses, permits, certificates, registrations or other means to engage in an occupation, trade, vocation, business or profession, on the grounds of a

lack of good moral character, or which purport to govern the suspension or revocation of a license, permit certificate or registration on the grounds of conviction of a crime. (b) Sections 46a-79 to 46a-81, inclusive, shall not be applicable to any law enforcement agency, provided nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth in said sections.

CGS Section 52-400e. Whenever a judgement in a civil action which relates to activities for which a license is required has been rendered against a business which is licensed by a state or local licensing authority and which remains unpaid for one hundred eight days after receipt by the judgement debtor of notice of its entry and the judgement shall not be stayed or appealed, the state or local licensing authority shall consider such failure to pay, if deliberate or part of a pattern of similar conduct indicating recklessness, as a basis for revocation, suspension or conditioning or, or refusing to grant or renew such license. Nothing herein shall be construed to preempt an authority's existing policy if it is more restrictive.