EXHIBIT E

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 the Amendment of Sections 22a-174-1(a)(5), 22a-174-3a(a)(1), 22a-174-3a(a)(2)(B), 22a-174-33(c)(2), 22a-174-33(o)(1), 22a-174-33(q)(1) and (2), 22a-174-40(d)(5) of the Regulations of Connecticut State Agencies

Hearing Officer: Anne B. Hulick

Date of Hearing: September 23, 2008

On August 19, 2008, the Commissioner of the Department of Environmental Protection (the Commissioner and Department, respectively) published a notice of intent to amend various sections of the Regulations of Connecticut State Agencies (RCSA), namely sections 22a-174-1(a)(5), 22a-174-3a(a)(1), 22a-174-3a(a)(2)(B), 22a-174-33(c)(2), 22a-174-33(o)(1), 22a-174-33(q)(1) and (2) and 22a-174-40(d)(5). Pursuant to such notice, a public hearing was held on September 23, 2008, with the public comment period closing on September 26, 2008.

I. Hearing Report Content

As required by 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. A final recommended version of the text is also provided.

A statement in satisfaction of CGS section 22a-6(h) is included as Attachment 1.

II. Summary of Proposal

The primary purpose of the proposal is to refine the purpose or specificity of certain air quality regulatory requirements and streamline certain air quality permitting and reporting processes. Streamlining processes is consistent with the Department's initiative to optimize value delivered to the environment, the public and the regulated community by eliminating activities that do not contribute to the agency's core mission. Several of the revisions address issues raised by members of the regulated community and result in administrative benefits to regulated entities

and the Department. The specific regulatory sections revised and a brief description of each revision is as follows:

- RCSA section 22a-174-1(a)(5): the definition of air pollutant is revised to exempt those substances that are non-reactive or do not contribute to air pollution except in accordance with regulations adopted pursuant to CGS sections 22a-200 through 22a-200(c) and 22a-201 through 22a-201(c).
- RCSA section 22a-174-3a(a)(1): incinerators, regardless of potential to emit, are added to the list of stationary sources for which a permit to construct and operate is required, except incinerators used for air pollution control equipment or subject to Section 129 of the Clean Air Act. Adding all incinerators to the applicability of RCSA section 22a-174-3a will allow the Department to review the operation of small incinerators on a case-by-case basis in pursuit of local air quality benefits.
- RCSA section 22a-174-3a(a)(2)(B): owners of gasoline stations are exempt from the requirement to obtain a permit pursuant to RCSA section 22a-174-3a, which requires permits to be obtained for stationary, not area, sources. Emissions from gasoline stations are regulated pursuant to RCSA section 22a-174-30, which requires vapor recovery systems at all pumps as well as monitoring and reporting requirements.
- RCSA section 22a-174-33(c)(2): owners of certain new, small electric generators are exempt from the requirement to obtain a Title V permit, creating consistency between the Federal and State Title V permitting requirements. These smaller electric generators have relatively low emissions for which the burden of obtaining a State Title V operating permit is unbalanced by environmental benefit.
- RCSA sections 22a-174-33(o)(1) and 22a-174-33(q)(1) and (2): the monitoring, progress and compliance report dates on which Title V permittees must submit reports to the Department are changed. This revision does not alter the frequency of reporting but rather improves the reporting schedule in relation to other reporting deadlines.
- RCSA section 22a-174-40(d)(5): the prohibition on the sale and manufacture of consumer products that contain certain toxic pollutants is clarified.

The text of the proposal is located in Attachment 2 to this report.

III. Opposition to Proposal

A single commenter opposes the revision to RCSA section 22a-174-3a(a)(1), which adds incinerator owners to the list of stationary sources that will be required to apply for and obtain a new source review (NSR) permit. The commenter questions the benefit of issuing NSR permits to the owner of small incinerators, particularly given the lack of clear emission standards for incinerators as well as the inconsistency with the Department's air quality permitting policies of the last decade.

A detailed discussion of all comments and responses is set out in the next section of this report.

IV. Summary of Comments

All comments submitted are summarized below with the Department's responses. Commenters are identified by number in this section and are identified fully at the corresponding number in the list that is Attachment 3 to this report. Similar comments from more than one individual are

combined. 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.

Comment 1. Title V permitting exemption. Two commenters supported the express exemption of certain minor sources from the requirement to obtain a Title V operating permit, making the State permitting requirements for these units consistent with the Federal Acid Rain new unit exemption (40 CFR 72.7). [1,2]

> **Response.** The Department notes the support of the revision to RCSA section 22a-174-33(c)(2)(D).

Comment 2. Monitoring, progress and compliance reporting. Two commenters supported the change in timeframes (from January 30 to March 1 and July 30 to September 1) in which Title V monitoring, progress and compliance reports are required to be submitted to the Department. [1,2]

> **Response.** The Department notes the support of the revision to RCSA sections 22a-174-33(o)(1) and 22a-174-33(q)(1) and (2).

Comment 3. Prohibition of sale and manufacture of certain consumer products. A single commenter supports the revision to RCSA section 22a-174-40(d)(5), which removes any potential for ambiguity as to the applicability of the prohibition on the sale and manufacture of consumer product categories that contain methylene chloride, perchloroethylene or trichloroethylene. The commenter notes the revision is also consistent with similar regulations in other jurisdictions, thus providing consistency for manufacturers. [3]

> **Response.** The Department notes the support of the revision to the RCSA section 22a-174-40(d)(5).

Comment 4. Small incinerators and NSR permitting. A single commenter opposed the proposal to require owners of nearly all small incinerators to apply for and obtain a NSR permit, regardless of the potential or actual emissions of the incinerator. The commenter recommends the Department abandon the proposal for the following reasons:

- There are no requirements, outside of requirements that apply independent of permitting, which would apply to such a small incinerator if the incinerator were operating under a NSR permit. No best available control technology (BACT) or lowest achievable emissions rate (LAER) requirements apply.
- A crematory would need a permit but not a source subject to emissions guidelines under section 129 of the Clean Air Act (CAA). That doesn't make sense.
- If the change is made, an incinerator with potential emissions of two tons per year cannot start construction until it obtains a NSR permit, but a source with a NSR permit that modifies its emissions by just under 15 tons of actual emissions may modify and operate before the permit is modified. That doesn't make sense.
- The statement of purpose and the regulatory language are not clear whether the requirement would apply to existing incinerators or new incinerators. If the requirement does apply to existing incinerators yet no BACT or LAER is established, permitting is a

de facto registration. If you really mean to register small incinerators, then register them without adding the burden on both the Department and the source owners of obtaining a permit. Many such small incinerator owners went to the effort of revoking permits when the Department revised its NSR requirements in 2002. Do we have to pay to obtain permits again?

- From the definition of "incinerator," if I put waste oil in with the other material I burn then my incinerator is no longer an incinerator. [4]

Response. The commenter raises concerns with the Department's proposal to include all incinerators, regardless of the potential or actual emissions, in the Department's NSR permitting program. The proposal is intended to improve the Department's ability to regulate small incinerators, in recognition that such incinerators may be a significant, sporadic source of local particulate and toxic emissions, depending on the operating conditions and materials burned. As noted in comment, inclusion of such small incinerators in the NSR program is a shift from the Department's 2002 overhaul of the NSR program, which was designed to focus permitting processes only on sources of air emissions with a potential to emit greater than 15 tons per year (tpy). Characteristic small incinerator operation prompts the Department to regulate incinerators as an exception to the 15 tpy threshold.

Unlike other fuel-burning sources, which generally use a consistent fuel source and operate in a consistent manner, small incinerators operate on an as needed basis with variable fuels. Pollutants capable of causing a localized public health concern may be emitted whether a small incinerator is operating above or below the 15 tpy permitting threshold. Spikes in emissions of certain pollutants can also be harmful to human health even if, on average, the incinerator operates at an acceptable emission level. The variability in operation makes enforcement of short-term emissions spikes difficult. Because these incinerators are not always operated consistently, reported concerns are difficult, if not impossible, to address as an incinerator may be operating with no measurable violation at the time of inspection, providing no basis for correcting emissions spikes.

The commenter correctly points out that there are no BACT or LAER requirements imposed, raising the question of the benefit and contents of a NSR permit. The Department recognizes that control technology on these small incinerators may be cost prohibitive; however a NSR permit can require compliance with manufacturer operating guidelines, compliance with the Department's toxic emissions limitations and other conditions, thereby encouraging good operating practices and providing a basis for enforcement actions, if necessary.

The NSR permit process also affords local citizens the opportunity to be informed of plans to operate a new incinerator in the neighborhood and to voice any concerns. This process is increasingly important as the Department, in response

to Public Act 08-94, must consider the location and cumulative impact of emission sources in environmental justice communities.

A final justification for permitting new incinerators is the Department's obligation to comply with stricter Federal standards for ozone and fine particulate matter. The reduced Federal standards require the Department to scrutinize all sources of emissions for opportunities for reduction.

The commenter is correct to question whether both existing and new incinerators are required to apply for a permit under the proposed revision. The intent of this revision is to require a permit for only those incinerators for which construction commences on or after June 1, 2009. The Department should change the proposed statement of purpose and regulatory language to reflect this intent.

The Department should also consider establishing operating requirements and emissions standards for existing small incinerators similar to the reasonably available control technology requirements established for other categories of equipment. Such an approach provides an additional mechanism to assure compliance with operating conditions and address local public health issues that might arise from existing incinerators.

The Department should revise the proposed text of subparagraph (G) of RCSA section 22a-174-3a(a)(1), consistent with the response herein, as follows:

(1) Applicability. Prior to beginning actual construction of any stationary source or modification not otherwise exempted in accordance with subdivision (2)(A) to (C) of this subsection, the owner or operator shall apply for and obtain a permit to construct and operate under this section for any:

(A) New major stationary source;

(B) Major modification;

(C) New or reconstructed major source of hazardous air pollutants subject to the provisions of subsection (m) of this section;

(D) New emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;

(E) Modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year; [or]

(F) Stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of

the source or modification otherwise to emit a pollutant[.]; or

(G) Incinerator~~, except if such incinerator does not require a permit pursuant to Subparagraphs (A) through (F) of this subdivision and such incinerator is used~~ **for which construction commenced on or after June 1, 2009, except if such incinerator is used:**

(i) for the primary purpose of reducing, controlling or eliminating air pollution, or

(ii) as a solid waste incineration unit subject to an emission guideline issued pursuant to Section 129 of the Act.

The commenter notes that by definition in RCSA section 22a-174-1, equipment burning waste oil is not an "incinerator." Thus, the owner of any incinerator might presumably add a small amount of waste oil to other material that it is burning and avoid any obligation to comply. Whatever mechanism the Department pursues to regulate incinerators, the Department should revisit the definition of "incinerator" in RCSA section 22a-174-1 and possibly specify that the exclusion for equipment burning waste oil should be restricted to equipment that primarily or only burns waste oil.

As a final point, in response to the commenter's assertion regarding an incinerator subject to emissions guidelines under CAA section 129, the exception is sensible. Any such incinerator is obligated to comply with a source-specific rule implementing the emissions guidelines and to apply for and obtain a Title V permit, which makes the additional oversight of a NSR permit unnecessary.

Comment 5. Definition of "air pollutant." A single commenter recommended that the Department write "hydrogen gas as H2" as an exception to the definition of air pollutant. [4]

Response. At standard temperature and pressure, hydrogen is a diatomic gas with the molecular formula H_2. In this chemical regard, it is similar to oxygen, and the comment recommends parallel verbal treatment in recognition of the similar chemical nature. Accordingly, the Department should revise the definition of "air pollutant," as follows:

(5) "Air pollutant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, aerosol, odorous substances, or any combination thereof, but does not include: carbon dioxide except in accordance with regulations adopted pursuant to sections 22a-174d [or], 22a-174j, 22a-200, 22a-200a, 22a-200b, 22a-200c, 22a-201 through 22a-201c of the Connecticut General Statutes; the noble gases (helium, neon, argon, krypton, xenon or radon); uncombined water vapor or water droplets[,]; **molecular** hydrogen **expressed as H_2;** or molecular oxygen expressed as O_2 or nitrogen.

V. Conclusion

Based upon the comments addressed in this Hearing Report, I recommend the proposal be revised as recommended herein and that the recommended final proposal, included as Attachment 4 to this report, shall be submitted by the Commissioner for approval by the Attorney General and the Legislative Regulations Review Committee and upon adoption, certain provisions be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

_____ January 21, 2009

/s/ Anne B. Hulick Date

Hearing Officer

ATTACHMENT 1

Federal Standards Analysis Pursuant to Section 22a-6(h) of the General Statutes

Pursuant to section 22a-6(h) of the Connecticut General Statutes (CGS.), the Commissioner of the Department of 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 notice of public hearing required under CGS section 4-168.

In accordance with the requirements of CGS section 22a-6(h), the following statement is entered into the public administrative record in the matter of the proposed revisions to various sections of the air quality regulations, as scheduled for public hearing on September 23, 2008:

The Department has performed a comparison of the proposed revisions with analogous federal laws and regulations, namely the Clean Air Act (CAA) and standards and procedures in 40 Code of Federal Regulations. In general, the impact of the proposed revisions is minor, involving changes small in scope in existing programs. The proposed revisions include refinements to definitions or applicability provisions and shifts in monitoring and reporting deadlines for existing air quality programs. A section-by-section comparison of the proposal with federal standards and procedures is as follows:

- The definition of "air pollutant" in section 22a-174-1 of the Regulations of Connecticut State Agencies (RCSA) is very broad on its face, including almost any substance in the air except those specifically excluded. The proposal adds an exclusion for the non-reactive noble gases, which are not regulated in the State air quality programs, and notes the exclusion of carbon dioxide as an air pollutant, except when specifically designated as such by the state legislature. This definition is similar to the definition of "air pollutant" in CAA Section 302(g) in that it is broad on its face but is similarly interpreted to be limited to those pollutants regulated under the Clean Air Act. The definition of "air pollutant" in RCSA section 22a-174-1 should be distinguished from the federal definition of "regulated air pollutant" in 40 CFR 70.2; that definition defines the pollutants and emissions units that must be addressed in a Title V permit. A very similar definition of "regulated air pollutant" applies Connecticut's Title V permit program (*see* RCSA section 22a-174-33).

- The revision of RCSA section 22a-174-3a(a)(1) adds certain incinerators to the applicability of the State's New Source Review (NSR) permitting program. While Federal NSR requirements (40 CFR 51) establish minimum emission thresholds to determine the applicability of the program to new and modified sources, the proposed

revision will result in the inclusion in some incinerators with emissions below the federal applicability threshold.

- Section 22a-174-3a(a)(2)(B) excludes the owners of gasoline dispensing stations from the requirement to apply for and obtain a NSR permit. Emissions from gasoline dispensing facilities are controlled by Stage II vapor recovery control devices, verified with a testing program and operated according to required procedures in RCSA section 22a-174-30. The Stage II vapor recovery program is required by CAA section 182(b)(3). Section 182(b)(3) directs State air pollution control agencies with moderate or worse ozone national ambient air quality standards (NAAQS) nonattainment areas to require Stage II vapor recovery systems at gasoline dispensing stations. The federal Stage II program requirements do not require gasoline dispensing station owners to obtain NSR permits, and the Department has as a matter of policy considered gasoline dispensing stations as area sources not subject to the NSR permitting program.

- Section 22a-174-33(c)(2) exempts certain small sources from the requirement to obtain a Title V permit. This exemption will result in Connecticut's Title V permit program applicability being the same as the federal Title V permit program requirements for the excluded group of sources.

- Section 22a-174-33(o)(1) and (q)(1) and (2) identify monitoring and reporting date requirements for Title V sources in Connecticut. Federal Title V program requirements include certain monitoring and reporting requirements as specified in 40 CFR 71. The proposed revision shifts the due date for certain periodic reports, without changing the periodicity. The revisions are consistent with Federal requirements.

- Section 22a-174-40(d)(5) clarifies the date at which certain consumer products containing certain toxic pollutants can no longer be sold in Connecticut. These requirements have no Federal equivalent in the consumer product program of 40 CFR 59. 40 CFR 59 specifies VOC content limits for certain consumer product categories but does not also prohibit the inclusion of toxic pollutants.

July 30, 2008
Date

/s/Anne B. Hulick
Bureau of Air Management

ATTACHMENT 2

Section 1. Section 22a-174-1(a)(5) of the Regulations of Connecticut State Agencies is amended to read as follows:

(5) "Air pollutant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, aerosol, odorous substances, or any combination thereof, but does not include: carbon dioxide except in accordance with regulations adopted pursuant to sections 22a-174d [or] , 22a-174j, 22a-200, 22a-200a, 22a-200b, 22a-200c, 22a-201 through 22a-201c of the Connecticut General Statutes; the noble gases (helium, neon, argon, krypton, xenon or radon); uncombined water vapor or water droplets[,]; hydrogen; or molecular oxygen expressed as O_2 or nitrogen.

Sec. 2. Section 22a-174-3a(a)(1) of the Regulations of Connecticut State Agencies is amended by adding subparagraph (G) as follows:

(1) Applicability. Prior to beginning actual construction of any stationary source or modification not otherwise exempted in accordance with subdivision (2)(A) to (C) of this subsection, the owner or operator shall apply for and obtain a permit to construct and operate under this section for any:

(A) New major stationary source;

(B) Major modification;

(C) New or reconstructed major source of hazardous air pollutants subject to the provisions of subsection (m) of this section;

(D) New emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;

(E) Modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year; [or]

(F) Stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant[.] ; or

(G) Incinerator, except if such incinerator does not require a permit pursuant to subparagraphs (A) through (F) of this subdivision and such incinerator is used:

(i) for the primary purpose of reducing, controlling or eliminating air pollution, or

(ii) as a solid waste incineration unit subject to an emission guideline issued pursuant to Section 129 of the Act.

Sec. 3. Section 22a-174-3a(a)(2)(B) of the Regulations of Connecticut State Agencies is amended to read as follows:

(B) Any stationary source that is:

(i) registered under and is in compliance with any new source review general permit to construct and operate a new or existing stationary source issued pursuant to section 22a-174(k) of the Connecticut General Statutes,

(ii) a stripping facility used to remove VOC from contaminated groundwater or soil pursuant to an order issued by the commissioner, provided such facility has a control device with VOC removal efficiency of at least ninety-five percent (95%),

(iii) a portable engine or boiler temporarily replacing an existing engine or boiler, provided the replacement units have a combined emission rate equal to or less than the existing units and that the number of days total that any and all such portable engines or boilers may be used does not exceed ninety (90) days in any calendar year, [or]

(iv) in compliance with section 22a-174-3b, [Section] section 22a-174-3c or [Section] section 22a-174-42 of the Regulations of Connecticut State Agencies, unless otherwise subject to this section pursuant to subdivision (7) of this subsection[;] , or

(v) a "dispensing facility," as defined in section 22a-174-30(a)(3) of the Regulations of Connecticut State Agencies.

Sec. 4. Section 22a-174-33(c)(2) of the Regulations of Connecticut State Agencies is amended to read as follows:

(2) Notwithstanding subdivision (1) of this subsection and except as provided in subdivision (3) of this subsection, this section shall not apply to any premises which is defined as a Title V source solely because a stationary source on such premises is subject to one or more of the following:

(A) Standard of performance for new residential wood heaters pursuant to 40 CFR 60, Subpart AAA;

(B) 40 CFR 61.145;

(C) Accidental release requirements pursuant to 40 CFR 68; or

(D) 40 CFR 60, 61, 63 [or] , 68 or 72, if such source is exempt or deferred from the requirement to obtain a Title V permit:

(i) by the terms of the applicable CFR,

(ii) by the terms of 40 CFR 70,

(iii) by the Administrator, or

(iv) with the Administrator's authorization, by the commissioner[;].

Sec. 5. Section 22a-174-33(o)(1) of the Regulations of Connecticut State Agencies is amended to read as follows:

(1) **Monitoring reports.** A permittee required to perform monitoring pursuant a Title V permit shall submit to the commissioner, on forms prescribed by the commissioner, written monitoring reports on [January 30 and July 30] March 1 and September 1 of each year or on a more frequent schedule if specified in such permit. Such monitoring reports shall include the date and description of each deviation from a permit requirement including, but not limited to:

(A) Each deviation caused by upset or control equipment deficiencies;

(B) Each deviation of a permit requirement that has been monitored by the monitoring systems required under the Title V permit, which has occurred since the date of the last monitoring report; and

(C) Each deviation caused by a failure of the monitoring system to provide reliable data.

Sec. 6. Section 22a-174-33(q)(1) and (2) of the Regulations of Connecticut State Agencies is amended to read as follows:

(1) **Progress reports.** A permittee shall, on [January 30 and July 30] March 1 and September 1 of each year, or on a more frequent schedule if specified in such permit, submit to the commissioner a progress report on forms prescribed by the commissioner, and certified in accordance with section 22a-174-2a(a)(5) of the Regulations of Connecticut State Agencies. Such report shall:

(A) Identify those obligations under the compliance plan schedule in the permit which the permittee has met, and the dates on which they were met; and

(B) Identify those obligations under the compliance plan schedule in the permit which the permittee has not timely met, explain why they were not timely met, describe all measures taken or to be taken to meet them and identify the date by which the permittee expects to meet them.

(2) **Compliance certification.** A permittee shall, on [January 30] March 1 of each year, or on a more frequent schedule if specified in such permit, submit to the commissioner[,] a written compliance certification certified in accordance with section 22a-174-2a(a)(5) of the Regulations of Connecticut State Agencies and which includes the information identified in Title 40 CFR 70.6(c)(5)(iii)(A) to (C), inclusive.

Sec. 7. Section 22a-174-40(d)(5) of the Regulations of Connecticut State Agencies is amended to read as follows:

(5) [No] On and after January 1, 2009, no person shall:

(A) [sell,] Sell, supply[,] or offer for sale [or manufacture for use] in the State of Connecticut [after January 1, 2009] any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner or graffiti remover manufactured on or after January 1, 2009, [that] if such product contains methylene chloride, perchloroethylene or trichloroethylene, except to the extent such compounds are present as impurities in a combined amount less than or equal to 0.01% by weight[.]; or

(B) Manufacture for sale in the State of Connecticut any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner or graffiti remover, if such product contains methylene chloride, perchloroethylene or trichloroethylene, except to the extent such compounds are present as impurities in a combined amount less than or equal to 0.01% by weight.

Statement of Purpose: This amendment makes minor technical corrections and clarifications to certain air quality regulations. Specifically, each section of the amendment serves the following purpose:

Section 1 clarifies the substances excluded from the definition of "air pollutant." For example, the noble gases, which are non-reactive and do not contribute to air pollution, are explicitly excluded.

Sections 2 and 3 more clearly identify those sources for which the owners are required to obtain an operating permit pursuant to Regulations of Connecticut State Agencies (RCSA) section 22a-174-3a. Currently, the owners of small incinerators used to burn various wastes and debris are not consistently required to obtain a permit, in part because emissions from such small incinerators are highly variable, making it difficult to ascertain whether or not permitting thresholds are crossed. Requiring owners of small incinerators, with the exception of incinerators used as air pollution control equipment, to obtain a permit will address this inconsistency and yield local air quality benefits.

Section 3 ends long-standing confusion by some gasoline station owners, who believe they are required to obtain a permit. Currently, emissions from gasoline stations are

regulated pursuant to RCSA section 22a-174-30, under which the vapor recovery systems at the pumps are periodically tested. Department of Environmental Protection (DEP) staff observe the tests and receive written reports of the results for every gasoline station in the state. Each gasoline station is certified and licensed by the State of Connecticut Department of Consumer Protection. As a result, the DEP does not require the station owners to obtain a new source review permit.

Section 4 creates consistency in how state and federal Title V operating permit programs apply to new small electric generators. DEP issues Title V operating permits to air pollution sources under a federally approved program. Currently, certain small electric generators in Connecticut are exempt from the requirement to obtain a Title V permit under the federal regulations, yet are required to obtain a Title V operating permit under the DEP's Title V program. The federal program exemption is limited to new, small sources with relatively low emissions for which the extensive requirements of a Title V permit are burdensome and unbalanced by environmental benefit. Creating regulatory consistency between Connecticut and the federal requirements is especially important now as we anticipate an increase in permit applications for such small units to meet Connecticut's electric demand. This revision is also consistent programmatically with the Air Bureau's initiative to optimize value delivered to the environment, the public and the regulated community by eliminating non-value added activities which do not contribute to the agency's core mission.

Sections 5 and 6 change the monitoring, progress and compliance reporting schedule on which Title V permittees complete and submit these reports to DEP. The schedule change does not hinder DEP's report processing, yet is more easily managed by source owners. The frequency of reports (annual or semi-annual) is unchanged.

Section 7 clarifies the prohibition on the sale and manufacture of consumer products that contain methylene chloride, perchloroethylene or trichloroethylene, by stating explicitly the implied product manufacture date from which the prohibition applies.

ATTACHMENT 3

List of Commenters

1. Thomas E. Atkins
   Waterside Power, LLC
   105 Chestnut Street, Suite 37
   Needham, MA 02492

2. Don C. DiCristofaro
   Blue Sky Environmental, LLC
   105 Chestnut Street, Suite 37
   Needham, MA 02492

3. D. Douglas Fratz
   Joseph T. Yost
   Consumer Specialty Products Association
   900 17th Street
   NW Suite 300
   Washington, DC 20006

4. John DiSalvo
   (no contact information provided)

ATTACHMENT 4

Section 1. Section 22a-174-1(a)(5) of the Regulations of Connecticut State Agencies is amended to read as follows:

(5) "Air pollutant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, aerosol, odorous substances, or any combination thereof, but does not include: carbon dioxide except in accordance with regulations adopted pursuant to sections 22a-174d [or], 22a-174j, 22a-200, 22a-200a, 22a-200b, 22a-200c, 22a-201 through 22a-201c of the Connecticut General Statutes; the noble gases (helium, neon, argon, krypton, xenon or radon); uncombined water vapor or water droplets[,]; molecular hydrogen expressed as H_2; or molecular oxygen expressed as O_2 or nitrogen.

Sec. 2. Section 22a-174-3a(a)(1) of the Regulations of Connecticut State Agencies is amended by adding subparagraph (G) as follows:

(1) Applicability. Prior to beginning actual construction of any stationary source or modification not otherwise exempted in accordance with subdivision (2)(A) to (C) of this subsection, the owner or operator shall apply for and obtain a permit to construct and operate under this section for any:

(A) New major stationary source;

(B) Major modification;

(C) New or reconstructed major source of hazardous air pollutants subject to the provisions of subsection (m) of this section;

(D) New emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;

(E) Modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year; [or]

(F) Stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant[.] ; or

(G) Incinerator for which construction commenced on or after June 1, 2009, except if such incinerator is used:

(i) for the primary purpose of reducing, controlling or eliminating air pollution, or

(ii) as a solid waste incineration unit subject to an emission guideline issued pursuant to Section 129 of the Act.

Sec. 3. Section 22a-174-3a(a)(2)(B) of the Regulations of Connecticut State Agencies is amended to read as follows:

(B) Any stationary source that is:

(i) registered under and is in compliance with any new source review general permit to construct and operate a new or existing stationary source issued pursuant to section 22a-174(k) of the Connecticut General Statutes,

(ii) a stripping facility used to remove VOC from contaminated groundwater or soil pursuant to an order issued by the commissioner, provided such facility has a control device with VOC removal efficiency of at least ninety-five percent (95%),

(iii) a portable engine or boiler temporarily replacing an existing engine or boiler, provided the replacement units have a combined emission rate equal to or less than the existing units and that the number of days total that any and all such portable engines or boilers may be used does not exceed ninety (90) days in any calendar year, [or]

(iv) in compliance with section 22a-174-3b, [Section] section 22a-174-3c or [Section] section 22a-174-42 of the Regulations of Connecticut State Agencies, unless otherwise subject to this section pursuant to subdivision (7) of this subsection[;] , or

(v) a "dispensing facility," as defined in section 22a-174-30(a)(3) of the Regulations of Connecticut State Agencies.

Sec. 4. Section 22a-174-33(c)(2) of the Regulations of Connecticut State Agencies is amended to read as follows:

(2) Notwithstanding subdivision (1) of this subsection and except as provided in subdivision (3) of this subsection, this section shall not apply to any premises which is defined as a Title V source solely because a stationary source on such premises is subject to one or more of the following:

(A) Standard of performance for new residential wood heaters pursuant to 40 CFR 60, Subpart AAA;

(B) 40 CFR 61.145;

(C) Accidental release requirements pursuant to 40 CFR 68; or

(D) 40 CFR 60, 61, 63 [or] , 68 or 72, if such source is exempt or deferred from the requirement to obtain a Title V permit:

(i) by the terms of the applicable CFR,

(ii) by the terms of 40 CFR 70,

(iii) by the Administrator, or

(iv) with the Administrator's authorization, by the commissioner[;].

Sec. 5. Section 22a-174-33(o)(1) of the Regulations of Connecticut State Agencies is amended to read as follows:

(1) **Monitoring reports.** A permittee required to perform monitoring pursuant a Title V permit shall submit to the commissioner, on forms prescribed by the commissioner, written monitoring reports on [January 30 and July 30] March 1 and September 1 of each year or on a more frequent schedule if specified in such permit. Such monitoring reports shall include the date and description of each deviation from a permit requirement including, but not limited to:

(A) Each deviation caused by upset or control equipment deficiencies;

(B) Each deviation of a permit requirement that has been monitored by the monitoring systems required under the Title V permit, which has occurred since the date of the last monitoring report; and

(C) Each deviation caused by a failure of the monitoring system to provide reliable data.

Sec. 6. Section 22a-174-33(q)(1) and (2) of the Regulations of Connecticut State Agencies is amended to read as follows:

(1) **Progress reports.** A permittee shall, on [January 30 and July 30] March 1 and September 1 of each year, or on a more frequent schedule if specified in such permit, submit to the commissioner a progress report on forms prescribed by the commissioner, and certified in accordance with section 22a-174-2a(a)(5) of the Regulations of Connecticut State Agencies. Such report shall:

(A) Identify those obligations under the compliance plan schedule in the permit which the permittee has met, and the dates on which they were met; and

(B) Identify those obligations under the compliance plan schedule in the permit which the permittee has not timely met, explain why they were not timely met, describe all measures taken or to be taken to meet them and identify the date by which the permittee expects to meet them.

(2) **Compliance certification.** A permittee shall, on [January 30] March 1 of each year, or on a more frequent schedule if specified in such permit, submit to the commissioner[,] a written compliance certification certified in accordance with section 22a-174-2a(a)(5) of the Regulations of Connecticut State Agencies and which includes the information identified in Title 40 CFR 70.6(c)(5)(iii)(A) to (C), inclusive.

Sec. 7. Section 22a-174-40(d)(5) of the Regulations of Connecticut State Agencies is amended to read as follows:

(5) [No] On and after January 1, 2009, no person shall:

(A) [sell,] Sell, supply[,] or offer for sale [or manufacture for use] in the State of Connecticut [after January 1, 2009] any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner or graffiti remover manufactured on or after January 1, 2009, [that] if such product contains methylene chloride, perchloroethylene or trichloroethylene, except to the extent such compounds are present as impurities in a combined amount less than or equal to 0.01% by weight[.]; or

(B) Manufacture for sale in the State of Connecticut any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner or graffiti remover, if such product contains methylene chloride, perchloroethylene or trichloroethylene, except to the extent such compounds are present as impurities in a combined amount less than or equal to 0.01% by weight.

Statement of Purpose: This proposal makes technical corrections and clarifications to certain air quality regulations. Specifically, each section of the proposal serves the following purpose:

Section 1 clarifies the substances excluded from the definition of "air pollutant." For example, the noble gases, which are non-reactive and do not contribute to air pollution, are explicitly excluded. The definition is also updated to recognize recently adopted legislation.

Section 2 identifies those sources for which the owners are required to obtain an operating permit pursuant to Regulations of Connecticut State Agencies (RCSA) section 22a-174-3a. Currently, owners of small incinerators used to burn various wastes and debris are not required to obtain a permit if emissions are below the 15 ton per year (tpy) threshold. Incinerators operating above or below the 15 tpy threshold may be a significant, sporadic source of local particulate and toxic emissions, depending on the operating conditions and materials burned. Short term spikes in emissions of certain pollutants can also be harmful to human health or cause a local nuisance. The revision requires owners to obtain a NSR permit for all new incinerators to enhance public participation, review and enforcement.

Section 3 exempts owners of gasoline stations from the requirement to obtain a permit pursuant to RCSA section 22a-174-3a, which requires permits for stationary, not area, sources. Emissions from gasoline stations are regulated pursuant to RCSA section 22a-174-30, which requires vapor recovery systems at all pumps as well as monitoring and reporting requirements.

Section 4 expressly exempts owners of certain new, small electric generators from the requirement to obtain a Title V permit, creating consistency between the federal and State Title V permitting programs. Creating regulatory consistency between State and federal requirements is especially important now as we anticipate an increase in permit applications for such small units to meet Connecticut's electric demand. This revision is also consistent with the Air Bureau's initiative to optimize value delivered to the environment, the public and the regulated community by eliminating activities that do not contribute to the agency's core mission.

Sections 5 and 6 change the monitoring, progress and compliance reporting schedule on which Title V permittees complete and submit these reports to the Department. The schedule change does not hinder the Department's report processing, yet is more easily managed by source owners. The frequency of reports (annual or semi-annual) is unchanged.

Section 7 clarifies the prohibition on the sale and manufacture of consumer products that contain methylene chloride, perchloroethylene or trichloroethylene, by stating explicitly the implied product manufacture date from which the prohibition applies.