



# Protecting Connecticut's Future

## Overcoming the 2022 Environmental Cliff

### Introduction

CT Department of Energy and Environmental Protection (DEEP) will face unprecedented retirements and corresponding loss of institutional knowledge due to upcoming retirement incentives. These upcoming retirements will dramatically accelerate strains on DEEP's resources and its ability to fulfill its core function of environmental enforcement. If DEEP is not adequately funded and staffed to fulfill this responsibility, we will see significant threats to environmental and public health and to quality of life for Connecticut residents.

Upcoming retirements will **dramatically accelerate** strains on DEEP's resources and its ability to fulfill its core function of environmental enforcement.

We must adequately fund DEEP's inspection and enforcement work, while prioritizing the re-hiring and training of these critical staff. Environmental inspection and enforcement is at the core of DEEP's mission as it protects our water, land, wildlife, air, and our public health. The Environmental Quality branch of DEEP is responsible for a transparent and fair system of inspections for facilities capable of spewing toxic and dangerous chemicals and pollutants into our water and air or devastating critical

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forests and wetlands. The Environmental Conservation branch is responsible for a field presence to ensure that fish and game are protected and that our natural spaces do not suffer from intensive use. If these functions are not protected, Connecticut's quality of life could be at stake.

DEEP has consistently been asked to do more with less. The Department's budget has seen steady decreases over time and staff numbers have been on a downward trend the last three decades. DEEP staff numbers have fluctuated, and the total number of full-time and part-time positions (873) in 2020 was 13.6% below staffing levels at the peak in 2013 (1030).



At the same time, DEEP's responsibilities continue to grow: covering gaps in federal enforcement, tackling emerging issues, managing growing use of open spaces and natural resources, and fulfilling an increasingly important role for state government in confronting the climate change crisis, among others. In the current COVID-19 pandemic, we are seeing the critical importance that state government plays and the breadth of its role, as well as the need for state government and its agencies to remain dynamic in an unsettled world.

DEEP is facing significant retirements that will undercut these core functions unless deliberate action is taken. By July 1, 2022, agencies statewide are expected to experience significant retirements: an average of 40% of all state employees are eligible to retire and will face significant disincentives to remain in the workforce as a result of a 2017 budgetary concession deal negotiated under the Malloy administration.<sup>1</sup> DAS Commissioner Josh Geballe predicts that "[a] third of the state workforce is going to retire in the next three years."<sup>2</sup> These retirements will be statewide, including within DEEP, and are unavoidable. The impact of these retirements, and budget shortfalls, can be mitigated, but each threat must be met with intentional efforts to maintain the environmental enforcement capabilities of both the Environmental Quality and Environmental Conservation branches.

With the 2022 retirements, comes great change. Commissioner Geballe characterizes it as an "opportunity to reinvent how we do things."<sup>3</sup> State agencies must grapple with significant loss of expertise and institutional knowledge, and will likely operate with lower staffing levels thereafter. Geballe and others<sup>4</sup> are looking into how bureaucratic reorganization and widespread deployment of e-governance systems can blunt the impacts of upcoming retirements, and respond to other ongoing challenges.

Compounding this issue, state and municipal governments nationwide, including Connecticut, are also facing dramatic budget shortfalls due to the COVID-19 pandemic, the scale of which we are only beginning to understand as the pandemic continues. Proposed solutions to these budget shortfalls might aggravate the upcoming 2022 retirements. In August 2020, Governor Ned Lamont directed state agencies to "find ways to cut spending by 10% or more in the next two fiscal years."<sup>5</sup> Agencies have also been directed to not "propose new or expanded programs,"<sup>6</sup> potentially limiting DEEP's ability to develop critical programs responsive to emerging issues. Even more troubling, it has been suggested that the state should leverage the upcoming 2022 retirements for budget savings.<sup>7</sup>

**40%**  
of all state  
employees  
are eligible for  
retirement in  
2022

**26%**  
of DEEP staff  
plan to leave by  
that time



The loss of essential enforcement staff through the 2022 retirements must not be capitalized upon for the purpose of accounting for budget shortfalls. If this were to be done, the citizens of Connecticut would suffer negative environmental and public health outcomes from insufficient monitoring and enforcement. It is imperative that DEEP maintain its fundamental function in protecting and improving environmental quality in Connecticut through adequate resourcing and an intentional transition through the 2022 retirements. As DAS Commissioner Geballe stated, "we're at a time where change is coming, whether people like it or not," a statement that has become more poignant amidst the COVID-19 pandemic.<sup>8</sup> It is up to us to make sure that this change does not come at a cost to the state's environmental resources and public health.

## There is a baseline staffing and resource level that must be maintained.

The good news is that there are opportunities for efficiencies, such as improving the tracking and follow-up of inspection and enforcement actions, using technology for monitoring, expanding e-governance functionality for the regulated community and the general public, and combining related staffing responsibilities to ensure better continuity and expert knowledge. The bad news is that effective inspections, compliance actions, and environmental conservation officer field presence are labor intensive, and there is a baseline staffing and resource level that must be maintained. Facility inspections and fair and efficient compliance follow-up require experienced staff. There is no substitute for state inspectors to ensure environmental compliance. Additionally, field environmental conservation officer presence is essential to ensure that fish and game laws are enforced.

Save the Sound commends DEEP on its demonstrated commitment to ensuring environmental quality in Connecticut, but is concerned with the agency's ability to continue to uphold these obligations when faced with upcoming 2022 retirements and the charge to severely cut its budget and halt rehiring. As a non-profit environmental organization representing thousands of citizens of the state of Connecticut, Save the Sound fills gaps in enforcement where DEEP or the EPA do not act, whether it be for political, strategic, or resource constraint reasons. Through this role, Save the Sound reviews compliance with environmental laws and enforcement actions and therefore is particularly suited to comment on the need to adequately prepare for changes to the agency. We understand that the State will be faced with countless priorities as it accounts for a strapped budget throughout COVID-19 recovery, but to hamstring DEEP's ability to continue to protect the environmental and public health through its environmental enforcement role will only compound the current civil rights and public health crises.



We are calling on Commissioner Dykes, the Governor's office, and the legislature to ensure that the core function of DEEP in ensuring compliance and enforcing environmental laws is maintained to protect the environment and public health.

## Environmental Inspections and Enforcement Are Essential to Maintain and Improve Public Health and Environmental Quality Outcomes

At the core of DEEP's statutory responsibilities is the administration and enforcement of environmental laws and regulations. Given the unique nature of each situation and the inevitable judgments and discretion involved, there is no substitute for actual inspection and enforcement personnel. DEEP staff in the Environmental Quality branch must both efficiently process permit applications and conduct the necessary inspections and enforcement actions to ensure positive environmental quality outcomes. Staff in the Environmental Conservation branch, such as Environmental Conservation officers, must establish a field presence in our natural spaces to ensure that natural resource use is compliant with permits and other restrictions, and that open spaces are safe for the general public.

Inspection and enforcement tasks include:

- Inspection and enforcement of air permits restricting toxic emissions from a waste recovery plant, in order to protect neighbors and local school children.
- Inspection of wastewater treatment plants and the enforcement of restrictions that ensure wastewater is properly treated before being discharged into the local waterway.
- Enforcement of permit requirements that limit pollutants discharged from a scrap metal refinery, such that waterways remain habitable for fish.
- Educating on and enforcing fisheries limits on striped bass or bag limits for duck hunting.
- Ensuring public safety at busy campgrounds.

A reduction in staff will severely strain DEEP's ability to fill these labor intensive roles. Proposed solutions such as restructuring permit processing and deploying technologies may help bridge this resource gap, but it is necessary to track compliance and environmental quality outcomes to confirm that these solutions effectively support the underlying responsibilities of the agency in a responsible manner. Fundamentally, however, there are roles and values of human capital that are irreplaceable, and sufficient staffing and training is critical. Rehiring enforcement positions must be prioritized and institutional knowledge and expertise must be preserved.



Enforcement is a core function of DEEP, and extends into virtually every staff role. Overall, 1/3 of all Environmental Quality branch staff hold inspection and enforcement positions. See Table 1. (We group inspection and enforcement roles together because inspections are a necessary first step in determining enforcement priorities and taking the appropriate action.) In the Bureau of Materials Management & Compliance Assurance, inspection and enforcement staff comprise 51% of FTEs in the Emergency Response and Spill Prevention Division, 37% of the Waste Engineering and Enforcement Division FTE staff, and those staff are separate from the 14 inspection and enforcement staff in the Permitting and Enforcement Division of MMCA. It is unknown how these staffing roles compare to years past.

Table 1. Analysis of Primary Activities of FTE Staff of Environmental Quality Branch (as of June 1, 2020).<sup>9</sup>

ENVIRONMENTAL QUALITY BRANCH						
BUREAU	DIVISION	FTEs	INSPECTION	ENFORCEMENT	PERMITTING	OTHER
MMCA	Waste Engineering & Enforcement	57	9	12	13	13
	Emergency Response & Spill Prevention	41	13	8	3	17
	Permitting & Enforcement	37	7	7	19	4
	Planning	3	0	0	0	3
Air	Radiation	12	4	4	4	0
	Engineering	22	0	0	12	10
	Enforcement	29	14	12	1	2
	Planning & Standards	30	0	0	0	30
WPLR	Planning & Management	57	4	3	16	34
	Remediation	41	2	3	2	34
	Land & Water Resources	36	3	3	17	13
<b>EQ BRANCH TOTALS</b>		<b>355</b>	<b>56</b>	<b>52</b>	<b>87</b>	<b>160</b>

It should also be noted that even those staff not categorized as primarily filling *inspection* or *enforcement* roles also provide support to environmental enforcement, through data analysis, planning, regulatory development, administrative support, and program management. Maintaining sufficient support staff is also critical to maintaining adequate environmental enforcement by the agency.



Environmental inspections and enforcement are essential to maintain and improve public health and environmental quality outcomes. Enforcement staff ensure that environmental requirements are met by the regulated community through both direct enforcement and through the expectation of consistent enforcement. Environmental enforcement requires a suite of skills and acquired expertise in order to be done properly, including: proper permitting with adequate sampling parameters and appropriate limits; audits of self-reported testing and monitoring data; on-site inspections; follow-up and correspondence; drafting of informal enforcement documents; pursuance of formal enforcement actions; and follow-up for post-enforcement action compliance. Certain tasks require familiarity with permit requirements and facility components. Others are best conducted through open communication with facility staff supported by longstanding relationships. Some tasks require historical knowledge of facility operations and actions previously taken to address longstanding issues.

These roles inherently require **boots on the ground** for both the actual enforcement and to provide a consistent presence to promote compliance forthright.

Within the Environmental Conservation branch, Environmental Conservation officers enforce fish and game laws, but also ensure public safety in the state's natural areas both on and off the water. These roles inherently require "boots on the ground" for both the actual enforcement and to provide a consistent presence to promote compliance forthright.

**Effective enforcement requires people.** Most of these roles cannot be easily replaced by new, inexperienced DEEP staff, or by technology alone.

Fundamentally, effective enforcement requires people. Most of these roles cannot be easily replaced by new, inexperienced DEEP staff, or by technology alone. While technology and the reconfiguration of agency structure and staff positions might alleviate some resources constraints, effective enforcement inherently requires sufficient well-trained and experienced staff. Enforcement staff, through on-site inspections, correspondence, and innate knowledge of facility operations are able to identify issues that warrant attention and then triage to target enforcement priorities. There is no substitute for experienced enforcement staff.



## Environmental Inspections and Enforcement Have Decreased in Recent Years and Other Functions Also Strained

Enforcement metrics have shown declines over the past decade in regard to certain enforcement activities - most notably in total number of inspections and formal enforcement actions. See Table 2. According to DEEP's annual environmental reports on enforcement statistics, the agency conducted 3151 inspections in 2019 (or over 50% fewer than in 2006), while between 2006 and 2010 the agency conducted over 6500 inspections per year. Inspections numbers peaked in 2009 with 7459 inspections. The agency logged an all-time low number of inspections in 2020 at 1,835, although this is attributable to coronavirus safety precautions. While a 2018 EPA review of DEEP's implementation of major federal environmental laws found that the agency generally met or exceeded expectations,<sup>10</sup> these declines are concerning.

While the Commissioner and Attorney General may influence the enforcement actions taken by the agency, there has been a marked trend away from formal enforcement actions towards informal enforcement actions, such as notices of violation and warning letters. In 2019, DEEP conducted 1285 informal enforcement actions, while between 2006 and 2010 that number ranged under 1000.<sup>11</sup> It should be noted that this number fluctuates dramatically year to year largely due to specific enforcement initiatives. Meanwhile, referrals to the Attorney General's office and EPA are at their lowest levels. Between 2018 and 2020, DEEP made only 6 to 8 referrals per year. Between 2006 and 2009, DEEP was making over 20 such referrals a year. Orders issued by DEEP have fluctuated, but are generally lower than in years past. In both 2018 and 2019, DEEP issued 110 orders. In 2020, only 65 orders were issued. Comparatively, in 2010, DEEP issued a record 301 orders. One reason for this decline is likely strained resources of the agency, confirmed through anecdotal evidence.<sup>12</sup> These are indicators that DEEP is already stepping away from formal enforcement mechanisms, and relying on informal compliance actions resting upon far fewer facility inspections. While informal enforcement can efficiently result in compliance, tracking and subsequent compliance with informal enforcement actions is unknown, as there is no system for tracking and escalating these enforcement actions as needed.

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Table 2. Compiled DEEP Reported Enforcement Statistics.<sup>13</sup>

ACTIVITY	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Referrals*	36	23	32	38	17	15	6	15	6	9	11	14	6	8	8
Orders	103	104	128	188	301	117	121	72	66	69	94	107	110	110	65
Informal Enforcement Actions**	631	643	831	848	963	973	809	1095	1279	818	832	786	1132	1285	925
Total Enforcement Actions	770	770	991	1074	1281	1105	936	1182	1351	896	856	907	1248	1403	998
Inspections	6791	6910	8314	7459	6900	5698	4765	4228	3608	3358	2599	3471	2784	3151	1835

\*Includes AG/EPA/CSA

\*\* Includes NOV/NON/Warning Letters

At the same time, under the Trump administration, the EPA conducted record low enforcement efforts, compared to the last twenty years, as measured by annual inspections and evaluations, criminal environmental cases opened and polluters charged, and civil judicial enforcement case referrals and closures.<sup>14</sup> EPA enforcement and compliance monitoring staff, too, have been at record low numbers.<sup>15</sup> DEEP necessarily had to shoulder more of the enforcement burden.<sup>16</sup> While it is expected that under the Biden administration there will be a renewed emphasis on enforcement, this change might not be immediate. State enforcement will always be necessary to federal environmental regulatory schemes. Further, federal staff levels may remain low with budget constraints, and the Biden administration will need to expend significant resources reversing the deregulatory actions of its predecessor.

DEEP's strained resources have also already impacted permitting timelines, an issue acknowledged by DEEP in its 20 By 20 Initiative.<sup>17</sup> The very purpose of this set of 20 goals is "predictability, efficiency, and transparency."<sup>18</sup> At least 7 of the 20 goals target efficient permitting and reduction of administrative burdens: Goal 1: Make permitting timelines more transparent; Goal 3: Reduce number of legacy permits pending; Goal 4: Reduce time for Transfer Act audits; Goal 6: Fast track same-same renewal time; Goal 7: Change individual permits to general permits; Goal 8: Eliminate some permits and move to "permit by rule"; and Goal 12: Establish permitting concierge approach. Similarly, each year countless legislative proposals seek to reduce the administrative burden on DEEP, by eliminating oversight or regulatory requirements. For example, there have been annual efforts to require 90-day automatic permit approvals for significant permits. Further, embedded in the recent legislation to transition from the Transfer Act to a release-based remediation system is the privatization of oversight and reduced transparency. However, many of these proposals shortchange robust environmental review, rather than provide the resources to conduct an efficient and complete review of potential environmental impacts.





## 2022 Retirement Effect will Lead to a Loss of Inspection and Enforcement Experience and Personnel and Potentially Paralyze DEEP's Ability to Function

It is estimated that 40 percent of all state employees are eligible to retire before July 1, 2022, and that actual retirements might be on the scale of 30 percent. Actual DEEP retirements will likely follow this pattern. Recent survey results indicate the potential impacts on the agency within each bureau (yet not specified by enforcement positions).

In 2019, DEEP staff were surveyed as to how long they plan to continue to work for the agency. The survey did not distinguish whether departures were due to 2022 retirements or other reasons, nor did it delineate which of these departures are affiliated with enforcement staff. It should be noted that staff retention at state agencies is lower than in decades past, with a more mobile workforce and diminishing benefits to state employment. Approximately 26 percent of DEEP staff who responded to the survey only plan on remaining with the agency for 3 more years. See Table 3. (An additional 14 percent of DEEP staff anticipate leaving the agency within 3-5 years.) Certain bureaus are likely to be impacted more than others due to age class and retirement eligibility. Of the Bureau of Air Management survey respondents, only 18 percent expect to leave the agency within 3 year, but of the Bureau of Materials Management and Compliance Assurance and Bureau of Outdoor Recreation survey respondents, that number exceeds 30 percent (35 percent and 31 percent respectively). See Table 4. Nearly ¼ of Bureau of Water Protection and Land Reuse survey respondents plan to remain with DEEP for only 3 years at most.

Table 3. 2019 DEEP Employee Survey (68% Response Rate); DEEP Staff Overall.<sup>19</sup>

<i>"I plan on working for DEEP for..."</i>	
Less than 1 year	5.03%
1-3 more years	21.01%
3-5 more years	14.18%
5-10 more years	23.52%
10 years or more	36.27%



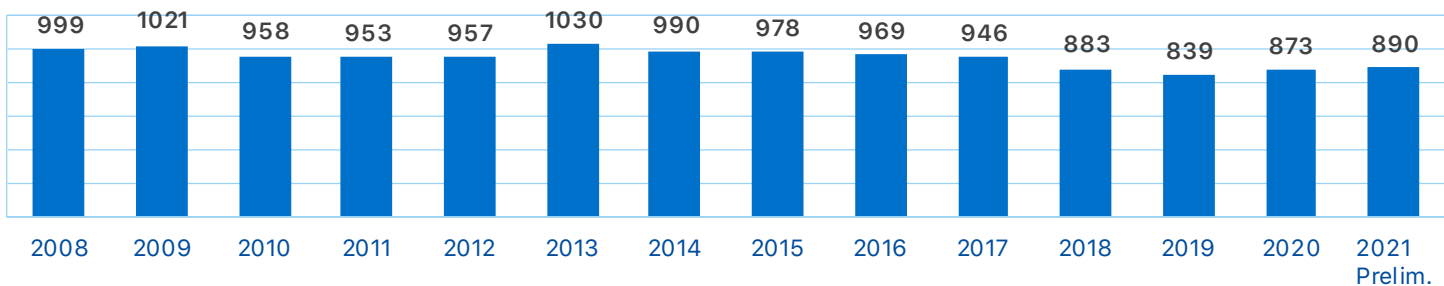
Table 4. 2019 DEEP Employee Survey (68% Response Rate); Divided by Bureau.<sup>20</sup>

Bureau	I plan on working for DEEP for:			Total; Staff planning on only working for agency for up to 5 years
	Under 1 year	1-3 years	3-5 years	
Bureau of Air Management	3.23%	14.52%	19.35%	37.1%
Bureau of Materials Management & Compliance Assurance	4.3%	31.18%	12.9%	43.38
Bureau of Outdoor Recreation	7.04%	23.94%	7.04%	38.02%
Bureau of Water Protection & Land Reuse	4.46%	19.64%	12.5%	36.6%

Deputy Commissioner of Environmental Conservation, Mason Trumble, has stated that the EnCon staff will be less impacted by 2022 retirements, implying that many of the departures indicated in Table 4 might be from less-experienced, non-retirement eligible, staff.

Overall DEEP staff numbers over the past three years have been lower than any year since at least 2008. Over the last two decades, DEEP staff numbers, and likely enforcement staff, have fluctuated, and the total number of current full-time and part-time positions (873) in 2020 is 10% below staffing levels during the 2008 economic crisis (999) and 13.6% below staffing levels at the peak level in 2013 (1030). See Table 5. DEEP staff levels were at their lowest in 2019 at 839. (Comparisons of staffing levels within bureaus is complicated, and not a useful exercise, given the consistent restructuring of bureaus and responsibilities year-to-year. However, this data was also provided to us by Betsey Wingfield.)

Table 5. Total Number of Full-Time and Part-Time DEEP Staff.<sup>21</sup>





If DEEP were to actually see the retirement or departure of 26% of staff between 2019 and 2022, as the survey responses indicate, and forced to capitalize on these departures through payroll savings as urged by OPM Secretary Melissa McCaw, then the agency staffing levels could dip well below 700, an unprecedented level in recent history.

With these low numbers, prior to the 2022 retirements, DEEP is already strained with resources, for both its permitting and enforcement roles. These resource constraints are frequently cited as reasons for restructuring permitting schemes, eliminating reporting requirements, and so on. Furthermore, DEEP has had to reconfigure staffing responsibilities to account for emerging issues, such as PFAS, evolving climate change mitigation and adaptation efforts, and COVID-19 response.

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**The State is already behind in preparing for 2022.** Retirements have already begun, and with that the loss of institutional knowledge. Retirement-eligible staff take with them decades of experience that cannot be replaced by new hires.

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In fact, DEEP staff have estimated that in order to be independent and effective in these roles, staff require 3 to 7 years of experience,<sup>22</sup> due to the technical nature of enforcement, familiarity with facilities and permit requirements, challenges of issue spotting, and personal relationship development. Throughout this staff turnover, there must be a deliberate effort to transition that institutional knowledge to new staff, whether by overlapping new hires with outgoing staff, directing adequate resources to training, or the memorialization and transfer of institutional knowledge.

## **In Rethinking State Government, DEEP Will Necessarily Change Its Structures, Staffing, and Tools**

As DAS Commissioner Josh Geballe stated, "we're at a time where change is coming, whether people like it or not." Certainly, cost cutting will be necessary statewide, including within DEEP. We understand that DEEP will look different following the 2022 retirements and will be operating under a severely limited budget. Save the Sound emphasizes, however, the critical importance of prioritizing hiring and training of staff, aggressive deployment of e-governance that is public facing, and the use of innovative partnerships, regardless of the implementation of technologies and other reconfiguration. At the same time, the Department must consistently review environmental quality goals to ensure that they are still being met.



However, despite what necessary changes are made, DEEP must be able to retain a baseline level of staff and funding in order to conduct these core functions and respond to emerging issues.

Some of the necessary changes that are coming are as follows:

### a. Combining Enforcement and Permitting Roles

DEEP has already emphasized hiring dynamic new staff who can cross between previously siloed roles. For example, staff would cover both permitting and enforcement for specific facilities. Staff can take advantage of their familiarity with specific permitting requirements and better understand the necessary enforcement tracking and follow-up. Conversely, staff familiar with enforcement matters can better incorporate corresponding compliance requirements into future permit updates. Combining such roles is intuitive. However, combining such roles should not be an excuse for reduced staffing levels. Staff can only be effective in this cross-dimensional role if they are not overburdened. This should be seen as an opportunity for efficiencies, not as a way to increase the responsibilities of individual staffers while reducing the overall workforce. In fact, combining these roles will yield terrible results if not balanced with maintaining or increasing the number of existing staff.

This should be seen as an **opportunity for efficiencies**, not as a way to increase the responsibilities of individual staffers while reducing the overall workforce.

### b. E-Governance

The expansion of e-governance can streamline the workload of DEEP staffers, reducing administrative tasks and redundancy. E-governance systems must be expanded to include: online permit application submissions; online and publicly-available records of permit applications, permits, corresponding environmental protection and mitigation plans, such as SWPPPs, NOVs and other enforcement documents, etc. E-governance allows DEEP to focus on critical analytical work, while also expanding public availability of information and reducing permitting timelines. However, it should be noted that the transition to e-governance and online availability of public documents requires significant efforts on the front end. E-governance systems must be developed, tested, and improved, hardcopy documents must be uploaded and inventoried, and internal protocols must be revised to incorporate the use of these systems. Resources must be allocated to allow for this transition that will pay out enormous dividends in staff time and resource expenditures over time.



E-governance systems must be developed, tested, and improved, hardcopy documents must be uploaded and inventoried, and internal protocols must be revised to incorporate the use of these systems. **Resources must be allocated to allow for this transition that will pay out enormous dividends in staff time and resource expenditures over time.**

### c. Implementation of Technology

DEEP has already begun to deploy innovative monitoring technologies to better inspect and monitor the operations at permitted, and unpermitted facilities, as a preliminary stage of enforcement. We commend the efforts to modernize the agency's enforcement activities. However, these technologies cannot fully replace the contributions of individual experienced enforcement staff. Not all environmental compliance can be tracked with the use of innovative technologies, and overreliance on self-reporting from facility-owned monitoring equipment is problematic. Significant issues have been identified by "boots on the ground" responding to citizen complaints or inspecting operations. Furthermore, as inspection and monitoring protocols change, it is critical that compliance rates are tracked and compared to ground-truth the effectiveness of these investments.

### d. Opportunities for Partnerships

Many recent proposals look to the privatization of certain roles currently held by DEEP, as a way to reduce the administrative burden. While these measures might be necessary to a certain degree, DEEP must retain the authority and resources to conduct oversight over any such privatization. Similarly, there may be opportunities for partnership with non-profit organizations or academic institutions to support DEEP's programs. For example, DEEP's partnership with UCONN's Center for Land Use Education & Research (CLEAR) on the implementation of the MS4 general permit is an excellent example of DEEP relying on outside, trusted expertise. Save the Sound's Unified Water Study and other water quality monitoring work supports DEEP as well. The Weantinoge Heritage Land Trust partners with the CT Department of Agriculture to preserve farms and farmland soils. Non-profits may also provide assistance in the administration of grant programs.



## Action Items to Protect Connecticut's Environmental Quality, Public Health, and Quality of Life through 2022 Retirements and Budget Cuts

In order to ensure that DEEP is able to continue its strong role in protecting and preserving our natural resources and public health environmental enforcement, in light of the ongoing and aggravated strains on its resources, Save the Sound suggests the following action items.

### Action Items for the Governor and the Connecticut General Assembly

#### 2021 LEGISLATIVE SESSION:

**DEEP MUST HAVE RESOURCES TO RE-HIRE sufficient numbers of inspection and enforcement staff to replace the functionality of those that are anticipated to retire, ultimately retaining or enhancing the Department's enforcement capacity.**

The state budget must sufficiently resource the re-hiring of inspection and enforcement staff to replace the functionality and expertise of retiring staff. The Governor and the Legislature should reconsider OPM Secretary Melissa McCaw's recent charge to take advantage of the upcoming 2022 retirements, and corresponding payroll savings, as a way to cut agency expenditures and fill budget gaps.

**ESTABLISH A TASK FORCE through legislation that will include broad representation.**

It is important that there be a systematic evaluation of the opportunities and challenges posed by upcoming retirements and budget restrictions that includes the voices of the environmental community, the regulated community, and the general public. This Task Force may look at areas for partnerships, best practices for e-governance and transparency, and enforcement tracking.

**DEEP STAFFING AND RESOURCE CONSTRAINTS must not be used as a reason for stripping responsibilities and oversight from the Department in legislative roll-backs.**

Legislative proposals frequently cite the limited resources of the Department as a reason for reducing oversight or responsibilities, rather than addressing the resource issue at its core. As DEEP experiences staffing limitations and budget cuts, the legislature must not capitalize on real resource constraints as an opportunity to pass environmental roll-backs. Instead, the legislature must look at how to fill the gaps in order to ensure efficient administration of environmental laws and policies.



**TRANSITIONS TO E-GOVERNANCE MUST BE PRIORITIZED, including front-heavy resource needs.**

E-governance provides cost and resource saving opportunities for DEEP and will prove beneficial to the regulated community, the environmental community, and the general public. However, the transition to e-governance takes time and resources, as platforms are designed and documents are digitized. Additional resources allocated today for this transition will pay dividends in the future. Further, e-governance tools must not only assist the regulated community in permit applications and compliance, but must be provide information to the general public and the environmental community.

**ONGOING:**

**REFORM OF CONTRACT POLICIES and practices is necessary to allow for innovative non-profit partnerships.**

Current state procurement and contracting policies limit the opportunities for partnerships with non-profit organizations and academic institutions.

**REGULAR LEGISLATIVE OR CEQ REVIEW of compliance rates and environmental quality is necessary throughout changes to agency structure, tools, and budgets.**

The legislature must support annual or systematic reviews of compliance rates and environmental quality that particularly focus on upcoming changes to organizational structure or resources. This review could be accomplished through an expanded scope of CEQ's Annual Report, *Environmental Quality in Connecticut*. Such a review can help support DEEP's request for funding and staffing.

**COMMITMENT TO FUNDING AND STAFFING major projects and initiatives to ensure effective planning and completion.**

Any major projects should be adequately funded and staffed for their entire planning and implementation schedules, such that they be resilient to any broader staffing and budget upheavals. We should not risk uncertainty in the Department's ability to follow-through on critical initiatives, and the Department should be able to confidently plan for future implementation.



## Action Items for DEEP

### **DEEP MUST PRIORITIZE REHIRING of enforcement and inspection staff.**

The Department must prioritize the rehiring of enforcement and inspection staff in order to maintain environmental quality. DEEP must readvocate for positions when they are vacated, as opposed to simply rehiring directly, therefore it is important that the Department strongly voice the need for maintaining these baseline levels of staff, regardless of other agency changes.

### **DEEP MUST PLAN AHEAD to ensure that employees are trained in advance to replace the functionality of senior positions that are anticipated to be vacated.**

Hiring replacement staff is just a part of the necessary effort to retain agency functionality. DEEP must also incorporate deliberate training or mentorship programs that allow for the transfer of knowledge and experience. DEEP might hire replacement staff prior to retirements, or the promotion of staff to higher roles, in order to better enable the transfer of knowledge. DEEP must develop programs in which retiring staff can have sufficient resources to document roles and institutional knowledge, or directly train replacements.

### **DEEP MUST MAKE COMPLIANCE AND ENFORCEMENT DATA transparent and available to the public to allow citizens and communities to understand the threats to their communities and take action.**

As part of the implementation of e-governance, DEEP must make compliance and enforcement data transparent and available to the public. This will ease administrative burdens on strained agency staff, as well as enable citizens to understand the activities in and threats to their communities and empower them to voice their concerns. E-governance must not just be seen as a way to streamline permitting, but rather it is also critical to empower citizens with information. This is especially true if DEEP transitions to general permits or permitting by regulation for several permitting schemes, and if DEEP staff are less able to take their own enforcement actions.

### **DEEP MUST TRACK COMPLIANCE RATES to ensure continued environmental outcomes as the agency makes necessary changes.**

DEEP must track and publish compliance rates to ensure continued environmental outcomes, especially as the agency reconfigures staffing roles and permitting schemes. Tracking compliance rates and environmental outcomes will ensure that any necessary changes have





not negatively impacted the environment and public health. If compliance or environmental outcomes decline, then the Department can use this data to identify where improvements and reevaluation is needed. Compliance rate metrics must be publicly available.

**DEEP MUST PREPARE FOR and retain flexibility to tackle emerging issues.**

As DEEP prepares for changes to agency structure and staffing, it must also prepare for the dynamic needs of emerging issues. After the 2019 PFAS spill into the Farmington River, DEEP redirected a significant number of staff to work primarily on the development of the PFAS Action Plan, away from their previous responsibilities. We cannot know what emerging issues we will face in the coming years, but it is inevitable that urgent needs will arise and staffing must be sufficient to address the needs of current and emerging issues.

**DEEP MUST EXPLORE RECONFIGURATION of staffing and responsibilities for efficiency, while still maintaining baseline staffing levels.**

As discussed above, DEEP has considered combining certain roles in order to take advantage of shared knowledge bases and make certain roles more efficient. However, combining responsibilities will only be effective if those staff are not overwhelmed. Therefore, while DEEP must explore these opportunities, these changes cannot result in overwhelmed staff at lower numbers that cannot effectively do critical enforcement work.

**DEEP MUST RETAIN OVERSIGHT and ensure transparency wherever responsibilities are privatized.**

There have been recent efforts to privatize responsibilities that were previously under the helm of DEEP (i.e., reliance on LEPs in the forthcoming release-based remediation system). Privatization of such roles must be considered cautiously, as there are very real concerns with private oversight of environmental compliance. If privatization is deemed absolutely necessary, DEEP must retain oversight and enforcement abilities. Further, there must be robust public transparency.

**DEEP MUST BUILD RESOURCE RESILIENCY into every major program area.**

This is an opportunity for DEEP to evaluate all major program areas to determine how their goals can be pursued through upcoming resource constraints. It is imperative that major environmental initiatives can be carried out, without fits and starts.



## Endnotes

- 1 Upon retirement after that date, employees will not be guaranteed a minimum cost-of-living adjustment (COLA) on their pensions, and the first potential COLA would not be applied until 30 months after retirement, as opposed to 12 months. Therefore, we expect a significant percentage of eligible employees to take advantage of their eligibility and retire to maintain greater benefits.
- 2 Mark Pazniokas, "Change is coming, whether people like it or not," CT Mirror, July 24, 2019, <https://ctmirror.org/2019/07/24/change-is-coming-whether-people-like-it-or-not/>.
- 3 Ibid.
- 4 <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/09-2020/Governor-Lamont-Announces-Government-Efficiency-Study>
- 5 Keith M. Phaneuf, Lamont tells CT agencies to prep deep cost cuts for next budget, CT Mirror, Aug. 17, 2020, <https://ctmirror.org/2020/08/17/lamont-ct-agencies-prep-deep-cost-cuts-next-budget-covid/>. This fiscal year is projected to run \$2.5 billion in the red, and the subsequent two fiscal years are project to each run over \$3 billion in deficits, equivalent to 15% of annual operating costs. Id.
- 6 Id. OPM Secretary Melissa McCaw wrote: "We are entering a time of restraint in terms of what we can reasonably propose for new initiatives or expenditures. . . . As a result, we will need to be flexible and creative in meeting the needs of the state." Id.
- 7 Id. It is reported that McCaw "directed agencies to find ways to capture that potential payroll savings by managing with fewer personnel." Id.
- 8 Mark Pazniokas, "Change is coming, whether people like it or not," CT Mirror, July 24, 2019, <https://ctmirror.org/2019/07/24/change-is-coming-whether-people-like-it-or-not/>.
- 9 Data provided by Betsey Wingfield on June 19, 2020.
- 10 U.S. Environmental Protection Agency, Region 1, Boston, State Review Framework: Connecticut, Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2016, Final Report (May 24, 2018), available at <https://www.epa.gov/sites/production/files/2018-06/documents/srf-rd3-rev-ct.pdf>.
- 11 See also <https://portal.ct.gov/CEQ/AR-19-Gold/2019-CEQ-Annual-Report-eBook/Compliance>.



12 While these enforcement statistics must be considered in light of changing enforcement priorities and programs, including targeted efforts that have resulted in spikes during certain years, as well as the Commissioner's preference for certain types of enforcement actions, the data still provides metrics by which we can see general trends towards informal enforcement actions and a reduction in overall facility inspections.

13 <https://portal.ct.gov/DEEP/Enforcement/Reports/Annual-Environmental-Reports>.

14 Environmental Integrity Project, Less Enforcement: Communities at Risk (Feb. 26, 2019), available at <https://environmentalintegrity.org/reports/less-enforcement-communities-at-risk/>.

15 Id. at 6.

16 The Environmental Integrity Project explains: "President Trump has repeatedly proposed cutting the EPA's budget much further, while reducing the federal agency's oversight and enforcement responsibilities. The EPA's strategic plan for 2020 promises to "restore authority to the states through cooperative federalism," while "sharply refocus[ing]" EPA on supporting states. "Cooperative federalism" is a slogan that is often used to legitimize the transfer of more environmental authority from EPA to state governments. The Trump Administration wants the public to believe that EPA can step back without harm to public health or the environment because states have shown they can pick up the slack." Environmental Integrity Project, The Thin Green Line: Cuts in State Pollution Control Agencies Threaten Public Health 3 (Dec. 5, 2019), available at <https://environmentalintegrity.org/reports/the-thin-green-line/> (internal citations omitted).

17 <https://portal.ct.gov/DEEP/About/20-by-20/20-by-20>.

18 [https://portal.ct.gov/-/media/DEEP/20\\_by\\_20/20BY202019Juneslidespdf.pdf](https://portal.ct.gov/-/media/DEEP/20_by_20/20BY202019Juneslidespdf.pdf).

19 Data provided by Betsey Wingfield on June 19, 2020.

20 Data provided by Betsey Wingfield on June 19, 2020.

21 Data provided by Betsey Wingfield on June 19, 2020.

22 DEEP staff reported the following time frames for enforcement staff to become effective and independent: 5-7 years for air inspection staff; at least 4 years for municipal water engineering staff; 3-5 years for EnCon enforcement officer; and, generally, 3 years for a good performer to reach EA2 staff level.