

September 6, 2011

NOTIFICATION FORM
DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION
SMALL BUSINESS REGULATORY IMPACT AND REGULATORY FLEXIBILITY
ANALYSIS

Title of Regulation Stream Flow Standards and Regulations, RCSA sections 26-141b-1 to 26-141b-8, inclusive

Statutory Authority Sections 22a-6 and 22a-141b

Contact Person Robert Hust, CT DEP (860) 424-3718

The Regulation

The proposed rules establish narrative flow standards for all river and stream systems in the state. There are also new regulatory requirements for certain dam owners and operators. The proposed rules that are being resubmitted will eventually replace the existing requirements found in the Minimum Stream Flow Standards and Regulations of the Connecticut Department of Energy and Environmental Protection, RCSA sections 26-141a-1 to 26-141a-8, inclusive. The proposed rules set forth standards and regulations that begin to balance the needs of humans to use water for drinking and domestic purposes, fire and public safety, irrigation, manufacturing, and recreation, with the needs of fish, wildlife and other biota that also rely upon the availability of water to sustain healthy natural communities.

Relationship to Small Business

Some small businesses that own or operate a dam that impounds or diverts the flow of water in a stream or river system may be required to comply with requirements to provide for in-stream water flows consistent with the flow standards of the regulations. In addition, some small businesses that use public water supplies may be indirectly affected by the potential increase in the cost of water as customers of public water suppliers. There is a minimum ten year implementation period built into the regulation before any compliance apart from reporting is required, so there will be little if any fiscal impact to small businesses, directly or indirectly, from these regulations for the first ten years. It should also be noted that this ten year period to comply does not start until after stream classification is completed. However, those few directly affected small businesses will likely need to consider how to invest in infrastructure improvements prior to the ten year implementation period. The extended implementation period will allow time for affected businesses to assess how to most cost-effectively come into compliance. The implementation period also allows the DEEP to use existing staff and other available resources currently dedicated to management of stream flows to facilitate implementation of the regulations by developing technical assistance documents, forms and web-based tools to assist small businesses and public water suppliers with compliance.

Regulatory Flexibility Analysis and Impact Reductions

There was a very high degree regulatory flexibility considered for small businesses. DEEP examined and re-examined flexibility at three distinct points in the regulation development process: during regulation development; during public comment and response and during the final regulation review. All points included consultation with key stakeholders, culminating in an intense stakeholder process in the spring of 2011. DEEP considered all the methods listed in section 4-168a(b) to reduce the impact of all or part of the requirements contained in the proposed regulation related to small businesses. The measures taken to reduce small business impacts included:

- Narrowing the regulation to include dams only: this approach excludes water supply wells and direct water intakes which make up the majority of all direct diversions by small businesses, and significantly reduces impacts to public water suppliers serving small businesses.
- Extending compliance out ten years from stream classification and providing an additional 10 years for implementation.
- Exempting agricultural uses, small water withdrawals (less than 50,000 gallons per day), all diversion permits, golf courses, minor withdrawals, and small impoundments.
- Easing release requirements for certain small water users.
- Reducing complexity by eliminating intermediate compliance and variable flow releases except for critical periods and allowing single minimum releases for a large number of small impoundments.
- Reducing impact on a water supplier's margin of safety and cost of compliance by minimizing releases, reducing water storage impacts, extending compliance time for infrastructure investment and reducing need for new water sources.
- Allowing for variances including drought off-ramps, summer release preservation protocol, and allowing for site specific flow releases to meet standards.
- Increasing certainty by ensuring classifications of streams and rivers and the resulting standards will be reflective of existing water diversions behind dams.
- Simplifying compliance and reporting requirements.
- Providing business assistance by developing compliance tools, guidance and assistance, including a web-based stream statistics mechanism and reporting system.

Expected Direct and Indirect Small Business Impact

Because of the high degree of regulatory flexibility and methods used to eliminate or reduce impacts discussed above, the regulations will have an extremely small direct impact and only a small indirect impact on small businesses. First and foremost, no impacts are expected until after a 10 year period because of the compliance schedule. After that 10 year period, some small business impacts may start to be felt, however the number is likely to be further reduced by the flexibility in the regulations including exemptions and variances.

There are 97,363 small businesses in Connecticut. It is estimated that only 3 small businesses will be directly subject to the requirements of regulation and directly impacted. Of the 71 water utilities in the state only 1 water utility is defined as a small business that will be directly impacted by the regulation. The indirect impact to small businesses is more difficult to predict as this impact is primarily the result of potential increased water costs on those business served by public water supply. It is estimated that 66% of the total 97,363 small businesses may be served by public water systems affected by the regulation. The potential cost, if any, to individual small businesses served by public water will then be highly variable dependent upon the public water supply source, service area, type of business, and relative water use. It is also dependent on the condition of the public water supply including type of supply, adequacy of their current water supplies, water conservation, resources that have been dedicated to maintenance of the system in the past, and the condition of existing infrastructure. Based on available information it is estimated that 74% of those small businesses that are served by public water will have no or low future water cost increases. Of the remaining 26% that may have potential future water cost increases, it is expected that the flexible provisions in the regulations to help affected public water suppliers preserve current supply yields will further eliminate or reduce those costs.

There is a potential for financial support in the form of low interest loans or grants through the Drinking Water State Revolving Fund to offset some costs to small water companies in the future, but this is not available to businesses.

Although numerous measures have been taken to minimize negative impacts, the regulation will have some positive impacts related to increases to the efficiency of water use and sustainability of the state water resources. In particular water conservation and the secondary effects of energy conservation as the result of decreased water use. Also the water infrastructure and operation improvements will create a small number of jobs, including green jobs, of which many may be small businesses.