



IN THE MATTER OF : *APPLICATION No. 201103241*
MSW ASSOCIATES, LLC : *AUGUST 13, 2015*

PROPOSED FINAL DECISION

***I
SUMMARY***

MSW Associates, LLC has applied to the Department of Energy and Environmental Protection (DEEP or the Department) for a permit to construct and operate a solid waste facility at 14 Plumtrees Road in Danbury. The Department issued a Notice of Tentative Determination to approve the Application and a petition for hearing was filed, initiating the hearing process.

The parties to this matter are MSW Associates, LLC, Staff of the Waste Engineering and Enforcement Division of the DEEP Bureau of Materials Management and Compliance Assurance (Staff), the City of Danbury, the Housing Authority of the City of Danbury, and the Housatonic Resource Recovery Authority.

The testimony and exhibits presented by the parties indicates that the proposed facility, if constructed and operated in accordance with the terms and conditions of the proposed Draft Permit ([Appendix 1](#)), as modified herein, will comply with all relevant statutory and regulatory criteria including, but not limited to those found in General Statutes §§ 22a-208 and 22a-208a and Regs., Conn. State Agencies §§ 22a-209-9 and 22a-209-10. Based on this substantial evidence, I recommend that the Commissioner issue the proposed Draft Permit, with the modifications proposed herein, as a final permit.

II ***DECISION***

A ***FINDINGS OF FACT***

The evidentiary record in this matter is extensive, with more than 130 exhibits admitted as full exhibits and nine days of evidentiary hearing, captured over 1637 pages of transcripts. As a result, more than one source may support a finding of fact. Citations to the record in this decision may cite only some of the documents or pages of testimony that support a finding. As the finder of fact, I have broad discretion to give weight to the evidence I find most complete, credible, and relevant. See, e.g., *Windels v. Environmental Protection Commission*, 284 Conn. 286, 291 (2007)(trier of facts privileged to adopt whatever testimony he reasonably believes to be credible). My reliance on certain sources does not imply that other sources in the record do not also support that finding, but rather that the sources cited are sufficient.

I ***Procedural Facts¹***

1. On May 6, 2011, the Department received an application for a permit to construct and operate a solid waste facility at 14 Plumtrees Road in Danbury (Application). The applicant, MSW Associates, LLC (Applicant) published notice of the Application in the Danbury News-Times on May 6, 2011. (Exs. DEEP-1, 3.)
2. Department Staff issued a letter indicating that “a preliminary review of the application has been conducted, and the Department has determined that the application is sufficient” on May 20, 2011. (Ex. DEEP-4.)
3. On September 9, 2011, the Department’s Office of Adjudications received a cover letter and pleading entitled “Motion to Intervene by City Of Danbury.” On September 23, 2011, the City of Danbury (City) was granted status as an intervening party. (Exs. DEEP-5-6.)

¹ Certain findings of fact in this section, or portions thereof, are based on the docket file in this matter, consisting of pleadings, rulings, notices and other correspondence between the parties and the Office of Adjudications. The docket file is available for inspection by contacting the Office of Adjudications.

4. On September 20, 2011, the Department's Office of Adjudications received a cover letter and pleading entitled "Motion to Intervene by the Housing Authority of the City of Danbury." The Housing Authority of the City of Danbury (HACD) was granted status as an intervenor on September 23, 2011. (Exs. DEEP - 7-8.)
5. On January 27, 2012, during its technical review of the Application, Department Staff requested that the Applicant provide additional information on a number of topics. On March 9, 2012, the Applicant responded to the Staff's request. (Exs. DEEP-18, 20.)
6. As part of the technical review of the Application, Department Staff determined that neither the Applicant, nor anyone associated with the Application, had a history of noncompliance with environmental statutes or regulations. (Ex. DEEP-21.)
7. Staff again requested additional information from the Applicant on November 30, 2012. Among the information requested was information on traffic congestion and safety prompted by correspondence from the City. (Ex. DEEP-23.)
8. Additional information was provided to Staff by the Applicant on January 31, 2013. Included in this information was an updated traffic study prepared by Fredrick P. Clark Associates, dated December 17, 2012. This traffic study updated an earlier traffic study for a proposed 500 ton per day solid waste facility that would have been located on property adjacent to the current proposal, for which an application was filed to the Danbury Planning Commission in 2007. (Exs. DEEP-25F, APP-27.)
9. After completing its technical review of the Application, Department Staff reached the tentative determination that the application should be approved. A draft permit was prepared and a Notice of Tentative Determination was published in the Danbury News Times on December 2, 2013. (Exs. DEEP-29-30.)
10. The Department's Office of Adjudications received a petition for hearing on December 27, 2013.
11. On December 30, 2013, the Housatonic Resource Recovery Authority (HRRA) filed a request for intervening party status. HRRA was granted intervening party status on January 16, 2013.
12. A status conference was held on January 27, 2014. The parties engaged in formal discovery, which was completed on March 28, 2014. A pre-hearing conference was held on April 23, 2014.

13. On April 29, 2014, a site visit was held, attended by the Hearing Officer, parties and intervenors and interested members of the public.
14. A Public Hearing was held on May 12, 2014 in the Council Chambers at Danbury Town Hall. Public comments were received at the public hearing and written comments were accepted until May 21, 2014.
15. The evidentiary hearing in this matter was scheduled to begin on June 3, 2014. On June 2, 2014, the Applicant offered revised plans as proposed exhibits. These plans documented proposed modifications to the previously submitted site plans, including moving the driveway from near the property's northern boundary to near the property's southern boundary. The modified site plans also included a 250-foot right-turn deceleration lane along the frontage of the property, partially in the Plumtrees Road right of way and partially on the Applicant's property. Minor modifications to the building proposed as part of the Application were also made. (Exs. APP-46-51.)
16. On June 3, 2014, the evidentiary hearing was opened. Testimony regarding the proposed modifications was offered, and argument on the admissibility of the proposed exhibits documenting the modification, and the modification itself, was heard.
17. On June 3, 2014, I made a verbal ruling to admit the exhibits documenting the proposed modification into the record. A written ruling followed on June 4, 2014. Certain modifications to the proposed schedule were made to allow Department Staff to determine if the proposed modifications were a minor change, which could be made during the hearing process, or a major change, which might require a new Notice of Tentative Determination. Additional time between hearing sessions was also provided so that the City and its experts would have an opportunity to review the proposed modifications.²
18. The evidentiary hearing continued on June 5 and 10, July 21, 22 and 25, August 12 and September 4.
19. On August 11, 2014, the Applicant and HRRRA reached a "joint stipulation" resulting in HRRRA withdrawing from active participation in this matter. Staff altered the Draft Permit

² Both the verbal and written rulings contain a more specific factual and legal analysis which need not be repeated in this decision.

to incorporate the terms of the agreement reached by HRRRA and the Applicant.³ (Exs. DEEP-37, 41.)

20. I issued a Post-Hearing Directive was issued on September 8, 2014, setting out the deadline for post-hearing filings (November 7, 2014) and replies (December 12, 2014). The post hearing directive also indicated that the parties must address, among other issues, “the Applicant’s standing to seek the [right-turn] deceleration lane, to the extent it is not located entirely on property owned by the applicant.”
21. Following the grant of extensions of time, post-hearing filings were received on December 12, 2014 and reply briefs were filed January 30, 2015.
22. I issued a Request for Clarification regarding the facility classification on February 6, 2015, and, after an extension of time, responses to that request were filed on February 23, 2015.
23. On April 14, 2015, I ruled that the Applicant lacked standing to seek approval of the right-turn deceleration lane, to the extent it was not located on property owned or controlled by the Applicant. As a result of this ruling, I re-opened the record in this matter to hear testimony regarding impacts on traffic safety caused by the absence of a right-turn deceleration lane.⁴ Previously withdrawn pre-filed testimony was updated and accepted into the record and the evidentiary hearing was re-opened on June 9, 2015.
24. During the evidentiary hearing, the Applicant called three witnesses. One was Joseph Putnam, a member of MSW Associates, who testified as a fact witness. (Ex. APP-3.)
25. A second witness, David S. Brown of Project Management Associates, a professional environmental and engineering consulting firm, testified as an expert. Mr. Brown is a licensed professional engineer in Connecticut and has thirty-five years’ experience in the permitting, development and operation of solid waste facilities. Mr. Brown has prepared permit applications or served as an auditor for a number of volume reduction plants and transfer stations in Connecticut. (Ex. APP-5.)
26. Michael A. Galante, the Principal-in-Charge of Frederick P. Clark Associates, Inc. Traffic Planning Studies Department, also testified as an expert witness. Mr. Galante has forty years’ experience as a traffic engineer. (Ex. APP-7.)

³ The “Joint Stipulation” calls for the inclusion of two permit conditions, contained in the final Draft Permit prepared by Department Staff. (Ex. DEEP-41.)

⁴ A more detailed explanation of the scope of the issues the record was re-opened to address can be found in the April 14, 2015 ruling.

27. Two members of Department Staff offered testimony, William Sigmund and Gabrielle Frigon. Both testified as expert witnesses. Mr. Sigmund is a permit analyst who has more than ten years' experience reviewing solid waste permit applications.
28. Ms. Frigon is a solid waste permitting supervisor, a role she has served in since 2007. Before assuming that role, Ms. Frigon worked as an enforcement coordinator and potable water analyst in the Department's remediation division.
29. The City called two fact witnesses: Thomas J. Saadi, minority leader of the Danbury City Council and resident of the area near the proposed facility and Matthew Knickerbocker, First Selectmen of the Town of Bethel.
30. The City also called David Sullivan, P.E., a traffic engineer, as an expert witnesses to provide testimony on traffic safety impacts caused by the elimination of the right-turn lane at the re-opened hearing on June 9, 2015.
31. The HACD called one fact witness, M. Carolyn Sistrunk, the executive director of the HACD.

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The Proposed Facility⁵

32. The Applicant proposes to construct and operate the proposed facility on property in Danbury known as 14 Plumtrees Road (Property), owned by Putnam Properties, LLC. The property is 2.5262 acres in size. The Property is not subject to any conservation easements or restrictions, has no inland wetlands or watercourses, and is not located in an aquifer protection area. (Exs. APP-5, DEEP-1B, 1M.)
33. An auto body shop, known as Putnam Automotive, currently operates on the Property. The auto body shop is housed in a building formerly operated as an automotive emissions testing station. (Exs. APP-2, 3; test. J. Putnam, 6/3/14, pp. 9-11.)
34. The Applicant proposes removing the existing building on the Property and constructing a new building to house the proposed facility. The building will be surrounded by a fence with a gate used to control access to the proposed facility. A sign will be posted at the

⁵A site plan and map showing the system of roads near the proposed facility are attached as [Appendix-2](#). These plans were admitted to the record as Exs. APP-2, p. 38 and APP-47. Note that this site plan depicts the driveway near the Property's southern boundary. This site plan also depicts a right-turn deceleration lane not considered as part of the Application for reasons discussed in section II.B.1.a. below.

entrance to the proposed facility which will identify the proposed facility's permit number, issuance date and expiration date, hours of operation, and include a phone number to provide public assistance, including answering questions and logging complaints. (Exs. APP-3, 5, 46-48, DEEP-41; test. D. Brown, 6/3/14, pp. 181-182.)

35. The "solid waste permit plan," which incorporates the June 2, 2015 revisions, identifies the size of the proposed building as 33,462 square feet. The proposed building has four tipping bay doors on its south side, facing a business known as Dell's Auto Wrecking, where waste would be unloaded from inbound trucks to two tipping areas. An outbound loading dock for transfer trailers removing solid waste from the proposed facility is located on the farthest east side of the proposed building, nearest Plumtrees Road. An office is located at the far west side of the building, which includes a position for a scale operator. (Exs. APP-3, 46-48; test. D. Brown, 6/3/14, pp. 85, 181-186, 191.)
36. Trucks delivering solid waste to the facility will enter from Plumtrees Road using a driveway located near the southern boundary of the Property, and will follow the driveway around the building in a counterclockwise direction. There is room for eleven large trucks to queue on the Property while waiting to be weighed and processed where the onsite roadway runs along Plumtrees Road and turns and runs along the northern boundary of the Property. Trucks will be prohibited from idling for more than three consecutive minutes while waiting to deliver waste. (Exs. APP-3, 46-48, DEEP-1M, 41; test. D. Brown, 6/3/14, pp. 181-186, 191, M. Galante, 7-25-14, p. 903.)
37. An inbound truck scale will be located along the driveway near the northwest corner of the building. After being weighed, trucks will proceed to the south side of the proposed building to the tipping bays. Trucks will back into the tipping bays to deliver their loads. The two tipping bays to the east will accept putrescible MSW, while the two western tipping bays will accept recyclables or other waste for processing. Waste will be visually screened as it is being unloaded onto the tipping floor. Loads that appear to contain unacceptable waste will be rejected. Records of tonnages of both inbound deliveries and outbound shipments to final disposal or market will be maintained and monthly summaries will be submitted quarterly to the Department. (Exs. APP-3, 5, 46-48, DEEP-1M, 41; test. D. Brown, 6/3/14, pp. 181-186, 191.)

38. Putrescible MSW, deposited using the two eastern tipping bay doors, will be visually inspected for unacceptable waste items. Putrescible MSW may be temporarily be stored on the tipping floor and then will be routed into transfer trailers for delivery to another facility for final disposal. The Draft Permit prohibits mechanical processing or manual sorting of putrescible MSW. (Exs. APP-3, DEEP-1M, 41.)
39. Other types of waste will be handled in the western portion of the proposed building and undergo additional processing at the proposed facility. Bulky waste and Construction and Demolition debris (C&D) will be received and sorted and materials which can be recycled will be diverted from the waste stream. Clean wood will also be separated and stored until sufficient volume for transportation to an offsite processing facility has been collected. Other recyclables will be sorted and processed using the on-site processing system. A recovery system, such as the “Boomerang System,” will be used to recover marketable materials from the waste being processed. That system will move waste using conveyor belts and sort waste using some combination of screens, which separate materials by size, and optical sorting devices, which use an electronic eye and blasts of air to separate recyclables based on color or transparency. (Ex. DEEP-1M; test. D. Brown, 6-5-14, pp. 185-188.)
40. A certified operator will be on the property at all times during operation. Joseph Putnam has indicated he intends to complete training courses offered by the Department to become a certified operator. (Exs. APP-3, DEEP-41; test. D. Brown, 6-5-14, p. 31.)
41. Noise is not typically an issue at other facilities like the proposed facility, which are generally able to comply with local noise ordinances. To limit noise, all processing of materials will occur inside the proposed building. Waste will be delivered to the proposed facility between the hours of 7:00 AM and 8:00 PM. Although the facility may continue to process material after 6:00 PM, the tipping bay doors must remain closed after that time. The Draft Permit requires the proposed facility to comply with all applicable laws and regulations, including the local noise ordinance. (Exs. DEEP-1M, 41; test. D. Brown, 6/3/14, p. 84, 6/5/14, pp. 210, 223-224.)
42. Air in the processing area will be monitored for lead and asbestos. Because no outside processing is permitted, no outside air monitoring is required. (Exs. APP-5, DEEP-41.)

43. The proposed building will be equipped with resources to control and extinguish fires, including a sprinkler system on the tipping floor, an alarm system, and fire extinguishers. The fire extinguishers and, if called upon, the sprinkler system are expected to be sufficient to control any interior fires that may develop, or as is more common with this type of activity, which may be contained within loads of refuse delivered to the facility. Fire extinguishers will be located inside the buildings and on the mobile equipment. A protocol will be in place for determining when emergency personnel are needed and how they are contacted. Explosions are not expected to occur at the proposed facility, but even if an explosion should occur, it could be managed using the fire suppression equipment described above. (Exs. APP-5, DEEP-1M.)
44. The proposed facility will accept up to 800 tons per day of solid waste, broken down as follows: Up to 100 tons per day of recyclables such as metal, plastic containers, paper and cardboard. The remaining 700 tons per day of capacity is reserved for construction and demolition debris (C&D), oversized MSW, putrescible MSW, clean wood, scrap tires, scrap metal and appliances. Putrescible MSW may make up no more than half (350 tons per day) of this 700 tons. In addition to source-separated loads of recyclables, the facility is required to recover ten percent of the C&D and non-putrescible MSW as recyclables in its first year of operation. This percentage increases at a variable rate each year, capping out at forty percent in the fifth year of the permit. (Ex. DEEP-41.)
45. Storage of solid waste is permitted both inside the proposed building and on the Property. The Draft Permit provides a table detailing specific amounts of solid waste that can be stored, and the storage method (e.g. in piles or containers, covered or uncovered). (Ex. DEEP-41, p. 6.)
46. Putrescible MSW stored outside the proposed building must be covered and cannot remain outside overnight. Putrescible MSW must leave the proposed facility 48 hours after its arrival (with the exception of legal holiday weekends). (Exs. APP-3, DEEP-41.)
47. All solid waste stored outside the facility must be stored in containers. All waste, except clean wood, must be covered. (Exs. APP-3, DEEP-41.)
48. Any litter generated by the proposed facility must be removed from the Property on a daily basis. (Ex. DEEP-41.)

49. The primary cause of odors at a facility such as the proposed facility is the handling of putrescible MSW, from which odor emanates as decomposition occurs. Odors are not expected to be a problem at the proposed facility, and are not typically a problem at this type of facility. The potential for noxious odors to emanate from this property is limited because putrescible MSW will be handled entirely inside the proposed building, on a “first in, first out” basis to ensure that waste will not decompose on-site. The use of covered containers for any outdoor storage of putrescible MSW will further limit the potential spread of odors, and that material must be moved inside overnight. (Ex. APP-5, test. D. Brown, 6-5-14, p. 323.)
50. Vectors, such as insects, rodents and birds, are primarily attracted to putrescible MSW. Vectors are not typically an issue at facilities similar to the proposed facility. The use of “first in, first out” procedures limits the potential for the attraction of vectors. If the operator of the proposed facility observes vectors at the site, a control service will be engaged to eliminate them. (Ex. APP-5; test. D. Brown, 6-5-14, p. 238-239.)
51. All surfaces to be traveled by trucks at the proposed facility will be paved, largely eliminating the potential for the generation of dust. All roadways on the Property will be swept regularly and all materials delivered to the proposed facility will be covered until unloaded inside. If dust is generated from the processing of material inside the proposed facility, a misting system will be deployed to minimize dust. (Ex. APP-5; test. D. Brown, 6-5-14, p. 234.)
52. Should the proposed facility be required to shut down, either temporarily or permanently, drivers will be notified to divert deliveries to other permitted facilities in the area. (Ex. APP-5.)

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Surrounding Area

53. The proposed facility is in an area zoned for industrial uses. The property to the north of the proposed facility is owned by the City of Danbury and its uses include the City’s sewage treatment plant. The treatment lagoons for the wastewater treatment plant are located near the property line shared with the proposed facility. (Exs. APP-2, 3; test. T. Saadi, 8-12-14, pp. 1073, 1074.)

54. Ferris Mulch is located north of the proposed facility, on the same side of Plumtrees Road, near the signalized intersection with Newtown Road. Ferris Mulch collects and processes waste wood and has sought a permit from the Department for a 1600 tons per day volume reduction plant. Ferris Mulch operates on property owned by the City of Danbury under a lease or license agreement. (Exs. APP-2, 3; test. T. Saadi, 8-12-14, p. 1163.)
55. Across Plumtrees Road from Ferris Mulch, Tilcon operates an asphalt plant. The City's dog pound is also located near the asphalt plant. (Test. T. Saadi, 9-12-14, pp. 1074, 1149.)
56. Dell's Auto Wrecking, a facility where old or unused motor vehicles are stored, crushed or otherwise disposed of, is located south of the proposed facility. Witnesses commented on the "aesthetics" of Dell's, which can best be characterized as a scrap yard or automotive graveyard where at least some vehicles are crushed. (Exs. APP-2, 3; test. T. Saadi, 8-12-14, p. 1076)
57. Further south of the proposed facility, there is a rock and gravel mining or processing operation. A regional fire training facility, where controlled burns are used to train fire departments to extinguish fires, is also located south of the proposed facility, near the intersection of Plumtrees Road with Shelter Rock road. (Exs. APP-2, 3; test. T. Saadi, 8-12-14, pp. 1071-1072, 1089, 1148.)
58. Across Plumtrees Road from the proposed facility is the former City of Danbury landfill, now closed and capped. (Exs. APP- 2, 3; test. T. Saadi, 8-12-14, p. 1084).
59. The HACD's Eden Drive housing complex is located approximately 250 feet east of the proposed property. The four-acre Eden Drive complex has sixty two-, three- and four-bedroom units, home to more than 200 residents. (Exs. APP-3, HACD-1; test. M. Sistrunk, 9-4-14, p. 1386.)
60. The residents of Eden Drive must meet certain income criteria to reside there. For purposes of determining eligibility, family incomes are considered, and are evaluated against federal standards for families of similar size. Ninety-eight percent of the families residing at Eden Drive earn less than eighty percent of the area median income; of those families, Seventy-eight percent are considered "Extremely Low Income," seventeen percent are considered "Very Low Income" and two percent are considered "Low Income." (Ex. HACD-1, test. M. Sistrunk, 9-4-2014, pp. 1386-1390.)

61. Ms. Sistrunk, the executive director of the Housing Authority of the City of Danbury testified that fifty-two of the fifty-eight families currently residing in the Eden Drive complex have an income below 200 percent of the federal poverty level based on 2014 levels, the most recent available. No other witness offered testimony comparing income levels in the Eden Drive complex to the federal poverty level. (Ex. HACD-1, test. M. Sistrunk, 9-4-2014, p. 1390.)
62. Although Eden Drive is 250 feet away from the proposed facility, it does not abut the Property. A 3.3311 acre parcel, owned by Putnam Properties, LLC and identified as 16 Plumtrees Road, separates the Property from the Eden Drive complex. (Exs. APP-3, DEEP-1M.)
63. Development of 16 Plumtrees Road is not proposed as part of the Application. The 16 Plumtrees Road property is heavily wooded and steeply sloped. The slope rises about forty feet near the center of the 16 Plumtrees Road parcel before gradually sloping back down towards Eden Drive. The proposed building will be approximately ten feet lower in elevation than the top of this slope. Department Staff visited the Property and Eden Drive on two occasions, including once in early spring before leaves had grown on trees, and determined that there is no direct line of sight from Eden Drive to the proposed facility as a result of the topography of the area and the vegetation present on 16 Plumtrees Road. Evergreens and other shrubs will be planted by the Applicant to screen the proposed facility from Plumtrees Road. (Ex. APP-3; test. W. Sigmund, 7-21-14, pp. 484-486.)
64. The proposed facility is located near Interstate-84 (I-84). The most direct route from the proposed facility to I-84 is to travel north on Plumtrees Road and turn right at the signalized intersection onto Newtown Road. Traveling this route, the I-84 eastbound and westbound on-ramps are 1.3 and 1.9 miles, respectively, from the proposed facility. For traffic exiting I-84 and traveling to the proposed facility, the most direct route is to exit I-84 and travel west on Newtown Road and turn left at the signalized intersection with Plumtrees Road. Traveling this route, the I-84 eastbound and westbound off-ramps are 1.2 and 1.5 miles, respectively, from the proposed facility. (Exs. APP-63-65; test. W. Sigmund, 7-22-14, pp. 666-667, M. Galante, 9-4-14, p. 1434.)
65. There are no residences located on Plumtrees Road or on Newtown Road from the Plumtrees Road intersection to the junction with I-84. (Ex. APP-3.)

66. I-84 can also be reached by traveling south on Plumtrees Road and then traveling along Shelter Rock Road to Payne Road, located partly in the Town of Bethel. This route is less direct. Traveling this route, the I-84 eastbound and westbound on-ramps are located 3.0 and 2.8 miles, respectively, from the proposed facility. For traffic exiting I-84, the proposed facility can be reached by traveling south on Payne Road to Shelter Rock Road and north on Plumtrees Road. Traveling this route, the I-84 eastbound and westbound off-ramps are 2.6 and 2.9 miles, respectively, from the proposed facility. (Exs. APP-63-65; test. M. Galante, 9-4-14, p. 1434.)
67. Payne Road between I-84 and its intersection with Shelter Rock Road is residential and “fairly densely populated” with single family homes. Some industrial uses are located on Payne Road in Danbury, near its intersection with Shelter Rock Road. Two parks, Meckauer Park and Bennett Park, are located on Payne Road in the Town of Bethel. Payne Road is relatively narrow and has several slopes and curves. There are no sidewalks on Payne Road. (Test. M. Knickerbocker, 8-12-14, pp. 1274- 1278).
68. Approximately one half mile south of the proposed facility, Plumtrees Road intersects Shelter Rock Road. In one direction, Shelter Rock Road continues south, from the proposed facility before turning west into Bethel. In the other direction, Shelter Rock Road turns sharply off Plumtrees Road and heads generally east, up a slope. This portion of Shelter Rock Road is characterized by its challenging turns and grades. At the top of this slope, Shelter Rock Road intersects with Crow’s Nest Lane and Fleetwood Drive. An elementary school is located at this intersection. (Ex. APP-29; test. M. Galante, 7-25-14, p. 851, T. Saadi, 8-12-14, pp. 1061-1063).
69. Over the last two decades, a number of residences have been developed on Shelter Rock Road. On the portion of Shelter Rock Road running east from Plumtrees Road, two large condominium complexes have been constructed. A development known as “Arlington Woods” is located on the north side of Shelter Rock Road and consists of ninety nine condominium units. Across the street, on the south side of Shelter Rock Road, a development known as “Woodland Hills” contains approximately 252 units. In Bethel, near the intersection of Plumtrees Road and Shelter Rock Road, a development known as “Lexington Meadows” contains approximately 115 units. The primary access drive to this complex is located on Shelter Rock Road in Danbury. Other condominium units and single

family homes, some of which were constructed in the past two decades, form dense residential neighborhoods along Shelter Rock Road and Crow's Nest Lane. (Ex. CITY-46; test. T. Saadi, 8-12-14, pp. 1097-1102.)

70. Thomas Saadi, who lives near the proposed facility and represents the neighborhood on the Danbury City Council, provided extensive testimony regarding the evolution and development of the neighborhood surrounding the proposed facility. (Ex. CITY-46; test. T. Saadi, 8-12-14, pp. 1047-1256.)
71. Matthew Knickerbocker, First Selectman of the Town of Bethel, provided extensive testimony regarding the areas of Bethel near the proposed facility, including descriptions of roadways and land uses. (Ex. CITY-51; test. M. Knickerbocker, 8-12-14, pp. 1264-1326, 9-4-14, pp. 1335-1380.)
72. There are no sidewalks along most of the length of Plumtrees Road. Plumtrees Road is widest near its intersection with Newtown Road and narrows as it proceeds south towards Shelter Rock Road. There is very little pedestrian activity on Plumtrees Road. (Test. J. Putnam, 6-3-14, p. 17, M. Galante, 7-25-14, pp. 861-862.)

4

Traffic Congestion and Safety

73. When operating at maximum capacity, which the facility is not expected to do each day, it is estimated that the proposed facility will generate 261 vehicle round trips (522 “directional trips”) per day. This estimate includes 28 round trips (56 directional trips) made by employees arriving for work, leaving for lunch or to run an errand, and going home for the day. Trips by employees are expected to be made in cars or other light passenger vehicles. The remaining 233 roundtrips (466 directional trips) will be made by trucks delivering waste to the proposed facility or picking up consolidated MSW for final disposal or recyclables or other recoverable materials for additional processing off-site. These trips will be made by a variety of types of trucks. (Exs. DEEP-1M, 20C; test. D. Brown, 6-5-14, pp. 210-214.)
74. The most common trucks serving the proposed facility will be refuse collection trucks, of which there are two predominant types. The first is known as a “roll off” truck, which has a hoist that picks up a 20-foot container or pulls a shorter container onto the rear of the

truck. The other type of refuse collection truck is the type truck which might collect MSW or recyclables from a home or business. Refuse collection trucks are “single-unit” trucks which may have multiple rear axles but are not tractor-trailers. Tractor-trailers will service the site to remove uncovered materials that were processed from the bulky waste and nonputrescible MSW stream, and to remove MSW which would not be processed by the facility but simply transferred. Tractor-trailers servicing the proposed facility will most commonly have forty-five to forty-eight foot trailers, although some tractor-trailers with trailers as long as fifty-three feet may service the property. (Test. D. Brown., 6-5-14, pp. 205-207.)

75. There is no restriction proposed on the routes trucks will take to reach the proposed facility. The Applicant anticipates that between seventy-five and eighty percent of trucks will reach the proposed facility via Newtown Road. The remaining twenty to twenty-five percent of trucks will reach the proposed facility by traveling north on Plumtrees Road. Most of these trucks will be collector trucks serving waste generators located to the south of the proposed facility. (Ex. DEEP-20C.)
76. There is no restriction proposed on the route that collector trucks, having delivered waste, may use when exiting the proposed facility. Trucks removing putrescible MSW for final disposal or recovered waste or recyclables to market will be prohibited from turning south onto Plumtrees Road when leaving the proposed facility.⁶ These trucks will travel north on Plumtrees Road, turn east at the signalized intersection with Newtown Road and enter I-84. The largest trucks serving the proposed facility will be those transporting putrescible MSW for final disposal or recovered waste or recyclables to market. Those very large trucks will be prohibited from traveling on Shelter Rock Road or Payne Road when leaving the proposed facility. (Ex. DEEP-20C; test. D. Brown., 6-5-14, pp. 205-207.)
77. When tractor-trailer trucks enter and leave the proposed facility, there is the potential that their turns will “track over,” or be forced to travel in the area used by, vehicles waiting to enter or exit the proposed facility. An analysis performed by Mr. Sullivan, the City’s traffic expert, using turning templates produced by the American Association of State Highway and Transportation Officials (AASHTO), a tractor-trailer entering the site may enter the lane that would be occupied by a vehicle waiting to leave the site and a tractor-trailer

⁶ Trucks delivering recovered scrap metal to Dell’s Auto Wrecking are exempted from this prohibition.

turning left onto Plumtrees Road may enter the lane occupied by a vehicle waiting to enter the site. In certain circumstances, this condition may cause a “stalemate” at the driveway, when one truck must back up to allow the other to enter or leave the proposed facility. It is uncertain how often such a stalemate may occur, but if one does occur, it may cause traffic on Plumtrees Road to be delayed. The majority of the trucks entering and leaving the property will be single unit trucks with turning radii that are unaffected by the geometry of the driveway. When larger tractor-trailers are arriving or departing the site, low speed maneuvering not modeled by the AASHTO turning templates but which trucks are capable of performing, may be required and intervention by the operator of the proposed facility may be necessary to keep traffic flowing. Tractor-trailers entering the property may also avoid this driveway geometry issue by proceeding straight into the proposed facility and along the south side of the proposed facility and backing into the loading dock, located on the far east side of the proposed building, as opposed to entering the property and proceeding clockwise around the proposed building as trucks delivering materials to the proposed facility will be required to do. This traffic pattern eliminates the need for the sweeping, 180-degree right turn most likely to create conflict with a vehicle waiting to exit the proposed facility. (Ex. CITY-79; test. D. Sullivan, 6-9-15, pp. 1555-1556, M. Galante, 6-9-15, pp. 1600-1601, 1609-1610.)

78. It is anticipated that most trucks servicing the proposed facility will travel Newton Road and Plumtrees Road when accessing the proposed facility. Only twenty percent of trucks are expected to access or leave the proposed facility by traveling on Plumtrees Road and Shelter Rock Road to the south of the proposed facility. It is unlikely that, given a choice, trucks would choose to travel on Payne Road, as it is neither a shortcut in time nor distance during the typical peak hour traffic. Traveling Newtown Road and Plumtrees Road provides a more direct route to and from I-84 for trucks servicing the proposed facility than the route using Payne Road in terms of both distance and length of travel time.⁷ A comparison of travel time, done during the morning peak hour, on a normal day with no

⁷ Distances for each route are described in detail in finding number 64.

extraordinary traffic accidents or delays, showed that it is faster to use Newtown Road and Plumtrees Road route to and from I-84.⁸ (Ex. DEEP-65; test., M. Galante, 9-4-15, p. 1435.)

79. Analysis of traffic impacts on surrounding roads focused on “peak hours,” periods during the morning and afternoon when the roads surrounding the proposed facility are most heavily used. Traffic counts were conducted at the intersection of Newtown Road and Plumtrees Road, on Shelter Rock Road south of the proposed facility, and along the site frontage in 2007 and early 2008. These traffic counts identified the morning peak hour as 7:30 to 8:30 AM and the afternoon peak hour as 5:00 to 6:00 PM. These traffic counts were increased by two percent to account for normal year-to-year growth.⁹ These adjusted traffic counts, broken down by turning movements at the various intersections near the property, are used to identify “no-build traffic volume condition at each of the intersections.” Once “no-build” traffic volumes are identified, traffic from the proposed development is added in. A comparison between “no-build” traffic and projected “build condition” traffic is performed to determine impact from traffic generated by the proposed facility. (Exs. APP-28, 32; test. M. Galante, 6-10-14, pp. 406-409.)

80. Traffic counts indicated that Plumtrees Road carries more than 7200 vehicles per day. During the morning peak hour, 605 vehicles traveled on Plumtrees Road in the area of the proposed facility. In the afternoon peak hour, 901 vehicles traveled Plumtrees Road. (Exs. APP-28, 32; test. M. Galante, 6-10-14, p. 410.)

81. Traffic counts indicated that Newtown Road, between Plumtrees Road and I-84, carried 1878 vehicles during the morning peak hour and 2447 vehicles during the afternoon peak hour. (Exs. APP-28, 32; test. M. Galante, 6-10-14, p. 413.)

82. Traffic counts indicated that Shelter Rock Road, west of Plumtrees Road, carried 449 vehicles during the morning peak hour and 535 vehicles during the afternoon peak hour. (Exs. APP-28, 32; test. M. Galante, 6-10-14, p. 413.)

⁸ To determine travel time, three trips were taken from both the eastbound and westbound I-84 off-ramps to the proposed facility and three trips were taken from the proposed facility to both the I-84 eastbound and westbound on-ramps. These times, and the distances traveled, are documented in Ex. APP-65. This analysis was performed during the morning peak hour on a typical day, and does not account for the travel time if, for example, Newtown Road were closed due to an accident.

⁹ This adjustment was made once, adjusting 2008 numbers to the 2009 “design year.” However, due to the economic climate, Mr. Galante testified that this was a “conservative” adjustment and that no additional adjustment was required for the years between 2009 and the filing of the Application. (Test. M. Galante, 6-10-14, pp. 414-415.)

83. The traffic analysis also included examination of turning movements at the signalized intersection of Newtown Road and Plumtrees Road. During the morning peak hour, seventy-five vehicles, including about eight trucks¹⁰, turned right from Newtown Road onto Plumtrees Road; 137 vehicles turned left, from Newtown Road onto Plumtrees Road including eleven trucks. During the afternoon peak hour, 142 vehicles traveling on Newtown Road turned right onto Plumtrees Road and 332 vehicles traveling on Newtown Road turned left onto Plumtrees Road. (Exs. APP-28, 32.)
84. Turning movements at the intersection of Shelter Rock Road and Plumtrees Road were also evaluated. 178 vehicles traveling on Shelter Rock Road turned left onto Plumtrees Road and 117 turned right and continued on Shelter Rock Road. 154 vehicles traveling on Plumtrees Road turned right onto Shelter Rock Road westbound and 245 continued onto Shelter Rock Road traveling south. (Exs. App-28, 32.)
85. Intersections are assigned a “level of service” designation. This designation is a letter grade, used to identify delays at that intersection and compare impacts from future development. As described by Mr. Galante, the Applicant’s traffic expert, “[l]evel [of] service A is everything is great in this case, B is a little bit more delay. C is what we consider average conditions or average delay. D is certainly more delay at an intersection. E, the traffic engineering in its theoretical capacity. F, we used to use the word failure, but it’s simply more congestion, and they increase in delay . . . as the levels go down” Under the “no-build” condition, the signalized intersection at Newtown Road and Plumtrees Road operates at an overall level of service A or B¹¹ during the morning peak hour and level of service B during the afternoon peak hour.¹² Vehicles turning left from Newtown Road onto Plumtrees Road, the route most likely to be traveled by vehicles servicing the proposed facility, experience a delay of about 6.4 seconds (service level “A”) during the morning peak hour and 29.1 seconds (service level “C”) during the afternoon peak hour. At the Plumtrees Road intersection with Shelter Rock Road, the level of service for cars traveling east on Shelter Rock Road and turning left or right at the intersection

¹⁰ Trucks of all types, from “single unit” thirty-foot trucks to tractor trailers were considered “trucks” for the purpose of this analysis.

¹¹ Applicant’s Ex. 32 indicates, at p. 16, that the level of service during the morning peak hour is “A” under the “no-build” conditions. Applicant’s Ex. 28 indicates that the current level of service during the morning peak hour is “B.”

¹² Level of service analysis for each turning movement at this, and other, intersections is included in both Applicant’s Exs. 28 and 32.

with Plumtrees Road is “C” during morning peak hour and “D” during afternoon peak hour. (Test. M. Galante, 6-10-14, pp. 428-429.)

86. The 522 one-directional trips per day to be generated by the proposed facility, when operating at maximum capacity, represents an approximately 7.2% increase in traffic on Plumtrees Road.¹³ (Exs. DEEP-28, 32.)
87. Vehicles servicing the proposed facility, when operating at maximum capacity, will make sixty-nine one-directional trips during the morning peak hour, an increase in traffic of about 11%. During the afternoon peak hour, the proposed facility will generate thirty-three one-directional trips, an increase in traffic on Plumtrees Road of approximately 3.7%¹⁴. (Exs. DEEP-28, 32.)
88. It is anticipated that traffic generated by the proposed facility will result in a decrease in the overall level of service at the signalized intersection of Newtown Road and Plumtrees Road from level of service “B” to “C” during the morning peak hour and from level of service “B” to “C” in the afternoon peak hour. The overall increase in delay “is just over an average of one second per vehicle.” (Ex. DEEP-32; test. M. Galante, 6-10-14, p. 434.)
89. Mr. Galante testified that, in his experience “. . . level of service B and C are certainly very acceptable levels of service in the eyes of the City and DOT.” (Test. M. Galante, 6-10-14, p. 434.)
90. The posted speed limit on Plumtrees Road is twenty-five miles per hour. In addition to the posted speed limit, the Connecticut Department of Transportation and traffic engineers use the measured “85th percentile speed” of vehicles traveling on a road to evaluate, among other things, appropriate intersection sight distances. The “85th percentile speed” is the speed or which 85 of 100 vehicles are traveling up to that speed. Many vehicles traveling

¹³ All traffic volume calculations for the “build” condition include both traffic generated by the proposed facility and traffic currently generated by Putnam Automotive. Mr. Galante indicated that, “we should have and could have removed the Putnam Automotive traffic [in our study], which would have reduced the number of vehicle trips . . . and then put back in the transfer station traffic. . . . [Our traffic volume projections are] very conservative.” It is estimated that Putnam Automotive generates 330 one-directional trips per day, including 132 during the morning peak hour and 112 during the afternoon peak hour. (Ex. APP-27; test., M. Galante, 7-25-14, p. 926-927, 931-932.)

¹⁴On p. 12 of Ex. APP-32, the table indicates that, between 5:00 and 6:00 PM, twelve trucks will enter the proposed facility and thirteen trucks and eight cars will exit the proposed facility – a total of thirty-three trips. The table on p. 13 of Ex. APP-32 indicates there will be 46 trips in the “weekday afternoon” peak hour (defined earlier in the document as between 5:00 and 6:00 PM), consisting of fifteen trucks entering the proposed facility and fifteen trucks and sixteen cars leaving the proposed facility. These numbers appear to be taken from the “4:00-5:00 P.M.” line of the table on p. 12, in error. The thirty-three trips were most commonly referred to throughout the hearing, but even using forty-six one directional trips, traffic on Plumtrees Road will increase only about 5.1%.

on Plumtrees Road exceed the posted speed limit. The 85th percentile speed for vehicles traveling north on Plumtrees Road was measured at forty-two miles per hour and the 85th percentile speed for vehicles traveling southbound on Plumtrees Road was measured at forty-eight miles per hour. (Test. M. Galante, 6-10-14, pp. 438-439, 446.)

91. A driver exiting the proposed facility from the driveway located on the southern edge of the Property has an intersectional sight distance of 485 feet to the north and 410 feet to the south.¹⁵ (Ex. App-52.)
92. Mr. Sullivan, the City's traffic expert, testified that Connecticut Department of Transportation Guidelines require "327 feet of stopping sight distances for vehicles traveling southbound on Plumtrees Road approaching the [proposed facility]," a calculation based on the eighty-fifth percentile speed of traffic on Plumtrees Road. Mr. Sullivan indicated that if one tractor-trailer and three single unit trucks queued on Plumtrees Road, stopping sight distance would be only 310 feet, which Mr. Sullivan testified "could potentially be in harm's way." Mr. Sullivan was unable to identify when, or with what frequency, trucks would be queued on Plumtrees Road. The Applicants traffic expert Mr. Galante testified that, "based on our analysis of the driveway, number of vehicles, and having intersectional sight distance based on certain factors that we looked at" and his opinion that off-site queueing was unlikely, "stopping sight distance" was not a concern. (Ex. CITY-79; test. D. Sullivan, 6-9-15, pp. 1566, 1592, M. Galante, 6-9-15, p. 1628.)
93. The potential risk of off-site queueing is greatest in the hours after the facility first opens, when the Applicant anticipates the greatest number of trucks per hour will arrive at the

¹⁵ Traffic engineers evaluate both "intersectional sight distance" and "stopping sight distance." Intersectional sight distance refers to the distance a driver waiting to exit the facility can see oncoming traffic, so that he may make an informed decision before turning onto a road. Stopping sight distance refers to the distance a driver approaching an intersection can see, so that he has time to maneuver or stop if someone enters the road in front of him. Both the City of Danbury Zoning Regulations and the Connecticut Department of Transportation Highway Design Manual contain standards used to evaluate intersectional sight distance. The Zoning Regulations indicate that sight distance is to be evaluated based on the posted speed limit; for roads with a posted speed limit of twenty-five miles per hour, the required sight distance is 150 feet. The Highway Design Manual indicates that, for driveways or intersections on state highways, sight distance is calculated based on the eighty-fifth percentile speed. An intersection on a road with an eighty-fifth percentile speed of forty-two miles per hour would require a sight distance of 630 feet. An intersection on a road with an eighty-fifth percentile speed of forty-eight miles per hour would require a sight distance in excess of 630 feet. Neither David Sullivan, the City's traffic expert, nor Mr. Galante, the Applicant's expert, are concerned about the driveway's intersectional sight distance. (Exs. APP-57-59, CITY-79; test. M. Galante, 6-10-14, pp. 438-440, 6-9-15, p. 1628, 6-9-15, D. Sullivan, pp. 1557-1558.)

proposed facility. If trucks carrying waste begin arriving before the facility is permitted to begin unloading material onto the tipping floor, this could also lead to off-site queueing. The proposed Draft Permit requires the Applicant to “mitigate” off-site queueing. (Exs. DEEP-20C, 41, CITY-79; test. D. Sullivan, 6-9-15, p. 1541.)

94. Data obtained from the Danbury Police Department indicates that in 2011, there were nineteen traffic accidents on Plumtrees Road. In 2012, there were four traffic accidents on Plumtrees Road. In 2013, there were nine accidents on Plumtrees Road. Of the thirty-two traffic accidents in that three-year period, twelve occurred near the intersection with Newtown Road or at shopping center access drives in the immediate vicinity of that intersection and twenty occurred along the remaining portion of Plumtrees Road before its intersection with Shelter Rock Road.¹⁶ (Ex. APP-62.)
95. The Connecticut Department of Transportation collects data regarding accidents on Newtown Road. Over a three-year period from 2010 to 2012, there were twenty-six accidents at the intersection of Newtown Road and Plumtrees Road, a majority of which were either rear end or right angle accidents. (Ex. APP-56; test. M. Galante, 6-10-14, pp. 417-418, 421-422.)
96. The record contains an analysis of accidents on Payne Road in Bethel as well as photographs of accidents on Shelter Rock Road. (Exs. CITY-60-65, 76.)
97. The Applicant’s traffic engineer’s ultimate conclusion was that, “[t]he level of traffic generated by this site in my opinion is low compared to the volume of traffic on Plumtrees Road or other roadways. The analyses show very acceptable levels of service and minimal delay, or minimal increase in delay due to the site traffic. The driveway location, whether it's the northerly side or the southerly side provides the sight lines that meet the City standard. Looking at the accident data obtained from the City the last time around, the accident data didn't really show a concern with driveways. It's just our opinion that this facility can be accommodated on Plumtrees Road.” (Test. M. Galante, 6-10-14, pp. 455-456.)

¹⁶ This recent accident data for Plumtrees Road was not available at the time of Mr. Galante’s initial testimony. Mr. Galante testified regarding data on Plumtrees Road for the period from 2004 to 2007. Mr. Galante later testified that the 2011 to 2013 data was “a similar breakdown of accidents by the roadway section along Plumtrees. It’s nothing that’s very different at all that would change my conclusions, no.” (Test., M. Galante, 9-4-14, pp. 1427-1428.)

Environmental Justice

98. At the time the Application was filed, The City of Danbury was not listed as a “distressed municipality” on the list of distressed municipalities generated by the Department of Economic and Community Development. (Test. W. Sigmund, 7-21-14, pp. 626-627, 7-22-14, p. 698.)
99. The Property was not located in a census block group with thirty percent of its population living below 200 percent of the federal poverty level according to the most recent census, according to a map delineating environmental justice communities, published by the Department in January 2009. The January 2009 map was the most recent map available at the time the Application was filed. (Exs. DEEP- 1I, 13; test. W. Sigmund, 7-21-14, pp. 626-627, 7-22-14, pp. 696-707.)
100. At the time it filed its Application, the Applicant determined that it was not subject to the provisions of General Statutes § 22a-20a, which concerns environmental justice. Department Staff, following established Department procedure, verified this determination using materials compiled by the Department’s Office of Environmental Justice, available to the public on the Department’s website. (Exs. DEEP- 1I, 13; test. W. Sigmund, 7-21-14, pp. 626-627, 7-22-14, pp. 696-707.)

B***CONCLUSIONS OF LAW******1******Threshold Issues***

This matter is unusual in that the parties disagree on both the nature of the proposed facility and the statutory and regulatory criteria which I must consider. Before evaluating the proposed activity, I must address these threshold issues and identify the relevant statutory and regulatory criteria which must be considered.

a

Standing and Configuration of the Proposed Facility

Standing refers to a party's legal right to set in motion the machinery of an administrative agency or court. E.g., *Black's Law Dictionary*, 7th Edition (1999). In the context relevant here, standing refers to the Applicant's right to seek the Department's authorization to conduct certain proposed activities. During the hearing process the Applicant modified its initial application to relocate the proposed facility's driveway from near the Property's northern boundary to near its southern boundary and to add a right-turn deceleration lane, at least partially on property owned by the City of Danbury.¹⁷ On April 14, 2015, I ruled that the Applicant lacked standing to seek authorization to construct the right-turn deceleration lane as part of the Application because that it required construction on property the Applicant did not own and consent of the owner had not been obtained.

The record indicates that there are, however, benefits to locating the proposed facility's driveway near the southern boundary of the Property. These benefits are discussed at length in Section B below. For this reason, consistent with my April 14, 2015 ruling, I consider the Application without a right-turn deceleration lane, but with the driveway near the Property's southern boundary. I recommend that the Commissioner impose a condition of approval, requiring submission of a revised site plan or plans, depicting the driveway near the southern boundary of the property (such as shown in Exs. App-46 and APP-47) but eliminating any reference to the right-turn deceleration lane.

¹⁷ Other minor modifications to the proposed facility were also proposed, for which no standing issues exist.

b
Classification of the Proposed Facility

I must first determine whether the proposed facility is a volume reduction plant, transfer station or both. Because the nature of the proposed activity is well defined in both the Application and the Draft Permit, this determination concerns only which label is properly affixed. This determination is necessary, however, to determine whether certain statutory or regulatory criteria apply to the proposed facility.

The definitions in question can be found in General Statutes § 22a-207. A “volume reduction plant” is defined as

. . . any location or structure . . . where more than two thousand pounds per hour of solid waste generated elsewhere may be reduced in volume, including, but not limited to, resource recovery facilities and other incinerators, recycling facilities, pulverizers, compactors, shredders, balers and composting facilities[.]

General Statutes § 22a-207(5).

A “[t]ransfer station” is defined as

. . . any location or structure . . . where more than ten cubic yards of solid waste, generated elsewhere, may be stored for transfer or transferred from transportation units and placed in other transportation units for movement to another location, whether or not such waste is stored at the location prior to transfer [.]

§ 22a-207(10).

Both the Application and the Draft Permit identify the proposed facility as a volume reduction plant and describe, in detail, the regulated activity to be conducted at that facility. The proposed activity includes the processing of a variety of waste streams including, among others, bulky waste, C&D debris, MSW and recyclables. The Draft permit authorizes the facility to handle 800 tons of waste per day, including 350 tons per day of putrescible MSW. The Operation and Management Plan indicates that bulky waste and C&D debris will be “received, sorted and

recoverable items separated for diversion from the disposal stream.” Recyclables will be processed in a similar fashion. Putrescible MSW, however,

will be separately received and handled from C&D wastes and recyclables . . . MSW deliveries will be screened (visual inspection) for any unacceptable materials and placed directly into container for delivery to an acceptable disposal facility. No recovery or processing of MSW will take place at the facility. . . .

The Draft Permit maintains a similar distinction between waste streams, indicating that

[m]anagement of putrescible MSW shall be limited to receipt on the tipping floor and consolidation into containers and transfer from the facility only. The incoming flow of putrescible MSW shall not be otherwise mechanically processed or manually sorted.

The Draft Permit expressly prohibits processing, including the reduction in volume, of any putrescible MSW accepted by the proposed facility. It is possible that nearly half the waste accepted by the proposed facility on any given day will be putrescible MSW which will be transferred from one container to another and then removed from the proposed facility. For this reason, the proposed facility is properly characterized as both a volume reduction plant and a transfer station and is subject to the statutory and regulatory criteria applicable to both uses.

c

Requirements of General Statutes § 22a-208a(a)

General Statutes § 22a-208a(a) contains criteria that must be considered before issuing a permit to construct and operate a solid waste facility. Criteria for various types of facilities are listed. Because the proposed facility includes a transfer station, I must evaluate whether, “such transfer station will result in disproportionality high adverse human health or environmental effects.” § 22a-208a(a). The City argues that this section should be read more expansively, requiring the evaluation of additional criteria. I conclude that such a reading would be improper.

The City relies on § 22a-208c, which states, in relevant part, that “[n]o person shall receive, dispose of, or process solid waste . . . at any solid waste facility, volume reduction plant [or]

transfer station . . . unless such facility, plant [or] station complies with the provisions of section 22a-208a.” The City argues that § 22a-208c expressly incorporates the requirement that the Commissioner consider “the character of the neighborhood in which such facility is located and may impose requirements for hours and routes of truck traffic . . .” despite the language contained at the beginning of the same sentence, indicating that these criteria apply only when considering “a permit to construct a solid waste land disposal facility, including a vertical or horizontal landfill expansion.” The City argues that its reading is further compelled by the Department’s previous permit decisions and that the information required to be submitted when applying for a volume reduction plant or transfer station is the same as that required when applying for a land disposal facility. Regs., Conn. State Agencies §§ 22a-209-4 and 22a-209-10.¹⁸

While I agree that the proposed facility is subject to some statutory criteria contained in General Statutes § 22a-208a(a), only those criteria relevant to a volume reduction plant or transfer station apply. It is axiomatic that, when construing statutes, “[w]e presume that laws are enacted in view of existing relevant statutes ... and that [s]tatutes are to be interpreted with regard to other relevant statutes because the legislature is presumed to have created a consistent body of law.” (Citations and internal quotation marks omitted.) *Conway v. Wilton*, 238 Conn. 653, 664 (1996). “We are obligated, furthermore, to read statutes together when they relate to the same subject matter.” *Felia v. Westport*, 214 Conn. 181, 187 (1990).

General Statutes § 22a-208c requires a permit for any facility proposing to collect or process solid waste. General Statutes § 22a-208a(a) identifies the criteria that must be considered

¹⁸ In the Final Decision *In the Matter of the Town of Canterbury*, 2000, the Department did reference the “character of the neighborhood . . . and truck route” language from General Statute § 22a-208a when evaluating a transfer station. However, although that language is referenced, that decision does not turn on a discussion of character of the neighborhood or truck routes. In fact, that decision contains only a very brief, general discussion of traffic in a decision approving the solid waste facility in question. The interpretation of § 22a-208a in light of § 22a-208c was not at issue in that decision. The use of this language in the Town of Canterbury decision appears to be *dicta*, unnecessary to the decision in the context in which it was used.

before issuing a permit for several *specific* types of facilities. When read together these statutes require an applicant to obtain a permit based on the criteria for the type of facility proposed. In this case, because the proposed facility is a transfer station, § 22a-208a(a) requires an evaluation of whether the proposed facility “will result in disproportionately high adverse human health or environmental effects.” The proposed facility is not, however, a land disposal facility. For that reason, no evaluation of the character of the neighborhood or the hours and routes of truck traffic is mandated. Furthermore, “[o]ur Supreme Court has held that, in construing two statutes, the clear language of a narrowly tailored provision is not to be superseded by the broad, general provisions of another statute. [Internal citation omitted].” *Lieb v. Dept. of Health Services*, 14 Conn. App. 552, 559 (1988). The provisions of General Statutes § 22a-208c apply broadly to all solid waste disposal and cannot supersede the more specific, facility driven requirements of § 22a-208a(a).

Had the legislature intended to require consideration of character of the neighborhood and the hours and routes of truck traffic when evaluating a proposed transfer station, it knew how to do so. See *State v. King*, 249 Conn. 645 (1999)(inclusion of language in one statutory provision and absence of similar language in another related statutory provision indicates legislature’s intent). That language requiring evaluation of certain criteria can be found in one sentence, about land disposal facilities, *but not in the next*, about transfer stations, unambiguously identifies the Legislature’s intent.

This is not to say that the area surrounding the proposed facility or traffic safety are not proper considerations in this matter. General Statutes § 22a-208 requires consideration of the proposed facility’s planning, design and construction, which necessarily requires some limited consideration of the area surrounding the proposed facility. Regs. Conn. State Agencies §§ 22a-

209-9 and 22a-209-10 require consideration of screening and access to the proposed facility, also requiring some evaluation of the facility's surroundings. Increased truck traffic caused by the proposed facility, and its impact on traffic safety, must be evaluated to determine whether it will have a disproportionately high adverse human health effect.

2

Traffic Safety and Congestion

Neither statute nor regulation contains any provision which mandates the consideration of off-site traffic impacts caused by the proposed facility. However, during their review of the Application, Department Staff solicited and considered information regarding traffic and traffic issues such as congestion and driveway design, which arguably impact certain criteria found in General Statutes § 22a-208, such as proper planning, design and construction the safeguarding of the "health, safety and welfare of the people of the state" The City also correctly identifies several Final Decisions of the Department where traffic impacts in the vicinity of the site in question have been considered. *E.g. In the Matter of the Town of Canterbury, 2000; In the Matter of Yaworski, Inc. 1994.*

To satisfy its burden in this matter, however, the Applicant is not required to prove that the proposed facility will have no impact on traffic conditions on the roads surrounding the proposed facility. Instead, as discussed above, the Applicant must demonstrate, by a preponderance of the substantial evidence in the record, that impacts to traffic as a result of the operation of the proposed facility will not have a disproportionately high adverse effect on human health. I note that considering traffic safety impacts under this standard is difficult, as the standard is better suited to issues more typically evaluated by this Department, such as the effect of a pollutant on groundwater, soil or those living in close proximity to its source. However, in the absence of more specific criteria directly related to traffic safety, this general standard must be used.

The City disputes the Applicant's ability to satisfy its burden, arguing that: the volume of trucks servicing the proposed facility will overburden local roads causing congestion and safety issues for other vehicles` and pedestrians; that potential off-site queuing of vehicles waiting to enter the proposed facility is unsafe, particularly due to limited sight lines; and, that the geometry of the proposed driveway will make it difficult for trucks to enter and exit the proposed facility, further exacerbating off-site queuing.

a
Traffic Volume

The Applicant has satisfied its burden of proving that the increased volume of traffic, including truck traffic, generated by the proposed facility will not have a disproportionately high adverse human health impact. The Applicant submitted substantial evidence, including the expert testimony of Michael Galante, its traffic engineer. This was the only expert testimony on this issue, and I find it to be credible. Mr. Galante's conclusion that the levels of traffic generated by the proposed facility are relatively minor compared to the existing volume of traffic on Plumtrees Road and other roads, is supported by significant data in the record, including traffic counts and a traffic study. This relatively minor increase in the volume of traffic will not have a disproportionately high adverse human health impact.

The City argues that the Applicant has failed to satisfy its burden. In support of this claim, the City first argues that when considering traffic congestion and safety I need not rely only on expert testimony, but instead may consider lay testimony, such as that provided by Councilman Saadi and First Selectman Knickerbocker. The City then urges me to compare the traffic generated by the proposed facility to traffic generated by other facilities considered by the Department and the Superior Court.

Courts have permitted administrative agencies, particularly zoning commissions, to rely on lay testimony regarding traffic. Our Supreme Court has held that a zoning commission may consider the lay testimony “of neighborhood residents about the nature of the existing roads in the area and the existing volume of traffic” *Cambodian Buddhist Society of Connecticut, Inc. v. Planning & Zoning Comm.*, 285 Conn. 381, 434 (2008). There exists, however, a critical distinction between describing current traffic conditions and projecting the impacts caused by future development. In *Silver Eagle Dev. Trust, LLC v. Durham Planning & Zoning Comm.*, 2009 Conn. Super Lexis 130, 13 (Conn. Super. Ct. 2009), the Superior Court addressed this distinction, holding that “. . . the court limits its use of lay testimony to the *existing roads* and existing traffic conditions at the relevant intersections, contrasted with projections of traffic conditions under *proposed or hypothetical circumstances* which, in the court’s view, require the testimony of experts.” (Emphasis original.) *Id.* While Mr. Saadi and Mr. Knickerbocker offered detailed testimony about traffic flow on the roadway system surrounding the proposed facility, neither is a traffic expert qualified to determine whether traffic generated by the proposed facility will create safety issues which merit denial of the Application. Mr. Galante’s conclusion that traffic generated by the proposed facility will not impact traffic safety on the streets surrounding the proposed facility is uncontradicted by any expert testimony in the record, and it would be inappropriate to disregard it.

The City compares the traffic to be generated by the proposed facility to other facilities denied for traffic safety reasons, including a proposed transfer station denied by the Department and a proposed gravel pit denied by the Town of Canterbury Planning and Zoning Commission and the Superior Court. I find these comparisons to be unavailing.

The Department denied an application for a permit to construct and operate a transfer station in Canterbury. That application was denied for a number of reasons, including traffic safety. *Final Decision re Yaworski, Inc.*, December 23, 1994. The Department determined that traffic to be generated by the *Yaworski* facility would “significantly exceed present levels.” *Id.* at 14. The traffic generated would travel on Packer Road, which was determined to be insufficient to carry even existing traffic. *Id.* Although there were homes located on Packer Road, impacts to pedestrians were not evaluated by the applicant, as *Yaworski*’s traffic expert testified that pedestrians should not use the roadway. The evidence in this record indicates that traffic safety impacts do not rise to the level of those in *Yaworski*. Traffic generated by the proposed facility will represent an incremental increase of 7.2% in the traffic traveling on Plumtrees Road overall, with increases of 11% and 3.7% during the morning and afternoon peak hours, respectively. This traffic will not “significantly exceed present levels” as the traffic generated in *Yaworski* would have. There is also nothing in this record to indicate that Plumtrees Road, Newtown Road or any other road surrounding the proposed facility is insufficient to carry existing traffic. The intersection of Newtown Road and Plumtrees Road, along the primary route to be used by trucks servicing the proposed facility, currently functions at a satisfactory level of service, and traffic generated by the proposed facility will only slightly increase delay at that intersection. There are no homes located on Plumtrees Road, and the record reveals that very few pedestrians use Plumtrees Road.

It is also important to note that six years after the Final Decision in *Yaworski*, the Department approved a permit to construct and operate a transfer station on the same parcel on Packer Road in Canterbury. *Final Decision re: Town of Canterbury, Application No. 1996-02422*, March 16, 2000. In that decision, the Department concluded that, after improved

maintenance of the road was performed and certain conditions of approval regarding the design of the proposed facility were imposed, “traffic impacts of the proposed facility do not justify denial of the requested permit.” *Id.* at 24. Although traffic was a reason for the denial of the permit in *Yaworski*, with proper design and planning, those issues could be overcome, as evidenced by the Department’s decision in *Town of Canterbury*. The record in this matter reveals that significant consideration has been given to traffic in the design and review of the proposed facility, and that traffic safety on Plumtrees Road and other roads surrounding the proposed facility do not merit denial of the Application.

The City relies on the Superior Court’s decision in *Strategic Commercial Realty, Inc. v Town of Canterbury Planning and Zoning Comm.*, 2013 Lexis 820 (Conn. Super. Ct. 2003) to support its claim that the proposed facility should be denied because of the type of traffic it will generate, not just the volume. Trucks servicing the proposed facility, the City argues, increase traffic safety risks more than other types of vehicles. In *Strategic*, trucks servicing a proposed gravel mining operation were to use a road between sixteen and nineteen feet wide. *Id.* at 11. The trucks servicing the gravel mining operation were to be nine feet wide, when measured to include their mirrors. *Id.* Cars would not be able to pass these trucks without difficulty and school buses would not be able to pass these trucks at all. *Id.* at 15. The record in this matter does not reveal any comparable traffic safety issue. Trucks regularly travel without incident to other facilities on Plumtrees Road such as Dell’s Auto Wrecking, Ferris Mulch and the Tilcon asphalt plant. There is no indication in the record that Plumtrees Road, or any surrounding road, is too narrow to allow these trucks to pass passenger cars, school buses, or other trucks servicing the proposed facility. The majority of the trucks servicing the proposed facility will be single unit trucks, such as trash collector trucks designed to travel on residential streets.

It is true that the proposed facility will generate an increased volume of traffic on Plumtrees Road and other nearby roads, and that much of this volume will be single unit or larger trucks. However, the increase in traffic volume will be incremental, and the roadway system is capable of handling the types of vehicles that will service the proposed facility. Mr. Galante's testimony, and the other supporting evidence in the record, necessarily leads to the conclusion that the volume of traffic to be generated by the proposed facility will not create significant traffic safety problems causing a disproportionately high adverse human health impact.

b
Off-Site Queuing

The City next claims that the Applicant has failed to meet its burden because trucks waiting to deliver waste to the proposed facility will be forced to queue into the southbound travel lane on Plumtrees Road, leaving only a dangerously short stopping distance for vehicles traveling around the significant curve located north of the proposed facility. To address these concerns the Applicant modified the design of the proposed facility, moving the entrance driveway to the south, to provide space for eleven large trucks to queue on-site. The City argues this modification is insufficient, particularly during the hours when the facility first opens and the heaviest volume of trucks per hour will arrive at the proposed facility, a problem which will be exacerbated if trucks begin arriving at the proposed facility before it opens.

Whether off-site queuing will occur, and if it does occur whether it will have impacts on traffic safety which cause a disproportionately high adverse effect on human health, are technical questions. When considering technically complex issues, such as the one under consideration here, administrative agencies typically rely on experts, as I do now. See *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 78 (2004) (determination of impacts on an inland wetland is a technically complex matter for which inland wetlands

commissions typically rely on evidence provided by experts). In this instance, there is contradictory expert testimony; the Applicant's expert testified that off-site queuing is unlikely and posed little threat to the safety of those traveling on Plumtrees Road while the City's expert testified off-site queuing was possible, if not likely, and could create a significant risk of collision. Both opinions are substantial evidence upon which I may base my recommendation.

[E]vidence is sufficient to sustain an agency finding if it affords a substantial basis in fact from which the fact in issue can be reasonably inferred. . . . [T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent [a determination] from being supported by substantial evidence. . . .

(Citations omitted; internal quotation marks omitted.) *Samperi v. Inland Wetlands Agency*, 226 Conn. 579, 587-588 (1993). While I agree generally with the Applicant's expert that off-site queuing is unlikely, especially give the ability of eleven large trucks to queue on-site, I recommend that certain modifications be made to the Draft Permit to strengthen and clarify the existing conditions regarding off-site queuing and address those issues raised by the City's expert. This modification to the Draft Permit and the weight of the evidence in the record provide that off-site queuing will not have a disproportionately high adverse human health impact.

Section C. 11. of the proposed Draft Permit addresses off-site queuing. It requires the Applicant to "control all traffic related to the operation of the Facility in such a way as to *mitigate* queuing of vehicles off-site and excessive or unsafe traffic impact in the area where the Facility is located. . . ." (Emphasis added.) Merriam Webster's dictionary defines "mitigate" as "to make (something) less severe, harmful, or painful." The present wording of the condition may create ambiguity as to the Applicant's duty under the Permit. To ensure that off-site queuing does not create a significant safety issue, the Applicant must take affirmative steps in its day to day operation to ensure that it does not occur. I recommend modifying this condition to require the Applicant to "control all traffic related to the operation of the Facility in such a way as to *prevent*

queuing of vehicles off-site and excessive or unsafe traffic impact in the area where the Facility is located. . . .”

When trucks arrive at the proposed facility will have a significant impact on the likelihood of off-site queuing. Of particular concern are trucks that arrive at the proposed facility before 7:00 AM, when the tipping bay doors are permitted to open for the unloading of waste. Section C.3.a. of the proposed Draft Permit states “Monday – Saturday 7 a.m. through 6 p.m., receive waste at the Facility, transfer waste from the Facility[.]” Over the course of this hearing process, it has become clear that there is some ambiguity in the proposed Draft Permit as to whether this requirement allows trucks arriving before the facility is permitted to begin accepting waste to queue on the on-site driveway or if the access gate will be closed and trucks would be forced to queue on Plumtrees Road. To avoid any off-site queuing, I recommend the following language be added to section C. 3. of the proposed Draft Permit:

Trucks delivering waste may arrive at the Facility no earlier than 6:45 AM. Trucks arriving between 6:45 AM and 7:00 AM must queue on-site in the space available on the Facility’s driveway. No backing by trucks equipped with backing alarms is permitted before 7:00 AM.

This recommended condition of approval will ensure that trucks do not queue on Plumtrees Road in the hours before the proposed facility can begin accepting waste and clarifies that trucks may not be arriving at the proposed facility before 6:45 AM.¹⁹ If more trucks than can queue on-site arrive before 7:00 AM, it will be the responsibility of the operator of the proposed facility to turn those trucks away.

The substantial evidence in the record indicates that off-site queuing is unlikely. The addition of the recommended requirements to the proposed Draft Permit will help ensure that the

¹⁹ Other conditions in the proposed Draft Permit prevent trucks from idling while waiting to be processed, an important consideration for those trucks arriving in the early morning hours.

operator is required to take affirmative action to prevent off-site queuing. As a result, I conclude that off-site queuing will not cause traffic safety issues which will rise to the level of having a disproportionately high adverse human health impact.

c
Sight Distance

The statutes and regulations relevant to the Department's evaluation of the proposed facility contain no requirement for sight distances of any particular length at the proposed facility's driveway. The City argues that the Application should be denied because sight distance, even with the driveway now located near the southern boundary of the property, does not meet the sight distance that would be required by the Connecticut Department of Transportation (DOT) for a driveway on a state highway. Whether the sight distance meets the DOT standard is irrelevant, as there is no evidence in the record that the sight distance is so unsafe that it will have a disproportionately high adverse human health impact.²⁰

The only evidence in this record that sight distances may be unsafe was offered by Mr. Sullivan, the City's traffic expert, who stated that if several vehicles were queued off-site in the southbound travel lane on Plumtrees Road, the "stopping sight distance" would be insufficient. This conclusion, however, was premised on one tractor trailer and three other trucks queuing on Plumtrees Road. Even under these contrived, unlikely circumstances (see Section 2.b. above), stopping sight distance failed to meet the stringent DOT standard of 327 feet by only seventeen feet.²¹ Mr. Sullivan's testimony on this point was speculative, relying on his assumption that

²⁰ The City of Danbury Zoning Regulations also contain a sight distance standard, which for the proposed facility is 150 feet, easily satisfied by the proposed facility. Neither the DOT standard, nor the standard contained in the Zoning Regulations is binding, and the only relevant question is whether the preponderance of the evidence in the record proves that the sight distances at the proposed driveway will be safe.

²¹ Mr. Sullivan testified that he did not know when, or with what frequency trucks would queue on Plumtrees Road, yet his pre-filed testimony evaluates only a scenario where the exact number and type of vehicles queued brings the stopping sight distance just below the DOT standard.

vehicles would queue off-site. His conclusion that vehicles traveling south on Plumtrees Road “could potentially be in harm’s way” is undermined by the unequivocal opinion of the Applicant’s traffic expert that stopping sight distance does not present a safety concern.

d
Driveway Geometry

The City also provided testimony that the width and approach angles of the proposed driveway will not allow tractor-trailer trucks to simultaneously enter and leave the facility. The Applicant responded that trucks are capable of executing maneuvers at low speeds that were not accounted for in the modeling performed by the City’s traffic expert. Intervention from the Applicant may be necessary to help sequence the flow of trucks into and out of the proposed facility and to direct trucks on the Property in the most efficient manner to avoid conflicts. However, this need for intervention, and the small possibility that a conflict at the proposed driveway would occur, do not present a disproportionality high safety risk as to merit denial of the Application.

e
Truck Routes

The Applicant proposes only one restriction on trucks servicing the proposed facility; tractor-trailer trucks leaving the facility must turn left and travel north on Plumtrees Road to Newtown Road.²² The City argues that trucks traveling on streets lined with residences, or that serve as the main access to condominium complexes or residential subdivisions, near the proposed facility, such as Shelter Rock Road in Danbury and Payne Road in Bethel, would be undesirable, given the residential character of those areas and the impacts of truck traffic.

²² The few trucks delivering scrap metal to Dell’s, located adjacent to the proposed facility are exempted from this requirement.

I agree that it would be preferable if trucks servicing the proposed facility reached their destination by traveling only on Newtown Road and Plumtrees Road, which have no residences located on them. However, as discussed in section B. 1. c. above, absent a showing that trucks traveling on other roads will have a disproportionately high human health impact, I lack the authority to condition approval of the Application, or recommend its denial, solely on the basis of truck routes.

The substantial evidence in the record indicates that the various routes taken by trucks servicing the proposed facility will not have an unreasonably high adverse human health impact. In fact, most trucks servicing the proposed facility *will* travel only on Newtown Road and Plumtrees Road because that is both the shortest and fastest route to reach the proposed facility from I-84. Those trucks traveling to the proposed facility using other routes will be residential collector type trucks – single unit garbage trucks designed to travel on residential streets. While the roads surrounding the proposed facility are, in some instances, steep and curving, potential safety issues on those roads do not rise to the level of those in previous cases considered by the Department and the Superior Court. There is no evidence that the roads surrounding the proposed facility are insufficient to serve current traffic or poorly maintained, as was the primary access road to reach the facility proposed in *Yaworski*. *Yaworski*, supra, at p. 14. Nor is there any evidence that the roads surrounding the proposed facility are so narrow that trucks traveling on those roads cannot pass one another or a school bus, as in *Strategic Commercial Realty*. *Strategic Commercial Realty*, supra, 2013 LEXIS 820, p. 11.

The record indicates that it is undesirable for trucks servicing the proposed facility to travel on roads other than Newtown Road and Plumtrees Road, but that it is not dangerous for them to do so. My decision on this issue, however, must only be based only on evidence of safety issues

resulting in adverse human health impacts. For these reasons, I cannot recommend conditions of approval to restrict the routes that trucks may travel when servicing the proposed facility.

3

Statutory and Regulatory Criteria

There are thirty-one different statutory and regulatory criteria found in General Statutes §§ 22a-208 and 22a-208a and Regs., Conn. State Agencies §§ 22a-209-9 and 22a-209-10 which must be used to evaluate the proposed facility.²³ Some of these criteria, particularly those contained in General Statutes § 22a-208, require “examination” of a certain aspect of the proposed facility, but provide little specificity as to how that examination is to be conducted. To the extent that the general criteria found in statute overlap with those criteria contained in Regs., Conn. State Agencies §§ 22a-209-9 and 22a-209-10, which are often more specific, those criteria are grouped together for the purposes of this analysis. Only those criteria relevant to the proposed facility are analyzed below.

The statutory and regulatory criteria all concern the design, construction and operation of the proposed facility itself. The only expert testimony on these subjects was offered by Department Staff and the Applicant. Their uncontradicted expert testimony constitutes substantial evidence upon which I may base my conclusions. “An administrative agency is not required to believe any of the witnesses, including expert witnesses... but it must not disregard the only expert evidence available on the issue” *Bain v. Inland Wetlands Commission*, 78 Conn. App. 808, 817 (2003). “The trier of fact is not required to believe un rebutted expert testimony, but may believe all, part or none of such un rebutted expert evidence.” *Bancroft v. Commissioner of Motor Vehicles*, 48

²³ Regs. Conn. State Agencies § 22a-209-9 contains fifteen different criteria; § 22a-209-10 contains twelve different criteria. Of these criteria, eleven are the same: access, certified operator, storage, working area, litter control, restrictions on certain wastes, air quality, fire control, shut down, measuring protocols, and temporary facilities. Section 22a-209-9 also requires the evaluation of enclosure, screening, vector control and maintenance. Section 22a-209-10 requires evaluation of explosion protection.

Conn. App. 391, 405 (1998). I find the testimony of Mr. Brown, for the Applicant, and Mr. Sigmund and Ms. Frigon, for the DEEP, to be credible and reliable as to the proposed facilities compliance with the statutory and regulatory criteria identified below.

a

Planning, Design, Construction and Access (Including Storage, Enclosure and Screening)

General Statutes § 22a-208 requires that I consider “proper planning, design [and] construction . . .” of the proposed facility. The more specific regulatory criteria in §§ 22a-209-9 and 22a-209-10 require that the proposed facility be designed to “prevent unauthorized use;” that appropriate storage capacity be provided and that waste not be stored for more than forty-eight hours; that an enclosure, such as a building, be provided; and, that the proposed facility be screened from the view of any residence within 500 feet. Regs., Conn. State Agencies §§ 22a-209-9(c)-22a-209-9(e), 22a-209-9(g), 22a-209-10(3)-22a-209-10(5), 22a-209-10(4).

The record indicates that the Property will be fenced to prevent unauthorized access and that the required sign will be posted at the entrance. The proposed facility includes a large building to enclose the areas where waste delivered to the proposed facility is processed. Both indoor storage and outdoor storage of some types of waste will be provided, which satisfies the storage volume requirements of the Regulations. The Draft Permit requires all waste to be removed from the proposed facility within forty-eight hours after being received, as required by § 22a-209-9(g)(1).

The record indicates that the only residences within 500 feet of the proposed facility are located in the Eden Drive complex to the East of the proposed facility. The proposed facility is

not visible from Eden Drive, as a result of the topography and vegetation of 16 Plumtrees Road.²⁴ Vegetative screening is also proposed along the frontage of the Property on Plumtrees Road.

b

*Facility Operation (Including Certified Operator, Working Area,
Litter Control, Restrictions on Certain Waste, Maintenance,)*

General Statutes § 22a-208 requires that I consider proper operation of the proposed facility. While operation of the proposed facility can, and does, include almost every item addressed in this decision, certain portions of Regs., Conn. State Agencies §§ 22a-209-9 and 22a-209-10 contain specific criteria most appropriately grouped as “facility operations.” Those criteria include the requirement that a certified operator be present during working hours, that unloading of waste take place in a designated area within the enclosed structure, that the facility and adjacent area be kept clean and reasonably free of litter, that the proposed facility not accept “hazardous wastes and special wastes,” and that provisions for proper maintenance of the proposed facility are made. Regs., Conn. State Agencies §§ 22a-209-9(f), 22a-209-9(h) - 22a-209-9(j), 22a-209-9(n), 22a-209-10(5) – 22a-209-10(8).

The record indicates that a certified operator will be on-site when the proposed facility is operating, a requirement also reiterated in the Draft Permit. All waste delivered to the proposed facility will be unloaded on the “tipping floor” located within the proposed building, and all processing of waste will take place indoors. The Draft Permit requires the Applicant to “operate the proposed facility in a safe manner so as to control . . . litter.” To satisfy this requirement, the Applicant will remove litter from the Property daily.

²⁴ No modifications to the topography or vegetation on 16 Plumtrees Road are proposed as part of this Application. Should the topography or vegetation on 16 Plumtrees Road be modified at some point in the future, the adequate screening of the proposed facility may need to be reassessed, perhaps as part of a permit renewal.

As detailed in the Draft Permit, the Applicant proposes to accept only certain types of waste. All waste arriving at the proposed facility will be visually inspected and if hazardous or special wastes are discovered, that delivery can be turned away and routed to an appropriate facility. In the event the facility inadvertently receives propane tanks with valves or spent lead acid batteries, which can be considered hazardous, the Draft Permit contains a specific procedure for handling those wastes.

The Applicant's Operation and Management Plan, incorporated into the terms of the Draft Permit, contains provisions for the proper maintenance of the proposed facility, including clean-up, equipment maintenance and snow removal, satisfying the maintenance requirement contained in the Regulations.

c

Monitoring and Measuring Procedures

General Statutes § 22a-208 requires proper monitoring of the proposed facility. The primary mechanism for monitoring, both in the Regulations and the proposed Draft Permit, is the creation of, “[d]aily records . . . [which] shall be maintained in a manner acceptable to the Commissioner.” These records must be submitted to the Department on a monthly basis and must identify the types of wastes received, the source of that waste, the amount of waste removed for resource recovery and the final disposal destination. Regs., Conn. State Agencies §§ 22a-209-9(p) and 22a-209-10(13).

The proposed facility has both inbound and outbound truck scales to enable the collection of the required data. The Draft Permit requires the collection and submission of draft reports containing the information identified in the Regulations. The record indicates that the Applicant will comply with the monitoring and measuring requirements contained in statute and regulation. The proposed Draft Permit also requires the regular auditing of the proposed facility.

d

Closure and Post-Closure Maintenance

General Statutes § 22a-208 requires evaluation of closure and post-closure maintenance. In the event the proposed facility is shut down, on a temporary or permanent basis, the Regulations require waste to be handled using, “an alternative method approved by the Commissioner” for the processing, transfer or disposal of solid waste. Regs., Conn. State Agencies §§ 22a-209-9(12) and 22a-209-10(o).

The record indicates that if the proposed facility is shut down, deliveries of solid waste can be diverted to other permitted facilities in the area. Because no waste will be permanently disposed of onsite, no provision for closure of open waste disposal areas or continued maintenance and monitoring is necessary.

e

Prevents Pollution to the Waters of the State

General Statutes § 22a-208 requires that I consider whether the planning, design, construction, operation, monitoring, closure and post-closure maintenance of the proposed facility ensures against pollution to the waters of the state. The Property is not in an aquifer protection area and there are no wetlands on the property, so any pollution would need to travel some distance to reach waters of the state. As described above, all waste will be processed indoors, stored indoors or in containers, and no waste will be disposed of on the property, so there is little potential for any pollution to leach into the ground or become part of stormwater runoff. For these reasons, the Applicant has met its burden of showing that the design and operation of the proposed facility protects against pollution of the waters of the state.

f
Vectors

The facility must be designed and operated so as to “prevent the harboring of vectors.” § 22a-208. To implement this requirement, the Regulations require that “(1) [c]onditions shall be maintained that are unfavorable for the harboring, feeding and breeding of vectors. (2) Additional means for controlling and exterminating vectors shall be instituted, whenever necessary in the judgment of the Commissioner to prevent the transmission of disease.” Regs., Conn. State Agencies §22a-209-9(m).

The Applicant has satisfied its burden by proposing conditions that are unfavorable to the harboring, feeding and breeding of vectors. The proposed Draft Permit requires the Applicant to “[o]perate the Facility . . . so as to control . . . vectors.” The testimony in this matter indicates that vectors, such as rodents, insects and birds, are not usually a problem at similar facilities. At the proposed facility, all putrescible MSW, which can attract vectors as it decomposes, must be removed from the Property within forty-eight hours of its receipt, before decomposition can begin. Vectors will not be attracted to the Property by waste stored outdoors because outdoor storage of waste is limited to temporary storage during the daytime hours and waste must be stored in covered containers, which limits its availability to vectors.²⁵ Should vectors become present at the proposed facility, the Applicant will hire a pest management company to eradicate the problem.

g
Fire and Explosion

During operation of the proposed facility, appropriate steps must be taken to prevent fires and explosions. The Regulations require that waste being delivered to the site be inspected and any burning or high temperature waste be rejected, that adequate fire control equipment be present

²⁵ “Clean wood” may be stored uncovered but is not attractive to vectors.

and that the local fire department and the Department be notified of any fire or explosion. Regs., Conn. State Agencies §§ 22a-209-9(1), 22a-209-10(10), 22a-209-10(11).

The Applicant has satisfied its burden by providing substantial evidence that it will prevent fires and explosions. Visual inspections of incoming waste are proposed. Fire suppression equipment and sprinklers will be present at the proposed facility, and the Applicant's operating plan calls contains emergency communication protocols. These prevention measures are also incorporated into the proposed Draft Permit. The substantial evidence in this record indicates that, because of the types of waste to be accepted, and the types of processing activities to be performed at the proposed facility, explosions are unlikely to occur.

h
Odors, Dust and Air Quality

General Statutes § 22a-208 requires that the proposed facility “minimize the emissions of objectionable odors, dust or other air pollutants.” The substantial evidence in the record reveals that the design and operation of the proposed facility will minimize odors, dust and other air pollutants. As noted above, putrescible MSW, likely to be the greatest source of odor as it decomposes, will not remain on the property long enough to begin decomposition. All waste with the potential to cause objectionable odors to emanate from the proposed facility will either be stored indoors or in covered containers. All waste processing will take place indoors, which will limit the spread of dust, odors or other pollutants. In addition, a misting system will be used to control dust. The proposed Draft Permit requires regular monitoring that will test the air inside the proposed building for lead and asbestos to ensure the proposed facility is not creating additional air pollution, and requires specific action be taken if an exceedance is found.

The Regulations also require the proposed facility to comply with “applicable regulations of the Department for the Abatement of Air Pollution.” Regs., Conn. State Agencies §§ 22a-209-

9(k) and 22a-209-10(9). Once the facility has become operational, it will be required to comply with these other regulations. There is no evidence in this record to suggest that the proposed facility will not be able to do so.

i

Conserves Natural Resources

The proposed facility will conserve natural resources, as required by General Statutes § 22a-208. A substantial portion of the waste processed by the proposed facility will be recyclables, to be separated, consolidated and marketed for reuse. In addition to this processing of recycled materials, the proposed facility is required recover a certain percentage of “C&D waste and non-putrescible MSW that is not source separated loads of recyclable material.” The recycling activity proposed at the facility will conserve natural resources and satisfies the Applicant’s burden.

j

*Health, Safety and Welfare and Disproportionately High Adverse
Human and Environmental Health Impacts*

Finally, General Statutes § 22a-208 requires that proposed facility be designed and operated in such a way as to protect the health, safety and welfare of the citizens of Connecticut. This standard is similar to the standard found in General Statutes § 22a-208a, which requires consideration of whether “such transfer station will result in disproportionately high human health or environmental effects.” For the reasons stated above, the preponderance of the substantial evidence in the record indicates that the design and operation of the proposed transfer station will not adversely impact human health, safety or welfare or have disproportionately high adverse human health or environmental impacts. The proposed facility will promote recycling without causing pollution and is designed and will be operated in accordance with the standards contained in statute and regulation.

Consistency with the Statewide Solid Waste Management Plan

The consistency of the proposed facility with the State-Wide Solid Waste Management Plan (Plan)²⁶ is at issue in this matter primarily because of objections raised by the HRRRA. During its technical review of the Application, Department Staff determined that the proposed facility was consistent with the goals of the Plan. HRRRA disagreed, arguing 1) that the proposed facility could solicit and accept MSW and recyclables from HRRRA member municipalities, which would hinder HRRRA's ability to perform its function under the Plan; and 2) that the Applicant did not propose, and the Draft Permit did not contain, an enforceable requirement that putrescible MSW received by the proposed facility be sent to resource recovery facilities for disposal if those facilities had available capacity.

In response to these objections, HRRRA and the Applicant agreed on two conditions of approval, which Department Staff subsequently incorporated into the proposed Draft Permit. The first of those conditions, section C.4.a. of the proposed Draft Permit, requires that the applicant not accept putrescible MSW or recyclables generated by HRRRA member towns until after the expiration of HRRRA's current waste disposal agreements. The second, section C.13.b of the proposed Draft Permit, requires the Applicant, in conjunction with HRRRA, to develop a process by which it will determine if a resource recovery facility has the capacity to accept putrescible MSW.

In general, the Plan requires final disposal of waste according to a hierarchy, prioritizing recycling and resource recovery or waste-to-energy plants over landfilling. The Plan also encourages bulky waste recycling. General Statutes § 22a-228. The proposed facility incorporates

²⁶ Although Regs., Conn. State Agencies § 22a-209-4(d) requires the operation of the proposed facility to be consistent with the Plan, the Plan itself is not a regulation. General Statutes § 22a-228.

a significant recycling component, including the capture for recycling of a certain percentage of waste that is not delivered as source separated recyclables. With the addition of the conditions of approval set out above, the facility will also prioritize the use of resource recovery facilities for waste that cannot be recycled. Since the addition of these conditions of approval, no party to this matter has seriously disputed that the proposed facility is consistent with the Plan. The preponderance of the substantial evidence in the record reveals that the Applicant has met its burden of proposing a facility that will operate in a manner consistent with the Plan.

5 *Noise*

Neither statute nor regulation contain any criteria which directly address noise which may be emitted by the proposed facility. The City argues, and I agree, that noise can be considered in this matter under the catch-all criteria contained in statute²⁷, such as the requirement of 22a-208 that the proposed facility be designed and operated so as to safeguard human health, safety and welfare or that of § 22a-208a the proposed facility not have a disproportionately high adverse human health effect. This approach is consistent with the past practice of the Department. E.g. *In the Matter of Yaworski, Inc.* 1994; *In the Matter of Circle of Life*, 2003.

The City argues that the Applicant has failed to meet its burden of proving that noise generated by the proposed facility will not adversely impact human health. I disagree. The only evidence in the record regarding noise to be generated by the proposed facility is the testimony of the Applicant's expert Mr. Brown and Department Staff. Mr. Brown's conclusion that noise is not typically an issue at other facilities like the proposed facility was uncontradicted, and is substantial evidence upon which I may rely. As noted above, "The trier of fact is not required to believe un rebutted expert testimony, but may believe all, part or none of such un rebutted expert evidence."

²⁷ On this point, and many others HACD adopted the City's arguments as its own.

Bancroft, supra, 48 Conn. App. 405 (1998). I find no reason to ignore the testimony of Mr. Brown. The City argues that Mr. Brown is not a noise expert so his testimony should be given little weight. But Mr. Brown is an expert on the design and operation of solid waste facilities. He is in a unique position among witnesses in this matter to know if the noise generated by the proposed facility would be problematic based on his experience with other, similar facilities. That his conclusion was accepted by the Department's experts only bolsters his credibility on this point.

It is also clear from the record that noise will be controlled by the design and operation of the proposed facility. All processing of waste must occur within the proposed building, limiting the biggest source of potential noise from the proposed facility. Before 7:00 AM and after 6:00 PM, the doors of the proposed building must be closed, further limiting potential sources of noise. Trucks servicing the proposed facility may idle for no more than three minutes before they must be shut off, limiting another source of noise.

The City compares the proposed facility to the one proposed in *Yaworski*, which was denied, in part because the projected volume of heavy trucks "in a neighborhood like this one would constitute . . . an unacceptable source of noise." *In the Matter of Yaworski, Inc.* 1994 at 3. In *Yaworski*, however, the primary road service the facility was a residential street and the facility itself was described as being located within the neighborhood. That is not the case here. The "neighborhood" surrounding the proposed facility is made up of light industrial uses along Plumtrees Road. While the Eden Drive complex is in relatively close proximity to the proposed facility, the proposed facility is not in and among its units. Nothing in the record indicates that the noise generated by the proposed facility will harm the health or well-being of residents of Eden Drive.

The proposed Draft Permit provides an additional layer of protection. The City of Danbury regulates noise, like most municipalities in the state. Condition C.7.g of the proposed Draft Permit requires the proposed facility to control noise “in continuous compliance with all applicable requirements,” which would include the local noise regulations. The City argues that this permit condition does nothing to help the Applicant meet its burden, again relying on *Yaworski*. This reliance is misplaced. In *Yaworski*, conditions of approval were deemed insufficient to control the activity proposed because the applicant had a long and thoroughly documented history of non-compliance with environmental statutes and regulations. *Id.* The Commissioner concluded that

[t]he Department has already unsuccessfully attempted to control [Yaworski’s] conduct by means of permit conditions, including a condition which the Applicant now specifically urges me to impose . . . Unfortunately, time has proven that even conditions as numerous and strict as those imposed [on Yaworski in other permits] are not enough to keep [Yaworski] in compliance. In my judgment, therefore, more drastic measures are needed.

Id. at 10-11. There is no evidence that the Applicant in this matter, or any person associated with it, has any history of non-compliance with environmental statutes or regulations. This can only lead to the assumption that the Applicant will make every effort to comply with the conditions of approval in the proposed Draft Permit, including those concerning emission of noise. In fact, it would be inappropriate to assume that the Applicant will violate the conditions of its permit. See *Waste Management v. New Milford Zoning Comm’n*, 1994 Conn. Super. Lexis 1064 at 7 (“[i]n determining whether or not to issue a permit, the Commission may not assume that a permit holder will act in violation thereof.”); *Abel v. New Canaan Planning and Zoning Comm’n*, 2012 Conn. Super. Lexis 153 (“[i]t was the Commission’s duty to assume that a land owner who seeks approval for a special permit will use the property for the permitted purpose, not a prohibited purpose.”).

The uncontradicted evidence in the record indicates that the proposed facility will not emit noise that will be harmful to the health or well-being of those near the proposed facility and will comply with local noise regulations. Noise emissions, therefore, do not form a basis for the denial of the Application.

6
Environmental Justice

HACD argues that the Applicant has failed to comply with the provisions of General Statutes § 22a-20a. This statute would require the Applicant to facilitate additional “meaningful public participation” and potentially enter into a “community environmental benefit agreement” if the proposed facility is located in an “environmental justice community.”²⁸ To determine whether the proposed facility is located in an environmental justice community, the Applicant followed the procedure prescribed by the Department. The Applicant first determined that Danbury was not a “distressed municipality” and then determined the proposed facility was not in a census block identified as an environmental justice community by relying on maps published on the Department’s website for this purpose. The map used indicated that the proposed facility is not in an environmental justice community. HACD questions the accuracy of this map, and asserts, through the testimony of Ms. Sistrunk, the executive director of the HACD, that the provisions of § 22a-20a should apply to the proposed facility.

The best evidence in the record regarding the delineation of environmental justice communities is the map published by the Department, referred to by both the Applicant and Department Staff. Although I find Ms. Sistrunk’s testimony on the demographics of those residing

²⁸ General Statutes § 22a-20a defines an “environmental justice community” as “(A) a United States census block group, as determined in accordance with the most recent United States census, for which thirty-percent or more of the population consists of low income persons who are not institutionalized and have an income below two hundred per cent of the federal poverty level, or (b) a distressed municipality, as defined in subsection (b) of section 32-9p.”

in the Eden Drive complex credible, it is insufficient to require a determination that the Department's maps were flawed, because the demographic information she provided was not assigned to any particular census block area, a critical component in delineating environmental justice communities. Based on this testimony, I cannot determine that the Applicant was required to do anything more than review the existing environmental justice community maps, as is typically required.²⁹ The Applicant relied on the most recent map published by the Department for this very purpose and took the steps typically required in reliance on that information.³⁰ To determine at this time, after years of technical evaluation and hearings, that the information, published by the Department, upon which the Applicant relied, was incorrect would be extremely prejudicial to the Applicant. Because the evidence in the record does not compel such a determination, I conclude that the Applicant has fulfilled its obligations with regards to General Statutes § 22a-20.

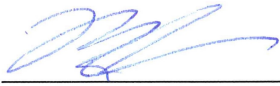
III CONCLUSION AND RECOMMENDATION

In light of the foregoing, I conclude that, if the Applicant acts in accordance with the terms and conditions of the proposed Draft Permit, as modified below, the proposed facility will be constructed and operated in compliance with all applicable legal requirements. I therefore respectfully recommend that the Commissioner issue the requested permit, incorporating the terms and conditions of the proposed Draft Permit, with the following modifications:

²⁹ It is possible that the census block containing the Eden Drive complex should be identified as an environmental justice community. There is no evidence, however, in this record that establishes that the Eden Drive complex and the proposed facility are in the same census block group. There is also no evidence in the record, however, about others who may reside in the same census block as the residents of Eden Drive, affecting the demographics of that block.

³⁰ HACD also argues that the Applicant failed to comply with the Department's Environmental Equity Policy. To the extent that this policy has not been superseded by the requirements of General Statutes § 22a-208a, it does not carry the force of law and cannot form a basis upon which I may deny the permit. I also note that, although residents of Eden Drive are in closest proximity to the proposed facility, there are hundreds of condominium units and single family homes near the proposed facility. Residents of Eden Drive are not being asked to bear a disproportionately higher risk than other nearby residents and, as discussed above, the risks posed by the proposed facility are quite low.

1. A condition of approval be added, requiring the Applicant submit a site plan that depicts the proposed facility with its driveway located near the southern boundary of the Property, as proposed, and contains no reference to the right-turn deceleration lane.
2. Section C. 11. of the proposed draft permit, concerning off-site queuing, be modified to replace the word “mitigate” with the word “prevent.”
3. A condition of approval be added to section C. 3. of the proposed Draft Permit which states, “Trucks delivering waste may arrive at the Facility no earlier than 6:45 AM. Trucks arriving between 6:45 AM and 7:00 AM must queue on-site in the space available on the Facility’s driveway. No backing by trucks equipped with backing alarms is permitted before 7:00 AM.



Brendan Schain, Hearing Officer

S E R V I C E L I S T

In the matter of MSW Associates, LLC – Permit to Construct and Operate a Volume Reduction Plant

Application No.: 201103241

PARTY

REPRESENTED BY

The Applicant

Joseph Putnam
MSW Associates
14 Plumtree Rd.
Danbury, CT 06810
joe.pag@sbcglobal.net

Ann Catino, Esq.
Amanda L. Brosy, Esq.
Halloran & Sage, LLP
225 Asylum St.
Hartford, CT 06103
catino@halloransage.com
brosy@halloransage.com

Department of Energy and Environmental Protection

Waste Engineering and Enforcement Division
Bureau of Materials Management and
Compliance Assurance
Department of Energy and Environmental Protection
79 Elm St
Hartford, CT 06106-5127

William Sigmund
william.sigmund@ct.gov
Gabrielle Frigon
garbielle.frigon@ct.gov

Intervening Parties

Hon. Mark D. Boughton
City of Danbury
155 Deer Hill Ave.
Danbury, CT 06810

Daniel E. Casagrande, Esq.
Lisa M. Rivas, Esq.
Cramer & Anderson, LLP
30 Main St., Suite 303
Danbury, CT 06810
dcasagrande@crameranderson.com
lrivas@crameranderson.com

Cheryl D. Reedy, Executive Director
Housatonic Resources Recovery Authority
Old Town Hall
162 Whisconier Rd.
Brookfield, CT 06804
cherylreedy@hrra.org

Robert J. Metzler, Esq.
Cohn Binbaum & Shea, P.C.
100 Pearl St., 12th Floor
Hartford, CT 06103
rmetzler@cbshealaw.com

Intervenors

M. Carolyn Sistrunk, Executive Director
Housing Authority of the City of Danbury
2 Mill Ridge Rd.
Danbury, CT 06810
msistrunk@hacdct.org

Kim E. Nolan, Esq.
Cramer & Anderson, LLP
30 Main St., Suite 303
Danbury, CT 06810
knolan@crameranderson.com

Petitioner (courtesy copy)

Thomas J. Saadi
Council Minority Leader, City of Danbury
24 Tobins Court
Danbury, CT 06810
tomsaadi@aol.com

Courtesy Copies

Rep. David Arconti
david.arconti@cga.ct.gov

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PERMIT TO CONSTRUCT AND OPERATE

PERMITTEE: MSW Associates
FACILITY ADDRESS: 14 Plumtrees Road, Danbury, Connecticut
PERMIT No. Permit No. ???????-PCO

Pursuant to Section 22a-208a of the Connecticut General Statutes (“CGS”) and Section 22a-209-4 of the Regulations of Connecticut State Agencies (“RCSA”), a PERMIT TO CONSTRUCT AND OPERATE IS HEREBY ISSUED by the Commissioner of Energy and Environmental Protection (“Commissioner”) to MSW Associates (“Permittee”) to construct and operate a solid waste Volume Reduction Plant (“Facility”) located at 14 Plumtrees Road, Danbury, Connecticut.

A. GENERAL TERMS AND CONDITIONS

1. a. This Permit is based on and incorporates by reference pertinent and appropriate sections of documents and specifications submitted as part of Application No. 201103241, including:
 - i. Application form received on May 4, 2011;
 - ii. Operation and Management Plan (O&MP) prepared by Project Management Associates, LLC and stamped by Mr. David S. Brown, P.E., dated May 3, 2011, revised March 8, 2012 and January 29, 2013;
 - iii. A Facility Site Plan labeled „Sheet K-1“ prepared by Isherwood Civil Engineering and stamped by Ms. Karen M. Isherwood, P.E., dated April 29, 2011 and revised to May 31, 2014;
 - iv. A Document entitled “Comment Response Submittal” prepared by Project Management Associates, LLC, dated March, 2012.
 - v. A Document entitled “Comment Response Submittal” prepared by Project Management Associates, LLC, dated January, 2013
 - b. The Permittee shall maintain at the Facility and have available for reference by Facility staff and inspection by the Commissioner:
 - i. All documents or copies of such documents submitted as Application No. 201103241 and any document submitted in support of said application for the life of this Permit; and
 - ii. A copy of this Permit and the Facility’s Facility Plan which consists of the Operation and Management Plan and the engineered drawings which describe the Facility and its operations; and
 - c. The Permittee shall provide to the Department notification within ninety (90) days of any changes in the information provided as part or in support of the application on which this Permit was based. Any inaccuracies found in the information submitted by the Permittee may result in revocation, reissuance, or modification of this Permit and civil or criminal enforcement actions.
2. As used in this Permit, the following definitions apply:

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“Clean Wood” as defined in Section 22a-208a-1 of the RCSA means any wood which is derived from such products as pallets, skids, spools, packaging materials, bulky wood waste, or scraps from newly built wood products, provided such wood is not treated wood as defined below or demolition wood.

“Commissioner” means the Commissioner of the Department of Energy and Environmental Protection or the Commissioner’s duly authorized designee.

“Construction and Demolition Waste” or “C&D” means waste from construction and demolition activities as defined in Section 22a-208x of the CGS.

“CFR” means the Code of Federal Regulations in effect the date this Permit is issued.

“Day” means calendar day.

“Department” means the Department of Energy and Environmental Protection.

“Designated Recyclable Item” pursuant to CGS Section 22a-207(27) of the CGS means an item designated for recycling by the Commissioner in regulations adopted pursuant to subsection (a) of section 22a-241b, as amended by Public Act No. 10-87, or designated for recycling pursuant to Section 22a-256 or 22a-208v of the CGS.

“Final Products” means processed solid wastes, which are ultimately delivered to a market or other solid waste Facility.

“Mixed Paper” means recyclable solid waste which is a combination of differing grades of source-separated recyclable paper including corrugated cardboard.

“Municipal Solid Waste” or “MSW” means solid waste from residential, commercial, industrial and institutional sources, excluding solid waste consisting of significant quantities of hazardous waste as defined in Section 22a-115 of the CGS, land clearing debris, biomedical waste, sewage sludge and scrap metal.

“P.E.” means Professional Engineer licensed in the state of Connecticut.

“Processed Wood” means recycled wood or treated wood or any combination thereof, which has been processed at a properly permitted volume reduction plant.

“Processing” means the practice by which either the physical characteristics or the volume of solid waste accepted at the Facility is being altered through separating, sorting, baling, shredding, crushing, grinding, chipping, compacting, consolidation, transfer or reworking as part of recycling and/or volume reduction operations.

“Recovered Materials” means processed solid wastes that are ultimately delivered to a market or other permitted recycling or reclamation Facility.

“Recycled Wood” means any wood or wood fuel which is derived from such products or processes as pallets, skids, spools, packaging materials, bulky wood waste or scraps from newly built wood products, provided such wood is not treated wood.

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“Residue” means all solid waste, as defined in Section 22a-207 of the CGS, other than recovered materials remaining after the handling and processing of the incoming waste stream.

“Treated Wood” as defined in Section 22a-209a(a)(2) of the CGS means wood which contains an adhesive, paint, stain, fire retardant, pesticide or preservative.

3. The Permittee shall comply with all terms and conditions of this Permit. This Permit consists of the conditions contained herein and the specifications contained in the application documents, except where such specifications are superseded by the more stringent conditions contained herein. Violation of any provision of this Permit is subject to enforcement action pursuant, but not limited, to Sections 22a-6, 22a-208, 22a-225 and 22a-226 of the CGS.
4. The Permittee shall make no changes to the specifications and requirements of this Permit, except in accordance with law.
5. To the extent that any term or condition of this Permit is deemed to be inconsistent or in conflict, with any term or condition of any permit previously issued for this Facility, including any modifications thereto, or with any data or information contained in the application, or any other documents incorporated by reference in this Permit, the term or condition of this Permit shall control and remain enforceable against the Permittee.
6. The Permittee shall submit for the Commissioner’s review and written approval all necessary documentation supporting any proposed physical/operational upgrades, improvements and/or minor changes in the Facility design, practices or equipment. The Commissioner may issue a written approval only if, in the Commissioner’s judgment, the proposed physical/operational upgrades, improvements and/or minor changes: (a) are deemed necessary for a better and more efficient operation of the Facility; (b) do not significantly change the nature of the Facility, or its impact on the environment; and (c) do not warrant the issuance of a permit or authorization pursuant to Section 22a-208 of the CGS.

B. AUTHORIZATION TO CONSTRUCT

1. The Permittee is authorized to construct the Facility in accordance with all applicable law, including this Permit. The Facility shall consist of the following:
 - a. a two way access road gated at the Facility’s entrance with two vehicle scales (one each for inbound and outbound traffic);
 - b. one 33,462 square foot (approx.) operations building containing a four-bay centralized tipping and operations area for receiving and processing wastes; a two-bay outbound loading area for the storage and outbound management of baled wastes; a two-bay direct transfer outbound loading area constructed with an approximate 6 foot grade separation (from that of the tipping floor) for the transfer and management of loose loads in open top transfer trailers; and a two-story business office and scale house;
 - c. seven commercial type roll-up doors installed at each of the operations building’s vehicle bays (two doors installed at the baled waste load out area, four doors installed at the centralized tipping and operations area, and one door installed at the direct transfer outbound truck loading area) to enable the facility to be completely closed during periods of overnight processing operations when loads are not being received or shipped;

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- d. an automated waste processing system equipped with screens, magnets, optical sorters, destoners, air boxes and eddy-current sorters, along with manual inspection/picking lines to separate the marketable fractions and non-marketable fractions from C&D waste, non-putrescible waste, and recyclables;
 - e. an operational area inside the operations building equipped with a baler for use in preparing recyclable materials for outbound shipping to reuse/energy recovery facilities;
 - f. a dedicated inside storage area for use in managing baled materials prior to outbound shipping;
 - g. a separate operational area provided with an impervious surface designed to store vertically no more than 30 scrap metal appliances containing CFC liquid;
 - h. an operational area for the separated storage (either in containers or in piles separated by walled storage bins) of recovered materials including scrap metal, tires, processed wood waste, mixed paper, and recyclable containers;
 - i. a centralized inside storage area for the storage (in loose piles or in containers) and processing (chipping) of clean wood waste;
 - j. two outside storage areas for the storage of processed wastes in covered containers;
 - k. a dedicated inside operational area on the Facility's tipping floor for the transfer, storage, and consolidation of putrescible MSW in piles or in containers;
 - l. a separate inside operational area provided with an impervious surface where spent lead acid batteries will be stored (when received inadvertently);
 - m. a separate outside storage area protected by a non-combustible, peripheral fence for the storage of no more than 20 propane tanks with valves (when received inadvertently).
2. The Permittee is authorized to construct the Facility for the purposes of processing no more than a total of 800 tons per day (TPD) of waste types specified in Section C. of this Permit.
 3. The Permittee shall control dust, odors, water discharges and noise resulting from the construction of the Facility at all times to assure compliance with applicable requirements of the RCSA, and any other applicable laws, including OSHA.
 4. The Permittee shall, within thirty (30) days from the completion of the construction, as described in Condition B.1. above, submit a written notification for the Commissioner's review and written approval. Such notification shall include at a minimum:
 1. P.E. certified statement that the construction of the Facility has been completed as approved;
 2. P.E. certified as-built drawings; and
 3. A request for written authorization from the Commissioner to operate in accordance with condition Nos. C.4. and C.5.

C. AUTHORIZATION TO OPERATE

1. The Permittee is authorized to operate any or all of the components specified in Condition No. B.1. upon written approval granted by the Commissioner. Such written approval shall be issued after the Permittee is deemed in full compliance with, but not limited to, the requirements of Condition No. B.4. of this Permit.
2. The Permittee shall not exceed the processing and storage limits established by this Permit. Solid waste, other than those listed herein, shall not be accepted, processed, treated, stored, transported

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or disposed off-site, or otherwise processed at the Facility without prior written approval of the Commissioner.

3. The Permittee is authorized to operate the Facility in accordance with all applicable law, including this Permit. Unless otherwise approved in writing by the Commissioner or limited by local authorities, the Permittee is authorized to operate as follows:
 - a. Monday – Saturday 7 a.m. through 6 p.m., receive waste at the Facility, transfer waste from the Facility;
 - b. Monday – Saturday 8 a.m. through 6 p.m., conduct wood chipping activities at the Facility;
 - c. Twenty four (24) hours per day seven (7) days per week, process solid waste at the Facility (with the exception of wood chipping), and conduct Facility and equipment maintenance. The processing of waste outside of the authorized hours for waste receipt (i.e. 6 p.m. through 7 a.m. or “overnight hours”) shall take place indoors only; and
 - d. Each of the bay doors to the tipping floor, and load-out bays is closed at 6 p.m. and shall remain closed during overnight operations at the Facility. No out-of-doors solid waste management activities shall be conducted during overnight hours.

4.
 - a. The Permittee shall not knowingly and intentionally accept at the Facility putrescible MSW generated within the borders of the Connecticut municipalities of Bethel, Bridgewater, Brookfield, Danbury, Kent, New Fairfield, New Milford, Newtown, Redding, Ridgefield and Sherman (the "HRRAs") beginning the date of issuance of this Permit until June 30, 2019. The Permittee shall also not knowingly and intentionally accept at the Facility recyclables generated by residential or small commercial entities within the boundaries of the HRRAs Towns, other than the Town of Ridgefield, beginning the date of issuance of this Permit until March 31, 2016, or March 31, 2019, if the Regional Single Stream Recycling Service Agreement between HRRAs and Winters Bros. Transfer Stations of CT, LLC (“Winters Bros.”) dated as of February 21, 2013 is extended according to its terms by HRRAs and Winters Bros..

 - b. The Permittee shall receive and manage at the Facility no more than a total of 800 tons/day (TPD) of the following types of solid waste (a) municipal solid waste (MSW); (b) scrap metal including appliances containing chlorofluorocarbon (CFC) liquid and propane tanks without valves; (c) construction and demolition debris; (d) Recyclables (including recyclable containers and mixed paper); (e) scrap tires; (f) clean wood waste; and, (g) yard waste. The Permittee shall process no more than 350 TPD of putrescible MSW.

| Maximum Daily Processing Capacity | |
|---|---------------|
| Waste Type | Amount |
| C&D/Oversized MSW, MSW*, Clean Wood, Scrap Tires, Scrap Metal, Appliances w/ CFCs | 700 TPD* |
| <i>* Receipt and Management of Putrescible MSW Not to Exceed 350 TPD</i> | |
| Recyclables (Metal/Plastic Containers, Paper, Cardboard) | 100 TPD |
| Facility Total (All Wastes and Recyclables) | 800 D |

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5. The Permittee shall store and manage authorized solid wastes only in the designated areas identified in the facility site plan referenced in Condition A.1.a. of this Permit, in accordance with the following storage limits and management specifications. Containers of solid waste shall be removed from the Facility no later than 48 hours after having been filled:

| Maximum Facility Storage | | |
|---|------------------------|---------------------------------------|
| Waste Stream | Maximum Storage | Storage Method |
| Inside VRP Storage | | |
| C&D/Oversized MSW | | |
| <i>Unprocessed</i> | 1200 cy | Piles or containers |
| <i>Processed</i> | 400 cy | Piles or containers |
| Putrescible MSW | 1200 cy | Piles or containers |
| Non-Putrescible MSW | | |
| <i>Unprocessed</i> | 100 cy | Piles or containers |
| <i>Processed</i> | 100 cy | Piles or containers |
| Paper & Cardboard | 270 cy | Containers or bales |
| Scrap Tires | 50 cy | Containers |
| Scrap Metal | 100 cy | Containers |
| CleanWood | | |
| <i>Unprocessed</i> | 90 cy | Piles or containers |
| <i>Processed</i> | 150 cy | Piles or containers |
| Regulated Wood/C&D Wood Fuel | 100 cy | Piles or containers |
| Separated Recyclable Containers | 100 cy | Piles or containers |
| Baled Recyclables | 200 cy | Bales |
| Appliances w/ CFCs | 30 units | Staged upright in designated area |
| Propane Tanks (w/o Valves) | 20 units | Containers (managed with scrap metal) |
| Outside Storage | | |
| C&D/Oversized MSW | | |
| <i>Unprocessed</i> | 100 cy | Covered containers |
| <i>Processed</i> | 200 cy | Covered containers |
| Putrescible MSW | 300 cy | Covered containers |
| Recyclables | 100 cy | Covered containers |
| Clean Wood (Total) | | |
| <i>Unprocessed</i> | 50 cy | Containers |
| <i>Processed</i> | 50 cy | Containers |
| Regulated Wood/C&D Wood Fuel | 100 cy | Covered containers |

- a. **Storage and Management of Putrescible MSW.** Management of putrescible MSW shall be limited to receipt on the tipping floor and consolidation into containers and transfer from the Facility only. The incoming flow of putrescible MSW shall not otherwise be mechanically processed or manually sorted. Indoor storage of putrescible MSW shall occur only in piles on the tipping floor or in containers staged inside of the VRP building, shall be limited to no more than 48 hours from when the waste entered the Facility (with the exception of legal holiday weekends), and shall be processed on a first-in first-out basis. Outside storage of putrescible MSW shall only occur in covered

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containers during daytime outbound shipping hours, and shall not occur during overnight hours. Loaded outbound containers of putrescible MSW may be parked overnight inside of the VRP in either the Outbound Truck Loading Area or on the tipping floor such that the total volume of putrescible MSW does not exceed 1500 cubic yards.

- b. **Storage and Management of Non-Putrescible MSW.** Processing of non-putrescible MSW (through either manual or mechanical means) shall be conducted within the operations building, either on the tipping floor or through the processing system in accordance with the manufacturer's specifications for the operation of the system. Such solid waste shall be processed on a first in/first out basis. Outside storage of solid waste shall be in containers that are watertight and covered at all times and shall occur only in the areas designated on the facility plan referenced in Condition A.1.a., above. Processed non-putrescible MSW waste shall not be stored on-site for greater than thirty (30) days from when the waste first entered the Facility.
- c. **Storage and Processing of C&D waste and oversized MSW.** Processing of C&D waste and oversized MSW (through either manual or mechanical means) shall only be conducted within the operations building, either on the tipping floor or through the processing system in accordance with the manufacturer's specifications for the operation of the system, and shall be processed on a first in/first out basis. The operations building shall be equipped with adequate ventilation, fire protection systems and an impervious floor. Outside storage of solid waste shall be in containers that are watertight and covered at all times and shall occur only in the areas designated on the facility plan referenced in Condition A.1.c., above. Processed C&D waste shall be containerized by the end of each processing day and shall not be stored on-site for greater than thirty (30) days from when the waste first entered the Facility.
- d. **Regulated Wood/C&D Wood Fuel.** The Permittee shall at all times implement a quality assurance/quality control plan for the production and management of regulated wood/C&D wood fuel from the C&D waste streams it processes to ensure that the recovered product is suitable for use as a fuel source at the receiving energy recovery facility. Wood recovered from C&D waste streams deemed acceptable for use as regulated wood/C&D wood fuel shall be analyzed in accordance with the testing requirements of the receiving energy recovery facility.
- e. **Storage and processing of Recyclable Materials:** Processing of Recyclable Materials shall be conducted within the operations building and shall occur only on the tipping floor, through the processing system in accordance with the manufacturer's specifications for the operation of the system, or through the baling system. Recyclable Materials shall be processed on a first in/first out basis and shall be managed and stored with like materials in a manner that preserves the marketability of that material. Processed Recyclable Materials shall be stored either in covered containers in the outdoor storage areas or in the bale storage area (if baled) as those management areas are defined on the facility plan referenced in Condition A.1.a.
- f. **Storage of clean wood (brush; land clearing debris, pallets)** Piles of unprocessed clean wood shall: have a minimum of a twenty-five (25) foot emergency access maintained around them; not contain treated wood; be processed/transferred on a first-in/first-out basis; and not exceed a height of twenty-five (25) feet.

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Piles of processed clean wood chips shall: have a maximum height of fifteen (15) feet; be stored in containers if stored outside in a clearly marked area equipped with stormwater run-on/run-off controls which comply with all existing permits and/or any applicable stormwater management requirements of Section 22a-430 of the RCSA.

Wood chipping activities shall only be conducted inside of the VRP building and only during Monday through Saturday between the hours of 8:00 a.m. through 6:00 p.m. The Permittee shall ensure that wood chipping activities comply with the requirements of Sections 22a-174-18, 22a-174-23 and 22a-174-29 of the RCSA; and shall not generate noise, dust, fumes, smoke, vibrations and odors that exceed background levels thereof at any boundary of the property on which the Facility is located.

- g. **Storage of scrap metal.** Scrap metal (including appliances which have had chlorofluorocarbon (CFC) liquid removed and propane tanks without valves) shall: be moved to and stored in containers or in piles staged within a storage bin at the end of each operational day; and be removed from the Facility within two (2) business days once the containers or storage bins are full. Any scrap metal that contains used oil shall be managed in accordance with the applicable used oil regulations as specified in Section 22a-449(c)-119 of the RCSA, until the used oil is drained or otherwise removed from the scrap metal. Scrap metal recovered from the automated processing system shall be relocated to the designated storage area no less than once per operational day.
 - h. **Storage of scrap metal containing chlorofluorocarbon (CFC) liquid.** Appliances containing CFCs shall be stored in an upright position, on a surface sufficiently impervious to prevent or minimize infiltration. Only a contractor certified in accordance with 40 CFR 82.150 through 166 shall remove the CFC liquid.
 - i. **Storage and handling of scrap tires.** Scrap tires shall be stored inside of the operations building and be confined either to a storage bin or within container. Scrap tires recovered from the processing system shall be placed in the storage area no later than the end of each operational day. Outside storage of fully loaded containers shall occur only in the areas designated as container storage areas on the facility site plan referenced in Condition A.1.a., above.
6. The following conditions are provided for inadvertently received unauthorized wastes and to ensure the proper management of these wastes. The Permittee is not authorized to accept the following.
- a. **Propane tanks with valves (received inadvertently).** Propane tanks with valves inadvertently received within loads of other materials shall be stored in accordance with the following: Storage of propane tanks with valves at the Facility shall not exceed ten (10) units. Unless otherwise directed by the Danbury Fire Marshall, the propane tanks with valves shall be: stored outside and upright on a surface sufficiently impervious to prevent or minimize infiltration; segregated from public access; provided with a non-combustible peripheral fence and a secured gate; and have open ventilation and proper signage in accordance with National Fire Protection Association (NFPA) 58-1995 “Standard for the Storage and Handling of Liquefied Petroleum Gases” and Section 29-331-5 of the RCSA. The Permittee shall hire a licensed contractor to extract the existing

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propane liquid, dismantle the valves and/or transport intact propane tanks with valves off-site. Any leaking propane tank shall immediately be removed for safe and proper handling. Empty propane tanks without valves shall be consolidated with the scrap metal.

- b. **Spent lead acid batteries (received inadvertently).** Lead acid batteries inadvertently received within loads of other materials shall be stored in accordance with the following: Lead acid batteries shall not be opened, handled or stored in a manner which may rupture the battery case, cause leakage, or produce a short circuit; and shall be removed from the Facility at a minimum of once every twelve (12) months. Storage shall: (i) not take place near incompatible solid waste or other materials unless the batteries are separated from such other materials by means of a dike, berm, wall or other device to prevent fires, explosions, gaseous emissions, leaching or other discharge of hazardous waste or hazardous waste constituents; and (ii) be done in an area provided with a roof, and an impervious base treated with a sealant that is chemically compatible with the batteries stored, bermed to prevent run-on, and provided with a spill containment system. With respect to the management of lead-acid batteries, the Facility shall comply with the requirements in Section 22a-449(c)-106(c) of the RCSA for lead-acid batteries, or in the alternative, with the requirements in Section 22a-449(c)-113 of the RCSA for universal waste batteries.

7. The Permittee shall:

- a. Store solid waste on-site in conformance with proper fire control measures. Routine maintenance and inspections of all fire control equipment shall be conducted in accordance with manufacturer's specifications.
- b. Ensure that all solid waste accepted at the Facility is properly managed on-site, processed, stored and transported to markets or other solid waste processing or disposal facilities permitted to accept such solid waste.
- c. Ensure that any unacceptable solid waste inadvertently received, or solid waste which is unsuitable for processing at the Facility is: (i) immediately sorted, separated, isolated and temporarily stored in a safe manner prior to off-site transport; (ii) recorded and reported in the quarterly report required by Condition No. C.12. of this Permit; and (iii) disposed at a Facility lawfully authorized to accept such waste. No more than thirty (30) cubic yards of unacceptable waste shall be stored on-site unless authorized by the Commissioner. A spare container shall be available for any storage emergency.
- d. Ensure that contingent storage of incidental mixed batteries, mercury-containing lamps, used electronics, thermometers and thermostats classified as universal wastes that is inadvertently delivered to the Facility as part of a load is conducted in accordance with the requirements of the Universal Waste Management Regulations (Sections 22a-449(c)-113 and 22a-209-17 of the RCSA). The storage container(s) shall be located in an area of the Facility that will not interfere with other permitted activities.
- e. Provide expeditious notification regarding any emergency incident (explosion, accident, fire, release, or other significant disruptive occurrence) which: (i) significantly damaged equipment or structures; (ii) interrupts the operation of the Facility for greater than twenty-four (24) hours; (iii) results in an unscheduled Facility shutdown or forced

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diversion of solid waste to other solid waste facilities; (iv) could reasonably create a source of pollution to the waters of the state; or (v) otherwise threatens public health.

Such notification shall be: (i) be immediately conveyed to the Commissioner using the 24-hour emergency response number (860) 424-3338 or the alternate number (860) 424-3333 and in no event later than twenty-four (24) hours after the emergency incident; (ii) verified to the Solid Waste Program in the Waste Engineering and Enforcement Division of the Bureau of Materials Management and Compliance Assurance by phone at (860) 424-3366, or at another current publicly published number for the Solid Waste Program, or by facsimile at (860) 424-4059; (iii) followed by a written report no later than the fifth business day after the emergency incident detailing the cause and effect of the incident, remedial steps taken and emergency backup used or proposed to be implemented; and (iv) be recorded in a log of emergency incidents. In addition to the notification requirements above, the Permittee shall comply with all other applicable reporting or notification requirements regarding the emergency incident including but not limited to, reporting required by Section 22a-450 of the CGS.

- f. Prevent the spillage of solid waste from transfer containers during on-site maneuvering/storage and off-site transport. Each loaded container shall be covered before transportation off-site and the haulers shall be instructed to keep the containers covered during off-site transportation.
- g. Operate the Facility in a safe manner so as to control fire, odor, noise, spills, vectors, litter and dust emission levels in continuous compliance with all applicable requirements, including OSHA. The Facility's premises shall be maintained and any litter shall be removed on a daily basis.
- h. Ensure that the manufacturer's operation and maintenance manuals for each major piece of fixed processing equipment (which may include, but not be limited to, balers; conveyors; compactors; and storage tanks) installed at the Facility are available for review by the Commissioner.
- i. Process and store wastes in such a manner that all recyclable wastes are segregated so that no other waste will cause contamination or degradation of the recyclable product, or any negative impact on the recyclability.
- j. Determine through observation that incoming loads of non-recyclable wastes do not contain greater than ten percent (10%) of designated recyclable items and that loads of designated recyclables do not contain greater than two percent (2%) non-designated recyclable items („threshold contaminant percentages“). For any loads identified that exceed the threshold criteria for load contamination specified in this condition the Permittee shall document them in the daily log and report to the Department in the quarterly reports required by this Permit. The Permittee shall also provide notice to the hauler in accordance with Condition No. 7.k.v.
- k. Conduct periodic unannounced inspections of truck loads delivered to the Facility, pursuant to Section 22a-220c(b) of the CGS. The inspections shall be performed for a minimum of five percent (5%) of the monthly truck loads received that are representative of the waste types authorized for receipt at the Facility. Records of such inspections shall

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be maintained at the Facility for the life of this Permit or such other timeframe specified in writing by the Commissioner. The inspections and supporting documentation shall consist of at a minimum:

- i. photographs of each load inspected that exceeds the threshold contaminant percentages specified in Condition No. 7.j;
 - ii. origin of each load (municipality; regional facility and whether commercial or residential);
 - iii. waste transporter company name;
 - iv. estimated percentage of contaminants(s) present in those loads (e.g. for loads that should not contain designated recyclables or only certain designated recyclables: cardboard, plastic Nos. 1 and 2, glass and metal food containers, leaves, newspaper, office paper, boxboard, magazines, residential high-grade white paper, colored ledger, scrap metal, storage batteries, and used oil and for loads that should contain only designated recyclables: MSW, and non-designated recyclables) and identification of each type; and,
 - v. immediate written notifications to the hauler, municipality in which the waste was generated and/or regional facility for each load that exceeds the threshold contaminant percentages specified in Condition No. 7.j.
- I. Process the C&D waste and non-putrescible MSW that is not source separated loads of recyclable materials, the Facility is authorized through this Permit to process and generate, through sorting, recyclables suitable for transfer to recycling markets. The Permittee shall achieve a ten percent (10%) rate of recovery of recyclables during the first year. For each year the specific recovery rates shall be as follows:

| <u>Recovery rate for Recyclables</u> | |
|---|---|
| <u>Year of the Permit</u> | <u>(Percent of total waste received)</u> |
| First year | 10% |
| Second year | 20% |
| Third year | 30% |
| Fourth year | 35% |
| Fifth year | 40% |

As part of the quarterly reports required to be submitted by Condition No. 12 of this Permit the Permittee shall document the percent recovery rate of recyclables achieved during the reporting period. Each year on or before sixty (60) days after the anniversary date of this Permit the Permittee shall submit to the Commissioner a report providing the percent recovery rate achieved during the previous year (year end report).

In the event the percent recovery rate of recyclables achieved is below that which is required, the Permittee shall document in the quarterly report and the year end report the circumstances which resulted in the Permittee's inability to achieve the specific recovery rates listed in this condition. The year end report shall also identify the measures the Permittee will take and processes the Permittee will institute in its effort to achieve the specified recovery rates.

8. The Permittee shall monitor and control airborne lead and asbestos within the enclosed processing area(s) of the Facility in accordance with the following:

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- a. **Sampling:** During the first (1st) and second (2nd) year of operation under this Permit, the Permittee shall conduct quarterly air sampling. Unless otherwise determined and notified in writing by the Commissioner, air sampling shall be performed on an annual basis thereafter during the second quarter for the remainder of this Permit. Sampling shall begin no later than thirty (30) days after the date of issuance of this Permit and the analysis of all samples shall be conducted by a laboratory certified by the CT DPH to perform such analyses.

All samples for asbestos shall be:

- i. Collected by a person licensed by the CT DPH as an Asbestos Consultant-Project Monitor;
- ii. Collected indoors at any enclosed processing area(s) and analyzed using the method specified in 29 CFR 1910.1001 Appendix A or equivalent method approved in writing by the Commissioner. The Permittee shall ensure that the time-weighted average (“TWA”) permissible exposure limit of 0.1 fibers per cubic centimeter is not exceeded.

All samples for lead shall be:

- i. Collected by a person licensed by the CT DPH as a Lead Inspector;
- ii. Collected indoors at any enclosed processing area(s) and analyzed using a method of monitoring or analysis which has an accuracy (to a confidence level of 95 percent) of not less than 20 percent for airborne concentrations equal to or greater than thirty (30) micrograms per cubic meter.

- b. **Exceedances:** If the analysis determines that the limits for airborne asbestos set forth in 29 CFR 1910.1001(c) or the action level for airborne lead as defined in 29 CFR 1910.1025(b) were exceeded, the Permittee shall, no later than thirty (30) days after becoming aware of such exceedance, submit for the Commissioner’s review and written approval a plan to address exceedances. The Permittee shall ensure that any such plan is developed by a P.E. for the design and installation of a ventilation/filtration/capture system or implementation of additional operational procedures to control airborne asbestos and lead. At a minimum, such plan shall include:
- i. The results of all previous quarterly or annual sampling;
 - ii. Plans and specifications of any proposed system or new operational procedures;
 - iii. A layout drawing for the installation of any such system;
 - iv. An operating and preventative maintenance schedule of any such system;
 - v. An engineering evaluation demonstrating the effectiveness of the proposed system or proposed operational procedure; and
 - vi. A schedule for the design, installation and operation of the system or the implementation of new operating procedures.

The Permittee shall implement the plan as approved by the Commissioner. In approving any such plan, the Commissioner may approve the plan with such conditions or modifications, as the Commissioner deems necessary.

9. The Permittee shall have an operator, certified pursuant to Section 22a-209-6 of the RCSA, present at all times during Facility operation. All individuals under the supervision of such certified operator shall have sufficient training to identify waste received at the Facility which is

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not permitted to be received, or is unsuitable for processing, and take proper action in handling such waste.

10. The Permittee shall prominently post and maintain a sign at the Facility entrance pursuant to Section 22a-209-10(3) of the RCSA that includes the Facility's permit number (Permit to Construct and Operate No. [Insert Permit No.]) issuance date and expiration date. Such sign shall also include a phone number that provides the general public the ability to register questions or complaints twenty-four (24) hours per day. The Permittee shall maintain a log of all calls received and how such calls were addressed or resolved.
11. The Permittee shall: (a) control all traffic related to the operation of the Facility in such a way as to mitigate queuing of vehicles off-site and excessive or unsafe traffic impact in the area where the Facility is located; (b) unless otherwise exempted, ensure that trucks are not left idling for more than three (3) consecutive minutes pursuant to Section 22a-174-18(b)(3) of the RCSA; (c) prominently post and maintain signs limiting such truck idling time within the Facility.
12. The Permittee shall maintain daily records as required by Section 22a-209-10(13) of the RCSA and Sections 22a-208e and 22a-220 of CGS. Based on such records, the Permittee shall prepare monthly summaries including, but not limited to, the following information as it pertains to solid waste:
 - a. Type and quantity of solid waste received, including recyclables and unacceptable waste.
 - b. Origin of waste load (municipality name; regional Facility name) and waste hauler name.
 - c. Destination to which solid wastes, including recyclables and unacceptable waste, from the Facility were delivered for disposal or recycling, including quantities delivered to each destination.
 - d. All daily logs (including documentation related to the unannounced inspections of truck loads) shall be maintained for the life of this Permit or such other timeframe specified in writing by the Commissioner.

The monthly summaries required pursuant this condition shall be submitted quarterly no later than January 31, April 30, July 31, October 31, of each year on forms prescribed by the Commissioner (as may be amended from time to time) directly to the Solid Waste Program, Waste Engineering and Enforcement Division, Bureau of Materials Management and Compliance Assurance, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127.

13. Nothing herein authorizes any person, municipality or authority to hinder municipal or regional solid waste recycling efforts. All activities conducted by the Permittee at the Facility shall be in accordance with this permit, in compliance with the adopted Connecticut State Solid Waste Management Plan and consistent with Sections 22a-228 and 229 of the CGS.

The Permittee shall:

- a. Conduct ongoing outreach in an effort to promote pay-as-you-throw ("PAYT" or unit based pricing) for waste disposal programs;
- b. Within sixty (60) days from the date of issuance of this Permit, submit to the Commissioner an agreement between the Permittee and HRRAs detailing the criteria by

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which the Permittee shall determine a waste to energy facility (aka Resource Recovery Facility, or RRF) has sufficient capacity to receive and process putrescible MSW delivered by or on behalf of the Permittee; which delivery shall be controlled from the date of issuance of this Permit until June 30, 2019;

- c. Establish a process (that shall include a frequency) by which the Permittee or his Certified Operator will determine if sufficient capacity exists at any RRF(s) the Permittee identifies as suitably located, whether such facility is located in-state or out-of-state;
- d. Record in the daily log and maintain as part of the operational records for the Facility each time the Permittee or his Certified Operator selects a Landfill as the destination facility for the disposal of solid waste, the criteria that were used for the selection; and
- e. Document the selected destination facility and the volume of solid waste transferred to the destination facility, per shipment.

The Permittee shall for the life of this Permit maintain such records and shall upon request make the records available for review by the Commissioner.

- 14. The Permittee shall, no later than sixty (60) days after the effective date of this Permit establish for the Commissioner's benefit an acceptable financial assurance instrument and post the financial assurance with the Department in the amount of \$119,615.00, as required by Section 22a-6(a)(7) of the CGS in conjunction with the general requirements of Section 22a-209-4(i) of the RCSA.

The Permittee shall acknowledge and accept the following:

- a. The purpose of the financial assurance is to cover the third party costs for handling, removing, transporting and disposing the maximum permitted amount of unprocessed and processed solid waste at the Facility, and any additional cost(s) to ensure the proper closure of storage areas including, but not limited to, equipment rental, site clean-up, the decontamination and disposal of all equipment and processing and storage areas, and a 15% contingency to cover unforeseen events or activities that may increase the overall cost to close the Facility.
- b. The financial assurance instruments shall follow the requirements of Section 22a-209-4(i) of the RCSA, and 40 CFR 264.141 to 264.143 inclusive and 40 CFR 264.151, as referenced therein. The Permittee shall ensure that the financial assurance instrument is established in a format specified by the Commissioner for closure or post-closure maintenance and care, as appropriate.
- c. The Department accepts five (5) types of financial assurance instruments, they are: (a) Trust Fund; (b) Irrevocable Standby Letter of Credit; (c) Financial Guarantee "Payment" Bond; (d) Performance Bond; and (e) Certificate of Insurance. The following documents are also required to be submitted in addition:
 - i. A cover letter signed by the Permittee shall be submitted along with the Irrevocable Standby Letter of Credit, in accordance with Section 40 CFR 264.143(d)(4).
 - ii. A "Standby Trust Agreement" shall be submitted along with either a Irrevocable Standby Letter of Credit; Financial Guarantee "Payment" Bond; or Performance
 - iii. A "Certification of Acknowledgement" shall be submitted along with the Trust Fund instrument.

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- d. The financial assurance shall:
 - i. Be valid for and appropriately maintained during the term of this Permit;
 - ii. Specify the Permittee's name, the Facility's address, the number and issuance date of this Permit; and
 - iii. Be established in one or more of, the instrument formats found on the Department's website [www.ct.gov/DEP/financialassurance].
 - e. The financial assurance instrument shall be adjusted annually for inflation within the sixty (60) days prior to the anniversary date of the instrument, and whenever there is a change in operations that affects the cost of closing the Facility in accordance with the requirements of 40 CFR 264.142(b) as incorporated in the RCSA Section 22a-449(c)-104.
15. The Permittee shall, no later than sixty (60) days from the issuance date of this Permit perform quarterly compliance audits for the life of this Permit.
- a. The compliance audits required by this condition shall consist of a thorough and complete assessment of the Permittee's compliance with Sections 22a-209-1 through 22a-209-17 of the RCSA and with the terms and conditions of this Permit.
 - b. Compliance Auditor
The compliance audits required by this condition shall be performed by an engineer licensed to practice in Connecticut ("P.E.") or consultant. Such P.E. or consultant shall be approved in writing by the Commissioner and will be required to prepare and submit to the Commissioner quarterly compliance audit reports.

The Permittee shall, prior to the Commissioner's approval of the P.E. or consultant: (a) submit for the Commissioner's evaluation a detailed description of the P.E. or consultant's credentials (education; experience; training) which are relevant to the work required under this condition; and (b) certify to the Commissioner that such P.E. or consultant:
 - i. Is not a subsidiary of or affiliated corporation to the Permittee or Permitted Facility;
 - ii. Does not own stock in the Permittee or any parent, subsidiary, or affiliated corporation;
 - iii. Has no other direct financial stake in the outcome of the compliance audit(s) outlined in this Permit;
 - iv. Has expertise and competence in environmental auditing and the regulatory programs being addressed through this Permit, including evaluation of compliance with requirements specified in Sections 22a-209-1 through 22a-209-17 of the RCSA and with the terms and conditions of this Permit; and
 - v. Within ten (10) days after retaining any P.E. or consultant other than the one originally identified pursuant to this condition, notify the Commissioner in writing of the identity of such other consultant by submitting the information and documentation specified in this condition. Nothing in this condition shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

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c. Scope of Compliance Audits

Compliance audits shall:

- i. Detail the Permittee's compliance with the requirements of this Permit and all applicable provisions of Sections 22a-209-1 through 22a-209-17 of the RCSA.
- ii. Describe any outreach efforts conducted by the Permittee to initiate pay as you throw (PAYT) programs also known as unit based pricing or variable-rate pricing and shall include names of waste haulers and municipalities that are participating in such programs.
- iii. The compliance auditor shall include in the compliance audit on-site inspections of the waste received at the Facility. The purpose of such inspections is to determine whether loads are being received that exceed the threshold contaminant percentages specified in Condition No. 7.j. for loads that are representative of the waste types authorized for receipt at the Facility and to detect patterns associated with such loads. Unless otherwise approved by the Commissioner, the compliance auditor shall inspect materials from a minimum of ten (10) representative truckloads received during the day of the compliance audit. The compliance auditor shall document the actual number of truck loads inspected and the findings of such inspections.

d. Compliance Audit Report

The results of each compliance audit shall be summarized in a Compliance Audit report. At a minimum such report shall include:

- i. The names of those individuals who conducted the compliance audit;
- ii. The areas of the Facility inspected;
- iii. The records reviewed to determine compliance;
- iv. Describe in detail the Permittee's compliance with this Permit and applicable regulations;
- v. Identify all violations of this Permit and applicable regulations;
- vi. A description of the actions taken by the Permittee to correct patterns of loads received that exceed the threshold contaminant percentages specified in Condition No. 7.j. for loads that are representative of the waste types authorized for receipt at the Facility;
- vii. Include findings regarding the inspections conducted in accordance with this condition during the day of the compliance audit;
- viii. Describe the actions taken by the Permittee to correct the violation(s) identified in each compliance audit; and
- ix. The Permittee's certification of compliance with the regulations and documentation demonstrating such compliance pursuant to this Permit. In cases where multiple counts of the same violation are discovered, the report shall include a listing of each count.

e. Permittee's Responses to Compliance Audit

The Permittee and consultant shall comply with the following:

- i. The inspection frequency shall be quarterly for the remaining life of the Permit;
- ii. All violations shall immediately be brought to the attention of the Permittee by the P.E. or consultant. The P.E. or consultant shall also notify the Department within five (5) days of the inspection of all violations noted during the inspection;

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- iii. The Permittee shall correct all violations immediately. Should the Permittee be unable to immediately correct the violation, the Permittee shall submit within seven (7) days of the notification date, for the review and written approval of the Commissioner, a detailed plan to correct all violations noted. Such plan shall also include a schedule for implementation of the corrective actions required or recommended; and
 - iv. Within fifteen (15) days from the inspection date the P.E. or consultant shall submit, to the Department and the Permittee, the compliance audit report. A copy of the compliance audit report shall be maintained at the Facility for the life of the Permit or for such other timeframe specified by the Commissioner.
- f. The Permittee shall cease accepting solid waste at the Facility in the event that the Permittee fails to submit in a timely manner the plan and schedule required by condition 15.e. of this Permit or fails to correct the violations noted by the inspection(s) in accordance with the approved plan and schedule.
- g. **Documentation Submittal Deadlines**
The documents required to be submitted pursuant to this condition shall be submitted quarterly no later than January 31, April 30, July 31, October 31, directly to the Solid Waste Enforcement Section, Waste Engineering and Enforcement Division, Bureau of Materials Management and Compliance Assurance, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127.
16. Unless otherwise specified in writing by the Commissioner, any documents required to be submitted under this Permit shall be directed to:
- Solid Waste Program
Waste Engineering and Enforcement Division
Bureau of Materials Management and Compliance Assurance
Department of Energy and Environmental Protection
79 Elm Street, Hartford, CT 06106-5127
17. Any document, including, but not limited to any notice, which is required to be submitted to the Commissioner under this Permit shall be signed by a duly authorized representative of the Permittee, as defined in Section 22a-430-3(b)(2) of the RCSA, and by the individual or individuals responsible for actually preparing such documents, each of whom shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement in the submitted information may be punishable as a criminal offense.”

Any false statement in any document submitted pursuant to this Permit may be punishable as a criminal offense in accordance with Section 22a-6 of the CGS, pursuant to Section 53a-157 of the CGS, and in accordance with any other applicable statute.

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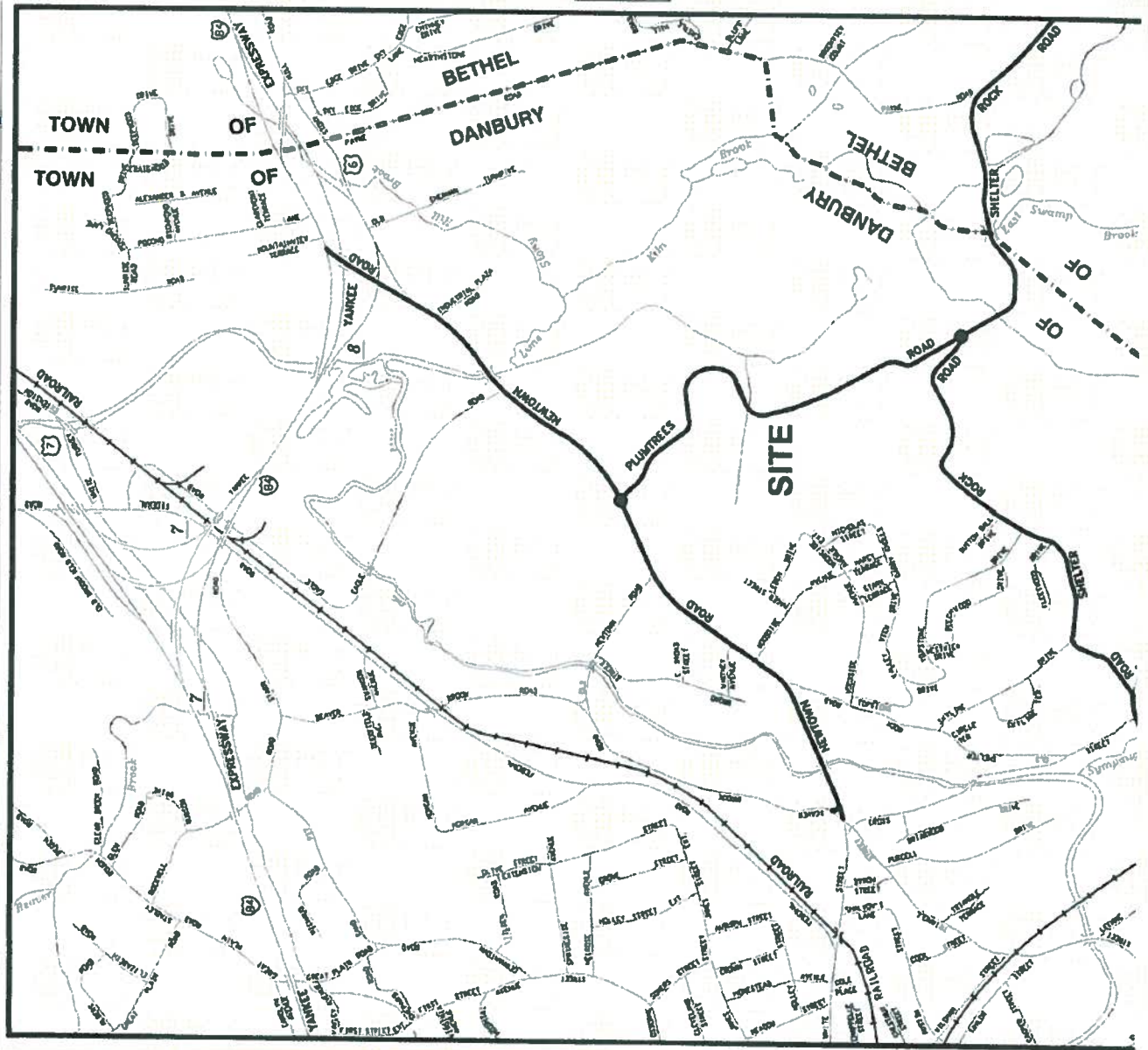
18. The date of submission to the Commissioner of any document required by this Permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Permit, including but not limited to, notice of approval or disapproval of any document or other action shall be the date such notice is personally delivered or the date three (3) days after it is mailed by the Commissioner, whichever is earlier. Any document or action which is due or required on a weekend or a legal state/federal holiday shall be submitted or performed by the next business day thereafter.
19. This Permit is subject to and in no way derogates from any present or future property rights or other rights or powers of the State of Connecticut and conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to, any and all public and private rights and to any federal, state or local laws or regulations pertinent to the Facility or activity affected thereby.
20. Nothing in this Permit shall affect the Commissioner's authority to institute any proceeding or to take any actions to prevent violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for violations of law.
21. Nothing in this Permit shall relieve the Permittee of other obligations under applicable federal, state and local laws.
22. This Permit shall expire 5 years from the date of issuance and may be revoked, suspended, modified, renewed, or transferred in accordance with applicable laws.

Issued on this _____ day of _____, 2014.

By **DRAFT DRAFT DRAFT**
Macky McCleary
Deputy Commissioner

Application No. 201103241
Permit to Construct and Operate No. **?????????**
Permittee - Certified Mail #
City/Town Clerk - Certified Mail #

Site Location Map

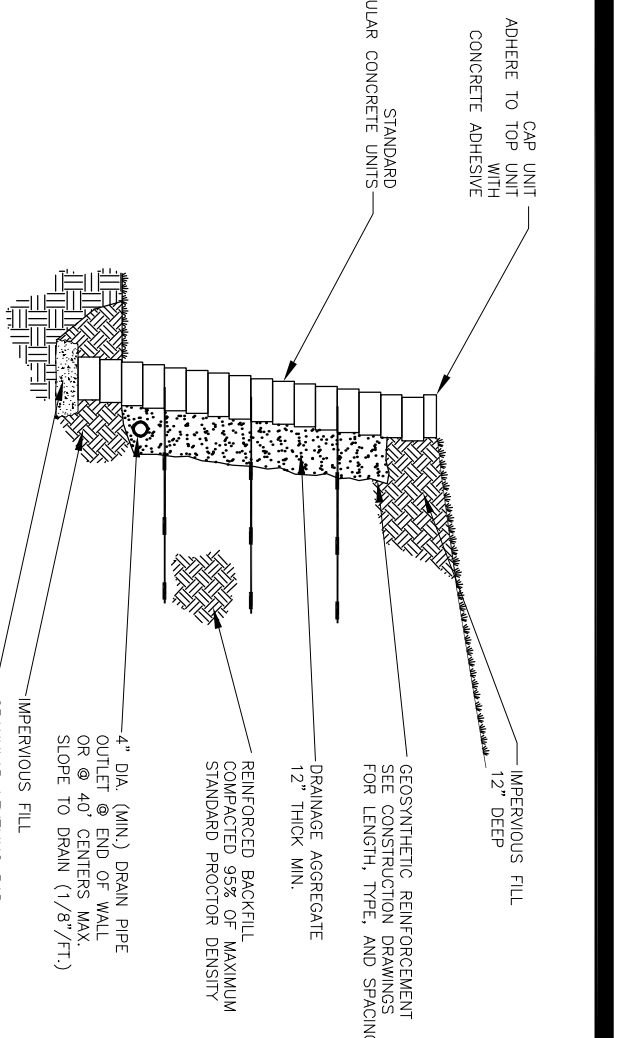


LEGEND

- STUDY AREA INTERSECTION
- KEY ROADWAYS
- - - TOWNLINE



RYE
 FAIRFIELD
 HUDSON VALLEY
 LONG ISLAND



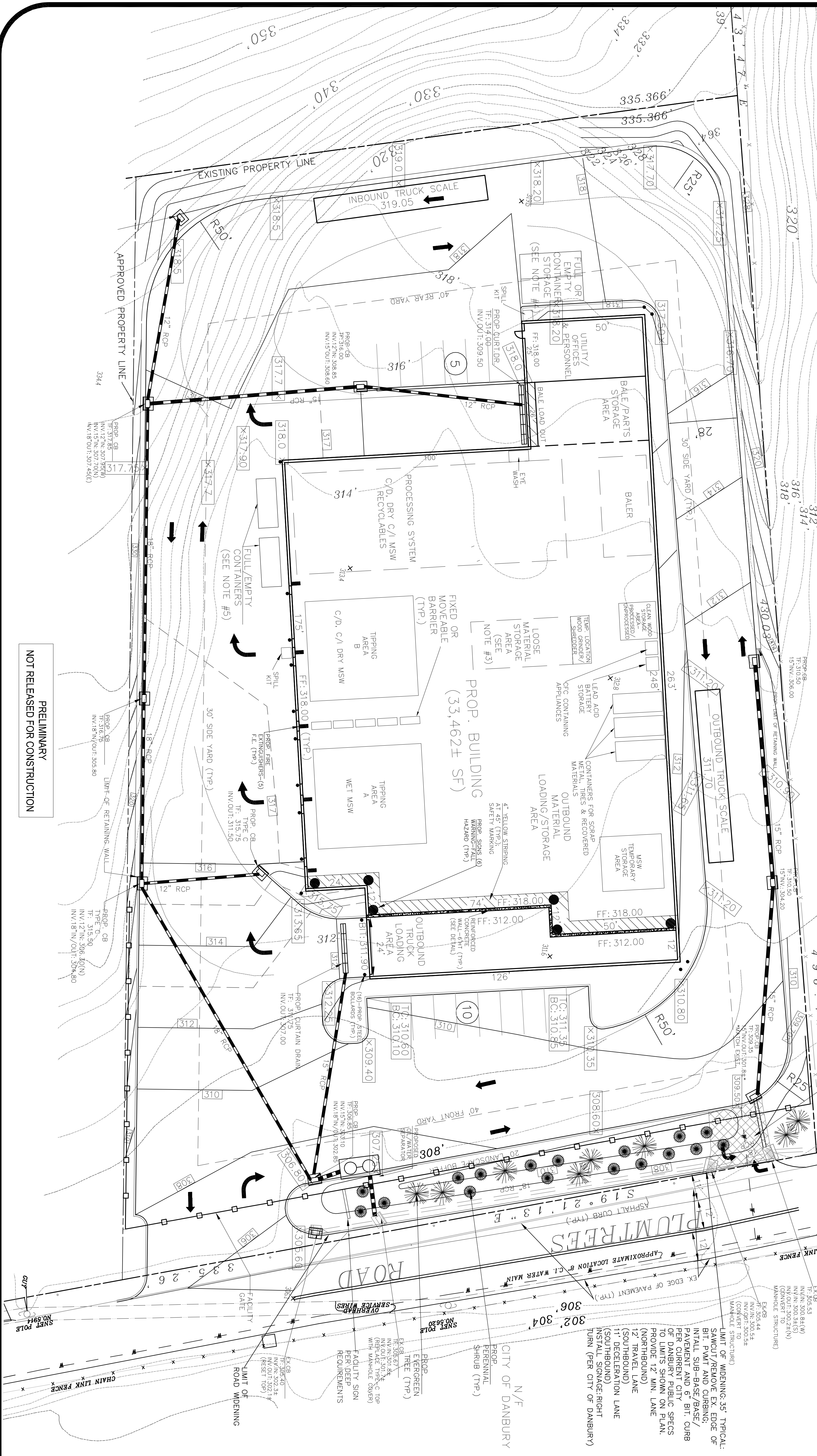
NOW OR FORMERLY CITY OF DANBURY

| Location | Cubic Yards |
|---------------------------------|-------------|
| Pile or Containers | 1200 |
| Pile or Containers | 400 |
| Pile or Containers | 1200 |
| Pile or Containers | 1200 |
| Pile or Containers | 1200 |
| Pile or Containers | 270 |
| Pile or Containers | 50 |
| Pile or Containers | 30 |
| Segmentation Pile or Containers | 150 |
| Pile or Containers | 150 |
| Pile or Containers | 150 |
| Pile or Containers | 150 |
| Pile or Containers | 150 |
| Lightly Decomposed Area | 30 Tons |
| Trapped/Decomposed Area | 20 Tons |
| Proposed (bank (see V&V)) | 20 Tons |

Cubic Yards
496.42

SAWCUT & REMOVE EXIST. BIT, CURBQUIT, FLAGE FILL, LOAM AND SEED.

| Location | Quantity |
|------------------------|----------|
| CAD Proposed | 1000 |
| W&M Proposed | 1000 |
| Incr. C/D MSW Proposed | 1000 |
| Layer & Cardboard | 1000 |
| Serpentine | 1000 |
| Segregated | 1000 |
| CAD Proposed | 1000 |
| W&M Proposed | 1000 |
| Incr. C/D MSW Proposed | 1000 |
| Layer & Cardboard | 1000 |
| Serpentine | 1000 |
| Segregated | 1000 |
| CAD Proposed | 1000 |
| W&M Proposed | 1000 |
| Incr. C/D MSW Proposed | 1000 |
| Layer & Cardboard | 1000 |
| Serpentine | 1000 |
| Segregated | 1000 |



| No. | Revision/Issue | Date |
|-----|----------------------------|---------|
| 1 | ISSUED FOR PERMIT | 3-29-10 |
| 2 | REVISED FOR STATE COMMENTS | 1-20-12 |
| 3 | REVISED FOR STATE COMMENTS | 3-2-12 |

| Legend |
|----------------------------|
| EXISTING ROAD PAVEMENT |
| EXISTING SIDEWALK |
| EXISTING DRIVEWAY |
| EXISTING DRIVEWAY AND PIPE |
| EXISTING DRIVEWAY AND PIPE |
| EXISTING DRIVEWAY |
| EXISTING DRIVEWAY |
| EXISTING DRIVEWAY |
| EXISTING DRIVEWAY |
| EXISTING DRIVEWAY |

NOT RELEASED FOR CONSTRUCTION

PRELIMINARY

1. PROPOSED LOT LINE ADJUSTMENT MAP PREPARED FOR PINYAM PROPERTIES, LLC SHOWING PROPERTY SITUATED AT 14-16 PLUMTREES ROAD, DANBURY, CT, 06810. DATE: MAR. 29, 2007. REV. JAN. 7, 2008. PREPARED BY STONEY A. RAPP LAND SURVEYING, P.C., DANBURY, CT. SCALE: 1"=50'

2. DATA ACCUMULATION PLAN PREPARED BY PINYAM PROPERTIES, LLC SHOWING PROPERTY SITUATED AT 14-16 PLUMTREES ROAD, DANBURY, CONNECTICUT. DATE: AUG. 28, 2008. SCALE: 1"=50'

General Notes:

- PARCEL AREA: 2.65± AC. PROPERTY IS ZONED IG.
- MATERIAL STREAMS IN TIPPING AREAS NOT TO BE MIXED-C/D, MSW, RECYCLABLES TO BE KEPT SEPARATE.
- THIS AREA WILL BE USED TO TYPICALLY SIZED MATERIALS (SUCH AS BAILING OR SHREDDING) OR OUT-SHIPMENT, MATERIALS INCLUDE PAPER AND CARDBOARD, UNPROCESSED CLEAN WOOD, SEPARATED RECYCLABLES (SUCH AS PLASTIC OR METALS), AND FILED ALL PILES IN THIS AREA WILL BE SEPARATED TO AVOID CONTAMINATION OF ANY SUCH MATERIAL.
- MAY CONTAIN CAD, RECYCLABLES, CLEAN WOOD.
- MAY CONTAIN CLEAN WOOD, RECYCLABLES.

Project Name and Address:

ISHERWOOD CIVIL ENGINEERING

58 GROWNY DR.
SOUTH WINDSOR, CT 06074
(860) 640-4064

Prepared For:

MSW ASSOCIATES, L.L.C.

14 PLUMTREES RD.
DANBURY, CT 06810

Project: 1010
Date: April 29, 2011
Scale: 1"=20'

K-1.1

Project No. 0944

PRELIMINARY NOT RELEASED FOR CONSTRUCTION