

Energy and Environmental Forecast for 2016

Lee D. Hoffman
Connecticut Law Tribune
January 5, 2016

This article previously appeared in the January 2016 issue of the Connecticut Law Tribune. Reprinted with permission from CLT. ©2016

When Robert Klee took over as Connecticut's Commissioner of Energy and Environmental protection in 2014, he viewed his role as that of an implementer. As he indicated when he took over two years ago, it was his job to take the innovations proposed by his predecessor, Daniel Esty, and move them from concept into reality. As 2015 draws to a close, however, it is clear that Commissioner Klee has implemented those plans and is now looking to innovate and tackle new, big ideas. The energy and environmental spheres in Connecticut appear ripe for major change as 2016 begins.

Energy Issues

One of the drivers for innovation in Connecticut over the last few years has been the state's inaugural Comprehensive Energy Strategy, which was published for the first time in 2013. The 2013 Comprehensive Energy Strategy called for expansion of the state's natural gas infrastructure, increased procurement of commercial-scale renewable energy, and a commitment to energy conservation measures. The Comprehensive Energy Strategy will be rewritten in 2016, and it is a safe bet that these measures will again form the backbone of the state's energy initiatives. However, one should expect that there will be a renewed focus on the cost of energy and how to make Connecticut more competitive in the regional marketplace.

One can see this new focus on energy costs in the DEEP's recent rollout of its latest renewable energy procurement of commercial-scale resources. Once again, DEEP is soliciting bids from large-scale renewable energy projects of over 20 MW in capacity. The process is well under way, and bids for this round of procurements will be due at the end of January. Ordinarily, the state uses such procurements to find the cheapest options for the state to meet its renewable energy goals. The latest round of RFPs promises something different, however.

Rather than focusing solely on the cost of renewable energy, the state has also announced that it will seek to evaluate electricity transmission projects, as well as projects that will increase natural gas infrastructure (thereby lowering the cost of electricity production for traditional generators). It is the DEEP's hope that the costs for these various projects can be evaluated side-by-side and that a workable comparison between classes of projects can be made. This is an exceedingly ambitious undertaking, and is likely the first of its

pullcom.com  [@pullmancomley](https://twitter.com/pullmancomley)

BRIDGEPORT
203.330.2000

HARTFORD
860.424.4300

SPRINGFIELD
413.314.6160

STAMFORD
203.324.5000

WATERBURY
203.573.9700

WESTPORT
203.254.5000

WHITE PLAINS
914.705.5355

Energy and Environmental Forecast for 2016

kind. It remains to be seen, however, how DEEP will be able to juggle all of the variables involved in these three procurement programs.

Merging Energy and Environmental Issues

In 2011, the Department of Environmental Protection was expanded to include energy, both in its name as well as the scope of its jurisdiction. Since that time, the agency has sought to combine the two areas wherever it could, seeking synergies where it could find them. In 2016, the agency will be looking to take this idea to a new level as it seeks to procure additional renewable energy resources to be located on brownfield sites.

In addition to the renewable energy procurements discussed above, the DEEP will be sponsoring a renewable energy procurement for smaller, commercial-scale projects, with capacity of two to 20 MW. Recently, the DEEP has asked communities with significant brownfield acreage to come forward and identify those sites so that renewable energy projects can be located on those sites. While the procurement is not expected to be limited to brownfield sites exclusively, brownfield sites and former landfills are expected to have an edge over projects that will be located on uncontaminated properties. The final details surrounding this procurement will be developed during the beginning of 2016, with the bidding and finalization of project selection coming later in the year.

Environmental Issues

Remediation of brownfields and other contaminated sites will be a focus of the Environmental Quality Branch of the DEEP as well. For the past several years, the Remediation Division of DEEP has been touting a plan for the “transformation” of the DEEP’s remediation program. The fundamental core of this transformation has focused on bringing more sites into the DEEP’s jurisdiction and developing a program that will allow those sites to be processed more quickly so that they will reach a regulatory endpoint sooner than under the current system. Right now, there are thousands of sites in the DEEP’s remediation program, but only a few dozen are verified as remediated each year.

For the most part, under the current system, potentially-contaminated sites are only brought to the DEEP’s attention when those sites are transferred to a new owner. The mechanism for this regulatory attention is Connecticut’s Property Transfer Act, which focuses on the uses of a commercial site, rather than whether a release of hazardous substances has taken place. While many sites that are significant generators of hazardous waste have releases of hazardous materials on the property that need to be remediated, many of these sites follow good waste handling practices and have no contamination present. Thus, the current program places clean sites into the DEEP’s jurisdiction, and site owners must spend time and money proving that no remediation is needed.

Energy and Environmental Forecast for 2016

In addition to the problem of being over-inclusive with respect to clean sites, the current program is paradoxically under-inclusive for contaminated sites. The vast majority sites enter into the DEEP's remediation program when the sites are transferred. Therefore, sites that are not being bought or sold may have environmental contamination that is not reported to DEEP. Moreover, certain contaminated sites may escape reporting to DEEP even when they are transferred, because their historic uses do not qualify for inclusion in the state's Property Transfer Program.

To address these issues, the DEEP has proposed shifting from a "transfer based" remediation program to a "release-based" remediation program, like that found in Massachusetts and other jurisdictions. Such a program would require a site owner to notify the DEEP upon discovery of contamination above certain levels at the property, regardless of whether the property is being transferred. It is anticipated that such a shift in contamination reporting would drastically increase the number of sites within the DEEP's purview. DEEP has promised to develop self-actuating cleanup standards that will allow sites to quickly verify that they have been remediated in accordance with state regulations, but as of yet, DEEP has yet to describe such regulatory "off ramps" in any detail.

Such a transformation may not only require regulatory changes, but also legislative changes in the form of amendments to, or the abolition of, the Property Transfer Act. The DEEP has not indicated whether this will be a regulatory change, a legislative change or both. Regardless of the form it takes, if this transformation is enacted, as DEEP has promised for 2016, it will be the most significant environmental program the DEEP has enacted in the last 30 years. With this transformation, coupled with an ambitious energy agenda ahead of it, DEEP has signaled that its latest round of implementation is over, and it is ready to once again try to innovate.

Lee D. Hoffman is the chair of the Environmental, Energy and Telecommunications Department of Pullman & Comley, LLC. He can be reached at lhoffman@pullcom.com

Professionals

Lee D. Hoffman

Practice Areas

Alternative Energy

Brownfield Redevelopment

Energy Procurement and Use

Environmental

Environmental Law and Litigation

Litigation

Energy and Environmental Forecast for 2016

Municipal Law

Power Development

Regulatory, Energy and Telecommunications

Town Governments, Departments and Authorities

Water

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email unsubscribe@pullcom.com with "Unsubscribe" in the subject line. Prior results do not guarantee a similar outcome.