STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

HEARING REPORT

**Prepared Pursuant to Section 4-168(d)
of the Connecticut General Statutes and
Section 22a-3a-3(d)(5) of the Department of Environmental Protection Rules of Practice**

**Regarding Regulations for the Abatement of Air Pollution:
Proposed Amendment of Section 22a-174-30 and
Proposed Adoption of Section 22a-174-43 of the
Regulations of Connecticut State Agencies**

Hearing Officer: Paul E. Farrell

Date of Hearing: December 19, 2003

Introduction

On November 4, 2003, the Commissioner of the Department of Environmental Protection ("Department") signed a notice of intent to amend section 22a-174-30 of the Regulations of Connecticut State Agencies ("R.C.S.A.") concerning dispensing of gasoline/stage I and stage II vapor recovery and to adopt R.C.S.A. section 22a-174-43 concerning portable fuel container spillage control. Pursuant to such notice, a public hearing was held on December 19, 2003. The public comment period for the proposed amendment and adoption also closed on December 19, 2003.

I. Hearing Report Content

As required by section 4-168(d) of the Connecticut General Statutes ("C.G.S."), this report describes the regulations proposed for hearing; the principal reasons in support of the Department's proposed amendment and adoption; the principal considerations presented in oral and written comments in opposition to the Department's proposed amendment and adoption; all comments and responses thereto on the proposed regulations; and the final wording of the proposed regulations. Commenters are identified in Attachment 1.

This report also includes a statement pursuant to C.G.S. section 22a-6(h).

II. Compliance with Section 22a-6(h) of the Connecticut General Statutes

Section 22a-6(h) of the C.G.S., as amended by section 5 of Public Act 03-76, requires the Commissioner to distinguish clearly, at the time of notice, all provisions of a proposed regulation

or amendment thereto that differ from adopted federal standards and procedures, provided: (1) such proposed amendment pertains to activities addressed by adopted federal standards and procedures; and (2) such adopted federal standards and procedures apply to persons subject to the provisions of such proposed amendment. In addition, the Commissioner must provide an explanation for all such provisions in the regulation-making record required under Title 4, Chapter 54 of the C.G.S.

In accordance with the requirements of C.G.S. section 22a-6(h), the Hearing Officer made a written statement available at the time of notice and at the public hearing. Such statement, incorporated into the administrative record for this matter, indicated that the requirements of C.G.S. section 22a-6(h) do not apply to the provisions of the proposed regulations for one of the following two reasons: (1) there are no applicable federal standards or procedures; or (2) there are applicable federal standards or procedures, and such standards or procedures are adopted without change.

With respect to R.C.S.A. section 22a-174-30 concerning stage I and II gasoline vapor recovery systems ("section 30"), there no longer exist any federal stage I and II vapor recovery system standards. Although these systems are required for serious and above ozone nonattainment areas under the federal Clean Air Act, the federal government does not issue stage II regulations or guidance and instead relies on the work done by the California Air Resources Board ("CARB"). Hence, the provisions of C.G.S. section 22a-6(h) do not apply.

With respect to R.C.S.A. section 22a-174-43 concerning portable fuel container spillage control ("section 43"), there are no applicable federal environmental standards placed on portable fuel containers. The standards embodied in section 43 were originally developed by the State of California and further refined through a public iterative process instituted by the Ozone Transport Commission. Hence, the provisions of C.G.S. section 22a-6(h) do not apply.

III. Summary and Text of the Amendments as Proposed

A. Section 22a-174-30, Dispensing of Gasoline/Stage I and Stage II Vapor Recovery. This proposed regulation requires the use of pressure-vacuum vent caps on gasoline pumps that are already subject to section 30, the stage II vapor control regulation. The proposed changes to section 30 also require the use of a two point closed system for the transfer of gasoline from a gasoline tanker truck to an underground storage tank. A number of minor changes are also proposed for section 30 to improve stage II system maintenance, clarify testing requirements and increase testing frequency. The delegation provisions of subsection (h) are also clarified. The text of the regulation as proposed for public hearing is as follows:

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Section 22a-174-30.  Dispensing of [Gasoline/Stage II]
GASOLINE/STAGE I AND STAGE II Vapor Recovery.

(a)  Definitions.
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For the purposes of this section:

(1) "CARB" means the State of California Air Resources Board.

[(2) "Commissioner" means the Commissioner of the Department of Environmental Protection.]

[(3) "Department" means the Department of Environmental Protection.]

(2) "CARB-CERTIFIED FILL ADAPTER" MEANS A SPECIALIZED FITTING ON A STATIONARY GASOLINE STORAGE TANK THAT PREVENTS THE LOOSENING OR OVERTIGHTENING OF THE CONNECTING LINE BETWEEN AN ENTRY PORT OF A GASOLINE FILL PIPE AND THE FILL LINE FROM A GASOLINE DELIVERY VEHICLE.

[(4)](3) "Dispensing facility" means any site where gasoline is transferred to motor vehicles from any stationary storage tank with a capacity of 250 gallons or more.

[(5) "EPA" means the United States Environmental Protection Agency.]

[(6)](4) "Gasoline" means any petroleum distillate or blend of petroleum distillate and alcohol having a reid vapor pressure of four pounds per square inch or greater and used as a fuel for internal combustion engines.

(5) "MAJOR SYSTEM MODIFICATION" MEANS, NOTWITHSTANDING ANY DEFINITION IN SECTION 22a-174-1 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES:

(A) THE REPAIR OR REPLACEMENT OF ANY STATIONARY STORAGE TANK EQUIPPED WITH A STAGE II VAPOR RECOVERY SYSTEM;

(B) THE REPAIR OR REPLACEMENT OF ANY PART OF AN UNDERGROUND PIPING SYSTEM ATTACHED TO A STATIONARY STORAGE TANK EQUIPPED WITH A STAGE II VAPOR RECOVERY SYSTEM, EXCLUDING THE REPAIR OR REPLACEMENT OF ANY PART OF AN UNDERGROUND PIPING SYSTEM THAT IS ACCESSIBLE FOR SUCH REPAIR OR REPLACEMENT WITHOUT EXCAVATION;

(C) THE REPLACEMENT OF A VAPOR BALANCE STAGE II VAPOR RECOVERY SYSTEM WITH A VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM; OR

(D) THE REPLACEMENT OF A VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM WITH A VAPOR BALANCE STAGE II VAPOR RECOVERY SYSTEM.

(6) "OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS, LEASES, OPERATES OR CONTROLS A DISPENSING FACILITY SUBJECT TO THIS SECTION.

[(8)](7) "Reid vapor pressure" or "RVP" means the vapor pressure of a liquid in pounds per square inch absolute at one hundred (100) degrees Fahrenheit as determined by American Society for Testing and Materials (ASTM) method [D323-89] D5191-01.

(8) "STAGE I VAPOR RECOVERY SYSTEM" MEANS A VAPOR RECOVERY SYSTEM THAT PREVENTS THE DISCHARGE TO THE ATMOSHPHERE OF GASOLINE VAPORS WHILE GASOLINE IS TRANSFERRED BETWEEN A DELIVERY VEHICLE AND A DISPENSING FACILITY IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22a-174-20(a) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(9) "Stage II vapor recovery system" OR "SYSTEM" means a vapor recovery system [which] THAT prevents THE discharge to the atmosphere of at least ninety-five percent (95%) by weight of gasoline vapors displaced during the dispensing of gasoline into a motor vehicle fuel tank.

(10) "Throughput" means the number of gallons of gasoline delivered into motor vehicles through all equipment at a dispensing facility over a specified period of time.

(11) "TWO-POINT STAGE I VAPOR REVOVERY SYSTEM" MEANS A STATIONARY STORAGE TANK POSSESSING AN ENTRY PORT FOR A GASOLINE FILL PIPE AND AN EXIT PORT FOR A VAPOR CONNECTION THAT SEALS WHEN EITHER PORT IS DISCONNECTED IN A MANNER THAT WILL PREVENT THE DISCHARGE OF GASOLINE VAPORS TO THE ATMOSHPERE.

(12) "VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM" MEANS A STAGE II VAPOR RECOVERY SYSTEM THAT USES A VACUUM-GENERATING DEVICE TO DRAW GASOLINE VAPORS FROM OF A MOTOR VEHICLE'S GASOLINE FUEL TANK DURING THE DISPENSING OF GASOLINE INTO SUCH TANK.

(b) Regulated dispensing facilities.

(1) On or after November 30, 1992, any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility shall install a Stage II vapor recovery system if such facility begins actual construction of a stationary storage tank of any size and such facility has a throughput of ten thousand (10,000) gallons or more during any calendar month. No such person shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such facility on or after November 30, 1992 unless a properly operating Stage II vapor recovery system is used for such transfer.

(2) After May 15, 1993, no [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility for which

construction commenced between November 15, 1990 and November 30, 1992 and which has a throughput of ten thousand (10,000) gallons or more during any calendar month shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer.

(3) After November 15, 1993, no [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility which existed, or for which construction commenced, on or before November 15, 1990 and which has a monthly throughput of one hundred thousand (100,000) gallons or more shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer. Such monthly throughput shall be calculated based on the highest throughput in a calendar month during the two year period between November 30, 1990 and November 30, 1992. If such a dispensing facility was inactive for any period during the [two year] TWO-YEAR period, such period shall be extended to include a total of [twenty four] TWENTY-FOUR months of activity.

(4) After November 15, 1994, no [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility which existed or for which construction commenced on or before November 15, 1990 and which has a throughput of ten thousand (10,000) gallons or more during any calendar month after November 30, 1992 shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer.

(5) After a dispensing facility becomes subject to subdivision [(b)](1), [(b)](2), [(b)](3) or [(b)](4) OF THIS SUBSECTION, the requirements of such subdivision shall always apply to such dispensing facility.

(6) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility which is not subject to subdivision [(b)](1), [(b)](2), [(b)](3) or [(b)](4) OF THIS SUBSECTION shall maintain at such dispensing facility records of monthly throughput which demonstrate such a dispensing facility is not subject to subdivision [(b)](1), [(b)](2), [(b)](3) or [(b)](4) OF THIS SUBSECTION. Such records shall be kept for five (5) years and shall be made available for inspection by a representative of the Department or EPA.

(c) Equipment specifications.

(1) No person shall install a Stage II vapor recovery system at a dispensing facility unless:

(A) [such] SUCH system IS OR has EVER been tested and approved by CARB [on or before November 1, 1992]; or

(B) [such] SUCH system IS OR has EVER been tested and approved by another state [on or before November 1, 1992] using testing methods approved by CARB; and

(C) [such] SUCH system UTILIZES only [has hoses which are] coaxial hoses.

(2) No person shall replace any part of a Stage II vapor recovery system with a new or rebuilt part unless such new or rebuilt part [was] IS OR HAS EVER BEEN approved for installation in such Stage II vapor recovery system [on or before November 1, 1992] either by CARB or by another state using testing methods approved by CARB.

(3) No person shall modify, remove, replace, add or otherwise render inoperative any part of a Stage II vapor recovery system [so as to render] IN SUCH A WAY THAT the system [to be] BECOMES incapable of preventing discharge to the atmosphere of at least ninety-five percent (95%) by weight of gasoline vapors displaced during the dispensing of gasoline.

(4) Each Stage II vapor recovery system shall conform to the APPLICABLE specifications of the National Fire Protection Association Automobile and Marine Service Station Code [NFPA 30A as adopted] SET FORTH in section [29-320-2] 29-320-3a of the Regulations of Connecticut State Agencies.

(5) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall install and maintain the Stage II vapor recovery system in a manner such that the dispensing facility complies with the provisions of [section] SECTIONS 22a-449(d)-1 and [sections] 22a-449(d)-101 through [22a-449(d)-110] 22a-449(d)-113 of the Regulations of Connecticut State Agencies[, as amended].

(6) UNLESS OTHERWISE SPECIFIED IN AN APPLICABLE CARB CERTIFICATION, ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, NO OWNER OR OPERATOR OF A DISPENSING FACILITY SUBJECT TO SUBSECTION (b) OF THIS SECTION SHALL TRANSFER OR ALLOW THE TRANSFER OF GASOLINE BETWEEN A DELIVERY VEHICLE AND A STATIONARY STORAGE TANK AT SUCH FACILITY UNLESS EACH STATIONARY STORAGE TANK IS EQUIPPED WITH:

(A) A CARB-CERTIFIED FILL ADAPTER; AND

(B) A PRESSURE-VACUUM VENT VALVE WITH A RELIEF SETTING OF THREE (3), PLUS OR MINUS ONE-HALF (0.5) INCH OF WATER COLUMN PRESSURE AND EIGHT (8), PLUS OR MINUS TWO (2.0)

INCHES OF WATER COLUMN VACUUM.

(7) TWO POINT STAGE I VAPOR RECOVERY SYSTEMS SHALL BE INSTALLED:

(A) BY AN OWNER OR OPERATOR OF ANY STATIONARY STORAGE TANK WITH AN AVAILABLE PORT ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION; AND

(B) BY AN OWNER OR OPERATOR OF ANY STATIONARY STORAGE TANK THAT DOES NOT HAVE AN AVAILABLE PORT AT SUCH TIME THE STATIONARY STORAGE TANK IS REPLACED OR AT SUCH TIME THE PRODUCT IN THE TANK IS SWITCHED FROM ANY OTHER FUEL TO GASOLINE.

(d) Training, maintenance, and labeling.

(1) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall require THAT at least one representative of such dispensing facility [to attend] ATTENDS and successfully [complete] COMPLETES a training session[,] provided by [an] A STAGE II equipment manufacturer, supplier, distributor or installer, in the operation and maintenance of the Stage II vapor recovery system USED AT THE FACILITY WHERE SUCH REPRESENTATIVE IS EMPLOYED. [Any person who owns, leases, operates or controls more than one dispensing facility subject to this subdivision may have a trained representative who is responsible for more than one such facility. Such representative] IF AN OWNER OR OPERATOR OWNS OR OPERATES MORE THAN ONE DISPENSING FACILITY THAT UTILIZES THE SAME TYPE OF STAGE II VAPOR RECOVERY SYSTEM, ONLY ONE REPRESENTATIVE FROM ONE OF THE DISPENSING FACILITIES NEED BE TRAINED IN ACCORDANCE WITH THIS SUBSECTION. TRAINING shall BE successfully [complete the training] COMPLETED no later than three (3) months after commencement of operation of the dispensing facility's Stage II vapor recovery system,. OR, IF A REPRESENTATIVE IS RESPONSIBLE FOR MORE THAN ONE FACILITY THAT UTILIZES THE SAME TYPE OF STAGE II VAPOR RECOVERY SYSTEM, SUCH TRAINING SHALL SUCCESSFULLY BE COMPLETED NO LATER THAN THREE (3) MONTHS AFTER THE FIRST INSTALLATION OF SUCH STAGE II VAPOR RECOVERY SYSTEM. If the representative who received the training is no longer employed at that dispensing facility, another representative of such dispensing facility shall attend and successfully complete the training within three (3) months of the departure of such representative who had previously received the training. Training shall include the following areas:

(A) Purposes and effects of the Stage II vapor recovery system;

(B) Operation of the [equipment in the] dispensing facility's

Stage II vapor recovery system;

(C) Maintenance schedules for the dispensing facility's [equipment] STAGE II VAPOR RECOVERY SYSTEM;

(D) Manufacturer's warranties for the DISPENSING FACILITY'S Stage II vapor recovery system; and

(E) Equipment manufacturer contacts (names, addresses, and phone numbers) for parts and service NECESSARY FOR THE PROPER OPERATION OF THE DISPENSING FACILITY'S STAGE II VAPOR RECOVERY SYSTEM.

(2) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall maintain the Stage II vapor recovery system in accordance with specifications THAT ARE OR HAVE EVER BEEN approved by CARB [on or before November 1, 1992].

(3) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall post, CONSPICUOUSLY on the upper two-thirds of each gasoline dispenser, operating instructions for dispensing gasoline using the Stage II vapor recovery system. [Such instructions shall be located conspicuously.] Such instructions shall include, at a minimum, the following:

(A) A clear description of how to correctly dispense gasoline using the Stage II vapor recovery system;

(B) A warning not to attempt to continue dispensing gasoline after automatic shutoff of the nozzle; and

(C) [the telephone number of a] A TELEPHONE NUMBER, 1-800-249-1234, TO contact [at] the Department OR [to whom] to report problems experienced with the Stage II vapor recovery system.

(e) Testing.

(1) [Before commencing operation of a Stage II vapor recovery system,] THE OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall conduct AN INITIAL PERFORMANCE TEST PRIOR TO DISPENSING ANY GASOLINE INTO A MOTOR VEHICLE FUEL TANK [testing] to verify that [such] THE STAGE II VAPOR RECOVERY system has been properly installed and is functioning properly. [Such tests shall include liquid blockage testing, leak check testing, and all other

related tests for automatic shutoff mechanisms and flow prohibiting mechanisms at the gasoline dispensers.] Such tests shall be conducted in accordance with the test procedures in the EPA document "Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", Vol II (EPA-450/3-91-022b)[.] AND SHALL ALSO INCLUDE:

(A) LIQUID BLOCKAGE TESTING;

(B) PRESSURE DECAY/LEAK CHECK TESTING, EXCEPT THAT THE AMOCO V-1 PHASE II VAPOR RECOVERY SYSTEM APPROVED PURSUANT TO CARB EXECUTIVE ORDER G-70-118-AB SHALL BE TESTED USING THE CARB-APPROVED PRESSURE DECAY/LEAK CHECK TEST METHODS SET FORTH IN TP-201.3A, "DETERMINATION OF 5 INCH WC STATIC PRESSURE PERFORMANCE OF VAPOR RECOVERY SYSTEMS OF DISPENSING FACILITIES;"

(C) AUTOMATIC SHUTOFF MECHANISM TESTING IN ACCORDANCE WITH TEST PROCEDURES SET FORTH IN CARB EXAMINATION PROCEDURES OUTLINE 26-F-1, "VAPOR RECOVERY SYSTEMS FIELD COMPLIANCE TESTING PROCEDURES;"

(D) ANY OTHER RELATED TESTING OF FLOW PROHIBITING MECHANISMS AT THE GASOLINE DISPENSER;

(E) PRESSURE-VACUUM VENT VALVE TESTING TO VERIFY OPERATION WITHIN 0.29 OUNCES PER SQUARE INCH OR 0.5 INCHES WATER COLUMN OF THE DESIGNED PRESSURE AND WITHIN 1.2 OUNCES PER SQUARE INCH OR 2 INCHES WATER COLUMN OF THE VACUUM SETTINGS; AND

(F) VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM TESTING USING THE CARB AIR-TO-LIQUID VOLUME RATIO TEST PROCEDURE SET FORTH IN TP-201.5.

(2) At least every [five] THREE years or upon major system modification, whichever occurs first, [a person who owns, leases, operates or controls] AN OWNER OR OPERATOR OF a dispensing facility shall conduct testing to verify that the Stage II vapor recovery system is operating properly. Such testing shall include a leak check test and any and all other functional tests that were required by subdivision [(e)](1) OF THIS SUBSECTION. [For the purposes of this section, a major system modification shall be defined as:

(A) the repair or replacement of any stationary storage tank equipped with a Stage II vapor recovery system;

(B) the repair or replacement of any part of an underground piping system attached to a stationary storage tank equipped with a Stage II vapor recovery system, excluding

the repair or replacement of any part of an underground piping system which is accessible for such repair or replacement without excavation;

(C) a change from a vapor balance Stage II vapor recovery system to a vacuum assist Stage II vapor recovery system; or

(D) a change from a vacuum assist Stage II vapor recovery system to a vapor balance Stage II vapor recovery system.]

(3) Before a person [other than a representative of the Department] conducts [testing] A TEST pursuant to [subdivision (e)(1) or (e)(2)] THIS SUBSECTION, the [person who owns, leases, operates or controls] OWNER OR OPERATOR OF the dispensing facility shall notify the Department's Bureau of Air Management at least [four (4) business] SEVEN (7) days in advance of such testing. Such notification shall include the date, time[,] and location of the [test] TEST(S), and the name and address of the person conducting the [test] TEST(S). THE OWNER OR OPERATOR IS NOT REQUIRED TO SUBMIT SUCH NOTICE IF A REPRESENTATIVE OF THE DEPARTMENT WILL CONDUCT SUCH TEST.

(4) [Any] IF ANY Stage II vapor recovery system [which] does not pass any test required by this subsection THE STAGE II VAPOR RECOVERY SYSTEM shall [not] be considered [properly operating for the purposes of subsection (b) of this regulation] TO NOT BE OPERATING PROPERLY.

(f) Record keeping requirements.

(1) Any OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall maintain, in a location in the State of Connecticut, the following records:

(A) All licenses, as that term is defined in section 4-166 of the CONNECTICUT General Statutes, to construct or operate the dispensing facility or to construct or operate a specific system at the dispensing facility;

(B) ALL RECORDS [Records] and results of tests performed pursuant to [subdivisions (e)] (1) and (e) (2)] SUBSECTION (e) OF THIS SECTION, including the date of the testing and the names, addresses, and phone numbers of the persons who [installed and tested such Stage II vapor recovery system] PERFORMED THE TESTS;

(C) A record of any maintenance or repair conducted on any part of the Stage II vapor recovery system, including a

description of the maintenance problem, identification of any part or parts repaired or replaced on such Stage II vapor recovery system, the date such part or parts were repaired or replaced, and a general description of the location of the part or parts in the system including the number of the gasoline dispenser;

(D) Proof [of completion by] THAT a current representative of the dispensing facility RECEIVED [of] training pursuant to [subdivision (d)] SUBSECTION (d) OF THIS SECTION;

(E) A chronological file of all inspection reports of the dispensing facility issued by a representative of the Department, THE DEPARTMENT OF CONSUMER PROTECTION or EPA; and

(F) A chronological file of all compliance records, including orders, warnings and notices of violations, issued by a representative of the Department, THE DEPARTMENT OF CONSUMER PROTECTION or EPA.

(2) [Such records] RECORDS REQUIRED BY THIS SUBSECTION shall be made available for inspection AND COPYING by a representative of the Department, [or] EPA OR THE DEPARTMENT OF CONSUMER PROTECTION. [The inspection reports file shall be maintained separately from the compliance records file.]

(3) [Such records] RECORDS shall be maintained for [not less than] five (5) years FROM THE DATE OF CREATION.

(4) AN OWNER OR OPERATOR SHALL DISPLAY IN A CONSPICUOUS LOCATION AT THE DISPENSING FACILITY THE ADDRESS IN THE STATE OF CONNECTICUT AT WHICH THE RECORDS REQUIRED BY SUBDIVISION (1) OF THIS SUBSECTION ARE MAINTAINED.

(g) Defective equipment.

(1) Any [part of a] Stage II vapor recovery system having a defect, as defined by subdivision [(g)](3) OF THIS SUBSECTION, shall be immediately tagged "out of order" by the [person who owns, leases, operates or controls] OWNER OR OPERATOR OF the dispensing facility.

(2) [Any person who owns, leases, operates or controls] AN OWNER OR OPERATOR OF a dispensing facility shall not allow the use of [any part of] a Stage II vapor recovery system which has been tagged "out of order" until such [part] SYSTEM has been repaired or replaced.

(3) For the purposes of subdivisions [(g)](1) and [(g)](2) OF THIS SUBSECTION, a defect in a Stage II vapor recovery system shall include, BUT SHALL NOT BE LIMITED TO:

(A) Absence or disconnection of any part required to be used in such Stage II [Vapor] VAPOR recovery [systems] SYSTEM;

(B) A vapor RECOVERY hose which is crimped [or], flattened OR OTHERWISE IMPAIRED, such that the vapor passage is blocked, or when the A pressure drop through the vapor RECOVERY hose THAT exceeds by a factor of two (2) or more the CARB SPECIFICATIONS [requirements] for such Stage II vapor recovery system;

(C) A nozzle boot which has ANY VISIBLE DAMAGE INCLUDING, BUT NOT LIMITED TO, A RIP, TEAR OR HOLE IN THE AREA OF THE CHECK VALVE; a triangular-shaped or similar tear ONE-HALF (1/2) inch or more to a side; a hole ONE-HALF (1/2) inch or more in diameter; or a slit ONE (1) inch or more in length;

(D) Balance nozzles and nozzles for aspirator and educator assist-type systems which are damaged such that the capability to achieve a seal with a fill pipe interface is affected for [1/4] ONE-QUARTER of the circumference of the faceplate (accumulated);

(E)) Nozzles for vacuum [assist-type] ASSIST systems which are damaged such that [more than 1/4 of the flexible cone is missing;] AN AREA OF THE VAPOR GUARD EQUAL TO OR GREATER THAN ONE-HALF (0.5) INCH IN AREA IS MISSING;

(F) A nozzle shutoff mechanism [which] THAT malfunctions in any manner;

(G) A vapor return line, including such parts as swivels, anti-recirculation valves and underground piping, which malfunctions or is blocked or restricted such that the pressure drop through the line exceeds by a factor of two or more the requirements for such Stage II vapor recovery system;

(H) A vapor processing unit which is inoperative;

(I) A vacuum producing device which is inoperative; or

(J) A pressure/vacuum relief valve, vapor check valve, or dry break which is inoperative.

(h) Delegation.

(1) The [Commissioner] COMMISSIONER may, in accordance with the provisions of section 22a-2a of the CONNECTICUT General Statutes,

delegate the authority to inspect any dispensing facility covered by the provisions of this [regulation] SECTION to the Department of Consumer Protection[, to any municipality,] or to any employee of [either] the Department of Consumer Protection [or such municipality]. Such delegation shall not include the authority to otherwise enforce any provision of this section.

(2) [The Commissioner of the Department of Consumer Protection or the chief executive officer of a municipality may apply to the Commissioner for delegation to such Department or municipality of all or part of the authority to inspect any dispensing facility covered by the provisions of this regulation. In making a decision on such application, the Commissioner shall consider:

(A) The knowledge and training of the applicant;

(B) The jurisdictional authority of the applicant;

(C) The financial and administrative capacity of the applicant;

(D) The level of experience and training of the employees of the applicant;

(E) The nature of the duties to be delegated; and

(F) The facilities which will be subject to this regulation.

(3) The Commissioner shall notify the applicant in writing of the decision on the application. If such application is approved, the Commissioner shall prepare a memorandum of understanding which defines the scope of the delegation. The Commissioner and the applicant shall both sign the memorandum of understanding.] THE COMMISSIONER SHALL IMPLEMENT SUCH DELEGATION OF AUTHORITY BY MEMORANDUM OF UNDERSTANDING. The memorandum of understanding shall include an effective date and an expiration date, provided that the initial memorandum of understanding shall be valid for a period of up to three (3) years.

[(4)](3) Prior to the expiration of the memorandum of understanding, the [Commissioner] COMMISSIONER shall review the performance of duties required by the memorandum of understanding, including record keeping, reporting, inspections and enforcement activities. If the [Commissioner] COMMISSIONER is satisfied with such performance, the [Commissioner] COMMISSIONER may renew the memorandum of understanding for up to five (5) years.

[(5) The Department of Consumer Protection or a municipality may allow employees to perform delegated duties, provided that the Department of Consumer Protection or such municipality is ultimately

responsible for such activities. Any person who will perform delegated duties shall complete technical training in methods of inspection and reporting.

(6) Any person who performs delegated duties shall abide by the standards and requirements for state employees contained in Chapter 10 of the General Statutes, as amended.]

[(7)](4) Within [fifteen (15)] THIRTY (30) days of the detection of a violation of any standard, criteria or other requirement at any dispensing facility which the Department of Consumer Protection [or a municipality] has been delegated the authority to inspect, the Department OF CONSUMER PROTECTION [or the municipality] shall submit a report to the [Commissioner] COMMISSIONER. In the event that further investigation or action by the Department OF ENVIRONMENTAL PROTECTION is required, the [Commissioner] COMMISSIONER shall notify the Department of Consumer Protection [or the municipality] of such investigation or action.

[(8)](5) [Beginning January 1, 1993, the] THE Department of Consumer Protection [or a municipality which has been delegated authority to inspect facilities under this section] shall submit an annual report to the [Commissioner] COMMISSIONER each January 1 which summarizes the activities, including the number of inspections, conducted under such authority during the previous twelve (12) months.

[(9) The Commissioner shall maintain a record of the cost to the Department of administering the delegation program under this section. The Commissioner shall assess the benefits, including any cost reductions, and liabilities to the Department of the delegation program, including the costs specified above, the number of inspections conducted, and the overall effectiveness of delegation in reducing air pollution in the state.]

[(10)](6) The [Commissioner] COMMISSIONER may revoke all or part of a delegation of authority upon written notice to the Commissioner of the Department of Consumer Protection [or the chief executive officer of the municipality]. Such revocation shall be effective upon receipt of such notice.

[(11)](7) The Commissioner of the Department of Consumer Protection [or the chief executive officer of a municipality] may terminate all or part of the delegated responsibilities upon thirty (30) days written notice to the [Commissioner] COMMISSIONER.

Statement of Purpose: To require the use of pressure-vacuum vent valves and fill adapters to limit emissions of volatile organic compounds (VOCs); to prevent the loosening or over tightening of the fill adapter; to improve Stage II system maintenance and reduce VOC

emissions by increasing the frequency of Stage II system performance tests from every five to every three years; to revise the format of Section 30 to conform to current conventions; to streamline and clarify the delegation provisions of subsection (h); and to use associated emission reductions to alleviate a shortfall in demonstrable emission reductions of VOCs in accordance with the federally approved one-hour Ozone Attainment Demonstration for the Connecticut portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) severe ozone nonattainment area. See 66 Fed. Reg. 63921 (December 11, 2001).

B. Section 22a-174-43, Portable Fuel Container Spillage Control. This proposed new regulation will require the use of portable fuel containers designed to reduce VOC emissions resulting from spillage and evaporation. The fuel containers subject to this rule range in size from one quart to ten gallons. This proposed regulation is based on a model rule developed by the Ozone Transport Commission. The text of the new proposed rule is as follows:

Section 22a-174-43 Portable Fuel Container Spillage Control.

(a) Definitions. For the purposes of this section:

(1) "CARB" means the California Air Resources Board.

(2) "CCR" means the California Code of Regulations.

(3) "Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout or both portable fuel container and spout for personal, family, household or institutional use. A person who acquires a portable fuel container or spout or both a portable fuel container and spout for resale is not a "consumer" for that product.

(4) "Distributor" means any person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers and consumers.

(5) "Fuel" means a volatile liquid mixture containing hydrocarbons or a blend of a volatile liquid mixture with one or more oxygen containing ashless organic compounds, such as alchols or ethers, which is suitable for use in spark-ignition internal combustion engines or compression-ignition internal combustion engines.

(6) "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages or re-labels a portable fuel container or spout or both portable fuel container and spout.

(7) "NYCRR" means the Official Compilation of Codes, Rules and Regulations of the State of New York.

(8) "NYSDEC" means the New York State Department of Environmental Conservation.

(9) "Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

(10) "Outboard engine" means the spark-ignition marine engine mounted on a marine watercraft and used to propel such watercraft.

(11) "Permeation" means the process by which individual fuel molecules may penetrate the walls and components of a portable fuel container.

(12) "Portable fuel container" means any container or vessel with a nominal capacity of ten gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing and dispensing fuel.

(13) "Retailer" means any person who owns, leases, operates, controls or supervises a retail outlet.

(14) "Retail outlet" means any establishment at which any portable fuel container or spout or both portable fuel container and spout is sold, supplied or offered for sale.

(15) "Spill-proof spout" means any spout that complies with the performance standards set forth in subsection (d) of this section.

(16) "Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the performance standards set forth in subsection (d) of this section.

(17) "Spout" means any device that can be firmly attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed.

(18) "Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

(b) Applicability.

Except as provided in subsection (c) of this section, this section applies to any person who sells, supplies, offers for sale or manufactures for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout for use in the State of Connecticut.

(c) **Exemptions.**

(1) This section shall not apply to any portable fuel container or spout or both portable fuel container and spout manufactured in the State of Connecticut for shipment, sale and use outside of the State of Connecticut.

(2) This section shall not apply to a manufacturer or distributor who sells, supplies or offers for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards set forth in subsection (d) of this section, provided that such manufacturer makes and keeps records demonstrating:

(A) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of the State of Connecticut; and

(B) The manufacturer or distributor has taken reasonable and prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed to or within the State of Connecticut.

(3) This section shall not apply to any safety can subject to and in compliance with the provisions of 29 CFR 1926, Subpart F.

(4) This section shall not apply to any portable fuel container with a nominal capacity of less than or equal to one (1) quart.

(5) This section shall not apply to any rapid refueling device with a nominal capacity of greater than or equal to four gallons, provided that such device:

(A) Is designed for use in an off-highway motorized vehicle competition;

(B) Creates a leak-proof seal against the target fuel tank; or

(C) Operates in conjunction with a receiver permanently installed on the target tank.

(6) This section shall not apply to marine portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating such engine.

(7) This section shall not apply to any manufacturer for any product for which the NYSDEC issued a variance pursuant to 6 NYCRR

239-7 for the period of time such variance is in effect, provided that the manufacturer submits all information and data required by 6 NYCRR 239-7 to the commissioner within thirty days of variance approval. If NYSDEC issues a variance pursuant to 6 NYCRR 239-7 more than thirty days before the effective date of this section, the manufacturer shall submit the information and data required by 6 NYCRR 237-7 to the commissioner within thirty days of the effective date of this section, provided the underlying variance is still in effect and necessary to maintain this exemption in the State of Connecticut.

(8) This section shall not apply to any manufacturer who:

(A) Is granted an exemption by CARB pursuant to the Innovative Products provisions of 13 CCR 2467.4 for the period of time the CARB Innovative Products exemption remains in effect; or

(B) Is granted an exemption by the NYSDEC pursuant to the Innovative Products provisions of 6 NYCRR 239-5.

(9) Any manufacturer who claims an exemption pursuant to subdivision (8) of this subsection shall submit to the commissioner, upon request therefore, a copy of the applicable CARB or NYSDEC exemption decision.

(10) Reserved for military use/equipment exemption.

(d) Performance Standards.

(1) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004, any portable fuel container or any portable fuel container and spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (2) of this subsection.

(2) Each portable fuel container and each portable fuel container and spout shall:

(A) Have an automatic shut-off that stops fuel flow before the target tank overflows;

(B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel;

(C) Have only one opening for both filling and pouring;

(D) Provide a fuel flow rate and fill level equal to or

greater than:

(i) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

(aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening, or

(bb) greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "LOW FLOW RATE" in bold type of thirty-four (34) point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any, or

(ii) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than or equal to two and one-half (2.5) gallons, and fills to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(iii) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons;

(E) Have a permeation rate of less than or equal to four-tenths (0.4) grams per gallon per day; and

(F) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(3) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004, any spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (4) of this subsection.

(4) Each spill-proof spout shall:

(A) Have an automatic shut-off that stops fuel flow before the target tank overflows;

(B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel;

(C) Provide a fuel flow rate and fill level equal to or greater than:

(i) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

(aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening, or

(bb) greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "LOW FLOW RATE" in bold type of thirty-four (34) point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto, or

(ii) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(iii) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons; and

(D) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(e) Labelling Requirements.

(1) Each manufacturer of a portable fuel container or portable fuel container and spout subject to this section shall clearly display on each spill-proof system:

(A) The phrase "Spill-Proof System;"

(B) A date of manufacture or a representative date; and

(C) A representative code identifying the portable fuel container or portable fuel container and spout as subject to this section and in compliance with subsection (d) of this section.

(2) Each manufacturer of a spout subject to this section shall clearly display on the accompanying package, or for a spill-proof spout sold without packaging, on either the spill-proof spout or a label affixed thereto:

(A) The phrase "Spill-Proof Spout;"

(B) A date of manufacture or a representative date; and

(C) A representative code identifying the spout as subject to this section and in compliance with subsection (d) of this section.

(3) Each manufacturer subject to this section shall file an explanation of both the date code and representative date code with the commissioner no later than three months after the effective date of this section or within ninety (90) days of production or any change in coding.

(4) Each manufacturer subject to this section shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

(5) Each manufacturer subject to subdivision (2) of this subsection shall clearly display the make, model number and size of each portable fuel container the spout is designed to accommodate, provided the identified combinations of container and spout shall comply with all applicable provisions of this section.

(6) No manufacturer shall display or affix the phrase "Spill-Proof System" or "Spill-Proof Spout" to a portable fuel container or a portable fuel container and spout unless such container and spout comply with all applicable provisions of subsection (d) of this section.

(7) If, due to its design or other features, a portable fuel container or a portable fuel container and spout cannot be used to refuel one or more on-road motor vehicles, the manufacturer shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in thirty-four (34) point type or greater on:

(A) An affixed label and the accompanying package, if any, for any portable fuel container or portable fuel container and spout sold together as a spill-proof

system; and

(B) Either the spill-proof spout or a label affixed thereto, and the accompanying package, if any, for any spill-proof spout.

(f) Compliance Test Procedures.

(1) Each manufacturer of a portable fuel container or spout or both a portable fuel container and spout must perform the compliance tests specified in subdivisions (2) and (3) of this subsection prior to allowing the product to be offered for sale in the State of Connecticut or at any other time directed to do so by the commissioner.

(2) To determine compliance with the standards set forth in subsection (d) of this section, each manufacturer shall use the following test procedures:

(A) "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000;

(B) "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000; and

(C) "Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000.

(3) To determine compliance with the permeation standard set forth in subsection (d)(2)(D) of this section, each manufacturer shall use the test procedures set forth in subdivision (2) of this subsection and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000.

(4) Each manufacturer must make and keep records of the compliance tests specified in subdivisions (2) and (3) of this subsection for as long as the product is available for sale in the State of Connecticut and make any test results available to the commissioner within thirty (30) days after receiving a request by the commissioner for such records.

(5) Compliance with the performance standards set forth in subsection (d) of this section does not exempt any manufacturer of a spill-proof system or spill-proof spout from the duty to comply with all other applicable federal and state requirements.

(6) Notwithstanding the provisions of subsections (d)(1) and (d)(3)

of this section, a portable fuel container or spout or both a portable fuel container and spout manufactured before May 1, 2004, may be sold, supplied or offered for sale until May 1, 2005 if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

Statement of Purpose:

To limit emissions of volatile organic compounds (VOCs) through the use of portable fuel containers designed to minimize spillage and fugitive evaporative emissions. To use associated emission reductions to alleviate a shortfall in demonstrable emission reductions of VOCs in accordance with the federally approved one-hour Ozone Attainment Demonstration for the Connecticut portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) severe ozone nonattainment area. See 66 Fed. Reg. 63921 (December 11, 2001).

IV. Principal Reasons in Support of the Proposed Amendments

The proposed amendment to section 30 provides additional emission reductions of volatile organic compounds ("VOCs") needed to comply with a final rule of the United States Environmental Protection Agency ("EPA"), which approved the Connecticut one-hour ozone attainment demonstration for the Connecticut portion of the NY-NJ-CT severe nonattainment area.[1] EPA has required, and Connecticut has committed to, the adoption and submission of additional control measures to offset the EPA-identified shortfall in emission reductions necessary to attain the federal one-hour ozone air quality standard by 2007. Proposed section 43 provides VOC emission reductions needed to comply with the same final EPA rule. The Department anticipates that section 30, in conjunction with section 43 and other previously adopted control measures for municipal waste combusters and mobile source repair and refinishing operations, will, when fully implemented, meet the EPA emission reduction targets.

V. Principal Considerations in Opposition to the Proposed Amendments

The Department did not receive any comments in opposition to the proposed amendment of section 30 or the proposed adoption of section 43. All comments submitted are addressed in detail in Section VI of this report.

VI. Summary of Comments

1 See Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Ozone, 66 Fed. Reg. 63921 (December 11, 2001).

A. General Comments

EPA Region 1 provided the following general comment on Section 30 and Section 43:

1. Comment: EPA commented that the public hearing notice for the proposed amendment of section 30 and the proposed adoption of section 43 indicated that the anticipated emission reductions are sufficient to offset the EPA-identified shortfall in the federally approved one-hour Ozone Attainment Demonstration but the public hearing package does not include any details on the quantity of emission reductions associated with the proposed rules. EPA requests that once the proposed rules are adopted and submitted to EPA as a SIP revision; the SIP revision should state the expected emission reductions from each rule being used to meet the shortfall and any assumptions that were made in calculating these reductions. The State will need to show that the combined reduction from the listed rules is equivalent to, or greater than, the identified shortfall (5.4 tons per summer day ("tpsd") for VOC and 0.5 tpsd for NOx).

Response: When submitting section 30 and section 43 to EPA as a revision to the SIP for air quality, the Department should state the expected emission reductions from each rule being used to meet the shortfall and any assumptions that were made in calculating these reductions in order to demonstrate that the combined reduction from the two rules, in addition with any other previously adopted control measure, is equivalent to, or greater than, the EPA-identified shortfall (5.4 tpsd for VOC and 0.5 tpsd for NOx).

B. Specific Comments on the Proposed Amendment of Section 30

EPA Region 1 provided the following specific comments on Section 30:

1. Comment: EPA recommends, for clarification purposes, that subsection (c)(1)(A) be revised as follows:

> "(1) No person shall install a Stage II vapor recovery system at a dispensing facility unless:
>
> > (A) such system is currently ~~or has ever been tested and~~ approved by CARB or was approved by CARB in accordance with the applicable certification procedures in place on April 12, 1996 or procedures in place prior to this date; or. . ."

Response: The proposed changes could potentially cause greater uncertainty than the language proposed because de-certifications by the California Air Resources Board ("CARB") could be viewed as automatically impacting systems covered by section 30. As this was not the intent of the proposed rule, the Department should not make the suggested changes.

2. Comment: EPA recommends, for clarification purposes, that subsection (e)(1) be revised as

follows:

> "The following ~~Such~~ tests shall be conducted in accordance with the test procedures in the EPA document 'Stage II Vapor Recovery System for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities,' Vol II (EPA-450/3-91-022b) ~~and shall also include~~, except where otherwise noted below:"

Response: The Department should not make the suggested change as it could be read to exclude the six testing requirements listed in subsection (e)(1).

3. Comment: EPA suggests subsection (e)(1)(E), which requires PV vent valve testing; be amended to specify a CARB test procedure as follows:

> "Pressure-vacuum vent valve testing to verify operation within 0.29 ounces per square inch or 0.5 inches water column of the designed pressure and within 1.2 ounces per square inch or 2 inches water column of the vacuum settings in accordance with the test procedures outlined in CARB's TP 201.2B, Appendix 1, Determination of Pressure and Vacuum Performance Specifications for Pressure/Vacuum Vent Valves; and. . ."

The test procedure referenced above is CARB's existing test procedure which was adopted on February 1, 2001. CARB is also in the process of establishing a new test method, TP 201.1E, "Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves." According to CARB's web site, this test procedure was adopted on October 8, 2003, but has not yet received final approval.

Response: The intent of the pressure-vacuum vent valve test is to determine the flow-versus-pressure correlation for equipment with a vapor recovery system. The EPA's suggested revisions do not comport with the intention of the Department's proposed requirement, which is to verify the pressure-vacuum cap is operating within the required range. In addition, California's governor has, subsequent to EPA's comments, terminated the rule making process for CARB's TP 201.1E, "Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves." As such, the Department should not make the suggested change.

4. Comment: EPA suggests subsection (e)(2), which revises the requirement for Stage II system re-testing from every five years to every three years, be amended to require annual leak check test and the air-to-liquid ratio test for vacuum assist systems. Such requirements are consistent with the Executive Orders issued by CARB in recent years and with Stage II vapor recovery testing requirements adopted by Rhode Island and Massachusetts.

Response. The Department should proceed to adopt the revised testing schedule as proposed. Section 30 could be revised at a later time if the Department, upon full implementation of the revised testing schedule, finds that more frequent testing is warranted.

5. Comment: EPA notes several typographical errors and recommends the following corrections:

> Section (a)(11): "Two-point Stage I vapor recovery system means a stationary storage tank. . ."
>
> Section (a)(12): ". . . to draw gasoline vapors from ~~of~~ a motor vehicle's gasoline fuel tank during the dispensing of gasoline into such tank."
>
> Section (g)(3)(B): ". . . or when the ~~A~~ pressure drop through the vapor recovery hose ~~that~~ exceeds by a factor of two or more. . ."

Response: The Department should incorporate the changes identified by EPA into section 30.

ExxonMobil provided the following comments on Section 30:

ExxonMobil expressed general support of the Department's proposed amendments. ExxonMobil made the following comments on areas where the proposed rules could be clarified or improved.

6. Comments on subsection (a) Definitions:

A. "*Major System Modification.*" The Department should revise this definition so that minor excavation performed to comply with the new requirements in section 30 do not fall under the definition of "Major System Modification."

B. Although not specifically mentioned in this proposed amendment, ExxonMobil also proposes that the Department clarify that tank maintenance and upgrade work, including work that is required to maintain or extend the manufacturers warranty of underground storage tanks, is specifically excluded from the definition of "Major System Modification."

C. "*Two Point Stage I Vapor Recovery System.*" For purposes of clarity and precision, ExxonMobil suggests replacing the phrase "either port" with the phrase "the vapor return connection" in the definition of *two-point stage I vapor recovery system* as follows:

> "Two point Stage I vapor recovery system" means a stationary storage tank possessing an entry port for a gasoline fill pipe and an exit port for a vapor connection that seals when ***the vapor return connection*** is disconnected in a manner that will prevent the discharge of gasoline vapors to the atmosphere."

Response: (A) To address ExxonMobil's concern with respect to minor excavation undertaken to install fill adapters and two-point stage I vapor recovery systems, the Department should exempt from the testing requirements set forth in subsection (e) of section 30 any minor excavation from activity undertaken solely to comply with the new requirements set forth in

subsections (c)(6) and (c)(7) of section 30. If excavation is conducted for reasons in addition to compliance with the new requirements, such activity would be considered a major system modificaion. Thus, section 30(e)(2) should be revised as follows:

> "(e)(2) At least every [five] THREE years or upon major system modification, whichever occurs first, [a person who owns, leases, operates or controls] AN OWNER OR OPERATOR OF a dispensing facility shall conduct testing to verify that the Stage II vapor recovery system is operating properly. Such testing shall include a leak check test and any and all other functional tests that were required by subdivision [(e)](1) OF THIS SUBSECTION. MINOR EXCAVATION CONDUCTED SOLELY FOR THE PURPOSE OF COMPLYING WITH THE REQUIREMENTS OF SUBSECTIONS (c)(6) AND (c)(7) SHALL NOT, BY ITSELF, TRIGGER THE REQUIREMENT TO TEST PURSUANT TO THIS SUBDIVISION. [For the purposes of this section, a major system modification shall be defined as:. . .]"

(B) The Department should not adopt ExxonMobil's suggestion to exempt from the definition of "major system modification" tank maintenance and upgrade work necessary to maintain or extend the manufacturers warranty of underground storage tanks. This comment is beyond the scope of the changes proposed by the Department.

(C) The Department should adopt ExxonMobil's proposed change to the definition of "two point stage I vapor recovery system" as stated above.

7. Comments on subsection (c) Equipment Specifications:

A. ExxonMobil supports the changes made to subdivision (1).

B. Subdivision (6)(A) requires installation of a CARB-certified fill adapter within one year of the effective date of this regulation. At this time, ExxonMobil is aware of only one supplier of CARB-certified equipment that would meet this requirement. ExxonMobil will make every effort to comply with the deadline. However, our concern is availability of complying equipment as this single supplier will be providing fill adapters to dispensing facilities nationwide. If it becomes apparent there will be a shortage of complying equipment, will the Department be prepared to delay this deadline? ExxonMobil proposes that this requirement be subject to a provision to extend the deadline if a person submits a petition for an extension on the grounds that the required equipment is not available.

Response: (A) The Department notes ExxonMobil's support of the proposed changes to subsection (c)(1) of section 30.

(B) The Department normally provides one year, or less, lead time to comply with air quality regulations. This period of time is *in addition to* the approximately one-year period prior to rule

adoption, during which sources are made aware of the Department's intent through both formal and informal rule making notice and opportunity to comment. The Department should not adopt any extension provisions in this case as ExxonMobil has not submitted any information that would lead the Department to conclude that there is, in fact, any shortage of fill adapters or other necessary equipment. The Department anticipates and expects full compliance with its requirements in a timely fashion.

8. Comments on subsection (e) Testing:

A. In subdivision (1)(D) the Department proposes to require the owner or operator to perform "Any other related testing of flow prohibiting mechanisms at the gasoline dispenser." ExxonMobil comments that this broad requirement sets an unreachable standard for system testing. It fails the standard by which the regulated community can determine their compliance with the rule. ExxonMobil supports the Department in setting valid and definable test requirements. Proposed subparagraph (D) fails in that regard and should be deleted from the proposal.

B. In subdivision (1)(E) the Department proposes testing of pressure-vacuum vent valves to a specific pressure. ExxonMobil is unaware of any reliable field test for these P/V valves. In addition, the CARB test specification for this equipment is a leak rate at a given pressure, not equipment operation within a range of the designed pressure. The Department should review the CARB test procedures for pressure-vacuum vents and adopt similar procedures.

C. In subdivision (3) the Department proposes to lengthen the required test notification time from four (4) days to seven (7) days. While this change may tend to provide the Department with added flexibility to monitor testing, it places more significant constraints on the regulated community. For example, if severe weather prohibits testing on the designated test date, is the tank system owner/operator then required to delay testing for another seven (7) days to meet the notification requirements?

Response: (A) The Department does not consider the requirement concerning "any other related testing of flow prohibiting mechanisms at the gasoline dispenser" to be a new requirement. The wording to which the commenter refers already exists in section 30 and is merely being moved within subsection (e)(1) to enhance clarity for the reader. As the commenter has, heretofore, been able to comply with this requirement, the Department should not view this as an "unreachable standard for system testing" as suggested. The Department should also not make the suggested deletion as this comment is beyond the scope of the proposed rule.

(B) The Department reviewed applicable CARB documents prior to proposing changes to section 30. The Department believes there are reliable field tests for P/V valves in use in other northeastern states that have adopted stage II vapor control programs.

(C) The Department should not view the addition of 72 hours to the notification requirement as

a "significant constraint" on the regulated community as suggested by the commenter. Given that the Department's resources are limited and will continue to be so into the foreseeable future, the additional notification time is needed if the Department is to manage its workload efficiently. It is also important to note the Department's ability to view a test is independent of the source's duty to notify the Department. Thus, if extreme weather is forecast for a particular day, the source should reconsider scheduling on that day.

9. Comments on subsection (g) Defective Equipment:

Subdivision (3)(C) proposed in this section is a new and very general description of damage to a nozzle boot that would be considered a defect. This new language, "Any visible damage including, but not limited to a rip, tear or hole in the area of the check valve:.." is so vague as to identify virtually any scuff or non-penetrating scrape as a defect. ExxonMobil suggests that the Department delete the words "any visible damage including but not limited to..". That would allow the Department to retain descriptive language of a defect that allows the regulated community to be able to understand exactly what constitutes a defect requiring repair/replacement of the dispensing nozzle.

Response: The Department should clarify subsection (g)(3)(C) of section 30 to better describe the damage that would trigger the restrictions set forth in subsections (g)(1) or (g)(2) of section 30. The Department should revise this provision to read as follows:

(C) A nozzle boot which has any rip, tear or perforation in the area of the check valve; a triangular-shaped or similar tear one-half (1/2) inch or more to a side; a hole one-half (1/2) inch or more in diameter; or a slit one (1) inch or more in length;

The Department of Defense (DoD) provided the following comment on section 30:

10. Comment: DoD understands that the proposed amendment does not change the existing definition of "dispensing facility" in subsection (a)(3) of section 30, however, DoD is concerned that there may be contradictory interpretations of this definition, specifically regarding the definition of "site" as used in this subdivision. DoD requests clarification regarding Department's interpretation of "dispensing facility."

Response: A dispensing facility, according to section 30, is any site where gasoline is transferred to motor vehicles from any stationary storage tank with a capacity greater than 250 gallons. Applicability of section 30, in general, is triggered when monthly throughput at a dispensing facility equals or exceeds 10,000 gallons. A dispensing facility is generally viewed as an area source, a common example is a gasoline station. The Department recognizes, that in certain limited circumstances, a large premises or campus may have more than one gasoline dispensing facility. In such a case, each dispensing facility must exceed the applicable throughput trigger in order to be subject to section 30.

C. Specific Comments on the Adoption of Section 43

EPA Region 1 provided the following comments on Section 43:

1. Comment: Subsection (a)(13) includes a definition of the term "product category." This term is defined as the applicable category that best describes the product with respect to a number of variables "as determined by the Commissioner." The definition as stated raises the issue of Commissioner's discretion. The term "product category," however, does not appear to be used in Connecticut's rule. Therefore, EPA recommends that this term be deleted.

Response: The Department removed the term "product category" prior to issuing public notice for section 43. The term is not used in the proposed rule.

2. Comment: Subsection (c) contains a number of exemptions. All of these exemption provisions are currently stated as "this section shall not apply to [specified product]." In some cases, the exemption is an outright exemption, i.e., there are no requirements that apply for the specified product. In other cases, however, the product is being exempted from many of the rule's requirements but the manufacturer is still subject to record keeping provisions. Therefore, EPA recommends that the phrase "this section shall not apply to" be deleted from the beginning of each subdivision and that the following statement be added to the beginning of subection (c):

> "The following are exempt from the requirements of Connecticut's 22a-174-43, with the exception of the applicable recordkeeping requirements as noted below."

Response: As each subdivision within a subsection must be read on its own, the suggested change would not provide additional clarity. The Department should amend the title of subsection (c) to alert the reader that the subsection provides both full exemptions and limited exemptions.

3. Comment: Subsection (c)(7) contains an exemption for products for which the NYSDEC has issued a variance for the period of time such variance is in effect, provided that the manufacturer submits all of the data required by 6 NYCRR 239-7 to the Commissioner within thirty days of variance approval. Variances issued pursuant to New York's rule would allow a delay in compliance but final compliance with the rule would still be required. Connecticut's subsection (c)(7) exemption raises the issue of commissioner's discretion. Allowing this exemption would be considered more reasonable if Connecticut's rule also included a date certain beyond which variances would no longer apply (i.e, final compliance with the rule must be achieved). Therefore, EPA recommends that subsection (c)(7) be revised to read as follows:

> ". . . any product for which the NYSDEC issued a variance for the period of time such variance is in effect, provided that the manufacturer submits. . . within thirty days of variance approval. In no case, shall this exemption from Connecticut's 22a-174-43

extend beyond [date]. . ."

Response: Subsection (c)(7) provides a limited exemption in the form of recognizing a variance issued by the NYSDEC only for the period of time that such variance would be in effect in New York. When the variance expires in New York, compliance is required in Connecticut. Thus, there is no need to insert a "drop dead" date as suggested as the New York issued variance will contain such a provision, and that provision will serve to limit the exemption provided by Connecticut.

4. Comment: Subsection (c)(8) contains an exemption for manufacturers who are granted an exemption by CARB and NYSDEC pursuant to the innovative products provisions of these states' regulations. This exemption appears reasonable since the California and New York rules require that the manufacturer demonstrate that the use of the innovative product "will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing." The wording of Connecticut's subsection (c)(8), however, should be clarified.

First, the provision states that the rule "shall not apply to any manufacturer" who is granted an innovative products exemption. This provision should instead state that the requirements do not apply "to any manufacturer for any product that" has been granted an innovative products exemption.

In addition, subsection (c)(8)(B) should be revised to state that the exemption applies "for the period of time the NYSDEC innovative products exemption remains in effect" as is stated in subsection (c)(8)(A) for the CARB innovative products exemption.

Response: Based on EPA's comment, the Department should revise subsection (c)(8) to read as follows:

(8) This section shall not apply to any product for which the manufacturer is granted:

(A) An exemption by CARB. . . ; or

(B) An exemption by the NYSDEC pursuant to the Innovative Products provisions of 6 NYCRR 239-5 for the period of time the NYSDEC innovative products exemption remains in effect.

5. Comment: Subsection (c)(10) contains a placeholder for a military exemption. The specific details of this exemption are not included, and it is not clear why such an exemption would be needed. There is no military exemption included in the OTC model rule or in the portable fuel container rules adopted by several other OTC states such as New York, Delaware, and Maine.

Response: Subsection (c)(10) was included in the proposed rule to generate comment as to

whether such an exemption is needed. The Department did not receive any comments regarding the proposed exemption. As such, the Department should delete subsection (c)(10) from the final proposed rule.

6. Comment: Subsection (d)(2)(D)(i)(bb) should be revised as follows:

> "greater than one and one half (1.5) gallons, but less than or equal to two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "LOW FLOW RATE" in ~~bold~~ type of thirty-four (34) point or greater on each spill-proof system...."

EPA recommends that the requirement for bold type be deleted for consistency with rules in neighboring states. In addition, subsection (d)(4)(C)(i)(bb) should also be similarly revised.

Response: In order to be consistent with the portable fuel container rules adopted in neighboring states, the Department should make the change suggested by EPA.

7. Comment: Section (e)(1)(B) requires that the portable fuel container display "a date of manufacture or a representative date." It is not clear what is meant by "a representative date." EPA recommends that this provision be revised to instead reference a "a date of manufacture or a representative code identifying the date of manufacture." Section (e)(2)(B) should also be similarly amended.

In addition, Section (e)(3) could be clarified by amending the provision to require that the manufacturer file "an explanation of the representative codes referenced in Sections (e)(1)(B) and (C) and/or Sections (e)(2)(B) and (C), as applicable, with the commissioner. . ."

Response: The term "representative date" is intended to provide flexibility to the manufacturer when providing a date of manufacture for inclusion on compliant portable fuel containers. As no other state has adopted a requirement that a "code identifying the date of manufacture" be made and the prior comment suggested that Connecticut's portable fuel container rule should be consistent with those adopted by neighboring states, the Department should not make the suggested change.

8. Comment: Section (e)(5) should state where the specified information should be displayed. Therefore, this section should be revised to read as follows:

> "Each manufacturer subject to subdivision (2) of this subsection shall clearly display, on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label fixed thereto, the make, model number and size of each portable fuel container the spout is designed to accommodate, provided the identified combinations of container and spout shall comply with all applicable provisions of this section."

Response: The Department should make the change suggested by EPA to subsection (e)(5) as it will clarify where the specified information should be displayed.

9. Comment: EPA requests Connecticut amend subsections (f)(1), (f)(4), and (c)(9) to state that tests shall be conducted, and records shall be made available, when requested by the commissioner and/or EPA.

Response. The Department should not make the suggested change because EPA has independent federal authority to require the tests set forth in subsections (f)(1), (f)(4) and (c)(9) of section 43.

10. Comment: It is EPA's understanding that Connecticut intends to claim emission reduction credit from the portable fuel container rule to help with the State's one hour ozone attainment shortfall. To claim this credit, Connecticut needs to ensure that the underlying emissions are accurately reported in the State's emissions inventory, as noted below.

Information contained in Pechan's March 31, 2001 document entitled, "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules" indicates that about 70 percent of the underlying portable container VOC emissions are not currently reported in most state emission inventories. The Pechan report indicates that emission estimates for this activity come from five different modes, only two of which, equipment-filling spillage and vapor displacement, are included in the EPA's non-road model. (See discussion on pages 11 and 12 of the Pechan document.) The other three ways that emissions occur are via diurnal, permeation and transport spillage activity, and together these three modes represent about 70 percent of the baseline emissions. (See Table II-2 on page 11 of the Pechan report.) Emissions from these three modes are not currently inventoried by states, but Appendix A of Pechan's report provides a methodology developed by CARB to do so.

Furthermore, the Pechan report estimates that a portable fuel container rule in Connecticut would achieve a VOC reduction of 3 tpsd in 2005, and 5 tpsd in 2007. However, this estimate assumes that the rule applies to the sale or manufacture of containers on or after January 1, 2003, with a one-year sell through period for containers manufactured prior to January 1, 2003. Connecticut's draft rule, however, contains a later compliance date of May 1, 2004, with a one-year sell through period. Therefore, there will be proportionally less sales and turnover of the existing fuel containers, and less emission reductions, by 2007 than the Pechan report estimate. If Connecticut wants to achieve more of the estimated reductions, the State needs to implement a strategy that would accelerate the turnover of portable fuel containers. Some of the possible mechanisms for accomplishing this are:

(1) to make use of the new portable fuel containers mandatory for certain commercial entities, such as any, or all, of the following: facilities required to have a Title V permit, facilities required to submit emissions statements, service stations, automotive repair

shops, farms, and landscapers; and/or

(2) to have a gas can buyback program for consumers. For example, Pennsylvania has conducted such a program. See http://www.dep.state.pa.us/dep/deputate/airwaste/aq/gascan/gascan.htm

If option 1 is chosen, Connecticut will need to make the appropriate revisions to its draft portable fuel container rule. EPA provided suggested regulatory language in their comment.

Response: The Department should adjust its emissions inventory to reflect portable fuel container emissions not currently accounted for in the emissions inventory. The Department recognizes the delayed effective date of section 43 will reduce the amount of creditable emission reductions that may be claimed in 2007. In accordance with the Department's response to EPA's general comment, the Department should state the expected emission reductions from each rule being used to meet the shortfall and any assumptions that were made in calculating emission reductions in order to demonstrate that the combined reduction from the two rules, in addition with other previously adopted control measures, is equivalent to, or greater than, the identified shortfall (5.4 tpsd for VOC and 0.5 tpsd for NOx. At this point, the Department believes the suite of reduction strategies to be identified in the air quality SIP revision, including both section 30 and section 43, are sufficient to meet the shortfall without adopting the enhancements suggested in this comment. As such, the Department should not adopt the suggested revisions to section 43 at this time.

DoD provided the following comments on section 43:

11. Comment: DoD requests clarification regarding the applicability of proposed section 43. DoD does not believe the intent of this new regulation is to regulate the type of suppliers who supply portable fuel containers to DoD and recommends the term "person" in subsection (b), (d)(1) and (d)(3) be changed to "manufacturer or distributor."

Response: The Department should not make the requested clarification as DoD may be misinterpreting the applicability provisions of section 43. There are two applicability triggers in Section 43. First, the rule applies to a person who sells, supplies, offers for sale or manufactures portable fuel containers. Second, the portable fuel containers must be delivered for sale in the State of Connecticut. For, example, if DoD sells portable fuel containers to base personnel from the base commissary, then such containers must comply with the provisions of section 43. The commenter did not provide sufficient information for the Department to determine whether portable fuel containers "supplied" by DoD to the Naval Submarine base in Groton, Connecticut, would trigger applicability of section 43 on the manufacturer. It is important to note that the term "manufacturer" also includes "importers." Thus, the change requested by DoD would not, by itself, preclude applicability of section 43.

12. Comment: DoD requests clarification whether section 43 applies to any user who purchases

a portable fuel container or spout from an out-of-state manufacturer or distributor.

Response: If a portable fuel container is purchased from an out-of-state manufacturer for resale in the State of Connecticut, the purchaser is, in fact, an importer falling within the definition of "manufacturer." Thus, the provisions of section 43 would apply to any portable fuel containers purchased for subsequent resale in Connecticut. It should be noted that Congress, in 42 U.S.C. §7418, clearly states that federal facilities are expected to comply with "all Federal, State, interstate, and local requirements, administrative authority . . . respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity." The Department has determined that portable fuel containers of the size specified in section 43 are a significant source of VOC emissions that must be controlled in order for the State of Connecticut to attain and maintain the 1-hour national ambient air quality standard for ground level ozone. As such, if it is determined that DoD is subject to the provisions of section 43, the Department would anticipate and expect full compliance.

VII. Additional Comments of the Hearing Officer

The Department should make the following technical/grammatical corrections to the proposed regulations:

A. Section 30

1. In subsection (c)(7), insert a hyphen within the word "TWO POINT" as follows:

"(7) TWO-POINT STAGE I VAPOR RECOVERY SYSTEMS. . ."

2. In subsection (d)(1), delete an additional comma on line 7 in between the words "installer" and "in." Also in subsection (d)(1), change the word "NEED" on line 16 to "MUST."

3. In subsection (d)(1), "[subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION" should be changed to "[subdivision] SUBSECTION (b)(1), (b)(2), (b)(3) or (b)(4) OF THIS SUBSECTION."

4. In subsection (d)(3)(C), delete the word "OR" from in between the word "Department" and the bracketed phrase "[to whom]" on line 2.

5. In subsection (e)(1), "[subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION" should be changed to "[subdivision] SUBSECTION (b)(1), (b)(2), (b)(3) or (b)(4) OF THIS SUBSECTION."

6. In subsection (e)(4) insert a comma on line 2 in between the word "subsection" and

the phrase "THE STAGE II VAPOR RECOVERY SYSTEM."

7. In subsection (f)(1), "[subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION" should be changed to "[subdivision] SUBSECTION (b)(1), (b)(2), (b)(3) or (b)(4) OF THIS SUBSECTION."

B. Section 43

1. In subsection (a)(17), amend the definition of the term "spout" as follows:

> "(17) "Spout" means any device that can be firmly attached to a portable fuel container for dispensing ~~conducting pouring through which~~ the contents of a portable fuel container. ~~can be dispensed.~~

2. In subsection (d)(2)(D)(i)(bb) delete the word "or" at the end of the subclause.

3. In subsection (d)(4)(C)(i)(bb) delete the word "or" at the end of the subclause.

VIII. Final Text of Proposed Regulations

A. Section 22a-174-30 of the Regulations of Connecticut State Agencies is amended to read as follows:

Section 22a-174-30. Dispensing of [Gasoline/Stage II] GASOLINE/STAGE I AND STAGE II Vapor Recovery.

(a) Definitions.

For the purposes of this section:

(1) "CARB" means the State of California Air Resources Board.

[(2) "Commissioner" means the Commissioner of the Department of Environmental Protection.]

[(3) "Department" means the Department of Environmental Protection.]

(2) "CARB-CERTIFIED FILL ADAPTER" MEANS A SPECIALIZED FITTING ON A STATIONARY GASOLINE STORAGE TANK THAT PREVENTS THE LOOSENING OR OVERTIGHTENING OF THE CONNECTING LINE BETWEEN AN ENTRY PORT OF A GASOLINE FILL PIPE AND THE FILL LINE FROM A GASOLINE DELIVERY VEHICLE.

[(4)](3) "Dispensing facility" means any site where gasoline is

transferred to motor vehicles from any stationary storage tank with a capacity of 250 gallons or more.

[(5) "EPA" means the United States Environmental Protection Agency.]

[(6)](4) "Gasoline" means any petroleum distillate or blend of petroleum distillate and alcohol having a reid vapor pressure of four pounds per square inch or greater and used as a fuel for internal combustion engines.

(5) "MAJOR SYSTEM MODIFICATION" MEANS, NOTWITHSTANDING ANY DEFINITION IN SECTION 22a-174-1 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES:

(A) THE REPAIR OR REPLACEMENT OF ANY STATIONARY STORAGE TANK EQUIPPED WITH A STAGE II VAPOR RECOVERY SYSTEM;

(B) THE REPAIR OR REPLACEMENT OF ANY PART OF AN UNDERGROUND PIPING SYSTEM ATTACHED TO A STATIONARY STORAGE TANK EQUIPPED WITH A STAGE II VAPOR RECOVERY SYSTEM, EXCLUDING THE REPAIR OR REPLACEMENT OF ANY PART OF AN UNDERGROUND PIPING SYSTEM THAT IS ACCESSIBLE FOR SUCH REPAIR OR REPLACEMENT WITHOUT EXCAVATION;

(C) THE REPLACEMENT OF A VAPOR BALANCE STAGE II VAPOR RECOVERY SYSTEM WITH A VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM; OR

(D) THE REPLACEMENT OF A VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM WITH A VAPOR BALANCE STAGE II VAPOR RECOVERY SYSTEM.

(6) "OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS, LEASES, OPERATES OR CONTROLS A DISPENSING FACILITY SUBJECT TO THIS SECTION.

[(8)](7) "Reid vapor pressure" or "RVP" means the vapor pressure of a liquid in pounds per square inch absolute at one hundred (100) degrees Fahrenheit as determined by American Society for Testing and Materials (ASTM) method [D323-89] D5191-01.

(8) "STAGE I VAPOR RECOVERY SYSTEM" MEANS A VAPOR RECOVERY SYSTEM THAT PREVENTS THE DISCHARGE TO THE ATMOSHPHERE OF GASOLINE VAPORS WHILE GASOLINE IS TRANSFERRED BETWEEN A DELIVERY VEHICLE AND A DISPENSING FACILITY IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22a-174-20(a) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(9) "Stage II vapor recovery system" OR "SYSTEM" means a vapor recovery system [which] THAT prevents THE discharge to the atmosphere of at least ninety-five percent (95%) by weight of

gasoline vapors displaced during the dispensing of gasoline into a motor vehicle fuel tank.

(10) "Throughput" means the number of gallons of gasoline delivered into motor vehicles through all equipment at a dispensing facility over a specified period of time.

(11) "TWO-POINT STAGE I VAPOR RECOVERY SYSTEM" MEANS A STATIONARY STORAGE TANK POSSESSING AN ENTRY PORT FOR A GASOLINE FILL PIPE AND AN EXIT PORT FOR A VAPOR CONNECTION THAT SEALS WHEN THE VAPOR RETURN CONNECTION IS DISCONNECTED IN A MANNER THAT WILL PREVENT THE DISCHARGE OF GASOLINE VAPORS TO THE ATMOSHPERE.

(12) "VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM" MEANS A STAGE II VAPOR RECOVERY SYSTEM THAT USES A VACUUM-GENERATING DEVICE TO DRAW GASOLINE VAPORS FROM A MOTOR VEHICLE'S GASOLINE FUEL TANK DURING THE DISPENSING OF GASOLINE INTO SUCH TANK.

(b) Regulated dispensing facilities.

(1) On or after November 30, 1992, any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility shall install a Stage II vapor recovery system if such facility begins actual construction of a stationary storage tank of any size and such facility has a throughput of ten thousand (10,000) gallons or more during any calendar month. No such person shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such facility on or after November 30, 1992 unless a properly operating Stage II vapor recovery system is used for such transfer.

(2) After May 15, 1993, no [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility for which construction commenced between November 15, 1990 and November 30, 1992 and which has a throughput of ten thousand (10,000) gallons or more during any calendar month shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer.

(3) After November 15, 1993, no [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility which existed, or for which construction commenced, on or before November 15, 1990 and which has a monthly throughput of one hundred thousand (100,000) gallons or more shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer. Such monthly throughput shall be calculated based on the highest throughput in a calendar month during the two year period between November 30, 1990 and November 30, 1992. If such a

dispensing facility was inactive for any period during the [two year] TWO-YEAR period, such period shall be extended to include a total of [twenty four] TWENTY-FOUR months of activity.

(4) After November 15, 1994, no [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility which existed or for which construction commenced on or before November 15, 1990 and which has a throughput of ten thousand (10,000) gallons or more during any calendar month after November 30, 1992 shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at such dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer.

(5) After a dispensing facility becomes subject to subdivision [(b)](1), [(b)](2), [(b)](3) or [(b)](4) OF THIS SUBSECTION, the requirements of such subdivision shall always apply to such dispensing facility.

(6) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility which is not subject to subdivision [(b)](1), [(b)](2), [(b)](3) or [(b)](4) OF THIS SUBSECTION shall maintain at such dispensing facility records of monthly throughput which demonstrate such a dispensing facility is not subject to subdivision [(b)](1), [(b)](2), [(b)](3) or [(b)](4) OF THIS SUBSECTION. Such records shall be kept for five (5) years and shall be made available for inspection by a representative of the Department or EPA.

(c) Equipment specifications.

(1) No person shall install a Stage II vapor recovery system at a dispensing facility unless:

(A) [such] SUCH system IS OR has EVER been tested and approved by CARB [on or before November 1, 1992]; or

(B) [such] SUCH system IS OR has EVER been tested and approved by another state [on or before November 1, 1992] using testing methods approved by CARB; and

(C) [such] SUCH system UTILIZES only [has hoses which are] coaxial hoses.

(2) No person shall replace any part of a Stage II vapor recovery system with a new or rebuilt part unless such new or rebuilt part [was] IS OR HAS EVER BEEN approved for installation in such Stage II vapor recovery system [on or before November 1, 1992] either by CARB or by another state using testing methods approved by CARB.

(3) No person shall modify, remove, replace, add or otherwise render inoperative any part of a Stage II vapor recovery system [so as to render] IN SUCH A WAY THAT the system [to be] BECOMES incapable of preventing discharge to the atmosphere of at least ninety-five percent (95%) by weight of gasoline vapors displaced during the dispensing of gasoline.

(4) Each Stage II vapor recovery system shall conform to the APPLICABLE specifications of the National Fire Protection Association Automobile and Marine Service Station Code [NFPA 30A as adopted] SET FORTH in section [29-320-2] 29-320-3a of the Regulations of Connecticut State Agencies.

(5) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall install and maintain the Stage II vapor recovery system in a manner such that the dispensing facility complies with the provisions of [section] SECTIONS 22a-449(d)-1 and [sections] 22a-449(d)-101 through [22a-449(d)-110] 22a-449(d)-113 of the Regulations of Connecticut State Agencies[, as amended].

(6) UNLESS OTHERWISE SPECIFIED IN AN APPLICABLE CARB CERTIFICATION, ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, NO OWNER OR OPERATOR OF A DISPENSING FACILITY SUBJECT TO SUBSECTION (b) OF THIS SECTION SHALL TRANSFER OR ALLOW THE TRANSFER OF GASOLINE BETWEEN A DELIVERY VEHICLE AND A STATIONARY STORAGE TANK AT SUCH FACILITY UNLESS EACH STATIONARY STORAGE TANK IS EQUIPPED WITH:

(A) A CARB-CERTIFIED FILL ADAPTER; AND

(B) A PRESSURE-VACUUM VENT VALVE WITH A RELIEF SETTING OF THREE (3), PLUS OR MINUS ONE-HALF (0.5) INCH OF WATER COLUMN PRESSURE AND EIGHT (8), PLUS OR MINUS TWO (2.0) INCHES OF WATER COLUMN VACUUM.

(7) TWO-POINT STAGE I VAPOR RECOVERY SYSTEMS SHALL BE INSTALLED:

(A) BY AN OWNER OR OPERATOR OF ANY STATIONARY STORAGE TANK WITH AN AVAILABLE PORT ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION; AND

(B) BY AN OWNER OR OPERATOR OF ANY STATIONARY STORAGE TANK THAT DOES NOT HAVE AN AVAILABLE PORT AT SUCH TIME THE STATIONARY STORAGE TANK IS REPLACED OR AT SUCH TIME THE PRODUCT IN THE TANK IS SWITCHED FROM ANY OTHER FUEL TO GASOLINE.

(d) Training, maintenance, and labeling.

(1) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision] SUBSECTION (b)(1), (b)(2), (b)(3) or (b)(4) OF THIS SECTION shall require THAT at least one representative of such dispensing facility [to attend] ATTENDS and successfully [complete] COMPLETES a training session[,] provided by [an] A STAGE II equipment manufacturer, supplier, distributor or installer[,] in the operation and maintenance of the Stage II vapor recovery system USED AT THE FACILITY WHERE SUCH REPRESENTATIVE IS EMPLOYED. [Any person who owns, leases, operates or controls more than one dispensing facility subject to this subdivision may have a trained representative who is responsible for more than one such facility. Such representative] IF AN OWNER OR OPERATOR OWNS OR OPERATES MORE THAN ONE DISPENSING FACILITY THAT UTILIZES THE SAME TYPE OF STAGE II VAPOR RECOVERY SYSTEM, ONLY ONE REPRESENTATIVE FROM ONE OF THE DISPENSING FACILITIES MUST BE TRAINED IN ACCORDANCE WITH THIS SUBSECTION. TRAINING shall BE successfully [complete the training] COMPLETED no later than three (3) months after commencement of operation of the dispensing facility's Stage II vapor recovery system, OR, IF A REPRESENTATIVE IS RESPONSIBLE FOR MORE THAN ONE FACILITY THAT UTILIZES THE SAME TYPE OF STAGE II VAPOR RECOVERY SYSTEM, SUCH TRAINING SHALL SUCCESSFULLY BE COMPLETED NO LATER THAN THREE (3) MONTHS AFTER THE FIRST INSTALLATION OF SUCH STAGE II VAPOR RECOVERY SYSTEM. If the representative who received the training is no longer employed at that dispensing facility, another representative of such dispensing facility shall attend and successfully complete the training within three (3) months of the departure of such representative who had previously received the training. Training shall include the following areas:

(A) Purposes and effects of the Stage II vapor recovery system;

(B) Operation of the [equipment in the] dispensing facility's Stage II vapor recovery system;

(C) Maintenance schedules for the dispensing facility's [equipment] STAGE II VAPOR RECOVERY SYSTEM;

(D) Manufacturer's warranties for the DISPENSING FACILITY'S Stage II vapor recovery system; and

(E) Equipment manufacturer contacts (names, addresses, and phone numbers) for parts and service NECESSARY FOR THE PROPER OPERATION OF THE DISPENSING FACILITY'S STAGE II VAPOR RECOVERY SYSTEM.

(2) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1),

(b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall maintain the Stage II vapor recovery system in accordance with specifications THAT ARE OR HAVE EVER BEEN approved by CARB [on or before November 1, 1992].

(3) Any [person who owns, leases, operates or controls] OWNER OR OPERATOR OF a dispensing facility subject to [subdivision (b)(1), (b)(2), (b)(3) or (b)(4)] SUBSECTION (b) OF THIS SECTION shall post, CONSPICUOUSLY on the upper two-thirds of each gasoline dispenser, operating instructions for dispensing gasoline using the Stage II vapor recovery system. [Such instructions shall be located conspicuously.] Such instructions shall include, at a minimum, the following:

(A) A clear description of how to correctly dispense gasoline using the Stage II vapor recovery system;

(B) A warning not to attempt to continue dispensing gasoline after automatic shutoff of the nozzle; and

(C) [the telephone number of a] A TELEPHONE NUMBER, 1-800-249-1234, TO contact [at] the Department [to whom] to report problems experienced with the Stage II vapor recovery system.

(e) Testing.

(1) [Before commencing operation of a Stage II vapor recovery system,] THE OWNER OR OPERATOR OF a dispensing facility subject to [subdivision] SUBSECTION (b)(1), (b)(2), (b)(3) or (b)(4) OF THIS SECTION shall conduct AN INITIAL PERFORMANCE TEST PRIOR TO DISPENSING ANY GASOLINE INTO A MOTOR VEHICLE FUEL TANK [testing] to verify that [such] THE STAGE II VAPOR RECOVERY system has been properly installed and is functioning properly. [Such tests shall include liquid blockage testing, leak check testing, and all other related tests for automatic shutoff mechanisms and flow prohibiting mechanisms at the gasoline dispensers.] Such tests shall be conducted in accordance with the test procedures in the EPA document "Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", Vol. II (EPA-450/3-91-022b)[.] AND SHALL ALSO INCLUDE:

(A) LIQUID BLOCKAGE TESTING;

(B) PRESSURE DECAY/LEAK CHECK TESTING, EXCEPT THAT THE AMOCO V-1 PHASE II VAPOR RECOVERY SYSTEM APPROVED PURSUANT TO CARB EXECUTIVE ORDER G-70-118-AB SHALL BE TESTED USING THE CARB-APPROVED PRESSURE DECAY/LEAK CHECK TEST METHODS SET FORTH IN TP-201.3A, "DETERMINATION OF 5 INCH WC

STATIC PRESSURE PERFORMANCE OF VAPOR RECOVERY SYSTEMS OF DISPENSING FACILITIES;"

(C) AUTOMATIC SHUTOFF MECHANISM TESTING IN ACCORDANCE WITH TEST PROCEDURES SET FORTH IN CARB EXAMINATION PROCEDURES OUTLINE 26-F-1, "VAPOR RECOVERY SYSTEMS FIELD COMPLIANCE TESTING PROCEDURES;"

(D) ANY OTHER RELATED TESTING OF FLOW PROHIBITING MECHANISMS AT THE GASOLINE DISPENSER;

(E) PRESSURE-VACUUM VENT VALVE TESTING TO VERIFY OPERATION WITHIN 0.29 OUNCES PER SQUARE INCH OR 0.5 INCHES WATER COLUMN OF THE DESIGNED PRESSURE AND WITHIN 1.2 OUNCES PER SQUARE INCH OR 2 INCHES WATER COLUMN OF THE VACUUM SETTINGS; AND

(F) VACUUM ASSIST STAGE II VAPOR RECOVERY SYSTEM TESTING USING THE CARB AIR-TO-LIQUID VOLUME RATIO TEST PROCEDURE SET FORTH IN TP-201.5.

(2) At least every [five] THREE years or upon major system modification, whichever occurs first, [a person who owns, leases, operates or controls] AN OWNER OR OPERATOR OF a dispensing facility shall conduct testing to verify that the Stage II vapor recovery system is operating properly. Such testing shall include a leak check test and any and all other functional tests that were required by subdivision [(e)](1) OF THIS SUBSECTION. MINOR EXCAVATION CONDUCTED SOLELY FOR THE PURPOSE OF COMPLYING WITH THE REQUIREMENTS OF SUBSECTIONS (c)(6) AND (c)(7) SHALL NOT, BY ITSELF, TRIGGER THE REQUIREMENT TO TEST PURSUANT TO THIS SUBDIVISION. [For the purposes of this section, a major system modification shall be defined as:

(A) the repair or replacement of any stationary storage tank equipped with a Stage II vapor recovery system;

(B) the repair or replacement of any part of an underground piping system attached to a stationary storage tank equipped with a Stage II vapor recovery system, excluding the repair or replacement of any part of an underground piping system which is accessible for such repair or replacement without excavation;

(C) a change from a vapor balance Stage II vapor recovery system to a vacuum assist Stage II vapor recovery system; or

(D) a change from a vacuum assist Stage II vapor recovery system to a vapor balance Stage II vapor recovery system.]

(3) Before a person [other than a representative of the Department] conducts [testing] A TEST pursuant to [subdivision (e)(1) or (e)(2)] THIS SUBSECTION, the [person who owns, leases, operates or controls] OWNER OR OPERATOR OF the dispensing facility shall notify the Department's Bureau of Air Management at least [four (4) business] SEVEN (7) days in advance of such testing. Such notification shall include the date, time[,] and location of the [test] TEST(S), and the name and address of the person conducting the [test] TEST(S). THE OWNER OR OPERATOR IS NOT REQUIRED TO SUBMIT SUCH NOTICE IF A REPRESENTATIVE OF THE DEPARTMENT WILL CONDUCT SUCH TEST.

(4) [Any] IF ANY Stage II vapor recovery system [which] does not pass any test required by this subsection, THE STAGE II VAPOR RECOVERY SYSTEM shall [not] be considered [properly operating for the purposes of subsection (b) of this regulation] TO NOT BE OPERATING PROPERLY.

(f) Record keeping requirements.

(1) Any OWNER OR OPERATOR OF a dispensing facility subject to [subdivision] SUBSECTION (b)(1), (b)(2), (b)(3) or (b)(4) OF THIS SECTION shall maintain, in a location in the State of Connecticut, the following records:

(A) All licenses, as that term is defined in section 4-166 of the CONNECTICUT General Statutes, to construct or operate the dispensing facility or to construct or operate a specific system at the dispensing facility;

(B) ALL RECORDS [Records] and results of tests performed pursuant to [subdivisions (e)] (1) and (e) (2)] SUBSECTION (e) OF THIS SECTION, including the date of the testing and the names, addresses, and phone numbers of the persons who [installed and tested such Stage II vapor recovery system] PERFORMED THE TESTS;

(C) A record of any maintenance or repair conducted on any part of the Stage II vapor recovery system, including a description of the maintenance problem, identification of any part or parts repaired or replaced on such Stage II vapor recovery system, the date such part or parts were repaired or replaced, and a general description of the location of the part or parts in the system including the number of the gasoline dispenser;

(D) Proof [of completion by] THAT a current representative of the dispensing facility RECEIVED [of] training pursuant to [subdivision (d)] SUBSECTION (d) OF THIS SECTION;

(E) A chronological file of all inspection reports of the dispensing facility issued by a representative of the Department, THE DEPARTMENT OF CONSUMER PROTECTION or EPA; and

(F) A chronological file of all compliance records, including orders, warnings and notices of violations, issued by a representative of the Department, THE DEPARTMENT OF CONSUMER PROTECTION or EPA.

(2) [Such records] RECORDS REQUIRED BY THIS SUBSECTION shall be made available for inspection AND COPYING by a representative of the Department, [or] EPA OR THE DEPARTMENT OF CONSUMER PROTECTION. [The inspection reports file shall be maintained separately from the compliance records file.]

(3) [Such records] RECORDS shall be maintained for [not less than] five (5) years FROM THE DATE OF CREATION.

(4) AN OWNER OR OPERATOR SHALL DISPLAY IN A CONSPICUOUS LOCATION AT THE DISPENSING FACILITY THE ADDRESS IN THE STATE OF CONNECTICUT AT WHICH THE RECORDS REQUIRED BY SUBDIVISION (1) OF THIS SUBSECTION ARE MAINTAINED.

(g) Defective equipment.

(1) Any [part of a] Stage II vapor recovery system having a defect, as defined by subdivision [(g)](3) OF THIS SUBSECTION, shall be immediately tagged "out of order" by the [person who owns, leases, operates or controls] OWNER OR OPERATOR OF the dispensing facility.

(2) [Any person who owns, leases, operates or controls] AN OWNER OR OPERATOR OF a dispensing facility shall not allow the use of [any part of] a Stage II vapor recovery system which has been tagged "out of order" until such [part] SYSTEM has been repaired or replaced.

(3) For the purposes of subdivisions [(g)](1) and [(g)](2) OF THIS SUBSECTION, a defect in a Stage II vapor recovery system shall include, BUT SHALL NOT BE LIMITED TO:

(A) Absence or disconnection of any part required to be used in such Stage II [Vapor] VAPOR recovery [systems] SYSTEM;

(B) A vapor RECOVERY hose which is crimped [or], flattened OR OTHERWISE IMPAIRED, such that the vapor passage is blocked, or when [the] A pressure drop through the vapor RECOVERY hose THAT exceeds by a factor of two (2) or more the CARB SPECIFICATIONS [requirements] for such Stage II

vapor recovery system;

(C) A nozzle boot which has ANY RIP, TEAR OR PERFORATION IN THE AREA OF THE CHECK VALVE; a triangular-shaped or similar tear ONE-HALF (1/2) inch or more to a side; a hole ONE-HALF (1/2) inch or more in diameter; or a slit ONE (1) inch or more in length;

(D) Balance nozzles and nozzles for aspirator and educator assist-type systems which are damaged such that the capability to achieve a seal with a fill pipe interface is affected for [1/4] ONE-QUARTER of the circumference of the faceplate (accumulated);

(E)) Nozzles for vacuum [assist-type] ASSIST systems which are damaged such that [more than 1/4 of the flexible cone is missing;] AN AREA OF THE VAPOR GUARD EQUAL TO OR GREATER THAN ONE-HALF (0.5) INCH IN AREA IS MISSING;

(F) A nozzle shutoff mechanism [which] THAT malfunctions in any manner;

(G) A vapor return line, including such parts as swivels, anti-recirculation valves and underground piping, which malfunctions or is blocked or restricted such that the pressure drop through the line exceeds by a factor of two or more the requirements for such Stage II vapor recovery system;

(H) A vapor processing unit which is inoperative;

(I) A vacuum producing device which is inoperative; or

(J) A pressure/vacuum relief valve, vapor check valve, or dry break which is inoperative.

(h) Delegation.

(1) The [Commissioner] COMMISSIONER may, in accordance with the provisions of section 22a-2a of the CONNECTICUT General Statutes, delegate the authority to inspect any dispensing facility covered by the provisions of this [regulation] SECTION to the Department of Consumer Protection[, to any municipality,] or to any employee of [either] the Department of Consumer Protection [or such municipality]. Such delegation shall not include the authority to otherwise enforce any provision of this section.

(2) [The Commissioner of the Department of Consumer Protection or the chief executive officer of a municipality may apply to the

Commissioner for delegation to such Department or municipality of all or part of the authority to inspect any dispensing facility covered by the provisions of this regulation. In making a decision on such application, the Commissioner shall consider:

(A) The knowledge and training of the applicant;

(B) The jurisdictional authority of the applicant;

(C) The financial and administrative capacity of the applicant;

(D) The level of experience and training of the employees of the applicant;

(E) The nature of the duties to be delegated; and

(F) The facilities which will be subject to this regulation.

(3) The Commissioner shall notify the applicant in writing of the decision on the application. If such application is approved, the Commissioner shall prepare a memorandum of understanding which defines the scope of the delegation. The Commissioner and the applicant shall both sign the memorandum of understanding.] THE COMMISSIONER SHALL IMPLEMENT SUCH DELEGATION OF AUTHORITY BY MEMORANDUM OF UNDERSTANDING. The memorandum of understanding shall include an effective date and an expiration date, provided that the initial memorandum of understanding shall be valid for a period of up to three (3) years.

[(4)](3) Prior to the expiration of the memorandum of understanding, the [Commissioner] COMMISSIONER shall review the performance of duties required by the memorandum of understanding, including record keeping, reporting, inspections and enforcement activities. If the [Commissioner] COMMISSIONER is satisfied with such performance, the [Commissioner] COMMISSIONER may renew the memorandum of understanding for up to five (5) years.

[(5) The Department of Consumer Protection or a municipality may allow employees to perform delegated duties, provided that the Department of Consumer Protection or such municipality is ultimately responsible for such activities. Any person who will perform delegated duties shall complete technical training in methods of inspection and reporting.

(6) Any person who performs delegated duties shall abide by the standards and requirements for state employees contained in Chapter 10 of the General Statutes, as amended.]

[(7)](4) Within [fifteen (15)] THIRTY (30) days of the detection of

a violation of any standard, criteria or other requirement at any dispensing facility which the Department of Consumer Protection [or a municipality] has been delegated the authority to inspect, the Department OF CONSUMER PROTECTION [or the municipality] shall submit a report to the [Commissioner] COMMISSIONER. In the event that further investigation or action by the Department OF ENVIRONMENTAL PROTECTION is required, the [Commissioner] COMMISSIONER shall notify the Department of Consumer Protection [or the municipality] of such investigation or action.

[(8)](5) [Beginning January 1, 1993, the] THE Department of Consumer Protection [or a municipality which has been delegated authority to inspect facilities under this section] shall submit an annual report to the [Commissioner] COMMISSIONER each January 1 which summarizes the activities, including the number of inspections, conducted under such authority during the previous twelve (12) months.

[(9) The Commissioner shall maintain a record of the cost to the Department of administering the delegation program under this section. The Commissioner shall assess the benefits, including any cost reductions, and liabilities to the Department of the delegation program, including the costs specified above, the number of inspections conducted, and the overall effectiveness of delegation in reducing air pollution in the state.]

[(10)](6) The [Commissioner] COMMISSIONER may revoke all or part of a delegation of authority upon written notice to the Commissioner of the Department of Consumer Protection [or the chief executive officer of the municipality]. Such revocation shall be effective upon receipt of such notice.

[(11)](7) The Commissioner of the Department of Consumer Protection [or the chief executive officer of a municipality] may terminate all or part of the delegated responsibilities upon thirty (30) days written notice to the [Commissioner] COMMISSIONER.

Statement of Purpose: To require the use of pressure-vacuum vent valves and fill adapters to limit emissions of volatile organic compounds (VOCs); to prevent the loosening or over tightening of the fill adapter; to improve Stage II system maintenance and reduce VOC emissions by increasing the frequency of Stage II system performance tests from every five to every three years; to revise the format of Section 30 to conform to current conventions; to streamline and clarify the delegation provisions of subsection (h); and to use associated emission reductions to alleviate a shortfall in demonstrable emission reductions of VOCs in accordance with the federally approved one-hour Ozone Attainment Demonstration for the Connecticut portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) severe ozone nonattainment area. See 66 Fed. Reg. 63921 (December 11, 2001).

B. The Regulations of Connecticut State Agencies are amended by adding a new Section 22a-174-43 as follows:

(NEW)

Section 22a-174-43 Portable Fuel Container Spillage Control.

(a) Definitions. For the purposes of this section:

(1) "CARB" means the California Air Resources Board.

(2) "CCR" means the California Code of Regulations.

(3) "Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout or both portable fuel container and spout for personal, family, household or institutional use. A person who acquires a portable fuel container or spout or both a portable fuel container and spout for resale is not a "consumer" for that product.

(4) "Distributor" means any person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers and consumers.

(5) "Fuel" means a volatile liquid mixture containing hydrocarbons or a blend of a volatile liquid mixture with one or more oxygen containing ashless organic compounds, such as alcohols or ethers, which is suitable for use in spark-ignition internal combustion engines or compression-ignition internal combustion engines.

(6) "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages or re-labels a portable fuel container or spout or both portable fuel container and spout.

(7) "NYCRR" means the Official Compilation of Codes, Rules and Regulations of the State of New York.

(8) "NYSDEC" means the New York State Department of Environmental Conservation.

(9) "Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

(10) "Outboard engine" means the spark-ignition marine engine mounted on a marine watercraft and used to propel such watercraft.

(11) "Permeation" means the process by which individual fuel

molecules may penetrate the walls and components of a portable fuel container.

(12) "Portable fuel container" means any container or vessel with a nominal capacity of ten gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing and dispensing fuel.

(13) "Retailer" means any person who owns, leases, operates, controls or supervises a retail outlet.

(14) "Retail outlet" means any establishment at which any portable fuel container or spout or both portable fuel container and spout is sold, supplied or offered for sale.

(15) "Spill-proof spout" means any spout that complies with the performance standards set forth in subsection (d) of this section.

(16) "Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the performance standards set forth in subsection (d) of this section.

(17) "Spout" means any device that can be firmly attached to a portable fuel container for dispensing the contents of a portable fuel container.

(18) "Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

(b) Applicability.

Except as provided in subsection (c) of this section, this section applies to any person who sells, supplies, offers for sale or manufactures for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout for use in the State of Connecticut.

(c) Full and Partial Exemptions.

(1) This section shall not apply to any portable fuel container or spout or both portable fuel container and spout manufactured in the State of Connecticut for shipment, sale and use outside of the State of Connecticut.

(2) This section shall not apply to a manufacturer or distributor who sells, supplies or offers for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards set forth

in subsection (d) of this section, provided that such manufacturer makes and keeps records demonstrating:

(A) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of the State of Connecticut; and

(B) The manufacturer or distributor has taken reasonable and prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed to or within the State of Connecticut.

(3) This section shall not apply to any safety can subject to and in compliance with the provisions of 29 CFR 1926, Subpart F.

(4) This section shall not apply to any portable fuel container with a nominal capacity of less than or equal to one (1) quart.

(5) This section shall not apply to any rapid refueling device with a nominal capacity of greater than or equal to four gallons, provided that such device:

(A) Is designed for use in an off-highway motorized vehicle competition;

(B) Creates a leak-proof seal against the target fuel tank; or

(C) Operates in conjunction with a receiver permanently installed on the target tank.

(6) This section shall not apply to marine portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating such engine.

(7) This section shall not apply to any manufacturer for any product for which the NYSDEC issued a variance pursuant to 6 NYCRR 239-7 for the period of time such variance is in effect, provided that the manufacturer submits all information and data required by 6 NYCRR 239-7 to the commissioner within thirty days of variance approval. If NYSDEC issues a variance pursuant to 6 NYCRR 239-7 more than thirty days before the effective date of this section, the manufacturer shall submit the information and data required by 6 NYCRR 237-7 to the commissioner within thirty days of the effective date of this section, provided the underlying variance is still in effect and necessary to maintain this exemption in the State of Connecticut.

(8) This section shall not apply to any product for which the manufacturer is granted:

(A) An exemption by CARB pursuant to the Innovative Products provisions of 13 CCR 2467.4 for the period of time the CARB Innovative Products exemption remains in effect; or

(B) An exemption by the NYSDEC pursuant to the Innovative Products provisions of 6 NYCRR 239-5 for the period of time the NYSDEC Innovative Products exemption remains in effect.

(9) Any manufacturer who claims an exemption pursuant to subdivision (8) of this subsection shall submit to the commissioner, upon request therefore, a copy of the applicable CARB or NYSDEC exemption decision.

(d) Performance Standards.

(1) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004, any portable fuel container or any portable fuel container and spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (2) of this subsection.

(2) Each portable fuel container and each portable fuel container and spout shall:

(A) Have an automatic shut-off that stops fuel flow before the target tank overflows;

(B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel;

(C) Have only one opening for both filling and pouring;

(D) Provide a fuel flow rate and fill level equal to or greater than:

(i) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

(aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening, or

(bb) greater than one and one-half (1.5) gallons, but less than or equal to two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "LOW FLOW RATE" in type of thirty-four (34) point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any,

(ii) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than or equal to two and one-half (2.5) gallons, and fills to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(iii) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons;

(E) Have a permeation rate of less than or equal to four-tenths (0.4) grams per gallon per day; and

(F) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(3) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004, any spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (4) of this subsection.

(4) Each spill-proof spout shall:

(A) Have an automatic shut-off that stops fuel flow before the target tank overflows;

(B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel;

(C) Provide a fuel flow rate and fill level equal to or greater than:

(i) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

(aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening, or

(bb) greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "LOW FLOW RATE" in bold type of thirty-four (34) point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto,

(ii) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(iii) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons; and

(D) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(e) Labeling Requirements.

(1) Each manufacturer of a portable fuel container or portable fuel container and spout subject to this section shall clearly display on each spill-proof system:

(A) The phrase "Spill-Proof System;"

(B) A date of manufacture or a representative date; and

(C) A representative code identifying the portable fuel container or portable fuel container and spout as subject to this section and in compliance with subsection (d) of this section.

(2) Each manufacturer of a spout subject to this section shall clearly display on the accompanying package, or for a spill-proof

spout sold without packaging, on either the spill-proof spout or a label affixed thereto:

(A) The phrase "Spill-Proof Spout;"

(B) A date of manufacture or a representative date; and

(C) A representative code identifying the spout as subject to this section and in compliance with subsection (d) of this section.

(3) Each manufacturer subject to this section shall file an explanation of both the date code and representative date code with the commissioner no later than three months after the effective date of this section or within ninety (90) days of production or any change in coding.

(4) Each manufacturer subject to this section shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

(5) Each manufacturer subject to subdivision (2) of this subsection shall clearly display, on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label fixed thereto, the make, model number and size of each portable fuel container the spout is designed to accommodate, provided the identified combinations of container and spout shall comply with all applicable provisions of this section.

(6) No manufacturer shall display or affix the phrase "Spill-Proof System" or "Spill-Proof Spout" to a portable fuel container or a portable fuel container and spout unless such container and spout comply with all applicable provisions of subsection (d) of this section.

(7) If, due to its design or other features, a portable fuel container or a portable fuel container and spout cannot be used to refuel one or more on-road motor vehicles, the manufacturer shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in thirty-four (34) point type or greater on:

(A) An affixed label and the accompanying package, if any, for any portable fuel container or portable fuel container and spout sold together as a spill-proof system; and

(B) Either the spill-proof spout or a label affixed thereto, and the accompanying package, if any, for any spill-proof spout.

(f) Compliance Test Procedures.

(1) Each manufacturer of a portable fuel container or spout or both a portable fuel container and spout must perform the compliance tests specified in subdivisions (2) and (3) of this subsection prior to allowing the product to be offered for sale in the State of Connecticut or at any other time directed to do so by the commissioner.

(2) To determine compliance with the standards set forth in subsection (d) of this section, each manufacturer shall use the following test procedures:

(A) "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000;

(B) "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000; and

(C) "Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000.

(3) To determine compliance with the permeation standard set forth in subsection (d)(2)(D) of this section, each manufacturer shall use the test procedures set forth in subdivision (2) of this subsection and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000.

(4) Each manufacturer must make and keep records of the compliance tests specified in subdivisions (2) and (3) of this subsection for as long as the product is available for sale in the State of Connecticut and make any test results available to the commissioner within thirty (30) days after receiving a request by the commissioner for such records.

(5) Compliance with the performance standards set forth in subsection (d) of this section does not exempt any manufacturer of a spill-proof system or spill-proof spout from the duty to comply with all other applicable federal and state requirements.

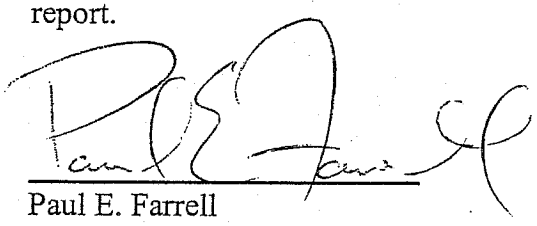
(6) Notwithstanding the provisions of subsections (d)(1) and (d)(3) of this section, a portable fuel container or spout or both a portable fuel container and spout manufactured before May 1, 2004, may be sold, supplied or offered for sale until May 1, 2005 if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or

spout.

Statement of Purpose: To limit emissions of volatile organic compounds (VOCs) through the use of portable fuel containers designed to minimize spillage and fugitive evaporative emissions. To use associated emission reductions to alleviate a shortfall in demonstrable emission reductions of VOCs in accordance with the federally approved one-hour Ozone Attainment Demonstration for the Connecticut portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) severe ozone nonattainment area. See 66 Fed. Reg. 63921 (December 11, 2001).

IX. Conclusion

Based upon the comments submitted by interested parties and addressed in this Hearing Report, I recommend that section 30 and section 43, as set forth in Part VIII of this report, be submitted by the Commissioner of Environmental Protection for approval by the Attorney General and the Legislative Regulations Review Committee. Based upon the same considerations, I also recommend these proposed regulations, upon promulgation, be submitted to the U.S. Environmental Protection Agency as revisions to the Connecticut State Implementation Plan for Air Quality together with the additional information requested by EPA in Part VI.A.1 of this report.



Paul E. Farrell
Hearing Officer

February 5, 2004
Date

Attachment 1
List of Commenters

1. David B. Conroy, Manager
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   United States Environmental Protection Agency
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   One Congress Street, Suite 1100
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2. Dan J. Horton
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ERRATA FOR R.C.S.A. SECTION 22a-174-30(e)(2)

Technical Correction:

When changing the periodic compliance testing frequency in section 22a-174-30(e)(2) from every five years to every three years, steps must be taken to ensure that sources are not immediately out of compliance with the revised requirements. As such, the Department should maintain the five year period for a short time and insert a future compliance date for the three year inspection period in order to provide all sources with sufficient notice of the change in the compliance testing frequency requirements before the test frequency is changed. A date of November 15, 2004 would suffice as follows:

At least every five years AND AFTER NOVEMBER 15, 2004 EVERY THREE YEARS. . .