Comments and Responses on the draft Generic ECD published to the Environmental Monitor from 10/06/2020 through 11/20/2020.

DEEP comments submitted by:
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DEEP Comment 1. As I have previously communicated to you, we do not believe that the current wording of Item II.e captures expansion projects at sewage treatment plants. In order to capture projects that expand the capacity of STPs, as opposed to projects which simply upgrade the level of treatment and quality of effluent at such plants, we propose a new listing which would read:

- Expansion of the hydraulic capacity of an existing sewage treatment plant

This item would appear either immediately before or immediately after the current Item II.e.

OPM Response to DEEP Comment 1.

The Generic ECD is revised to include Section II.f:

f. Expansion of the hydraulic capacity of an existing sewage treatment plant;

March 2, 2021

DEEP Comment 2. Concerning wastewater conveyance infrastructure, i.e, sewer lines, we believe that the relevant CEPA concern with such lines relates to projects which extend sewer service to areas which do not currently have such service and, therefore, could influence land use and development pressure in the newly served areas. We strongly wish to avoid capturing in CEPA situations where existing, antiquated and/or deteriorating sewer lines are being replaced but which do not expand sewer service to any new areas. Simple replacement of antiquated sewer lines, many of which are 100+ years old, is commonly occurring in many cities but such actions have no environmental or land use impacts. Reflecting the above reasoning, we propose rewording the current Item II.e language to read:

> e. Construction of new wastewater conveyance infrastructure, or increase in the hydraulic capacity of existing wastewater conveyance infrastructure, for the purpose of providing sewer service to previously unserved areas or corridors

The last two words, "or corridors", has been added to reflect the concern you voiced for situations where a sewer line which will principally serve an already sewered area is replaced in such an alignment that a parcel of undeveloped area is traversed. Per our previous discussion, you indicated that this added wording captured your concern.

OPM Response to DEEP Comment 2.

The replacement of existing "antiquated and/or deteriorating sewer lines ..... which do not expand sewer service to any new areas " is addressed in the exemption language in Section IV.h, as long as such replacement would not result in an expansion of service beyond the area currently being served:

> h. Maintenance, repair, or in-kind replacement of sewer or water infrastructure that does not provide capacity for service beyond the area currently being served;

To address DEEP's other concerns, the language in Section II.g. is revised as follows:

> g. Construction of new wastewater conveyance infrastructure or an increase in the hydraulic capacity of existing wastewater conveyance infrastructure that has the capacity to provide service beyond the existing sewer service area;;

As DEEP indicates, a primary concern for both DEEP and OPM are the impacts associated with the extension of sewer service to areas which do not currently have such service, including but not limited to the potential impacts on land use and development pressures in those newly served areas.

However, under DEEP's proposed language CEPA consideration would only apply when the *purpose* of a proposed action is to provide sewer service to previously unserved areas. The revised wording of Section II.g. above extends that CEPA consideration to any state agency action which could enable sewer service (and its associated impacts) beyond the existing service area, regardless of the underlying purpose of the project.

The revised language also eliminates the need to specifically address the reconstruction of existing infrastructure on a new alignment. Reconstruction which would not extend sewer service to unserved areas (either directly or indirectly) would be exempt from CEPA under Section IV.h., whereas any reconstruction that has the capacity to expand sewer service beyond the current sewer service area would be subject to Section II.g.

DEEP Comment 3. We also would like to propose additional wording for Category IV to add a listing for projects which come to State agencies through the Small Cities Economic Assistance Program (STEAP) or similar grant programs (Urban Action Grants or other programs) where OPM both awards the project grant and selects a State agency to administer the project, with such State agency having no exercise of discretion over the location, scale or design of the project. Administering such projects often puts State agencies in a position of having to justify or defend the propriety of the proposed action whether or not the project is consistent with recognized departmental goals and/or other State policies. This can put State agencies in the very difficult position of having to defend or justify the impacts of an action but having no ability to alter the activity in any way. Ideally, municipal projects selected for funding under such programs should be vetted by OPM before they are selected for funding. While you are more aware of the range of programs that fall into this category where municipal projects are selected for funding by OPM and then assigned to specific State agencies for administration, we suggest wording as follows for an additional listing in Category IV of the generic ECD:

- Administration and construction of OPM-selected, State-funded projects pursuant to the Small Town Economic Assistance Program (STEAP), Urban Action Grants or similar funding mechanisms where the State agency assigned to administer such project has no meaningful discretion over the location, design or scale of the action but is simply acting in an administrative role.

OPM Response to DEEP Comment 3.

No change.

The above comment references the language in CGS 22a-1c (2) which states that CEPA shall not apply to *activities in which state agency participation is ministerial in nature, involving no exercise of discretion on the part of the state department, institution or agency.* It is OPM's interpretation that "ministerial" as used in this section typically refers to actions specifically directed through legislation or in which an agency's role is merely to verify that certain criteria have been met and documented (eg. permitting), and does not apply to instances in which a project is awarded by OPM and assigned to another agency to administer based on the agency's technical expertise in relation to the project. In such cases, OPM considers the assigned agency to be the sponsoring agency under CEPA, and is therefore responsible for completing any CEPA responsibilities associated with the project.

However, OPM recognizes that some past projects may have created conflicts with the agencies assigned to administer them and agrees that improvements to OPM's vetting process, including improved coordination with other agencies during the vetting process, would likely reduce such conflicts and improve project outcomes. Going forward, OPM commits to developing an improved process for vetting such projects, and commits to early and more thorough coordination with potential administering agencies.

DOH comments submitted by:
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DOH Comment 1. Recommend Revising Part II (a) i. 'That threshold is increased to 100,000 GSF of floor space or 100 or more residential units, when the facility is:

(1) Located on a previously developed site or an urban infill site.'

> • Recommend a definition for 'previously developed site' (adopted from usgbc.org)
> previously developed site - altered by paving, construction, and/or land use that would require regulatory permitting.
>
> Land that is not previously developed are landscapes altered by current or historical clearing or filling, agricultural or forestry use, or preserved natural area use.
>
> • Recommend a definition for 'urban infill site' (adopted from CHFA 2019 Qualified Allocation Plan)
> urban site - a site inside of an urban area or urban cluster in the 2010 Census.

Rationale: In order to help protect greenfields and open space, DOH and CHFA recommend a clear definition of previously developed sites. Adding urban infill sites to this section also helps redirect development to urban areas and protects larger parcels of greenfield and undeveloped land.

OPM Response to DOH Comment 1:

The Generic ECD is revised to include a stand-alone definition for "developed land":

> As used in this document, "**developed land**" means the development footprint, including associated land alterations and fixed infrastructure, on land occupied by or previously occupied by a permanent structure or paving. This does not include portions of land altered only by current or historical agriculture or forestry activities.
>
> - Properties of one acre or less that are occupied or were previously occupied by a permanent structure shall be considered developed land.
> - Properties of more than one acre and that are at least 75% developed according to the criteria above shall be considered developed land.

No change is recommended regarding the addition of "urban infill site".

"Urban-Area" or "Urban Clusters" are statistical delineations used by the US Census Bureau intended to broadly differentiate between developed (urban) and non-developed (rural) areas, with "urban clusters" including as few as 2,500 people: https://www.census.gov/programs-surveys/geography/about/faq/2010-urban-area-faq.html.

While these thresholds are apparently appropriate for the various ways it is applied across the range of population densities in the US, this criteria does not seem to be a good proxy for what people in

Connecticut tend to have in mind as being urban infill, nor does it serve as a good indicator of the potential environmental impacts that might arise from the addition of such development, especially in the less densely populated portions of the state identified as urban areas or clusters.

However, OPM agrees that new development should be directed towards areas where development, infrastructure, and previous state investment already exist. As a result, the thresholds in Section II.a. of the Generic ECD are revised to incentivize development to be located in places with pre-existing development and existing access to sewer and water infrastructure by allowing for increasingly larger developments to avoid scoping by locating in such places:

a. Construction of, or addition of, a facility:

1) located on undeveloped land without access to existing sewer and water infrastructure, that exceeds 15,000 gross square feet (GSF) of floor space or 15 residential units; or

2) located on undeveloped land with access to existing sewer and water infrastructure, that exceeds 40,000 GSF of floor space or 40 residential units; or

3) located on developed land with access to existing sewer and water infrastructure, that exceeds 100,000 GSF of floor space or 100 residential units.

This tiered-system of thresholds recognizes that areas with existing development and infrastructure are typically better suited to absorb the types of impacts evaluated under CEPA, whereas areas without infrastructure may be more impacted by new development and trigger CEPA scoping at a lower threshold.

DOH Comment 2. Recommend Revising Part II (a) 'Construction of a new facility, or major reconstruction, or gut rehabilitation of an existing facility or significant change in use of an existing facility..'

- Recommend the following definition for major reconstruction or gut rehabilitation (adopted from HUD requirements) Major reconstruction or gut rehabilitation - a project where the cost of the alterations is 75% percent or more of the replacement cost of the completed facility.

Rationale: This proposed revision exempts moderate or minor rehabilitation and renovations for existing affordable housing facilities. It is critical to make these kinds of repairs and improvements to existing housing stock for low to moderate income families in the most timely manner.

OPM Response to DOH Comment 2:

The Generic ECD is revised to include the following thresholds relating to the reconstruction or rehabilitation of an existing facility:

> Section II.b. (requires scoping):
> b. Any major reconstruction, rehabilitation, or improvement that would significantly change the use of an existing facility exceeding either 100,000 GSF or 100 residential units;
>
> Section IV.a. (exempt from scoping):
> a. Maintenance, repairs, or renovations that would not significantly change the use of an existing facility, including minor or moderate reconstruction, rehabilitation, or improvements;

Note that these thresholds have been revised to emphasize a proposed project's *change in use*.

Project costs and/or the varying degrees of rehabilitation are not necessarily reliable indicators of a project's potential environmental impacts, especially considering the wide range of agencies' projects covered by the Generic ECD. However, the significant change in use of an existing facility, especially a facility exceeding 100,000 GSF or 100 residential units, is more likely to result in the types of impacts to the environment and surrounding neighborhoods that are required for consideration under CEPA.

For example, the rehabilitation of a 100-unit apartment complex still results in a 100-unit apartment complex, regardless of whether the facility received minor or major upgrades. As a result, the environmental impacts of that facility remain largely consistent. However, if that same apartment complex were converted into another use, such as an industrial facility, there are a number of CEPA factors that would likely need to be addressed including but not limited to, potential effects on the natural environment, surrounding land uses and neighborhoods, the displacement of residents, etc.

DOH Comment 3. Recommend adding Part II (a) (ii) Increase the threshold to 150,000 GSF or 150 units when the facility is a mixed use commercial/residential and is in an urban area (and meets the requirements of (i))

- Recommend a definition for Mixed Use (adopted from 2015 International Building Code Sec 508 and CHFA definition)
  mixed use – a building with at least 500 gross square footage and 10% or more of the ground floor GSF as commercial occupancy including retail, business, assembly.

Rationale: Some large scale DOH/CHFA urban projects with ground floor commercial use must maximize their housing units to be able to develop in priority and desirable downtown urban areas.

OPM Response to DOH Comment 3:

No change.

The inclusion of a relatively small amount of commercial space in a housing development would not reduce the potential for a proposed development to significantly affect the environment and does not appear to warrant a larger threshold for scoping under CEPA.

DOH Comment 4. Recommend adding an 18 month grace period from the inception of this proposed ECD with the possibility of an additional 6 month extension with special review and approval from OPM.

Rationale: Many DOH/CHFA construction projects were approved in previous funding rounds without knowledge of these new changes. These developments are long term 2-3 year projects and the state's action of funding may not be completed until the middle of 2022. The Department of Housing has made a good faith effort starting October 2020 to review all current incoming projects with respect to the ECD redline version as posted on the Environmental Monitor.

OPM Response to DOH Comment 4:

OPM believes the concern raised in this comment will be resolved if DOH undertakes the CEPA review of projects it is funding during or at the completion of the Schematic Design Phase. Once the review is completed for a particular project, that CEPA determination will remain valid for the duration of the project/process, provided that there is no substantive change in the action's environmental setting, environmental impacts or alternatives which would merit a revision. This method is similar to how other agencies handle CEPA evaluation for actions with lengthy approval, design, or construction processes.

CEQ comments submitted by:
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CEQ Comment 1. Part II (New) The Public Scoping process, of the Connecticut Environmental Policy Act (CEPA), is a mechanism to provide wide distribution of information about a proposed action and to elicit input regarding improvements or ways to avoid environmental harm. Part II of the revised ECD lists categories of projects that require Public Scoping to help determine whether an Environmental Impact Evaluation should be conducted.

The revised ECD makes no mention of energy facilities. Large heating or energy production facilities, of any kind, might have significant environmental effect and consequently qualify as actions that "may significantly affect the environment in an adverse manner…" under Part II of the revised ECD.

It should not matter if a proposed facility is subject to other regulatory / approval reviews. Inclusion of an energy project in the CEPA process would not be burdensome or duplicative. The application and approval processes for energy projects are rigorous. The information needed for them also should fulfill the CEPA requirements for a Scoping Notice i. The benefit of the Public Scoping is wider dissemination of notice and additional opportunity for input from the public and State agencies. ii The Council recommends inclusion of the following text into Part II of the revised ECD, "Construction of an energy facility on or in water, and/or undeveloped land, except for emergency generation".

OPM Response to CEQ Comment 1.

The Generic ECD is revised to include the following in Section II.n:

> n. Development of an energy generation facility that exceeds 100 kW on undeveloped land, or an energy generation facility that exceeds 1 kW located on or in water;

The Generic ECD is also revised to include an exemption for the construction or installation of emergency generators which are located on the same site as the facility being served. These units are typically smaller in size and do not result in broad environmental or land use impacts which typically require scoping:

> e. Construction or installation of an emergency generator on the site of the facility being served;

CEQ Comment 2. Part II (h). The revised ECD adds language to address potential impacts on farmland, "Any action, other than maintenance or repair of an existing facility, which may significantly affect all of, or a portion of, a block totaling 25 or more contiguous acres identified as important farmlands in 7 CFR § 657.5 of the U.S. Code of Federal Regulations, which includes prime farmlands, unique farmland, and farmland of statewide and/or local importance". Because farms in Connecticut are often composed of small parcels interrupted by walls, roads, wetlands or vegetative barriers, the Council suggests that the draft wording be revised from "a block totaling 25 or more contiguous acres" to "a block totaling 25 or more acres". This would eliminate any possible confusion regarding the intent to address potential impacts on farmland, regardless of its connectivity.

OPM Response to CEQ Comment 2.

Section II.j. of the Generic ECD is revised to require scoping for the following:

> j. Any action, other than maintenance or repair of an existing facility, that would convert five (5) or more acres of land from an active agricultural use to a non-agricultural use, or that may significantly affect five (5) or more acres of Prime Farmland Soils, Statewide Important Farmland Soils, and/or Locally Important Farmland Soils as defined in Title 7 Part 657 of the U.S. Code of Federal Regulations, not including developed land underlain by such soil;

The revised language includes several notable changes.

The first is the addition of a scoping requirement for any state agency action which would convert 5 or more acres of active agricultural land to a non-agricultural use. This change helps to better align the state's CEPA review with over-arching state policies to protect and preserve existing farmlands, and to recognize the important contribution of the state's smaller farms.

Second, the revised language changes the threshold for farmland impacts from a 25-acre *block* to a more comprehensive five (5) acre requirement. As with the previous change, this was done in part to recognize Connecticut's smaller farms and to better align with state policies. However, it is also intended to emphasize an agency's evaluation of potential *impacts* to farmland soils, especially *indirect impacts*, regardless of whether those soils are directly connected to one another and to the project site.

A more comprehensive review of potential farmland soil impacts should include consideration of the potential impacts to the broader geographic area, such as the potential for spin-off development resulting from the proposed action that is likely to impact nearby farmland soils. If those impacts are likely to affect five or more total acres then scoping would be required.

The final clause in the revised threshold recognizes that some areas identified as having farmland soils have already been developed and that the underlying farmland soils have either likely been removed or the land has been developed in a way that makes it unlikely it will be converted for agricultural use. This clause allows an agency to deduct such **developed land** (as defined earlier in the Generic ECD) when calculating the five-acre threshold on impacts to farmland soils.

CEQ Comment 3. Public Notice. The Council is willing to publish, in the Environmental Monitor, the comments that are received by OPM, should OPM so desire.

OPM Response to CEQ Comment 3.

While this is appreciated, OPM's past practice has been to publish comments all at once in conjunction with responses and the revised Generic ECD.

Additional Revisions:

In accordance with Section 22a-1a-5(d) of the Regulations of Connecticut State Agencies, OPM is required to consult with DEEP and CEQ prior to approving any ECD. During the course of those discussions other revisions were made to the Generic ECD that may not have been addressed in the preceding comments. Those revisions and a brief discussion of their rationale are as follows:

- The revised Generic ECD includes standalone definitions for "**developed land**" and "**access to existing sewer and water infrastructure**". These definitions are then referenced in the thresholds in Section II.a. Additional discussion of "**developed land**" can be found in OPM's response to DOH Comment #1.

  The definition of "**access to existing sewer and water infrastructure**" that appears in this revised Generic ECD evolved from the thresholds originally created in Section II.a.i. sub-sections (1) and (2) which was published to the Environmental Monitor on October 6, 2020. The number of thresholds in Section II.a. have increased and the stand-alone definition for existing sewer and water was added to provide better clarity in the document.

- Section II.h. is revised as follows, to maintain consistency with other thresholds in the revised Generic ECD (See OPM's response to DEEP Comment #2 for additional explanation):

  > h. Construction of new drinking water distribution infrastructure or increase in the capacity of existing drinking water distribution infrastructure that has the capacity to provide water service beyond the area currently being served;