



JUNE 2010

Public Act 10-106: an Act Concerning Long Island Sound and Coastal Permitting

In this year's legislative session, the Department of Environmental Protection proposed a bill that would change a number of provisions in its coastal permitting statutes. After being amended by the Legislature, the bill was passed as Public Act 10-106 on May 5, 2010, but ultimately vetoed by Governor M. Jodi Rell on June 8 due to provisions in the bill concerning solid waste facility permitting. On June 21, 2010, the Connecticut Legislature overrode the Governor's veto. The act has significant impacts on coastal permitting in the state. The following items are the highlights of the act, which goes into effect on October 1, 2010.

CERTIFICATES OF PERMISSION STATUTE CHANGED SIGNIFICANTLY

The most significant change is the "grandfathering" date for activities that are eligible for a certificate of permission (COP). A COP is a simplified and streamlined process for obtaining a coastal permit and may be issued for activities (e.g., the installation of a dock or sea wall) that were completed without the necessary DEP permits. Under the current law, in order for unpermitted activities to be eligible for a COP, the activity must have taken place prior to January 1, 1980. The new law changes that date to January 1, 1995. This provision was not in the DEP's original proposal, but was added by the Legislature's Environment Committee. This change should make it easier to obtain a COP because it is significantly easier to prove that a structure has been in place since January 1, 1995, rather than January 1, 1980. However, an activity is eligible for a COP only if it "complies with all applicable standards and criteria." This is a change from the previous standard, which only required that the activity "not interfere with navigation or littoral or riparian rights" and "not cause adverse impacts on coastal resources." The term "all applicable standards and criteria" is defined elsew in the statute to mean those standards and criteria contained in the Tidal Wetlands Act, the Coastal Management Act, and the Structures, Dredging, and Fill Statute, as well as any applicable regulations. This change may allow the DEP to refuse to issue a COP for unpermitted activities that pre-date January 1, 1995, if the activity does not comply with its policies and guidelines, such as a dock that is too large or a seawall that is not necessary to protect an inhabited structure.

The act also changes the COP statute in the following ways:

- "Maintenance dredging" is no longer included in the definition of "substantial maintenance." This means that maintenance dredging is no longer COP-eligible unless the dredged area is deemed to have been "continuously maintained and serviceable." The deletion of maintenance dredging from the definition of substantial maintenance removes an inconsistency previously in the statute and will likely make it more difficult to obtain a COP for maintenance dredging.

- Tidal wetland restoration and resource restoration or enhancement activities have been added to the list of activities eligible for a COP.
- The "substantial maintenance or repair of structures, fill, obstructions, or encroachments placed landward of the mean high water line and waterward of the high tide line completed prior to October 1, 1987, and continuously maintained and serviceable since that date" has been added as an activity eligible for a COP. This addition to the statute simply recognizes that up until October 1, 1987, the DEP's jurisdiction was the mean high water line and that activities landward of the mean high water line, but waterward of the high tide line, did not need a permit until that date. This change should not have a significant effect on most projects, as typically only a small portion of any structure lies between the mean high water and high tide line.

DEP COASTAL PERMITS MUST BE RECORDED ON THE LAND RECORDS

Starting October 1, 2010, the recipient of a new coastal permit or COP from the DEP will be required to record that permit on the land records of the town w the work will be conducted. The permit must be recorded no later than 30 days after its issuance.

Also, starting October 1, 2010, the owner of real property on which t is a regulated coastal activity must file a certified copy or notice of the most recent permit or certificate received from the DEP prior to transferring the property. This will require property owners selling a home with a dock, for example, to record the DEP dock permit on the land records prior to the transfer. If t is no permit, then the purchasers will have notice of the deficiency and will not be able to claim ignorance if the DEP seeks to enforce against the unauthorized structure in the future.

HEARINGS ON TIDAL WETLANDS APPLICATIONS

The Tidal Wetlands Act has been changed to allow applicants to request a hearing on their application. Previously, a hearing was held only upon the receipt of a petition signed by 25 persons.

FEE PENALTY FOR AFTER-THE-FACT APPLICATIONS

The act allows the DEP to charge an application fee of four times the normal rate for an application that seeks to retain a structure built without the necessary permits. This provision also allows the DEP to lower the fee, based upon extenuating circumstances, such as whether the applicant acquired the property after the date of the unauthorized activity, whether the applicant is not otherwise liable for the unauthorized activity, and whether the new owner did not know and had no reason to know of the unauthorized activity. However, given the new permit recording requirements in the act, it may be difficult for new owners of properties with unauthorized structures to claim they did not know about the unauthorized activity.

NOTICES OF APPLICATIONS AND PERMIT DECISIONS

For purposes of notification of permit applications and notices of tentative determinations by the DEP, the DEP is now authorized to send notice of those items by electronic means, as opposed to certified mail, return receipt requested. This change applies to notifications of applications under both the Tidal Wetlands Act and the Structures, Dredging, and Fill Statute.

These items are only the highlights of the act. If you have any questions or wish to discuss coastal management or permitting issues further, please contact [John Casey](#).

© 2010 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole and you. Consult your attorney before acting on anything contained n. The views expressed n are those of the authors and not necessarily those of Robinson & Cole or any other individual attorney of Robinson & Cole.

This email was sent to: **archive@rc.com**

This email was sent by: Robinson & Cole LLP
280 Trumbull Street Hartford, CT 06103 Attn: Business Development and Marketing



We respect your right to privacy - [view our policy](#)

||