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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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BORDEN, J., concurring and dissenting. The majority concludes that: (1) the plaintiff, Fort Trumbull Conservancy, LLC, has standing under General Statutes § 22a-16[1] to bring an action against all three defendants, New London Development Corporation (corporation), Antonio H. Alves, the New London building official, and the city of New London (city), for all of the harms alleged in the complaint regarding the demolition of certain buildings; but (2) as to the two municipal defendants, namely, Alves and the city, the trial court's dismissal of the plaintiff's action for lack of standing constituted harmless error because the complaint against them would be subject to a motion to strike for lack of a substantive cause of action. I concur in part with the majority's first conclusion. Regarding the majority's second conclusion, I disagree that it is appropriate for us to consider, in the present appeal, whether the plaintiff's complaint would be subject to a motion to strike, because the issues that would be raised by such a motion have not yet been presented to either the trial court or this court. In this connection, I also disagree with the majority's analysis that the substantive question of whether the complaint states a cause of action against the municipal defendants is controlled by our decision in *Nizzardo* v. *State Traffic Commission*, 259 Conn. 131, 159, 788 A.2d 1158 (2002).

I

STANDING

I agree with the majority that the plaintiff has standing to bring an action against all of the defendants under § 22a-16. I disagree, however, that this standing extends to all of the harms asserted by the plaintiff.

Because this case involves statutory standing under § 22a-16, not classical standing, the entire standing inquiry necessarily involves some interpretation of the statute under which the party seeks relief. Keeping this context in mind, I begin by emphasizing two principles regarding the law of standing, as applied to the present case, which the majority does not emphasize. First, every statutory standing inquiry focuses on whether the *plaintiff* is the proper party to invoke the machinery of the courts, and whether the interest that the plaintiff seeks to vindicate is arguably within the zone of interests protected by the applicable statute. *Med-Trans of Connecticut, Inc.* v. *Dept. of Public Health*, 242 Conn. 152, 160, 699 A.2d 142 (1997); *Mystic Marinelife Aquarium, Inc.* v. *Gill*, 175 Conn. 483, 492, 400 A.2d 726 (1978). Second, the present action against the municipal defendants is precisely the type of independent action under § 22a-16 that we specifically anticipated in our decision in *Nizzardo* v. *State Traffic Commission*,

supra, 259 Conn. 159.

Application of these principles and authorities regarding statutory standing to the plaintiff's complaint leads me to conclude that it sufficiently alleged facts to afford it standing to bring an action against all three defendants under § 22a-16. Section 22a-16 affords standing to, among others, "any person, partnership, corporation, association, organization or other legal entity . . . ." This is a partial list of the plaintiffs to whom or which the statute affords standing to bring an action. The plaintiff unquestionably comes within that language, and I do not understand the majority to contend otherwise. Indeed, we have long stated that a basic purpose of the Connecticut Environmental Protection Act (act), General Statutes § 22a-14 et seq., "is to give persons standing to bring actions to protect the environment . . . ." *Mystic Marinelife Aquarium, Inc.* v. *Gill*, supra, 175 Conn. 499. "The broad language of the act gives any person the right to bring an action for declaratory and equitable relief against pollution." *Belford* v. *New Haven*, 170 Conn. 46, 53, 364 A.2d 194 (1975), overruled in part, *Manchester Environmental Coalition* v. *Stockton*, 184 Conn. 51, 57 n.7, 441 A.2d 68 (1981). Thus, the plaintiff is within the class of persons contemplated by the statute and, therefore, is a proper party to invoke the machinery of the courts thereunder.

In addition, under the rubric of standing, this is precisely the type of case that we anticipated in *Nizzardo* v. *State Traffic Commission*, supra, 259 Conn. 159. Contrary to the present case, that case did not involve an independent action under § 22a-16, but an attempted intervention under General Statutes § 22a-19. In *Nizzardo*, we concluded that the plaintiff did not have standing to intervene in the proceedings of the defendant traffic commission because the commission had no environmental jurisdiction to adjudicate the environmental issues that the plaintiff sought to raise.[2] Id. We stated therein, however, that "[t]he establishment of the right to bring an independent action to address environmental concerns lends credence to our conclusion that the issues appropriately raised by intervention pursuant to § 22a-19 are limited to those within the jurisdiction of the particular agency. If a party wants to raise environmental concerns that are beyond the scope of authority of a particular agency, the act provides a means for doing so, namely, instituting an independent action pursuant to § 22a-16." Id. Thus, in *Nizzardo*, we specifically anticipated that, as in the present case, a party would have standing to bring an independent action under § 22a-16 against an agency or agent that did not have environmental jurisdiction, such as these municipal defendants.

These conclusions do not, however, end the standing inquiry. The plaintiff must also seek to vindicate an interest that is arguably within the zone of interests

that the statute involved seeks to protect. *New England Cable Television Assn., Inc.* v. *Dept. of Public Utility Control*, 247 Conn. 95, 111–12, 717 A.2d 1276 (1998); *Med-Trans of Connecticut, Inc.* v. *Dept. of Public Health*, supra, 242 Conn. 159. Thus, ''standing is conferred only to protect the natural resources of the state from pollution . . . .'' *Mystic Marinelife Aquarium, Inc.* v. *Gill*, supra, 175 Conn. 499. That requirement is drawn directly from the language of General Statutes §§ 22a-15 and 22a-16. Section 22a-15 declares the policy of the act: ''[T]here is a public trust in the air, water and other natural resources of the state of Connecticut and that each person is entitled to the protection, preservation and enhancement of the same . . . [and] it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction.'' Section 22a-16 affords standing to any person or entity to sue any private or public person or entity, ''acting alone, or in combination with others, for the protection of the public trust *in the air, water and other natural resources of the state* from unreasonable pollution, impairment or destruction . . . .'' (Emphasis added.) See footnote 1 of this opinion for the text of § 22a-16. Thus, in order for the plaintiff to have standing to bring an action against *anyone* under § 22a-16, the plaintiff must be seeking to protect ''the air, water [or] other natural resources of [this] state . . . .'' On this aspect of the analysis of the plaintiff's standing, I depart from the majority.

As I read the complaint in the plaintiff's favor, as we must at this stage of the proceedings, the plaintiff raises four sets of environmental harms: (1) excessive use of energy in demolishing the buildings at issue; (2) excessive use of energy in this state and elsewhere resulting from the demolition; (3) local air pollution resulting from the demolition process; and (4) overfilling of landfills as the dumping grounds of the debris from the demolition process. At oral argument before this court, the plaintiff refined those claims by specifying that, by its reference to the excessive use of energy, it meant the excessive use of *oil* as a *source* of energy, presumably in enabling the trucks, which are to cart the demolition debris away from the demolition site, to operate, and also, presumably, the use of such oil in operating demolition machinery. In my view, only the third set of harms, namely, the pollution of the air in New London, is arguably within the zone of interests sought to be protected by § 22a-16, because only that air is within the meaning of the statutory language, ''the air, water and other natural resources of the state . . . .''[3] Put another way, I would conclude that neither the oil consumed in the demolition process nor the overfilled landfills complained of by the plaintiff are ''natural resources of the state,'' within the meaning of § 22a-16. Moreover, this conclusion would limit the plaintiff's standing in its

entirety, as against both the corporate defendant and the municipal defendants, contrary to the conclusion of the majority that the plaintiff's standing extends to all of the harms alleged against both sets of defendants.

It is axiomatic that whether particular substances constitute "natural resources of the state" within the meaning of § 22a-16 presents a question of statutory interpretation. *Paige* v. *Town Plan & Zoning Commission*, 235 Conn. 448, 454, 668 A.2d 340 (1995); *Red Hill Coalition, Inc.* v. *Town Plan & Zoning Commission*, 212 Conn. 727, 735, 563 A.2d 1347 (1989). Fortunately, in deciding whether the oil or the landfills constitute natural resources of this state, we are not required to write on a blank slate, because both *Red Hill Coalition, Inc.*, and *Paige* give us guidance. In *Red Hill Coalition, Inc.* v. *Town Plan & Zoning Commission*, supra, 735–40, we concluded that "prime agricultural land" is not such a resource within the meaning of the act. In *Paige* v. *Town Plan & Zoning Commission*, supra, 454–63, we concluded that "trees and wildlife" are such natural resources, irrespective of whether they have economic value. Of more importance to the present case, moreover, in *Paige*, we distinguished *Red Hill Coalition, Inc.*, as follows: "Prime agricultural land is different from what is claimed to be a natural resource in this case. Prime agricultural land is a subcategory of land subject to human alteration that is kept barren of plant and animal life that would otherwise eventually live on it through natural succession. Agricultural land is not naturally occurring." Id., 463. Thus, reading *Red Hill Coalition, Inc.*, and *Paige* together, I would conclude that, as the defendants in the present case suggested at oral argument before this court, an essential element of a natural resource under the act is that it be a resource occurring naturally that has not been subject to human alteration.

Applying this definition to the plaintiff's claims in the present case, I would conclude, further, that neither the oil consumed nor the landfills alleged by the plaintiff to be polluted by the defendants' conduct are natural resources within the meaning of § 22a-16. The oil at issue obviously is refined oil, not occurring in its natural condition. The same may be said of the landfills. They are, like the agricultural land considered in *Red Hill Coalition, Inc.*, not a natural resource, because they obviously are land that is the result, not of natural occurrence, but of human alteration. Furthermore, to the extent that the plaintiff relies on the use of oil outside of Connecticut, that oil cannot possibly be a natural resource "of [this] state . . . ."[4] General Statutes § 22a-16. Therefore, the plaintiff does not have standing under § 22a-16 to seek to protect those resources, because they are not "natural resources of the state . . . ."

By contrast, however, the air in New London, which

the plaintiff asserts will be polluted by virtue of the debris and automotive fumes resulting from the demolition process, is a natural resource of the state. Thus, the plaintiff does have standing to seek protection of that resource.[5]

II

THE MAJORITY'S MOTION TO STRIKE ANALYSIS

The majority concludes that, although the trial court improperly dismissed the action for lack of standing, that was harmless error because ''the plaintiff has failed to allege sufficiently a cause of action against Alves,'' and because ''its claims against the city are derivative of the claims against Alves, those claims also legally are insufficient.'' Thus, the majority asserts, ''the claims . . . properly would have been subject to a motion to strike.'' The problem with this conclusion is that the municipal defendants have never filed a motion to strike the complaint,[6] the trial court has never considered whether the complaint is legally sufficient, and, obviously, that fundamental legal question has never even been briefed or argued, either in the trial court or in this court. In my view, therefore, it is inappropriate for the majority to consider that question.

Before continuing with this contention, however, I think it would be helpful to specify precisely how the majority reaches the conclusion that the plaintiff has not stated a cause of action against the municipal defendants. The majority's conclusion is based entirely on our decision in *Nizzardo* v. *State Traffic Commission*, supra, 259 Conn. 131. I think it is fair to say that the sum and substance of the majority's analysis in this regard is the following passage from the majority opinion: ''In *Nizzardo* . . . we concluded that the act did not expand the jurisdiction of administrative agencies to include consideration of environmental matters not otherwise within their jurisdiction. [Id., 155–56]. As the plaintiff conceded in its complaint, '[n]either the [d]emolition [c]ode, city ordinances, nor [the Building Official and Contracting Administrator's Code] require [Alves] to consider feasible and prudent alternatives or any other related analysis before issuance of a demolition permit.'[7] Accordingly, to the extent that the plaintiff seeks a declaratory judgment that Alves should be required to consider the environmental ramifications of demolition before issuing the demolition permits, such relief cannot be granted consistent with our holding in *Nizzardo* that administrative bodies have no duty—indeed, no authority—under the act to consider environmental matters not otherwise within their jurisdiction.''

In my view, *Nizzardo* does not and cannot control the question of whether the plaintiff has stated a substantive cause of action under § 22a-16. *Nizzardo* involved: (1) the standing of the plaintiff, and not

whether he had stated a substantive cause of action; (2) intervention under § 22a-19, and not standing to bring an independent action under § 22a-16;[8] and (3) the proper interpretation of § 22a-19. It is axiomatic that whether a plaintiff has standing and whether a plaintiff has made out a substantive cause of action involve two separate and distinct inquiries. "When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue *and not . . . whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded*." (Emphasis added.) *Mystic Marinelife Aquarium, Inc.* v. *Gill*, supra, 175 Conn. 492. Thus, I simply do not see how a case that involved statutory standing to intervene under § 22a-19 can, ipso facto, control the different question of whether the plaintiff's complaint stated an independent cause of action under § 22a-16.

Thus, the question of whether the plaintiff has stated a cause of action against the municipal defendants would involve, for example, an inquiry into both the language and purpose of § 22a-16.[9] Indeed, as the majority acknowledges, we implicitly permitted, and considered on its merits, a claim of pollution by a municipality in *Waterbury* v. *Washington*, 260 Conn. 506, 800 A.2d 1102 (2002), despite the fact that the city of Waterbury had not enacted environmental ordinances.

Contrasting *Waterbury* with the present case simply underscores the notion that, whether a municipality may be held liable for pollution under § 22a-16 depends on the facts of the case, and whether those facts make it a polluter under § 22a-16. Thus, the question of whether the municipal defendants in the present case may be held liable for pollution under § 22a-16—which is the question that a motion to strike would raise—necessarily involves the interpretation of § 22a-16 as applied to the facts alleged in the complaint. Significantly, the majority's entire analysis, quoted previously, fails to perform this interpretive task.[10]

This brings me back, then, to the procedural question of whether it is appropriate for the majority to dispose of this case on what is essentially an alternate ground to affirm the trial court's judgment, namely, that the plaintiff has not stated a valid cause of action against the municipal defendants. I contend that it is not appropriate.

Although, I agree that, when and if a motion to strike were filed, it would *probably* be appropriately granted; see footnote 9 of this opinion; *how* we decide questions of law is just as important as *what* we decide. It is important that this court, which insists on litigants adhering to fundamental procedural norms, do so itself.

We have often rejected attempts by litigants in this court to raise nonconstitutional issues that were never

presented to the trial court, characterizing them as unfair ''ambuscades'' of the trial court. See, e.g., *In re Jonathan S.*, 260 Conn. 494, 505, 798 A.2d 963 (2002); *State* v. *Meehan*, 260 Conn. 372, 390, 796 A.2d 1191 (2002); *State* v. *Berube*, 256 Conn. 742, 748, 775 A.2d 966 (2001). We have also refused to consider claims of an appellate litigant that it had not adequately briefed in this court. See, e.g., *State* v. *DeJesus*, 260 Conn. 466, 477, 797 A.2d 1101 (2002); *Rocque* v. *Northeast Utilities Service Co.*, 254 Conn. 78, 87, 755 A.2d 196 (2000). Indeed, we have even criticized, and reversed, the Appellate Court for reaching out and deciding a case before it on a basis that had never been raised or briefed. See, e.g., *Lynch* v. *Granby Holdings, Inc.*, 230 Conn. 95, 98–99, 644 A.2d 325 (1994). Finally, we have severely criticized a trial court for deciding a case, adversely to the plaintiff, on a substantive basis that the court itself raised sua sponte, without affording the parties, and particularly the plaintiff, prior notice and a hearing on that substantive question. See *Sassone* v. *Lepore*, 226 Conn. 773, 776–77, 629 A.2d 357 (1993). Nonetheless, the majority is willing to dispose of the plaintiff's entire case—not just this appeal—on a basis that has never been presented at all in any court in this state.

The majority's approach may well have other negative consequences for our appellate jurisprudence. For example, what will we say to the future appellee who is defending an improperly granted motion to dismiss, and who, in violation of our usual appellate limitations and norms, asks us at oral argument before this court, citing the present case, to decide that the trial court's dismissal was harmless because the plaintiff's complaint was legally insufficient—despite the fact that such an issue had never been raised, briefed or argued in either the trial court or this court? I can think of no legitimate answer to this question.

In addition, the approach of the majority cannot even command the justification of judicial economy. Because the plaintiff's complaint against the corporation still stands, the case must continue in the trial court in any event. It escapes me, therefore, why the majority is so eager to rule the municipal defendants out of the case at this stage of the proceedings. If it is so obvious that the complaint is legally insufficient that it does not even need presentation, briefing and argument on the question, then surely their lawyers would recognize that and move to strike the complaint against them, after a proper remand on the standing issue.

Finally, this brings me to the only case on which the majority relies for its analysis, namely, *McCutcheon & Burr, Inc.* v. *Berman*, 218 Conn. 512, 590 A.2d 438 (1991).[11] In my view, that case offers no support for the majority's analysis, despite the majority's assertion to the contrary.

McCutcheon & Burr, Inc., involved the exact oppo-

site of what the majority does here. It is the exact opposite because, as I explain later in this opinion, in *McCutcheon & Burr, Inc.*, the parties addressed themselves *in substance* to the question that was briefed, argued and decided in both the trial court and this court. By contrast, in the present case, the question of statutory interpretation regarding whether the plaintiff had stated a valid cause of action under § 22a-16 was not addressed in substance either in the trial court or in the present appeal, despite the majority's assertion that it was so addressed.[12]

In *McCutcheon & Burr, Inc.*, the plaintiff, a real estate broker, brought an action against the defendants, certain individuals and their real estate partnership, for a real estate commission based on, inter alia, a written listing agreement governed by General Statutes § 20-325a (b). Id., 514–15. The defendants moved to dismiss the complaint for lack of subject matter jurisdiction on the ground that the listing agreement did not comply with § 20-325a (b) because it had not been signed by all of the owners of the property, and the trial court granted the motion to dismiss on that basis. Id., 517–18.

On appeal, we fully considered, on the basis of the briefs and arguments presented to us, the question of whether the listing agreement was deficient in that respect, and we agreed with the trial court that the listing agreement was so deficient. Id., 522. We noted, however, that this deficiency in who had signed the listing agreement was not a subject matter jurisdictional defect, subject to a motion to dismiss, but, instead, that ''the ruling of the trial court on the motion to dismiss necessitated a *full review of the merits of the underlying issue*, namely, whether the listing agreement satisfied the requirements of § 20-325a (b).'' (Emphasis added.) Id., 526. It was that ruling that we were reviewing in the appeal in *McCutcheon & Burr, Inc.*, and, therefore, the merits of that issue were fully briefed and argued before us. We stated that ''the proper procedural mechanism addressing whether § 20-325a (b) was satisfied would have been a motion to strike under Practice Book § 152 [now § 10-39], rather than a motion to dismiss under Practice Book § 142 [now § 10-30].'' Id. Because, however, the plaintiff had not been prejudiced by the foreclosure of an opportunity to amend its complaint;[13] id., 528; we held that the procedural impropriety was harmless. Id.

The critical difference between *McCutcheon & Burr, Inc.*, and the majority's analysis is this: in *McCutcheon & Burr, Inc.*, the parties, albeit under an improper procedural heading, briefed and argued to both the trial court *and this court* the merits of this court's decision, namely, whether the plaintiff's listing agreement satisfied the substantive requirement of the governing statute, and this court decided that question on the basis of those briefs and arguments. Thus, no party was treated

unfairly by our disposition of the case. In the present case, by contrast, the question of whether the plaintiff's complaint satisfies the substantive requirements of the governing statute, namely, § 22a-16, has never been briefed or argued to the trial court or this court, and the majority has decided that question, to the plaintiff's prejudice, without resort to any such briefing or argument. Put another way, in *McCutcheon & Burr, Inc.*, the parties fully presented to *both* courts the question of whether the plaintiff had a cause of action, but under an incorrect procedural mechanism. In the present case, by contrast, the parties have presented to both courts, under the *proper* procedural mechanism, the only question in the case, namely, whether the plaintiff has standing, but the majority has decided a different question, in a way that is fatal to the plaintiff's claim, that the plaintiff has never been given the opportunity to confront.

I therefore respectfully dissent.

[1] General Statutes § 22a-16 provides in relevant part: "The Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the judicial district wherein the defendant is located, resides or conducts business . . . for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction . . . ."

[2] Two aspects of *Nizzardo* v. *State Traffic Commission*, supra, 259 Conn. 131, are worthy of note. First, it decided the question of the plaintiff's standing as a matter of statutory interpretation of § 22a-19. See id., 148–49. Second, its ultimate holding that one may not intervene to raise environmental issues before an agency that has no environmental jurisdiction; id., 159; also is supported by the notion that, despite the broad language of § 22a-19, the legislature did not intend to require an agency without any environmental jurisdiction—and, therefore, without any environmental expertise—to decide environmental questions. That rationale does not apply, however, to an independent action under § 22a-16, because the legislature clearly has placed such a responsibility on the court as the ultimate decision maker in such an action. See, e.g., *Waterbury* v. *Washington*, 260 Conn. 506, 545–46, 800 A.2d 1102 (2002).

[3] Despite the majority's suggestion to the contrary, this issue has been raised in the present case, at least at oral argument before this court. Both the plaintiff and the defendants addressed themselves, in the context of the standing argument, to the question of whether the plaintiff's contentions regarding oil and landfills are within the contemplation of § 22a-16. Indeed, the defendants contended, in the argument over standing, that the interests sought to be protected by the plaintiff were not resources of the state within the meaning of § 22a-16. In any event, moreover, because we have been squarely presented with the question of the plaintiff's standing under that statute, we are constrained to interpret the statute properly, and are not confined to those specific arguments raised by the plaintiff. In other words, merely because the plaintiff contends, incorrectly, that § 22a-16 confers standing on the plaintiff to assert *all* of its claims, does not mean that we are precluded from concluding that the plaintiff has standing to assert only *some* of its claims.

In this connection, the majority apparently chides me for my questioning during oral argument before this court, taking the unusual step of referring to me by name and quoting from my colloquy with the plaintiff's counsel in my attempt to understand the plaintiff's theory of pollution as alleged in its broadly and imprecisely phrased complaint. See footnotes 16 and 17 of the majority opinion and the accompanying text. In my view, if a litigant

makes oral representations to this court regarding the meaning of its claim, it is irrelevant whether those representations were made in response to questioning, and by whom. In any event, I deem it to be a part of my role as a Justice of this court to attempt to understand what a litigant does mean by such ''vague'' allegations, rather than to attempt to speculate and, perhaps, arrive at an interpretation that the litigant does not intend. See footnote 20 of the majority opinion.

[4] Indeed, the last time I looked, I did not see any oil wells pumping oil from the ground in this state. Although perhaps Texas, Oklahoma and Alaska could claim oil as a natural resource, our state cannot.

[5] This conclusion does not mean, however, that, simply because the plaintiff has standing to raise such a concern, any such pollution would, as a factual matter, rise to the level of ''unreasonable pollution'' of the air, which is what the plaintiff would have to prove in order to prevail on its cause of action under § 22a-16.

[6] Indeed, under the procedural posture of the case in the trial court, the defendants could not have properly filed a motion to strike the complaint, because once they moved to dismiss the case for lack of subject matter jurisdiction, the court was obligated to rule on that question before going any further in the case. See *Federal Deposit Ins. Corp.* v. *Peabody, N.E., Inc.*, 239 Conn. 93, 99, 680 A.2d 1321 (1996).

[7] Significantly, the question of whether the municipal defendants are required to consider ''feasible and prudent alternative[s]'' is a question that does not even arise in a claim under the act, presented under § 22a-16, unless and until the plaintiff has presented, at the trial, a prima facie showing of unreasonable pollution. In that event, General Statutes § 22a-17 (a)—not § 22a-16—provides to the purported polluter ''an affirmative defense, that, considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to the defendant's conduct . . . .'' Thus, not only has the majority gone beyond the standing question in this case, but, as support for that analysis, it relies on an allegation in the complaint regarding an issue that would not even arise until the plaintiff had established a prima facie case at trial.

[8] Indeed, as I have noted, in *Nizzardo* itself we specifically stated that, instead of seeking to intervene under § 22a-19, the plaintiff would have had standing to bring an action against a nonenvironmental agency in an independent action under § 22a-16. *Nizzardo* v. *State Traffic Commission*, supra, 259 Conn. 159.

[9] In this connection, I note that, at least on its face, § 22a-16 arguably could be read to permit such a claim, because the plaintiff could argue that it has stated a claim ''for declaratory and equitable relief against . . . a political subdivision [of the state] . . . acting alone, or in combination with others, for the protection of the public trust in the air . . . from unreasonable pollution . . . .'' General Statutes § 22a-16. I can see, however, powerful arguments on the other side, namely, that, despite the breadth of this language, it was not intended to embrace, as a substantive matter, a nonenvironmental governmental official who was merely acting in compliance with the applicable statutes and ordinances. The language of § 22a-16, ''or in combination with others,'' probably is aimed, not at this type of situation, in which the official's conduct is simply a ''but for'' cause of the alleged pollution, but at the situation in which the pollution caused by two or more actors combines to cause ''unreasonable pollution . . . .'' Indeed, without any briefing or argument on this question, I would be strongly inclined to conclude along these lines. My point is, however, that these are questions that are appropriately addressed, not within the confines of the present appeal, where they have not been briefed or argued, but within the context of a subsequent proceeding in which the plaintiff has had the opportunity to address them.

[10] I acknowledge that some—but not all—of the policy concerns that underlie *Nizzardo* could be applied to the separate question of whether the plaintiff here has stated a claim under § 22a-16. That is quite different, however, from concluding, without the question ever having been briefed or argued, that *Nizzardo* controls that separate question. It is true, as the majority notes, that the parties were instructed to address themselves at oral argument before this court to *Nizzardo*, which was decided after they had filed their briefs in this court, and it is also true that they did so. That instruction, however, was given in the context of the question that the present appeal presented, namely, whether the plaintiff had standing under § 22a-16. It did not ask them to address—and they therefore did not address—either in form or in substance, the separate question of whether,

under the facts of the case and the language of the statute, the plaintiff had stated a cause of action under that statute.

[11] The majority's additional reliance for this analysis on *Middletown* v. *Hartford Electric Light Co.*, 192 Conn. 591, 473 A.2d 787 (1984), is misplaced. In that case, the trial court held a full factual hearing; id., 593; and found the facts adversely to the plaintiff's claim under the act. Id., 600. The trial court's resolution of that fully litigated issue constituted this court's alternate basis for affirmance. Id.

[12] The majority's response to this argument is that the majority ''cannot perceive how a philosophical inquiry into the language and purpose of § 22a-16 would further elucidate this matter.'' In my view, analyzing the language and purpose of a statute is not a philosophical inquiry; it is, instead, necessary to the process of deciding whether a plaintiff has stated a cause of action based on a specific statute.

[13] I acknowledge that, as the majority asserts, it is highly unlikely that the plaintiff in the present case could, if given the opportunity after the granting of a motion to strike, amend its complaint to add facts that would establish a valid cause of action. In my view, that is irrelevant. Because the parties here have never, in substance, briefed or argued the question of whether the plaintiff has stated a cause of action—in contrast to *McCutcheon & Burr, Inc.*, in which they did brief and argue that question in substance—the plaintiff should not be deprived of its right to notice and a hearing on that substantive question simply because the majority has decided, *without* such briefing or argument, that the plaintiff has not stated such a cause of action.