

MEMORANDUM

CGS §22a-19(a) provides that in “any administrative... proceeding...any person...may intervene as a party on the filing of a verified pleading¹ asserting that the proceeding or action...involves conduct which has, or which is likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.”

The Connecticut Supreme Court has held that this statute permits parties to intervene in administrative proceedings to raise environmental issues only when two conditions are met.

First, CGS §22-19 permits intervenors the right to raise only those environmental issues over which the Commission has jurisdiction. Accordingly, the Commission must determine whether, under its regulations, it has the right to consider any environmental issues. Second, the petition must be reviewed to determine whether the intervenor sets forth specific factual allegations implicating an issue over which the Commission has jurisdiction. (See generally, Nizzardo v. State Traffic Commission, 259 Conn 131 (2002); Keiger v. Zoning Commission of the Town of Redding, 72 Conn App 721 (2002).

If a petition raises specific environmental issues over which the Commission has jurisdiction, the Commission must decide whether the proposed activity has, or is reasonably likely to have, the effect of unreasonably polluting the air, water or other natural resources of the state.

Finally, if the Commission determines that the conduct has, or is likely to have, the effect of causing unreasonable pollution, it may not permit the activity if it finds there are feasible and prudent alternatives to the proposed conduct.

The Commission must engage in the following analysis:

- 1) Review the petition to determine whether it contains specific factual assertions alleging harm or possible harm to the environment.
- 2) Determine the specific type and/or character of the harm being claimed and determine whether, under the applicable wetlands or zoning regulations, the Commission has jurisdiction over the claim.

¹ A verified pleading is essentially a set of specific factual allegations or assertions made under oath.

Assuming that the Commission grants intervenor status, it then becomes the intervenor's burden to establish that the proposed activity will cause, or is reasonably likely to cause, the environmental harm alleged. The proposed activity must be reasonably likely to cause harm not just possibly likely to cause harm. Usually the allegations raised in such petitions are generally of a technically complex nature. Typically evidence of this nature would come from an expert. If the intervenor's simply assert that potential harm will follow, without some more probative and/or substantive evidence, it will be very difficult for the Commission to find that harm is reasonably likely.

Finally, if the intervenors carry their burden of establishing harm, or a reasonably likelihood of harm, the Commission cannot approve the activity unless it finds that feasible and prudent alternatives do not exist. The courts have determined that it is not the obligation of the applicant to suggest alternatives to this plan although, as a practical manner, the applicant would usually propose such alternatives.

The Supreme Court has defined prudent and feasible as follows: "feasible" is a matter of sound engineering and "prudent alternatives" are those which are economically reasonable in light of the social benefits derived from the activity. Samperi v Inland Wetlands Agency of the City of West Haven, 226 Conn 579 (1993).

To make a finding that no feasible or prudent alternatives exist does not require the Commission to make explicit findings ruling out each and every possible alternative. Further, while not conducting the activity in the first place is always an alternative, such an alternative is rarely a reasonable outcome. Again, this analysis is necessary if, and only if, the Commission finds that the proposed activity will cause, or is likely to cause unreasonable harm to the environment.