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SCHALLER, J., dissenting. I would affirm the judgment of the trial court dismissing this administrative appeal for lack of jurisdiction because I disagree with the majority conclusion that the commissioner's rejection for insufficiency was a final judgment in a contested case giving the trial court jurisdiction to entertain the appeal.

As a matter of law, I believe the majority's conclusion that a contested case exists and that the applicant was entitled to a hearing is incorrect. The majority states that it was improper for the commissioner to issue a rejection without a hearing because under § 22a-371, the commissioner was required to give the applicant an opportunity to remedy any deficiencies or request that the application be deemed complete and then hold a hearing before rendering a final decision. The majority further concludes that the commissioner improperly used § 22a-3a-2 (e), a regulation of ''general applicability'' in rejecting the application in this case. The majority offers its view that ''[t]he commissioner should have made his determination pursuant to § 22a-377 (c)-2 (a) (3) of the regulations because that is a regulation that specifically relates to the Water Diversion Policy Act.

I disagree with both of these conclusions. With regard to § 22a-371, the majority decision, in essence, revokes the authority of the commissioner to make a threshold determination, under § 22a-3a-2 (e), of the viability of an application. I am not aware of any valid basis in statutory interpretation or other law that allows a court effectively to eliminate § 22a-3a-2 (e) from the regulations and, in the process, to deprive the commissioner of the authority to screen applications for fundamental compliance. With reference to § 22a-377 (c)-2 (a) (3), the majority overlooks the fact that § 22a-3a-2 (e) and this regulation perform entirely different functions. I conclude that the two regulatory sections are not distinguished as general versus specific, but rather operate at different stages of the application process. This conclusion is consistent with the well-settled rule of statutory construction, also applicable to regulations, that different sections should be construed in a manner that achieves harmony. See *Department of Income Maintenance* v. *Watts*, 211 Conn. 323, 328, 558 A.2d 998 (1989) (noting principle of statutory construction ''that statutes in apparent conflict should be construed so as to achieve harmony between them'' and that statutes ''must be construed, if possible, so that both will be operative'').

On the basis of on my reading of the applicable statutes and regulations, I conclude that § 22a-3a-2 (e) provides the commissioner with two options when faced with an insufficient application. The commissioner may

reject an application as insufficient if it does not meet governing provisions of law or is so manifestly insufficient, for example, when the applicant does not have sufficient interest or standing, that further proceedings are not possible. Under § 22a-3a-2 (e), the commissioner, however, may also deem the application sufficient or not reject it under this subsection. In that event, the regulation provides that nothing shall preclude the commissioner from requiring additional information from the applicant. Should the commissioner choose not to reject the application, it is implicit that he has determined that, while he may need more information before ruling on the application, it is not so defective that it must be rejected. I conclude, therefore, that § 22a-3a-2 (e) is a threshold regulation that allows the commissioner either to reject an application or to keep it active, with the option to request more information.

The next step in the analysis is to determine how the commissioner proceeds to procure additional information. I believe that §§ 22a-371 and 22a-377 (c)-2 (a) (3) are applicable here. Section 22a-371, entitled ''request for additional information,'' applies when the commissioner decides to not reject the application but also wants more information. Consistent with § 22a-3a-2 (e), § 22a-371 (a) requires that the commissioner, having received the application, determine within one hundred and twenty days whether he requires more information. Section 22a-377 (c)-2 (a) (3) operates as a corollary to this, providing that if the commissioner requests information pursuant to § 22a-371 (a), the applicant must provide it within four months. It is clear that § 22a-377 (c)-2 (a) (3) serves a different function from the ''gate keeping'' purpose of § 22a-3a-2 (e). While the majority contends that § 22a-377 (c)-2 (a) (3) specifically governs applications such as the one at issue, I believe that it applies only after an application has passed the threshold determination of § 22a-3a-2 (e). At that point, the commissioner has decided to maintain the application, subject to requesting more information. The commissioner then may request more information, under § 22a-371 (a), as he considers the application. As a counterpart, § 22a-377 (c)-2 (a) is designed to provide the applicant with a limited period of time in which to produce the requested material.

I next address the hearing requirement. I first note that in addition to the functions noted, § 22a-377 (c)-2 (a) (3) goes on to state that if this information is not provided, the commissioner will return the application in accordance with § 22a-371 (b). Section 22a-371 (b) provides that in the absence of the information, the commissioner shall provide a tentative decision and then hold a hearing. On the basis of this construction of the statute and regulations, I believe that the hearing requirement in § 22a-371 (b) is implicated only when the commissioner decides not to reject the application under § 22a-3a-2 (e), requests more information under

§ 22a-371 (a), and is not provided with it under § 22a-377 (c)-2 (a). At that point, a hearing is appropriate because the commissioner, having decided to maintain the application, has determined that a decision can be rendered on the application and has received all the information he can expect from the party. If the commissioner tentatively denies the application for lack of information or otherwise, a hearing is necessary in order to determine how to proceed.

I note that this reading of the provisions is also consistent with the appeals provision, § 22a-374. This section, in part, allows an appeal to be taken when the commissioner returns an application as incomplete pursuant to § 22a-371 (b). Under this provision, an applicant can appeal from the commissioner's decision regarding the completeness of the application after the commissioner has first decided to maintain the application pursuant to § 22a-3a-2 (e) and then rendered his tentative judgment on it. An appeal is appropriate at that time because the commissioner has already determined that the application is sufficient to enable a decision to be made.

On the basis of the foregoing, I conclude that when the commissioner rejects an application outright under § 22a-3a-2 (e), § 22a-371 does not come into play. No hearing, therefore, is required in that situation. Furthermore, the § 22a-374 right to appeal is not implicated in such a case because it rests upon § 22a-371. This interpretation falls within our well-settled canon of statutory construction that statutes, and regulations, in apparent conflict should be construed in a manner that achieves harmony between them. See *Department of Income Maintenance* v. *Watts*, supra, 211 Conn. 328. In the present case, I would conclude, contrary to the majority, that a hearing was not required because the commissioner decided to reject the application as insufficient under § 22a-3a-2 (e). Without the right to a hearing, the trial court lacked jurisdiction to hear the appeal.

I also disagree on a procedural level with the majority resolution of this case. I begin by noting that at its core, the plaintiff's appeal actually challenges the failure of § 22a-3a-2 (e) to provide for a hearing when the commissioner decides to reject an application as insufficient. On appeal, however, the plaintiff has failed to raise a due process challenge to the regulation, or to attack § 22a-3a-2 (e) by any other means. Instead of challenging § 22a-3a-2 (e), the plaintiff has launched an indirect attack on the regulation. It contends that there is no meaningful distinction between an insufficiency rejection pursuant to that regulation and an incompleteness determination pursuant to General Statutes § 22a-371, and that the right to a hearing overrides the regulation.

While the majority apparently accepts that assertion, I do not believe that the plaintiff's implicit attack gives us license to determine the validity or viability of § 22a-3a-2 (e). Absent a specific claim challenging the applica-

bility of § 22a-31-2 (e) or the failure of § 22a-3a-2 (e) to provide for a hearing, these issues are not before us. Since the plaintiff has not challenged § 22a-3a-2 (e) in this proceeding, our function is only to provide an interpretation based on our well-settled rules of statutory construction that makes sense of the regulation, considered in light of the entire statutory and regulatory scheme. See id. Consistent with our responsibility under these circumstances, I interpret § 22a-3a-2 (e) to enable the commissioner to reject an application that fails to meet the fundamental requirements for consideration.

I also disagree with the majority decision because of the practical effect it will have on the commissioner's discretion in the application process. I first note that § 22a-3a-2 (e) obviously serves a vital function in allowing the commissioner to exercise the discretion authorized by statute to reject, without the necessity of a public hearing, applications that are deficient because they fail to include basic predicates that are essential to consideration of the merits of the application. It would be bizarre, indeed, if the commissioner were to be required to hold a public hearing on each and every application, no matter how deficient. For example, must the commissioner hold a public hearing before rejecting an application that failed to contain the applicant's full name, capacity, address, and signature? Similarly, if an individual citizen were to submit an application for diversion of a water source without further explanation, would that individual be entitled to a public hearing, simply because an application was filed?

Despite the importance of § 22a-3a-2 (e) as a regulation dealing with threshold requirements, it would appear that under the majority opinion, no rejection of any application can take place without a public hearing because the result of the decision is to bypass and effectively to eliminate the commissioner's discretion. I believe that this result is incorrect because the commissioner's discretion is properly vested in him by virtue of the applicable statutes through § 22a-3a-2 (e) and is essential to enable the commissioner to carry out the purposes of the Water Resources Act.

Moreover, I believe it is improper to require the commissioner to hold public hearings on fundamentally deficient applications before rejecting them because such a hearing creates § 4-183 appeal rights for applicants who have failed to conform to even the basic requirements for administrative action. Applicants who fail to provide the information necessary to meet the fundamental requirements of form should not be entitled to a § 4-183 appeal because that information is necessary to the actual consideration of the application. As a result, an appeal to the trial court at this stage would not address any substantive decision. Rather, it would mire the courts in matters of administrative form and preliminary conditions that must be met before any

substantive action can be taken. I believe such issues should be dealt with prior to any appeal to the courts in the absence of a direct challenge to the regulation in question. As such, I do not believe that an applicant should be able to appeal from the commissioner's decision without meeting the threshold requirements that are necessary to enable a determination on the merits of the application.

I would also note that this concern is born out in the present case, in which the plaintiff has failed to show that it can satisfy the application requirements without joining the NLWWPCA. The plaintiff has failed to do so because of the evident practical problem it faces in this case, namely, that the proposed user whose signature is required on the application, the NLWWPCA, is a competitor and unlikely to join voluntarily in the application. The plaintiff undoubtedly suspects that if it must join that entity in the application process, it will not be able to obtain a determination on the merits of its application. I do not believe that such problems can legitimately be dealt with in the present appeal.

Despite my present concerns, the majority states that my construction is ''an invitation to reject as insufficient any application not consonant with department policy.'' The majority further contends that the return without rejection of the New London Water Control Authority's application and the rejection of the plaintiff's application illustrate the inequitable exercise of discretionary authority by the commissioner under § 22a-3a-2(e). To the contrary, the actions considered together constitute consistent and fair action. The Miller's Pond application was rejected without a request for further information on that application because it was fatally deficient in lacking a fundamental prerequisite—the acquiescence of the water company that was the proposed user of the water that Miller's Pond sought permission to divert. Without that basic consent to the application, the Miller's Pond application was meaningless. On the other hand, New London's application was filed by the actual proposed user involved and therefore complied with basic requirements. No hearing of the Miller's Pond application could remedy the fatal deficiency. The Miller's Pond application could not go forward unless it secured the agreement of the ultimate user of the water.

For all the foregoing reasons, I conclude that the rejection of the plaintiff's application for insufficiency did not confer jurisdiction on the trial court for purposes of an appeal under the UAPA. I would affirm the judgment of the trial court.