

Legislative History for Connecticut Act

<b>Public Act:</b> 00-19	
<b>Bill Number:</b> 5060	
<b>Senate Pages:</b> 765, 829-831	4
<b>House Pages:</b> 850-853	4
<b>Committee:</b> Environment: 9-28, 56-60	30

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and House of Representatives Proceedings

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S-443

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
2000

VOL. 43  
PART 3  
651-1007

000765

33

pat

Senate

Wednesday, April 5, 2000

271, HB5275 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

272, HB5047 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

273, HB5584 is Go.

274, HB5125 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

Page 19, 275 is PR.

276, PR.

277, HB5809 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

278 is PR.

279 is PR.

Page 20, 280, HB5060 I move to the Consent

Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

000829

pat

97

Senate

Wednesday, April 5, 2000

Calendar 116, Substitute for HB5015.

Calendar 118, Substitute for HB5572.

Calendar Page 5, Calendar 126, SB378.

Calendar Page 9, Calendar 204, Substitute for  
SB369.

Calendar Page 10, Calendar 214, Substitute for  
SB3843. SB 384

Calendar Page 15, Calendar 239, Substitute for  
SB489.

Calendar 241, Substitute for SB510.

Calendar Page 17, Calendar 254, Substitute for  
SB88.

Calendar Page 18, Calendar 259, Substitute for  
SB539.

Calendar 271, Substitute for HB5275.

Calendar 272, Substitute for HB5047.

Calendar 273, Substitute for HB5584.

Calendar 274, HB5125.

Calendar Page 19, Calendar 277, HB5809.

Calendar Page 20, Calendar 280, Substitute for  
HB5060.

Calendar 281, HB5138.

Calendar 282, HB5140.

Calendar 283, Substitute for HB5702.

Calendar 284, HB5715.

000830

pat

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Senate

Wednesday, April 5, 2000

Calendar Page 26, Calendar 80, SB89.

Calendar Page 28, Calendar 128, SB444.

Calendar Page 29, Calendar 153, SB55, correction,  
Page 29, Calendar 153, SB553.

And Calendar Page 30, Calendar 244, SR12.

Madam President, I believe that completes the first  
Consent Calendar.

Correction. Also on Calendar Page 28, Calendar SB445  
136, Madam President. I believe that completes the  
first Consent Calendar.

THE CHAIR:

Thank you, Sir. Would you once again announce a  
roll call vote on the Consent Calendar. The machine  
will be opened.

THE CLERK:

The Senate is now voting by roll call. Will all  
Senators please return to the Chamber.

An immediate roll call has been ordered in the  
Senate on the Consent Calendar. Will all Senators  
please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted,  
the machine will be locked. The Clerk please announce  
the tally.

THE CLERK:

000831

pat

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Senate

Wednesday, April 5, 2000

Motion is on adoption of Consent Calendar No. 1.

Total number voting, 36. Those voting "yea", 36;  
those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

The Consent Calendar is adopted.

Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. The Clerk is in  
possession of a second Senate Agenda.

THE CLERK:

Madam President, the Clerk is in possession of  
Senate Agenda No. 2 for Wednesday, April 5, 2000, copies  
of which have been distributed.

THE CHAIR:

Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. I move all items on  
Senate Agenda No. 2 dated Wednesday, April 5, 2000 be  
acted upon as indicated and that the Agenda be  
incorporated by reference into the Senate Journal and  
the Senate Transcript.

THE CHAIR:

Without objection, so ordered.

SENATE AGENDA #2

H-824

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
2000

VOL. 43  
PART 6  
1650-1961

H-821

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
2000

VOL. 43  
PART 3  
638-931

Kmr

133

000850

House of Representatives

March 29, 2000

Question is on suspension of the rules for immediate transmittal to the Governor. Hearing no objections so ordered.

SPEAKER LYONS:

Will the Clerk please call Calendar 189.

CLERK:

On page 13, Calendar 189, substitute for HB5060, AN ACT CONCERNING CRIMINAL VIOLATIONS OF ENVIRONMENTAL LAWS. Favorable report of the Committee on Judiciary.

SPEAKER LYONS:

Representative Jesse Stratton you have the floor madam.

REP. STRATTON: (17th)

Thank you Madam Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill.

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage, will you remark?

REP. STRATTON: (17th)

Thank you Madam Speaker. This bill seeks to conform Connecticut law to the penalty provisions in federal criminal law with regard to violations to the Clean Water Act and to also make clear that criminal violations of hazardous waste laws apply to both the

Kmr

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000851

House of Representatives

March 29, 2000

federal laws and to Connecticut's own hazardous waste statutes which are sometimes different than the federal RIFRA laws. In order to clarify whom some of those individuals are who can be held criminally liable for these actions the Clerk has an amendment LCO 2990, if he would call and I be allowed to summarize.

SPEAKER LYONS:

The Clerk has in his possession LCO 2990 which will be designated House "A" would the Clerk please call and the lady has asked leave to summarize.

CLERK:

LCO 2990 House "A" offered by Representative Stratton.

SPEAKER LYONS:

Representative Stratton you have the floor madam.

REP. STRATTON: (17th)

Thank you Madam Speaker. Quite simply this makes it clear that a municipal violation, the person to be held responsible would be a specific municipal official rather than anyone who was connected to that municipality, and I urge adoption.

SPEAKER LYONS:

The question before the Chamber is on adoption will you remark? Will you remark on the amendment that is before us? If not let me try your minds. All those in

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000852

House of Representatives

March 29, 2000

favor please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed nay. The ayes have it the amendment is adopted. Representative Stratton.

REP. STRATTON: (17th)

Thank you Madam Speaker. I think as amended this is an important update of our criminal statutes in terms of willing violations of Connecticut's environmental laws and I urge passage.

SPEAKER LYONS:

Will you remark further, will you remark further on the bill that is before us? If not will staff and guests please come to the well, members take your seats, the machine will be open.

CLERK:

The House of Representatives if voting by roll call, members to the Chamber. The House is voting by roll call, members to the Chamber please.

SPEAKER LYONS:

Have all members voted? Have all the members voted. Will the members please check the board to make sure that your vote is accurately recorded. If all the members have voted, the machine will be locked and the

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Kmr

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House of Representatives

March 29, 2000

Clerk will take a tally. The Clerk will please announce the tally.

CLERK:

HB5060 as amended by House "A."

Total Number Voting	143
Necessary for Passage	72
Those voting Yea	143
Those voting Nay	0
Those absent and not voting	8

SPEAKER LYONS:

Bill as amended passes. Are there any announcements or points of personal privilege? Representative Roraback.

REP. RORABACK: (64th)

Thank you Madam Speaker. For purposes of an introduction if I may.

SPEAKER LYONS:

Please proceed sir.

REP. RORABACK: (64th)

Thank you Madam Speaker. If this Chamber needs help having the bill we acted upon that going to allow campfires in our state, if we need help bringing that bill up to the Senate Madam Speaker, with us in the gallery are a group of Girl Scouts that have just arrived from Torrington after school. They're here from

JOINT  
STANDING  
COMMITTEE  
HEARINGS

ENVIRONMENT  
PART 1  
1-261

2000  
INDEX

gmh ENVIRONMENT COMMITTEE

February 16, 2000  
1:30 P.M.

000009

PRESIDING CHAIRMEN: Senator Daily  
Representative Stratton

MEMBERS PRESENT:

SENATORS: McKinney

REPRESENTATIVES: Widlitz, Boughton, Collins,  
Heagney, Maddox, Nystrom,  
Piscopo, Backer, Caruso, Davis,  
Jarmoc, McGrattan, Mikutel,  
Mordasky, Murphy, Mushinsky,  
Roy, Wallace

SENATOR DAILY: We have four people signed up. So if anybody intends to testify and they're not one of the four, they had better --

The first person signed up is Tamberlyn Conopask.

JACK CRONIN: I'm not Tamberlyn, Madam Chairman. I'm Jack Cronin from the Chief State's Attorney's office and Tamberlyn is our environmental prosecutor and she had some proposals that you were very kind to adopt. So she will explain the reasons for doing so.

Thank you.

SENATOR DAILY: (INAUDIBLE - MICROPHONE NOT ON)

TAMBERLYN CONOPASK: Good afternoon. Senator Daily, Representative Stratton, and committee members, I wanted to first thank you for raising this bill and provide me the opportunity to testify in support of HB5060.

My name is Tamberlyn Conopask. I'm a Deputy Assistant State's Attorney with the State Division of Criminal Justice and I'm assigned to the Environmental Crime Committee with the Office of the Chief State's Attorney.

I have been prosecuting the environmental criminal matters for the State for almost two years and together with the inspector in our office we've worked with many of the statutes that are in our

proposed bill today and through working with them we've identified some inconsistencies, gaps in the current language that we think can be easily remedied through our proposals that are contained in the raised bill.

HB 5060

And if I could I would -- I know you have our written testimony. I will just kind of like to go through and highlight the reasons for each of these sections.

There are four environmental statutes that we're proposing amendments for.

The first one is in Section 1 of HB5060 and it amends - it seeks to amend Connecticut General Statute 22a-131a. This statute give us our authority for criminal enforcement of the environmental violations regarding the handling of hazardous waste. And the purpose or reasons -- changes are really three-fold. We have three main changes that we'd like to see in this statute.

HB 5060

The first one and what I consider the most important would be the reference in 131a to the federal Hazardous Waste Program. That would be the Resource Conservation Recovery Act.

Connecticut is authorized to manage its own state hazardous waste program and this is set forth in Connecticut General Statutes 22a-449(c) and the regulations promulgated thereunder.

Because the state program has various components to it that are more encompassing than the federal program, the state program includes the federal minimum requirements, but goes further in various areas of hazardous waste management. Therefore, as the current statute exists, we have some gaps where we are unable to criminally enforce the state program.

We assume and we see from the language that is in Connecticut General Statutes 22a-449(c) we feel that the original legislative intent behind enacting the criminal provision, that is 131a, is that 131a provide criminal enforcement for the

state program. Therefore, we're asking that the reference to the federal program be removed and referenced to the state program under state statutes be added.

The second reason for amending or the second aspect of our proposals for 131a is to include enforcement for the regulation of used oil. Used oil is regulated under our state's Hazardous Waste Program even though it's not always considered a hazardous waste as defined by state law.

However, we don't specifically mention it in 22a-131a and recent federal requirements - this is the federal program that authorizes Connecticut to manage its own state program. One of the minimum requirements that we must include is the regulation of the used oil and that incorporates the federal regulations.

So, we are seeking to incorporate these regulations on the used oil in 22a-131 specifically and without doing so, the Connecticut DEP maybe in jeopardy of losing its authorization to manage the state Hazardous Waste Program.

Lastly, regarding 22a-131a. We're seeking to increase the penalty provisions for both first and subsequent convictions. These proposals would increase the sentencing guidelines for both the fines and the imprisonment, the term of imprisonment. We feel that the serious nature of these types of crimes merits the proposed levels of penalties and specifically through our work we've become aware that environmental offenders are intentionally violating the environmental laws because it seems to be good economic policy. In other words, specifically we've investigated and prosecuted matters when the defendant company or the company officers choose to dump toxic, sometimes lethal chemicals into the rivers or behind their facility because it's more cost effective than paying for a proper disposal.

So we have witnessed the violation and non-compliance of environmental laws because compliance with the law is too expensive for the company.

Section 2 of HB5060 seeks to amend Connecticut General Statute 22a-226a. This is the statute that governs the environmental violations regarding disposal of asbestos and the handling of solid waste meaning our landfills.

I'll address this statute as well as the next one in section 3 of the raised bill. That's the statute 22a-438 and that's the statute that governs criminal enforcement for environmental violations regarding water pollution.

HB 5060

Our changes and the reasons for our changes are very similar on both these statutes. Currently, both these statutes have a one year imprisonment maximum penalty as a guideline. We feel that because the one year maximum is there, that automatically classifies these crimes as a misdemeanor, an unclassified misdemeanor and we feel that that misdemeanor status does not accurately represent the serious nature of these types of crimes.

Frankly, nor does it warrant the time involved to investigate and bring charges because frankly we've gone into the lower courts and when you're faced with -- when an environmental misdemeanor is the on docket with other misdemeanors being larcenies, assaults, even criminal trespasses, it's very challenging to convince the system that these crimes, these environmental crimes are, in fact, crimes.

But just to give an example and this ties into kind of the cost of doing business position. We have a case that we recently brought charges under the Statute 22a-226a against a company in the New Haven area. This company has previously been charged and convicted by our office under the same statute, 22a-226a for the same illegal conduct. However, under the existing penalties, 22a-226, the first offense was a misdemeanor and the company paid a minimal fine. Our pending charges now, subsequent charges against the company allege that it was back in its illegal operations the next day, the very next day after it paid the fine.

So, in addition, the amount of the fine imposed was at least ten times less than the cost that the company would have paid had the company complied the law and paid for proper disposal instead of disposing it where they did.

So, our point is that we are witnessing companies and defendants, environmental offenders who choose to violate, pay the criminal fines as a cost of doing business.

Lastly, Section 4 of our bill discusses 22a-467. This is the statute that governs criminal enforcement for poly-chlorinated bi-fennels, PCBs which is your nasty toxic materials, handled and regulated under 467. Our proposal only seeks to define "disposal" under that statute. We feel it's not clear as is and would provide a better definition, provide better notice to the regulated community and the enforcement community.

I would only add that attached to my written testimony is an addendum. In reviewing the raised bill after it came out and discussing it with members of DEP and other individuals, we realized there were a few technical corrections that needed to be made to the raise bill in order to effect our changes that we're seeking.

So, I ask that those be amended into the raised bill.

HB 5060

And in closing I'd just like to add that we've been doing this for two years. We feel like we've made a lot of progress in this field and the changes to these statutes will greatly benefit our enforcement efforts.

I'd be happy to answer any questions on any of them and also I've brought with me Inspector Matthew Schroder from our office. He's the inspector in charge of investigating these crimes on a full-time basis and would be happy to answer any questions you have, as well.

SEN. DAILY: Thank you very much and we thank you for

bringing these matters to our attention. This committee takes very seriously the enforcement of environmental laws and the regulated community is always looking for clarification. So this serves two purposes.

Are there questions? Representative Stratton.

REP. STRATTON: Thank you very much. I'm just curious as to how the changes in penalties compare with penalties for similar violations in neighboring states. Do you have any sense of that?

TAMBERLYN CONOPASK: Yes, I do, actually. We researched both New York and Massachusetts and Rhode Island and we found that New York -- that all are very similar as well as the proposals that we've made mirror the federal penalties for these same types of crimes.

New York, for example, gives - sets out a level - a five level system for its state statute with the hazardous waste violations and I believe the knowing level is commensurate with what the exact penalties that we are looking for our in our revisions to 131a which is our waste violations.

REP. STRATTON: The reason for that question is actually what you just referred to in the knowing section in 438. The provision that says, "shall be fined not less than \$5,000 a day." That is a relatively new concept in most of our penalty things. We sort of have an up to and this obviously is a mandatory minimum, I assume, from the day of violation?

TAMBERLYN CONOPASK: I apologize. What are you referring to? Are you in 438?

REP. STRATTON: 107. (INAUDIBLE - MICROPHONE NOT ON)

TAMBERLYN CONOPASK: Correct. Actually we took that parallel from the federal Clean Water Act which sets out this exact penalty for the same exact conduct under federal criminal provisions.

REP. STRATTON: Thank you.

SEN. DAILY: Thank you. Other questions? Representative Heagney.

REP. HEAGNEY: Thank you, Madam Chairman. I'm sorry I don't know, but you used the term "used oil" here and I assume that means just what it sounds like, that it's been processed oil out of an automobile engine, something like that?

TAMBERLYN CONOPASK: Yes and actually I don't know that I can give you the correct technical definition. There's a whole set -- it's regulated under Regulations 22a-449d and used oil, while isn't included in the hazardous waste definitions, is considered a special waste in Connecticut or a non-hazardous Connecticut regulated waste. And it is, it's used oil that has gone through automobiles as well as industrial uses, as well.

REP. HEAGNEY: But it would not be included in that would be tank bottoms in storage tanks, that kind of oil?

TAMBERLYN CONOPASK: Well, frankly I don't know that I'm the best person to answer the technical questions. I know that there's a difference between waste oil and used oil and the sludges that you find at the bottom of tanks, for example, underground storage tanks which are regulated under 22a-449d, not "c" deal with waste oil in the tanks.

131a would not cover -- as existed, does not cover the waste oil in the underground storage tanks. That's handled under 438, actually.

REP. HEAGNEY: Okay. And then later on you're using the term of -- you refer to the dumping of these materials and also you talk about willful and criminally negligent.

Could you have a situation where you have a failure at a facility, a pipe or something and when does that get to a level that it's considered criminally negligent?

TAMBERLYN CONOPASK: Well, based on our experience in the cases that have been brought to our attention

so far, the criminal negligence standard is even lower than the knowledge and that's really met when you have the circumstances, for example, where a company is, perhaps, bypassing their treatment system and not -- they have a permit to discharge, but they're not complying with the permit because they've bypassed their treatment system. Certainly, that would fit the criminally negligent standard.

REP. HEAGNEY: But that's a willful act, isn't it?

TAMBERLYN CONOPASK: Well, part of the difference is who your targets are and I think that there are circumstances, certainly cases that we have under review right now where the company -- I think you could hold the company criminal negligent, but you could hold the actual individual employees or the lower management of the company who actually participate in the bypass with actual knowledge. So perhaps you charge the individual who is actually doing it with the higher intent and the higher penalty, yet the company or the company officers that aren't there on a day-to-day basis, maybe should have known, meaning they're criminally negligent, but don't have actual knowledge of the bypass or the conduct.

REP. HEAGNEY: Is that how you anticipate this being utilized?

TAMBERLYN CONOPASK: I would anticipate that's one way we could utilize it, yes.

REP. HEAGNEY: I guess what I'm concerned about is something happens and then -- I mean a lot of times you can work back far enough scientifically and say well, someone should have known that was going to happen because when the temperature gets to 32 and this and that happens, then you have something else happen and that's what caused this. And it seems to me that there's a huge difference between someone who didn't recognize something was going to occur and someone who is just totally careless, just doesn't give a hoot.

TAMBERLYN CONOPASK: Right. I completely agree with you and actually I'll tell you frankly that in our own

internal discretionary factors, that's something that we consider. And we have not charged, in the two years that I've been doing it, we have not charged a 438 violation for a criminal negligent intent. We have always -- in our discretion and in our review of matters that are brought to our office, we say does this meet the intent level of knowledge? Do we have people here that knew what they were doing and gaining from it? And so my purpose in revising the statute is not necessarily to focus on the criminally negligent. I would just as soon forego the criminal negligent standard, go with the knowledge standard, but have the increased penalties. Make it a felony to knowingly violate the water pollution laws. That's my focus.

REP. HEAGNEY: Thank you. Thank you, Madam Chairman.

SEN. DAILY: Other questions? Representative Mushinsky.

REP. MUSHINSKY: Thank you. I appreciate that you're trying to work on that greater New Haven case. I think I know the case you're referring to and it has been a vexing case because the perpetrator just flagrantly disobeys the Connecticut laws.

So I'm glad you're working on that.

But I wanted to ask if you would consider an amendment to the bill. In the interim between sessions, I worked on a number of complaints of significant waste dumping on private land and when looked into the legalities of it, discovered -- I think I asked OLR to look into this for me.

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Anyway, whether you remember or not, I think your conclusion was that the original exemption was aimed at -- probably aimed at farmers, that the significant waste dumping on the land was probably a farm exemption, but what's happened today is it's being abused by people who are calling on that exemption even though they're not farmers. They're just piling up significant amounts of waste on their own property and then legally the town can't touch them.

So I was wondering if you would be amenable to an

amendment on here that would close that loophole and make it clear that we were talking about farm exemption, real farmers, and not anyone.

TAMBERLYN CONOPASK: Just so I understand, are you talking about hazardous waste or just solid waste, construction debris, demolition debris, municipal waste?

REP. MUSHINSKY: Well, this would be solid waste.

TAMBERLYN CONOPASK: Okay.

REP. MUSHINSKY: Matt, could you -- are you remembering now, this memo?

MATT RANELLI: I apologize, Mary. I don't remember the details of it, but it was solid waste, but I don't remember the exact provision other than it had to do with the exemption, people dumping on their own property. I'd be happy to refresh my memory and get contact about it.

REP. MUSHINSKY: He can get his memo and show it to you, but some cases it's a significant quantity. They have their own personal landfill and the towns would love to close it down, but they can't legally.

TAMBERLYN CONOPASK: Well, I have to say I'm not real familiar with the local ordinances and the municipal laws regarding solid waste on private land, but I do know the state law provides penalties as long as you have over ten cubic yards disposed of on private land and you can -- there are a couple of sections, 226a involves the solid waste disposal. So there maybe some authority there and there's also 22a-252 which is basically your littering statute and provides some authority there.

I would definitely be open to discussion.

REP. MUSHINSKY: Okay. I will get a memo from OLR and send it you and then see if you would be agreeable to a language change to cover that loophole.

TAMBERLYN CONOPASK: In 226?

REP. MUSHINSKY: We're just attaching it to this bill somewhere.

TAMBERLYN CONOPASK: Okay.

REP. MUSHINSKY: Because the town officials feel constrained. They feel it is a loophole.

TAMBERLYN CONOPASK: Okay, I'd be willing to discuss it. I don't know that - I'd be interested in seeing where the loophole is in the state law.

REP. MUSHINSKY: Yes, it's in Matt's memo. We'll get that for you.

TAMBERLYN CONOPASK: Okay.

REP. MUSHINSKY: Thanks.

SEN. DAILY: Thank you, Mary. Representative.

REP. WALLACE: I have a question.

SEN. DAILY: Yes.

REP. WALLACE: Thank you. Good afternoon. I want to talk a little bit about felonies and who would be impacted and who would likely be charged with a felony.

In your testimony you talk about your office investigating and prosecuting several individuals. Could you give me an example of an individual that was successfully prosecuted and who, under this amendment, would now be charged with a felony?

TAMBERLYN CONOPASK: Sure. I can give you an example of a recent case that the individual has been convicted, but not yet sentenced. So without going into much detail about the case, I can just generally say that we prosecuted, we charged an individual in the Manchester, Connecticut area with disposing hazardous waste at a local landfill.

The individual was an owner of a chemical

manufacturing company and our charges surrounded -- the factual basis was basically that he had numerous hazardous chemical wastes at his facility including acrolein, hydrozene, vinyl chloride, very toxic lethal chemicals and he transported it to the Manchester landfill and disposed of it.

So he was convicted of charges under 22a-131a. Now, he was convicted under charges of 131a subsection (b) and subsection (d) -- I'm sorry, existing subsection (c) meaning he was charged with transporting hazardous waste without a permit. He was charged with disposing hazardous waste without a permit, and he was charged under 131a(c) with placing another in imminent danger while disposing of hazardous waste without a permit because there were landfill workers that were injured.

I can tell the background in assessing that case to see what charges we could bring, we were limited. We could not charge him with any of the generator violations meaning the fact the he -- at his facility he didn't have any labels or he didn't have the correct labels on the chemicals in the facility. That's a violation of our state laws. We couldn't charge him with failing to register with the State and get an EPA I.D. number which is in violation of our state laws, as well as federal laws. The reason we couldn't number one is because 131a(a) which regards failure to maintain records, documents, failure to label, is only a misdemeanor. So, first of all, our one year statute of limitations was out the window, gone because we didn't even get notice from the regulatory community on this matter until close to that year was already up. It might have even been after the year. However, so that's an example of where the misdemeanor section in the existing 131a(a) for the failure to report the manifesting requirements, the violations regarding some of the reporting and the transportation are all misdemeanors and have a one year statute of limitations.

Does that answer your question? I'm sorry.

REP. WALLACE: Yes, another question. This was an individual who owned a business who was in the

business of chemicals and therefore should have been knowledgeable, etc., etc.

TAMBERLYN CONOPASK: Correct.

REP. WALLACE: Are there any instances where Joe homeowner or Jane homeowner was prosecuted and would have been charged with a felony, would now be charged with a felony?

TAMBERLYN CONOPASK: We currently do not have any charges brought against a resident homeowner and I can't think of any of our cases that involve -- I mean a large part of our discretion involves who are targets are and who we're seeking charges for and I can tell you that probably 90% of the cases that we investigate and bring charges against are either individuals or companies that have been in non-compliance for significant years, meaning they do not - they don't take responsibility for their spills. They continue to dispose or contaminate even though the DEP has sent them notices of violations and has tried to get them to comply.

So I would have to say that probably 90% of our cases, including the ones that are currently on our docket, involve these types of companies or individuals.

REP. WALLACE: Back to the business owner who was involved in the transport to the Manchester landfill. Was it a privately owned business or did he have a co-owners and were those co-owners charged and would they have been charged with a felony under this?

TAMBERLYN CONOPASK: Okay. It was a privately owned business. It was not a public corporation. It was a privately owned business. He was the sole owner of the business that we investigated and brought charges on.

Many times in these situations you have instances where companies operate a facility for a number of years and then they transfer the property to a different owner, sometimes under the same name, sometimes under a different name and we take all of

that into consideration when we look at the case and we decide who to charge. And like in this case, we tend to pursue the individual that was there at time and caused the contamination or caused or had the willful conduct and caused the contamination.

So if -- in this specific case that I was referring to, there was another individual involved that pursuant to a sales agreement brought some of the merchandise from the company and some of this merchandise was at the facility and was subject to clean-up and contamination, but as far as our criminal charges were concerned, we did not consider him a target.

REP. WALLACE: Just to close this out. If, again with this situation and that particular owner, if he had had an employee who had delivered that material to the landfill, would that employee be liable for a felony or charged with a felony?

TAMBERLYN CONOPASK: Well, whether he would be liable or whether he would be charged is two different questions because one involves discretion and one doesn't.

That employee is liable if we can show that the intent requirement -- so if we can show that that employee knew that he was bringing chemicals or what he was disposing of was not permitted -- actually, we don't even have to show that they knew they needed a permit. We just have to show under case law that what they disposed of they knew was bad stuff, was not supposed to be going into the waters or was not supposed to be going into the environment.

So, your answer to the question on whether they would be liable, yes, if we could show the necessary element of intent. Whether we would charge, quite often in our investigation we start with the low man on the totem pole, the employee, the kid who was working there during the summer and got stuck with the nasty job and we work up because our purpose and our intent really isn't to charge the people that got stuck into it and didn't really

know what they were doing, perhaps. Our intent is to charge the people that know what they're doing, are benefitting from it, are profiting from it because they're not paying proper disposal costs. So we kind of work our way up the chain.

That actually brings up a good point regarding my request to make these charges from misdemeanors to felonies because you're dealing with statute of limitations and on a misdemeanor we only have a one year statute of limitation. On a felony we have five years and the process of investigating and working our way up that ladder takes an awful lot of time. Our inspector goes through it. He has to do property record checks. He has to track down the principals of the company. It's a lot. It's a big paper case. We do a lot of search warrants. So one of the definite added benefits of increasing these penalties to felonies is that you give us five years to do it and really hone in on who the target should be as we work our way up.

REP. WALLACE: I thought I was going to close it up, but one more question, please.

Is there anything in between a misdemeanor and a felony that gets you that five years?

TAMBERLYN CONOPASK: Not that I'm aware of. And again, both 226a, the proposals under 226a and the proposals under 438, section 2 and section 3 of the bill. I know at least 226a we're looking to go from one year prison term guideline of what maximum one year to a maximum of two years. So substantively I don't consider it a big jump. Realistically right now, I don't see a judge giving us two months, let alone two years, but unfortunately, there is a stigma with a misdemeanor status and just giving us another year or another couple of years on these statutes will bump it up to a felony status and will benefit us.

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REP. WALLACE: Thank you very much. Thank you.

SEN. DAILY: Thank you. Are there additional questions?  
Thank you. Oops, Representative Collins.

REP. COLLINS: I like the purpose of the bill, but I'm uncomfortable with some of the language in it.

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TAMBERLYN CONOPASK: Okay.

REP. COLLINS: On lines 22 to 32 or there about, hopefully your answers will make me comfortable here. Where it says, "any person who knowingly transports or causes to be transported any hazardous waste to a facility" that bothers me, "or causes to be transported".

Can I assume that what you're trying to get at here -- I've read this thing fifteen times and I come up with an answer 50/50 each way. So I'm looking for a little clarification here.

And if I know I have some hazardous waste and call in Company ABC and say take care of this property which to me means I knowingly caused it to be transported, and they take it to some wrong facility in New Haven or something that I'm not responsible because I thought it was being taken care of properly?

TAMBERLYN CONOPASK: I would answer your question as in my mind yes, you are not responsible, but not because of the reason you're suggesting.

I don't think you're responsible because you don't - we don't meet the knowledge requirement or the intent requirement. Do you see what I'm saying?

REP. COLLINS: Well, that's what I'm hoping.

TAMBERLYN CONOPASK: Okay. But that's a different -- I think that's a different issue than the causation and really the language in line 22 and 23 regarding the causation, I think, protects us in the situation where you have somebody running a company -- they don't actually drive the truck, but they're telling -- they're causing it to be transported. You know, they have a hauling company. They don't do the driving, but they're causing it to --

REP. COLLINS: That's fine. I'm with you on that one. I just don't want to be some Joe Blots manufacturing

company who calls up that company and says take care of it properly. I'm knowingly causing it to be transported. I'm calling you to come and get it, but I don't know where you're going with it and I think you're going to take it in the right place and I don't want to be subject to \$50,000 of fine if the guy doesn't, in fact, take it in the right area.

TAMBERLYN CONOPASK: That's a legitimate concern and we've seen cases that involve that situation. We've never charged someone. I don't know that we could meet the intent level to charge and I do know that in the community and in the industry they have a lot of contractual contracts that cover that situation, provisions that are written into contracts that protect the generator, so to speak.

REP. COLLINS: From 35 to 44, the next section, can you make me comfortable in that -- oh, I may have some stuff at my house and I might take down to household hazardous waste day where if I was commercially involved would need a permit, but I don't think I need a permit, I'm not subject to any fines here if I do that?

TAMBERLYN CONOPASK: Uhm --

REP. COLLINS: Because I've got some stuff at my house that I think I need a permit for and I don't want to -- so it sits at my house. I'm not transporting it or causing it to be transported.

TAMBERLYN CONOPASK: Your local transfer station is well equipped to take that. However, to answer your question, I think that would fall under the discretionary aspect.

REP. COLLINS: I don't like that.

TAMBERLYN CONOPASK: I understand that concern. I'll tell you that when we revised this statute and put in this language for proposal, it was solely because of the federal requirement that --

REP. COLLINS: To be honest with you, I don't care about federal requirements either because I'm only

dealing with state stuff here.

TAMBERLYN CONOPASK: I understand. However, if DEP does not get re-authorized to manage our state program, then the federal government will manage it and we might be involved in some of the same problems because our state statutes incorporate the federal regulations regarding used oil. And there maybe exemptions for residential --

REP. COLLINS: Okay, that's what I'm getting at.

TAMBERLYN CONOPASK: -- the residential community. There may be exemptions as far as amounts. I just don't know them off the top of my head.

REP. COLLINS: Could you maybe in the future come up with some suggested language that would make me a lot more comfortable on these two?

TAMBERLYN CONOPASK: Well, as my inspector has just graciously pointed out to me, that this maybe covered under the Small Quantity Generator exemption. So I don't -- I think the language as is protects us. If you would like I could discuss in more detail the Small Quantity Generator exemption.

REP. COLLINS: Fine.

TAMBERLYN CONOPASK: Do you want me to do that now?

REP. COLLINS: No, that's fine.

TAMBERLYN CONOPASK: Okay.

REP. COLLINS: We'll talk later. The Senator from the 33rd said no.

SEN. DAILY: I knew his answer. Representative Nystrom.

REP. NYSTROM: Thank you. Good afternoon.

TAMBERLYN CONOPASK: Good afternoon.

REP. NYSTROM: You mentioned contractual agreements and Representative Collins was talking to you and discussing with you whether the intent is present

in an individual who maybe perhaps facing charges. Do we require that contracts be in writing when the transportation of hazardous materials takes place in our state so that you now have a trail with the individual who is shipping, the individual who is hauling, and the destination is then known before it even leaves the warehouse, for example? Do we require that?

TAMBERLYN CONOPASK: Yes, state law requires that. I don't know that you would call it a contract. It's called a manifest. And we have a strict manifesting system in the State of Connecticut. It's sometimes referred to as cradle to grave management because it tracks the waste from -- the hazardous waste from the day it's generated at the generator site to the transporter to the end facility that will ultimately treat or dispose of it. And that manifest is an actual document that requires signatures at every step of the line and actually, this is a very good example of how the subsection (a) of 131a, meaning the fact that the current statute refers to the federal law provides gaps in that manifesting requirement because the State has stricter manifesting requirements than the federal government does right now.

REP. NYSTROM: This manifest you reminded me of, is this also the same manifest that ends up in the hands of the local fire marshall, if, for example, some of these materials are being stored in any particular community? It should be.

TAMBERLYN CONOPASK: Yes. I'm not sure if they actually have a manifest or if you're referring to the hazardous waste materials survey that's required to be filed with the local fire marshalls when you're storing any kind of hazardous chemicals. But there are strict requirements that provide for that under state law, or state program.

REP. NYSTROM: If I may ask on that vein, are you finding violations of those or absences of those manifests being provided? Have you heard any complaints at all from fire marshalls' offices either state or local? Are they ever running into that situation?

TAMBERLYN CONOPASK: I don't believe we have been notified by the fire marshall's office. I don't believe that we have had any instances that have been -- complaints that have been generated from a local fire marshall.

We do have instances where either manifests or certain records were not properly kept or not properly maintained, but it hasn't come to our attention through the local fire marshall's office, no.

Does that answer your question?

REP. NYSTROM: Thank you.

SEN. DAILY: Are there other questions? Thank you very much for your testimony.

TAMBERLYN CONOPASK: Thank you very much for the opportunity.

SEN. DAILY: The next speaker is Commissioner Bruce Gresczyk followed by Jeff Smith.

CMRS. BRUCE GRESCZYK: Senator Daily, Representative Stratton, and other distinguished members of the Environment Committee. I'm Bruce Gresczyk. I'm Deputy Commissioner of the Department of Agriculture and I wish all of you a good day and good afternoon.

HB 5052  
HB 5054  
HB 5058

I have before you, for your consideration today, several proposals that the Department of Agriculture strongly supports.

First is one that you've probably seen before and that's our soil amendments bill, HB5055. And we spent a lot of time on this bill in the last year working with industry members and we've seen to have developed a relatively decent support for it. And what it primarily does is in the State of Connecticut today we regulate fertilizer. If somebody buys a bag of fertilizer, whether it's a consumer or if it's a farmer, that person knows exactly what it's getting because there's

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**TESTIMONY OF  
TAMBERLYN E. C. CONOPASK  
DEPUTY ASSISTANT STATE'S ATTORNEY  
STATE OF CONNECTICUT, DIVISION OF CRIMINAL JUSTICE**

**RE: RAISED BILL NO. 5060  
IN FRONT OF THE ENVIRONMENT COMMITTEE  
FEBRUARY 16, 2000**

As the prosecutor assigned to the State's Environmental Crime Unit at the Office of the Chief State's Attorney, I support the legislative proposals set forth in Raised Bill No. 5060. I would like to thank you for the opportunity to testify before this committee in support of this bill.

The Office of the Chief State's Attorney supports these proposed statutory amendments in an effort to better effectuate the state's criminal enforcement in several areas of environmental violations. I have been the prosecutor assigned to handle the State's environmental criminal matters since March, 1998. Over the course of the past two years, our office has investigated, charged and successfully prosecuted several individuals and companies for environmental violations, including the illegal dumping of hazardous waste, illegal disposal of asbestos, dumping oil into Connecticut's waters, and the illegal operation of solid waste landfills. We currently have over twenty cases in investigation or prosecution. It is through our work with these statutes that we have identified ambiguities, inconsistencies, and gaps in the language of the existing laws. The language in Raised Bill No. 5060 will remedy these problems in the following ways:

**Section 1 of Bill No. 5060 (Amends §22a-131a)**

Conn. Gen. Stat. §22a-131a is the authority for criminal enforcement of the environmental violations regarding the handling of hazardous wastes. The purposes for the proposed changes to this statute are threefold. First, to provide enforcement for the *state* hazardous waste program versus the *federal* hazardous waste program. The U.S. Congress sets forth the requirements for proper handling of hazardous waste under the Resource Conservation and Recovery Act (RCRA) and the Code of Federal Regulations. The U.S. Environmental Protection Agency regulates the handling of hazardous waste pursuant to federal law. This law allows each state to manage and regulate its own hazardous waste as long as the state's hazardous waste laws incorporate certain minimum federal requirements. Hence, a state's hazardous waste laws may deviate from RCRA in that a state may impose stricter standards or additional management requirements. Connecticut is authorized to manage its state hazardous waste program. Connecticut's hazardous waste program is promulgated under Conn. Gen. Stat. §22a-449(c) and Regulations of State Agencies §22a-449(c)-11 and §22a-449(c)-100-110.) This program incorporates the federal regulation that is required. However, Connecticut's program goes further than the federal program in certain areas that are specifically relevant to Connecticut's environment. Because §22a-131a, as it currently exists, refers to RCRA (the federal hazardous waste program), rather than the state program, gaps exist for enforcement of the state program. As indicated by the language in Conn. Gen. Stat. §22a-449(c), ("actions pursuant to the state's hazardous waste program shall be brought under the provisions of sections 22a-131 and 22a-131a."), the original legislative intent for enacting §22a-131a was to provide criminal penalties for the state's hazardous waste laws. This purpose would be better met if §22a-131a referred to the *state* program rather than the federal program.

Secondly, §22a-131a, as it currently exists, does not include the regulation of used oil, which is part of the state's hazardous waste program even though it is not necessarily considered a "hazardous waste" under state regulations. As discussed above, RCRA requires a state's program

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to include certain minimum requirements. The changes proposed in Raised Bill No. 5060, Section 1(c), regarding used oil, are required by federal law. Without the amendments to §22a-131a, regarding used oil, the Connecticut Department of Environmental Protection is in jeopardy of losing its authorization under federal RCRA to manage Connecticut's hazardous waste program.

Lastly, the proposed amendments to §22a-131a include an increase in the penalties imposed for first and subsequent convictions. The proposed amendments to subsections (a), (b) (c) and (d) of §22a-131a would increase the guidelines for imposing fines and imprisonment. The serious nature of these types of crimes merits the proposed levels of penalties, respectively, within each subsection. The environmental enforcement community has become aware that environmental offenders are intentionally violating the environmental laws because it is good economic policy. Specifically, we have investigated and prosecuted cases where the defendant company and company officers choose to dump toxic, explosive and lethal chemicals into a river or behind the facility because it is cost effective. The amount of penalties the company faces upon criminal conviction oftentimes is less than the cost of proper disposal and compliance with the hazardous waste laws.

**Section 2 of Bill No. 5060 (Amends §22a-226a)**

Conn. Gen. Stat. §22a-226a allows for criminal enforcement of environmental violations regarding the disposal of asbestos and the handling of solid waste (landfills, etc.) The proposed changes to §22a-226a increase the guidelines set for monetary fines and imprisonment and would bring the state penalties into conformity with the penalties provided under federal law for these types of crimes. The proposed increase would also, in our view, better reflect the level of seriousness for these kinds of environmental violations. One difficulty with the existing statute lies in the fact that, because the maximum term of imprisonment is one year, these crimes are classified as misdemeanors. This misleads some, including potential defendants, to conclude that the offenses are minor even though the authorized fines are as high as \$25,000 per day of violation, or twelve times higher than fines for the most serious penal code misdemeanors. [\$2000 for class A misdemeanors]. We believe that the increased penalties would better convey the actual level of seriousness of these crimes to the regulated community as well as to the judiciary. For example, the State recently brought charges under §22a-226a against a company in the New Haven area. This company had previously been charged and convicted under §22a-226a for the same illegal conduct. However, under the existing penalties in §22a-226a, the first offense was a misdemeanor and the company paid a minimal fine. Our pending charges against the company allege that it was back to its illegal operations the day after it paid the fine. The amount of the fine imposed was at least ten times less than the cost that the company would have paid had the company complied with the law and paid for proper disposal of its waste. Obviously, the criminal fine was simply a cost of doing business.

Additionally, felony status would increase the statute of limitations from one year to five years. Because of the complexity involved with these types of crimes, and the fact that our office frequently does not become aware of these matters until months after the violation occurred, the longer statute of limitations would increase the effectiveness of criminal enforcement in this area.

**Section 3 of Bill No. 5060 (Proposed §22a-438)**

Conn. Gen. Stat. §22a-438 allows for criminal enforcement of environmental violations regarding the dumping of pollutants into the waters of Connecticut. The proposed changes to §22a-438 would increase the monetary fines and incarceration guidelines for the same reasons already noted in connection with the amendment to section 22a-226a: it would better reflect the seriousness of this type of environmental harm and provide a more effective deterrent to the

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companies that are discharging industrial wastes. Additionally, the proposed amendment provides clarification of an offender's liability for *wilful* (i.e. knowing) conduct versus *criminally negligent* conduct by providing stricter penalties for a wilful violation. The proposed changes separates the two mental elements. Subsection (b), (starting on line 97 of Raised Bill No. 5060), requires "criminal negligence" and keeps the existing misdemeanor penalties. Subsection (c), (starting on line 106), requires "knowing" conduct, and imposes penalties commensurate with felony status. (Please see Correction No. 3 on the attached Addendum which sets forth a correction necessary to effect this change.)

Again, felony status best represents the serious nature of these types of wilful environmental violations, and also mirrors the federal criminal penalties in the Clean Water Act. Additionally, it would allow for a five year statute of limitations that is reasonable and necessary in order to effectively investigate these matters.

**Section 4 of Bill No. 5060 (Amends §22a-467)**

Conn. Gen. Stat. §22a-467 regulates the "disposal" of polychlorinated byphenols (PCB's.) but, as currently written, does not define the term "dispose." The proposed amendment simply borrows from the definition of "dispose" that already exists in Section 22a-115(3) and incorporates it into the PCB statute so that any type of activity that causes PCB's to enter the environment could be addressed. A clear definition would provide better notice to the regulated community as to what conduct is prohibited.

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**ADDENDUM TO WRITTEN TESTIMONY OF TAMBERLYN CONOPASK**

**PROPOSED CORRECTIONS TO BILL NO. 5060**

In the course of reviewing Raised Bill No. 5060, the following three areas have been identified as necessary technical corrections to the Bill which should be addressed. We request that these changes be amended to Raised Bill No. 5060.

- 1.) In Section 1, regarding §22a-131a, the State Hazardous Waste Program is referred to and, starting on line 6, incorporates "section 22a-449." This should be changed to "22a-449(c)." The reason for this is that §22a-449 includes the regulation of underground storage tanks and licensing terminals, not currently governed by criminal penalties under §22a-131a. Subsection (c) of §22a-449 is the subsection which promulgates the state hazardous waste program, along with the regulations under §22a-449(c)-11, 100-110. By specifically referencing §22a-449(c), in Bill No. 5060, then §22a-131a stays within the intended authority for enforcing the state hazardous waste program. Accordingly, the same change should be made in lines 10, 12, 15, 16/17, 25, and 37 of Bill No. 5060, for the same reason.
- 2.) In Section 1, regarding §22a-131a, subsection b, which starts on line 22 of Bill No. 5060, seeks to include a violation of an administrative order. On line 29 the proposed language is, "or an order made pursuant to such permit." Because administrative orders regarding the hazardous waste program are not made pursuant to permits, but rather, pursuant to law and regulation, the language on line 29 should read, "or an order issued by the Commissioner regarding the treatment, storage or disposal of hazardous waste."
- 3.) In Section 3, regarding §22a-438, the amendments set forth in subsection (b) and newly proposed subsection (c) of §22a-438, (starting on line 97 and 106 of the Bill, respectively), seek to differentiate the two elements of intent of the crime, i.e., "wilfully" and "criminal negligence." The purpose of the separation, as stated above, is to clarify an offender's liability for wilful conduct versus criminally negligent conduct and to provide stricter penalties for the "wilful" violation. Subsection (c), starting on line 106, includes the "knowingly" conduct, and imposes penalties commensurate with felony status. Subsection (b), starting on line 97, sets forth the "criminal negligence" crime and keeps the misdemeanor penalties. Therefore, the "wilful" element should be removed from subsection (b), and line 97 should read, "(b) Any person who or municipality which with criminal".

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STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – February 16, 2000  
Environment Committee

Testimony Submitted by Commissioner Arthur J. Rocque, Jr.  
Department of Environmental Protection

House Bill # 5060  
An Act Concerning Criminal Violations of Environmental Laws

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As a partner in the enforcement of the state's environmental laws, the Chief State Attorney's Office provides a critical role in bringing criminal enforcement actions. The Department fully supports the amendments proposed by the Chief State's Attorney's Office for a number of reasons. First and foremost, the Department will soon be seeking authorization from USEPA to administer additional section of the Federal Resource and Conservation Act. Changes to the criminal penalties regarding used oil are necessary for this reauthorization. The other proposed changes to the criminal penalties for violation of the state's hazardous waste and water programs would allow the state's criminal penalties to parallel the corresponding federal penalties. Since both EPA and the Department enforce the hazardous waste and water pollution control laws this bill will ensure that the criminal penalties that may be sought by either entity will be consistent. The bill also updates the criminal penalties for violations of the state's solid waste requirements.

The changes to the provisions regarding PCBs are intended to clarify what constitutes "disposal." Unregulated releases of PCBs into the environment can be harmful to humans and persist in the environment for years. The State's Attorney's Office has indicated that this change will assist in the prosecution of cases involving PCBs.

For all these reasons, the Department fully supports the bill. The Department does note, however, that it has discussed with the Chief State's Attorney's Office the need for a few minor technical edits. To this end, DEP supports the proposed substitute language offered by that Office.