Connecticut Department of

ENERGY &
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 Energy and Environmental Protection Rules of Practice

Regarding
Revision of Various Sections of the Air Quality Regulations;
Repeal of Non-Core Air Quality Programs

Hearing Officer:
Merrily A. Gere

Date of Hearing: November 9, 2011

On September 27, 2011, the Commissioner of the Department of Energy and Environmental Protection (the Department) published a notice of intent to amend various sections of the Regulations of Connecticut State Agencies (RCSA), including portions of sections 22a-174-1, 22a-174-3a, 22a-174-30 and 22a-174-36b and to repeal sections 22a-174-17, 22a-174-43 and 22a-174-100. Pursuant to such notice, a public hearing was held on November 9, 2011, with the public comment period closing on the same day.

I. Hearing Report Content

As required by RCSA section 4-168(d) of the Connecticut General Statutes (CGS), this report describes the proposal, identifies principal reasons in support of and in opposition to the proposal, and summarizes and responds to all comments on the proposal.

The proposal is included as Attachment 2 to this report. A final version of the proposal, with revisions recommended in this report, is provided in Attachment 3. A statement in satisfaction of CGS section 22a-6(h) is included as Attachment 1.

II. Summary of Proposal

The proposal has four components, as follows:

(1) Repeal of non-core air quality programs. The Department recognizes the need to eliminate three air management regulatory programs that are no longer necessary to its core mission. The Department proposes to repeal the following sections of the air quality regulations:

- 22a-174-17, control of open burning;
- 22a-174-43, portable fuel container spillage control; and
- 22a-174-100, permits for construction of indirect sources.

Subdivisions (3) and (4) of RCSA section 22a-174-26(c), concerning fees, are also revised to delete references to RCSA sections 22a-174-17 and 22a-174-100.

(2) Fine particulate matter criteria for air permits. RCSA sections 22a-174-1 and 22a-174-3a are revised to include significant impact levels, significant emissions rates and increments for fine particulate matter, or $PM_{2.5}$,consistent with U.S. Environmental Protection Agency (EPA) rules promulgated in 2008 (73 FR 28321) and 2010 (75 FR 64864-64907).

(3) Exemption from Stage II vapor controls for certain vehicle fleets; reporting requirements. RCSA section 22a-174-30 is revised to include an exemption from the requirement to install Stage II vapor recovery systems. The exemption would apply to gasoline dispensing facilities that exclusively service rental vehicles. The exemption is consistent with EPA's December 12, 2006 determination on widespread use of onboard refueling vapor recovery under Clean Air Act (CAA) section 202(a)(6). For facilities that are not exempt, reporting requirements for routine Stage II testing are clarified.

(4) Compliance options for vehicle manufacturers under the Department's low emission vehicle program. RCSA section 22a-174-36b is revised to add compliance flexibility for large vehicle manufacturers consistent with CAA section 177 and CGS section 22a-174g.

This series of repeals and revisions will function overall to reduce regulatory burdens on Connecticut businesses and administrative burdens on the Department, without interfering with the Department's progress towards meeting its air quality goals.

III. Opposition to the Proposal

Neither of the commenters opposes the final adoption of the proposal or an aspect of it. EPA made comments of a technical nature and raised issues related to the approval into the State Implementation Plan (SIP) of some of the proposed changes. Such specific concerns are addressed in Section IV.

IV. Summary of Comments

Written comments were received from the following persons:

1. Anne Arnold, Manager
   Air Quality Planning Unit
   USEPA Region 1
   5 Post Office Square, Suite 100
   Boston, MA 02109-3912

2. Eric J. Brown
   Director of Energy and Environmental Policy
   Connecticut Business and Industry Association
   350 Church Street
   Hartford, CT 06103-1126

All comments submitted by the two commenters are summarized below with the Department's responses. Commenters are associated with the individual comments below by the number assigned above. When changes to the proposed text are indicated in response to comment, new text is in bold font and deleted text is in strikethrough font. Comments are organized by the four components of the proposal identified in Section II of this report.

Repeal of non-core air quality programs.

Comment 1: CBIA supports the Department's repeal of non-core programs, particularly to allow the Department to allocate more time and resources to addressing the most significant air quality challenges in Connecticut. (2)

> **Response:** The Department takes note of CBIA's support for the proposed repeal of non-core programs.

Comment 2: On December 23, 1980, EPA published a final rulemaking in the *Federal Register* approving the withdrawal of Connecticut's indirect source regulation from the Connecticut SIP (45 FR 84769). As RCSA section 22a-174-100 is not part of the EPA-approved Connecticut SIP, the repeal of RCSA section 22a-174-100 should be not submitted to EPA as a SIP revision. (1)

Response: The Department thanks EPA for confirming that RCSA section 22a-174-100 is not currently an element of the SIP. If the proposed repeal is completed successfully, the Department will not submit the repeal of RCSA section 22a-174-100 to EPA as a SIP revision.

Comment 3: RCSA section 22a-174-17 is not SIP-approved. The predecessor regulation, RCSA section 19-508-17, is the EPA-approved regulation in the SIP. If CGS section 22a-174(f) replaces RCSA section 19-508-17 in the SIP, EPA is concerned that the statute is not as protective as the former regulation. EPA's concerns are summarized in the table below, which compares the former SIP-approved regulation (RCSA section 19-508-17) to CGS section 22a-174(f), which the Department proposes as a replacement. EPA also notes:

- CGS section 22a-174(f) focuses on burning of brush and does not explicitly include many types of open burning covered by former RCSA section 19-508-17. EPA notes in the table that some activities are more stringently regulated in CGS section 22a-174(f) while others are less stringently regulated. EPA recommends that the Department avoid losing stringency or introducing ambiguity.
- EPA points out that RCSA section 22a-174-17 covers different activities than are addressed by CGS section 22a-174(f). The regulation also adds a definition of "brush" that is not included in the statute.

Items in italic font are required by the current SIP but not addressed in CGS section 22a-174(f). Underlined items are included in the statute but are not addressed in the current SIP.

Activity	**SIP-approved RCSA section 19-508-17**	**CGS section 22a-174(f)**
Brush burning on residential property	Written certification from the commissioner: • No interference with NAAQS • No hazardous health condition • Conditions to avoid nuisance, protect health and safety • *No salvage* • *No practical and reasonably available alternative method*	Need permit from local municipal official: • No interference with NAAQS • No hazardous health condition • <u>No extreme forest fire danger</u> • <u>No air pollution episode advisory</u> • No violation of a municipal ordinance
Brush burning in municipal landfill, transfer station or recycling center	Same as above.	Need permit from fire marshal: • No interference with NAAQS • No hazardous health condition • <u>No extreme forest fire danger</u> • <u>No air pollution episode advisory</u> • No violation of a municipal ordinance • <u>Landfill not on hotspot map</u> • <u>< 6/year</u> • <u>No burning of leaves, demolition waste or other landfill waste</u>
Campfires and bonfires	Allowed without permit.	• <u>Use non-processed wood.</u> • <u>Do not create a nuisance.</u> • <u>In accordance with "any</u>

Activity	**SIP-approved RCSA section 19-508-17**	**CGS section 22a-174(f)**
		restrictions imposed on such burning."
Outdoor fires used for cooking food for human consumption	Allowed without permit.	Not specified.
Fire breaks and controlled fires	Allowed, *controlled by directions of the fire official.*	Allowed without restriction.
Fires in salamanders, etc.	Allowed without permit.	Not specified.
Fire training	Need written certificate from commissioner including *conditions to avoid nuisance and protect health and safety* • *No hazardous health condition* • *No salvage* • *No practical and reasonably available alternative method* • *No interference with NAAQS*	Need an open burning permit from an open burning official.
Fires for disease/pest control	Same as above	Need an open burning permit from an open burning official.
Fires for disposal of dangerous materials	Same as above, *plus no reasonable alternative method of disposal*	Need an open burning permit from an open burning official.
"Agricultural purposes"	Not a separate category. Authorizes fires for agricultural disease/pest control and agricultural burning for vegetation management, which need a written certificate from the commissioner, including: • *Conditions to avoid nuisance and protect health and safety* • *No hazardous health condition* • *No salvage* • *No practical and reasonably available alternative method* • *No interference with NAAQS*	Need an open burning permit from an open burning official.
Clearing vegetative debris following a natural disaster	Implied. Not clear if permit is required.	Need an open burning permit from an open burning official.
Vegetative enhancement or habitat enhancement	Not addressed.	Need an open burning permit from an open burning official. Must occur on municipal property or private property permanently designated as open space.
Any other fires to prevent hazard/ protect public health	Need written certificate from the commissioner: • Necessary to prevent a hazard that can't be managed by any other means or necessary to protect public health • Conditions to avoid nuisance and protect health and safety • No hazardous health condition • No salvage • No practical and reasonably available alternative method	Not specified. Ambiguous whether allowed without permit or prohibited.

Activity	SIP-approved RCSA section 19-508-17	CGS section 22a-174(f)
	• No interference with NAAQS	

Response: As of August 1, 1983, the section 19-508-# series of air quality regulations was renumbered as 22a-174-# via Public Act 83-159 of the Connecticut General Assembly. The regulatory substance was unchanged. Thus, the former RCSA section 19-508-17, which was submitted to the SIP, became RCSA section 22a-174-17 on August 1, 1983. However, no corresponding SIP revision acknowledging the change in numbering was submitted. The Department will explain this history in the SIP submission that will follow this rulemaking to make it clear that SIP-approved RCSA section 19-508-17 is RCSA section 22a-174-17, which will be replaced in the revision by CGS section 22a-174(f). RCSA section 19-508-17 no longer exists except as a phantom in the SIP. In this response, the Department will refer to RCSA section 22a-174-17 to mean the Connecticut air quality regulation pertaining to open burning.

While the Department contends that the program of open burning control under CGS section 22a-174(f) is at least as protective as the program implemented under RCSA section 22a-174-17, the question is irrelevant since, based on its legislative history, the provisions of CGS section 22a-174(f) supersede the regulation. The state legislature amended subsection (f) of CGS section 22a-174 in 1996, 1999 and 2000. The 2000 amendments allow for local open burning officials to issue permits for open burning on residential property and for fire training, insect control, agricultural purposes, natural disaster clean-up, wildlife habitat and vegetative management and ecological sustainability; establish a process for nominating and certifying local open burning officials; allow open burning on state property with approval of the commissioner and authorize the commissioner to adopt regulations governing open burning. As the general assembly was well aware of RCSA section 22a-174-17 in developing the 2000 statutory amendments, the authority provided to adopt regulations was intended for new regulations consistent with the amended statute.

EPA points out in its comment and accompanying table that some activities regulated under RCSA section 22a-174-17 are not regulated under CGS section 22a-174(f) and vice versa. The most important point is that both the regulation and statute allow for significant control over open burning to be placed in the hands of municipal officials, who are better situated to respond to open burning events, as burning events are sporadic in nature and often occur outside of routine business hours. Well-trained municipal officials and effective enforcement result in an open burning program under CGS section 22a-174(f) at least as protective as that under the regulation.

The Department has been providing training to municipal officials on open burning enforcement for over a decade, since the enactment of the statute. The Bureau of Air Management is presently enhancing its training with a free online course to assist municipalities in meeting the certification requirements for an Open Burning Official. The Open Burning Training Program for Municipal Officials is being designed as an overview of the statutory requirements under CGS section 22a-174(f) regarding residential and municipal open burning provisions and is targeted to local officials responsible for knowing the law and implementing it on the local level. In developing this on-line training, the Bureau is currently undertaking a comprehensive review of the existing program elements to identify potential improvements in program effectiveness and efficiency.

In addition, the Department pursues enforcement actions, typically if large quantities of material are burned in violation of CGS section 22a-174(f) or in the case of a repeated violation. The Department has taken nine formal actions to address violations under CGS section 22a-174(f). Four actions resulted in consent orders. Three referrals to the Office of Attorney General are now actively being pursued, as are one criminal referral to the Office of the Chief States Attorney and one referral to EPA Region 1.

Furthermore, the Department anticipated the repeal of RCSA section 22a-174-17 upon the general assembly's amendment of CGS section 22a-174(f) and decided that the most important part of the regulation that would be lost is the definition of "brush." Effective February 1, 2010, the Department added a definition of "brush" to RCSA section 22a-174-1, definitions of general applicability to the air quality regulations. So, despite the repeal of RCSA section 22a-174-17, the Department has a definition of "brush" for use for enforcement and compliance purposes.

In sum, the current program of open burning under CGS section 22a-174(f) is at least as stringent as the program formerly implemented under former RCSA section 19-508-17. The Department should proceed with the repeal of RCSA section 22a-174-17 as an administrative cleanup consistent with legislative actions and use the information provided here in the SIP narrative upon submission of the repeal to EPA.

Fine particulate matter criteria for air permits.

Comment 4: In Table 3a(k)-1 of section 22a-174-3a, Connecticut should add the following entry since the current regulation does not contain a requirement equivalent to 40 CFR 51.166(b)(23)(ii), which defines significant as any increase of a regulated NSR pollutant which is not listed:

Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year). (1)

Response: The Department appreciates EPA's careful review of its proposal. As the recommended addition is outside the scope of the proposal, the Department should not move forward with the suggestion at this time. The Department will take note of that requirement for possible addition to a future proposal.

Comment 5: EPA requests Connecticut revise Table 3a(k)-1 to be more consistent with 40 CFR 51.166(b)(23)(i) regarding precursor pollutants. 40 CFR 51.166(b)(23) contains a partial list of regulated NSR pollutants. Volatile organic compounds (VOCs) are not a listed pollutant. The regulated NSR pollutant is ozone with VOCs regulated as precursors of ozone. Connecticut should revise Table 3a(k)-1 as follows:

Air Pollutant	Emission Levels (Tons per Year)
Ozone (as Volatile Organic Compounds)	25
Ozone (as Nitrous Oxide)	25
$PM_{2.5}$ (as direct emissions)	10
$PM_{2.5}$ (as Nitrous Oxide)	40
$PM_{2.5}$ (as Sulfur Dioxide)	40

Response: Although the Department appreciates the concept underlying EPA's suggested revision to Table 3a(k)-1, the Department should not revise Table 3a(k)-1 as recommended. For the regulated community, that ozone is the regulated air pollutant and subject to a NAAQS is not as important as identifying the pollutant emitted and to which the emission levels of the Table apply. Furthermore, Connecticut does not use the term "regulated pollutant," so as a defined term it has no relevance. From a practical standpoint, EPA's suggested change is confusing for both ozone and PM2.5. Therefore, the Department should not revise the proposal in response to this comment.

Exemption from Stage II vapor controls for certain vehicle fleets; reporting requirements.

Comment 6: The opening bracket was omitted from RCSA section 22a-174-30(b)(6). (1)

Response: The Department thanks EPA for noting this error on the published version of the proposal. The proposed text should have appeared as set out below, and this is the text that the Department should use in proceeding with this rulemaking process.

(6) Any owner or operator of a dispensing facility [which is] not subject to subdivision (1), (2), (3) or (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 (1), (2), (3) or (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] commissioner or Administrator.

Comment 7: RCSA section 22a-174-30(b)(7) provides an exemption for both new and existing gasoline dispensing stations that service rental vehicles or corporate or commercial fleets. If the intent is to exempt both new and existing stations, the Department should also adopt decommissioning procedures to be followed by existing stations equipped with Stage II vapor recovery systems that choose to seek exemption. (An example of such procedures can be found in Appendix A of Maine's Chapter 118 regulation.) Otherwise, Connecticut should revise this subdivision to reflect that only new gasoline dispensing facilities are able to use the new exemption. (1)

Response: The Department's intent in proposing subsection (b)(7) is to exempt existing and new stations that meet the stated criteria from the Stage II vapor control requirements of RCSA section 22a-174-30. The Department is working to develop decommissioning guidance now, which we expect to make available for public comment and discussion in early 2012. The decommissioning guidance is necessary not only to support the proposed exemption but to support broader scale decommissioning efforts anticipated as a result of EPA's recent publications concerning widespread use of onboard vapor recovery. The Department plans to finalize the decommissioning guidance in the first quarter of 2012, prior to the likely completion of this rulemaking effort.

The Department's intent is that after removal of Stage II equipment, facility owners will need to maintain a properly operating Stage I vapor control system. As proposed, the exemption appears to apply to both Stage I and Stage II control equipment. While the majority of the applicable Stage I requirements are included in RCSA section 22a-174-20(a), a few are specified in RCSA section 22a-174-30, and these few need to be taken into account in the exemption. The Department should limit the exemption to only Stage II vapor control equipment. The Department should also refer to "onboard refueling vapor recovery" whenever the phrase is used for consistency. Proposed subsection (b)(7) should be revised by the addition of the text in bold font, as follows:

(7) An owner or operator of a dispensing facility that exclusively services rental vehicles or corporate or commercial fleets, where at least ninety-five percent (95%) of such vehicles or fleets are equipped with onboard refueling vapor recovery systems, may submit to the commissioner a written request for an exemption from the **Stage II vapor control** requirements of this section. An exemption request shall demonstrate, and the preparer shall certify, that at least 95% of the vehicles fueled at the facility are equipped with onboard refueling vapor recovery systems and that a minimum of 95% onboard **refueling** vapor recovery system use will be maintained.

Comment 8: The SIP-approved version of RCSA section 22a-174-30 requires facilities to install Stage II systems and parts that have been approved by CARB or another state using test methods approved by CARB. In subdivisions (1) and (2) of subsection (c), Connecticut is proposing to allow Stage II systems and parts that have been approved in writing by the Commissioner. Provisions with such state discretion are not acceptable for approval into the SIP. Therefore, subdivisions (1) and (2) of subsection (c) should be revised to require approval of the Commissioner and EPA. (1)

Response: As suggested in the comment concerning subdivisions (1) and (2) of subsection (c), the Department should include the EPA Administrator in the approval process for Stage II systems and parts. The Department should also correct the format error in the proposal by combining subparagraph (A) into subdivision (1) and re-identifying the subclauses as subparagraphs, as follows:

(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; or] has been approved by:

(A) ~~(i)~~ CARB,

(B) ~~(ii)~~ Another state using testing methods approved by CARB, or

(C) ~~(iii)~~ The commissioner **and the Administrator**, in writing.

[(B) Such system is or has ever been tested and approved by another state using testing methods approved by CARB; and

(C) Such system utilizes only 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 is or has ever been approved for installation in such Stage II vapor recovery system either by CARB, [or] by another state using testing methods approved by CARB[.] , or in writing by the commissioner **and the Administrator**.

Compliance options for vehicle manufacturers under the Department's low emission vehicle program.
Comment 9: The California Code of Regulations (CCR) Title 13 provisions have been amended since Connecticut initially adopted California's low emission vehicle program. One change is the deletion of Article 2 "Approval of Motor Vehicle Pollution Control Devices (New Vehicles)." The sections formerly under Article 2 are now under the General Provisions of Article 1. The Department should take this opportunity to change Table 36b-1 to reflect the current structure of CCR Title 13. (1)

Response: The Department thanks EPA for the suggestion. Upon inspection, the Department agrees that California has deleted Article 2 of Chapter 1 of Title 13, and RCSA section 22a-174-36b may be revised with respect to this change. In Table 36b-1, the Department should delete the line title for Article 2 of Chapter 1, as all of the listed sections are now part of California's Article 1 of Chapter 1, as indicated below. The remainder of Table 36b-1 should not change, except as noted in the response to Comment 10.

Table 36b-1

California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference

Title 13 CCR	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	04/17/09
[~~Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)~~]		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	10/11/07
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	03/26/04
Etc. **********	**********	**********

Comment 10: In Table 36b-1, the row for Section 1961.1 appears to have an incorrect section amendment date of March 29, 2010. Section 1961.1 was amended and new subsections were added by California on April 1, 2010. Please ensure that the correct amendment date for Section 1961.1 is included in Table 36b-1. (1)

Response: The Department thanks EPA for pointing out the error in the date in Table 36b-1 associated with Section 1961.1. The Department should change March 29, 2010 to April 1, 2010, as recommended in the comment. The corrected row in Table 36b-1 shall read as follows:

Table 36b-1

California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference

Title 13 CCR	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	04/17/09
[~~Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)~~]		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	10/11/07
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	03/26/04
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	06/16/08

Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.	[01/01/06] ~~03/29/10~~ **04/01/10**
Etc.		
**********	**********	**********

V. Comments of Hearing Officer

The hearing officer suggests the following additional revisions to the proposal. The suggested revisions are minor and will make for a clearer final proposal consistent with the Department's intent.

(1) Concerning the proposed addition of subdivision (5) to RCSA section 22a-174-30(e), the proposed language should be revised to eliminate the use of a fax machine as an acceptable means of submitting test reports to the Department. Given the low cost and widespread availability of electronic mail as a reporting option in combination with option of submitting a paper copy by U.S. mail or courier, the option of faxing is not necessary and comes at a higher cost to the Department than the other means of submission. For proper format, the sentence concerning the submission of the test report should also be incorporated into the text of the subdivision, prior to the subparagraphs.

Proposed section 22a-174-30(e)(5) should be revised as follows:

> (5) Not more than ten business days after testing is conducted under subdivision (1) or (2) of this subsection, the owner or operator of such dispensing facility shall ensure that a written report of the results of such testing is submitted to the Department's Bureau of Air Management, Engineering and Enforcement Division. **Such a written report may be submitted via mail, courier or electronic mail.** In addition to all test results produced in testing the facility, such a report shall include:
>
> (A) A list of all repairs made to the Stage II vapor recovery system to achieve proper function; and
>
> (B) A certification signed by a responsible official of the entity that conducted the testing, who shall certify in writing as follows:
>
> > I have personally examined and am familiar with the information submitted in this report and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the testing that is the subject of this report was performed in accordance with the requirements of section 22a-174-30 of the Regulations of Connecticut Agencies and the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted report may be punishable as a criminal offense under section 22a-175 of the Connecticut General Statutes, under section 53a-157b of the Connecticut General Statutes, and in accordance with any applicable statute.
>
> ~~A test report submitted under this subdivision may be submitted via mail, or courier, facsimile or via electronic mail.~~

(2) Concerning the definition of "corporate or commercial fleets" proposed for addition to RCSA section 22a-174-30(a)(4), the Department should change the defined term from plural to singular for consistency with the other defined terms in the section. The list of organization owners should also be changed from plural to singular since a single organization may own a fleet. The revised definition should appear as follows in the final text of the proposal:

> (4) "Corporate or commercial ~~fleets~~ **fleet**" means vehicles that are used for business purposes and are owned by ~~corporations, governments, universities or other organizations~~ **a corporation, government, university or another organization.**

VI. Conclusion

Based upon the comments addressed in this report, I recommend the proposal be revised as recommended herein and that the recommended final proposal, included as Attachment 3 to this report, shall be submitted by the Commissioner for approval by the Attorney General and the Legislative Regulations Review Committee and upon adoption, be submitted to EPA as one or several SIP revisions.

Merrily A. Gere — 8 February 2012

Merrily A. Gere — Date

Hearing Officer

Connecticut Department of

ENERGY &
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Attachment 1

STATEMENT PURSUANT TO SECTION 22a-6(h) OF THE GENERAL STATUTES CONCERNING THE ADOPTION OF REGULATIONS PERTAINING TO ACTIVITIES FOR WHICH THE FEDERAL GOVERNMENT HAS ADOPTED STANDARDS OR PROCEDURES

Pursuant to section 22a-6(h) of the Connecticut General Statutes (CGS), the Commissioner of the Department of Energy and Environmental Protection (the Department) is authorized to adopt regulations pertaining to activities for which the federal government has adopted standards or procedures. At the time of public notice, the Commissioner must distinguish clearly all provisions of a regulatory proposal that differ from federal standards or procedures either within the regulatory language or through supplemental documentation accompanying the proposal. In addition, the Commissioner must provide an explanation for all such provisions in the regulation-making record required under CGS Title 4, Chapter 54 and make such explanation publicly available at the time of the publication of the notice of intent required under CGS section 4-168.

In accordance with the requirements of CGS section 22a-6(h), the following statement is entered into the administrative record in the matter of the proposed revisions to and repeal of various sections of the air quality regulations.

This proposal is a series of changes to the Department's air quality programs that will function generally to reduce regulatory burdens on Connecticut businesses and administrative burdens on the Department. This proposal has four components:

- The addition of fine particulate matter requirements into the Department's new source review permitting program to retain federal program approval;
- An exemption from Stage II vapor controls for certain vehicle fleets;
- Additional compliance options for vehicle manufacturers under the Department's low emission vehicle program; and
- The repeal of non-core air quality programs.

The Department has performed a comparison of the proposal with analogous federal laws and regulations, namely the Clean Air Act (CAA) and standards and procedures in 40 Code of Federal Regulations (CFR), as follows:

The addition of $PM_{2.5}$ requirements to the New Source Review (NSR) Permitting Program in RCSA section 22a-174-3a aligns RCSA section 22a-174-3a with the U.S. Environmental Protection Agency's (EPA's) *Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)* (73 FR 28321, 2008) and *Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)* (75 FR 64864-64907, 2010). Together, these final rules delineated several NSR program elements for sources of $PM_{2.5}$. While EPA first promulgated a NAAQS for $PM_{2.5}$ in 1997, EPA allowed states to use the pollutant PM_{10} as a surrogate for $PM_{2.5}$ in NSR permitting programs until certain technical problems were resolved. Consistent with EPA's rules, RCSA section 22a-174-3a is revised to include $PM_{2.5}$ significant impact levels, significant emissions rates and

increments, in addition to adding $PM_{2.5}$ to the requirements for internal offset or certified emission reduction credits in nonattainment areas. There are no differences between the applicable standards promulgated by the EPA rules and those new $PM_{2.5}$ standards added to RCSA section 22a-174-3a.

The inclusion of an exemption from Stage II vapor controls in RCSA section 22a-174-30 is consistent with EPA's guidance provided in December 12, 2006 and November 28, 2007 memoranda concerning the widespread use of onboard refueling vapor recovery (ORVR). CAA section 182(b)(3) requires Stage II vapor recovery systems to be used at gasoline dispensing facilities located in serious, severe, and extreme non-attainment areas for ozone. Stage II program requirements are set out in a SIP revision and approved by EPA. Connecticut's Stage II program was first approved in 1991 (58 FR 65930). However, CAA section 202(a)(6) allows EPA to waive Stage II requirements for certain ozone nonattainment areas when ORVR systems are in widespread use in a motor vehicle fleet. The 2006 and 2007 memoranda distributed by the EPA identified gasoline dispensing facilities that exclusively service rental vehicles and corporate or commercial fleets as categories for which widespread use may occur earlier than for the motor vehicle fleet as a whole. EPA also determined that widespread use occurs when 95% of the vehicles in a rental vehicle fleet or corporate or commercial fleet are equipped with ORVR. The revisions to RCSA section 22a-174-30 provide for the exemption from Stage II program requirements for rental vehicle fleets or corporate or commercial fleets in which 95% of the vehicles are equipped with ORVR. The addition of the definition of "corporate or commercial fleets" to subsection (a) of RCSA section 22a-174-30 mirrors the language of the November 28, 2007 memorandum. The other revisions related to the exemption from Stage II vapor recovery systems based on widespread use of ORVR pertain to the procedures for requesting such an exemption, for which there is no federal analogue. Hence, for those revisions, CGS section 22a-6(h) does not apply. The remaining revisions are clarifications of existing requirements.

With respect to the amendment of RCSA section 22a-174-36b concerning the Low Emission Vehicle (LEV) program, the revisions are intended to maintain the consistency of Connecticut's LEV program with California's LEV program. There are two federally sanctioned LEV programs from which a state may choose to comply in the United States, the federal emissions program located in Title II of the CAA or the California LEV program. In 2004, Connecticut adopted the California program. Since adoption, the "identicality" provisions of CAA section 177 and CGS section 22a-174g require Connecticut to update its LEV program in response to changes in California's LEV program. California last revised its LEV program in March 2010 and included three compliance flexibility options for large vehicle manufacturers, which this proposal incorporates by reference into RCSA section 22a-174-36b. Since Connecticut adopted the California LEV program by incorporation, there are no discernable differences between the revisions in RCSA section 22a-174-36b and the revisions to the California program in March 2010.

With respect to the repeal of RCSA sections 22a-174-17, 22a-174-43 and 22a-174-100, the Department recognizes the need to eliminate air management regulatory programs that are no longer necessary to its core mission. A section by section comparison of the proposal with federal standards and procedures follows:

- **RCSA section 22a-174-17**, control of open burning, regulates open burning by requiring prior certification for certain types of outdoor fires. While EPA discourages open burning and provides educational resources on its effects, there are no comparable federal standards intended to improve ambient air quality by regulating the practice of open burning. Hence, the provisions of CGS section 22a-6(h) do not apply.
- **RCSA section 22a-174-43**, portable fuel container spillage control, regulates the manufacture of portable fuel containers to limit hydrocarbon emissions that evaporate from or permeate through fuel containers. Connecticut established its portable fuel container program in 2004 based on a program developed by the California Air Resources Board (CARB). The Department revised its program in 2007 to remain consistent with CARB's program. On February 26, 2007, EPA published a final rule, *Control of Hazardous Air Pollutants from Mobile Sources* (72 FR 8428),

which established a significantly similar program, also based on the CARB program. Both the Federal and Connecticut rules regulate all portable fuel containers, including those intended for use with diesel and kerosene, require manufacturers to warrantee those containers for a minimum of one year, and specify labeling requirements. The emission standard or permeation rate promulgated by each rule differs slightly. The Federal standard of 0.3 grams/gallon/day for portable fuel containers is more stringent than the emissions standard required under RCSA section 22a-174-43 of 0.4 grams/gallon/day. In general, EPA's rule is less prescriptive than RCSA section 22a-174-43, relying on the emission standard rather than specific design requirements. However, overall, the federal program is at least as protective as RCSA section 22a-174-43 and results in equivalent or greater emissions reductions. The repeal of RCSA section 22a-174-43 leaves the federal program as the only applicable program in Connecticut.

- **RCSA section 22a-174-100,** permits for construction of indirect sources, regulates via permits certain roadway construction projects on the Connecticut highway system. Originally, EPA had required all State Implementation Plans (SIPs) to contain indirect source review regulations as part of each state's effort to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide. In 1979, the program was rescinded from the CFR and eliminated as a SIP requirement when EPA concluded that the indirect source permitting program did not significantly contribute to progress toward attainment and maintenance of the ozone NAAQS. Consistent with this conclusion, the Department has not quantified emission reductions from the program for attainment purposes. All projects subject to indirect source permitting are also subject to the transportation conformity process contained in 40 CFR 93. The transportation conformity process is required by the CAA and ensures that federally-funded or approved transportation plans, programs, and projects conform to the air quality objectives established in the SIP. The repeal of RCSA section 22a-174-100 will eliminate the duplicative requirements of the indirect source permitting program and the transportation conformity process.

1 September 2011
Date

_____
Merrily A. Gere

Attachment 2
Proposal

Section 1. Definition (60) of section 22a-174-1 of the Regulations of Connecticut State Agencies is amended as follows:

(60) "Major source baseline date" means January 6, 1975 for particulate matter and sulfur dioxide; [and] February 8, 1988 for nitrogen dioxide; and October 20, 2010 for $PM_{2.5}$.

Sec. 2. Table 3a(i)-1 of section 22a-174-3a(i) of the Regulations of Connecticut State Agencies is amended as follows:

Table 3a(i)-1 Ambient Impact

[AIR POLLUTANT	AMBIENT IMPACT (MICROGRAMS PER CUBIC METER)
PM_{10}	
Annual average	1
24-hour average	5
Sulfur Dioxide	
Annual average	1
24-hour average	5
3-hour average	25
Carbon Monoxide	
8-hour average	500
1-hour average	2000
Nitrogen Dioxide	
Annual average	1
Dioxin	
Annual average (as calculated according to Section 22a-174-1(29) of the Regulations of Connecticut State Agencies) (Polychlorodibenzodioxins (PCDDs)) (Polychlorodibenzofurans (PCDFs))	(Notwithstanding above units) 0.1 picograms/m^3
Lead (Pb)	0.3]
Three (3) month average	

AIR POLLUTANT	AMBIENT IMPACT (MICROGRAMS PER CUBIC METER)
$PM_{2.5}$	
Annual average	0.3
24-hour average	1.2
PM_{10}	
Annual average	1
24-hour average	5
Sulfur Dioxide	
Annual average	1
24-hour average	5
3-hour average	25
Carbon Monoxide	
8-hour average	500
1-hour average	2000
Nitrogen Dioxide	
Annual average	1
Dioxin	
Annual average (as calculated according to Section 22a-174-1(29) of the Regulations of Connecticut State Agencies) (Polychlorodibenzodioxins (PCDDs)) (Polychlorodibenzofurans (PCDFs))	(Notwithstanding above units) 0.1 picograms/m^3
Lead (Pb)	
Three (3) month average	0.3

Sec. 3. Table 3a(k)-1 of section 22a-174-3a(k) of the Regulations of Connecticut State Agencies is amended as follows:

Table 3a(k)-1 Significant Emission Rate Thresholds

[AIR POLLUTANT	EMISSION LEVELS (TONS PER YEAR)
Carbon Monoxide	100
Nitrogen Oxides (as an ozone precursor)	25
Nitrogen Oxides (NOx National Ambient Air Quality Standard)	40
Sulfur Dioxide	40
Particulate Matter	25

PM_{10}	15
Volatile Organic Compounds	25
Hydrogen Sulfide (H_2S)	10
Total Reduced Sulfur (including H_2S)	10
Reduced Sulfur Compounds (including H_2S)	10
Sulfuric Acid Mist	7
Fluorides	3
Lead	0.6
Mercury	0.1
Municipal Waste Combustor Organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6}
Municipal Waste Combustor Metals (Measured as particulate matter)	15
Municipal Waste Combustor Acid Gases (Measured as sulfur dioxide and hydrogen chloride)	40]

AIR POLLUTANT	**EMISSION LEVELS (TONS PER YEAR)**
Carbon Monoxide	100
Nitrogen Oxides (as an ozone precursor)	25
Nitrogen Oxides (as a $PM_{2.5}$ precursor)	40
Nitrogen Oxides (NOx National Ambient Air Quality Standard)	40
Sulfur Dioxide (as a $PM_{2.5}$ precursor)	40
Sulfur Dioxide (SO_2 National Ambient Air Quality Standard)	40
Particulate Matter	25
$PM_{2.5}$	10
PM_{10}	15
Volatile Organic Compounds	25
Hydrogen Sulfide (H_2S)	10
Total Reduced Sulfur (including H_2S)	10
Reduced Sulfur Compounds (including H_2S)	10
Sulfuric Acid Mist	7
Fluorides	3
Lead	0.6
Mercury	0.1
Municipal Waste Combustor Organics	3.5×10^{-6}

(measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	
Municipal Waste Combustor Metals (Measured as particulate matter)	15
Municipal Waste Combustor Acid Gases (Measured as sulfur dioxide and hydrogen chloride)	40

Sec. 4. Table 3a(k)-2 of section 22a-174-3a(k) of the Regulations of Connecticut State Agencies is amended as follows:

Table 3a(k)-2 Maximum Allowable Increase above Baseline Concentration

[AIR POLLUTANT	PSD INCREMENT (ug/m^3)
Particulate Matter, as PM_{10}	
Annual Arithmetic Mean	17
24-Hour Average	30
Sulfur Dioxide	
Annual Arithmetic Mean	20
24-Hour Average	91
3-Hour Average	512
Nitrogen Dioxide	
Annual Arithmetic Mean	25]

AIR POLLUTANT	**PSD INCREMENT (ug/m^3)**
$PM_{2.5}$	
Annual Arithmetic Mean	4
24-Hour Average	9
Particulate Matter, as PM_{10}	
Annual Arithmetic Mean	17
24-Hour Average	30
Sulfur Dioxide	
Annual Arithmetic Mean	20
24-Hour Average	91
3-Hour Average	512
Nitrogen Dioxide	
Annual Arithmetic Mean	25

Sec 5. Section 22a-174-3a(*l*)(1) of the Regulations of Connecticut State Agencies is amended as follows:

(1) Applicability. In accordance with subsection (a) of this section, the provisions of this subsection shall apply to the owner or operator of: [any new major stationary source or major modification which:]

(A) [Is or will be a] Any new major stationary source that: [or major modification for any nonattainment air pollutant if such source is located in a non-attainment area for such air pollutant; or]

(i) Is or will be constructed in a designated nonattainment area; and

(ii) Is or will be major for the pollutant for which the area is designated nonattainment;

(B) [Is located in an attainment area or unclassifiable area, but the allowable emissions of any air pollutant would cause or exacerbate a violation of a National Ambient Air Quality Standard in an adjacent non-attainment area. Allowable emissions of any such air pollutant will be deemed not to cause or contribute to a violation of a National Ambient Air Quality Standard provided that such emissions result in impacts that are less than levels set forth in Table 3a(i)-1 in subsection (i) of this section.] Any major modification that:

(i) Occurs at a source that is major for the pollutant for which the area is designated nonattainment; and

(ii) Is or will be major for the pollutant for which the area is designated nonattainment; or

(C) Any new major stationary source or major modification that is located in an attainment area or unclassifiable area, but the allowable emissions of any air pollutant would cause or exacerbate a violation of a National Ambient Air Quality Standard in an adjacent nonattainment area. Allowable emissions of any such air pollutant will be deemed not to cause or contribute to a violation of a National Ambient Air Quality Standard provided that such emissions result in impacts that are less than levels set forth in Table 3a(i)-1 in subsection (i) of this section.

Sec 6. Section 22a-174-3a(*l*)(4) of the Regulations of Connecticut State Agencies is amended as follows:

(4) Offsetting emission reductions or Emission Reduction Credits.

(A) Except as provided in subdivision (8)(B) of this subsection, prior to commencing operation pursuant to a permit issued under this section, the owner or operator of the subject source or modification shall:

(i) reduce actual emissions from other stationary sources on such premises, sufficient to offset the allowable emissions increase for each individual non-attainment air pollutant which is the subject of the application, or

(ii) obtain certified emission reduction credits in accordance with subdivision (5) of this subsection, which credits are sufficient to offset the allowable emissions increase for each individual nonattainment air pollutant; and

(B) The commissioner shall not grant a permit to an owner or operator of the subject source or modification unless the owner or operator demonstrates that internal offset or certified emission reduction credits pursuant to subparagraph (A) of this subdivision:

(i) have occurred preceding the submission of such application and prior to the date that the subject source or modification becomes operational and begins to emit any air pollutant. The commissioner may consider a time period beginning no earlier than November 15, 1990,

(ii) are not otherwise required by any of the following: the Act; a federally enforceable permit or order; the State Implementation Plan; or the regulations or statutes in effect when such application is filed,

(iii) will be incorporated into a permit or order of the commissioner and would be federally enforceable,

(iv) will create a net air quality benefit in conjunction with the proposed emissions increase. In determining whether such a net air quality benefit would be created, the commissioner may consider emissions on an hourly, daily, seasonal or annual basis. For carbon monoxide or particulate matter (total suspended particulate, $PM_{2.5}$ and PM_{10}), the net air quality benefits shall be determined by the use of atmospheric modeling procedures approved by the commissioner and the Administrator in writing. Upon the request of the commissioner, the owner or operator shall make and submit to the commissioner, a net air quality benefit determination for each air pollutant. Such determination shall include, but not be limited to, all increases and decreases of emissions from stationary sources at any premises providing the offsetting emission reductions,

(v) shall be based on the pounds per hour of potential emissions increase from the subject source or modification. The commissioner may consider other more representative periods, including, but not limited to, tons per year or pounds per day,

(vi) are identified in an emissions inventory maintained by the commissioner or otherwise approved in writing by the commissioner,

(vii) are of the same non-attainment air pollutant of which the owner or operator proposes to increase. Reductions of any exempt volatile organic compound [listed in Table 1-3 of section 22a-174-1 of the Regulations of Connecticut State Agencies or those] listed in 40 CFR 51.100 shall not be

used to offset proposed increases emissions of non-exempt volatile organic compounds,

(viii) occurred at either: one or more stationary sources in the same nonattainment area or stationary sources in another non-attainment area if, pursuant to the Act, such area has an equal or higher nonattainment classification than the area in which the proposed activity would take place, and if emissions from such other nonattainment area contribute to a violation of a National Ambient Air Quality Standard in the non-attainment area in which the proposed activity would take place,

(ix) for the applicable non-attainment air pollutant, shall be from reductions in actual emissions, and

(x) offset actual emissions at a ratio greater than one to one, as determined by the commissioner. In addition, the owner or operator shall offset emission increases of allowable emissions at a ratio, for volatile organic compounds or nitrogen oxides, of at least: 1.3 to 1 in any severe non-attainment area for ozone, and 1.2 to 1 in any serious non-attainment area for ozone.

Sec. 7. Section 22a-174-30(a) of the Regulations of Connecticut State Agencies is amended as follows:

(a) Definitions.

For the purposes of this section:

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

(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.

(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.

(4) "Corporate or commercial fleets" means vehicles that are used for business purposes and are owned by corporations, governments, universities or other organizations.

[(4)](5) "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)](6) "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)](7) "Owner or [Operator] operator" means any person who owns, leases, operates or controls a dispensing facility subject to this section.

[(7)](8) "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 D5191-01.

[(8)](9) "Stage I vapor recovery system" means a vapor recovery system that prevents the discharge to the [atmoshphere] atmosphere 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)](10) "Stage II vapor recovery system" or "system" means a vapor recovery system 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)](11) "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)](12) "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.] atmosphere.

[(12)](13) "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.

Sec. 8. Subdivisions (6) and (7) of section 22a-174-30(b) of the Regulations of Connecticut State Agencies are amended as follows:

(6) Any owner or operator of a dispensing facility [which is] not subject to subdivision (1), (2), (3) or (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 (1), (2), (3) or (4) of this subsection. Such records shall be kept for five (5) years and shall be made available for inspection by a representative of theartment or EPA] commissioner or Administrator.

(7) An owner or operator of a dispensing facility that exclusively services rental vehicles or corporate or commercial fleets, where at least ninety-five percent (95%) of such vehicles or fleets are equipped with onboard refueling vapor recovery systems, may submit to the commissioner a written request for an exemption from the requirements of this section. An exemption request shall demonstrate, and the preparer shall certify, that at least 95% of the vehicles fueled at the facility are equipped with onboard refueling vapor recovery systems and that a minimum of 95% onboard vapor recovery system use will be maintained.

Sec. 9. Subdivisions (1) and (2) of section 22a-174-30(c) of the Regulations of Connecticut State Agencies are amended as follows:

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

(A) Such system [is or has ever been tested and approved by CARB; or] has been approved by:

(i) CARB,

(ii) Another state using testing methods approved by CARB, or

(iii) The commissioner, in writing.

[(B) Such system is or has ever been tested and approved by another state using testing methods approved by CARB; and

(C) Such system utilizes only 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 is or has ever been approved for installation in such Stage II vapor recovery system either by CARB, [or] by another state using testing methods approved by CARB[.] , or in writing by the commissioner.

Sec. 10. Subdivision (2) of section 22a-174-30(e) of the Regulations of Connecticut State Agencies is amended as follows:

(2) [At least every five years and after November 15, 2004 every three years or upon major system modification, whichever occurs first, an] An owner or operator of a dispensing facility shall conduct performance testing to verify that the Stage II vapor recovery system is operating properly. Such a performance test shall be conducted within three years of the date the previous passing test was conducted. If the owner or operator makes a major system modification, a performance test shall be conducted within 45 days of the completion of such modification. Such performance testing shall include a leak check test and any and all other functional tests that were required by subdivision (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.]

Sec. 11. Section 22a-174-30(e) of the Regulations of Connecticut State Agencies is amended by adding subdivision (5), as follows:

(NEW)
(5) Not more than ten business days after testing is conducted under subdivision (1) or (2) of this subsection, the owner or operator of such dispensing facility shall ensure that a written report of the results of such testing is submitted to the Department's Bureau of Air Management, Engineering and Enforcement Division. In addition to all test results produced in testing the facility, such a report shall include:

(A) A list of all repairs made to the Stage II vapor recovery system to achieve proper function; and

(B) A certification signed by a responsible official of the entity that conducted the testing, who shall certify in writing as follows:

> I have personally examined and am familiar with the information submitted in this report and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the testing that is the subject of this report was performed in accordance with the requirements of section 22a-174-30 of the Regulations of Connecticut Agencies and the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted report may be punishable as a criminal offense under section 22a-175 of the Connecticut General Statutes, under section 53a-157b of the Connecticut General Statutes, and in accordance with any applicable statute.

A test report submitted under this subdivision may be submitted via mail or courier, facsimile or via electronic mail.

Sec. 12. Section 22a-174-30(f) of the Regulations of Connecticut State Agencies is amended by adding subdivision (5), as follows:

(NEW)
(5) Any dispensing facility operating under an exemption pursuant to subdivision (7) of subsection (b) of this section shall maintain the following records at the facility:

(A) Documentation of monthly throughput of gasoline at the facility, which shall include dates and quantities of gasoline delivered and monthly records of the quantity of gasoline dispensed; and

(B) Copies of manufacturers' specifications clearly demonstrating that vehicles in the fleet are equipped with onboard refueling vapor recovery systems.

Sec. 13. Subsection (g) of section 22a-174-36b of the Regulations of Connecticut State Agencies is amended as follows:

(g) Fleet Average Emissions Reporting Requirements.

(1) For the purposes of determining compliance with the requirements of subsections (c)(3) and (e) of this section, commencing with the 2008 model year, each manufacturer shall submit annually to the Department, by March 1st of the calendar year succeeding the end of the model year, a report which demonstrates that such manufacturer has met the fleet average emissions requirements for its fleet delivered for sale in Connecticut. Commencing with the 2009 model year, such report shall include medium-duty vehicles.

(2) Prior to the commencement of each model year, commencing with the 2008 model year, each manufacturer shall submit, to the Department, a projection of the fleet average emissions for vehicles to be delivered for sale in Connecticut during such model year. Commencing with the 2009 model year, such report shall include medium-duty vehicles.

(3) Commencing with the 2009 model year, each manufacturer shall report the average greenhouse gas emissions of its fleet delivered for sale in the State of Connecticut, using the same format used to report such information to CARB. If the voluntary compliance option described in subsection (n)(2) of this section is used, a manufacturer shall report separate data for the multi-state pool and the Connecticut portion. Such report shall be filed with the commissioner by March 1st of the calendar year succeeding the end of the model year and shall include the number of greenhouse gas vehicle test groups certified pursuant to subsection (m)(5) of this section, delineated by model type, delivered for sale into the State of Connecticut.

(4) A manufacturer that elects to demonstrate compliance pursuant to subsection (n)(3) of this section shall submit to the Department a copy of the official report demonstrating compliance with the national greenhouse gas program. The submitted report shall contain the information and be in the format required in California Code of Regulations, Title 13, section 1961.1.

Sec. 14. Subsection (n) of section 22a-174-36b of the Regulations of Connecticut State Agencies is amended as follows:

(n) Greenhouse gas emission standards and related requirements.

(1) Each manufacturer subject to the greenhouse gas provisions of this section shall demonstrate compliance with such provisions as required by, and in accordance with, Code of California Regulations, Title 13, section 1961.1.

(2) For all 2009 and subsequent model year vehicles, manufacturers may demonstrate compliance based on the total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles certified to the California exhaust emission standards in California Code of Regulations, Title 13, section 1961.1, which are produced and delivered for sale in Connecticut, California, and all other states that have adopted California's greenhouse gas emission standards pursuant to section 177 of the Clean Air Act. A manufacturer that fails to comply under the provisions of this subdivision shall be subject to applicable penalties and shall be required to comply with the greenhouse gas standards pursuant to subdivision (1) of this subsection.

(3) For the 2012 through 2016 model years, a manufacturer may elect to demonstrate compliance with the California exhaust emissions standards by demonstrating compliance with the national greenhouse gas program pursuant to California Code of Regulations, Title 13, section 1961.1. A manufacturer with outstanding greenhouse gas debits at the end of the 2011

model year shall submit a plan to the Department describing how the debits will be offset utilizing credits earned under the national greenhouse gas program.

Sec. 15. Table 36b-1 of section 22a-174-36b of the Regulations of Connecticut State Agencies is amended as follows:

Table 36b-1 **California Code of Regulations (CCR)** ***Title 13*** **Provisions Incorporated by Reference**		
Title 13 CCR	**Title**	**Section Amended Date**
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	04/17/09
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	10/11/07
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	03/26/04
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	06/16/08
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.	[01/01/06] <u>03/29/10</u>
Section 1962	Zero Emission Vehicle Standards for 2005 through 2008 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	04/17/09
Section 1962.1	Zero Emission Vehicle Standards for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles	04/17/09
Section 1965	Emission Control, Smog Index, and Environmental Performance Labels – 1979 and Subsequent Model Year Vehicles	06/16/08
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and	11/27/99

	Medium-Duty Vehicles	
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	11/09/07
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	11/09/07
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	01/04/08
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	01/04/08
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	11/09/07
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles.	5/15/99
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	11/09/07
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	11/09/07
Section 2039	Emission Control System Warranty Statement.	12/26/90
Section 2040	Vehicle Owner Obligations	12/26/90
Section 2046	Defective Catalyst	1/16/79
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing.		
Article 1 Assembly Line Testing.		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model-years.	11/27/99
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action.	11/27/99
Section 2109	New Vehicle Recall Provisions.	12/30/83

Section 2110	Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model-Year.	11/27/99
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls.		
Section 2111	Applicability.	01/04/08
Section 2112	Definitions.	11/15/03
	Appendix A to Article 2.1.	11/15/03
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls.	1/26/95
Section 2114	Voluntary and Influenced Recall Plans.	11/27/99
Section 2115	Eligibility for Repair.	1/26/95
Section 2116	Repair Label.	1/26/95
Section 2117	Proof of Correction Certificate.	1/26/95
Section 2118	Notification.	1/26/95
Section 2119	Record keeping and Reporting Requirements.	11/27/99
Section 2120	Other Requirements Not Waived.	1/26/95
Article 2.2 Procedures for In-Use Vehicle Ordered Recalls.		
Section 2122	General Provisions.	01/4/08
Section 2123	Initiation and Notification of Ordered Emission-Related Recalls.	1/26/95
Section 2124	Availability of Public Hearing.	1/26/95
Section 2125	Ordered Recall Plan.	1/26/95
Section 2126	Approval and Implementation of Recall Plan.	1/26/95
Section 2127	Notification of Owners.	1/26/95
Section 2128	Repair Label.	1/26/95
Section 2129	Proof of Correction Certificate.	1/26/95
Section 2130	Capture Rates and Alternative Measures.	11/27/99
Section 2131	Preliminary Tests.	1/26/95
Section 2132	Communication with Repair Personnel.	1/26/95
Section 2133	Record keeping and Reporting Requirements.	1/26/95
Section 2135	Extension of Time.	1/26/95
Article 2.3 In-Use Vehicle Enforcement Test Procedures.		
Section 2136	General Provisions.	01/04/08
Section 2137	Vehicle Selection.	12/28/00
Section 2138	Restorative Maintenance.	11/27/99
Section 2139	Testing.	8/21/02
Section 2140	Notification of In-Use Results.	8/21/02
Article 2.4 Procedures for Reporting Failure of Emission-Related Components.		
Section 2141	General Provisions.	01/04/08
Section 2142	Alternative Procedures.	2/23/90

Section 2143	Failure Levels Triggering Recall.	11/27/99
Section 2144	Emission Warranty Information Report.	11/27/99
Section 2145	Field Information Report.	11/27/99
Section 2146	Emissions Information Report.	11/27/99
Section 2147	Demonstration of Compliance with Emission Standards.	8/21/02
Section 2148	Evaluation of Need for Recall.	11/27/99
Section 2149	Notification of Subsequent Action.	2/23/90
Article 5 Procedures for Reporting Failures of Emission-Related Equipment and Required Corrective Action		
Section 2166	General Provisions	01/04/08
Section 2166.1	Definitions.	01/04/08
Section 2167	Emission Warranty Information Report.	01/04/08
Section 2168	Supplemental Emissions Warranty Information Report.	01/04/08
Section 2169	Recall and Corrective Action for Failures of Exhaust After-Treatment Devices.	01/04/08
Section 2170	Recall and Corrective Action for Other Emission-Related Component Failures (On-Board Diagnostic-Equipped Vehicles and Engines).	01/04/08
Section 2171	Recall and Corrective Action for Vehicles without On-Board Diagnostic Systems, Vehicles with Non-Compliant On-Board Diagnostic Systems, or Vehicles with On-Board Computer Malfunction.	01/04/08
Section 2172	Notification of Required Recall or Corrective Action by the Executive Officer.	01/04/08
Section 2172.1	Ordered or Voluntary Corrective Action Plan.	01/04/08
Section 2172.2	Approval and Implementation of Corrective Action Plan.	01/04/08
Section 2172.3	Notification of Owners.	01/04/08
Section 2172.4	Repair Label.	01/04/08
Section 2172.5	Proof of Correction Certificate.	01/04/08
Section 2172.6	Preliminary Tests.	01/04/08
Section 2172.7	Communication with Repair Personnel.	01/04/08
Section 2172.8	Recordkeeping and Reporting.	01/04/08
Section 2172.9	Extension of Time.	01/04/08
Section 2173	Penalties.	01/04/08
Section 2174	Availability of Public Hearing.	01/04/08
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks.		
Section 2235	Requirements.	9/17/91

Sec. 16. Section 22a-174-17 of the Regulations of Connecticut State Agencies is repealed.

Sec. 17. Section 22a-174-43 of the Regulations of Connecticut State Agencies is repealed.

Sec. 18. Section 22a-174-100 of the Regulations of Connecticut State Agencies is repealed.

Sec. 19. Subdivisions (3) and (4) of subsection (c) of section 22a-174-26 of the Regulations of Connecticut State Agencies are amended as follows:

(3) [There is no fee for any permit issued to a municipality or to an agency of the state or political or administrative subdivision thereof under section 22a-174-100 of the Regulations of Connecticut State Agencies.] Reserved.

(4) [There is no fee for any certificate required under section 22a-174-17 of the Regulations of Connecticut State Agencies.] Reserved.

Statement of Purpose

This regulatory proposal is a series of changes to the Department of Energy and Environmental Protection's (DEEP's) air quality programs that will function to reduce regulatory burdens on Connecticut businesses and administrative burdens on DEEP, without interfering with DEEP's progress towards meeting its air quality goals.

This proposal has four components:

- The addition of fine particulate matter requirements into DEEP's new source review permitting program, to retain federal program approval;
- The exemption from Stage II vapor controls for certain vehicle fleets;
- Additional compliance options for vehicle manufacturers under DEEP's low emission vehicle program; and
- The repeal of non-core air quality programs.

Fine Particulate Matter (PM2.5) Criteria for Air Permits (Sections 1 through 6)

DEEP is proposing to include the pollutant fine particulate matter, or $PM_{2.5}$, in DEEP's new source review (NSR) permit program. While the U.S. Environmental Protection Agency (EPA) first promulgated a National Ambient Air Quality Standard for $PM_{2.5}$ in 1997, EPA allowed states to use the pollutant PM_{10} as a surrogate for $PM_{2.5}$ in NSR permitting programs until certain technical problems were resolved and EPA issued guidance for the states. EPA has issued two relevant implementation rules and has required states to adopt the necessary requirements by July 20, 2012. The revisions help DEEP and the regulated community to understand what new sources or modifications have the potential to impact $PM_{2.5}$ levels and thus warrant additional permitting requirements.

The proposal also revises an unrelated portion of the NSR permit program to achieve consistency with federal requirements in 40 CFR 51.165(a)(2). The revision links the applicability for preconstruction review requirements in nonattainment areas to the pollutant for which the area is designated as nonattainment. The difference between the state and federal requirements has caused considerable delay in processing several NSR permits, so the harmonization of the requirements is likely to streamline certain future applications.

Once adopted, these requirements will be submitted to EPA and will allow DEEP to retain full approval of its NSR permitting program.

Exemption from Stage II Vapor Controls (Sections 7 through 12)

DEP is proposing to allow rental, corporate or commercial vehicle fleets to seek an exemption from the requirement to install vapor recovery systems at fleet gasoline dispensing stations. The criteria that must be met to obtain an exemption ensure that the exemption will not interfere with the state's air quality goals yet will reduce financial burdens for environmental compliance at certain facilities. The amendment also adds record keeping requirements to support the exemption and makes minor corrections.

Onboard refueling vapor recovery (ORVR) systems are installed in newer model year vehicles to collect vapors that would otherwise be released when the gasoline tank is filled. These on-vehicle systems are alternatives to the Stage II vapor recovery systems installed on gasoline pumps. Section 202(a)(6) of the Clean Air Act (CAA) allows EPA to waive Stage II requirements for certain ozone nonattainment areas when ORVR is in widespread use in a motor vehicle fleet. In two guidance memorandums issued in 2006 and 2007, EPA identified dispensing facilities that exclusively serve rental vehicles or corporate or commercial fleets as categories for which widespread use may occur earlier than for the motor vehicle fleet as a whole, if 95% of the fleet vehicles have ORVR installed. EPA has approved a similar regulatory exemption in Rhode Island.

Compliance Flexibility in the Low Emission Vehicle Program (Sections 13 through 15)

DEEP is proposing to increase the compliance flexibility available to vehicle manufacturers under Connecticut's low emission vehicle program, as follows:

- The greenhouse gas standards are revised to allow for alternative compliance with the joint federal EPA/National Highway Traffic Safety Administration greenhouse gas (GHG) standards; and
- An additional voluntary compliance mechanism allows a manufacturer to demonstrate compliance based on the total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in all states that have adopted California's vehicle GHG emissions standards under CAA section 177, rather than the current fleet average requirements, which limit averaging only to the state of Connecticut.

The proposed revisions are required under CAA section 177, which requires Connecticut's low emission vehicle program to maintain requirements identical to California's program.

Repeal of Non-Core Programs (Sections 16 through 19)

DEEP recognizes the need to eliminate programs that are no longer necessary to DEEP's core mission. Accordingly, DEEP proposes to repeal the following three air management discretionary programs:

- Control of open burning;
- Portable fuel container spillage control; and
- Permits for construction of indirect sources.

Staff resources freed by this amendment can be devoted to more immediate permitting and enforcement needs. In addition to the repeal of the three programs described below, the amendment proposes to revise the Air Bureau's general fee regulation to delete exemptions from fees provided for the open burning and indirect source permit programs.

Open burning. In a series of public acts in 1996, 1999 and 2000, the Connecticut General Assembly developed an open burning program via statute, CGS section 22a-174(f), which allows DEEP's commissioner, along with local officials, to enforce open burning requirements. This statutory

program is self-implementing, comprehensive and supersedes DEEP's authority under RCSA section 22a-174-17, an open burning regulation developed in 1983. The continued existence of RCSA section 22a-174-17 serves only to confuse and is therefore proposed for repeal.

Portable fuel containers. In 2007, EPA promulgated national evaporative emissions standards for portable fuel containers (aka gas cans), which apply to containers manufactured on and after January 1, 2009. These federal standards are as protective of air quality as DEEP's portable fuel container spillage control requirements (RCSA section 22a-174-43), which DEEP adopted in 2004 as part of a regional initiative. To eliminate the redundant regulatory requirements, DEEP is proposing to repeal the Connecticut regulation, leaving manufacturers to comply with EPA's national standards. This approach will allow Connecticut to retain expected air quality benefits, while saving enforcement and administrative resources.

Indirect source permits. DEEP is proposing to repeal the indirect source permit (ISP) program of RCSA section 22a-174-100. The ISP program requires the Connecticut Department of Transportation (DOT) to obtain an ISP permit from DEEP before beginning certain state highway construction projects. DEEP recognizes that many of the ISP program elements are duplicated in the transportation conformity process, the National Environmental Protection Act and/or the Connecticut Environmental Policy Act. Hence, the ISP program is no longer programmatically necessary for Connecticut. DEEP is developing a joint Memorandum of Agreement with DOT to ensure that, with the repeal of RCSA section 22a-174-100, the limited air quality benefits of the ISP program, especially with respect to emissions from construction equipment, continue in a more efficient, streamlined and less costly manner.

Attachment 3
Final Text of the Proposal, Based on Recommendations in the Hearing Officer's Report

Available in the Regulations and Certification Page File