#### Volume 15

#### CHAPTER 1. ORIGINS OF THE ACT

- § 1:1 Introduction
- § 1:2 Brief summary of CEPA
- § 1:3 The Connecticut Environmental Policy Act distinguished
- § 1:4 Standing and aggrievement
- § 1:5 Environmental litigation prior to CEPA
- § 1:6 Citizen suits in federal court
- § 1:7 Citizen suit statutes in sister states
- § 1:8 The enactment of CEPA

## CHAPTER 2. THE LEGISLATIVE HISTORY OF CEPA

- § 2:1 Introduction
- § 2:2 Executive branch initiatives
- § 2:3 Legislative branch initiatives, S.B. 400, S.B. 675 and H.B. 5037
- § 2:4 The legislative debates on CEPA
- § 2:5 Amendments to CEPA since adoption

## CHAPTER 3. THE RULES OF STATUTORY CONSTRUCTION AS APPLIED TO CEPA

- § 3:1 Introduction
- § 3:2 The plain meaning rule
- § 3:3 Interpretation to avoid absurd consequences or bizarre results
- § 3:4 Liberal construction of remedial statutes
- § 3:5 Construction in accordance with legislative policy
- § 3:6 Reliance on legislative history
- § 3:7 Construction of related statutes
- § 3:8 Legislative action in related fields
- § 3:9 Deference to administrative agency interpretations
- § 3:10 Common sense
- § 3:11 Case law from other jurisdictions
- § 3:12 Common law principles
- § 3:13 Stare decisis
- § 3:14 Conclusion

# CHAPTER 4. NATURAL RESOURCES PROTECTED UNDER THE ACT

§ 4:1 Introduction

- § 4:2 Legislative finding
- § 4:3 The concept of the public trust
- § 4:4 The evolution of the term "natural resource"—Red Hill Coalition, Inc. v. Town Plan & Zoning Commission
- § 4:5 The evolution of the term "natural resource"—Paige v. Town Plan & Zoning Commission
- § 4:6 The evolution of the term "natural resources"—Other cases

## CHAPTER 5. JURISDICTIONAL ASPECTS OF § 22A–16 ACTIONS

- § 5:1 Introduction
- § 5:2 Introduction to standing
- § 5:3 Standing as the threshold issue
- § 5:4 CEPA confers statutory standing
- § 5:5 Standing of potential plaintiffs under § 22a–16
- § 5:6 Standing distinguished from burden of proof
- § 5:7 The requirement of a "colorable claim" of harm to natural resources—Belford v. New Haven
- § 5:8 The requirement of a "colorable claim" of harm to natural resources—Lewis v. Planning & Zoning Commission (1998)
- § 5:9 The requirement of a "colorable claim" of harm to natural resources—Fort Trumbull Conservancy, LLC v. Alves
- § 5:10 The requirement of a "colorable claim" of harm to natural resources—Fort Trumbull Conservancy, LLC v. New London
- § 5:11 The requirement of a "colorable claim" of harm to natural resources—Connecticut Coalition Against Millstone v. Rocque
- § 5:12 The requirement of a "colorable claim" of harm to natural resources—Rocque v. Mellon; Ventres v. Goodspeed Airport, LLC
- § 5:13 The requirement of a "colorable claim" of harm to natural resources—Lewis v. Planning & Zoning Commission (2005)
- § 5:14 Section 22a–16 standing to enforce other environmental laws—Introduction
- § 5:15 Section 22a–16 standing to enforce other environmental laws—Manchester Environmental Coalition v. Stockton
- § 5:16 Section 22a–16 standing to enforce other environmental laws—Middletown v. Hartford Electric Light Co.
- § 5:17 Section 22a–16 standing to enforce other environmental laws—Fish Unlimited v. Northeast Utilities Service Co. ("Fish II")
- § 5:18 Section 22a–16 standing to enforce other environmental laws—Waterbury v. Washington
- § 5:19 Section 22a–16 standing to enforce other environmental laws—Fort Trumbull Conservancy, LLC v. Alves
- § 5:20 Section 22a–16 standing to enforce other environmental laws—Connecticut Coalition Against Millstone v. Rocque

§ 5:21	Section 22a–16 standing to enforce other environmental laws—Against municipality or agency without environmental jurisdiction
§ 5:22	CEPA allegations—Legal sufficiency
§ 5:23	CEPA allegations—Miscellaneous
§ 5:24	Exhaustion of administrative remedies—The exhaustion requirement
§ 5:25	Exhaustion requirement—Arrieu v. Litchfield
§ 5:26	Exhaustion requirement—Fish Unlimited v. Northeast Utilities Service Co. (Fish I)
§ 5:27	Exhaustion requirement—Waterbury v. Washington
§ 5:28	Exhaustion requirement—Pac v. Inland Wetlands & Water Courses Commission
§ 5:29	Exhaustion requirement—Connecticut Coalition Against Millstone v. Rocque

# CHAPTER 6. SUBSTANTIVE AND PROCEDURAL ISSUES IN § 22A–16 ACTIONS

§ 6:1	Introduction
§ 6:2	Applicability of the act—Exemptions within CEPA
§ 6:3	Applicability of the act—Exemptions in other provisions of the General Statutes
$\S 6:4$	Right to jury trial
$\S~6:5$	Venue
§ 6:6	Unreasonable conduct defined—No explicit standard provided by legislature
§ 6:7	Compliance with statutory or administrative scheme— Waterbury v. Washington
§ 6:8	Compliance with statutory or administrative scheme—Ventres v. Goodspeed Airport, LLC; Rocque v. Mellon
§ 6:9	Compliance with statutory or administrative scheme—Animal Rights Front, Inc. v. Jacques
§ 6:10	Violation of an environmental statute
§ 6:11	Unreasonableness as a question of fact
§ 6:12	Unreasonableness based on hypothetical questions to experts
§ 6:13	Failure of a municipality to abate a public nuisance as unreasonable conduct
§ 6:14	What unreasonableness does not mean
§ 6:15	Rejection of the de minimis standard
§ 6:16	Conclusion
§ 6:17	The class of potential defendants—The class broadly defined
§ 6:18	The class of potential defendants—The state as CEPA defendant
§ 6:19	The class of potential defendants—Company officials who

#### CONNECTICUT ENVIRONMENTAL PROTECTION ACT

§ 6:20 The class of potential defendants—Unreasonable conduct affecting the environment The class of potential defendants—Defendant's action § 6:21 considered along with others' actions § 6:22 Allocation of burden of proof § 6:23 The prima facie showing that the defendant's conduct is unreasonable § 6:24 The statutory affirmative defense: no feasible and prudent alternative Other affirmative defenses—Statute of limitations § 6:25 § 6:26 Res judicata and collateral estoppel—In general § 6:27 Res judicata and collateral estoppel—Transactional test § 6:28 Res judicata and collateral estoppel—Privity § 6:29 Res judicata and collateral estoppel—Inability to appeal initial finding § 6:30 Res judicata and collateral estoppel—Effect on subsequent CEPA plaintiffs of actions brought by prior CEPA plaintiffs Use of master or referee § 6:31

#### CHAPTER 7. SECTION 22A-19 INTERVENTION IN ADMINISTRATIVE PROCEEDINGS

FILO	CEEDINGS
§ 7:1	Introduction
§ 7:2	Administrative, licensing or other proceedings
§ 7:3	The verified petition—In general
$\S 7:4$	The verified petition—Content of the petition
§ 7:5	The verified petition—Status of the CEPA intervenor
§ 7:6	The verified petition—Assumption of party status
§ 7:7	Administrative agency jurisdiction—In general
§ 7:8	Administrative agency jurisdiction—Connecticut Fund for the Environment, Inc. v. Stamford
§ 7:9	Administrative agency jurisdiction—Red Hill Coalition, Inc. v. Town Plan & Zoning Commission
§ 7:10	Administrative agency jurisdiction—Burton v. Dillman
§ 7:11	Administrative agency jurisdiction—Connecticut Post Ltd. Partnership v. South Central Connecticut Regional Council of Governments
§ 7:12	Administrative agency jurisdiction—Nizzardo v. State Traffic Commission
§ 7:13	Administrative agency jurisdiction—Pathways, Inc. v. Planning & Zoning Commission
§ 7:14	Administrative agency jurisdiction—Keiser v. Zoning Commission

Who may intervene—Class of potential intervenors

Who may intervene—Introduction

§ 7:15

§ 7:16

Who may intervene—Nature of the intervenor's interest Agency consideration—Introduction
e •
Agency consideration—Two-step inquiry
Agency consideration—Two-step inquiry—Gardiner v. Conservation Commission
Agency consideration—Two-step inquiry—Post—Gardiner two-step inquiry cases
Agency consideration—Two-step inquiry—River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission
Agency consideration—Burden of proof on alternatives
Agency consideration—Burden of proof on alternatives— Quarry Knoll II Corp. v. Planning & Zoning Commission
Agency consideration—Burden of proof on alternatives—Lack of alternatives
Agency consideration—Burden of proof on alternatives— Requirement of finding on alternatives

## CHAPTER 8. SECTION 22A-19 INTERVENTION IN JUDICIAL PROCEEDINGS

§ 8:1	Introduction
§ 8:2	Intervention in judicial review of administrative proceedings
§ 8:3	Judicial review—Intervention in general
§ 8:4	Judicial review—CEPA intervention
§ 8:5	Judicial review—CEPA intervention—Red Hill Coalition, Inc. v. Conservation Commission
§ 8:6	Judicial review—CEPA intervention—Subsequent decisions
§ 8:7	Initiation of appeals from administrative agency decisions—In general
§ 8:8	Initiation of appeals from administrative agency decisions— Mystic Marinelife Aquarium, Inc. v. Gill
§ 8:9	Initiation of appeals from administrative agency decisions— Hyllen-Davey v. Plan & Zoning Commission
§ 8:10	Initiation of appeals from administrative agency decisions— Specificity required in pleadings
§ 8:11	Initiation of appeals from administrative agency decisions— Fort Trumbull Conservancy, LLC v. Planning & Zoning Commission
§ 8:12	Applicant for administrative relief as CEPA appellant
§ 8:13	Timeliness of the appeal
§ 8:14	Effect of CEPA intervention on the conduct of judicial proceedings—Scope of judicial review
§ 8:15	Effect of CEPA intervention on the conduct of judicial proceedings—Scope of issues raised on appeal

#### CONNECTICUT ENVIRONMENTAL PROTECTION ACT

Effect of CEPA intervention on the conduct of judicial § 8:16 proceedings—Scope of issues raised on appeal—What constitutes an "environmental issue" § 8:17 Effect of CEPA intervention on the conduct of judicial proceedings—Scope of issues raised on appeal—Right to raise procedural issues § 8:18 Settlement of claims—In general Settlement of claims—Ralto Developers, Inc. v. Environmental § 8:19 Impact Commission § 8:20 Settlement of claims—Dietzel v. Planning Commission Settlement of claims—Rocque v. Northeast Utilities Service § 8:21 Settlement of claims—Brookridge District Assn. v. Planning & § 8:22 **Zoning Commission** § 8:23 Intervention in "other proceedings"—Introduction § 8:24 Intervention in "other proceedings"—Polymer Resources, Ltd. v. Keeney Intervention in "other proceedings"—Zoning Commission v. § 8:25 Fairfield Resources Management, Inc. and Keeney v. Fairfield Resources, Inc.

# CHAPTER 9. SECTION 22A-19A: HISTORIC STRUCTURES AND LANDMARKS OF THE STATE

Intervention in "other proceedings"—Conclusion

§ 9:1 Introduction

§ 8:26

- § 9:2 Protection afforded historic structures and landmarks
- § 9:3 Judicial construction

issuance

- § 9:4 84 Connecticut Attorney General Opinions, No. 80 (1984)
- § 9:5 State historic preservation board

## CHAPTER 10. RELIEF AFFORDED UNDER CEPA: POWERS OF THE COURT

§ 10:1 Introduction § 10:2 Declaratory and injunctive relief Mootness § 10:3 § 10:4 Declaratory relief § 10:5 Equitable relief—Statutory authority § 10:6 Equitable relief—Necessary parties Equitable relief—No showing of irreparable harm and § 10:7 inadequate remedy at law required Equitable relief—Temporary injunctions: prohibitory and § 10:8 mandatory Equitable relief—Temporary injunctions: grounds for § 10:9

§ 10:10	Equitable relief—Temporary injunctions: posting of a bond
§ 10:11	Equitable relief—Injunctions issued in CEPA suits:
0.10.10	temporary injunctions
§ 10:12	Court remand to administrative proceedings
§ 10:13	Procedure on remand
§ 10:14	Retention of jurisdiction to conduct two-pronged review: first prong—Whether substantial evidence in the record supports agency decision
§ 10:15	Second prong: adequacy of agency consideration
§ 10:16	Judicial review of adequacy of existing administrative and regulatory procedures
§ 10:17	Court may grant judgment by stipulation of the parties
§ 10:18	Costs and attorney's fees—References to "costs" within CEPA
§ 10:19	Costs and attorney's fees—Costs—General
§ 10:20	Costs and attorney's fees—Taxable costs
§ 10:21	Costs and attorney's fees—Taxable costs in equitable causes of action
§ 10:22	Non-taxable costs and attorney's fees—The American rule
§ 10:23	Non-taxable costs and attorney's fees—Purpose of attorney's fees
§ 10:24	Non-taxable costs and attorney's fees—Who may seek an award of attorney's fees
§ 10:25	Non-taxable costs and attorney's fees—Caselaw—A reasonable attorney's fee
§ 10:26	Non-taxable costs and attorney's fees—Rule 1.5 (a) of the rules of professional conduct
§ 10:27	Non-taxable costs and attorney's fees—Existence of reasonable fee agreement: effect
§ 10:28	Non-taxable costs and attorney's fees—Proponent's burden to make evidentiary showing of entitlement of attorney's fees
§ 10:29	Non-taxable costs and attorney's fees—Timely objection to award of attorney's fees by opposing counsel
§ 10:30	Non-taxable costs and attorney's fees—Award of attorney's fees at the appellate level
§ 10:31	Non-taxable costs and attorney's fees—The taxing of costs pursuant to § 22a–19a—When applicable
§ 10:32	Non-taxable costs and attorney's fees—The taxing of costs pursuant to § 22a–19a—Scope of costs included
§ 10:33	Court may order supplemental environmental projects or financial contribution: § 22a–16a
§ 10:34	CEPA is supplementary to administrative procedures

## **CHAPTER 11. FORMS**

- § 11:1 Complaint—§ 22a–16 action
- § 11:2 Special Defense—§ 22a–16 action

#### CONNECTICUT ENVIRONMENTAL PROTECTION ACT

§ 11:3	Motion to Dismiss—§ 22a-16 action
§ 11:4	Motion to Strike—§ 22a–16 action
§ 11:5	Notice of intervention—Inland Wetlands & Watercourses Agency
§ 11:6	Notice of intervention—Planning & Zoning Commission
§ 11:7	Notice of intervention—State administrative agency
§ 11:8	Notice of intervention—Pending civil action
§ 11:9	Notice of intervention—Administrative appeal
§ 11:10	Objection to motion for approval of settlement agreement in land-use appeal

#### **APPENDICES**

- Appendix A Connecticut Environmental Protection Act—General Statutes §§ 22a-14 to 22a-20 Appendix B Senate Bill No. 400, 1971 Connecticut General Assembly Appendix C Senate Bill No. 675, 1971 Connecticut General Assembly House Bill No. 5037, 1971 Connecticut General Appendix D Assembly Appendix E Legislative History—CEPA Appendix F 84 Connecticut Attorney General Opinions, No. 80 (1984)
- Appendix G Bibliography
- Appendix H Chronological List Of Cases

**Table of Laws and Rules** 

**Table of Cases** 

Index