

2019 Connecticut Environmental Legislative Update No. 11

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Welcome to our Environmental Legislative Updates.

Throughout Connecticut’s legislative session, these updates highlight developments concerning environmental law and policy. The author prepares updates as Legislative Liaison of the Connecticut Bar Association’s Environmental Law Section. Pullman & Comley is pleased to offer them in this format to a wider audience.

As the session proceeds, early updates will alert readers to proposals on a broad range of issues concerning the environment, narrowing focus over time on bills that continue to progress, and concluding with a post-session wrap-up of bills that pass as well as noteworthy also-rans. Along the way they’ll summarize and challenge arguments pro and con, examine the policy and science behind proposals, and occasionally cast a side glance at the vicissitudes and vagaries of the process. The views expressed will be the author’s own, not necessarily those of Pullman & Comley LLC.

Questions, comments, requests and suggestions are always welcome. Please contact one of our Environmental attorneys.

At this relatively advanced stage of the session, we’re going to focus on bills that meet a two-part test – they’ve progressed at least as far as the file copy stage, and they’ve shown recent signs of life. On a couple of topics of particular interest to the environmental audience, we’ll go with the file copy element and set the bar for viability at “not dead yet.” Although we do have one that’s genuinely bereft of life, not just pining for the fjords.

Pride of place for first bill through the Environment Committee to become law: SB 893 crosses the finish line as PA 19-3 to establish a pilot program for hemp production. By all means read the bill or the OLR bill analysis. We will limit ourselves here to the observation that if you thought legalized cannabis would retain any vestige of fun, you underestimated the buzz-killing power of the modern administrative state. In this

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highly-regulated area, Cheech & Chong need not apply.

A number of bills on our tracking list have passed one chamber or the other. We're not going to list them all, but here are a few that warrant mention.

SB 1060 on municipal separate storm sewer system requirements (File Copy 639) passed the Senate. We've seen proposals to link state MS4 standards to federal law. This one would instead direct DEEP to report back on recommended changes, best practices, and options for helping towns cope with costs.

HB 7277 on municipal land banking authorities passed the House, though with an amendment that excludes brownfields from the real property land banks can acquire. Um ... wasn't that the point? Well, to be fair, the public hearing testimony focused on blighted urban properties, so there'd still be plenty for a non-brownfield land bank to do. But brownfields probably constitute a fair proportion of blighted and abandoned properties, and at least some witnesses seemed to think they'd be included. What does leaving them out do to the effectiveness of the concept?

SB 229 comes to us from the richly populated universe of nuisance waste bills – plastic bags, plastic straws, nip bottles, bottle deposits, etc. As passed by the Senate, this particular one takes aim at “expanded polystyrene” trays, which would be banned from Connecticut schools as of July 1, 2020. You might know this stuff as Styrofoam[®]™ – which our intrepid lawmakers evidently recognized as a Dow trademark. If any of this pains you, take an Aspirin[®]™.

The headache of expanded polystyrene containers is also addressed by HB 5384, a ban bill that passed the House in an amended form that applies to restaurants and caterers. But nothing's ever easy. The bill also directs DPH and DEEP to report on enforcement and the need for hardship waivers. (Hardship waivers??) If you have a soft spot for expanded polystyrene containers, though, take heart: nothing in the bill shall be construed to prohibit anyone other than restaurants and caterers from making or selling them.

The Senate passed SB 585, File Copy 635, on state assistance to Connecticut municipalities that want to monitor air quality downwind (more or less) of a proposed gas-fired power plant in Dover Plains, New York. The concern is that emissions from the plant could blow over state lines. Some may say the concern is overblown. And perhaps the whole thing will blow over.

HB 5308 on “vegetation” management along highways passed the House with an amendment that would, among other things, promote replanting with native species and considering environmental factors such as pollinator habitat. The bill as passed got a new File Copy 903.

The House also passed HB 5395 (file copy here), which would expand requirements related to environmental justice considerations in siting a wide range of waste management and electrical generation infrastructure projects. Some of the expansions deal with applications and public notice; others relate to ongoing mitigation

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and monitoring.

A number of bills noted in the early going remain technically alive in file copy form. Some notable items:

HB 5999 concerning pesticide regulation has been kicking around for a while after getting a favorable report out of Environment (file copy here). It qualifies as “not dead yet” by virtue of recent favorable attention from a second committee of reference. Watch this space.

If you were rooting for HB 5400 to repeal the Transfer Act, or HB 5482 to expand its exemptions, you have our condolences: even by a “not dead yet” standard, they’ve flatlined. SB 1030, to reduce the three-year audit period for final verifications to sixty days, at least made it to the file copy stage. But DEEP felt strongly that sixty days was too short, and there’s been no official action since it was reported out of Commerce favorably in March. That would ordinarily qualify it as “pretty dead” or at least “not at all well,” but we continue to hear rumblings that could portend late-session re-emergence, perhaps in a form less odious to DEEP.

The one surviving bill on hydraulic fracturing waste, SB 753, was an early joint favorable substitute out of the Environment Committee (File Copy 56) and more recently cleared Judiciary. It would replace the current provisional ban of Conn. Gen. Stat. § 22a-472 (“thou shalt not, until DEEP issues regulations”) with a straight ban (“thou shalt not”), and contributes a definitional framework describing oil and natural gas “exploration waste” so it’s clear what “thou shalt not” with.

Because the regulated community has had particular interest in the subject, we will conclude the business portion of this Update with a note on unilateral DEEP revocation of consent orders. One proposal, HB 5185, got as far as a committee bill in Environment before going exactly nowhere. A substantially similar bill, HB 7128, actually failed a joint favorable vote in Judiciary, which puts it in the “bleedin’ demised” category. Proponents have been tilting at this particular windmill for several sessions now, but DEEP hasn’t been throwing its supposed revocation power around, so the initial alarm seems to have worn off. Who knows what tomorrow may bring. Life is uncertain; hug your consent order.

We’ll wrap up with the bonus legislative update on SB 594, the pet installment payment sales and lease ban, which has passed the Senate. The file copy can be found [here](#). We thought we were making up horror stories about repossessing Fluffy, but it turns out our imagination failed to do justice to the loathsome reality. If you’ve thought through the issues, however, you’ll be relieved to know the current bill makes exceptions for breeding, shows and motion pictures, and guide and K-9 dogs. Toto and Lassie still have the right to work.