



STATE OF CONNECTICUT

COUNCIL ON ENVIRONMENTAL QUALITY

Keith Ainsworth,  
*Acting Chair*

Alicea Charamut

David Kalafa

Kip Kolesinskas

Matthew Reiser

Charles Vidich

William Warzecha

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Peter Hearn  
*Executive Director*

February 23, 2022

Re: Senate Bill 117 – Testimony in support of provisions of An Act Concerning Tree Removal on Properties Under the Control of the Department of Energy and Environmental Protection.

Honored Co-Chairs Sen. Cohen and Rep. Gresko, Vice Chairs Sen. Slap and Rep. Palm, Ranking Members Sen. Miner and Rep. Harding, Distinguished Members of the Environment Committee,

The Council on Environmental Quality (Council) is a nine-member board that works independently of the Department of Energy and Environmental Protection to assess the condition of Connecticut's environment and report its findings annually to the Governor, recommend actions to improve state environmental programs, advise other state agencies on the environmental impacts of proposed projects, and investigate citizens' complaints and allegations of violations of environmental laws.

The Council supports the provision of Senate Bill 117 that would require the Department of Energy and Environmental Protection (DEEP) to appoint an arborist for each state park and campground and require consultation from such arborist for the removal of trees and shrubs, presuming that a single arborist will have jurisdiction over multiple facilities. Because not all arborists are trained to assess the role of the target trees in the broader biological and social ecology of the location, the Council recommends a team approach that would include a certified arborist and other qualified experts who can assess the impact of a proposed removal on erosion, invasive species, wildlife, recreation, aesthetics as well as carbon uptake and retention. In addition, the Council recommends a review of proposed tree removal actions for consistency with Connecticut's 2020 Forest Action Plan and other appropriate planning documents.

The Council also supports the requirement that notice be posted on trees that are to be removed. The Council notes that, depending upon the season of the posting, the notice of the planned action might not be seen by the users of the state parks and campgrounds for whom the removal would have the most impact. This dilemma can be addressed through the statutory notice requirement of the Connecticut Environmental Policy Act (CEPA) to which DEEP is subject. Included with this testimony is the Council's analysis of CEPA, which the Council interprets as including forest management and tree removal activities. CEPA contains provisions for notice and for public meetings. It requires notice of a proposed action to be published in the Environmental Monitor and requires a public scoping meeting "if twenty-five persons or an association having not less than twenty-five persons requests such a meeting within ten days of the publication of the notice in the Environmental Monitor". The Environmental Monitor is published twice a month on the Council's website and is provided to the town/city clerk for every municipality in the state and to all members of the public that subscribe. CEPA requires that the sponsoring agency address all

comments received in assessing whether an Environmental Impact Evaluation is appropriate for the proposed action. The CEPA process also has a provision for posting the determination of the agency regarding its proposed action that could substitute for section (e) in the proposed Bill.

In conclusion, the Council is recommending that, in addition to posting notice on the trees and shrubs that are scheduled to be removed, DEEP should utilize the existing CEPA process that requires analysis, notice, public input and agency responses for its planned forestry and tree management actions. The attached analysis, *The importance of a CEPA\* review for state sponsored forestry, forest management and tree maintenance in Connecticut*, explains why DEEP's forest management practices are subject to CEPA.

Thank you for consideration of these comments. The Council would be pleased to work with the Environment Committee in the refinement of this important legislation.

Sincerely,

A handwritten signature in black ink that reads "Peter Hearn". The signature is written in a cursive style with a long horizontal line extending to the right.

Peter Hearn,  
Executive Director

Attachment (1)

# 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

February 24, 2022

#### 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.