

## **CERTIFICATION OF THE ATTORNEY GENERAL OF THE STATE OF CONNECTICUT**

I hereby certify that there exists adequate legal authority within the State of Connecticut for the implementation and enforcement of the marina stormwater runoff management measure<sup>1</sup>, as applicable for the management area identified pursuant to Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. 16 U.S.C. § 1455b, P.L. No. 101508. The authority of the State of Connecticut to enforce the nonpoint source provisions of Section 6217 rests chiefly with the state's Department of Environmental Protection (DEP), through its water pollution control and structures, dredging, and fill statutes, and secondarily with municipal regulation of marina development proposals, based upon guidance and oversight from the DEP. The existence of certain additional state and municipal programs, such as coastal zone management, provides further assurance that the marina stormwater runoff management measure can be implemented and enforced where necessary. These legal mechanisms are detailed in the following discussion.

### **I. DIRECT REGULATORY AUTHORITY OF THE COMMISSIONER OF ENVIRONMENTAL PROTECTION**

The Commissioner possesses both region-specific and program-specific authority to regulate stormwater runoff from boating facilities in the state of Connecticut. Examples of region-specific authority are the regulation of activities within tidal wetlands, which is reserved exclusively to the Commissioner of Environmental Protection ("Commissioner"), including both the issuance of permits and the ability to take enforcement actions, Conn. Gen. Stat. § 22a-28 to § 22a-35a, inclusive, and the exclusive authority to permit dredging and the erection of structures and the placement of fill in tidal, coastal or navigable waters. Conn. Gen. Stat. § 22a-359 to § 22a-363f, inclusive. Under the structures, dredging, and fill program, the Commissioner shall regulate such proposed work with due regard for the "use and development of adjoining uplands and the interests of the state, including pollution control, water quality...and management of coastal resources." Conn. Gen. Stat. § 22a-359.

#### **A. Connecticut's Water Pollution Control Act**

The basic program-specific authority delegated to the Commissioner by Connecticut's General Assembly is the regulation of water pollution within the state. Chapter 446k of the General Statutes, Conn. Gen. Stat. § 22a-416 *et seq.*, constitutes a broad delegation of authority to abate pollution of the waters of the state, consistent with the legislature's declaration of policy that "the pollution of the waters of the state is inimical to the public health, safety and welfare of the inhabitants of the state, is a public nuisance and is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water," and that "the elimination of pollution is hereby declared as a matter of legislative determination." Conn. Gen. Stat. § 22a-422.

Pollution, broadly defined for the purposes of this delegation and mandate, is any "harmful thermal effect or the contamination or rendering unclean or impure or prejudicial to public health of any waters of the state by reason of any wastes or other material discharged or deposited therein by any public or

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<sup>1</sup> The marina stormwater runoff management measure calls for the implementation of effective runoff control strategies which include the use of pollution prevention activities and the proper design of hull maintenance areas. The measure also calls for reduction of the average annual loadings of total suspended solids (TSS) in runoff from hull maintenance areas by 80 percent. For the purpose of this measure, an 80 percent reduction of TSS is to be determined on an average annual basis.

private sewer or otherwise so as directly or indirectly to come in contact with any waters.” The term “rendering unclean or impure” means “any alteration of the physical, chemical or biological properties of any of the waters of the state, including, but not limited to, change in odor, color, turbidity or taste.” The term “waters” includes “all tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways. . . and all other surface . . . bodies or accumulations of water, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof[.]” The term “wastes” includes “sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the waters of the state.” Conn. Gen. Stat. § 22a-423, *q.v.* “pollution.”; “rendering unclean or impure”; “waters”; “wastes.”

The Commissioner is specifically empowered to “develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of the state”; “to advise, consult and cooperate with other agencies of the state, the federal government . . . and with . . . political subdivisions . . . in furtherance of the purposes of this chapter”; “to encourage, participate in or conduct studies, investigations, research and demonstrations, and collect and disseminate information, relating to water pollution and the causes, prevention, control and abatement thereof”; “to issue, modify or revoke orders prohibiting or abating pollution of the waters of the state, . . . or adopting such other remedial measures as are necessary to prevent, control or abate pollution”; “to issue, continue in effect, revoke, transfer, modify or deny permits . . . for the discharge of any water, substance or material into the waters of the state . . .;” “to adopt regulations . . . to implement this chapter . . .”; and “to exercise all incidental powers necessary to carry out the purposes of this chapter and the federal Water Pollution Control Act.” Conn. Gen. Stat. §§ 22a-424 (b), (c), (e), (f), (i), (l), and (k).

No person or municipality may cause pollution of any of the waters of the state or maintain an unpermitted discharge of any treated or untreated wastes.<sup>2</sup> The Commissioner has the authority to regulate all discharges of “water, substance or material into the waters of the state . . .”,<sup>3</sup> and possesses the authority to seek enforcement with respect to violations of any permitted or unpermitted discharge, by administrative order or by referral to the Attorney General for appropriate legal action. Conn. Gen. Stat. § 22a-430(d).

In the event that polluted runoff is or could potentially be discharged to any waters of the state from new, existing or expanding marinas, the Commissioner has authority pursuant to this statute to enforce against anyone creating or maintaining that discharge or a potential discharge, and to enjoin the activity. The Commissioner can invoke this authority to order the abatement of any actual or potential source of pollution, as when a condition is created or maintained at a marina site that causes or has the potential to cause pollution to the waters of the state. The Commissioner may also proceed against the property owner where the actual or potential polluting discharge to the waters of the state is

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<sup>2</sup> No person or municipality shall cause pollution of any of the waters of the state or maintain a discharge of any treated or untreated wastes in violation of any provision of this chapter [ Chapter 446k, Water Pollution Control] . Conn. Gen. Stat. § 22a-427. The Commissioner is specifically authorized to identify not only persons or municipalities that are causes of pollution to the waters of the state, but also to identify so-called “community pollution problems” and order their abatement. Conn. Gen. Stat. § 22a-428.

<sup>3</sup> No person or municipality shall initiate, create, originate or maintain any discharge of water, substance or material into the waters of the state without a permit for such discharge issued by the Commissioner.... Conn. Gen. Stat. § 22a-430(a).

being created or maintained by one other than the property owner. Conn. Gen. Stat. § 22a-432, § 22a-433.<sup>4</sup>

In issuing an order to abate or prevent nonpoint source pollution from a new, existing or expanding marina, the Commissioner can require whatever steps are necessary to abate an existing discharge or to correct a potential source of pollution. These steps can specifically control average annual loadings of total suspended solids in these individual cases. An order to abate or prevent pollution would include a time schedule for the accomplishment of the necessary steps leading to the abatement of such pollution or the correction of such potential source of pollution.

## **B. Water Quality Standards**

The Commissioner is empowered to adopt, and has adopted, water quality standards for the State of Connecticut. Conn. Gen. Stat. § 22a-426. The Commissioner submits, and the United States Environmental Protection Agency (EPA) approves, the most current version of the water quality standards. These standards contain in their narrative portion a specific policy of antidegradation, in addition to specific water quality classifications, which constitute a comprehensive exposition of the state's public policy. These standards shall not “plan for, encourage or permit any wastes to be discharged into any of the waters of the state without having first received the treatment available and necessary for the elimination of pollution.” Conn. Gen. Stat. § 22a-426(a).

Specifically, the Class SA water quality classification for coastal and marine surface waters under these standards indicates that, for suspended and settleable solids, the allowable standard is “none other than of natural origin.” The SB water quality standard for suspended and settleable solids allows “none in concentrations or combinations which would impair the most sensitive designated use; none aesthetically objectionable; none which would significantly alter the physical or chemical composition of bottom sediments; none which would adversely impact organisms living in or on bottom sediments.” The water quality goal for all Connecticut coastal and marine waters is either SB or SA. Therefore, no discharge that would preclude reaching those goals can be authorized. *Id.* The Commissioner may address violations of the standards through his pollution abatement order authority or by means of an administrative cease and desist order. Conn. Gen. Stat. § 22a-7.

## **C. Connecticut’s Structures, Dredging, and Fill Regulatory Program**

In accordance with the Structures, Dredging and Fill Act (SDFFA), the Commissioner has the exclusive authority to permit dredging, the erection of structures, obstructions and encroachments, and the placement of fill in the tidal, coastal, or navigable waters of the state. Conn. Gen. Stat. § 22a-359 to § 22a-363f, inclusive. Under the structures and dredging program, the Commissioner shall regulate such proposed work with due regard for “indigenous aquatic life, fish and wildlife,” the “use and development of adjoining uplands,” and “the use and development of adjacent lands and properties and the interests of the state, including pollution control, water quality...and management of coastal

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<sup>4</sup> Pollution abatement orders occupy a central role in the Commissioner’s ability to act administratively and expeditiously to address actual or potential sources of pollution. The text of the statute provides, in pertinent part, as follows: “If the Commissioner finds that any person has established a facility or created a condition...or is maintaining any facility or condition which reasonably can be expected to create a source of pollution to the waters of the state, he may issue an order to such person to take the necessary steps to correct such potential source of pollution.... If the Commissioner finds that the recipient of any such order fails to comply therewith, he may request the Attorney General to bring an action in the superior court for the judicial district of Hartford to enjoin such person from maintaining such potential source of pollution to the waters of the state or to take the necessary steps to correct such potential source of pollution....” Conn. Gen. Stat. § 22a-432.

resources.” Conn. Gen. Stat. § 22a-359.<sup>5</sup>

Due to their location, coastal, estuarine, and riverine marina facilities have the greatest potential to generate adverse impacts upon coastal water quality. Accordingly, through the SDFA, the siting and design of all new marinas and the in-water expansion of existing marinas in the tidal, coastal, or navigable waters of the state are under the direct regulatory control of the Commissioner. Inland marina facilities, on the other hand, are less likely to have a direct impact on coastal water quality, but nonetheless are regulated by municipal land use authorities with direct oversight by the Commissioner.

Although the Commissioner’s direct regulatory jurisdiction under the SDFA is seaward of the high tide line and does not directly control upland development as such, the statute requires that any decisions rendered by the Commissioner in the issuance of a permit be made with due regard for the use and development of adjoining uplands, the use and development of adjacent lands and properties, and the interests of the state including pollution control, water quality, and management of coastal resources. Therefore, the Commissioner has the authority under the SDFA to incorporate specific conditions into permits regarding the use and development of adjacent and adjoining lands in order to accomplish these objectives. Such conditions of DEP permit approval may include the proper design of hull maintenance areas at marinas, and the incorporation of any other measures, such as pollution prevention techniques and reductions in total suspended solids, that are necessary to implement the stormwater runoff management measure. These would apply to any marina development proposed in Long Island Sound or the state’s major estuarine and riverine areas within the Section 6217 management area.

The Commissioner is also required to coordinate the activities of all regulatory programs under his jurisdiction with permitting authority in the coastal area to assure that the administration of such programs is consistent with the goals and policies of the Connecticut Coastal Management Act.<sup>6</sup> *See infra*. In order to ensure that activities regulated pursuant to the SDFA and proposed in the coastal area are consistent with the goals and policies of the CMA and do not result in statutorily defined adverse impacts to coastal water quality, the Commissioner can modify or condition permit approvals to require that hull maintenance areas be properly designed and maintained, and that average annual loading of total suspended solids in runoff from hull maintenance areas be reduced by 80 percent standard.

Under the DEP's general order authority to address violations of statutes and regulations administered and adopted by him, the Commissioner can order the abatement of any condition causing or with the potential to cause environmental harm. Conn. Gen. Stat. §22a-6 & 22a-7; *see, e.g.*, § 22a-432.

**Unauthorized activities or activities which do not conform to their authorization(s), including any**

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<sup>5</sup> The Commissioner of Environmental Protection shall regulate dredging and the erection of structures and the placement of fill, and work incidental thereto, in the tidal, coastal or navigable waters of the state waterward of the high tide line. Any decisions made by the Commissioner pursuant to this section shall be made with due regard for indigenous aquatic life, fish and wildlife, the prevention or alleviation of shore erosion and coastal flooding, the use and development of adjoining uplands, the improvement of coastal and inland navigation for all vessels, including small craft for recreational purposes, the use and development of adjacent lands and properties and the interests of the state, including pollution control, water quality, recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned. Conn. Gen. Stat. § 22a-359(a)

<sup>6</sup> The Commissioner shall coordinate the activities of all regulatory programs under his jurisdiction with permitting authority in the coastal area to assure that the administration of such programs is consistent with the goals and policies of this chapter. Such programs include, but are not limited to... (3) regulation of dredging and the erection of structures or the placement of fill in tidal, coastal or navigable waters pursuant to sections 22a-359 to 22a-363f, including.... Conn. Gen. Stat. § 22a-98.

conditions of such authorization(s), or activities which, regardless of their authorization, are causing adverse impacts to natural resources or the environment are subject to all enforcement authorities of the Department.

Finally, the Commissioner has the authority to request that the Attorney General bring a civil action to seek imposition and recovery of civil penalties for violations of the SDFA. Conn. Gen. Stat. §22a-361a. The Attorney General shall, at the request of the Commissioner of DEP, institute proceedings to enjoin or abate any violation of the terms and conditions of any authorization issued pursuant to the SDFA. Conn. Gen. Stat. §22a-362. The Commissioner may abate or alleviate any condition likely to cause damage to the environment if any person so ordered fails to comply. Conn. Gen. Stat. §22a-363e. The Commissioner may issue a cease and desist order to any person conducting or about to conduct an activity that requires authorization without having obtained such authorization. Conn. Gen. Stat. §22a-363f.

#### **D. The “Clean Marina” Certification Program**

As an extension of the Commissioner’s direct regulatory authority, Connecticut DEP is currently developing a “Clean Marina” certification program, in part to address the marina stormwater runoff management measure. The DEP is updating and expanding an existing manual that describes the best management practices that should be incorporated into marina design, operation, and maintenance to ensure against adverse water quality impacts to adjacent waterbodies. The manual, developed with funding under Section 319 of the Clean Water Act, describes best management practices (“BMPs”) which are recognized by the EPA’s Section 6217(g) guidance as representative of the types of practices that can be applied successfully to achieve the marina stormwater runoff management measure. These BMPs are currently incorporated as conditions into state SDFA permits throughout the Section 6217 management area, *supra*, and in municipal Coastal Site Plan Review (“CSPR”) approvals for projects in the coastal boundary, *infra*, thereby ensuring that the management measure for marina stormwater runoff is implemented.

The DEP’s updated marina BMP manual will be a critical component of the Clean Marina certification program. The program will be a comprehensive initiative to encourage BMP use at Connecticut’s coastal and inland recreational boating facilities. Once the updated Clean Marina workbook has been completed and certification criteria have been finalized in early calendar 2002, the DEP will conduct workshops to introduce the workbook, outline the certification aspects of the program, and announce the availability of mini-grants for demonstration projects. Criteria for certification will include implementation of stormwater runoff management measures, whereby certified marinas will be expected to reduce the average annual load of total suspended solids in stormwater runoff by 80 percent, and to design hull maintenance areas to reduce water quality impacts from stormwater runoff. Once these and other criteria are met, a marina facility will be eligible for certification as a “Clean Marina,” and can use that status as a marketing tool. As a result of this Clean Marina Program, all recreational boating facilities throughout Connecticut will be educated about and encouraged to utilize stormwater management BMP’s, including those without hull maintenance areas.

## II. ADDITIONAL AUTHORITIES FOR THE IMPLEMENTATION OF THE MANAGEMENT MEASURE FOR MARINA STORMWATER RUNOFF THROUGHOUT THE SECTION 6217 MANAGEMENT AREA

Owing to the prominence of municipal regulation of land use within the State of Connecticut, authorization for many activities affecting marina development rests with local planning and zoning, and inland wetlands and watercourses commissions.

The Commissioner himself plays a significant role in the work of municipal land use control bodies. He both advises and oversees regulation of activities having an impact on inland and coastal resources through the following statutory programs, *viz.*: Inland Wetlands and Watercourses Act (IWWA), Conn. Gen. Stat. §§ 22a-36 through 22a-45; and the Coastal Management Act (CMA), Conn. Gen. Stat. §§ 22a-90 through 22a-112. These programs have the ability to address nonpoint pollution from new and expanding marinas and require management measures in their regulations and approvals for specific marina-related activities.

### A. Inland Wetlands and Watercourses Act (IWWA)

The IWWA requires the comprehensive regulation of activities affecting wetlands and watercourses within the limits of all of the state's municipalities, Conn. Gen. Stat. § 22a-42(a), and authorizes the creation of municipal inland wetlands agencies to apply the substantive requirements of the enactment. Conn. Gen. Stat. § 22a-42(c).<sup>7</sup> The term "regulated activities" sweeps within its purview "any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses...." Conn. Gen. Stat. § 22a-38(13).<sup>8</sup> Although the majority of the state's marina facilities likely adversely to affect Long Island Sound water quality are located adjacent to coastal or estuarine water bodies in the coastal area and are not subject to direct regulation by the DEP, the IWWA allows municipalities to regulate inland waterbodies to protect against local water quality impacts which, in turn, protects against coastal water quality impacts.

The IWWA contains detailed considerations of policy and factors for decision that are designed to balance the protection of inland wetlands and watercourses from pollution with the need for development. Conn. Gen. Stat. § 22a-36 (legislative declaration of policy); § 22a-41 (factors for consideration of regulated activities). The definitions of "pollution," "rendering unclean or impure," "waste," and "discharge" are identical to those contained in the water pollution control statute. Conn. Gen. Stat. § 22a-38(8), (9), (7) & (10). Additionally, the term "material" within the definition of "pollution" is defined broadly to embrace "any substance, solid or liquid, organic or inorganic, including, but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse

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<sup>7</sup> Regulation is lodged with the municipal commissions with the exception of the regulation of the land use activities of state agencies, which the Commissioner administers directly. Conn. Gen. Stat. § 22a-39(a).

<sup>8</sup> By way of comparison, the tidal wetlands statute defines "regulated activity" to mean "the dumping, filling or depositing [upon a tidal wetland] of any soil, stones, sand, gravel, mud, aggregate of any kind . . . [e]ither directly or indirectly...." Conn. Gen. Stat. § 22a-29(3); cf. Conn. Gen. Stat. § 22a-38(6) (definition of "pollution" in the IWWA).

or waste.” Conn. Gen. Stat. § 22a-38(6).

The Commissioner is responsible for reviewing the regulations of the municipal agencies for conformity with the IWWA, and he both issues directives and promulgates model regulations designed to ensure that the municipal agencies apply the provisions of the enactment in a consistent manner. The Commissioner is also charged by the IWWA with the responsibility for the training of municipal commission members and town agents in the requirements of the enactment. Conn. Gen. Stat. § 22a-39(b)-(d) & (j)-(n). Such training already includes best management practices that embrace proposed regulated activities in both their construction and post-construction phases. Pursuant to this authority, the Commissioner also offers these municipal agencies technical assistance on specific projects that are of a complex nature. The Commissioner requires municipalities to report on their activities, thus allowing him the ability to monitor the manner and extent to which municipal inland wetlands agencies themselves monitor environmental impacts associated with inland marina facilities, including those marinas with hull maintenance facilities.

The IWWA provides enforcement mechanisms for both the municipal agencies and the Commissioner, including the ability to issue cease and desist orders, and seek judicial enforcement. Conn. Gen. Stat. § 22a-44(a). The Commissioner himself has the ability to issue an administrative order to abate pollution concerning any matter addressed by the IWWA, notwithstanding the existence of any municipal inland wetlands and watercourses commission. Conn. Gen. Stat. § 22a-44(a)(2). Both the Commissioner and municipal inland wetlands and watercourses agencies have the authority when issuing permits to conduct regulated activities to condition those activities in specific ways so as to minimize or eliminate adverse impacts to the subject resources. Such conditions can readily ensure the implementation of the marina stormwater runoff management measure throughout the state’s Section 6217 management area. *See* Conn. Gen. Stat. § 22a-41.

## **B. Coastal Zone and Municipal Coastal Management**

The General Assembly of the State of Connecticut has devoted special attention to the coastal communities bordering Long Island Sound, and has enacted legislation designed to offer additional protections to this natural resource. The DEP itself maintains an Office of Long Island Sound Programs, which coordinates the Commissioner’s interactions with the coastal communities both on an advisory and regulatory level. The following statutory provisions allow for the implementation of the marina stormwater runoff management measure.

### ***1. Coastal Management Act***

The Coastal Management Act, Conn. Gen. Stat. 22a-90 *et seq.*, offers a comprehensive combination of policy considerations, planning, regulation and enforcement designed to ensure that pollution to tidal and inland wetlands and watercourses, and the waters of the state located within the coastal boundary generally, is addressed in a manner consistent with the statutory programs specifically devoted to those topics. Conn. Gen. Stat. § 22a-92(a)(2); *see supra*. Upland development projects proposed within this statutory “coastal boundary,” as defined by Conn. Gen. Stat. § 22a-94(b), are subject to the policies and standards contained in the CMA, and cannot result in “adverse impacts on coastal resources” as

defined by the CMA.<sup>9</sup> Land use boards and commissions in coastal municipalities are required to conduct coastal site plan review (CSPR) for most activities that are proposed within the coastal boundary to ensure that projects are consistent with the CMA, and the review dovetails with the general provisions for zoning regulation within the state. Conn. Gen. Stat. § 22a-105(a). In their review of a CSPR, municipal land use agencies are authorized to modify, condition, or deny the activity proposed in a CSPR in order to ensure that the potential adverse impacts of the proposed activity on coastal resources are acceptable. Conn. Gen. Stat. § 22a-105(e); *see also* § 22a-106.

If necessary, municipal approvals of CSPR can be conditioned to require the implementation of effective runoff control strategies, proper design of hull maintenance areas at marinas, and the reduction of the average annual loading of total suspended solids in runoff from hull maintenance areas by 80 percent. The mechanism for bringing these requirements within the consideration of the municipal agencies would be through the Commissioner's oversight function, *see infra*, and the municipalities' obligation to ensure against adverse impacts to coastal resources and water quality.

The Commissioner is responsible for overseeing the municipal implementation of the CMA, including comment and recommendations regarding the proposal of any municipal plan of conservation and development, or zoning regulations. Conn. Gen. Stat. § 22a-104. He has the authority to take such legal action as is necessary to ensure: that activities subject to CSPR receive the necessary approvals and comply with all conditions; that municipal CSPR is properly undertaken by land use boards and commissions; and that decisions rendered at the municipal level are consistent with the goals and policies contained in the CMA. Conn. Gen. Stat. § 22a-110. The Commissioner is empowered to submit comments upon specific matters pending before municipal agencies responsible for conducting CSPR; to appear before any such agency; and to appeal the decision of any municipal agency responsible for CSPR. *Id.* The Commissioner may also request that the Attorney General initiate legal action to enforce the substantive provisions of the CMA, apart from municipal enforcement activities, which are also cognizable under the CMA. Conn. Gen. Stat. § 22a-106a; § 22a-108.

For projects located in Connecticut's coastal zone, the CMA requires the Commissioner of the DEP to coordinate all regulatory programs under his jurisdiction with permitting authority in the coastal area to assure that the administration of those programs is consistent with the goals and policies of the CMA.<sup>10</sup> Accordingly, activities proposed within the coastal area<sup>11</sup> and regulated by the DEP cannot result in adverse impacts on coastal resources as defined in the CMA.

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"Adverse impacts on coastal resources" include but are not limited to: "Degrading water quality through the significant introduction into either coastal waters or groundwater supplies of suspended solids, nutrients, toxics, heavy metals or pathogens, or through the significant alteration of temperature, pH, dissolved oxygen or salinity....." Conn. Gen. Stat. § 22a-93(15)(A).

<sup>10</sup> The Commissioner shall coordinate the activities of all regulatory programs under his jurisdiction with permitting authority in the coastal area to assure that the administration of such programs is consistent with the goals and policies of (the Coastal Management Act)...The Commissioner shall assure consistency with such goals and policies in granting, denying or modifying permits under such programs. Any person seeking a license, permit or other approval of an activity under the requirements of such regulatory programs shall demonstrate that such activity is consistent with all applicable goals and policies in section 22a-92 and that such activity incorporates all reasonable measures mitigating any adverse impacts of such actions on coastal resources and future water-dependent development activities.... Conn. Gen. Stat. § 22a-98.

<sup>11</sup> The Connecticut coastal area shall include the land and water within the area delineated by the following: The westerly, southerly and easterly limits of the state's jurisdiction in Long Island Sound; the towns of Greenwich, Stamford, Darien, Norwalk, Westport, Fairfield, Bridgeport, Stratford, Shelton, Milford, Orange, West Haven, New Haven, Hamden, North Haven, East Haven, Branford, Guilford, Madison, Clinton, Westbrook, Deep River, Chester, Essex, Old Saybrook, Lyme, Old Lyme, East Lyme, Waterford, New London, Montville, Norwich, Preston, Ledyard, Groton and Stonington. Conn. Gen. Stat. § 22a-94(a)



## 2. Connecticut General Assembly Public Acts 91-170 and 91-398

Public Acts 91-170 and 91-398, codified, respectively, as Conn. Gen. Stat. § 8-2(b) and § 8-23(a) in the state's zoning and planning statutes, require that the zoning regulations and plans of conservation and development (POCD) for any municipality contiguous to Long Island Sound be adopted with reasonable consideration for the restoration and protection of the ecosystem and habitat of Long Island Sound. Municipal regulations and POCDs must be designed to reduce hypoxia, pathogens, toxic contaminants, and floatable debris in Long Island Sound. *Id.* The regulations and POCDs must also provide that municipal planning and zoning commissions consider the environmental impact on Long Island Sound of any development proposal. The provisions of these two Public Acts encompass all development and redevelopment within a coastal municipality, and not just that proposed within the coastal boundary (*see* CMA discussion above).

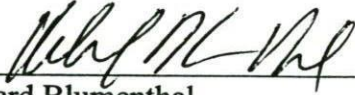
The Commissioner's Office of Long Island Sound Programs has developed a document entitled *Coastal Water Quality Protection: A Guide for Local Officials* as a Coastal Zone Management Act Section 309 enhancement task, in order to aid in the implementation of Public Acts 91-170 and 91-398. The guide contains a model stormwater ordinance that can be adopted by municipalities to meet the requirements of these enactments. The model ordinance contains the specific language of the marina stormwater runoff management measure with respect to 80 percent reductions in total suspended solids as a criterion for approval of plans. The model ordinance also encourages municipalities to require a stormwater management plan for all projects, especially those that have greater potential to impact Long Island Sound and other waters of the state. In adopting the stormwater ordinance, municipalities will augment their existing regulations to protect against most adverse water quality impacts associated with stormwater runoff from marina hull maintenance facilities.

Further, the *Coastal Water Quality Protection* guide also contains a chapter devoted to nonpoint source pollution generated from marina facilities. The chapter describes the types of pollutants that are routinely associated with marina operations; identifies how municipal officials can implement nonpoint source pollutant controls at marinas through the use of best management practices (BMP's); specifies the various BMP's appropriate for marina siting, design, operation, and maintenance that are also recognized by the EPA's Section 6217(g) guidance as representative of the types of practices that can successfully achieve the marina stormwater runoff management measure; and highlights several enforcement mechanisms available to municipal officials to ensure against nonpoint source pollution from marinas.

Although Public Acts 91-170 and 91-398 apply only to municipalities bounding on Long Island Sound, the water quality guide will be instrumental in ensuring broader implementation of the marina stormwater runoff management measure throughout the Section 6217 management area. The guide will be utilized as an outreach tool to inland municipalities located in the Section 6217 management area, and the model stormwater ordinance was drafted in such a way that it can be adopted by any municipality. As Section 6217 management area municipalities adopt stormwater ordinances and apply the BMP's identified in the marina chapter, the marina stormwater runoff management measure will be implemented.

In conclusion, there are no other aspects of state law in the water pollution control statutes or other

authorities that would limit or preclude the use of the authority to regulate nonpoint source pollution from new, expanding, or existing marinas. While the language contained in the state's SDFA, CMA, and the water pollution control statutes does not explicitly reiterate the language contained in the management measure for marina stormwater runoff, the authority contained in those statutes is more than sufficient to ensure implementation of the management measure throughout the Section 6217 management area. Any actual or potential source of nonpoint pollution, regardless of location within the state, can be addressed by the state's water pollution control authorities. It is not necessary for the state or its municipalities to issue additional regulations prior to using this authority to ensure management measure implementation.



Richard Blumenthal  
Attorney General, State of Connecticut