

January 2, 2013

David Conroy, Chief, Air Programs Branch  
EPA New England Regional Office  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

***Re: Connecticut State Implementation Plan with Regard to the  
Infrastructure Requirements of Clean Air Act Section 110(a)(1) and (2) for the  
2010 Nitrogen Dioxide National Ambient Air Quality Standards***

Dear Mr. Conroy:

Pursuant to Clean Air Act (CAA) section 110(a)(1) and (2), all states are required to submit plans to implement, maintain and enforce the 2010 nitrogen dioxide (NO<sub>2</sub>) primary national ambient air quality standards (NAAQS), including such basic requirements as emissions inventories, monitoring and modeling to assure attainment and maintenance of the NAAQS.

As described in the enclosed explanation, Connecticut's State Implementation Plan (SIP), as identified in 40 CFR 52, subpart H, satisfies the required CAA section 110(a)(1) and (2) infrastructure requirements for the 2010 primary NO<sub>2</sub> NAAQS after completion of the identified regulatory updates. This submission also includes the necessary documents to satisfy the public participation requirements of 40 CFR 51, Appendix V, Section 2.1. The structure of this submission is as follows:

- Enclosure A: Explanation of the Adequacy of Connecticut's SIP with Regard to the Infrastructure Elements for the 2010 Primary NO<sub>2</sub> NAAQS
- Enclosure B: Connecticut General Statutes (CGS) section 1-85, satisfying the conflict of interest requirements of CAA Section 128(a)(2), as specified by CAA Section 110(a)(2)(E)
- Enclosure C: Public Participation Documentation
  - Attachment 1: Notice of public hearing and comment period
  - Attachment 2: Attendees at the public hearing
  - Attachment 3: Certification of public hearing
  - Attachment 4: Hearing report, addressing all comments received

The enclosed materials meet the infrastructure requirements for the 2010 NO<sub>2</sub> NAAQS. However, if you need additional information to approve this SIP, please do not hesitate to contact me.

We look forward to working with EPA as a critical partner in our continuing mission to conserve, improve and protect the environment and public health for the citizens of Connecticut.

Mr. David Conroy  
January 2, 2013  
Page 2

We are submitting an electronic version of this SIP revision to the copy recipient listed below. I certify that the electronic copy is an exact duplicate of this hard copy.

Sincerely,



Anne R. Gobin  
Chief, Bureau of Air Management

Enclosures

cc: Anne Arnold, EPA Region 1 (via electronic mail)  
cc: Donald Dahl, EPA Region 1 (via electronic mail)

## Enclosure A

### **Adequacy Determination of the Connecticut State Implementation Plan for Clean Air Act Section 110(a) Infrastructure Elements: 2010 National Ambient Air Quality Standard for Nitrogen Dioxide (NO<sub>2</sub>)**

On January 22, 2010, the U.S. Environmental Protection Agency (EPA) revised the primary national ambient air quality standard (NAAQS) for oxides of nitrogen, as measured by nitrogen dioxide (NO<sub>2</sub>). Specifically, EPA established a new 1-hour standard at a level of 100 parts per billion, based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard. EPA finalized initial designations in February 2012, assigning all of Connecticut as unclassifiable/attainment for the new NAAQS, based on available monitoring data from the 2008-2010 period. EPA's January 22, 2010 rulemaking also required Connecticut and other states to establish near-road monitoring networks to better assess NO<sub>2</sub> levels near heavily traveled roadways. Connecticut expects to begin phase-in of its near-road monitoring network by early 2013.

Pursuant to Clean Air Act (CAA) Section 110(a)(1) and (2), all states are required to submit any necessary revisions to their State Implementation Plans (SIP) to provide for the implementation, maintenance and enforcement of any revised or new NAAQS. States are required to maintain a comprehensive air quality management infrastructure, including enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling, and adequate personnel, resources, and legal authority. Section 110(a)(2)(D)(i) also requires each SIP to prohibit emissions from within the state that contribute significantly to nonattainment or maintenance areas in any other state, or which interfere with programs to prevent significant deterioration of air quality or to achieve reasonable progress toward the national visibility goal for Federal class I areas (national parks and wilderness areas). The infrastructure SIP revisions are due by January 22, 2013, three years after promulgation of the revised NO<sub>2</sub> NAAQS.

The Connecticut Department of Energy and Environmental Protection (DEEP) hereby reviews its program infrastructure in relation to the revised 2010 NO<sub>2</sub> NAAQS for each of the required CAA section 110(a)(2) infrastructure elements. Details of how Connecticut's SIP now satisfies or will, after revision, satisfy the infrastructure requirements are set out in Table 1 below.

Currently, DEEP is implementing the suggested significant impact levels and other Prevention of Significant Deterioration (PSD) requirements in EPA's June 29, 2010 ["Guidance Concerning the Implementation of the 1-hour NO<sub>2</sub> NAAQS for the Prevention of Significant Deterioration Program"](#). DEEP recognizes that EPA may, at some point in the future, establish a short-term PSD increment, significant impact level, significant emission rate, and/or significant monitoring level for the 2010 1-hour NO<sub>2</sub> NAAQS. If that occurs, DEEP commits to pursue adoption of appropriate regulatory revisions within a reasonable period following EPA's final adoption of required PSD program parameters

In addition, DEEP is drafting revisions to Section 22a-174-24 of the Regulations of Connecticut State Agencies (RCSA) to ensure consistency with the 2010 1-hour NO<sub>2</sub> NAAQS, as well as other NAAQS recently revised by EPA. DEEP commits to pursue adoption of these regulatory revisions, with a goal of completion by September 30, 2013.

## Table 1

### Overview of How Connecticut’s State Implementation Plan Satisfies the CAA Section 110(a)(1) and (2) Program Infrastructure Elements for Nitrogen Dioxide (NO<sub>2</sub>)<sup>1</sup>

CAA Section	Required CAA Element	Corresponding Connecticut Program Element(s)
<b>110(a)(2)(A) Emission limits and other control measures</b>	..."include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance..."	<p><b>CGS Section 22a-6(a)(1)</b> The commissioner is empowered to "[a]dopt, amend or repeal ... such environmental standards, criteria and regulations ... as are necessary and proper to carry out his functions, powers and duties." It is under this general grant of authority that the Commissioner has adopted emissions standards and control measures for a variety of sources and pollutants.</p> <p><b>CGS Section 22a-174</b> Establishes the Commissioner’s general authority to adopt regulations and issue permits to control air pollution.</p> <p><b>CGS Section 22a-174g</b> California motor vehicle emissions standards (for model year 2008 and later vehicles).</p> <p>The sections of the air quality regulations that specify or are used to establish emissions limits related to the control of nitrogen oxides include RCSA sections:</p> <ul style="list-style-type: none"> <li><b>22a-174-3a(i) - (l)</b> Prevention of significant deterioration and nonattainment new source review<sup>2</sup></li> <li><b>22a-174-22</b> NO<sub>x</sub> emissions</li> <li><b>22a-174-22c</b> CAIR ozone season trading program</li> <li><b>22a-174-24(k)</b> Ambient air quality standards for nitrogen dioxide<sup>3</sup></li> <li><b>22a-174-27</b> Periodic motor vehicle inspection and maintenance</li> <li><b>22a-174-36</b> Low emission vehicles program</li> </ul>

<sup>1</sup> CAA refers to the Clean Air Act.

CGS refers to the [Connecticut General Statutes](#).

RCSA refers to the [Regulations of Connecticut State Agencies](#).

CFR refers to the Code of Federal Regulations.

DEEP refers to the Connecticut Department of Energy and Environmental Protection.

Commissioner refers to the Commissioner of the DEEP.

<sup>2</sup> DEEP recognizes that EPA may, at some point in the future, establish a short-term Prevention of Significant Deterioration (PSD) increment, significant impact level, significant emission rate, and/or significant monitoring level for the 2010 1-hour NO<sub>2</sub> NAAQS. If that occurs, DEEP commits to pursue adoption of appropriate regulatory revisions within a reasonable period following EPA final adoption of required PSD program parameters. In the interim, DEEP will continue to apply the suggested significant impact levels and other PSD requirements described in EPA’s June 29, 2010 [“Guidance Concerning the Implementation of the 1-hour NO<sub>2</sub> NAAQS for the Prevention of Significant Deterioration Program”](#).

<sup>3</sup> DEEP is currently drafting revisions to RCSA Section 22a-174-24 to ensure consistency with the 2010 1-hour NO<sub>2</sub> NAAQS, as well as other NAAQS recently revised by EPA. In the interim, pursuant to 40 CFR 52.14, DEEP will observe the 2010 NO<sub>2</sub> NAAQS.

CAA Section	Required CAA Element	Corresponding Connecticut Program Element(s)
		<p><b>22a-174-36b</b> Low emission vehicles II program<sup>4</sup></p> <p><b>22a-174-38</b> Municipal waste combustors</p> <p><a href="#">Update to NOx and VOC Orders</a>, submitted to EPA November 23, 2011, to address non-CTG major sources of NOx and VOC.</p>
<b>110(a)(2)(B)</b> <b>Ambient Air quality Monitoring/data system</b>	... “provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.”	<p><b>CGS Section 22a-174(d)</b> Provides the commissioner with all incidental powers necessary to control air pollution.</p> <p><b>40 CFR 53; 40 CFR 58</b> Establishes ambient air monitoring reference and equivalent methods and ambient air quality surveillance requirements. States are required to submit a comprehensive air quality monitoring plan to EPA each year. DEEP’s <a href="#">2012 Annual Air Monitoring Network Plan</a> was submitted on July 12, 2012, and included DEEP’s 2012 Near Road Nitrogen Dioxide Network Plan. DEEP previously submitted the required <a href="#">Ambient Air Monitoring 5-Year Network Assessment</a> on August 9, 2010.</p>
<b>110(a)(2)(C)</b> <b>Program for enforcement of control measures</b>	... “include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;”	<p><b>CGS Section 22a-6(a)(5)</b> "The commissioner may ... in accordance with constitutional limitations, enter at all reasonable times, without liability, upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of any statute, regulation, order or permit administered, adopted or issued by him and the owner, managing agent or occupant of any such property shall permit such entry . . ."</p> <p><b>CGS Section 22a-6b</b> Imposition of civil penalties by the commissioner.</p> <p><b>CGS Section 22a-7(d)</b> Civil actions.</p> <p><b>CGS Section 22a-171</b> “The commissioner shall . . . (4) adopt, amend, repeal and enforce regulations . . . and do any other act necessary to enforce the provisions of this chapter” (which encompasses CGS Sections 22a-170 through 22a-206).</p> <p><b>CGS Section 22a-175</b> Penalties for violations.</p> <p><b>CGS Section 22a-176</b> Consideration in making regulations and issuing orders.</p> <p><b>CGS Section 22a-177</b> Enforcement of Regulations. Complaints.</p> <p><b>CGS Section 22a-178</b> Orders to correct violations.</p> <p><b>CGS Section 22a-180</b> Penalty for violations of orders. Injunctions.</p> <p><b>RCSA section 22a-3a-6(c)</b> Orders, rulings and decisions - procedures in contested cases.</p> <p><b>RCSA section 22a-174-2a</b> Specifies administrative requirements for the new source review (NSR) program, including notification concerning major sources permits and modifications.</p> <p><b>RCSA section 22a-174-3a</b> Permit to construct and operate stationary sources. This</p>

<sup>4</sup> DEEP is currently pursuing adoption of California’s low emission vehicle, phase 3 standards (CALEVIII).

CAA Section	Required CAA Element	Corresponding Connecticut Program Element(s)
		<p>section sets out DEEP’s NSR permit program requirements. Connecticut’s NSR program is SIP approved.</p> <p><b>RCSA section 22a-174-12</b> Violations and Enforcement of the Regulations of Connecticut State Agencies. This section provides that “The Commissioner shall designate employees of DEP to be known as enforcement personnel, who shall, acting with or without complaints, conduct investigations and ascertain whether the Commissioner's regulations are being complied with.”</p>
<p><b>110(a)(2)(D)</b> <b>Interstate transport</b></p>	<p>“... contain adequate provisions - (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,</p> <p>(ii) insuring [<i>sic</i>] compliance with the applicable; requirements of sections 126 and 115 (relating to interstate and international pollution abatement);”</p>	<p>Connecticut sources do not significantly contribute to nitrogen dioxide non-attainment or maintenance areas in other states, as all surrounding areas are designated by EPA as “unclassifiable/attainment”<sup>5</sup>. In addition, Connecticut’s NOx emissions are projected to continue to decline through at least the year 2025<sup>6</sup>, further reducing any impacts from Connecticut on other states.</p> <p><b>RCSA section 22a-174-3a</b> Prevention of significant deterioration and nonattainment new source review<sup>7</sup> requirements, which include modeling requirements that ensure new/modified sources to not cause/contribute to NAAQS issues in nearby states.</p> <p>Connecticut’s <a href="#">Regional Haze SIP</a> was submitted to EPA on November 18, 2009. EPA has not acted on that submission.</p> <p><b>RCSA section 22a-174-2a</b> includes administrative requirements for the new source review (NSR) program, including notification concerning major sources permits and modifications<sup>8</sup>.</p>

<sup>5</sup> <http://www.epa.gov/airquality/nitrogenoxides/designations/state.html>

<sup>6</sup> On June 22, 2012, DEEP submitted a [PM2.5 Redesignation/Maintenance SIP](#) to EPA that includes NOx emissions projections for Fairfield and New Haven Counties. NOx emissions in those two counties are projected to decrease by more than 50% between 2007 and 2025. Similar reductions are expected throughout the rest of the state.

<sup>7</sup> DEEP recognizes that EPA may, at some point in the future, establish a short-term Prevention of Significant Deterioration (PSD) increment, significant impact level, significant emission rate, and/or significant monitoring level for the 2010 1-hour NO<sub>2</sub> NAAQS. If that occurs, DEEP commits to pursue adoption of appropriate regulatory revisions within a reasonable period following EPA final adoption of required PSD program parameters. In the interim, DEEP will continue to apply the suggested significant impact levels and other PSD requirements described in EPA’s June 29, 2010 [“Guidance Concerning the Implementation of the 1-hour NO<sub>2</sub> NAAQS for the Prevention of Significant Deterioration Program”](#).

<sup>8</sup> DEEP recently finalized revisions to RCSA 22a-174-2a explicitly requiring notice to nearby states, consistent with CAA section 126 and 40 CFR 51.166(q).

CAA Section	Required CAA Element	Corresponding Connecticut Program Element(s)
<p><b>110(a)(2)(E)</b> <b>Adequate Resources</b></p>	<p>... “provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;”</p>	<p><b>CGS Section 22a-171</b> Duties of the Commissioner of Environmental Protection. “shall (1) initiate and supervise programs for the purposes of determining the causes, effect and hazards of air pollution; (2) initiate and supervise state-wide programs of air pollution control education; (3) cooperate with and receive money from the federal government and, with the approval of the Governor, from any other public or private source; (4) adopt, amend, repeal and enforce regulations as provided in section 22a-174 and do any other act necessary to enforce the provisions of this chapter and section 14-164c; (5) advise and consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of this chapter.”</p> <p><b>Air Quality Implementation Plan, Chapter 11, Parts A-E (March 3, 1972).</b> Describes the (A) existing organizations; (B) manpower; (C) funding; (D) physical resources and (E) local agencies. It stated, in part, “The Department of Environmental Protection will secure appropriations sufficient, in conjunction with federal assistance, to maintain the projected state funding levels.”</p> <p><b>CGS section 1-85</b> CAA section 128(a)(2) requires SIPs to contain adequate provisions requiring the DEEP commissioner to disclose any potential conflicts of interest. Connecticut has in place conflict of interest provisions that are broader than EPA’s minimum requirements and that apply to all state employees and public officials. These requirements, which are set out in section 1-85 of the Connecticut General Statutes (CGS), prevent DEEP’s commissioner from acting on a matter when a substantial conflict of interest exists. <a href="#">CGS section 1-85</a> is attached for approval by EPA as a part of this SIP revision.</p> <p>The State of Connecticut is the sole authority implementing the SIP and does not rely on local or regional governments or agencies to carry out this responsibility.</p>

<b>CAA Section</b>	<b>Required CAA Element</b>	<b>Corresponding Connecticut Program Element(s)</b>
<p><b>110(a)(2)(F)</b> <b>Stationary source monitoring system</b></p>	<p>... “require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;”</p>	<p><b>CGS Section 22a-6(a)(5)</b> “The commissioner may, in accordance with constitutional limitations, enter at all reasonable times, without liability, upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of any statute, regulation, order or permit administered, adopted or issued by him and the owner, managing agent or occupant of any such property shall permit such entry ...”</p> <p><b>CGS Section 22a-174(c)</b> Various powers of the commissioner related to permitting, inspections, and recordkeeping.</p> <p><b>RCSA section 22a-174-4</b> Source monitoring, record keeping and reporting. Paragraph (d)(1) states: “The commissioner may, by written notice, require the owner or operator of any source to create, maintain and submit data, records or reports of monitoring data and other information deemed necessary by the commissioner to evaluate compliance with chapter 446c of the Connecticut General Statutes and regulations promulgated thereunder. Such information shall be recorded, compiled and submitted on forms furnished or prescribed by the commissioner. The written notice shall provide the date by which such data, records or reports shall be submitted to the commissioner.”</p> <p><b>RCSA section 22a-174-5</b> Methods for sampling, emission testing, sample analysis, and reporting.</p> <p><b>Subsection (e)(1)</b> states: “The owner or operator of a stationary source of air pollution with maximum uncontrolled emissions of any particular air pollutant greater than one hundred (100) tons per year shall be required to carry out emission tests as prescribed by the Commissioner. Such test or tests shall be conducted at such intervals as the Commissioner may specify for an individual stationary source.”</p> <p><b>Subsection (e)(2)</b> states: “In addition to the emission tests required in subdivision 22a-174-5(e)(1), the commissioner may require the owner or operator of any stationary source to conduct emission tests of emissions.”</p> <p><b>RCSA section 22a-174-10</b> Public availability of information. Paragraph (a) states: “Any records, reports or other information obtained by the Commissioner or on file with the department shall, pursuant to the provisions of sections 1-7 through 20 of the General Statutes, as amended, be made available to the public.”</p>



CAA Section	Required CAA Element	Corresponding Connecticut Program Element(s)
<b>110(a)(2)(G) Emergency Power</b>	... “provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;”	<b>CGS Section 22a-181</b> Emergency action to protect public health or safety.  <b>RCSA section 22a-174-6</b> Air pollution emergency episode procedures. This section describes the existing emergency episode procedures in place, which are consistent with the significant harm levels as indicated in 40 CFR Part 51.151.
<b>110(a)(2)(H) Future SIP revisions</b>	... “provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;”	<b>CGS section 22a-174(d)</b> The Commissioner is authorized with all incidental powers necessary to control and prohibit air pollution.  <b>Air Quality Implementation Plan, Chapter 13, (March 3, 1972).</b> “This implementation plan is intended to be dynamic, not static. To this end, it will be revised when necessary.”  DEEP has made numerous SIP revisions addressing the NAAQS. Most recently, DEEP submitted revisions to its notification requirements for the PSD program on September 27, 2012 and to add PM2.5 to the NSR program on October 9, 2012.
<b>110(a)(2)(I) Nonattainment area plans</b>	...” in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to non attainment areas).”	In <a href="#">January 2012</a> , EPA designated Connecticut as unclassifiable/attainment for the 2010 NO <sub>2</sub> NAAQS. As a result, CAA section 110(a)(2)(I) does not apply to Connecticut.
<b>110(a)(2)(J) Consultation with government officials</b>	... “meet the applicable requirements of section 121 (relating to consultation)”	<b>CGS Section 22a-171</b> Duties of Commissioner of Environmental Protection. “... (5) advise and consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of this chapter.” <b>CGS Section 22a-174(d)</b> “The commissioner shall have all incidental powers to carry out the purposes of [Chapter 446c, entitled “Air Pollution Control,” which encompasses Conn. Gen. Stat. Sections 22a-170 through 22a-206] . . . <b>CGS Chapter 54</b> Uniform Administrative Procedures Act.  <b>State Implementation Plan Revision Advisory Committee (SIPRAC)</b> Established in 1972 and generally meets each month.

CAA Section	Required CAA Element	Corresponding Connecticut Program Element(s)
<p><b>110(a)(2)(J) Public notification</b></p>	<p>... “meet the applicable requirements of section 127 (relating to public notification),”</p>	<p><b>CGS Section 4-168</b> Notice prior to action on regulations.  <b>CGS Section 22a-171</b> Duties of Commissioner of Environmental Protection...“(2) Initiate and supervise state-wide programs of air pollution control education;”  <b>CGS Section 22a-174(d)</b> “The commissioner shall have all incidental powers to carry out the purposes of [Chapter 446c, entitled “Air PollutionControl,” which encompasses Conn. Gen. Stat. Sections 22a-170 through22a-206] . . .</p> <p><b>RCSA section 22a-174-2a(b)</b> Procedural requirements for new source review and Title V permitting. Public notice.  <b>RCSA section 22a-174-2a(c)</b> Procedural requirements for new source review and Title V permitting. Public Comment and Hearings.</p> <p><b>AQI Forecasting and Reporting.</b> Pursuant to 40CFR58.50, DEEP provides daily air quality forecasts to the public via EPA’s AirNow and Enviroflash programs, as well as via DEEP’s website and air quality information telephone line.</p>
<p><b>110(a)(2)(J) PSD and Visibility Protection</b></p>	<p>... “meet the applicable requirements of part C (relating to prevention of significant deterioration of air quality and visibility protection);”</p>	<p><b>RCSA section 22a-174-2a</b> includes administrative requirements for the new source review (NSR) program, including notification concerning major sources permits and modifications<sup>9</sup>.  <b>RCSA section 22a-174-3a(k)</b> Permit Requirements for Attainment Areas: Prevention of Significant Deterioration of Air Quality (PSD) Program<sup>10</sup>.</p> <p>EPA has interpreted the CAA Section 110(a)(2)(J) provision on visibility as not being ‘triggered’ because the visibility requirements in Part C are not changed by a new NAAQS<sup>11</sup>.</p>

<sup>9</sup> DEEP recently finalized revisions to RCSA 22a-174-2a explicitly requiring notice to nearby states, consistent with CAA section 126 and 40 CFR 51.166(q).

<sup>10</sup> DEEP recognizes that EPA may, at some point in the future, establish a short-term Prevention of Significant Deterioration (PSD) increment, significant impact level, significant emission rate, and/or significant monitoring level for the 2010 1-hour NO2 NAAQS. If that occurs, DEEP commits to pursue adoption of appropriate regulatory revisions within a reasonable period following EPA final adoption of required PSD program parameters. In the interim DEEP will continue to apply the suggested significant impact levels and other PSD requirements in EPA’s June 29, 2010 [“Guidance Concerning the Implementation of the 1-hour NO2 NAAQS for the Prevention of Significant Deterioration Program”](#).

<sup>11</sup> For example, see EPA’s July 23, 2012 proposed Federal Register approval of CT’s PM2.5 Infrastructure SIP, finalized on October 16, 2012.

<b>CAA Section</b>	<b>Required CAA Element</b>	<b>Corresponding Connecticut Program Element(s)</b>
<b>110(a)(2)(K) Air Quality modeling/data</b>	... “provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;”	<p><b>CGS section 22a-5. Duties and powers of the commissioner.</b> “The commissioner shall carry out the environmental policies of the state and shall have all powers necessary and convenient to faithfully discharge this duty. In addition to, and consistent with the environment policy of the state, the commissioner shall (a) promote and coordinate management of water, land and air resources to assure their protection, enhancement and proper allocation and utilization; ... (e) provide for the prevention and abatement of all water, land and air pollution including, but not limited to, that related to particulates, gases, dust, vapors, noise, radiation, odors, nutrients and cooled or heated liquids, gases and solids; ...”</p> <p><b>RCSA section 22a-174-3a(i) Ambient Air Quality Analysis:</b> “The commissioner may request any owner or operator to submit an ambient air quality impact analysis using applicable air quality models and modeling protocols approved by the commissioner.”</p>
<b>110(a)(2)(L) Permitting fees</b>	... “require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;”	<p><b>CGS Section 22a-6(a)(10)</b> “The commissioner may . . . by regulations adopted in accordance with the provisions of chapter 54 require the payment of a fee sufficient to cover . . . the reasonable cost of reviewing and acting upon an application for and monitoring compliance with the terms and conditions of any state or federal permit, license, registration, order, certificate or approval required . . .”</p> <p><b>CGS Section 22a-6f Fees.</b></p> <p><b>CGS Section 22a-174(g)</b> “The commissioner shall require, by regulations adopted in accordance with the provisions of chapter 54, the payment of a permit application fee sufficient to cover the reasonable costs of reviewing and acting upon an application for, and monitoring compliance with the terms and conditions of, any state or federal permit, license, order, certificate or approval required pursuant to this section. . . .”</p> <p><b>RCSA section 22a-174-26(c)(1)</b> “Each person to whom the commissioner issues a permit, or a modification or renewal thereto, under section 22a-174-3a, section 22a-174-2a and section 22a-174-19 of the Regulations of Connecticut State Agencies shall pay a permit fee as prescribed in the fee schedule in subdivision (2) of this subsection.” The fee schedule is set forth in Table 26-1 of subsection 2.</p> <p><b>RCSA section 22a-174-33(j)(1)(Z)</b> Requires Title V source to pay all fees due under RCSA section 22a-174-26 (Approved as satisfying 40 CFR 70.6(a)(7). See 67 FR 31966 (May 13, 2002))</p>

<b>CAA Section</b>	<b>Required CAA Element</b>	<b>Corresponding Connecticut Program Element(s)</b>
<p><b>110(a)(2)(M) Consultation /participation by affected local entities</b></p>	<p>... “provide for consultation and participation by local political subdivisions affected by the plan.”</p>	<p><b>CGS Section 4-168</b> Notice prior to action on regulations.</p> <p><b>Connecticut Air Quality Implementation Plan, Chapter 12 “Intergovernmental Relations” (March 3, 1972)</b> “The State will take immediate action in coordinating and delegating new responsibilities to local agencies that are prepared to accept the responsibility.”</p> <p><b>State Implementation Plan Revision Advisory Committee (SIPRAC)</b> Established in 1972 and generally meets each month.</p>

## Enclosure B

### Connecticut Statute Addressing Conflict of Interest Inclusion in Revision of State Implementation Plan for Air Quality: Infrastructure Requirements for the 2008 Ozone and 2010 NO<sub>2</sub> NAAQS

**Sec. 1-85. (Formerly Sec. 1-68). Interest in conflict with discharge of duties.** A public official, including an elected state official, or state employee has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, if he has reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. A public official, including an elected state official, or state employee does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him, his spouse, a dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group. A public official, including an elected state official or state employee who has a substantial conflict may not take official action on the matter.

(1971, P.A. 822, S. 3; P.A. 77-600, S. 7, 15; P.A. 84-546, S. 142, 173; P.A. 89-97, S. 5, 7.)

History: P.A. 77-600 changed "person subject to this chapter" to "public official or state employee"; in 1979 Sec. 1-68 transferred to Sec. 1-85; P.A. 84-546 made technical change; P.A. 89-97 amended section to specify applicability to elected state officials, state employees, their spouses and dependent children and businesses with which they are associated and to prohibit an official or employee who has substantial conflict from taking official action on the matter.

## **Enclosure C**

### **Public Participation Documentation**

<b>Attachment 1:</b>	<b>Notice of public hearing and comment period</b>
<b>Attachment 2:</b>	<b>Attendees at the public hearing</b>
<b>Attachment 3:</b>	<b>Certification of public hearing</b>
<b>Attachment 4:</b>	<b>Hearing report</b>

## **Attachment 1**

### **Notice of Intent to Revise the State Implementation Plan for Air Quality**

The Commissioner of the Department of Energy and Environmental Protection (DEEP) hereby gives notice of intent to amend the State Implementation Plan (SIP) to address section 110(a)(1) and (2) of the Clean Air Act (CAA) with respect to the 2008 8-hour ozone and 2010 1-hour nitrogen dioxide (NO<sub>2</sub>) national ambient air quality standards (NAAQS). DEEP is also proposing to incorporate section 1-85 of the Connecticut General Statutes into the SIP to satisfy the conflict of interest provisions of CAA section 110(a)(2)(E). The SIP revisions will be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval. The CAA section 110(a)(1) and (2) requirements, which are referred to as infrastructure requirements, provide that a state must demonstrate its ability to implement, maintain and enforce a revised NAAQS.

All interested persons are invited to comment on the proposal. Comments should be submitted no later than 4:30 PM on December 21, 2012 to Alison Rau, DEEP, Bureau of Air Management, 79 Elm Street, Hartford, Connecticut 06106-5127. Comments may be submitted by mail, facsimile to (860) 424-4063 or by electronic mail to [alison.rau@ct.gov](mailto:alison.rau@ct.gov).

In addition to accepting written comments, DEEP will also hold the public hearing described below. Any person giving oral comment at the hearing will be asked to submit a written copy of such comments.

**PUBLIC HEARING**  
**December 20, 2012**  
**2:00 p.m.**  
**DEEP, 5th Floor, Holcombe Room**  
**79 Elm Street, Hartford, CT 06106**

Copies of the SIP revisions are available for public inspection during normal business hours from Alison Rau at the Bureau of Air Management, 5th Floor, 79 Elm Street, Hartford, CT. The same documents are posted on DEEP's website at:

<http://www.ct.gov/dep/cwp/view.asp?a=2684&Q=514032>

For further information, contact Alison Rau of the Bureau of Air Management at (860) 424-3311 or by electronic mail to [alison.rau@ct.gov](mailto:alison.rau@ct.gov).

DEEP is an affirmative action/equal opportunity employer and service provider. In conformance with the Americans with Disabilities Act, DEEP makes every effort to provide equally effective services for persons with disabilities. Individuals with disabilities who need this information in an alternative format, to allow them to benefit and/or participate in the agency's programs and services, should call 860-424-3194 or e-mail the ADA Coordinator, at [deep.hrmed@ct.gov](mailto:deep.hrmed@ct.gov).

Persons who are hearing impaired should call the State of Connecticut relay number 711.  
**Requests for accommodations must be made at least two weeks prior to the program date.**

The authority to adopt these SIP revisions is granted by sections 22a-5 and 22a-174 of the Connecticut General Statutes. This notice is required pursuant to 40 Code of Federal Regulations 51.102.

11/16/2012  
Date

/s/ Macky McCleary  
Macky McCleary  
Deputy Commissioner







## Attachment 3

### HEARING CERTIFICATION

This certifies in accordance with the provisions of Title 40 Code of Federal Regulations Part 51.102 that the following actions were taken by the Connecticut Department of Energy and Environmental Protection (DEEP) regarding revisions to the Connecticut State Implementation Plan for air quality, specifically to address section 110(a)(1) and (2) requirements of the federal Clean Air Act (CAA) with respect to the 2008 8-hour ozone and 2010 1-hour nitrogen dioxide (NO<sub>2</sub>) national ambient air quality standards (NAAQS).

- 1) The public hearing was held on December 20, 2012 as announced in the notice of hearing;
- 2) In accordance with the notice, materials were available for review on the Department's website and at the Department's headquarters in Hartford, CT;
- 3) Copies of the notice were mailed to the directors of the air pollution control agencies in New York, New Jersey, Rhode Island and Massachusetts along with a copy to Region I of the U.S. Environmental Protection Agency; and
- 4) The notice of hearing was published on the DEEP's website at <http://www.ct.gov/dep/cwp/view.asp?A=2586&Q=514188> on November 16, 2012.

December 28, 2012

Date

*Alison A. Rau*

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/s/Alison A. Rau  
Bureau of Air Management

## **Attachment 4**

### **HEARING REPORT Prepared Pursuant to Code of Federal Regulations Part 40, Section 52 Regarding Revisions to the State Implementation Plan for Air Quality Hearing Officer: Alison A. Rau**

On November 19, 2012, the Commissioner of the Connecticut Department of Energy and Environmental Protection (DEEP) signed a notice of intent to amend the State Implementation Plan (SIP) for air quality to address the infrastructure requirements of Section 110(a)(1) and (2) of the federal Clean Air Act (CAA) with respect to the 2008 8-hour ozone and 2010 nitrogen dioxide (NO<sub>2</sub>) national ambient air quality standards (NAAQS). Pursuant to such notice, DEEP provided an opportunity for a public hearing and written comment. The public hearing was held at DEEP headquarters in Hartford, Connecticut on December 20, 2012. Written comments were accepted through the end of the public comment period on December 21, 2012.

#### **I. Overview**

This report describes the revisions to the SIP as proposed for hearing, the comments received through the comment period and DEEP's responses.

#### **II. Summary of the Revisions as Proposed**

The CAA requires states to submit SIP revisions to address the requirements of CAA section 110(a)(1) and (2) within three years of promulgation of a revised NAAQS. The 8-hour ozone NAAQS were revised on March 27, 2008 and the NO<sub>2</sub> NAAQS were revised on February 9, 2010, resulting in the preparation and proposal of the subject SIP revision. The CAA section 110(a)(1) and (2) requirements, which are referred to as infrastructure requirements, provide that a state must demonstrate its ability to implement, maintain and enforce revised NAAQS.

The proposed SIP revisions include tables of existing Connecticut and federal regulations that satisfy the CAA 110(a)(2) infrastructure requirements for both the ozone and NO<sub>2</sub> NAAQS. DEEP concludes that the provisions of current regulations and the proposed adoptions currently in progress (described below) meet all of EPA's required elements:

1. DEEP is implementing the suggested significant impact levels and other Prevention of Significant Deterioration (PSD) requirements in EPA's June 29, 2010 "Guidance Concerning the Implementation of the 1-hour NO<sub>2</sub> NAAQS for the Prevention of Significant Deterioration Program." If in the future EPA establishes a short-term PSD increment, significant impact level, significant emission rate, and/or significant monitoring level for the 2010 1-hour NO<sub>2</sub> NAAQS, DEEP commits to pursue such

adoptions within a reasonable period following EPA's final adoption of such required parameters.

2. DEEP is pursuing revisions to RCSA 22a-174-24 to ensure consistency with the 2008 ozone NAAQS, 2010 1-hour NO<sub>2</sub> NAAQS and other recent EPA NAAQS revisions. DEEP seeks to complete such regulatory revisions by September 30, 2013.
3. DEEP is incorporating the existing statute, CGS section 1-85, to fulfill the requirements of 110(a)(2)(E).

### **III. Summary of Comments**

The only comments received were from Anne Arnold, Manager, Air Quality Planning Group, EPA Region 1, Boston, Massachusetts, on December 20, 2012. The comments address four subject areas:

1. Updating 2008 ozone and 2010 NO<sub>2</sub> standards;
2. Addressing prongs 1 and 2 of portion D(i) at a later time;
3. Incorporating Connecticut statutes into the SIP; and
4. Referencing compliance assurance monitoring requirements.

A phone call was also received on December 3, 2012 from U.S. Army Regulatory Affairs Specialist Charlene Beairsto, who inquired about the meaning of and reference to section 1-85 in the SIP.

All comments submitted are summarized below with DEEP's responses.

**1. EPA Comment:** In order to receive full approval of its infrastructure State Implementation Plan (SIP) for the 2008 ozone and 2010 NO<sub>2</sub> standards, Connecticut must update its Section 22a-174-24 regulation to include the 2008 ozone and 2010 NO<sub>2</sub> standards. We note that under Element A, the proposal states that Connecticut plans to complete this rulemaking by September 2013.

**DEEP Response:** DEEP plans to complete this rulemaking for the 2008 ozone and 2010 NO<sub>2</sub> standards by the end of September 2013.

**2. EPA Comment:** In light of ongoing litigation, we suggest Connecticut address the "significantly contribute to nonattainment or maintenance in another state" portion of element D(i), also sometimes referred to as prongs 1 and 2, at a later time. For the reasons explained in the November 19, 2012, EPA memorandum entitled "Next Steps for Pending Redesignation Requests and State Implementation Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule," at this time, EPA does not plan to make findings with respect to CAA section 110(a)(2)(D)(I), prongs 1 and 2.

**DEEP Response:** As documented by EPA's CSAPR modeling, Connecticut's ability to attain the 2008 8-hour ozone NAAQS is substantially compromised due to the overwhelming influence of transported air pollution from upwind states. Monitoring data confirm the dominating role of transport, with measured values often exceeding the NAAQS at monitors located along the

state's most upwind boundaries, before any interaction with in-state emissions. Connecticut has done its fair share to reasonably control in-state emissions, and cannot continue to shoulder a disproportionate burden while upwind states fail to fulfill their CAA obligations. EPA's CSAPR modeling supports that conclusion. CSAPR modeling projections for 2014 (a year before marginal areas are required to attain) indicate that Connecticut will no longer contribute significantly to out-of-state nonattainment issues in any area currently designated by EPA as nonattainment for the 2008 ozone NAAQS, with the exception of the NY/NJ/CT area. Rather than continuing to disadvantage Connecticut's competitiveness and further the past inequity, DEEP will wait for EPA to address the CAA section 110(a)(2)(D) obligation of upwind states to assure the airshed wide control strategy focuses on the most cost effective and largest contributors.

EPA has a responsibility under the CAA to ensure that states meet the requirements of section 110(a)(2)(D)(i)(I) in a timely fashion. EPA's November 19, 2012 memorandum is not consistent with that responsibility and will result in additional delays in securing upwind reductions. EPA should instead issue findings of failure to submit for any state that has not addressed the transport provisions, thereby starting the two-year sanctions clock for imposition of a Federal Implementation Plan (FIP) that would mandate the necessary reductions and ensure continued progress toward attainment.

The technical support document should be revised to reflect the above discussion.

**3. EPA Comment:** The discussion for several elements includes reference to a number of state laws. Under element E, we note that Connecticut specifically requests that one of these laws (CGS section 1-85) be incorporated into the SIP. Connecticut should ensure that when law(s) are the only program element(s) on which the state must rely to meet a specified CAA element, the law(s) are incorporated into the SIP.

**DEEP Response:** DEEP has included CGS section 1-85 in this SIP revision to satisfy the conflict of interest requirements of CAA section 128(a)(2), as identified by CAA section 110(a)(2)(E)(ii). DEEP understands that all the other Connecticut statutes used to satisfy program elements have been submitted to the SIP. If EPA believes that additional statutes are required, we invite EPA to get in touch with us so that we might address any gap.

**4. EPA Comment:** Although Connecticut references 22a-174-5 for meeting 110(a)(2)(F), the state should consider also referencing the compliance assurance monitoring requirements contained in section 22a-174-33 in meeting 110(a)(2)(F)(i).

**DEEP Response:** Section 22a-174-33 implements the Title V operating permit program in Connecticut. DEEP understands Title V as standing outside the requirements of CAA sections 110(a)(1) and (2), and as a result, DEEP has not proposed to include this rule in the Connecticut SIP.

**5. Comment from U.S. Army Regulatory Affairs Specialist Charlene Beirsto:** Called and requested a citation and more information concerning section 1-85 in the SIP.

**DEEP Response:** DEEP provided Ms. Beirsto with full CGS section 1-85 citation and explained the conflict of interest provision via email.

**IV. Conclusion**

I recommend that the SIP revision as proposed, together with the above revisions made in response to comments, be submitted to the EPA for approval.

*Alison Rau*

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Alison Rau  
Hearing Officer

*12/28/12*

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Date