June 23, 2010

Governor Signs Legislation to Improve Connecticut's Permitting Process

On June 9, 2010, Governor M. Jodi Rell signed legislation designed to improve the Connecticut permitting process by reducing bureaucratic delays and setting specific time frames for certain tasks. This legislation creates a permit ombudsman within the Connecticut Department of Economic and Community Development to coordinate and expedite permits from the Connecticut Departments of Environmental Protection, Public Health, and Transportation. It also contains provisions designed to make environmental permitting more efficient and assist businesses in complying with environmental regulations. The legislation reflects the work of the Permitting Task Force (the "Task Force") created by Governor Rell at the beginning of the last legislative session via an Executive Order dated February 3, 2010.

Governor Rell's Permitting Task Force

The Task Force, composed of consumers and representatives of business and industry, labor, the construction industry, and cities and towns, was charged with making recommendations to improve efficiency in the permitting process to support the economic advancement and competitiveness of the state of Connecticut.[1]? The Task Force submitted a report with more than a dozen recommendations to Governor Rell in April 2010. The report was the basis for many provisions in the referenced legislation, Public Act No. 10-158, An Act Concerning the Permit and Regulatory Authority of the Department of Environmental Protection and Establishing an Office of the Permit Ombudsman within the Department of Economic and Community Development (the "Act").

Department of Economic and Community Development

The Act creates an office of the permit ombudsman within the Department of Economic and Community Development ("DECD"). The permit ombudsman will expedite the review of permit applications for certain projects, including those that create at least 100 new jobs, create at least 50 new jobs in an enterprise zone, are located in a brownfields, are compatible with responsible growth initiatives or constitute transit-oriented development, develop green technology business, or satisfy certain other criteria in the Act. The Connecticut Departments of Environmental Protection, Public Health and Transportation will each designate a liaison to the permit ombudsman's office and a business ombudsman within their respective agencies. In its annual report to the governor and the legislature, DECD will review the activities of the permit ombudsman.?

Department of Environmental Protection

Many provisions in the Act focus on better understanding and improving the permitting process at the Department of Environmental Protection ("DEP"). First, the Act establishes time frames for notice of application sufficiency and tentative determinations on permit applications, 60 days and 180 days respectively. A separate provision allows DEP to establish an alternative permit schedule for large, complex or technically difficult projects. Next, the Act provides for the extension of general permits for 12 months past their expiration dates if the Commissioner publishes notice of an intent to renew the general permit. Then, the general permit expires only if the Commissioner does not make a final decision to renew it within those 12 months. The Act also gives DEP the authority to exempt applicants having certain wastewater discharges from the requirement to submit plans and specifications and includes provisions for withdrawing petitions for hearings on environmental permit applications.

Subsequent to March 1, 2011, the Act requires DEP to adopt water quality standards in accordance with the Uniform Administrative Procedure Act. The Act requires that DEP provide at least 90 days' notice prior to proposing any water quality

standards regulation, and the 90-day requirement also applies to the notice of availability of supporting documents. Nothing in the Act prohibits DEP from adopting currently pending proposed amendments to the water quality standards prior to March 1, 2011.

The Act contemplates a DEP consulting services program that would assist entities in complying with environmental regulations. Following consultation and negotiation with the U.S. Environmental Protection Agency ("EPA") and by October 31, 2010, DEP is to implement a consulting services program or, if this is infeasible, an alternative program to provide compliance assistance.

The Act also requires DEP to propose a pilot expedited permitting process that will include at least 200 facilities, propose changes to the review schedules for individual permits to reduce the time for identifying deficient applications, and identify the resources necessary to make such changes. It instructs DEP to study the effects of the permitting process on the business community and to work with environmental groups, the business community and municipalities to study issues related to the time frame for reaching final determinations on permit applications.? The Commissioner is to report the results of these studies no later than September 30, 2010.? Additionally, DEP is to consider methods to streamline adjudicatory hearings and implement procedures for increased use of settlement conferences and pre-hearing submittals of evidence and testimony.

Other Agencies

Provisions in the Act that affect other agencies include an amendment to the Uniform Administrative Procedure Act and the creation of a new task force to examine agency disclosures when promulgating regulations. The provision amending the Uniform Administrative Procedure Act requires agencies to utilize methods identified in a regulatory flexibility analysis before adopting any proposed regulation. The analysis is intended to identify and reduce negative impacts of regulation on small businesses, and it requires agencies to consider establishing more flexible compliance and reporting requirements for small businesses or exempting small business from all or part of a new regulation. The Act also creates a task force to investigate potential impacts of a requirement that agencies make additional disclosures about the intersection of their regulations with federal law and regulations.

Impacts of the Act

Overall, the Act has the potential to expedite certain permitting processes and help businesses better anticipate the time necessary to obtain final determinations on permit applications.? Particularly with an effective new permitting ombudsman shepherding applicants through the regulatory processes, the DEP 60-day and 180-day benchmarks could ease much of the uncertainty that many claim is involved in the state environmental permitting process. Of note, should DEP feel it needs more time or information to consider a permit application, it can deem an application deficient, thereby delaying the start of the 180-day tentative determination clock.? To minimize delays, permit applicants should be particularly thorough when preparing and then revising permit applications, and they should take advantage of opportunities for pre-application meetings with DEP. While fixed timelines and expedited permitting provisions will not cure all permitting delays, the Act takes substantial steps toward predictable and efficient permitting.

A copy of the Task Force's report is available here. A copy of the Act is available here.?

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[1]?Day Pitney's Beth Barton was a member of the Governor's Permitting Task Force