

Table of Contents

CHAPTER 1. ORIGINS OF THE ACT

- § 1:1 Introduction
- § 1:8 The enactment of CEPA
- § 1:9 Review of CEPA by DEP required by 2010 Connecticut general assembly *[New]*

CHAPTER 2. THE LEGISLATIVE HISTORY OF CEPA

- § 2:5 Amendments to CEPA since adoption

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

- § 3:2 The plain meaning rule
- § 3:4 Liberal construction of remedial statutes
- § 3:7 Construction of related statutes
- § 3:9.50 Legislature does not enact meaningless provisions *[New]*

CHAPTER 4. NATURAL RESOURCES PROTECTED UNDER THE ACT

- § 4:3 The concept of the public trust
- § 4:6 The evolution of the term “natural resources”—Other cases
- § 4:7 Natural resources “of the state” *[New]*
- § 4:8 Natural resources outside of the state *[New]*

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

- § 5:5 Standing of potential plaintiffs under § 22a–16
- § 5:6 Standing distinguished from burden of proof
- § 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

CONNECTICUT ENVIRONMENTAL PROTECTION ACT

- § 5:13.10 The requirement of a “colorable claim” of harm to natural resources—Fort Trumbull Conservancy, LLC v. New London II *[New]*
- § 5:13.15 The requirement of a “colorable claim” of harm to natural resources—Bingham v. Dept. of Public Works *[New]*
- § 5:13.20 The requirement of a “colorable claim” of harm to natural resources—Burton v. Commissioner of Environmental Protection *[New]*
- § 5:13.30 The requirement of a “colorable claim” of harm to natural resources, distinguished—Burton v. Dominion Nuclear Connecticut, Inc. *[New]*
- § 5:13.40 The requirement of a “colorable claim” of harm to natural resources—Noise Pollution *[New]*
- § 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
- § 5:29 Exhaustion requirement—“Exclusive domain”: Connecticut Coalition Against Millstone v. Rocque *[Retitled]*
- § 5:29.50 Exhaustion requirement—“Exclusive domain”: Burton v. Commissioner of Environmental Protection *[New]*
- § 5:30 Federal preemption *[New]*
- § 5:30.50 Sovereign immunity *[New]*
- § 5:31 Justiciability *[New]*
- § 5:31.30 Justiciability—Ripeness *[New]*
- § 5:31.70 Justiciability—Mootness *[New]*
- § 5:32 Federal issues *[New]*
- § 5:33 Standing distinguished from classical aggrievement *[New]*

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

- § 6:4 Right to jury trial
- § 6:5 Venue
- § 6:6 Unreasonable conduct defined—No explicit standard provided by legislature
- § 6:9 Compliance with statutory or administrative scheme—Animal Rights Front, Inc. v. Jacques
- § 6:9.30 Compliance with statutory or administrative scheme—Friends of Animals, Inc. v. United Illuminating Co. *[New]*
- § 6:9.70 Compliance with statutory or administrative scheme—Burton v. Commissioner of Environmental Protection *[New]*
- § 6:10 Violation of an environmental statute
- § 6:11 Unreasonableness as a question of fact
- § 6:12 Unreasonableness based on hypothetical questions to experts
- § 6:12.30 Evidence to establish unreasonable conduct *[New]*
- § 6:12.70 Expert testimony—When required *[New]*
- § 6:13 Failure of a municipality to abate a public nuisance as unreasonable conduct
- § 6:16 Conclusion
- § 6:16.50 Summary judgment *[New]*

TABLE OF CONTENTS

- § 6:16.75 Entry of default *[New]*
- § 6:17 The class of potential defendants—The class broadly defined
- § 6:18.50 The class of potential defendants—The municipality as defendant *[New]*
- § 6:21 The class of potential defendants—Defendant’s action considered along with others’ actions
- § 6:24 The statutory affirmative defense: no feasible and prudent alternative
- § 6:25 Other affirmative defenses—Statute of limitations
- § 6:25.30 Other affirmative defenses—Laches *[New]*
- § 6:25.50 Other affirmative defenses—Comparative recklessness/assumption of the risk *[New]*
- § 6:25.70 Other affirmative defenses—Failure to mitigate damages *[New]*
- § 6:30.50 Other affirmative defenses—Governmental immunity *[New]*
- § 6:31 Use of master or referee
- § 6:32 Dismissal of CEPA claim for plaintiff’s failure to make out a prima facie case *[New]*
- § 6:33 CEPA standard of care imported into negligence per se actions *[New]*
- § 6:34 Apportionment of negligence in CEPA claim pursuant to General Statutes § 52-572h *[New]*

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

- § 7:1 Introduction
- § 7:2 Administrative, licensing or other proceedings
- § 7:3 The verified petition—In general
- § 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
- § 7:12 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
- § 7:15 Who may intervene—Introduction
- § 7:16 Who may intervene—Class of potential intervenors
- § 7:18 Agency consideration—Introduction
- § 7:19 Agency consideration—Two-step inquiry
- § 7:21 Agency consideration—Two-step inquiry—Post-*Gardiner* two-step inquiry cases
- § 7:23 Agency consideration—Burden of proof on alternatives
- § 7:24 Agency consideration—Burden of proof on alternatives—Quarry Knoll II Corp. v. Planning & Zoning Commission

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

- § 8:3 Judicial review—Intervention in general

CONNECTICUT ENVIRONMENTAL PROTECTION ACT

- § 8:4 Judicial review—CEPA intervention
- § 8:6 Judicial review—CEPA intervention—Subsequent decisions
- § 8:6.50 Judicial review—CEPA intervention—Intervenor’s status not derivative *[New]*
- § 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
- § 8:9.50 Initiation of appeals from administrative agency decisions—Finley v. Inland Wetlands Commission *[New]*
- § 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
- § 8:14 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
- § 8:16 Effect of CEPA intervention on the conduct of judicial 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
- § 8:19 Settlement of claims—Ralto Developers, Inc. v. Environmental Impact Commission
- § 8:20 Settlement of claims—Dietzel v. Planning Commission
- § 8:22 Settlement of claims—Brookridge District Assn. v. Planning & Zoning Commission
- § 8:22.50 Settlement of claims—Diamond 67, LLC v. Planning and Zoning Commission of the Town of Vernon and Batchelder v. Planning and Zoning Commission of Town of Vernon *[New]*
- § 8:23 Intervention in “other proceedings”—Introduction
- § 8:25.50 Intervention in “other proceedings”—Diamond 67, LLC v. Planning and Zoning Commission of Town of Vernon *[New]*
- § 8:26 Intervention in “other proceedings”—Conclusion

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

- § 9:1 Introduction
- § 9:2 Protection afforded historic structures and landmarks
- § 9:3 Judicial construction

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

- § 10:1.50 § 22a-20 construed *[New]*

TABLE OF CONTENTS

§ 10:2	Declaratory and injunctive relief
§ 10:3	Mootness
§ 10:4	Declaratory relief
§ 10:5	Equitable relief—Statutory authority
§ 10:5.50	Availability of injunctions <i>[New]</i>
§ 10:7	Equitable relief—No showing of irreparable harm and inadequate remedy at law required
§ 10:8	Equitable relief—Temporary injunctions: prohibitory and mandatory
§ 10:9	Equitable relief—Temporary injunctions: grounds for issuance
§ 10:10	Equitable relief—Temporary injunctions: posting of a bond
§ 10:11	Equitable relief—Injunctions issued in CEPA suits: temporary injunctions
§ 10:11.50	Equitable relief—Injunctions issued in CEPA suits: hearing in damages <i>[New]</i>
§ 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
§ 10:18	Costs and attorney’s fees—References to “costs” within CEPA
§ 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
§ 10:33	Court may order supplemental environmental projects or financial contribution: § 22a–16a

Appendices

Appendix A. Connecticut Environmental Protection Act—General Statutes §§ 22a–14 to 22a–20

Appendix H. Chronological List of Cases

Table of Laws and Rules

Table of Cases

Index